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

Howell Promenade, LLC,
Petitioner,

v

MTT Docket No. 433125

City of Howell,
Respondent.

Tribunal Judge Presiding
Preeti Gadola

FINAL OPINION AND JUDGMENT

Introduction

Petitioner, Howell Promenade, LLC, appeals the ad valorem property tax assessment levied by Respondent, City of Howell, against the real property owned by Petitioner (parcel no: 4717-36-403-013) for the 2012 tax year. Stewart Mandell and Daniel Stanley, attorneys, appeared on behalf of Petitioner. Dennis Perkins, attorney, appeared on behalf of Respondent. A hearing of the matter occurred on November 19, 2013. Petitioner's witnesses were John Breza, Operations Manager of Howell Promenade, Richard O'Connor, Real Estate Broker, and Jason Krentler, Appraiser. Respondent did not present any witnesses as it was precluded from doing so at the prehearing conference of this matter.

The subject property consists of a multi-tenant, neighborhood shopping center containing 78,538 net rentable square feet situated on a development site of 10.6 acres. It is located on the southwest corner of Grand River Avenue and Lucy Street in the city of Howell, Michigan. For the purposes of this Final Opinion and Judgment the property shall be referred to by its common name, "Howell Promenade."

Summary of Judgment

Based on the evidence, testimony, and case file, the Tribunal finds that Petitioner has met the burden of proof in establishing that a modification of true cash value, as determined by the Tribunal, is appropriate. The Tribunal further finds the true cash value ("TCV"), the state equalized value ("SEV"), and the taxable value ("TV") of the subject property for the year under appeal are as follows:

Parcel Number: 4717-36-403-013

	TCV	SEV	TV
2012	$2,088,160	$1,044,080	$1,044,080

Preclusion of Respondent From Presenting Witnesses and Valuation Testimony at the Hearing of this Matter

On October 29, 2013, Tribunal Judge Steven H. Lasher issued a Summary of Prehearing Conference and Scheduling Order in which Respondent was precluded from "presenting its valuation disclosure or offering witnesses at the scheduled hearing." The reasoning behind the preclusion was as follows:

> The initial petition is this matter was filed on April 12, 2012 and the parties were given notice on December 27, 2012 of the requirement to file and exchange their valuation disclosures and prehearing statements by August 16, 2013, [approximately eight months after the notice]. Notwithstanding that the parties had notice and sufficient opportunity to conduct discovery, discuss settlement, and prepare their valuation disclosures and prehearing statements for timely submission, Respondent failed to do so. Respondent filed its valuation disclosure and prehearing statement on October 17, 2012, just four days prior to the Show Cause hearing, and no good cause justifying its untimely filing has been shown.

Further, pursuant to TTR 237(3),

> The prehearing statement shall provide the other party or parties and the tribunal with the name and address of any person who may testify and with a general

> summary of the subject area of the testimony. A person who is not disclosed as a witness shall not be permitted to give testimony, unless, for good cause shown, the tribunal permits the testimony to be taken.

No good cause was shown for the late filing by Respondent of the prehearing statement, with witness names, or valuation disclosure; therefore, Respondent was precluded from presenting valuation evidence or offering witnesses at the hearing. Petitioner timely filed its valuation disclosure and prehearing statement with witness identification, addresses and general subject area of their testimony.

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 calculated by Respondent is substantially overstated. Petitioner's contentions of the TCV, SEV, and TV for the subject property for the tax year at issue are:

Parcel Number: 4717-36-403-013

	TCV	SEV	TV
2012	$1,490,000	$745,000	$745,000

Petitioner contends that on December 31, 2011, the subject property was 27.5% vacant and that in 2011, its anchor tenant, "Big Lots," informed Mr. Breza that it intended to relocate its store. Petitioner contends that the property had physical deficiencies that required repair including roofing, HVAC replacement, and parking lot replacement. Petitioner also contends that it made a significant effort to attract new tenants and/or buyers of the property, but was unable to do so. Petitioner's appraiser, Mr. Krentler, prepared both a sales and income approach to value the subject property. Mr. Krentler determined the true cash value of the subject property for the 2012 tax year to be $1,490,000.

PETITIONER'S ADMITTED EXHIBITS

P-1 Appraisal of the subject property prepared by Jason Krentler of Stout, Risuis and Ross

P- 2 HVAC Issues Summary

P-3 Roofing Issues Summary

P-4 Parking Lot Issues Summary

PETITIONER'S WITNESSES

John Breza

Mr. Breza oversees all operations management for Howell Promenade. He is an attorney, real estate sales person and investor, and is a member of the International Council of Shopping Centers, among other groups. He is currently employed by First Holding Management Company, LLC which counts as an asset of the Howell Promenade property. He oversees "acquisitions, dispositions, financing, leasing, accounting, legal, construction, and marketing. I'm involved with every aspect of every asset from top to bottom, all the way down to signing every invoice that comes through regarding these assets." Transcript at 21-22.

Mr. Breza testified that the subject property is a shopping center with inline businesses, an outlot with a restaurant, and an anchor, big box, tenant which is currently "Big Lots." A Secretary of State branch was also located in Howell Promenade, but relocated in February 2011. Mr. Breza testified that in the beginning of 2011, Big Lots informed him "that is was their intention to close their store and relocate within the market." Transcript at 31. Big Lots intended to relocate to Brighton near a Walmart, Meijer, Staples and Kohl's which location was also adjacent to the expressway. Mr. Breza testified that "we put on the big pitch….We talked about store renovations. We offered them several hundred thousand dollars in tenant improvement dollars, and offered to change our Howell Promenade sign to the Big Lots sign, rebrand the center. And they came back and said there's really no amount of money that we could pay them to make them stay, they were – they were leaving." Transcript at 31-32. Howell Promenade entered into a lease amendment with Big Lots on October 31, 2011, at a lower rate, which was terminable by either party.

Mr. Breza testified that the inline tenants were mostly "mom and pop" businesses, but that three had multiple locations, though they were not national chains. He noted that there were two restaurants in Howell Promenade that required "significant forgiveness of rents in connection with these new rent deals." Transcript at 38. Mr. Breza testified that the loss of the Secretary of State Branch and the upcoming loss of Big Lots were detrimental to Howell Promenade's gross income. He also noted that on December 31, 2011, the property was already 27.5% vacant.

Mr. Breza testified regarding physical deficiencies in the property. He testified that roof replacement and HVAC replacement were needed in and above a number of the tenants. He also testified that the property parking lot was in need of replacement. Transcript at 49-50. He testified that third-party audits are done annually by contractors for the roof and HVAC and that annual audits are done internally and semi-annual audits are done by a third-party contractor with regard to the parking lot. Transcript, at 52-53. He testified that the subject property required $477,152 in deferred maintenance. Transcript at 67, 69.

Mr. Breza testified that he hired a real estate firm, Marcus and Millichap, and specifically broker Richard O'Connor to list the subject property. Mr. Breza testified that three letters of intent were received with potential offers of $1,200,000, $1,800,000 and $2,150,000. Transcript at 77. He testified that two of the offers were from out of state and possibly out of the country, and the third offer for $1,200,000 was a local offer. He testified that once the potential local buyer did its due diligence, including exploring the amount of deferred maintenance needed and the loss of Big Lots, the offer went away. Transcript at 77-78. On cross examination, Mr. Breza testified that Big Lots was still located at Howell Promenade as of the date of the hearing of this matter. Transcript at 98.

Richard O'Connor

Richard O'Connor is a licensed real estate broker with Marcus and Millichap. He testified that "it is a full service national company with seventy offices, thirteen hundred brokers and we specialize only in the buying and selling of commercial properties." Mr. O'Connor testified that 95% of his work is in buying and selling retail properties, 98% of his work is in Michigan, and he has been involved in 600-700 shopping centers. Transcript at 114-115. Mr. O'Connor testified that he recommended lowering the asking price of the property to $1,700,000 in the hope that they could receive an offer between $1,200,000 and $1,500,000. He testified that he put the offering memorandum out to in excess of 14,000 to 15,000 people. Transcript at 120. He testified that after the initial letters of intent, it was his responsibility to offer an inspection of the property, rent rolls, and to inform the potential buyers of the instability of the Big Lots lease. Mr. O'Connor confirmed that there were three letters of intent, but that none of the letters led to binding offers to purchase due to the "unstabilized anchor." Transcript at 130-131.

Jason Krentler

Mr. Krentler is MAI designated appraiser. He is employed by Stout, Risius and Ross appraisal firm where he is the Director of Real Estate. He prepared an appraisal of Howell Promenade for this property tax appeal. Mr. Krentler prepared sales and income approaches to value the subject property. His reconciled opinion of the true cash value of the subject property for the 2012 tax year is $1,490,000. See P-1.

In Mr. Krentler's sales approach to value, he presented five sales with adjustments to make them consistent with the characteristics of the subject property. He determined a range of $27.20 to $32.16 per square foot in value. His final conclusion of value for the subject property, under the sales approach, was $28 per square foot or $2,200,000. Transcript at 156.

Mr. Krentler also prepared an income approach to value. He presented five rental comparables for inline stores and adjusted them to be consistent with the characteristics of the subject property. He testified that he adjusted the rental comparable leases to triple net leases, testifying that, a "[t]riple net is a lease structure where the tenant is reimbursing the landlord for CAM charges as well as utility or as well as insurance charges and real estate taxes and then they pay their utilities separately." Transcript at 159. After adjustments, Mr. Krentler's conclusion of value was $6.00 per square foot for inline space.

With regard to the big box space, Mr. Krentler presented five rental comparables and adjusted them to be consistent with the characteristics of the subject property. Again, the leases were converted to triple net and his conclusion of market rent for the big box space was $3.50 per square foot. Transcript at 162-164. Mr. Krentler's final conclusion of value for the subject property was $2,100,000 for the 2012 tax year under the income approach. Mr. Krentler indicated that he found the income approach more reliable than the sales approach, testifying, "the subject is ultimately an income-generating property and market participants are going to rely on the income approach in their conclusion of purchase price and that's what's relied upon." Transcript at 172. From his $2,100,000 conclusion of value for the subject property under the income approach, he subtracted $480,000 for deferred maintenance and $130,000 for lease-up costs including 5% in entrepreneurial incentive. His final conclusion of value for the subject property for the 2013 tax year was $1,490,000.

RESPONDENT'S CONTENTIONS

Respondent's contentions of value on the tax roll are as follows:

Parcel Number: 4717-36-403-013

	TCV	SEV	TV
2012	$3,022,400	$1,511,200	$1,232,400

Respondent contends that the subject property has been fairly and accurately assessed at 50% of its true cash value.

RESPONDENT'S ADMITTED EXHIBITS

Respondent was precluded from admitting any exhibits into the record.

RESPONDENT'S WITNESSES:

Respondent was precluded from calling any witnesses, but was able to cross-examine Petitioner's witnesses.

FINDINGS OF FACT

1. The subject property is located at 1245 E. Grand River Avenue, Howell, Michigan.
2. The property is retail, strip community shopping center known as Howell Promenade. It consists of seventeen in-line suites, one big box suite, and one outlot. There are 78,538 net rentable square feet situated on 10.6 acres. The property was 27.5% vacant on December 31, 2011.
3. Mr. Breza oversees all operations management for Howell Promenade and he alleges that Petitioner's anchor tenant, "Big Lots," informed him that it was leaving the shopping center and relocating elsewhere. Mr. Breza indicated that he was unable to find tenants to fill the existing vacancies in Howell Promenade and was unable to convince Big Lots to remain.
4. Mr. Breza put Howell Promenade on the market, through Mr. O'Connor, real estate broker, and received three letters of intent. The letters suggested offers of $1,200,000, $1,800,000 and $2,150,000. Mr. Breza testified that only the $1,200,000 letter of intent was a local offer.
5. Mr. O'Connor testified that the potential purchaser that submitted the local letter of intent did its due diligence and determined not to make a formal offer due to the unstable nature of the anchor tenant. The other two letters of intent did not result in formal offers to purchase.
6. Mr. Breza hired Mr. Krentler, appraiser, to prepare an appraisal of the subject property to determine its market value as of December 31, 2011, for this ad valorem property tax appeal.
7. Mr. Krentler prepared two approaches to value the subject property, the sales and income approaches, but relied on his income approach to value.

8. Mr. Breza testified that the subject property requires $477,152 in deferred maintenance. Mr. Krentler based his estimation of the deferred maintenance required to the property on this information. In his appraisal, he utilized $480,000 as the amount of deferred maintenance needed. Mr. Krentler indicated that a purchaser of the property would take care of the deferred maintenance immediately.
9. Mr. Krentler indicated in his appraisal under his sales comparison approach, that no expenditures were needed immediately after the sale of the subject property.
10. Mr. Krentler made condition adjustments to his sales and rental comparables to make them consistent with the condition of the subject property on December 31, 2011.
11. In his income approach to value, Mr. Krentler adjusted all leases of comparable rental properties to triple net leases.
12. Mr. Krentler wrote in his appraisal that triple net leases include pro-rata reimbursement for CAM, property taxes and property insurance.
13. Mr. Krentler determined a vacancy and credit loss in his income approach of 20%.
14. In his rental comparables, Mr. Krentler indicated that tenant improvements and leasing concessions were similar in the subject property and the comparables, therefore no adjustment was needed.
15. Mr. Krentler’s determination of value for the subject property was $2,100,000 under the income approach.
16. From the $2,100,000, Mr. Krentler subtracted $480,000 in deferred maintenance and $130,000 in lease-up-costs, including entrepreneurial profit.
17. Mr. Krentler’s final determination of the true cash value of the subject property was $1,490,000.

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 211.27a.

> The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. 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 percent . . . . 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).

The Michigan Supreme Court has determined that "true cash value" is synonymous with "fair market value." See *CAF Investment Co v State Tax Comm*, 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 Dev 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 Holland, 437 Mich 473, 485-486; 473 NW2d 636 (1991).

A proceeding before the Tax Tribunal is original, independent, and de novo. See MCL 205.735a(2). The Tribunal's factual findings must be supported by competent, material, and substantial evidence. See *Antisdale v 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 proof in 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, supra* at 354-355. However, “[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessments 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 205.737(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, supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 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, supra* at 277. In this matter, the Tribunal finds that the income capitalization approach, supported by the sales approach, is the appropriate method of valuation of the subject property.

Mr. Krentler prepared an appraisal of the subject property for Petitioner. The appraisal presents two approaches to value, the sales comparison approach and the income approach. In his sales comparison approach, Mr. Krentler presented five sales with adjustments to make them consistent with the characteristics of the subject property. The Tribunal finds Mr. Krentler's adjustments to be appropriate as was his determination of the fair market value of the subject property under the sales approach of $2,200,000 for the 2012 tax year. It should be noted, however, that in his sales approach, Mr. Krentler indicated that the subject property required no expenditures immediately after purchase because he did not make an adjustment to the comparable properties that also needed no expenditures. He wrote, "No adjustments are necessary because none of the comparable sales required such expenditures immediately after the sale." See P-1 at 37. Conversely, he testified, "[s]o in my application of a market participant's perspective, I think it's absolutely necessary to do a deduction for these costs that they would anticipate having to incur immediately." Transcript at 194.

Further he testified:

> And given – given the life of the building components that we're talking about, given their installation date, I would expect these items would need to be cured very soon from the current owner's perspective. But, from a buyer's perspective, I would anticipate that they would need to take care of them immediately or they would not have an interest in the property. Transcript at 194.

In his testimony, Mr. Breza indicated that the subject property required $477,152 in deferred maintenance and Mr. Krentler determined that in his income approach, the market value of the property included an under the line deduction of $480,000 in deferred maintenance. Mr. Krentler writes,

> The property owner has conveyed deferred maintenance items and costs which need to be remedied prior to selling the subject or deducted from the purchase price. These items appear reasonably categorized as deferred maintenance based on our inspection, but we are not engineers and are not qualified to opine on whether these items are structurally failing. Deferred maintenance costs are deducted from the true cash value conclusion after reconciliation P-1 at 62, Transcript at 67.

However, in both his sales and income approaches to value, Mr. Krentler previously made condition adjustments for the difference in condition between the subject and the comparables: "Improved sale 2 is in similar condition to the subject and no adjustment is necessary. Sales comparables 1, 3, 4, and 5 are superior in terms of condition and negative adjustments are applied." P-1 at 38. In his income approach to value, Mr. Krentler wrote for inline comparables, "Rent comparables 1, 4, and 5 are in similar condition to the subject property and no adjustments are necessary. Rent comparables 2 and 3 are superior in terms of condition; therefore, negative adjustments are applied." P-1 at 45. In his big box analysis, Mr. Krentler wrote, "Rent comparable 4 is similar in condition to the subject and no adjustment is necessary. The remaining comparables are superior in condition to the subject, and negative adjustments are applied." P-1 at 50. The Tribunal finds that Mr. Krentler first indicated that there are no expenditures needed immediately after the sale, then that there are expenditures that would have to be made immediately, but already made condition adjustments to his sales and rental comparables for superior or inferior condition as compared to the subject property. It appears to the Tribunal that Mr. Krentler is making adjustments for the present condition of the property, twice. He is stating that the subject property would sell for a certain amount in the condition it is in, based on the sale prices/or rental rates of comparables in, or adjusted to be in, the same condition as the subject. The Tribunal does not doubt that repairs to the property are needed as suggested by Mr. Breza's testimony and exhibits P-2, P-3 and P-4 detailing needed repairs; however, it also finds that condition adjustments were already taken above the line. It should also be noted that a deduction for the actual cost of deferred maintenance is suspect in determining the fair market value of the subject property. Cost does not equal market value and $480,000 spent on deferred maintenance does not equal a $480,000 increase in value. In the alternative, why would its market value decrease by $480,000 because of the potential costs of the repairs that are part of the cost of doing business?

With specific regard to Mr. Krentler's income approach to value, he presented five inline rental comparables to determine the market rent of the subject property per square foot. Mr. Krentler properly adjusted the comparables to make them consistent with the characteristics of the subject property and concluded with a market rent of $6.00 per square foot. It should be noted that he adjusted all the comparable leased properties to triple net leases and "the majority of the leases in place at the subject property are triple net." P-1 at 49. Mr. Krentler further put forth five rental comparables to determine the market rent for the subject big box space. He made appropriate adjustments to the comparables to make them consistent with the characteristics of the subject property and concluded with market rent of $3.50 per square foot, triple net. In a triple net lease, "the tenant reimburses the landlord for their pro-rata share of real estate taxes, insurance, and common area maintenance ["CAM"]." See P-1 at 49. Finally, Mr. Krentler determined a market rent for the outlot space of $9.00 per square foot and such was "based on a 50% adjustment to the in-line rental rate due to an overall superiority in utility and marketability." P-1 at 53.

Mr. Krentler projected potential rental income, based on his calculated market rental rates, of $414,868. From that amount, he deducted a 20% vacancy and credit loss for a net rental income of $331,894. Next Mr. Krentler added expense reimbursements of $69,113 for an effective gross income of $401,008. In his appraisal, Mr. Krentler wrote regarding vacancy and credit loss,

> Most properties do not continually maintain full occupancy. Typically, vacancies occur during periods of tenant turnover, when tenants choose not to renew their existing lease. In addition tenants may fail to pay their rent or pay their rent late. . . .Based on this analysis, the stabilized vacancy rate for the subject is projected to be 18%. Credit loss is projected to be 2%.

The Tribunal finds that Mr. Krentler properly determined the stabilized vacancy and credit loss and also finds that with triple net leases, as his rental comparables were, 20% of the totality of the tenants' pro-rata share of real estate taxes, insurance and common area maintenance are also lost. Mr. Krentler wrote in his appraisal under his explanation of Expense Reimbursement Revenue,

> The market lease rate for the subject is on a triple net basis. Therefore, tenants reimburse the landlord their pro rata share of operating expenses. Expense reimbursement revenue has a direct correlation to the occupancy of the property. Expense reimbursement will increase as occupancy increases. Slippage is anticipated as leases expire and roll to market. P-1 at 54.

On the expense side of his income approach, Mr. Krentler took deductions for Petitioner's share of property insurance and common area maintenance, as well as management fees, and non-recoverable expenses. Total operating expenses were determined to be $122,067 for a net operating income of $278,941. A capitalization rate of 13% was utilized and tax loaded, resulting in an tax-adjusted capitalization rate of 13.58%. Mr. Krentler's final conclusion of value for the subject property was $2,100,000 which the Tribunal finds to be accurate thus far in the analysis.

In his final reconciliation of value in which most weight was placed on his income approach, Mr. Krentler takes under the line deductions for deferred maintenance and lease-up costs. The Tribunal previously discussed why an under the line deduction for $480,000 in deferred maintenance is inappropriate: The dollar amount of deferred maintenance is taken from the actual estimates received by Mr. Breza and cost doesn't equal value, Mr. Krentler already made adjustments for the differences in the condition of the subject property in relation to the comparables, and in his sales approach, Mr. Krentler does not indicate that the subject requires any expenditures immediately after the purchase, yet then indicates a buyer would make immediate repairs in his conclusion of value. Perhaps the cost of any deferred maintenance would be spread over a number of years, it could be included by the appraiser in capital reserves or it could be included in the rental rate. As far as Mr. Krentler's analysis in this matter, the Tribunal finds that deferred maintenance was included in the condition adjustments and that to subtract it again, under the line, is akin to double dipping.

With regard to the $130,000 under the line deduction for lease-up costs and entrepreneurial incentive, the Tribunal finds that leasing commissions are the only appropriate costs to be deducted from the market value of the property under the income approach. Mr. Krentler indicated in his appraisal that the market rate of vacancy and credit loss is 20%. He also noted that all his comparables were triple net leases. As indicated above, triple net leases include pro-rated amounts for CAM, property insurance and property taxes. In his explanation of lease-up costs, Mr. Krentler includes unreimbursed CAM, property insurance and property taxes. As the aforementioned information suggests, the loss of those items was already accounted for in the vacancy and credit loss. Further, in his rent comparables, Mr. Krentler indicates that, “The rent comparables all have similar tenant improvement allowances or rental concessions as compared to the subject and no adjustments are necessary.” P-1 at 45. In other words, as with condition adjustments, rental concessions and tenant improvements are already accounted for in Mr. Krentler’s income approach and no additional under the line adjustment is required. In his appraisal, Mr. Krentler describes lease-up costs, as “lost rental income attributable to vacant suites, unrecovered expenses such as real estate taxes, insurances and common area maintenance, free rent [rental concessions], tenant improvement allowances and leasing commissions.” P-1 at 61. Of the highlighted items, the only category unaccounted for is leasing commissions of $11,840.

With regard to entrepreneurial incentive, the Tribunal finds it improbable that a purchaser of the property would “expect a [5%] return on the cost associated with leasing the property”. P-1 at 61. The purpose of purchasing an income producing property is to make a profit. As such, lease terms would be negotiated in order to make a property profitable.

Mr. Breza paints a picture of a failing property, unable to attract tenants, with a large amount of deferred maintenance, making rent concessions and on the verge of losing its anchor tenant, which is as of the hearing date, still present as part of Howell Promenade. From Mr. Breza’s testimony, it appears that the property is worth very little and no investor would ever purchase it given the only letter of intent from a local buyer went away after it learned of the unstable tenant and the amount of deferred maintenance. However, an independent appraiser has taken a close look at the property and determined it to have $1,490,000 in value in exchange on the market. The Tribunal finds Mr. Krentler's appraisal to be probative in determining the true cash value of the subject property for the 2012 tax year without additional deductions for deferred maintenance and lease-up costs, excluding leasing commissions. The resulting true cash value of the subject property for the 2012 tax year is $2,088,160.

Conclusion of Value

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. In an income-producing property such as the subject, the Tribunal finds the income approach, supported by the sales comparison approach, to be the appropriate technique of valuation. 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. The Tribunal finds the true cash value of the property to be as presented in the Summary of Judgment section, above.

JUDGMENT

IT IS ORDERED that the property's state equalized and taxable values for the tax year at issue are MODIFIED as set forth in the Summary of Judgment section of this Final Opinion and Judgment.

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

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Final Opinion and Judgment within 28 days of the entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest 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 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 Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09% for calendar year 2012, (iv) after June 30, 2012, through December 31, 2013, at the rate of 4.25%, and (v) after December 31, 2013, and through June 30, 2014, at the rate of 4.25%.

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

By: Preeti Gadola

Entered: