

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

Grand Teton Properties, LLC,
Petitioner,

v

MTT Docket No. 317624

Township of Ypsilanti,
Respondent.

Tribunal Judge Presiding
Richard A. Southern

FINAL OPINION AND JUDGMENT

The subject property is a one-story, commercial office building, located at 5401 – 5429 Whittaker Road, Ypsilanti Township, Washtenaw County, Ypsilanti, Michigan. At the time of appeal, the subject property was configured for lease as 7 office units. Petitioner, Grand Teton Properties, LLC, is appealing the true cash value (TCV), state equalized value (SEV) and taxable value (TV) established by Respondent, Charter Township of Ypsilanti, for the 2005-2006 tax years, under the General Property Tax Act (GPTA).

The subject property was built by Petitioner in 2004 of concrete, frame and brick construction. It is classified as 201 Commercial. Its highest and best use is its present use as a commercial office building. There were no additions or losses contended by either party. The parcel number is K-11-21-200-020 and the school district is Ypsilanti Area School District (81020).

The Tribunal must determine the subject property's TCV, SEV and TV for the tax years at issue and the appropriate valuation method that should be used. Based on reasons stated in this opinion, the Tribunal upholds Respondent's value conclusions for the tax years at issue and finds

that the sales comparison approach, with support from the income and cost approaches as applied by Respondent, is the most reliable and credible method for determining the true cash values.

Petitioner was represented by Robert Spencer, owner of Grand Teton Properties, LLC, an *in propria persona* litigant. Further, Mr. Spencer also acted as his own Expert Witness on the basis of his ownership. Respondent was represented by Angela B. King (P29899) from the law firm of McLain & Winters. Daniel J. Dzierbicki, IFAS, IFA, MSA, RES, CMAE III, [Michigan Certified Real Estate Appraiser] acted as Respondent's Expert Real Estate Valuation Witness.

Petitioner's value contentions as determined by witness Spencer [Property owner] for the tax years at issue are as follows:

Year	TCV	SEV	TV
2005	\$1,218,300	\$609,150	\$609,150
2006*	\$1,254,850	\$627,425	\$627,425

* Petitioner did not provide a separate valuation analysis for TY 2006, rather he increased the TY 2005 TCV by 3%.

Respondent's value contentions as determined by witness Dzierbicki [Chief Appraiser Ypsilanti Township] for the tax years at issue are as follows:

Year	TCV	SEV	TV
2005	\$1,713,000	\$856,500	\$603,933
2006	\$1,900,000	\$950,000	\$623,862

It is undisputed that Petitioner timely appealed to the proper board of review and neither party disputes that the Tribunal has jurisdiction.

FINAL VALUES

The Tribunal determines that the subject property's TCVs, SEVs, and TVs, are:

Year	TCV	SEV	TV
2005	\$1,713,000	\$856,500	\$603,933
2006	\$1,900,000	\$950,000	\$623,862

BACKGROUND

This Final Opinion and Judgment results from a two-day hearing that commenced February 20, 2008, before Judge Richard A. Southern in Lansing, Michigan. The petition was originally incorrectly filed in the Michigan Tax Tribunal's Small Claims Division and subsequently transferred to the Entire Tribunal Division.

SUMMARY OF PETITIONER'S CASE

Petitioner contends that Respondent had assessed the subject property greater than 50% of its true cash value in violation of Michigan Law. Within the question of true cash value, Petitioner raised questions concerning Respondent's measurement of the subject property, application of the cost approach to value, and the taxable value's relationship to sales price. Uniformity and Level of Assessment were not at issue.

In support of these contentions, Petitioner offered the following exhibits, which were admitted into evidence:

<u>Exhibit</u>	<u>Description</u>	<u>Offered</u>	<u>Admitted</u>
P1	Valuation Disclosure (Spencer)	Yes	Yes (T1, p35)

Also, Petitioner listed two witnesses, a real estate broker and a certified public accountant, on his witness list. However, neither was present at the hearing. Petitioner called a single witness, himself, as a property owner appraisal witness.

Mr. Spencer was allowed to testify as an expert as a result of his ownership of subject property, MCR 702.7 and *City of Grand Rapids v H R Terryberry Co*, 122 Mich App at 755, 333 NW2d at 126 (1983), and his authorship of Petitioners' seven-page valuation disclosure.

(1) Robert J. Spencer

Mr. Spencer, arguing the case himself *pro se*, also called himself as his only witness. He represented that he had “on the job training,” having performed for 14 years as a developer; however, when asked if he “...had any educational [appraisal] training in terms of any schools or other types of institutions regarding valuing real estate and methodologies employed,” he answered “Nothing but on-the-job-training.” (T1, p18) He did not offer himself as an appraisal expert, however, he did discuss his familiarity with the subject property in that he purchased the land, designed the building with the aid of an architect, and acted as the general contractor during construction. Mr. Spencer is a mechanical engineer, by education, with a Bachelor of mechanical engineering from General Motors Institute, and a Masters of science from University of Michigan. He holds no degrees or certificates in the field of real estate appraising. (T1, pp15-16) He has worked in the building and development field for 14 years, and has been a construction manager on this as well as other projects in Southeast Michigan. (T1, pp14-21) Petitioner offered his only exhibit, a 7 page valuation disclosure which was marked as Petitioner's Exhibit (P1) and accepted on the record (T1, p35)¹.

¹ Hereinafter, Petitioners' Exhibits will be denoted by “P,” Respondent's Exhibits will be denoted by “R,” and references to the transcripts will be denoted by “T.”

Petitioner's Valuation Disclosure:

* Income Capitalization Approach: Petitioner's valuation disclosure did not contain an income analysis or prospective rent roll. No other income information was offered during the hearing.

* Cost Approach: Mr. Spencer contended construction costs on the subject building, which was newly completed on the tax years at issue, with the exception of tenant "build out" improvements, should be used as true cash value of \$1,115,300 analyzing the sum of the actual costs to construct as follows:

[a]ctual value in 2005 to be \$1,115,000...based on the following analysis:

A. Actual land cost	\$131,000
B. Actual building cost	\$703,300
C. Actual tenant build out costs	\$281,000
D. Total project cost (P1, p2)	\$1,115,300*

*It should be noted that Witness Spencer, corrected the above table, in his testimony on the witness stand to incorporate a category of costs, called "soft costs", [meaning architectural fees, engineering fees, permit fees, and profit] that he had missed when first he authored his valuation disclosure. The **corrected table** is as follows:

A. Actual land cost	\$131,000
B. Actual building cost	\$703,300
C. Actual tenant build out costs	\$281,000
D. Soft costs	\$103,000
E. Total project cost (T1, pp36-38)	\$1,218,300

Further, Petitioner offered a total "build out" cost obtained from each tenant, absent detail as to what the amounts entailed.

Tenant Improvements

The following presents actual cost of tenant improvements.

Tenant	January 2005
Edward Surovell	\$107,138
Ypsi. Credit Union	\$76,670
Kruger Chiropractic	\$40,265
Internal Medicine	\$21,759
Quantum Phy. Therapy	\$23,000
Kuman Math and Reading	\$11,990
Total cost of improvements (P1, p7)	\$280,822 [rounded say \$281,000]

* Sales Comparison (Market) Approach: Mr. Spencer advanced an analysis of three comparable sales, which he then compared to his subject property;

Comparable Ypsilanti Sold Properties

Address	Sq. ft	Taxable Value Per Sq. Ft.	Selling Price	\$/Sq. Ft.	Notes
Subject Property	15000	\$39.19	\$1,632,400	\$108.82	Sale price est. by 2XSEV
500 Hewitt	9520	\$26.40	\$900,000	\$94.53	actual sale
750 Towner	8540	\$31.78	\$535,000	\$62.64	actual sale
1189 E. Mich. (P1, p3)	4513	\$17.30	\$230,000	\$50.96	actual sale

With regard to the above, Petitioner then argued that this “[a]nalysis of comparable office building sales in 2005 ... [results in] a high taxable value of \$31.78 per sq. ft. [while] our property is valued at \$39.19 per sq. ft.. Further, “[a]n analysis of [the above] selling prices shows a high of \$94.53 which is 15% lower than our property.”

* Reconciliation of Final Values: Petitioner’s valuation disclosure also did not contain a reconciliation section. Moreover, Petitioner’s valuation disclosure (P1) did not contain the development of the three principal valuation approaches, corresponding methodologies, and accompanying analysis applying those approaches and methodologies against researched

relevant data, which one might expect to find in a real property appraisal assignment for a commercial office building. Further, there was little application of relevant data to the several approaches with an eye toward reconciliation of the strengths and weaknesses each presented in coming to a final conclusion of true cash value. Further still, there was no indication that the witness understood the circumstances under which the several approaches might reasonably be employed as is typically presented in an Entire Tribunal proceeding before the Michigan Tax Tribunal.

Mr. Spencer's valuation disclosure did not conform, in any meaningful way, to a professional appraisal of the real property for a commercial office building, prepared in accordance with industry standards for such work. That is to say, while it contained some elements of cost and market there was no recognizable application of standard Cost Approach, Market Sales Comparison Approach or Income Approach methodology or analysis. Further, there was no Reconciliation of Final Values discussing the strengths and weaknesses of the various approaches and their corresponding data inputs in concluding to a final estimate of true cash value for the tax years at issue. The information was indeed minimal and unconvincing to the Tribunal.

Thus, at the conclusion of proofs, Petitioner contended that the true cash value for the subject property was \$1,218,000 for the 2005 tax year. Petitioner did not advance a separate valuation disclosure for the subsequent year; rather he applied a 3% increase across the board to calculate a true cash value of \$1,254,850 for the 2006 tax year. (T2, pp56-58)

SUMMARY OF RESPONDENT'S CASE²

Respondent contended that the assessed, state equalized and taxable values do not exceed the amounts permitted by Michigan Law.

Initially Respondent's counsel, Ms. King, moved for a directed verdict in favor of the township pursuant to Michigan Court Rule 2.515 stating as follows:

MS. KING: Your Honor, at this stage ... I would request that a directed verdict [be rendered] in favor of the township. In Tribunal cases such as this, the Petitioner has the burden of proof. And in viewing directed verdicts, the standard, according to Michigan law, is viewing the evidence in the light most favorable to the non-moving party, so viewing the evidence most favorable to Mr. Spencer. We would submit that his appraisal that was submitted in evidence is wholly deficient in presenting actual evidence that the assessment in this case was in excess of fifty percent of the true cash value. That's according to *Kok v Cascade Township*, 265 Mich App 413, (2005). The Petitioner failed to submit any description whatsoever about the comparable properties in his appraisal, making it virtually impossible for the Tribunal to make any true evaluation as to whether or not those properties are or are not comparable. He admitted that one of the properties is not even a commercial ... office property. It's a retail ... property. The other property ... does not have any frontage on the thoroughfare of Michigan Avenue. And he ultimately failed to provide the Tribunal with any methodology for concluding that the true cash value was what he claims. Essentially he stated ... his feeling is that the true cash value of the property for the two years are what he represented. But he doesn't back it up with any hard evidence ... someone ... could extrapolate ... to arrive at the conclusions that he arrived at. So for all these reasons, we would respectfully request the Court enter a directed verdict in favor of the township.

JUDGE SOUTHERN: You're coming under [MCR] 2.515?

MS. KING: Correct.

MR. SPENCER: ... I believe that the Respondent's [appraisal] report has ignored some actual numbers as far as the building cost. They've ignored in their cost approach actual numbers that were submitted and relied on tables and schedules that **I'm certain are generally applicable** but I believe they should be questioned. And for that reason, I respectfully submit, or request, that the motion be denied.

² The Tribunal notes that its opinion incorporates some relevant portions of the evidentiary and legal analysis contained in the various briefs filed by the parties that the Tribunal finds well supported by the record and Michigan law and adopts as its own.

JUDGE SOUTHERN: Motion for directed verdict is denied. The burden with respect to Petitioner is twofold. One, a burden of going forward with the evidence, which may shift from party to party, and a second, a burden of persuasion, which is always attached to Petitioner. **I believe Petitioner has minimally met the burden of going forward. That makes no statement with regard to the credibility of the Petitioner's Exhibit P1 that was admitted.** I'm going to listen to Respondent's valuation rendition and their valuation expert. (Emphasis supplied.) (T1, pp62-64)

Respondent then addressed the matters of uniformity and level of assessment, claiming that neither party had raised either issue in pleading.

Next, Respondent argued that the assessed, state equalized and taxable values were not erroneously determined nor did they exceed amounts permitted by Michigan Law.

In support of its contentions, Respondent offered the following exhibit which was admitted at hearing:

<u>Exhibit</u>	<u>Description</u>	<u>Offered</u>	<u>Admitted</u>
R1	Valuation Disclosure (Dzierbicki)	Yes	Yes (T1, p70)

In further support of its value contentions, Respondent identified and took testimony from its single expert valuation witness.

(1) Daniel J. Dzierbicki

Respondent called Mr. Dzierbicki, IFAS, RES, CMAE III, Michigan Certified General Real Estate Appraiser #1201000849 Chief Appraiser of Ypsilanti Township, to testify about information contained in Respondent's Valuation Disclosure. (R1 – also known as the Dzierbicki Appraisal), a professionally researched and produced, 116-page, Uniform Standards of Professional Appraisal Practice USPAP compliant, Complete Appraisal, with appropriate scope of work. It employed all relevant appraisal approaches with explanations as to the strengths, weaknesses and applicability of the analyses and methods applied and their relevance to the

property under appraisal. The report also contained the typical supporting sections for maps, comparable sales and rentals, pictures and diagrams. The document included value conclusions and the basis for those value conclusions for all property and tax years at issue.

Mr. Dzierbicki's 31 years as a real estate appraiser, licenses and certifications to perform real estate appraisal and assessment functions in Michigan, numerous designations from peer reviewed and tested appraisal organizations, various courts wherein he was qualified as a real estate appraisal expert, and considerable qualifications as a real estate appraisal expert were discussed in (R1, pp99-101) and on the record. (T1, pp65-69) He explained the various methods that he used to determine the value of the subject property including the income approach, cost approach, and sales comparison approach. Then he testified about how he reconciled the strengths and weaknesses of the value conclusions from the three approaches and available data in coming to a final conclusion of true cash value for each tax year at issue. He testified that the highest and best use for the subject property is to continue as a commercial office building and that all three approaches support one another for determining the value of the subject property.

Respondent's Valuation Disclosure:

* Income Capitalization Approach: Respondent's appraiser's income approach commenced with a market rental survey and an analysis of the lease provisions, to which was applied the appraiser's experience and understanding of appropriate appraisal methodology as it applies to the reconstruction of an owner's income operating statement.

REVISED INCOME OPERATING STATEMENT

	[TY 2005] 2004	[TY 2006] 2005
INCOME		
...		

EFFECTIVE GROSS INCOME	\$168,489	\$193,940
EXPENSES		
...		
TOTAL EXPENSES	\$14,044	\$15,826
NET INCOME	\$154,445	\$178,114
(Emphasis supplied.) (R1, p78)		

The above net income was capitalized using an overall rate [OAR] selected after having researched several rates, as indicated below, from published and individually derived sources.

OVERALL RATE SELECTION

2004 [TY 2005]

Robert G. Watts – Realtyrates.com			
Debt Coverage Ratio Technique	8.57%	-	9.05%
Market Cap Rate	9.24%	-	9.40%
Appraisal Institute – Korpacz Survey	8.40%	-	8.77%
Yield Capitalization – Mortgage Equity			7.68%
Band of Investment			8.37%
Most Appropriate Rate			9.00%

2005 [TY 2006]

Robert G. Watts – Realtyrates.com			
Debt Coverage Ratio Technique	9.02%	-	9.43%
Market Cap Rate	9.37%	-	9.68%
Appraisal Institute – Korpacz Survey	7.35%	-	8.36%
Yield Capitalization – Mortgage Equity			7.18%
Band of Investment			8.24%
Most Appropriate Rate			9.00%

VALUE BY THE INCOME CAPITALIZATION APPROACH

12/31/04: [TY 2005] \$154,445 Net Income Estimate / .0900 = **\$1,716,000 (Rounded)**
 12/31/05: [TY 2006] \$178,114 Net Income Estimate / .0900 = **\$1,979,000 (Rounded)**
 (Emphasis supplied.) (R1, p85)

* Cost Approach: Witness Dzierbicki commenced with an analysis of recent land sales comparable to the subject property. Sales corresponding to nineteen parcel identification numbers were found, ranging in sales prices per square foot from \$6.06 to \$2.38. He was

persuaded the per square foot amount which best reflected the value of subject land was \$5.99; which, when applied to the 78,876 square foot area of subject, yields a **value for land at \$472,000.** (R1, pp41-42)

Then he added an estimate of cost for the improvements to the land of \$23,817 [TY 2005] and \$25,522 [TY 2006] respectively.

Further, to this was added the replacement cost less accrued depreciation of the improvements using effective ages of two and three years respectively for the effective ages of subject during the tax years under appeal, based upon a useful life estimate of 65 years. These depreciated replacement costs, which were intended to include all items necessary to replace the structure as of the date of appraisal, were estimated using the Michigan State Tax Commission Cost Manual. The subject property was considered to have been improved with a Class "D" Commercial Office Building.

COST APPROACH SUMMATION

	[TY 2005]	[TY 2006]
Estimated Building Value:	\$1,214,124	\$1,334,271
Land Improvement Value:	\$23,817	\$25,522
Land Value:	\$472,000	\$472,000
Indicated Value by the Cost Approach:	\$1,709,941	\$1,831,793
Rounded To:	\$1,710,000	\$1,832,000
Square Foot Area:	15,411	15,411
Value Per Square Foot:	\$110.96	\$118.88

(Emphasis supplied.) (R1, pp43-44)

* Sales Comparison (Market) Approach: Mr. Dzerbicki researched recent sales available to him that he considered comparable to the subject property and analyzed them, as shown in pertinent part in the following grids, to obtain an indication of value through the sales comparison approach.

SALES ADJUSTMENT GRID [TY 2005]

12/31/2004	Comp 1	Comp 2	Comp 3	Comp 4
...				
Adj SP/SqFt	\$151.30	\$104.83	\$92.67	\$102.08
...				
Net Adj	-30.0%	10.0%	15.0%	10.0%
Value Per				
SqFt	\$105.91	\$115.31	\$106.57	\$112.29

(R1, p65)

From the above analysis the appraiser indicated he found the mid-range of \$111.00 to be the best estimate within the range. Thus, the **Market Approach Value for [TY 2005]** is \$111.00 X 15,411 Sq. Ft. = \$1,710,622 say **\$1,711,000**.

SALES ADJUSTMENT GRID [TY 2006]

12/31/2005	Comp 1	Comp 2	Comp 3	Comp 4	Comp 5	Comp 6
...						
Adj SP/SqFt	\$155.62	\$107.74	\$111.85	\$96.20	\$145.16	\$105.08
...						
Net Adj	-25.0%	20.0%	10.0%	20.0%	-20.0%	15.0%
Value Per						
SqFt	\$116.72	\$129.29	\$123.03	\$115.44	\$116.13	\$120.85

(R1, p66)

From the above analysis the appraiser indicated he found the mid-range of \$123.00 to be the best estimate within the range. Thus the **Market Approach Value for [TY 2006]** is: \$123.00 X 15,411 Sq. Ft. = \$1,895,533 say **\$1,896,000**.

* Reconciliation of Final Values: Appraiser Dzierbicki selected his final values to most closely approximate those in the Sales Comparison Approach, which also happens to be very close to the arithmetic mean of all three approaches for each tax year.

COST APPROACH:	\$1,710,000	\$1,832,000
SALES COMPARISON APPROACH:	\$1,711,000	\$1,896,000
INCOME CAPITALIZATION APPROACH	\$1,716,000	\$1,979,000

(R1, p86)

In his report he explains his application of the process of reconciliation to the values he obtained from the three approaches in the following way:

The value indicated by the Sales Comparison Approach is [most] worthy of consideration as an indicator of value for the subject property.

After careful review of the three approaches and consideration of the facts and data ... that influence ... value [renders his] opinion of market value for subject property [as follows]:

December 31, 2004 [TY 2005]	\$1,713,000
December 31, 2005 [TY 2006]	\$1,900,000

(R1, p87)

FINDINGS OF FACTS

The subject property is a one-story, commercial office development, with no basement that was built in 2004-2005. It is located in Ypsilanti Township, Michigan.

Petitioner has the burden of proving the value of the subject property and the burden of going forward. The Tribunal finds that Petitioner did not meet its burden of persuasion because there was no credible or reliable evidentiary support for its true cash value contentions.

Respondent's expert witness had 31 years of experience in real estate appraisal in Michigan. He prepared his appraisal (R1) in accordance with the Uniform Standards of Professional Appraisal Practice USPAP as promulgated and in place at the time of the preparation of the report. The Tribunal finds for Respondent and its TCVs, SEVs, and TVs, as stated *supra* in the *Final Values* section of this Final Opinion and Judgment.

The Tribunal also finds that the highest and best use of the subject property is as a commercial office development.

The Tribunal also finds the following concerning the “measurement” issue: Mr. Spencer disputed the measurements of the subject’s building at trial indicating that a proper measurement ought to have been 15,372 square feet rather than the 15,411 square feet that Respondent contended.

MR. SPENCER: Good afternoon. One of the first things that I question is the square footage of my building. Based upon your sketch area table in your addendum, you list it as fifteen thousand four hundred and eleven. ... the building basically is two hundred fifty by sixty feet, which adds up to fifteen thousand. It has a lot of jut-outs and jut-ins. As I added that square footage up based upon these dimensions, I arrived at fifteen thousand three hundred and seventy-two feet **[15,372 square feet]**.

...
JUDGE SOUTHERN: So the disparity – the delta is what?

MR. SPENCER: Thirty-nine **[39 square] feet**.
(Emphasis supplied.) (T1, pp115-116)

Respondent’s appraiser indicated in performing his appraisal he utilized the APEX software, which is a widely used commercially available sketch program that assists in drawing building sketches and calculating the interior area.

MS. KING: And you represented the square footage as being fifteen thousand four hundred and eleven [15,411 square feet] –

MR. DZIERBICKI: Correct

...
MS. KING: Can you tell us what is generally the Apex drawing program?

MR. DZIERBICKI: It’s commercial software that is available to appraisers, engineers, surveyors. It has all the math equations from algebra to trigonometry and basically it’s a computer-assisted drafting component as to where you put in the dimensions of whatever you’re drawing, and **it automatically calculates the square foot area once the drawing is closed.**

MS KING: According to the questioning yesterday, it was purported that there was a difference of thirty-nine square feet in the square footage of this property. Assuming for the sake of this question, okay, that is, in fact, the case, a difference of thirty-nine feet, would that make any significant difference, in your opinion, as to the value of this particular property?

MR. DZIERBICKI: **I don’t believe so.**
(Emphasis supplied.) (T2, pp54-55)

The Apex software is sufficiently reliable to be the best indicator, in the absence of any error of application, for the calculation of square footage of subject. Further, the Tribunal observes from the parties' Stipulation of Facts:

In 2003-2004, the property was improved with the construction of a single story brick and wood framed office building. The building contains a gross area of **15,411 square feet**. There is no basement or lower level. (Emphasis supplied.) (STIPULATION OF FACTS, dated March 29, 2007, p2)

The Tribunal finds the following with respect to the issue of "disproportionate taxation." When Petitioner contended the subject property was being disproportionately taxed he offered comparisons of TV to Sales Price, when he ought to have offered comparisons of AV or SEV to Sales Price. Petitioner was simply mistaken as to the computation and meaning of taxable valuation (TV), and consequently misused the term in his argument.

Comparable Ypsilanti Sold Properties

Address	Sq. ft	Taxable Value Per Sq. Ft.	Selling Price	\$/Sq. Ft.	Notes
Subject Property	15000	\$39.19	\$1,632,400	\$108.82	Sale price est. by 2XSEV
500 Hewitt	9520	\$26.40	\$900,000	\$94.53	actual sale
750 Towner	8540	\$31.78	\$535,000	\$62.64	actual sale
1189 E. Mich.	4513	\$17.30	\$230,000	\$50.96	actual sale

(Emphasis supplied.) (P1, p3)

With regard to the above, Petitioner argued that this "[a]nalysis of comparable office building sales in 2005 ... [results in] a high taxable value of \$31.78 per sq. ft. [while] our property is valued at \$39.19 per sq. ft.. Further, "[a]n analysis of [the above] selling prices shows a high of \$94.53 which is 15% lower than our property." (P1, p3)

Counsel for Respondent put a series of questions to Mr. Spencer relative to taxable value in an apparent effort to discern whether he understood the mathematical relationship of that term to assessed value, state equalized value and true cash value.

MS. KING: Now, do you believe that taxable value represents assessed value?

MR. SPENCER: I thought that the taxable value was – well, here, by assessed you mean SEV, state equalized –

MS. KING: No, I mean assessed value. I mean –

MR. SPENCER: Assessed value meaning what it would sell for on the open market?

MS. KING: The term “assessed value”.

MR. SPENCER: You would have to define it.

MS. KING: You don’t know what the term “assessed value” means in terms of property taxes? If you’re not familiar, that’s fair.

MR. SPENCER: I’m familiar with SEV, state equalized value, taxable value. Assessed value?

MS. King: Well, let me ask you, **do you believe there’s a correlation between the SEV of a property and the taxable value** of a property?

MR. SPENCER: **They’re about equal.**

MS. KING: ... If I were to own property for ten years would the SEV of the property – my property and the taxable value correlate, in your opinion?

MR. SPENCER: Yes.

(Emphasis Supplied.) (T1, pp58-59)

It appears that Petitioner was attempting to perform a type of analysis known as a “sales ratio” study [assessed value / sales price]. Such a study is sometimes useful in property tax jurisdictions to examine for disproportionality of assessments. However, it appears he did not understand that taxable value may not be used as a proxy for assessed value in this type of analysis. In Michigan, taxable value does not vary consistently in relation to sales price in the same way that assessed value does; thus, taxable value is an improper variable with which to measure uniformity of assessments. Taxable value is the mechanism by which the “capping” feature of Michigan’s property tax is employed. Petitioner’s analysis with regard to his three sales is flawed, at least to the extent that the numerator taxable value TV, of the TV/Sales Price

ratio calculation. It is defined and calculated as described in (Subsection 27a) below; rather than as Petitioner uses it.

MCL 211.27a Sec. 27a.

(1) Except as otherwise provided in this section, property shall be assessed at 50% of its true cash value under section 3 of article IX of the state constitution of 1963.

(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**.

(3) Upon a transfer of ownership of property after 1994, the property's **taxable value for the calendar year following the year of the transfer is the property's state equalized valuation** for the calendar year following the transfer. (Emphasis supplied.)

(MCL 211.27a – Property tax assessment; determining taxable value; ...)

The Tribunal finds, with respect to the proper application of the cost approach to valuation: That Petitioner was incorrect when he asserted that Respondent's appraiser improperly employed the cost approach to value because he did not accept, as rendered, Petitioner's supplied schedule of "actual" cost information *supra* as determinative of true cash value. Petitioner thought that Respondent hadn't considered Petitioner's actual cost, when he actually considered them but realized that in many respects they were incomplete, or improperly rendered. Further, Respondent's appraiser indicates that he performed a standard cost approach to value: using land sales, and adding to that replacement cost new less depreciation from the Michigan State Tax Commission (STC) Appraisal Manual. The use of the STC, or a similar cost

manual, as a guideline, tends to result in a uniform and comprehensive estimate which has as its purpose to consider all costs necessary to place the building in service for its highest and best use.

The Tribunal agrees Respondent was correct in not accepting Petitioner's rendition of costs because it was incomplete. Petitioner's valuation disclosure did not, for example, contain a category or an amount for indirect costs, sometimes called "soft costs."

MR. SPENCER: I...missed one category of construction, which would add to the cost of the project ...a hundred and three thousand dollars [**\$103,000**], which we refer to as soft costs meaning **architectural fees, engineering fees, permit fees, and profit**.

JUDGE SOUTHERN: By profit you mean specifically **entrepreneurial profit**?

MR. SPENCER: Yes.

(Emphasis supplied.) (T1, pp36-37)

While Petitioner partially corrected his error by adding an additional \$103,000 to his cost estimate to recognize several indirect or "soft cost" elements (architectural fees, engineering fees, permit fees, and [entrepreneurial] profit) hi-lighted below, his correction failed to recognize a number of other missing elements of cost. There are some 18 elements to be recognized [10] Direct and [8] Indirect. Most of these costs will be operative in a typical commercial office development project, for example, the one in dispute in the instant matter.

Table 14.1 Direct Costs and Indirect Costs

Direct [hard]Costs

- Building **permits**
- Materials, products, and equipment
- Labor used in construction
- Equipment used in construction
- Security during construction
- Contractor's shack and temporary fencing
- Material storage facilities
- Power line installation and utility costs

- Contractor's profit and overhead, including job supervision; coordination and management (when appropriate); worker's compensation; and fire, liability, and unemployment insurance
- Performance bonds

Indirect [soft] Costs

- **Architectural and engineering** fees for plans, plan checks, surveys to establish building lines and grades, and environmental studies
- Appraisal, consulting, accounting, and legal fees
- The cost of carrying the investment in land and contract payments during construction (if the property is financed, the points, fees or service charges, and interest on construction loans are indirect costs)
- All-risk insurance expense and ad valorem taxes during construction
- The cost of carrying the investment in the property after construction is complete but before stabilization is achieved
- Supplemental capital investment in tenant improvements and leasing commissions
- Marketing costs, sales commissions, and any applicable holding costs to achieve stabilized occupancy in a normal market
- Administrative expenses of the developer

Entrepreneurial Profit

- A market derived figure that represents the amount an entrepreneur receives for his or her contribution to a project and risk; the difference between the total cost of property (cost of development) and its market value (property value after completion), which represents the **entrepreneur's compensation** for the risk and expertise associated with development.

(Emphasis supplied.)

The Appraisal of Real Estate (Chicago: 12th ed, Appraisal Institute, 2001), pp359-360

The Tribunal cannot locate many of the above described typical cost elements, which it would reasonably expect to find in Petitioner's cost rendition were it to have been properly done. For example, conspicuously absent are "interest during construction," "subcontractor's overhead and profit," and "leasing commissions."

MR. SPENCER: Yes, your Honor. I'm a mechanical engineer by education. I have worked in the building and development field for fourteen years. I have

bought property, sold property, developed office buildings, retail centers. The specific property we're talking about today **I bought the land, I obtained all the permits and approvals from the various agencies. I hired contractors, supervised the contractors, and signed leases for the tenants – or with tenants.** And have been involved from day one until now as the owner of the building.
(Emphasis supplied.) (T1, pp14-15)

Indeed, if those costs are mentioned at all, they appear to have been performed by the Petitioner himself and omitted from the breakdown. Of course, an entity having an office building constructed in order to obtain the resulting income stream would have had to incur associated cost in those areas, costs which Petitioner has failed to include in his estimate.

The Tribunal can only conclude that Respondent's Cost Approach is the most reliable cost approach in evidence in the instant matter.

Further, it is not clear to the Tribunal that Petitioner understood the distinction between the estates of Fee Simple Absolute and Leased Fee.

PROPERTY RIGHTS APPRAISED

It is to be recognized that the rights of ownership in real estate are many. The most common found in the market are as follows:

Fee Simple Estate

Absolute ownership unencumbered by any interests or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.

...

Leased Fee Estate

A leased fee estate is an ownership **interest held by a landlord** with specific rights that include the right of use and occupancy conveyed by lease to others; the rights of lessor (the leased fee owner) and lessee (leaseholder) are specified by contract terms contained within the lease.

...

For this appraisal, by virtue of the type of assignment for which the appraiser is engaged, that the **property rights to be appraised are Fee Simple Estate**. (Emphasis supplied.) (R1, p10)

It seemed at times that Petitioner was advancing the argument that, because of his position as a developer landlord, the proper subject of his burden of proof was value to the *leased fee estate* rather than to the *fee simple estate*. “There has been no addition to the building or property since 2004. All improvements to the property were completed in 2004 with the exception of tenant build outs.” (P1, p1)

In contrast, Respondent was correct when he established in his appraisal the appropriate appraisal assignment was for a *fee simple estate* in subject property.

[Ms. King]: Sir, what interest did you appraise in regards to Grand Teton Properties?

[MR. DZIERBICKI]: Interest appraised was fee simple.

[MS. KING]: And why fee simple interest?

[MR. DZIERBICKI]: Because it's absolute to the owner.
(T1, p70)

With regard to Petitioner's true cash value estimates, Mr. Spencer testified about his understanding of various general aspects of office building valuation; however, his testimony did not provide professionally reliable or credible valuation testimony with regard to consideration of and application of relevant factual material appropriately obtained and correctly employed in Petitioner's appraisal. Standard approaches such as the cost-less-depreciation approach, the income approach, and the sales comparison approach, applied in accordance with conventional appraisal methodology to reliable data, could not be found in Petitioner's valuation disclosure.

CONCLUSIONS OF LAW

STANDARD OF REVIEW

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.

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%.... Const 1963, art 9, sec 3.

The Michigan Legislature has defined “true cash value” to mean:

... the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale. MCL 211.27(1); MSA 7.27(1).

The Michigan Supreme Court has determined that “true cash value” is synonymous with “fair market value.” See *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450; 221 NW2d 588 (1974).

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 NW 2d 479 (1981). The Tribunal is not bound to accept either of the parties’ theories of valuation. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 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 Limited Dividend Housing Association v City of Holland*, 437 Mich 473, 485-486; 473 NW2d 636 (1991).

A proceeding before the 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 Department 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. *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). This burden encompasses two separate concepts: (1) the risk of persuasion, which does not shift during the course of the hearing; and (2) the burden of going forth with the evidence, which may shift to the opposing party. *Jones and Laughlin* at 354-355. However, “[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessment in relation to true cash value in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question.” MCL 205.735(3).

The three most common approaches to valuation are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach. *Meadowlanes*, at 484-485; *Pantlind Hotel Co v State Tax Commission*, 3 Mich App 170; 141 NW2d 699 (196), *aff'd* 380 Mich 390 (1968). The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in marketplace trading. *Antisdale*, p. 278. “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.” *Meadowlands*, *supra* at 485, citing *Antisdale*, *supra* at 277, n 1. The Tribunal is under a duty to

apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale*, p. 277. As previously discussed, the Tribunal finds that both the income capitalization approach and the sales comparison approach provide an accurate valuation of the subject property.

The concept of “highest and best use” is fundamental to the determination of a property’s true cash value as this concept recognizes that the use to which a prospective buyer would put the property will influence the price that the buyer would be willing to pay. *Rose Bldg Co v Independence Twp*, 436 Mich 620, 623; 426 NW2d 325 (1990).

Three criteria must be satisfied before expert testimony will be admitted: (1) the witness must be a qualified expert; (2) expert testimony must “assist the trier of fact to understand the evidence or to determine a fact in issue”; and (3) there must be recognized scientific, technical, or other specialized knowledge in a particular area that “belongs more to an expert than to the common man.” MCR Rule 702 requires the trial judge to ensure that the expert’s testimony rests on a reliable foundation and is relevant to the issues. *Daubert v Merrell Dow Pharmaceuticals, Inc*, 509 US 579; 113 S Ct 2786 (1993). The trial judge has the discretion to determine whether a witness is an “expert.” The decision will not be reversed on an appeal absent an abuse of discretion. *Siirila v Barrios*, 398 Mich 576, 591; 248 NW2d 171, 176 (1976).

DISCUSSION AND ANALYSIS

Mr. Spencer has shown throughout these proceedings that he is both intelligent and intrepid; however, the fact that he is not an appraiser has not served him well, hindering him significantly in using and describing appraisal concepts and methods established as reliable and

credible in the market place and the courts. For example, most of Mr. Spencer's testimony never really rose to the level of credible and reliable "expert witness" testimony useful to the Tribunal as envisioned in MRE 702 and 703.

MRE 702.1 The rationale of the rule.

Rule 702 sets forth guidelines for the admission of expert opinion testimony. The Rule was amended effective January 1, 2004 to conform it more closely with FRE 702. Prior to the amendment, there were three criteria that had to be satisfied before expert testimony would be admitted: **(1) the witness had to be a qualified expert; (2) expert testimony had to assist the trier of fact to understand the evidence or to determine a fact in issue; and (3) there had to be recognized scientific, technical, or other specialized knowledge in a particular area that belongs more to an expert than to the common man.** Under the current rule, those three criteria must still be met, with the exception that the word "recognized" no longer appears as a qualifier to "scientific, technical or other specialized knowledge."

In addition, there are now three further criteria that must be met:

- (1) the testimony must be based on sufficient facts or data;**
- (2) the testimony must be the product of reliable principles and methods;**
- and**
- (3) the witness must have applied the principles and methods reliably to the facts of the case.**

These three criteria were added for the purpose of requiring trial judges to "act as gatekeepers who must exclude unreliable expert testimony."

(Footnotes excluded) (Emphasis supplied.)

(Courtroom Handbook on Michigan Evidence 702.1 (2006))

The Tribunal concludes that while witness Spencer's testimony and valuation disclosure was admissible as a property owner under MRE 702.7, it was not credible and did not result in persuading the Tribunal concerning Petitioner's true cash value contentions.

Petitioner provided little if any appraisal analysis or methodological basis to justify the \$1,218,300 [TY 2005] and \$1,254,850 [TY 2006] true cash value estimates asserted. While Petitioner claimed to offer a cost approach, in fact his valuation disclosure contained no methodologically sound identifiable approaches. Also, while he claimed to offer some market

information, there were no adjustment grids and no comparable analyses. Even though P1 was accepted into the record, the minimal appraisal content of the exhibit resulted in the trier of fact according it little or no credibility or reliability. The initial consequence of this is Mr. Spencer was unable to establish that he performed any of the standard appraisal approaches in coming to his true cash value contentions. The further consequence of this is Petitioner was unable to carry its burden of proof with respect to persuasion concerning its contentions of value for subject property for the tax years at issue.

Again, in contrast, the Tribunal finds that Mr. Dzierbicki's work product did comply with the relevant sections of the applicable years of USPAP standards and provided evidence of proper research and application of appropriate methodology. This is particularly true concerning requirements to "perform assignments with impartiality ... without accommodation of personal interests" and "be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal" when preparing and reporting their respective valuations disclosures.

USPAP 2006

ETHICS RULE: Conduct:

...An appraiser must perform assignments ethically and competently, in accordance with USPAP [the edition dated to be in effect at the date of appraisal]
... **An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests.**

In appraisal practice, an appraiser must not perform as an advocate of any party or issue.

USPAP [2006] Standards Rule 1-1

(This Standards Rule contains binding requirements from which departure is not permitted.)

In developing a real property appraisal, an appraiser must:

(a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;

Comment: This Rule recognizes that the principle of change continues to affect the manner in which appraisers perform appraisal services. Changes and developments in the real estate field have a substantial impact on the appraisal profession. Important changes in the **cost and manner of constructing and marketing commercial, industrial, and residential real estate as well as changes in the legal framework in which real property rights and interests are created, conveyed, and mortgaged** have resulted in corresponding changes in appraisal theory and practice. ...

(b) not commit a substantial error of omission or commission that significantly affects an appraisal; and

Comment: In performing appraisal services, an appraiser **must be certain that the gathering of factual information is conducted in a manner that is sufficiently diligent, given the scope of work as identified according to Standards Rule [1-2\(f\)](#), to ensure that the data that would have a material or significant effect on the resulting opinions or conclusions are identified and, where necessary, analyzed.** Further, an appraiser must use sufficient care in analyzing such data to avoid errors that would significantly affect his or her opinions and conclusions. (Emphasis supplied.)

Uniform Standards of Professional Appraisal Practice (USPAP) (Washington D.C.: The Appraisal Foundation, 2006), pp7, 17

In order to perform a proper market approach to valuation, the appraiser is expected to research recent sales in the market place, similar to the subject in as many aspects relevant to value as possible, adjusting those attributes that are different from the subject property, so as to “infer” a value for the property under appraisal. The process is described in slightly more detail below:

Analyzing and Adjusting Comparable Sales

Ideally, if all comparable properties are identical to the subject property, no adjustments would be required. However, this is rarely the case, especially for nonresidential properties. In this step of the analysis the appraiser **adjusts for any differences**.

After sales information has been collected and confirmed, it can be organized in a variety of ways. One convenient and commonly used method is to arrange the data on a market data grid. Each important difference between the comparable properties and the subject property that could affect property value is considered an element of comparison. Each element is assigned a row on the grid, and total **property prices or unit prices of the comparables are adjusted to reflect the value of these differences**. The process is a way for appraisers to model typical buyer actions and to analyze sales data to quantify the impact of certain characteristics on value. ...

The Appraisal of Real Estate (Chicago: 12th ed, Appraisal Institute, 2001), p425 (Emphasis supplied.)

The Tribunal finds that Respondent properly and appropriately considered and applied all three traditional approaches to value: Income Capitalization, Cost and Sales Comparison, in conformance with USPAP and without accommodation of personal interests. Therefore, based on the case file, evidence and record the Tribunal finds for Respondent. Further, the Tribunal finds that the most credible and reliable method of estimating true cash value in the instant matter is the Sales Comparison (Market) Approach, with strong support, and slight modification, coming from the cost and income capitalization approaches as each were employed and explained by Respondent's appraiser.

In conclusion, for the reasons set forth herein, the Tribunal finds that the subject property's true cash, state equalized and taxable values are:

Year	TCV	SEV	TV
2005	\$1,713,000	\$856,500	\$603,933
2006	\$1,900,000	\$950,000	\$623,862

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, and (xiii) after December 31, 2007, at the rate of 5.81% for calendar year 2008.

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

MICHIGAN TAX TRIBUNAL

By: Tribunal Judge: Richard A. Southern

Entered: April 22, 2008