

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

Target Corporation
Petitioner,

v

MTT Docket No. 361963

City of Midland,
Respondent.

Tribunal Judge Presiding
Marcus L. Abood

OPINION AND JUDGMENT

ORDER DENYING RESPONDENT'S MOTION TO COMPEL

Petitioner, Target Corporation, appeals the ad valorem property tax assessment levied by Respondent, City of Midland, against the real property owned by Petitioner for the 2009, 2010, and 2011 tax years.

A hearing was held on January 9, 2012, to resolve the real property tax dispute. Michael B. Shapiro and Daniel L. Stanley, attorneys at Honigman Miller Schwartz and Cohn, LLP, appeared on behalf of Petitioner. Francis J. Keating, attorney at Braun Kendrick Finkbeiner, PLC, appeared on behalf of Respondent. Laurence G. Allen, MAI, was Petitioner's valuation witness. Andrew B. Chamberlain was Respondent's valuation witness.

SUMMARY OF JUDGMENT

The subject property's 2009, 2010, and 2011 True Cash Values (TCVs), Assessed Values (AVs), and Taxable Values (TVs) as determined by Respondent are:

Parcel No. 11-33-50-090

	Respondent		
Year	TCV	SEV	TV
2009	\$5,884,000	\$2,942,000	\$2,889,478
2010	\$6,001,600	\$3,000,800	\$2,880,809
2011	\$6,001,800	\$3,000,800	\$2,929,782

Respondent also presented an appraisal contending the values are:

Parcel No. 11-33-50-090

	Respondent		
Year	TCV	SEV	TV
2009	\$5,560,000	\$2,780,000	\$2,780,000
2010	\$4,990,000	\$2,495,000	\$2,495,000
2011	\$5,260,000	\$2,630,000	\$2,630,000

Petitioner's contentions are:

Parcel No. 11-33-50-090

	Petitioner		
Year	TCV	SEV	TV
2009	\$2,600,000	\$1,300,000	\$1,300,000
2010	\$2,310,000	\$1,155,000	\$1,155,000
2011	\$2,130,000	\$1,065,000	\$1,065,000

The Tribunal's conclusions are:

Parcel No. 11-33-50-090

Year	TCV	SEV	TV
2009	2,763,000	1,381,500	1,381,500
2010	2,394,000	1,197,000	1,197,000
2011	2,210,000	1,105,000	1,105,000

GENERAL PROPERTY DESCRIPTION

The subject property is known as a Target store, and is located at 6820 Eastman Avenue, in the city of Midland, Midland County, Michigan. The building contains 92,094 square feet on 8.5 acres. It is a typical big box construction built to suit the Target Store model.

SUMMARY OF PETITIONER'S CASE

Petitioner presented testimony from its appraiser, Laurence G. Allen, MAI. Mr. Allen has appraised big box stores for Wal-Mart, Target, K-Mart, and Lowe's on behalf of property owners, for tax appeals, and for the Michigan Department of Treasury. Based on his experience and training, the Tribunal accepted Mr. Allen as an expert appraiser.

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

P-1: An Appraisal of the subject property, prepared by Laurence G. Allen.

Mr. Allen testified to the difference between a fee simple interest and a leased fee interest. The real property is being appraised, not the occupancy of the property. The subject property was appraised in fee simple interest; the property was appraised as if unleased, vacant, and available for sale.

Mr. Allen testified that the location of the subject property is less than desirable because it does not have good visibility or exposure. The subject

property sits back off of Eastman Avenue. The traffic count on M-10 is 19,200 cars a day as compared to Eastman Avenue, which has a traffic count of 21,800 cars per day.

Mr. Allen identifies the subject building as an average quality discount store. He inspected the building in June, 2011. Numerous interior and exterior photographs were taken of the subject property.

When questioned as to what motivates a retailer to construct a big box store, Mr. Allen explained that they are built to fulfill a business plan and model. This is done to penetrate a particular market and to maximize the retail sales for the store and company. Big box retailers are not motivated by the resale value of the stores. Big box stores have the lowest selling prices per square foot of retail properties. Mr. Allen explained that, when sold, big box stores are renovated or converted to a multi-tenant building. Another big box store purchaser will either change the facades, flooring, lighting, etc., or will demolish the existing building and rebuild for its specific use.

Mr. Allen believes that the sales comparison approach is the most reliable indicator to determine the fee simple market value for the subject property. Data for sales and offerings of big box stores is better than data of re-leasing of existing big box stores. The comparison analysis focused on existing big box stores that were owner occupied and build-to-suit. Mr. Allen's appraisal contains six sales

and twelve listings of big box stores. The comparable sales data indicates variations in location and age, and dissimilarities in market conditions.

Mr. Allen testified that the big box sales unadjusted sale prices per square foot range are \$15.00 to \$50.00. The five year old Home Depot store, located in Holland, closed in 2010 and was initially listed for \$41.00 per square foot. Subsequently, it was listed with a local broker for \$22.00 per square foot.

Mr. Allen stated that the two biggest factors to consider in sales comparison adjustments are the difference in market conditions (with the economic collapse that occurred in late 2008) and then the difference in location. The age and condition of a comparable sale is less significant because a purchaser is going to make major renovations or demolish the existing structure.

The adjustment for difference in location was explained by Mr. Allen. Purchasing power within a market area is based on population, households, income, visibility, exposure, traffic count, accessibility, surrounding land uses, and neighborhood trends. The subject property is located in the Midland Metropolitan Statistical Area (“MSA”), which indicates that the population, households, and retail sales are expected to decrease.

The following six sales are analyzed by Mr. Allen in determining the market value of the subject property:

Sale #	1	2	3	4	5	6
Location	Dearborn	Holland	Denton	Sterling Ht.	Frenchtown	Auburn Hills
Sale Date	Jan-06	May-04	Jul-05	Mar-06	Dec-09	Apr-11
Square Feet	192,000	80,953	94,559	111,285	124,631	151,336
Year Built	1993	1990	1989	1996	1992	1996
Sale Price	\$9,650,000	\$2,350,000	\$1,425,000	\$4,500,000	\$2,765,000	\$2,250,000
SP/SF	\$50.26	\$29.03	\$15.07	\$40.44	\$22.19	\$14.87
Adjusted SP/SF (2009)	\$32.23	\$21.10	\$27.13	\$34.57	\$24.65	\$27.53
(2010)	\$29.01	\$18.99	\$24.41	\$31.12	\$22.18	\$24.78
(2011)	\$26.11	\$17.09	\$21.97	\$28.00	\$19.96	\$22.30

Mr. Allen adjusted all of the sales for differences in market condition. Sales 1 and 2 have superior locations and are adjusted downward. Sales 3 and 6 are located in inferior locations and were adjusted upward. Sales 1, 2, and 4 are superior in age/condition and are adjusted downward to the subject. All six sales were adjusted for the difference in market conditions. Deed restrictions in two of the sales were considered and analyzed. Mr. Allen had discussions with brokers and buyers about any negative impact to the sale prices. “. . . The brokers didn’t lose any potential buyers because of the potential for deed restrictions. And the deed restrictions that were negotiated at the time of sale were negotiated not to affect the purchase price.” (TR, Vol 2, p 41)

In addition, Mr. Allen provided summary information of 12 comparable listings indicating the square feet, tenant(s), and listing price per square foot for the year(s) the property was listed. The summary includes the range of listing prices per square foot, as well as the average for each of the tax years at issue. The range

of listings for 2008 is \$36.27 to \$47.75 with an average asking price of \$42.91 per square foot. The range of listings for 2009 is \$14.05 to \$43.89 with an average asking price of \$29.84 per square foot. The range of listings for 2010 is \$13.66 to \$41.05 with an average asking price of \$26.39.

Next, Mr. Allen also includes a summary of 32 big box stores throughout the state that were listed and sold from 2000 to 2010. Three other properties were noted in this summary as available for retail use but were eventually sold for total redevelopment.

After analyzing the comparable sales, adjusting for difference in amenities, and reviewing the listings, Mr. Allen concluded to a value for the subject property of \$28.00 per square foot (\$2,580,000) as of December 31, 2008; \$25.00 per square foot (\$2,300,000) as of December 31, 2009; and \$23.00 per square foot (\$2,120,000) as of December 31, 2010, for the opinions of market value.

Mr. Allen began the discussion of his income approach by distinguishing between three different markets for big box stores: the existing rental market, the build-to-suit lease market, and the build-to-suit re-lease market. The rental market for existing stores is based on market conditions, as well as supply and demand. In this market, an existing property is exposed to the market for a reasonable amount of time. On the other hand, the build-to-suit lease is based on a direct negotiation between a developer and a user. This cost of construction is based on custom

design that includes a profit to the developer. The build-to-suit lease involves a property that is not yet in existence. Rents vary between an existing building and a non-existent, build-to-suit property. In general, market rents are lower than build-to-suit leases because discounting is required for extensive retrofitting. A build-to-suit store is custom designed based on the specific needs of the original user.

Petitioner has placed emphasis and reliance on existing leases as opposed to build-to-suit leases for these noted differences.

Petitioner's valuation disclosure is conveyed on the foundation of a fee simple interest. Mr. Allen explained that the fee simple interest is an acquisition of a property as unleased and vacant. Contrarily, a leased fee interest is based on the value of a property subject to an existing lease. There may be a value difference for the same property dependent on the interest appraised. Mr. Allen's explanation of fee simple and leased fee was necessary in determining market rent and market adjustments for the subject property within the income approach.

In the income approach, Mr. Allen determined that the subject property should be valued as vacant and available for lease in fee simple manner. He presented big box store leases, build-to-suit leases, and build-to-suit big box store re-leases.

Mr. Allen provided eleven rental comparable properties that were leased or offered for lease in the open market. These leases range from \$1.89 to \$5.75 per

square foot. In addition, nine build-to-suit leases were identified with rents ranging from \$5.13 to \$9.50 per square foot. Next, there is an illustration of eleven build-to-suit leases that were vacant and re-leased in the open market. Mr. Allen compared the difference between the original build-to-suit leases and the existing market lease rates. The difference between the two leases (from eleven build-to-suit leases that were re-leased) is a 47.21% average decrease in value. Mr. Allen concluded to a 35% deduction in value for the build-to-suit leases. The analyzed final triple net rent was \$4.00 per square foot as of December 31, 2008, \$3.75 per square foot as of December 31, 2009, and \$3.50 per square foot as of December 31, 2010.

The next step in the income approach was to determine the vacancy and credit loss. There was no national survey for the Midland retail community. Mr. Allen then relied upon conversations with real estate brokers and competing market data to conclude to a 10% vacancy and credit loss due to the subject property's size, shape, and location.

The reimbursable operating expenses are common area maintenance (CAM), property taxes, and insurance expenses. Mr. Allen estimated the expenses utilizing *Dollars and Cents of Shopping Centers* for 2008. These expenses are incurred by a landlord when the property is vacant. The owner would be responsible for the

management fee for the triple net lease, as well as reserves for capital improvements.

Mr. Allen calculated gross income from the rental rate per square foot. Vacancy and credit losses were deducted for an effective gross income; operating expenses were deducted to equal the net operating income (NOI). Mr. Allen considered capitalization rates from extracted sales, band-of-investment, and investor surveys. His decision for the overall capitalization rate (OAR) was 10.00%, 10.50%, and 10.50%, respectively, for the three years under appeal. Emphasis and reliance was placed on Realtyrates surveys because they relate to investor expectations with respect to single occupant retail buildings. (TR, Vol 2, p 76)

After capitalizing the NOI, Mr. Allen deducted leasing commissions to arrive at indications of true cash value of \$2,640,000 (\$28.66 per square foot) as of December 31, 2008; \$2,330,000 (\$25.30 per square foot) as of December 31, 2009; and \$2,150,000 (\$23.34 per square foot) as of December 31, 2010.

Mr. Allen also developed a cost approach to value, but it was not used as a primary indication of value. Rather, it served as a check to the sales comparison and income approaches. The sales comparison approach was the primary indicator of value because the sales data is considered more reliable than the rental data.

SUMMARY OF RESPONDENT'S CASE

Respondent presented testimony from its appraiser, Andrew Chamberlain, ASA. In support of its value contentions, Respondent offered the following exhibits, which were admitted into evidence:

- R-1: Respondent's Appraisal Report prepared by Andrew Chamberlain.
- R-2: Allen & Associates Appraisal Group – Appraisal Report for Target Store in Norton Shores.
- R-4: Laurence Allen's workfile, pages 161-183, pages 186-208, pages 276-280, pages 600-602, pages 426-430.
- R-5: Lease Agreement for 800 E. Fourteen Mile Road, Madison Heights, Michigan.
- R-6: Write-up Page for 800 E. Fourteen Mile Road, Madison Heights, Michigan.
- R-7: Write-up Pages for 2214 Mall Drive East, Waterford, Michigan.

Andrew Chamberlain, ASA, prepared an appraisal of the subject property. He testified that the median income for Midland is higher than the median income for the state as well as Saginaw. In addition, unemployment rates for Midland are lower than the state of Michigan and the city of Saginaw. Tata Consultancy Services and Dow Kokam Advanced Battery Group have brought jobs to the county.

Respondent developed and communicated an income approach to value. Mr. Chamberlain utilized a direct capitalization method to conclude to an indication of value. Initially, thirteen big box leases were analyzed; the average rental rate was \$7.34 per square foot on a triple net basis. The leases that were given the most consideration were Kohl's in Saginaw, Buy Buy Baby in

Kentwood, and the three Burlington Coat leases. (Respondent's Exhibit R-1, p 43)

Mr. Chamberlain also considered anecdotal market evidence regarding a

Dunham's lease in the Midland Mall.

Mr. Chamberlain's concluded rental rate of \$6.00 per square foot is the same for each year under appeal. He stated his reasons:

Big box retailers, to the best of our knowledge, are pretty stable and they're five-year terms and they don't increase. They increase after five years, so that was one reason. The other reason would be that it was my opinion that if you were increasing or changing the rental rates every year and change cap rates every year, it would magnify, perhaps, the economic conditions beyond what was really being felt in the market. (TR, Vol 1, p 173)

The potential gross income for the subject property for each year is \$552,564.00 (92,094 square feet multiplied by \$6.00 per square foot). The vacancy and credit loss is estimated at 5%, which is deducted from the potential gross income to arrive at an effective gross income of \$524,935.80 for each year. Mr. Chamberlain's further analysis indicates an estimated 3% deduction for a management expense and a \$0.25 per square foot deduction for replacement reserves. The result is a net operating income of \$486,164.23 for each year. In reference to property taxes, Mr. Chamberlain states, "In a single-tenant, big box retail property, taxes would not be a non-reimbursed expense. As property taxes would be a tenant responsibility, we will not be required to 'load' the overall

capitalization rate to account for the non-homestead millage rate for the City of Midland.” (Respondent’s Exhibit R-1, p 46)

Mr. Chamberlain reviewed and considered several sources in the determination of capitalization rates for the income approach.

PriceWaterhouseCoopers/Korpacz Real Estate Investor Survey, RealtyRates.com Regional Market Survey, and Real Estate Research Corporation (RERC) were reviewed. Respondent reconciled the strengths and weaknesses of each source to conclude to capitalization rates of 8.75% for December 31, 2008, 9.75% for December 31, 2009, and 9.25% for December 31, 2010.

The net operating income was divided by the capitalization rates. The indicated value via the income approach is \$5,560,000 (\$60.37 per square foot) as of December 31, 2008, \$4,990,000 (\$54.18 per square foot) as of December 31, 2009, and \$5,260,000 (\$57.11) as of December 31, 2010.

Mr. Chamberlain reasoned that the cost approach was inapplicable because buyers and sellers motivations do not take this into account. This approach is compromised in a down market. Lastly, the age of the subject improvements and all forms of depreciation can lead to subjective determinations.

Mr. Chamberlain researched numerous sales of big box stores. There was a lack of data in the city of Midland as well as in Midland County. Again, the primary motivation of buyers and sellers for properties similar to the subject is the

income approach. The sales comparison approach is not as reliable as the income approach. Mr. Chamberlain used the sales comparison approach to support the income approach to value.

FINDINGS OF FACT

1. Subject property is located at 6820 Eastman Avenue, city of Midland, Midland County.
2. Subject building contains 92,094 square feet.
3. Subject property has a total of 8.5 acres.
4. Subject property is an owner-occupied big box store.
5. The occupant of subject property should not influence the market value of the property.
6. The subject is not an income-producing property, thus the income approach is not given weight in the final conclusion to value.
7. The subject is located in the Midland Metropolitan Statistical Area (MSA).
8. The total population for the Midland MSA is 83,000.
9. The subject is located east of Eastman Avenue, north of M-10, and west of Jefferson Avenue.
10. The subject site is located on the east side of the mall and has impeded visibility from Eastman Avenue.
11. Traffic counts along M-10 are below average when compared to similar developments around Michigan.
12. The number of people employed in the Midland MSA declined each year from 2007 through 2010.
13. The unemployment rates in the Midland MSA increased from 5.4% in 2007 to 9.4% in 2010.
14. Both parties have furnished valuation disclosures in the form of appraisal reports.
15. Petitioner's appraisal report includes values for 2009, 2010, and 2011.
16. Respondent's appraisal report includes values for 2009, 2010, and 2011.
17. The parties agree that the cost approach is not relevant in this tax appeal.
18. Both parties have appraised the subject property as a fee simple interest.
19. Petitioner develops all three approaches to value (sales comparison, cost, and income).
20. Respondent develops all three approaches to value, but only conveys an opinion of value from the income approach.

21. Both parties have analyzed the comparable sale located at 33801 Van Dyke Avenue, Sterling Heights, Macomb County.
22. Petitioner utilizes six comparable sales for analysis purposes.
23. Petitioner utilizes twelve comparable listings for analysis purposes.

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.

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not...exceed 50%.... Const 1963, art 9, sec 3.

The Michigan Legislature has defined “true cash value” to mean:

...the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale. MCL 211.27(1); MSA 7.27(1).

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

A proceeding before the Tax Tribunal is original, independent and de novo. MCL 205.735(1); MSA 7.650(35)(1). The Tribunal’s factual findings must be supported by competent, material and substantial evidence. *Antisdale v City of*

Galesburg, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Department of Treasury*, 185 Mich App 458, 462-463; 452 NW2d 765 (1990).

Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

“The petitioner has the burden of establishing the true cash value of the property...” MCL 205.737(3). This burden encompasses two separate concepts: (1) the risk 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.

Under MCL 205.737(1); MSA 7.650(37)(1), the Tribunal must find a property’s true cash value in determining a lawful property assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal is not bound to accept either of the parties’ theories of valuation. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 377 NW2d 908 (1985). The Tribunal may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination. *Meadowlanes Limited Dividend Housing Association v City of Holland*, 437 Mich 473, 485- 486; 473 NW2d 636 (1991).

The three most common approaches to valuation are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach. *Meadowlanes*, at 484-485; *Pantlind Hotel Co v State Tax Commission*, 3 Mich App 170; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968). The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale*, p277. Pursuant to MCL 211.27(5), “the purchase price paid in a transfer of property is not the presumptive true cash value of the property transferred.”

CONCLUSIONS OF LAW

Petitioner developed and analyzed all three approaches to value. Respondent developed and analyzed all three approaches to value, but only conveys an indication of value from the income approach. As reflected in the findings of fact, neither party has placed any reliance on the cost approach in this appeal. The appraisers were charged with determining market value of the subject property for the three years under appeal.

Petitioner was able to explain and provide documentation for the sales comparison approach. Mr. Allen provided extensive listings and sales of big box stores throughout the state. The data included comparables in west Michigan, as

well as other competing market areas. He analyzed six sales and twelve listings for each year under appeal. The data illustrated to the Tribunal the decline in asking prices over a three-year period. The comparable data was analyzed in conjunction with supported market conditions. Mr. Allen's application of available data to the subject property is persuasive. Therefore, Petitioner's sales comparison approach is meaningful to the final conclusions of value.

Petitioner's comparison analysis and adjustments reflect market actions; however, Petitioner's reconciliation of the adjusted sale prices for the three years under appeal is incomplete. Petitioner concludes to the values by averaging the adjusted sales prices. The reconciliation of approaches is similar to the reconciliation of sales data. Reconciliation is an appraiser's opportunity to fill in gaps, and to prove overall logic and reasoning for the value conclusions.

Averaging adjusted sales prices infers equal weight and consideration to the data. In this instance, Petitioner's data, even after adjustments, indicates a given range in adjusted sales prices. "Even when adjustments are supported by comparable data, the adjustment process and the values indicated reflect human judgment."

Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13th ed, 2008), p 313.

The strengths and weaknesses of each comparable sale are examined for reliability and appropriateness. Petitioner's adjustments for all three years are the same except for the market conditions adjustment. Petitioner has provided sufficient

support for the market conditions adjustment. Nonetheless, certain sales are more germane for each year under appeal. The sales comparison approach for each year is reconciled with the similarities and dissimilarities of each comparable sale. Petitioner's elaborative comparison analysis gives rise to more than averaged value conclusions. The Tribunal agrees with Petitioner's sales comparisons, but disagrees with the reasoning for the concluded (averaged) prices per square foot.

In regards to the 2009 valuation, Petitioner's sale 4 has minimal location and market conditions adjustments and sold in March, 2006. This sale is more applicable to the 2009 value. Sales 5 and 6 sold after December 31, 2008, and are less applicable to the 2009 value. Sale 2 is the oldest sale occurring in 2004; this sale is less reliable. Sales 2 and 4 have relatively less adjustments. Therefore, a reasoned and reconciled price per square foot for the 2009 valuation is \$30 or calculated as a value of \$2,762,820.

In regards to the 2010 valuation, Petitioner's sale 5 is the closest to the December 31, 2009, tax date; this sale has a zero market conditions adjustment. Sales 4 and 5 have the least adjustments for location. Sales 3, 4, and 5 have the fewer total adjustments. Sale 6 is beyond the relevant tax date. Sale 1 has the largest overall adjustments out of the comparable data. Therefore, a reasoned and reconciled price per square foot for the 2010 valuation is \$26 or calculated as a value of \$2,394,444.

In regards to the 2011 valuation, Petitioner's sales 5 and 6 are bracketed to and are more applicable to the December 31, 2010, tax date. These two sales have fewer overall adjustments. Further, sales 4 and 5 have zero location adjustments. Sale 6 has a zero market conditions adjustment. Therefore, a reasoned and reconciled price per square foot for the 2011 valuation is \$24 or calculated as a value of \$2,210,256.

The effect of a common comparable sale used by both parties is important. The noted common sale (located in Sterling Heights) occurred in March, 2006. This comparable is important for analysis, but is not controlling for the three years under appeal.

Respondent's valuation expert develops the sales comparison approach to value. As part of his analysis, Mr. Chamberlain analyzes five comparable sales in a grid format. The sales are adjusted on a qualitative basis. Mr. Chamberlain does not conclude to an indication of value for this approach. Rather, he surmises that the qualitative analysis of the comparables' unadjusted prices per square foot support the income approach. The effort of developing a partial sales comparison approach contradicts Respondent's noted limitations of this approach. "The sales comparison approach can therefore be relevant, even when its reliability is limited. This approach may still provide a probable range of value in support of a value indication derived using the income approach." (Respondent's Exhibit R-1, p 58)

In light of Petitioner's extensive sales comparison data, the Tribunal is unable to accept Respondent's rationale that its sales comparison approach is still supportive to the income approach. Respondent's reasoning is not meaningful and is misleading. Therefore, Respondent's sales comparison approach is given no weight or credibility in the final conclusions of value.

Respondent's valuation expert develops an income approach to value. The initial analysis was based on thirteen comparable lease data (Respondent's Exhibit R-1, p 43) This data included several built-to-suit leases that Petitioner contends are not appropriate for direct comparison. The average rent per square foot for the data is \$7.34, but Respondent concludes to \$6.00 per square foot for all three years under appeal. An assumption that adjustments occurred to arrive at this adjusted rent per square foot is not supported by any written or oral testimony. In the absence of any support or explanation, Mr. Chamberlain's determination of the rent per square foot is subjective and arbitrary. The presentation of the same potential gross income, vacancy and credit loss, effective gross income, replacement reserves, and net operating income does not reflect market conditions for the three years under appeal. Moreover, these elements are impacted by the tenant, the lease terms, and the condition of the property. The lone component that changes in Respondent's income analysis is the capitalization rate. In testimony, Mr. Chamberlain admits a contradiction in the weight given to regional malls and

Realtyrates regional surveys (TR, Vol 1, p 242) and to “blending of the Korpacz Power Center and Net-Leased Institutional and Non-Institutional published rates.” (Respondent’s Exhibit R-1, p 49) The co-author to the appraisal report, Mr. Reed, provided the documents and summaries for the cap rate analysis. Mr. Chamberlain analyzed and selected the capitalization rates. In testimony, Mr. Chamberlain was unclear and uncertain where his concluded cap rates came from. (TR, Vol 1, p 246) The change in Respondent’s capitalization rates reflects a change in market conditions. Overall, Respondent’s income approach lacks clarity and consistency. Therefore, Respondent’s income approach is given no weight or credibility in the final conclusions of value.

Respondent’s appraisal report includes one front view photograph and one aerial photograph of the subject property. Respondent’s appraisers certified that they inspected the subject property. Mr. Chamberlain gave no explanation for the lack of interior photographs. This element of a summary report is meaningful to the description of improvements narrated by the appraiser. Moreover, relative to the scope of work acceptability, an appraiser’s peers will commonly include interior photographs in the appraisal report. This omission (along with other elements of the appraiser’s report) results in diminished reliability and credibility.

Respondent's diminished approaches to value are further amplified by testimony from Mr. Chamberlain. For example, page 2 of Respondent's appraisal report identifies a report date of August 1, 2011. On page 6 of the same report, the date of report is shown as June 25, 2011. Mr. Chamberlain was unable to explain these different report dates. Next, the subject improvements are described as Class C, average condition on page 38 of the report; however, on page 54, the subject improvements are identified as Class C, good condition. Mr. Chamberlain acknowledges contradictions regarding the subject as a discount store and as a department store. (TR, Vol 1, pp 42-45) Further, the issue of relevant leases in the city of Midland was raised. Mr. Chamberlain states, "We were unable to locate any relevant leases of single-tenant, big box retail in the City of Midland." (Respondent's Exhibit, R-1, p 44) In testimony, Mr. Chamberlain states that there are relevant leases within the city Midland. The Dunham's lease is located in the Midland Mall and is relevant for analysis.

Appraisers are many things and one of the things we have to be is a good writer, and clearly we didn't identify Dunham's, so that's bad writing. There's no getting around that. But clearly we identify the lease at least in size – let me make sure that – confidential lease. It doesn't even say it's in the mall. This is just a horribly written sentence, paragraph, but clearly it's identified in the report. It's recognized in the report. It's something that I relied upon in my work. (TR, Vol 1, p 59)

There is little doubt that Mr. Chamberlain's involvement in his appraisal report is minimal. The lack of familiarity with his report is equally evident. The series of errors and contradictions significantly affect his opinions and conclusions. He admits that Mr. Reed did most of the research and wrote most of the report. (TR, Vol 1, pp 40-41)

The subject property is an owner-occupied building. The property has no history of an income stream. In other words, the subject is not an income-producing property. This is validated by both parties' analysis of the subject property in a fee simple interest. Therefore, the income approach is not the primary indicator of value for the years under appeal. The primary focus is given to the sales comparison approach to value.

The Tribunal finds that Petitioner was able to show that the property was over-assessed for the tax years under appeal. As such, and in light of the above, the Tribunal finds that Petitioner has succeeded in meeting its burden of going forward with competent evidence on the issue of true cash value, assessed value, and taxable value. Petitioner has provided credible documentary evidence and testimony for the 2009, 2010, and 2011 tax years at issue and, as such, the Tribunal finds Petitioner's data within the sales comparison approach is sufficient to arrive at an independent determination of value.

On December 9, 2011, Respondent filed a Motion requesting the Tribunal to compel Petitioner to respond to post-valuation discovery requests served on September 29, 2011. Respondent also filed a Motion on December 20, 2011, requesting that the Tribunal permit it to partially withdraw its December 9, 2011 Motion to Compel based on Petitioner's December 9, 2011 partial response to the discovery requests. The Tribunal has not acted on those Motions. Nevertheless, those Motions are untimely. In that regard, the initial petition was filed on May 1, 2009, and the parties were given notice of the closing of post-valuation disclosure discovery on October 21, 2010. As such, the parties had notice and a sufficient opportunity to conduct pre and post-valuation disclosure discovery prior to the closing on August 2, 2011, and October 1, 2011, respectively, and Respondent's failure to timely conduct discovery and timely file a motion to compel did not and does not justify the granting of an extension for the conducting of post-valuation disclosure discovery or Respondent's Motion to Compel. Further, a prehearing conference was conducted on November 3, 2011, and the prehearing summary did not provide for the conducting of any further discovery. In that regard, TTR 270 provides, in pertinent part, "[d]iscovery shall *not* be conducted after completion of the prehearing conference, *unless* otherwise ordered by the tribunal." (Emphasis added.)

JUDGMENT

IT IS ORDERED that Respondent's Motion to Compel is DENIED.

IT IS FURTHER ORDERED that the subject property's true cash, assessed, and taxable values for the 2009, 2010 and 2011 tax years are those shown in the "Summary of Judgment" section of this 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 assessed and taxable values in the amounts as finally shown in the "Final Values" section of this Opinion and Judgment, subject to the processes of equalization, within 20 days of the entry of this Opinion and Judgment. 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 Opinion and Judgment within 20 days of the entry of this Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes,

fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Order. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (ii) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (iii) after December 31, 2005, at the rate of 3.66% for the calendar year 2006, (iv) after December 31, 2006, at the rate of 5.42% for the calendar year 2007, and (v) after December 31, 2007, at the rate of 5.81% for the calendar year 2008, (xiv) after December 31, 2008, at the rate of 3.31% for calendar year 2009, and (xv) after December 31, 2009, at the rate of 1.23% for calendar year 2010 (xvi) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (xvii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, and (xvi) after December 31, 2011, at the rate of 1.09 for calendar year 2012.

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

MICHIGAN TAX TRIBUNAL

Entered: April 4, 2012

By: Marcus L. Abood