STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

Kerr Manufacturing,
Petitioner,

v MTT Docket Nos. 347925 and 347926

City of Romulus,
Respondent.

Tribunal Judge Presiding
Marcus L. Abood

OPINION AND JUDGMENT

Introduction

Petitioner Kerr Manufacturing appeals ad valorem property tax assessments levied by Respondent City of Romulus against the real property owned by Petitioner for the 2008 and 2009 tax years. Leonard R. Brice, III, attorney, and Edward U. Blanchard appeared on behalf of Petitioner. Jerome P. Pesick and Jason C. Long, attorneys, appeared on behalf of Respondent. Witnesses appeared on behalf of both parties. Petitioner's witnesses were David Bur, MAI, and Andrew Beaudry, worldwide controller for Sybron Dental Specialties. Respondent's witness was Norman G. Thomas, ASA, SR/WA, certified general real estate appraiser.

The proceedings were brought before this Tribunal on April 25, 2011, to resolve the real property assessment dispute.

At issue before the Tribunal is the determination of true cash value of Petitioner's real property for the 2008 and 2009 tax years. The value on the assessment rolls are as follows:

Parcel Number 80-048-0005-001

	Respondent		
Year	TCV	SEV	TV
2008	$6,802,200	$3,401,100	$2,461,915
2009	$6,831,000	$3,415,500	$2,570,239

Parcel Number 80-048-0005-002

	Respondent		
Year	TCV	SEV	TV
2008	$90,800	$45,400	$42,022
2009	$87,600	$43,800	$43,800

Parcel Number 80-998-01-9801-060

	Respondent		
Year	TCV	SEV	TV
2008	$3,209,600	$1,604,800	$1,536,805
2009	$3,209,600	$1,604,800	$1,536,805

Petitioner contends the aggregate values are:

2008	$5,850,000	$2,925,000	$2,925,000
2009	$5,450,000	$2,725,000	$2,725,000

The Tribunal finds the values shall be:

Parcel Number 80-048-0005-001

Year	TCV	SEV	TV
2008	$6,802,200	$3,401,100	$2,461,915
2009	$6,831,000	$3,415,500	$2,570,239

Parcel Number 80-048-0005-002

Year	TCV	SEV	TV
2008	$90,800	$45,400	$42,022
2009	$87,600	$43,800	$43,800

Parcel Number 80-998-01-9801-060

Year	TCV	SEV	TV
2008	$3,209,600	$1,604,800	$1,536,805
2009	$3,209,600	$1,604,800	$1,536,805

Background

At issue for tax years 2008 and 2009 is the true cash value for the three parcels of real property. The first property is identified as 28200 Wick Road, parcel identification 80-048-048-99-0005-001, and contains 31.38 acres. This parcel is improved with the Kerr building, which has 192,913 square feet. The second parcel identification is 80-048-99-0005-002 containing 1.1 acres with a guard shack. The third property is 28210 Wick Road, Romulus, parcel identification 80-998-01-99801-060 which houses the Metrex building with 85,200 square feet. No land is attached to the Metrex building.

For each year, Petitioner conveys one opinion of value for all three parcel identification numbers as all of the buildings make up the subject property. Petitioner bases the value on the sales comparison approach and the income approach to value.

Respondent's valuation disclosure has requested a slight increase to the true cash value of the subject properties and valued the parcels independently.

Petitioner's Arguments

Petitioner argues that the true cash value of the subject property is overstated.

Petitioner's first witness was Andrew Beaudry, Worldwide Controller for Sybron Dental Specialties. Mr. Beaudry testified that his initial position with the company was as site controller covering Kerr and Metrex for the Romulus facility. He then moved to director of financial operations for Sybron Dental and currently is the controller. He stated that Sybron Dental Specialties is the parent company that owns Kerr Manufacturing who in turn owns Metrex. Kerr Manufacturing is in the business of providing dental consumables and equipment to the dentist. Metrex is in the business of infection control, manufacturing infection control and distribution.

When questioned, Mr. Beaudry explained that Kerr and Metrex employees have access to the three subject property buildings. Kerr's employees, however, do not use the Metrex building. The Kerr building is used for group meetings and distribution of samples. Both businesses may share employees.

Mr. Beaudry testified to the lease agreements and amendments. He stated that the landlord under the lease is Corporate Property Associates with Sybron Acquisition as the guarantor under the lease. The lease was entered into as a sale lease-back transaction. Kerr Manufacturing owned the property prior to December 31, 1988. The agreement was entered into as a financing tool for the company. He testified that the lease referenced an acquisition price of $7.3 million, but is not aware how the price was established. The First Amendment to the Lease Agreement was explained as a five-year extension to the lease with Sybron Dental Specialties as the guarantor. The Agreement of Consent was the acknowledgement of the construction of the Metrex building.

Mr. Beaudry testified that the activities of both of the buildings do not include interaction with the Detroit Metro Airport. The Metrex building does not include any land, and no additional rent is paid for the Metrex building. Neither Kerr nor Metrex has the ability to sell the property. Kerr paid approximately $3,770,000 in 2001 to construct the 85,000 square foot Metrex building. Lastly, Mr. Beaudry testified that the annual current rent for Kerr is $1,200,000.

Petitioner's second witness was David Bur, MAI, who prepared an appraisal report for tax years 2007 and 2008. Mr. Bur testified that he appraised the total square footage as though it were one building. An appraisal supplement provides the allocation of the value for the individual three parcel identification numbers. Mr. Bur testified that none of the three parcels could be marketed separately. He determined that the highest and best use of the subject property would be to keep the parcels together.

Mr. Bur explained that he spoke to several brokers who were familiar with the subject properties, they explained that it may be possible to market the Metrex building by itself, but it has no visibility from the road, it has no parking or site improvements or separate access. Therefore, Mr. Bur determined that the marketing of the subject property would be as one entity.

Mr. Bur is familiar with some of the airport distribution facilities that are around the Metro Airport. He testified that they tend to be multi-tenant industrial warehouse buildings with good loading facilities for the trucks to pull in, unload goods that are repackaged and put onto airplanes. These facilities tend to be small because of the limitation of the size of the airplanes. The subject property is in a good location that would allow it to be a distribution facility. The Kerr building is too large and not constructed as a distribution center. The Metrex building is a big box design without any divisionary walls, and also is not designed as a distribution center.

Mr. Bur testified that he did rely on the Sales Comparison Approach more than the Income Approach, as larger industrial buildings are usually owner-occupied rather than leased. There is less information for leased large industrial properties.

Mr. Bur developed an income approach utilizing the same five rental properties for tax year 2007 and 2008. All of the rental comps were triple net leases with the landlord paying management fees and unrecovered expenses. The five rental properties are:

	Subject	Rental 1	Rental 2	Rental 3	Rental 4	Rental 5
	Romulus	Romulus	Farmington Hills	Redford Twp	Livonia	Lyon Twp
Lease Mo.	60	72	72	9	66	120
Sq Ft	278,113	172,225	144,000	393,940	160,000	127,533
Year Blt	1966/2001	1996/2003	1963-1980	1975	1987	1989
Condition	Average	Good	Average	Average	Avg/Good	Avg/Good
Rent/ Sq Ft	$4.31	$5.35	$3.75	$3.09	$3.41	$5.30

Mr. Bur then adjusted the leases based on his experience in valuing large industrial properties, discussions with market participants, and quantitative methodologies. The five leases were adjusted for differences in location, square footage, year built, condition, and quality. The specific adjustments and the resulting rents per square foot for 2007 are as follows:

	Subject	Rental 1	Rental 2	Rental 3	Rental 4	Rental 5
	Romulus	Romulus	Farmington Hills	Redford Twp	Livonia	Lyon Twp
Sq Ft	278,113	172,225	144,000	393,940	160,000	127,533
Year Blt	1966/2001	1996/2003	1963-1980	1975	1987	1989
Condition	Average	Good	Average	Average	Avg/Good	Avg/Good
Rent/ Sq Ft	$4.31	$5.35	$3.75	$3.09	$3.41	$5.30
Adj:						
			Location	Location	Location	
		Size	Size	Size	Size	Size
		Age/cond			Age/cond	Age/cond
		Quality	Quality	Quality	Quality	Quality
		-35%	-20%	5%	-25%	-30%
Adj Rent/SF		**$3.57**	**$3.08**	**$3.33**	**$2.49**	**$3.60**

Mr. Bur concludes to $3.20 per square foot triple net rent as of December 31, 2007 and $3.00 per square foot triple net rent as of December 31, 2008.

Mr. Bur's next step is to estimate typical vacancy and credit loss in the industrial submarket for typical industrial tenants. Long term vacancy and credit loss was determined to be 12%. The remainder of the expenses that a landlord would incur includes a management fee, which is 2% of revenue. Unrecovered operating expenses include common area maintenance, real estate taxes and insurance that the landlord would pay when the property is vacant.

Mr. Bur's next step in the income analysis is to develop a capitalization rate to apply to the net operating income. Mr. Bur considered market derived capitalization rates from sixteen properties with leases in place at the time of sale. Second, a band of investment technique was analyzed based on current mortgage and equity rates. Last, published national investment surveys were reviewed. Mr. Bur concluded to a 10.5% overall capitalization rate that reflected the subject property's average condition, the low/average cost of construction, and the functional obsolescence from two separate buildings, as well as the layout of the Kerr building.

Mr. Bur also applied lease-up costs to reach a stabilized occupancy and a 3% leasing commission for a five-year term. Mr. Bur begins with zero occupancy, a $3.20 per square foot rental rate (annualized at $783,164) and two years to rent the property. He determined that the lost income is $1,566.332 and a 3% leasing commission of $117,645. The total lease-up cost of $1,680,000 was deducted from the capitalized income. Mr. Bur's value conclusion for the income approach is $5,960,000 as of December 31, 2007. Mr. Bur utilizes the same technique for December 31, 2008, which results in a $5,550,000 market value.

Next, Mr. Bur develops the Sales Comparison approach to find similar properties that have sold in a reasonable period to the effective dates of the appraisal. Mr. Bur utilized five sales of industrial properties located in different communities. All of the sales were adjusted for differences in amenities and characteristics. All of the properties were adjusted for the difference in market conditions. Mr. Bur views the subject's location in Romulus as average. There is good freeway and airport access. However, the subject site is adjacent to a hazardous waste deep injection system and within the flight path of the airport. Sale 1, in Romulus, has an inferior location. Sale 4, in Livonia, is considered to be a superior location. Both properties received a location adjustment. All of the sales were adjusted for the difference in building size.

Again, the subject property was considered to be in average condition. The subject property is comprised of two separate buildings. In addition, the Kerr building has a functional inadequate layout and design. Mr. Bur also considered the lack of cranes in condition/quality adjustments to the sales data. Sale 1 is inferior in condition but is superior in a heavy industrial aspect. This sale required an overall downward adjustment. Sale 2 is also inferior in condition but is superior quality of construction. Sale 3 is superior in condition and quality; this sale contains cranes and required a larger downward adjustment to the sale price. Sale 4 is superior in condition and quality requiring a downward adjustment. Sale 5 is similar to subject property in condition but has superior quality of construction. All of the sale properties were adjusted for superior condition or quality. Likewise, all of the sales also were adjusted downward for the superior shop clear heights.

The subject property has 18% office, which Mr. Bur considered superior for a building of its size. Sales 3, 4, and 5 have lower office components and were adjusted upward.

Mr. Bur concludes his adjustments with land-to-building ratios. He states that land-to-building ratio is important to industrial properties because it is an indication of the amount of area for parking, storage and truck maneuverability. The subject property has a high land-to-building ratio with surplus land for expansion.

Mr. Bur has gross adjustments of 30-50% for differences in characteristics and amenities. The unadjusted sale prices per square foot range from $14.17 to $38.27. The adjusted sale prices range from $14.91 to $27.88 per square foot. Mr. Bur determined the market value of the subject property as of December 31, 2007 was $21.00 per square foot for a value of $5,840,000. As of December 31, 2008, the price per square foot was $19.50 for a value of $5,420,000.

Petitioner did an allocation of the true cash value per parcel identification number:

Parcel # 80-998-01-9801-060	
2007	$1,858,500
2008	$1,727,100
Parcel # 80-048-0005-001	
2007	$3,938,900
2008	$3,675,800
Parcel # 80-048-0005-002	
2007	$52,600
2008	$47,100

Respondent's Argument

Respondent believes that the subject property's assessment does not exceed the applicable ratio of the property's true cash value, and therefore the properties' assessments are valid under Michigan Law. Respondent has submitted valuation disclosures prepared by Norman G. Thomas, ASA, SR/WA.

Respondent's witness, Mr. Thomas, prepared an appraisal report for the Kerr building and the Metrex building. He developed the cost, sales comparison, and income approaches for each building.

Mr. Thomas testified that the first appraisal report includes the Kerr building and the guard shed. The Kerr building has 31.38 acres and is identified as parcel # 80-048-99-00005-001. The guard shed parcel has 1.11 acres and is identified as parcel # 80-048-99-00005-002.

Mr. Thomas testified that the Kerr Building is a research and development type of construction. The location of this property is a key factor in the determination of land value. The subject property is located on Wick Road, which provides direct access to the airport. Interchanges with the I-94 expressway are located at Ecorse and Telegraph Road to the east and Middlebelt Road to the west. Interstate 94 is located one-half mile north and the Detroit metropolitan airport is one-half mile west of the subject property.

Mr. Thomas explained the land value is applicable to all three parcel numbers. He determined the demand and value of multi-acreage industrial land. He used several land sales with slightly older sale dates and adjusted downward due to lack of demand. The five land sales are as follows:

Sale No.	1	2	3	4	5
Location	Belleville	Romulus	Ypsilanti	Ypsilanti	Belleville
Sale Date	May-06	Aug-05	Jan-06	Nov-05	Nov-05
Zoning	M-1	MT-2	L-I	IRO	G_1
Acres	42.22	19.94	57.86	36.09	36.96
Sale Price	$2,215,000	$1,779,000	$4,050,000	$1,500,000	$2,160,000
SP/SF	$1.20	$2.05	$1.61	$0.95	$1.34
Adjustments					
Time	-25%	-25%	-25%	-25%	-25%
Location	50%			50%	50%
Frontage	-25%	-25%	-25%		-25%
Adj Sp/SF	$1.13	$1.15	$0.91	$1.07	$1.26

The five vacant land sales were adjusted for differences in market conditions from 2005 and 2006 to tax dates at issue. The unadjusted sale prices range from $.95 to $2.05 per square foot. The adjusted sale prices range from $1.20 to $1.50. Further, adjustments were made for the difference in location (access to Metro Airport and access to freeways) to Sales 1, 4, and 5. Differences in road frontage were adjusted for Sales 1, 2, 3, and 5.

Mr. Thomas determines that the appropriate land value for the Kerr Building and 22.59 front acres is $1.70. This equates to a true cash value of $1,632,835. The same $1.70 per square foot was applied to the 1.1 acre guard shed property, which results in a true cash value of $82,197.

Mr. Thomas explained that Sale 4 represents back land similar to the Metrex Building at $1.00 per square foot. He concluded that the back land of 8.79 acres for the Metrex building is valued at $383,000.[1]

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[1] The Tribunal includes the Metrex Building's basic land value calculation, noting that the entire acreage is applicable to both properties. The Metrex Building calculations are separate from the Kerr Building.

Mr. Thomas stated that the lack of sales results in the decreased demand for industrial properties. The same vacant land sales were used for both tax years in contention.

Mr. Thomas used Marshall Valuation Services to calculate the cost of the Kerr building as Class R & D; however, he did not rely upon the cost less depreciation approach due to the chronological age and obsolescence of the building.

The sales comparison approach was the next application by Mr. Thomas. He examined sales in the industrial corridors along I-94, I-96 and I-275. Mr. Thomas testified that he considered many sold properties but found three sales that were similar to subject property. The following three sales were selected as reflective of the real estate market:

Sale No.	Subject	1	2	3
Address	Romulus	Plymouth	Romulus	Belleville
Sale Date		May-08	Feb-06	Jan-07
Year Blt	1966	1948	1989	1968
GBA	192,149	259,351	176,007	145,000
Land Ratio	7.37	3.36	4.94	6.01
Office %	50%	40%	20%	27%
Land SF	1,415,264	871,200	869,983	871,200
Sale Price		$9,400,000	$6,717,158	$4,226,000
SP/SF		$36.24	$38.16	$29.14
Adjustments				
Location		-10%	10%	10%
L/B Ratio		-5%	3%	
Time			-10%	
Interior			10%	10%
Adj SP/SF		$41.68	$42.24	$34.97

Sale 1 is located in Plymouth; it is a sale lease-back. It is close to subject in office percentage but has a smaller land-to-building ratio and an inferior location. Sale 1 does not have an interchange with the expressway.

Sale 2 is located two miles west of the subject and is west of I-275. This was also a sale lease-back agreement. The office percentage is 20% and required an adjustment. This sale has limited access to the highway, and is inferior to the subject in land-to-building ratio.

Sale 3 is located at the northwest corner of Rawsonville and Textile Roads. The finished area was estimated by the seller to be 40,000 square feet; this estimated at 27% of finished area used for Spring Arbor College classrooms. The land-to-building ratio is similar to subject property, but the interior build-out and location are inferior to the subject.

Mr. Thomas determined that analysis and adjustments result in a value of $39.00 per square foot for the subject property. The subject's gross building area multiplied by the price per square foot reflects a true cash value of $7,495,000 as of December 31, 2007. Mr. Thomas states for the subsequent year, the subject market remains stable with a slight 5% decline. The market value decreases to $37.00 per square foot or $6,437,000 as of December 31, 2008.

The income approach was the last indication of value that Mr. Thomas calculated. He utilized five industrial sales that were leased. From this data, Mr. Thomas calculated the annual rents and capitalization rates.

Thomas determined that the actual rent for the Kerr calculated to $6.67 per square foot in 2004. The actual lease was not used to determine market value. Thomas analyzed the following five properties that were leased[2]:

[2] The Tribunal notes the same properties were also used for the Metrex Building.

Location	Romulus	Romulus	Plymouth	Livonia	Plymouth
Sale Price	$17,650,000	$5,489,544	$9,400,000	$8,625,000	$15,500,000
Cap Rate	8.65%	7.75%	10.99%	9.42%	9.5%
Building Size	302,832	77,508	259,251	203,100	414,700
Year Built	2006	1988	1948	1976	1975
Income	$1,526,725	$425,440	$1,033,060	$812,475	$1,472,500
Type	Warehouse	Industrial	Industrial	Warehouse	Warehouse
Location	Hildebrandt	Middlebelt	Plymouth	Capital	Haggerty
Rent/SF	$5.04	$5.49	$3.98	$4.00	$3.55

Mr. Thomas used the leases to determine the appropriate market rent for the Kerr building. The rental data indicates an unadjusted range of $3.55 to $5.49 per square foot. Mr. Thomas selected $4.50 per square foot as market rent. He found that 8% was appropriate for vacancy and collection loss. The I-275 airport corridor has somewhat lower vacancies. The capitalization rate was extracted from Korpacz, Colliers, Signature, as well as market extracted sales and rentals. Mr. Thomas selected 7.5% for the 2008 tax year and increased the capitalization rate to 7.875 for tax year 2009. Mr. Thomas then loaded the capitalization rate with the component for property taxes by using the real estate tax rate for each year.

The income analysis for tax year 2008 is as follows:

Square Feet/Rate	192,149		$4.50	
Potential Gross Income				$864,671
Vacancy/Collection			8%	$69,174
Effective Gross Income				$795,497
Expenses:				
Management Fee		3%	$23,865	
Reserves		1%	$7,955	
Total			4%	$31,820
Net Operating Income				$763,677
Overall Rate				0.1033
Indicated Value				**$7,392,000**

The 2009 net operating income remained the same. The change to the overall rate was 10.714%. This resulted in an indicated value of $7,128,000 for the Kerr building.

The second appraisal report is for the parcel identified as 80-998-01-9801-060 and is identified as the Metrex building. This property is not identified by a numbered street address. Mr. Thomas described the Metrex Building as a light industrial warehouse building with 8% build-out for offices and five overhead doors with loading facilities. This building contains 85,200 square feet. Mr. Thomas utilized the same cost, sales comparison approach, and income techniques for the Metrex Building.

The cost new less depreciation was the first approach that Mr. Thomas analyzed to determine the value of the building only. He selected the Class C Average, Light Industrial/Manufacturing from Section 14, of the Marshall Valuation Services Manual.

Mr. Thomas selected the five sales of industrial properties that sold from February 2005 to December 2007. All five of the sales included land. They are as follows:

Sale No.	1	2	3	4	5
Address	Romulus	Romulus	Westland	Livonia	Romulus
Sale Date	Mar-07	Mar-05	Dec-07	Feb-05	Feb-06
Year Blt	1994	2000	1977	1997	2000
Sq Foot	59,600	40,000	84,672	127,800	54,000
Land Ratio	3.66	5.74	6.95	2.37	4.84
Office %	9%	10%	6%	4%	20%
Land SF	217,800	229,561	588,060	302,742	261,360
Sale Price	$1,800,000	$1,900,000	$4,150,000	$6,006,600	$3,250,000
SP/SF	$30.20	$47.50	$49.01	$47.00	$60.19
Adjustments					
Location	-25%			10%	
Age	-5%		5%		
Time		-10%		-10%	-10%
Crane			-5%		
Buildout					-25%
Adj SP/SF	$39.26	$42.75	$49.01	$47.00	$40.62

Mr. Thomas explained the adjustments for differences in characteristics and amenities to each sale. Sale 1 is a manufacturing plant that has no direct access to the interstate system. Sale 2 required an adjustment for selling in superior market conditions. Sale 3 is a manufacturing plant with a two-story office in the middle of the plant. This is a unique construction that is located five miles northeast of subject property. This sale lacks a crane and direct access to the Metropolitan Airport. Sale 4 is outside of subject's submarket but was included as a similar use property. This sale has a complicated access to I-275. Sale 5 is three miles south of the subject property. This sale has similar access to the Metropolitan Airport and the interstate as the subject. This sale has more office build-out than the subject property.

Mr. Thomas adjusted the five sales for the differences in amenities. He then determined the contributory land value to all of the sales. The appraisal assignment called for valuation of the building improvements only. Mr. Thomas concluded that $1.00 per square foot was the contributory value for land. He deducted $1.00 per square foot for land value for each of the sales to arrive at an adjusted range of prices per square foot of $35.62 to $44.83 for the extracted building value only.

Mr. Thomas explains subject's location within the Metrex appraisal report on page 59 as:

> With respect to the location, the property has substantial value because of its proximity to the Detroit/Wayne County Metropolitan Airport and the entire airport corridor stretching west to Willow Run Airport. Warehousing and distribution facilities will be needed near the airport for many years to come. Based on the age of the building, it appears to have many years of remaining useful life. Therefore, physically and from a location standpoint, the property as improved is at least comparable to the mid-point of the generated range.

Mr. Thomas concluded to $40.00 per square foot for the 2008 tax year for a value of $3,408,000. The same analysis yielded $38.00 per square foot for the 2009 tax year for a value of $3,238,000.

Mr. Thomas presented the income approach for the Metrex building utilizing the same income properties that were used for the Kerr building. The income approach for the Metrex building does not include a land contribution to value. After considering the location, age, and functional utility of the subject, Mr. Thomas selected a rental rate of $4.75 per square foot on a net basis for subject property. The remaining calculations are the same as those utilized in the Kerr building income analysis. The 2008 analysis for the Metrex building is calculated as follows:

Square Feet/Rate	85,200		$4.75	
Potential Gross Income				$404,700
Vacancy/Collection			8%	<u>$32,376</u>
Effective Gross Income				$372,324
Expenses:				
Management Fee		3%	$11,170	
Reserves		1%	$3,723	
Total			4%	<u>$14,893</u>
Net Operating Income				$357,431
Overall Rate				0.1033
Indicated Value				**$3,460,000**

Mr. Thomas did not acknowledge the consistency in extracting the land value from the total value from the income approach. The land-to-building ratios from the sales comparison approach were reviewed to determine the dedicated amount of land necessary to support the building. Mr. Thomas found that the land-to-building ratio would be from 4:1 to 5:1. He selected a 4.5:1 land-to-building ratio to be consistent with local markets and industry standards. The result is an indicated land area of 8.79 acres or 383,000 square feet of land to support the 82,500 square foot Metrex Building. The land value was determined to be $1.00 per square foot or $383,000. This amount is deducted from the indicated value of $3,460,000 to equate to $3,077,000 for tax year 2008 and $2,953,000 for tax year 2009.

Tribunal's Findings of Fact

The Metrex Building was granted an Industrial Facilities Exemption Certificate (IFT) for twelve years beginning December 31, 2001 and ending December 31, 2011. The IFT exempts this specific property from the ad valorem roll, excludes land, and gives the property owner an approximate 50% reduction in millage rate for the term of the exemption. At the end of the exemption period the specific parcel identification number is retired and the value of the building is added to the ad valorem parcel. The IFT is the sole reason why there is no land value added to the Metrex building. The parcel identification number reflects the contribution of the building only on the specific tax roll.

The Kerr building is the older, larger building that is akin to a research and development property because of the large office space and smaller manufacturing space.

The Tribunal agrees that the two parcel identification numbers represent the subject property. The third parcel number is a small guard shed. The buildings cannot be sold separately without a split of the land. Neither party presented this scenario, thus, the Tribunal will not comment on the feasibility of splitting the land and buildings. The subject property is not a 278,113 square foot building. The Kerr building consists of 192,913 square feet and the Metrex building consists of 85,200 square feet. The Kerr building has exposure and direct access from Wick Road. The Metrex building does not have direct access or exposure to Wick Road. The Metrex building is located behind the Kerr building.

Petitioner's income approach was applied to the buildings' combined square footage. This methodology is not reasonable; each building would be leased separately. In fact, each building is currently leased out to two separate but related entities. Petitioner also assumes that there will be a $1,600,000 investment to release the property.

> Leasing commissions are fees paid to an agent for leasing tenant space. In direct capitalization, leasing commissions are either treated as a normalized annual expense or not included as an expense in the reconstructed operating statement, depending on local market convention. In discounted cash flow analysis, leasing commissions are typically included in the time period in which they are expected to occur. Leasing commissions may or may not be reflected in the operating statements provided by the owner. Initial leasing commissions, which may be extensive in a new development, are usually treated as part of the capital expenditure for developing the project. These initial leasing commissions are not included as ongoing periodic expenses. Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13th ed, 2008), p 489.

Petitioner's below the line deduction of $1,600,000 is not appropriate in this instance. The subject properties are well established and have been occupied for their entirety.

Respondent separates the two buildings and appropriately determines the rent for each individual property. However, he does account for the lack of land, which in actuality is not true. When the tax abatement expires the entire 31.38 acres will contain two buildings on one parcel. As of the two tax dates the entire acreage does contain 31.38 acres and two buildings, with two parcel identification numbers. Respondent included the effective tax rate in the overall capitalization rate. Mr. Thomas testified that a triple net lease should include expenses to the owner not reimbursed by the tenant. The effective tax rate should only be included (if at all) in the same percentage as the vacancy, since this is the only time that the owner will be responsible for a small portion of the property taxes.

The Tribunal finds that neither party included a sale or sales that had two buildings on one 31+ acre parcel. The location of the subject properties in close proximity to Detroit Metropolitan Airport was at issue. Petitioner did not consider location influence in the market value of the subject property because the actual use of the property was not dependent upon the airport. Petitioner combined both buildings' square footage. This resulted in a lower rental rate in the income approach as well as a higher vacancy because Mr. Bur did not consider the airport's proximity and the lower vacancy for the area. The Sales Comparison Approach also combined the building square footage resulting in a lower sale price per square foot. Mr. Bur's adjustments for differences in amenities ranged from a low of 30% to a high of 50%. Comparable sales with higher adjustments are an indication of less comparability. Excessive adjustments raise the reliability and credibility of the sales data. Mr. Bur did not consider the location of the subject property adjacent to Detroit Metropolitan Airport as an asset and did not adjust the comparable sales for the difference.

Respondent did consider these location influences in the market. As a result the rental income was higher as were the actual sales used in the Sales Comparison Approach.

The Tribunal finds that Petitioner's appraisal is not as reliable as Respondent's appraisal. Petitioner's analysis of the subject property as one total square footage and one use is inconsistent; the lack of consideration for its proximity to a major airport is the other major flaw.

Conclusions of Law

Pursuant to Section 3 of Article IX of the State Constitution, the assessment of real property in Michigan must not exceed 50% of its true cash value. The Michigan Legislature has defined true cash value to mean the usual selling price at the place where the property to which the term is applied is at the time of the assessment, being the price which could be obtained for the property at private sale, and not forced or auction sale. See MCL 211.27(1). The Michigan Supreme Court in *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450 (1974), has also held that true cash value is synonymous with fair market value.

In that regard, the Tribunal is charged in such cases with finding a property's true cash value to determine the property's lawful assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767 (1981). The determination of the lawful assessment will, in turn, facilitate the calculation of the property's taxable value as provided by MCL 211.27a. A petitioner does, however, have the burden of establishing the property's true cash value. See MCL 205.737(3) and *Kern v Pontiac Twp*, 93 Mich App 612 (1974).

> 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.

The subject property includes two main buildings – the Kerr building and the Metrex building. The marketability and appeal of the property includes both buildings. The property owners intended this by constructing the Metrex building on the Kerr land. However, Petitioner has created some fundamental flaws in the analysis of the improvements. First, Petitioner's appraiser, Mr. Bur, combines the square footages of both buildings together as if it were a singular building. Mr. Bur does not articulate the possibility of two buildings on one parcel of land in the market. This is physically and legally possible as manifested by the existence of the subject property. The lack of comparable sales does not preclude the appraiser from this analysis. Next, Mr. Bur combines both buildings as if they are the same condition, quality, use, etc. In fact, the buildings are different in condition, quality, use, etc. The Kerr building is older with greater build-out and percentage of office space. The Metrex building is newer with less build-out and percentage of office space. Analyzing the buildings as one improvement negates the relevance of each building's attributes. In turn, adjusting sales data on this basis disregards the distinct features of the Kerr and Metrex buildings. Petitioner's analysis of a combined square footage for two buildings is unpersuasive.

Petitioner misapplies lease-up costs in the income approach. The subject buildings have been continually occupied since construction. The buildings have never been tenant leased under arm's length agreements. Mr. Bur's use of lease-up costs assumes the subject is vacant for the purpose of analysis. However, Mr. Bur does not apply a hypothetical condition for this deviation. A hypothetical condition is defined as "that which is contrary to what exists but is supposed for the purpose of analysis." (The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice,* Washington DC: 2010-2011 edition), p U-3. Lease-up costs are not acknowledged in general appraisal theory. The practice of lease-up costs may be common in appraisal practice; however, this practice requires justification and support from the real estate market. Mr. Bur's initial explanation that lease-up costs stem from a statutory obligation is erroneous. Mr. Bur has not demonstrated that this discretionary methodology is supported by the market. The absence of support suggests subjective inclinations by the appraiser. Lastly, the length of the subject leases minimizes the relevance of lease up costs. The subject, as vacant, is not a reasonable hypothetical condition given the strength of the current leases.

Petitioner disregards airport and freeway proximity in its analysis. Many properties within this location of Romulus are impacted by these influences. The marketability and appeal of industrial properties encompasses these attributes. The subject property owners may not have the need for air transportation or shipping; however, the property's airport and freeway linkages are significant in valuation. Petitioner does not give support or rationale for using rental and sales data further in distance from the subject property. The subject's industrial zoning reflects the legal permissibility under the highest and best use analysis. Petitioner's lack of analysis and consideration is not typical of an appraiser's scope of work acceptability.

Respondent's appraisal reports properly distinguish the two subject buildings. This description and analysis resulted in separate rental and sales data specifically applied to each subject building. Respondent analyzed data with the emphasis on airport and freeway access. Petitioner questions Respondent's lack of consideration to the Willow Run Airport, Petitioner did not give any consideration to any airport influence on the subject. Further, Respondent gave consideration to comparables with sale lease-back agreements because the subject has such an agreement in effect. Overall, Respondent's development of the sales comparison approach is reasonably supported.

Respondent develops a cost approach but admits this approach is given the least weight in the overall value conclusion. Mr. Thomas acknowledges this approach is less applicable for older construction. The Metrex building is newer and gave credence to this approach to the value. Moreover, the contributory land value was omitted from the Metrex building and applied to the Kerr building. Site improvements were not dismissed or overlooked. Mr. Thomas's method in valuing the Metrex building aside from the land value is acceptable in appraisal practice.

Respondent's income approach utilized rental data specific to each subject building. Each subject building has different features and amenities that result in different rental rates. Mr. Thomas testified to these distinctions even though the rental rate for each subject building was very similar. Mr. Thomas chose lease rates and capitalization rates based on noted sources. National data was taken from Korpacz;

local data was taken from Collier's and Signature and Associates. Respondent's analysis placed reliance on data close to Romulus.

Petitioner must prove that its applied approaches are more credible and thus meet its burden of proof. Petitioner is unsuccessful in this regard. Petitioner's opinions, analyses, and conclusions are not reasonably supported. Moreover, Petitioner's valuation disclosure presented as an appraisal report is not meaningful (Standard 1) and is misleading (Standard 2) by the very standards and ethics that Petitioner's appraiser invokes.

The Tribunal finds that Petitioner was not able to show that the property was over-assessed for the tax years at issue. As such, and in light of the above, the Tribunal finds that Petitioner has failed to meet its burden of going forward with competent evidence on the issue of true cash value, assessed value, and taxable value. Respondent has provided credible documentary evidence and testimony to support the subject property's assessment for the tax years at issue and, as such, the Tribunal finds that the assessment is fair and reasonable.

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 *Introduction* 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 90 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 this Order within 28 days of the entry of this Order. 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 the Tribunal's order. As provided in 1994 PA 254, being MCL 205.737, as amended, interest shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest rate of the 94-day discount treasury bill rate for the first Monday in each month plus 1%. As provided in 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods after January 1, 1996 at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 1995 at the rate of 6.55% for calendar year 1996, (ii) after December 31, 1996 at the rate of 6.11% for calendar year 1997, (iii) after December 31, 1997 at the rate of 6.04% for calendar year 1998, (iv) after December 31, 1998 at the rate of 6.01% for calendar year 1999, (v) after December 31, 1999 at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000 at the rate of 6.56% for calendar year 2001, (vii) after December 31, 2001 at the rate of 5.56% for calendar year 2002, (viii) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ix) after December 31, 2003 at the rate of 2.16% for calendar year 2004, (x) after December 31, 2004 at the rate of 2.07% for calendar year 2005, (xi) after December 31, 2005 at the rate of 3.66% for calendar year 2006, (xii) after December 31, 2006 at the rate of 5.42% for calendar year 2007, and (xiii) after December 31, 2007 at the rate of 5.81% for calendar year 2008, (xiv) after December 31, 2008, at the rate of 3.31% for calendar year 2009, and (xv) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (xvii) after December 31, 2010 at the rate of 1.12% for calendar year 2011.

This Order resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: August 2, 2011 By: Marcus L. Abood