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

VON MAUR MICHIGAN PARTNERSHIP,
Petitioner,

v MTT Docket No. 334494

CITY OF ANN ARBOR, Tribunal Judge Presiding
Respondent. Kimbal R. Smith III

FINAL OPINION AND JUDGMENT

A hearing was held in the above-captioned matter on February 8 and 9, 2010. Petitioner was represented by Michael B. Shapiro and Daniel Stanley of the firm of Honigman, Miller, Schwartz & Cohn, LLC. Respondent was represented by Kristen D. Larcom of the Office of the City Attorney, City of Ann Arbor.

This matter involves one parcel of real property located in the city of Ann Arbor, Washtenaw County, State of Michigan, identified by tax parcel number 09-17-08-100-040. Petitioner timely invoked the jurisdiction of the Tribunal for tax years 2007, 2008 and 2009. At issue are assessed, taxable, and true cash values for each of the years for the subject property.

Information relevant to the property's contested true cash, assessed and taxable values on the assessment roll is as follows:

Parcel Number	Year	TCV	SEV	TV
09-12-08-100-040	2007	$10,935,000	$5,467,500	$3,277,936
09-12-08-100-040	2008	$12,168,800	$6,084,400	$3,353,328
09-12-08-100-040	2009	$12,338,200	$6,169,100	$3,500,874

FINAL VALUES

Parcel Number	Year	True Cash Value	SEV	TV
09-12-08-100-040	2007	$ 5,000,000	$ 2,500.000	$ 2,500,000
09-12-08-100-040	2008	$ 4,750,000	$ 2,375,000	$ 2,375,000
09-12-08-100-040	2009	$ 4,200,000	$ 2,100,000	$ 2,100,000

THE SUBJECT PROPERTY

The subject property consists of one parcel of land located at 300 Briarwood Circle, Ann Arbor, Washtenaw County, Michigan. Parcel No. 09-12-08-100-040 consists of 7.182+/- acres of land and a 100,812 +/- aggregate square foot structure constructed in 1980, and is occupied by Von Maur as a department store. The property is one of four anchor department stores in the mall. The property is subject to a Reciprocal Easement Agreement (REA) that governs the maintenance and use of the site and the remaining mall property. Prior to being occupied by Von Maur as an anchor department store the property was occupied by Jacobson's as an anchor department store.

PETITIONER'S CONTENTIONS

Petitioner contends that as of each valuation date the assessed value of the subject property grossly exceeded 50% of its true cash value. In support of Petitioner's position, Exhibit (P-1) was introduced, without objection. The exhibit is an appraisal prepared by Michael E. Ellis, MAI, of Value Trends Inc. dated May 19, 2009, that concluded to the True Cash Value of the subject property as of December 31, 2006, of $4,950,000; December 31, 2007, of $4,900,000; and December 31, 2008, of $4,300,000. Petitioner further contends that the purported appraisal prepared and filed by Respondent is a fraud and that Petitioner should be awarded costs.

RESPONDENT'S CONTENTIONS

Respondent acknowledges that, based on the appraisal prepared by David R. Petrak, CMAE4, dated May 29, 2009 (R-2 and P-6), the subject property had an indicated "Cash Value" as of December 31, 2006, of $7,100,000; as of December 31, 2007, of $7,300,000; and as of December 31, 2008, of $6,900,000. As a result, the property had been assessed in excess of 50% of its true cash value for each of the tax years before the Tribunal.

Respondent contends that the property was initially assessed and placed on the tax rolls in accordance with the cost-less-depreciation methodology approved by the State Tax Commission for assessment purposes.

PETITIONER'S CASE IN CHIEF

In support of its contentions Petitioner presented one witness and ten exhibits, which were admitted without objection:

Petitioner's Exhibits:

- P-1 Appraisal dated May 19, 2009
- P-2 Briarwood Operating Agreement dated February 2, 1972
- P-3 Memorandum of Third Amendment to Supplemental Agreement (Briarwood) Dated October 15, 2002
- P-4 Excerpt from "Dollars and Cents of Shopping Centers"
- P-5 Excerpt from Korpacz Real Estate Investor Survey, Fourth Quarter 2008
- P-6 Respondent's Appraisal
- P-7 Real Estate Investment Proposal Acceptance-Respondent's Comparable #5
- P-8 Demographic & Income Profile Subject Property
- P-9 Demographic & Income Profile of Respondent's Comparable #5
- P-10 Demographic & Income Profile of Respondent's Comparable #3

Petitioner's witness, Michael F. Ellis, MAI, was qualified as an expert in the valuation of real property in support of the appraisal prepared by him (Petitioner's Exhibit 1 (P-1)), the methodology he employed, and his conclusions.

Ellis explained that the proper methodology to value property of this type is to utilize the income capitalization and sales comparison approaches to value. The cost approach, although considered, was not used because typical buyers/investors would not use this approach in estimating value and further, due to the age of the improvements, depreciation is difficult if not impossible to accurately compute.

Petitioner's basic theory was that for all times relevant to this case Michigan was in a downward economic spiral that intensified in the last several months of 2008. This downward economic spiral manifested itself by increased unemployment (P-1, p 30), bank failures, federal takeovers of Fannie Mae and Freddie Mac, and financial difficulties suffered by the automobile industry. Michigan was and continues to be harder hit as a result of the economic downturn than the rest of the country as a result of Michigan's dependency on the auto industry. Petitioner set forth extensive research and analysis of the area where the subject property is located, including population trends and issuance of single family building permits, and concluded that, for the tax years involved, those building permits decreased between 2004 and 2008 by 86.3% for Washtenaw County (P-1, pp 26-28).

Ellis further explained that during the past 15 years Michigan has undergone fundamental evolution related to the number of malls located in the region and that many smaller Class B & C malls have been demolished and or redeveloped (P-1, p 38) and Lifestyle Centers have been constructed and developed.

An analysis was conducted that compared per square foot annual sales for Petitioner's subject property versus its Laurel Park property. The study showed that the Laurel Park store consistently out performed the subject property which would indicate that the Laurel Park property is a superior location to the subject. This was also confirmed by an analysis of JC Penney per square foot annual sales at various area locations, including Ann Arbor. Further analysis indicated that the economic health of mall anchor stores in Southeast Michigan are in decline to some extent due to adverse economic conditions in Michigan in general and Southeast Michigan in particular indicating that values are lower as of December 31, 2008, than as of December 31, 2004 (P-1, p 43).

Petitioner's Income approach

Petitioner's expert stated that the first step within the Income Approach to develop his conclusion of value was to estimate the subject's market rent or simply the rental income that the subject would most probably command on the open market. (P-1, p 94.)

Ellis explained the methodology he employed in developing his conclusions of value using the income approach. One method he used was to estimate rent utilizing market tables for similar type of properties. He stated that "Dollars & Cents of Shopping Centers/the Score 2008," a publication accepted in the Shopping Center industry, analyzed sales on a square foot basis for Regional Shopping Center Malls for traditional mall anchor department stores in the range from $98.70 to $249.96 per square foot, with mean and median averages of $164.82 and $167.15. This contrasted to annual per square foot sales for the subject for the subject property of $144.95 for 2005, $152.20 for 2006, $154.42 for 2007, and $147.46 for 2008. Ellis also analyzed Von Maur's per square foot sale at its Laurel Park store for the same years, which resulted in $160.99 for 2005, $176.76 for 2006, $181.95 for 2007, and $169.43 for 2008. As a result of this analysis, Ellis concluded that the subject's fares slightly better than its region's performance. Using this methodology, Ellis concluded to a median rental per square foot rate of $3.30 for traditional mall anchor department stores and a mean average of $3.73 per square foot triple net.

The next step Ellis employed in estimating the subject's economic rental was to review existing lease terms of mall department store anchor tenants. He reviewed four rentals (see P-1, p 104, Comparable Rental Summary) after which he concluded that the subject's economic rent should fall within the general range of $4.50 to $4.60 per square foot effective December 31, 2006 and December 31, 2007. Because of the decline in market conditions that occurred in 2008 he concluded to a range in market rent for 2008 of $4.05 to $4.15 per/sf.

Based on his analysis outlined above, Ellis's ultimate conclusion for **stabilized base rental** estimated for the subject was $460,000 as of December 31, 2006 and December 31, 2007, and $410,000 as of December 31, 2008.

For tax years **2007 and 2008,** a 2.5% vacancy loss was applied to the $460,000 Gross Potential Income to arrive at Gross Effective Income of $448,500 from which a 3% management fee of $13,455 and Reserves-Capital Items of $20,146 were deducted to arrive at **Net Operating Income** (NOI) **of $414,899**. For tax year **2009,** a 2.5% vacancy loss was applied to the $410,000 to arrive at a GEI of $399,750 from which a 3% management fee of $20,146 and Reserves-Capital Items of $20,146 were deducted to arrive at **Net Operating Income of $367,612**.

In developing his Capitalization Analysis Ellis first utilized the <u>Korpacz Real Estate Investor Survey</u>**.** He determined that the National Net Lease Market data should be applied which indicated an overall rate as of December 31, 2006 between 8.50% and 8.75%, and as of December 31, 2007 between 8.60% and 8.85%. Due to ongoing economic deterioration in Michigan during 2008, Ellis determined that an upward adjustment in rates as of December 31, 2008 was required and he compared bond yields as of December 2008 and 2007 to support his conclusion of 9.25% to 9.50%.

Ellis's ultimate indication of value using the Income Approach was $4,800,000 as of December 31, 2006; $4,750,000 as of December 31, 2007; and $3,925,000 as of December 31, 2008.

Petitioner's Sales Comparison Approach

Ellis explained both in the Appraisal (P-1) and in his testimony that he had developed his sales comparison analysis by utilizing the sales of five properties that he considered similar. **Comparable #1,** which is the subject property, sold on October 15, 2002, via a bankruptcy auction. Ellis explained that he considered this sale an arms length transaction because it had been made available to the market in early 2002 and had been actively marketed for some six months plus. Prior to the actual sale five parties had submitted offers and, in an effort to maximize the sale price, the auction was held with offers being submitted by Saks and the mall owner. Ellis indicated that both the broker and purchaser indicated that the bidding process drove the sale price higher than it might have been otherwise (P-1, p 75). The sale price of the property was $5,047,902 or **$50.11 per s.f.**

Comparable #2 located at 37500 Six Mile Road, Livonia, Michigan, was also a former Jacobson's Department Store, purchased by Von Maur, Inc. on the same basis as the subject. The building size of this property is 149,790 s.f. and was purchase for $7,452,098 or $49.75 per s.f.

Comparable #3, located at 18900 Michigan Avenue, Dearborn, Michigan, was a former Saks Fifth Avenue Department Store, with 93,341 s.f. of building space, which sold on January 31, 2002 to Fairlane Town Center, LLC for $2,750,000 or $29.15 per s.f. as part of a sale leaseback arrangement the terms of which were based on a rental rate of 2.5% of gross sales on gross terms with the tenant (seller) not being responsible for pass-expenses. In 2007 the structure was demolished.

Comparable #4, located at 14150 Lakeside Circle, Sterling Heights, Michigan, a 120,000 square foot anchor store, sold on October 20, 1997 for $4,300,000 ($35.00 per s.f.) to Lakeside Mall Limited Partnership who, in turn, leased the property to Marshall Fields. Marshall Fields already occupied space in the Mall and relocated its men's department to the space.

Comparable #5, a former Lord & Taylor store located in part of the Polaris Fashion Place Mall, Columbus, Ohio, with a building size of 139,524 square feet, sold on July 25, 2005 to Von Maur, Inc, for $5,250,000 or $37.63 per s.f.

Four of the five comparables were located in southeast Michigan and were the only sales of mall anchor department stores known to have occurred since 2000 (P-1, p 91) with the exception of the Marshall Fields transaction, which was a bulk purchase of the corporation's assets and for which individual prices were never established to Ellis's satisfaction for the individual stores.

Ellis considered adjustments to the individual sales for interest conveyed, financing, conditions of sale, date of sale (market conditions, location, building size, quality and age /condition).

Since the subject property was valued in fee simple and all of the comparables were fee simple transactions, Ellis concluded that no adjustment was needed for the interest conveyed. Also, since all were cash sales, no adjustment was needed for financing or for conditions of sale since, in his opinion, all were arm's length transactions.

Ellis, however, concluded that **Date of Sale** (market adjustments) were needed because market evidence he had found indicated that many of the locations experienced significant appreciation prior to 2001 depending on their location. He stated "to a large extent, market values for mall anchor stores follow the pattern of retail sales volumes." (P-1, p 92) Beginning, however, in mid-2007, a measurable decline had already been recognized and by September-October 2008 the market further deteriorated. Ellis indicated he made market condition adjustments to reflect the on-going decline in market values in southeast Michigan.

Location adjustments were made by Ellis for sale 3, adjusting upward due to serious difficulties being experienced by the Fairlane; sale 4 was determined to be a superior location, but at the time of sale the market did not view it as superior and thus no adjustment was made. Sale 5, located in Columbus, Ohio makes a location adjustment difficult but after Ellis reviewed various sales of properties located at the same Mall, he concluded that an upward adjustment was necessary. For Sale 1 (the subject) and Sale 2 (the Laurel Mall) properties, Ellis made no location adjustments because at the time of the sales the market did not appear to consider one location superior to the other. However, based on retail sales comparisons at the two sites, Ellis believes that today a location adjustment would be warranted.

Neither building size nor quality adjustments were made since all sales were considered similar in this area. All properties, with the exception of sale 3, were considered similar as to age/condition with the exception of Sale 3 due to its slightly "rougher" condition, which would have required a slight upward adjustment.

Ellis's ultimate indication of value using the Sales Comparison Approach as of December 31, 2006 was a range of $4,927,663 (100,729 sf x $48.92) to $5,097,895 (100,729 sf x $50,61 per sf); for December 31, 2007 was a range of $4,878,305 (100,729 sf x $48.43 per sf) to $5,047,530 (100,729 sf x $50,11 per sf); and for December 31, 2008 was a range $4,434,091 (100,729 sf x $44.02 per sf) to $4,542,878 (100.10 per sf). Ellis rounded his values to conclude to a sales comparison indicated value of $5,000,000 as of December 31, 2006; $4,975,000 as of December 31, 2007; and $4,500,000 as of December 31, 2008.

In his Final Reconciliation and Conclusion of Value, Ellis explained that both the Income and Sales Comparison Approach were given weight in his final conclusions. He found the subject's **true cash (market) value as of December 31, 2006 to be $4,950,000; as of December 31, 2007 to be $4,900,000; and as of December 31, 2008 to be $4,300,000.**

RESPONDENT'S CASE IN CHIEF

In support of its contentions Respondent presented one witness, David R. Petrak, CMAE4, the City Assessor, and four exhibits, which were admitted without objection.

> R-1 2007 property Record Card for Subject Property
> R-2 Respondent Valuation Disclosure
> R-3 U. S. Census Data Washtenaw County, Mi
> R-4 National Net Lease Market

Respondent's appraisal utilized the Cost Less Depreciation and Sales Comparison Approaches to value the subject. The Income Approach, although considered, was not utilized due to

> All four of the department store anchors at the subject mall are owner occupied or under a very old sale lease back of part of the property. (R-2, p 43).

Respondent's Sales Comparison Analysis

Respondent, for its Sales Comparison Approach, utilized five purported sales of properties it believed to be comparable.

Sale 1, a property located at 700 Briarwood Mall, was a 186,700 structure (Marshall Field's), which sold in July of 2004. Based on a transfer affidavit filed at the time of sale, Petrak concluded to a sale price of $13,760,000 or $73.70 per s.f. He then applied a "Date of Sale" adjustment of 7.4% to his concluded per square foot sale price to the first valuation date of December 31, 2006, to arrive at a time adjusted value of $79.15.

Sale 2, located at 3521 Washtenaw Ave, Ann Arbor, Michigan, was the sale of a 409,000 square foot entire shopping mall property with multiple tenants, which sold on September 30, 2005 for $102,000,000 or $249.39 per s.f. Petrak then applied a 3.7% "Date of Sale" adjustment to the first valuation date of December 31, 2006, to arrive at a time adjusted per s.f. price of $258.02 and thereafter a location adjustment of -20% and an effective age adjustment of 4% for a concluded value as of December 31, 2006, of $217.24 per s.f.

Sale 3, located in Oakbrook, Illinois, identified as a 112,099 square foot structure that housed a Neiman Marcus, sold on November 13, 2005, for $6,900,000 or $61.55 per s.f., which Petrak applied a 3.70% "Date of Sale" adjustment and an effective age adjustment of 8% to arrive at an adjusted price per square foot of $68.94.

Sale 4, a 125,161 square foot property located in Ann Arbor that contained multiple anchor stores, sold in 2006 for $28,180,000 to which Petrak applied a 3.70% "Date of Sale" adjustment, a quality and location adjustment of -20%, and an effective age adjustment of -10% to arrive at an adjusted per s.f. rate of $163.44 as of December 31, 2006.

Sale 5, a 92,386 s.f. JC Penney store located in Crystal Lake, Illinois, sold in January of 2008 for $5,800,000 to which Petrak applied a “Date of Sale” adjustment of 2.5% to arrive at an indicated value per square foot of $64.35.

Petrak, giving the most weight to sales 1, 3 and 5 and considering the other sales, determined the appropriate rate to be $70.00 per square foot, (R-2, p 40) by which he multiplied the subject’s square footage. Although he had initially determined the square footage of subject to be 101,350, he testified at hearing that the correct square footage was 100,810, and he adjusted his initial value conclusions downward accordingly, which resulted in a true cash value using the sales comparison approach of $7,056,700 for tax year 2007.

For tax year 2008 Petrak adjusted his 2007 value conclusion by 2.63% as a result of his determination of a market general increase, which resulted in a true cash value of $7,242,291 (using revised square footage described above). For tax year 2009 Petrak adjusted his 2008 value conclusion by a negative 5.12% as a result of his analysis, which indicated a market decline, to $6,871,485 (using revised square footage described above).

Respondent’s Cost Approach

Petrak in R-2 explained that

> the cost approach to value is based on the principle of substitution and that the principle of substitution affirms that no rational buyer will pay more for a property than the cost to acquire a similar site and construct improvements of equal desirability and utility without undue delay. In other words, the reproduction cost new (emphasis added) (before depreciation) plus land, generally tends to set the upper limit for market values. (R-2, p 44)

In arriving at his estimate of value for the subject land as vacant, Petrak considered ten land sales (R-2, p 45), nine of which were outside the City of Ann Arbor, and used the one sale in the City that sold on January 3, 2005. This sale contained, according to Petrak, 344,124 square feet and sold for $3,000,000 or $8.72 per s.f. This property is zoned PUD, which is different than the subject's C2B. Petrak multiplied the subject's 275,706 net square feet by $8.72 to arrive at a value for the land of $2,404.16 as of December 31, 2006. (The Tribunal notes that the land, based on the 2007 tax roll, had a true cash value of $1,641,994. For tax year 2008 the value of the land was increased by 2.63% to reflect a true cash value of $2,467,000,and for tax year 2009, it decreased by 5.12%, with a resulting true cash value of $2,338,588.

After arriving at a value for the land, Petrak proceeded to estimate the cost of the improvements new (RCN). The Tribunal is uncertain whether Petrak used the reproduction or replacement method, as in R-2 at page 46, he first explains the "reproduction cost new before depreciation" and also describes "replacement cost" on page 44 of R-2. On page 46 to R-2, he indicated he utilized Marshall Valuation Service's Commercial Cost Handbook Calculator from Chapter 13. At page 47 and 48 of R-2 he explained that the subject suffered from no functional obsolescence nor did external obsolescence exist as of any of the valuation dates. Using the age/life method a 12-year effective age was determined as of December 31, 2006; a 13-year effective age was determined as of December 31, 2007; and a 15-year effective age was determined as of December 31, 2009 based on a total life of 45 years. Using the age/life method for determining depreciation, Petrak concluded to depreciation at the rate of 25% for all three tax years. (See R-1 47-49) Site improvements were costed and depreciated at the rate of 40%.

Using his cost method, Petrak determined an estimated **true cash value using the cost approach** as of **December 31, 2006 to be $8,938,000**; as of **December 31, 2007 to be $9,194,000;** and as of **December 31, 2008 to be $9,594,000.**

Respondent's Correlation and Conclusion of Value is found at page 51 of R-2 wherein Petrak stated:

> Sales Comparison approach-for the purpose of this appraisal a number of sales were available to be extracted from the market. As the purpose of this appraisal is to determine what a willing buyer would pay a willing seller, a great deal of weight is place on this approach's value conclusion.
>
> Cost Approach-As stated in the cost approach section of this appraisal the building was constructed in 1980 and had extensive interior renovations in 2003. This approach is given less weight due to the age of the structure and the difficulty in calculating the actual depreciation of the subject. It does however support a value change due to the renovations that occurred in 2003 and the final value conclusion.

Based on the above, the **true cash value** of the subject property was determined by Respondent, based on the appraisal, as of **December 31, 2006 to be $7,100,000;** as of **December 31, 2007 to be $7,300,000;** as of **December 31, 2008** to be **$6,900,000.** The Tribunal notes that each of Respondent's values are in the range of $3 million to $5 million *less* than the true cash values reflected on the assessment roll.

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 property is an anchor department store located at Briarwood Mall, a regional shopping mall in the City of Ann Arbor, Michigan. At all times relevant to this case the service area for the subject and southeast Michigan had been in economic descent, which intensified in the last half of 2008. This economic downturn was evidenced by increased unemployment, reduction of building permits, and a reduction of annual retail sales per square foot, both at the subject property and other similar stores in the area. (See Market Synopsis P-1, p 43)

Ann Arbor/Washtenaw County has been designated by the United States Census Bureau as a separate Metropolitan Statistical Area separate and apart from the Detroit Area Metropolitan Statistical Area, although the Tribunal finds that the subject's primary service area extends outside of Washtenaw County and is affected by the general economic conditions of the area, and that at all times relevant to this case the state of Michigan and the subject area in particular has suffered from a severe economic downturn greater than that which the nation as a whole has experienced, and this economic downturn has affected property values.

The property was purchased for the sum of $5,047,902 by the current owner as a result of an auction conducted by the bankruptcy court in October 2002. The Tribunal specifically finds and determines that even though this sale was an auction conducted by the bankruptcy court the property had been actively marketed for a number of months with multiple offers being received and the bidding process drove the price higher than might have otherwise been received. The Tribunal further takes judicial notice of the bankruptcy court's charge to maximize return for the benefit of creditors.

The Tribunal finds the five sales comparables utilized by Petitoner and the adjustments made to the sales as a whole yield a more reliable indicator of value than those considered by Respondent. The Tribunal will discuss in the Conclusions of Law section of this Opinion and Judgment certain modifications it has determined necessary to Petitioner's sales and adjustments thereto.

The Tribunal finds that all of the five sales which Respondent utilized and the adjustments made thereon are not supported by the market nor have the sales and adjustments been properly verified and the conclusions contained therein are the result of misapplication of the most basic of valuation principles and methodology. By way of example, Respondent's sales 2 and 4 (R-2, p 38) were sales of entire shopping malls wherein the subject property was a single anchor store in a regional mall. Further, sale 1 was in fact part of a bulk sale of multiple properties from Marshall Field's to Macy's and Respondent was unable to provide verification as to the actual purchase price of this particular property. The Tribunal is unconvinced that the sale price reflected on the Property Transfer Affidavit was nothing more than twice the then current taxable value of the property. The Tribunal finds that Respondent made no meaningful attempt to verify the sales price of sale 1 from third parties. As to Respondent's sales 3 and 4, both of which were located in suburbs of Chicago, neither of which were inspected by Respondent, the Tribunal finds the lack of a location adjustment for these properties suspect considering that Respondent made location adjustments for sales 2 and 4, both of which are approximately 2 to 3 miles from the subject.

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:
> (a) The property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions. For taxes levied in 1995, the property's taxable value in the immediately preceding year is the property's state equalized valuation in 1994.
> (b) The property's current state equalized valuation.

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 central issue in this dispute is: what is the true cash (market) value of the subject property for tax years 2007, 2008 and 2009. This case requires the Tribunal to determine which valuation methods are useful to determine an accurate market value estimate of the subject property and to make an independent determination of the true cash value based upon its evaluation and analysis of the evidence.

The Tribunal is at a loss as to how a proper application of the State Tax Commission's cost less depreciation tables initially utilized by Respondent when assessing the subject property could result in a true cash value that was so grossly over valued that even Respondent's expert, in what the Tribunal will conclude was a fundamentally flawed appraisal, found for tax year 2007 that the property was over valued by approximately 158% ($10,935,000 vs. $6,900,000), and for tax year 2008 found it was over valued by approximately 166% ($12,016,800 vs. $7,300,000) and for tax year 2009 found it was over valued by 188% ($12,383,000 vs. $7,100,000). Based on this large disparity between the values of the subject based on initial assessments, the Tribunal can only conclude to a misapplication of STC mass appraisal standards by Respondent in setting the initial assessments.

The parties, through their respective appraisers, concluded to a widely disparate value estimate for the subject property.

The Tribunal agrees with Petitioner that the cost approach is not a reliable indicator of value for a building of this type. Further, for older properties (such as the subject) the cost approach is less than a reliable indicator or value due to the difficulty in determining depreciation and obsolescence.

Although both parties utilized the sales comparison approach in arriving at their respective estimates of value, for reasons stated in the Findings of Fact portion of this Opinion and Judgment, the Tribunal gives no weight whatsoever to Respondent's sales comparison conclusions.

The Tribunal concludes that Petitioner's Sales 1, 2 and 4 and the adjustments made by Petitioner's expert (P-1, pp 96, 97 & 98 of 21) and per square foot dollar conclusions as of each of the valuation dates to be reasonable and supported on this record.

As to Petitioner's Sale 3, the Tribunal concludes that the underlying transaction in this sale was a sale lease back. As a result of decisions in previous Tribunal cases, we are not going to utilize this sale. Petitioner's Sale 5 will also not be used because it is an out-of-state sale with what the Tribunal considers to be a large location adjustment. In addition, the Tribunal is unclear whether

Ohio has suffered as severe an economic downturn as has Michigan to support the December 31, 2008 market adjustment.

The Tribunal accepts Petitioner's final adjusted $/sf conclusions for tax year **2007** for its sale comparables 1, 2 and 4 of $50.61, $50.25 and $48.92 (P-1, p 97 of 121), respectively, and giving equal weight to the three, the Tribunal concludes to a $/sf value of $49.93 or estimated **true cash value of $5,099,400 (rounded)** ($49.93 x 100,729 s.f.) for tax year **2007** using the **sales comparison approach.**

For tax year **2008,** the Tribunal also accepts Petitioner's final adjusted $/sf conclusions for its sale comparables 1, 2 and 4 of $50.11, $49.75 and $38.79 (P-1, p 98 of 121), respectively, and giving equal weight to the three, the Tribunal concludes to a $/sf value of $46.22 or an **estimated true cash value of $4,655,600** (rounded) ($46.22 x 100,729 s.f.) using the **sales comparison approach.**

For tax year **2009**, the Tribunal accepts Petitioner's final adjusted $/sf conclusions for its sale comparables 1, 2 and 4 (P-1, p 99 of 121) of $45.10, $44.78 and $35.67, respectively, and giving equal weight to the three, the Tribunal concludes to a $/sf value of $41.85 or an **estimated true cash value of $4,215,500** (rounded) using the **sales comparison approach.**

Petitioner has established to the satisfaction of the Tribunal that there existed as of all valuation dates sufficient data and information available for Petitioner to develop an estimate of value using the income capitalization approach which it, in fact, did.

Further, the Tribunal concludes that the methodology employed by Petitoner to determine appropriate per square foot rental rates as of all valuation dates, together with its vacancy, management, reserve charges and capitalization rates employed to arrive at an estimate of value using the direct capitalization method to be well reasoned and market based. The Tribunal takes special notice of Petitioner's conclusion that for tax year 2009, due to the ongoing economic recession, the Southeast Michigan market was considered much more risky than the national market and, as a result, an upward adjustment in the overall rate for tax year 2009 was appropriate.

The Tribunal adopts for reasons set forth above Petitioner's indicated **value** via the **Income Approach** as of **December 31, 2006** of **$4,800,000;** as of **December 31, 2007** of **$4,750,000** and as of **December 31, 2008** of **$3,925,000**.

Having considered both Petitioner's indicated conclusions of value using the income and sales comparison approaches to value, as modified by the Tribunal, both valuation techniques are given weight and consideration in the Tribunal's conclusion of **true cash value of the subject property as of December 31, 2006 of $5,000,000, as of December31, 2008 of $4,750,000 and as of December 31, 2008, of $4,200,000.**

Petitioner has requested that the Tribunal award it costs based upon its allegation that Respondent's Valuation Disclosure "Appraisal" so deviated from accepted appraisal standards that it constituted a "fraud." The Tribunal has concluded for reasons previously set forth in this Opinion and Judgment to give Respondent's conclusions no weight in arriving at its ultimate conclusions of value for the subject property as of the relevant tax dates; however, there is nothing in this record to raise Respondent's preparation of its Valuation Disclosure to the level of "fraudulent." To raise Respondent's actions in preparing its valuation disclosure to the level of fraudulent requires something more than preparation of a less than credible valuation disclosure, which is what the Tribunal has been confronted with in this matter. Pursuant to TTR 145(1), the tribunal may, upon motion or upon its own initiative, allow a prevailing party in a decision or order to request costs. Having carefully considered this case in totality, and because there can be no question that Petitioner is the prevailing party, the Tribunal awards Petitioner costs as provided by MCL 600.2421b.

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 Petitioner is awarded costs. Petitioner may submit a bill of costs in accordance with TTR 145.

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, (xiv), after December 31, 2008 at the rate of 3.315 for calendar year 2009, and (xv) after December 31, 2009, at the rate of 1.23% for calendar year 2010.

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

MICHIGAN TAX TRIBUNAL

Entered: March 8, 2010

By: Kimbal R. Smith III