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

Brighton Mall,
Petitioner,

v

MTT Docket No. 433590

City of Brighton,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Brighton Mall, appeals the ad valorem property tax assessment levied by Respondent, City of Brighton, against the real property owned by Petitioner for the 2012 tax year. H. Adam Cohen and Jason C. Long, attorneys at Steinhardt, Pesick & Cohen, P.C., appeared on behalf of Petitioner. Bradford L. Maynes, attorney at Law Offices of Paul E. Burns, appeared on behalf of Respondent. Petitioner's witnesses were Marc Weinbaum, real estate investor, developer, and property manager, and Michael Ellis, MAI. Respondent's witnesses were Jack Johns, Certified General Appraiser and Matthew Modrack, Executive Director of the Downtown Development Authority and the Community Development Director.

The proceedings were brought before this Tribunal on December 10, 2013, and continued on January 23, 2014, to resolve the real property dispute.

SUMMARY OF JUDGMENT

The City of Brighton has assessed the property on the tax roll as follows:

Parcel No. 4718-30-100-019

	Respondent		
Year	TCV	SEV	TV
2012	$575,520	$287,760	$218,680

Parcel No. 4718-19-300-024

	Respondent		
Year	TCV	SEV	TV
2012	$19,610,060	$9,805,030	$9,179,010

Parcel No. 4718-30-100-036

	Respondent		
Year	TCV	SEV	TV
2012	$338,080	$169,040	$25,000

Petitioner’s contentions:

Parcel No. 4718-30-100-019

	Petitioner		
Year	TCV	SEV	TV
2012	$30,000	$15,000	$15,000

Parcel No. 4718-19-300-024

	Petitioner		
Year	TCV	SEV	TV
2012	$12,190,000	$6,095,000	$6,095,000

Parcel No. 4718-30-100-036

	Petitioner		
Year	TCV	SEV	TV
2012	$30,000	$15,000	$15,000

Aggregate values for the parties:

Aggregate per Appraisals

	Petitioner			Respondent		
Year	TCV	SEV	TV	TCV	SEV	TV
2012	$12,250,000	$6,125,000	$6,125,000	$16,000,000	$8,000,000	$8,000,000

The Tribunal finds the following values:

Parcel No. 4718-30-100-019

Year	TCV	SEV	TV
2012	$575,520	$287,760	$218,680

Parcel No. 4718-19-300-024

Year	TCV	SEV	TV
2012	$12,190,000	$6,095,000	$6,095,000

Parcel No. 4718-30-100-036

Year	TCV	SEV	TV
2012	$338,080	$169,040	$25,000

Respondent's appraisal indicates a reduction in its aggregate true cash value of $20,523,660 to $16,000,000. Petitioner requests a reduction to $12,250,000. Respondent argues that the Tribunal's October 2011 Opinion of a 2011 true cash value was $21,175,000, and therefore, cannot find that the subject property declined in value by 50% in one year.

The Tribunal finds that the prior case had different appraisers, evidence and issues involving Petitioner's appraiser. In that appeal, Petitioner's appraisal tried out a "creative" approach that made no sense to this Tribunal. This Tribunal reluctantly utilized the appraisal with the least flaws to arrive at an independent determination of value.

The Tribunal determined the following in the prior hearing for subject property, MTT 300623 December 2011 opinion:

> Petitioner's appraisal was given no credibility for the vague responses given at the hearing when asked if this is a fee simple or a leased fee appraisal. The written and verbal response both indicates that the appraisal was a fee simple contingent on the existing leases. Petitioner used techniques that are novel and, in this instance, misleading to this Tribunal. Widmer had access to all of the data and background to value the subject property as of the tax dates at issue. He failed to ascribe to acceptable methods and, therefore, Petitioner did not meet its burden of proof.

> Respondent's income approach had errors. Parker stated that he did not have all of the information and based his income approach on an assumption that all of the retail space was a triple net lease with the tenants reimbursing Petitioner. However, the Tribunal finds his testimony conflicts with his report.
>
> The Tribunal finds that the income approach is generally the preferable method of valuing income-producing property. Having said this, due to the deviation of conventional methodologies, discretionary actions outside of typically accepted appraisal practice and theory, neither Petitioner's income approach nor sales comparison technique was accepted.

In the current instance, this Tribunal will combine its familiarity with the subject property and again go through the valuation process with the two appraisers to determine the true cash value of the subject property, irrespective of the prior hearing.

Respondent, at the hearing, presented evidence that the long-term "CAF" lease with the Sears store ended. It will be this Tribunal's decision how the closing of the Sears store (and the notification by the tenant to vacate the space) was known or knowable as of the tax date.

The subject property includes a 306,800(+/-) square foot retail center, three retail buildings, one office building, and a restaurant pad. The three parcels have a total of 51.73 acres.

PETITIONER'S ARGUMENTS

Petitioner believes that the true cash value of the subject properties for the tax years at issue should be reduced based on Petitioner's appraisal.

Petitioner's Exhibits admitted:

P-1 Photographs of subject property.
P-2 Rent Roll as of December 31 2011.
P-3 Summary Appraisal Report, Michael E. Ellis, MAI as of December 31, 2011.
P-11 Thomas A. Duke Company lease listing, Brookside Mall.

Marc Weinbaum was Petitioner's first witness. He is an attorney, a real estate investor, developer, and property manager for the subject property. Since 1993, he has been employed at Dale Investment Company. He is the President of the Brighton Mall Inc. Further, Weinbaum is a managing member of Prospect Hill Group, which is a grocery-anchored community shopping center in Milford, Michigan. He is also the managing agent for Village Commons East, (a strip center in Milford), a general partnership member of 9912 East Grand River Associates, (a strip center in Brighton Township), and managing member for Fenton Commons Group, (a Fenton, Target-anchored center).

Weinbaum stated he has primarily looked at shopping centers for over 200 deals in the last few years. He testified that the most significant component he looks at is the net operating income. "Because an investor is buying cash flow and that's what NOI represents. It's somewhat analogous if you were buying a bond. You're looking at the cash flow stream that's going to evolve from this investment, so NOI is a true characterization of that income stream." Tr. 1, page 25.

The majority of the subject's approximately 230,000 square feet was constructed in the early to mid-1970's. Weinbaum, using Petitioners Exhibit 1, explained that the Brighton Mall is comprised of five buildings located on three parcels. The main building includes Sears, Marshalls, Jo-Anns, and MC Sporting, as well as some in-line stores. PetSmart and Best Buy are in a separate building; 13,000 square foot office building; and a 30,000 square foot building called the Annex that includes Lady America, Radio Shack and Dollar Tree. Panera is a stand-alone 4,000 square foot building on an out lot.

Brighton Mall originally was an enclosed community mall with K-mart. It was then "de-malled," meaning it was converted from a mall into inline bays. The de-malling took place before 1993.

The rent roll, Petitioner's Exhibit 2, was prepared by Weinbaum or his controller. Weinbaum explained that not all of the leases were triple net or gross; they were a combination. The common area maintenance ("CAM") is not reimbursed in total. Some of the leases are marked "retail rent." He explained that this designation means that they are recovering some CAM. Weinbaum was able to explain the terms of the retail net leases. None of the leases were pure triple net leases, in which the expenses are passed through to the tenant. The leases that most closely resembled a triple net lease were Lady of Livingston, Pearl Vision and three office spaces. These five tenants occupy 12,000 square feet total of the subject property.

Weinbaum testified that the 2011 rent rolls for the Brighton Mall (Exhibit P-2) accurately reflect income and expenses for the subject property.

Weinbaum testified on cross-examination that, as of December 31, 2011, he was not aware that the Sears store at the Brighton Mall was going to close. He explained that he was aware that Kmart nationally was having financial difficulties, and had been going on for a few years.

He stated "Kmart certainly never notified us and nobody ever notified us that they were closing at that time." Tr. 1, page 71. On redirect, he stated "Neither me nor my partner had any knowledge whatsoever that Kmart had any intention of closing the Brighton store." Tr. 1 p 73.

<u>Michael E. Ellis</u>, MAI, was Petitioner's expert valuation witness. He prepared Petitioner's Exhibit 3. The appraisal states that the interest appraised is "Leased Fee Estate,

subject to market rents with one exception. This exception is the Sears store (K-Mart) which was subject to a lease from the 1970's." P-3, page 4. Ellis defined True Cash Value and cites MCL 211.27(1) and MCL 211.27(5).

As of the effective date of valuation (12/31/2011), the subject property had one tenant with a 20 year lease that included five 5-year options.[1] Effective as of the date of the valuation, each option had been exercised and the lease remained in effect. As of December 31, 2011, the remaining Options would extend the lease until 2021. P-3, pages 9 and 10.

Ellis explains the following:

> Effective as December 31, 2011, the subject buildings included a gross leasable area of 302,502 square feet. A total of eighteen (18) tenants occupied 271,980 sf (89.91%) of this gross leasable space. P-3. Page 17.

Ellis determined that the highest and best use of the subject property, as vacant, is for development of a retail use. The highest and best use, as improved, is based on the occupancy levels and market demand that the existing use as community power retail center with a small office. Power Centers were defined as an open-center dominated by at least 75% large big-box anchors, including discount stores, warehouse clubs, and value-oriented category stores, and a minimal amount of inline store space. The subject development's big-box anchors represent 76.1% of the total building area.

Petitioner's income approach first determined the breakdown of the unit types and vacancy. The breakdown for the center is Big Box, Inline, Panera, and Office. The units are valued subject to market rents with the exception of the Sears store. Other anchor stores are JoAnn Fabrics, Marshalls, Best Buy and PetSmart.

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[1] The Sears lease is a 20 year lease that included five 5-year Options. Subsequent to the initial lease, Sears acquired K-Mart and continued to operate the retail unit as a Sears store.

Ellis determined that the direct capitalization of the subject's market rent was the best technique. Gross income using leases for similar retail space was considered.

Unit	Sq Ft	Gross $
Anchor	230,184	$1,498,763
Inline	54,350	$590,890
Panera	4,640	$83,520
Office	13,328	$145,602
Total Gross Income	302,502	$2,318,775

Market vacancy was considered in relation to the subject's vacancy history. Ellis concluded to a 10.5% vacancy rate with 0.5% collection loss. Annual miscellaneous income of $3,000 was allocated for road agreements. Common Area Maintenance ("CAM") is negotiated with every tenant and is most akin to the subject's actual history. Next, eight years of reimbursements were considered to arrive at $305,000. Insurance recovery of $20,500 was added plus some miscellaneous interest income of $1,700.

Historical expenses were considered as well as market expenses. Expenses for the subject property include management fee, recoverable expenses, and nonrecoverable expenses, as well as reserves for replacement. After the deduction of expenses, the net operating income ("NOI") was $1,287,488.

Various techniques were analyzed in determining the appropriate capitalization rate for the subject property. This includes rates extracted from local retail buildings as well as the Korpacz Investor Survey. Ellis indicated a range of 9.80% to 10.10% before the application of the effective tax rate multiplier. The effective tax rate is reduced to reflect the amount of taxes that the landlord is responsible for; that is 20%. Ellis selected a10.36% to 10.66% an overall range. The result is a range from $12,077,753 to $12,427,494. The result via the income approach is rounded to $12,250,000.

Petitioner's sales comparison approach utilized ten sales. As noted, Sales 6, 7, 8, and 9 were foreclosed properties. Ellis states that they were put on the open market through reputable brokerages. The sales are representative of arms-length transactions which require no adjustments.

Again, Sales 6, 7, 8, and 9 were foreclosures, but did not require an adjustment for conditions of sale. Market conditions indicate that a decline in market prices require an adjustment. Sales 1, 2, and 3 were adjusted negatively for market conditions. Smaller buildings have a tendency to sell for more per square foot than the larger buildings. Sales 1, 2, 3, 5, 6, 7, 8, and 10 were all adjusted for size, the larger square footage was adjusted downward and the small buildings adjusted upward. The overall quality of the subject property is average. Sales 1, 5, 8, 9, and 10 are a lower quality and required an upward adjustment. Sale 4 was built to a gold level by the U.S. Green Building council's LEED program and was adjusted downward. The subject property has approximately 76% anchor stores, which typically are used to generate traffic and higher rents for inline space. The Sears store is 28% of the total square footage and is on a long term lease for less than $2.00 per square foot. A prospective purchaser would consider this in determining a price for the subject property. Sales 9 and 10 have similar situations with large anchors generating low income per square foot. Although not to the degree as the subject, downward adjustments were made to these sales.

Ellis also considered the age and condition of the sales as compared to the subject property. The effective age of the subject is determined to be 1985 construction. Negative adjustments were made to Sales 2, 3, 4, and 6. Positive adjustments were applied to Sales 5, 9, and 10. The subject has occupancy of 89%. Those sales that did not require an adjustment were Sales 8 and 10. The last adjustment was for utility function. All of the sales with the exception of Sales 5 and 9 have shallower average depth and were adjusted. The sales are as follows:

Sale #	Location	Sale Price	Sale Date	SF	SP/SF
1	S. Lyons	$5,000,000	03/08	57,056	$87.63
2	Novi	$5,300,000	11/08	75,408	$70.28
3	W. Bloomfield	$2,500,000	06/09	52,859	$47.30
4	Allen Park	$2,950,000	06/10	275,891	$106.93
5	Sterling Ht	$2,250,000	03/10	154,835	$14.53
6	Shelby Twp.	$3,500,000	08/10	92,515	$37.83
7	Sterling Ht	$3,600,000	06/11	102,999	$38.84
8	Oak Park	$60,000	10/11	146,882	$40.85
9	Madison Ht	$8,353,000	12/11	227,088	$36.78
10	Sterling Ht	$4,200,000	01/12	162,448	$25.85
Subject	Brighton			302,502	

Again, Sales 6, 7, 8, and 9 are foreclosures. Ellis determined that they were placed on the open market through reputable brokerages. The sales represent arms-length transactions and were adjusted for market conditions. The number of building permits declined, unemployment increased and asking rates for retail space declined with vacancies increasing. Ellis correlated the sale prices with sale dates to illustrate the decline. The following properties were adjusted for market conditions: Sale 1 -30%, Sale 2 -5%, and Sale 3 -2%.

Location adjustments were based on differences between the rent levels at each location. The following properties were adjusted for location: Sale 1, 2, 3, 8, and 9 -3%, and Sale 4 -18%. The building size was adjusted as smaller buildings generally sell for a higher unit rate. The following properties were adjusted for size: Sale 1 and 3 -4%, Sale 2 -3%, Sales 6 and 7 -2%, and Sales 5, 8, and 10 -1%.

The subject is considered average quality. The sales were adjusted as follows: Sale 4 -15%, Sale 5 was +10%, Sales 1, 8, 9, and 10 +5%. The inline space generates a higher rent; the anchor space generates the traffic. The subject property has 76.1% of its square footage of anchor stores. This results in a lower rent per square foot. See the chart below:

Sale #	SF	% Anchor	% Adjustment
1	57,056	50%	-10%
2	75,408	0%	-20%
3	52,859	0%	-20%
4	275,891	55%	-10%
5	154,835	45%	-10%
6	92,515	24%	-20%
7	102,999	39%	-10%
8	146,882	37%	-10%
9	227,088	74%	-5%
10	162,448	71%	-5%
Subject	302,502	76%	

Ellis explained that Sale 2 included a 1.23 acre outlot. It was adjusted -%5. Further adjustments were made for age/condition. The weighted average construction of the subject property is 1985. Adjustments were made to the following: Sale 2 -18%, Sales 3 and 5 -15%, Sale 4 -20%, Sales 6 -10%, and Sales 9 and 10 -5%. The subject has an occupancy level of 89%. The occupancy level varies with the sale properties. The adjustments for occupancy are as follows: Sale 1 -5%, Sales 2 and 3 +30%, Sale 4 +2%, Sale 5 100%, Sales 6 and 7 +25%, and Sale 9 +4%.

Sales 5 and 9 were similar to the subject in the depth of the inline stores and required no adjustment. The remainder of the sales was adjusted -5%. The final adjustments based on gross and then net adjustments and Ellis's final sale price per square foot is as follows:

Sale #	Location	SF	SP/SF	% Gross/Net Adj	Adjusted SP/SF
1	S. Lyons	57,056	$87.63	62/-22%	$48.15
2	Novi	75,408	$70.28	84/-23%	$51.41
3	W. Bloomfield	52,859	$47.30	79/-17%	$38.70
4	Allen Park	275,891	$106.93	60/-66%	$36.89
5	Sterling Ht	154,835	$14.53	135/+114%	$31.10
6	Shelby Twp.	92,515	$37.83	66/-12%	$33.29
7	Sterling Ht	102,999	$38.84	42/8%	$37.75
8	Oak Park	146,882	$40.85	34/-9%	$37.38
9	Madison Ht	227,088	$36.78	22/12%	$41.01
10	Sterling Ht	162,448	$25.85	21/-1%	$25.59
Subject	Brighton	302,502			$38.02

The comparable sales analysis resulted in a true cash value of $38.02 per square foot for $11,500,000.

RESPONDENT'S ARGUMENTS

Respondent believes that the true cash value of the subject properties for the tax years at issue should be reduced based on Respondent's appraisal.

Respondent's Exhibits admitted:

R-1 GIS Aerial Map of subject property.
R-2 Respondent's Valuation Disclosure, Jack Johns, as of December 31, 2011.
R-3 2012 property record for parcel 4718-19-300-024.
R-4 2012 property record for parcel 4718-19-100-019.
R-5 2012 property record for parcel 4718-19-100-036.
R-6 Site plan for subject property.
R-8 December 9, 2013 Michigan Sears, K-mart stores on closing list Yahoo Internet News.
R-9 December 9, 2013 Michigan Sears, K-mart stores on closing list USA Today Internet News.

Jack Jason Johns was Respondent's expert witness. He is a Certified General Real Estate Appraiser, licensed in Michigan and Illinois. He prepared the valuation disclosure (R-2). He determined that the Income and Sales Comparison Approaches were applicable to the subject property. The appraisal states the property rights appraised is the retrospective "as is" Market Value/True Cash Value of the Fee Simple Estate as of December 31, 2011.

Johns determined that the highest and best use of the subject property, as vacant, is for permitted commercial use. The highest and best use as improved would be for continued use as improved.

Johns determined that the direct capitalization of the subject's market rent was the best technique. He asserts the expenses will be the net of property taxes and reimbursement because this is a tax appeal.

The actual leases in place were considered and Johns determined that 43.5% of the subject leases expire in 24 months from the date of the appraisal. "However, the subject has a long history of renewing tenants and new leases and has been experiencing only frictional vacancy due to its excellent location." R-2, page 49. The actual leases were compared to comparable in-line retail and office rents and big box junior anchors.

Johns states that according to Mr. Eric Unatin, the leasing agent from Armada Real Estate Services, the rates for a junior anchor were $4.00 to $14.00 per square foot depending on size and terms. The in-line space ranged from $8.00 to $25.00 per square foot. The Annex Building rental rate is $10.00 to $12.00 per square foot due to the age and parking. The big box store was $8.00 to $14.00 per square foot due to the visibility, accessibility and available parking.

The smaller in-line space was estimated to be less than 9,000 square feet[2].

The rent per space is as follows:

Unit	Sq Ft	Gross $
Anchor	230,184	$1,836,557
Inline	54,350	$566,588
Panera	4,640	$83,984
Office	13,328	$181,403
Total Gross Income	302,502	$2,668,532

Market vacancy was considered with the subject's history. 10.0% with 1.0% collection loss was Johns' result. Ancillary income is $10,200 annually for road agreements. Common Area Maintenance ("CAM") is estimated. After considering reimbursement, and history of the CAM $589,879 is utilized. Insurance recovery adds $30,250 to the income.

Historical expenses were considered as well as market expenses. Expenses for the subject property include management fee, recoverable expenses, and nonrecoverable expenses, as well as reserves for replacement. Expenses were $0.10 for insurance, Management $0.48, CAM $1.85, Non Reimbursable $1.15, and Reserves $0.15. Total Expenses were $3.73 per square foot. After the deduction of expenses, the net operating income ("NOI") was $1,790,085.

Various techniques were analyzed in determining the appropriate capitalization rate for the subject property. The Band of Investment, Equity Dividend Rates from RealtyRates.com, Market Extraction, and National Investor Surveys were all considered. Johns estimated that the estimated tax neutral OAR was 8.75. The effective tax rate is calculated at 2.78% to equal an

[2] Suites A100, A400, A500, A600, A700, A800, M9000, M5000, O100, O200, O400, O500, O600, and O1000.

overall capitalization rate of 11.50%. The Net Operating Income is divided by the OAR to equal $15,565,000. This reflects John's value via the income approach.

Three sales were utilized by John's in the Sales Comparison Approach. They are:

Sale #	Location	SF	SP/SF	% Gross/Net Adj	Adjusted SP/SF
1	Allen Park	275,891	$186.25	-45%	$102.44
2	Chesterfield	248,990	$106.43	-35%	$51.41
3	Utica	76,830	$55.38	+10%	$60.92

Adjustments were made to Sale 1 for its superior location and quality of construction. Sale 2 was adjusted for its superior location, age and condition. Sale 3 was adjusted for its smaller size, age and inferior condition. Primary weight was given to Sales 2 and 3. John's concluded to $65.00 per square foot. The conclusion via the Sales Comparison Approach is $19,660,000.

TRIBUNAL'S FINDINGS OF FACT

1. Subject properties are located at 8375 West Grand River Avenue, Brighton.
2. Subject property contains approximately 302,643 square feet.
3. Subject property has a total of 51.73 +/- acres.
4. Subject property is a multi-tenant retail building, and an office building.
5. Subject property contains a variety of buildings on three parcels which include a strip shopping center, restaurant, big box store and a stand-alone office building.
6. Subject property has occupancy of approximately 90%.
7. Subject property has high visibility from I-96.
8. Petitioner's appraisal included the Sales Comparison Approach utilizing ten sales adjusted for differences in amenities.
9. Respondent's appraisal also included the Sales Comparison Approach utilizing three sales. (R-2 was determined to not be a sale.)
10. Petitioner also did an income approach utilizing market rent, expenses and an overall rate adjusted for the effective tax rate, adjusted for vacancy.
11. Respondent's income approach included market rents, expenses, and an overall rate with vague documentation for rent and overall rate.
12. The Sears store had in existence on tax day (December 31, 2011), a long-term lease with less than market rent.

13. The Sears' 20 year lease that included five 5-year options.[3] As of December 31, 2011, the remaining Options would extend the lease until 2021.
14. Effective as of the date of the valuation, each option had been exercised, and the Sears' lease remained in effect.
15. Both parties considered the sale of the Fairlane Green Phase I, Shopping Center, in Allen Park (P4 and R1).

Subject property's parcel identification number 19-300-024 is the mall and the buildings individually calculated and has 27.31 acres. Parcel identification number 30-100-019 is 8.9 acres vacant (very low land) with a small parking lot. Parcel identification number 30-100-036 is 15.52 acres vacant except for a small portion of Best Buy Drive. The three parcels make up the 51.73 acres.

The subject property has been described as a "power center," described as center dominated by at least 75.0% large big-box anchors, including discount stores, warehouse clubs and value oriented category stores and a minimal amount of inline store space. The subject property's location is visible from I-96 with an exit that was recently renovated for easy access into the Brighton area. The management and maintenance of the shopping center has been described by both parties as good. The occupancy is approximately 90%. To further complicate the valuation of the subject property, the long-term lease with K-Mart/Sears still had options until 2021. However, Petitioner testified that they were not aware that the Sears store was slated to close. The Sears store closed approximately four months after tax day. The long-term CAF Lease was at $1.94 per square foot. Petitioner assumed it would continue as the indications were that the lease would continue. Respondent assumed that the lease expired December 31, 2011. Respondent used $5.50 per square foot. The remainder of the differences in the two appraisals

[3] The Sears lease is a 20 year lease that included five 5-year Options. Subsequent to the initial lease, Sears acquired K-Mart and continued to operate the retail unit as a Sears store.

for the parties is minimal compared to the determination of whether CAF applies to the Sears store.

APPLICABLE LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value. 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. 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).

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. MCL 205.735a(2). The Tribunal's factual findings are to 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 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 205.737(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 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 at 277.

CONCLUSIONS OF LAW

The Tribunal, having considered the testimony and evidence, finds that the appraisal submitted by Petitioner demonstrates that the subject properties value has been negatively impacted by market influences. Petitioner was able to provide sufficient evidence to prove that the subject property is assessed in excess of 50% of market value.

A significant issue in this appeal is the consideration of the Sears store's pending closure and its long term CAF lease as of December 31, 2011. A noted difference in the appraisals is Respondent's $5.50 per square foot market rent and Petitioner's analysis of the actual CAF lease as of December 31, 2011. Neither party developed any other methodology, including a discounted cash flow for the lease analysis. The appropriate statute that prevails in all valuation appeals is:

> MCL 211.27(1)
>
> 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 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.

In this specific instance the following is applicable:

> MCL 211.27(5) states in pertinent part: As used in subsection (1), "present economic income" means for leased or rented property the ordinary, general, and usual economic return realized from the lease or rental of property negotiated under current, contemporary conditions between parties equally knowledgeable and familiar with real estate values. The actual income generated by the lease or

> rental of property is not the controlling indicator of its true cash value in all cases. This subsection does not apply to the property subject to a lease entered into before January 1, 1984 for which the terms of the lease governing the rental rate or tax liability have not been renegotiated after December 31, 1983.

The income approach converts the current income into an indication of present value. The subject property is an income producing property. Both appraisers considered gross potential rental income, reimbursements, stabilized vacancy and collection (credit) allowance. The difference between the gross income and vacancy and collection loss is the effective gross income. Market operating expenses for a similar property is considered and compared with actual operating expenses. The operating expenses are deducted from the effective gross income for net operating income. The appropriate capitalization technique is then selected. The overall capitalization rate is divided by the net operating income to result in an indicated value via the income approach.

Petitioner's appraiser, Ellis, considered the valuation based market rents and the inclusion of a tax neutral capitalization rate. Because property taxes are a function of the taxable value, they are excluded from the income and expenses and included as an effective tax rate to the capitalization rate[4].

Ellis considered the actual income of the units at the subject property. He compared the actual rents with market rents for specific spaces, depending upon the type of space, and assigned a rent to each space. On the other hand, John's comparable rents were a little vague if not elusive. He used some comparables and found a range. John's inability to give the specific

[4] Appraisal Institute, *Real Estate Valuation in Litigation* (Chicago: 2nd ed, 1995), pp 520-521.

properties that he used to determine the market extraction for overall capitalization rates[5] lessens his credibility. The result is somewhat misleading.

Respondent's Exhibit R-2, page 51, lists all of the tenants with John's gross rent. The differences in actual rent, Petitioner's market rents and Respondent's market rents are as follows:

Tenant 12/31/2011	Suite No.	SF	Actual Rent/SF	Mkt Rent/SF Petitioner	Mkt Rent/SF Respondent
Lady of Living	A100	5,980	$8.03	$10.90	$8.03
Pearle Vision	A400	1,500	$20.00	$10.90	$20.00
Tuesday Morn	A500	8,800	$9.10	$10.90	$10.00
Vacant	A600	4,400	$0.00	$10.90	$10.00
Vacant	A650	1,750		$10.90	$13.00
Radio Shack	A700	2,750	$12.00	$10.90	$12.00
Dollar Tree	A800	7,669	$11.00	$10.90	$11.00
Vacant	M5000	8,250		$10.90	$11.00
Vacant	M6000	12,571		$10.90	$10.00
Sears	M1000	85,334	$1.94	$1.94	$5.50
MCSport	M3000	13,500	$0.00	$6.50	$10.00
JoAnns	M4000	36,280	$13.60	$6.50	$9.00
Marshalls	M7000	45,000	$9.00	$6.50	$9.00
Best Buy	M8000	30,000	$14.80	$6.50	$10.00
PetSmart	M8500	20,070	$15.30	$6.50	$10.00

[5] Exhibit R-2, page 56.

Panera Land	M9000	4,640	$18.10	$18.10	$18.10
Wells Fargo	O100	1,810	$11.60	$10.90	$13.50
Accelerated	O200	2,008	$14.37	$10.90	$14.37
Mall Mgt	O400	1,555	$0.00	$10.90	$13.50
Poch Staff	O500	860	$12.56	$10.90	$12.56
Integrated	O600	1,117	$13.98	$10.90	$13.98
Estate Preserv	O800	3,107	$14.00	$10.90	$13.50
Vacant	O1000	2,871		$10.90	$13.50
	Total	301,822			

The Tribunal developed a comparative grid using Respondent's rent per square foot for the Anchor, Inline, Office and Panera areas, as well as an estimate of Petitioner's rent.

Total	301,822	Actual Rent/SF	Petitioner Rent	Respondent Rent
Anchor	230,184	$9.11	$6.50	$10.70
Inline	59,820	$10.92	$10.90	$10.56
Office	13,328	$13.30	$10.90	$13.56
Panera	4,640	$18.10	$18.10	$18.10

Ellis's anchor store average rent at $6.50 includes the $1.95 Sears' rent. Excluding the Sears' rent, the average rate is $13.10. MC Sports is a straight percentage rent; the actual rent does not appear in the evidence.

Both appraisers inspected the subject property after tax date. Likewise, both were aware that Sears closed and that the space was divided. Some space was rented to new tenants while other space remained vacant.

The parties also prepared a sales comparison approach as a check to the income approach. The following sales were utilized:

Sale #	Location	SF	SP/SF	% Gross/Net Adj	Adjusted SP/SF
P1	S. Lyons	57,056	$87.63	62/-22%	$48.15
P2	Novi	75,408	$70.28	84/-23%	$51.41
P3	W. Bloomfield	52,859	$47.30	79/-17%	$38.70
P4	Allen Park	275,891	$106.93	60/-66%	$36.89
P5	Sterling Ht	154,835	$14.53	135/+114%	$31.10
P6	Shelby Twp.	92,515	$37.83	66/-12%	$33.29
P7	Sterling Ht	102,999	$38.84	42/8%	$37.75
P8	Oak Park	146,882	$40.85	34/-9%	$37.38
P9	Madison Ht	227,088	$36.78	22/12%	$41.01
P10	Sterling Ht	162,448	$25.85	21/-1%	$25.59
R1	Allen Park	252,351	$186.25	-45%	$102.44
R2	*Chesterfield*	*248,990*	*$106.43*	*-35%*	*$51.41*
R3	Utica	76,830	$55.38	+10%	$60.92

Both parties considered the sale of the Fairlane Green Phase I Shopping Center in Allen Park (P4 and R1). However, Ellis used the $29,500,000 June 2010 sale. The adjusted sale price was $36.89. Adjustments were made for location, quality, Inline/Anchor, age and condition, occupancy and some functional obsolescence when compared to the subject property.

Johns used November 2011, $47,000,000, transfer from Lormax Sterns Development to Cole REIT advisors III, LLC. The adjusted sale price per square foot was $102.44. He adjusted the sale price -25% for location and -20% for age and condition. However, his testimony regarding the verification of this sale was vague. John's reliance on someone else's verification of a sale is not the equivalent of independently confirming the information himself. John's lack of articulation does not strengthen his knowledge or credibility of this sale.

Petitioner successfully rebutted that the Chesterfield Sale 2, as it was not a sale. Ellis obtained information from the owners which indicate this sale was actually a finance transaction. Johns was unaware that the Chesterfield property (Sale 2) was not a sale. Simply, Johns did not conduct due diligence research for this sale.

The Tribunal finds that Johns' income and sales comparison approaches are not worthy of belief. As a witness, he exhibited a lack of decorum and demonstrated an equal lack of articulation in his testimony.

Petitioner utilized ten sales. He was familiar with every sale, location and the underlying information. Petitioner confirmed the sales as well as lease information.

The Tribunal finds that the Ellis appraisal and testimony had greater depth and detail. Ellis had ample support from his work file in answering questions. Simply, Ellis's appraisal and testimony were credible in the valuation of the subject property.

The main issue between the parties was the treatment of the Sears' long-term lease at a rate substantially under market rate. The lease had been in existence for 40-years. As of December 31, 2011, the Sear's lease had five 5-year options. As of the tax date, the remaining options would extend the lease until 2021[6]. Weinbaum, the property's Manager, testified that the existing lease was in place as of tax day. The Lessee did not inform Petitioner that the existing lease would not be extended. Sears' store closures had been rumored for several years.

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[6] Exhibit P-3, page 10.

As of December 31, 2011, Petitioner had no reason to believe the long term existing lease of 40 years would expire. Further, the owner/manager had no indication that Sear would be vacating the subject property. The Tribunal has no basis or belief to disregard the Sears' lease as of December 31, 2011. Marc Weinbaum testified under oath, that he was not aware that the Sears store was going to close. Neither he nor his partner had any knowledge that Sears had any intention of closing the Brighton store.

The Tribunal gives minimal weight to Respondent's two on-line sources stating the closure of the Sears store. It is unknown whether a property manager would rely upon Yahoo News.com or USA Today.com as an authoritative source. It is also unclear if Weinbaum has the obligation and responsibility to rely solely on internet information pertaining to the Sears store closing.

As of the tax day, Sears occupied the space at the subject property under a long-term lease. Accordingly, CAF applies to the subject property for tax year 2012. The construction after tax day is not considered applicable in this specific instance.

Therefore, in present case, the Tribunal finds that Petitioner's witnesses and documentary evidence are credible. The allocation of the sale price, however, appears to result in undervaluing the two vacant land parcels. Petitioner's appraisal considers the entire 51+ acres in determining the value of the entire property but the allocation of $30,000 each for the 8.9 acres and 15.52 acres is not adequately supported. Parcel 4715-30-100-019 is 8.9 acres of wetland and contains a small parking lot. Parcel 4718-30-100-036 is 15.52 acres and contains a small portion of Best Buy Drive. Parcel 4718-19-300-024 is the improved and contains 27.31 acres. The value allocation appears to decrease the acreage and place both the 8.9 acres and 15.52 acres at

$30,000. Neither party's appraisal report contained a land value; therefore, the allocation for the two adjacent parcels is left at the value on the assessment roll. See Exhibit R-2, for property records.

The Tribunal finds that Petitioner has met the burden of proving that the subject property is valued in excess of 50% of market value as of December 31, 2012.

JUDGMENT

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

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 within 20 days of entry of this Opinion, 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 within 28 days of entry of this Opinion. 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 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 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 Opinion. 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 Opinion and Judgment resolves all pending claims in this matter and closes this case.

By: Victoria L. Enyart

Date Entered by Tribunal: Mar 11, 2014