STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL
PROPERTY TAX APPEAL

New Michigan LP,
Petitioner,

v

MTT Docket No. 326490

City of Norton Shores,
Respondent.

Tribunal Judge Presiding
Rachel J. Asbury

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner appeals Respondent's 2006 and 2007 ad valorem property tax assessments of commercial real property owned by Petitioner. Petitioner timely appealed the assessment to Respondent's March, 2006, Board of Review which affirmed the assessment for the tax year appealed. Petitioner filed its petition in this matter with the Tribunal on June 30, 2006, and timely filed a motion to amend to include the 2007 tax year. A hearing was held in this case on May 13 and 14, 2009. Petitioner was represented by Daniel P. Perk, Miller Johnson. Respondent was represented by Eric Grimm, Williams Hughes & Cook, PLLC.

BACKGROUND

The subject property is located at 3755 Henry Street, Norton Shores, Muskegon County. Petitioner purchased the subject property in 1994 and has owned it continually since that time. The property is classified commercial and zoned as multi-family residential.

The subject property is a 58 unit apartment complex built in 1972 on 1.86 acres. It is a 2.5 story structure with the lower level being partially below-grade, offering garden-style apartments. The breakdown of units is as follows:

Studio	20 units
One bedroom	35 units
Two bedroom	3 units

All units have interior entrances and there are carports for each apartment.

Respondent's contentions of true cash value, state equalized value, and taxable value, as confirmed by the Board of Review, are:

Parcel No. 61-27-638-000-0029-00

Year	TCV	SEV	TV
2006	$1,607,600	$803,800	$736,846
2007	$1,611,200	$805,600	$764,109

Petitioner's contentions of true cash value, state equalized value, and taxable value are:

Parcel No. 61-27-638-000-0029-00

Year	TCV	SEV	TV
2006	$625,000	$307,000	$307,000
2007	$650,000	$320,500	$318,359

The Tribunal, having considered the testimony and evidence properly submitted, and the file in the above-captioned case, finds that the property's true cash value, state equalized value , and taxable value are:

Parcel No. 61-27-638-000-0029-00

Year	TCV	SEV	TV
2006	$1,607,600	$803,800	$736,846
2007	$1,611,000	$805,500	$764,109

PETITIONER'S CONTENTIONS

Petitioner offered the following proposed exhibits:

P-1 December 27, 2007 Appraisal of Real Property for Lakecrest Shores Apartments, prepared by Susan P. Shipman of Stout Risius Ross, Inc.
P-2 December 27, 2007 Appraisal of Real Property for Lakecrest Park Apartments, prepared by Susan P. Shipman of Stout Risius Ross, Inc. (as corrected)
P-3 Appraisal Institute, The Appraisal of Real Estate (13th ed., 2008)

P-4 Petitioner's Pre-Hearing Statement
P-5 Summary Statement of Operations for period ending December 31, 2003 through December 31, 2006 for both Roosevelt Park & Norton Shores
P-6 December 7, 2007 engagement letter for Lake Crest Park Apartments from Daniel Tomlinson of Stout Risius Ross to Morgan Thomas of Marvin F. Poer & Company
P-7 December 7, 2007 engagement letter for Lake Crest Shores Apartments from Daniel Tomlinson of Stout Risius Ross to Morgan Thomas of Marvin F. Poer & Company
P-8 Information Request for Property Tax Appeal for Stout Risius Ross
P-9 Lakecrest Apartments Floorplans
P-10 Lakecrest (Park & Shores) Building Layout
P-11 Lakecrest Park and Lakecrest Shores Property Surveys
P-12 Summary Statement of Operations (Park & Shores Combined) for the period ending December 31, 2007 (Accrual Basis)
P-13 Summary Statement of Operations (Park & Shores Combined) for the period ending December 31, 2008 (Accrual Basis)
P-14 Muskegon Market Rents, December 5, 2007, prepared by K. Rosado
P-15 Market Surveys from MPA, Primary Competitive Set (B/C Product), June 12, 2007
P-16 Lakecrest Shores Rent Roll As of December 31, 2005
P-17 Lakecrest Shores Rent Roll As of December 31, 2006
P-18 Lakecrest Shores Rent Roll As of December 31, 2007
P-19 Lakecrest Shores Rent Roll As of December 31, 2008
P-20 Lakecrest Park Rent Roll As of December 31, 2005
P-21 Lakecrest Park Rent Roll As of December 31, 2006
P-22 Lakecrest Park Rent Roll As of December 31, 2007
P-23 Lakecrest Park Rent Roll As of December 31, 2008
P-24 Lakecrest Park & Shores Homeless and Section 8 Rent Rolls
P-25 Lakecrest Apartments Apartment Pricing List, December 18, 2007
P-26 Lakecrest Park & Shores Occupancy Percentage by Property And Month for years 2004 through 2007
P-27 Lakecrest Park & Shores Vacancy Summary
P-28 Lakecrest Park and Shores Vacancy Trend Years 2007-2008
P-29 Rental Comparable and Improvement Sale Comparable Market Data
P-30 Historic Unemployment Rates in Muskegon County
P-31 Location Map of Lakecrest Park Apartments and Lakecrest Shores Apartments
P-32 Lakecrest Park & Shores Flood Data
P-33 Muskegon County Demographics
P-34 Zoning Notes by Susan Shipman
P-35 2006 City of Norton Shores Winter and Summer Tax Bills
P-36 2007 City of Norton Shores Winter and Summer Tax Bills
P-37 2006 City of Roosevelt Park Winter and Summer Tax Bills
P-38 2007 City of Roosevelt Park Winter and Summer Tax Bills
P-39 Lakecrest Shores Apartments Photographs
P-40 Lakecrest Park Apartments Photographs
P-41 Improved Sale Comparable Photographs

P-42 Comparable Rentals Photographs
P-43 Baker Townhomes Information
P-44 Grand West Apartments Information
P-45 North Muskegon Apartments Information
P-46 Tiffany Woods Apartments Information
P-47 Professional Qualifications of Susan F. Shipman, MAI
P-48 Amended pages to Petitioner's exhibit 1

Respondent objected to the admission of Petitioner's exhibit 1, an appraisal of Lakecrest Shores Apartments, the subject property. Respondent asserted that "[t]here has never been a prior tax tribunal case that has allowed that combination and separation methodology [used in Petitioner's appraisal and w]e think that it would be very unwise for the Tribunal to set a precedent."[1] Respondent further objected based on MRE 702 asserting that the Tribunal should "act as a gatekeeper and exclude it based on the problematic methodology of the appraiser."[2] The Tribunal overruled Respondent's objection stating, "[t]he credibility of the document, the credibility of the process and the weight given to that document would be [the Tribunal's] to determine. . . .[t]he relevance of it, that will all be [the Tribunal's] to determine as we go through the hearing."[3] Petitioner's exhibit 1 was admitted.

Respondent objected to the admission of Petitioner's exhibit 5, summary statements of operation for the 2003, 2004, 2005, and 2006 calendar years. The summary statements included separate

[1] Transcript, May 13, 2009, page 9, ll 13-16
[2] Transcript, May 13, 2009, page 10, ll 4-5; Respondent cites *May Company v Taylor*, 16 MTT 266, in support of its argument. Contrary to Respondent's implication, the Tribunal in that case overruled Respondent's objection to the admission of the petitioner's appraisal stating "the question of whether Petitioner's principles and methodology are reliable would be dealt with in this Opinion and Judgment." 16 MTT 266, 278. Further, the Supreme Court in *Gilbert v Daimler-Chrysler*, 468 Mich 883, 661 NW2d 232 (2003), states "MRE 702 [provides] the factors that a court may consider in determining whether expert opinion evidence is admissible. It . . . [is] the court's fundamental duty of ensuring that *all* expert opinion testimony—regardless of whether the testimony is based on 'novel' science—is reliable." In that case, "the faux 'medical' opinion of an individual who lacked any medical education, experience, training, skill, or knowledge became the linchpin of plaintiff's case and unmistakably affected the verdict." In the present case, there is no question. Petitioner's appraiser is qualified by education, experience, training, skill, and knowledge to perform an appraisal. That her methodology may be novel is not dispositive as to its reliability. The question of credibility and reliability of the appraisal and her appraisal methodology is for the Tribunal to review and determine.
[3] Transcript, May 13, 2009, page 13, ll 18-23

columns for Roosevelt Park and Norton Shores. The columns were labeled "actual basis"; however, testimony was given that the numbers were allocated amounts and not actual to the individual properties. The Tribunal admitted Petitioner's exhibit 5 for the purpose of showing what data Ms. Shipman used but not for purposes of the information and data within the exhibit as specific to either property as the values were allocated and not actual. Respondent objected to the admission of Petitioner's exhibits 20 and 21, rent rolls for Lakecrest Park for tax years 2006 and 2007 respectively. The Tribunal allowed the exhibits for the limited purpose of showing how the numbers on Exhibits 1 and 48 were determined.

Respondent objected to the admission of Petitioner's exhibit 26, combined annual occupancy rates, on the basis of relevance as the document "combines the properties."[4] The Tribunal allowed the exhibit for information purposes, "just as an underlying document as to how [Ms. Shipman] came to her conclusions with the notation that it is not specific to the subject property but that it is a combined number."[5]

Exhibits 7, 16, 17, 29, 47, and 48 were admitted without objection.

Petitioner asserts that the subject property's "state equalized value, assessed value, and taxable value are in excess of 50% of the subject's true cash value."[6] Petitioner asserts that the "highest and best use of this [property] is to operate it together as a combined economic unit with the property located in Roosevelt Park."[7] Petitioner

> did not value Norton Shores. . . separately from Lakecrest Park.. . . What she did is she looked at the combined properties as a 302 unit multi-unit apartment complex, and then made her income approach determinations based on those

[4] Transcript, May 14, 2009, page 69, l 24
[5] Transcript, May 14, 2009, page 70, ll 2-5
[6] Petitioner's prehearing statement
[7] Transcript, May 13, 2009, page 18, l 25-page 19, l 2

> comparisons and her sales comparison approach based on comparisons to similarly . . . sized apartment complexes.[8]

Petitioner offered the testimony of Ms. Sophia Iglesias, Regional Vice President for Metropolitan Properties of America, a real estate and property management company which manages Lakecrest Shores Apartments. The subject property is owned by New Michigan Limited Partnership and the owner of Metropolitan Properties of America is . . . a partner in New Michigan. Ms. Iglesias is responsible for "overseeing a group of properties . . . to oversee the marketing, supervise the staff, manage the financials and make sure we maximize income."[9] She is responsible for overseeing the subject property. Ms. Iglesias testified that she had in the past managed "about 6 apartment buildings that were 50 to 60 units each"[10] near Fenway Park. The company combined "that . . . portfolio . . . because it was cheaper and less expensive to the owner to spread those expenses throughout those portfolios."[11]

Ms. Iglesias testified she is responsible for "hiring and firing. Setting up marketing plans, setting up maintenance planes. . . . Managing all of the income for the property."[12] Ms. Iglesias testified that income statements are generated for "the property, which is Lakecrest Park and Shores. . . . there is no separate operating statement for Shores."[13] She further testified that rent rolls and vacancy rates are "not separated by property. It's one report"[14] and that the subject property is "operated as a part of Park."[15] There is one contract for snow plowing, "landscaping,

[8] Transcript, May 13, 2009, page 21, ll 6-17
[9] Transcript, May 13, 2009, page 40, ll 14-18
[10] Transcript, May 13 2009, page 73, ll 7-8
[11] Transcript, May 13 2009, page 73, ll 14-19
[12] Transcript, May 13, 2009, page 41, ll 9-13
[13] Transcript, May 13, 2009, page 42, ll 4-6
[14] Transcript, May 13, 2009, page 42, ll 18-19
[15] Transcript, May 13, 2009, page 43, l 10

extermination, all those types of contracts, because we get a better deal . . . it's less expensive."[16] Ms. Iglesias testified that part of her responsibility was to review "financial statements . . . rent rolls . . . and vacancy reports"[17] and that she is familiar with the financial statements for tax years 2006 and 2007.

Ms. Iglesias testified that the rent rolls for 2006 and 2007 for the subject property showed both a market rent rate and a lower rate.[18] Ms. Iglesias explained that market rent was "under perfect conditions that [is] what we would be able to get"[19] but that Petitioner was not actually receiving market rent in 2005 or 2006. Ms. Iglesias testified that, based on her review of the rent rolls for the subject property, mathematically the vacancy rate for 2005 was 29.31% and the vacancy rate for the 2006 tax year was 12%. She further testified that the only way to determine a collection loss for bad debts and uncollected rents for the subject property would be "allocation. We would probably base it on the number of units."[20] Ms. Iglesias testified that operating expenses were not tracked separately for the subject property and to determine expenses for the subject, "[y]ou would have to do an allocation."[21] Ms. Iglesias testified that the operating expenses listed in Petitioner's exhibit 5 were allocated amounts and that "actual operating expenses for Norton Shores is just not kept track of."[22]

On cross examination, Ms. Iglesias admitted that, although she testified on direct examination that the national vacancy rate was 12%, she did not review Muskegon area market studies when

[16] Transcript, May 13, 2009, page 43, ll 23-25
[17] Transcript, May 13, 2009, page 46, ll 12-18
[18] Petitioner's exhibits 16 and 17
[19] Transcript, May 13, 2009, page 78, ll 15-16
[20] Transcript, May 13, 2009, page 93, ll 6-8
[21] Transcript, May 13, 2009, page 96, l 3
[22] Transcript, May 13, 2009, page 97, ll 12-13

coming to that opinion and Petitioner's appraisal stated that the national rate was between 5% and 7%.[23] Ms. Iglesias testified that she began managing the subject property in 2008 and had managed other 50 unit complexes in the past. She testified that in her experience, these were "part of a portfolio . . . managed out of one location as a whole property."[24]

Ms. Iglesias testified that she is not trained as an appraiser and did not prepare a valuation disclosure for this case. She answered in the affirmative when asked if her "testimony today related to financial feasibility and economic issues and business decisions that would be made by a management company in determining whether or not to purchase a property."[25] Ms. Iglesias testified that, although they have the information, Petitioner does not break out specific replacement costs, long term maintenance issues, financial expenses, or capital expenses for the subject property separately in its reports.

Petitioner offered the testimony of Ms. Susan Shipman. Ms. Shipman is a commercial real estate appraiser, with a certified general license from the State of Michigan. She has been a certified general real estate appraiser for 15 years and holds an MAI designation from the Appraisal Institute. Ms. Shipman also has an MBA from University of Michigan. Ms. Shipman testified that she has performed approximately 75 appraisals of apartment complexes. She has performed "some for tax appeal. . . . one in connection with a Chapter 11 bankruptcy hearing. . . . for bank financing . . . for condemnation purposes. And . . . to assist a buyer or seller in determining a price that they should ask or get for acquisition . . . and for insurance replacement."[26]

[23] Transcript, May 13, 2009, page 110, ll 8-16
[24] Transcript, May 13, 2009, page 112, ll 4, 18-19
[25] Transcript, May 13, 2009, page 123, ll 7-14
[26] Transcript, May 13, 2009, page 128, ll 6-13

Ms. Shipman testified that as she began her appraising process, she made contact with the property's owner and tax consultant. With respect to the physical characteristics of the property, she obtained a "site plan [and] unit floor plans."[27] Ms. Shipman was provided "[f]inancial statements, meaning income and expense statements, . . . [r]ent rolls as of the valuation date. . . . Vacancy reports."[28] Ms. Shipman testified that she toured the property, conducted an inspection, and took photographs. She also "drove around and looked at the comparable rental properties and the improved sales, two improved sales in Muskegon County."[29] Ms. Shipman observed that the subject property was "a very dense site, with 30 something units per acre. . . . [and] had a very high percentage of studio units"[30] which, she testified, would impact the income stream as an owner will get more rent from a 1 bedroom unit than from a studio. Only one of the sales comparables she used had any studio units with "20% studio as opposed to 33, 34%."[31] Additionally, she looked at location demographics and market conditions including unemployment data, population, households, household income, as well as historic rent and occupancy surveys on the subject and other properties in Muskegon County.[32]

Ms. Shipman determined that the highest and best use of the property was "an apartment multi-family market rate conventional apartment complex operated together with Lakecrest Park. . . . located . . . in the city of Roosevelt Shores [Park]."[33] Ms. Shipman described Lakecrest Park as a 244 unit complex with the same unit layout, same basic construction, same unit sizes as the

[27] Transcript, May 13, 2009, page 137, l 7
[28] Transcript, May 13, 2009, page 137, ll 13-16
[29] Transcript, May 13, 2009, page 138, ll 17-20
[30] Transcript, May 13, 2009, page 139, ll 2-5
[31] Transcript, May 13, 2009, page 139, ll 2-3
[32] Transcript, May 13, 2009, page 140, ll 6-13
[33] Transcript, May 13, 2009, page 144, ll 1-6

subject property. The "main difference was the number of buildings, the number of units, the unit mix at each property, and . . . Lakecrest Park had a swimming pool. . . . a leasing office and a model office."[34] To come to her highest and best use determination, Ms. Shipman "looked at the history of the property, how it had been owned and operated. . . how it had been bought and sold. . . [a]nd . . . from an economic perspective. . . . also . . . from a legal perspective,. . . in that the tenants at Lakecrest Shores are paying rent with the knowledge that they are going to be able to use the pool at Lakecrest Park."[35] Ms. Shipman testified that in coming to her conclusion she considered that the subject property "was being operated out of Lakecrest Park. . . . in order . . . to exist on its own it would have to . . . have a leasing office and a model. . . [and] staff on-site . . . or else contract out those maintenance services."[36] She testified that she also looked at the financial statements which are "generated in a consolidated fashion by the property owner. . . they were separated . . . at my request. . . . because they track rents on a unit-by-unit basis, they could separate the income . . . then they took the expenses and just distributed them on a straight per unit basis."[37] Although she testified that she did not look at contract services, she did consider that "if you contract for snowplowing, for example, you probably are going to get a better deal if you contract for 2 complexes. . . than if you [did] just for one.[38]

Ms. Shipman testified that in valuing the subject property she,

> . . . looked at Lakecrest Park and Lakecrest Shores as one operating entity of 302 units. And I valued it based on an income capitalization approach, and then looked at comparable sales and made a value . . . conclusion for the 2 properties combined. And then I made an allocation of that combined property value to each

[34] Transcript, May 13, 2009, page 144, ll 19-25
[35] Transcript, May 13, 2009, page 145, ll 2-
[36] Transcript, May 13, 2009, page 145, l 21-page 147, l 1
[37] Transcript, May 13, 2009, page 148, ll 10-18
[38] Transcript, May 13, 2009, page 149, ll 3-6

> of the individual properties, the one in Lakecrest Park and then . . . the remainder . . . to Lakecrest Shores.[39]

Ms. Shipman testified that she thought "the most reliable approach for purposes of determining true cash value of the subject property [was t]he income approach"[40] as the property would be purchased for its ability to generate income. She also utilized the sales comparison approach but placed "much less reliance in this case"[41] on that method. She testified that she considered the cost approach but "did not think that it would be meaningful. . . because I don't think that . . . a buyer would use the cost approach to determine what they would pay for the property."[42]

Ms. Shipman reviewed her chart[43] that summarized her "conclusions for the income capitalization approach for the 2006 tax year . . . with . . . .revision.[44]"[45] Ms. Shipman identified the "pro forma operating statement for the . . . combined properties for the 2006 tax year."[46] She testified that she "concluded that a buyer of this subject property would more than likely use the effective rents to determine the gross potential rental income for the combined properties."[47] She testified that the rent rolls she relied on were rent rolls for Lakecrest Shores[48] "but also . . . for Lakecrest Park.[49]"[50] Ms. Shipman used the combined[51] Lakecrest Park and Lakecrest Shores as the subject property for her comparable rental survey.[52] Ms. Shipman considered comps 1 and 2

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[39] Transcript, May 13, 2009, page 162, l 8-page 163, l 1
[40] Transcript, May 13, 2009, page 164, ll 18-20
[41] Transcript, May 13, 2009, page 165, l 4
[42] Transcript, May 13, 2009, page 165, l 24-page 166, l 4
[43] Petitioner's exhibit 1, page 40
[44] Petitioner's exhibit 48
[45] Transcript, May 13, 2009, page 167, ll 19-21
[46] Transcript, May 13, 2009, page 173, ll 14-16
[47] Transcript, May 13, 2009, page 175, ll 8-11
[48] Petitioner's exhibit 16
[49] Petitioner's exhibit 20
[50] Transcript, May 13, 2009, page 176, ll 10-11
[51] Transcript, May 13, 2009, page 179, l 3
[52] Petitioner's exhibit 29

to be most similar.[53] Comp 1 was Tiffany Woods with 302 units and comp 2 was Lake Forest with 252 units. Of the other two comps, comp 3 had 667 units and comp 4 had 138 units.[54]

Ms. Shipman testified that "the vacancy and collection loss factor is based on a review of the combined properties' vacancy reports, . . . what the comparable properties were doing in terms of vacancy"[55] and she concluded a vacancy rate for the combined properties of 12%.

To project operating expenses for the 2006 tax year, Ms. Shipman testified that she "reviewed the historical operating expenses for the combined property for calendar years 2003, 2004, and 2005."[56] Ms. Shipman relied on combined operating expense statements[57] as "they would typically not have separate statements."[58] Ms. Shipman made a determination of net operating income for the combined properties, subtracting the combined operating expenses from the combined income. She used a tax adjusted capitalization rate of 11.28%; however, she testified that the rate for 2006 should have been 11.08% and she recalculated her value conclusions during the hearing. The tax adjusted capitalization rate was 10.82% for the 2007 tax year. Ms. Shipman testified that she used the same methodology and made separate calculations and valuation conclusions for the combined properties for each of the tax years at issue.

[53] Transcript, May 13, 2009, page 179, ll 21-22
[54] Petitioner's exhibit 29
[55] Transcript, May 13, 2009, page 187, ll 3-7
[56] Transcript, May 13, 2009, page 191, ll 7-9
[57] Petitioner's exhibit 5
[58] Transcript, May 13, 2009, page 192, l 2

Ms. Shipman testified that she also utilized the sales comparison approach[59] and that, consistent with her income approach, she did it "on a combined basis."[60] Ms. Shipman identified and inspected properties comparable in size and age to the combined properties. In her analysis, she made adjustments using the combined properties as the standard.

Ms. Shipman made adjustments for location; property size (number of units based upon 302 as the subject property); average unit size (SF); age, quality, condition; amenities; and economic characteristics.[61] Ms. Shipman made the following adjustments:

Comp 1	-10% unit size -10% age, quality, condition -25% economic characteristics
Comp 2	-10% unit size -30% economic characteristics
Comp 3	-10% location - 5% number of units -10% unit size +5%, age, quality, condition -20% economic characteristics
Comp 4	-20% location - 5% age, quality, condition -25% economic characteristics

The adjustment for unit size was made for comps in which the units were significantly larger than units in the subject. Comp 1 had 4.3 times as many units as Lakecrest Shores, comp 2 had 5.2 times as many units, comp 3 had 2.3 times as many units, and comp 4 had 6.2 times as many units. Ms. Shipman made the no adjustments for number of units for comps 1, 2, and 3 and a 10% adjustment for comp 4. Ms. Shipman made no adjustments for amenities although

[59] Transcript, May 13, 2009, page 212, ll 6-8
[60] Transcript, May 13, 2009, page 212, ll 10-12
[61] Petitioner's exhibit 1, page 55

Lakecrest Shores does not have a clubhouse, pool, fitness center, office, model, or on-site maintenance as do the comparables.[62] Ms. Shipman testified that her market conditions adjustments were based on the time between sale date and valuation date with a standard of 3% per year.[63] Ms. Shipman testified that she made economic characteristics adjustments to the comps in her sales comparison approach,

> . . . because there is a relationship between income and value. . . the differences between the NOI would be reflected in differences in the properties. If you generate more income, you have a superior property. . . . And one of the things that influences the income . . . is location. And the reason I made an adjustment to comparables 3 and 4, because I think they're in better locations than the subject property. And in terms of property size, . . . all else being equal, 2 properties that are exactly alike except for one is much smaller or much larger than the other, there could be a price differential. And in real estate the tendency . . . for apartment complexes, the lower the number of units the higher the price per unit.[64]

Ms. Shipman testified that after she had "looked at all of [the] individual elements of comparison [and] how much they impacted the NOI for the comparable sales. . . . there was still a significant difference."[65] Ms. Shipman stated that she looked at the comparables and knew that some had been renovated, the density of the subject is very high in comparison to the comparables, the comps had lower expense ratios, and some of them were operating on a more stable basis or at a higher stabilized occupancy rate, "[s]o that's . . . what I classified as an economic characteristic."[66] She further testified that "[t]he economic adjustment accounts for things that impact the income of the property that I haven't accounted for in my other adjustments."[67] The economic characteristics adjustments were based on differences in net operating income between the each comparable property and that of the combined properties.

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[62] Petitioner's exhibit 1, page 55
[63] Transcript, May 13, 2009, page 223, ll 8-11
[64] Transcript, May 13, 2009, page 225, l 16-page 226, l 11
[65] Transcript, May 13, 2009, page 228, ll 19-22
[66] Transcript, May 13, 2009, page 229, ll 19-20
[67] Transcript, May 13, 2009, page 229, l 25- page 230, l 2

Ms. Shipman was asked to read the following:

> Economic characteristics include all the attributes of a property that directly affect its income. This element of comparison is usually applied to income producing properties. Characteristics that affect a property's income include: operating expenses, quality of management, tenant mix, rent concessions, lease terms, lease expiration dates, renewal options and lease provisions such as expense recovery clauses. Investigation of these characteristics is critical to proper analysis in the comparables and development of a final opinion of value. Appraisers must take care not to attribute differences in real property rights conveyed or changes in market conditions to different economic characteristics. Caution must also be exercised in regard to units of comparison such as net operating income per unit. NOI's per unit reflect a mix of interactive economic attributes, many of which should only be analyzed in the income capitalization approach. Sales comparison analysis must not be presented simply as a variation of the income capitalization approach applying the same techniques to reach an identical value indication.[68] Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 12th ed, 2001), p 436.

Ms. Shipman testified that she did not "violate any of the admonitions or statements in that paragraph."[69] She testified that she did not take the NOI of the comparable property and adjust the sale price for the differential. Ms. Shipman was asked to read further from *The Appraisal of Real Estate:*

> Paired data analysis may provide the only persuasive support for adjustments for differences in the attributes of a property that affect its income such as operating expenses, management quality, tenant mix, rent concessions, and other characteristics. Some of these characteristics may already be reflected in the adjustment for location. . . . Some appraisers analyze net operating income per unit to account for differences in economic characteristics, but the technique is not widely used because it essentially duplicates the techniques used in direct capitalization. Thus, errors are duplicated in 2 of the 3 approaches, and these errors will be hard to identify in the final reconciliation of value indications.[70] Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 12th ed, 2001), page 457.

[68] Transcript, May 13, 2009, page 232, l 13- page 233, l 8
[69] Transcript, May 13, 2009, page 233, ll 18-21
[70] Transcript, May 13, 2009, page 234, l 21- page 235, l 14

Ms. Shipman's opinion of value based on the sales comparison approach for the combined properties was $5,590,000 for the 2006 tax year.[71] Ms. Shipman determined an adjusted price per unit of $18,500 for both the 2006 and 2007[72] tax years. Her opinion of value, based on the sales comparison approach, was $5,590,000 for the 2007 tax year. Ms. Shipman's "combined value conclusion, based on the income capitalization approach, was $4,820,000"[73] for the 2006 tax year and $5,050,000 for the 2007 tax year.[74]

Ms. Shipman's "final value of the combined subject properties . . . for the 2006 tax year [is] $4,925.000."[75] Ms. Shipman's "combined value conclusion for the 2007 tax year . . . is $5,100,000."[76]

Ms. Shipman's "conclusion . . . for the true cash value for the subject property. . . as of 12-31-2005 . . . Lakecrest Shores . . . is $635,000."[77] Ms. Shipman's "conclusion for the subject property Norton Shores for tax year 2007 [was] $650,000."[78]

Ms. Shipman testified that she "took the combined true cash value . . . first . . . did . . . a straight line allocation on a per unit basis."[79] She testified that had she allocated strictly on a per unit basis, 19% of the value would have applied to the subject property. She testified that she

> introduced the fact that that the subject property did not have a leasing office or model, . . . that if it were to sell separately it would have probably higher

[71] Transcript, May 13, 2009, page 236, ll 16-17
[72] Transcript, May 13, 2009, page 237, l 8, page 238, l 11
[73] Transcript, May 13, 2009, page 239, ll 19-20
[74] Transcript, May 13, 2009, page 240, ll 4-7
[75] Transcript, May 13, 2009, page 239, ll 22-25
[76] Transcript, May 13, 2009, page 240, ll 3-9
[77] Transcript, May 13, 2009, page 241, ll 5-12
[78] Transcript, May 13, 2009, page 241, ll 13-15
[79] Transcript, May 13, 2009, page 241, l 18-page 242, l 120

> expenses, operating expenses. . . . it wouldn't have a pool and it might have a higher capitalization rate.[80]

Ms. Shipman testified that these factors "would have a negative impact on NOI . . .[s]o the adjustment I made was, . . . I allocated 13 percent of the combined value . . . [to] Lakecrest Shores."[81] Ms. Shipman then deducted the personal property at the subject property and arrived at a value conclusion for the subject property of $635,000 as of 12-31-2005 and $650,000 for the 2007 tax year.[82]

On cross examination, Ms. Shipman testified that there is "no 302 unit apartment complex called Lakecrest Shores. . . . the subject property in Norton Shores is a 58-unit complex."[83] When asked if she performed a cost approach or sales comparison valuation on the 58-unit subject property, or "any of the 3 required valuation methodologies on the subject property itself,"[84] she responded, "not in and of itself, no."[85] Ms. Shipman testified that it was her opinion that the highest and best use of the subject property was that it be combined and "the highest and best use of them [the combined properties] is to operate them together."[86] Ms. Shipman testified that she was not aware of "any chapter in the appraisal of real estate that talks about a process of combining a subject property with a nonsubject property."[87] She testified that nothing directs an appraiser to combine and nothing authorizes an appraiser to combine properties for purposes of appraisal. In response to Respondent's specific questions, Ms. Shipman responded, "[t]here is

[80] Transcript, May 13, 2009, page 242, ll 5-11
[81] Transcript, May 13, 2009, page 242, ll 11-16
[82] Transcript, May 13, 2009, page 243, ll 7-16
[83] Transcript, May 14, 2009, page 5, ll 17-19
[84] Transcript, May 14, 2009, page 5, ll 9-10
[85] Transcript, May 14, 2009, page 5, l 23-page 6, l 11
[86] Transcript, May 14, 2009, page 7, ll 14-15
[87] Transcript, May 14, 2009, page 8, ll 18-20

nothing that says you can or cannot do it."[88] Ms. Shipman further testified that "the combined property does not exist in Norton Shores."[89]

Ms. Shipman testified that she did not believe that expense data was available for expenses solely related to the Lakecrest Shores property "other than on an allocation basis."[90] Ms. Shipman agreed, when questioned by Respondent, that the subject property could operate independently as a freestanding unit and that it could be sold as a freestanding apartment complex.[91] Ms. Shipman testified that "all else being equal, a smaller property sells at a higher price per unit than a larger property"[92] and that a 50-unit complex will sell for more per unit than a 300-unit complex. Ms. Shipman agreed with Respondent's statement "it's common in the Muskegon marketplace for 50-unit complexes to exist and be staffed and to operate successfully"[93] and that the subject will always have more than enough vacancies to accommodate an office or a model with "no real opportunity cost to Lakecrest Shores."[94]

Respondent asked Ms. Shipman to review Petitioner's comparable properties. Ms. Shipman testified that she used comparables in her rent study that were determined by the leasing manager to be "where people are looking when they're also looking at Lakecrest."[95] She further confirmed that none of the comparables have studio apartments although there are a substantial number of studio apartments at the subject property and that one comp, Beverly Hills

[88] Transcript, May 14, 2009, page 9, l 20
[89] Transcript, May 14, 2009, page 13, ll 2-4
[90] Transcript, May 14, 2009, page 13, ll 13-15
[91] Transcript, May 14, 2009, page 14, ll 16-22
[92] Transcript, May 14, 2009, page 15, ll 12-13
[93] Transcript, May 14, 2009, page 17, ll 14-16
[94] Transcript, May 14, 2009, page 18, ll 9-10
[95] Transcript, May 14, 2009, page 20, ll 20-22

Apartments, had a substantially lower vacancy rate for 2006.[96] Ms. Shipman testified that there was a significant disparity in NOI per unit between the combined properties and the comps she used "but not in the individual components that make it up."[97]

Ms. Shipman testified further that the occupancy rate for the subject property for the year ending December 31, 2005, was 70.7% and the occupancy rate for the subject property for the year ending December 31, 2006, was 87.9%. Respondent asked Ms. Shipman, "[w]ith respect to your highest and best use analysis, did you do any separate determination as to how the subject property could perform standing alone?"[98] to which she responded, "I didn't do a separate valuation analysis of Lakecrest Shores in and of itself. But I did consider how . . .it would operate on its own."[99]

Ms. Shipman affirmed upon questioning that the combined properties had administrative and payroll costs that are "at the high end of the range of comparables. [but] the total operating expenses are not at the high end of the range of the comparables."[100] Ms. Shipman testified that the unadjusted sale price per unit was $35,816 for comp 1, $32,450 for comp 2, $31,818 for comp 3, and $38,611 for comp 4. She determined an unadjusted sale price per unit for the combined properties was $18,500.[101] Ms. Shipman further testified that she "applied the income capitalization approach and sales comparison approach to the combined property."[102] She

[96] Transcript, May 14, 2009, page 21, ll 1-6
[97] Transcript, May 14, 2009, page 24, ll 19-20
[98] Transcript, May 14, 2009, page 29, ll 13-15
[99] Transcript, May 14, 2009, page 29, ll 16-19
[100] Transcript, May 14, 2009, page 37, ll 6-8
[101] Petitioner's exhibit 48
[102] Transcript, May 14, 2009, page 51, ll 23-24

testified that "inclusion of the clubhouse is a typographical error"[103] and there is no fitness room for the combined properties.

RESPONDENT'S CONTENTIONS

Respondent offered the following proposed exhibits:

R-1 Appraisal Institute, The Appraisal of Real Estate (13th ed., 2008)
R-2 Respondent's Valuation Disclosure (including attachments)
R-3 Respondent's Prehearing Statement
R-4 Record Card (TY 2006), for Parcel No. 61-27-638-000-0029-00
R-5 Computation of cost approach valuation for TY 2006 for subject property
R-6 Record Card (TY 2007), for Parcel No. 61-27-638-000-0029-00
R-7 Computation of cost approach valuation for TY 2007 for subject property
R-8 Sketch/Area Table Addendum for File No. 27-638-000-0029-00
R-9 Floor Plan Diagram for units in subject property
R-10 Summary chart for sales comparison approach to valuation
R-11 front view of subject property
R-12 Photograph of carports at subject property
R-13 Photograph of comparison property at 308 Oakhill Drive
R-14 Photograph of parking at comparison property at 308 Oakhill Drive
R-15 Photograph of parking at comparison property at 308 Oakhill Drive
R-16 Photograph of comparison property at 1011 Ruddiman Drive
R-17 Photograph of comparison property at 1199 West Grand Ave
R-18 Photograph of comparison property at 1199 West Grand Ave
R-19 Table summarizing income capitalization calculations
R-20 Summary of monthly rental revenue
R-21 Summary statement of operations of subject property (period ending 12/31/2004)
R-22 Summary statement of operations of subject property (period ending 12/31/2003)
R-23 Summary statement of operations of subject property (period ending 12/31/2005)
R-24 Stout Risius Ross, Appraisal of Real Property Interest, Lakecrest Shores Apartments, including attachments (Norton Shores property)
R-25 Stout Risius Ross, Appraisal of Real Property Interest, Lakecrest Park Apartments, including attachments (Roosevelt Park property)
R-26 Map of Norton Shores and Roosevelt Park (oversize)

Petitioner objected to the admission of Respondent's exhibit 2, Respondent's valuation disclosure, on the basis that the calculation of potential gross income "is not based on reliable facts and data. . . . The determination of operating expenses is not based on reliable facts and

[103] Transcript, May 14, 2009, page 53, ll 11-12

data nor are the facts and data on which it purports to be based in evidence in this case. The operating expenses is going to be based solely on hearsay."[104] The Tribunal overruled Respondent's objection[105] and allowed the valuation disclosure stating,

> I don't know what facts are going to be presented in this case are, so it's premature based on what will or will not be presented. The reliability, credibility, weight and relevance of this valuation disclosure is the responsibility of the Tribunal to determine.[106]

Respondent asserts that the subject property is a 58-unit apartment complex and "not a hypothetical 302-unit apartment complex which is what the Petitioner's appraiser instead elected to value."[107] Respondent asserts that Petitioner's appraiser combined "the subject property with a ***non-contiguous*** property, that is located in a ***completely different taxing jurisdiction,*** that is ***taxed at a completely different rate,*** and that is separated from the subject property by ***more than a mile***." (emphasis in original)[108] Respondent contends that this methodology is unreliable and has never previously been "approved by the Michigan Tax Tribunal, or by any court in the

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[104] Transcript, May 14, 2009, page 90, ll 12-20

[105] In its post hearing brief at page 12, Petitioner includes at footnote no. 6, "Petitioner moved to exclude Respondent's Valuation Disclosure under MRE 702 and MRE 703 for the reason that the testimony of VanderKooi was not based on sufficient facts or data and also because the facts or data upon which it was based were not in evidence." Contrary to Petitioner's assertion, Petitioner simply objected to the admission of Respondent's valuation disclosure when offered into evidence in the course of the hearing. The Tribunal overruled Petitioner's objection stating that the credibility of the document, the credibility of the process, the relevancy of the document, and the weight given to the document would be the Tribunal's to determine. Petitioner asserted a continuing objection which the Tribunal noted in the record. Petitioner's recourse to the Tribunal's ruling would most appropriately have been a request for reconsideration of that ruling. The Tribunal may order a rehearing or reconsideration of any decision or order upon the motion of any party filed within 14 days of the entry of the decision or order sought to be reheard or reconsidered. TTR 288. Petitioner did not timely file a motion for reconsideration of the Tribunal's order. Further, all requests to the Tribunal shall be made by written motion filed with the clerk and accompanied by the appropriate fee. Motions shall be served concurrently by the moving party on all other parties of record and proof of service shall be filed with the clerk. TTR 230. Petitioner's motion was not properly filed. It is contained in a footnote of its post hearing brief which was filed more than 14 days after the Tribunal's ruling. Further, no motion fee accompanied the motion nor was proof of service of the motion upon the opposing parties filed with the clerk of the Tribunal. Petitioner's footnote "motion" to exclude Respondent's valuation disclosure fails on several counts and is not properly before the Tribunal.

[106] Transcript, May 14, 2009, page 90, l 24-page 91, l 4

[107] Respondent's post hearing brief, p 1

[108] Respondent's post hearing brief, p 2

state of Michigan and should be rejected in this case."[109] Respondent submits that "Petitioner deliberately under-valued the Subject, and that Petitioner's valuation should be rejected."[110]

Respondent offered the testimony of Dan VanderKooi. Mr. VanderKooi is the Deputy Directory for the Muskegon County Equalization Department. He is a Level III Assessor. Mr. VanderKooi testified that he has performed appraisals of residential properties, including multi-family residential properties, and commercial properties for municipalities. Mr. VanderKooi was responsible for nine assessing units in Muskegon County, including Norton Shores. Mr. VanderKooi testified, when questioned by Petitioner, that he had been involved with many valuation disclosures but that he is not a licensed appraiser. He stated that he has never authored any valuation disclosures involving a multi-unit apartment complex but he has "definitely been involved with other appeals involving apartment complexes."[111] Mr. VanderKooi prepared Respondent's valuation disclosure in this matter.

Mr. VanderKooi testified that he considered all three approaches to value and "relied on the sales comparison and the income approaches."[112] Mr. VanderKooi testified that he visited the subject property and each of his comparables. Mr. VanderKooi testified that he did not perform a cost approach but "provided as a record the existing cost approach on which the property tax assessments were based."[113] The Muskegon County Equalization Department performed the cost approach following the State Tax Commission's Cost Manual. The true cash value determination based on the cost approach as of December 31, 2005 was $1,607,653. Mr. VanderKooi testified

[109] Respondent's post hearing brief, p 2
[110] Respondent's post hearing brief, p 19
[111] Transcript, May 14, 2009, page 82, ll 24-25
[112] Transcript, May 14, 2009, page 87, ll 11-12
[113] Transcript, May 14, 2009, page 92, ll 7-9

that a correction to the true cash value determination for the 2007 tax year was necessary due to a mathematical error and that the value in the valuation disclosure should be $1,611,200.[114]

Mr. VanderKooi performed a sales comparison approach to value.[115] Before discussing the specifics of his analysis, Mr. VanderKooi provided adjustments and corrections to his sales comparison chart.[116] Specifically, Respondent's comps 2 and 3 did not have carports, but comp 2 did have underground parking.

Mr. VanderKooi made adjustments for market conditions, property size (number of units); project amenities (unspecified); condition; and physical characteristics (unspecified).[117] Mr. VanderKooi made the following adjustments:

Comp 1	+4% market conditions +15% number of units +2% condition -5% physical characteristics
Comp 2	-3% condition
Comp 3	+2% market conditions - 5% number of units -2% condition

Mr. VanderKooi made a time adjustment for comps 1 and 3 based on date of sale. Adjustments were made to comps 1 and 3 for number of units as the subject has 58 units, comp 1 had 175 units and comp 3 had 16. No adjustment for unit number was made to comp 2, which had 34 units. Mr. VanderKooi testified that for comp 1,

[114] Respondent's exhibit 2; Transcript, May 14, 2009, page 94, ll 17-25
[115] Respondent's exhibit 2, page 21
[116] Transcript, May 14, 2009, pages 96-97
[117] Petitioner's exhibit 1, page 55

> the physical characteristics adjustment that I made actually takes in 3 different things. The quality of construction. . . the large acreage involved. . . attractiveness, . . . [and] the fact that the average unit size is larger than my subject, I ended up making a negative 5 percent adjustment. . . . The 15% adjustment for property size was based on properties with more units selling for less on the market.[118]

Mr. VanderKooi's final indication of value, after adjustments, for comp 1 was $34,944 per unit. Comp 2 was North Muskegon Apartments. Mr. VanderKooi considered it similar to the subject in terms of size and physical conditions, i.e., quality of construction and acreage, and therefore made no adjustments in these factors. A downward adjustment was made for condition as he considered it "in better condition."[119] Mr. VanderKooi's final indication of value for comp 2, after adjustments, was $36,375 per unit. Mr. VanderKooi made two adjustments to establish his value for Comp 3, Grand West Townhouses, an adjustment for number of units, as the comp had only 16 apartments, and for condition. Mr. VanderKooi's final indication of value, for comp 3, after adjustments, was $37,055 per unit. Mr. VanderKooi's conclusion of value by the sales comparison approach was in the range of "1.6 to 2 million"[120] dollars.

Mr. VanderKooi testified that he performed an income approach to value. Mr. VanderKooi determined potential gross income "based on the information we had as to what those units were renting for. We did not take into consideration concessions."[121] Mr. VanderKooi testified that he relied on the information he had and assistance from other employees to determine that a vacancy rate of 8% for both 2006 and 2007 was reasonable. For operating expenses, Mr. VanderKooi testified that he "initially analyzed the same expense information that was provided

[118] Transcript, May 14, 2009, page 98, l 18-page 99, l 3
[119] Transcript, May 14, 2009, page 104, l 10
[120] Transcript, May 14, 2009, page 106, l 14
[121] Transcript, May 14, 2009, page 107, l 9-11

to us, the actual expense information. . . . [except] I assumed a 5% management."[122] Mr. VanderKooi corrected his 2005 Projected statement[123] to reflect management expense of $16,459 rather than $450. The percentage of projected expenses should have been 59% rather than 54%. Mr. VanderKooi testified that he "backed out the property taxes from the expenses."[124] To determine expenses, Mr. VanderKooi testified that he looked at actual expenses and IREM, which indicated a "range from 45.7 to 54.2 . . . with property taxes."[125] Without property taxes, Mr. VanderKooi determined expenses "somewhere between 35 and 45."[126] In his final calculations, he used 45% based on his "analysis, based on consulting published guides, and also based on other information that I was able to obtain in discussion with other people in my office."[127]

For his final reconciliation, Mr. VanderKooi considered all three approaches. He testified that "it's pretty well-accepted that . . . cost approach is not the way to go, . . . [a]nd income approach is typically relied on the heaviest, and I did the same."[128] Mr. VanderKooi testified that "the sales comparison approach . . . indicated that both the cost approach and the income approach were on the low end of"[129] the valuation range. His final opinion as to value for the subject property is $1,607,600 as of December 31, 2005 and $1,611,200 as of December 31, 2006.

[122] Transcript, May 14, 2009, page 109, ll 10-16
[123] Respondent's exhibit 2, page 30
[124] Transcript, May 14, 2009, page 111, ll 4-5
[125] Transcript, May 14, 2009, page 111, l 21
[126] Transcript, May 14, 2009, page 112, l 1-2
[127] Transcript, May 14, 2009, page 115, ll 14-17
[128] Transcript, May 14, 2009, page 116, ll 6-10
[129] Transcript, May 14, 2009, page 116, ll 15-18

On cross-examination, Mr. VanderKooi testified that all of his experience has been "with the municipalities in terms of assessing, appraising, that type of thing,"[130] that all of the valuation disclosures he has performed were on behalf of municipalities, and the only valuation disclosure he has "authored and signed for a multi-unit apartment complex"[131] is the one for this appeal. Mr. VanderKooi testified that he visited the subject property and took a picture in February, 2008 and visited a model unit at Lakecrest Park. He explained that "[t]here is not a model unit at Lakecrest Shores . . . and . . . I needed to be familiar with both properties."[132] Mr. VanderKooi admitted that prior to the time he prepared his valuation disclosure, he had a copy of Petitioner's appraisal and had an opportunity to review it. He further conceded that he "may have"[133] incorporated into his report some of the information that had been part of Petitioner's appraisal.[134] Mr. VanderKooi further testified that, for his income approach, "[t]he actual data [used] is focused on 12-31-05."[135]

In response to questioning, Mr. VanderKooi testified that he was aware that the subject property and Lakecrest Park have the same owner, are operated as a single economic unit, the leasing office for the subject property is located at Lakecrest Park, as is the model unit, and that there is no leasing staff onsite at the subject property. He disagreed with Petitioner's statement that

[130] Transcript, May 14, 2009, page 118, ll 13-15
[131] Transcript, May 14, 2009, page 119, ll 10-11
[132] Transcript, May 14, 2009, page 121, ll 20-25
[133] Transcript, May 14, 2009, page 123, l 25
[134] The parties stipulated to the timeliness of the exchange of their respective valuation disclosures and appraisals. (Transcript, May 14, 2009, page 7, l 21-page 8, l 4) Any objection to Respondent having Petitioner's appraisal prior to Respondent serving its valuation disclosure upon Petitioner should have been made at the time established for the exchange. Alternatively, Petitioner could have filed its appraisal under seal and exchanged simultaneously with Respondent. Any objection at the hearing or in Petitioner's post hearing brief to the timing of the exchange of valuation disclosures is untimely.
[135] Transcript, May 14, 2009, page 124, ll 24-25

"Lakecrest Shores could not operate on its own under current circumstances."[136] When asked if he had conducted any kind of market study to determine whether more value would be realized by the owner selling these 2 complexes separately or together, Mr. VanderKooi testified that "my valuation disclosure makes it clear that it's worth more separate."[137] Mr. VanderKooi testified that he was familiar with the criteria for determining highest and best use and agreed that "it would be legally permissible to operate Lakecrest Shores and Lakecrest Park together . . . physically possible to operate Lakecrest Shores and Lakecrest Park as one unit. . . financially feasible to operate Lakecrest Shores and Lakecrest Park as one unit."[138] Mr. VanderKooi did not agree that "maximum productivity would be obtained by operating Lakecrest Shores and Lakecrest Park as one unit."[139] He testified that the subject property was "[m]aximally productive as its own unit, with its own owner, own leasing office, and that's the highest value."[140]

Mr. VanderKooi testified that in his opinion the most reliance should be given to the income approach. He stated that in determining potential gross income, he "took the published rate or asking price and multiplied it by the number of units [58]."[141] Mr. VanderKooi testified that he did not use rent rolls, concessions, or contract rents. He testified that he looked at "others"[142] to see what comparable rental properties were leasing for but that the information was not contained in his valuation disclosure. Mr. VanderKooi testified that he used an 8% vacancy and

[136] Transcript, May 14, 2009, page 126, ll 11-13
[137] Transcript, May 14, 2009, page 127, ll 8-9
[138] Transcript, May 14, 2009, page 129, ll 14-25
[139] Transcript, May 14, 2009, page 130, ll 2-3
[140] Transcript, May 14, 2009, page 130, ll 6-7
[141] Transcript, May 14, 2009, page 133, ll 6-14
[142] Transcript, May 14, 2009, page 134, l 20

collection loss rate "based on rental data in discussions with other appraisers"[143] and that the rental data relied on was not disclosed in his valuation disclosure nor were the identities of those other appraisers. Mr. VanderKooi stated that he did not have the breakdown between vacancy and collection loss and that he looked at comparable rental information but, "other than the statement that I looked at it, I don't provided that data"[144] in the valuation disclosure. He stated that he "primarily relied on market data, not the subject's data"[145] when projecting vacancy losses.

Mr. VanderKooi determined "simply a flat rate of 45 percent of effective gross income"[146] for operating expenses. Mr. VanderKooi's valuation disclosure states that this value was based on a statement reported to him that had been made by Ms. Deanna Fox,[147] Director of Multi- Family Division, that "a good average to use would be 45 percent"[148] and that he did not know how that average was determined. Mr. VanderKooi stated that he used a capitalization rate of 8.5% and that this was based on market information for similar properties. In response to questions, he

[143] Transcript, May 14, 2009, page 136, ll 17-19
[144] Transcript, May 14, 2009, page 138, ll 12-13
[145] Transcript, May 14, 2009, page 139, l 17
[146] Transcript, May 14, 2009, page 142, ll 9-10
[147] In its post hearing brief at page 13, Petitioner includes at footnote no. 7 "At the time of the hearing, Petitioner's counsel objected to this testimony on the basis that it was double hearsay. Petitioner renews its objection to this testimony and the utilization of this information." The testimony to which Petitioner refers in its post hearing brief, (T-II, Petitioner 142), was cross examination by Petitioner of Respondent's witness. It appears that Petitioner is asking that the Tribunal not consider testimony Petitioner's counsel elicited in response to questions he asked. Further, the record does not indicate that Petitioner objected to the witness's testimony as indicated in Petitioner's post hearing brief. Notwithstanding the lack of objection as indicated, Petitioner's recourse to the Tribunal's ruling, had there been a ruling, would have been a request for reconsideration of that ruling. The Tribunal may order a rehearing or reconsideration of any decision or order upon the motion of any party filed within 14 days of the entry of the decision or order sought to be reheard or reconsidered. TTR 288. Petitioner did not timely file a motion for reconsideration of the Tribunal's order. Further, all requests to the Tribunal shall be made by written motion filed with the clerk and accompanied by the appropriate fee. Motions shall be served concurrently by the moving party on all other parties of record and proof of service shall be filed with the clerk. TTR 230. Petitioner's motion was not properly filed. It is contained in a footnote of its post hearing brief which was filed more than 14 days after the Tribunal's ruling. Further, no motion fee accompanied the motion nor was proof of service of the motion upon the opposing parties filed with the clerk. Petitioner's footnote renewal of an objection not contained in the transcript as indicated by Petitioner fails on several counts and is not properly before the Tribunal.
[148] Transcript, May 14, 2009, page 130, ll 2-3

testified that he did not disclose which properties were used and that he did not use a band of investment analysis.[149]

Mr. VanderKooi agreed that less reliance should be given to the sales comparison approach for an income producing property. Petitioner questioned the use of the Baker Townhouse as a comp as it is student housing. Mr. VanderKooi testified that although the property is currently owned by Baker College, it was not owned by the College at the time he used the sale in his sales comparison approach. He testified that he made an adjustment for size in his analysis. Mr. VanderKooi explained that the basements in comp 1 were considered in his "negative 5 percent adjustment under physical characteristics."[150] Mr. VanderKooi testified that he made positive adjustments for market conditions based on his awareness "of paired sales analysis that indicated increasing values during that time frame,"[151] although he admitted that the data was not part of his valuation disclosure. Mr. VanderKooi testified that vacancy rates were going down in the area, that he knew this from "a number of sources,"[152] but did not include any data to support that conclusion in his valuation disclosure.

Mr. VanderKooi testified that he made no adjustments for economic characteristics and that he made an attempt to determine NOI on a per unit basis for the subject property and the comparables. He testified that "there [are] various documents that I referred to. But they're not in this report."[153] Mr. VanderKooi testified that the land value reported on the property record cards

[149] Transcript, May 14, 2009, page 145, ll 17-24
[150] Transcript, May 14, 2009, page 155, ll 15-16
[151] Transcript, May 14, 2009, page 159, l 20-page 160, l 3
[152] Transcript, May 14, 2009, page 162, l 12
[153] Transcript, May 14, 2009, page 164, ll 1-2

is supported by "all the sales that we have data on,"[154] but that that information was not available in his report. Land values are based on acreage tables, determined by an analysis of land sales done every year. In response to Petitioner's questioning, Mr. VanderKooi testified that he was "confident that this [2006 property record card] is [STC appraiser assessor] manual values.. . . We use . . . equalizer software which has the rates built into it."[155]

On redirect, Mr. VanderKooi testified that, as an assessor, he was not able to "combine properties, one in the jurisdiction where you're working and one in another jurisdiction"[156] and that he had only seen that done where the properties are contiguous. But that even then, if they're in separate jurisdictions, . . . they are assessed separately in each jurisdiction."[157]

FINDINGS OF FACT

The Tribunal finds that the subject of this appeal is Parcel No. 61-27-638-000-0029-00, commonly referred to as Lakecrest Shores Apartments, located at 3755 Henry Street, Norton Shores, Muskegon County, Michigan. The subject property is a 58 unit apartment building.

Petitioner has the burden of proof to establish a value other than that as assessed by Respondent. In that regard, Petitioner fell far short of meeting that burden. The Tribunal finds that Petitioner's appraisal of a property that did not exist for the tax years at issue is unreliable and not credible. Petitioner combined the subject property with a separate property located in a different taxing jurisdiction and used the combined property, a 302-unit apartment complex, as the subject property. For Petitioner's sales comparison approach, comparables to that 302 unit property were

[154] Transcript, May 14, 2009, page 167, l 2
[155] Transcript, May 14, 2009, page 170, l 23-page 171, l 6
[156] Transcript, May 14, 2009, page 174, ll 3-5
[157] Transcript, May 14, 2009, page 174, ll 19-22

selected and adjustments were made to the standard of 302 units. For its income capitalization approach, Petitioner used data from the combined properties, the 302 units, to come to collective conclusions of value, which it allocated between the separate parcels. Petitioner's allocation of the combined conclusions were subjective and without clear measurable criteria.

Petitioner based the combination of two properties, only one of which is the subject of this appeal, on its appraiser's determination of highest and best use. In its post hearing brief, Petitioner states that the highest and best use of the subject property is "to value it in combination with the Lakecrest Park"[158] and that Petitioner

> offered unrefuted testimony that this is how the subject functions in the market place, this is how the subject has been historically operated and sold, this is how the seller has historically marketed the subject, and this is how the subject is likely to realize the most value.[159]

Petitioner further states, in a conclusory manner, that Ms. Shipman's determination of highest and best use is consistent with the "definition of highest and best use contained in the Dictionary of Real Estate Appraisal, 4th edition, (2002)."[160] Petitioner offers this statement without quoting that definition or applying it to this case. The Tribunal finds that Petitioner's determination of highest and best use is fundamentally flawed and thus the very basis of its value conclusions are not credible or reliable and Petitioner's conclusions must fail.

Petitioner also states, again in a conclusory manner and in contradiction to the list of cases and quotations provided in its own post hearing brief, that there is "no constitution or statutory proscription against combining properties, even when located in different taxing jurisdictions,

[158] Petitioner's post hearing brief, page 15
[159] Petitioner's post hearing brief, page 15
[160] Petitioner's post hearing brief, page 15

when determining a highest and best use in conjunction with a true cash value determination."[161] Petitioner lists numerous cases in support of its methodology but fails to successfully show how the facts, circumstances, or law of these cases apply to this matter.

Specifically, in support of its position, Petitioner cites *Great Lakes Division of National Steel Corp v City of Ecorse*, 227 Mich App 379; 576 NW2d 667 (1998). In the portion of that decision quoted by Petitioner, the Court stated that the general rule is that different parcels of land in the same ownership must be separately valued and assessed. The decision further states that property should be assessed as a unit when it "cannot be . . . subdivided" but that there are situations in which the determination of whether "there is a unit or separate assessment is regarded as within the discretion of the assessors." The petitioner in the *Great Lakes* case was a steel mill and the Court specifically held that the Tax Tribunal may make a determination that the usual selling price for *the integrated steel mill* in its entirety is the most accurate. (emphasis added)

Petitioner next cites *County of Wayne v Michigan State Tax Commission*, 261 Mich App 174; 682 NW2d 100 (2004), and argues that, in that case, the Court of Appeals upheld the Tribunal's utilization of the unit appraisal method and stated that "unit valuation is a matter of proper appraisal practice to find true cash value of an *integrated whole*."(emphasis added)[162] *County of Wayne* involved a utility company in which all parties agreed that valuation as a unit was applicable as the properties were integrated and *were not capable of functioning except as a unit*. In that case, the Court stated quite clearly what it meant by integrated:

[161] Petitioner's post hearing brief, page 15
[162] Petitioner's post hearing brief, page 16

> [a]n appraiser cannot correctly and accurately determine the true cash value of a property by appraising only half of a facility that is "integrated" and without question dependent upon all interrelated functions. That would be analogous to valuing a car for resale based upon the individual parts. By selling a potential buyer the shell, based on its value, and separately selling the chassis, based on its value, and finally the engine and other components, a $20,000 car would be worth substantially more.

Here, the two properties are not integrated. One is not the shell of the car and the other the engine. They can and do function separately. Nothing prevents the two properties from being owned by two different owners and operating as apartment complexes independently and separately. No part of one property is integral and necessary to the fundamental ability of the other to function as an apartment building. Neither of the properties combined by Petitioner will automatically cease to function or be unable to exist if the other ceases to function.

The Tribunal finds that the facts in this case are easily differentiated from the other cases cited by Petitioner, which involve contiguous properties operated as a single unit, and that those cases are not applicable or persuasive.

Petitioner's reliance on *Richwood Village Associates v City of Lansing*, MTT Docket Nos. 226798 and 237968, to support its combination of the two noncontiguous parcels in two separate taxing jurisdictions is also misplaced. In *Richwood Village Associates*, the subject property was a single self-contained apartment complex in one taxing jurisdiction with ten contiguous buildings. In the instant case, the subject property consists of only one building. The basic facts of the cases are simply not at all similar.

That the subject property has been historically owned, operated, and sold as a single economic unit does not require that they be assessed as a single unit. That their operating statements are consolidated is a decision based upon business considerations and not valuation. Further, that it "is not clear that the properties could be sold separately under current financing arrangements,"[163] especially when Petitioner's appraiser admits that the properties could be sold separately, does not change the fundamental fact that the property subject to the appeal in this matter is only Lakecrest Shores Apartments. Ms. Iglesias's testimony related to business decisions made by the owners and managers of the subject property as well as of many other properties and not to value for assessment purposes. She was not qualified to testify as to value by credentials, education, or training and did not submit a valuation disclosure in this matter.

Further, if the sales comparison approach to value is used, the comparables must be similar to the subject property, recently sold or offered for sale in the open market. On a per unit basis, the sales used by Petitioner in its sales comparison approach have values almost identical to the values placed on the property by the City of Norton Shores. The Tribunal finds that only after questionable downward adjustments, for size and economic characteristics, does Petitioner arrive at the values it places on the property. Petitioner's adjustments for economic characteristics to account for the fact that the net operating income of the comparables is much higher than that projected for the subject properties is especially suspect and appraisers are specifically cautioned against such manipulations. If Petitioner's values, adjusted only for location and date of sale, are used and applied, on a per unit basis to a 58 unit building, the values are almost identical to those as assessed by Respondent.

[163] Petitioner's post hearing brief, page 17

Further, none of the comparable properties Petitioner used for either its sales comparison approach or its income capitalization approach, are two non-contiguous properties, combined for valuation purposes, which makes those properties fundamentally unlike, i.e., not comparable to, the subject. The Tribunal finds that Petitioner's determination of highest and best use is not appropriate, and that none of the comparables Petitioner chose are comparable to the subject property or even the combined property used by Petitioner. Petitioner's value conclusions are further flawed as adjustments were made for a clubhouse, gym, and other amenities that do not exist.

The Tribunal finds that, based upon the testimony of Petitioner's expert, data was available for the subject property especially as to income, expenses, and vacancy rates. The Tribunal notes specifically that although Petitioner used a 12% vacancy rate for the combined properties for both tax years at issue, allocated to the subject property, Petitioner knew that the subject property had actual vacancy rates of 29.31% as of December 31, 2005[164] and 12% as of December 31, 2006.[165]

The Tribunal does not accept Petitioner's characterization of the subject property as a 302 unit apartment complex. Because of this, the Tribunal does not find that any allocation method is applicable.

[164] Transcript, May 13, 2009, page 87, ll 12-20
[165] Transcript, May 13, 2009, page 88, ll 1-3

Respondent's valuation disclosure contained property record cards in support of its cost less depreciation approach to value. Based on land sales studies, Respondent established a true cash value for the land of $422,000 for both the 2006 and 2007 tax years. Utilizing standard valuation programs, Respondent established a true cash value for the 2006 tax year for the building and carports of $1,185,600. Respondent determined that the carports were 58% good and that the building was 51.4% good. The ECF factor used was 1.050. For the 2007 tax year, Respondent established a true cash value for the building and carports of $1,189,200. Respondent determined that the carports were 58% good and that the building was 50.5% good. The ECF factor used was 0.980. No evidence was presented to contradict any values determined by Respondent in this analysis and no alternative values were offered.

Respondent's sales comparison approach to value consisted of a single-page graph listing the subject property and three comparables. Respondent's comparables ranged in size from 16 units to 175 units. Only comparable 2, with 34 units, was significantly similar to the subject's size. Respondent's adjustment categories were broad, vague, and not specific. Respondent's witness testified that the -5% adjustment for physical characteristics for comp 1 was based on site size and "attractiveness,"[166] although there is no definition of what constitutes attractiveness. Respondent made adjustments to comps 2 and 3 for amenities, described in the narrative as carports. Although Respondent's witness testified to the components of each category, those components were not consistently applied to all comparables and the chart was unclear as to what was considered when making specific adjustments for each of the comparables. The Tribunal finds that Respondent's sales comparison approach to value lacks adequate data to

[166] Respondent's exhibit 2, page 2

allow the Tribunal to determine the appropriateness of Respondent's adjustments and thus finds Respondent's sales comparison approach to value to be an unreliable indicator of value for the subject property.

Because the subject property is an apartment complex, classified commercial, and an income producing property, the most appropriate method for determining the value is the income capitalization method. Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 12th ed, 2001), page 471. For its income capitalization approach to value, Respondent reviewed "2003-2005 income and expense history for the subject property . . .along with data from other apartment complexes submitted in other appeals."[167] Respondent testified that he was unaware of the origin of the income data he used and believed that the summary statement of operations[168] provided to him reflected actual figures for the subject property. Testimony at hearing by Petitioner's witnesses who prepared the data was that the data actually reflected allocated values. Although Respondent stated that data from other apartment complexes was used, no listing of those other apartment complexes or documentation or evidence related to income and expenses of those other apartment complexes was included in Respondent's valuation disclosure. Respondent's vacancy and collection loss allowance of 8% was based on "discussions with other appraisers"[169] but the substance of those discussions and the underlying data was not provided. Respondent used a capitalization rate of 8.5%, before adding the effective tax rate, based on market information. Again, Respondent did not provide the Tribunal any evidence of the market information used to determine that rate or the method for determining that rate.

[167] Respondent's exhibit 2, page 2
[168] Respondent's exhibit 2, page 32
[169] Respondent's exhibit 2, page 3

To determine expenses for use in its income capitalization approach to value, Respondent's witness testified that he looked at actual expenses and "put the typical expenses, without property taxes, somewhere between 35 and 45 [percent]."[170] Respondent used 45% as the percentage rate of expenses "based on my analysis, based on consulting published guides, and also based on other information that I was able to obtain in discussion with other people."[171] Respondent's witness testified that he consulted with Ms. Stokes who told him that "Deanna Fox told her that 45 percent would be a good average to use in . . . the valuation of a multi-family. Respondent did not offer the underlying data or calculations on which this percentage was based.

The Tribunal finds Respondent's income capitalization approach not to be a credible indicator of value as it is based on data the origin of which, and the nature of which, Respondent is unable to substantiate. Thus, the Tribunal finds that Respondent's value conclusions based on this method are not reliable.

In its post hearing brief, Respondent argues that "highest and best use means the most profitable and advantageous use the owner may make of the property even if the property is presently used for a different purpose or is vacant." The Tribunal agrees with Respondent's assertion that the highest and best use of the subject property is as a 58 unit apartment complex. Once the highest and best use is decided, market value of that property must be determined. If the sales comparison approach is used, the comparables must be similar to the subject property, recently sold or offered for sale in the open market. The sales used by Petitioner in its sales comparison

[170] Transcript, May 14, 2009, page 111, l 25-page 112, l 2
[171] Transcript, May 14, 2009, page 115, ll 14-16

approach have values almost identical to the values placed on the property by Respondent. The Tribunal agrees with Respondent that only after questionable downward adjustments does Petitioner arrive at the values it places on the subject property. Petitioner's adjustments for economic characteristics as an adjustment made to account for the fact that the net operating income of the comparables is much higher than that projected for the subject properties is especially suspect and appraisers are specifically cautioned against such manipulations.

Notwithstanding the inadequacy of both Respondent's sales comparison approach to value and its income capitalization approach, the Tribunal finds that Petitioner did not provide reliable and credible evidence of value of the subject property.

Further, Respondent's reliance on *Turnberry Homes LLC v Orion Twp,* unpublished per curiam opinion of the Court of Appeals, issued April 7, 2009 (Docket No. 280584), is misplaced. In that case, the petitioner filed one petition to contest assessments of 10 parcels, only two of which were contiguous. The Court of Appeals upheld the Tribunal's determination that separate petitions must be filed for each noncontiguous parcel. In this case, Petitioner filed a separate petition appealing the assessment of the subject property.

CONCLUSIONS OF LAW

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735(1); MSA 7.650(35) (1). The Tribunal's factual findings are to be supported by competent, material, and substantial evidence. *Antisdale* v *City of Galesburg,* 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co* v *Dept of Treasury,* 185 Mich App 458, 462-463; 452 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. (Citations omitted) *Jones & Laughlin Steel Corp* v *City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

The petitioner has the burden of 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* at 354-355, citing: *Kar* v *Hogan*, 399 Mich 529, 539-540; 251 NW2d 77 (1976); *Holy Spirit Ass'n for the Unification of World Christianity* v *Dept of Treasury*, 131 Mich App 743, 752; 347 NW2d 707 (1984). There are three traditional methods of determining true cash value, or fair market value, which have been found acceptable and reliable by the Tax Tribunal and the courts. They are: (1) the cost-less-depreciation approach, (2) the sales-comparison or market approach, and (3) the capitalization-of-income approach. *Meadowlanes Limited Dividend Housing Assn* v *City of Holland*, 437 Mich 473, 484-485; 473 NW2d 636 (1991); *Antisdale* at 276-277, n1. The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in marketplace trading. *Antisdale* at 276, n1 It is the duty of the Tribunal to select the approach which provides the most accurate valuation under the circumstances of the individual case. *Antisdale* at 277, citing *Pantlind Hotel Co* v *State Tax Comm*, 3 Mich App 170; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968).

Under MCL 205.737(1), the Tribunal must find a property's true cash value in determining a lawful property assessment. *Alhi Development Co* v *Orion Twp*, 10 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal may not automatically accept a respondent's assessment but

must make its own findings of fact and arrive at a legally supportable true cash value. *Pinelake Housing Cooperative* v *Ann Arbor*, 159 Mich App 208, 220; 406 NW2d 832 (1987); *Consolidated Aluminum Corp* v *Richmond Twp*, 88 Mich App 229, 232, 233; 276 NW2d 566 (1979).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; 377 NW2d 908 (1985). The Tribunal may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination. *Meadowlanes* at 485-486; *Wolverine Tower Associates* v *City of Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980). A similar position is stated in *Tatham* v *City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982): The Tax Tribunal is not required to accept the valuation figure advanced by the taxpayer, the valuation figure advanced by the assessing unit, or some figure in between these two. It may reject both the taxpayer's and assessing unit's approaches. The Supreme Court has recognized that under the definition of fair market value the concept of "true cash value" is synonymous with "fair market value." *CAF Investment Co* v *State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

The Tribunal's quest for true cash value begins with a determination of subject's highest and best use. "Highest and best use" is a concept fundamental to the determination of true cash value. It recognizes that the *use* to which a prospective buyer would put *the property* will influence the price which the buyer would be willing to pay. (emphasis added) *Rose Bldg Co* v *Independence Twp*, 436 Mich App 620, 633; 462 NW2d 325 (1990). The four criteria the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum profitability. *The Dictionary of Real Estate Appraisal*, (Chicago: Appraisal Institute, 3d ed,

1993), p 171. The relationship between highest and best use, and market value, is explained in Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 11th ed, 1996), pp 297-303:

> . . . When the purpose of an appraisal is to estimate market value, highest and best use analysis identifies the most profitable, competitive *use* to which *the property* can be put. Therefore, highest and best use is a market driven concept.
> . . .
> Market forces also shape market value, so the general data that are collected and analyzed to estimate property value are also used to formulate an opinion of the property's highest and best use as of the appraisal date. In all valuation assignments, value estimates are based on *use*. The highest and best use of *a property* to be appraised provides the foundation for a thorough investigation of the competitive positions of market participants. Consequently, highest and best use can be described as the foundation on which market value rests.
> . . .
> The *use* that maximizes value represents the highest and best use. (emphasis added)
>
> The tests of legal permissibility and physical possibility *must* be applied before the remaining test of financial feasibility and maximal productivity.

Fundamental to a highest and best use determination is the identification of the property. In this case the property is Lakecrest Shores Apartments, located in Norton Shores, Muskegon County State of Michigan, Parcel No. 61-27-638-000-0029-00. And all parties agree that the best legally permissible and physically possible use of that property is as a multi-family residential 58 unit apartment building. The property cannot easily be used for anything but an apartment complex. Thus the highest and best use of the subject property is as an apartment building.

Further, there is no ambiguity in determining the meaning of the word "use." It is the function or purpose to which the subject property is put. In this case, an apartment building. That is what the property is "used" for. Petitioner's characterization of the term is a distortion of its well established definition. Petitioner has provided no evidence or argument to persuade the Tribunal that any further analysis is needed to determine that the highest and best use of the subject property is simply as a multi-family residential apartment building.

Petitioner asserts that the two properties are combined by Petitioner's appraiser based on shared ownership and economies of scale. Ms. Iglesias testified that Petitioner owns many apartments in many locations. Those characteristics can be applied to Petitioner's other properties as well. That the subject property may be considered by its owners, for business or management purposes, to be more valuable if certain functions are consolidated with another nearby property, is not the basis on which a determination of highest and best use, by definition, is made. To combine these two properties, as Petitioner has done in its appraisal reports, does not take into account that they are distinct and very different. The subject property must be individually valued. Further, allocation on a unit basis of a value of a property that is not the subject property, adjusted by unclear subjective criteria, does not meet Petitioner's burden to present a value of the unique property that is Lakecrest Shores Apartments.

The Tribunal finds that Petitioner's highest and best use analysis and determination is fundamentally flawed. Notwithstanding this determination, that the highest and best use of the two noncontiguous parcels is to be valued as a unit, Petitioner did not choose one comparable, for either its sales or income analysis, that was a combination of two noncontiguous parcels. Petitioner's choices actually indicate a determination that a result opposite to that of its appraiser should be the result.

Petitioner's appraisal did not provide sufficient reliable evidence of value of the subject property using either the income capitalization method or the comparable sales approach. The Tribunal concludes that Petitioner's appraisal lacks credibility and does not provide reliable conclusions

of value. Further, Petitioner did not provide any evidence or testimony contending that the factors used to determine the value of the subject property by Respondent for assessment purposes for the tax years at issue were inaccurate.

Therefore, based upon the file, the applicable statutory and case law, and the testimony and evidence presented, the Tribunal concludes that Petitioner failed to meet its burden of proof to establish that the true cash value, state equalized value, and taxable value of the subject property are other than that as assessed.

Further, the Tribunal concludes that Respondent's cost less depreciation method, the values of which are supported by Petitioner's sales comparison approach with appropriate adjustment, is the most reliable indicator of value. The true cash value, state equalized value, and taxable value for the 2006 and 2007 tax years are as assessed by Respondent and are as follows:

Parcel No. 61-27-638-000-0029-00

Year	TCV	SEV	TV
2006	$1,607,600	$803,800	$736,846
2007	$1,611,000	$805,500	$764,109

JUDGMENT

IT IS ORDERED that the property's assessed and taxable values for the tax years at issue shall be as set forth in the *Conclusions of Law* 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 this Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Final Opinion and Judgment within 28 days of the entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of 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 interest shall accrue (i) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (ii) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (iii) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (iv) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (v) after December 31, 2007, at the rate of 5.81% for calendar year 2008, and (vi) after December 31, 2008, at the rate of 3.31% for calendar year 2009.

MICHIGAN TAX TRIBUNAL

Entered: September 30, 2009 By: Rachel J. Asbury