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

Schefenacker Vision Systems USA, Inc.,
Petitioner,

v

MTT Docket No. 365867[1]

City of Marysville,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Schefenacker Vision Systems USA, Inc., appeals ad valorem property tax assessments levied by Respondent, City of Marysville, against Petitioner's ownership interest in Parcel Nos. 74-03-051-0033-300, 74-03-900-0020-000, 74-03-900-0021-000 and 74-03-900-0025-000 for the 2009, 2010, and 2011 tax years, and Parcel Nos. 74-03-900-0027-000 and 74-03-051-0033-000 for the 2010 and 2011 tax years. Steven P. Schneider, attorney, represented Petitioner, and Mark A. Westrate, attorney, represented Respondent.

A hearing on this matter was held on February 27, February 28, and February 29, 2012. Petitioner's sole witness was David D. Bur, Bur Valuation Group, Inc. Respondent's witnesses were David E. Burgoyne, Burgoyne Appraisal Company, LLC, and Ann Ratliff, Assessor, City of Marysville.

Based on the evidence, testimony, and case file, the Tribunal finds that Petitioner has generally met its burden of proof in establishing the subject property's true cash value, and further finds the true cash values ("TCV"), the state equalized values ("SEV"), and the taxable values ("TV") of the subject property for the years under appeal are as follows:

[1] Consolidated with MTT Docket No. 392991 by Order of the Tribunal dated December 22, 2011

PARCEL NUMBER	YEAR	TCV	SEV	TV
74-03-051-0033-300	2009	$2,289,100	$1,144,550	$1,144,550
74-03-900-0020-000 (IFT)	2009	$654,200	$327,100	$327,100
74-03-900-0021-000 (IFT)	2009	$84,400	$42,200	$42,200
74-03-900-0025-000 (IFT)	2009	$2,442,400	$1,221,200	$1,221,200
74-03-051-0033-300	2010	$2,024,100	$1,012,050	$1,012,050
74-03-900-0020-000 (IFT)	2010	$596,100	$248,050	$248,050
74-03-900-0021-000 (IFT)	2010	$76,600	$38,300	$38,300
74-03-900-0025-000 (IFT)	2010	$2,222,800	$1,111,400	$1,111,400
74-03-900-0027-000 (IFT)	2010	$452,300	$226,150	$226,150
74-03-051-0033-000	2010	$178,100	$89,050	$89,050
74-03-051-0033-300	2011	$1,817,900	$908,950	$908,950
74-03-900-0020-000 (IFT)	2011	$589,200	$294,600	$294,600
74-03-900-0021-000 (IFT)	2011	$73,800	$36,900	$36,900
74-03-900-0025-000 (IFT)	2011	$2,154,400	$1,077,200	$1,077,200
74-03-900-0027-000 (IFT)	2011	$438,300	$219,150	$219,150
74-03-051-0033-000	2011	$126,400	$63,200	$63,200

PETITIONER’S CONTENTIONS

Petitioner contends that the evidence presented in this case strongly supports a determination that the true cash value of the subject property as determined by Respondent is substantially overstated. Petitioner further contends that because both appraisers relied on the sales comparison approach to value, the Tribunal should carefully review the comparable sales identified by the respective appraisers. Petitioner contends that its appraiser identified sales of comparable properties generally located in the same local area as the subject, an area that was adversely impacted by the economic downturn experienced in late 2008 to a much greater extent than the areas in which Respondent’s appraiser finds his comparable sales. Petitioner contends that the comparable sales identified by Respondent’s appraiser are newer, nicer, and located in a better area of metro Detroit, and are simply not comparable to the subject property. Petitioner further contends that the income approach used by Mr. Bur as support for his sales comparison approach is appropriate for the subject property, reflects market rents adjusted for location, and supports a lower true cash value than that determined by Respondent's appraiser, even without adjusting for "lease-up" costs. (Transcript, Vol. 3, pp. 131 – 174)

As determined by Petitioner's appraiser, the TCV, SEV, and TV for the subject property for the tax years at issue should be:

PARCEL NUMBER	YEAR	TCV	SEV	TV
74-03-051-0033-300	2009	$1,431,000	$715,500	$715,500
74-03-900-0020-000 (IFT)	2009	$409,000	$204,500	$204,500
74-03-900-0021-000 (IFT)	2009	$53,000	$26,500	$26,500
74-03-900-0025-000 (IFT)	2009	$1,527,000	$763,500	$763,500
74-03-051-0033-300	2010	$1,236,000	$618,000	$618,000
74-03-900-0020-000 (IFT)	2010	$364,000	$182,000	$182,000
74-03-900-0021-000 (IFT)	2010	$47,000	$23,500	$23,500
74-03-900-0025-000 (IFT)	2010	$1,358,000	$679,000	$679,000
74-03-900-0027-000 (IFT)	2010	$276,000	$138,000	$138,000
74-03-051-0033-000	2010	$109,000	$54,500	$54,500
74-03-051-0033-300	2011	$1,101,000	$550,500	$550,500
74-03-900-0020-000 (IFT)	2011	$357,000	$178,500	$178,500
74-03-900-0021-000 (IFT)	2011	$45,000	$22,500	$22,500
74-03-900-0025-000 (IFT)	2011	$1,305,000	$652,500	$652,500
74-03-900-0027-000 (IFT)	2011	$265,000	$132,500	$132,500
74-03-051-0033-000	2011	$77,000	$38,500	$38,500

PETITIONER'S ADMITTED EXHIBITS

P-1 Appraisal Report of David Bur, dated September 23, 2011.

P-3 Photographs of mezzanine sections of Subject Property.

P-4 Articles on Big Three and Economic Problems 2008-2009.

P-5 CoStar Data Comparing Industrial Rents and Vacancy Rates in the Subject's Location compared to Combined Wayne County, Oakland County, and Macomb County Data.

P-6 Photographs of certain Bur Sales Comparables.

P-7 Bur Sale Comparable 5 Sale Agreement.

P-8 Materials on SMR Purchase of Industrial Building at 2611 16th Street, Port Huron, MI.

P-9 Photographs of Burgoyne Sales Comparables.

P-10 Article on Lease Up costs, "Appraising in the Next Cycle" by William Anglyn.

P-11 Information on Subsequent Sales of Bur Sales Comparable No. 1.

P-12 Allocation of Bur concluded values to tax parcels.

P-13 Information regarding Respondent's Comparable No. 1.

P-20 Listing for sale of property located at 2401 Sixteenth Street, Port Huron, MI.

PETITIONER'S WITNESSES

David Bur

David Bur, MAI, a licensed general real estate appraiser, was Petitioner's valuation expert. Mr. Bur testified that (i) he valued the fee simple interest of the subject property using the income and sales comparison approaches to value, (ii) the subject property is owner occupied, (iii) Michigan experienced a significant economic downturn beginning at the end of 2008, especially in the automobile manufacturing industry, (iv) during the tax years under appeal no significant industrial buildings were constructed in St. Clair County, (v) he measured the gross building area of the subject property to be 217,793 square feet, (vi) he did not use the cost approach to value the subject property because of the difficulty in estimating depreciation and external obsolescence, (vii) he applied the income approach to this owner-occupied property because buyers often "purchase these industrial buildings and then lease them out," (viii) in applying the income approach, he identified seven leases of industrial improved property located in the metropolitan Detroit area (exclusive of the City of Detroit) to determine an appropriate triple net lease rate per square foot after adjusting for lease terms, market conditions, location, size, office percentage, quality of improvements, and land-to-building ratio, (ix) determined a vacancy rate based on higher vacancy rates in St. Clair County than in the tri-county area, (x) he applied a vacancy and credit loss adjustment of 15% to gross rents and then subtracted operating expenses, (xi) he developed a capitalization rate using market information, band-of-investment methods, and industry surveys that included a property tax component based on an anticipated vacancy rate of 15% applied to a triple net lease, (xii) after applying a capitalization rate to net operating income, he determined a value for the subject property, with a final adjustment for "lease-up" costs to reflect lost income, commissions, and entrepreneurial profit during the period where the subject property is not leased, and (xiii) in applying the market approach to value, he identified ten comparable sales of properties located in close proximity to the subject property and adjusted the comparable sales for market conditions, location, size, quality, and condition of improvements, percentage of office space, land-to-building ratio, and clear height. (Transcript, Vol. 1, pp. 46 – 228, Vol. 2, pp. 6 – 217)

RESPONDENT'S CONTENTIONS

Respondent contends that the true cash, assessed, and taxable values determined by Respondent for the subject property for the tax years at issue should be reduced based on the value conclusions made by its appraiser, but should not be reduced to the values determined by Petitioner's appraiser. Specifically, Respondent contends that Petitioner's appraiser's primary reliance on the sales comparison approach is flawed because in attempting to use comparable sales located near the subject property, Petitioner's appraiser has been forced to rely primarily on distressed sales, including bankruptcy sales and sales by court appointed receivers. On the other hand, although Respondent's appraiser ultimately was required to identify comparable sales outside of the Marysville area in order to find market sales, Respondent contends that its appraiser appropriately adjusted for differences between the subject property and the comparable sales for age of improvements, location, size, and condition. Respondent further contends that

Petitioner's income approach is flawed because its appraiser failed to identify any rental comparable sales in St. Clair County, and relied on inferior comparable sales from outside the Marysville area, and failed to support his capitalization rate and his adjustment for "lease-up" costs. (Transcript, Vol. 3, pp. 173 – 191)

As determined by Respondent's appraiser, the TCV, SEV, and TV for the subject property for the tax years at issue should be:

PARCEL NUMBER	YEAR	TCV	SEV	TV
74-03-051-0033-300	2009	$3,010,000	$1,505,000	$1,505,000
74-03-900-0020-000 (IFT)	2009	$860,400	$430,200	$430,200
74-03-900-0021-000 (IFT)	2009	$111,100	$55,550	$55,550
74-03-900-0025-000 (IFT)	2009	$3,211,400	$1,605,700	$1,605,400
74-03-051-0033-300	2010	$2,881,200	$1,440,600	$1,440,600
74-03-900-0020-000 (IFT)	2010	$848,600	$424,300	$424,300
74-03-900-0021-000 (IFT)	2010	$108,900	$54,450	$54,450
74-03-900-0025-000 (IFT)	2010	$3,164,000	$1,582,000	$1,582,000
74-03-900-0027-000 (IFT)	2010	$643,800	$321,900	$321,900
74-03-051-0033-000	2010	$253,500	$126,750	$126,750
74-03-051-0033-300	2011	$2,587,200	$1,293,600	$1,293,600
74-03-900-0020-000 (IFT)	2011	$838,400	$419,200	$419,200
74-03-900-0021-000 (IFT)	2011	$104,900	$52,450	$52,450
74-03-900-0025-000 (IFT)	2011	$3,065,600	$1,532,800	$1,532,800
74-03-900-0027-000 (IFT)	2011	$623,700	$311,850	$311,850
74-03-051-0033-000	2011	$180,200	$90,100	$90,100

RESPONDENT'S ADMITTED EXHIBITS

R-1 Burgoyne Appraisal Company, LLC Valuation of the subject property as of 12/31/08, 12/31/09 and 12/31/10.

R-8 City of Lapeer, Property Transfer Affidavit, property identification number: L21-31-130-

040-00.

R-9 Warranty Deed recorded at Liber 2246 pages 278, 279, Lapeer County Records.

R-10 Warranty Deed recorded at Liber 19533 pages 498-501, Macomb County Records.

R-11 Property Tax Record Card Parcel No. 14-12-07-351-012 Harrison Township.

R-12 Property Tax Record Card Parcel No. 17-12-07-301-031 Harrison Township.

R-13 Warranty Deed recorded at Liber 3947 pages 313 and 314, St. Clair County Records.

R-14 Warranty Deed recorded at Liber 20660 pages 434-437, Macomb County Records.

R-15 Sheriff's Deed on Foreclosure Sale and attachments recorded at Liber 20415 pages 820-828, Macomb County Records.

R-16 Deed in Lieu of Foreclosure recorded at Liber 3877 page 792, St. Clair County Records.

R-19 Petitioner's Comparable 2 Record Card.

R-21 Petitioner's Comparable 3 Record Card.

R-36 Petitioner's Comparable 7 Stipulated Order for Approval of Sale of Assets.

R-39 Rent Comparable 3.

R-40 Rent Comparable 5.

R-46 Property Tax Record Card Parcel No. 74-03-900-0025-000. (Not admitted for valuation purposes.)

R-47 Property Tax Record Card Parcel No. 74-03-051-0033-300. (Not admitted for valuation purposes.)

R-48 Property Tax Record Card Parcel No. 74-03-900-0021-000. (Not admitted for valuation purposes.)

R-49 Property Tax Record Card Parcel No. 74-03-900-0020-000. (Not admitted for valuation purposes.)

R-50 Property Tax Record Card Parcel No. 74-03-051-0033-000. (Not admitted for valuation purposes.)

R-51 Property Tax Record Card Parcel No. 74-03-900-0027-000. (Not admitted for valuation purposes.)

R-55 Market derived cap rate work papers.

R-59 Communications re: work papers.

R-60 Sheriff's Deed, Comparable No. 4.

R-71 Image Sketch.

RESPONDENT'S WITNESSES

Ann Ratliff

Ms. Ratliff is a Level III assessor licensed in the State of Michigan, and has been the assessor for the City of Marysville since 2003. Ms. Ratliff testified that in June 2011 she measured the outside dimensions of the subject buildings and determined that their total area was 232,650 square feet.[2] (Transcript, Vol. 2, pp. 219 – 239; Vol. 3, pp. 4 -13)

David E. Burgoyne

Mr. Burgoyne is a licensed real estate appraiser and was qualified as an expert witness. Mr. Burgoyne testified that (i) he determined the total area of the subject buildings to be 232,650 square feet for purposes of his appraisal, (ii) he determined the highest and best use of the subject property as improved to be a light industrial manufacturing facility, (iii) he did not apply the income approach in valuing the subject property because it is owner occupied and because the available income information was older and more difficult to apply because of a declining market, (iv) the sales comparison approach was the most appropriate in determining the true cash value of the subject property, with support from the cost approach, (v) in identifying comparable sales, he included all of southeast Michigan, because comparable sales were not available in St. Clair County, given physical differences, age differences, and circumstances of sale such as bankruptcy or receivership, (vi) he selected seven comparable sales for analysis based on size, age, date of sale, and market conditions, (vii) none of his comparable sales were located in St. Clair County, (viii) his comparable 3 was also used by Petitioner's appraiser in his market

[2] On March 16, 2012, the parties filed a Stipulation Concerning Building Size, stipulating that the total building area is 221,982 square feet.

approach to value, but the respective appraisers disagree regarding sale price, (ix) he used the cost approach as a check against his sales comparison analysis, but gave this approach no weight in his reconciliation of value approaches, (x) he identified three vacant land sales to determine land value for the cost approach, and (xi) he used Marshall Valuation to determine the cost of the subject improvements, and reduced that value by physical depreciation and economic obsolescence. (Transcript, Vol. 3, pp. 13 – 128)

FINDINGS OF FACT

1. The subject property consists of an approximate 11.5-acre parcel of property located at 1855 and 1875 Busha Highway, Marysville, Michigan, improved with manufacturing and warehouse buildings with a total area of 221,982 square feet.
2. The subject property was assessed for the tax years at issue as follows:

PARCEL NUMBER	YEAR	TCV	SEV	TV
74-03-051-0033-300	2009	$4,376,400	$2,188,200	$2,188,200
74-03-900-0020-000 (IFT)	2009	$1,251,000	$625,500	$577,050
74-03-900-0021-000 (IFT)	2009	$161,600	$80,800	$78,833
74-03-900-0025-000 (IFT)	2009	$4,669,200	$2,334,600	$2,334,600
74-03-051-0033-300	2010	$3,896,200	$1,948,100	$1,948,100
74-03-900-0020-000 (IFT)	2010	$1,147,600	$573,800	$573,800
74-03-900-0021-000 (IFT)	2010	$147,200	$73,600	$73,600
74-03-900-0025-000 (IFT)	2010	$4,278,600	$2,139,300	$2,139,300
74-03-900-0027-000 (IFT)[3]	2010	$870,600	$435,300	$407,457
74-03-051-0033-000	2010	$342,800	$171,400	$171,400
74-03-051-0033-300	2011	$3,535,800	$1,767,900	$1,767,900
74-03-900-0020-000 (IFT)	2011	$1,045,800	$572,900	$572,900
74-03-900-0021-000 (IFT)	2011	$143,400	$71,700	$71,700

[3] The true cash values of parcels 74-03-900-0027-000 and 74-03-051-0033-000 were not appealed by Petitioner for the 2009 tax year.

PARCEL NUMBER	YEAR	TCV	SEV	TV
74-03-900-0025-000 (IFT)	2011	$4,189,600	$2,094,800	$2,094,800
74-03-900-0027-000 (IFT)	2011	$852,400	$426,200	$414,483
74-03-051-0033-000	2011	$246,200	$123,100	$123,100

3. The subject property is zoned M-1, Light Industrial.
4. The subject property is owner occupied and is not leased.
5. The appraisers for both parties determined the highest and best use of the subject property as improved to be its current use.
6. Petitioner’s appraiser utilized the income and direct sales comparison approaches to value for the tax years at issue.
7. Petitioner’s appraiser did not use the cost approach to value the subject property “because of the difficulty in accurately estimating depreciation.” (Petitioner’s Appraisal, p. 56)
8. Petitioner’s appraiser gave the sales comparison approach the “most consideration in the final estimate of value” because the comparable sales were physically similar and were recent sales. The income approach was given secondary consideration. (Petitioner’s Appraisal, pp. 82)
9. Petitioner’s appraiser applied the direct capitalization method in developing a value for the subject property using the income approach.
10. Petitioner’s appraiser identified seven leased properties comparable to the subject to develop market rents of $2.80, $2.70, and $2.60 for the 2009, 2010, and 2011 tax years, respectively, with adjustments made for market conditions, location, size, condition, clear height, and office percentage.
11. In applying the income approach, Petitioner’s appraiser assumed (i) a triple net lease with the tenant paying all operating expenses, (ii) a vacancy and credit loss rate of 15% of revenue, (iii) a period of 1.5 years to lease the subject property, (iv) management fees of 2% of revenue, and (v) unrecovered operating expenses during the vacancy period of

$0.08 per square foot.

12. Petitioner's appraiser's capitalization rate was derived by analyzing (i) market derived capitalization rates developed from sixteen sales of comparable properties, (ii) current mortgage and equity rates derived from information provided by RealtyRates.com, and (iii) industry surveys of capitalization rates for similar property types.
13. Petitioner's appraiser negatively adjusted the values determined for the subject property using the direct capitalization method for "lease-up" costs to reflect the costs incurred by an investor purchasing the subject property to find a tenant to lease the property. Petitioner's appraiser included as "lease-up" costs, lost income during the lease-up period, commissions, tenant improvement allowances, and entrepreneurial profit during the assumed 18 months it would take to lease the property.
14. In applying the sales comparison approach, Petitioner's appraiser identified ten comparable sales. (Petitioner's appraisal, pp. 73 – 81)
15. Petitioner's comparable #1 was ultimately concluded to be an incorrectly identified property and was not included by Petitioner's appraiser in his market analysis for the 2009 tax year.
16. Petitioner's comparable #2 is an industrial building constructed in 1977, remodeled in 2005, located in Lapeer, MI that sold in February 2007 for $1,967,500.[4] This property is located on 5.57 acres and has 102,290 square feet of improvements, with 22% of the building devoted to office space and with 14 to 24 feet of clear height.
17. Petitioner's comparable #3 is an industrial building constructed in 1992, located in Lapeer, MI that sold in October 2007 for $2,539,239. This property is located on 11.53 acres and has 104,630 square feet of improvements, with 9% of the building devoted to office space and with 18 to 26 feet of clear height.
18. Petitioner's comparable #4 is an industrial building constructed in 1998, located in New

[4] Petitioner's appraiser testified that the Property Transfer Affidavit reflected a purchase price of $2,150,000, which included more than just the real property.

Baltimore, MI that sold in October 2007 for $2.2 million. This property is located on 12.28 acres and has 152,000 square feet of improvements, with 1% of the building devoted to office space, and with 24 to 35 feet of clear height.

19. Petitioner's comparable #5 is an industrial building constructed in 1996, located in Macomb Township, MI that sold in October 2008 for $6.8 million.[5] This property is located on 23.24 acres, and has 214,240 square feet of improvements, with 4% of the buildings devoted to office space, and with 25 feet of clear height.
20. Petitioner's comparable #6 is an industrial building constructed in 1974, remodeled in 1989, located in Chesterfield Township, MI, that sold in December 2008 for $2.0 million. The property is located on 12.17 acres and has 145,063 square feet of improvements, with 4% of the buildings devoted to office space, and with 18 to 20 feet of clear height.
21. Petitioner's comparable #7 is an industrial building constructed in 1936, remodeled in 1985, located in Marysville, MI, that sold in April 2009 for $2.0 million. The property is located on 11.34 acres and has 212,751 square feet of improvements[6], with 2% of the buildings devoted to office space, and with 21 feet of clear height.
22. Petitioner's comparable #8 is an industrial building constructed in 1995, located in St. Clair, MI, which sold in October 2009 for $2.0 million. The property is located on 11.7 acres and has 133,000 square feet of improvements, with 5% of the buildings devoted to office space, and with 30 feet of clear height.
23. Petitioner's comparable #9 is an industrial building constructed during the period 1970 – 1994, located in Harrison Township, MI that sold in December 2010 for $3,454,680. The property is located on 13.01 acres and has 221,977 square feet of improvements, with 14% of the buildings devoted to office space, and with 15 to 35 feet of clear height.

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[5] Petitioner's comparable #5 is the same as Respondent's comparable #3; however, Respondent contends that the purchase price for this property was $7.3 million, while Petitioner contends the purchase price was $6.8 million. The difference is $500,000, which Petitioner's appraiser contends was an allocated value of the personal property conveyed as a part of this transaction. Respondent relies on the Property Transfer Affidavit filed by the parties and Petitioner relies on the Purchase Agreement, which states that the purchase price includes personal property.

[6] The City of Marysville assessment records reflect a building size of 209,000 square feet.

24. Petitioner's comparable #10 is an industrial building constructed in 1955, located in Sterling Heights, MI that sold in February 2011 for $3.5 million. The property is located on 22.87 acres and has 371,131 square feet of improvements, with 12% of the buildings devoted to office space, and with 20 to 50 feet of clear height.
25. Petitioner's appraiser adjusted each comparable sale for market conditions, location, size, condition, clear height, office percentage, and land-to-building ratio, where appropriate.
26. Petitioner's appraiser relied primarily on comparable sales #3 and #4 in concluding that the value of the subject property for 2009 should be $17 per square foot.
27. Petitioner's appraiser relied primarily on comparable #8 in concluding that the value of the subject property for 2010 should be $15.50 per square foot.
28. Petitioner's appraiser relied primarily on comparable sales #8 and #9 in concluding that the value of the subject property for 2011 should be $14 per square foot.
29. Respondent's appraiser did not use the income approach to value the subject property because the subject property is owner occupied and inadequate income data was available. (Respondent's appraisal, p. 47)
30. Respondent's appraiser determined a value for the subject property using the cost less depreciation approach but did not give it any weight in his reconciliation of values. (Transcript, Vol. 3, p. 66)
31. In applying the cost approach, Respondent's appraiser (i) determined land value to be $45,000 per acre based on three comparable sales of industrial zoned vacant properties from February 2008, April 2010, and June 2010, with sizes ranging from 1.79 acres to 5.0 acres, all located in Macomb and St. Clair counties, (ii) used Marshall Valuation to determine the replacement cost new of the buildings, (iii) determined physical depreciation to be 18% for 2009, 20% for 2010, and 22% for 2011[7] and determined

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[7] Respondent's appraiser reversed depreciation rates in his appraisal such that a higher depreciation rate was applied to 2009, with a lower rate applied to 2011. After correction of those errors, the appraiser's value determinations for 2009 and 2011 are revised to $12,565,000 and $11,265,000, respectively.

economic obsolescence factors of 30%, 32%, and 35% for tax years 2009, 2010, and 2011, respectively.

32. Respondent's appraiser gave the "greatest emphasis" to the sales comparison approach to determine the true cash value of the subject property because this approach "most closely resembles the motivations of buyers and sellers in the real estate market." (Respondent's appraisal, p. 47)
33. In applying the sales comparison approach to the subject improved property, Respondent's appraiser identified seven comparable sales. (Respondent's appraisal, pp. 41 – 45, 50 – 54, 59 – 62)
34. Respondent's comparable #1 is a manufacturing facility located in Plymouth Township, MI, sold in May 2008 for $9.4 million in a sale and leaseback transaction. This property is located on 24.35 acres, has 259,351 square feet of improvements, of which approximately 28% is office.
35. Respondent's comparable #2 is primarily used for warehousing, is located in Warren, MI, and sold for $7.1 million in June 2008. This property is located on 15.56 acres and has 211,750 square feet of improvements.
36. Respondent's comparable #3 is a light manufacturing building located in Macomb Township, MI, that Respondent contends sold for $7.3 million in October 2008 based on the Property Transfer Affidavit filed and on discussions with the broker for this transaction. This property is located on 22.26 acres and has 214,282 square feet of improvements.
37. Respondent's comparable #4 is a warehouse/distribution facility located in Lansing, MI, that sold for approximately $7.1 million in March 2009. This property is located on 10.5 acres and has 198,492 square feet of improvements. This property was purchased by the State of Michigan.
38. Respondent's comparable #5 is located in Northville Township, MI, and sold for $3.999

million in March 2010. This property is located on 13.99 acres and has 111,223 square feet of improvements. The subject property was vacant for ten years prior to its sale.

39. Respondent's comparable #6 is a warehouse/distribution facility located in Plymouth Township, MI, and sold for $4 million in May 2010. This property is located on 5.81 acres and has 101,000 square feet of improvements. This property was not marketed and was sold to the owner of the adjacent property.
40. Respondent's comparable #7 is a manufacturing facility located in Auburn Hills, MI, that sold for $5 million in August 2010. This property is located on 9.28 acres and has 125,955 square feet of improvements, of which approximately 28% is office space.
41. In determining the true cash values for each individual parcel, both parties allocated their overall value conclusion to the respective parcels using the assessed values of each parcel to total assessed values.

ISSUES AND CONCLUSIONS OF 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.

> 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%.... Const 1963, art 9, sec 3.

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 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).

The Michigan Supreme Court has determined that "true cash value" is synonymous with "fair market value." See *CAF Investment Co v State Tax Commission,* 392 Mich 442, 450; 221 NW2d 588 (1974).

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 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 Limited Dividend Housing Association v City of Holland,* 437 Mich 473, 485- 486; 473 NW2d 636 (1991).

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 Department 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. *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). 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,* pp. 354-355. However, "[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessment in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question." MCL 205.735(3).

The three most common approaches to valuation are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach. *Meadowlanes*, at 484-485; *Pantlind Hotel Co v State Tax Commission*, 3 Mich App 170; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968). The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in marketplace trading. *Antisdale*, p. 278. The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale*, p. 277. The Tribunal finds that the appropriate method of determining the true cash value of the subject property for the tax years at issue is the sales comparison approach.

1. Cost approach.

The Tribunal finds that neither of the parties' appraisers relied on the cost-less-depreciation approach. Petitioner's appraiser did not use the cost approach "because of the difficulty in accurately estimating depreciation." (Petitioner's appraisal, p. 56) Respondent's appraiser estimated a value using the cost approach primarily to "lend support to the results provided by the Sales Comparison Approach." (Respondent's Appraisal, p. 47) Generally, the cost-less-depreciation approach is applicable to a newly constructed property. The cost approach values a property based on a comparison with the cost to build a new or substitute property, presumably taking into consideration market influences. As is discussed by The Appraisal Institute, "the cost approach is important in estimating the market value of new or relatively new construction. The approach is especially persuasive when land value is well supported and the improvements are new or suffer only minor depreciation." Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13th ed, 2008), p. 382. Here, given the age of the existing improvements and the amount of physical depreciation and economic obsolescence determined to be appropriate by Respondent's appraiser (necessitating an adjustment to value of approximately 50%), the Tribunal finds that the cost approach is not an appropriate method to determine the true cash value of the subject property for the tax years at issue.

2. Income Approach.

Respondent's appraiser rejected the income approach to value the subject property because

> [t]he reliability of this technique is dependent upon the reasonableness of the estimate of the anticipated net annual income, the duration of the net annual income, the economic life of the building and the method of conversion of income to capital. As an owner occupied building with inadequate available income data, the income approach to value does not apply and will not be utilized in the analysis. (Respondent's appraisal, p. 47)

Petitioner's appraiser determined the value of the subject property using an income approach, concluding that "[t]he assumptions are well supported and the final estimate of value via the income approach is reliable." (Petitioner's appraisal, p. 82) Petitioner's appraiser, however, gave only "secondary consideration" to the income approach in his final estimate of value, and separately concluded that "[t]he subject property does not have a tenant and likely would not be purchased by an investor." (Petitioner's appraisal, p. 6)

The Tribunal finds that Petitioner's income approach should be given no weight in its ultimate determination of the true cash values of the subject property for the tax years at issue, primarily because of (i) Petitioner's appraiser's conclusion that the subject property is owner occupied, does not have a tenant, and would not likely be purchased by an investor, and (ii) Petitioner's appraiser's failure to adequately support the numerous assumptions that he made in applying this approach to value.

For example, the use of the direct capitalization method rather than a discounted cash flow method where income is not stabilized is questionable. Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13th ed, 2008), p. 499, states that:

> Direct capitalization is widely used when properties are already operating on a stabilized basis and there is an ample supply of comparable sales with similar risk levels, incomes, expenses, physical and locational characteristics, and future expectations. This methodology may be less useful for properties going through an initial lease-up or when income or expenses are expected to change in an irregular pattern over time.

Further, other than an article entered into evidence as Petitioner's Exhibit P-10, the Tribunal was unable to find any discussion in The Appraisal of Real Estate's approximate 110 pages devoted to the Income Approach or in other appraisal resources regarding the validity of Petitioner's approximate 20% negative adjustment to "Value" for "Lease-Up Costs." The Tribunal previously rejected Mr. Bur's adjustment for lease-up costs in the income approach where the subject property was owner occupied.[8] Although the Tribunal might be willing to accept an adjustment for such anticipated costs where the subject property is vacant or has multiple tenants, the Tribunal finds that such adjustment is not supported or justified in this instance. As was expressed by the presiding Tribunal Judge during the hearing, the Tribunal's reading of Petitioner's Exhibit P-10 is that the author of the article is simply suggesting that lost profits, etc., experienced during periods of vacancy should be considered in applying the income approach where the property is "distressed," and "suffering from higher than normal vacancies and/or properties where effective rents or prices have declined significantly to attain lease-up or sale." Here, Petitioner's appraiser has not sufficiently convinced the Tribunal that the owner-occupied subject property is the type of property contemplated by the author in proposing that a negative adjustment for lease-up costs be considered.

In addition, the Tribunal also has significant concerns with Petitioner's appraiser's failure to adequately support his assumptions in his appraisal and upon cross-examination regarding time needed to lease the subject property, vacancy rates, rental comparables identified by Petitioner and adjustments made to those comparables, capitalization rates, and operating expenses. The Tribunal finds that Petitioner's income approach generally lacks credibility and is not an appropriate method to apply to value this owner-occupied property.

[8] *Comau, Inc v City of Novi*, MTT Docket No. 351412 (2011)

3. Sales Comparison Approach.

As stated above, the Tribunal finds that the sales comparison approach is the appropriate methodology to use in valuing the subject property for the tax years at issue. Although the appraisers for both Petitioner and Respondent relied primarily on the sales comparison approach to determine the true cash values for the subject property for the tax years at issue, the respective appraisers applied very different criteria in identifying comparable sales. Petitioner's appraiser identified comparable sales of properties located in the general St. Clair area, and was not necessarily concerned with whether the sales were bank sales or some other form of financially driven sales. Respondent's appraiser specifically excluded bank type sales from its analysis and was therefore forced to find comparable sales of properties located in the metropolitan Detroit area. Petitioner contends that Respondent's comparable sales do not properly reflect the Marysville market, and Respondent's comparable sales should have been substantially adjusted to reflect deteriorating market conditions and Marysville's less desirable location, while Respondent contends that Petitioner's comparable sales are generally distressed and less than arm's-length and should not be considered by the Tribunal. Respondent further contends that the appropriate market for a large manufacturing facility such as the subject should not be limited to the Marysville area, but should include all of southeast Michigan.

Between them, the respective appraisers identified seventeen comparable sales that they determined to be appropriate for consideration for the three tax years at issue. Of the seventeen total comparable sales, only one of the comparable sales (property located at 16445 Twenty Three Mile Road, Macomb Township, MI, that sold in October 2008 for either $7.3 million or $6.8 million) was used by both appraisers in their sales comparison analysis.

The Tribunal has reviewed the seven comparable sales identified by Respondent's appraiser and finds that (i) Respondent's comparable sale #1 should be excluded from consideration because this sale was actually a sale and leaseback, which is essentially a financing transaction that could impact buyer and seller motivations, and because the parties to the transaction seem to be related entities, (ii) Respondent's comparable sale #4 should be excluded from consideration because this purchase by the State of Michigan included substantial build-outs, was not purchased for manufacturing purposes, and required gross adjustments of 20%, (iii) Respondent's comparable sale #5 should be excluded from consideration because this property had been vacant for ten years prior to its purchase, is substantially smaller than the subject, and required gross adjustments of 42.5%, and (iv) Respondent's comparable sale #6 should be excluded from consideration because this property is substantially smaller than the subject, is not a manufacturing facility, and was purchased by the adjacent property owner for expansion of existing facilities and was not marketed for sale. The Tribunal accepts Respondent's comparable sales #2, # 3 and #7 as appropriate for further review and analysis.

The Tribunal has also reviewed the ten comparable sales identified by Petitioner's appraiser and finds that (i) Petitioner's comparable sale #1 should be excluded from consideration because Petitioner's appraiser identified the wrong sold property, (ii) Petitioner's comparable sale #2 should be excluded because this property is substantially smaller than the subject, required 38% adjustments, was sold in February 2007, and the purchase price identified by Petitioner's appraiser was not consistent with the Property Transfer Affidavit filed by the parties to the transaction, (iii) Petitioner's comparable sale #3 should be excluded because this property is substantially smaller than the subject and required 32% adjustment, (iv) Petitioner's comparable sale #9 should be excluded from consideration because of lender pressures on the owner to sell the property and because of substantial monies spent by the purchaser after purchase of the property to remodel the property, and (v) Petitioner's comparable #10 should be excluded from consideration because of its much larger size and the need for 31% adjustment.

After eliminating the above comparable sales from consideration, three sales identified by Respondent and five sales identified by Petitioner remain for Tribunal consideration. Acknowledging that the search parameters applied by the respective appraisers vary substantially as to location, size, and whether the sales were bank or receiver sales, the Tribunal finds that the most compelling market evidence of value for the 2009 and 2010 tax years is the sale of property located in Macomb Township identified by Respondent's appraiser as comparable #3 and by Petitioner's appraiser as comparable #5, and used by both appraisers in their sales comparison analysis for both years. This property sold in October 2008 and is approximately the same size as the subject. The Tribunal further finds that the appropriate sale price for this comparable sold property is $6.8 million, based on the Purchase Agreement entered into evidence and the testimony from Petitioner's appraiser regarding the due diligence performed to determine the value of the personal property included in the gross sale price of $7.3 million.

Petitioner contends that negative adjustments are warranted for market conditions, location, and land-to-building ratio and a positive adjustment is warranted for office area. Respondent agrees that a negative adjustment is warranted for land-to-building ratio and that a positive adjustment is warranted for office area, but does not agree that negative adjustments are warranted for market conditions and location. Respondent also contends that a positive adjustment is warranted for building condition. Based on the evidence and testimony presented by Petitioner in defending its use of a 2% negative adjustment for 2009 and a 12% negative adjustment for 2010, the Tribunal finds that (i) because the December 31, 2008, assessment date for the 2009 tax year essentially coincides with the beginning of the economic downturn experienced in Michigan, no adjustment for economic conditions is warranted for 2009, (ii) a negative adjustment of 10% for the deterioration in market conditions experienced in southeast Michigan in late 2008 is warranted for the 2010 tax year, (iii) Petitioner has not adequately supported its 15% negative adjustment for location and a negative adjustment of 10% is better supported, (iv) a negative adjustment for land-to-building ratio of 5% is appropriate, (v) a positive adjustment of 2.5% for office area is reasonable, and (vi) neither party has provided support for an adjustment for condition of the property.

Given the above, the Tribunal calculates the adjusted price per square foot of this comparable sale to be $27.77 for 2009 and $25 for 2010.[9] Applying the adjusted prices per square foot to the stipulated total building area of 221,982 square feet yields a true cash value of $6.16 million for 2009 and $5.55 million for 2010. For the 2011 tax year, the Tribunal finds it appropriate to reduce the 2010 true cash value of $5.55 million by the percentage decrease in assessed value of 6.3% determined by Respondent for the subject property for the 2011 tax year. The resulting calculated per square foot value of $23.42 for 2011 is within the range of per square foot values concluded by Petitioner and Respondent in their respective appraisals for the 2011 tax year. The total true cash values for the subject property determined by the Tribunal have been allocated to each of the parcels under appeal consistent with their assessed values for the applicable tax year, which is consistent with the allocation method applied by both appraisers.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner did prove by a preponderance of the evidence that the subject property is assessed in excess of 50% of market value. The subject property's true cash values (TCV), state equalized values (SEV), and taxable values (TV) are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that the property's assessed and taxable values for the tax year at issue are MODIFIED 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

[9] For 2009, $6.8 million divided by 214,240 square feet, negatively adjusted 10% for location and 5% for land-to-building ratio, and positively adjusted 2.5% for office area; for 2010, $6.8 million divided by 214,240 square feet, adjusted 10% for market conditions, and then adjusted for location, land-to-building ratio, and office area consistent with the calculation for 2009.

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, (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, and (xviii) after December 31, 2011 at the rate of 1.09% for calendar year 2012.

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

MICHIGAN TAX TRIBUNAL

Entered: March 30, 2012 By: Steven H. Lasher