

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

RICHARD & ROBIN ENGEL,
Petitioners,

v

MTT Docket No. 332534
(345993 Consolidated)

TOWNSHIP OF RICHLAND
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

OPINION AND JUDGMENT

A hearing was held in the above-captioned matter on June 24, 2009. Petitioners were represented by James R. Durant. Respondent was represented by James W. Porter.

This matter involves one parcel of real property located in the Township of Richland, Kalamazoo County, State of Michigan, identified by tax parcel number 03-23-101-092. Petitioners, in timely fashion, invoked the jurisdiction of the Tribunal for tax years 2007 and 2008. Petitioners initially filed separate petitions for each year that were assigned separate MTT Docket Numbers. The Tribunal ordered the cases consolidated for hearing. At issue are assessed, taxable, and true cash values for each of the years for the subject property.

Information relevant to the property's contested true cash, assessed and taxable values is as follows:

Parcel Number	Year	AV	SEV	TV
03-23-101-092	2007	\$727,600	\$727,600	\$544,455
03-23-101-092	2008	\$727,600	\$727,600	\$556,977

FINAL VALUES

Parcel Number	Year	True Cash Value	SEV	TV
03-23-101-092	2007	\$1,010,000	\$ 505,000	\$ 505,000
03-23-101-092	2008	\$1,010,000	\$ \$05,000	\$ 505,000

THE SUBJECT PROPERTY

The subject property is an 8.49 acre parcel located in the Village of Richland, Kalamazoo. The site is improved with 24 rental apartments located in one two-story eight-unit building and four one-story four-unit structures. There is also a 1,800 square foot utility building, a pole barn used for storage and four garage structures. The garage structures provide enclosed parking for the apartments and are included in the monthly rental. All the apartments located on the property are two bedroom/two bath units. Each of the units has an individual gas furnace, central air-conditioning, and laundry facilities. Water, sewer and garbage removal are included in the rent with the tenant picking up the cost for other utilities.

ADMITTED EXHIBITS:

All exhibits offered by the parties were admitted without objection.

Petitioner's Exhibits:

Petitioner's Exhibit #1: Appraisal dated January 31, 2008 for December 31, 2006 and 2007.

Respondent's Exhibits:

Respondent's Exhibit #2: 2007 Property Record Card.

Respondent's Exhibit #3: 2008 Property Record Card.

Respondent's Exhibit #4: Building Photo bldg. #1-(two story)

Respondent's Exhibit #5: Photo-4 unit bldg.

Respondent's Exhibit #6: Building Photo-9 Stall garage

Respondents Exhibit #7: Building Photo-4 Stall garage

Respondent's Exhibit #8: Building Photo-3 Stall garage

Respondent's Exhibit #9: Photo-4 Unit bldg.

Respondent's Exhibit #10: Building Photo-4 Unit Bldg.

Respondent's Exhibit #11: Building Photo-8 Stall Garage

Respondent's Exhibit #12: Building Photo-8Stall garage

Respondent's Exhibit #13: Building Photo-0Pole Building

Respondent's Exhibit #14: Appraisal as of December 31, 2006

Respondent's Exhibit #14: Appraisal as of December 31, 2007

CASE OVERVIEW

In support of their position, Petitioners' representative called two witnesses: Richard Engel, Petitioner, and Charles R. Cherney, ASA, to give evidence that on both valuation dates the subject property was unlawfully assessed and to establish the true cash value of the subject real property on both valuation dates at \$740,000.

Respondent's representative, in support of its position, also called two witnesses: Dianne Gajor, township Assessor, and David E. Borak, MAI. Borak concluded to a true cash value as of both valuation dates to be \$1,210,000.

The Tribunal notes at the onset of this Opinion that both parties' experts utilized the income and sales comparison approach in arriving at their respective conclusions of value. Both experts determined after considering the cost approach that utilization of this approach did not assist them in arriving at a reliable estimate of value and as a result did not utilize the same.

The Tribunal will focus in its analysis on the differences between the two experts' income and sales comparison methodology to assist in arriving at our ultimate determination of true cash value of the subject property as of each valuation date.

The Income Approach

A careful review of both experts' appraisals (P-1, R-16 & R-16-A) income and expense assumptions and numbers upon which they respectively based the conclusions of value using the income approach will reveal (see P-1 p42 and R-16 p36-37 & R-16A p36-37) that both experts have utilized essentially the same projected gross rental income numbers: \$188,640 annually in the case of Petitioner and \$196,800 annually in the case of Respondent. The difference in the two amounts is that Respondent included \$4,800 annually for assumed rental of excess garage units and his assumption that 16 of the units would rent for \$675 per month with the remaining 8 units renting at \$650, rather than the actual and assumed rental rate of \$650 for all units that was applied by Petitioner's expert. Petitioner's expert applied a 15% vacancy and collection loss. Respondent applied a 5% vacancy loss factor.

Although the components of the parties' respective operating expenses varied, the bottom line is that Petitioner's appraiser assumed annual operating expenses for both years of \$57,003 and Respondent's appraiser assumed stabilized expenses of \$58,078 for 2007 and \$53,978 for 2008. These amounts are so similar that the Tribunal feels it unnecessary to analyze or critique each expense item set forth by the respective appraisers.

The primary difference between the two parties' expense numbers is that Petitioner included an annual repair and replacement reserve in the amount of \$19,067 for roofs, appliances, and asphalt. During cross-examination for Petitioner's expert it was ascertained that, using the appraiser's rationale, the reserve should have been \$17,424 rather than the amount set forth in the appraisal. Respondent's expert did not use a repair and replacement reserve stating that on projects this size, reserves generally were not utilized, but repairs were considered as a cost to cure and were deducted from sale proceeds at time of sale or a slight upward adjustment to the capitalization rate.

Both parties utilized a tax loaded capitalization rate. Petitioner's rate for both years was .1168 and Respondent's was .112011 for 2007 and .112133 for 2008. In arriving at their respective conclusions of value, both experts employed the direct capitalization method.

THE SALES COMPARISON APPROACH

Petitioner's expert utilized four properties in his analysis of the sales comparison approach to value. These four properties were:

- (1) Hickory Hills Apartments located at 5735 East G Avenue, Richland. This project contained 20 total units made up of 12 two-bedroom townhomes, 7 two-bedroom apartments and a one-bedroom apartment. This project sold in 2004.
- (2) Lake Point Apartments, 8875 North 32nd Street, Richland. This project contained 12 one-bedroom units, 48 two-bedroom units with small second bedroom; six buildings. This project initially sold in 2000 with a sale pending in January of 2008.
- (3) 8150 East Michigan, Galesburg. This project consists of 2 two-story apartment buildings, 11 units each. Six 480 square foot one-bedroom units and sixteen 560 square foot two-bedroom units. This project sold in May of 2003.
- (4) 1218 California Road, Kalamazoo. This project is made up of four buildings with 59 total units, all two-bedroom with one bath. These apartments are approximately 864 square feet in size.

Petitioner's appraiser notes at pages 51 and 52 of his appraisal (P Ex-1) that all properties are considered inferior to the subject. A review of his market data adjustments contained on page 52 of P-Ex 1 indicated "gross adjustments of the **inferior** properties ranging from 10% to 55%." (Emphasis added.)

For tax year 2007, Respondent's appraiser also utilized four properties. These four properties were: (See R- Ex. 14)

- (1) An 8-unit complex that consisted of 4 duplex-style units. Each of the units is two bedroom, one bath. The property was located about 7.4 miles from the subject in Kalamazoo and sold in December of 2006.
- (2) Hickory Hills Apartments (same property as Petitioner's comparable #1), which Respondent's appraiser characterized as a 20-unit complex made up of 1 one-bedroom/one-bath unit, 7 two-bedroom/one-bath units and 12 two-bedroom/1.5-bath townhouse units.
- (3) 2860 South 9th Street, Kalamazoo is an 8-unit complex made up of one efficiency, 3 one-bedroom/one-bath units and 4 two-bedroom/one-bath units. The square foot size of the units ranged from 430 sf for the efficiency to 900 sf for the two-bedroom units. The project sold in March of 2004.
- (4) 6530 East JK Avenue, Kalamazoo is a 24-unit complex approximately 6.2 miles from the subject which sold in May 2003. All of the units are two-bedroom/1.5-bath units of approximately 700 square feet.

Respondent's expert utilized what he called "Effective Gross Income Multiplier (EGIM)

Analysis" to arrive at his value conclusions using the Sales Comparison Approach. He defines this method at page 50 of R-16 as:

The EGIM is a relationship between the effective gross income and price. It is found by dividing the sales price by effective gross and indicates an investor is willing to pay "x" times the property's actual gross income for the project. The sales data indicated a range of EGIM's from 5.51 to 8.28. The discussion of the sale properties indicated a proper EGIM will be higher than Sales 2 and 4 (5.51 to

6.22), close to Sale 3 (6.89), and less than Sale 1 (8.28). As a result of a location that offers limited competition and units that are relatively new, an EGIM of 7.00 is considered appropriate for the subject property.

Respondent's appraiser then applied his 7.00 ERIM to his concluded effective gross income conclusion found at page 36 of R-14 to arrive at a 2007 value using the sales comparison approach of \$1,308,720. The Tribunal notes that if Respondent's effective gross income numbers are found by the Tribunal to be incorrect or flawed, then his value conclusion using this method would be also flawed.

FINDINGS OF FACT

The Tribunal, having considered all of the documentary evidence and testimony submitted by the parties and based upon the record before it, concludes:

1. The subject property is a 24-unit apartment complex located on 8.49 acres, owned by the Petitioners on all relevant valuation dates more particularly described in "The Subject Property" portion of this Judgment.
2. Nothing exists on this record for either of the years under appeal that there were any "additions or losses" as set forth in MCL 211.34d.
3. This property is intended as and is in fact an income-producing property.
4. The Tribunal finds that there was no change in the true cash value of the subject property between tax years 2007 and 2008.
5. The property has a stabilized tenant mix, which contributes to its historically low vacancy rate as demonstrated by the evidence and testimony.
6. The highest and best use of the subject property is continuation of its present use as a multi-family apartment complex.

APPLICABLE 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, as equalized, and that beginning in 1995, the taxable value is limited by statutorily determined general price increases, adjusted for additions and losses.

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law...The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not...exceed 50%...; and for a system of equalization of assessments. For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred. When ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value. Const 1963, Art IX, Sec 3.

MCL 211.27a (2) provides:

- (2) Except as otherwise provided in subsection (3), for taxes levied in 1995 and for each year after 1995, the taxable value of each parcel of property is the lesser of the following:
- (a) The property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions. For taxes levied in 1995, the property's taxable value in the immediately preceding year is the property's state equalized valuation in 1994.
 - (b) The property's current state equalized valuation.

MCL 211.34d(1)(b)(iii) provides that "new construction" constitutes an "addition" for the calculation of a property's taxable value and provides in pertinent part:

- (c) For taxes levied after 1994, “additions” means, except as provided in subdivision (c) all of the following:

- (iii) New construction. As used in this subparagraph, “new construction” means property not in existence on the immediately preceding tax day and not replacement construction. New construction includes the physical addition of equipment or furnishings, subject to the provisions set forth in Section 27(2)(a) to (o). For purposes of determining the taxable value of property under Section 27a, the value of new construction is the true cash value of the new construction multiplied by 0.50.

The Michigan Legislature has defined “true cash value” to mean “the usual selling price.”

As used in this act, “cash value” means 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); MSA 7.27(1).

“True cash value” is synonymous with “fair market value.” *CAF Investment Co v State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

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 Dep’t 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 and 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); MSA 7.650 (37)(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 and 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 Dep’t 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 Ass’n v City of Holland*, 437 Mich 473, 484-485; 473 NW2d 636 (1991); *Antisdale* at 276-277, n 1. 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, n 1. “Variations of these approaches and entirely new methods may be useful if found to be accurate and reasonably related to the fair market value of the subject property.” *Meadowlanes*, at 485, referencing *Antisdale* at 277, n 1. “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); MSA 7.650 (37)(1), the Tribunal must find a property’s true cash value in determining a lawful property assessment. *Alhi Development Co v Orion Twp*, 110 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."

CONCLUSIONS OF LAW

The Tribunal, having considered all of the evidence properly before it in this matter and having made its findings of fact based upon evidence that it has found credible, competent and material, concludes that the approach to value that provides the most accurate valuation of the subject property in this case is the income capitalization approach.

The Tribunal finds that none of the comparables used by either party in arriving at their respective value conclusions using the sales comparable approach are sufficiently similar even with adjustments. In the case of Petitioner, the value conclusions are unsupported by the market and in the case of Respondent, by his utilization of the EGIM analysis method to arrive at a reliable estimate of value likewise is less than credible.

In arriving at its ultimate determination of true cash value of the subject property on both valuation dates using the income capitalization approach, the Tribunal is essentially utilizing Projected Income and Expense numbers found in Petitioner's appraisal at page 42 of P-1, except as otherwise noted. The 15% vacancy/collection loss adjustment utilized by Petitioner is not supported by the record and is determined to be excessive. The Tribunal determines that the 5% vacancy collection loss utilized by Respondent in its income and expense analysis is more reflective of the market and will be utilized by the Tribunal based upon the stabilized tenant population of this project.

Since both parties' gross operating expenses are essentially the same (compare P-1 page 42 with R-16 & 16A page 37), the Tribunal finds total operating expenses of \$56,000. The Tribunal rejects as excessive Petitioner's repair and replacement reserve amount and the methodology utilized by Petitioner in arriving at the amount. The Tribunal further rejects Respondent's contention that no repair or replacement reserve is necessary. Based on the Tribunal's experience in handling cases of this nature, the Tribunal concludes that it is customary to provide

a charge for a replacement reserve before arriving at net operating income (NOI) and that an appropriate amount is 3% of effective gross annual income.

Petitioner concluded to a tax loaded capitalization rate of .1168, which was approximately .0048 higher than that used by Respondent. Respondent’s appraiser arrived at an unloaded rate of 8.50, which was somewhat lower than his average rate of 8.77% based on his assumption that there is a potential for increased rents at the subject. (See R-16 at page 39). The Tribunal finds nothing in the record to support an increase in rents and, in fact, by accepting Petitioner’s current rent structure of \$650 per unit as market rent, expressly rejects this assumption and, as a result, accepts Petitioner’s capitalization rate of .1168 (9%) unloaded as better supported by the market.

Based on the above findings, the Tribunal concluded to the following projected income and expenses.

Projected Gross Income (EGI)	
\$650/mo x24 units x 12	\$187,200
Misc Income \$5 mo x 24 x12	<u>\$ 1,440</u>
Potential Annual Gross Income	\$188,640
Less 5% Vacancy/Credit Loss	<u>\$ 9,432</u>
Effective Gross Income (EGI)	\$179,208
Operating Expenses:	-\$56,000
MJ-I need to add a footnote here	
Less Replacement Reserve @3% EGI	<u>-\$ 5,375</u>
NET INCOME BEFORE DEBT SERVICE AND DEPRECIATION	\$117,833

Capitalization: $\$117,833 / .1168 = \$1,008,844$

Rounded to: **\$1,010,000**

Based on the above Findings of Fact, the application of applicable law and Conclusions of Law, the Tribunal finds a true cash value for the subject property for both 2007 and 2008 to be \$1,010,000 with the state equalized and taxable values in the above "Final Value" section of this Judgment.

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 *Final Values* 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 as required by the Final Opinion and Judgment within 90 days of the entry of the 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 (i) after December 31, 1995, at a rate of 6.55% for calendar year 1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a rate of 6.04% for calendar year 1998, (iv) after December 31, 1998, at the rate of 6.01% for calendar year 1999, (v) after December 31, 1999, at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000, at the rate of 6.56% for calendar year 2001, (vii) after December 31, 2001, at the rate of 5.56% for calendar year 2002, (viii) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ix) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (x) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (xi) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (xii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (xiii) after December 31, 2007, at the rate of 5.81% for calendar year 2008. and after December 31, 2008 at the rate of 3.315 for calendar year 2009.

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

MICHIGAN TAX TRIBUNAL

Entered: July 17, 2009

Kimbal R. Smith III, Tribunal Judge