STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

Lowe's Home Centers, Inc. (#1121),
Petitioner,

v — MTT Docket No. 414842

City of Grandville, — Tribunal Judge Presiding
Respondent. — Kimbal R. Smith, III

**OPINION AND JUDGMENT**

I. INTRODUCTION

Petitioner, Lowe's Home Centers, Inc. (#1121), through its amended Petition in the above-captioned case, is appealing the ad valorem property tax assessment levied by Respondent, City of Grandville, for the 2011 and 2012 tax years. A five-day hearing was held in the matter June 12, 2013, through June 17, 2013, and June 25, 2013. Michael B. Shapiro and Daniel L. Stanley, attorneys at Honigman Miller Schwartz and Cohn LLP, appeared on behalf of Petitioner. Andrea D. Crumback, attorney at Mika Meyers Beckett & Jones PLC, appeared on behalf of Respondent. Lawrence G. Allen, MAI, was Petitioner's valuation witness. Eugene Szkilnyk, CCIM, was Respondent's valuation witness.[1]

[1] Upon commencement of the hearing, Respondent's counsel moved to disqualify Tribunal Judge Kimbal R. Smith III. See TR, Vol 1, pp. 6-9. The oral motion fails to comply with TTR 225(1), which states that "[a]ll requests to the tribunal requiring an order in a proceeding shall be made

## II. SUMMARY OF JUDGMENT

The property's TCV, SEV, and TV as established by the Board of Review for the tax years at issue are as follows:

**Parcel Number:** 41-17-30-100-079

| Year | TCV | SEV | TV |
|---|---|---|---|
| 2011 | $8,507,800 | $4,253,900 | $4,055,796 |
| 2012 | $8,493,400 | $4,246,700 | $4,165,302 |

The property's TCV, SEV, and TV as established by the Tribunal for the tax years at issue shall be as follows:

**Parcel Number:** 41-17-30-100-079

| Year | TCV | SEV | TV |
|---|---|---|---|
| 2011 | $4,485,000 | $2,242,500 | $2,242,500 |
| 2012 | $4,430,000 | $2,215,000 | $2,215,000 |

## III. GENERAL PROPERTY DESCRIPTION

The subject property, commonly known as Lowe's Home Improvement, consists of a 13.86-acre parcel of land located at 4705 Canal Avenue in the City of Grandville, Kent County, Michigan. It is classified 201-Commercial, zoned C-5,

***by written motion filed with the clerk and accompanied by the appropriate fee***, unless otherwise provided by the tribunal." [Emphasis added.] Further, pursuant to MCL 205.726 and TTR 201, the Tax Tribunal is governed by the provisions of the Administrative Procedures Act. MCL 24.279 provides, in pertinent part, that "[h]earings shall be conducted in an impartial manner. ***On the filing . . . of a timely and sufficient affidavit*** of personal bias or disqualification of a presiding officer, the agency shall determine the matter as a part of the record in the case, and its determination shall be subject to judicial review at the conclusion of the proceeding." [Emphasis added.] No affidavit alleging any specific instances of personal bias or disqualification of Judge Smith was filed, timely or otherwise. Moreover, the conduct that was cited at the hearing would not "'create in reasonable minds a perception that [his] ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired.'" *Brady v Attorney Grievance Comm*, 486 Mich 997, 998; 793 NW2d 398 (2010).

Commercial Freeway Interchange, and improved with a freestanding single-tenant mega warehouse store originally constructed as a build-to-suit for Lowe's Home Centers in the year 2000.

## IV. SUMMARY OF PETITIONER'S CASE

Petitioner contends that the subject property is assessed in excess of 50% of its true cash value. Petitioner's contentions of TCV, SEV, and TV are as follows:

**Parcel Number:** 41-17-30-100-079

| Year | TCV | SEV | TV |
|---|---|---|---|
| 2011 | $4,420,000 | $2,210,000 | $2,210,000 |
| 2012 | $4,250,000 | $2,125,000 | $2,125,000 |

### PETITIONER'S ADMITTED EXHIBITS

P1: Appraisal Report prepared by Lawrence G. Allen, MAI
P5: Declaration of Easements and Restrictive Covenants for subject property

### PETITIONER'S WITNESSES

Lawrence G. Allen, MAI

Petitioner presented testimony from its appraiser, Lawrence G. Allen, MAI. Based on his experience and training, the Tribunal accepted Mr. Allen as an expert in the valuation of real property and big-box stores. Mr. Allen prepared and communicated an appraisal of the subject property. The appraisal sets forth both a sales comparison and income analysis for each of the tax years at issue. The cost approach was considered but not developed due to the significant depreciation and obsolescence associated with the subject building improvements. All approaches are conveyed on the foundation of a fee simple interest.

Mr. Allen testified that (i) the subject property is located in the Grand Rapids-Muskegon-Holland Combined Statistical area, (ii) for purposes of his analysis, the subject neighborhood was defined as the area within a one-half mile radius of the property, (iii) RiverTown Crossings, a super-regional mall located just outside of the defined neighborhood, approximately one mile east of the subject, is a major influence in the area, (iv) although retail is the predominant use, the subject neighborhood supports a variety of land uses, including residential to the south of the subject property, (v) the subject neighborhood is in a growth stage of its life cycle, with a limited supply of vacant land available for future development, (vi) the primary commercial thoroughfares for the subject neighborhood are RiverTown Parkway and the I-196 expressway, (vii) the subject property is located south of RiverTown Parkway and east of I-196 on Canal Avenue, (viii) Canal Avenue provides access to the subject property and an adjoining shopping center, but has relatively low traffic counts for a retail location and is primarily a residential access road, (ix) the subject property does not have visibility or access from any main thoroughfare, (x) the subject building is a freestanding big-box warehouse discount store with a gross building area of 135,389 square feet, (xi) the right side of the building faces Canal Avenue while the front faces north toward the parking lot, and an outlot development situated north of the property also impairs visibility, (xii) the highest and best use of the property is retail use, (xiii) in concluding to the highest and best use, the existing use of the property was considered, but the identity of the actual user of the property was not, (xiv) big-box retailers like Lowe's are not concerned about the resale value of the stores they construct because they are building the store for the purpose of maximizing their retail sales and profits, (xv) the cost to construct a Lowe's store at the subject site reflects the cost of improvements made to enhance the owner's business image, and those costs were incurred without regard to whether they add to the true cash value of the property, and (xvi) when sold, big-box properties are generally torn down and redeveloped or significantly modified for a new user.

SALES COMPARISON APPROACH

Mr. Allen's sales comparison analysis examines seven sales of big-box properties that were vacant and available at the time of sale. Write-ups and photographs of each comparable are included in the appraisal report. A summary of the sales is as follows:

| Sale # | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|---|
| Development | Super K | Target | HQ/BS | Wal-Mart | Circuit City | Target | Target |
| Location | Dearborn | Warren | Sterling Heights | Frenchtown | Kochville | Holland | Kentwood |
| Sale Date | Jan-06 | Dec-12 | Mar-06 | Dec-09 | Jul-12 | May-04 | Nov-05 |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Year Built | 1993 | 1990 | 1996 | 1992 | 1985 | 1990 | 1989 |
| Building Area (SF) | 192,000 | 98,634 | 111,285 | 124,631 | 94,284 | 80,953 | 103,086 |
| Sale Price | $9,650,000 | $2,250,000 | $4,500,000 | $2,765,000 | $2,634,520 | $2,350,000 | $7,100,000 |
| SP/SF | $50.26 | $22.81 | $40.44 | $22.19 | $27.94 | $29.03 | $68.87 |
| Adj SP/SF (2011) (2012) | $35.29 $33.53 | $31.70 $30.11 | $33.19 $31.53 | $31.30 $29.73 | $35.01 $33.26 | $24.44 $23.22 | $38.66 $36.73 |

The individual attributes of each sale were analyzed and compared to the subject, and adjustments were made to account for differences between the properties. Various elements of comparison, including property rights transferred, financing terms, conditions of sale, market conditions, size, location, and age/condition were considered in the analysis. Annual market condition factors for each comparable were based on examinations of market sales, publications, and interviews with brokers and varied by location. Because larger developments command lower sales prices per square foot when compared to smaller developments, Comparable 5, a former big-box home improvement store that was divided into two junior-box spaces, required a downward adjustment for this superior size characteristic. The subject location was concluded to be superior to that of all comparable sales, with the exception of Comparable 7, and upward adjustments were made accordingly. Population, income levels, traffic count, access, and visibility were the primary factors considered in this determination. The age/condition adjustment considers the actual age of the development, as well as the influence of any renovations and overall maintenance. Because the subject is newer than all of the comparables, with the exception of Comparable 3, upward adjustments were required for this element of comparison.

In addition to the sales, Mr. Allen also examined 12 comparable listings. Write-ups of each comparable are included in the appraisal report.

After analyzing the comparable sales, adjusting for differences in amenities and reviewing the supplemental listings, Mr. Allen concluded to final true cash value indications as follows: $33.00/SF or $4,470,000 as of December 31, 2010, and $31.50/SF or $4,260,000 as of December 31, 2011.

INCOME APPROACH

Mr. Allen's income approach is based on a direct capitalization methodology. To determine appropriate rental rates for the subject property, he examined 20 existing big-box buildings that were leased or offered for lease and seven original build-to-suit leases. The data indicated a 54% difference in value between the two types of leases before age, location, and date of lease considerations, illustrating the premium commanded by build-to-suit leases. After adjusting the lease comparables for relevant elements of comparison, Mr. Allen concluded to final (triple net) market rent rates of $5.00/SF and $4.75/SF for the 2011 and 2012 tax years, respectively.

Mr. Allen reviewed local market data and conversed with various real estate brokers to determine appropriate vacancy and credit loss factors for both years.

Operating expenses were estimated for each year utilizing *Dollars and Cents of Shopping Centers* (2008) and various investment surveys. Reimbursable expenses included common area maintenance, property taxes, and insurance. Base capitalization rates were established utilizing three separate sources: single-tenant retail building and center sales, band-of-investment techniques, and investment surveys. After capitalizing the net operating incomes, Mr. Allen deducted leasing commissions to arrive at final true cash value indications as follows: $4,270,000 as of December 31, 2010, and $4,220,000 as of December 31, 2011.

RECONCILIATION

| | **December 31, 2010** | **December 31, 2011** |
|---|---|---|
| Sales Comparison Approach | $4,470,000 | $4,260,000 |
| Income Approach | $4,270,000 | $4,220,000 |

After considering both the sales comparison and income approaches to value, Mr. Allen concluded that the sales comparison approach yielded the most reliable indicator of value and as such should be given the most weight in his final value determinations. Reconciling the values indicated by these approaches, Mr. Allen concluded to a final true cash value indication of $4,420,000 for the 2011 tax year. Likewise, in 2012, Mr. Allen reconciled the sales and income approaches to value, which resulted in a final true cash value indication of $4,250,000.

## V. SUMMARY OF RESPONDENT'S CASE

Pursuant to its valuation disclosures, both original and as amended, Respondent agrees that the subject property is assessed in excess of 50% of its true cash value. Respondent contends, however, that the assessment is not excessive to the extent asserted by Petitioner. Respondent's contentions of TCV, SEV, and TV, as provided by its original valuation disclosure, were as follows:

**Parcel Number:** 41-17-30-100-079

| Year | TCV | SEV | TV |
|---|---|---|---|
| 2011 | $7,350,000 | $3,675,000 | $3,675,000 |
| 2012 | $7,400,000 | $3,700,000 | $3,700,000 |

During the hearing, Respondent's expert acknowledged and amended numerous errors in the original disclosure. Reported errors included typos, mislabelings, inaccurate factual assumptions relating to the subject and comparable properties, and flawed application of various appraisal calculations and techniques. Respondent's revised contentions of TCV, SEV, and TV, as provided by its amended valuation disclosure, are as follows:

**Parcel Number:** 41-17-30-100-079

| Year | TCV | SEV | TV |
|---|---|---|---|
| 2011 | $7,100,000 | $3,550,000 | $3,550,000 |
| 2012 | $7,100,000 | $3,550,000 | $3,550,000 |

### RESPONDENT'S ADMITTED EXHIBITS

R1: Appraisal Report prepared by Eugene Szkilnyk, CCIM
R2: Photographs of subject property
R3(4): Sketch/Area Table Addendum for subject property
R5(3-30): Deed/Declaration of Covenants and Restrictions for 5851 Mercury

Drive, Dearborn, MI
R6(1-4): Covenant Deed for 27300 Dequindre, Warren, MI
R7(3-6): Covenant Deed for 33801 Van Dyke Road, Sterling Heights, MI
R8(6-10, 12-16): Covenant Deed for 2155 North Telegraph Road, Frenchtown, MI
R9: Covenant Deed for 4100 28th Street, Kentwood, MI
R16: Sales Brochure for 1740 East Sherman Boulevard, Muskegon, MI
R17(4-7): Special Warranty Deed for 7700 and 7945 North Alger Road, Pine River, MI
R19: Sherriff's Deed on Mortgage Sale for 33801 Van Dyke Road, Sterling, Heights, MI
R21: Operation and Easement Agreement for 12386 Felch, Holland, MI
R22: Covenant Deed for 12386 Felch, Holland, MI
R23: First Amendment to Operation and Easement Agreement for 12386 Felch, Holland, MI
R24: Amended Sales Comparison Analysis for subject property

RESPONDENT'S WITNESSES

James Uyl

Respondent presented testimony from its deputy assessor, James Uyl, MMAO. Mr. Uyl testified that (i) he has been employed by the City of Grandville since 1995, having formerly served as its assessor and currently serving as its deputy assessor, (ii) prior to the construction of RiverTown Crossings Mall, which was complete as of December 31, 1999, the 28th Street-Chicago Drive corridor served as the City's main retail corridor, (iii) the completion of RiverTown, in conjunction with the previously completed Paul B. Henry Freeway (M-6), spurred many outlot-type developments of restaurants and strip malls in that area, as well as some freestanding commercial, (iv) the big ventures in Kent county in the 13 years since RiverTown have largely been in Grandville, which is now seen as a "shining light" in the greater Grand Rapids area, (v) RiverTown has approximately 660,000 square feet of leasable area on two levels and is comprised of approximately 110 in-line tenant spaces plus six anchor stores, (vi) the subject property is located approximately three-quarters of a mile from RiverTown and has multiple signs that can be seen from the nearby I-196 expressway, (vii) he personally prepared the subject's property record cards for both of the tax years at issue, (viii) the assessments reflected on the record cards were calculated using the cost-less-depreciation approach to value, Marshall Valuation Service, and BS&A software, (ix) the square footage reflected on the record cards was calculated by him during an on-site inspection in which he and one of his co-workers personally measured the building using a 100-foot measuring tape, and (x) the curvature of the earth was not taken into consideration in calculating the square footage, and numbers were rounded in the calculations.

Eugene Szkilnyk

Respondent presented testimony from its appraiser, Eugene Szkilnyk. Based on his experience and training, the Tribunal accepted Mr. Szkilnyk as an expert in general appraising. Mr. Szkilnyk prepared and communicated an appraisal of the subject property. The appraisal sets forth a sales comparison, income, and cost analysis for each of the tax years at issue. All approaches are conveyed on the foundation of a fee simple interest.

Mr. Szkilnyk testified that (i) the subject property is located in the Grand Rapids Metropolitan Statistical Area, (ii) there are two distinct retail submarkets in the Grand Rapids Metropolitan Statistical Area – the 28$^{th}$ Street corridor and the 44$^{th}$ Street corridor, (iii) the 44$^{th}$ Street corridor has experienced significant growth in retail and residential development since the construction of RiverTown Crossings Mall, and demand is expected to stay strong, (iv) as a major node of retail activity, the 44$^{th}$ Street corridor directly competes with the 28$^{th}$ Street corridor, (v) the location of the subject property is excellent, with close proximity to RiverTown, a major highway interchange (I-196), and the burgeoning 44$^{th}$ street corridor, (vi) the subject property lacks direct visibility off 44$^{th}$ Street but has ample market identity via local and regional advertising, two pylons signs that clearly identify the property as being a Lowe’s property, and vehicular traffic along 44$^{th}$ Street, Canal, and I-196, (vii) visibility is extremely critical for smaller in-line space but that significance starts to dissipate as you become more of a destination-type retailer like the subject property, (viii) for purposes of his analysis, the primary market area included all retail along the 44$^{th}$ Street corridor, (ix) the subject property is a freestanding retail building comprised of 136,538 square feet and its highest and best use is as a freestanding, single-tenant retail building, (x) the subject property was owned and occupied by Lowe’s during each of the tax years at issue, (xi) retailers like Lowe’s build stores to fit their specific architectural prototype and business model, (xii) first generation build-to-suit rental rates are higher than those of existing properties because the leases are based on internal calculations between the lessor and the lessee to derive some kind of systematic return on an investment and are more akin to forces of internal financial calculations than market forces of supply and demand, (xiii) when build-to-suit leases start to expire or burn-off, the impact of the leased fee interest begins to dissipate, (xiv) although there is a market for second-generation big-box properties like the subject, there is a limited availability of recent sales with similar market positions, locational characteristics, and use, (xv) if the subject were bought by or leased to another user that is not Lowe’s, the building would have to be adapted to another user and costs would be involved in the process, (xvi) although interior improvements, signage, and exterior image are generally worth less to a new buyer, the cost to rebrand the subject building to another similar user/occupant is not cost prohibitive relative to the development cost and risk of new construction, (xvii) if a potential user can acquire an existing building for cheaper than the replacement cost new, then a prudent and well-informed retailer will pursue the purchase of an existing building rather than build a new one, (xviii) big-box building footprints have evolved over the past two decades, increasing in size from approximately 80,000 to 100,000 square feet to approximately 130,000 to 200,000 square feet, (xix) because of the big-box evolution, many former big-box properties have become nonfunctional "tweener" properties selling at lower unit prices per square foot for alternative uses including industrial and church use, and (xx) the subject is not a tweener and has sufficient size to accommodate several general merchandiser-type tenants.

SALES COMPARISON APPROACH

Mr. Szkilnyk's sales comparison analysis examines four big-box properties that were vacant and available at the time of sale and one that sold in a leased fee transaction. He also examined a number of comparable listings, but, in concluding to value by the sales comparison approach, gave no weight or consideration to the same. Write-ups and photographs of each comparable are included in the appraisal report. A summary of the sales is as follows:

| Sale # | 1 | 2 | 3 | 4 | 5 |
|---|---|---|---|---|---|
| Development | Home Quarters | Kmart | Wal-Mart | Sam's Club | Target |
| Location | Sterling Heights | Dearborn | Frenchtown[2] | Madison Heights | Kentwood |
| Sale Date | Mar-06 | Jan-06 | Dec-09 | Feb-05 | Nov-05 |
| Year Built | 1995 | 1993 | 1992 | 1986 | 1989 |
| Building Area (SF) | 111,285 | 192,902 | 124,631 | 113,290 | 103,086 |
| Sale Price | $4,500,000 | $9,650,000 | $3,500,000 | $7,250,000 | $7,100,000 |
| SP/SF | $40.44 | $50.03 | $28.08 | $64.00 | $68.87 |
| **Original Adj SP/SF** (2011) (2012) | $36.03 $38.76 | $39.34 $42.37 | $39.79 $38.92 | $35.82 $40.07 | $63.03 $67.96 |
| **Revised Adj SP/SF** (2011) (2012) | $32.56 $34.45 | $34.47 $36.42 | $31.20 $29.89 | $29.31 $32.18 | $53.78 $57.03 |

[2] As amended by witness testimony. See TR, Vol 4, p 53.

The individual attributes of each sale were analyzed and compared to the subject, and adjustments were made to each sale to account for differences between the properties. Various elements of comparison, including property rights transferred, financing terms, conditions of sale, market conditions, location, land-to-building ratio, access/exposure, size, use, and age/condition were considered in the analysis. Annual market condition adjustments of -7% (2011) and -5% (2012) were made to each comparable. Comparable 4 required a downward property rights adjustment due to the leased-fee nature of the transaction. Locational adjustments were based on a retail supply and demand analysis, which examined, among other things, household income, population, retail gap, and market size, as well as vacancy rates for retail space in each market. From this analysis and the resulting ranking, Mr. Szkilnyk concluded that the locations of Comparables 1 and 3 were inferior to that of the subject, while Comparable 4 had a superior location. Because the highest and best use of the subject, as improved, was concluded to be continued use for freestanding single-tenant retail, Comparables 1, 3, and 5, all of which sold for alternative or multi-tenant uses, required downward adjustments. All comparables were older than the subject and required upward adjustments for age and condition. The age and condition adjustments considered both Marshall Valuation Services and market-extracted rates.[3]

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[3] Market-extracted rate taken from Comparable 2. The indicated cost to modify the property was

After adjustments, weight allocation was determined based on the location, functional utility, and use of each comparable in relationship to the subject. A summary of the weight analysis is as follows:[4]

| No. | Development | Weight Applied | Original Adjusted Price (SF) | Original Weighted Price (SF) | Revised Adjusted Price (SF) | Revised Weighted Price (SF) |
|---|---|---|---|---|---|---|
| 1 | Home Quarters | 5% | $36.03 | $0.60 | $32.56 | $1.63 |
| 2 | Kmart | 40% | $39.34 | $27.54 | $34.47 | $13.79 |
| 3 | Wal-Mart | 5% | $39.79 | $0.66 | $31.20 | $1.56 |
| 4 | Sam's Club | 10% | $35.82 | $0.60 | $29.31 | $2.93 |
| 5 | Target | 40% | $63.03 | $12.61 | $53.78 | $21.51 |
| | **Final Weighted Adjusted** | **Price (SF)** | **$42.80** | **$42.01** | **$36.26** | **$41.42** |

Most weight was given to Comparables 2 and 5 because they were concluded to have similar locational characteristics as the subject. Traffic counts for both Canal and 44th Street were considered in this determination. Comparable 2 was also the only property that sold in fee simple for continued single-tenant retail use. Though Comparable 5 was indicated has having somewhat better visibility to vehicular traffic, Mr. Szkilnyk concluded that this was offset by the subject's excellent location to a major highway interchange. Comparable 4 sold with three years remaining on the lease term, but was weighted at 10% because it was purchased for continued use as a single-tenant big-box store.[5] Comparables 1

approximately $10,854,000, or $50/SF.

[4] As indicated by the original and amended valuation disclosures for the 2011 tax year. No 2012 summaries were provided. See Respondent's Exhibits R1 & R24.

[5] Based on an ancillary analysis of 1st generation, net-leased properties of Lowe's Home Improvement in the United States, Mr. Szkilnyk concluded that there is approximately a 33% decrease in price per square foot from net-leased properties that sold with more than 10 years remaining (assuming a 20-year term) versus properties with less than five years remaining.

and 3 were given less weight because they sold for alternative or multi-tenant use. A summary of the three improved sales with the most weight is as follows:[6]

| No. | Development | Unadjusted Price (SF | Original Adjusted Price (SF) | Revised Adjusted Price (SF) |
|---|---|---|---|---|
| 2 | Kmart | $50.03 | $39.34 | $34.47 |
| 4 | Sam's Club | $46.00 | $39.79 | $29.31 |
| 5 | Target | $68.87 | $63.03 | $53.78 |
| | **Average** | **$54.96** | **$47.39** | **$39.18** |

After analyzing the comparable sales, adjusting for differences in amenities and determining appropriate weight allocations, Mr. Szkilnyk concluded to final true cash value indications as follows: $40.00/SF or $5,500,000 as of December 31, 2010, and $42.00/SF or $5,700,000 as of December 31, 2011.[7]

INCOME APPROACH

Mr. Szkilnyk's income approach is based on a direct capitalization methodology. To determine appropriate rental rates for the subject property, he examined the leases of seven retail buildings, one of which was an original build-to-suit lease. With the exception of Comparable 7, all of the comparables are smaller than the subject. Though no specific adjustment for size or any other element of comparison was applied, the final concluded market rent reflects the

Accordingly, the impact of 1st generation, build-to-suit transactions on property rights dissipates with those properties with five years remaining or less.

[6] As indicated by the original and amended valuation disclosures for the 2011 tax year. No 2012 summaries were provided. See Respondent's Exhibits R1 & R24.

[7] As indicated by the amended valuation disclosure. Original final true cash value indications were as follows: $47.00/SF or $6,400,000 as of December 31, 2010, and $50.00/SF or $6,800,000 as of December 31, 2011. See Respondent's Exhibits R1 & R24.

subject size at the bottom of the unadjusted range.[8] Assuming a 10-year lease, and with primary consideration given to Comparable 4 for its proximity to the subject, Mr. Szkilnyk concluded to final (triple net) market rent rates of $6.00/SF and $5.75/SF for the 2011 and 2012 tax years, respectively.

Mr. Szkilnyk reviewed local market data to determine appropriate vacancy and credit loss factors for both years. Operating expenses were estimated for each year utilizing *Dollars and Cents of Shopping Centers* (2008). Reimbursable expenses included common area maintenance, property taxes, and insurance. Base capitalization rates were derived from three separate sources, including comparable sales, band-of-investment techniques, and investment surveys. These rates were then loaded with a tax capitalization factor. After capitalizing the net operating incomes, Mr. Szkilnyk arrived at final true cash value indications as follows: $8,100,000 as of December 31, 2010, and $8,100,000 as of December 31, 2011.

COST APPROACH

Mr. Szkilnyk consulted the cost schedules provided by the Marshall Valuation Service for a Class C Mega Warehouse Discount Store to estimate the replacement cost of the subject improvements. Allowances for indirect costs and entrepreneurial profit were calculated and added to the base replacement cost new.

[8] Although the report indicates that the final concluded market rent reflects the subject size at the bottom of the adjusted range, testimony indicated that in fact no formal adjustments were made. See TR, Vol 1, p 94.

Age-life depreciation was calculated on a straight-line basis using a projected life of 30 years for the building improvements and 15 years for the site improvements. After additional deductions for functional and external obsolescence, land value was added to the depreciated cost of the improvements for final true cash value indications as follows: $5,900,000 as of December 31, 2010, and $5,400,000 as of December 31, 2011.[9]

RECONCILIATION

| | **December 31, 2010** | **December 31, 2011** |
|---|---|---|
| Income Approach | $8,100,000 | $8,100,000 |
| Sales Comparison Approach[10] | $5,500,000 | $5,700,000 |
| Cost Approach | $5,900,000 | $5,400,000 |

After considering all three approaches to value, Mr. Szkilnyk determined that the income approach yielded the most reliable indicator of value and as such should be given the most weight in his final value determinations. Accordingly, this approach was weighted at 60%, and the sales comparison and cost approaches were weighted at 25% and 15%, respectively. Reconciling the values indicated by

[9] Mr. Szkilnyk utilized the sales comparison approach to estimate the value of the subject land. His analysis examines five sales of vacant land. After adjustments for various elements of comparison, including effective sale price, real property rights, financing terms, conditions of sale, market conditions, location, access/exposure, size, shape and topography, zoning, and entitlements, Mr. Szkilnyk concluded to a market value of $5/square foot for the 2011 tax year, which resulted in a land value determination of $3,000,000. For the 2012 tax year, Mr. Szkilnyk concluded to a market value of $4.50/square foot, which resulted in a land value determination of $2,700,000.

[10] As indicated by the amended valuation disclosure. Original value indications were as follows: $6,400,000 as of December 31, 2010, and $6,800,000 as of December 31, 2011. See Respondent's Exhibits R1 & R24.

these approaches, Mr. Szkilnyk concluded to a final value indication of $7,100,000 for the subject property for both of the tax years at issue in this appeal. [11]

## VI. FINDINGS OF FACT

1. The subject property is located at 4705 Canal Avenue, City of Grandville, Kent County, Michigan.

2. The subject property is identified as Parcel No. 41-17-30-100-079 and commonly known as Lowe's Home Improvement.

3. The subject property is classified as 201-Commercial and zoned C-5, Commercial Freeway Interchange. The highest and best use of the property, as improved, is as a commercial retail store.

4. The subject parcel is irregularly shaped and has a total land area of 13.86 acres. It is located on the west side of Canal Avenue, south of RiverTown parkway, with two shared ingress/egress access drives to Canal Avenue. Canal Avenue has relatively low traffic counts for a retail location, approximately 10,000 per day, and is primarily a residential access road.

5. The subject parcel is improved with a freestanding, single-tenant commercial building, originally constructed as a build-to-suit in 2000 for Lowe's Home Centers.

6. The subject building is a modern, single-story, big-box retail structure. More specifically, it is a class C mega warehouse store. It has a total gross area of 135,900 square feet, as determined by the Tribunal, and consists of generally open retail/warehouse areas plus an outdoor garden shop on the side of the building.

7. The subject building does not have visibility or access from any main thoroughfare. The right side of the building faces Canal Avenue, while the front faces north toward the parking lot, and an outlot development north of the property impairs visibility.

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[11] As indicated by the amended valuation disclosure. Original final true cash value indications were as follows: $7,350,000 as of December 31, 2010, and $7,400,000 as of December 31, 2011. See Respondent's Exhibits R1 & R24.

8. RiverTown Crossings, a super-regional mall located approximately one mile east of the subject, is a major influence in the subject's market area. Although retail is the predominant use, the subject neighborhood supports a variety of land uses, including residential to the south of the subject property.

9. The subject property is owner-occupied. It is not an income-producing property and has no history of an income stream.

10. The parties' valuation experts were charged with developing and communicating appraisals of the subject property to support their specified contentions of value and assist the Tribunal in making an independent determination of its true cash or fair market value (usual selling price) for the two years under appeal. Based on the submitted appraisals and the opinion of Respondent's own valuation expert, it is undisputed that the subject property has been assessed in excess of 50% of its true cash value (usual selling price) for the tax years at issue.

11. Petitioner's appraisal sets forth a sales comparison and income analysis for each of the tax years at issue. The sales comparison approach is given primary consideration. The cost approach was considered but not developed.

12. In developing his sales comparison analyses, Petitioner's appraiser identified and examined a total of seven comparable sales, with dates of sale ranging from May of 2004 to December of 2012, as well as 12 comparable listings. All comparables were vacant and available at the time of sale.

13. Petitioner's appraiser adjusted each comparable sale for property rights transferred, financing terms, conditions of sale, market conditions, size, location, and age/condition.

14. From the adjusted sales prices of the selected comparables and review of the supplemental listings, Petitioner's appraiser concluded to a market value of \$33/SF for the 2011 tax year and \$31.50/SF for the 2012 tax year.

15. In developing his income analyses, Petitioner's appraiser identified and examined 20 existing big-box buildings that were leased or offered for lease. The price per square foot of the lease comparables ranged from \$4.28/SF to

$7.00/SF, with an average rate of $4.26/SF. Petitioner's appraiser also identified and examined seven build-to-suit leases with rents ranging from $6.16/SF to $12.25/SF.

16. Petitioner's appraiser adjusted each comparable lease for expense reimbursement terms, conditions of lease, market conditions, location, tenant size, condition, quality of construction, and other factors/lease terms.

17. From the adjusted lease rates of the selected comparables, Petitioner's appraiser concluded to final (triple net) market rent rates of $5.00/SF and $4.75/SF for the 2011 and 2012 tax years, respectively.

18. Petitioner's appraiser concluded to a 15% stabilized vacancy rate for both tax years and base capitalization rates of 10.50% (2011) and 10.00% (2012). After capitalizing the net operating incomes, Petitioner's appraiser deducted leasing commissions to arrive at his final true cash value indications.

19. Respondent's appraisal sets forth a cost, sales comparison, and income analysis for both of the tax years at issue in this appeal. The income approach was given primary consideration and weighted at 60%, while the sales comparison and cost approaches were given secondary consideration and weighted at 25% and 15% respectively.

20. In developing his income analyses, Respondent's appraiser identified and examined the leases of seven retail properties, most of which were located in multi-tenant buildings. The price per square foot of the lease comparables ranged from $3.50/SF to $10.00/SF, with an average rate of $6.88/SF.

21. The adjustment grid, cited on page 69 of Respondent's appraisal, was omitted from the report, and testimony revealed that aside from size, location, and date of lease, no elements of comparison were considered or adjusted for. Specific size, location, and date of lease adjustments were not made, but the superiority of the subject with regard to size was considered by way of concluding to a final market rent at the bottom of the unadjusted range.

22. From the adjusted lease rates of the selected comparables, Mr. Szkilnyk concluded to final (triple net) market rent rates of $6.00/SF and $5.75/SF for the 2011 and 2012 tax years, respectively.

23. Respondent's appraiser concluded to vacancy and credit loss factors of 8% (2011) and 7% (2012) and base capitalization rates of 8.75% (2011) and 8.50% (2012). These rates were then loaded with a tax capitalization factor for final tax-adjusted capitalization rates of 8.9565% (2011) and 8.6824% (2012).

24. In developing his sales comparison analyses, Respondent's appraiser identified and examined a total of five comparable sales, with dates of sale ranging from February of 2005 to December of 2009. With the exception of Comparable 4, which is a sale lease-back/leased-fee transaction, all comparables were vacant and available at the time of sale.

25. Respondent's appraiser adjusted each comparable sale for property rights transferred, financing terms, conditions of sale, market conditions, location, land-to-building ratio, access/exposure, size, use, and age/condition.

26. From the adjusted sales prices of the selected comparables, Respondent's appraiser concluded to a market value of $40.00/SF for the 2011 tax year and $42.00/SF for the 2012 tax year. Primary consideration was given to Comparables 2 and 5, both of which were weighted at 40%. Comparable 4 was weighted at 10%, while Comparables 1 and 3 were both weighted at 5%.

27. In developing his cost approach, Respondent's appraiser consulted the Marshall Valuation Service for a Class C Mega Warehouse Discount Store to determine the replacement cost new of the subject building and site improvements and then calculated physical depreciation using the age life straight-line method with an economic life of 30 years. Land value was estimated using the sales comparison approach to value and added to the depreciated cost of improvements. Allowances were made for functional and external obsolescence.

## VII. APPLICABLE LAW

Pursuant to Section 3 of Article IX of the State Constitution, the assessment of real property in Michigan must not exceed 50% of its true cash value. The Michigan Legislature defined "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, and not at auction sale except as otherwise provided in this section, or at forced sale." See MCL 211.27(1). The Michigan Supreme Court, in *CAF Investment Co v State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974), held that "true cash value" is synonymous with "fair market value."

The Tribunal is charged with finding a property's true cash value to determine the property's lawful assessment. See *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). The determination of the lawful assessment will, in turn, facilitate the calculation of the property's taxable value as provided by MCL 211.27a. Fundamental to the determination of a property's true cash value is the concept of "highest and best use." It recognizes that the use to which a prospective buyer would put the property will influence the price which the buyer would be willing to pay. See *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 623; 462 NW2d 325 (1990).

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735a(2). The Tribunal's factual findings must be supported by competent, material, and substantial evidence. See *Antisdale v Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990). "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence." *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

MCL 205.737(3) provides that "[t]he petitioner has the burden of proof in establishing the true cash value of the property." The Michigan Court of Appeals has held that "[t]his burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party." *Jones & Laughlin, supra* at 354-355. Nonetheless, the tribunal *must* make an independent determination of true cash value. *Id.* at 355. The Tribunal is also obligated to select the valuation methodology that is accurate and bears a reasonable relation to the property's true cash value. See *Safran Printing Co v Detroit*, 88 Mich App 376; 276 NW2d 602 (1979). The Tribunal is not, however, "bound to accept either of the parties' theories of valuation. It may accept one theory and reject the other, it may reject both theories, or . . . utilize a combination of both in arriving at its determination." *Jones & Laughlin, supra* at 356. Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject property would sell. See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473; 473 NW2d 636 (1991).

## VIII. CONCLUSIONS OF LAW

The parties' valuation experts were charged with developing and communicating appraisals of the subject property to assist the Tribunal in making an independent determination of its true cash value (usual selling price) for the two years under appeal. True cash value (usual selling price) is properly determined using one of three widely accepted appraisal methods: cost less depreciation, sales comparison, and capitalization of income. Petitioner's appraiser, Mr. Allen, relies primarily on the sales comparison approach, while Mr. Szkilnyk relies primarily on the income approach to support Respondent's specified contentions of value. Ultimately the parties' experts, through their respective methodologies, conclude to widely disparate estimates of value for the subject property.

The Tribunal, having considered all of the documentary evidence and testimony provided by the parties, and based upon that portion of the evidence that it finds believable and credible upon the record before it, concludes that neither party's valuation of the subject property using the various approaches offers a fully supportable indicator of the true cash value (usual selling price) of the subject property as of the two valuation dates. There is, however, sufficient evidence to allow the Tribunal to make an independent determination of true cash value (usual selling price) for each of the tax years at issue. For the reasons set forth below, the Tribunal concludes that the valuation methodology that is most useful in assisting it in determining the true cash value (usual selling price) of the subject property is the sales comparison approach.

The Tribunal does not believe Respondent's cost approach assists it in arriving at its ultimate determination of value. The testimony of both appraisers established that big-box retailers are not motivated by resale value. Stores are specifically constructed to meet the design, location, and physical requirements of one major retailer's business needs, and construction costs are incurred without regard to whether they add to the true cash value of the property. When such properties are sold to second-generation purchasers, considerable modification (or even demolition) of the existing improvements is generally required. The result is a type of functional obsolescence that must be considered in a determination of true cash value (usual selling price) in accordance with the Court of Appeals decision in *Meijer, Inc v Midland*, 240 Mich App 1; 610 NW2d 242 (2000). Although Respondent's appraiser attempts to account for such factors in his analyses, the Tribunal believes that it is extremely difficult to accurately determine both depreciation and obsolescence using the cost approach, which generally is most applicable to new or relatively new construction. See Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: Appraisal Institute, 13th ed, 2008), p. 382. As such, and inasmuch as the Tribunal also has substantive concerns with Mr.

Szkilnyk's cost calculations, it will give no weight to Respondent's cost approach in making its determination of true cash value (usual selling price).[12]

Both appraisers considered the income capitalization approach, and each concluded that it provided a reliable indication of value for the subject property. Although the Tribunal agrees, it notes that relevance of a valuation approach is directly related to property type:

> Typically, the sales comparison approach provides the most credible indication of value for owner-occupied commercial and industrial properties, i.e., properties that are not purchased primarily for their income-producing characteristics. These types of properties are amenable to sales comparison because similar properties are commonly bought and sold in the same market.
>
> Buyers of income-producing properties usually concentrate on a property's economic characteristics and put more emphasis on the conclusions of the income capitalization approach. *The Appraisal of Real Estate*, *supra* at 300.

Respondent's appraiser weighted the income approach at 60% because freestanding retail buildings are generally income-producing properties with mid to long-term leases, and investors of such properties place heavy reliance on that

[12] Mr. Szkilnyk's cost calculations double-dip on certain indirect cost considerations and also include allowances for entrepreneurial profit, a use-related value. In appraising property for taxation purposes in Michigan, value-in-exchange rather than value-in-use is the appropriate consideration. "The uniformity requirement of the Michigan Constitution compels the assignment of values to property upon the basis of the true cash value of the property . . . . Noticeably absent from the statutory definition of 'cash value' and those enumerated factors which an assessor must consider is any reference to the identity of the person owning an interest in the property . . . . 'The Constitution requires assessments to be made on property at its cash value. This means not only what may be put to valuable uses, but what has a *recognizable pecuniary value inherent in itself, and not enhanced or diminished according to the person who owns or uses it.*'" *Edward Rose Bldg Co, supra* at 640-641. See also *First Federal S&L Ass'n of Flint v Flint*, 415 Mich 702; 329 NW2d 755 (1982).

approach. The subject property, however, is owner-occupied; it is not an income-producing property and has no history of an income stream. Mr. Szkilnyk himself acknowledged as much and also recognized that (i) an owner-user would be the most likely purchaser of the property, and (ii) the income capitalization approach does not represent the primary analysis undertaken by the typical owner-user.[13] Mr. Szkilnyk's reasoning is contradicted by his own admissions, and consistent with *The Appraisal of Real Estate*, the Tribunal finds that the sales comparison approach should be given primary consideration in its final determination of value. Based on its experience in hearing cases of this nature and the fact that Michigan is a market (usual selling price) state, the Tribunal believes that this approach is the best indicator of value for properties like the subject.

Further, having reviewed the parties' respective income analyses, the Tribunal is not persuaded that Respondent's lease comparables, most of which are located in multi-tenant commercial buildings, are sufficiently similar to the subject property so as to be considered more reliable indications of market rent than the big-box comparables utilized by Petitioner's appraiser. No adjustments were made to the comparables for any relevant elements of comparison, and it is noted that Mr. Szkilnyk's concluded market rent for the 2011 tax year is higher than that

[13] See R1, p. 24 and TR, Vol 6, pp. 195-196.

indicated for his first generation build-to-suit lease comparable.[14] Respondent failed to account for region-specific costs in estimating its operating expenses, and the basis and reliability of its capitalization rates are also somewhat questionable. Mr. Szkilnyk testified that his cap-rate comparables were all big-box properties, but portions of his report suggest that other types of properties may have been included in the data that he relied upon. Even assuming arguendo that all of the comparables were in fact big-box retail, the analysis lacks local, market-specific considerations, and according to his own sources, there is a significant spread between cap rates for national retail versus Michigan and the Midwest. Closed sales and listings were considered collectively, and by Mr. Szkilnyk's own declaration, market listings lack a "meeting of the minds" of buyer and seller and should be utilized only as ancillary data to consummated transactions. Contrarily, Petitioner's analyses are supported by the evidence and testimony presented, all appropriate considerations were accounted for, and Mr. Allen's application of available data is logical and persuasive. As such, the Tribunal will give more weight to Petitioner's income approach in making its determination of true cash value (usual selling price).

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[14] As noted above, Mr. Szkilnyk testified that first-generation rates are generally higher than those of existing properties because they more akin to forces of internal financial calculations versus market forces of supply and demand.

Prior to addressing the parties' sales evidence, the Tribunal notes that the number of errors identified in Respondent's appraisal that required countless hours of explanation, revisions to testimony, and three changed pages to Mr. Szkilnyk's market analyses and reconciled value indications are disturbing and certainly cause the Tribunal to question the credibility of his report. Equally troublesome is the fact that the appraiser's source information appeared at times to be presented in a misleading fashion. Nonetheless, the Tribunal has considered the substance of the errors and distortions against the weight of the evidence provided, and a review of the market data reveals that four of the five comparables utilized by Respondent in its sales comparison analyses were also used by Petitioner. The fifth comparable, identified as Respondent's Comparable 4, was a sale of a property that was subject to a lease in place, otherwise known as a sale-leaseback or leased-fee transaction. The Tribunal has consistently held that such transactions are not reflective of market value. In *Meritax, LLC v Richmond*, ___ MTTR ___, ___ (Docket No. 425425, October 18, 2012), the Tribunal explained:

> Respondent's selected comparables were all sales of properties subject to leases in place . . . . Payments in such transactions are not predicated on market rent, however, but rather upon the amount the business can afford to pay based on its operations. . . . In utilizing these comparables to develop its income and sales comparison approaches to value, Respondent distorts in an upward fashion the value of the subject property and also demonstrates a serious lack of understanding of basic appraisal process.

The Tribunal reiterated this position in *Home Depot USA, Inc v Breitung Twp,* ___ MTTR ___ (Docket No. 366428, December 26, 2012). See also *Lowes v Marquette Twp,*___ MTTR ___ (Docket No. 385768, December 13, 2012). Accordingly, it will give no weight to this comparable in making its determination of true cash value (usual selling price). [15]

The presence of several mutual comparables provides the Tribunal with a rare and unique opportunity to test the validity and appropriateness of each party's adjustments for the various elements of comparison. With the exception of the Kentwood Target, however, the appraisers' analyses of the remaining comparables present substantially similar adjusted sales prices for each, and the majority of Respondent's revised values actually fall below those indicated by Petitioner's analyses. The adjusted sales prices of these properties, as provided by both parties, range between $31.20/SF and $35.29/SF for the 2011 tax year and $29.73/SF and $36.42/SF for the 2012 tax year. Mr. Allen's analysis examined three additional comparables, two of which fall within the adjusted sales range indicated for each tax year.[16] And while his concluded values for the former Target fall only slightly outside of those ranges at $36.73/SF and $38.66/SF, respectively, Respondent's values deviate quite substantially at $53.78/SF and $57.03/SF.

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[15] Notable is the fact that this property, having sold in February of 2005 for $64.00/SF, subsequently sold in fee simple to an industrial user for $19.42/SF. See TR, Vol 1, p. 157 and TR, Vol 4, pp. 70-71.

[16] The third comparable had adjusted sales prices of $24.44/SF and $23.22/SF.

Despite the significant clustering indicated by the sales data, Respondent's appraiser concluded to values of $40.00/SF and $42.00/SF for the subject property. This determination was largely the result of his weight allocation, which placed most emphasis on the Kentwood Target and the Dearborn Kmart. Although an appraiser may, as part of the process of reconciliation, employ a weighted average to each adjusted comparable sale, "[i]t is important that the appraiser consider the strengths and weaknesses of each . . . sale, examining the reliability and appropriateness of the market data compiled and the analytical techniques applied in the comparative analysis." *The Appraisal of Real Estate, supra* at 312.

Mr. Szkilnyk's allocations were based on his perception of the location, functional utility, and use of the comparables in relationship to the subject. And while the Kentwood property is not only closest in proximity, but also very similar to the subject in terms of population and income, both appraisers noted that it has direct frontage and visibility on 28th Street, which sees traffic counts ranging between 34,000 and 36,000 daily and serves as the primary retail corridor in Grand Rapids. Additionally, it has visibility and access from 29th Street, a secondary road with traffic counts similar to those of Canal Avenue. The Tribunal is not persuaded that the Comparable's superior visibility and access features are offset by the subject's proximity to a major highway interchange, as Respondent's appraiser contends. This is particularly true in light of the fact that the Kentwood

Target is similarly situated near such an interchange. Accordingly, Respondent's failure to adjust for location is inappropriate, as is its weighting of this property at 40% based (in part) on that element of comparison. Even if Mr. Szkilnyk's locational conclusions were correct, the property is, admittedly, an outlier with respect to both the unadjusted and adjusted sales ranges indicated by each of his own comparables, including the sale-leaseback. Outliers are often evidence of an error or something other than "usual selling price" and "may have an inordinate effect on a statistical model if the reason for [their] departure from the typical range cannot be explained." *The Appraisal of Real Estate, supra* at 355. And Mr. Szkilnyk himself acknowledged that it is common practice by appraisers to look at the range of indicated values, find the central tendency or "clustering" of those values, and throw out the outliers ("highs and lows").

Given the above, the Tribunal concludes that the parties' mutual comparables (excluding the outlier) should be given the most weight in its final determination of value, with primary consideration to Petitioner's adjusted sales prices, as the same are better supported on the record. The Tribunal concludes further that the adjusted sales prices of these comparables, with appropriate weight and consideration given thereto, in conjunction with all other evidence on record, support a market value of $33.00/square foot for the 2011 tax year, which results in a true cash value of $4,485,000 (rounded). As for the 2012 tax year, the Tribunal concludes that the adjusted sales prices support a market value of $32.60/SF, which results in a true cash value of $4,430,000 (rounded).

As for Petitioner's request for costs, MCL 205.752 states that "[c]osts may be awarded in the discretion of the tribunal." The Tribunal implemented this statute in its procedural rule TTR 209. As noted in *Aberdeen of Brighton, LLC v Brighton*, unpublished opinion per curiam of the Court of Appeals, issued October 16, 2012 (Docket No. 301826), p 5, "[t]he term 'may' is permissive and is indicative of discretion." (Citing *In re Forfeiture of Bail Bond*, 276 Mich App 482, 492; 740 NW2d 734 (2007). Though the Tribunal's discretion is not limited, statutorily or otherwise, it generally reserves an award of costs to circumstances where an action or defense was frivolous, or when other good cause to justify the granting of such an award has been shown. Respondent's defense is concluded to have been grounded in fact and warranted by existing law, and in the absence of a showing of other good cause to justify the granting of its request, the Tribunal finds that MCR 2.114 does not support an award of costs in Petitioner's favor.

## IX. JUDGMENT

IT IS ORDERED that the subject property's true cash, assessed, and taxable values for the 2011 and 2012 tax years are those shown in the "Summary of Judgment" section of this Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the assessed and taxable values in the amounts as finally shown in the "Summary of Judgment" section of this Opinion and Judgment, subject to the processes of equalization, within 20 days of the entry of this Opinion and Judgment. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by the Opinion and Judgment within 28 days of the entry of the Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Opinion and Judgment.

Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09% for calendar year 2012 and (iv) after June 30, 2012, through December 31, 2013, at the rate of 4.25%.

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

Entered: By: Kimbal R. Smith, III
ejg