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

Oakland Commons Acquisition, LLC,
Petitioner,

v

MTT Docket No. 333712

City of Southfield,
Respondent.

Tribunal Judge Presiding
Stuart Trager

OPINION AND JUDGMENT

INTRODUCTION

This real property tax valuation case came before the Michigan Tax Tribunal for hearing on November 9, 10, 17 and 18, 2009 in Lansing, Michigan. Petitioner was represented by Joshua M. Wease, Attorney at Law. Laura M. Hallahan, and Sean M. Mulchay, Attorneys at Law, represented Respondent, city of Southfield.

At issue is the true cash value of the subject property, known as Oakland Commons I and II, 20700 and 20750 Civic Center Drive, Southfield, MI 48084. The tax years at issue are 2007, 2008, and 2009. The property is classified for taxation purposes as commercial and is zoned RC, Regional Center District, which includes office, secondary retail, and residential uses. The average level of assessment for each tax year in question is 50%.

Each party offered testimony and documentary evidence. Petitioner's exhibit P-1 was admitted into evidence. Respondent's Exhibit R-6, Exhibit R-8, Exhibit R-10, and Exhibit R-13 were admitted into evidence.

PROCEDURAL HISTORY

The 2007 property tax assessments were based on Respondent's estimate of the true cash value (TCV) of the subject property as of December 31, 2006. Petitioner appeared before the March 2007 Board of Review for the city of Southfield to protest the true cash value (TCV), state equalized value (SEV), and taxable value (TV) of the subject property. The Board of Review denied the relief requested and affirmed the tax assessments. On May 24, 2007, Petitioner filed a petition with the Tribunal alleging that Respondent erred in its assessment of TCV, SEV, and TV for the 2007 tax year. Respondent filed a timely answer. The Tribunal granted Petitioner’s motions to amend to add the subsequent tax years 2008 and 2009.

PARTIES' CONTENTIONS OF TRUE CASH AND ASSESSED VALUES

Petitioner contends that the property is assessed in excess of 50% of its true cash value. Respondent contends that the property is assessed at 50% of its true cash value.

Petitioner’s Contentions of TCV, SEV and TV for the tax years at issue are as follows:

Parcel Number: 76-24-22-201-017

Year	TCV	SEV	TV
2007	$28,500,000	$14,250,000	$14,250,000
2008	$25,700,000	$12,850,000	$12,850,000
2009			

Respondent’s Contentions of TCV, SEV and TV for the tax years at issue are as follows:

Parcel Number: 76-24-22-201-017

Year	TCV	SEV	TV
2007	$35,100,000	$17,550,000	$17,550,000
2008	$34,500,000	$17,250,000	$17,250,000
2009	$34,500,000	$17,250,000	$17,250,000

TRIBUNAL'S CONCLUSIONS OF TRUE CASH AND ASSESSED VALUES

The Tribunal concludes that the true cash value and revised assessments of the subject property are as follows:

Parcel Number: 76-24-22-201-017

Year	TCV	SEV	TV
2007	$31,760,070	$15,880,035	$15,880,035
2008	$32,945,120	$16,472,560	$16,245,276
2009	$34,500,000	$17,250,000	$16,960,068

PETITIONER'S EVIDENCE, APPRAISAL AND EXPERT TESTIMONY

Andrew Gutman

Petitioner's first witness was Andrew Gutman, chief financial officer and asset manager for the Farbman Group. It was his responsibility to oversee the financial aspects of the property. When the property was acquired occupancy was at 60% to 65%. The vacant space was not in market ready condition; either the condition was first generation, or brought back to bare bones in order to market it. He defined first generation as raw space, just concrete floors, with no build-out in the space whatsoever. The occupancy rate has improved due to an aggressive marketing campaign. This included offering long term free rent to prospective tenants and offering significant tenant improvement allowances, in order to induce them to rent at Oakland Commons. Also, lower rental rates were offered to original tenants. Farbman offered $8.75 a square foot for the first year, and he believes that the initial tenants were paying closer to $35 a square foot. Also, they actively marketed prior tenants. The market in Southfield is very competitive, and they are competing with class A buildings and class B buildings. Mr. Gutman believes there is a narrowing difference between the qualities of the building classifications. From December 31, 2006 through December 31, 2007, rent concessions and reduced rates were given to the building tenants prior to acquisition by Farbman. All of the Farbman leases are gross leases, not triple net leases. The need for inducements was also present in the period from December 31, 2007 through December 31, 2008.

Mr. Gutman indicated that Farbman has been actively marketing the excess land. Farbman has no plans to develop the excess land because there has not been a market, or financing, for ground up development in the area.

On cross-examination, Mr. Gutman stated that he brought, pursuant to a subpoena, a purchase agreement, a closing statement, and several related documents. He also brought a cost segregation study summary that was done by Grant Thornton, a certified public accounting firm. Mr. Gutman did not participate in the acquisition of the subject property; however he did participate in the cost segregation study. Mr. Gutman said the cost segregation study was performed for income tax purposes because, pursuant to income tax regulations, buildings are depreciable, but land is not depreciable. In response to Petitioner's counsel's objections as to relevance, Respondent's counsel noted that Petitioner's appraiser also took issue with the Grant Thornton analysis. Respondent's counsel noted there were differences between the ad valorem appraisal, the financing appraisal, and the Grant Thornton allocation analysis. Ms. Hallahan suggested that the allocations in the financing appraisal and the Grant Thornton analysis were consistent with Respondent's analysis of fair market value of the excess land. Petitioner's counsel countered that this was contrary to Tax Tribunal precedent, *Consolidated Aluminum v Richmond Township*, 88 Mich App 229 (1979), because the allocation is commonly negotiated between the purchasers and the sellers to allocate tax benefits for the purchaser and to have less depreciation and to recapture and minimize capital gains.

Grant Thorton allocated just under $15 million to the buildings, but the cost of excess land was not severed. $13.5 million was allocated for the value of all the land against the total cost of acquisition. Mr. Gutman provided documentation to Grant Thorton; however, he was not aware whether Grant Thorton made an allocation as to what land was usable and what land was not usable.

Mr. Gutman testified that the current outstanding mortgage for the property was approximately $27 million, which was the limit under the mortgage that Petitioner could borrow, but it was not necessarily the total amount owed for the acquisition of Oakland Commons.

Farbman retained a retail real estate broker to market the excess land. At one point there was a proposed development, for a hotel use on three acres of the excess land, but the proposal did not come to fruition.

Betty Drapinski

Petitioner's next witness was Betty Drapinski, Farbman Group's director of real estate taxes. She processes tax bills to the accounting division for processing, and she assists in the tax appeals. She testified that the Farbman Group does not own any property, it is a management company; however, Farbman principals are members of real estate ventures.

David Tijerina

Petitioner's next witness was David Tijerina, city of Southfield assessor, who identified Respondent’s exhibit R-8, a Southfield property record card for the subject property, printed

September 2008. R-8 was printed one month before Mr.Tijerina was employed by the city of Southfield.

<u>Michael Gerendasy</u>

Petitioner's next witness was Michael Gerendasy, a self-employed commercial appraiser. Mr. Gerendasy, as an employee of CB Richard Ellis, and along with others, performed an appraisal of the subject property in January of 2007 for Huntington Bank. The purpose of this appraisal was to evaluate the property as collateral for financing. This appraisal had two effective dates, an “as is” valuation for January 2007, and a prospective valuation date of 2010. The bank's instructions for the financing appraisal were to evaluate the surplus land as two individual parcels that were marketable. He then performed an ad valorem appraisal of the subject property, dated April 2009, for submittal to the Tax Tribunal. The assumptions for the financing appraisal and the ad valorem appraisal were different. The financing appraisal was based on a leased fee analysis, while the ad valorem appraisal was based on fee simple. The ad valorem appraisal was a summary appraisal, with a minimum amount of detail to describe the appraisal process, and analysis pursuant to USPAP.

Mr. Gerendasy started preparation of the tax appeal appraisal by calling the city of Southfield and speaking to Jeff Spence, a planner, to inquire of the development potential of the surplus land. Mr. Gerendasy was told that development of the 18 plus acres was limited by the extent of wetlands, setback requirements, and drainage concerns. The setback requirements were contained in the deed to provide a buffer zone between any office development and the Knob in the Woods apartment complex immediately adjacent to Oakland Commons. Mr. Gerendasy learned from this conversation that the assumptions in the prior financing appraisal, that there were two individual marketable parcels, one about ten acres and the other seven acres that were amenable to development, were not true because of zoning.

Mr. Gerandasy looked at CoStar vacancies in class A and B office space and found an average vacancy factor of 28.6% at the end of 2006, and 32.9% at the end of 2007. After looking at lease rates and concessions, he determined a market rental rate for December 31, 2006 of $18.50 per square foot and $17.75 per square foot for December 31, 2007. He determined vacancy percentages of 12% for December 31, 2006 and 16% for December 31, 2007, even though the actual vacancy averages were from 20% to over 30 %. Mr. Gerendasy testified that the vacancy projections were intended to indicate stabilized longer-term occupancy assuming that the current economic crisis would subside and that the occupancy rates would even be higher.

Mr. Gerendasy was advised by the city that the surplus land for the subject property was a total of 18.71 acres of which two areas, 6.76 acres and 4.75 acres were usable.

Mr. Gerandasy loaded property taxes into the cap rate and did not put them into expenses. Therefore, 2.81% for property taxes was added for tax year 2007.

Mr. Gerandasy did not use the cost approach analysis, because owners do not use the cost approach to estimate value. He said the cost approach could be used, but a substantial allowance for external obsolescence and other obsolescence would have to be applied, and he believed there is not a good methodology for quantifying those values.

Mr. Gerendasy used the sales approach in this analysis stating that he believes the only time the sales approach is not viable is when there are absolutely no sales available.

Mr. Gerendasy used the sales comparison approach for valuing the surplus land. He started out by looking at the acreage as being separate from the main parcel. He believes that surplus land could not be sold off, and that its usefulness would be limited to expansion of the subject improvements, or additional improvements. He looked at land sales and concluded a land value per square foot as though the 18.71 acres was a separate parcel and then as surplus land and applied a 50% adjustment. He assumed that anyone buying the land would want to know what portion of the land they could develop and use to derive an income stream, and that land that has no economic utility will not be marketable. Three vacant land comparables were found in the December 31, 2006 analysis and five vacant land comparables were listed in the December 31, 2007 analysis.

Mr. Gerandasy also used the income approach. He surveyed market rents and various indicators including RIES and CoStar. He also used information from the Farbman Company which had budgeted $18.50 rental income a square foot for 2007. Farbman planned five months of free rent on a 65-month lease. So Mr. Gerandasy calculated the concession would be a -7.7% adjustment, and therefore the $18.50 per square foot would really be 93% of the contract rent. For 2007 and 2008, he took the actual operating income and expenses, along with the concessions, to derive an estimated effective rent. Mr. Gerandasy asserted that his rent estimates are conservative. Also, he believes that reconstructing values retrospectively indicate that the prior market estimates were unrealistically high compared to what has actually occurred.

The direct capitalization approach, Mr. Gerandasy used was based on stabilized occupancy. Therefore, as of December 31, 2006, the direct capitalization rate was predicated upon 88% occupancy. He asserted that it did not matter whether the building was 50% occupied or vacant as of the valuation date. He projected an 86% occupancy rate for the following year. He projected income based on market rent applied to the rentable area, and an allowance for electric reimbursement, and miscellaneous income, and then 12% for vacancy loss. The expenses were based on information from the subject property's actual income data. Mr. Gerandasy indicated that, given that the properties were less than fully occupied, the expense values are lower than they would be with full occupancy. He estimated net operating income excluding taxes, which means the value determined is higher than the actual stabilized net operating income because taxes were not included. Once the stabilized value is determined, and the lease discount was subtracted, a value is added for the surplus land. The capitalization rate was determined by looking at the building, the quality of the building, the location, sales comparables, and various other indicators such as Korpacz, and the general economy in order to make a judgment as to the capitalization rate. The national indicators for 2007 ranked 60 metropolitan markets and the Detroit market was rated 60th.

Mr. Gerandasy's conclusion based on the income capitalization approach as of December 31, 2006 was $28,900,000, and $27,210,000 as of December 31, 2007 (Petitioner's appraisal indicated a value of $25,700,000, which was recalculated upwards because of revised vacancy data raising occupancy from 68% to 77%, based on Mr. Gerandasy's recalculation of the lease up discount/vacancy values, during the hearing). The December 31, 2006 value of the surplus land was $1,900,000, which was included in the total value above. The December 31, 2007 value of the surplus land was $1,600,000, which also was included in the total value.

On cross-examination, Mr. Gerandasy recalculated the values for the income approach utilizing 316,634 square feet; the revision is based on Petitioner's rent roll for December 31, 2006, rather than the 312,318 square feet that Mr. Gerandasy had used in his appraisal. Mr. Gerandasy indicated that the square footage on the rent rolls over the months will show a different square footage because of reconfiguration of the interior. Therefore, the rentable square footage will change month-to-month. Multiplying 316,634 square feet times market rent of $18.50 per square foot yields $5,857,729. And then factoring in $1.15 for electricity times 316,634 square feet yields $418,748 and three cents per square foot for miscellaneous income yields $9,499. This totals $6,231,357. Then factoring in $.20 per square foot for credit loss times 316,634 square feet yields a value of $747,763, which was for credit loss and vacancy combined, which subtracted from gross potential income yields $5,483,594. Mr. Gerandasy calculated the total operating expenses, including a management fee of 3 1/2 % and determined a value of $1,790,928. Taxes were not included. Therefore, net operating income after subtracting the operating expenses and management fees becomes $3,692,666. Then applying the tax loaded capitalization rate, a stabilized value of $33,387,577 was calculated. Mr. Gerandasy then deducted $5.9 million for lease up costs and adding the value conclusion for the surplus land of $1.9 million yielded a value for December 31, 2006 of $29,584,620. This is $450,255 higher than what he had originally calculated. By recalculating the lease up costs the value conclusion would increase by further $726,268, for a total increase of $1,176, 523.

Mr. Gerandasy was then asked to recalculate the December 31, 2007 values using 316,634 square feet and a market rent at $17.75 per square foot, which yielded a value of $5,620,254 and electric reimbursement at $364,129 and miscellaneous income at $9,499, which ultimately yielded a total value of $29,264,669, which is an increase of $364,669 from his appraisal.

The current owners acquired the subject property in February 2007 for $28,500,000, based on an allocation of $22,500,000 to the improved portion and $6 million to the surplus land. Mr. Gerandasy testified that the land value allocation is highly overstated for the following reasons. It is based on a total of 18.11 acres, rather than the usable 11.51 acres. It assumes the creation of two separate parcels. He believes the city at most will allow the creation of only one parcel because there is a ten-acre minimum size requirement. Also the allocated value in the financing appraisal is overstated because it assumes that a substantial portion of the usable acreage will be marketed as commercial retail land. To the best of his knowledge, no other sale or transfer of ownership of the subject property has occurred within the past three years.

Cross-examination continued focusing on the January 24, 2007 financing appraisal by CB Richard Ellis, Respondent's Exhibit R-11. Petitioner objected because the financial appraisal assumptions were different from determining true cash value in an ad valorem appraisal. R-11 was for evaluating the leased fee interest and the value being contested is the fee simple interest. Respondent replied that it was not being offered to establish the property’s fair market value on either of the tax dates. It was being offered to evaluate the credibility of the witness, having evaluated the same interest, especially the excess land, with dramatically different value conclusions in the appraisals. Exhibit R-11 was admitted. Cross-examination then focused on R-11, p.12.

Mr. Gerandasy testified as to the difference between a lease fee interest and a fee simple interest. He indicated that a lease fee interest describes a property that is encumbered or partly encumbered by a lease, and a fee simple interest is a property owned without any such encumbrance.

Although Mr. Gerandasy was one of the persons signing the January 2007 financing appraisal, it was not solely his work product, it was a team effort, and he and the other drafter reported to Leslie Linder of CB Richard Ellis, who reviewed and approved the final work product. Mr. Gerandasy agreed that USPAP requirements indicate that a signature indicates review and approval of the appraisal analysis of the property. However, in the case of a joint signature, he indicated that it is impossible to know and accept every detail. His signature, he testified, indicated that he accepted the value and the overall analysis.

Mr. Gerandasy testified that if there was more usable land on the subject property his value conclusion would increase, especially if the portions of usable land were contiguous. He defined excess land as a potentially separate parcel, which could be sold off at any time. Surplus land is part of the property and legally it cannot be sold off unless there is a lot split. The owner must go to the city and be given permission to split it off the surplus land to be used as a separate parcel. Surplus land has limited potential use primarily as room for expansion of an existing use. Therefore the sale and development potential of surplus land is limited. Mr. Gerandasy acknowledged that both the financing and the ad valorem appraisals indicated that the undeveloped portions of the subject property were surplus land. He testified that the total of the vacant land was 18.71 acres of which 11.51 acres were usable, and the remaining 7.2 acres, as wetlands, did not provide any value because they were not usable or developable. Mr. Gerandasy testified that he did not know about the value of wetlands nor did he have any experience in developing wetlands. He was not aware of the details of the process of mitigating wetlands. He did believe that the cost of mitigating wetlands would be very high and this would preclude developing them.

Mr. Gerandasy, in the ad valorem appraisal, valued only the 11.51 acres of surplus land that he considered usable and then reduced this value by 50%. He concluded a surplus land value, and then applied a discount to it because it is not separately marketable. However, in the financing appraisal, he used a hypothetical allowing a retail use of a seven-acre parcel, and a 10-acre office parcel and determined a total value of $7.5 million. He testified the financing appraisal indicated that the highest and best use of the excess land would be the development of a commercial project with examples including retail, hospitality, and owner/user oriented headquarter buildings. Mr. Gerandasy agreed that his value conclusion for December 31, 2006 and December 31, 2007 could change if the wetlands on the subject property could be developed.

Mr. Gerandasy testified that the financing appraisal indicated that the improved portion, the land under the buildings, of the subject property was 21.46 acres, and the excess land indicated in the financing appraisal was 10.73 acres. The excess land with potential office component in the financing appraisal is 10.73 acres, and the potential commercial portion is 7.98 acres. Totaling the two component of the excess land would yield 18.71 acres.

Mr. Gerandasy valued the excess land, the 18.71 acres, as of December 31, 2006, by assuming that the 7.2 acres of wetlands had zero value and the value of the remaining 11.51 acres had a value of $3.8 million, which he discounted by 50%. As of December 31, 2007, he derived the value of the 11.51 acres to be $3.2 million, to which he again applied a 50% discount.

In the December 31, 2006 ad valorem appraisal, Mr. Gerandasy gave primary weight to the sales comparison approach, because of the subsequent purchase of the property, while as of December 31, 2007, he gave substantial weight to the income capitalization approach, relying on the direct capitalization method. He did not consider using the discounted cash flow method. In valuing subject property using the direct capitalization method, he estimated a stabilized value of the property. From this value he deducted certain expenses, and added the leased up costs to arrive at his value conclusion. For December 31, 2007, he simply adjusted values from December 31, 2006 to account for inflation. However, the management fee wasn't escalated for inflation and taxes were loaded into the capitalization rate. For the 2007 tax year, he used an 11.06% tax loaded capitalization rate, which included a tax load of 2.81%. In cross-examination, it was indicated that the millage rate was 54.319719. Therefore, the tax load in the capitalization rate would be 2.71%. If 2.71% tax rate was used the value conclusion would increase $300,000. And if the same methodology was applied to the value as of December 31, 2007, and an adjusted cap rate was used with 2.6036% for the tax rate was added to 8.5% cap rate, the tax loaded cap rate would be 11.1036% and the value would increase $213,000. This would be in addition to the increase in value using the larger square footage of 316,634. Mr. Gerandasy indicated that although he would agree with the arithmetic of the calculations, he did not agree with the increased value conclusions.

On redirect, Petitioner's counsel pointed out that there were errors in the charts prepared by Respondent to demonstrate Petitioner's December 31, 2006 sales comparables. Respondent's counsel indicated that the data indicated in cross-examination came from Mr. Gerandasy's appraisal and not the chart, and that Mr. Gerandasy had an opportunity to compare the chart with his report.

RESPONDENT'S EVIDENCE, APPRAISAL, AND EXPERT TESTIMONY

Jeffrey L. Spence

Respondent’s first witness was Jeffrey Spence, assistant city planner, city of Southfield. He testified that the subject property is zoned RC, which is the city of Southfield's all-encompassing zoning, allowing any use from residential, to office, to retail. In RC zoning, sites smaller than 10 acres have been developed in the city of Southfield. One would have to go to the Zoning Board of Appeals for a waiver of the 10-acre minimum, and then request site plan approval from the City Council.

There is a northern portion of the subject property, approximately four acres, adjoining the Knob in the Woods that was set aside to act as a buffer to any office development south of the apartment complex.

Mr. Spence testified that he had seen the amount of wetlands on a property reduced by approximately two-thirds after an extended review process. In addition, wetlands can be incorporated into a development plan, or relocated, or mitigated.

Mr. Spence testified that there have been several commercial developments in the city of Southfield from December 31, 2006 to the present.

Mr. Spence testified that the minimum set back in RC is 75 feet, in addition to the 10-acre lot size minimum. Also, he indicated that besides the setback requirements, and wetland issues, the existing drainage system would have to be modified and that resolution of all of these issues could diminish the full development of the excess land.

David Tijerina

Respondent's next witness was David Tijerina, city of Southfield assessor. Mr. Tijerina inspected the property in October 2008. Indeed, this was the first property he looked at, once he had been hired by Southfield. His inspection revealed that there were inaccuracies in the city assessment records. The records showed two five-story buildings, however, the two buildings are six stories each.

Mr. Tijerina testified that the 2007 Southfield millage rate was 54.319719 per thousand of assessed value, and not 56.2 per thousand of assessed value as listed by Mr. Gerandasy. Therefore, the 2007 tax portion of the adjusted cap rate should be 2.716% and not 2.81%. Also,Mr. Gerandasy was incorrect as to tax year 2008 millage; the actual rate was 52.072166 per thousand of valuation, and not 54 per thousand of assessed valuation, and the tax year 2008 portion of the capitalization rate should be 2.6036%.

<u>John R. Widmer, Jr.</u>

Respondent's next witness was John R. Widmer. He has appraised more than ten office buildings in the last three years in Southfield, and numerous other office buildings outside the city of Southfield. He is a member of the Appraisal Institute with an MAI designation. He is also a licensed certified general appraiser in the state of Michigan.

He appraised fee simple, the subject property Oakland Commons I & II. Mr. Widmer testified that he appraised the fee simple interest, rather than the leased fee interest, as this is his usual practice when doing an ad valorem appraisal. As for a financing appraisal, where the property is encumbered by leases, and there are no special instructions, the appraisal will be a leased fee appraisal. He was aware that Huntington Bank had commissioned a financing appraisal for the subject property. He has never had a bank tell him how to value property or whether to value land as excess land as opposed to surplus land. Mr. Widmer testified that if he was valuing the same property as a leased fee appraisal and as fee simple, he would expect some minor variation, but for the most part he would not expect a major variation.

It was Mr. Widmer's professional opinion that the price paid for the subject property was very favorable to the purchaser. He understood that the prior owner, Teachers Investment, was very motivated to sell this property and other properties. Indeed, when Teachers was selling the property, they sent out an offering memorandum, which Mr. Widmer reviewed. The net rentable area listed in the offering memorandum was 316,634 square feet. No offering price was contained in the memorandum; however, there was an income pro forma in the memorandum. The memorandum had two lines for property taxes. One was for recoverable property taxes and the other was for nonrecoverable property taxes, and an allocation was applied relating to the existing vertical improvements for the two office buildings. The nonrecoverable property taxes related to the additional land that is associated with this property. Tenants would normally pay a pro rata share of the recoverable property taxes, but not pay the taxes for the additional land. He was surprised that the property taxes in the pro forma were nearly $1.2 million. He said from an appraiser's perspective, there is an understanding that there will be an uncapping in value if there is a big disparity between the taxable and assessed values.

The rent rolls from the prior management company indicated 316,634 square feet. He determined from CoStar and the prior management company that there was roughly 65,000 square feet of unfinished space in the buildings.

In performing the appraisal Mr. Widmer considered all three approaches to value. He concluded that the cost approach was inapplicable to valuing the subject property. He performed a sales comparison study, and considered it secondary to the value he derived from the income approach.

Initially, he determined the highest and best use of the subject property as if it were vacant and available to be an office or commercial development. Mr. Widmer noted two extraordinary assumptions, as they related to valuation of the property. The first was that there were no adverse environmental conditions impacting the property. The second was the lack of information provided by Petitioners. Financial statements were presented to him, but he did not have complete rent rolls to rely on. The December 31, 2006 rent roll and the calendar year 2006 and 2007 operating statements were subsequently provided to Mr.Widmer by Petitioner.

He indicated that there are two techniques for utilizing the income approach to valuing property, direct capitalization and a discounted cash flow. He considered direct capitalization with an overview of property sales for vacant space. He considered and reviewed income capital or direct capitalization with a modified discounted cash flow, which is essentially calculating what the rent loss would be, what lease up would be, and then he considered it from a direct capitalization perspective with a loaded tax capitalization rate. His analysis was based on the rent roll for the December 31, 2006 valuation, and prior rent rolls from the prior owner from years 2002 to 2006. He made a distinction between new tenant deals and renewing tenants, and ended up relying on a combination of contract rental rates and market rental rates, which he believes constitutes 93.5% of the conclusion of existing contract rents. He concluded a market rent of $20 per square foot for 2007. He concluded an average market rent of $18.21 per square foot for 2008. He applied rent only to the existing occupied square footage and not the vacant space. Therefore, for 2007, after factoring in actual contract rents, he used an average rent factor of $21.40 per square foot and for 2008 for occupied space an average rent of $19.49 a square foot.

For the value as of December 31, 2006 Mr. Widmer multiplied the average rent per square foot, $21.40, times the occupied square footage, 206,191 square feet, based on 65.1% occupancy, and determined $4,412,662 for the occupied contract rent. He determined miscellaneous income, which included electricity recovery and communication lines in the building at $481,463. This yielded a gross income of $4,333,169, to which he applied a 10% reduction for underlying vacancy, and 1% for collection loss, which resulted in an effective gross income (EGI) of $4,289,837. He separated operating expenses into eight categories, which included real estate taxes, liability insurance, repairs and maintenance, janitorial cleaning, building utilities, management fees, miscellaneous administrative fees, and capital reserve, which resulted in total operating expenses of $2,186,169. Subtracting total operating expenses from EGI yielded net operating income of $2,103,668, and with an overall capitalization rate of 9% resulted in an estimated true cash value of $23,374,093. He added a contributory value for the vacant space of $6,445,604, and contributory value of the excess land at $5,294,718. This resulted in a total true cash value, as derived by the income approach, as of December 31, 2006 of $35,114,415, which he rounded down to $35,100,000.

Mr. Widmer estimated the subsequent year value with an inflation rate based on the CPI rather than actual figures, because he believed income had not stabilized after the purchase. For the value as of December 31, 2007 he multiplied the average rent per square foot, $19.49, times the occupied square footage, 244,512 square feet, based on 77.2% occupancy, and determined $4,765,133 for the occupied contract rent. He determined miscellaneous income, which included electric recovery and communication lines in the building at $414,829. This yielded a gross income of $4,814,632, to which he applied a 10% reduction for underlying vacancy, and 1% for collection loss, which resulted in an effective gross income of $4,615,346. He again separated operating expenses into eight categories, which included real estate taxes, liability insurance, repairs and maintenance, janitorial cleaning, building utilities, management fees, miscellaneous administrative fees, and capital reserves, which resulted in total operating expenses of $2,310,739. This yielded a net operating income of $2,304,607, and with an overall capitalization rate of 9% resulted in an estimated true cash value of $25,606,739. He added a contributory value for the vacant space of $3,586,331, and contributory value of the excess land at $5,294,718. This resulted in a total true cash value, as derived by the income approach, as of December 31, 2006 of $34,487,789, which he rounded to $34,500,000.

Mr. Widmer based capitalization rates based on office market value extractions, developed from calculating the overall rates in the sales and other investment properties, as well as looking at investment surveys that are available in the market from which he determined an overall rate range from roughly 8.75% to 9.25%, which he reconciled at 9%. He also considered investment risks associated with the subject property, including tenant roll reduction, and rent increases, and increases in occupancy, which were all built into the market extracted rate.

Mr. Widmer indicated that he derived the value of the vacant space by reviewing the sales of office buildings that have occupancy issues, or that were 100% vacant. He made an evaluation of vacant space and office building sales, which he used for tax years 2007 and 2008. The first comparable was the Presidential Office Center located on Southfield Road. Petitioner's counsel objected because this property was not in Respondent's appraisal report, R-10. Respondent pointed out that the comparable is listed on page R-10-81. The other vacant property was on Stephenson Highway. Petitioner's counsel withdrew his objection. Presidential Office Center was purchased May 21, 2007. The sale price was based on a rentable per square foot basis of $52.71.

Petitioner's counsel objected again, because the analysis of the sale of this comparable was not included in the appraisal report. Respondent's counsel responded that Petitioner had had the report and could have and should have asked for the underlying data. Petitioner's counsel responded that the appraisal report and the underlying data were to be used as evidence for the Tax Tribunal, and that not providing the documentation was contrary to Tribunal regulations, especially TTR 252. The Tribunal held that having a witness testify as to comparables that were not part of the record was contrary to Tax Tribunal Rules and the Michigan General Court Rules, which require providing adequate notice to the opposing party. Respondent's counsel then conceded that the additional material was not included in the addendum provided to Petitioner and the Tribunal. The Tribunal allowed Respondent to present an offer of proof as to whether the missing data was determinative or referenced elsewhere in the report, and if admitted the Tribunal would weigh the evidence accordingly.

Mr. Widmer, after examining his copy of the appraisal and the copy that was submitted to the Tribunal, indicated that between R-10-81 and R-10-82, 25 pages were missing. These 25 pages include five land comparables, a summary and an adjustment process for the land. Included was an illustration of improved office building sales that were relied upon and reviewed to substantiate the value of the occupied square footage, and an illustration of the sales and discussion of the adjustment process for the evaluation of vacant square footage in the building.

Petitioner was given an opportunity to review Respondent's missing exhibit pages and Petitioner indicated that some of the material was data and some of the material was intended to go into the appraisal report, R-10. The Tribunal ruled that the documents containing data could be offered pursuant to an offer of proof, but the amendments to the appraisal report could not be offered.

Direct examination of Mr. Widmer focused on income vacant property comparables #1 and #2. Comparable #1 is Presidential Office Center, on Southfield Road in Southfield. Comparable #2 is the 800 Building, on Stephenson Highway in Troy. Based on these two comparables Mr. Widmer calculated a contributory value to the subject property to vacant space for tax year 2007 at $58.36 per square foot, yielding a value of $6,445,604 for tax year 2008 and $49.73 per square foot, yielding a value of $3,586,331. Mr. Widmer testified that these values were supported by CoStar and the rent rolls he was able to obtain.

Mr. Widmer distinguished the valuation approach that he used compared to the valuation approach Mr. Gerandasy used. Mr. Gerandasy's approach was an alternative method, where the entire property is valued at a stabilized level and then costs associated with leasing up the additional space are deducted.

Mr. Widmer concluded, pursuant to the direct capitalization method of the income approach fair market value of the buildings as of December 31, 2006, was $29,819,697, and for December 31, 2007, he concluded under the direct capitalization method of the income approach, a fair market value of $29,193,070.

Mr. Widmer testified that it would not be appropriate practice to value the same parcel of property as being both excess land and surplus land.

Mr. Widmer recalled that Mr. Gerandasy had testified that 11.51 acres were excess land and derived a value of $3.8 million for 2007 and $3.2 million for 2008 and then Mr. Gerandasy applied a 50% discount to the excess land. Mr. Widmer defined excess land as that land, which is not needed to support the primary improvement to a site, and surplus land is that which is not needed to support a highest and best use of a site, but due to physical limitations is not marketable as a distinct parcel. Mr. Widmer testified that in his opinion the subject property is an ideal example of excess land. It offers sufficient frontage and no physical limitations on development. Surplus land would be where there is no road accessibility and it can only be used for building expansion, and it is not readily marketable as a freestanding site. Mr. Widmer testified that there are 18.7 acres of excess land on the subject property. This includes a portion of the property that has drainage, but not the northern four acres adjoining Knob in the Woods. Further, Mr. Widmer testified that wetlands have monetary value other than aesthetic value. He believes wetlands can be mitigated. He also asserted that wetlands can be used to establish density for development of a parcel. Mr. Widmer also had knowledge of a development proposal that was distributed by Farbman for the development of the 18.71 acres of excess lands as a stacked multiple use development.

Direct examination of Mr. Widmer shifted to the value of the excess land, Respondent's Exhibit 14, which consisted of five comparables. However, the Tribunal determined that none of the comparables in Respondent's Exhibit 14 were referenced or contained in the body of Respondent's appraisal report, R10; therefore Exhibit 14 was not admitted. Based on Exhibit 14 and the comparables, Mr. Widmer had determined a per square foot excess land value of $6.50 for the entire 18.71 acres.

The Tribunal ruled that Respondent's Exhibit 13 was sufficiently represented in the body of the appraisal report, R 10, so as to be admissible. There was sufficient information in the appraisal report so that Respondent's Exhibit 13 would not be a surprise to Petitioner. The Tribunal determined that Respondent's Exhibit 13 is repetitive of information contained in Respondent's appraisal report. Respondent's Exhibit 14 is not duplicative of information contained in Respondent's appraisal report; therefore, the Tribunal found that Respondent's Exhibit 14 is not admissible because it had not been submitted as required by the prehearing conference summary. The summary of the prehearing conference held June 4, 2009, indicated that all exhibits were to be provided, and the Tribunal determined that the material in Respondent's Exhibit #14 is not referenced at all in Respondent's appraisal report.

Mr. Widmer was asked to look at the vacant land comparables utilized by Mr. Gerandasy. Mr. Widmer asserted that Petitioner's comparable #5, located at 27355 Cabaret in Novi, was not comparable because he had talked to the owner, Etkin Equities, and he believes this was not a market-based sale. Mr. Widmer testified that Petitioner surplus land comparable #3 at 40101 West 12 Mile in Novi is substantially impacted by wetlands.

On cross-examination, Mr. Widmer agreed that the net rentable area in his appraisal report was 316,634 square feet; however, in the appraisal report that he prepared for the prior owner, as of December 31, 2001 he had indicated 320,824 square feet. Mr. Widmer could only speculate as to the difference in square footage, but thought that the differential might be based on CoStar. Mr. Widmer indicated that the value of the excess land was listed in his appraisal report, R-10, at $5,294,718. This was the same value he had concluded as of December 31, 2001, December 31, 2002, and December 31, 2003.

Mr. Widmer testified that he reached the ultimate value for the income valuation approach based on the direct capitalization approach. He also considered discounted cash flow analysis but did not use it. There was no reconciliation between the direct capitalization approach and the discounted cash flow analysis, in Mr. Widmer's appraisal.

Mr. Widmer indicated that his use of contributory value for vacant space was something he had indicated in discussions with the Farbman group and also with the prior owner. He believed that vacant space in the market for the subject property would be able to achieve $58 a square foot.

FINDINGS OF FACT

The subject property commonly known as Oakland Commons is located at 20700-20750 Civic Center Drive, Southfield, in Oakland County. Respondent’s record card indicates the property was purchased by the current owner on January 31, 2007 at a reported price of $28,250,000. The total site area is approximately 40.18 acres upon which sit two office buildings totaling approximately 21.46 acres, and the excess land contains 18.71 acres. The site in addition to the two office buildings includes parking areas and landscaping. Gas and electricity and all public utilities are available to the property, including municipal water, sanitary and storm sewers. The property is classified for taxation purposes as commercial real property. The average level of assessment in effect for the subject property's classification for each tax year in question is 50%.

The Tribunal finds the 2007 tax year true cash value based on the income valuation approach as follows:

Income

Potential Income ($18.50 x 316,634 square feet)	$5,857,729
Electricity Reimbursement ($1.15 x 316,634 square feet)	$364,129
Miscellaneous income ($.03 x 316,634 square feet)	$9,499
Gross Potential Income	**$6,231,357**
Credit Loss 1%	($62,314)
Vacancy Loss 11%	($685,449)
Effective Gross Income	**$5,483,594**

Expenses

Insurance	$.20 per square foot	$63,327
Utilities	$2 per square foot	$633,268
General Operating	$1 per square foot	$316,634
R&M	$.75 per square foot	$237,476
Janitorial	$1 per square foot	$316,634
Management Fee	3.5%	$191,926

Reserves $.10 per square foot		$31,663
Total Operating Expense (excluding taxes)		**$1,790,928**
Net Operating Income		$3,692,666
Tax Loaded OAR	(8.25% +2.716%)	10.966%
Indicated Stabilized Value		$33,673, 773
Lease-up Discount		($5,173,732)
Excess Land		$3,260,030
True Cash Value		**$31,760,071**

The Tribunal finds the 2007 tax year true cash value based on the income valuation approach as follows:

Income

Potential Income ($17.75 x 316,634 square feet)	$5,620,254
Electricity Reimbursement ($1.15 x 316,634 square feet)	$364,129
Miscellaneous income ($.03 x 316,634 square feet)	$9,499
Gross Potential Income	**$5,993,882**
Credit Loss 1%	($59,939)
Vacancy Loss 11%	($659,327)
Effective Gross Income	**$5,274,616**

Expenses

Other operating expenses (2006+2.5%)	$1,638,977
Management Fee 3.5%	$184,612
Reserves $.10 per square foot	$31,663

Total Operating Expense (excluding taxes)		**$1,855,252**
Net Operating Income		**$3,419,364**
Tax Loaded OAR	(8.5% +2.6036%)	11.1036%
Indicated Stabilized Value		**$30,795,093**
Lease-up Discount		($1,110,000)
Excess Land		$3,260,030
True Cash Value		**$32,945,123**

The Tribunal determines that the square footage of the two structures is 316,634 square feet. This determination is supported by the December 31, 2006 rent roll and the testimony regarding the prior owner's offering memorandum, which indicated the square footage, and the REDICO prior rent rolls.

The Tribunal adopts the rental rate per square footage as determined by Mr. Gerandasy, based on Mr. Gerandasy having access to the actual rent rolls. As indicated further, the Tribunal adopts the methodology as used by Mr. Gerandasy. However, as explained further, some of Mr. Gerandasy's data assumptions are not accepted.

The expenses, as indicated by Mr. Gerandasy and Mr. Widmer, are fairly close to each other. The major difference is that Mr. Widmer calculated property taxes into the expenses. The STC Manual, Volume 3, Chapter 8, The Income Approach, indicates that:

> "Property taxes are generally not included as an expense when appraising a subject property for assessment purposes. The reason for this is that the purpose of the appraisal is to estimate the value which will become the basis for the property taxes assessment. To use the existing taxes as an expense would be to say that the present assessment is

> already correct. Instead of being treated as an expense, property taxes are handled as part of the capitalization rate."

See also, *The Appraisal of Real Estate* (Chicago:13th ed, 2008), Chapter 21, Income and Expense Analysis, p 485.

Vacancy and Credit Loss. Mr. Gerandasy testified that the 11% vacancy projections that he determined were intended to be longer-term stabilized vacancies with the idea that at some point in the future the vacancies would decline, and that the current economic crisis will be over. However, he did indicate that current conditions do not support these vacancy values. Mr. Gerandasy's vacancy values were in part derived from market indicators such as CoStar and REIS. Mr. Widmer used a 10% vacancy factor for underlying vacancy based on his calculations. As indicated on page R10-49, based on a five-year market lease term with 50% probability of renewal and 50% probability of rollover, Mr. Widmer assumed a re-leasing period of 13 months, a weighted vacancy lag of 6.5 months, and a total lease cycle of 66.5 months, yielding a weighted average vacancy of 9.8%. The vacancy values determined by Mr. Gerandasy, and Mr. Widmer support each other.

The Tribunal finds that the vacancy and credit loss of 11% for each tax year at issue is supported by a preponderance of the material and credible evidence that is relevant to this issue.

Insurance Expense. The Tribunal finds that the insurance expense of $63,000 for tax year 2007 is supported by the income statements. Mr. Gerandasy indicated insurance expense of $.20 per square foot, and Mr. Widmer indicated an insurance expense of $.15 per square foot; however, Mr. Widner acknowledged that his value was on the conservative side.

Management Expense. Mr. Gerandasy indicated a management fee of 3.5%. However, he did not provide any testimony as to the basis of the 3.5% except that the fees range from 2% to 5%. Mr. Gerandasy's report was reviewed by Farbman personnel and if the 3.5% fee was too low or too high it would have been revised. Mr. Widmer indicated a management fee of 3%. By reviewing the market he determined that management's fees ranged from 2% to 5%.

Capitalization Rate. The Tribunal finds that Petitioner's capitalization rates of 8.25% plus 2.716% (factoring in taxes) for tax year 2007, and the capitalization rate of 8.5% plus 2.6036% (again, factoring in taxes) are supported by the band of investment method and the rates derived from sales of comparable properties. Petitioner used three methods to estimate the capitalization rate applicable for the subject property. This was done by review of investor surveys, extraction of rates from comparable sales, and the band of investment method. The KORPACZ Investor survey indicated capitalization rates for suburban office properties ranging from 7% to 11% with a central tendency of 8.91%. Petitioner noted that rates were moving downward over the past several quarters, and this trend is expected to continue in the near term. The second method Petitioner relied on was the extraction of capitalization rates from comparable sales which indicated a range of 8.2% to 9.26%. Petitioner also factored in several positive factors. Mr. Gerandasy indicated that the subject property is a good quality recently constructed class A/B building in a favorable location with good access and visibility, and based on rent rates, is competitive with established higher quality buildings. The negative factor for the subject office market is weak demand for both 2007 and 2008 tax years. Occupancy and rental rate trends are negative, because this market has a concentration of larger corporate clients and it is more affected by the ongoing recession.

Respondent based its capitalization rate on similar methodology as Petitioner, relying on sales commissions, yield rate, and prevailing capitalization rates. Mr. Widmer considered the first component to be the cost of sale, assuming that commissions would be 1%, with transfer taxes and closing costs, yielding a total of 2.11%. Mr. Widmer considered the yield rate to be more difficult to extract because anticipated performance is difficult to predict. He indicated there is a reality basis for assuming negative and positive assumptions. Reported capitalization rates, within the survey, range from roughly 8.7% to 9.2% over the past two years. Mr. Widmer indicated based on the assumptions incorporated in his analysis that economic growth parameters, along with review of yield rate requirements for real estate and alternative investment vehicles, that the subject property will be valued at a base yield rate of 9.5%, which Mr. Widmer believes is approximately 20 basis points lower than the average yield percentage within the KORPACZ survey. Respondent noted that the best method for measuring overall rate is market extraction, utilizing the primary sales included in Respondent's appraisal, along with a review of several other investment property sales throughout the southeastern Michigan region. Even with recent soft market conditions and a deteriorating economy in southeast Michigan, the office market has remained active over the past several years. A review of capitalization rates over the past several years indicates a stable but downward trend derived from the 2007 office building sales, capitalization rates ranging from 5.1% to 9.3%, with a simple and weighted average conclusion of roughly 8.0%. Respondent indicated that there has been a minimum of sale activity of investment oriented office buildings since year-end 2007. However, for the few 2008 transactions, overall rates were reported with a wide range from 6.5% to 8.5%. The low end of the range was set by a portfolio sale of various Citizens Bank branches and corporate offices across the country. Respondent indicates that with the paucity of 2008 sales, the samples offer minimal insight. Considering the subject's economic characteristics and KORPACZ statistics, Respondent indicates that an overall rate for the subject property is 9.0%. Respondent also considered that there are tighter lending restrictions which have resulted in a substantial decrease in the sale of investment oriented assets. This has to be balanced against the near investment grade rating of the subject’s primary tenants and survey data that indicate that buyers will typically pay a premium for similar type properties. Mr. Widmer concluded a 9.0% overall capitalization rate for both tax years and he included real estate taxes in the operating expenses.

Taking all the relevant evidence into account, it is concluded that a capitalization rate of 8.25% is supported by the evidence and expert testimony for tax year 2007, and likewise a capitalization rate of 8.5% is supported for tax year 2008. The applicable property tax rate for tax year 2007 is 54.319719 and the tax load capitalization rate consequently would be 2.71%. As for tax year 2008, with a millage rate of 54.319719 per thousand dollars the capitalized tax rate would be 2.6036%.

Lease-Up Discount. For tax year 2007 Mr. Gerandasy applied a lease-up discount of $5,900,000. Upon checking his figures, he revised this total to $5,177,132. In addition, the lease-up discount for tax year 2008 was initially $4,300,000, which Petitioner revised based on the upward revision in occupancy figures and he lowered the lease-up discount to $1,110,000. The lease-up discount is based on the costs of upgrading and marketing vacant space. Respondent did not supply any lease-up discount costs. The Tribunal determines that the revised lease-up costs based on the evidence and testimony is well supported.

Excess Land/Surplus Land. The excess/surplus land comprises 18.71 acres, of which 7.2 acres are wetlands. The Tribunal finds that the 18.71 acres are surplus land and the land should be valued accordingly.

Petitioner concluded a value for tax year 2007 of the excess/surplus land at $1,900,000, and $1,600,000 for tax year 2008. This was based on the assumption for tax year 2007 that the 7.2 acres of wetlands have zero value and the value of the remaining 11.51 acres has a value of $3.8 million, which he discounted by 50%. As for tax year 2008, he determined a value of the 11.51 acres at $3.2 million, which he again discounted at 50%.

Respondent, in its summary of valuation for tax years 2007 and 2008, valued the entire 18.71 acres at $6.50 per square foot, yielding a value of $5,294,718. However, these values were based on five comparables which were contained in Respondent's proposed Exhibit 14, which was not admitted because the evidence was not provided prior to the hearing as required by the Tribunal's Scheduling Order. In direct examination, Mr. Widmer indicated that two of the comparables contained in proposed Exhibit 14 were also in Petitioner's vacant land sale comparables, and that these two properties were both impacted by wetlands on site. Petitioner’s vacant land comparable #1 (Respondent’s #5) is owned by the Bosch Corporation, on the northwest corner of M-14 and I-275, in Plymouth Township, comprising 15.26 acres with the sale price of $4,400,000, which yields a per square foot price of $6.62. The sale occurred January 22, 2003. Petitioner's vacant land comparable #3 (Respondent #2) is owned by the International Transmission Corp., at 40101 West 12 Mile Rd in Novi, Michigan, comprising 23.21 acres with a sale price of $4,150,000, which yields a per square foot price of $4.10. The sale occurred November 6, 2006. Mr. Widmer testified that there are approximately 9 acres of wetlands on this site.

The Tribunal finds that Petitioner's adjustments, reducing the usable acreage from 18.71 acres to 11.51 acres and then discounting the resulting value by 50%, are not probative or persuasive. Mr. Gerandasy admitted a lack of experience regarding the valuation and development of wetlands. Mr. Widmer indicated that wetlands have intrinsic value, whether used to meet density requirements, or the wetlands can be mitigated or relocated.

Petitioner’s comparable #1, the Bosch site, with a sale on January 22, 2003, with a per square foot sale price of $6.62, is not deemed to be as probative as Petitioner’s comparables #3, the ITC site, which sold more recently, with a sale price of $4.10 per square foot. The Tribunal finds that Petitioner's comparable #3 with its more recent sale price is probative and persuasive. The Tribunal notes that Mr. Gerandasy did not make any adjustment for wetlands in this comparable. This supports the Tribunal's conclusion that the excess land should be valued at $4.10 per square foot. This determination is also supported by testimony and evidence indicating that the Farbman Group had marketed the vacant portion of property as office and stacked retail, but withdrew the property because of a decline in market and economic conditions.

Therefore, based on all the evidence and testimony the Tribunal concludes that the 18.71 acres are excess land and the land has value.

Market Approach to Value

Mr. Gerandasy in exhibit P1, Petitioners appraisal, provided values for tax years 2007 and 2008. However, given that the values are premised on 312,318 square feet and not the 316,634 square feet as supported by the evidence; and that the lease-up discounts, as indicated in P1 were revised substantially; and the surplus land value determination, including the assumption that wetlands are worthless; and the unsubstantiated 50% discount off the remaining value, is found by the Tribunal to not be probative or persuasive.

Mr. Widmer relied on his value determination based on the income approach, and therefore did not attempt to reconcile the values he determined based on the income approach with the market data that he found, but he simply put the market data in the addendum to his appraisal report.

Although Petitioner and Respondent considered the cost approach, neither party utilized it in their valuation analysis. The Tribunal notes that there is a fundamental weakness in the cost approach because of the difficulty in accurately estimating accrued depreciation, functional obsolescence, and external obsolescence, and current market conditions. Therefore, the Tribunal accepts that the cost approach was not used.

Although Petitioner filed a motion to add tax year 2009 and the Tribunal granted the motion, Petitioner did not provide a valuation for tax year 2009. Therefore, the true cash value for 2009 as indicated on the tax rolls is accepted by the Tribunal, and the 2009 taxable value is adjusted as indicated in the Tribunal's Conclusions of True Cash and Assessed Value.

<u>CONCLUSIONS OF LAW</u>

As used in the General Property Tax Act, "true cash value" means the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale. MCL 211.27(1).

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735(1). "The petitioner has the burden of establishing the true cash value of the property...." MCL 205.737(3); MCL 211.27(1); *Meadowlands Limited Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 483-484; 473 NW2d 363 (1991). "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 Steel Corp v City of Warren*, 193 Mich App 348; 483 NW2d 416 (1992), citing: *Kar v Hogan*, 399 Mich 529, 539-540; 251 NW2d 77 (1976); *Holy Spirit Ass'n for the Unification of World Christianity v Dept of Treasury*, 131 Mich App 743, 752; 347 NW2d 707 (1984).

"True cash value" is synonymous with "fair market value." *CAF Investment Co v State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974). The Michigan Supreme Court, in *Meadowlanes, supra*, held that the goal of the assessment process is to determine "the usual selling price for a given piece of property." In determining a property's true cash value or fair market value, Michigan courts and the Tribunal recognize the three traditional valuation approaches as reliable evidence of value. See *Antisdale v Galesburg*, 420 Mich 265; 362 NW2d 632 (1984).

The three most common approaches to valuation are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach. *Meadowlanes*, at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968); *Antisdale*, at 276. The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale*, at 277.

Under MCL 205.737(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 finding 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 Assocaites v City of Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980); *Tatham v City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982).

In this case, the Tribunal concludes that the law and appraisal practice favor the application of the income approach to this income producing rental property. *Northwood Apartments v City of Royal Oak*, 98 Mich App 721; 296 NW2d 639 (1980); *Eversdyk v City of Wyoming*, 10 MTT 664 (1999), MTT Docket No. 195925. “The capitalization-of-income method has been described as the most appropriate method for evaluating the TCV of income-producing property.” *First City Corp v Lansing*, 153 Mich App 106, 116 (1986).

The Tribunal concludes that the income valuation methodology utilized by Petitioner is in line with methodology approved by the STC. However, some of Petitioner's underlying data and assumptions were not probative or persuasive. Therefore, adjustments were required in the amount of square footage, and the value of the wetlands and excess lands. The Tribunal’s determination of square footage, at 316,634 square feet, is based on the offering memorandum of the prior owner and the rent records of the prior manager. The rental rate per square foot for 2007 and 2008 is based on Mr. Gerandasy’s testimony, which the Tribunal found to be probative and persuasive. The Tribunal determines that the 18.71 acres, primarily based on the attempts to market the property, are excess land. Mr. Gerandasy’s opinion that the wetlands did not have value, and his methodology and opinion of the remaining lands value, was found by the Tribunal to not be probative or persuasive. Evidence was not admitted to support Mr. Widmer’s value of the excess lands. The Tribunal determined Petitioner’s comparable #3, being a recent sale of property with a substantial presence of wetlands, at $4.10 per square foot to be probative and persuasive of the value of the wetlands. The base capitalization rates for 2007 and 2008 used by Petitioner and Respondent support each other. The Tribunal determines that the lease-up discount methodology and amounts, as recalculated by Mr. Gerandasy during the hearing are probative and persuasive.

Based on all the testimony and evidence provided, the Tribunal determines that the TCV, based on market value for 2007, is $31,760,070 based on the income approach. Further, the Tribunal determines that the TCV for 2008 is $32,945,120, based on the income approach. Given that Petitioner did not provide any data as to tax year 2009, the 2009 true cash value and equalized value are as indicated on the tax roll with a revision of the taxable value based on the CPI.

JUDGMENT

IT IS ORDERED that the subject property's true cash value, assessed and taxable values for 2007, 2008, and 2009 are those shown in the "Tribunal's Conclusions of TCV and AV" section of this Opinion and Judgment.

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

1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a rate of 6.04% for calendar year 1998, (iv) after December 31, 1998, at the rate of 6.01% for calendar year 1999, (v) after December 31, 1999, at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000, at the rate of 6.56% for calendar year 2001, (vii) after December 31, 2001, at the rate of 5.56% for calendar year 2002, (viii) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ix) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (x) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (xi) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (xii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, and (xiii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, and (xiv) after December 31, 2008, at the rate of 3.31% for calendar year 2009 and (xiv) after December 31, 2009, at the rate of 1.23% for calendar year 2010.

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

MICHIGAN TAX TRIBUNAL

Entered: May 5, 2010 By: Stuart Trager, Tribunal Judge