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

Kohl's Department Stores,
Petitioner,
v MTT Docket No. 268318

Township of Northville, Tribunal Judge Presiding
Respondent. Sherry A. Lee

OPINION AND JUDGMENT

INTRODUCTION

A hearing of the real property assessment matter in the above-captioned case was held before the Michigan Tax Tribunal on July 25, 2005 in its Lansing, Michigan offices. Petitioner was represented by attorney Nanci Wolf Freedman. Respondent, Township of Northville, was represented by attorney Nevin A. Rose. Both parties presented witnesses, which included Petitioner's valuation expert, Laurence G. Allen, MAI, and Respondent's valuation expert, Beverly A. Stanton, a certified general real estate appraiser. Petitioner offered 31 exhibits and all were admitted. Respondent offered 10 exhibits and all were admitted. Petitioner is appealing the assessed values for 1999 through 2004, contending that the assessments exceed fifty percent of the property's true cash value. Respondent contends that its assessments are proper and do not exceed applicable statutory limitations.

SUMMARY OF CASE

The underlying issues in this case relate to the subject property's true cash value and taxable values for the tax years 1999 through 2004. The subject property is a Kohl's Department Store located in Northville Township on the west side of Haggerty Road between Seven and Eight Mile Roads, approximately one mile from the entrance to I-275 on Eight Mile Road, and one mile from the entrance to I-275 at Seven Mile Road. The site was purchased as unimproved land on February 13, 1998 for $2,425,000. In addition to the costs to purchase the vacant land, Petitioner spent $6,044,440 to construct the improvements, for a total cost of $8,469,440. Petitioner argued department stores such as the subject are considered income producing properties, therefore, the value will generally be established by the net operating income the property can be expected to generate and not by the construction cost. Petitioner further argued that the Tribunal determined in 2003 in its decision in the case of the Kohl's store located in the city of Kentwood that the best way to value a Kohl's store was to apply the income approach and that the Tribunal's decision in this case is of particular relevance and provides a blueprint for valuation of the Northville Kohl's here under appeal. Respondent argued the subject is a brand new building, and in such case the cost method is nearly always applicable. Moreover, because there is a clear market for big box retail stores, the market approach to value is the best approach in this case. The Tribunal concluded that although the income approach as applied in the decision in Kentwood may be easily applicable to other Kohl's stores, including the Northville Kohl's here under appeal, to arrive at a supportable true cash value, the Tribunal has not previously found and does not find it to be the only, sole or standalone appraisal method for valuation of Kohl's Department Stores. The Tribunal concluded that the most accurate method to determine the true cash value of the subject property is the cost-less-depreciation method.

FINDINGS OF FACT

This case involves the valuation and lawful assessment of a single tax parcel of commercial real property in the Township of Northville, Wayne County, Michigan for the tax years 1999 and 2004. The tax parcel identification number is 001-02-0001-000. The subject property is located on the west side of Haggerty Road between Seven and Eight Mile Roads, approximately one mile from the entrance to I-275 on Eight Mile Road, and one mile from the entrance to I-275 at Seven Mile Road. The subject property has access from Haggerty Road. The subject property is zoned B-3, General Business District. The site was purchased as unimproved land on February 13, 1998 for $2,425,000. In addition to the costs to purchase the vacant land, Petitioner spent $6,044,440 to construct the improvements, for a total cost of $8,469,440. The physical improvement on the site is an 86,462 square foot Class C steel frame and masonry retail store which includes: four 8x8 overhead doors, exterior truck well, wet sprinkler system, and roof mounted HVAC. Site improvements include open asphalt paved parking spaces, traffic islands with pole lights, curbing and landscaping. Construction of the improvements was completed on December 3, 1998.

PETITIONER’S CONTENTIONS AND EVIDENCE

The subject of this appeal is one tax parcel, 001-02-0001-000, improved with a Kohl’s discount department store, placed at the rear of an 8.326+/- acre lot on the west side of Haggerty Road, south of Eight Mile Road in the Township of Northville. The property was purchased by Kohl’s in February of 1998, for $2,425,000, after which an 86,462 square foot, one-story building was constructed at a cost of $3,962,940 or $45.83/square foot. Site improvements consist of paved parking for 490 parking spaces, lighting, curbing and additional landscaping. All improvements were completed prior to the first tax date here at issue. Northville is a stable geographic area which is nearly fully developed. Although it has good access from Haggerty Road, the location of the subject at the back of an irregularly shaped parcel with elevated topography from front to rear results in poor visibility. Petitioner’s appraisal expert appraised the subject property utilizing the three methods for determining true cash value. However, Petitioner argued department stores such as the subject are considered income producing properties, therefore, the value will generally be established by the net operating income the property can be expected to generate and not by the construction cost. Petitioner further argued that the Tribunal determined in Kohl's/Kentwood that the best way to value a Kohl's Department Store was to apply the income approach by developing the building rent by applying 2.5% to actual gross sales, deduct for vacancy and credit loss, a management fee and capital reserves, divide the result by the proper capitalization rate, and finally deduct the appropriate leasing fee. This method is easily applicable to each Kohl store, including the subject property, to arrive at a supportable true cash value. Petitioner contends for each tax year under appeal, the true cash, assessed and taxable values are as follows:

Year	True Cash Value	Assessed and Taxable Value
1999	$6,000.000	$3,000,000
2000	$6,200,000	$3,100,000
2001	$4,528,520	$2,264,260
2002	$4,841,871	$2,420,936
2003	$5,104,698	$2,552,349
2004	$5,143,228	$2,571,614

RESPONDENT'S CONTENTIONS AND EVIDENCE

The subject property consists of land that is located on Haggerty Road between Seven and Eight Mile Roads in Northville Township. It consists of one unit of a three unit commercial condominium. The property consists of 7.42 acres, and contains an 86,432 square foot retail building, plus a storage mezzanine. The building was constructed beginning in 1998 and completed and open for business prior to December 31, 1998. The Kohl's building has access from Haggerty Road. The business area between Seven and Eight Mile Roads on Haggerty is robust and always full of traffic. It contains a Costco, a Target, a Meijer, a Home Depot, a twenty-screen theater, and a number of upscale restaurants. In the commercial site that includes the subject, there is also a Babies-R-Us, a Starbucks, a cellular phone store, a jewelry store, and a salon and spa. The tax years involved are 1999 through 2004. The issue is the true cash value and taxable value of the subject property. Respondent's appraisal expert appraised the subject property utilizing the three methods for determining true cash value. However, Respondent argued the subject is a brand new building, and in such case the cost method is nearly always applicable. Moreover, in the instant case there are a number of market comparables. Because there is a clear market for big box retail stores, the market approach to value is the best approach in this case. Respondent further argued although the Kentwood case involves the valuation of a Kohl store, the similarities between that case and the subject property end there. Most significantly, the respondent and petitioner in Kohl's/Kentwood agreed that the income approach to value is the most applicable valuation method. No such agreement exists in the instant case. Also, where the subject building is brand new, the *Kohl's v Kentwood* case involved the valuation of a nine year old building. Respondent contends that the true cash value as of December 31, 1998, December 31, 1999, and December 31, 2000, is $10,000,000. Respondent offered into evidence the market studies concerning commercial property completed by the County of Wayne for Northville Township for tax years 2002-2005. These studies indicated that an increase in assessment was warranted in each of these three years as follows:

2002	27.98%
2003	5.69%
2004	2.21%
2005	6.91%

Since there were no additions during that period, the taxable value was capped in all years at issue. For tax years 2002 through 2005 the County studies suggest assessments and taxable values as follows:

Tax Year	Assessment	Inflation Rate	Taxable Value
2002	$6,390,700	3.2%	$5,160,000
2003	$6,735,800	1.5%	$5,237,400
2004	$6,870,500	2.3%	$5,357,860
2005	$7,341,100	2.3%	$5,481,090

CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value, as equalized, and that beginning in 1995 the taxable value is limited by statutorily determined general price increases, adjusted for additions and losses.

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

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

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

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

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735 (1); MSA 7.650 (35)(1). The Tribunal's factual findings are to be supported by competent, material, and substantial evidence. *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Dept of Treasury*, 185 Mich App 458, 462-463; 452 NW2d 765

(1990). Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence. (Citations omitted) *Jones and Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

The petitioner has the burden of establishing the true cash value of the property.... MCL 205.737 (3); MSA 7.650 (37)(3). This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing; and (2) the burden of going forward with the evidence, which may shift to the opposing party. *Jones and Laughlin* at 354-355, citing: *Kar v Hogan*, 399 Mich 529, 539-540; 251 NW2d 77 (1976); *Holy Spirit Assn for the Unification of World Christianity v Dept of Treasury*, 131 Mich App 743, 752; 347 NW2d 707 (1984).

There are three traditional methods of determining true cash value, or fair market value, which have been found acceptable and reliable by the Tax Tribunal and the courts. They are: (1) the cost-less-depreciation approach, (2) the sales-comparison or market approach, and (3) the capitalization-of-income approach. *Meadowlanes Limited Dividend Housing Assn v City of Holland*, 437 Mich 473, 484-485; 473 NW2d 636 (1991); *Antisdale* at 276-277, n 1. The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in marketplace trading. *Antisdale* at 276, n 1. Variations of these approaches and entirely new methods may be useful if found to be accurate and reasonably related to the fair market value of the subject property. *Meadowlanes*, at 485, referencing *Antisdale* at 277, n 1. It is the duty of the Tribunal to select the approach that provides the most accurate valuation under the circumstances of the individual case. *Antisdale* at 277, citing *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968).

Under MCL 205.737(1); MSA 7.650 (37)(1), the Tribunal must find a property's true cash value in determining a lawful property assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal may not automatically accept a respondent's assessment but must make its own findings of fact and arrive at a legally supportable true cash value. *Pinelake Housing Cooperative v Ann Arbor*, 159 Mich App 208, 220; 406 NW2d 832 (1987); *Consolidated Aluminum Corp v Richmond Twp*, 88 Mich App 229, 232-233; 276 NW2d 566 (1979).

The Tribunal is not bound to accept either of the parties' theories of valuation. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 377 NW2d 908 (1985). The Tribunal may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination. *Meadowlanes* at 485-486; *Wolverine Tower Associates v City of Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980). A similar position is stated in *Tatham v City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982): The Tax Tribunal is not required to accept the valuation figure advanced by the taxpayer, the valuation figure advanced by the assessing unit, or some figure in between these two. It may reject both the taxpayer's and assessing unit's approaches.

Valuation Discussion and Analysis

A relatively high amount of controversy in this matter is attributable to the Tribunal's decision in *Kohl's Department Stores, Inc v City of Kentwood*, MTT Docket 247577 (February 7, 2003).

Petitioner argued that in law and in fact the Tribunal's decision in that case is of particular relevance and provides a blueprint for valuation of the Northville Kohl's here under appeal. Respondent argued although employing gross sales to determine value under the income approach may have provided the best evidence of value for the property in *Kohl's v Kentwood*, the same cannot be said for the case at bar. Most significantly, the respondent and petitioner in that case agreed that the income approach to value is the most applicable valuation method. No such agreement exists in the instant case. Moreover, the *Kohl's v Kentwood* case involved the valuation of a nine year old building and in the instant case the subject is a brand new building where the cost method is always applicable. The Tribunal finds that Respondent's expounded argument more appropriately goes to the weight to be accorded to it by the Tribunal as it considers evidence bearing on valuation issues. Therefore, notwithstanding Respondent's argument in opposition, because the Tribunal finds Petitioner's argument dispositive, we will address it alone. Petitioner asserts that in its opinion in *Kohl's v Kentwood* "the Tribunal determined that **the best way to value a Kohl's Department Store** was to apply the income approach, i.e., develop the building rent by applying 2.5% to actual gross sales, deduct for vacancy and credit loss, a management fee and capital reserves, divide the result by the proper capitalization rate and finally deduct the appropriate leasing fee. **This method is** easily **applicable to each Kohl store**, including the Northville Kohl's here under appeal, **to arrive at a supportable true cash value.**" Petitioner's Trial Brief (PTB), pp 3-4. [Emphasis added]. In fact, however, in the *Kentwood* case the Tribunal specifically explained:

> The Tribunal agrees with both parties that the income approach provides the most reliable indicator of value for the subject property…the Tribunal concludes that Mr. Allen's income valuation approach provides the most accurate and reliable indication of the market value of the subject property with the following adjustments: the market rent of the subject property is that amount established in Ms. Ring's appraisal…Ms. Ring's use of current sales and the use of a 2.50%

factor are supported by the evidence and accepted by the Tribunal.

Clearly, the decision rendered by the Tribunal in the *Kohl's v Kentwood* case provides no indication of a proprietary method of valuation for Kohl's Department Stores. Rather, based upon its analysis and evaluation of the evidence, the Tribunal concludes that the use of current sales and a 2.5% factor under the income approach provides the most accurate and reliable indication of the market value for "the subject property." In that case, the subject property was identified as a specific Kohl's store and not all Kohl's Department Stores. The prescribed application of the income approach decreed by the Tribunal then speaks only to the basis of facts found relative to the Kentwood property under appeal. Therefore, the rule of law averred by Petitioner regarding a single method to value each and every Kohl's store is by way of unreasonable inference and interpretation of the Tribunal's determination in *Kohl's v Kentwood*. However, although the Tribunal agrees and hereby opines that the use of current sales and a 2.5% factor under the income approach may be easily applicable to other Kohl's stores, including the Northville Kohl's here under appeal, to arrive at a supportable true cash value, the Tribunal has not previously found and does not find it to be the only, sole or standalone appraisal method for valuation of Kohl's Department Stores. The Tribunal is duty bound to determine which of the three most common approaches to valuation: capitalization of income, sales comparison and cost-less-depreciation, are useful to determine the true cash value of the property being appealed. Therefore, the rule of law in *Kohl's v Kentwood* relative to the income approach is for its application, as adjusted by the Tribunal, as a reliable indicator of value for the Northville store here under appeal, as well as perhaps other store locations, and not as a predetermined or adjudicated method of determining the true cash value of Kohl's Department Stores. The Tribunal finds that the proposition of law which Petitioner arrived at and advanced is not supported. Consequently, the Tribunal holds it for nought.

Petitioner's Appraisal Evidence

In support of its market value contentions, Petitioner relied upon the expert testimony and appraisal of Laurence G. Allen, MAI. Mr. Allen's appraisal includes value indications derived by the three traditional approaches to value. He concluded that the highest and best use of the subject property as improved is for commercial use (Exh P1, p 46).

Income Approach

Mr. Allen determined an estimate of value for the subject property using the direct capitalization of net operating income technique. In using this technique, Mr. Allen's first step was to determine the market level rent of the property. Mr. Allen distinguished what he termed the "typical" market lease, based on a facility already built and available for lease in the open market, from a "built-to-suit" market lease, which involves a yet-to-be-constructed facility built to the specifications of a prospective buyer or tenant. According to Mr. Allen, a build-to-suit lease rate is a function of land and construction costs, not an open market transaction. Therefore, re-leasing vacated build-to-suit buildings often results in negotiated rates below the initial rate. (Exh P1, p 39). He used four leases, located in Canton, Auburn Hills, Livonia and Pontiac, as comparables. One of the comparables was a Farmer Jack supermarket and one was a former Builder's Square store. Two of the comparables, the Canton and Auburn Hills locations, were Kohl's stores. Mr. Allen made a 20% adjustment for the Auburn Hills lease as it was for a build-to-suit store. Using these comparables, Mr. Allen found an annual lease rate ranging from $5.25/sf to $8.79/sf. He then adjusted these comparables for conditions of lease, market conditions, size, location, age and condition to arrive at an adjusted unit rate ranging from $5.84/sf to $6.98/sf with a conclusion of $6.25/sf for 1999 and from $6.14/sf to $7.28/sf with a conclusion of $6.50/sf for 2000. (Exh P1, p 41, 44). Based upon these rates, Mr. Allen derived the potential gross annual income from building rent for the subject property of $540,388 for 1999, and $562,003 for 2000. An allowance for vacancy and credit loss (calculated as 5% of potential gross income) was subtracted to derive an effective gross income of $513,368 for 1999, and $533,903 for 2000. Finally, expenses for management fees (calculated as 3% of effective gross income) and reserves for replacements (calculated as $0.15/sf) were deducted to arrive at a net operating income of $541,738 for 1999, and $562,889 for 2000. (Exh P1, pp 49-50).

Mr. Allen next determined an overall capitalization rate using market derived rates, band-of-investment technique, and investor surveys. For the market derived rates, Mr. Allen used the sale of five recent shopping centers in Michigan, sale dates ranging from 8/96 to 5/00. The capitalization rates in those sales ranged from 9.45% to 10.90%, with an average of 9.71%. (Exh P1, p 52). In the band-of-investment technique, the data used in the computation for the capitalization rate was derived from current mortgage and equity requirements and resulted in a rate of 9.346%. (Exh P1, p 50). Finally, using information from The Peter Korpacz Real Estate Investment Survey and RERC Real Estate Report, Mr. Allen concluded the proper overall capitalization rate for both tax years 1999 and 2000 was 10.00 percent. (Exh P1, p 52).

Using the derived values, Mr. Allen established an estimated value for the subject property by dividing the net operating income by the capitalization rate for each tax year. Thus, for 1999, the net operating income figure of $541,738 was divided by the capitalization rate of 10% to arrive at a value of $5,417,380; for 2000, $562,889 was divided by 10% to arrive at a value of $5,628,890. From these figures, Mr. Allen deducted a leasing fee (calculated as five percent of gross income for the first five years) and rounded the resultant number to arrive at a final valuation of the subject property under the income method of $5,290,000 for tax year 1999, and $5,500,000 for tax year 2000. (Exh P1, p 53).

Sales Comparison Approach

Mr. Allen's Sales Comparison approach utilized four comparable sales of retail store buildings to derive the value of the subject property. These comparables, all located in Michigan, include: a 91,372 sf former Mags Department store in Northville; a 62,129 sf former Jumbo Sports store in Canton Township; a 55,000 sf former Jumbo Sports store in Bloomfield Township; and the package sale of seven former HQ big box stores for a total sale price of $50 million or $7,142,875 per store and with an average size of 116,404 sf. The unadjusted sales ranged from $34.28/sf to $70.14/sf. For each of the comparables, Mr. Allen adjusted for differences from the subject property, including conditions of sale, market conditions, size, age and condition. As adjusted, the comparables ranged from $45.88/sf to $62.98/sf with an average of 54.70 for 1999 and ranged from $48.05/sf to $65.88/sf with an average of $57.29 for 2000. Based on these figures, Mr. Allen used an indicated value of $50.00/sf for 1999 and 2000. By multiplying the indicated value by the building size, Mr. Allen arrived at an indicated building value of $4,323,100. Addition of the land value at $2,450,000 and $2,540,000 ($6.75/sf and $7.00/sf for the subject's 8.32 acres) and rounding of the resultant figures by Mr. Allen resulted in a final valuation of the subject property under the sales comparison approach of $6,770,000 for 1999 and $6,860,000 for 2000. (Exh P1, p 63, 65).

Cost Approach

Mr. Allen began his valuation under the cost approach by estimating the market value of the land area of the subject property. Mr. Allen utilized four recent retail land sales including the sale of the subject site located in Northville Township, one located in Farmington Hills and two in Novi, to derive the value of the land area. The unadjusted sale prices of the land ranged from $5.04/sf to $8.91/sf. Mr. Allen then made adjustments to the sale prices for conditions of sale, market conditions and location to arrive at an adjusted sales range from $5.40/sf to $7.34/sf, with an average of $6.24/sf for 1999 and an adjusted sales range from $5.50/sf to $7.69/sf, with an average of $6.55/sf for 2000. From these values, Mr. Allen chose $6.75/sf as a reasonable rate for 1999 and $7.00/sf as a reasonable rate for 2000. Multiplying these rates by the land size in square feet, Mr. Allen concluded the land value of the subject property for 2000 as $2,450,000, and for 2000 as $2,540,000. (Exh P1, pp 73-74).

Next, Mr. Allen estimated replacement costs of the building and site improvements, which he classified as an "Average Class C Department Store" for purposes of valuation. Using cost data supplied by the Marshall Valuation Service (MVS), Mr. Allen found a base building cost estimate for the size of the building for each tax year (69,273 sf in 1997, 90,227 sf in 1998). This base cost was then adjusted for heating and cooling and sprinkler cost estimates, escalators and elevators, story height and perimeter ratio. This adjusted building cost estimate was then multiplied by a local multiplier of 1.15 and a current multiplier of 1.01. Finally, a time adjustment to 1998 of 93.18% for tax year 1999 and 98.23% for tax year 2000 was applied to arrive at a final building replacement cost estimate of $6,235,233 for the building as it existed for tax year 1999, and $6,573,159 for the building as it existed for tax year 2000. (Exh P1, pp 75-76).

After estimating and including soft costs and site improvement costs for 490 parking spaces, Mr.

Allen made calculated depreciation deductions. Mr. Allen used the aged-life method to determine the incurable physical depreciation, based on a useful life time frame of 45 years. Since construction of the building was completed in 1998, Mr. Allen used one year as the effective age of the building for tax year 1999 and two years as the effective age of the building for tax year 2000. The site improvements were judged to have an effective age of three years with a useful life of 15 years. (Exh P1, p 79). Allen thus calculated the incurable physical depreciation as $217,161 for 1999 and $309,650 for 2000. (Exh P1, p 80).

The other depreciation deduction Mr. Allen allowed for was functional obsolescence. Mr. Allen determined that the size and the layout of the building would result in a lack of tenants, therefore, the subject suffers from functional obsolescence. Mr. Allen concluded that functional obsolescence in the amount of $3,836,333 should be deducted for 1999 and $3,999,269 should be deducted for 2000. Mr. Allen made no reduction for external obsolescence as demand for retail property in the subject market has been strong. (Exh P1, p 79). Using these above-derived values, Mr. Allen concluded to a value under the cost approach for the subject property of $5,540,000 for 1999 and $5,750,000 for 2000. (Exh P1, pp 80-81).

Reconciliation

In reconciling the value indications derived by the three approaches to value, Mr. Allen considered the Income and Sales Comparison Approaches to be reliable indicators of market value, with the Cost Approach being less reliable than the other two approaches. Based on this analysis, Mr. Allen concludes the final market value estimates for the subject property as follows $6,000,000 for 1999 and $6,200,000 for 2000. Notwithstanding its appraisal evidence, Petitioner's Exhibit P-14 constitutes its evidence of value for tax years 2001 through 2005.

Exhibit P-14 is a schedule of mathematical computations that were used in *Kohl's Department Store v City of Kentwood*, MTT Docket No. 247577, February 7, 2003), the appeal of a Kohl's store located in Kentwood, Michigan outside of Grand Rapids for tax years 1997 and 1998. Giving primary weight to the Income Approach, Allen's final market value estimates of the fee simple interest in the subject property are $6,000,000 for 1999 and $6,200,000 for 2000.

Respondent's Appraisal Evidence

In support of its market value contentions, Respondent relies upon the expert testimony and narrative appraisal of Beverly Stanton, a licensed real estate broker and state certified real estate appraiser. Stanton is also president of a licensed proprietary school designed to educate appraisers and assist them to meet requirements of appraiser licensing laws. Stanton's appraisal includes value indications derived by the three traditional approaches to value. She concludes that the highest and best use of the subject property as improved is its continued use for commercial retail.

Cost Approach

Ms. Stanton first considered a market approach to determine the value of the land. Her analysis was based upon a review of four comparable sales located in Northville, Livonia, Westland and Sterling Heights. Three sales occurred in 1999 and 2000 and one sale occurred in 1994. The parcels ranged in size from just below 5 acres to just below 21 acres. The price per unit ranged from $6.69 to $17.68 per square foot. However, the subject land sold for $2,425,000 on February 13, 1998. This suggested a cost per square foot of $7.50. Based upon the market comparables and the sale of the subject itself, Ms. Stanton concluded the value of the land was evidenced by the sale of the subject, and supported by the comparable land sales. She determined that the value of the land was $2,425,000 (Exh R1, p 34).

Ms. Stanton's determination of estimated cost new of the structure is based upon prevailing building costs as set forth in the Marshall Valuation Service, Good Class C Retail Stores. This directed a cost of $68.92 per square foot, plus the cost of the wet sprinkler system. She then deducted 1% physical depreciation for the second year only, and no functional and external depreciation. Next she added to this amount the site improvements such as clear and fill, grading, asphalt, landscaping, curbing, concrete pad, etc. Finally, she added the value of the land and reached a total value of $9,913,960 for 1999. Building costs increased by 1.069 percent in 2000, suggesting a total value of $10,430,698 for 2000. Based upon this analysis, Ms. Stanton determined a value of $10,000,000 for tax years 1999 and 2000 and $10,500,000 for 2001. (Exh R1, pp 38-39).

Income Approach

In applying the Income approach to value, Ms. Stanton looked at the market leases for six comparable properties located in Grand Rapids, Livonia, Saginaw Township, Westland, Taylor and Muskegon. Some of the leases concern single tenant big box stores such as Best Buy, Home Depot and Farmer Jack's while others involved multiple tenant occupants. The current market leases for these similar locations and buildings ranged from $8.25 to $13.47 absolute net per square foot, plus add-ons for maintenance, insurance and taxes. Respondent's appraiser found that two leases, Livonia and Taylor, were particularly pertinent to the subject. Based upon the information from the market, Ms. Stanton concluded a triple net rent of $12.00 per square foot exclusive of "billbacks" (maintenance, taxes and insurance). (Exh R1, p 41). Based on a size of 86,462 square feet of floor space, potential gross income was computed to be $1,037,544. From this amount she deducted a 5% vacancy rate and operating expenses of $100,000 for estimated liability insurance and reserves to arrive at a net operating income of $885,667. (Exh R1, p 48). To develop a rate of capitalization, Ms. Stanton found a range of 8.45 to 10.57 for commercial retail in Michigan. Based upon this market data she opined that a rate of 9% was reasonable. (Exh R1, p 49). Ms. Stanton, therefore, determined a value under the Income Approach of $9,800,000 for tax years 1999, 2000 and 2001. (Exh R1, p 51).

Sales Comparison Approach

In applying the Sales Comparison approach to value, Ms. Stanton considered and analyzed seven sales located in Livonia, Farmington Hills, Madison Heights and Sterling Heights. The comparable properties have similar zoning but vary in size, location, land use ratios, construction quality, age and condition. The unadjusted unit price ranged from $71.22 to $114.43 per square foot. After adjustments, Ms. Stanton concluded that a value of $110.00 per square foot was appropriate. Therefore, Ms. Stanton determined a value under the Sales Comparison approach of $9,500,000 for tax years 1999, 2000 and 2001. (Exh R1, p 54).

Reconciliation

In reconciling the value indications derived by the three approaches to value, Ms. Stanton considered the Sales Comparison and Cost Approaches to be reliable indicators of market value, with the Income Approach being less reliable than the other two approaches. Based on this analysis, Ms. Stanton determined a true cash value of $10,000,000 as of December 31, 1998, December 31, 1999, and as of December 31, 2000.

Tribunal Analysis

When considering the income approach Petitioner's appraiser distinguishes between two markets for the type of property such as the subject, which he identified as the typical market, the market for an existing facility available for sale or lease and the build-to-suit market, for a yet-to-be constructed facility built to the specifications of the prospective buyer or tenant. Mr. Allen testified that the build-to-suit market has no relevance to the value of the subject property. (T 128). In applying the income approach, his market rent conclusion is based on an analysis of market leases of four big box stores located in Michigan. Three of the stores were vacated by the original occupant/user and leased in the secondary market. Those stores were leased for $6.00, $5.25 and $5.78 per square foot. Such rent comparables are too dissimilar to yield with adjustments a reliable indication of a market rental rate for the subject. *Meijer v City of Midland*, 10 MTT 287 (1997). The fourth store, located in Auburn Hills, was a build-to-suit store occupied by Kohl's that was leased for $8.79 per square foot. However, Allen discounted the lease rate of the Kohl's store by 20%, because it was a build-to-suit lease, contending that it was significantly higher than that of typical market leases. (Exh P1, p 39). The result is an understatement of potential gross income. *Meijer*, *supra*. In applying the income approach to value, Mr. Allen considers and treats the subject store as existing, vacant and available for sale in the secondary market. He does not consider the building as being a brand new building that is built to the specifications of a particular user, i.e., Kohl's, and then leased. Respondent's appraiser developed her income projections by analyzing six comparable leases of big box stores other than Kohl's where many of the comparables are build-to-suit properties like the subject property. The lease rates range from $8.25 to $14.61 per square foot. Although she selects the built-to-suit leases of the Home Depot in Livonia and the Farmer Jack's in Taylor as particularly pertinent to the subject, Ms. Stanton failed to include adjustments to the six lease comparables in her appraisal for differences with the subject property. Respondent addressed the absence of adjustments in Stanton's appraisal with its entry of Exhibit R8. As submitted, Exhibit R8 contained an "Income Lease Adjustment Chart" that included only an adjustment for "billbacks" (common area maintenance, insurance and taxes) and no consideration for differences with the subject with respect to time or market conditions, location and size. As such, Respondent has disregarded the requirement that an analysis is required to determine what, if any, value dissimilarity adds or detracts from the value of the lease comparables, and therefore, Respondent's income approach cannot be considered as being sufficient evidence of true cash value by the Tribunal. However, the Tribunal finds that the lease comparables offered by Respondent were pertinent with respect to their location. Therefore, the Tribunal was persuaded by the descriptive information on the lease comparables presented by Respondent and, along with Petitioner's evidence offered in this matter, the Tribunal was provided with some guidance with respect to the existence of a market for build-to-suit properties such as the subject. Thus it would be inappropriate not to take into consideration the lease rate of build-to-suit properties when many of the leases presented in this case are build-to-suit not unlike the subject property. The use of a build-to-suit comparable in valuation analysis is just as proper as an existing comparable as long as a build-to-suit comparable is sufficiently similar to the subject property and appropriately adjusted for differences that influence the market value. *Thrifty Kraft, Inc v City of Holland*, MTT Docket No. 170040 (1997). Of the four retail leases considered by Allen, the Tribunal finds the built-to-suit lease of the Auburn Hills store to be most comparable to the subject property. Therefore, with emphasis placed on the Auburn Hills comparable and with the omission of Mr. Allen's 20% adjustment and acceptance of his other adjustments, the Tribunal concludes that the market rental rate for the subject property is $8.30/SF for 1999 and $8.70/SF for 2000. The remainder of Mr. Allen's direct capitalization technique, as applied by the Tribunal, then results in a value determination under the Income Approach of $6,161,700 for

1999 and $6,461,900 for 2000.

In his sales comparison approach, Petitioner's appraiser utilized four comparable sales of retail store buildings to derive a value indication for the subject retail store. Because of differing land to building ratios, the unit of comparison made by Mr. Allen is the sale price per square foot of building area. Therefore, the value of the land was subtracted from the sale price of each of the comparables. After adjustments, the range of sale values per square foot of building area was determined and used to estimate the value of the subject building. Upon adding the value of the subject's land to the previously derived building value, the value of the subject property was then determined. However, in analyzing the individual sales, Mr. Allen assumes a land value for each sale, and then assigns the balance of the sale price to the building. He failed to provide any market data in order to support the value of the land he attributed to each of the comparables. Regarding the sale of the seven big box stores from Home Quarters to Costco, land value estimates for the various properties were based on interviews with brokers, appraisers, assessors, as well as market extraction. (Exh P1, p 61). As with the other three comparables, an amount for land value, computed as the average for the seven store locations, was subtracted from the sale price per store. However, again, there is nothing in his appraisal nor is there any indication in Mr. Allen's testimony which supports the land values attributed to the seven store locations. More importantly, in analyzing the Home Quarter package sale, Mr. Allen determined the building per square foot based on the average sale price per store as opposed to what the buyer, Costco, actually paid for each store. (T 155). Also, Mr. Allen testified that the first comparable, formerly Mags Department Store, was not being used as a retail operation. (T 147).

Respondent's appraiser utilizes seven comparable sales in her sales comparison approach to derive a value indication for the subject retail store. However, Ms. Stanton failed to include adjustments to the comparables in her appraisal for differences with the subject property. Respondent addressed the absence of adjustments in Stanton's appraisal with its entry of Exhibit R8. As submitted, Exhibit R8 contained a "Sales Comparison Adjustment Chart," which included adjustments for "quality" (of construction) and "age." However, Ms. Stanton stated in her appraisal that the comparable properties have similar zoning, but vary in size, location, land use ratios, construction quality, age and condition. (Exh R1, p 54). With regard to land use ratios, Ms. Stanton testified that most of these sales have similar land-to-building ratios. Where the subject's land-to-building ratio was 27%, the first four comps were 17% to 20%; comparable five was 40%; comparable six was 14.5%; and, comparable seven was 23%. (T 148-149, 159-160, 162). Yet no adjustment for differences with the subject with respect to land use ratios, size, location and condition was indicated in the either her appraisal or Exhibit R8. As such, she has disregarded the requirement that a considerable analysis is required to determine what, if any, of these value dissimilarities adds or detracts from the value of the comparables. Ms. Stanton concluded a value at $110.00 per square foot based on her first four comparables because they were better representative of the market of the subject, even though comps one and four were of lower quality, and with comparable two as her best comp. (T 163-164). Notwithstanding, in the absence of any evidence of appropriate market adjustments to reflect pertinent differences in the sales utilized, including land use ratios, size, location and condition, the Tribunal was unable to rely upon the comparable evidence offered by Ms. Stanton. The Tribunal regards her adjustments for quality and age as being not enough to address the many variables she introduced and described in her comparables. Consequently, of the four comparables considered by Allen, the Tribunal finds the sales of Jumbo Sports in Canton and Bloomfield Township to be most comparable to the subject property. Therefore, with emphasis placed on these comparables and with acceptance of Mr. Allen's other adjustments, the Tribunal concludes that the adjusted building value per square foot for the subject property is $60.00/SF for 1999 and $65.00/SF for 2000. Adding the land value at $6.75/SF for 1999 and $7.00/SF, as determined by Mr. Allen, then results in a value determination under the Sales Comparison Approach of $7,637,700 for 1999 and $8,160,000 for 2000.

Under the Cost approach, Mr. Allen indicated in his appraisal that he considered the subject building to be an "Average Class C Department Store" having a cost estimate of $64.35/SF. However, at the hearing, Mr. Allen amended his cost estimate of the subject to reflect the subject as being an "Average Class C Discount Department Store" based upon the testimony of Mr. Kendall Lees, Kohl's Real Estate Manager. Allen testified that it was not until trial and the testimony of Mr. Lees that he learned that he had applied the wrong base cost to estimate the replacement cost for the subject. Allen further testified that the base cost for an Average Class C Discount Department Store was $44.53/SF. (T 36-37). After applying that rate, correcting the depreciable basis, subtracting depreciation and then adding the land value, Allen determined a value estimate of $5,470,000 for 1999 and $5,690,000 for 2000. However, Respondent argued that Allen's cost approach to value is simply unrealistic and his radical changes to his own cost approach are not credible. Kohl's has already told us that this property cost $8,469,440.97. Respondent's Closing Brief (RCB), p 12. In applying the cost approach, Ms. Stanton's determination of building cost was based upon prevailing costs for a Good Class C Retail Store. This directed a base cost of $68.92/SF. Petitioner argued that Ms. Stanton overvalued the subject by estimating a grossly excessive construction cost. Petitioner's Closing Brief (PCB), p 25.

Under cross-examination, Mr. Lees testified that Kohl's operates nearly 700 stores nationally and owns approximately one-third of them. (T 51). Mr. Lees also testified that the contract for the typical construction cost for a Kohl's store was $35.00/SF for 2002, $43.00/SF for 2003 and $42.00/SF for 2004. (T 22). The subject building was constructed at a cost of $3,962,940 or $45.83/SF. Petitioner's Reply Brief (PRB) p 2. Therefore, from the evidence it appears to the Tribunal that Petitioner's determination for building classification and construction quality as an "Average Class C Discount Department Store" and the resultant $44.53/SF base rate for the subject are more in line with the actual building costs experienced by Kohl's for the period in question, as well as the reported cost for construction of the subject. In application of her cost analysis, Ms. Stanton made an allowance for 1% physical depreciation, which was deducted for 2000, but no functional or economic obsolescence was noted. (Exh R1, p 37). To the contrary, under his cost analysis, Mr. Allen made a considerable deduction for "functional obsolescence" of the subject building. Respondent contends this deduction by Allen for functional obsolescence is unsupported by the evidence. RCB p 12. From his amended cost approach analysis presented at trial, the deduction of approximately 35% of the total depreciable basis for building and site improvements cost is based on Mr. Allen's assertion that when properties such as the subject are sold to or leased by another national discount department store, the purchaser is going to have to adapt the building to its own retail requirements. (T 45). According to Mr. Lees, the subject property incurred additional construction costs as the front façade is different. He testified that the Northville store is actually all face brick, which is not typical at all for a Kohl's store. Typically, the front is all that has the face brick on it and even then, some stores don't even have brick. Mr. Lees further testified that the face brick does not add anything to our store, but the related additional expenses were requirements that were put on the store in order to build it. Most

Kohl's stores have a distinctive stair step façade, but the façade at the Northville store is very indistinctive as it kind of blends in. (T 21-22). Clearly, Petitioner in this case is a retailer whose building is built to suit, which would likely cause a new occupant to incur modification costs to operate in the building. The cost of these modifications must be deducted from the replacement cost in order to determine the true cash value of the property. *Meijer, Inc v City of Midland*, 240 Mich App 1; 610 NW2d 242 (2000). Therefore, consideration of functional obsolescence is necessary. Where Respondent's appraiser made no deduction for functional obsolescence in her cost approach analysis, the Tribunal concludes it is the least reliable. The Tribunal also concludes that Petitioner's appraiser provided a more reliable cost analysis because a calculated deduction for functional obsolescence was made, which enabled the Tribunal to apply its expertise to the derived depreciation reduction. While the Tribunal agrees that the cost of building modifications must be deducted from the cost of the subject building under functional obsolescence, it is doubtful that the cost of such obsolescence would equal a deduction of $1.8 million, as indicated by Mr. Allen in his testimony (T 50-51), which is approximately 35% of the total depreciable basis for building and site improvements cost. Allen's consideration to rate the subject property as an "Average Class C Discount Department Store" and use of a $44.53/SF base rate to estimate the replacement cost for the subject is consistent with the costs for the typical Kohl's store based upon the testimony of Mr. Lees. Clearly, the replacement cost approach does eliminate the need to calculate some types of functional obsolescence. *Teledyne Continental Motors v Muskegon Twp*., 145 Mich App 745; NW2d 590 (1985). Mr. Allen's calculation of functional obsolescence was extracted based on capitalizing the difference between the required rent (rent required for improvement costs plus land) and the projected rent for the subject property (based upon the net operating income calculated in his income approach)

(T 48). In that regard, as adjusted by the Tribunal, Mr. Allen's income approach yields a net operating income of $648,601 for 1999 and $680,202 for 2000. As a result, the loss due to functional obsolescence from Mr. Allen's method of capitalizing the deficient income is calculated to be $771,435 for 1999 and $729,176 for 2000. The remainder of Mr. Allen's amended cost analysis, as applied by the Tribunal, then results in a value determination under the Cost Approach of $6,509,900 for 1999 and $6,824,300 for 2000.

The Tribunal considered the type and reliability of the data and the applicability of each approach. Consideration by the Tribunal of build-to-suit leases as opposed to typical market leases limited the data to only one of four comparable leases presented by Petitioner under the Income Approach. Therefore, the Income Approach does not provide a reliable basis for valuing the subject property. The lack of market data to support land values attributed by Petitioner to isolate the building sale price per square foot renders the Sales Comparison Approach the least credible. Under the Cost Approach, the land value was supported by market evidence and the estimated replacement cost was supported by credible witness testimony regarding the construction cost for stores such as the subject, as well as the subject's actual construction cost. With the built-in problems inherent with each approach considered, the Tribunal concludes that the most accurate method to determine the true cash value of the subject property is the cost-less-depreciation method.

The Tribunal further finds the valuation methodology most indicative of the property's true cash value for the tax year at issue is the Cost Approach. The Tribunal concludes that the market studies concerning commercial property completed by the County of Wayne for Northville

Township will be used to determine the true cash values and revised assessments for tax years 2001 through 2004. The Tribunal notes, notwithstanding information and evidence submitted by the parties relating to contention of assessed value for 2005, the petition was not amended to include the tax year 2005. The Tribunal further concludes for tax years 1999 through 2004 that the true cash values and revised assessments of the subject property are as follows:

The original state equalized, assessed and taxable values on the roll for the subject property are:

Property Tax Code	Year	Original T.C.V.	Original S.E.V.	Original Assessment	Original Taxable Value
001-02-0001-000	1999	$9,215,620	$4,607,810	$4,607,810	$4,607,810
001-02-0001-000	2000	$9,307,800	$4,653,900	$4,653,900	$4,653,900
001-02-0001-000	2001	$10,024,600	$5,012,300	$5,012,300	$4,802,824
001-02-0001-000	2002	$12,781,400	$6,390,700	$6,390,700	$4,956,514
001-02-0001-000	2003	$13,471,600	$6,735,800	$6,735,800	$5,030,861
001-02-0001-000	2004	$13,741,000	$6,870,500	$6,870,500	$5,146,570

The revised true cash, state equalized, assessed and taxable values for the subject property are:

Property Tax Code	Year	Revised T.C.V.	Revised S.E.V.	Revised Assessment	Revised Taxable Value
001-02-0001-000	1999	$6,509,900	$3,254,950	$3,254,950	$3,254,950
001-02-0001-000	2000	$6,824,300	$3,412,150	$3,412,150	$3,316,790
001-02-0001-000	2001	$7,353,860	$3,676,930	$3,676,930	$3,422,920
001-02-0001-000	2002	$9,411,460	$4,705,730	$4,705,730	$3,532,450
001-02-0001-000	2003	$9,946,960	$4,973,480	$4,973,480	$3,585,430
001-02-0001-000	2004	$10,166,780	$5,083,390	$5,083,390	$3,667,890

JUDGMENT

IT IS ORDERED that the subject property's true cash, assessed and taxable values shall be revised for the tax years at issue as provided in the "Conclusions of Law" section of this Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Order within 20 days of the entry of this Order. 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. 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 Order. As provided in 1994 PA 254 and 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest shall accrue at an interest rate set monthly at a per annum rate based on the auction rate of 91-day discount treasury bill rate for the first Monday in each month, plus 1%. After January 1, 1996, interest shall accrue at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, 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 the calendar year 1998, (iv) after December 31, 1998, at a rate of 6.01% for the calendar year 1999, (v) after December 31, 1999, at a rate of 5.49% for the calendar year 2000, (vi) after December 31, 2000, at a rate of 6.56% for calendar year 2001, (vii) after December 31, 2001, at a rate of 5.56% for calendar year 2002, (viii) after December 31, 2002, at a rate of 2.78% for calendar year 2003, (ix) after December 31, 2003, at a rate of 2.16% for 2004, (x) after December 31, 2004, at the rate of 2.07% for calendar year 2005 and, (xi) after December 31, 2005, at the rate of 3.66% for calendar year 2006.

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

MICHIGAN TAX TRIBUNAL

Entered: July 31, 2006 By: Sherry A. Lee, Tribunal Judge