

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

Brighton Park Shopping Center LLC,
Petitioner,

v

MTT Docket No. 414123

City of Brighton,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Brighton Park Shopping Center LLC, appeals ad valorem property tax assessments levied by Respondent, City of Brighton, against Parcel No. 4718-31-202-065 for the 2011 and 2012 tax years. Jason Conti, Attorney, represented Petitioner, and Bradford Maynes, Attorney, represented Respondent.

A hearing on this matter was held on May 23, 2013, and May 24, 2013. Petitioner's sole witness was Lawrence G. Allen, MAI, Michigan Certified General Real Estate Appraiser. Respondent's sole witness was Jack J. Johns, Michigan Certified General Real Estate Appraiser.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash values ("TCV"), state equalized values ("SEV"), and taxable values ("TV") of the subject property for the 2011 and 2012 tax years are as follows:

Parcel No.	Year	TCV	SEV	TV
4718-31-202-065	2011	\$2,410,050	\$1,205,025	\$1,205,025
4718-31-202-065	2012	\$2,526,800	\$1,263,400	\$1,237,560

PETITIONER’S CONTENTIONS

Petitioner contends that the evidence presented in this case strongly supports a determination that the true cash value of the subject property on the assessment rolls is substantially overstated. Specifically, Petitioner contends that its appraisal evidence supports a value for the subject property of \$1.96 million for the 2011 tax year and \$2.34 million for the 2012 tax year. Petitioner further contends that (i) its appraiser correctly relied on the sales comparison and income approaches to determine the true cash value of the subject property, (ii) the income approach is the most appropriate method for valuing the subject property and was relied on most significantly by its appraiser, (iii) the sales comparison approach provides a check to the reasonableness of its appraiser’s income approach, (iv) its appraiser valued the fee simple interest, subject to actual occupancy and market rent, (v) Respondent’s appraiser failed to adequately support his assumptions and conclusions, (vi) Respondent’s appraiser’s concept of “frictional vacancy” in adjusting his capitalization rate is not supported, and (vii) Respondent’s appraiser failed to adjust the value determined using the income approach for stabilization costs (costs associated with adjusting actual vacancy to assumed market vacancy).

As determined by Petitioner’s appraiser, the TCV, SEV, and TV for the subject property for the tax years at issue should be as follows:

Parcel No.	Year	TCV	SEV	TV
4718-31-202-065	2011	\$1,960,000	\$980,000	\$980,000
4718-31-202-065	2012	\$2,340,000	\$1,170,000	\$1,006,460

PETITIONER’S ADMITTED EXHIBITS

P-1 Appraisal Report prepared by Allen & Associates, dated January 6, 2013.

P-2 Corrections to Appraisal Report (last page containing quality point analysis excluded).

P-3 CoStar information regarding Respondent's sale comparable #3.

PETITIONER'S WITNESS

Laurence G. Allen

Laurence G. Allen, MAI and a Michigan Certified General Real Estate Appraiser, was Petitioner's valuation expert. He testified that (i) he appraised the fee simple interest of the subject property, subject to the occupancy in place at market rents,¹ (ii) the highest and best use of the subject is multi-tenant rental property, (iii) the cost approach was not used to value the subject as it was unreliable given the age of the subject and the amount of obsolescence in the market, (iv) primary reliance was placed on the income approach in determining the TCV of the subject property because property such as the subject is primarily "bought and sold in the marketplace based on its income" (Transcript, Vol. 1, p. 66), with secondary support given to the sales comparison approach, (v) errors were made in the original appraisal, which were corrected in Exhibit P-2, and include corrections to the income approach on page 55 to change real estate taxes to an expense reimbursement, removal of nonreimbursable expenses in the conclusion on page 57, and removal of the rent concession from the stabilization cost on page 62, (vi) for tax year 2011, the subject was not at stabilized occupancy,

¹ Mr. Allen further testified that ". . . a pure fee simple would be with no leases in place. Because when there's a lease in place there's loss of right to use the property. It's no longer pure fee simple. For property tax purposes . . . it's necessary to look at present economic income, which means for leased or rented property. It means the usual economic return realized from a lease of rental property negotiated under current contemporary conditions between parties equally knowledgeable and familiar with real estate values. . . . But for rental property, in order to determine economic income it's – I would look at income that's in place only at market rent as opposed to contract rent." (Transcript, Vol. 1, pp. 53 – 55)

and in applying the income approach, a reduction in TCV was determined for stabilization costs, (vii) market rents were determined based on triple-net leases at the subject property and on leasing activity for other comparable properties, (viii) different market rental rates were determined for different portions of the subject, based on size and location, (ix) actual rents for the subject were considered, which included concessions to the tenants for various amounts of free rent² and tenant improvement allowances, (x) the subject derives additional income through expense reimbursements from the tenants for common-area maintenance (“CAM”), property taxes, and insurance, (xi) a vacancy rate of 15% and collection loss of .5% were determined based on historical occupancy of the subject property, as well as market occupancy, (xii) expenses were determined based on historic expenses, market information, and industry operating statistics, (xiii) he developed his capitalization rate in applying the income approach using CoStar general cap rate data, band-of-investment, and investment surveys, but “place[d] least weight on the band of investment and most weight on the investment surveys” (Transcript, Vol. 1, p. 164), (xiv) a tax load was not included in the cap rate because he reflected property taxes as reimbursement and as an expense, (xv) stabilization costs³ were deducted from the TCV determined using the income approach for 2011 to reflect the costs that would have been incurred by a purchaser of the property given stabilized occupancy of 85% and actual occupancy of 46%, and (xvi) in applying the sales comparison approach, he identified four comparable sales and adjusted these comparable sales for differences between them and the subject property,

² The concluded triple-net market rental rate reflects five months free rent “[b]ecause free rent was typical in the market at that time and to get to an equivalent market rent it was necessary to adjust for free rent.” (Transcript, Vol. 1, p. 76)

³ Stabilization costs include leasing commissions, lost rent, and tenant improvements.

including adjustments for market conditions, location, age/condition, occupancy rate, and tenant composition. (Transcript, Vol. 1, pp. 20 – 194; Vol. 2, pp. 203 - 209)

RESPONDENT’S CONTENTIONS

Respondent contends that the true cash, assessed, and taxable values initially determined by Respondent for the subject property for the tax years at issue should be reduced. Specifically, Respondent contends that (i) its appraiser determined the market value of the fee simple interest, which is what is required under Michigan law, (ii) its appraiser did not perform a fee simple subject to leasing analysis, which is nothing more than a disguised lease fee analysis, (iii) its appraiser performed both a sales comparison approach and an income approach and gave each approach equal weight in determining the true cash value of the subject property for the tax years at issue, and (iv) Petitioner’s appraiser failed to adequately support his determination of capitalization rates, lessor concessions, and calculation of stabilization costs in applying the income approach to value.

As determined by Respondent’s appraiser, the TCV, SEV, and TV for the subject property for the tax years at issue should be:

Parcel No.	Year	TCV	SEV	TV
4718-31-202-065	2011	\$3,250,000	\$1,625,000	\$1,427,870
4718-31-202-065	2012	\$3,100,000	\$1,550,000	\$1,466,420

RESPONDENT’S ADMITTED EXHIBITS

- R-1 GIS Aerial Map of Subject Property.
- R-2 Photographs of Petitioner’s Alleged Comparable Properties.
- R-3 Photographs of Petitioner’s Alleged Comparable Properties.
- R-4 Photographs of Petitioner’s Alleged Comparable Properties.

R-5 Retrospective Appraisal dated January 11, 2013, prepared by Jack J. Johns
Appraisal Company, Inc.

R-6 2011 Property Record Card.

R-7 2012 Property Record Card.

RESPONDENT'S WITNESS

Jack J. Johns

Jack J. Johns, Michigan Certified Real Estate Appraiser, was admitted as Respondent's valuation expert in this matter. Mr. Johns prepared a Retrospective Appraisal of the subject property for the tax years at issue, concluding that the true cash value of the subject property was \$3,250,000 for 2011 and \$3,100,000 for 2012. Mr. Johns testified that (i) he appraised the subject property as of December 31, 2010, and December 31, 2011, (ii) he appraised the fee simple interest in the subject property and did not perform a fee simple subject to leasing analysis, (iii) a fee simple interest is absolute ownership unencumbered by any other interest or estate, (iv) as part of that absolute ownership, the owner has the ability to encumber the property with leases, (v) this ability to encumber the property with leases is something that has to be taken into consideration when developing an income approach, (vi) the subject is a retail shopping center in an area with income demographics "that are well above state and national averages . . . [which] speaks to those residents having more disposable incomes on those properties in that market." (Transcript, Vol. 2, p. 31), (vii) the highest and best use of the subject property, as improved, is for its continued use as a retail shopping center, (viii) the subject is in an average to good location on Grand River, at a corner with a traffic light, and is functional and accessible with good traffic counts and good exposure in the front,

(ix) the cost approach was not developed because meaningful and accurate depreciation is hard to calculate on properties that are older and have been updated and renovated over the years, and investors give little credence to this approach when purchasing and selling these types of properties, (x) he prepared a direct capitalization income approach, relying on comparable properties to develop market rental rates for the various types of rental space present at the subject property,⁴ (xi) concessions were not made in his income approach because there was insufficient data that would warrant adjustments during the effective dates, (xii) a vacancy and collection loss factor of 15% was applied for 2011 and 10% was applied for 2012, based on discussions with agents and brokers, CoStar data, and his overall experience, (xiii) no expense reimbursements were included in potential income because any such income was reflected through adjustments to vacancy and collection loss, (xiv) expenses were determined through an analysis of market information and on his experience, (xv) a capitalization rate was determined based primarily on the market-extraction method, with support from the band-of-investment technique and national market surveys, (xvi) the capitalization rate he ultimately determined included an adjustment upward for unreimbursed expenses that would be incurred by the owner for the vacant portion of the subject property, (xvii) a sales comparison approach was also developed with comparables selected based on size, location, and similar market occupancy rates, (xviii) all of the comparable sales identified were sales of leased fee interests, and (xix) the final value conclusion for both tax years was based on equal weight to the income and sales comparison approaches. (Transcript, Vol. 2, pp. 7 – 202)

⁴ Potential rental space at the subject property includes smaller in-line space, larger retail space, and the freestanding building.

FINDINGS OF FACT

1. The subject property consists of one parcel of property located at 1005 – 1023 E. Grand River Avenue, Brighton, Michigan, Livingston County, known as the Brighton Park Shopping Center.
2. The subject property is a neighborhood shopping center containing a total of 39,585 square feet of gross area, with a separate freestanding building of 5,361 square feet, located on a site containing 5.85 acres.
3. Exclusive of the freestanding building, the subject property is comprised of six tenant spaces, including approximately 16,750 square feet occupied by Planet Fitness since December 2011, approximately 12,750 square feet occupied by Keller Williams, and four smaller in-line spaces.
4. The Planet Fitness space was leased in December 2011 at a rate of \$7.64 per square foot, with ten months free rent, and \$15 per square foot in tenant improvements.
5. The subject retail shopping center was originally constructed in 1956 and remodeled in 1999. The freestanding building was constructed in 2000.
6. The highest and best use of the subject property, as improved, is as currently used for shopping center use.
7. The subject property is zoned C-1, Community Shopping Center District.
8. The subject property was assessed for the tax years at issue as follows:

Parcel No.	Year	TCV	SEV	TV
4718-31-202-065	2011	\$4,194,220	\$2,097,110	\$1,427,870
4718-31-202-065	2012	\$4,012,540	\$2,006,270	\$1,466,420

9. As of December 31, 2010, the subject property was 46.7% occupied, and as of December 31, 2011, it was approximately 85% occupied.

10. Petitioner's appraiser gave primary weight to the income approach and secondary consideration to the sales comparison approach in determining the true cash values of the subject property for the tax years at issue.
11. In applying the sales comparison approach, Petitioner's appraiser identified four comparable sales, with sale dates ranging from May 2010 to January 2011, sizes ranging from 41,622 square feet to 92,515 square feet, and adjusted per square foot prices ranging from \$45 to \$51 for 2011, and \$56 to \$59 for 2012, concluding that the true cash value of the subject property was \$2,020,000 for 2011 and \$2,600,000 for 2012.
12. Petitioner's appraiser adjusted all of his comparable sales for market conditions, location, age/condition, occupancy rate, and three of the four comparable sales for tenant composition, but did not adjust for size or conditions of sale.
13. In applying the income approach to value, Petitioner's appraiser determined a market rent rate of \$8.02 per square foot based on an analysis of comparable leases. Petitioner further determined separate unadjusted market lease rates for the free-standing space at \$10.00 per square foot, for the small in-line space at \$13.00 per square foot, for the Planet Fitness space at \$7.50 per square foot, and for the Keller-Williams space at \$6.50 per square foot. Each of these rates was adjusted downward to reflect lessor concessions of five free month's rent, yielding adjusted rates of \$9.17, \$11.92, \$6.88, and \$5.96, respectively.
14. Petitioner's appraiser concluded that the market rents for the Keller-Williams space should be \$1 per square foot less than the Planet Fitness space due to its poor visibility from the main roads near the property.

15. In applying the income approach to value, Petitioner's appraiser determined that a 15% vacancy rate and a collection rate of .5% were appropriate based on market information.
16. In applying the income approach to value for each of the tax years at issue, Petitioner's appraiser determined applicable expenses to be \$3.28 per square foot for 2011 and \$3.50 per square foot for 2012.
17. In applying the income approach to value, Petitioner's appraiser determined a capitalization rate of 11% for 2011 and 10.75% for 2012.
18. Because actual vacancy for 2011 was approximately 46% and market vacancy was determined to be 85%, Petitioner's appraiser adjusted his value conclusion using the income approach for stabilization costs, including leasing commissions of 6% of market rent, tenant improvements of \$10 per square foot, and lost rental income.
19. Respondent's appraiser gave equal weight to the income and sales comparison approaches in concluding to a true cash value of \$3.25 million for 2011 and \$3.1 million for 2012.
20. In applying the sales comparison approach, Respondent's appraiser identified three comparable sales for 2011 and three comparable sales for 2012 (one of which was identified as a comparable sale for both years at issue), with sale dates ranging from February 2009 to August 2010 for 2011 and August 2010 to August 2011 for 2012, sizes ranging from 27,150 square feet to 76,830 square feet, and adjusted per square foot prices ranging from \$71 to \$99 for 2011 and from \$61 to \$71 for 2012, and concluded that the true cash value of the subject property was \$3,370,000 for 2011 and

\$2,965,000 for 2012. All of the comparable sales identified by Respondent's appraiser were sales of leased fee interests.

21. For 2011, Respondent's appraiser did not adjust his comparable sales for market conditions, but did adjust one or more of his comparable sales for location, size, quality, and age and condition.
22. For 2012, Respondent's appraiser did not adjust his comparable sales for market conditions or age and condition, but did adjust one or more of his comparable sales for location, size, and quality.
23. In applying the income approach to value, Respondent's appraiser determined a composite market rent rate of \$8.93 per square foot based on an analysis of seven comparable leases. Respondent further determined separate market lease rates for the free-standing space at \$15 per square foot, for the small in-line space at \$13 per square foot, for the Planet Fitness at \$6 per square foot, and for the Keller-Williams at \$7 per square foot.
24. In applying the income approach to value, Respondent's appraiser determined that a 15% vacancy rate for 2011 and a vacancy rate of 10% for 2012 was appropriate based on market information.
25. In applying the income approach to value for each of the tax years at issue, and recognizing that the subject leases were all triple-net leases, Respondent's appraiser determined applicable expenses to include a 5% management fee and replacement reserves of \$0.25 per square foot.
26. In applying the income approach to value, Respondent's appraiser determined a capitalization rate of 10% for 2011 and 10.25% for 2012, which include an upward adjustment for non-reimbursed expenses incurred by Petitioner.

27. In applying the income approach to value, Respondent's appraiser did not adjust his conclusion of value for stabilization costs that could be incurred by Petitioner during 2011.

28. Respondent's appraiser determined the true cash value of the subject property using the income approach to be \$3,130,000 for 2011 and \$3,240,000 for 2012.

CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value. See MCL 211.27a.

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

The Michigan Legislature has defined "true cash value" to mean:

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

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

Under MCL 205.737(1), the Tribunal must find a property's true cash value in determining a lawful property assessment. See *Alhi Dev Co v Orion Twp*, 110

Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal is not bound to accept either of the parties' theories of valuation. See *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985). The Tribunal may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination. See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485-486; 473 NW2d 636 (1991).

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735a(2). The Tribunal's factual findings are to be supported by competent, material, and substantial evidence. See *Antisdale v Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990). "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence." *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

"The petitioner has the burden of proof in establishing the true cash value of the property." MCL 205.737(3). "This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing; and (2) the burden of going forward with the evidence, which may shift to the opposing party." *Jones & Laughlin* at 354-355. However, "[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question." MCL 205.737(3).

The three most common approaches to valuation are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach. See *Meadowlanes* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968). The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in marketplace trading. See *Antisdale*. The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. See *Antisdale* at 277.

At the outset, there was some dispute among the parties between the type of interest being appraised by the respective appraisers and the correct interest that should be valued in considering the subject property. Petitioner's appraiser stated that he appraised the fee simple estate, "subject to the occupancy in place at market rents." (Transcript, Vol. 1, p. 53) Respondent's appraiser, on the other hand, appraised the fee simple interest without consideration of any existing leases present on the subject property. Both parties also contend that it is necessary to look at present economic income, as that term is defined in MCL 211.27(4). The parties disagree, however, in how this definition is to be interpreted, with Petitioner arguing that present economic income is for leased and rented property and that the Tribunal is authorized to consider the value of leases in place under *Royal Industrial Ctr v Royal Oak Twp*, unpublished opinion per curiam of the Court of Appeals, issued February 8, 2002 (Docket No. 225361), and Respondent arguing that Petitioner has appraised the wrong interest under *Meijer v Midland*, unpublished opinion per curiam of the Court of Appeals, issued March 24, 2005

(Docket No. 252660), and that a fee simple interest subject to leases in place at market rental rates and terms “is a fiction . . . [that] does not exist . . . [and] [t]o the extent that it doesn’t exist, it’s a leased fee interest, which you’re not supposed to appraise before the Tribunal for cases of this type.” (Transcript, Vol. 2, pp. 235).

MCL 211.27(1) provides, in part, that in determining the value of a property the “present economic income” of a property must be considered. In *CAF Investment Co v Saginaw Twp*, 410 Mich 428; 302 NW2d 164 (1981),⁵ the Michigan Supreme Court concluded that the Tribunal’s failure to use actual income as the basis of its capitalization of income in valuing taxpayer’s property constituted reversible error. In part, because of the Supreme Court’s holding in *CAF II*, the Michigan legislature revised the existing statute in 1982 by adding MCL 211.27(4), which provided, in part, that:

. . . “*present economic income*” means in the case of leased or rented property the ordinary, general, and usual economic return realized from the lease or rental of property negotiated *under current, contemporary conditions* between parties equally knowledgeable and familiar with real estate values. *The actual income generated by the lease or rental of property is not the controlling indicator of its cash value in all cases.* [Emphasis added.]

Subsequent to the addition of section (4) to MCL 211.27, the Court of Appeals reiterated the holdings in the two *CAF* cases, where the tax years at issue preceded the addition of MCL 211.27(4), but acknowledged that the provisions of MCL 211.27(4) may have yielded a different result if the tax years at issue were subject to the statutory change. There is nothing in either Supreme Court opinion to suggest that present economic income should not be based on actual income. In

⁵ The second of two *CAF* cases, commonly referenced as *CAF II*; see also *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442; 221 NW2d 588 (1974).

both *CAF I* and *CAF II*, the Supreme Court acknowledged that actual rent may not always be appropriate to the determination of the present economic income of a particular parcel of property. However, the Court made clear that exceptions to actual rent valuations should be premised on a finding that actual rent is either too speculative or does not reflect an accurate picture of a property's fair market value.

While we realize that the Michigan Legislature has recently amended the General Property Tax Act in response to the Supreme Court's decisions in CAF I and CAF II, these amendments were not in effect for the tax years involved in the instant case and we thus do not consider the effect of such legislation on the tribunal's valuation of the true cash value of petitioner's office parcel. Uniroyal, Inc v Allen Park, 138 Mich App 156, 162, 360 NW2d 156 (1984). [Emphasis added.]

Further, in *Fifty-Nine Seventy-Three Corp v Detroit*, unpublished opinion per curiam of the Court of Appeals, issued July 24, 1998 (Docket No. 202520), the Court of Appeals stated that while the *CAF I* and *CAFII* cases held that present economic income of property subject to a long-term lease could be calculated based on actual rental income from that property, “the Legislature later abrogated the effect of this decision by redefining ‘present economic income’ for leased properties . . . requiring the use of market rental rates in the valuation of leased property.”

In *Amurcon/Ridgewood Vista v Leoni Twp*, unpublished opinion per curiam of the Court of Appeals, issued March 7, 1997 (Docket No. 192485), the Court of Appeals did consider what the Legislature was attempting to accomplish in adding MCL 211.27(4) held that actual rents generated by subsidies constituted “circumstances” warranting such consideration:

MCL 211.27(4); MSA 7.27(4) does not preclude the use of actual rents in calculating cash value. This provision specifically provides that actual income generated by a lease or rental of property is not to be “the controlling indicator of its cash value in all cases.” From the Legislature’s use of the qualifying phrase “in all cases,” it can be inferred that the Legislature did not intend to preclude the consideration of actual rents in the value determination process *when the circumstances of the particular case warrant such consideration. Amurcon/Ridgewood Vista, supra* at 3. [Emphasis added.]

Similarly, in *Palace Sports & Entertainment, Inc v Auburn Hills*, unpublished opinion per curiam of the Court of Appeals, issued June 21, 2012 (Docket Nos. 294051, 294185), pp. 10, 11, the Court of Appeals held that while MCL 211.27(4) provides that actual income generated by a lease in place is not “the controlling indicator of its true cash value in all cases,” it may be controlling in certain cases, such as in the instant case, where “[a]mple evidence reflects that the property’s highest and best use involved its current use as an arena that hosted the Pistons, other sports teams, and entertainment events, and that the Palace received significant income from its lease agreement with the Pistons.”

Further, in *Royal Industrial Ctr v Royal Oak Twp*, unpublished opinion per curiam of the Court of Appeals, issued February 8, 2002 (Docket No. 225361), p. 2, the Court of Appeals held that in determining “present economic income” pursuant to MCL 211.27(4), “the Tribunal was expressly authorized to consider the value of the leases in place in determining the true cash value of petitioner’s property.”

Finally, in *Troy Technology Park v Troy*, unpublished opinion per curiam of the Court of Appeals, issued July 25, 1997 (Docket No. 193934), the Court of Appeals affirmed the Tribunal’s acceptance of the parties’ valuation of the leased

fee interest rather than the fee simple interest because the leased fee interest value was higher. Simply, the Court was asked to determine whether the higher value (using the income approach), based on existing leases, continued occupancy, and market rent was appropriate or a lower value based on the property being vacant and available for sale. The Court of Appeals affirmed the Tribunal's determination that a property valuation must include the present value of the leases in place.

Therefore, the Tribunal finds that the Court of Appeals generally interprets the statute to require the use of market rents except where unusual circumstances would dictate otherwise. See *JC Penney Co, Inc v Ann Arbor*, unpublished opinion per curiam of the Court of Appeals, issued March 11, 2010 (Docket No. 288536). The Tribunal concludes that the sentence, “[t]he actual income generated by the lease or rental of property is not the controlling indicator of its cash value *in all cases*,” included in MCL 211.27(4) [Emphasis added], implies that application of actual rental income or contract rents may be appropriate in some cases.

In *Rite Aid Corp v Delhi Charter Twp*, 13 MTTR 404, 412 (Docket No. 277889, October 5, 2004), the Tribunal again held that market rents must be considered in applying the income approach to value a property subject to lease; however, a long-term lease in place may be a “significant factor to be considered in determining what a third party could expect to receive in rent on the open market.”

Finally, in *Redford Square Assoc, Ltd v Redford Twp* 22 MTTR 382 (Docket No. 362195, May 29, 2012), the Tribunal concluded that a tenant-occupied building should be valued as a fee simple interest subject to existing leases at market rents, which is precisely how Petitioner's appraiser in this case valued the subject property using the income approach.

The Tribunal finds that, consistent with the line of cases discussed above, except in unusual circumstances, the appraiser of a property subject to long-term net leases must appraise the fee simple interest in the property subject to a lease in place at market rents. Further, the Tribunal finds that it is also important to consider the language in MCL 211.27(4) that requires that “present economic income” means, in part, rents negotiated “under current, contemporary conditions.” The Tribunal finds that this language is clear and unambiguous, as it specifically requires that rents, including market rents in place, used in applying the income method, should reflect current market conditions as of the applicable assessment date and should not reflect rents negotiated several years prior to the applicable assessment date, based on the property owner’s recovery of the cost to construct a build-to-suit building plus profit.

Both parties agree that the cost approach should not be applied in valuing the subject shopping center, essentially concluding that the cost approach is less reliable given the accuracy of calculating depreciation, the amount of obsolescence in the market, and investors’ lack of reliance on the cost approach when considering the purchase of properties of this type. The Tribunal agrees and finds that the cost approach will be given no consideration in determining a value for the subject for the tax years under appeal.

Both parties prepared a sales comparison and income approach in determining the true cash value of the subject property for the tax years at issue. In comparing and contrasting the income and market approaches to value, The Appraisal Institute states:

Typically, the sales comparison approach provides the most credible indication of value for owner-occupied commercial and industrial

properties, i.e., properties that are not purchased primarily for their income-producing characteristics. These types of properties are amenable to sales comparison because similar properties are commonly bought and sold in the same market. Buyers of income-producing properties usually concentrate on a property's economic characteristics and put more emphasis on the conclusions of the income capitalization approach. *The Appraisal of Real Estate*, p. 300. [Emphasis added.]

Consistent with *The Appraisal of Real Estate*, and because the subject property is the type of property that is bought and sold in the marketplace, the Tribunal agrees with Petitioner's appraiser that the income approach is the most appropriate method to use to determine the true cash value of an income-producing property such as the subject for the tax years at issue. Although both appraisers applied a sales comparison approach in valuing the subject property, the Tribunal finds that the value conclusions reached by each appraiser using the market approach were so deficient that they provide little or no assistance to the Tribunal in determining the true cash value of the subject property. While the Tribunal recognizes that Petitioner's appraiser gave only "secondary weight" to the sales comparison approach, the Tribunal finds no reasonable rationale for Respondent's appraiser to rely equally on this approach. Specifically, the Tribunal has concerns regarding both appraisers' reliance on sales of leased fee interests without providing analysis of existing leases at each comparable property. Further, the Tribunal finds application of the sales comparison approach by both appraisers to be lacking given their failure to identify any comparable sales in Livingston County and both appraisers' failure to adequately support and explain adjustments to the comparable sales.

Both parties also prepared, and relied on, an income approach to determine

the true cash value of the subject property for the tax years at issue. Although both parties offered a direct capitalization analysis,⁶ the assumptions made by the respective parties varied greatly, as is indicated by the information listed below:

2011	Respondent	Petitioner
Base Rental Income	\$8.93/sf	\$8.02/sf
Free-standing market rent	\$15/sf	\$9.17/sf ⁷
Small in-line market rent	\$13/sf	\$11.92/sf ⁸
Keller-Williams market rent	\$7/sf	\$5.96/sf ⁸
Planet Fitness market rent	\$6/sf	\$6.88/sf ⁸
Potential Gross Income ⁹	\$401,267	\$360,194
Less: Vacancy/Collection ¹⁰	(\$60,190)	(\$72,396)
Plus: Expense Reimbursement	--	\$106,882 ¹¹
Gross Income	\$341,077	\$394,679
Operating Expenses	(\$28,279) ¹²	(\$147,365) ¹³

⁶ Simply, a direct capitalization analysis is “a method used to convert an estimate of a single year’s income expectancy into an indication of value in one direct step, either by dividing the net income estimate by an appropriate capitalization rate or by multiplying the income estimate by an appropriate factor.” *The Appraisal of Real Estate*, p. 499.

⁷ Petitioner’s estimated price per square foot of \$10 was reduced to reflect Petitioner’s assumption of 10 months of free rent. (Transcript, Vol. 2, pp. 149 – 152)

⁸ Petitioner’s estimated price per square foot of \$13 for small in-line space, \$6.50 for the Keller-Williams space, and \$7.50 for the Planet Fitness space was reduced to reflect Petitioner’s assumption of five months of free rent. (Transcript, Vol. 2, pp. 114 – 116)

⁹ Each appraiser determined the Keller Williams space to be 12,747 square feet, the Planet Fitness space to be 16,753 square feet, and the smaller in-line space to be 10,085 square feet. However, Respondent’s appraiser determined that the free-standing building included 5,361 square feet of leasable space, while Petitioner’s appraiser determined said leasable space to be 5,316 square feet.

¹⁰ Petitioner assumes a vacancy and collection loss of 15.5%; Respondent assumes a vacancy and collection loss of 15%.

¹¹ Because the leases at the subject property are triple-net leases, tenants (at 85% occupancy) will reimburse Petitioner for CAM, real estate taxes, and insurance.

¹² Operating expenses reflect only a 5% management fee and replacement reserves of \$.25 per square foot. Respondent’s appraiser assumed all other expenses were reimbursed by the tenants. Although no discussion was included in his appraisal, Respondent’s appraiser testified that expenses not reimbursed by tenants (i.e., attributable to the 15% vacant space) were taken into

Net Operating Income	\$312,798	\$247,314
Capitalization Rate	10% ¹⁴	11% ¹⁵
Stabilization ¹⁶	--	(\$306,579)
True Cash Value	\$3,130,000	\$1,940,000
2012	Respondent	Petitioner
Base Rental Income	\$8.93/sf	\$8.02/sf
Free-standing market rent	\$15/sf	\$9.17/sf ¹⁷
Small in-line market rent	\$13/sf	\$11.92/sf ¹⁸
Keller-Williams market rent	\$7/sf	\$5.96/sf ⁸
Planet Fitness market rent	\$6/sf	\$6.88/sf ⁸
Potential Gross Income	\$401,267	\$360,194
Less: Vacancy/Collection ¹⁹	(\$40,127)	(\$73,846)
Plus: Expense Reimbursement	--	\$116,230

consideration in Respondent's determination of the capitalization rate. (Transcript, Vol. 2, pp. 154, 155)

¹³ Petitioner's appraiser determined operating expenses equal to \$3.28 per square foot based on historical data (\$4.52 per square foot), comparables (\$3.94 - \$7.11), and industry data (\$4.59 mean and \$4.03 average).

¹⁴ Respondent's appraiser determined a capitalization rate of 10% based on RealtyRates.com information (10.69%, 11.04%), band-of-investment technique (9.75%), and market information (9.06%, 8.38%).

¹⁵ Petitioner's appraiser determined a capitalization rate of 11% based on CoStar sales information (10.18%), band-of-investment technique (10.25% average), and investor surveys (7.16% - 11.19%).

¹⁶ Petitioner's appraiser calculated an additional reduction in true cash value for stabilization costs for the 2011 tax year only, based on a stabilized occupancy of 85% and actual occupancy of the subject as of 12/31/2010 of 46.7%, to reflect estimated leasing commissions, tenant improvement allowances, and lost rent. Respondent's appraiser did not account for stabilization costs for 2011 because he concluded that such an adjustment was appropriate only when valuing the leased fee interest in a property. (Transcript, Vol. 2, pp. 175, 176)

¹⁷ Petitioner's estimated price per square foot of \$10 was reduced to reflect Petitioner's assumption of 10 months of free rent. (Transcript, Vol. 2, pp. 149 – 152)

¹⁸ Petitioner's estimated price per square foot of \$13 for small in-line space, \$6.50 for the Keller-Williams space, and \$7.50 for the Planet Fitness space was reduced to reflect Petitioner's assumption of five months of free rent. (Transcript, Vol. 2, pp. 114 – 116)

¹⁹ Petitioner assumes a vacancy and collection loss of 15.5%; Respondent assumes a vacancy and collection loss of 10%.

Gross Income	\$361,140	\$402,578
Operating Expenses	(\$29,282) ²⁰	(\$157,029) ²¹
Net Operating Income	\$331,858	\$245,549
Capitalization Rate	10.25% ²²	10.75% ²³
True Cash Value	\$3,240,000	\$2,280,000

Based on the testimony and evidence presented in this matter, the Tribunal finds that the appropriate method of determining the true cash value of the subject property for the tax years at issue is the income approach, with primary emphasis placed on the approach taken by Petitioner’s appraiser. Respondent’s appraiser was unable to adequately explain how certain market rents were concluded and how he quantified adjustments or assumptions made for certain conditions present at the subject. Specifically, Respondent’s appraiser failed to credibly support his assumptions regarding certain market rents and capitalization rates and further failed to adequately explain his failure to reflect expenses incurred by Petitioner relating to space not leased. In this regard, the Tribunal finds that Respondent’s appraiser repeatedly responded to questions during cross-examination that he could not explain or recall the basis for various assumptions without referring to his notes, which were not in the appraiser’s possession during the hearing. Further, Respondent’s appraiser failed to take into consideration lease-up or stabilization

²⁰ Operating expenses reflect a 5% management fee and replacement reserves of \$.25 per square foot.

²¹ Petitioner’s appraiser determined operating expenses equal to \$3.50 per square foot based on historical data (\$4.52 per square foot), comparables (\$3.94 - \$7.11), and industry data (\$4.59 mean and \$4.03 average).

²² Respondent’s appraiser determined a capitalization rate of 10.25% based on RealtyRates.com information (10.41%, 10.85%), band-of-investment technique (10%), and market information (9.06%, 8.38%).

²³ Petitioner’s appraiser determined a capitalization rate of 10.75% based on CoStar sales information (10.18%), band-of-investment technique (10.25% average), and investor surveys (7.16% - 11.19%).

costs that would be incurred by Petitioner given a market vacancy rate of approximately 15% and actual vacancy of approximately 54% in 2011. Upon careful review of the appraisals and testimony presented by the parties, the Tribunal finds the following in applying the income approach to determine the true cash value of the subject property for the tax years at issue:

1. Market Rents.

As is reflected by the tables above, the parties' estimated base market price per square foot for the various types of space available at the subject are quite similar, other than the parties' estimated market rates for the freestanding space. Specifically, both appraisers determined a per square rate of \$13 for the in-line space, \$7 and \$7.50 for the Keller-Williams space, and \$6 and \$7.50 for the Planet Fitness space. However, Petitioner's appraiser determined the market value for the freestanding space at \$10 per square foot, indicating that the square footage is between the small and large in-line spaces, and a rental rate between those two values would be expected, considering the size, age/condition, and exposure of the freestanding space. (Exhibit P-1, p. 53) Respondent's appraiser testified that he used \$15 per square foot for the freestanding space, which was based on the in-line space being at \$13 per square foot and the freestanding space to be above the in-line space, given that it had its own parking, sits on the road, was newer, and had superior exposure and accessibility. He stated that the built-to-suit leased comparables for the freestanding space were used as a "check" against his \$15 per square foot conclusion. (Transcript, Vol. 2, p. 108) Because Respondent's appraiser was unable to explain to the satisfaction of the Tribunal how he

concluded to the \$15 per square foot value used, based on the combination of the in-line rate, his experience, and the “check” utilizing built-to-suit comparables, the Tribunal finds that the market rent for the freestanding space at the subject should be \$10 per square foot.

Petitioner also applied a lower value to the Keller-Williams space, as it “lacks thoroughfare visibility and has a design that is more akin to [an] office.” (Exhibit P-1, p. 53) Petitioner’s appraiser states that the windows along the front and side elevation would make this space less desirable to retailers. Although this space is currently being used as a real estate office, neither appraiser identified office space comparables to determine the rental rate. The Tribunal finds that Petitioner’s appraiser has failed to provide adequate support for the \$1 per square foot reduction in market rents for the Keller-Williams space.

Petitioner’s appraiser also applied a reduction in the base market rents to reflect five months free rent to the small in-line space, Keller-Williams, and Planet Fitness and 10 months free rent to the freestanding space. Although Petitioner’s appraiser did not have any information regarding whether or not the lease comparables selected included any free rent, he testified that the Planet Fitness and Hockey World leases present at the subject’s development included both free rents and tenant improvements and that “it’s common throughout metro Detroit to do free rent and tenant improvements.” (Transcript, Vol. 1, pp. 143- 146, 151; Vol. 2, pp. 203 - 209) Respondent’s appraiser did not include any rent concessions in his income approach and testified that he did not know if it was commonly done in Livingston County and “if concessions were

granted, they were made up for somewhere else” (Transcript, Vol. 2, p. 90) Petitioner’s deductions for free rent are not supported by any market data and the testimony of the appraiser alone is insufficient to establish that any amount of free rent is typical or expected in the subject’s market. Accordingly, the Tribunal finds that Petitioner’s income approach should be adjusted to remove any adjustment to market rents for landlord concessions. Therefore, the Tribunal finds that market rent rates of \$10 per square foot for the freestanding space, \$13 per square foot for the small in-line space, and \$7 for the Keller-Williams and Planet Fitness space are appropriate for both the 2011 and 2012 tax years.

2. Vacancy/Collection Loss.

Although Petitioner’s appraiser agreed that the primary trade area vacancy was 7.3% in 2010 and 6.2% in 2011, he concluded to a market vacancy, as applied to the subject, of 15% for both tax years, primarily because this information relates to major retail centers, while the subject is not a major retail center and is located in an area of Brighton with substantial vacancy. (Transcript, Vol. 1, pp. 134 – 135) Petitioner’s appraiser relied on the historic occupancy of the subject and market occupancy in determining the vacancy loss to be applied in his income approach. (Transcript, Vol. 1, p. 81) Respondent’s appraiser also applied a 15% vacancy and collection loss for 2011, but reduced it to 10% for 2012, without providing any credible explanation. Respondent’s appraiser stated that the vacancy and collection loss factor was determined based on inspection of the overall market, conversations with

leasing agents, landlords, brokers, and the CoStar data, as well as his overall experience. (Transcript, Vol. 2, p. 45) He further testified that the 15% vacancy applied for 2011 is comprised of 13% for vacancy and 2% for collection loss. (Transcript, Vol. 2, p. 129) The Tribunal accepts Petitioner's 15% vacancy loss and .5% collection loss as the more credible and better supported conclusion for both tax years at issue, based on the evidence and testimony presented.

3. Expense Reimbursement.

Respondent's appraiser did not reflect expense reimbursements in his calculation of potential gross income. Petitioner's appraiser determined expense reimbursements by market expenses reimbursed at 100% for occupied space, with the portions of reimbursement that did not occur built into the vacancy rate. (Transcript, pp. 154 – 155) The Tribunal finds that where the leases in place are triple-net leases, expense reimbursements for CAM, real estate taxes, and insurance should be reflected as potential gross income. The Tribunal further finds that Petitioner appraiser's estimated expense reimbursements of \$2.38 per square foot for 2011 and \$2.59 per square foot for 2012 are supported by the evidence and testimony presented.

4. Operating Expenses.

As discussed above, given his determination that a 15% vacancy rate is appropriate for the market, the Tribunal does not accept Respondent's conclusion that operating expenses should include only a management fee and a provision for reserves. Although Respondent's appraiser testified that expenses not reimbursed by tenants were reflected in his

determination of his capitalization rate, the Tribunal finds no evidence to support this testimony. The Tribunal accepts Petitioner's determination that operating expenses equal to \$3.28 per square foot for 2011 and \$3.50 per square foot for 2012, based on historical data, comparable information, and industry data, is reasonable and well supported.

5. Capitalization Rate.

Petitioner's appraiser relied on general capitalization rate data from CoStar, band-of-investment, and national investment surveys, with primary reliance on the investment surveys. Although this information suggests that a capitalization rate lower than was ultimately determined by Petitioner's appraiser is appropriate, he stated that "Michigan cap rates are generally higher than the national rates." (Transcript, Vol. 1, p. 88) He further stated that the band-of-investment was not "a very reliable method during this period of time, because it was so difficult to get financing for shopping centers . . ." and further stated that the capitalization rate he concluded was within the range of the band-of-investments, which was 6.9 to 15.45. (Transcript, Vol. 1, p. 163) Finally, he concluded that the lack of significant regional or national tenants would also make the subject property a less attractive asset to potential purchasers. In view of the above, the Tribunal finds that Petitioner's appraiser has generally supported a capitalization rate higher than what might be expected from the data presented in his appraisal. However, Petitioner fails to adequately support his ultimate conclusion that capitalization rates of 11% for 2011 and 10.75% for 2012 are appropriate.

Respondent's appraiser stated that the market extraction approach was mostly relied on in developing capitalization rates of 10% for 2011 and 10.25% for 2012, because it relies more on local and regional capitalization rates. (Transcript, Vol. 2, p. 50). Respondent's appraiser specifically relied upon seven retail shopping center comparables, without any specific analysis of each comparable. Although not stated in his appraisal, Respondent's appraiser testified that he used a larger capitalization rate based on the expenses the landlord would have to pay for the vacant portions of the subject and that he would have selected a lower rate if he had actually determined what the operating expenses were. (Transcript, Vol. 2, pp. 138 – 139) Respondent's appraiser further stated that he accounted for this "frictional" vacancy within his rate, which accounts for the expenses that can be attributed to the "frictional" vacancy, and that he would have used a 9% capitalization rate had he taken those expenses out from the net operating income. As discussed above, the Tribunal does not accept Respondent's testimony regarding his determination of a capitalization rate as credible or reliable. Simply, as Respondent's appraiser consistently responded to questions from opposing counsel, he was unable to explain assumptions reflected in his appraisal, stating that the answer lies somewhere in his work papers. In this specific case, Respondent's appraiser failed to even include this theory in his appraisal when discussing capitalization rates.

Upon review of the information and testimony provided by both appraisers, the Tribunal finds that the capitalization rate applied in valuing the subject property should be reflective of the immediate market

area. The Tribunal finds that Petitioner's evidence and testimony supports a capitalization rate of 10.75% for both 2011 and 2012.

6. Stabilization Costs.

For the 2011 tax year, after application of the cap rate to the calculated net operating income, Petitioner's appraiser deducted \$306,579 to account for stabilized occupancy at the subject. He testified that "anyone purchasing the property at that time would pay less than the value of stabilized occupancy, because he would have to incur certain costs to achieve stabilized occupancy. Those costs would include leasing commissions, [and] lost rent" (Transcript, Vol. 1, pp. 89 – 90) Petitioner's reduction for stabilization included estimated leasing commissions, a \$10 per square foot tenant improvement allowance, and lost rent, all based on the subject having to absorb 17,203 square feet of rentable area (based on the 85% stabilized occupancy and the subject's 46.7% occupancy). (Exhibit P-1, p. 62) Respondent's appraiser testified that he did not include a stabilization analysis because he was not appraising the leased fee interest and was looking at the subject "as though it was available and for rent to anybody that was out there." (Transcript, Vol. 2, p. 175) He further indicated that the market was stable and that the subject does not make the market. Both appraisers agreed that market occupancy was about 85%, with the subject operating at only 46.7% as of December 31, 2010. As stated previously, the Tribunal finds that it is appropriate to value the fee simple interest in the subject property, subject to leases in place at market rents, and therefore, it is also appropriate to account for stabilization when the subject is

operating below the market in terms of stabilized occupancy for 2011.²⁴ However, as discussed above, the Tribunal finds no substantive support in Petitioner’s testimony or evidence for the tenant improvement allowance adjustment (\$172,029) proposed by Petitioner’s appraiser. The Tribunal accepts Petitioner’s estimated leasing commissions (\$31,050) and estimated lost rent (\$103,500) as reasonable and credible.

The following is a breakdown of the revised income calculations as determined by the Tribunal:

2011:

	Components	TCV Calculation
Base Rental Income		
Free-standing market rent	\$10/sf (5,361 sf)	\$53,610
Small in-line market rent	\$13/sf (10,085 sf)	\$131,105
Keller-Williams market rent	\$7/sf (12,747 sf)	\$89,229
Planet Fitness market rent	\$7/sf (16,753 sf)	\$117,271
Total Rent Income		\$391,215
Expense Reimbursement	\$2.38/sf	\$106,971
Total Income		\$498,186
Vacancy/Collection	15.5%	(\$77,219)
Effective Gross Income		\$420,967
Operating Expenses	(\$3.28/sf)	(\$147,423)
Net Operating Income		\$273,544
Capitalization Rate	10.75%	
TCV before Stabilization		\$2,544,600
Stabilization costs		(\$134,550)
TCV		\$2,410,050

²⁴“Leasing commissions and tenant’s improvement allowances are not typically treated as operating expenses in a direct capitalization, stabilized income forecast. Instead, they are treated as capital expenditures after net operating income – i.e. ‘handled below the line’ because of their variability and the unwarranted impact they could have depending on when they are forecast.” Appraisal Institute, *Shopping Center Appraisal and Analysis* (Chicago: 2nd ed, 2009), pp 227-228.

2012:

	Components	TCV Calculation
Base Rental Income		
Free-standing market rent	\$10/sf (5,361 sf)	\$53,610
Small in-line market rent	\$13/sf (10,085 sf)	\$131,105
Keller-Williams market rent	\$7/sf (12,747 sf)	\$89,229
Planet Fitness market rent	\$7/sf (16,753 sf)	\$117,271
Total Rent Income		\$391,215
Expense Reimbursement	\$2.59/sf	\$116,410
Total Income		\$507,625
Vacancy/Collection	15.5%	(\$78,682)
Effective Gross Income		\$428,943
Operating Expenses	(\$3.50/sf)	(\$157,311)
Net Operating Income		\$271,632
Capitalization Rate	10.75%	
TCV before Stabilization		\$2,526,800
Stabilization costs	None	
TCV		\$2,526,800

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner did prove by a preponderance of the evidence that it is assessed in excess of 50% of market value. The subject property's true cash values (TCV), state equalized values (SEV), and taxable values (TV) are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that the property's assessed and taxable values for the tax year at issue are MODIFIED as set forth in the Introduction 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 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 this Order within 28 days of the entry of this Order. 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 the Tribunal's order. Pursuant to 1995 PA 232, 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, through December 31, 2013, at the rate of 4.25%.

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

By: Steven H. Lasher

Entered: July 24, 2013