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

Macy's Inc.,
Petitioner,

v

MTT Docket No. 436564

City of Grandville,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

Petitioner, Macy's Inc., appeals the ad valorem property tax assessment levied by Respondent, City of Grandville, against the real property owned by Petitioner for the 2012 and 2013 tax years.

A hearing was held on January 30, and 31, 2014, to resolve the real property dispute. Ellen G. Berkshire, attorney at Verros, Lafakis & Berkshire, P.C., appeared on behalf of Petitioner. Deborah Ondersma and Adam Brody, attorneys at Varnum Law, appeared on behalf of Respondent. Joseph M. Ryan, MAI, was Petitioner's valuation witness. Laureen Birdsall, MMAO (IV) Assessor, appeared for Respondent. Jumana Judeh, MAI, was Respondent's valuation witness.

SUMMARY OF JUDGMENT

The parties' contentions and the Tribunal's findings of the subject property's 2012 and 2013 True Cash Values ("TCV"), State Equalized Values ("SEV") and Taxable Values ("TV") are set forth below:

<u>Values as determined by the parties are</u>:

Parcel No. 41-17-29-151-013

	Petitioner			Respondent		
Year	TCV	SEV	TV	TCV	SEV	TV
2012	$5,650,000	$2,825,000	$2,825,000	$9,046,400	$4,523,200	$4,523,200
2013	$5,650,000	$2,825,000	$2,825,000	$9,046,400	$4,523,200	$4,523,200

<u>Respondent's revised values per Judeh's appraisal are</u>:

Parcel No. 41-17-29-151-013

	Petitioner			Respondent		
Year	TCV	SEV	TV	TCV	SEV	TV
2012	$5,650,000	$2,825,000	$2,825,000	$16,000,000	$8,000,000	$4,523,200
2013	$5,650,000	$2,825,000	$2,825,000	$17,000,000	$8,500,000	$4,523,200

<u>The Tribunal's conclusions are</u>:

Parcel No. 41-17-29-151-013

Year	TCV	SEV	TV
2012	$9,046,400	$4,523,200	$4,523,200
2013	$9,046,400	$4,523,200	$4,523,200

<u>GENERAL PROPERTY DESCRIPTION</u>

The subject property is located at 3850 Rivertown Parkway, Rivertown Crossings Mall, Grandville, Kent County. The subject is an anchor store within the Rivertown Crossings Mall. The subject property is a 2-story design with 164,997 square feet (82,494 square feet per floor). Both parties presented appraisal reports indicating that the highest and best use of the subject property is the continued use as an anchor store. The appeal is to determine the true cash value of the subject property.

<u>SUMMARY OF PETITIONER'S CASE</u>

Petitioner presented testimony from its appraiser, Joseph Ryan, MAI. Based on his skills, knowledge, education, experience and training, the Tribunal accepted Ryan as an expert appraiser.

In support of its value contentions, Petitioner offered the following exhibits, which were admitted into evidence:

P1: Appraisal of the subject property, by Joseph Ryan, MAI.
P-2: Corrections for clerical errors in the appraisal.

<u>Joseph Ryan, MAI</u>, prepared an appraisal that determined the market value of the fee-simple interest of the subject property. The appraisal considered all three approaches to value: cost, market, and income. The cost approach was not used due to obsolescence, age, and market conditions related to the subject property. Further, Department Store Anchors are not traded based upon the cost to construct. The income approach was developed because of its revenue potential. Lastly, Ryan utilized sales of anchor stores for a comparative analysis.

Ryan testified that the big box stores expanded into the retail market which has diluted the department stores market share. In addition, internet sales have also negatively impacted the share of consumer dollars. As a result, the percentage of market share to department stores has declined from 10% to 2.5%. (from 1980 to 2010). In addition to economic concerns, the two-story design of the subject property further reduces its marketability. Ryan contends the design of the subject property is functionally obsolete.

The subject neighborhood contains Rivertown Crossings, a super-regional mall, two regional malls, Wilson Town Center and Grandville Marketplace (both regional malls), as well as the Grand Village Mall and Grandville Crossing (smaller community malls). Ryan's analysis concludes that the value for the subject property will trend downward due to national and local economies, the replacement of the department store with category-killers and internet retail sales. He believes traditional malls are being replaced with retail power centers. This is less demand for department stores and more supply that equals a decrease in value. The decreased demand for department stores mean a greater supply of stores, which results in a value decrease.

Again, the highest and best use for the subject is the use as an anchor department store.

Ryan prepared a sales comparison analysis of anchor department stores, including eight sales and one listing. Going back to 2005, Michigan did not have any sales during this time period. The following sales were developed by Ryan:

		Sale Price	Sale Date	Sq Feet	Age	Occupant	SP/SF
Sale 1	Colorado	$7,000,000	Jun 04	201,000	10	Lord/Taylor	$34.82
Sale 2	Colorado	$4,000,000	Feb 05	119,838	8	Lord/Taylor	$33.38
Sale 3	Columbus	$5,250,000	Jul 05	139,524	5	Von Maur	$37.63
Sale 4	Bloomingdale IL	$6,700,000	Apr 06	153,368	25	JC Penney	$43.68
Sale 5	Columbus	$8,000,000	Jun 07	199,976	5	Macy's	$40.00
Sale 6	Ft Wayne	$1,000,000	Dec 07	121,502	28	Macy's	$8.23
Sale 7	Georgia	$4,000,000	Dec 10	118,142	17	Belk	$33.85
Sale 8	West Dundee IL	$2,400,000	Jan 12	138,651	29	JC Penney	$17.31
Listing	Dearborn	$2,000,000	Listing	121,000	37	Lord/Taylor	$16.53
Subject				161,280	13	Macy's	$35.00

Ryan’s qualitative analysis employed in a ranking methodology recognized inefficiencies in the market. The sales range from $8.23 to $43.68 per square foot. The one listing located in Dearborn is at $16.53 per square foot. The ages range from 5 years to 29 years old.

Ryan notes that Sales 1 and 2 are in the same market. Sale 1 was demolished and Sale 2 was retrofitted for three tenants. Likewise, Sale 5 was retrofitted into a life style center. Market conditions “have not kept pace with other retail segments due to consolidation within the industry and department stores lack of appeal to the 35 year old generation of shoppers.” P-1, p 60. Therefore, no adjustments were made for condition of sale. The sales locations were analyzed relative to their demographics. Sales 1, 2, 3, 4, 5, and 7 were adjusted downward for their superior location. Sale 6 is inferior in location and is adjusted upward.

Next, Ryan made adjustments for the size of the sales. The larger square footage has a tendency to sell for less per square foot, due to efficiencies in constructing larger buildings. Sales 2, 6, and 7 were adjusted downward and Sales 1 and 5 were adjusted upward. The overall adjustments are:

	Sale Date	Sq. Feet	Age	SP/SF	Location	Size	Age	Total
Sale 1	Jun 04	201,000	10	$34.82	-	+		--
Sale 2	Feb 05	119,838	8	$33.38	-	-		---
Sale 3	Jul 05	139,524	5	$37.63	-		-	---
Sale 4	Apr 06	153,368	25	$43.68	-		+	--
Sale 5	Jun 07	199,976	5	$40.00	-	+	-	---
Sale 6	Dec 07	121,502	28	$8.23	+	-	++	+++
Sale 7	Dec 10	118,142	17	$33.85	-	-	+	---

Sale 8	Jan 12	138,651	29	$17.31			++	++
Listing	Listing	121,000	37	$16.53		-		++
Subject		**161,280**	**13**	**$35.00**				

Ryan opined that Sale 4 was not a fee simple transaction, as it was sold to an investor, involving the mall owner and market rent. Ryan's adjustments result in a range of $30 to $37 per square foot. He reconciles at $35 per square foot, multiplied by the 161,280 square feet for a value of $5,650,000 via the sales comparison approach.

Petitioner then found leases for similar anchor stores. The subject property is owner-occupied and not leased. Ryan estimated market rent for anchor stores on a net basis with tenants paying the utilities. The 8 rental properties are:

Rental	City	Tenant	SF	Rent/SF	Lease Date
1	IL	Carson's	209,224	$2.35	2009
2	CA	Macy's	152,131	$4.47	2009
3	CA	Macy's	117,879	$4.45	2010
4	CA	Macy's	101,104	$3.20	2010
5	IL	Macy's	140,000	$2.00	2012
6	WI	Macy's	210,000	$2.85	2012
7	GA	Von Maur	225,000	$1.67	2012
8	AL	Von Maur	180,000	$1.40	2013

Lease 1 was signed at $2.35 per square foot, and then $10,000,000 to renovate the building was made. Ryan notes that $10,000,000 amortized over a 25 year loan term at 5% interest, and the annual debt service would be $3.35 per square foot. The lease rate at $2.35 does not cover the debt service. Lease 6 has a 1l0% rent kick-in at $105 per square foot of retail sales. This is in addition to Macy's receiving $20,000,000 for real and personal improvements, with a stipulation that if Macy's stayed 30 years, the mall owner would deed the property to Macy's. Rentals 7 and 8 did not include any tenant improvements.

Ryan concluded to a rental rate of $3.50 per square foot for the subject property. He also reviewed *Dollars and Cents of Shopping Centers* 2008 Urban Land Institute, 2008 Publication, to determine the accuracy of rates. He noted that this publication ended in 2008. The rental data is primarily for second generation department store space. Ryan found that 1.5% to 3.0% of sales per square foot for percentage rents are typical for the subject property as found in the *Dollars & Cents of Shopping Centers* Publication. The actual sales per square foot for Macy's in Grandville from 2003 to 2012 indicate a range from $98.52 to $133.37.

Again, the subject property is a 2-story design within a traditional mall setting. The subject's 2-story design is not as flexible as a big box store and illustrates functional obsolescence. Ryan's concluded rent of $3.50 per square foot is multiplied by 161,280 square feet to arrive at gross income of $564,480.

Ryan contends vacancy is low for a single owner-occupant. He found that a 1% vacancy and collection is appropriate for the subject property. Operating expenses included management fees at 2.5% ($0.09), reserves for replacements ($0.05), and insurance ($0.04). Total operating expenses of $29,030 is deducted from the net operating income.

Next, Ryan determined that market derived capitalization rates were limited. However, Sale 4 was close to the subject property indicating that its OAR would be similar. The April 2006 sale indicated a 9.86% overall capitalization rate. He then considered overall rates from national real estate investor surveys. RealtyRates.com averages from 10.07 for free standing retail 2011 and 2012. The band of investment was supportive of the direct capitalization technique. A 6.25% interest rate, with 25-year amortization term, is a mortgage constant of 7.92%. The loan to value ratio is 70% with a 12.5% return on invested capital. This technique resulted in a 10% overall rate. Ryan considered all of the techniques and concluded to a 9.5% overall rate. The calculations are as follows:

Square feet	161,280
Rent	$3.50
Potential Gross Income	$564,480
Vacancy & Collection Loss	$5,645
Effective Gross Income	$558,835
Operating Expenses	$29,030
Net Operating Income	$529,805
OAR	9.50%
Rounded Value	$5,575,000

The net operating income is divided by the overall rate ("OAR") for a value indication of $5,575,000 for the income approach. The reconciliation was concise.

Both the sales and income approaches utilized reliable data; however, Ryan placed more reliance on the sales approach because the property is owner occupied.

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 Appraisal by Jumana Judeh, MAI.
R-2 Portions of Jumana Judeh's work file.
R-3 Property record for subject parcel.
R-4 09/09/04 Property Transfer Affidavit between Target Corp. and the May Dept. Stores Co.
R-5 Property Transfer Affidavit received in 2006 for Parisian, Inc. and Bonstores Realty Two, LLC.
R-7 Joe Ryan Deposition.

R-9 Petitioner's Response to Post-Valuation Respondent's Second Set of Interrogatories and Document Production Requests dated 12/16/13.

Jumana Judeh, MAI, was Respondent's expert witness. She is a Certified General Real Estate Appraiser licensed in the State of Michigan. Based on her skills, knowledge, education, experience and training, the Tribunal accepted Judeh as an expert in real property appraisal. She prepared the valuation disclosure (R-1). She determined that the Cost, 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 for tax appeal proceedings.

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

The cost approach was utilized in a supporting capacity because the area is still experiencing growth and the construction of a super-regional mall is limited. The replacement cost new calculations for the subject property is found on R-2, page 56. Judeh testified that the subject property is a class C, good quality construction, and good maintenance with an effective age of 10 years. The base cost was adjusted for height and perimeter multiplier; current and local multipliers were also applied. The cost of fire suppression, indirect costs, and entrepreneurial incentive were calculated. The physical incurable depreciation indicated an effective age of 15 years. No other physical curable, functional or external obsolescence was applied. The depreciated value of the building is $13,146,232. Site improvements were then calculated for a value of $476,993. The 11.04 acres of land was compared with five sales of vacant land ranging from 1.51 acres to 12.8 acres. The unadjusted sales per square foot ranged from $7.81 to $14.35. The adjusted sale prices per square foot ranged from $7.81 to $14.35. Judeh concluded to $8.00 per square foot of land value for 2012 and $8.12 for 2013. The land value, depreciated building and site improvements were added for the total replacement cost new. The result is a true cash value of $16,230,000 for December 31, 2011, and $16,780,000 as of December 31, 2012.

Judeh next prepared a sales comparison approach. Six anchor store sale properties were analyzed. The sales were adjusted for economic characteristics, square footage and year built. The unadjusted sale price per square foot ranged from $53.08 to $93.24. The following sales were utilized:

		Sale Price	Sale Date	Sq Feet	Age	Occupant	SP/SF
Sale 1	California	$10,000,000	Oct 10	107,248	20	Target	$93.24
Sale 2	Florida	$5,000,000	Dec 10	94,191	26	Kohl's	$53.08
Sale 3	Florida	$5,000,000	Dec 10	85,832	26	Kohl's	$58.25
Sale 4	California	$8,300,000	Sep 11	102,000	35	JC Penney	$81.37
Sale 5	Columbus	$9,500,000	Sep 12	135,000	10	Great Outdoors	$70.37
Sale 6	California	$8,500,000	Feb 13	95,933	21	Gottschalks	$88.60
Subject				**161,280**	**12**	**Macy's**	

Adjustments were made to Sales 1 and 4 for superior economic conditions. All of the comparable sales have smaller square footages resulting in positive adjustments. All of the sales except Sale 5 are older and required upward adjustments.

	Sale Price	Sale Date	Sq. Feet	Age	SP/SF	Ec. Cond	Size	Age
Sale 1	$10,000,000	Oct 10	107,248	20	$93.24	-	-	+
Sale 2	$5,000,000	Dec 10	94,191	26	$53.08		-	+
Sale 3	$5,000,000	Dec 10	85,832	26	$58.25		-	+
Sale 4	$8,300,000	Sep 11	102,000	35	$81.37	-	-	+
Sale 5	$9,500,000	Sep 12	135,000	10	$70.37		-	
Sale 6	$8,500,000	Feb 13	95,933	21	$88.60		-	+

Judeh limited the value determination for 2012 to Sales 1 through 4. More weight was placed on Sales 2 and 3. Sale 3 is the closest in terms of comparison because it is located in a super-regional mall with a similar classification as the subject property. For the 2012 valuation, $60 per square foot was multiplied by the subject's 161,280 square feet for a value of $9,899,220. The 2013 conclusion utilized Sales 2 through 6. Judeh relied on Midwest sale for the $70 per square foot which results in a true cash value of $11,549,090.

Judeh found through property managers, developers and buyers, that monies were spent after purchase. "Such monies deal specifically with re-imaging the location which in most cases includes no deferred maintenance." R-1, page 71. Sales 2 and 3 were Kohl Stores; the representative anticipated that an expense of $40 to $55 per square foot would be applied to the re-imaging and re-branding. Judeh gave another example of a 2006 sale of a K-Mart that re-branded to Wal-Mart at a cost of approximately $50 per square foot. The estimated potential increase in value for the re-imagining/re-branding was $35.00 per square foot. On the other hand, Judeh cites a sale that did not require re-branding. Younkers in Rivertown Crossings, which sold in 2006 for $104 per square foot, was considered a transaction of an existing use[1]. It did not require an after acquisition investment.

Lastly, Judeh added $35.00 per square foot or $5,774,545 to the indications of value from the sales comparison approach. For December 31, 2011, the conclusion of value is $15,670,000 and for December 31, 2012, the conclusion of value is $17,320,000.

For the income approach, Judeh determined that the direct capitalization of market rent is the best technique. The subject property is owner-occupied and does not have a market rent in place. Therefore, comparable rental data was researched. The following six properties were utilized:

Rental	City	Tenant	SF	Rent/SF	Lease Date	Year Built
1	Saginaw	Kohl's	80,584	$7.15	12-94	1994
2	Flint	TJ Maxx	24,589	$8.00	11-90	1990
3	Lansing	Office Max	23,524	$8.50	06-90	1990
4	Southfield	Burlington	67,541	$7.50	01-99	1969
5	Orion	Kohl's	86,017	$8.75	04-99	1997
6	Shelby	Kohl's	84,680	$8.75	08-02	2002

Judeh stated that the income comparables are all smaller than the subject property and are located in different markets. She concluded to a market rent at mid-range of $8.50

[1] "…according to the sworn testimony of Mr. Szkilnyk who confirmed the sale." R-1, page 72 ,

per square foot. Vacancy and collection are minimal at 3.00%. The management fee is minimal at 2.00%.

The next step in the income analysis is the development of a capitalization rate. 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. CoStar sales information on some properties from 2010 to 2012 was reviewed. Judeh extracted capitalization rates from RealtyRates.com indicating 8.41% and 8.20% for the two tax years at issue. Six properties located in Saginaw, Michigan, Nevada, and California, were selected with capitalization rates ranging from 5.21% to 7.55%. Judeh relied on RealtyRates.com for capitalization rates of 8.8% and 8.30%, based on the fact that the subject property is a national institutional investment.

In the final analysis, the net operating income for both tax years is $1,333,110. The net operating income is divided by the capitalization rate of 8.80% for 2012 and 8.30% for 2013. The resulting indications of indicated true cash value via the income approach are $15,150,000 as of December 31, 2011 and $16,060,000 as of December 31, 2012.

Judeh reconciled the final value for the subject property relying upon the sales comparison approach, with support from the cost approach. She gave minimal weight to the income approach.

Laureen Birdsall, MMAO(IV), is the contract assessor for the City of Grandville. She identified R-3, which contains the assessment records for the subject property for 2012 and 2013. Within this exhibit were additional pages that included deeds of vacant land sales, a final opinion of a Sears Store, and consent judgments for the subject property. Birdsall's duties involve the review of prior Tribunal Decisions. For example, Birdsall testified that an industrial property was rezoned for a present ongoing commercial development located in the subject neighborhood. Again, Birdsall's file contains other decisions and consent judgments that are all part of the consideration in the valuation on the subject property.

Birdsall reviewed Ryan's comparable sales. Birdsall contends that research and discussions with assessors in the appropriate taxing jurisdiction indicates information utilized by Ryan, is incomplete and lacks credibility. For example:

Petitioner's Sale 1 is a three-story building, vacant at the time of sale. After purchase in 2006, the building was demolished.

Petitioner's Sale 2 was the first of three Lord and Taylors that closed in Colorado. This Denver area mall has a history of vacancies. This sale as a stand-alone structure was considered distressed indicative of land value only by the assessor.

Petitioner's Sale 3 was a sale from the mall developer to Von Maur. The mall developer purchased it from May Department stores. The property was vacant at the time of both transfers. The operating covenant with the mall was terminated.

Petitioner's Sale 4 indicated that the square footage is actually 145,605. This Bloomingdale mall experienced a significant anchor store vacancy. This JC Penny store 2006 sale is scheduled to close in 2014. Petitioner's Sale 5 is the same Columbus location as Sale 3. This was a Kaufmann's that sold to the mall developer. The property was razed and a lifestyle center was constructed. Petitioner's Sale 6 was transferred in

July 2004 from Target Corporation Property Development to MF Grape-Coldwater Stores, LLC for $8.6 million. Marshall Fields was occupying the space at the time of the sale. However, the property was vacant for three years prior to the 2004 sale. The assessor's office considered this a distressed sale. Carson's currently occupies this space. Based on the assessor's information, Petitioner's Sale 7 was a sale of a shell building. After sale, the building was torn down to the steel structure; the sale price is reflective of land value only. Purchaser, Von Maur, invested $10.1 million after acquisition. Petitioner's Sale 8 is located in a failing Illinois mall. The seller, JC Penny moved to another location. The store has been dark since 2011. Overall, Respondent argues Petitioner's comparable sales information is incomplete and insufficient.

FINDINGS OF FACT

1. Subject property is located at 3850 Rivertown Parkway Southwest, city of Grandville, Kent County.
2. The tax years at issue are 2012 and 2013.
3. Subject property for the tax years at issue is used as an anchor store in a super-regional mall.
4. Subject property has approximately 11.04 acres.
5. The subject property contains approximately161,000 square feet.
The subject property is a two-story Macy's store constructed in 1999.
1. 7. The subject property is not rented.
2. 8. Petitioner's eight sales were called into question by Respondent's assessor.
3. 9. Petitioner presented a sales comparison approach and an income approach.
4. 10. Respondent presented all three approaches to value.
5. 11. The sales comparison approaches are considered but given minimal weight.
6. 12. Neither party's appraiser has comparable sales of anchor stores in the State of Michigan.
7. 13. Petitioner's appraiser did not have workfile support for his comparable sales or rent comparables.
8. 14. Neither party challenged the validity of Respondent's property record cards.
9. 15. Ryan's workfile was incomplete.
10. 16. Ryan's workfile lacked documentation for Sales 3, 5, and 8.
11. 17. Ryan's workfile lack documentation for Rentals 1, 2, 3, 4, 7, and 8.

Expert witness status is based on the appraiser's education, experience, knowledge, skill, and training. Based on the MAI designation, both appraisers were designated as an expert in the appraisal field. The expert witness status does not automatically grant the witness or exhibits credibility or weight.

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 parties' testimony and evidence, finds that their appraisals lack foundation, supported analysis opinions and conclusions.

Respondent requested that Petitioner's Sales 3, 5, and 8, as well as Rentals 1, 2, 3, 4, 7, and 8, be excluded. Ryan failed to exchange any documentation when requested in discovery. Ryan also failed at the deposition to provide the workfile relative to the Sales and Rental comparable properties as requested. Pursuant to MCR 2.313(B)(2)(b), if a person fails to obey an order to provide or permit discovery, the Tribunal may order sanctions that are just, including "an order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing designated matters into evidence." Additionally, MCR 2.313(B) states:

> In lieu of or in addition to the foregoing orders, the court shall require the party failing to obey the order or the attorney advising the party, or both, to pay the reasonable expenses, including attorney fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

As such, the Tribunal considered excluding Petitioner's appraisal in its entirety as a discovery sanction for Petitioner's appraiser's failure to provide his complete work file, as ordered by the Tribunal, in addition to awarding costs for such failure to Respondent.

Factors to consider in determining the appropriate sanction, pursuant to the Michigan Court of Appeals' decision in *Dean v Tucker*, 182 Mich App 27, 32-33; 451 NW2d 571 (1990), include:

> (1) whether the violation was wilful or accidental, (2) the party's history of refusing to comply with discovery requests (or refusal to disclose witnesses), (3) the prejudice to the defendant, (4) actual notice to the defendant of the witness and the length of time prior to trial that the defendant received such actual notice, (5) whether there exists a history of

> plaintiff engaging in deliberate delay, (6) the degree of compliance by the plaintiff with other provisions of the court's order, (7) an attempt by the plaintiff to timely cure the defect, and (8) whether a lesser sanction would better serve the interests of justice. [Footnotes omitted.]

Respondent was able to successfully cross exam Ryan[2]. Regardless of the unsuccessful exchange of a complete workfile, Petitioner's appraisal report has issues of credibility.

For example, Respondent's assessor successfully challenged Petitioner's sales as non-arms-length transactions. In addition, Ryan's first six sales took place between June 2004 and December 2007. The sales prior to the 2008 economic collapse and too distant form either tax date at issue. That leaves Ryan's Sales 7 and 8, both of which were sales of stores that were dark and vacant for years prior to the transaction. The subject property is located within a successful super-regional mall. In other words, the subject is not in a failing mall with closures of anchor stores.

Therefore, no weight is given to any of Petitioner's sales data. Ryan's incomplete sales and lack of work file is not meaningful to his analysis. Again, Respondent's due diligence regarding Petitioner's incomplete sales data is significant. In general, a party's efforts in data research and verification facilitate an efficient appeal process.

As noted in the findings of fact, Respondent has also used out of state sales, but are in the appropriate time period. These sales are much smaller in size and all but one was 20 to 35-years old. The subject is ten years old and is in good condition. The unadjusted comparable sale prices ranged from $53.08 to $93.24. The lowest comparable sale prices are two Kohl's store sales in Florida. The higher ends of the

[2] In addition, Ryan's appraisal fails for other reasons and in the final analysis, is given no weight and credibility.

comparable sales are located in California. The closest sale in location is Columbus, Ohio, at $70.37 per square foot. This is Respondent's Sale 5 and is the Great Outdoors store which is owned by Sears. This property closed and sold to the mall owners. Judeh opined that the subject property, based on sales, has a market value of $60 per square foot for 2012, and $70 per square foot for the 2013 tax year. As such, the Tribunal will consider Respondent's range of sale prices for the subject property. However, Judeh's application of re-branding as an expenditure after sale is not persuasive, Judeh specifically states that no deferred maintenance or functional obsolescence was included in the re-branding. The Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 14th ed, 2013) p 412, states in pertinent part:

> A knowledgeable buyer considers expenditures that will have to be made upon purchase of a property because these costs affect the price the buyer agrees to pay. Such expenditures may include: costs to cure deferred maintenance, costs to demolish and remove a portion of the improvements, costs for additions or improvements to the property, costs to petition for a zoning change, costs to remediate environmental contamination.

Re-branding costs are referenced by Respondent and are not found in any authoritative appraisal cite. Therefore, the Tribunal finds that the additional $5,774,545 is not an appropriate expenditure after sale. The Tribunal finds the following excerpt of assistance:

> Estimating the market value of the fee interest in the real property component of a single-tenant, built-to-suit or custom-built commercial property is a difficult assignment. The reason it is so difficult is that no one builds these properties on a speculative basis and then offers them for sale or rent on the open market. Instead, they are built-to-suit, and if they sell, they trade on a sale/leaseback arrangement. The rent, sale price, and overall capitalization rate are not arm's-length and not equivalent to market rent, value or capitalization rates. As a result, it is very difficult to find support for market rent, market sales comparables, and market

> overall capitalization rates. However, the value in use to a specific tenant or owner does not become market value just because support for the latter is hard to find. The best support for the components of both the sales comparison approach (the comparables) is second-generation space that has leased or sold and that enjoys the same highest and best use as the subject would if it were available for lease or sale on the open market. *You Can't Get the Value Right if You Get the Rights Wrong p*. 65. Appraisal Journal, Winter 2009.

The income approach converts the current income into an indication of present value[3]. The subject property is not an income producing property. Nonetheless, both parties also included an income approach. Both appraisers considered gross potential rental income, reimbursements, minimal vacancy and collection (credit) allowance. The difference between the gross income, vacancy, and collection loss is the effective gross income. Market operating expenses for a similar property are 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 income analysis was based on anchor stores outside of the State of Michigan. Petitioner failed to provide the work files pertaining to the majority of his income properties. Specifically, Petitioner did not have the backup information for Rentals 1, 2, 3, 4, 7, and 8.

The Tribunal finds that Ryan's lack of work-files would violate the Record Keeping Rule of USPAP.

[3]The Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 14th ed, 2013) p 491.

> An appraiser must prepare a workfile for each appraisal, or appraisal review, or appraisal consulting assignment. A workfile must be in existence prior to the issuance of any report.
>
> An appraiser who willfully or knowingly fails to comply with the obligations of the RECORD KEEPING RULE is in violation of the ETHICS RULE. USPAP 2012-2013 Edition, Record Keeping Rule.

The Tribunal is not the regulatory agency for appraisers. USPAP's minimal requirements assist in partially determining credibility of appraisers that practice before the Tribunal.

The culmination of Petitioner's failure to respond to Respondent's discovery request and misleading sales data information is not credible. Thus, the Tribunal places no reliance on Petitioner's income approach and indications of value.

Respondent's appraisers' income analysis is based on a consideration of market rents. However, Rentals 1, 2, 3, and 5 were constructed close to the lease dates and appear to be built-to-suit leases. Judah's comparable rental properties were questioned further. She was unable to answer whether Rentals 1, 2, 3, 5, and 6 were built-to-suit leases. Therefore, Respondent's rental comparisons were not determined to be market driven, arms-length transactions supportive of a typical rental rate for the subject property. Next, Judeh did not include a tax neutral capitalization rate. Property taxes are a function of the taxable value and are excluded from the income and expenses. Rather, an effective tax rate is applied to the capitalization rate[4].

Therefore, after finding that Petitioner's sales and income approaches are not worthy of belief, while Petitioner has met its burden of going forward, its burden of persuasion does not prove that the assessment exceeds 50% of market value.

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

Respondent's sales comparison approach is reasonably supported, but without the addition of the $5,774,545 for re-branding. Simply, re-branding does not add market value to the real estate, but to the business operation. The re-branding of a property is to create a recognized image, based on a business model.

Respondent's request to increase the market value of the subject property is found to be unsupported. While Judah's appraisal contained a cost approach, the Tribunal finds that it is difficult to rely upon the cost approach for a ten year old property located in a super-regional mall. Depreciation was estimated for the physical age of the subject property. However, no market economic or external obsolescence was considered. The indication of value from this cost approach does not support Respondent's contention of true cash value.

Notwithstanding Petitioner's failure to present persuasive evidence of value for 2012 and 2013, Respondent's value may not be automatically adopted. As noted above in Jones & Laughlin v City of Warren, 193 Mich App 348, 356 NW2nd 416 (1992), "the tribunal shall make an independent determination of true cash value." In this case, the Tribunal has reviewed and analyzed Respondent's (assessor's) cost-less-depreciation methodology and finds that it provides persuasive support for its contention of the subject property's true cash value for the tax years at issue. The current assessment is a true cash value of $9,046,400 for both tax years at issue. Neither party has demonstrated an error in the calculation of the true cash value from the property record cards. The general allegation of value in excess of market value is not the equivalent of specific challenges to the assessor's cost calculations. Neither Petitioner's decrease in value, nor Respondent's increase in market value, has been substantiated. As such, the value of the subject property as found on the assessment roll is the true cash value of the subject property.

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: 3/24/14