

STATE OF MICHIGAN  
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH  
MICHIGAN TAX TRIBUNAL

AUTOMOTIVE COMPONENTS HOLDINGS, LLC,

and

FORD MOTOR CO.  
PETITIONERS,

v

MTT Docket No. 327618  
(consolidated w/327622, 336132,  
336133)

TOWNSHIP OF YPSILANTI,  
RESPONDENT.

Tribunal Judge Presiding  
Kimbal R. Smith III

**FINAL OPINION AND JUDGMENT**

A hearing was held in the above-captioned matter on February 1 through February 5, 2010.

Petitioner was represented by Sherrill D. Wolford, and Douglas J. Fryer of Dykema Gossett, PLLC and Respondent was represented Thomas J. Kenny and Eric M. Nemeth of Varnum LLP.

For tax year 2006, this matter involves one parcel of real and one parcel of personal property located in the Township of Ypsilanti and owned by Petitioner, Automotive Component Holdings, LLC, identified by Parcel Identification Numbers K-11-25-200-001 (real) and K-99-109-001-00 (personal). For tax year 2007, the property subject to this action was owned by Ford Motor Company and identified by the same tax parcel identification numbers, with the exception that a portion of parcel K-99-109-001-00 (personal) had been separated from the original parcel and given parcel number K-99-109-002-00 by the State Tax Commission and the personal property identified by the new parcel is not part of this action for tax year 2007. Petitioners timely

invoked the jurisdiction of the Tribunal for tax years 2006 and 2007. At issue are assessed, taxable, and true cash values for each of the tax parcels for tax years 2006 and 2007.

Information relevant to the property's contested true cash, assessed and taxable values on the assessment roll is as follows:

| Parcel Number   | Year | TCV           | SEV          | TV           |
|-----------------|------|---------------|--------------|--------------|
| K-11-25-200-001 | 2006 | \$32,200,600  | \$16,100,300 | \$16,100,300 |
| K-99-109-001-00 | 2006 | \$81,355,400  | \$40,677,700 | \$40,677,700 |
| K-11-25-200-001 | 2007 | \$30,525,800  | \$15,262,900 | \$15,262,900 |
| K-99-109-001-00 | 2007 | \$136,780,800 | \$68,390,400 | \$68,390,400 |

#### **FINAL VALUES**

| Parcel Number   | Year | True Cash Value | SEV           | TV            |
|-----------------|------|-----------------|---------------|---------------|
| K-11-25-200-001 | 2006 | \$ 17,534,000   | \$ 8,767,000  | \$ 8,767,000  |
| K-99-109-001-00 | 2006 | \$ 88,299,206   | \$ 44,140,600 | \$ 44,140,600 |
| K-11-25-200-001 | 2007 | \$ 17,534,000   | \$ 8,867,000  | \$ 8,767,000  |
| K-99-109-001-00 | 2006 | \$136,780,800   | \$68,390,400  | \$68,390,400  |

#### **THE SUBJECT PROPERTY**

The subject real property consists of approximately 94 acres of land located at 10300 Textile Road, Ypsilanti Township, Michigan (Rawsonville Plant). Situated on the real property is a large manufacturing building and several ancillary buildings. The structures were built in stages commencing in 1956 with additions added in 1964. The main building area is approximately 1,241,000 square feet in size with secondary structures on site making up the balance of the total +/- 1,594,000 square feet.

For tax year 2006, the subject tangible personal property associated with the Rawsonville Plant consisted of equipment used in several areas of manufacturing including die cast/shaft machining, air/fuel charging, fuel injectors, alternators, fuel pumps, and wiper motors, office furniture and fixtures identified by Parcel Identification Number K-99-109-001-00 as of December 31, 2005. Additional personal property assets that were part of Parcel Identification Number K-90-996-047-00 and K-90-996-005-00 were excluded from the valuation, together with an additional parcel that had not been assigned a number as of the appraisal and only known as IFT 05-037 was also excluded. Also, the value of the personal property located within the Global Technology Center (“GTC”) portion of the real property was not included in the assessment of personal property for tax year 2006, but is within the jurisdiction of the Tribunal to determine value. Using the same methodology as was employed by Respondent in concluding to the value of the other personal property on site for 2006, Respondent’s assessor concluded to a true cash value of \$6,943,800 for the personal property contained within the GTC portion of the real property. (Tr, p 1088) Petitioner’s counsel indicated that its witness, Mr. Sigworth, whom Petitioner had available to testify on February 5, 2010, would, if called to testify with respect to the GTC property, indicate a value “reasonably close to Ms. Frischman’s calculation.” (Tr, p 1090)

For tax year 2007, the subject personal property assets consisted of certain tangible personal property associated with the Rawsonville Plant, as of December 31, 2006, owned by Ford Motor Company and identified as Parcel Identification Number K-99-109-001-00. As of December 31, 2006, the subject parcel number included the parcels previously identified as IFT parcels and

excluded that property that was included in Parcel Identification Number K-99-109-002-00 pursuant to an Order of the State Tax Commission.

### **CASE OVERVIEW**

This matter requires that the Tribunal determine the True Cash Value of the real property identified by Parcel Identification Number K-11-25-200-001 for tax years 2006 and 2007, together with the true cash value of certain personal property contained within Parcel Identification Number K-99-109-001-00 for tax years 2006 and 2007. For tax year 2007, property within Parcel Identification Number K-99-109-001-00 includes certain personal property separately under different tax parcel numbers (IFT'S etc.), but excludes the personal property separated from the K-99-109-001-00 by State Tax Commission order dated December 18, 2008 and assigned tax parcel identification number K-99-109-002-00.

Both Petitioners' and Respondent's real property valuation experts considered all three approaches to value (cost, market and income), but utilized only the sales comparison and cost-less-depreciation approaches after having concluded that real property of this type is generally owner occupied and, as a result, the income approach is not applicable.

Although both experts utilized the replacement cost approach, each used a different method. Petitioners used the Marshall Swift Calculator method for light manufacturing, while Respondent used the segregated cost method. Petitioners stated that they had used a hybrid replacement cost model with the square foot size of the model the same as the existing facility, even through there

were inefficiencies built into the existing footprint. (Tr, p 293) The different methods applied by the parties resulted in widely disparate conclusions of replacement cost new (“RCN”) before depreciation. Petitioners concluded RCN, including soft costs before depreciation for the 2006 year, was \$78,322,459 and for tax year 2007 was \$85,019,155. Respondent concluded to RCN before depreciation of \$185,955,714 for 2006 and \$198,023,636 for 2007. Petitioners applied total accrued depreciation in the amount of 91% for 2006 and 92% for 2007. Respondent calculated total depreciation for both tax years at approximately 89%.

Petitioners utilized seven sales for their sales comparison analysis, including five properties located in the State of Michigan for both tax years. Respondent analyzed six sales and one listing, all being in Michigan for both tax years. The Tribunal notes that both parties used the sale of the Delta Township/Lansing GM facility (Petitioners’ Sale 2 and Respondent’s Sale 5). The seven sales utilized by Petitioners occurred between 1999 (Sale 7), 2003-2004 Sales 4, 5 & 6) with Sales 1, 2 and 3 occurring between 2005 and 2006. After adjustments, Petitioners concluded to a True Cash Value using the sales comparison approach of \$12,800,000 for both tax years.

Respondent utilized six sales and one listing. Sale 1 occurred in December of 1999, Sale 2 in January 1998, Sale 3 in December 2005, Sale 4 in January 1999, Sale 5 in January 2005 (in common sale with Petitioners’ Sale 2), and Sale 6 in January 2006. Respondent’s concluded True Cash Value after adjustments was \$26,000,000 for tax year 2006 and \$26,800,000 for tax year 2007.

The square footage of Respondent's sales range from 2,075,022 for Sale 1 to 1,068,693 for Sale 5.

For the personal property portion of this appeal Petitioners utilized what they described as the Cost Approach and Market (Sales Comparison) Approach to arrive at their estimation of True Cash Value. Respondent relied entirely on the STC multiplier table's mass appraisal method to assess and value the subject property and presented no market value valuation evidence whatsoever. Respondent did, however, engage a personal property auditor to review Petitioners' personal property statements and fixed asset list to determine whether the assets reported on the personal property statements were reported in the property category, and made adjustments to the personal property statements filed by Petitioners and modified by Respondent's assessor prior to the personal property assessment being placed on the tax rolls. As a result of the audit, Respondent has requested an increase in the assessments for the personal property parcel for both 2006 and 2007 tax years.

### **Petitioners' Case**

Petitioners, in support of their contention that the subject tax parcels had been assessed in excess of 50% of their True Cash Value for both 2006 and 2007, presented two fact and two expert witnesses together with the following exhibits, which were admitted into evidence unless otherwise indicated:

Exhibit No.

1. Petitioners' Valuation Disclosure of the True Cash Value of Real Property of ACH Rawsonville Road Plant as of December 31, 2005.
2. Petitioners' Valuation Disclosure of the True Cash Value of Personal Property of ACH Rawsonville Road Plant as of December 31, 2005.
3. Petitioners' Valuation Disclosure of the True Cash Value of Real Property of ACH Rawsonville Road Plant as of December 31, 2006.
4. Petitioners' Valuation Disclosure of the True Cash Value of Personal Property of ACH Rawsonville Road Plant as of December 31, 2006.
5. Errata to certain pages of Petitioners' Valuation Disclosure of the True Cash Value of Real Property of ACH Rawsonville Road Plant as of December 31, 2005.
6. Errata to certain pages of Petitioners' Valuation Disclosure of the True Cash Value of Real Property of ACH Rawsonville Road Plant as of December 31, 2006.
7. American Society of Appraisers, *Valuing Machinery and Equipment: The Fundamentals of Appraising Machinery and Technical Assets* (2000).
8. Remsha, Michael J., P.E., ASA, CMI, American Society of Appraisers, M&TS Journal, Vol. 16, Issue #1, 1999-2000 Fiscal Year, Economic Obsolescence.
9. Reilly, Robert F., Is Obsolescence Obsolete? Procedure to Identify and Justify Obsolescence Allowances, (2005).
10. Reilly, Robert F., Business Valuation Review, The Identification and Quantification of Economic Obsolescence, (June 1988).
11. Reilly, Robert F. and Schweih, Robert P., Guide to Property Tax Valuation, Ch 14 External Obsolescence, Ch 15 Identifying Economic Obsolescence, and Ch 16 Measuring Economic Obsolescence (2008).
12. Not Offered
13. State Tax Commission Bulletin No. 12 of 1999.
14. Ford Motor Company Press Release, AUTOMOTIVE COMPONENTS HOLDINGS, LLC BEGINS OPERATIONS AFTER VISTEON TRANSFERS 23 FACILITIES, <http://media.ford.com/newsroom/release-display.cfm?release=21687>.

15. Global Insight article re: CEO of Automotive Components Holdings Talks to Global Insight about Divestment Plans.
16. Certificate of Formation of Automotive Components Holdings, LLC, as Delaware limited liability company, July 15, 2005.
17. Curriculum Vitae of Michael S. Kendzior, MAI
18. Curriculum Vitae of Mark R. Simzyk, ASA
19. Curriculum Vitae of Steven J. Shanker, CPA/ABV, ASA
20. Curriculum Vitae of Jouky Chang
21. Curriculum Vitae of William Connelly
22. Curriculum Vitae of Craig L. Sigworth
23. Not Offered
24. PricewaterhouseCoopers, Project Firefly Rawsonville Road Phase II Buy-Side Report dated July 29, 2005. (Confidential, proprietary documents to be produced under protective order after *in camera* inspection.)
25. Mark Simzyk Work file (Certain confidential, proprietary documents to be produced under protective order after *in camera* inspection.), Bates No. ACH-YT 1634-3133, and electronic work file.
26. Not Offered
27. List of Assets Reported as Personal Property for December 31, 2005 and Not Reported as Personal Property for December 31, 2006 - Appraised by Duff and Phelps as Real property for both years.
28. Not Offered.
29. Curriculum Vitae of Michael J. Remsha.
30. Not Offered.
31. Plant Floor Plans (demonstrative blowups) admitted over objection
32. Demonstrative Exhibit - Introduction to Rawsonville Plant.
33. Copy of MRV (Mark Rodriguez Valuation Consulting LLC) Engagement Letter.

34. Automotive Machinery Equipment Personal Property Report form 4798. Admitted over objection.
35. Not offered.
36. ACH Rawsonville Plant-assessed Value Summary of D & P Individual Assets (Disk Also).
37. Ford Motor Co-Rawsonville Plant-Assessed Value Summary of D & P Included Assets (Disk Also).

The following exhibit was offered and not admitted after objection:

24. Steven Shanker, Duff & Phelps, Business Valuation Report dated October 10, 2005, (excerpts relating to Rawsonville Road Plant). (Confidential, proprietary documents to be produced under protective order after *in camera* inspection.)

#### Petitioner's Fact Witnesses

*William Connelly* testified that he had retired from Ford Motor in April of 2009 and prior to his retirement had been employed with Ford for almost 37 years. In 2003, after a long series of various assignments with Ford, he became the Chief Financial Officer for Visteon, which had been spun off from Ford in 1999 or 2000. After his assignment at Visteon he became the Chief Financial Officer for Automotive Components Holdings Company (ACH) and in 2007 became the Chief Executive Officer of ACH, although he remained an employee of Ford.

He testified that ACH acquired the subject property from Visteon on October 1, 2005. Prior to the acquisition of Rawsonville and other plants, Ford conducted due diligence in regard to the acquisition. (Tr, p 27) In conjunction with their due diligence Ford engaged PricewaterhouseCoopers (PWC). The witness explained the contents of a report prepared by PWC (P-Confidential Exhibit 25), which, among other matters, described the state of the auto

industry as of the date of the PWC report. He further explained that the U.S. auto industry at the time was suffering from intense competition from foreign manufacturers (Tr, P 34) and, as a result, the demand for automotive parts from Ford and other domestic manufacturers was falling. As a result of the falling demand, the subject plant and others like it were underutilized, which made the company less cost competitive.

Connelly explained that even though the Rawsonville Plant was unprofitable, Ford reacquired the property in late 2006 to insure a continuity of supply of parts being produced by the plant and to protect future model programs. (Tr, pp 36-37) Prior to the transfer to Ford, ACH did not actively market the subject because it was not in a position where it was saleable, it had an uncompetitive mix of product, the portfolio of products made in the plant was not consistent with a single buyer, and it needed many improvements in terms of cost structure.

*Mark Willis*, the plant manager of the subject plant between 2002 and 2008, gave an overview of the Rawsonville Plant (P-33) and a description of the product lines produced at the plant as of January 2006, which consisted of, among other things, throttle bodies, alternators, windshield wiper motors, fuel pumps, etc. He further explained the installed capacity of the various lines and the actual output (Tr, pp 66-67) and also the lines and processes that were scheduled to be phased out and, as a result, various types of equipment would be no longer be needed and this was known at the relevant valuation dates.

The witness, during cross-examination, acknowledged that the plant was generally maintained in good order and there were never any occasions where serious maintenance issues caused the plant to be unusable.

#### Petitioner's Expert Witnesses

*Michael Kendzior*, MAI, an employee of Duff & Phelps, was qualified as an expert in valuation of real property. He is a member of the Appraisal Institute and licensed in 15 states, including Michigan, as a certified general appraiser. He has been designated as an MAI by the Appraisal Institute for approximately ten years and considers the valuation of industrial real property in both the United States and overseas as one of his specialties. (Tr, p 121) He explained to the Tribunal his experience in appraising auto-related companies and auto parts suppliers.

Kendzior testified in support of the appraisals he had prepared for the subject real property for the 2006 and 2007 tax years (P-1 and P-3). He explained that he had inspected the subject property on at least two occasions (once for these appraisals and once on a prior occasion) and explained what he looked for when he did site inspections. (Tr 139) As a result of the inspection, he concluded that the plant was well maintained. (Tr, p 140-141). After his inspection and discussions with plant personnel, he concluded that if the facility were to be replaced in today's market, it would be replaced as a light industrial facility rather than as originally constructed "like a bomb shelter." (Tr, p 141). The plant was well built in the 1950s, but construction has changed over the years and the type of equipment for the facility has changed such as the "dinosaur heating system."

The witness explained that as a result of the crisis in the automotive industry during 2004 and 2005 there were 64 plants shut down totaling approximately 83 million square feet of automotive or automotive-related manufacturing space. This excess square footage impacted his valuation conclusions for each of the valuation dates. He looked at the market for this type and size (1,600,000 sf +/-) of property as a national rather than a local market and explained how the “Big Three’s” market share fell from 73% in 1996 to 52.2% in 2005. (Tr, p 167) Unemployment steadily rose in Michigan from 4.8% in 1999 to 8.6% in 2004.

Kendzior concluded based on the crisis in the automotive industry that existed on both valuation dates that:

We have a very large facility, 1.6 million square feet, a very, very weak demand.  
We have a building that’s really kind of built like a brick shit house okay? It’s built, okay, but nobody in the world is going to pay for it.  
Tr, p 174

The witness explained that he did not believe that an appraisal can be completed using just one approach to value (Tr, p 193) and although the cost approach is best used for new facilities, he still developed a value using the cost approach but in the weighting process gave it little weight.

Petitioners’ replacement cost model was as a new light manufacturing facility. (Tr, p 198)

The witness testified that he believed that the sales comparison approach is the best approach for property the type and vintage of the subject.

To identify sales of properties he considered similar, Kendzior conducted a national search for large industrial sales (Tr, p 180), where the most important criteria was to locate sales of large automotive-related facilities. (Tr, p 223)

Kendzior identified seven sales of properties he deemed similar to the subject. (See P-1, p 88 pullout)

Petitioners' sales 2, 4, 5, 6 and 7 were all once related to the automobile industry with sales one and three being large facilities, but not related to the auto industry. (Tr, p 224)

The witness elaborated, explaining in detail the sales he had utilized and also the methodology he employed in making his adjustments to the sales and the steps he used to verify the sales themselves. Adjustments were considered for financing terms, conditions of sale, market conditions (date of sale), location, property use, size, age/condition, percentage of office space, ceiling height, and land-to-building ratio.

Kendzior explained the basis of his adjustment for property rights conveyed to Sales 2, 3, 4 and 6 due to what the witness stated were either leased fee or partial leased fee sales. Since Sale 2 was used by both appraisers, he explained in detail the -20% adjustment he made to Sale 2 (Lansing Delta Township Plant) because:

This property is one point—almost 1.1 million square feet. It's a very large facility. And if this facility was on the market vacant, it would take a substantial period of time to lease up or sell. And what I said to myself is if I was going to

buy this property and I had a lease in place would I pay maybe a premium for it versus a property down the street with the same square footage and vacant? Would I want to take the risk of buying the property that's leased or the property that's vacant? I said to myself, I think there's less—I think I would pay a premium for that. So I made a 20 percent negative adjustment.  
(Tr, p 226)

The method he employed to arrive at his adjustment was to take a perceived market rent of \$1.75 per square foot even though the actual lease in place was \$4.26 per square foot because he believed that the actual rate might have had some equipment in the rental rate (Tr, p 228), and then multiplied the rental rate by the 12-to-24 month period that he had estimated it would take to lease up the property. This approach yields a range of between 8-to-22% with an ultimate conclusion of a negative 20%. The methodology he employed for the property rights conveyed for Sale 2 was also applied to Sales 3, 5 and 7.

Other adjustments made to Sale 2 include a negative 15% for clear ceiling height. The basis of this adjustment was that the property had a ceiling height of 32 feet versus an average under the truss ceiling height for the subject of 17 feet. The higher ceiling height would give a prospective purchaser more flexibility in the use of the property. Using the same methodology by which he ascertained a negative clear ceiling height adjustment for Sale 3, he also adjusted Sales 1, 3, 4 and 5. (Tr, p 233)

An adjustment for land-to-building ratio was also made for Sale 2. The subject property had a 2.8-to-1 land-to-building ratio and Sale 2 had a 7.15 ratio. Kendzior testified that "7.1 ratio means there's a lot of land," and he further explained how he arrived at his adjustment, which

was basically valuing the excess land based on the assessed value of the land, which resulted in a premium of about 14% but he applied only a -10% adjustment. (Tr, p 235)

For Sale 2, although no adjustment was made to the sale price for an allocation of personal property, he subsequently ascertained from talking with Troy Kennedy of GM that \$2,950,000 for personal property was included in the \$18,000,000 purchase price.

After explaining the other adjustments made to Sale 2, but without adjusting for the personal property, Kendzior concluded to an adjusted per square foot sale price for Sale 2 of \$8.36. If he would have actually considered the presence of personal property in the selling price, he indicated he would have further reduced his per square foot value conclusion for Sale 2 by \$1.00 (Tr, p 240) or by \$ .50 in his concluded value using all sales comparables. (Tr, p 241)

Using \$8.00 per square foot, Petitioners' expert concluded to a value of \$12,800,000 for tax year 2006 using the sales comparison approach.

Although Kendzior concluded to the same true cash value for both tax years, he indicated that general market conditions between 2006 and 2007 had gotten worse and he took a conservative approach and didn't make any adjustment for market conditions. (Tr, p 246)

On cross-examination the witness indicated that he had verified the ceiling heights of his sales comparables by either looking at the assessment cards, from sales brochures or from sales listings, and then asked brokers or buyers to verify the information. (Tr, p 265)

In the course of the cross-examination the witness acknowledged that Ford would probably not sell one of its plants to a competitor (Tr, p 281) and, as a result, the potential market of buyers seeking to buy a manufacturing facility like the subject would be limited by restrictions the seller might impose (Tr, p 281), but he would not necessarily make an adjustment for this type of restriction.

Kendzior acknowledged that his percentage adjustments were to some extent based on his experience. (Tr, p 233)

After adjustments Petitioners' range of unit values for both 2006 and 2007 was \$5.91 to 11.31 per square feet of gross building area, including land value, with an ultimate unit value of the subject property of \$8.00 or \$12,752,480, rounded to \$12,800,000.

*Mark Simzyk*, an accredited senior appraiser with the American Society of Appraisers in the appraisal of machinery and equipment, was qualified as an expert and offered testimony in support of the appraisals he had prepared valuing the personal property on the subject real property parcel as of the relevant valuation dates (P-2 and P-4).

He explained that the scope of his assignment was to estimate the true cash value of personal property in Parcel Identification Number K-99-109-001-00 as of December 31, 2005 (P-2) and December 31, 2006 (P-4).

After determining the scope of his assignment, he then determined what items he was appraising and the purpose of his analysis, and proceeded to collect data. (Tr, p 318)

During the data collection phase of his assignment he talked with people at the plant and reviewed fixed asset registers containing all the assets that were on site and to be consider in his analysis. (Tr, p 319) He indicated that his appraisals were completely independent of previous fair value analysis done by Duff & Phelps for purchase price allocation of the subject plant for financial reporting purposes. (Tr, p 323)

The property was inspected by him and two members of his team on February 25, 2008. Their inspection consisted of what the witness characterized as “floor to sheet reconciliation of assets.” (Tr, p 325) This process consisted of taking fixed asset listings and consolidating them by department number and dollar. It was determined that roughly 90% of the value of the assets from an original cost perspective was represented by a dollar amount of \$35,000 or higher (Tr, pp 326-327) The fixed asset listing included items with original cost of \$2,500 or higher.

As of December 31, 2005, Simzyk testified that there were over 10,000 line items on the fixed asset list that consisted of approximately 80,000 individual assets at the plant. (Tr, p 327) For

assets that appeared on the fixed asset list as on site as of December 31, 2005, but were no longer present on the plant floor, Simzyk would question a representative of Petitioners as to “when this asset might have been removed from service.” (Tr, p 330) The witness indicated in response to an inquiry from the Tribunal that other than relying on information from the fixed asset list and from talking to people at the plant, he had no independent knowledge as to the conditions of various items of equipment as of the valuation date. (Tr, p 331) As a result of the inspection the witness indicated that some adjustments were made to the fixed asset list in that it was determined that some of the items classified on the fixed asset list as personal for 2006 were classified as real for 2007. (Tr, p 333) (P28). These items had an original book cost of \$8.2 million. (Tr, p 334)

Personal property located at the GTC was not valued as it was the opinion of the witness that it was not part of the parcel number nor were the items contained on the fixed asset list. (Tr, p 33)

In arriving at his conclusion of value using the market, Petitioners’ expert developed what he characterized as Market Based Cost Multipliers. This process is set forth at pages 55-61 of P-2 and P-4. Petitioners’ expert explained the theory and methodology employed by him in developing the multipliers which essentially consisted of taking 399 refined data points (sales) and developing market-derived depreciation multipliers for the categories defined as machining, injection molding, and auxiliary. (P-2 and P-4, pp 56-59) On cross-examination the witness acknowledged that other than the subject property and another property in Plymouth Township, he had never used the Market Based Multiplier method in a personal property appraisal. (Tr, p

454) From the value derived using its market-derived depreciation multipliers he then applied a penalty, stating:

an inutility penalty is necessary to adjust the assets valued because the Market Approach does not recognize additional obsolescence due to excess capacity and bottlenecks that exist at the subject production lines. Deducting the inutility penalty from the result of the application of the market based cost multipliers to the assets' historical cost yields the subject Asset's True Cash Value. (P-2 at p 60 and P-4 at p 62)

The sales that were utilized were from the Duff & Phelps data base and sales that Ford and ACH had provided in addition to some sales of DaimlerChrysler. The sales considered were sales occurring between 1997 and 2005. The witness acknowledged that there was nothing in his work file allowing a third party to independently verify the accuracy of the data considered. (Tr, p 454)

Simzyk's concluded true cash value of the subject personal property tax parcel for 2006 is \$32,455,364 (not including the GTC personal property) and for 2007 is \$61,643,295 (not including GTC personal property now assigned tax parcel identification number K-99-109-002-00).

### **Respondent's Case**

Respondent, in support of its position, presented one fact witness: Sharon Frischman, the township assessor who signed the tax roll for both years under appeal; and three expert witnesses: Alfonso Consiglio, who was qualified as an expert in auditing of personal property (the Tribunal notes that Consiglio was not qualified as an expert in the valuation of the personal

property); David Heinowski, MAI, who was qualified as an expert in the valuation of real property; and Mark Rodriguez, ASA, who was qualified as an expert in the valuation of machinery and equipment for the purpose of critiquing Petitioners' personal property appraisals, but not for the purpose of expressing an opinion of value.

In addition, the following exhibits were offered and admitted unless otherwise indicated:

Exhibit No.

1. Ypsilanti Township Assessment Notice for 2006 (Real Property)
2. Ypsilanti Township Assessment Notice for 2007 (Real Property)
3. Ypsilanti Township Assessment Notice for 2006 (Personal Property)
4. Ypsilanti Township Assessment Notice for 2007 (Personal Property)
5. Personal Property Statement for 2006 (ACH)
6. Personal Property Statement for 2007 (Ford Motor company)
7. Ypsilanti Township Assessment Records
8. Resumé of Sharon Frischman
9. TMA Associates Summary Letter
10. TMA Associates Audit Report
11. Resumé of Al Consiglio
12. Resumé of David Heinowski Years 2006 and 2007
15. ACH Chart of Accounts (Confidential) (Bates Stamp Nos. ACH-YT 00909—00938)
16. ACH Dictionary Codes (Confidential) Bates Stamp Nos. ACH-YT 00791-00908)
17. ACH Fixed Asset Schedule (Confidential) (CD attached)-Admitted over objection

18. ACH Balance Sheet (Confidential) Bates Stamp Nos. ACH-YT (00761-00790)-Admitted over objection
19. Mark Simzyk Work File including but not limited to Bates Stamp Nos. ACH-YT (01634-02294) (Bates Stamp Nos.: ACH-YT 02070-02178) included in P26
22. State Tax Commission Bulletin No. 12
28. Assessor or Equalization Director's Notice of Property Incorrectly Reported or Omitted from Assessment Roll dated November 26, 2008
29. State Tax Commission Order No. 154-08-659 dated December 15, 2008
31. MRV-Mark Rodriguez CV
32. Email from Stewart Mandell re: Pinnacle Capital Cost-Admitted over objection
33. MI Form L-4175-Machinery and Equipment Tables
34. Analysis of New STC Multiplier Tables
35. Summary of Part A Presses and Transfer Machines
36. Summary of Part C Assets-Paint and Conveyor Systems
37. Summary of Part D Assets-Support Equipment
38. Additional Part D Assets as defined in 4798-Not reported by Petitioners, but located in audit adjustments
39. Original historical cost of R-35, 36, 37, 38 with new multipliers applied
40. Summary of R-39 in table form

Respondent's Witnesses

*Sharron Frischman* is a Level 4 Assessor and was the township assessor between 2001 and 2009. She indicated that she had visited the plant and the Rawsonville facility two or three times in 2002 and again in 2007 and 2008. (Tr, p 593)

In her capacity as the township assessor, Frischman indicated she was familiar with the personal property statements provided by ACH for tax year 2006 and by Ford for tax year 2007. (R-5 and R-6) (Tr, p 554) She explained the four sections of the respective personal property statements and indicated that she would personally review the statements and make any adjustments she deemed fit prior to preparing the assessment notice. (Tr, p 666) She indicated that the reason for her personal review and attention was because when Visteon (a previous owner) had submitted its statements she had had problems with “classification,” and her practice was to move 75% of Visteon’s reported totals on Section D over to Section B (Tr, p 556) because she believed items were being misreported.

Frischman indicated that not all the personal property located at the Rawsonville site was included in Parcel Identification Number K-99-109-001-00 for either year under appeal. For tax year 2006 personal property located in the “GTC” building had not been reported or included. For tax year 2008 the personal property located in the “GTC” building was assigned a separate tax parcel number and is not a part of this action.

The witness testified that in preparing the personal property assessments, she used the State Tax Commission multipliers which she further indicated were merely guidelines (Tr, pp 568-569) and didn’t use or consider any other approaches to valuing the personal property. She further indicated that the township was asking for an increase in the personal property assessments as they appear on the roll because the township hired an auditor to look at the personal property statements and the request to increase the assessments is based on that report. (Tr, p 585) During

the auditor's visit to the plant Frischman accompanied him and the visit took approximately half a day. (Tr, p 586) Frischman stated that she had never valued a specific item of equipment using the STC tables as they were intended to value a group of assets. (Tr, p 589)

*Alfonso Consiglio* was qualified as an expert in the auditing of personal property (not valuation) and is a certified personal property examiner. He testified that he had been engaged by Respondent to perform a personal property audit of the Rawsonville facility as of December 31, 2005 and 2006. (Tr, p 626) It was his understanding that the reason he was engaged to conduct the audit was because there was some equipment identified by the assessor that was not being reported. (Tr, p 626)

As part of his audit Consiglio reviewed the 2006 and 2007 personal property statements filed by Petitioners and a chart of account (R-15), which is the general ledger chart of accounts. He described the chart of accounts as the framework for the general ledger system employed by the taxpayer. He described R-16 as the dictionary code employed by ACH that is the next level underneath the property plan and equipment section of the balance sheet and that is how the fixed asset accountants or the property accountants at the plant will capture the asset cost; it helps identify categories of assets. Consiglio also described R-17, the 800-page fixed asset schedule provided on a compact disc, together with R-18, identified as the balance sheet and income statement as of December 31, 2005 and December 31, 2006 for ACH. (Tr, p 631)

Consiglio explained the relationship between the dictionary codes and fixed asset schedules, stating that the fixed asset schedules for each capitalized asset have an indicated dictionary code, so each asset will have a unique dictionary code attached to it. (Tr, p 632)

He further indicated that his inspection/tour of the facility occurred in May of 2008 and lasted three or four hours. (Tr, p 634)

As a result of his audit and 3 to 4 hour site inspection, Consiglio concluded that an adjustment was warranted in the methodology for the analysis of personal property reporting for tax year 2006 and 2007. For tax year 2006 his audit recommendation was to move \$25,077,359 from table D back to table B (machinery and equipment) and for 2007 to move \$27,087,112 from table D to table B. (Tr, pp 658-659) The adjustments were at original cost, not depreciated cost or true cash value of the items on the respective valuation date. In addition to moving original cost of items from one table to another, the witness concluded that certain construction interest had not been included in the original so he also increased the original cost in those categories (Tr, p 660) The witness, in response to an inquiry from the Tribunal acknowledged that there was *no attempt to ascertain whether the fact that he had moved an item from table D to table B or included construction interest for the item affected the item's usual selling price in the market place.* (Tr, pp 660-661) Again in response to inquiry from the Tribunal, the witness indicated that he did not know whether an item being disconnected, in use, or not in use, would affect the usual selling price for that item on the relevant valuation date. (Tr, p 664)

On cross-examination Consiglio *indicated that his audit did not include property that was reported on the personal property statements, but not actually in the plant, although that would usually be part of his audit.* (Tr, p 670) He further stated that his normal procedure was to interview the taxpayer and their personnel and inspect their facility, in addition to reviewing their accounting records (Tr, pp 670-671), but here he conducted a limited or “desk cost reconciliation.”

Consiglio, when doing an audit to verify a taxpayer’s personal property statement, always uses the State Tax Commission’s multiplier tables as a mass appraisal tool, but not to value a single piece of equipment. (Tr, p 676) In response to Petitioners’ counsel’s inquiry that he was not aware of any methods other than the STC multiplier tables he could use to value personal property to which Consiglio answered “No” (Tr. p 678) As a result of his adjustments, the assessed and taxable of the property increased from \$40,677,000 to \$46,539,000 in 2006 and from \$68,390,400 to \$70,7000,000 in 2006, although the assessor’s adjustments in moving 75% of the reported table D assets over to table B had already been reflected in the assessment. (Tr, p 703).

*Mark Rodriguez-ASA* of MR Valuation Consulting, was qualified as an expert in the valuation of machinery and equipment. He indicated that his scope of engagement in this case was to review the various sections of the Duff & Phelps 2005 and 2006 appraisal reports (P2 & P4) relating specifically to the market or sales comparison approach and to offer comments. (Tr, p

736) He further indicated that he had not been engaged by Respondent to perform an appraisal or review appraisal.

Petitioner objected to the testimony and placed a continuing objection on the record. The basis of the objection was that Rodriguez has not “complied with USPAP either by providing a written review appraisal or, in the absence of a written review appraisal, an oral review appraisal requires at least a certification of his appraisal and that has not been provided.” (Tr, p 742) The Tribunal overruled the objection and determined that Rodriguez had not performed a review appraisal nor had he rendered a conclusion of value, but merely critiqued the approach utilized by Petitioners’ expert in valuing the personal property. Further, even if Rodriguez had violated USPAP, which the Tribunal specifically finds he did not, that violation would only go to the weight and credibility of the testimony and not its admissibility (See *Bass Pro Outdoor World and Taubman Auburn Hills Associates LP v City of Auburn Hills*, MTT 275731 (April 28, 2003), where the Tribunal found that lack of state licensure did not preclude expert testimony of a non-Michigan licensed appraiser but did go to weight and credibility).

In preparation for his testimony Rodriguez reviewed excerpts of P-2 and P-4, together with personal property statements filed by ACH and Ford Motor Company dated 12-31-05 and 12-31-06 and marked as R-5 & R-6.

He also reviewed American Society of Appraisers' *Valuing of Machinery and Equipment-The Fundamentals of Appraising Machinery and Technical Assets* (2nd ed); Appraisal Institute, *The Appraisal of Real Estate*, (13<sup>th</sup> ed), and *Fair Value for Financial Reporting*, by Alfred M. King.

The witness indicated that he was familiar with market multipliers utilized by Petitioners in valuing machinery and equipment; however, he stated that this approach "is designed in the book to be used for one piece of equipment. It has been modified by Duff and Phelps to be used more in a mass appraisal technique . . . I don't agree with the final results and the verifications and checkings of that procedure to justify issuing specific curves on this particular data." Rodriguez further stated his opinion applied to the specific tables set forth on pages 56 and 57 of Petitioners' Exhibit P-2 for 12-31-05. (Tr, p 765)

As an example of such lack of being able to verify P-2, page 1504, he called the Tribunal's attention to the item described as Sale-Machine Cutting Welder-LaPorte Bean Welder –Year 1995, Location-Indiana, Sale Year 2004, Historic Cost \$32,166, Installed Sale Price \$5,470, Price/Cost 17%, Age 9—\$32.Price/Cost 9. The witness indicated that, based on the information provided, there was no way to verify the historic cost of the item, how the item was exposed to the market for sale, its condition, who sold the item, and who bought the item. He stated that all of this data would generally be available either in the appraisal itself or the work papers.

Further, all of the sales data points were from sales of Ford, ACH or Daimler-Chrysler, together with some internal sales information from Duff & Phelps. It appears that no sources or sales were utilized in arriving at the 800 original data points.

The witness gave as an example a way to verify the appropriateness of a sale price, i.e., he could go on eBay and look for sales of welders, and could click “closed sales” and he could look at probably thousands of welding machine sales. Using this procedure would eliminate being hit with a penalty because of Ford’s particular application of that asset. (Tr, p 782) He continued and stated that eBay is a normal market place for used machinery and equipment.

Rodriguez indicated that he was of the opinion that the Duff & Phelps procedure and the methodology it employed did not result in a determination of true cash value, but rather what is called “investment value.” (Tr, p 778) He called the Tribunal’s attention to P-2 (personal property appraisal), at page 8 wherein Duff & Phelps in its Premise of Value, states:

**Fair Market Value-Installed** is the estimated amount, expressed in terms of money that may be reasonably expected for an installed property in an exchange between a willing buyer and a willing seller, with equity to both, neither under any compulsion to buy or sell, and both fully aware of all the relevant facts, including installation, as of a specific date. (This amount includes all normal direct and indirect cost, such as installation and other assemblage costs, to make the property fully operation but does not have to be support by the business earnings.) *Valuing Machinery and Equipment: The Fundamentals of Appraising Machinery and Technical Assets*, page 3, 2000, 2005; Machinery and Technical Specialties Committee of the American Society of Appraisers, Washington, D.C.

Rodriguez continued his explanation of the difference between market value and investment value:

As used in appraisal assignments investment value is the value of property to a particular investor based on that person’s investment requirements. In contrast to market value, investment value to an individual – investment value is value to an individual, not necessarily value in the marketplace. Investment value reflects the subjective relationship between a particular investor and a given investment. It differs from the concept of market value, although investment value, market value indications sometimes may be similar. If the

investor's requirements are typical with the market, investment value in this case will be the same as market value.

Now, what I'm getting at here is if I have a drill press and I'm trying to determine the true cash value of that drill press, why—and I put it on eBay, let's say, why would a buyer of that or somebody determining the true cash value of that care about the economic obsolescence of Ford or some of their bottlenecking issues? Those—you know, if I'm going to put a drill press on eBay and I'm going to sell it, why would a buyer pay less for my drill press because of the economic situations of Ford and their plant? It doesn't pertain. The value that they determined here in introducing economic obsolescence takes their value and makes it an investment value. (Tr, pp 780-781)

In further explaining what he believed was a faulty premise of value, Rodriguez stated:

They have investment value specific—as I've read it's a specific to this particular investment in this particular situation and that's not what the goal here is. The goal is to determine the true cash value, so that's why you have a tremendous difference in those curves on page 55 because Duff & Phelps' selected data was more--was confidential data in an automotive transaction that shows a significant reduction in value. (Tr, pp 782-783)

*David Heinowski*, MAI, testified in support of his conclusion of value as set forth in the appraisal he prepared (R-13) that concluded to a true cash value of \$26,500,000 as of December 31, 2005 and \$27,000,000 as of December 31, 2006. He described the improvements located on the subject real property as the main industrial structure and ancillary improvements, which include parking lots, drives, water, tower, water treatment facility, guard shack, etc. Heinowski inspected the property twice, on October 15 and again on October 23, 2007, and found that the buildings were in good general condition (Tr, p 841) with little deferred maintenance.

He concluded that the highest and best use of the property as improved was its continued use as an industrial structure. (Tr, p 848)

Heinowski testified as to his methodology employed in valuing the land for his cost approach together with how he costed the improvements. He indicated he utilized Marshall Valuation Service, concluded the primary building was classified by Marshall Swift as a Class C, and used the segregated cost method to cost the structures. (Tr, p 859) He indicated that he believed the results are more accurate using the segregated cost method to arrive at a replacement cost new. (Tr, p 863)

Heinowski was not aware of any one million plus square foot heavy industrial buildings being built in Michigan in the last five years. (Tr, p 868) He further stated that after coming up with modified reproduction cost new, he then applied trend multipliers (Tr, p 872)

He explained his sales comparison approach appearing at page 92 of R-13 and acknowledged that all of his sales, with the exception of Sales 3 and 5, occurred between 1998 and 2000.

Heinowski believed that based on his investigation the personal property component of the sale was \$2,000,000 rather than \$2,950,000 as verified by Petitioners' expert. He explained that one reason for the difference in square footage between Petitioners' and his appraisal could be inside versus outside wall, about a 50,000 square foot difference, but neither used that sale as the sole indicator of value. (Tr, p 899)

Heinowski also indicated he did have a negative adjustment for leased fee for his Sale 2 because at the time of sale there was no lease based on conversations with Mr. Gursky and Mr. Spencer. The lease to Ryder Logistics was signed immediately after the sale.

Heinowski's market adjustment (Tr, p 901) database appears to be made up of more than just Michigan properties, and his database does not appear to take into consideration the deterioration of the Michigan market.

#### **Tribunal's Request for Information from the Parties**

At the conclusion of Petitioners' and Respondent's cases, the Tribunal having recently become aware that the State Tax Commission issued new depreciation multiplier tables (P-35) requested each of the parties to attempt to ascertain what effect, if any, the new depreciation multipliers would have on the 2006 and 2007 assessed value of the personalty if they had been in effect for the respective tax years on the assessments of the property and had been utilized in seeking the assessments using those tables.

On the final day of the hearing Respondent's personal property auditor and Petitioners' personal property valuation expert presented their respective conclusions to the Tribunal.

Petitioners' expert did an analysis as of December 31, 2005 (P-37) using the new multiplier tables based on how Petitioners' expert classified the respective assets regardless how the items were originally classified by Petitioners in their personal property statements or as reclassified by Respondent's assessor (Tr, pp 1053-1057) Petitioners concluded to a true cash value of

\$37,160,122. Petitioner performed the same exercise for tax year 2007 (P-38) and arrived at a true cash value of \$56,687,560. (P-38)

Respondent's auditor performed what he perceived as the same analysis as was requested by the Tribunal of Petitioners. Using the definitions contained in Form 4798, Respondent's auditor attempted to apply dictionary codes (R-16) and apply the items identified by the codes to the new tables, regardless of what the items in fact were. (Tr, p 1062) and the fixed asset schedule (R-17). Based on the auditor's interpretation of the STC definitions, he concluded to a true cash value of the personal property using the new multipliers of \$135,055,827 in contrast with his audited value using the STC tables in existence as of December 31, 2006 of \$141,596,900. (Tr, p 1084) To accept Respondent's revised true cash value conclusion assuming the new multiplier were in effect, which they were not, would be to tacitly validate Respondent's auditor's methodology utilized in performing his original audit, which the Tribunal will in the Findings of Fact section of this Opinion and Judgment find flawed and unreliable.

On the other hand, the Tribunal determines that Petitioners' expert's conclusions are little better. Since the new STC tables were not in effect on either of the valuation dates before the Tribunal, the Tribunal will not consider the effect of the new tables on its conclusion of value in this matter.

### **FINDINGS OF FACT**

The Tribunal, having considered all of the documentary evidence and testimony submitted by the parties and based upon the record before it, concludes:

The subject real property consists of approximately 94 +/- acres of land located at 10300 Textile Road, Ypsilanti Township, Michigan (Rawsonville Plant). Situated on the real property is a large manufacturing building and several ancillary buildings. The structures were built in stages commencing in 1956 with additions added in 1964. The main building area is approximately 1,241,000 square feet in size with secondary structures on site making up the balance of the total 1,594,000 +/- square feet.

The subject personal property consists of approximately 80,000 items that are primarily made up four groups: Machining-Machines used for drilling, milling, honing, grinding, transfer machines, screw machines and lathes; Auxiliary-equipment such as testing equipment, compressors, furnaces, cranes, baler, etc.; Injection-Equipment such as injection machines and presses; and Mobile Equipment-Equipment used for the movement of material including fork trucks, tugs and floor washers.

At all times relevant to this case the domestic industry was in a state of crisis with the “Big Three’s” market share having declined from 73% in 1996 to 52.2% in 2005.

During 2004 and 2005 there were 64 plants that were shut down totaling approximately 83 million square feet of automotive or automotive-related manufacturing space and there existed a substantial over supply of 1 million square feet of automotive or automobile parts manufacturing plants on the market or scheduled for demolition.

The subject property, due to its size and layout, is a limited market property as the term is generally used. (See Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13<sup>th</sup> ed, 2001), p 24.

The highest and best use of the subject real property and personal property as of both valuation dates is as industrial.

In arriving at their respective estimates of true cash value of the subject real property both parties' appraisers considered the income approach, but did not utilize it for reasons stated in their respective appraisal reports. They did consider and use the cost and sales comparison approaches in arriving at their respective real property value conclusions.

Both experts in utilizing the cost approach concluded to between 89% and 93% accrued depreciation from all sources in arriving at their respective estimates of value.

The Tribunal finds that both experts considered the real property located at 1901 S. Canal Drive, Delta Township, Lansing, Michigan (Petitioners' Sale 3 and Respondent's Sale 5) comparable to the subject and the Tribunal likewise so finds.

The Tribunal finds that the sale price of \$18,000,000 for the Canal Drive property included approximately \$2,950,000 of personal property, which was verified by Troy Kennedy. (Tr, p 238) Deducting the value of the personal property netted \$15,050,000 for the real property or \$9.44 per square foot unadjusted ( $\$15,050,000 \div 1,594,000$  sf).

The Tribunal finds that the square footage of the improvements on the subject property is 1,594,000.

Considering the turmoil that existed in the American auto industry as of both valuation dates, the Tribunal is not impressed with Respondent's inclusion of four sales that occurred in 1998, 1999 & 2000 in its analysis of sales to arrive at an estimated value of the real property for its sales comparison approach. The Tribunal finds time/market adjustments for the older sales difficult if not impossible to accurately verify and codify.

The Tribunal finds Respondent's Sale 3, occurring in December of 2005, and Sale 5, occurring in January 2005, relatively close to the relevant dates and as such require little or no time/market condition adjustment. The Tribunal finds these sales to be valid units of comparison and based

on this record the sale prices reflected by these sales (subject to removing the personal property component from the Canal Road sale).

The Tribunal took into consideration market conditions and trends in the automotive and automotive parts industry on the relevant valuation dates and finds that the conditions and trends in the automotive industry were generally known at the time of these sales and would have been taken into consideration by market participants.

The Tribunal finds, taken as a whole, Respondent's real property Sales 2 and 5, and adjustments made to those sales are more credible. The Tribunal finds Respondent's verification and adjustment process subject to modifications that the Tribunal will make in the Conclusions of Law section of this Opinion and Judgment more credible.

This finding is based in part on the Tribunal's finding that some of the comparables utilized by Petitioners' expert were in fact sale lease backs, and significantly smaller in size, together with several of Petitioners' adjustments appearing to be excessive, non-market based, or as a result of questionable appraisal principles.

The Tribunal finds for tax year 2006 neither party valued personal property located within tax parcel K-99-109-001-00, more commonly referred to as the GTC, nor did its value appear on the tax roll.

Using information provided to Respondent's assessor from Petitioners' fixed asset schedule, Frischman determined the true cash value using the STC depreciation multipliers to be \$6,943,800 for tax year 2006. (Tr, p 1088) Petitioners did not present any testimony or evidence to the contrary and as a result the Tribunal finds that, absent any other evidence to the contrary, the non-included personal property has a true cash value of \$6,943,800, and will add this amount to its ultimate conclusion of true cash value for the personal property for tax year 2006.

The Tribunal finds that Petitioners' personal property appraiser, Mark Simzyk, other than for the subject property and another property in Plymouth Township, had never used the Market Based Multiplier method in a personal property appraisal. (Tr, p 454)

The Tribunal finds that Petitioners attempted to value the personal property within the subject personal property tax identification number for both tax years by constructing "Market-Based Cost Multipliers" using sales collected from Duff & Phelps, ACH/Ford between 1997 & 2005, together with a limited number of DaimlerChrysler sales during that period.

Petitioners' expert acknowledged that there was nothing in his work file that a third party could use to independently verify the accuracy of the data considered (Tr, p 454), and after extensive review of all the exhibits and testimony submitted, the Tribunal is unable to test the validity of Simzyk's conclusion of value using what Petitioners characterize as their Market Approach (P-2, p 55 and P-4, p 57).

The Tribunal finds that Petitioners' "Inutility Penalty" that was included in their cost approach for both valuation dates was in fact valuing the items' use or investment value rather than market value.

The Tribunal finds that Petitioners' "Market-Based Cost Multiplier" method of attempting to establish true cash value of approximately 80,000 items of personal property using approximately 300 sales (data points) lacking in credibility at least as applied by Petitioners' expert.

The Tribunal finds that Respondent presented absolutely no evidence whatsoever as to the true cash value of the subject personal property for either of the two valuation dates, relying on the STC depreciation multipliers and modification by the assessor to Petitioners' timely filed personal property statements.

Respondent engaged a personal property auditor who conducted a "limited or desk audit reconciliation" rather than his normal audit. (Tr, p 671) This limited audit did not include any attempt to identify property included in the personal property statements but not presented on the site, which he would normally do. (Tr, p 670)

The Tribunal finds that the "limited or desk audit reconciliation" performed by Respondent's auditor does not form a sufficient basis to prove or justify his conclusion that the assessed and taxable values of the personal property contained within the above-described tax parcel be

increased from \$40,677,000 to \$46,539,000 in 2006 and from \$68,390,400 to \$70,7000,000 in 2006.

The Tribunal finds that the scope audit conducted by Consiglio was entirely “one sided” in that no attempt was made to determine if property listed in the personal property statements by Petitioners was not present on the site, but only to find items which were not included in the statements but present.

The Tribunal also finds that the Consiglio audit consisted primarily of moving items of personal property as reported by Petitioners in their timely filed personal property statements from one category to another without actually inspecting and making an independent determination of the category in which the items should be placed. The Tribunal rejects this superficial method of attempting to justify an increase in the assessed values placed on the personal property parcel on the 2006 and 2007 tax rolls by the assessor.

#### **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, as equalized, and that beginning in 1995, the taxable value is limited by statutorily determined general price increases, adjusted for additions and losses.

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%...; 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.

MCL 211.27a (2) provides:

- (2) Except as otherwise provided in subsection (3), for taxes levied in 1995 and for each year after 1995, the taxable value of each parcel of property is the lesser of the following:
- (a) The property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions. For taxes levied in 1995, the property's taxable value in the immediately preceding year is the property's state equalized valuation in 1994.
  - (b) The property's current state equalized valuation.

The Michigan Legislature has defined "true cash value" to mean "the usual selling price."

As used in this act, "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. MCL 211.27(1); MSA 7.27(1).

"True cash value" is synonymous with "fair market value." *CAF Investment Co v State Tax Comm*, 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 are to 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 Dep't 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.” (Citations omitted) *Jones and 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); MSA 7.650 (37)(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 and Laughlin* at 354-355, citing: *Kar v Hogan*, 399 Mich 529, 539-540; 251 NW2d 77 (1976); *Holy Spirit Ass’n for the Unification of World Christianity v Dep’t of Treasury*, 131 Mich App 743, 752; 347 NW2d 707 (1984).

“There are three traditional methods of determining true cash value, or fair market value, which have been found acceptable and reliable by the Tax Tribunal and the courts. They are: (1) the cost-less-depreciation approach, (2) the sales-comparison or market approach, and (3) the capitalization-of-income approach.” *Meadowlanes Limited Dividend Housing Ass’n v City of Holland*, 437 Mich 473, 484-485; 473 NW2d 636 (1991); *Antisdale* at 276-277, n 1. The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in marketplace trading. *Antisdale* at 276, n 1. “Variations of these approaches and entirely new methods may be useful if found to be accurate and reasonably related to the fair market value of the subject property.” *Meadowlanes*, at 485, referencing *Antisdale* at 277, n 1. “It is the duty of the Tribunal to select the approach which provides the most accurate valuation

under the circumstances of the individual case.” *Antisdale* at 277, citing *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170; 141 NW2d 699 (1966), aff’d 380 Mich 390 (1968).

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 may not automatically accept a respondent’s assessment but must make its own findings of fact and arrive at a legally supportable true cash value. *Pinelake Housing Cooperative v Ann Arbor*, 159 Mich App 208, 220; 406 NW2d 832 (1987); *Consolidated Aluminum Corp 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. *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* at 485-486; *Wolverine Tower Associates v City of Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980). A similar position is stated in *Tatham v City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982): “The Tax Tribunal is not required to accept the valuation figure advanced by the taxpayer, the valuation figure advanced by the assessing unit, or some figure in between these two. It may reject both the taxpayer’s and assessing unit’s approaches.”

### CONCLUSIONS OF LAW

The central issues in this dispute are what is the true cash (market) value of the subject real property for tax years 2006 and 2007 (Parcel Identification Number K-11-25-200-001), and what is the true cash value of all of the personal property located on Parcel Identification Number K-99-109-001-00 for tax years 2006 and 2007.

The Tribunal is required to determine which valuation methods are useful to determine an accurate market value estimate of the subject properties and to make an independent determination of the true cash value based upon its evaluation and analysis of the evidence.

As to the real property parcel (K-11-25-200-001), the Tribunal concludes that the Sales Comparison Approach yields the most valid indicator of value for both years. Neither party has contended that the Income Approach is a valid indicator of value for the reason that properties the subject's size and nature are generally owner occupied. Although the cost approach was considered and utilized by both parties, both parties' cost model found depreciation from all courses in the range of 86 to 94 percent. It is generally considered that the cost approach is of questionable reliability in attempting to estimate depreciation in older properties (subject was built between 1957 and 1964). *The Appraisal of Real Estate*, 13<sup>th</sup> Edition, Appraisal Institute (2008) As a result, the cost approach used by both parties does not produce a valid indicator of value and the Tribunal does not utilize it.

What the Tribunal is then left with is the utilization of two sales considered by Respondent. The first is the sale identified as Sale 3 in Respondent's appraisal (R-130), which is a 1,236,218 square foot industrial property located in the City of Detroit that sold on December 20, 2005 (R-13, p 97) and the second being Sale 5 (Petitioners' Sale 2), a 1,594,000 square foot structure that sold on January 13, 2005 (R-13, p 98) located in Delta Township (Lansing).

The Tribunal having concluded that Respondent's Sales 3 and 5 are the most similar to the subject and makes the following adjustments to the adjustments made by Respondent's expert:

**Respondent's Sale 3:** Respondent concluded to a sale price per square foot of \$10.54 for Sale 3; however, the Tribunal finds that this sale is sufficiently close to the first valuation date so that no adjustment is necessary. The Tribunal concludes that Respondent's location adjustment of a positive 20% is excessive and, while acknowledging that the subject occupies a superior location, finds that a positive 10% adjustment is more appropriate. The Tribunal makes no further adjustments to Respondent's Sale 3. The per square foot value applying the above adjustment is  $(\$10.54 + 10\% \text{ [location adjustment]} + 5\% \text{ [functional utility]}) = \$12.61$  for both tax years 2006 and 2007.

**Respondent's Sale 5 (Petitioners' Sale 2):** The Tribunal, having found the per square foot sale price after deducting the personal property from the sale price to be an unadjusted price per square foot of \$9.44, based on the evidence and applying its own expertise, makes the following adjustments: a positive 10% for location to the subject, which is similar to Respondent's Sale 2; a negative 5% age adjustment and negative .25% for land-to-building ratio due to the subject's

below normal land-to-building ratio. Applying these adjustments the Tribunal concludes to a per square foot sale price for Sale 5 for both years of  $(\$9.44 + 10\% \text{ [location adjustment]} - 5\% \text{ [age adjustment]} - 2.5\% \text{ [land-to-building ratio]}) = \$9.67$ .

The Tribunal concludes that Respondent's Sale 5 (Petitioners' Sale 2) should be given slightly more weight than Respondent's Sale 3 because both parties acknowledge its similarity to the subject and, as a result, concludes to a per square foot price for the subject property for both years of \$11.00.

The Tribunal further finds that the **True Cash Value** of the subject **real property** (K-11-25-200-001) is **\$17, 534,000** for tax years 2006 and 2007 with a corresponding **assessed** and **taxable** value of **\$8,767,000**.

The Tribunal must next attempt to resolve the true cash value of the personal property located within tax parcel K-99-109-001-00 as of both valuation dates. Petitioners have alleged and have attempted to prove that the personal property has been assessed in excess of 50% of its true cash value in violation of constitution and statute. Respondent has taken a position that the subject property has, in fact, been assessed at less than 50% of its true cash value and requests that the Tribunal increase the assessed and taxable value of the subject property.

Since both parties are seeking a change in the assessments of the personal property as it appears on the tax roll for 2006 and 2007, both have the burden of proof to establish the true cash value

of the subject property to the extent that they wish the tax assessments to be changed. MCL 205.737(3); MSA 7.650(37)(3).

Respondent relied entirely on the STC multiplier table mass valuation method to assess the subject property based on Petitioners' personal property statements as adjusted by Respondent's assessor. It made no attempt to actually determine the usual selling price of the various items of personal property contained within the tax parcel as of the relevant valuation dates. The Tribunal, in this matter, acknowledges that the mass appraisal methodology set forth in the STC multipliers may have value for assessment purposes and can be used as a guide to assist an assessor in determining an assessment (50% of usual selling price). MCL 211.27(1); MSA 7.27(1) But it is not well suited to defend against a market-based methodology required in Tribunal appeals. *See, e.g., Ferndale Laboratories, Inc v City of Ferndale*, MTT Docket No. 315338 and 329408 (March 18, 2009).

Michigan, as a market-based state, provides for using a cost approach with depreciation multipliers if there is no other alternative or market-based evidence.

*Wayne County v State Tax Commission*, 261 Mich App 174; 682 NW2d 100 (2004), held:

In an individual assessment dispute, if the municipality, or for that matter the utilities, do not think the multipliers equate to true cash value, they can introduce evidence to the contrary for consideration. *County of Wayne v Michigan State Tax Com'n*, 261 Mich App 174, 236-237; 682 NW2d 100,136 (2004).

The above case upheld the validity of the STC multipliers as an appraisal method, and further held if a taxpayer or municipality believes the multipliers are inadequate as applied to particular property, it must introduce other evidence of value. The Tribunal notes that this is not a new concept; it is consistent with the Tribunal's holdings in *Producers Color* and *IBM Credit v Grand Rapids*, Michigan Court of Appeals No. 181519 (1996), (invalidating State Tax Commission multipliers for computer equipment).

This Tribunal member is in full agreement with Judge Enyart's holding in *Ferndale Laboratories* that a well-proven market-derived sales comparison approach will trump the STC depreciation multipliers. This position was also supported by Respondent's rebuttal expert, Mark Rodriguez, who after critiquing Petitioners' attempt to create its own market-based depreciation multipliers, stated that one method to test the market was to utilize eBay sales to verify and establish sales. Petitioners in this matter did not to the Tribunal's satisfaction establish the true cash value of the subject property using a true market approach, but rather attempted to value 80,000 +/- items of personal property using approximately 300 sales data points provided by Ford/ACH and Duff & Phelps that were incapable of being verified either by Respondent or the Tribunal. The Tribunal rejects Petitioners' "Market Based Cost Multipliers" approach to establish a true cash value for the subject personal property, and concludes that it is nothing more than a refinement of Respondent's STC multiplier approach, which the Tribunal finds has value only in the mass valuation area and not to determine the usual selling price pursuant to statute.

The Tribunal concludes that Respondent presented no evidence credible or not credible to meet its burden of establishing that the assessed value as it appeared on the respective tax rolls reflected a value of less than 50% of the true cash value of the personal property with the exception that it is uncontested that the personal property located in the GTC portion of the tax parcel for tax year 2006 was not included in the assessment. Petitioners did not challenge at hearing the \$6,943,800 true cash value for those items determined by the assessor using the STC multipliers. Therefore, the Tribunal will add to its 2006 true cash value conclusion (the amount appearing on the roll) for parcel K-11-25-200-001, which will result in a true cash value of \$88,299,206.

For the reasons stated above, neither party met their burden in establishing a true cash value that would justify a change in the assessment other than as stated in the preceding paragraphs. The Tribunal reluctantly has no choice but to affirm the 2007 assessment on the roll in the amount of \$136,780,800.

#### JUDGMENT

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

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment

within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by the Final Opinion and Judgment within 90 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, 1995, at a rate of 6.55% for calendar year 1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a rate of 6.04% for calendar year 1998, (iv) after December 31, 1998, at the rate of 6.01% for calendar year 1999, (v) after December 31, 1999, at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000, at the rate of 6.56% for calendar year 2001, (vii) after December 31, 2001, at the rate of 5.56% for calendar year 2002, (viii) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ix) after December 31, 2003, at the rate of

2.16% for calendar year 2004, (x) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (xi) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (xii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (xiii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, (xiv), after December 31, 2008 at the rate of 3.315 for calendar year 2009, and (xv) after December 31, 2009, at the rate of 1.23% for calendar year 2010.

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

MICHIGAN TAX TRIBUNAL

Entered: March 30, 2010

By: Kimbal R. Smith III, Tribunal Judge