

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

LA Fitness #476,
Petitioner,

v

MTT Docket No. 417658

Township of Bloomfield,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

Introduction

Petitioner, LA Fitness #476, appeals the ad valorem property tax assessment levied by Respondent, Township of Bloomfield, against the real property owned by Petitioner for the 2011, 2012, and 2013 tax years.

Michelle M. Lowrie and Daniel Tucker, attorneys at Ryan, appeared on behalf of Petitioner. Derk W. Beckerleg, attorney, Secrest, Wardle, Lynch, Hampton, Truex and Morley, P.C., appeared on behalf of Respondent.

Petitioner's valuation witness was Kevin Kernen, MAI; Respondent's witness was William Griffin, Michigan Master Assessing Officer (4).

The proceedings were brought before this Tribunal on October 15, 2013, to resolve the real property dispute.

Summary of Judgment

Petitioner contends the values should be as follows:

Parcel No. C-19-05-351-079

| Year | TCV | SEV | TV |
|------|-------------|-------------|-------------|
| 2011 | \$2,900,000 | \$1,450,000 | \$1,450,000 |
| 2012 | \$3,000,000 | \$1,500,000 | \$1,500,000 |
| 2013 | \$3,000,000 | \$1,500,000 | \$1,500,000 |

The Township of Bloomfield has assessed the property on the tax roll as follows:

Parcel No. C-19-05-351-079

| Year | TCV | SEV | TV |
|------|-------------|-------------|-------------|
| 2011 | \$7,360,520 | \$3,680,260 | \$3,680,260 |
| 2012 | \$7,603,300 | \$3,801,650 | \$3,779,620 |
| 2013 | \$7,681,260 | \$3,840,630 | \$3,840,630 |

Respondent's Revised value:

Parcel No. C-19-05-351-079

| Year | TCV | SEV | TV |
|------|-------------|-------------|-------------|
| 2011 | \$8,425,800 | \$4,212,900 | \$3,680,260 |
| 2012 | \$8,425,800 | \$4,212,900 | \$3,801,650 |
| 2013 | \$8,425,800 | \$4,212,900 | \$3,840,630 |

The Tribunal finds the values shall be:

Parcel No. C-19-05-351-079

| Year | TCV | SEV | TV |
|------|--------------|-------------|-------------|
| 2011 | \$11,979,850 | \$5,989,925 | \$3,680,260 |
| 2012 | \$12,375,000 | \$6,187,500 | \$3,801,650 |
| 2013 | \$12,375,000 | \$6,187,500 | \$3,840,630 |

Background

At issue is the true cash value for the subject property located at 2050 Telegraph Road, Bloomfield, Oakland County. The subject property is located on 3.99 acres with 44,372 square feet of a fitness center/health club. The two-story health club was constructed in 2008. The highest and best use is as a retail facility with a fitness center.

Petitioner's Arguments

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

Petitioner's Exhibits:

P-1 Appraisal of subject property as of December 31, 2010, and December 31, 2011, and December 31, 2012.

Petitioner's only witness was Kevin Kernan, MAI. He prepared an appraisal of the subject property. The subject property has a long-term lease partially tied to the construction costs as they are recaptured in the lease rate. He did not consider the build-to-suit lease as market. This is similar to the big box and drug store cases that the Tribunal has considered.

Kernen testified that USPAP requires the last three years history of the subject property. In fact, there were no sales prior to tax day. The subject property was described as having a pool, small daycare, fitness area, locker rooms; the second floor contains basketball and racket ball courts.

The highest and best use as vacant is to hold for future retail uses. Kernen determined the highest and best use as improved is for a retail user as a community center, athletic club.

The sales comparison approach and the income approaches were determined to be the most applicable by Kernen.

Kernen used the same six sales and applied the same adjustments for all three years. Sales 1, 3, 4, 5, and 6 were inferior locations; therefore, positive adjustments were made. Sale 2 was a superior location, and a negative adjustment was applied. Sales 2, 3, and 6 are smaller than the subject and would sell for a higher price per square foot; therefore, a negative adjustment was applied. Sale 5 was adjusted for its inferior construction quality. Land to building ratio for Sales 5 and 6 were larger than subject and Sale 4 has some excess land. All of the sales were

adjusted were adjusted. The six sales and the adjusted resulting sale price per square foot follow.

| | Subject | Sale 1 | Sale 2 | Sale 3 | Sale 4 | Sale 5 | Sale 6 |
|-----------------|------------|-------------|-------------|------------------|-------------|-------------|-----------|
| Location | Bloomfield | Clinton | Ann Arbor | Sterling Heights | Madison Ht | Brighton | Bangor |
| Sale Date | | 12/12 | 12/12 | 03/12 | 03/12 | 04/11 | 06/09 |
| Sale Price | | \$1,200,000 | \$2,000,000 | \$512,000 | \$2,200,000 | \$1,585,000 | \$500,000 |
| Location | Average | Inferior | Superior | Inferior | Inferior | Inferior | Inferior |
| Size | 45,000 | 30,628 | 26,284 | 17,600 | 113,262 | 63,072 | 23,424 |
| Year Built | 2008 | 1993 | 1958 | 1975 | 1986 | 1977 | 1971 |
| Condition | Good | Inferior | Inferior | Inferior | Inferior | Inferior | Inferior |
| Const Quality | Average | Average | Average | Average | Average | Average | Average |
| Site Site | 117,420 | 79,715 | 132,422 | 53,579 | 544,936 | 564,102 | 183,823 |
| Land/Bldg Ratio | 3.87 | 2.6 | 5.04 | 3.04 | 4.84 | 8.94 | 7.85 |
| SP/SF | | \$38.19 | \$76.09 | \$29.09 | \$19.42 | \$25.13 | \$21.35 |
| Adj SP/SF | 2011 | \$44.08 | \$60.87 | \$42.18 | \$28.55 | \$38.20 | \$31.38 |
| Adj SP/SF | 2012 | \$44.08 | \$60.87 | \$42.18 | \$28.55 | \$38.20 | \$31.38 |
| Adj SP/SF | 2013 | \$44.08 | \$60.87 | \$42.18 | \$28.55 | \$38.20 | \$31.38 |

The adjustments for each year were unchanged, resulting in \$55.00 per square foot or \$2,500,000 for all three years.

Upon cross-examination, Kernan testified that he used sales from other counties because he had to broaden the market area due to lack of sales. He was not aware that the Pet Smart building sold on June 9, 2011 for \$129 a square foot. The 55,000 square foot building sold for \$7,100,000

and is across the street from the subject property. Kernan explained that there were no 2010 sales that he found appropriate to use in his market analysis. He claims it is typical to use the same sales for all three years at issue.

Kernan considered rent comparable properties selected based on space for lease within the subject's market place. Comparable leases were considered based on building characteristics, size, configuration and location. He notes:

Several big box comparables are utilized in the analysis of market rent. These are reasonable comparables since the subject is being valued as if unencumbered (fee simple) and available for purchase. There are very few leases that are not directly tied to construction costs. Therefore, the big box rent comparables are combined with some fitness center leases which were signed in buildings already constructed. (P-1, p. 54)

The rent comparables are:

| | Subject | Rental 1 | Rental 2 | Rental 3 | Rental 4 | Rental 5 | Rental 6 |
|------------|------------|------------|------------|------------|------------|---------------|--------------|
| Location | Bloomfield | Troy | Bloomfield | Bloomfield | Bloomfield | Detroit | Chesterfield |
| Sq Feet | 45,000 | 29,000 | 232,452 | 232,452 | 232,452 | 59,125 | 175,763 |
| Year Built | 2008 | 1988 | 1998 | 1998 | 1998 | 1986 | 1995 |
| Lease Date | | 2012 | 2012 | 2011 | 2010 | 2010 | 2010 |
| Tenant | | Listing | Dicks | Homegoods | Office Max | Plant Fitness | Staples |
| Lease SF | 45,000 | 29,000 | 48,805 | 39,646 | 21,500 | 25,385 | 20,000 |
| Term | | Negotiable | 10 yrs | 5 yrs | 1 year | 10 yrs | 5 yrs |
| \$/SF | | \$12.00 | \$14.25 | \$8.75 | \$9.00 | \$7.00 | \$8.95 |
| Adj \$/SF | | \$11.88 | \$14.25 | \$9.63 | \$8.45 | \$8.75 | \$9.85 |

Adjustments were made for differences in location, size, and condition. Rentals 3 and 4 did not have any tenant improvements which required positive adjustments. The same adjustments were applied for all three years. Rental 5 is the most reflective of value; Kernen testified that this is a Planet Fitness. This resulted in an indicated market rent of \$9.00 per square foot on a triple net basis. The current rent of the subject property is \$24.19. Kernen states that the current lease is significantly above market tenant improvements.

Expenses are then considered as a deduction from the market rent.

Vacancy and credit are projected at 11% (combined) for all three years.

Expenses are reimbursed at \$48,060. Property insurance is estimated at \$0.20 per square foot. Common area maintenance is \$1.00 per square foot. Management fees are 5% of effective gross income. Total expenses total \$1.90 per square foot. The net operating income is calculated:

| | | | |
|-----------------------|--|----------|-----------|
| Gross Income (\$9 sf) | | \$45,000 | \$405,000 |
| Vacancy/Credit (11%) | | | \$44,550 |
| Reimburse | | | \$48,060 |
| Eff Gross Income | | | \$408,510 |
| Expenses | | | |
| Insurance | | \$9,000 | |
| CAM | | \$45,000 | |
| Mgt Fee | | \$20,426 | |
| Non Recoverable Exp | | \$11,250 | |
| Total | | \$85,676 | |
| Net Operating Income | | | \$322,835 |

Kernen found the same net operating income for all three years. The capitalization rate was based upon market-derived rates and investor surveys for the primary consideration of the rate. The conclusion is 10.5% for 2011 and 10.0% for 2011 and 2012. The effective tax rate for the period of time when the landlord pays expenses is added. The 2.47% tax rate is multiplied by 10% vacancy which results in 0.25.

The net operating income is divided by the overall capitalization rate to result in \$2,900,000 for 2011 and \$3,000,000 for tax years 2012 and 2013.

Kernen testified that he was not aware that the subject sold until after the appraisal was finished. Further, he testified that he was not made aware that the subject property was listed for sale. The June 30, 2013 sale price of \$13,605,000 would not have been considered by Kernen because (1) construction costs were baked into the lease, (2) the buyer was purchasing for the income stream, and (3) the lease was above market. Therefore, he did not believe that the sale price was relevant in determining the fee simple value of the subject property.

Kernen used the same methodology as applied to big box store. He did not value the subject property as a big box, but used the key component in any fee simple valuation. He stated that the key component is the value to the secondary user. This concept is not specific to the big box stores.

Specifically, he did not consider the sale of a LA Fitness facility in Royal Oak because it was sold to investors, and not a subsequent user. Kernen indicated that leased fee market is not a fee simple premise. Investors look at the leased fee estate which calls for a different premise than fee simple.

Kernen explained that CoStar's submarket for the subject property is the Pontiac submarket. Pontiac's quoted rental rate is \$10.61 for all types of retail property. The subject's rent is \$24.19 which is based on above market tenant improvements¹. Kernen testified that the Pontiac submarket was used because CoStar determined the properties within the submarket. He agreed that Pontiac was generally a depressed market and Bloom is generally an affluent market. When questioned why the subject property with 532 lineal feet on Telegraph Road was only considered average location, Kernen explained that you can only get there going one way and then make a Michigan left to get there from the north.

¹ The on-line CoStar map indicates that the subject property is located in the Southwest corner of the Pontiac submarket.

The underlying leases in place at the time of the sales for the subject property and LA Fitness in Royal Oak indicate that that the sales would not be considered fee simple in nature. Kernan stated that the properties were built-to-suit which can be above market leases. The market rent has to be determined as built-to-suit properties in general have recapture “baked” in for the developer. Kernan testified that he did a fee simple market value of the subject property. If this were a leased fee value, the sale price of the subject property may be appropriate to consider as well as actual rent.

Respondent's Arguments

Respondent believes that the assessment currently under values the subject property. The subject property sold June 20, 2013 for \$13,605,000. Based upon other sales of fitness centers, the sale of two LA Fitness properties in Michigan, the assessment is not reflective of the market value of the subject property. Respondent requests an increase in the market value of the subject property.

Respondent's admitted exhibits are:

R-1 Valuation disclosure of subject property (June 17, 2013).

R-5 Petitioner's response to Respondent's First Request for Production of Documents.

R-8 June 20, 2013 Warranty Deed for subject property.

R-9 Real Estate transfer tax valuation affidavit dated June 20, 2013.

R-10 2053-2067 South Telegraph sale.

William D. Griffin, Assessor for the township, is certified as a MMAO (4).

He is the person responsible for the valuation disclosure.

The subject property is located in a financially-affluent community. All three approaches to value were considered by Respondent; however, the cost and sales approaches carried the most weight. Griffin testified that he did not prepare its valuation disclosure for use at the Tribunal but for negotiating purposes. Griffin acknowledged the valuation disclosure is therefore substandard.

The subject property is located on the west side of Telegraph Road, between Square Lake Road and Orchard Lake Road. Telegraph Road is a heavily traveled divided highway with eight lanes of traffic. The two-story building is considered good quality construction and condition with a high end fitness center within it. There is a three-lane lap pool, basketball court and racket ball courts. The locker rooms are also high-end quality. In addition, the facility contains rooms for various classes along with fitness equipment.

The subject property is a free-standing two-story building with load bearing walls that would not be used for a big box type of use. Based upon the long term lease, construction, and zoning the subject property is physically possible and financially feasible for a health and fitness club. Griffin opined that its highest and best use is its continued use.

Griffin disagreed that the highest and best use of the property as if vacant is to hold for future development. At Long Lake and Telegraph, a Lifetime Fitness is currently under construction. This four-acre parcel was purchased in 2008 for \$5.1 million. Further, the property across the street was razed in 2012 and a Dicks Sporting Goods was built. Griffin argues that if there is a vacant four-acre parcel, it would be developed in the area.

Griffin testified that a Property Transfer Affidavit also stated that \$13,605,000 was paid for the subject property. The revenue stamps were \$117,030 for county and state taxes and in addition to the deed filed by the subject property. There was no indication that the sale price was anything but an arms-length transaction.

Griffin opined that an investor would be willing to pay more for the long-term lease which is 15 years plus three five-year options. (The subject's lease was in year three for the 2010 tax year.) At the end of the lease, the property owner/landlord still has a substantial asset left (land and building). The subject property has four acres of land in excess of 500 lineal feet on Telegraph Road as well as the improvement. The value of the four acres based on sales of commercial land is \$2,003,760 for tax year 2011, \$1,829,520 for 2012 and 2013.

The following six sales of fitness clubs were researched and utilized in Griffin's valuation disclosure:

| | Subject | Sale 1 | Sale 2 | Sale 3 | Sale 4 | Sale 5 | Sale 6 |
|------------|--------------|-------------|-------------|--------------|------------------|---------------|-------------|
| Location | Bloomfield | Chicago, IL | Carmel, IN | Hamilton, OH | Indianapolis, IN | Royal Oak, MI | Aslip, IL |
| Sale Date | 06/13 | 08/07 | 06/09 | 08/11 | 03/11 | 09/11 | 12/09 |
| Sale Price | \$13,605,000 | \$1,080,000 | \$8,113,636 | \$7,900,000 | \$8,150,000 | \$12,375,000 | \$8,412,060 |
| Size | 45,000 | 56,000 | 45,000 | 38,000 | 45,326 | 45,000 | 45,000 |
| Year Built | 2008 | 2007 | 2008 | 2008 | 2009 | 2010 | 2008 |
| Site Site | 4 acres | 5 acres | 6.94 acres | 5.21 acres | 3.65 acres | 3.3 acres | 23.02 acres |
| SP/SF | \$302.33 | \$192.86 | \$180.30 | \$208.89 | \$179.81 | \$275.00 | \$186.93 |

Respondent did not make any adjustments for differences in amenities including location. The sale prices ranged from \$179.81 to \$275.00 per square foot with the average of \$203.79 and a median of \$189.89 per square foot.

Griffin testified that it is apparent when looking at the sales that they are investors purchasing the real property for the long and short-term leases.

Sale 1 was an owner occupied fitness center. The remaining five sales were LA Fitness centers. Sale 5 is the only sale that had 19 years remaining on its lease. Griffin determined that remaining properties, based on the sale prices, had shorter terms left on the leases. The longer the remaining term of a lease, the higher the sale price.

Griffin applied the median sale price of \$189.89 a square foot and concluded to a value for the subject property of \$8,425,800 for the three years at issue.

Griffin explained the cost approach as used in mass assessing. The land value is calculated based upon sales of land. The cost approach used the State Tax Commission's Cost Manual with the assistance of BS&A computerized software. Land sales were used to estimate the \$2,003,760 and \$1,829,520 values for the tax years at issue. The building data is put in the software. The current cost of the building is adjusted with county multipliers, depreciated for condition and age, and an economic condition factor for the relationship to the market, is applied. The land and building value and any land improvements are totaled for the indicated value via the cost approach on a mass basis. The cost approach resulted in the true cash values found on Respondent's assessment roll.

The building was classified as an average construction, good quality, Fitness Center cost schedule for the building. The effective age as of December 31, 2010, was three years, four years, and five years respectfully.

Tribunal's Findings of Fact

1. The subject property is located at 2050 Telegraph Road, Bloomfield.
2. The subject property is owned by Tiffrae for the three tax years at issue.
3. The subject property sold June 20, 2013 to Cole LA, Bloomfield Hills, MI, LLC for \$13,605,000.
4. The parcel identification number is C-19-05-351-079.

5. The subject property is a commercial fitness center property.
6. The subject property is a two-story building constructed in 2008 with 45,000 square feet.
7. The tenant is LA Fitness.
8. The highest and best use of the subject property, as improved, is continued use.
9. The parties both agreed that the subject property is in good condition.
10. Petitioner states that the subject was a build-to-suit at a higher rent than the comparable market.
11. The subject property has a 15-year lease with three 5-year renewals options.
12. The subject's lease is \$24.19 per square foot, \$1, 088,438 a year.
13. Petitioner determined that market rent is \$9.00 per square foot.
14. Respondent does not have the burden of proof, but the burden of defending the assessment and assuring that it does not exceed 50% of market value.
15. Respondent's valuation disclosure utilized both the income and cost approaches.
16. Respondent's sales were all fitness centers.
17. Respondent's valuation disclosure rebutted Petitioner's appraisal.
18. Respondent's Sale 5 located in Royal Oak is found to be the most comparable property to the subject property.

APPLICABLE LAW

Pursuant to Section 3 of Article IX of the State Constitution, the assessment of real property in Michigan must not exceed 50% of its true cash value. 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 the 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 in *CAF Investment Co v State Tax Comm*, 392

Mich 442, 450; 221 NW2d 588 (1974), has also held that true cash value is synonymous with fair market value.

In that regard, the Tribunal is charged in such cases with finding a property's true cash value to determine the property's lawful assessment. See *Alhi Dev v Orion Twp*, 110 Mich App 764, 767; 314 NW 2d 479 (1981). The determination of the lawful assessment will, in turn, facilitate the calculation of the property's taxable value as provided by MCL 211.27a. A petitioner does, however, have the burden of establishing the property's true cash value. See MCL 205.737(3) and *Kern v Pontiac Twp*, 93 Mich App 612; 287 NW2d 603 (1979).

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 percent; and for a system of equalization of assessments. For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred. When ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value. Const 1963, Art IX, Sec 3.

The Michigan Supreme Court, in *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 484; 473 NW2d 636 (1991), acknowledged that the goal of the assessment process is to determine “the usual selling price for a given piece of property. . . . ‘In determining a property’s true cash value or fair market value, Michigan courts and the Tribunal recognize the three traditional valuation approaches as reliable evidence of value.’” See *Antisdale v Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984).

“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 Steel v City of Warren*, 193 Mich App 348, 354-355; 483 NW2d 416 (1992).

The three most common approaches to valuation are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach. See *Meadowlanes*, *supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170; 141 NW2d 699 (1966); *Antisdale*, *supra* at 276. 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, supra* at 277. Petitioner utilized a sales comparison approach and an income approach. Respondent also used the sales comparison approach and a cost approach to value the subject property.

The Tribunal may not automatically accept a respondent's assessment but must make its own finding of fact and arrive at a legally supportable true cash value. See *Pinelake Housing Co-op v Ann Arbor*, 159 Mich App 208, 220; 406 NW2d 832 (1987); *Consolidated Aluminum Corp, Inc v Richmond Twp*, 88 Mich App 229, 232-233; 276 NW2d 566 (1979). 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, supra* at 485-486; *Wolverine Tower Assoc v Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980); *Tatham v Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982).

CONCLUSIONS OF LAW

The Tribunal, having considered the testimony and evidence, finds that the appraisal submitted by Petitioner has weaknesses. It is inconceivable that an MAI's due diligence would not include analysis of the subject's listing and eventual sale within a few days after signing his appraisal. Even more shocking was the observation that the sale of the Royal Oak LA Fitness property is a very close replica of the subject property with the same use, in close proximity to the subject property but was not considered.

Kernen, a designated Member of the Appraisal Institute, testified, under oath, that he was not aware of the sale of the subject property until a few days after he finished the appraisal. He also was not aware that a Pet Smart building across the street from the subject property sold in June 2011 for \$129 a square foot. He was aware of the LA Fitness sale in Royal Oak but gave this sale no consideration because it was a build-to-suit lease which could result in a higher value.

This Tribunal is unclear if Kernen just did a slovenly job of investigating sales. It is noticeable, however, that his value conclusion of \$2,900,000, \$3,000,000, and \$3,000,000 does not equate to the \$1,088,438 annual

lease paid by the tenant, much less the \$13,605,000 sale price paid June 20, 2013.

The difference between a leased fee estate and a fee simple estate is stated as follows. Leased fee interest is defined as “The ownership interest held by the lessor, which includes the right to the contract rent specified in the lease plus the reversionary right when the lease expires.”

Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 14th ed, 2013), p. 72.

Fee simple estate is:

The sticks in the bundle of rights each have some type of value. For example, the owner of the fee simple estate (i.e., the holder of the complete set of sticks in the bundle) can trade the rights to occupy a certain amount of space within an existing building on the land in exchange for rent. In this way, the familiar relationship of landlord to tenant can be thought of as an exchange of property rights, and the appraiser can develop an opinion of the market value of the right to use and occupy the leased premises. This right does not cease to exist when the owner of the fee simple estate separates it from the complete bundle of rights. Rather, it is held by someone else, in this instance the tenant. Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 14th ed, 2013), p 69.

“The fact that a property is leased does not mean the appraiser must value a leased fee or leasehold estate.” Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 14th ed, 2013), p. 70.

The fact that a property was leased at the time of sale does not invalidate a sale price. As with all sales, the data has to be analyzed.²

Kernen may have misinterpreted the Tribunal's recent big box decisions regarding vacant and available relative to fair market value. MCL 211.27 defines true cash value as:

As used in this act, "true cash value" means the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale. The usual selling price may include sales at public auction held by a nongovernmental agency or person if those sales have become a common method of acquisition in the jurisdiction for the class of property being valued. The usual selling price does not include sales at public auction if the sale is part of a liquidation of the seller's assets in a bankruptcy proceeding or if the seller is unable to use common marketing techniques to obtain the usual selling price for the property.... In determining the true cash value, the assessor shall also consider the advantages and disadvantages of location; quality of soil; zoning; existing use; present economic income of structures, including farm structures; present economic income of land if the land is being farmed or otherwise put to income producing use...

The subject property is not owner-occupied. It is leased for fifteen years with three five-year options making it a long-term lease. The terms of the

² The Appraisal Foundation, Uniform Standards of Professional Appraisal Practice, (Chicago, 2012-2013 ed), P. 11-20.

lease are not found in Petitioner's appraisal. Interestingly, the actual lease is found in Respondent's exhibits. Kernen states in the assignment overview that the fee simple interest is being appraised even though the subject has a long-term lease in place. The terms of the lease are not incorporated into the analysis. The Tribunal finds this is a flaw in the assignment. Without doing an analysis of the lease, the build-to-suit lease was determined to be at above market rates with the cost of the construction "baked" into the rates.

Kernen's sales comparison approach included some properties that were in close proximity to the subject property. None likely would be good substitutes as investment properties because they were big box stores. This is would not be the same use value.

In real estate appraisal, the value a specific property has for a specific use; may be the highest and best use of the property or some other use specified as a condition of the appraisal.

Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 14th ed, 2013), p. 62.

Petitioner's Sale 1, a listing from December 2012, is a smaller building and site, and an inferior location. This comparable property is relatively newer with an effective age of 15 years. Sale 2 is located in Washtenaw County was vacant at the time of sale. The building is 50 years old, and in inferior

condition, although it was renovated in 1992. Sale 3 was a foreclosure in Sterling Heights. This property has no road frontage, and is in an inferior location and condition. Sale 4 was a former Sam's Club which is an industrial use. This building is inferior construction (as a big box), and condition (22 years old at the time of the sale). Sale 5, located in Brighton was a 31-year-old athletic club with steel construction. This sale is an inferior location and condition. Sale 6 is a 36 year old former YMCA located in Bay County was sold to a senior center. Sale 6 is located approximately 100 miles north of the subject property.

The Tribunal finds that the sales utilized by Kernan are not appropriate comparisons to a 3 to 5-year-old property, in good condition. As described in Kernan's report, the subject property is located in an area with access to major roads including Telegraph Road, Woodward Avenue, and Square Lake Road (with access to I-75, and two miles east of the subject property). The subject area is dense with commercial and residential development. The sales selected do not bracket the subject property. An investor's view of Kernan's sales data would not find them suitable as substitute comparable properties. "Buyers of income-producing properties usually concentrate on a property's economic characteristics and typically put more emphasis on the conclusions of the income capitalization approach.

“Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 14th ed, 2013), p 380.

Respondent presented a brief sales comparison approach. This comparative analysis contained sales more indicative of the market value for the subject property. Griffin’s six selected properties were all health clubs that sold close to the tax date(s) at issue (with the exception of Sale 1). Griffin’s abbreviated approach demonstrated similarities in size, acreage, age, usage and leasing.

The Tribunal finds that Respondent’s sales comparison are a better reflection of the value range for the subject property based on its location, age, amenities, and income stream. An appraiser is compelled to research and consider all relevant data in a comparative analysis.

After excluding non-arm’s length sales, the remaining sales that cannot be effectively used for direct comparison are still part of the market at large and can be used for bracketing, understanding general market activity, and other analytical purposes. Thus, market data is classified and weighted for its importance, relevance, and reliability. Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 14th ed, 2013), p, 382.

Kernen dismissed the 2011 sale of the Royal Oak LA Fitness property in his analysis. The build-to-suit nature of the lease was tied to the

construction cost. Likewise, he did not investigate or analyze the influence of the lease to the sale price. In other words, Kernen did not attempt to apply this lease to the actions of the market.

Kernen, when questioned if the purchase price is presumptive of true cash value, responded, "Depends on the premise of value." "Again, it just depends if you are looking at the leased fee or fee simple, and whether there is a lease in place and the factors associated with that lease." Tr. p 105.

Kernen indicated that the big box store "methodology" was the basis for using the fee simple value of the subject property. Kernen stated "Because I have seen rulings out there of drug stores as the big box, where the lease rates are tied to construction costs." Tr. p. 70. He answered that it is correct that he believes that the law requires him to value the subject property kind of like a big box store. He misses the mark, however, in understanding the evidence and testimony in the big box stores. He absolutely fails in providing the level of documentation and basis for the below market valuation conclusion of his report. The Tribunal finds that Kernen's lack of detail and documentation is a factor in the determination that his report lacks the appropriate analysis for the subject property. Petitioners in big box appraisals included 25 sales and offerings with an

analysis of each. Build-to-suit, existing leases, and re-leases were considered. In those cases, Petitioner's appraiser went into great depth and detail documenting the results. Simply stating that "built-to-suit leases are above market" without providing adequate documentation is insufficient. It reflects upon the Kernens' competency and the credibility of his report.

Therefore, Petitioner's sales comparison approach is given no weight or credibility based on the aforementioned reasons.

Kernens developed an income approach and selected six rental comparables. Four out of six rentals were big box type stores, and two rentals were related to the fitness industry. Rental 1 is a former Bali's located in Troy. Kernens determined this rental was inferior in construction and location. Rental 5 is a 22-year old Planet Fitness building on Ford Road in Detroit. This rental is inferior construction and location. The four referenced big box leases were properties located across the street from the subject property in a retail development. Rental 2 is the Dicks Sporting Goods leased at \$14.26 per square foot. This rental was at the highest end of the range. Further, it was one of the three stores in a shopping center across the street that was renovated in 2003. This rental involves a recent lease March 2012, with the longest term (10 years plus four 5-year

options). The lease that Kernan found most comparable (Rental 5) is located north of the Fairlane Town Center in Detroit.

The Tribunal considered the rental information presented by Respondent. Although an income approach was not submitted, the data contained in Respondent's report indicates a net operating income for Sales 4, 5, and 6 (the data indicates these were triple net leases) in a range of \$16.37 to \$22.00 per square foot. The sales were also under long-term leases with LA Fitness as the tenant. Petitioner's determination that market rent for three years at \$9.00 per square foot appears inadequate for the subject property after considering Respondent's data. Under the estimate of the income comparables, Respondent's income extracted from its comparable is persuasive enough to negate Petitioner's rent analysis.

Petitioner's appraiser states, "Furthermore, to the best of our knowledge, the property is not currently being marketed for sale, and there are no outstanding offers or options for the sale of the property." This statement gives no assurance based on Kernan signature date of June 14, 2013, that he was unaware the subject was being marketed. Six days later on June 20, 2013, the subject property sold for \$13,605,000. This fact alone undermines the reliability and credibility of Kernan, as a MAI and an expert

witness in this matter. The Tribunal notes that an expert witness does not assume credibility. The weight and credibility of a witness is determined when considering the evidence and testimony.

Again, Petitioner's appraiser's actions contradict the professional standards that he invokes. The Uniform Standards of Professional Appraisal Practice (USPAP) require appraisers to analyze and report all agreements of sale, options, and listings of the subject property current as of the effective date of the appraisal. See Standards Rule 1-5.

Respondent's evidence indicates that the purchaser of the subject property filed a warranty deed as well as the Property Transfer Affidavit. These documents disclose the full purchase price and revenue stamps on the payment. Respondent indicated that this was an investor sale; however, it is difficult to comprehend that the same is not true cash value of the subject property. The transaction appears to be arms-length, devoid of duress.

The purchaser filed appropriate documents indicating that the \$13,605,000 purchase price was for the real estate known as the subject property.

The Tribunal finds that the entire premise of Petitioner's appraisal report was clearly refuted/rebutted by Respondent's ability to extract appropriate comparable sales as well as indirect income data analysis. The sale of the

subject property itself would not have been known or knowable as of the last tax date at issue, December 31, 2012, Respondent's sale of the Royal Oak LA Fitness Center is a good indication of a property located within subject's market area. This sale is similar construction, lease, age, and square footage. This September 30, 2011 sale is reflective of the market value of the subject property as of December 31, 2011. The sale price of \$12,375,000 or \$275 per square foot sale price for the same 45,000 square feet and a similar lease, lot size, and market location is the best "comparable" sale.

The 2012 true cash value of the subject property is found to be \$12,375,000. The 2011 assessment is reduced the same ratio as the remainder of the commercial properties. The 2013 indicated market value remains the same as the 2012 value. The State Equalized Value for the tax years at issue are increased; however, the taxable value for the tax years at issue remains unchanged as the property did not transfer during the tax years at issue for an uncapping event nor were there any "new" additions.

The Tribunal finds that Petitioner was unsuccessful in convincing the Tribunal that the subject property was assessed in excess of 50% of

market value. Moreover, The Tribunal finds that based on the reasoning above, the subject property is under assessed.

JUDGMENT

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

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 90 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by the Final Opinion and Judgment within 28

days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 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, and (iv) after June 30, 2012, and prior to January 1, 2014, at the rate of 4.25%.

This Opinion and Judgment resolves the last pending claim and closes this case.

By: Victoria L. Enyart

Entered: Nov. 08, 2013