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

Target Corporation,
Petitioner,

v

MTT Docket No. 345523

City of Novi,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

ERRATUM TO FINAL OPINION AND JUDGMENT

The Tribunal, having given due consideration to the file in the above-captioned case, finds the Tribunal erred in the entry of the September 21, 2010 Opinion and Judgment. Although the errors are clerical in nature, they need to be corrected, as provided by TTR 135. More specifically, the property's true cash was improperly calculated for the 2009 tax year only, as $50.20 per square foot times 126,894 square feet equals $6,375,154 (rounded) and not $6,375,515. As such, the property's final true cash, state equalized and taxable values for the 2009 tax year need to be CORRECTED as follows:

Parcel Number: 50-22-17-101-022

Year	TCV	SEV	TV
2009	$6,375,154	$3,187,577	$3,187,577

The Tribunal also erred on page 3 when it stated that "Petitioner indicated that the income approach is used only as a 'check' to its value conclusions using the sales and income approaches." That error also needs to be CORRECTED as the Tribunal had intended to state that "Petitioner indicated that the **cost** approach is used only as a 'check' to its value conclusions using the sales and income approaches." (Emphasis added.)

IT IS SO ORDERED.

MICHIGAN TAX TRIBUNAL

Entered: September 23, 2010
pmk

By: Kimbal R. Smith III

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

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City of Novi
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith, III

OPINION AND JUDGMENT

A hearing was held in the above-captioned matter on August 23 through August 26, 2010. Petitioner was represented by Michael B. Shapiro and Daniel Stanley of the law firm of Honigman, Miller, Schwartz and Cohn, LLP. Respondent was represented by Stephanie Simon Morita of the law firm of Secrest, Wardle.

This matter involves one parcel of real property located in the City of Novi, Oakland County, Michigan, identified by tax parcel number 50- 22-17-101-022. Petitioner timely invoked the jurisdiction of the Tribunal for tax years 2008, 2009 and 2010. 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	AV	SEV	TV
50- 22-17-101-022	2008	$10,265,900	$5,142,950	$4,876,620
50- 22-17-101-022	2009	$10,145,300	$5,072,650	$5,072,650

50- 22-17-101-022	2010	$9,081,400	$4,540,700	$4,540,700

FINAL VALUES

Parcel Number	Year	True Cash Value	SEV	TV
50- 22-17-101-022	2008	$7,968,943	$3,984,715	$3,984,715
50- 22-17-101-022	2009	$6,375,515	$3,268,775	$3,268,775
50- 22-17-101-022	2010	$5,100,400	$2,550,200	$2,550,200

THE SUBJECT PROPERTY

The subject property consists of one parcel of land located in the City of Novi, Oakland County, State of Michigan and is identified as tax parcel no. 50- 22-17-101-022. It is located at 27100 Wixom Road, consists of approximately 13 acres of land upon which sits a 126,894 square foot (P-1, p.1 and R-1, p.3) structure and surface parking. The structure was constructed on Petitioner's behalf as a big box Target store according to Petitioner's plans and specifications and was completed in early 2003. The structure was constructed for and on behalf of Petitioner. The property is zoned light industrial subject to a consent agreement that allows for retail development and use.

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 Allen & Associates Appraisal Group, Inc., dated March 1, 2010 covering tax years 2008, 2009 and 2010. The appraisal concluded to a true cash value of Seven Million Seven Hundred and Thirty Thousand

($7,730,000) Dollars as of December 31, 2007; Six Million One Hundred Ninety Thousand ($6,190,000) Dollars as of December 31, 2008; and as of December 31, 2009, Four Million Nine Hundred Eighty Thousand ($4,980,000) Dollars.

Petitioner states the proper methodology is to consider all three traditional approaches (cost, sales and income), which he did, but after considering all approaches he concluded that the sales comparison approach was the primary indicator of value with the income approach being a secondary indicator. Due to Petitioner's significant amount of determined obsolescence to the building and site improvements, Petitioner indicated that the income approach is used only as a "check" to its value conclusions using the sales and income approaches.

Petitioner further contends that the building on the property was constructed as a Target store. The layout and functional utility of the building is considered to be best suited to a large tenant/ user due to the size and interior layout of the building and is not conducive to a multi-tenant conversion because there is only a single utility service and a single loading dock for shipping and receiving and its layout on the site. The design is generally similar to the design of other "big box" stores but is oversized for most single tenant retail uses. The relative shallow depth of the site impairs the functional utility for retail use. (P-1, p.26)

Petitioner has requested it be awarded costs.

In support of Petitioner's contentions, Petitioner presented one witness, Lawrence Allen, MAI, who testified in support of the appraisal which he prepared and which was admitted into evidence as Petitioner's Exhibit P-1.

Allen determined the Highest and Best Use of the property "As Improved" to be a retail store, which is different than the property's current specific use as a Target Store. The interest in the subject property which Allen appraised and valued was "fee simple" and as "vacant and available" at time of sale.

In arriving at his opinion of value, Allen considered all three approaches to value but ultimately concluded that the sales comparison approach be given the most weight.

For tax year 2007 Allen utilized five sales occurring between February 2005 (Comparable #3) [same as Respondent's Comparable #1] and December 2009 (Comparable #5). The square footage of the comparables ranged from 192,000 (Comparable #1) to 111,285 (Comparable #4) compared to the subject's 126,894 square feet.

To each of his sales comparables Allen made adjustments for property rights conveyed, financing terms, conditions of sale, market conditions, size, location, and age and condition using December 31, 2007 [2008 tax year] as his base year (See P-1, p.57, together with explanation of adjustments on pages 53-58 of P-1). Allen used the same sales comparables for tax year 2009 and 2010 and essentially used the same adjustments for the subsequent years with the exception of his adjustment for market conditions. He noted, commencing at page 53 of P-1, regarding market conditions:

> The adjustment, for market conditions, accounts for any changes in the market conditions between the date of sale of the comparable and the date of value of the subject. Based upon the historical condition of the retail market in southeast Michigan, we have applied an annual market condition factor of zero percent (-0%) to the comparables through year end 2007.
> From the beginning of 2008 through the end of 2009, the economy (locally and nationally) began a serious decline with several notable events. These include but are not limited to: collapse of Bear Sterns, the liquidation of Lehman Brothers (4th largest investment bank in U.S.), the government seizing control of Fannie Mae and Freddie Mac, crash of the stock market, the government bailout of insurance giant AIG in exchange for 80% ownership, the country's largest bank failure in Washington Mutual, freezing of commercial credit, eventual bankruptcy filings by Chrysler and General Motors in May/June 2009, failure in the banking industry in general and the residential/commercial property foreclosure crisis. While most of these events occurred in 2008, each had a profound effect on the major changes in real estate markets, including the demand for retail properties. As a result of these changes there has been a decline in the value of retail properties. This is a result of a decrease in demand resulting from the auto industry contractions, investment uncertainties and lack of financing.
>
> In order to conclude a market value for December 31, 2008 & 2009, we have examined market sales, reviewed market publications, changing market factors, and have interviewed brokers to establish an adjustment for the changes in market conditions from 12/31/07 to 12/31/09.

Based upon his review, he states that from 12/31/07 to 12/31/09, unemployment in the Detroit MSA rose significantly (P-1, p.54) together with unemployment in Michigan; in both instances the unemployment rate was in excess of the national average. By the end of 2009 the average selling price per square foot for retail property was 50% less than in the 4th quarter of 2007. He states that the rise in market vacancy together with a decline in average market rent indicated a declining market. (P-1, p.55)

Allen concluded that an adjustment due to market conditions of a negative .20 was necessary for both years, which resulted in an .80 market condition adjustment for 2009 and a .64 adjustment for 2010. (See P-1, p.58) In addition, Allen reviewed six listings which he deemed comparable to verify his conclusion of a market decline. He did so by showing a reduction in listing price per square foot between the years in dispute (P-1, p.59).

Allen concluded to a true cash value using his sales comparison approach after adjustments of $7,870,000 as of December 31, 2007 ($62.00 per S/F x 126,894); $6,340,000 ($50.00 per S/F) as of December 31, 2008; and $5,080,000 ($40.00 per S/F) as of December 31, 2009.

Allen's income capitalization approach consisted of an analysis of the subject property as a discount big box retail store. In developing the subject's income (market rent) potential an estimated rental rate was established using market rent from twelve similar big box structures. (See P-1, p.63) The first four of Allen's rent comparables were build-to-suit properties (built specifically for the tenant according to the tenant's plans, layout, etc.), whereas the other eight were leases of existing buildings. Allen explained that his study concluded that build-to-suit leases commanded approximately a 31% premium over the lease rates for existing properties. After adjustments for differences in age, location, date of lease, tenant improvements included in the lease and offering status, Allen concluded to an average per square foot rental rate for build-to-suit leases of $7.88 and for existing building rental rates of $5.37 for tax year 2008 with an average overall lease rate of $6.30. As a result of his study Allen concluded to a retrospective triple net market rental rate for the subject property as of the relevant valuation dates of December 31, 2007-$6.50/SF NNN, December 31, 2008-$6.00SF NNN and as of December 31, 2009-$5.50 SF NNN. Allen based his diminished rental rates as of December 31, 2008 and 2009 on the same market conditions that his adjustments to his sales comparison approach were based.

After determining the rental rate per square foot for the subject years, Allen then multiplied the rental rate by the square footage of the subject to arrive at potential rental income to which he added reimbursement income that included common area maintenance (CAM), insurance and property taxes. These reimbursement items were predicated on the assumption that any lease of the subject property would be a triple net lease.

From his potential gross income determination for each tax year Allen deducted a vacancy and credit loss factor for retail properties in the Detroit MSA (Metropolitan Statistical Area) as published by CoStar. (P-1, p.65) In applying these factors he utilized a 10% factor for tax year 2008 and a 15% factor for 2009 and 2010 to arrive at effective gross income (EGI) of the subject for all years. (P-1, p.66) The Tribunal notes that the vacancy factor utilized was for all retail and not just big box discount properties. After arriving at EGI, Allen deducted non-reimbursed operating expenses of a management fee of 3% of EGI, a reserve for replacement of $.15 per square foot, insurance of .$23 per square foot and CAM expense equaling the CAM income on the income side to make the CAM income and expense amounts a wash. Allen's replacement reserve factor was based on the Korpacz Real Estate Investment Survey from 2005 to 2007 across several different types of investors that indicated reserves ranging from $0.10 /SF to $0.50/SF. After deducting from the EGI all of the expenses set forth above, Allen arrived at an NOI (net operating income) for each year to which he applied his capitalization rate.

In arriving at his overall capitalization rate for each year, Allen considered the band of investment method (P-1, p.67) and market derived capitalization method (P-1, p.68) before concluding to direct capitalization rates of 8.50% as of December 31, 2007; 9.00% as of

December 31, 2008; and 10% as of December 31, 2009. Allen explained that the increased rates reflected were a result of the financial meltdown and perceived risk by investors. Applying the above capitalization rates determined for each year, Allen concluded value estimates using the income capitalization approach of $7,570,821 for 2008, $7,959,118 for 2009, and $4,888,886 for 2010 (P-1, p.70). After arriving at the above amount, Allen then reduced his value estimate using this approach by a leasing commission of 6% of gross rent assuming a five-year lease. (P-1, p.69) Applying the leasing commission to the indicated value yielded a concluded value via the income approach of $7,320,000, $5,730,000, and $4,680,000, respectively for 2008, 2009 and 2010.

Allen explained the methodology he employed in arriving at his estimate of value using the cost approach. He first estimated the land value of the subject using four land sales for "big box" retail stores (P-1, pp.71-77) and made adjustments to the sales before concluding value per square foot for the land for each year under appeal. He then applied the Marshall Valuation Service replacement cost numbers for an Average Class C Discount Store for the subject, and applied local and current multiplier factors to arrive at a replacement cost estimate for each year under appeal.

The Tribunal notes that the replacement cost estimate obtained using MVS exceeds the actual cost to complete the subject improvements set forth in R-3-Application and Certificate for Payment form (attached to this exhibit) to the replacement cost calculation for the subject structure. Allen calculated Site Improvement Costs (P-1, p.81) together with construction management fees (P-1, p.82). He then calculated physical depreciation using the age life method and then deducted functional obsolescence. Allen based his functional obsolescence on his conclusion that

> [t]he subject is oversized for what is generally required in the market and has a façade and other features, including interior layout and design, that [are] specific to a Target business but would have no value to other users. (P-1, p.83)

Allen explained his method in determining obsolescence as set forth at pages 85 to 87 of P-1, with estimated cost of modification, before coming to his value estimate using the cost approach found at page 88 of P-1. The Tribunal notes that Allen's value conclusion found total depreciation (physical and obsolescence) in excess of 75% of his concluded replacement using Marshal Swift for each year under appeal.

RESPONDENT'S CONTENTIONS

Respondent relies on the value conclusions contained in the appraisal prepared by Raymond V. Bologna, MAI, and David E. Gensley, of Terzo & Bologna, dated February 26, 2010, which concluded to retrospective market values of the subject property for the tax years under appeal as follows: 2008 (December 31, 2007) $10,500,000; 2009 (December 31, 2008) $10,500,000; and 2010 (December 31, 2009) $9,000,000 (R-1, p.2). In addition to the testimony of Raymond Bologna, who testified in support of his appraisal, Respondent offered four exhibits that were admitted into evidence. The admitted exhibits were: R-3.—Actual Construction Cost number provided by Petitioner discovery requests; R-5—Article by Davod C. Lennhoff, "You Can't Get the Value Right If You Get the Rights Wrong"; R-6 – Court of Appeals Opinion *Meijer v City of Midland*.

For all years under appeal, the Bologna appraisal (R-1) concluded that the highest and best use of the property as improved was the current use of the property be continued and “As to the utility and design of the improvements they are constructed within the general expectations of the market so no modifications or enhancement is dictated to maximize value.” (R-1, p.68)

For each year Respondent considered essentially four approaches to value: cost approach, sales comparison approach, direct Capitalization-Effective Gross Income Multiplier (EGI), and Direct Capitalization-Overall Rate.

The format of R-1 was to consider separately each valuation method for each year (2008, 2009, and 2010) separately.

For tax year 2008 (December 31, 2007), the value of the subject land using the sales comparison approach based on four sales occurring between April 2007 and April 2009 were utilized and, after adjustments, a value of $255,000 per acre or $3,180,000 was determined. (The Tribunal notes that Respondent’s 2007 land value was in fact less than the land value utilized by Petitioner’s expert using the same approach (i.e., $5,190,000 [P-1, p.85]). To Respondent’s land value, the cost of Site Improvements in the amount of $779,000 was added (again less than Petitioner’s site improvement cost estimate) plus indirect costs of 5%, but no entrepreneurial incentive factor. To Respondent’s land site improvement estimates the replacement cost of an average discount store was determined using MVS (Marshall Valuation Service), which, after indirect costs of 5% and application of retrospective cost index factor, establishes an estimated replacement cost of the building before depreciation of $9,637,501 to which depreciation of

17.34% or $1,651,900 was deducted to arrive at an estimated value using the cost approach of $11,500,000. In arriving at this number Respondent found “no functional obsolescence” and “no external obsolescence” (R-1, p.66) This same methodology was utilized by Respondent for the 2009 and 2010 tax years.

Respondent’s income approach concluded to a market rental rate of $6.15 per square foot for tax year 2008 (R-1, p.74) in contract to Petitioner’s market rental rate of $6.50 (P-1, p.66) for 2007. For tax year 2009 Respondent’s rental rate was $6.15 per SF (R-1, p.89) in contrast to Petitioner’s rental rate of $6.00 per SF (P-1, p.65) and for tax year 2010 Respondent’s rental rate was determined at $5.75 per SF (R-1, p.102) in contrast with Petitioner’s $5.50 per SF (P-1, p.66).

Respondent’s EGI technique was to apply the concluded rental rate to the square footage of the subject and deduct vacancy and collection losses, which Bologna determined did not exist because

> [t]he subject is a large, single-tenant building. Such buildings are typically subject to long-term leases and investors capitalize the income without an allowance for vacancy. In such investments, the vacancy risk is accounted for within the capitalization rate. Accordingly, no vacancy allowance is imputed. (R-1. p73)

Bologna then concluded that

> due to the low intensity of management required, it is projected that management includes all administrative expense including legal and accounting. It is estimated that all of theses fees can be negotiated for 0.5 percent of annual rental income.

On page 83 of R-1 Bologna set forth what he described as market extracted overall rates for his Direct Capitalization Overall Rate methodology, which indicated a rate of 7.50% as of December 31, 2007, or $9,970,000 whereas his value using his EGI was $10,660,000.

For its sales comparable approach, Respondent utilized six sales occurring between February 2005 (Comparable #1) to January 2008 (Comparables #5 and #6). With the exception of Comparable #2, which was a two-box power center, all were single user structures. The square footage of the comparables ranged from 136,430 for Comparable #3 to 76,741 for Comparable #5 as compared to the subject's 126,894 square feet. Respondent made significant adjustments to all of its comparables for "location" ranging from a negative forty (-40) percent for Comparables 1, 2 and 4 to a negative thirty (-30) percent for Comparables 3, 5 and 6. Respondent also made building height and other adjustments before arriving at its final conclusion of value using the sales approach for tax year 2008 of $10,500,000, and for the 2009 tax year of $10,300,000 (same sales comparables with minor additional adjustments for age. For tax year 2010 again using the same sales comparables for a final conclusion of value of $8,100,000, but acknowledging a 20% economic condition degeneration for the last valuation date.

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 parties stipulated at the commencement of the hearing that the equalization factor for all years under appeal was one (1) and the relative level of assessment was 50%.

The subject property is located at 27100 Wixom Road, Novi, Michigan, has been assigned tax parcel #50- 22-17-101-022, and has been at all times owner-occupied by Petitioner.
The parcel is +/- 13.23 acres in size and the structure located thereon has a gross building area of approximately 126,894 square feet. The structure was custom built in 2003 as a Target Store according to Target's plans, specifications and footprint.

The layout of the subject property because of the discount/big box design is generally intended for a single tenant user and is not conducive to a multi-tenant conversion.

The highest and best use of the subject property as improved is as a retail store which is different than its current use as a Target store.

Beginning in early 2008 and continuing through 2009 the nation, Michigan and Southeast Michigan in particular was hit with a severe recession. This recession was evidenced by rising unemployment rates and lack of liquidity in the financial markets. Michigan was particularly hard hit because of its dependence on the automotive industry. As a result, vacancy rates increased, commercial rents declined and there was a substantial rise in foreclosures, both in the residential and commercial markets. All of these events had a significant effect in decreased demand for retail property similar to the subject and thus the true cash value of the subject property on the December 31, 2008 and 2009 valuation dates.

Both experts acknowledge in their respective value conclusions for the December 31, 2009 valuation date that the true cash value of the subject property using their respective sales comparison analyses that the true cash value of the subject had declined approximately twenty per cent (20%) from December 31, 2008 (See P-1, p.60 [from $5,300,000 to $5,080,000=20%] and [from $10,500,000 to $8,100,000=22.86%]. (R-1, pp.91 &101)

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 2008, 2009 and 2010. 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 has carefully analyzed the two appraisals prepared by the parties' respective experts (P-1 and R-1) together with the testimony of both experts and additional exhibits properly admitted.

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 2008, 2009 and 2010.

For reasons set forth below the Tribunal will, as a starting point, consider Petitioner's sales comparison analysis and adjustments contained therein together with Petitioner's income capitalization analysis. The Tribunal does not believe either party's cost approach assists the Tribunal in arriving at its ultimate determination of true cash value first for the reason that in the case of Petitioner a substantial degree of depreciation and obsolescence was determined and in the case of Respondent no obsolescence was determined whatsoever. The Tribunal believes that it is extremely difficult to determine depreciation and obsolescence using the cost approach and that the market itself takes these items into consideration in the sales comparison approach. For these reasons, the Tribunal will give no weight to either expert's value conclusion using the cost approach and will not set forth any critique of cost approach methods.

The Tribunal finds that Respondent's expert's position that the value of the subject remained the same for both the December 31, 2007 and 2008 valuation dates (see R-1, pp.81 & 86) flies in the face of reality, as reflected by the recession which everyone else, including the Tribunal, found to exist in this country, and particularly in Southeast Michigan as evidenced by Respondent's determination, and the real estate market in the subject area (as testified by Petitioner's expert).

The Tribunal believes it to be is a disingenuous attempt on the part of Respondent to maintain the value of the subject property in a declining market and to refuse to recognize the clear market decline until December 31, 2009. It was not until the December 31, 2009 valuation date that Respondent's expert finally acknowledged that the nationwide recession which the nation and Michigan had been suffering for two plus years had finally hit the Wixom Road "neighborhood" where the subject property is located. At that time, Respondent lowered the true cash value of the property based on its sales approach by approximately 20% from its 2008 and 2009 tax year levels.

In making its ultimate conclusion of true cash value of the subject, the Tribunal will make its determination for the 2008 tax year and then adjust the 2008 value to the 2009 and 2010 years based on market conditions and any other factors the Tribunal determines relevant based on the record.

In this matter both parties, in their respective sales comparison analyses, utilize the sale of the Sam's Club property in Madison Heights in February 2005 for $7,250,000 (P-1, p.37, Comp #3, and R-1, p.77, Comp #1) or $64.00 per/SF based on a building area of 113,290 square feet. The Tribunal believes strongly that it can test the reliability of the experts' value conclusions where both experts utilize the same sale or sales in their sales comparison analyses by looking at the adjustments made to the common sale or sales.

With this sale after adjustments to the original $64.00 per SF sale price, Petitioner concluded to an adjusted per square foot value as of December 31, 2007 of $61.20 in contrast to Respondent's concluded per square foot value as of the same date of $96.64.

At the time of the sale of this comparable there was an existing above market lease with two years remaining on the lease. Allen adjusted the sale price of $64.00 per/SF by .85 to reflect the above market lease term remaining in what he characterized as a transaction adjustment (leased fee) to arrive at an adjusted sale price per square foot of $54.40 after which he made "characteristic" adjustments of .90 location (superior) and age and condition adjustment of 1.25 due to the fact that the subject was newer than the comparable. Bologna, on the other hand, appeared to have made an upward "economic condition" of 63% which in effect increased the sale price of the comparable by 63% due to the above market lease with two years remaining and what Bologna characterized as "repositioning costs" that being the costs estimated by the appraiser of $40.33 per square foot to convert the property to a series of 20,000 square foot mini-anchors. In addition, Bologna made a location adjustment of -40% based on his opinion that the location of the property was superior to the subject and further adjustments because

> It had a slightly lower ceiling height and was somewhat older at the time of sale thus requiring upward adjustments. This property indicates a rate of $96.64 per square foot as an appropriate value for the subject, but the large adjustments required due to this repositioning property in a market Sam's Club chose to leave makes this property only marginally reliable as a comparison. (R-1, p.78)

Although Bologna gave this comparable only marginal reliability, his methodology in effect adjusting the sale price upward due to the estimated cost to be incurred in splitting up the property into a series of mini-anchors brings into question the reliability of all of his value conclusions. Costs incurred by a purchaser after purchase that were anticipated at time of purchase may be added into the purchase price when adjusting a comparable property to the subject. (See Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13th ed, 2008), pp 331, 311.) *The subject property is not a series of 20,000 square foot mini-anchor stores but a single user/tenant big box*. In passing, the Tribunal notes that cross-examination by Petitioner's counsel seriously called into question basis and accuracy of the ceiling height adjustments made by Bologna.

The Tribunal, having carefully reviewed both the sales utilized by both parties and the adjustments made to each party's respective sales especially for the December 31, 2007, valuation date and having observed the demeanor and responses of the respective experts during the hearing, determines that Petitioner's comparables, the adjustments made thereto, and the rationale expressed as to the basis of selecting the comparables are better explained, justified, and market-based than those of Respondent. In particular, Petitioner's Comparables #1, #2, #4 and #6 give the Tribunal the most assistance in determining the true cash value of the subject property for the years before it. The Tribunal determines that Petitioner's Comparable #3, Respondent's Comparable #1 (since at time of sale was subject to the tail end of a above market lease) is of less relevance. The Tribunal notes, however, that the adjustments made by Petitioner's expert were much better explained and market based than were those adjustments and explanations made by Respondent's expert.

The Tribunal concludes that the valuation method that is most useful in assisting the Tribunal in determining the 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 is the Sales Comparison Approach for all years in dispute. Based on its experience in hearing cases of this nature, the Tribunal believes that property of this type is most generally owner/user occupied and the sales comparison approach is the best indicator of value for these types of properties. Petitioner's expert also stated that his sales comparison approach "will serve as our primary indicator of value." (P-1, p.90)

The Tribunal is uncomfortable with Respondent's EGIM capitalization method in that it ignores normal market-based expenses from consideration and, as a result, as demonstrated by Respondent's conclusions of value for each year (R-1, pp.81, 91 & 103) second only to the cost approach, which the Tribunal has previously rejected. The direct capitalization method, based on the Tribunal's experience, yields a more accurate indication of value when expenses are properly accounted for and an appropriate capitalization rate applied. The Tribunal is not satisfied with Respondent's explanation that no expenses other than a .5% management fee was expensed to conclude to its NOI and that no vacancy, credit loss or replacement reserve was included. The

Tribunal has some concerns with the vacancy and credit loss calculations employed by Petitioner for the 2009 and 2010 tax years, but will not go into a detailed analysis. For the reasons listed above, the Tribunal determines that the sales comparison approach utilized by Petitioner yields the most assistance in the Tribunal's determination of true cash value for the subject.

For tax year **2008 (December 31, 2007)** the Tribunal determines the **true cash value** of the subject property based on Petitioner's average sale price per square foot of sale Comparables #1 ($60.82 per SF), #2 ($68.30 per SF), #4 ($62.27 per SF) and #5 ($59.80per SF) of $62.80, which the Tribunal accepts and adopts as its independent determination of true cash value or **$7,968,943 ($62.80 x 126,894 SF).**

The Tribunal having previously found in its Findings of Fact section of this Opinion and Judgment that, due to changing market conditions between December 31, 2007 and December 31, 2008, the market value of the subject property declined 20% from its true cash value for tax year 2008, the Tribunal determines that the **true cash value of the subject property as of December 31, 2008 (2009 tax year) to be $6,375,515 or $50.24 per square foot.**

For tax year 2010 both parties' experts having concluded to approximately a 20% decline in market value of the subject property due to adverse market (economic) conditions from December 31, 2008 to December 31, 2009 (2010 tax year), which the Tribunal has found in its Findings of Fact section of this Opinion and Judgment to exist, **the Tribunal determines the true cash value of the subject property as of December 31, 2009 (2010 tax year) to be $5,100,400 or $40.20 (rounded) per square foot.**

Although Petitioner has requested costs in this matter, the Tribunal has considered Petitioner's request and determines that, although Petitioner is a prevailing party, costs are not warranted in this matter as Respondent proceeded in good faith to defend this action.

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's requests for costs is Denied for reasons set forth above.

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: September 21, 2010 By: Kimbal R. Smith III