

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

Pier Group Investments, LLC,
Petitioner,

v

MTT Docket No. 393526

City of St. Joseph,
Respondent.

Tribunal Judge Presiding
Preeti Gadola

FINAL OPINION AND JUDGMENT

Introduction

Petitioner, Pier Group Investments, LLC, appeals the ad valorem property tax assessment levied by Respondent, City of Saint Joseph, against the real property owned by Petitioner for the 2010-2012 tax years. The property under appeal is a condominium office building (“Cedarwood Building”) located at 820 Lester Ave., St. Joseph, Michigan. The condominium office building consists of thirteen condominiums; however, only twelve are under appeal in this matter as Petitioner does not own the thirteenth unit. Petitioner was represented by Howard Kahne, attorney, and Respondent was represented by Ingrid Jensen, attorney. Petitioner’s witnesses were Joseph E. Dick, commercial real estate lending officer; Richard D. Miller, state certified appraiser; and Joseph J. Giannola, resident agent of and member in Pier Group Investments, LLC. Respondent’s witnesses were

Deborah Deja, assessor, City of St. Joseph; and David Waszak, state certified appraiser. The hearing of this matter occurred on December 12, 2012.

Respondent’s contentions of true cash value (“TCV”), state equalized value (“SEV, and taxable value (“TV”), on the tax roll for the 2010-2012 tax years, are as follows:

Parcel No. 11-76-1135-0001-00-0

	Respondent		
Year	TCV	SEV	TV
2010	\$473,800	\$236,900	\$172,644
2011	\$402,600	\$201,300	\$175,578
2012	\$289,000	\$144,500	\$144,500

Parcel No. 11-76-1135-0002-00-6

	Respondent		
Year	TCV	SEV	TV
2010	\$329,400	\$164,700	\$115,838
2011	\$279,600	\$139,800	\$117,807
2012	\$200,400	\$100,200	\$100,200

Parcel No. 11-76-1135-0002-01-4

	Respondent		
Year	TCV	SEV	TV
2010	\$154,400	\$77,200	\$50,354
2011	\$131,600	\$65,800	\$51,210
2012	\$95,400	\$47,700	\$47,700

Parcel No. 11-76-1135-0003-00-2

	Respondent		
Year	TCV	SEV	TV
2010	\$862,200	\$431,100	\$318,208
2011	\$733,200	\$366,600	\$323,617
2012	\$527,200	\$263,600	\$263,600

Parcel No. 11-76-1135-0004-00-9

Respondent			
Year	TCV	SEV	TV
2010	\$503,400	\$251,700	\$183,691
2011	\$427,400	\$213,700	\$186,813
2012	\$306,400	\$153,200	\$153,200

Parcel No. 11-76-1135-0004-01-7

Respondent			
Year	TCV	SEV	TV
2010	\$45,400	\$22,700	\$17,088
2011	\$33,000	\$16,500	\$16,500
2012	\$24,000	\$12,000	\$12,000

Parcel No. 11-76-1135-0005-00-5

Respondent			
Year	TCV	SEV	TV
2010	\$343,600	\$171,800	\$125,833
2011	\$291,600	\$145,800	\$127,972
2012	\$209,000	\$104,500	\$104,500

Parcel No. 11-76-1135-0006-00-1

Respondent			
Year	TCV	SEV	TV
2010	\$339,200	\$169,600	\$139,901
2011	\$201,200	\$100,600	\$100,600
2012	\$143,800	\$71,900	\$71,900

Parcel No. 11-76-1135-0008-00-4

Respondent			
Year	TCV	SEV	TV
2010	\$68,800	\$34,400	\$24,978
2011	\$49,200	\$24,600	\$24,600
2012	\$35,200	\$17,600	\$17,600

Parcel No. 11-76-1135-0009-00-1

	Respondent		
Year	TCV	SEV	TV
2010	\$642,000	\$321,000	\$251,147
2011	\$525,800	\$262,900	\$255,416
2012	\$363,400	\$181,700	\$181,700

Parcel No. 11-76-1135-0010-00-9

	Respondent		
Year	TCV	SEV	TV
2010	\$836,400	\$418,200	\$316,761
2011	\$694,400	\$347,200	\$322,145
2012	\$483,800	\$241,900	\$241,900

Parcel No. 11-76-1135-0011-00-5

	Respondent		
Year	TCV	SEV	TV
2010	\$1,108,200	\$554,100	\$426,424
2011	\$921,400	\$460,700	\$433,673
2012	\$644,200	\$322,100	\$322,100

Petitioner's contentions of TCV, SEV, and TV for the tax years in question are as follows:

Parcel No. 11-76-1135-0001-00-0

	Petitioner		
Year	TCV	SEV	TV
2010	\$145,291.58	\$72,645.79	\$72,645.79
2011	\$85,823.92	\$42,911.96	\$42,911.96
2012	\$82,650.97	\$41,325.49	\$41,325.49

Parcel No. 11-76-1135-0002-00-6

		Petitioner	
Year	TCV	SEV	TV
2010	\$101,011.07	\$50,505.54	\$50,505.54
2011	\$59,603.50	\$29,801.75	\$29,801.75
2012	\$57,312.30	\$28,656.15	\$28,656.15

Parcel No. 11-76-1135-0002-01-4

		Petitioner	
Year	TCV	SEV	TV
2010	\$47,347.02	\$23,673.51	\$23,673.51
2011	\$28,053.72	\$14,026.86	\$14,026.86
2012	\$27,283.40	\$13,641.70	\$13,641.70

Parcel No. 11-76-1135-0003-00-2

		Petitioner	
Year	TCV	SEV	TV
2010	\$264,395.11	\$132,197.56	\$132,197.56
2011	\$156,299.30	\$78,149.65	\$78,149.65
2012	\$150,773.68	\$75,386.84	\$75,386.84

Parcel No. 11-76-1135-0004-00-9

		Petitioner	
Year	TCV	SEV	TV
2010	\$154,368.47	\$77,184.24	\$77,184.24
2011	\$91,110.64	\$45,555.32	\$45,555.32
2012	\$87,627.19	\$43,813.60	\$43,813.60

Parcel No. 11-76-1135-0004-01-7

		Petitioner	
Year	TCV	SEV	TV
2010	\$13,921.99	\$6,960.99	\$6,960.99
2011	\$7,034.75	\$3,517.37	\$3,517.37
2012	\$6,863.75	\$3,431.87	\$3,431.87

Parcel No. 11-76-1135-0005-00-5

		Petitioner	
Year	TCV	SEV	TV
2010	\$105,365.53	\$52,682.76	\$52,682.76
2011	\$62,161.59	\$31,080.79	\$31,080.79
2012	\$59,771.81	\$29,885.91	\$29,885.91

Parcel No. 11-76-1135-0006-00-1

		Petitioner	
Year	TCV	SEV	TV
2010	\$104,016.26	\$52,008.13	\$52,008.13
2011	\$42,890.64	\$21,445.32	\$21,445.32
2012	\$41,125.29	\$20,562.65	\$20,562.65

Parcel No. 11-76-1135-0008-00-4

		Petitioner	
Year	TCV	SEV	TV
2010	\$21,097.64	\$10,548.82	\$10,548.82
2011	\$10,488.17	\$5,244.08	\$5,244.08
2012	\$10,066.83	\$5,033.42	\$5,033.42

Parcel No. 11-76-1135-0009-00-1

		Petitioner	
Year	TCV	SEV	TV
2010	\$196,870.40	\$98,435.20	\$98,435.20
2011	\$112,086.98	\$56,043.49	\$56,043.49
2012	\$103,928.59	\$51,964.30	\$51,964.30

Parcel No. 11-76-1135-0010-00-9

		Petitioner	
Year	TCV	SEV	TV
2010	\$256,483.49	\$128,241.75	\$128,241.75
2011	\$148,028.14	\$74,014.07	\$74,014.07
2012	\$138,361.73	\$69,180.87	\$69,180.87

Parcel No. 11-76-1135-0011-00-5

		Petitioner	
Year	TCV	SEV	TV
2010	\$339,831.43	\$169,915.71	\$169,915.71
2011	\$196,418.67	\$98,209.34	\$98,209.34
2012	\$184,234.45	\$92,117.23	\$92,117.23

Respondent's revised contentions of TCV, SEV, and TV for the tax years in question are as follows:

Parcel No. 11-76-1135-0001-00-0

		Respondent	
Year	TCV	SEV	TV
2010	\$191,800	\$95,900	\$95,900
2011	\$191,800	\$95,900	\$95,900
2012	\$191,800	\$95,900	\$95,900

Parcel No. 11-76-1135-0002-00-6

		Respondent	
Year	TCV	SEV	TV
2010	\$128,700	\$64,350	\$64,350
2011	\$128,700	\$64,350	\$64,350
2012	\$128,700	\$64,350	\$64,350

Parcel No. 11-76-1135-0002-01-4

		Respondent	
Year	TCV	SEV	TV
2010	\$60,000	\$30,000	\$30,000
2011	\$60,000	\$30,000	\$30,000
2012	\$60,000	\$30,000	\$30,000

Parcel No. 11-76-1135-0003-00-2

Respondent			
Year	TCV	SEV	TV
2010	\$288,100	\$144,050	\$144,050
2011	\$288,100	\$144,050	\$144,050
2012	\$288,100	\$144,050	\$144,050

Parcel No. 11-76-1135-0004-00-9

Respondent			
Year	TCV	SEV	TV
2010	\$203,500	\$101,750	\$101,750
2011	\$203,500	\$101,750	\$101,750
2012	\$203,500	\$101,750	\$101,750

Parcel No. 11-76-1135-0004-01-7

Respondent			
Year	TCV	SEV	TV
2010	\$15,100	\$7,550	\$7,550
2011	\$15,100	\$7,550	\$7,550
2012	\$15,100	\$7,550	\$7,550

Parcel No. 11-76-1135-0005-00-5

Respondent			
Year	TCV	SEV	TV
2010	\$139,400	\$69,700	\$69,700
2011	\$139,400	\$69,700	\$69,700
2012	\$139,400	\$69,700	\$69,700

Parcel No. 11-76-1135-0006-00-1

Respondent			
Year	TCV	SEV	TV
2010	\$81,200	\$40,600	\$40,600
2011	\$81,200	\$40,600	\$40,600
2012	\$81,200	\$40,600	\$40,600

Parcel No. 11-76-1135-0008-00-4

	Respondent		
Year	TCV	SEV	TV
2010	\$22,800	\$11,400	\$11,400
2011	\$22,800	\$11,400	\$11,400
2012	\$22,800	\$11,400	\$11,400

Parcel No. 11-76-1135-0009-00-1

	Respondent		
Year	TCV	SEV	TV
2010	\$171,400	\$85,700	\$85,700
2011	\$171,400	\$85,700	\$85,700
2012	\$171,400	\$85,700	\$85,700

Parcel No. 11-76-1135-0010-00-9

	Respondent		
Year	TCV	SEV	TV
2010	\$236,600	\$118,300	\$118,300
2011	\$236,600	\$118,300	\$118,300
2012	\$236,600	\$118,300	\$118,300

Parcel No. 11-76-1135-0011-00-5

	Respondent		
Year	TCV	SEV	TV
2010	\$311,400	\$155,700	\$155,700
2011	\$311,400	\$155,700	\$155,700
2012	\$311,400	\$155,700	\$155,700

Based on the evidence, testimony, and case file, the Tribunal finds that the TCV, SEV, and TV of the subject properties for the years under appeal are as follows:

Parcel No. 11-76-1135-0001-00-0

Year	TCV	SEV	TV
2010	\$185,602	\$92,801	\$92,801
2011	\$171,318	\$85,659	\$85,659
2012	\$128,556	\$64,278	\$64,278

Parcel No. 11-76-1135-0002-00-6

Year	TCV	SEV	TV
2010	\$124,518	\$62,259	\$62,259
2011	\$114,934	\$57,467	\$57,467
2012	\$86,244	\$43,122	\$43,122

Parcel No. 11-76-1135-0002-01-4

Year	TCV	SEV	TV
2010	\$58,036	\$29,018	\$29,018
2011	\$53,570	\$26,785	\$26,785
2012	\$40,198	\$20,099	\$20,099

Parcel No. 11-76-1135-0003-00-2

Year	TCV	SEV	TV
2010	\$278,856	\$139,428	\$139,428
2011	\$257,396	\$128,698	\$128,698
2012	\$193,144	\$96,572	\$96,572

Parcel No. 11-76-1135-0004-00-9

Year	TCV	SEV	TV
2010	\$196,970	\$98,485	\$98,485
2011	\$181,812	\$90,906	\$90,906
2012	\$136,428	\$68,214	\$68,214

Parcel No. 11-76-1135-0004-01-7

Year	TCV	SEV	TV
2010	\$14,580	\$7,290	\$7,290
2011	\$13,460	\$6,730	\$6,730
2012	\$10,100	\$5,050	\$5,050

Parcel No. 11-76-1135-0005-00-5

Year	TCV	SEV	TV
2010	\$134,938	\$67,469	\$67,469
2011	\$124,554	\$62,277	\$62,277
2012	\$93,462	\$46,731	\$46,731

Parcel No. 11-76-1135-0006-00-1

Year	TCV	SEV	TV
2010	\$78,950	\$39,295	\$39,295
2011	\$72,542	\$36,271	\$36,271
2012	\$54,434	\$27,217	\$27,217

Parcel No. 11-76-1135-0008-00-4

Year	TCV	SEV	TV
2010	\$22,118	\$11,059	\$11,059
2011	\$20,418	\$10,209	\$10,209
2012	\$15,320	\$7,660	\$7,660

Parcel No. 11-76-1135-0009-00-1

Year	TCV	SEV	TV
2010	\$165,830	\$82,915	\$82,915
2011	\$153,068	\$76,534	\$76,534
2012	\$114,860	\$57,430	\$57,430

Parcel No. 11-76-1135-0010-00-9

Year	TCV	SEV	TV
2010	\$228,934	\$114,467	\$114,467
2011	\$211,316	\$105,658	\$105,658
2012	\$158,566	\$79,283	\$79,283

Parcel No. 11-76-1135-0011-00-5

Year	TCV	SEV	TV
2010	\$301,304	\$150,652	\$150,652
2011	\$278,116	\$139,058	\$139,058
2012	\$208,692	\$104,346	\$104,346

PETITIONER'S ADMITTED EXHIBITS

P-7 Appraisal – Rick Miller, Ltd. dated 8/28/2012

P-9 2009 Form 1065, US Return of Partnership Income for Petitioner

P-10 2010 Form 1065, US Return of Partnership Income for Petitioner

P-11 2011 Form 1065, US Return of Partnership Income for Petitioner

P-12 Financial History of Property from 2007 through 10/31/2012

P-13 Occupancy History for Property for 2010

P-14 Occupancy History for Property for 2011

P-15 Occupancy History for Property for 2012

PETITIONER'S WITNESSES

Joseph E. Dick

Mr. Dick testified that he is a real estate lending officer with Chemical Bank. He testified that Chemical Bank holds the mortgage on the Cedarwood Building and that he is the loan officer on the loan between Pier Group Investments, LLC and Chemical Bank. (Transcript, pp. 9-10) Mr. Dick testified that the loan has gone from performing status to non-performing status and now to a non-accrual status. (Transcript, p. 10)

Mr. Dick testified that when a loan is designated as non-performing, federal banking examiners require an appraisal of the property on an annual basis. (Transcript, p. 11) Mr. Dick testified that the appraisals performed of the property (to determine its market value) for tax years 2010-2012 demonstrated a downward trend in value. (Transcript, p. 14)

Richard D. Miller

Mr. Miller testified that he is a state certified appraiser and that he prepared an appraisal of the subject property for the purposes of this tax appeal. Mr. Miller has also been a real estate broker for 31 years and is a law school graduate. (Transcript, pp. 17-18) Mr. Miller testified that he has owned 179 apartments and a 30,000 square foot office building in the Benton Harbor/St. Joseph area.

(Transcript, p. 19) He also testified that he grew up in St. Joseph (Transcript, p. 24) and is very familiar with the area.

Mr. Miller has appraised many properties in the city of St. Joseph, including offices on the same block as the subject property. There are also smaller offices in the same area as the subject property and retail businesses that Mr. Miller has appraised. He testified that the area of St. Joseph that the subject property is located in is referred to as “Southtown.” (Transcript, pp. 19-20) Mr. Miller testified that he inspected the subject property several times and that the most current inspection was on August 24, 2012. (Transcript, p. 21)

Mr. Miller testified that there were several negative economic influences on the subject property caused by the increasing vacancy of other properties in the area. He testified that these vacancies have created a small market for attracting renters/buyers to the subject property as many property owners are competing for the same potential renters and/or buyers. One negative economic influence creating vacancies that Mr. Miller testified about was the “Whirlpool Effect.”

In essence, Mr. Miller testified that the “Whirlpool Effect” was caused by Whirlpool Headquarters, located in St. Joseph, Michigan, moving its offices out of the City by building a new 240,000 square foot office building in Benton Harbor. As of the date of the hearing, 80,000 square feet of the old building had been

vacated, thereby increasing the available office space in St. Joseph. (Transcript, pp. 23-24)

Another factor increasing vacancies in the subject property building is that the property was originally a thriving medical office building (built in the 1960s) and is now being vacated by the doctors who work there. Mr. Miller calls the aforementioned phenomenon, the “Lakeland Effect.” He testified that Lakeland Hospital is the local area hospital and that Lakeland is getting aggressive in luring physicians to work in its own self-constructed office facilities rather than Cedarwood. Mr. Miller testified that he has appraised 80% of the new Lakeland facilities and is thus familiar with the phenomenon. (Transcript, p. 25)

The third effect on the vacancy rate in St. Joseph has to do with United Federal Credit Union desiring to consolidate its office space into one 50,000-100,000 square foot building, thereby vacating its current office space. Mr. Miller testified that the consolidation hasn’t yet occurred but its imminence has affected the market in the Southtown area. (Transcript, p. 26)

Mr. Miller testified that other factors influencing the market in St. Joseph include the real estate crash of 2007 and 2008, the phase out of the tool and die industry, and outdated office space in Southtown being relocated out of the area. Mr. Miller testified that there aren’t enough property users to absorb the

currently/near future vacant properties. (Transcript, pp. 27-28) Mr. Miller testified that the only new property users coming into St. Joseph include a few restaurants and fitness centers. He testified that one fitness center recently rented a former ABC Warehouse property for \$3.00/square foot after it sat on the market for about ten years. (Transcript, p. 31)

Mr. Miller testified that he completed both a sales comparison and income approach to value the subject property. He testified with regard to his income approach that he utilized actual income and actual expenses. (Transcript, p. 65) He also testified that little weight was given to his income approach to value in determining the fair market value of the subject property for the tax years in question as he indicated that “there is no reasonable plan available to stabilize.” (Transcript, p. 67) Mr. Miller further testified that his income approach “gives supporting information, but I wouldn’t hang my hat on it.” (Transcript, p. 73)

With regard to Mr. Miller’s sales comparison approach to value, he testified regarding the various comparables that he utilized for each of the tax years in question. He testified that 2010 comparable one and 2011 comparable two located at 2945 Niles Avenue (utilized twice in the appraisal) is the St. Joe/Lincoln Township Senior Center. 2010 comparable three located at 403 State Street is a mixed use residential/retail complex, which Mr. Miller knew was foreclosed upon

by the Bank of Holland. Mr. Miller utilized 2010 comparable two located at 1012 S. 11th Street, which was a former Fifth Third Bank, and 2012 comparable three located at 20 N. 2nd Street, which was a bank sale. Both 1012 S. 11th Street and 20 N. 2nd Street were properties located in the city of Niles about twenty miles from the subject property. (Transcript, pp. 75-88) Mr. Miller's 2012 comparable one located at 5020 Cleveland consisted of a church and Mr. Miller's last three sales comparables (2012 comparable two and 2011 comparables one and three) were located in Kalamazoo, Three Oaks, and Parchment, Michigan, which were between 25-60 miles from the subject property. (Transcript, pp. 91-96)

Mr. Miller testified that he appraised seven out of the nine sales comparables that he utilized in his appraisal (Transcript, pp. 44-51) and was therefore very familiar with the properties and necessary adjustments. Mr. Miller testified that the subject property did not consist of twelve freestanding condominium units, but has operated as an integrated medical building (Transcript, p. 115) and should be valued that way. Mr. Miller reconciled his two approaches to value to present a fair market value of the subject property of \$1,750,000 for 2010, \$1,000,000 for 2011, and \$950,000 for 2012.

Joseph J. Giannola

Mr. Giannola testified that he is the resident agent and one of the members of Pier Group Investments, LLC. He oversees the daily operations of the property: he “cut the leases, work[s] with municipalities, takes care of the insurance, the exterior, interior maintenance.” (Transcript, p. 122) Mr. Giannola is a licensed real estate salesperson with Core Realty and such realty company currently has the property listed for sale. (Transcript, p. 123)

Mr. Giannola testified regarding the vacancy rates in the facility for the tax years in question. He testified that at one point, the vacancy rate was 62.8% as many medical occupants moved out of the building. (Transcript, p. 150) Mr. Giannola reiterated that Petitioner owns twelve out of the thirteen condominium units. He testified that Lakeland has the thirteenth unit and that the doctors who practice in the building no longer practice as an affiliated Cedarwood Medical Clinic, P.C. practice (as of 1999-2000), but separate medical practices. (Transcript, p. 127) He further testified that the medical suites in the building might occupy more than one condominium unit (one suite utilized two and one half units) and that the building was “condo-ed” as Lakeland Hospital acquired one of the units and wanted to maintain a tax exemption as a non-profit. “And I’m thinking that is the only reason that that occurred. Because they do not have a tax

I.D. for that parcel.” (Transcript, p. 128) On cross examination, when questioned about the sale listing of the subject property, Mr. Giannola testified that 11 condo units were presently for lease and one unit was listed for sale. (Transcript, p. 157) At the time of hearing, the tenants in the subject property building included Chemical Bank, Lighthouse Church, and Lakeside Health (a primary care medical practice), which Mr. Giannola testified is on a month-to-month lease as it plans to move out of the building. (Transcript, pp. 150-152)

RESPONDENT’S ADMITTED EXHIBITS

R-1 Appraisal Report by David Waszak, MAI

R-3 Master Deed of Cedarwood Medical Complex recorded in Liber 63, Page 1,
Berrien County Register of Deeds

Rebuttal Exhibit: Lakeland Building Permits were admitted into evidence, but physical copies were not provided to the Tribunal Judge.

RESPONDENT’S WITNESSES

Deborah Deja

Ms. Deja testified that she is the assessor for the City of St. Joseph and that she has been an assistant assessor or assessor for twelve years. (Transcript, p. 169)

Ms. Deja testified briefly regarding the “Lakeland, Whirlpool and United Federal Credit Union Effects” and though she acknowledged that Whirlpool is building

new facilities in Benton Harbor and that it moved some employees to that location, it also reoccupied the vacated space with other Whirlpool employees. Ms. Deja indicated that United Federal Credit Union is looking for new space and that it considered Cedarwood as one possibility. She further testified that Lakeland medical facility is not moving out of the city of St. Joseph and taking doctors out of the area. Ms. Deja was questioned regarding the market conditions in St. Joseph during the tax years in question and replied that “we haven’t seen a big change in the market conditions over that three-year period.” (Transcript, pp. 172-176)

On cross examination, Ms. Deja testified that she has only been out to the Cedarwood building one time, when the parties met there. She was unaware that the actual suite usage did not match the individual condominium units. (Transcript, p. 176) She testified that she used the condominium master deed to value the property. (Transcript, p. 180)

David Waszak

Mr. Waszak testified that he is a state licensed appraiser in Michigan and Indiana, a level two assessor in Indiana, and a state certified tax representative in the state of Indiana. Mr. Waszak testified that he completed the appraisal of the subject property for Respondent. (Transcript, p. 182,184) He testified that he included the property record cards of the subject property in his valuation

disclosure to illustrate that the property consisted of individual condominium units and not one big building. (Transcript, p. 186) Mr. Waszak inspected the interior of the subject property building and determined that it was well maintained with no functional obsolescence. (Transcript, pp. 188-190) He testified that St. Joseph is a beautiful lakefront community and a highly sought after residential area. (Transcript, p. 192)

Mr. Waszak testified that he did an appraisal one week before the hearing of this matter in Gary, Indiana, and determined that Gary was a blighted area with burned buildings and plywood over windows. He testified that St. Joseph is not a blighted area, like Gary. (Transcript, p. 191) When questioned by Mr. Kahne about a lawyer on every corner in St. Joseph, he responded, “That’s true for Indiana, too.” (Transcript, p. 241) Mr. Waszak testified that he had not completed any commercial appraisals in the City of St. Joseph between 2009 and the date of hearing, other than his current appraisal of the subject property. (Transcript pp. 231-232)

Mr. Waszak prepared an income and sales comparison approach to value the subject property. He termed his income approach a “Development Approach” which:

is something that's used in condo developments, in residential subdivisions, in commercial subdivisions. And it takes into account that I can value all day long the bulk value of these condos if they were all to sell this year....Those properties are not going to sell in one year at one time. That's not the present value of those properties. Present value of those properties is those properties selling some next year, some the year after, some the year after, some the year after, some the year after. I forecast a five-year sellout for the property. (Transcript, p. 197)

Further, with regard to his development approach to value, Mr. Waszak determined the vacancy and collection loss percentage by speaking with a local real estate broker, Loren Gerber. Mr. Gerber told Mr. Waszak that the vacancy rate was about twenty to thirty percent and Mr. Waszak reconciled at 25%. (Transcript, pp. 223-224)

Mr. Waszak also prepared a sales approach to value the subject property. He presented six sales from 2007 through 2011 in his sales approach to value. (R-1) The sale of comparable one, located at 1 South 5th Street, occurred in 2007 "during the real estate bubble" and sold for \$85.22 per square foot. Comparable two, located at 18 North Fourth Street, was a small dentist's office. Comparable three, located at 3838 Niles Road, was a former real estate office with vinyl siding. Comparable four, located at 2900 Niles Road, was purchased by the surgeons who left Cedarwood and had a

newer effective age than the subject property. Comparable five, located at 8 N. St. Joseph, was leased at sale and was much larger than the individual condominium sizes in the subject property, and comparable six, located at 2820 Niles, had a partially finished basement. Three of Mr. Waszak's sales comparables were located in Niles, Michigan and three were located in St. Joseph Township. (Transcript, pp. 209-210, 243-246) Mr. Waszak reconciled his two approaches to value at \$1,850,000 in value for the entire property for each of the three tax years in question.

FINDINGS OF FACT

1. The subject property consists of a condominium office building located at 820 Lester Ave., St. Joseph, Michigan.
2. The subject property has a net rentable square footage of 43,464 square feet and is classified as commercial, real.
3. The subject property consists of thirteen condominium units, but only twelve are under appeal in this matter as the thirteenth is owned by another party.
4. Petitioner presented an appraisal of the subject property utilizing both a sales comparison approach and an income approach to value to determine the

subject property's fair market value as of December 31, 2009, December 31, 2010, and December 31, 2011.

5. Petitioner's appraiser presented eight sales comparables that were adjusted to be consistent with the characteristics of the subject property.
6. Petitioner's appraiser's income approach to value utilized actual income and expenses and property taxes were treated as an expense when calculating the net operating income of the property.
7. Respondent presented an appraisal of the subject property utilizing both a sales comparable and development approach to determine the subject property's value as of December 31, 2009, December 31, 2010, and December 31, 2011.
8. Respondent's appraiser presented six sales comparables that he adjusted to be consistent with the characteristics of the subject property.
9. Respondent's appraiser's development approach included a five-year sellout period for the twelve condominiums under appeal in this matter and a 25% vacancy rate.

ISSUES PRESENTED 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. See MCL 211.27(a).

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), the Tribunal must find a property's true cash value in determining a lawful property assessment. See *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. See *Teledyne Continental Motors*

v Muskegon Twp, 145 Mich App 749, 754; 378 NW2d 590 (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. See *Meadowlanes Ltd. Dividend Housing Ass'n 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 205.735a(2). The Tribunal's factual findings are to be supported by competent, material, and substantial evidence. See *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 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 & 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 & Laughlin* at 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. See *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. See *Antisdale*. 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. See *Antisdale* at 277. In the matter before us, the Tribunal finds that the sales comparison approach is the correct approach to apply when determining the fair market value of the subject property for the 2010-2012 tax years.

Income Approach to Value

Both appraisers’ income approach to value is not probative to the Tribunal in making its independent determination of the true cash value of the property for the

tax years in question. Petitioner's appraiser used actual income and expenses in his report and the income approach to value must use market information. In Mr. Miller's appraisal of the subject property (P-7, p. 8), he states: "Because of poor absorption of vacant office space we are using actual income and expenses and not a stabilized report." He also testified that the reasoning behind using actual income and expenses is: "What I'm saying is that the building is what it is." (Transcript, p. 33)

Real property may not be assessed on the basis of the value of its use to the owner. See *Safran Printing Co v City of Detroit*, 88 Mich App 376, 276 NW 2d 602 (1979). "Use value" refers to the economic value of the use made by the property owner, regardless whether it is the highest and best use of the property. *Id.* In contrast, to determine true cash value, the property must be assessed at its highest and best use. *Great Lakes Div. of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 408; 576 NW2d 667 (1998). Highest and best use "recognizes that the use to which a prospective buyer would put the property will influence the price which the buyer would be willing to pay." *Edward Rose Bldg Co v Independence Twp.*, 436 Mich. 620, 633; 462 N W 2d 325 (1990). The Tribunal reiterates that the subject property cannot be assessed based on its value in use to

Petitioner, but must be assessed at its market value based on its determined highest and best use.

Mr. Miller further discredited his income approach by testifying that it “gives supporting information, but I wouldn’t hang my hat on it.” (Transcript, p. 73) He also states: “Little weight is given to the Income Approach because there is no reasonable plan available at this time to stabilize or increase the income stream.” (P-7, pp. 9-11)

The Tribunal notes, when considering the mechanics of Mr. Miller’s income approach to value, that he improperly included property taxes as an expense when computing the net operating income of the subject property. (P-7, pp. 9-11) Given that the function of Mr. Miller’s appraisal is to assist in the determination of the true cash value of the property as part of an ad valorem tax appeal, real estate taxes should not be included as an expense. Instead, a tax capitalization component should be added to the overall rate utilized to value the subject property.

Respondent’s appraiser (Mr. Waszak) used a development approach to value which determined the present value of the property (for tax years 2010-2012) assuming it had some lease income and eventually sold in a five-year period. The Tribunal does not find Mr. Waszak’s development approach to be probative. The Tribunal is unable to discern a convincing explanation as to where the five-year

sellout prediction came from, other than purely subjective assumptions. Mr. Waszak presented a “statistical analysis” used to determine the accuracy of the five-year sellout period that consisted of looking at random sales in southwest Michigan and tracking how long they were on the market, which presented a result of 278-294 days. (Transcript, pp. 217-218) He also testified that “several of those appraisals that were alluded to also used a five-year marketing period.” (Transcript, p. 218) The Tribunal is unsure of the relevance of the statistical analysis and the reference to unnamed appraisals “that were alluded to.” For example, did the appraisals alluded to value properties in the City of St. Joseph and further, where are the appraisals so they can be reviewed? Also, how does a random average of days of less than one year for the sale of real property on the market, follow with a sellout period of five years for twelve condominiums?

The Tribunal is also skeptical of the vacancy rate utilized by Mr. Waszak given that it was determined from chatting with only one real estate broker in the City of St. Joseph. (Transcript, pp. 223-224) Mr. Waszak did not appear familiar with the rental or sales market in the City as he testified that he had not completed any commercial appraisals in the City of St. Joseph between 2009 and the date of hearing, other than his current appraisal of the subject property. (Transcript pp. 231-232) He also appeared to prepare more appraisals in the state of Indiana than

in Michigan testifying that he did an appraisal one week before the hearing of this matter in Gary, Indiana. (Transcript, p. 191) When questioned by Mr. Kahne about a lawyer on every corner in St. Joseph, he responded “That’s true for Indiana, too.” (Transcript, p. 241) Mr. Waszak also testified that he is a state licensed appraiser in Indiana, a level two assessor in Indiana, and a state certified tax representative in the state of Indiana. (Transcript, p. 182) Ultimately, the Tribunal does not find the income approach to value presented in either party’s appraisals to be persuasive.

Sales Comparison Approach

With regard to the sales comparison approach to value, the Tribunal finds that the sales comparables presented by Mr. Miller are far from perfect; however, when adjusted, some of them provide the best evidence of the fair market value of the subject property for the 2010-2012 tax years. Mr. Miller viewed the inside and outside of the comparable properties at some time in the past, having appraised them. He also grew up in St. Joseph and has appraised a great number of properties in the City. Mr. Waszak provided six comparables, two from 2007 and 2008, which are too far removed from the tax years in question; two not at all comparable to the subject property;

one that he, himself, discredits; and the sixth is much newer than the subject property.

With regard to Mr. Waszak's sales comparable approach to value, the Tribunal agrees that the separately parceled condominium units may be sold individually, regardless of suites and condo units not coinciding. Again, the individual units have separate parcel numbers and one of the thirteen units in the building is not owned by Petitioner, but in fact was purchased as an individual condominium unit by another owner. The Tribunal questions how it is possible to sell the Cedarwood building as one unit, if it is not wholly owned by one party. The court in *Edward Rose Bldg Co, supra* at 632, states that "as a general rule, different parcels of land in the same ownership are to be regarded as separate units for tax purposes and, as such, must be separately valued and assessed." Furthermore, MCL 559.161 states:

Upon the establishment of a condominium project **each condominium unit**, together with and inseparable from its appurtenant share of the common elements, **shall be a sole property subject to ownership**, mortgaging, **taxation**, possession, **sale**, and all types of juridical acts, inter vivos or causa mortis **independent of the other condominium units**. [Emphasis added]

With regard to the sales comparables presented by both appraisers for the 2010 tax year, the Tribunal finds that Petitioner's comparables one and

two located at 2945 Niles, St. Joseph, and 1012 S. 11th Street, Niles, to be the most similar to the subject property. They received a 5% net adjustment and are similar in square footage to some of the individual condominium units in the subject property. Furthermore, Mr. Miller has been inside both properties having appraised them in the past. Comparables one and two were also properly adjusted to make them consistent with the characteristics of the subject property. Mr. Miller's comparable three located at 403 S. State Street, St. Joseph; was a foreclosure property and sold during the redemption period . The Tribunal was not provided with any information in order to determine if the sale was subject to normal market pressures.¹ The Tribunal reiterates that Mr. Miller's comparables one and two are the most reliable given that he actually appraised the properties, himself, in the past and is thus, presumably familiar with the inside and outside of the properties, rather than the properties just being "drive-bys," a common appraisal practice. (The appraiser views the outside of a potential comparable property and gleans its other characteristics from the property record card, assessor interview, or sale listing, for example). Although

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

Respondent's comparable two located at 18 N. 4th Street, Niles, was sold during the 2010 tax year (on/or before December 31, 2009)², it does not appear to be similar to the subject property as demonstrated by its photograph on page 84 of Respondent's appraisal. (The subject property photographs are best viewed in R-1, beginning on page 39.) The Tribunal is also unsure as to whether Mr. Waszak viewed the inside of the property as no photographs or testimony regarding the interior were provided.

Respondent's comparables one and six, located at 1 S. 5th Street, Niles, and 2820 Niles, St. Joseph, sold in 2007 and 2008 and thus were too far removed from the 2010 tax year to be reliable.

While the average dollar per square foot in sales price for the two chosen comparable properties is not the only evidence to be considered in any determination of fair market value, it is the best evidence presented in this case. In an ideal world, there would be sales comparables relating to each unit size, all in St. Joseph, and all within condominium office buildings. However, in the matter before us, the average dollar per square

²MCL 211.2(2) states: (2) The taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day, any provisions in the charter of any city or village to the contrary notwithstanding.

foot in sale price is the best evidence provided. The average dollar per square foot in sales price for the two chosen 2010 comparables is \$41.19 per square foot. Although there was some discussion regarding the square footage of the subject building and its gross square footage versus its net rentable square footage, the Tribunal finds that both parties ultimately rested on 43,464 square feet, as both parties utilized that number in their appraisals. (P-7, pp. 16, 18, 21; R-1, pp. 100, 113) Therefore, $\$41.19 \times 43,464$ square feet equals a true cash value of \$1,790, 300 (rounded) for 2010. This aggregate dollar per square foot in value has been spread amongst the parcels by the square footage of each parcel.

For 2011, the Tribunal finds that Petitioner's sales comparable two located at 2945 Niles, St. Joseph, is the most comparable to the subject property. It has only a (5%) net adjustment and was viewed on both the inside and outside by Mr. Miller. Petitioner's comparable one located at 205 Generations Drive, Three Oaks, had 20% in net adjustments and was located in a smaller community about 25 miles from the subject property. Further, the Petitioner's comparable one had 16,000 square feet, which is much larger than the individual condominium units in the subject property. Petitioner's comparable three located at 310 Riverview, Parchment (about

60 miles from the subject property), was not seen on the inside by Mr. Miller and was not in Berrien County (where the subject is located). Mr. Miller testified “It’s not as strong, probably, as some of the other comps because it’s not close.” (Transcript, p. 49)

Respondent’s comparable three located at 3838 Niles, St. Joseph, sold in 2010; however, it has vinyl siding and appears to be very inferior to the subject property in its photograph on page 86 of Respondent’s appraisal. Mr. Waszak testified, “It’s kind of an ugly building, actually, compared to the subject.” (Transcript, p. 244) Respondent’s comparable five located at 8. N. St. Joseph, sold in 2010; however, the property was leased at sale and is 19,050 square feet, much larger than the subject property individual units. Mr. Waszak testified, “This is my larger outlier.” (Transcript, p. 210) In light of the aforementioned facts, the Tribunal finds that the dollar per square foot in market value for the subject property for the 2011 tax year to be \$38.02, as demonstrated in Petitioner’s comparable two. Therefore, \$38.02 multiplied by 43,464 square feet equals \$1,652,500 (rounded) in true cash value. This aggregate dollar per square foot in value has been spread amongst the parcels by the square footage of each parcel.

For 2012, the Tribunal finds Petitioner's comparable one, located at 5020 Cleveland, St. Joseph, to be the most comparable to the subject property. It was appraised by Mr. Miller in the past and it consists of a church, and a church is also one of the tenants in the subject property. Petitioner's comparable two, located at 2121 Hudson Street, Kalamazoo, was not given as much weight by Mr. Miller as it was located in Kalamazoo, about 60 miles from the subject property, outside of Berrien County. Mr. Miller also testified that he had not been inside the property. Petitioner's comparable three located at 20 North 2nd Street, Niles, was bank-owned at the time of sale and no information was provided regarding whether the sale was subject to normal market pressures. Respondent's comparable four located at 2900 Niles Rd., St. Joseph, is much newer than the subject property with an effective age of five years. Mr. Waszak assigned the subject property an effective age of twenty-five years and its actual age is fifty nine years. The Tribunal finds that Respondent's comparable four is not truly comparable to the subject property. In light of the aforementioned facts, the Tribunal finds that the dollar per square foot in market value for the subject property for the 2012 tax year to be \$28.53, as demonstrated in Petitioner's comparable one. Therefore, \$28.53 multiplied by 43,464 square

feet equals \$1,240,000 (rounded) in true cash value. This aggregate value per square foot has been spread amongst the parcels by the square footage of each parcel.

In this case, the Tribunal concludes that the evidence, testimony, and case file indicate that the subject property is assessed in excess of 50% of market value. The Tribunal finds the sales approach to be the appropriate technique of valuation and utilized the same in making its independent determination of the true cash value of the subject property for the tax years in question. The Tribunal is charged in this valuation appeal to determine the true cash value of the subject property as of each tax year at issue. Petitioner was able to prove by a preponderance of the evidence that the assessment of the subject property should be modified.

JUDGMENT

The subject property's true cash value (TCV), state equalized value (SEV), and taxable value (TV) for the 2010-2012 tax years are as stated in the Introduction section above.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable value as finally

shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by the Final Opinion and Judgment within 28 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2008, at the rate of 3.31% for calendar year 2009; (ii) after December 31, 2009, at the rate of 1.23% for calendar year 2010; (iii) after

December 31, 2010, at the rate of 1.12% for calendar year 2011; (iv) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09% for calendar year 2012; (v) after June 30, 2012, and prior to January 1, 2013, at the rate of 4.25%; and (vi) after December 31, 2012, and prior to July 1, 2013, at the rate of 4.25%.

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

MICHIGAN TAX TRIBUNAL

By: Preeti Gadola

Entered: February 15, 2013