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STATE OF MICHIGAN

COURT OF APPEALS

DRSN REAL ESTATE GP, LLC, Petitioner-Appellant,	UNPUBLISHED January 28, 2021
v	No. 352153 Tax Tribunal
CITY OF GROSSE POINTE WOODS, Respondent-Appellee.	LC No. 17-001117-TT

Before: JANSEN, P.J., and SERVITTO and RIORDAN, JJ.

PER CURIAM.

Petitioner, DRSN Real Estate GP, LLC, appeals as of right the Tax Tribunal's judgment determining the true cash value (TCV) and taxable value (TV) of petitioner's property in Grosse Pointe Woods for tax year 2017. We affirm in part, reverse in part, and remand for further proceedings.

I. FACTS AND PROCEEDINGS

Petitioner is the owner of The Rivers, a continuing care retirement community (CCRC), on Cook Road in Grosse Pointe Woods. Petitioner offers three levels of housing for senior citizens: (1) 77 independent living (IL) units; (2) 80 assisted living (AL) units (including 40 memory-care units for residents with dementia); and (3) 80 skilled nursing (SN) units. Construction on the facility began in 2013 and was completed in late 2015. The facility was designed as an upscale residence, consistent with the surrounding high-income neighborhood. The designers included a multistory glass-ceiling atrium, a saltwater swimming pool, and other upscale features intended to attract high-income senior citizens. The project was financed through issuance of two municipal bonds, one taxable and one nontaxable.

The instant appeal concerns the city of Grosse Pointe Wood's valuation of the property for tax year 2017. Petitioner challenged the city's assessor's determination that the property's TCV was $26,999,200. The Tax Tribunal held a six-day hearing at which petitioner presented evidence of valuations under the sales-comparison approach, the cost-minus-depreciation approach, and the income-capitalization approach. Respondent's expert conducted analyses under these three

approaches, but his valuation was based solely on the cost approach. The Tax Tribunal determined that the TCV was $29,400,000 and the TV $14,700,000. Petitioner now appeals.

II. STANDARD OF REVIEW

"[T]his Court's 'review of decisions of the Tax Tribunal, in the absence of fraud, is limited to determining whether the tribunal made an error of law or adopted a wrong principle; the factual findings of the tribunal are final, provided that they are supported by competent and substantial evidence.' " *President Inn Props, LLC v Grand Rapids*, 291 Mich App 625, 630-631; 806 NW2d 342 (2011) (citation omitted); Const 1963, art 6, § 28. Thus, the tribunal's factual findings "that are supported by competent, material, and substantial evidence on the whole record will not be disturbed on appeal." *Columbia Assoc, LP v Dep't of Treasury*, 250 Mich App 656, 665; 649 NW2d 760 (2002). "Substantial evidence is the amount of evidence that a reasonable person would accept as being sufficient to support a conclusion; it may be substantially less than a preponderance of the evidence." *Wayne Co v Mich State Tax Comm*, 261 Mich App 174, 186-187; 682 NW2d 100 (2004). Issues of statutory construction are reviewed de novo. *Forest Hills Coop v Ann Arbor*, 305 Mich App 572, 587; 854 NW2d 172 (2014).

III. MCL 211.27

Petitioner argues that the Tax Tribunal violated MCL 211.27 by increasing the TV for tax year 2017 by a sum greater than the product of 1.05 times the TV for tax year 2016.[1] We agree.

"In a property tax dispute, the petitioner must prove by the greater weight of the evidence that the disputed assessment was too high on the basis of the Tax Tribunal's findings of true cash value." *Forest Hills Coop*, 305 Mich App at 588. However, the tribunal must make an independent determination of TCV. *President Inn Props,* 291 Mich App at 631. Accordingly, "the Tax Tribunal has the overall duty to determine the most accurate valuation under the individual circumstances of the case." *Id.*

Const 1963, art 9, § 3, provides:

> 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, after January 1, 1966, exceed 50 percent; and for a system of equalization of assessments. The legislature may provide for alternative means of taxation of designated real and tangible personal property in lieu of general ad valorem

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[1] Petitioner asserts that the Tax Tribunal's increase of the TV was erroneous because the Tax Tribunal found that the subject property was over-assessed. Petitioner relies on the statement in the tribunal's opinion that "[p]etitioner has successfully [sic] demonstrated that the subject property was *over-assessed* for 2017." However, the totality of the Tax Tribunal's lengthy opinion and judgment clearly reflects the tribunal's determination that the subject property was not over-assessed, and that petitioner's allegations of over-assessment were not supported by the evidence.

> taxation. Every tax other than the general ad valorem property tax shall be uniform upon the class or classes on which it operates.

MCL 211.27a provides, in pertinent part:

> (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.
>
> * * *
>
> (11) As used in this section:
>
> (a) "Additions" means that term as defined in section 34d. [Emphasis added.]

MCL 211.34d(b)(*iii*)[2] defines "additions" to mean "[n]ew construction," defined as "property not in existence on the immediately preceding tax day and not replacement construction," including "the physical addition of equipment or furnishings . . . ."

The TV of the subject property for tax year 2016 was $12,920,797. Multiplied by 1.05, the product is $13,566,836.85. The Tax Tribunal's imposition of a TV of $14,700,000 thus exceeds the statutory limit, unless additions were made in 2016. The Tax Tribunal made no findings regarding additions in 2016. Respondent relies on an isolated statement by petitioner suggesting that construction was completed in 2016. However, petitioner argues, and we agree, that there was no evidence of construction in 2016.

Petitioner observes that respondent's appraiser made no findings of new construction in 2016. Petitioner cites the report of respondent's appraisal expert, Michael Ellis, who stated:

> The subject was physically completed as of both dates of valuation, and was continuing to absorb units. The Petitioner has provided AIA Construction Pay

[2] MCL 211.34d was amended by 2019 PA 117, effective November 15, 2019. The definition of addition and "new construction" was not modified from the version of MCL 211.34d in effect for tax years 2016 and 2017.

> Applications evidencing construction costs. The most recent document provided is dated October 21, 2015 and bates stamped 2386 to 2389. Not included in the cited document are soft cost, entrepreneurial profit, builders profit, or personal property. **An extraordinary assumption has been made that these statements are true and correct**. Based on the statement the percentage of completion effective October 31, 2015 was as follows . . . .

This statement is followed by a chart indicating that each of the three sections of the subject property was 100 percent completed as of October 31, 2015. Ellis's report also includes a table summarizing the AIA construction pay data as of October 31, 2015. Ellis testified that the October 31, 2015 AIA statement was the final statement he saw. He acknowledged that the table in his report indicated that construction on the entire property was complete as of October 31, 2015. There is no evidence of any construction in 2016, and respondent's own evidence indicates that there were no additions or construction in 2016. Moreover, the tribunal's final opinion does not reference any additions in 2016 to justify an increase in TV in excess of the 1.05 multiplier limitation.

We therefore agree that the Tax Tribunal was subject to the 1.05 multiplier limitation provided by MCL 211.27a. The tribunal made an error of law by not applying the statutory limitation. We therefore remand for modification of the TV for tax year 2017 consistent with the 1.05 multiplier limitation in MCL 211.27a.

IV. INDIRECT COSTS

Petitioner argues that the Tax Tribunal erroneously included in its cost calculation certain indirect costs associated with the costs of obtaining financing. We find no error.

"The Tax Tribunal is under a duty to apply its expertise to the facts of a case in order to determine the appropriate method of arriving at the true cash value of property, utilizing an approach that provides the most accurate valuation under the circumstances." *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998). "True cash value is synonymous with fair market value." *Id*. "The three most common approaches for determining true cash value are the capitalization-of-income approach, the sales-comparison or market approach, and the cost-less-depreciation approach." *Id*. at 390. In *President Inn Props,* 291 Mich App at 639, this Court stated that

> a valuation method is wrong only if it does not lead to the most accurate determination of the taxable property's true cash value or fair market value. Thus, the Tax Tribunal has a duty to select the approach which provides the most accurate valuation under the circumstances of the individual case. [Quotation marks and citation omitted.]

For the valuation analysis, an appraiser must analyze "data mathematically to determine an estimate of the fair-market value of both the physical real estate and all the interests, benefits, and rights inherent in ownership of that real property." *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991) (citation omitted). The petitioner

bears the burden of proving a property's TCV. *Menard, Inc v City of Escanaba*, 315 Mich App 512, 520; 891 NW2d 1 (2016); MCL 205.737(3).

"The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property . . . ." Const 1963, art 9, § 3. This constitutional provision requires "(1) that the Legislature is to provide a uniform system of real property taxation, (2) that the tax must be assessed on the basis of the true cash value of the property, and (3) that the Legislature is to provide a determination of true cash value." *Meadowlanes*, 437 Mich at 483. MCL 211.27(1) defines "true cash value" as "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 . . . ." The Legislature did not direct that a specific valuation method be used; thus, it is left to the courts to approve or disapprove specific methods. *Meadowlanes*, 437 Mich at 484; *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984). "Regardless of the valuation approach employed, the final value determination must represent the usual price for which the subject property would sell." *Meadowlanes*, 437 Mich at 485.

The cost-less-depreciation approach focuses on the cost of reproducing or replacing the structure. *Id.* at 484. "The cost-less-depreciation approach underlying the valuation for the improved parcels is, in reality, a type of comparative or market-data approach to value, which generally considers the land to be unimproved, requires the development of a replacement cost for improvements, and makes adjustments for depreciation to reflect the fact that an old or used property is usually less valuable than a new one." *Forest Hills Coop*, 305 Mich App at 590. "Under the cost approach, true cash value is derived by adding the estimated land value to an estimate of the current cost of reproducing or replacing improvements and then deducting the loss in value from depreciation structures, i.e., physical deterioration and functional or economic obsolescence." *Id*. at 590-591, quoting *Meadowlanes*, 437 Mich at 484 n 18.

Respondent's expert, Ellis, included all of these indirect or "soft" costs in his valuation:

Insurance and other fees	$141,000
Design	$778,000
Municipal and State Permitting	$260,000
Third-party reports	$153,000
Miscellaneous	$75,000
Letter of Credit Fee	$120,000
Underwriter's discount	$746,000
Cost of Issuance	$705,000

Construction Monitor	$65,000
Total	**$3,043,000**

The Tax Tribunal accepted respondent's indirect cost total of $3,043,000.

Petitioner disputes the inclusion of the following items as soft costs: (1) third-party reports, (2) miscellaneous, (3) letter of credit fee, (4) construction monitor, (5) underwriter's discount, and (6) cost of issuance, which total $1,756,000. Petitioner argues that these items should not have been included as soft costs in the cost-approach calculation because they were costs of financing that did not add value to the property. Petitioner argues that it incurred substantially higher costs in obtaining the bond financing than it would have incurred through conventional bank financing. Petitioner also argues that the inclusion of these costs violated the principle of uniformity by treating the subject property as more valuable than real estate financed through simpler loan transactions.

In *Meadowlanes*, 437 Mich 473, our Supreme Court addressed "the ad valorem taxation of a federally subsidized housing complex," determining "whether, in computing the true cash value of real property, the Tax Tribunal may rely on an approach that takes into account the value, if any, of a federal governmental mortgage subsidy." *Id*. at 482. The Court held:

> Thus, the Tax Tribunal adopted a wrong principle by using Allen's "mortgage/equity" component approach in determining the true cash value of the subject property. This approach makes a number of invalid assumptions allowing it to value in large part the underlying mortgage paper rather than the real property. In so doing, it has the potential for creating irrational disparities in the true cash value of real property and thus violates the constitutional mandate of uniformity in the assessment of ad valorem taxes. [*Id*. at 494.]

We are not persuaded that the federal mortgage subsidy in *Meadowlanes* is analogous to the bond financing costs. It was not an expenditure that the property owner made to complete the development of the property. In the instant case, petitioner presented evidence that it pursued bond financing because bank financing was not available. These were necessary expenditures to accomplish the project. Ellis's testimony and the website records are evidence that petitioner incurred these costs in order to finance the project. Accordingly, these findings are "supported by competent, material, and substantial evidence on the whole record will not be disturbed on appeal." *Columbia Assoc*, 250 Mich App at 665. Thus, the tribunal did not err by including these costs.

V. LAND USE RESTRICTION AGREEMENT

Petitioner argues that the Tax Tribunal's calculation of costs failed to account for a Land Use Restriction Agreement (LURA) that restricted the use of 16 IL units to qualified low-income tenants. This LURA was a condition of the bonds that petitioner obtained to finance the project.

The Tax Tribunal stated:

> Regarding the land use restriction agreement, there was a lack of clarity from testimony about the base rent for the 16 units from market-supported evidence. Similarly, it was unclear as to which 16 units are set aside for the low-income residents under this agreement. In compounding fashion, Petitioner's appraiser looked at some units, but could not recall if those were the units held aside for low-income residents. Petitioner's appraiser did not consider whether or not the lost rental income from the land use restriction was offset by a lower interest payment on the construction loan for the subject development. The tribunal is not persuaded that the land use restriction agreement and unspecified 16 units set aside for low income residents adversely affects the Rivers extensive facilities for independent living, assisted living and skilled nursing.

Petitioner's expert appraiser, Gerald Rasmussen, testified that he accounted for the LURA by using a discounted cash-flow analysis. Rasmussen agreed that financing real estate with municipal bond financing was "a different marketplace" than conventional financing through a bank loan. He agreed that the interest paid on tax-exempt bonds was exempt from federal income tax. He agreed that in certain circumstances, tax-exempt bonds could be more beneficial from a tax perspective than general financing. Rasmussen stated that he did not consider whether lost rental revenue from the LURA was offset by a lower interest payment on the construction loan.

Rasmussen testified that he determined the annual rent range for the low-income units from comparison to eight properties. None of these were located in Michigan. None were independent living facilities. Rasmussen knew that the LURA applied only to independent living units, and not to assisted living units, but he did not believe the difference was significant because the types of units were not bifurcated until 2018. Six of the exemplar properties in the comparison were skilled nursing units. Rasmussen admitted that an independent living unit was not similar to a skilled nursing unit. He admitted that the quality of the facilities was not similar to the quality of the subject property. He believed, however, that they provided a basis for forming an opinion. He did not inspect the comparable properties, but instead relied on information from the Cushman & Wakefield database. Many of the comparable exemplars were much older than the subject property. The six skilled nursing facilities had rates capped by Medicaid. Rasmussen thus disclosed weaknesses in his analysis of how the LURA affected the TCV of the property. The Tax Tribunal's decision to give more weight to Ellis's analysis is supported by substantial evidence. *Columbia Assoc*, 250 Mich App at 665.

Petitioner relies on *Menard*, 315 Mich App at 531-532, for the principle that a deed restriction that affects a property's marketability should be accounted for in valuing the property under the cost-less-depreciation and sales-comparison approaches. In *Menard*, the property at issue was a "big box" retail store. *Id*. at 514. The *Menard* property was not subject to deed restrictions, but the retail properties used as exemplars in the sales-comparison analysis were subject to deed restrictions. The property owner's appraiser did not adjust the sales-comparison data to reflect the deed restrictions affecting the exemplar properties. *Id*. at 516-517. The Tax Tribunal accepted the appraiser's testimony "and used the deed-restricted comparables in its determination of value." This Court concluded that the tribunal's "finding was based on an error of law and was not supported by competent, material, and substantial evidence." *Id*. at 524. Assuming, arguendo, that the LURA is analogous to a deed restriction with respect to the effect

on the real property's value, *Menard* does not help petitioner overcome the other weaknesses of Rasmussen's data regarding the LURA's alleged detriment to the subject property's value.

VI. DEMOLITION COSTS

We agree with petitioner that the Tax Tribunal failed to subtract demolition costs from the land value. Accordingly, the tribunal shall address and correct this error on remand.

Petitioner's expert found that the land's indicated value was $3,320,000. Rasmussen determined that the property's value was $20,400,000 under a cost approach, $20,450,000 under a sales-comparison approach, and $20,475,000 under the income-capitalization approach. Rasmussen's report states:

> We were provided with the hard and soft costs for the subject as of July 2015, which have been included in the addenda of this report. Total hard costs for the subject were reported to be $21,142,190.84. This included demolition costs of $339,178.34, which needs to be deducted as this cost would be included in the land value. Subtracting demolition costs brings the hard costs to $20,803,012.53, or $98.56 per square foot. Additionally the subject had soft costs of $1,482,106.00 bringing the total for hard and soft costs to $22,285,118.50, or $105.58 per square foot.

Respondent's expert, Ellis, included demolition costs in a table, labeled Summary of AIA Construction Pay Application statements. Ellis subtracted the demolition total of $339,178 from total development costs of $21,142,191, for a "Total Cost Less Demolition figure of $20,803,013."

Petitioner argues that the Tax Tribunal failed to make any adjustment for demolition costs. Petitioner states that the Tax Tribunal used Ellis's land value figure, but never accounted for demolition costs. Respondent argues in response:

> Tribunal's value conclusion was derived by taking Appellee's expert's land value, adding the same expert's improvements value after subtracting for entrepreneurial profit, and then using the same expert's depreciation conclusion. Every single number that appears in the tribunal's calculation on page 37 of the FOJ is taken directly from R1:149—including the land value and cost of constructing the improvements.

The values in the Tax Tribunal's calculation that respondent refers to are from the following table:

Contractor's Development Cost	$21,226,760
Contractor's Profit	$1,592,007
Total Indirect Costs	$3,043,000
Cost New from Contractor Stmts	$25,861,767

Less Depreciation (1%)	$258,617
Depreciation Cost of Improvements	$25,603,150
Plus Land Value	$3,800,000
Indicated Value via Cost Approach	$29,403,150
(Rounded)	$29,400,000

Although respondent argues that these figures, as derived from Ellis's report, account for demolition costs, we are unable to verify this from the record. Most of these items are from the following chart in Ellis's report:

ESTIMATE OF ENTREPRENEURIAL INCENTIVE

Contractor's Development Cost w/o Demo	$21,226,760
Contractor's Profit Margin @ 7.5%	$1,592,007
Land Value	$3,800,000
Total Indirect Costs	$3,043,000
Total Development Cost	$29,661,767
Less Demolition Cost	$339,178
Adjusted Development Cost	$29,322,588

The Tax Tribunal used Ellis's figure for Contractor's Development Cost without demolition cost, but did not account for demolition in any other area of its opinion from what we can determine. Thus, the Tax Tribunal erred by failing to subtract demolition costs in its cost-approach analysis. This error should be corrected on remand.

VII. COSTS PAID TO GENERAL CONTRACTOR

Petitioner argues that the Tax Tribunal erred by including in its cost calculation the general contractor's profit. We disagree.

Petitioner states that Ellis concluded that the Contractor's Development Cost was $21,226,760, and the Contractor's Profit was $1,592,007. The Tax Tribunal made the same conclusion regarding these amounts. Petitioner argues, however, that Ellis's calculation of these two categories repeated several items. Specifically, to calculate contractor's profit, Ellis multiplied the contractor's development costs by 7.5%. Ellis explained that contractor's profit was meant to

account for costs that a contractor would incur in renting an office, "office utilities," the general contractor's salary, and "a bunch of [the contractor's] own things."

Ellis testified:

> *Q*. [Ellis's report] says, "The data observed tended to support contractor's profit (net profit margin) of 4 percent to 11 percent; therefore, the contractor's profit has been estimated at 7.5 percent, applied to the contractor's development cost." Did I read that correctly?
>
> *A*. Yes, you did.
>
> *Q*. Now that contractor's profit, what is it intended to cover?
>
> *A*. It's intended to cover the profit that the builder would receive for constructing and building this property.
>
> *Q*. Well, does it cover his overhead or is it pure profit?
>
> *A*. *I think it's the profit that the builder should have earned from the project*. It's illustrated in Marshall Valuation. They show the same line item for profit.
>
> *Q*. So I want to make sure I have a clear answer. It's pure profit?
>
> *A*. That's my understanding.
>
> *Q*. So this would be over and above what a contractor would have been paid for things like general conditions, correct?
>
> *A*. I would presume so, yes.
>
> *Q*. *This would be over and above what a contractor would be paid for project management, correct*?
>
> *A*. *I would presume so*. [Emphasis added.]

Ellis acknowledged that the AIA payment application included a check payment of $295,510, but he did not know the payee of the check. He also did not know the recipient of check payments of $163,350 and $93,270.21. He did not know if a check for $59,000 (line 01-200, Project Management Administration) was paid to the general contractor. Line 01-100, "general conditions," showed a payment of $82,513.24. Ellis did not know if this was paid to the general contractor. He also did not know who received a payment of $51,244. The total amount of these payments was $744,887.45. Ellis admitted that he did not know who received these payments.

Timothy Kamego, the Chief Operating Officer for petitioner's holding company, Riverview Health, testified that he made payments listed as "Item Numbers" under the "General Conditions" column paid to CCLA Building & Development. The "schedule value for general conditions" was $295,510, and the "scheduled value for project management" was $163,350.

These payments were made to CCLA Building & Development. Kamego stated that payments of $93,270.21, $59,000, $82,513.24, and $51,244 were paid to CCLA Building & Development. Kamego testified:

> *Q*. Aside from general conditions and project management, were there any other fees that you're aware of that were paid to CCLA Building & Development?
>
> *A*. Some line items–I mean, like carpentry, we may have doors, because I purchased the doors, so certain lighting fixtures would be in the electrical budget, I bought the electrical fixtures, so CCLA Building & Development may have got some reimbursement for those types of items.

Kamego further stated:

> *Q*. And in fact, isn't it true that on the terms of the financing, the owner was prohibited from paying the contractor a profit, correct?
>
> *A*. That's correct.
>
> *Q*. So you couldn't mark them up?
>
> *A*. That's correct.

Kamego stated that CCLA Building & Development did not self-perform any of the construction work or subcontract any of the work to related third parties other than Riverview entities.

Respondent states in response that the parties agree that the contractor's profit required to construct the improvements must be accounted for. "If the contractor profit was not built in to the actual cost amount it would need to be accounted for separately." Respondent states that the municipal bonds precluded the general contractor from receiving any profit from the construction contract. Thus, the contractor profit was not included in the AIA statements. Failing to account for this line item in the cost approach would have been misleading. Ellis testified that the contractor's profit represented the profit that the builder would have received.

Respondent has provided a persuasive explanation for why inclusion of a contractor's profit based on a percentage of contractor costs was appropriate, notwithstanding that part of those costs was paid by petitioner. The percentage represented the theoretical profit that the general contractor would have received if the financing arrangement permitted it. The Tax Tribunal's decision is therefore supported by substantial evidence.

VIII. FUNCTIONAL AND EXTERNAL OBSOLESCENCE

Petitioner argues that the Tax Tribunal erred by failing to give credence to petitioner's evidence of functional obsolescence and external obsolescence adversely affecting the subject property's value. We disagree.

Petitioner argues that the "superadequacies," such as unnecessary use of structural steel in the IL section, and luxurious features such as a glass-ceiling atrium and saltwater swimming pool,

should not have been considered as factors increasing the value because they did not commensurately lead to increased rental prices. Petitioner also cites the disproportionate amount of nonrentable common areas as examples of functional obsolescence.

Rasmussen described "functional obsolescence" as "an obsolescence built within the property that could be a super adequacy or it could be an incurable or a curable entity here." For example, the facility needed "additional heating and cooling capabilities" to accommodate the areas with higher ceilings. Rasmussen stated that the facility's square footage was 44.4 percent rentable area and 55.6 percent nonrentable. This portion of nonrentable space was about 15.6 percent higher than most CCRCs, according to data from the American Senior Housing Association. Rasmussen explained his calculation that the superadequacies totaled 21 percent of the total replacement cost new.

Rasmussen stated that external obsolescence, also known as economic obsolescence, was "obsolescence to the subject property outside the property's boundaries." He stated:

> [T]he median home value surrounding subject within a one-mile radius is $260,480; within three miles, 149,122; and within five miles, 98,404. So these median home values illustrate desirability of subject to the immediate area, but then the need to draw residents from outside the subject primary market of five miles, so it creates an external obsolescence for the subject property.

He estimated that external obsolescence accounted for a 10 percent reduction of value.

In his report, Rasmussen quantified the cost of excess story height. He stated that the average proportion of nonrentable space in other senior housing properties ranged from 26.4 percent to 39.1 percent. He concluded:

> The subject's total replacement cost new using Marshall Valuation Service is $35,288,204. The total functional obsolescence costs of the excess story height and additional square footage total: $2,069,755 + $5,369,243 = $7,438,998. These superadequacies make up 21 percent of the total replacement cost new and support our conservative deduction for functional obsolescence of 20.00 percent.

Regarding external obsolescence, Rasmussen determined:

> External obsolescence is the adverse effect on value resulting from influences outside the property. External obsolescence may be the result of lagging rental rates, high inflation, excessive construction costs, access to highways, the lack of an adequate labor force, changing land use patterns and market conditions.
>
> Grosse Pointe Woods is a desirable community where many residents have the means to afford more in-home private care that would not lead to added occupancy at the subject property. The median home value surrounding the subject within a 1-mile radius is $260,480, within a 3-mile radius is $149,122, and within a 5-mile radius is $98,404. These median home values illustrate the desirability of the subject's immediate area, but then the need to draw residents from outside the

> subject's primary market area of a 5-mile radius. This dynamic creates an external obsolescence for the subject property.

Rasmussen estimated that external obsolescence was 10 percent of replacement cost.

On cross-examination, Rasmussen agreed that a superadequacy was "something that is above and beyond what the market would expect and that does not provide value to the property." He agreed that the level of expected "finishes" varied according to geographic region; for example, a higher-quality cooling system might be a superadequacy in Michigan, but not in Texas. He acknowledged that his report did not address the baseline of expected finishes in the market in order to determine whether the superadequacies he identified were indeed above market expectations. He agreed that this would have been useful information. The CCRCs he used for comparison purposes did not all have licensed AL units. He did not agree that it was impossible for the tribunal to determine whether the subject property's finishes were above what the market would normally expect if the tribunal did not know what the market finishes were. He admitted that his report did not have a baseline. He used a baseline story height from the Marshall & Swift Valuation Guide, but he acknowledged that this guide stated a minimum story height, which was not necessarily a market baseline height. He acknowledged that Marshall & Swift did not indicate that a 13-foot story height was above the baseline or that it was necessarily a superadequacy. Rasmussen based his belief on his experience.

Rasmussen also admitted that he did not know the ceiling height or the percentage of nonrentable common area of a Sterling Heights CCRC and other properties that he used for comparison purposes. He acknowledged that the Sterling Heights property was sold as a going-concern. He did not inspect the interior of the comparison properties.

The tribunal found that the subject property was not over-built because it was intended to have the ambience of a luxury hotel. Petitioner's decisions regarding the quality of construction took into account market tastes and needs. The tribunal stated:

> Issues concerning ceiling heights, a glass atrium and a saltwater swimming pool were raised. Petitioner's contention of functional obsolescence was impacted by these items and were alleged to be above market standards/expectations. However, Rasmussen admitted that he developed no baseline/benchmark to measure the subject's interior finishes as super-adequacies. Similarly, Petitioner's appraisal report makes no mention of market expectations for ornate chapels in senior care facilities, yet Rasmussen testified that the subject's chapel is understated. Pointing to ceiling heights, heating/cooling systems, large atriums & common areas and a saltwater pool as super-adequacies, without market examples, is equally unpersuasive. Given the size of the subject development (with 3 types of facilities), the elaborate layout, floorplan, varied ceiling heights, cooling-heating would reasonably be expected for a CCRC facility.

In *First Fed S & L Ass'n of Flint v City of Flint*, 415 Mich 702; 329 NW2d 755 (1982), the petitioner purchased a 40-year-old building in 1966 for $675,000. It spent an additional $475,000 on renovations, "adding the types of improvements suitable to a bank's image." *Id.* at 703. Our Supreme Court held:

> While actual and reproduction cost are some evidence of value, the constitutional and statutory standard is market-based.
>
> The Tax Tribunal erred in adopting the hearing officer's reasoning that the value should include amounts expended for physical improvements that the hearing officer found were made to enhance the bank's "image" or "business", without regard to whether the expenditures added to the "cash" or "usual selling price" of the property. The law does not tax expenditures that merely enhance the image or business of the owner, only expenditures that add to the cash value or selling price of the property.
>
> It can be anticipated that, if a bank puts fine hardwood and marble throughout a building, those expenditures may not enhance the selling price of the building in an amount equal to their cost. While the expenditures may add to the selling price of the building, they may not add dollar-for-dollar. [*Id.* at 705.]

In the instant case, respondent introduced contravening evidence that the "over-built" features were not merely signs of prestige, but consistent with petitioner's plan to build a high-quality CCRC that would attract high-income residents. Petitioner's expert was not able to support his conclusion with evidence and data demonstrating that costly features were above market expectations and unlikely to translate to higher rents and faster absorption. We therefore conclude that the tribunal's decision to not accord weight to Rasmussen's findings regarding functional and external obsolescence is supported by substantial evidence. *Wayne Co*, 261 Mich App at 186-187.

The tribunal found that petitioner's external obsolescence percentages overlapped with its functional and physical obsolescence percentages. The tribunal found that petitioner failed to quantify its evidence that elderly residents were waiting longer to sell their houses and enter a CCRC facility. Petitioner does not cite any evidence of data supporting its explanation for why absorption of residents was not as quick as anticipated. Richard Levin stated that the IL section was "essentially full," but it took four years for that to happen. Only 60 or 62 of the AL units were full. Levin attributed the slow absorption to the local trend of wealthier clients staying longer in their homes, but his supposition was not supported by a causal link between high home values and the trend of slow absorption. The tribunal's finding is supported by the record. Petitioner failed to satisfy its burden of proof regarding these obsolescence factors. *Menard*, 315 Mich App at 520.

IX. METHODS OF VALUATION

Petitioner argues that the Tax Tribunal erred by failing to give proper weight to each of the proffered valuation methods. We disagree.

"The Tax Tribunal is under a duty to apply its expertise to the facts of a case in order to determine the appropriate method of arriving at the true cash value of property, utilizing an approach that provides the most accurate valuation under the circumstances." *Great Lakes Div of Nat'l Steel Corp*, 227 Mich App at 389. The Tax Tribunal "has the overall duty to determine the most accurate valuation under the individual circumstances of the case." *President Inn Props,* 291 Mich App at 631. It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case."

Meadowlands, 437 Mich at 485. "Regardless of which approach is used, the value determined by the Tax Tribunal must be the usual price for which the property would sell." *Great Lakes Div of Nat'l Steel*, 227 Mich App at 390.

"The three most common approaches for determining true cash value are the capitalization-of-income approach, the sales-comparison or market approach, and the cost-less-depreciation approach." *Id*. [V]ariations of these approaches and entirely new methods may be useful if found to be accurate and reasonably related to fair market value." *Id*. "All three approaches should be used whenever possible, and an appraisal which disregards an approach by mere statements and without research justifying nonuse is considered incomplete." *Meadowlands*, 437 Mich at 485. "The values derived under the various approaches are correlated, reconciled, and weighed in order to reach a final estimate of value." *Id*. at 485-486. In *President Inn Props,* 291 Mich App at 639, this Court observed that

> a valuation method is wrong only if it does not lead to the most accurate determination of the taxable property's true cash value or fair market value. Thus, the Tax Tribunal has a duty to select the approach which provides the most accurate valuation under the circumstances of the individual case. [Quotation marks and citation omitted.]

Petitioner's expert appraiser, Rasmussen, testified that CCRC sales were infrequent, and usually sold as a going-concern. He therefore used sales of comparable senior housing for the "real property side here." He studied the sale of eight senior housing properties in Michigan from June 2014 through October 2016. He admitted that most of the sales involved going-concerns. He admitted that his assignment was to appraise the fee-simple value of the subject property. Rasmussen testified that his Sale Comparables 1, 2, and 3 were part of a portfolio sale. He relied on information that the real property value in these sales was $35,324,664. His report did not have information showing the allocated purchase price of these properties. He relied on property transfer affidavits. The broker gave him the price of each property in the sale, but this data was not in the report. Rasmussen admitted that his Sale Comparables 4, 5, 6, 7, and 8 did not involve facilities with all three types of units—IL, AL, and SN. The comparables included three properties built in the 1960s and 1970s, and a property built in 2003. Rasmussen did not attempt to quantify the functional external obsolescence for each of these properties. The sixth and seventh comparable properties were part of a portfolio sale of going-concerns. The sixth and seventh properties were located in different cities. In view of these flaws, the Tax Tribunal did not err by declining to give credence to Rasmussen's comparative-sales analysis.

Rasmussen's income projection analysis was based on a comparison of leases at eight facilities, none of which were located in Michigan. He stated that all of the leases were made at arm's length, but this was based on information in his firm's database that he did not personally verify. Six of the lease comparables were skilled nursing facilities, some of which were regulated by Medicaid. At least two of the properties had negative lease coverage ratios, meaning that the rent charged was not high enough to cover the property's mortgage debt. None of the comparable leases included IL facilities. In view of these flaws, the Tax Tribunal did not err by not giving weight to petitioner's capitalization-of-income approach.

In sum, the Tax Tribunal did not err by finding that petitioner's comparative-sales and income analyses were unreliable, and therefore, entitled to no weight in the tribunal's decision.

X. "VACANT AND AVAILABLE" EVALUATION

Finally, petitioner argues that the Tax Tribunal erred by failing to determine the subject property's value as though it was vacant and available. MCL 211.27(1) provides:

> As used in this act, "true 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. The usual selling price may include sales at public auction held by a nongovernmental agency or person if those sales have become a common method of acquisition in the jurisdiction for the class of property being valued. The usual selling price does not include sales at public auction if the sale is part of a liquidation of the seller's assets in a bankruptcy proceeding or if the seller is unable to use common marketing techniques to obtain the usual selling price for the property. A sale or other disposition by this state or an agency or political subdivision of this state of land acquired for delinquent taxes or an appraisal made in connection with the sale or other disposition or the value attributed to the property of regulated public utilities by a governmental regulatory agency for rate-making purposes is not controlling evidence of true cash value for assessment purposes. In determining the true cash value, the assessor shall also consider the advantages and disadvantages of location; quality of soil; zoning; existing use; present economic income of structures, including farm structures; present economic income of land if the land is being farmed or otherwise put to income producing use; quantity and value of standing timber; water power and privileges; minerals, quarries, or other valuable deposits not otherwise exempt under this act known to be available in the land and their value. . . .

This statute does not incorporate a "vacant and available" standard. The unpublished decision cited by petitioner uses the term "vacant and available" to distinguish between valuation of the value of real estate from the value of an entity as a going-concern. The Tax Tribunal did not ignore this distinction when it discredited petitioner's comparative-sales analysis for its over-reliance on sales of CCRCs that were going-concerns. We find no error.

Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Deborah A. Servitto
/s/ Michael J. Riordan