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

Detroit Medical Center,
Petitioner,

v

MTT Docket No. 327024

City of Novi,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

FINAL OPINION AND JUDGMENT

A hearing was held in the above-captioned matter on March 23, 2009 through March 24, 2009. Petitioner was represented by Joshua Wease of Wease Halloran, PLC. Respondent was represented by Stephanie Simon Morita, of Secrest, Wardle.

This matter involves one parcel of real property located in the City of Novi, Oakland County, State of Michigan, identified by tax parcel number: 50-22-14-200-025. Petitioner in timely fashion invoked the jurisdiction of the Tribunal for tax years 2006 and 2007. At issue are the true cash, assessed, and taxable values for each of the years for the subject property. Information relevant to the property's contested assessed and taxable values as found on the tax rolls is as follows*:

Parcel Number	Year	AV	SEV	TV
50-22-14-200-025	2006	$5,565,250	$5,565,250	$5,271,700
50-22-14-200-025	2007	$5,717,700	$5,717,700	$5,466,750

* In this Opinion, TCV stands for true cash value, AV for assessed value, SEV for state equalized value and TV for taxable value.

Petitioner's contentions of the property's true cash value (TCV), assessed, and taxable values are as follows:

Parcel Number	Year	TCV	SEV	TV
50-22-14-200-025	2006	$5,000,000	$2,500,000	$2,500,000
50-22-14-200-025	2007	$4,150,000	$2,075,000	$2,075,000

Respondent's contentions of the property's true cash, assessed and taxable value are as follows:

Parcel Number	Year	TCV	SEV	TV
50-22-14-200-025	2006	$10,500,000	$5,250,000	$5,250,000
50-22-14-200-025	2007	$10,300,000	$5,150,000	$5,150,000

FINAL VALUES

The Tribunal finds the values for the years at issue are:

Parcel Number	Year	TCV	SEV	TV
50-22-14-200-025	2006	$8,435,061	$4,217,513	$4,217,503
50-22-14-200-025	2007	$8,349,447	$4,174,472	$4,174,472

THE SUBJECT PROPERTY

The subject property consists of a parcel of land located in the City of Novi, Oakland County, State of Michigan. The parcel is located at 41935 Twelve Mile Rd., Novi, Michigan and consists 7.42+/- acres of land and an office building currently being utilized as a medical office building. The building located on the parcel was constructed in 1981. Although there is some dispute as to the exact size of the building, the Tribunal finds, based on Respondent's exhibit R-5 (the property record card), that the building is 96,075 square feet in size (gross square feet "GSF").

PETITIONER'S CONTENTIONS

Petitioner contends that the medical office building located on the subject property was originally constructed in 1981 and was designed as a single-tenant structure. Since Detroit Medical Center (DMC) had privatized the single medical group (employed by DMC), the building has effectively moved from a single- to a multi-tenant structure. As a result, the original design as a single-tenant structure, with large reception areas at each level, makes it inefficient and unattractive as a multi-tenant structure. The layout and design of the subject on each valuation date contributes to an abnormally high vacancy rate. It is Petitioner's contention that this design flaw results in "functional obsolescence" and can be corrected with substantial expenditures to retrofit the property as a multi-tenant facility. Petitioner's final position, which it set forth at hearing, is that the property should be valued without its design flaws and then the cost to cure (eliminate functional obsolescence) should be subtracted from its value conclusion to arrive at a true cash value of the subject the property for each year in dispute. Petitioner further contends that the sales comparable and income approaches to value yield the most reliable indicators of value and that the direct capitalization method is appropriate for the income approach.

PETITIONER'S WITNESSES

In support of Petitioner's contention that the subject property suffers from "functional obsolescence," and to support its contentions of value, Petitioner presented the testimony of four witnesses:

Candi Liske, a Senior Property Manager for the Farbman Group, testified that she is familiar with the subject property. She described the negative features of the lay-out with each floor having a large central waiting room and check-in area. When attempting to rent space in the

subject property to individual doctors or small professional groups, most physicians want their own waiting room and check-in area. The way the individual floors are set up is with a large waiting room located off the main set of elevators. Ms. Liske further indicated that all subtenants in the building between 2005 and 2007 pay on a gross rather than a triple net basis. She further indicated that the basement was set up differently from the three above-grade floors.

Jan K. Culbertson, AIA, a senior principal in A3C Collaborative Architecture, was qualified over the objection of Respondent's counsel as an expert in the design and/or redesign of medical office buildings. She indicated that she was familiar with the subject property, and had spent one-half day at the site where she toured each floor and examined the layout of space on each floor.

She explained that the current layout of the building was designed for a single occupant/occupancy, which was common for construction in the early 1980's. Since the property is currently being marketed for multi-tenant use, each floor would need to be reconfigured so each doctor/practice would have its own office entrance off a corridor with its own waiting room. In Ms. Culbertson's opinion, the subject would need to be extensively renovated to make the property economically feasible and to be able to compete with other medical office buildings in the area.

Laney M. Cavazos, Director, Corporate Service/Vice president, NAI, Farbman, testified regarding the efforts made to lease the subject property and the reason for those difficulties. She

indicated that from 2005 to 2007she had been involved in leasing just under 200,000 square feet of office space, 135,000 of which were located in the City of Novi.
She indicated that she was familiar with the marketing effort utilized in attempting to rent space at the subject site and also of the physical characteristics of 15 to 20 other properties in Novi and the surrounding area.

Ms. Culbertson identified P-3 as a marketing flyer for the subject property, which was mailed to potential tenants (the Tribunal notes that the flyer indicated a $1.45 per sq.ft./month as a sublease through 2012 [$17.40]) and further identified a "market Plan" (P-4) developed by her to market the subject. She indicated that there was a tremendous amount of medical office space available in the area, which meant that there was a lot of product with not much demand. She further stated that there were a lot of challenges in renting space in this building due to the lack of separate waiting rooms for each practice. Due to the fact that DMC had not authorized allowance for tenant improvement, the rental rate had come down from an initial rate in the $24-$26 rate to the $17.40 per square foot rate. She explained that where a medical office building was attached to a hospital, the office space in such situation commanded a $2 to $3 per square foot premium. Due to the amount of medical office space available in the Novi market, there was a negative absorption of available space for the 4th quarter of 2006 and only a small positive absorption for 2007 which she indicated was evidenced by P-12 that was admitted over the objection of Respondent's counsel.

Daniel Essa, MAI, LLM, JD, testified in support of and to explain the appraisal (P-7) dated October 15, 2008 that contained the retrospective " as is" value conclusion of the subject

property for tax years 2007 and 2008. The appraisal was prepared by Professional Appraisal Services, Inc. and signed by Mr. Essa and Tyler B. Berg. The appraisal concluded to a true cash value of the subject of $5,550,000 for tax year 2006 and $4,660,000 for tax year 2007.

Essa, in arriving at his estimate of value, utilized the sales comparable and income approaches to value. He rejected the cost approach due to the age of the structure and the difficulty in accurately determining depreciation for structures of similar age to the subject.

At the outset of Essa's testimony, he indicated that the methodology he had employed in arriving at his conclusion of value using the income approach had been changed to assume a hypothetical rental rate for the subject as if the "functional obsolescence" claimed to exist did not exist and then subtract from that value conclusion the value conclusion arrived at using actual rates and vacancy rates of the subject, the result being what he characterized as "functional obsolescence" in the approximate amount of $4,000.000. No written addendum containing an explanation of the change in methodology was prepared or offered by the witness.

Essa explained his value conclusions utilizing the Sales Comparison Approach contained at pages 81-111 of P-7.

For tax year 2006 Essa utilized eight properties which he deemed comparable (P-7, p 81). The square footage of the sales ranged from $24,800 (comp 6) to $63,173 (comp 4). The sales which he used were of both medical and general office buildings. For sales of general office buildings that he utilized (comparables 1, 3, 5, 7, 8), he applied a positive 10% quality & appeal

adjustment because he believed that HVAC, wiring, etc., in medical office buildings are generally of higher quality. He made size adjustments running from -10% (comp 6) to -3% (comp 2). He made no age/condition adjustment to any of the comparables based on his theory that he was adjusting the ultimate value conclusion by his cost to cure "functional obsolescence" amount rather than making a market-based adjustment of his comparables to reflect the superior design and layout of the comparables to the subject. He also indicated that he had not personally inspected either the subject property or any of the comparables. The Tribunal notes six of Petitioner's eight comparables for tax year 2007 were of general rather than medical office buildings.

Essa concluded to a per square foot value for tax year 2006 of $110 and based upon his determination that the building contained 88,297 square feet a value estimate of $9,812,670 from which he subtracted his supposed cost to cure his claim of "functional obsolescence" of $4,000,000 to arrive at his "As Is" True Cash value via the sales comparison approach of $5,700,000 (P-7, p. 107).

For tax year 2007, Essa utilized comparable sales (P-7, p 115) and employed the same methodology as he utilized for tax year 2006 and described in detail above, to arrive at a value conclusion using the sales comparison approach of $9,271,185 from which he once again subtracted $4,000,000, his supposed cost to cure his claim of "functional obsolescence," to arrive at an "As Is" true cash value via the sales comparison approach of $5,300,000 (P-7, pp 110-111).

Essa's original methodology used to develop his value estimate using the income capitalization approach was set forth in P-7, pp 60-80. Essa determined the gross square footage of the subject to be 56,763 with 42,059 being above grade and 14,694 in the basement (P-7, p63) and applying a weighted average found at $16.00 per square foot (gross) for both 2006 and 2007. He determined a gross rental income for both 2006 and 2007 of $908,948 (56,753 SF x $16.00). For 2006 he applied a vacancy factor of 20% to arrive at an effective gross income of $726,438 from which he deducted both fixed and variable expenses of $331,097 to arrive at net operating income before depreciation and taxes of $395,341. For 2007 arriving at the same potential income but increasing the vacancy factor to 40%, he determined an effective gross income of $544,829 from which he deducted both fixed and variable expenses in the amount of $325,650 to arrive at a net operating income before depreciation and taxes of $219,179. The difference in net operating income as set forth in P-7 is essentially the result of Essa's increased vacancy rate.

For both years, Essa found that the non-homestead millage rate in Novi was 48.9311 and determined, based on the market, that the indicated capitalization rate was 10% and when tax loading (48.9311 /2 =24.4656) to the 10%, an overall capitalization rate of 12.45% was applied to each year's net operating income to arrive at an "As Is" estimate of value using the income capitalization of $5,400,000 for tax year 2006 and $4,020,000 for 2007. Essa's ultimate value conclusion using the income capitalization approach remained the same even though his rental rates and methodology was changed orally from the witness stand at the time of the hearing.

After explaining his value conclusions using the two approaches to value, Essa reconciled indicating that both value conclusions were given equal weight with a resulting opinion of true cash value of the subject of $5,550,000 for 2006 and $4,660,000 for 2007.

RESPONDENT'S CONTENTIONS

Respondent contends that for each of the tax years at issue the property has been properly assessed and valued at 50% of its true cash value subject to the values arrived at by Respondent's expert. Respondent contends that the proper methodology to value the subject parcel was to consider all three approaches to value with primary emphasis on the sales comparison and income approaches. Respondent further claims that the methodology utilized by Petitioner is a misapplication of accepted valuation principles and the values arrived at using his flawed methodology are not supported in the market place.

Respondent presented two witnesses in support of its position: Robert Kugler of the Novi assessor's office, and Raymond Bologna, MAI, who testified in support of the Valuation Disclosure/Appraisal, which he prepared on behalf of Respondent.

Robert Kugler identified the property record card for the subject property (R-5), which was admitted without objection, and indicated that the property record showed that the building on the subject property contained 96,075 square feet. He also testified that while present at the subject property for a site visit with an appraiser he overheard one of Petitioner's agents indicate that some prospective tenants were being steered away from the subject to other properties.

Raymond V. Bologna, MAI, testified in support of his Market Value Conclusion for tax years 2006 (December 31, 2005) and 2007 (December 31, 2006) contained in the appraisal prepared by him dated December 21, 2007 and supplemented November 14, 2008 (R-1). In that appraisal he concluded to a true cash value of the subject property of $10,500,000 for tax year 2006 and $10,300,000 for tax year 2007. At the beginning of his testimony Mr. Bologna acknowledged that a calculation error had occurred at page 92 of R-1 that affects the cost and income approach conclusions and that corrections were made to page 92 and five other pages even though the ultimate value conclusions were the same. As a result, R-9, the page corrections, were admitted into evidence and incorporated into the body of R-1.

The first portion of Bologna's direct examination consisted of a critique of Petitioner's appraisal (P-7).

Bologna testified that he had physically inspected the subject property in November of 2007, that he had extensive experience in owning, marketing and renting buildings for his own account, and that the normal manner that buildings similar to the subject are marketed are on a net rentable square foot basis. On the day of his inspection he observed that no one was present in the "large lobby" to direct patients/clients to their destination and, as a result, he believed that the property was not being competently managed.

Bologna testified that he considered and utilized all three commonly accepted valuation methods (sale, cost and income) in arriving at his ultimate conclusions of value although the cost

approach had limited reliability because it is difficult to estimate depreciation on properties of the age of the subject (R-1, p. 3).

Bologna indicated that using the square footage contained on the property record card (R-5) together with his own observations he concluded the subject medical office building was constructed in 1980 and contained 96,075 GSF (gross square feet) (70,655 SF above grade and 25,420 SF in the basement) of which 80,897 SF was net rentable (NRSF) (59,897 SF above grade and 21,328 SF in the basement).

The subject property was valued in "fee simple" even though the property was under a "master lease" as explained by the witness (petitioner valued the property on the same basis).

For his sales comparison approach, Bologna utilized four properties he deemed comparable. (See R-1, p 104) The properties range from 17,500 square feet in size (Comp. #4) to 58,000 square feet (Comp #3). All sales were in "leased fee" with the exception of Comparable #2, which was subject to a land lease and which Bologna made a +16% adjustment to the sale price. All of the comparables were medical office buildings (Comp #3 was approximately 60% occupied by medical tenants). Although all of the comparables were significantly smaller than the subject, no size adjustments were made, the witness indicating that the market did not reflect that a size adjustment was warranted. The basis for all the other adjustments made to the comparables was explained by the witness with his final value conclusion on a square foot basis ranging from $119.44 to $131.86.

Bologna testified that, based on his research, there was no difference in value of basement space in medical office buildings to above grade space and, as a result, he applied his same square foot value conclusion to both above and below ground space.

For purposes of his appraisal, the witness characterized the "functional utility" of the subject property as "average" and all comparables with the exception of comparable #3 as similar, which he classified as "superior."

The net adjustments to the four comparables ranged from -32% for Comparable #3 to 0% for Comparable #4. Gross adjustments for the comparables ranged from 41% for Comparable #2 to 0% for Comparable #4. Giving some weight to all comparables, but stressing Comparable #4, a value using the Sales Comparison approach of $124.00/SF or $10,300,000 (rounded) for both years was arrived at.

Respondent's expert explained the methodology he employed in arriving at his estimate of value using the income capitalization approach. He indicated that at the end of 2005 the subject was 79% subleased and as of march 2007 the rent roll indicated that the property was 35% occupied.

Bologna valued the property in fee simple based upon market lease and occupancy rates. (R-1, p 68) and to accomplish this found six comparable properties/leases (including the subject), which he deemed similar in physical, functional, and economic characteristics. The square foot rental rates ranged from $13.59 SF (Comp. #1 [the subject]) to $23.50 for Comparable #3. After adjustments which the witness deemed appropriate a rental conclusion range of $13.74 to $22.50

was arrived at. The Tribunal notes and it will discuss later that Bologna made no adjustment for functional utility of any of the comparables. Bologna further determined that the subject property was leased and being offered for lease on a "per USF" basis, which is atypical in the market. The asking rate of the subject, Comparable #1, was adjusted by him to reflect its 22% load factor to a rate of 13.59/NRSF.

While acknowledging that the subject was only "35 percent occupied to subtenants," Bologna based his vacancy & collection allowance adjustment analysis

> on a market position, and the market vacancy for older buildings as of the valuation date was 36.6 percent. When using an overall rate to capitalize an NOI into perpetuity, the typical investor generally does not apply a vacancy factor exceeding ten percent for well-located properties like the subject. A rate of ten percent will be applied in this instance. The added risk of absorption and lease due to the temporarily poor market conditions will be factored, such as an adjustment to the capitalization rate, which is how most investors would approach the analysis. (R-1, p.85)

Bologna created a Pro Forma Operating Statement (R-1, p 92 & R-9 –revised p 92). The Pro Forma showed Revenues consisting of:

Scheduled Gross Rents (SGR)	80,897 sq ft.	@15.50		$1,253,904
Reimbursements				$1,129,359
Scheduled Gross Income				$2,383,263
Vacancy & Collection	10%			(238,326)
EFFECTIVE GROSS INCOME (EGI)				$2,144,937
Expenses				
Administrative	80,697 sq. ft.	$1.50	$121,346	
Management	3.00%		$ 64,345	
Utilities	80,897	$4.10	$331,678	
Maintenance	80.897	$4.05	$327,633	
Taxes			$251,995	
Insurance	80,897	$0.40	$ 32,359	
Reserves	80,897	$0.25	$ 20,224	
TOTAL EXPENSES			1,149,583	($1,149,583)
NET OPERATING INCOME BEFORE DEBT SERVICE &				

DEPRECIATION $ 995,354

Bologna used his market-derived and risk-adjusted (R-1 & R-9, pp 91-92) capitalization rate of 9.3% for tax year 2007 to yield a true cash value of $10,700,000, and for tax year 2006, he used a 9.10% capitalization rate, which yielded a true cash value of $11,000,000.

Using the same Pro Forma methodology as set forth above, Bologna created a Pro Forma Statement for 2006 using a 9.10% overall rate that yielded a true cash value of $11,000,000 using the direct capitalization method.

Reconciliation of his income and sales comparison approach and determining them to be more or less equal, Bologna concluded to a true cash value of the subject property in fee simple for tax year 2006 of $10,500,000 (R-1, p 8 [Bates stamp 0008] and for tax year 2007 of $10,300,000.

FINDINGS OF FACT

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

The parcel is located at 41935 Twelve Mile Road, Novi, Michigan and consists 7.42+/- acres of land and a medical office building The building located on the parcel was constructed in 1981 and it was designed as a single-tenant medical office building.

The Tribunal finds, based on Respondent's Exhibit R-5 (the property record card), that the building is 96,075 square feet in size (gross square foot "GSF").

The Tribunal finds that the building is currently being occupied and marketed as a multi-tenant medical office building.

Based upon the testimony of Jan K. Culbertson, AIA, a senior principal in A3C Collaborative Architecture, who was qualified as an expert in the design and/or redesign of medical office buildings, the Tribunal finds that the subject property suffers from a substantial amount of "functional obsolescence" due to its initial design as a single-tenant building and its current utilization as a multi-tenant building, and this design flaw contributes to the building's high vacancy rate coupled with an over-saturation of medical office buildings in the market.

The Tribunal finds that for all tax years under appeal there existed "curable functional obsolescence" as defined in *The Appraisal of Real Estate*, Appraisal Institute, 13 ed, 2008 at pages 434-435.

The Tribunal finds that for tax year 2006 the subject property had an 84.5% occupancy level (15% vacancy rate) and for tax year 2007 a 46.3% occupancy level (53.7% vacancy rate).

The Tribunal finds that the occupancy rates experienced for the subject property for both years under appeal were in excess of the general occupancy rates for medical office buildings in the general area of the subject and that these occupancy rates were, to a great extent, the result of the design flaws ("functional obsolescence") of the subject property that existed during both tax years.

The Tribunal finds that much, if not all, of the design and layout flaws of the subject building can be cured or eliminated if the December 2, 2004 recommendations of Ventura & Associates Incorporated are accepted. Those recommendations involved converting the subject from a single to multi-tenant building at a cost of $2,016,595 (see R-3, tab 28).

Nothing exists on this record for either of the years under appeal indicating that there were any "additions or losses" as set forth in MCL 211.34d.

The Tribunal finds that Petitioner's expert changed his value conclusions and methodology employed by him in arriving at his conclusions of value using the income approach set forth in P-7 on at least two occasions (see P-7, Petitioner's appraisal of the subject property dated October 10, 2008 and R-6, Petitioner's appraisal of the subject property dated June 15, 2007) coupled with his oral explanation of methodology change at the hearing as to the income approach without any written addendum to P-7 renders Petitioner's expert's opinion of value unreliable and given no weight whatsoever unless otherwise set forth.

The Tribunal finds that the non-homestead millage rate for the City of Novi for both tax years 2006 and 2007 to be 48.9311. The Tribunal does find that Petitioner's tax loading ½ of the non-homestead millage rate for the City of Novi into its capitalization rate is a proper method.

The Tribunal finds that the four sales comparables used by Respondent and the adjustments, taken as a whole, made to the sales yield a more reliable indicator of value, with the exception that no or insufficient adjustments were made in the "functional utility" of the comparables. The

Tribunal will adjust Respondent's concluded values using the sales comparison approach in the "Conclusions of Law" section of this Opinion and Judgment.

The Tribunal accepts Respondent's explanation of why it did not apply the actual vacancy rates to the subject, but rather adjusted (increased) the capitalization rate to reflect the added risk of absorption and leasing due to the temporarily poor market conditions because this is how most investor would approach this analysis. (R-1, p 85.)

The Tribunal finds that Respondent has provided insufficient justification for the Tribunal to accept its failure to "tax load" the existing millage into its overall capitalization rate and to modify Respondent's Pro Forma Operating Statements for both years under appeal to take deduction "taxes" both for the "Reimbursements" and "Expenses" portion of the Operating Statements (See R-1, p 92; R-1 addendum [Bates stamp 006]; R-9, p 92) and, as a result, with tax load 2.45% in Respondent's capitalization rate of 9.10 for tax year 2006 and 9.3 for tax year 2007 for a resulting overall capitalization rate of 11.55 for tax year 2006 and 11.75 for tax year 2007.

APPLICABLE LAW

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

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

MCL 211.27a (2) provides:

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

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

> For taxes levied after 1994, "additions" means, except as provided in subdivision (c) all of the following:
>
> * * *
>
> (iii) New construction. As used in this subparagraph, "new construction" means property not in existence on the immediately preceding tax day and not replacement construction. New construction includes the physical addition of equipment or furnishings, subject to the provisions set forth in Section 27(2)(a) to (o). For purposes of determining the taxable value of property under Section 27a, the value of new construction is the true cash value of the new construction multiplied by 0.50.

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

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

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

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735 (1); MSA 7.650 (35)(1). The Tribunal's factual findings are to be supported by competent, material, and substantial evidence. *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 452 NW2d 765 (1990). "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence." (Citations omitted) *Jones and Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

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

"There are three traditional methods of determining true cash value, or fair market value, which have been found acceptable and reliable by the Tax Tribunal and the courts. They are: (1) the

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

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

The Tribunal is not bound to accept either of the parties' theories of valuation. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 377 NW2d 908 (1985). The Tribunal may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination. *Meadowlanes* at 485-486; *Wolverine Tower Associates v City of Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980). A similar

position is stated in *Tatham v City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982): "The Tax Tribunal is not required to accept the valuation figure advanced by the taxpayer, the valuation figure advanced by the assessing unit, or some figure in between these two. It may reject both the taxpayer's and assessing unit's approaches."

CONCLUSIONS OF LAW

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

In arriving at its ultimate determination of true cash value of the subject property for both valuation dates, the Tribunal has primarily adopted the comparable sales and income capitalization methodology utilized by Respondent with the exception of reducing Respondent's value conclusions using the sales comparison approach (to which no adjustments were made to the comparables for functional obsolescence) by the cost to cure the functional obsolescence which the Tribunal found in its "Findings of Fact" did in fact exist in the amount of $2,000,000 (rounded).

In arriving at its determination of value utilizing the income approach, the Tribunal has adjusted Respondent's Pro Forma Operating Statements and finds the resulting estimate of true cash value for both years as follows:

Tax Year 2006:

Scheduled Gross Rents (SGR)	80,897 sq ft. @15.50			$1,253,904
Reimbursements				$ 853,388
Scheduled Gross Income				$2,107,292
Vacancy & Collection	10%			($ 210,729)
EFFECTIVE GROSS INCOME (EGI)				$1,896,563
Expenses				
Administrative	80,697 sq. ft.	@$1.50	$118,110	
Management	3.00%		$ 63,833	
Utilities	80,897	$4.10	$321,970	
Maintenance	80,897	$4.05	$317,925	
Insurance	80,897	$0.40	$ 31,550	
Reserves	80,897	$0.25	$ 20,224	
TOTAL EXPENSES			$ 873,612	

NET OPERATING INCOME BEFORE DEBT SERVICE & DEPRECIATION	$1,022,951

VALUATION BY DIRECT CAPITALIZATION (2006)

$1,022,951 NOI Tax Loaded Overall Rate (9.1 + 2.45)11.55% **$8,856,718**

2007 Scheduled Gross Rents (SGR)	80,897 sq ft. @ 15.50			$1,253,904
Reimbursements				$ 877,364
Scheduled Gross Income				$2,131,268
Vacancy & Collection	10%			(213,126)
EFFECTIVE GROSS INCOME (EGI)				**$1,918,142**
Expenses				
Administrative	80,697 sq. ft.	@$1.50	$121.346	
Management	3.00%		$ 64.345	
Utilities	80,897	$4.10	$331,678	
Maintenance	80.897	$4.05	$327,633	
Insurance	80,897	$0.40	$ 32,359	
Reserves	80,897	$0.25	$ 20,224	
TOTAL EXPENSES			$897,588	($ 897,588)
NET OPERATING INCOME BEFORE DEBT SERVICE & DEPRECIATION				$1,020,544

VALUATION BY DIRECT CAPITALIZATION (2007)

$1,020,544 NOI Tax Loaded Overall Rate (9.3 + 2.45)11.75% **$8,685,480**

In adjusting Respondent's value conclusions utilizing the sales comparison approach for years which Respondent's expert had determined to be $10,030,000 without any adjustments for functional obsolescence and the Tribunal in its "Findings of Fact" found that functional obsolescence did in fact exist and the cost to cure was $2,016,595, the Tribunal concludes to an indication of value utilizing the sales comparison approach of $8,013,405 for both tax year 2006 and 2007.

Giving equal weight to its indications of value utilizing both the sales comparison and income approach the Tribunal finds the **TRUE CASH VALUE** of the subject property for Tax Year **2006** is ($8,013,405 + $8,856,718 ÷ 2) to be **$8,435,061** and for **Tax Year 2007** ($8,013,405 + $8,685,480 ÷ 2) to be **$8,349,442.**

Having determined the true cash value of the subject property for both 2006 and 2007, the Tribunal concludes that the assessed and taxable value for the parcel is 50% of the above-determined true cash value and is reflected in the Final Values section of this Opinion and Judgment.

JUDGMENT

IT IS ORDERED that the property's assessed and taxable values for the tax years at issue shall be as set forth in the *Final Values* section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the

property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by the Final Opinion and Judgment within 90 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 1995, at a rate of 6.55% for calendar year 1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a rate of 6.04% for calendar year 1998, (iv) after December 31, 1998, at the rate of 6.01% for calendar year 1999, (v) after December 31, 1999, at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000, at the rate of 6.56% for calendar year 2001, (vii) after December 31, 2001, at the rate of 5.56% for calendar year 2002, (viii) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ix) after December 31,

2003, at the rate of 2.16% for calendar year 2004, (x) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (xi) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (xii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (xiii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, and (xiv) after December 31, 2008 at the rate of 3.315 for calendar year 2009.

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

MICHIGAN TAX TRIBUNAL

Entered: April 8, 2009 By: Kimbal R. Smith III