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

SEARS ROEBUCK & COMPANY,
Petitioner,

v MTT Docket No. 337851

CITY OF GRANDVILLE,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

OPINION AND JUDGMENT

A hearing was held in this matter on May 11 & 12, 2010. Petitioner was represented by Ellen G. Berkshire and Gregory J. Lafakis of the firm of Verros, Lafakis & Berkshire, P.C. Respondent was represented by Deborah I. Ondersma of the Varnum law firm.

This matter involves one parcel of real property located in the City of Grandville, Kent County, Michigan, identified by tax parcel number 41-17-29-253-001. 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 No. 41-17-29-253-001

Year	AV	SEV	TV
2007	$4,622,500	$4,622,500	$3,891,395
2008	$4,622,500	$4,622,500	$3,980,897
2009	$4,622,500	$4,622,600	$4,156,056

FINAL VALUES

Parcel No. 41-17-29-253-001

Year	True Cash Value	SEV	TV
2007	$7,055,800	$3,527,900	$3,527,900
2008	$7,057,400	$3,528,700	$3,528,700
2009	$6,805,500	$3,402,750	$3,402,750

THE SUBJECT PROPERTY

The subject property consists of one parcel of land located in the City of Grandville, Kent County, Michigan. Parcel No. 41-17-29-253-001 is located at 3622 Rivertown Parkway, Grandville, Michigan and consists of 10.37+/- acres of land and a 124,244+/- aggregate square foot structure constructed in 1999 and is owner occupied as a department store. The property is part of the 1,250,000 square foot River Town Crossings mall, a two-story mall, also constructed in 1999, containing five anchor stores (Macy's, Sears, JC Penney, Younker's, and Kohl's), together with a multi-screen cinema and a Dick's Sporting Goods store.

PETITIONER'S CONTENTIONS

Petitioner contends that as of each valuation date the assessed value of the subject property exceeded 50% of its true cash value. In support of Petitioner's position, one Exhibit (P-1) was introduced, without objection. The exhibit is an appraisal prepared by LaSalle Appraisal Group, Inc., dated January 30, 2009, that concluded to a true cash value of the subject property for both the 2007 and 2008 tax years of $5,000,000. Petitioner did not submit an appraisal for tax year 2009; Petitioner's expert at hearing testified that the market for the subject property was essentially flat as of December 31, 2008 and he believed that his 2007 and 2008 concluded values were the same for tax year 2009.

Petitioner's basic theory is that:

> The traditional mall concept is now obsolete by design, in my opinion. The enclosed mall with anchor department stores cannot compete with more modern retail designs, and is losing ground in customer acceptance to life-style centers. The current consumer does not have the time nor desire to browse through the mall thus the appeal of the life-style center where the shopper can park in front of the desired store, shop, and then exit back to home or work. (P-1, p11)

Petitioner acknowledges that the western Michigan economy has not been impacted by the troubled auto industry as much as other areas of Michigan and that the M6 Beltline area (of which the subject property is part) has seen retail development to meet the growth of St. Mary's Hospital and Metro Health Hospital. (P-1, p13)

Petitioner states that the proper methodology to value the property is to utilize the income capitalization approach, together with sales comparison approaches, to value the subject property and that the cost approach, although considered, was not used because typical buyers/investors would not use this approach in estimating value. (P-1, p9)

Petitioner finds support in its theory that the enclosed mall concept is obsolete in that retail sales per square foot of the subject property has been declining since 2003.

After considering the four criteria required to be analyzed in determining highest and best use of the property "as vacant" (physically possible, legally permissible, financially feasible, and maximally productive), Petitioner concluded to a highest and best use of the subject property as vacant would be a commercial use. Its determination of highest and best use of the subject "as improved" would be its continued use as an anchor department store and the most probable buyer considering that use would be an owner/user. (P-1, p29)

Petitioner utilized the sales of thirteen properties that it deemed comparable (see P-1, pp33-50) for its sale comparison approach, to which it applied qualitative adjustments to arrive at a market value estimate of $40 per square foot or $4,969,760, rounded to $5,000,000, for all valuation dates.

Petitioner's expert utilized fifteen rentals for properties constructed between 1952 (Sear's Frandor property) to 2008 (Von Maur, Beavercreek, Ohio) and square footage ranging from 196,470 (Sear's Frandor) to 93,957 (Younker's, Meridian Mall) with lease commencement dates ranging from 1981 for the Penney's located in Bloomingdale, Illinois to 2008 for the Von Maur property in Beavercreek, Ohio. In terms of rental rates per square foot, the rates ranged between $5.90 for the Penney's property located at the Mall of Georgia to $2.00 for the Von Maur property in Louisville, Kentucky. All of the rental comparables were triple net with the exception of the Frandor and Harper Woods leases that were percentage leases (P-1, p. 76).

After considering its rental comparables, Petitioner arrived at a rental rate of $4.00/SF rental rate, a vacancy and credit loss of 1%, which resulted in effective gross income of $3.96 per SF from which operating expenses of $.17 were deducted to arrive at a net operating income of $3.79 per SF. Petitioner determined a 9.5% (tax adjusted) overall rate was appropriate, which resulted in a value of $4,950,000 (rounded) or $39.85 per square foot. Petitioner concluded that the Direct Capitalization method is applicable in its income capitalization approach. In arriving at its capitalization rate Petitioner utilized the Korpacz survey for C+ to B+ Malls for the first quarter of 2008 and the RERC Real Estate Report-Summer 2007) for 2nd Tier Regional Malls. These rates ran from 5.75% on the low end to 9.0% on the high end but, based on his analysis of the subject's physical and location, Petitioner concluded to a 9.5% capitalization rate as of all valuation dates.

RESPONDENT'S CONTENTIONS

It is Respondent's contention that the true cash value of the subject property is reflected in the appraisal prepared by Integra Realty Resources for this litigation. The true cash value of the subject parcel as indicated in the appraisal for tax year 2007 is $7,920,000, for 2008 is $7,975,000, and for 2009 is $7,900,000. This true cash value is less than twice the assessed value of the parcel as it appeared on the tax roll for each of the tax years at issue.

In support of its contention, Respondent presented two witnesses: Eugene Szkilnyk, Certified General Real Estate Appraiser who testified in support of the appraisal jointly prepared by himself and Kenneth A. Blondell, dated January 11, 2009; and James Uyl, contract assessor to prepare commercial appraisals for Respondent. Respondent offered six exhibits into evidence, three of which were admitted: R-1, January 11, 2009 Appraisal of the subject property as of December 31, 2006, 2007 and 2008; R-1A, Errata Sheets; R-2, Portions of Appraiser's Work File including but not limited to, Vacant Land Comparables, Rental Income Comparables, Various Demographic Information of the subject property, Article Keeping Track of U.S. Mall Visits, Sale Comparable Information and additional file documents as necessary if requested at trial.

Respondent in addition offered three exhibits: R-10, September 9, 2004 letter from S. Olkowski to City of Grandville and attached Property Transfer Affidavit between Target Corp. and The May Dept. Stores Co; R-11, Property Transfer Affidavit received April 20, 2006 between Parisian Inc. and Bonstores Realty Two, LLC; and R-12, Anchor Store Stipulations and Judgments: Kohl's Dept. Store-4/16/10, Bonstores-6/26/08 and May Dept. Store-12/18/08. Respondent's exhibits R-10, R-11 and R-12 were not admitted for reasons the Tribunal stated on the record. Briefly summarizing, the Tribunal determined that none of the proposed exhibits were relevant to the true cash value of the subject property as of any of the relevant valuation dates and further that the consent judgments of other anchor parcels in the same mall were not evidence of the true cash value of the subject parcel. The amounts reflected on the transfer affidavits (R-10 and R-11) were as a result of allocations made from a bulk sale (number of properties transferred in a single transaction) which the Tribunal believes is not necessarily reflective of the true cash value of the parcels transferred.

Respondent utilized all three approaches to value: cost, sales comparison, and income capitalization, and concluded that the income capitalization approach was given the most weight. (R-1, p70)

Respondent's cost approach consisted of first valuing the land of the subject property. Respondent utilized three vacant land sales, three of which were within the City of Grandville and occurred between August of 2000 and January of 2006, together with a listing of property located at the 12 Oaks Mall in Novi, Michigan. (R1, p38) Land Sales two and three were approximately 5-acre parcels contrasted to the subject's 10.37 acres. Sale one, in August of

2000, was 13.86 acres in size. Respondent utilized a 2% annual upward adjustment to the sales based on its conclusion that they perceived an upward trend in the market during the relevant period. Utilizing the land sales after adjustment, a land value of $9.00 a square foot was concluded to or $4,065,455, which was rounded to $4,070,000. To value the improvements on the subject property *Marshall Valuation Service (MVS)* cost manuals were utilized (R-1, pp40-44) to arrive at a replacement cost new of $13,827,209. After arriving at the replacement cost new Respondent estimated total accrued depreciation using the age-life method in the amount of $2,260,000 for a depreciated replacement cost of $11,570,000 after which the concluded land value of $4,070,000 was added to arrive at an indicated value using the cost approach of $15,600,000 (rounded).

Respondent's sales comparison approach consisted of five sales: Sale #1 located in Cincinnati, Ohio, not in an enclosed Mall, was a 178,596 square foot retail property that sold in May of 2006 for $7,700,000 or $43.11 per square foot before adjustments; Sale #2, a 234,804 square foot retail property located in an enclosed mall at Owings Mills, Maryland, which sold for $14,400,938 or $61.33 per square foot unadjusted in July of 2006; Sale #3, a 173,141 square foot retail property within an enclosed mall at Gloucester, New Jersey, sold in July of 2006 for $9,210,000 or $53.19 per square foot unadjusted; Sale #4, a 258,435 square foot retail property located in an enclosed mall located in Gloucester, New Jersey, sold for $16,000,000 or $61.91 per square foot in June of 2006, unadjusted.

After adjustments, Szkilnyk concluded an indicated value per square foot of $65.00 (R-1, p51) for 124,244 square feet of general retail space for a total of $8,100,000 (rounded) for tax year

2007; $8,200,000 (@ $66.00 s/f) for tax year 2008; and $8,300,000 (@ 67.00 s/f) for tax year 2009. (R-1, p52)

Respondent, in arriving at a value estimate using the income capitalization approach, used two methods: (1) Market Rents and (2) Occupancy Cost Ratio (OCR). In performing its market rent analysis, Respondent utilized four rentals of department store properties it deemed comparable to the subject: (1) the Burlington Coat Factory property located at the Crossroads Mall in Portage, Michigan, a 80,072 square foot space constructed in 1988 with an August 2006 start date for a 10-year term @ $6.88 s/f triple net; J. C. Penney property located at the Pittsburg Mills Mall, Pittsburg, PA, a 99,935 square foot structure constructed in 2005 with an October 2004 lease start date for a 20-year term @ 6.25 s/f triple net; J. C. Penney property located at the Great Lakes Crossing Mall in Auburn Hills, Michigan, a 109,099 square foot space constructed in 1999 with a November 1998 lease start date with a 15-year term @ $4.73 s/f triple net and a Boscov's property located in Pittsburg, PA, a 264,855 square foot property constructed in 2006 with an August 2006 lease commencement date with an unknown term triple net. After adjustments rental rates ranging between $4.86 and $8.53 per/SF were determined with an average rate of $6.43 per/SF. (R-1, p58)

Respondent also utilized the Occupancy Cost Ratio (OCR) method to estimate a market rental rate based on market-level sales per square foot that can be expect for the Subject, assuming it was vacant and occupied by a department store. (R-1, p58) Respondent looked to SEC Filings of six department store chains to-wit Federated, JC Penney, Nordstrom, Dillard's, Neiman Marcus, and Saks Fifth Avenue, in addition to the subject's actual $106 sales per square foot for 2006 (tax year 2007). The average sales per square foot for each of the department store chains for tax year 2007 ranged from $135 for Dillard's to $807 for Neiman Marcus, with Federated at $172 and J.C. Penney at $176. The same reports indicate that for 2007 (tax year 2008) Federated's per square foot sales declined to $168, J.C. Penney sales per square foot increased slightly to $177, and Dillard's same based sales decreasing to $126. (R-1, p59) Respondent concluded to a $180 per square foot market-level sales based on its analysis of J.C. Penney Average Sales per SF (chain wide), Federated Stores (chain wide), Peer Group Survey, and US Enclosed Regional Mall (upper decile) and applying the $180 per/sf to the subject's square footage (124,244) and arrived at $22,400,000 in estimated annual sales (market/actual) blend rounded to $22,400,000. Responded then determined the Occupancy Cost Ratio (OCR) to be 4.50% to arrive at a total cost of occupancy based on sales of $1,008,000 from which NNN Charges (actual R.E Tax, Ins and CAM's) of $333,268 were deducted to arrive at an estimated annual market rental based on OCR and Sales of $674,732 or $5.43 per square foot. (R-1, p60)

In reconciling the two methods of estimating market rents, Respondent concluded to a rate of $5.50 per square foot (R-1, p61) or $683,342 potential gross rent from which it added expense reimbursement in the amount of $124,586 (under triple net lease), less vacancy and collection loss of 5%, to arrive at an effective gross income of $767,207 from which expenses of $145,800 were calculated to arrive at a net operating income (NOI) of $621,406. (R-1, p63)

In determining the appropriate capitalization rate Respondent considered capitalization rates it derived from three sales of properties it determined comparable (R-1, p63) and concluded to an average mean rate of 7.08%, together with rates determined as a result of capitalization rate surveys taken at year end of 2006 , the first quarter of 2007, and fourth quarter of 2006. These rates ranged from a low of 5.5% to a high of 9.0%. (R-1, p64) Respondent also considered the band of investment approach from which it arrived at a rate of 8.20%. (R-1, p65) After considering all three methods of determining an appropriate capitalization rate, Respondent concluded to a rate of 8.00% for tax years 2007 and 2008 to which it loaded a weighted millage rate to arrive at an overall rate of 8.1307% for 2007 and 8.1305% for 2008 respectively. For 2008, having determined a deterioration in the interest market in late 2008, Respondent adjusted its interest rate upwards by 25 basis points to conclude to a rate of 8.25% adjusted to 8.3809%. (R-1, p67)

FINDINGS OF FACT

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

The subject property is located at 3622 Rivertown Parkway, Grandville, Kent County, Michigan, and is identified by tax parcel identification number 41-17-29-253-001 and at all times has been owner/occupied by Petitioner.

The parcel is located within the River Town Crossings Mall and contains a land area of 451,317 square feet +/- (10.37 acres). Located on the site is an anchor department store (one structure) containing 124,244 square feet +/- of aggregate building space.

Currently, in addition to Petitioner, there are three other anchor tenants located at the mall: Macy's, JC Penney and Younkers. In addition, a Dick's Sporting Goods store and Multi-screen cinema occupy the mall. None of the other anchors in the mall are upper end department stores, i.e., Neiman Marcus, Saks, Lord & Taylor, or Nordstrom.

The structure was constructed in 1999, contemporaneous with the initial opening of the mall. The 123,244 square foot structure reflects the state of design for anchor department stores in Regional and Super Regional Malls in 1999, which were smaller and more efficient than those constructed in the 1960s and 1970s (see Respondent's Comparable Sales #1 and #2 [R-1, p51] and Petitioner's comparable sales #1, #5, #6 and #9 [P-1, p. 51]).

The highest and best use of the subject property as improved is continued use as an anchor department store and "as if vacant" retail use.

For all periods relevant to this matter the Western Michigan retail market and West Michigan economy has not been impacted by the general economic downturn to the extent that Michigan in general and southeast Michigan in particular has suffered.

The deterioration of the credit markets during the later part of 2008 were reflected in an increase of 25 basis points as of December 31, 2008 from December 31, 2006 and 2007.

APPLICABLE LAW

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

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

MCL 211.27a (2) provides:

> (2) Except as otherwise provided in subsection (3), for taxes levied in 1995 and for each year after 1995, the taxable value of each parcel of property is the lesser of the following:
>
> (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.

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

> (c) For taxes levied after 1994, "additions" means, except as provided in subdivision (c) all of the following:

***

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

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

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

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

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

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

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

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

(1987); *Consolidated Aluminum Corp v Richmond Twp*, 88 Mich App 229, 232-233; 276 NW2d 566 (1979).

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

CONCLUSIONS OF LAW

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

The Tribunal finds that although neither party's valuation of the subject property using the various approaches offers a fully supportable indicator of value, there is sufficient evidence to allow the Tribunal to make an independent determination of true cash value for tax years 2007, 2008 and 2009.

The Tribunal concludes that market participants do not rely on the Cost Approach in making their investment or acquisition decisions and as a result does not consider Respondent's cost approach value conclusion relevant or material to this case. As a test of Petitioner's value conclusion of $5,000,000 for all years under appeal, the Tribunal cannot but question Petitioner's concluded value where Respondent's concluded value for the land alone is $4,070,000. There was nothing presented at the hearing that would bring into question the validity of Respondent's land value conclusion utilized in developing its cost approach.

Although eleven of the thirteen sales upon which Petitioner based its sales comparison analysis were from the Midwest, including four from Michigan, the sales generally were from the years 2000 through 2005, which the Tribunal believes were sufficiently remote in time to limit their reliability, especially given the adjustment methodology employed by Petitioner's expert. The Tribunal is also troubled that Petitioner's expert concluded to the same per square foot values and same per square foot rental rates on at least two other appraisals prepared by him for Petitioner on other properties in other parts of the State. Also, several of the comparables were of older properties with a design that Petitioner's expert deemed outdated or antiquated. In addition, Petitioner's expert, even though ordered to bring his work file to the hearing, presented little material out of his work file to support his selections and conclusions.

Respondent's sales comparison analysis does not fare much better in the Tribunal's mind than Petitioner's. None of the sales upon which Respondent based its sales comparison analysis were located in Michigan and only one (comparable sale #1) was located in the Midwest. Sale #1 was, however, not located in a traditional mall and was constructed in 1964. All three of Respondent's remaining comparables were significantly larger in square footage than the subject, were part of a bulk transfer in the case of comparable sale #2, or sold for redevelopment in the case of comparable sale #3. Further, Respondent's expert did not explain his adjustments to sales comparables to the satisfaction of the Tribunal based on market extracted information, but rather indicated he was falling back on "his experience" to explain the adjustments.

Both Petitioner and Respondent have considered the income capitalization approach using the direct capitalization method with Respondent giving it the most weight and Petitioner giving the approach secondary consideration to the sales comparison approach (P-1, p 81). The Tribunal, after considering each of the traditional approaches to value, and based on the evidence before it, concludes that utilization of the direct income capitalization approach yields the most reliable indicator of value upon which the Tribunal can make its independent finding of true cash value of the subject property on all of the respective valuation dates.

The Tribunal concludes that Respondent's methodology in arriving at a final estimate of market rent of $5.50 per square foot utilizing both the rental comparable approach and OCR analysis (R-1 p. 81) was better presented than the analysis presented by Petitioner in its analysis of the comparable rentals section of P-1. For reasons already stated in this Opinion and Judgment, Petitioner's conclusion of a rental rate of $4.00 per square foot for its appraisal and at least two other appraisals prepared for this Petitioner in other areas of the State of Michigan, leads the Tribunal to find such across the board rental rate conclusions to be an amazing coincidence and, as a result, suspect.

The Tribunal, having concluded to the market rental rate of $5.50 per square foot, determines that the potential gross rent for the subject property for all tax years before it to be $683,342 (124,244 square feet x $5.50). The Tribunal further determines a tenant leasing the subject property would pay real estate taxes, insurance and common area maintenance and that normal practice would be to exclude real estate taxes from the expense reimbursements. The Tribunal concludes that the methodology employed by Respondent in determining vacancy and collection to be 5% to be well explained and supported by market-based information together with its conclusions as to expenses in the amount of $145,800 (R-1, p 63), which resulted in a net operating income (NOI) for the subject property of $621,406 per year.

The Tribunal has carefully reviewed and considered the capitalization rates selected by both Petitioner and Respondent for each of the years under appeal. Petitioner utilized the Korpacz C+ to B+ Mall survey for the first quarter of 2008 and the RERC 2nd Tier Regional Mall survey for summer 2007 (P-1, p 74). The rates reflected in these surveys ranged from a low of 5.75% in the Korpacz survey to highs indicated by both Korpacz and RERC of 9.0%. Petitioner added 50 basis points to the indicated high value of 9.0% based on its conclusion that there was more risk involved in anchor department stores than in an entire mall (rates based on entire mall rather than individual anchor stores) (P-1, p 75). The Tribunal finds nothing in this record to justify Petitioner's 50 basis point addition to the high end of the rates disclosed in the two surveys.

Respondent utilized five capitalization rate surveys: IRR Viewpoint of Neighborhood Strip Mall Year End 2006 with a range of 6.0 to 8.50%; IRR Viewpoint Year End 2006 of National Community Center Mall with a range of 6.0% to 9.0%; Korpacz 1 Quarter of 2007 with a range of 5.80% to 9.0%; Korpacz 1 Quarter of 2007 National Power Centers with a range of 5.5% to 9.0%; and the ACLI 4th Quarter of 2006 for National Retail of 7.0%. With a concluded capitalization rate of 8.0% before millage rate loading for tax years 2007 and 2008 and with a concluded rate of 8.25% before millage rate loading for 2009, the Tribunal concludes that the appropriate capitalization rate to be applied in this case for tax years 2007 and 2008 is best reflected in the Korpacz surveys utilized by both parties, that rate being 8.75% before millage rate loading, and after millage rate loading, a rate of 8.807 for tax year 2007 and 8.805% for 2008. The Tribunal accepts Respondent's conclusion that, due to the deterioration of the financial markets during the 4th quarter of 2008, a 25 basis point increase in the concluded 2007 and 2008 capitalization rates existed and as a result concludes that for tax year 2009 a capitalization rate of 9.0% based on the high end of the Korpacz surveys is appropriate before tax loading and after tax loading (.1209%) a rate of 9.1309 is appropriate..

The Tribunal having concluded that the direct income capitalization approach is the best indicator of value for the subject property for all years before it, and having determined appropriate rental, expense and capitalization rates as set forth above, determines that the **True Cash Value of the subject property for tax year 2007 is $7,055,800 ($621,406 NOI / 8.8807%); 2008 is $7,057,400 ($621,406 NOI / 8.8805%) and for tax year 2009 is $6,805,500 ($621,406 NOI /9.1309%).**

Having determined the true cash value of the parcel at issue for both tax years 2007 and 2008, the Tribunal concludes that the assessed and taxable values for each parcel is 50% of the above determined true cash values and is reflected in the final values section of this Opinion and Judgment.

JUDGMENT

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

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by the Final Opinion and Judgment within 90 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 1995, at a rate of 6.55% for calendar year 1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a rate of 6.04% for calendar year 1998, (iv) after December 31, 1998, at the rate of 6.01% for calendar year 1999, (v) after December 31, 1999, at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000, at the rate of 6.56% for calendar year 2001, (vii) after December 31, 2001, at the rate of 5.56% for calendar year 2002, (viii) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ix) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (x) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (xi) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (xii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (xiii) after December 31, 2007, at the rate of 5.81% (xiv) for calendar year 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: June 18, 2010

By: Kimbal R. Smith III, Tribunal Judge