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

Jackson National Life Insurance Co.,
Petitioner,

v

MTT Docket No. 336090

City of Lansing,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

Introduction

Petitioner, Jackson National Life Insurance Co. ("JNL"), appeals ad valorem property tax assessments levied by Respondent, City of Lansing, against the real property owned by Petitioner for the 2007, 2008, and 2009 tax year. Michael B. Shapiro, attorney, appeared on behalf of Petitioner. Michael D. Homier, attorney, appeared on behalf of Respondent. Witnesses appeared on behalf of both parties. They include: Michael E. Ellis, MAI; Dennis A. Blue, Assistant Vice-President of Corporate Support services at JNL; and Maria Irish, CMAE4, Assessor for the City of Lansing, for Petitioner, and Raymond V. Bologna, MAI, for Respondent.

The proceedings were brought before this Tribunal on October 27, 2010, to resolve the real property dispute.

Petitioner's revised contentions[1]:

[1] TCV = true cash value; SEV = state equalized value; TV = taxable value

Parcel Number: 33-01-06-04-301-002

	TCV	SEV	TV
2007	$22,220,551	$11,110,276	$11,110,276
2008	$22,648,038	$11,324,019	$11,324,019
2009	$19,582,018	$9,791,009	$9,791,009

Parcel Number: 33-01-06-04-376-001

	TCV	SEV	TV
2007	$1,935,449	$967,725	$967,725
2008	$3,007,962	$1,503,981	$1,503,981
2009	$2,823,982	$1,411,991	$1,411,991

The property's TCV, SEV and TV as amended by STC docket 154-09-0443:

Parcel Number: 33-01-06-04-301-002

	TCV	SEV	TV
2007	$57,121,600	$28,560,800	$24,398,359
2008	$50,431,200	$27,515,600	$24,959,515
2009	$48,440,600	$24,220,300	$24,220,292

Parcel Number: 33-01-06-04-376-001

	TCV	SEV	TV
2007	$4,868,800	$2,434,400	$2,208,195
2008	$8,632,000	$4,316,000	$4,301,264
2009	$8,183,800	$4,091,900	$4,091,900

Respondent's Contentions based on appraisal:

Parcel Number: 33-01-06-04-301-002

	TCV	SEV	TV
2007	$64,430,000	$32,215,000	$24,398,359
2008	$63,250,000	$31,625,000	$24,959,515
2009	$67,200,000	$33,600,000	$24,220,292

Parcel Number: 33-01-06-04-376-001

	TCV	SEV	TV
2007	$5,870,000	$2,935,000	$2,208,195
2008	$9,750,000	$4,875,000	$4,301,264
2009	$10,300,000	$5,150,000	$4,091,900

The Tribunal finds:

Parcel Number: 33-01-06-04-301-002

	TCV	SEV	TV
2007	$49,500,000	$24,750,000	$24,398,359
2008	$45,400,000	$22,700,000	$22,500,000
2009	$37,000,000	$18,500,000	$18,500,000

Parcel Number: 33-01-06-04-376-001

	TCV	SEV	TV
2007	$4,200,000	$2,100,000	$1,050,000
2008	$7,700,000	$3,850,000	$1,925,000
2009	$6,200,000	$3,100,000	$1,550,000

Background and Introduction

At issue is the true cash value for the corporate headquarters for JNL**.** Parcel Number: 33-01-06-04-301-002 (“002”) is the corporate headquarters office building, which consists of a long building with approximately 298,365 square feet (“SF”) of rentable area. The office building measures approximately 100 feet by 850 feet on a slight arc. It contains an atrium as part of the entrance, underground parking, and some finished basement offices. A cafeteria is located in the basement, as well as shipping and receiving.

The separate parcel, 33-01-06-04-376-001 (“001”), contains a data center (with new square footage added for 2008) and child care center. The subject properties are located on the south side of I-96 off the Okemos exit.

Petitioner argues that the physical configuration of the subject property is just one of the areas of obsolescence. Petitioner applied the sales comparison approach and the income approach for its final value estimates.

Respondent believes, based on an appraisal, that the true cash value of the subject property should increase. Respondent utilized the cost-less-depreciation, sales comparison, and the income approaches to determine the true cash value of the subject properties.

Petitioner initially filed an appeal for parcel 002; however, Respondent filed an "omitted" property appeal with the State Tax Commission and the building for the data center was transferred from parcel 002 to parcel 001. Petitioner does not contest the $906,000 land value on parcel 001, but appeals the building value placed on the parcel. The Tribunal combines the land value with Petitioner's value for parcel 001 for a total true cash value conclusion.

<u>Petitioner's Arguments</u>

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

Petitioner's admitted exhibits:

P-1 Appraisal for JNL by Value Trends.
P-3 Adjustment Grid Analysis.
P-4 Photographs of subject property.
P-5 Photograph of JNL floor.

Michael E. Ellis, MAI, was Petitioner's valuation witness. He prepared an appraisal and provided an explanation of the appraisal. He explained that the subject property has a Lansing address, but is physically located in Alaiedon Township. The City of Lansing and Alaiedon Township entered into a PA 425 Agreement. This enables two local units of government to conditionally transfer property by written agreement for the purpose of economic development projects. As part of the agreement the City of Lansing provides utilities and collects all real, personal, and income taxes, remitting 2.5 mills for ten years and 2.0 mills for the remaining 40 years back to Alaiedon Township.

Ellis testified that he appraised the fee simple interest in the subject property. He described it as:

> A fee simple estate is ownership interest where the property owner's rights have not been conveyed to any other party, and they have a right to use it to the extent under the law to whatever – in whatever manner they wish. Tr. Vol. 1, p 31.

Ellis described leased fee estate as:

> It's a free hold estate in which the—the owner has conveyed the right to somebody else to use the property for a specified period of time for frequently rent or some other agreement. Tr. Vol. 1, p 32.

Ellis stated that the difference in fee simple and leased fee is that with a lease fee interest the property owner has conveyed the right to use the property to another party. He indicated that with a fee simple interest the ownership is held for the properties, and the rights to use the property are not conveyed to anyone else.

The questions of ownership or the owner's success in business influence the true cash value of the subject property. Ellis stated that, all things being equal, market value is not influenced by the success of the owner of a property. Ellis explained that as unemployment goes up, the demand for office space goes down and purchasing power for spending within a region or community also diminishes, which has a definite influence on market value. Ellis then went into great detail on the economic conditions in Michigan as of tax day for each year, stating:

> It's no secret probably to anybody sitting in this courtroom that Michigan's suffered hard economic times in the last – in the last decade, continuing through today. At the end of – during the second half or end of '07, this sub prime crisis nationally, which was felt locally, was starting to heat up. As I read from my report briefly, Fed chairman Ben Bernanke and Treasury Secretary Hank Paulson expressed alarm in the dangers posed by a potential busting housing market, and Paulson indicated, and I quote, that the housing decline is still unfolding, and he viewed it as the most significant risk to our economy.
>
> As we continued through the events of '08, in March we had Bear Stearns required fed financing to stay alive. You had UBS Swiss Bank announced cutting fifty-five hundred jobs, Freddie Mac and Fannie Mae needed a bailout. Come September anything broke loose, and you had Merrill Lynch sold to Bank of America, Lehman Brothers filed for bankruptcy protection, the U.S. Federal Reserve lends eighty-five billion dollars to AIG Group so they could avoid bankruptcy. Washington Mutual is seized by the FDIC. And then in October George Bush announced that the Troubled Asset Relief Program, known as TARP had been created.
>
> October 6th through 10th we have the worst week in the stock market in seventy-five years. The Dow Jones lost 22.1 percent, and it continued to get worse as the Dow Jones average on October 11th had the worst week ever and the most volatile day in over a hundred and twelve years. And if that wasn't horrible, Michigan faced something the rest of the country did not face, and that was the potential that the automotive industry, either one, two or three of the major auto manufacturers was under threat of bankruptcy.
>
> And nobody knew what exactly was going to happen other than they knew there was a serious threat, and that was a risk factor as you look at the end of 2008, December 31st, that's what was dominating the economy and decision making as to what people would do as of that date. Tr. Vol 1, pp 36, 37.

Ellis continued to explain that the adverse economic conditions throughout the country influenced the subject properties with a decline in market value during 2008. Ellis explained that this is part of the reason for some economic obsolescence.

Ellis found that the 79.17 acres for parcel 002 may have contained some surplus land; however, it had issues and did not contribute additional value. There was no demand for any surplus land and subject is dissected by an eighty-foot drain that meanders through the back of subject parcel 002. Some of the land is below grade, which would be a determent to a developer if there was any demand. He did note that the photographs depict the deteriorated driveway and parking lot.

Ellis describes subject parcel 002 as five levels with one located in the basement. A section of the subject has three floors due to an atrium. This is a class A corporate office headquarters. The square footage of 298,305 does not include the second and third floor where the atrium is in the middle and there is no floor. Although there is a basement level, JNL refers to it as “ground floor area.” The basement contains some offices, cafeteria, kitchen, shipping, storage, conference rooms and an area that contained partitions for the original data center. The data center was located in the basement of JNL, but the basement leaked and a separate building was constructed for a remote data center, which is parcel 001.

The subject property has movable work stations with the exception of the fourth floor, which contains the majority of private offices. The only private bathroom is off a conference room. Ellis describes the condition of the subject property as good with the exception of two areas that have functional issues. The floor in the entry is Texas Limestone, which is pitted to the point where a heel could be caught, and Ellis believes it is a liability. Texas Limestone was used as trim on the exterior. However, Texas

Limestone was not made for extreme weather it gets porous when wet causing some leaks. The siding beneath the aluminum had a wrap and flashing for the windows. Water was getting behind the siding. JNL had to remove all the siding and put in insulation to cure the problem. The use of the basement for offices space is not as desirable in the market as the upper floors. The physical configuration of the building is functionally obsolete. It costs more to construct the long narrow building rather than a rectangular building, and from a functional standpoint, it takes away from productivity if an individual needs to walk from one end of the 850 foot building to the other. The subject property was custom construction to reflect JNL's image. The market would recognize the same value for the custom building as it originally cost to construct.

Ellis spoke to brokers who were familiar with the subject property and termed it as a "white elephant" due to the property's design, style, size, and lack of adaptability.

Ellis considered sales of office buildings within the general Lansing area; however, the sales were expanded to the Detroit-Metro suburbs that would have similar market influences as the subject property.

The child care center is located on parcel 001 and contains approximately 10,400 square feet. Its exterior façade matches the quality of the corporate headquarters. It was constructed in 2000. The remote data center is also located on parcel 001. It contains an area described as a mechanical courtyard. Ellis explained that it has a concrete floor, masonry walls with a metal grate to keep the outside elements from harming the equipment. He testified that the data center was overbuilt, with a large area that is not used.

Ellis stated that the market would not consider the cost approach as reliable. The cost new is not reliable when a property contains significant functional and external obsolescence.

Ellis included the value of the data center (parcel 001) with parcel 002. He needed a foundation to determine the value contribution of the land out of the dollar per square foot rate to allocate the value for the data center building to parcel 001.

The sales comparison technique utilized by Ellis consisted of researching the market for sales, listings and offers. He quantified the data as to sale prices, any terms, the motivation of the parties, and compared the differences for physical, economic or any other variable that would be influenced by the market. He found fifteen sales. He used the following sales as of December 31, 2006:

12/31/06 Sales Used						
		Comp #	Size	Sale Date	Sale Price	$/SF
Class A		Subject	298,305			
Class A	Leased Fee	1	78,055	Mar-05	$9,250,000	$118.51
	Leased Fee	4	65,269	Mar-07	$4,200,000	$64.35
		5	195,240	Sep-06	$13,400,000	$68.63
		8	174,328	Nov-05	$16,370,329	$93.91
		10	58,953	Sep-04	$5,200,000	$88.21
		11	437,812	Apr-07	$33,000,000	$75.37
Class A	Listing	12	568,503	Oct-06	$52,800,000	$92.88

Ellis discussed each individual fee simple sale that he used and testified that he inspected each property. He was able to give details about each comparable property, describing why it was similar to the subject property, and as he confirmed each sale he explained the extra information that the brokers knew and shared.

Ellis explained his Adjustment Grid Analysis (P-3), which was created as part of the appraisal process. He typically does not include the grid in the appraisal. Adjustments were made for differences in: conditions of sale (Comps 11 and 12); date of sale (all Comps except 9); location (Comps 5, 6, 7, 8, 9, 10, 11, and 12); building size (all comps except 3); age/condition (Comps 1, 6, 7, 8, 10, and 11); design/quality (Comps 6, 7, 8, and 10); amenities (all comps except 3 were adjusted).

The adjustments for 2007 ranged from 2.00% to 41.00%; 2008 ranged from 1.00% to 78.00%; 2009 ranged from 1.00% to -43.00%. The adjustments were more extreme for the later two years.

Adjustments for differences in amenities varied slightly for each year in contention as the properties aged. After adjustments the Day Care amenity was added for adjusted rates per square foot that range from $64.81 to $72.31 for 2007, the unadjusted rate per square foot ranged from $64.35 to $119.09. The 2008 and 2009 tax year followed the same adjustment process.

Ellis concluded to the following values per square foot for the sales comparison approach: 2007: $63.87, 2008: $66.54, and 2009: $64.02.

Ellis next utilized an income approach to determine the value of the subject property. The subject property is a corporate headquarters and owner-occupied. It is possible that an investor would consider the income-producing potential for the subject property. He used eight leases in the Lansing market. The comparable leases include five class C properties that range in size from 3,734 to 52,290 square feet. The leases range from $15.27 to $19.17 per square foot. Leases 6, 7 and 8 are class A or B office properties and have modified gross rents of $14.50 to $15.91. Ellis included some properties in Detroit Central Business District and Suburban locations to assist in adjustments to the Lansing comparables.

Leases 1, 2, 3, 4, and 5 are of lesser quality and substantially smaller than the subject property, thus requiring adjustments for size and quality of building. Lease 6 was also a sale of the same quality as the subject property; however, at 77,674 square feet it is smaller than the subject property. Lease 7 is a governmental lease and is a class C quality with 76,429 square feet. This is in a lower rent district, smaller square footage and lower quality than the subject property requiring adjustments. Lease 8 is 35,000 square feet in the former JNL building. This is a class B quality 130,000 square foot building, older than the subject and of slightly lower quality, thus requiring adjustments.

Ellis determined that the adjusted rental rates per square foot are $17.50 for 2007, $17.75 for 2008, and $16.50 for 2009. CBRE Martin published vacancy rates for the East Lansing Submarket as well as the overall Lansing area. NAI Vlahakis[2] also does a

[2] Vlahakis is a local commercial/industrial brokerage firm.

market survey. The Eyde Company[3] indicated that office properties were 80% occupied in 2006 and 2007, with the market softening to 70% occupied in 2008. All of the surveys reflect vacancies for Class A property are lower than Class B or C properties. Ellis states that the size of subject property would make marketing difficult and would take 2 to 3 years or longer to lease up to full occupancy. Ellis concluded to the following vacancy factors; 2007 15.0%, 2008 15.5% and 2009 18.0%.

Ellis provided an explanation of the following:

> A fee simple estate is ownership interest where the property owner's rights have not been conveyed to any other party, and they have a right to use it to the extent under the law to whatever –in whatever manner they wish. Tr, Vol 1, p 31.

When asked what a leased fee estate was, Ellis answered:

> It's a freehold estate in which the – the owner has conveyed the right to somebody else to use the property for a specified period of time for frequently rent or some other agreement. Tr, Vol 1, p 32.

Ellis testified that the difference between leased fee and fee simple ownership is:

> It's very simple. The one situation you've conveyed the right to use the property to another party, and in the fee simple, which is the ownership held here, you have not conveyed the right giving anybody else the right to use it.

the tenants pay for everything and the landlord has the expense of management and the outer walls and roof in a triple net. With the subject property, the landlord is responsible for taxes, insurance, repairs, maintenance, management, administration, and reserves for replacement. Ellis considered the actual expenses of the subject property and broke them down into a per square foot rate. He considered the following

[3] The Eyde Company is a major investor in the Lansing area office market.

expenses: utility, security supplies, waste management, HVAC services, electrical, plumbing, fire and safety, internal and external building services, landscaping, snow removal, tools and equipment, pest control, security supplies, elevator supplies, miscellaneous, and vehicle expenses. The following is the income and expense statement for each year:

	2006	2007	2008
Gross Income	$5,511,923	$5,921,915	$5,504,879
Less Vacancies	$826,788	$917,897	$990,878
Effective Gross Income	$4,685,135	$5,004,018	$4,514,001
Expenses			
Insurance	$48,800	$51,600	$51,600
Management Fee	$117,128	$125,100	$112,850
Utilities	$122,595	$127,880	$128,280
Repairs/Maintenance	$1,008,638	$1,100,892	$1,100,893
Janitorial	$92,730	$98,048	$98,048
Reserves	$65,073	$68,806	$68,806
Total Expenses	$1,454,964	$1,572,328	$1,560,477
Net Operating Income	**$3,230,171**	**$3,431,690**	**$2,953,523**

Ellis added the per square foot contributory value of the day care center. For the 2007, 2008, and 2009 tax years at issue this was $1.40, $1.32 and $1.15.

Ellis considered Korpacz Real Estate Investor Survey, extraction of capitalization rates from office properties that have sold, and band of investment, as well as Realty Rates Survey, to determine the capitalization rate for subject property. Based on these four sources, Ellis found that the capitalization rate was 8.65% for 2007, 8.50% for 2008, and 10.00 for 2009. The effective tax rate was added for an overall capitalization rate of 12.23%, 12.15%, and 13.70%.

The net operating income for each year is divided by the overall capitalization rate for a final value of $27,000,000 for 2007; $28,850,000 for 2008, and $22,050,000 for 2009.

Petitioner called Maria L. Irish, CMAE 4, and assessor for the City of Lansing, as the next witness. She affirmed the land value for the parcel with the data center was $906,000. This equates to $42,296 per acre or $0.97 per square foot for the approximately 20 acres of land on parcel 001. Parcel 002 has a true cash value of $2,939,200, which is approximately the same amount at which Ellis appraised the vacant land.

Dennis A. Blue, Assistant Vice-President of Corporate Support Services at JNL, was Petitioner’s last witness. Blue testified that in his capacity he is familiar with the engineering drawings that depict the drain easements on subject parcel 002. There is an 80-foot drainage easement. The wetlands were expanded since the original construction. The topographical area of construction sites caused water to flow into the wetlands, increasing the size of the wetlands. In addition to the wetlands, Blue testified that there are three utility easements at the north, south, and center of subject property 002. The wetlands and the easement would prevent some but not all construction on the subject site.

<u>Respondent’s Arguments</u>

Respondent requests that the Tribunal increase the true cash value of subject property based on its appraisal.

Respondent’s admitted exhibits:

R-1 Appraisal for JNL Bologna.
R-5 1998 Development Agreement between JNL and City of Lansing.
R-6 1998 PA 425 Agreement between Alaiedon Township and the City of Lansing.
R-7 2008 Agreement between City of Lansing, Board of Water & Light and JNL.
R-8 2009 State Tax Commission Order.

Raymond V. Bologna, MAI, testified that he prepared the appraisal for Respondent. He testified that he used Replacement Cost, which takes out extraordinary expenses. For example, the Texas limestone did not have an additional amount added to or deducted from the cost calculations. The subject property's topography was described as gently rolling and not in the 100-500 year flood plain. The site does not have any unusual easements.

Bologna stated that subject property 002 has 330,191 square feet, five stories including the lower level that is actually a basement level with garages, service areas, walkout, and cafeteria. The entrance is a three-story atrium. The fourth floor is the executive offices and mechanical penthouses. Administrative offices are in some of the perimeters and rear portion of the building that over look a wooded area. This parcel is 77.79 acres.

Subject property 001 contains the remote data center that was 16,674 square feet and in 2008 included an addition to 35,214 square feet and a 12,125 square foot mechanical courtyard. There is also a child care center with approximately 11,000 square feet. This parcel is approximately 20 acres. Bologna testified that the zoning was tied to JNL and affects the value. Zoning would become nonconforming if JNL vacated the subject property.

Bologna explained that the Lansing market is typically made up of smaller spaces and property in excess of 10,000 square feet is considered large. General vacancies for office properties increased from 1999 to 2008 from 12.6% to 16.2%. Brokers for the area advised him that spaces over 200,000 square feet were owner occupied and would experience a longer absorption period. This increases the holding costs for the property owner.

Bologna found that the Lansing area has several corporate headquarters that have renovated or expanded in the last few years. They include MSU Credit Union, Auto-Owners, Delta Dental, and Accident Fund, a subsidiary of Blue Cross Blue Shield. This expansion includes the subject property with the addition of the remote data center.

Bologna described the subject property as an incredible building with a nice arranged design, attractive grounds, and abundant parking. The interior design is very flexible with open floor plans and use of modular workstations that are able to be quickly reconfigured. The three-story atrium is an attractive entrance. He states that the building was designed to exude a good quality finish. The finishes are above average to very good. The cafeteria is a convenient feature. The addition of the remote data center is becoming common feature as computers are a high priority in business.

The subject property has not been fully developed, according to Bologna, with approximately fifty-acres available for future expansion or excess/surplus land. He found five sales of vacant land that sold in 2006. The sales varied in acreage starting with 5.00, 15.94, 16.41, 31.74, and 124.58[4] acres. After adjustment for differences in size and location, Bologna determined that the subject property's combined 99.21 acres is $2.10 per square foot or $9,075,334. After determining the land value, Bologna then applied the Marshall Valuation Service costs.

The cost less depreciation approach was the first method that Bologna explained. He stated that he used Marshall Valuation Service with a good to excellent quality office building with adjustments for specific variables as the beginning point. The age-life depreciation method was used, as well as a premium to account for the retrofitting another investor would have in the market.

Bologna costed each component separately. The office building was good to excellent class A, with the basement, atrium and mechanical penthouse costed out separately. The data center was costed separately, as well as the child care building, pole barn, parking garage and land improvements. A retrofit cost of $10.00 per square foot was applied, which added 2.3 years to the depreciation. Bologna stated that although the market at large had high vacancies, and pressure for reduced rents because of the deteriorating market conditions, and an economic decline throughout the state and nation, no external obsolescence was applied to the subject property. He applied 15.17% depreciation to the building improvements for a total improvement cost of $60,239,634. Land value of $9,080,000 was added for a total value of $69,300,000 for tax year 2007. The same methodology was utilized for the subsequent two years.

[4] This property was an extracted land value from the sale of an improved property.

Bologna's income approach considered the data center and office building in the net rentable square foot, but not the daycare facility, as it is often an amenity. Local brokers stated that the rents dropped 10-15% in 2008 for smaller spaces. He believes that larger spaces are not as prone to concessions and rent loss. 6% decline was applied for the last one-half of 2007. The Detroit market declined 15-20% over the last three years. Bologna also used 6% annual decline rate for Detroit properties. Triple net leases were used because three out of four single user buildings utilized triple net leases.

Adjustments were made to the lease comparables for differences in square footage, age, location, and quality. Bologna's five multi-tenant leases ranged in size from 8,997 to 78,600 square feet; their rents ranged from $17.00 to $21.90 per square foot. The single tenant buildings ranged from 111,881 to 185,494 square feet, and the rents ranged from $11.87 to $20.50 per square foot. Bologna selected $14.70 as the economic rent for subject property. He stated that 86% of the Korpacz investors surveyed stated that they generally do not apply a vacancy and credit loss. The majority of the survey respondents also stated that they capitalized the net operating income before expensing reserves and tenant improvements.

Bologna, using the Korpacz Real Estate Investor Survey, determined that for the national net lease market for the first quarter of 2007 surveyors applied overall capitalization rates ranging from 5.0% to 10.5% with an average of 7.65%. The 7.65% overall capitalization rate was not adjusted because the underlying lease is net, which presupposes that the tenant is responsible for all expenses, including property taxes, and was used to capitalize subject property's net operating income.

The income for 2007 is as follows:

Gross Rents	343,700 SF @ $14.70	$5,052,390
Garage rents	22 spaces @ $900	$ 19,900
Vacancy and Credit $0		
Effective Gross Income		$5,072,190
No Expenses deducted	Net Operating Income	$5,072,190

Net operating income of $5,072,190 divided by the overall capitalization rate of 7.65% is rounded to $66,300,000 true cash value for the subject property as of December 31, 2006.

Bologna added the value of the 50 acres of surplus land at $2.10 per square foot for a value of $4,570,000 that is added to the $66,300,000. Bologna then adjusted for the $10 per square foot credit for 298,000 square feet to be built out for a new tenant for a $2,980,000 reduction. The result is a true cash value of the subject property for tax year 2007 rounded to $67,900,000. Bologna used the same methodology for the remaining two tax years.

Bologna's sales comparison approach included sales of five properties located outside of Lansing and one (Sale 6) located within the Lansing market. The adjusted sales comparison grid is:

Comp #	Size	Sale Date	Sale Price	$/SF	Adjustment	SP/SF

Subject	298,305					
1	151,400	Feb-05	$14,500,000	$95.77	66%	$158.98
2	127,278	Oct-05	$27,450,000	$215.67	-6%	$202.73
3	105,572	Sep-05	$14,900,000	$141.14	54%	$217.36
4	437,812	Apr-07	$33,000,000	$75.37	102%	$152.25
5	114,000	Jan-07	$17,850,000	$156.58	51%	$236.44
6	127,919	Apr-09	$17,500,000	$136.81	23%	$168.28

Sale one was adjusted for differences in age, lower quality, and location in the Ann Arbor Central Business District. Sale two was adjusted for superior location, newer construction, and land-to-building ratio. Sale three was adjusted for superior location, older construction, average quality, and land-to-building ratio. Sale four was adjusted for superior location, older construction, average quality, and inferior land-to-building ratio. Sale five was adjusted for superior location, older construction, average quality, and inferior land-to-building ratio. Sale six was adjusted for its inferior location, older construction, average quality, and larger land-to-building ratio.

Bologna considered sales two, three and five, which bracketed a range of $203 to $236 per square foot, tempered with sale six. He used $193.50 per square foot to determine the true cash value of $70,700,000 for tax year 2007; $73,900,000 for tax year 2008, and $73,300,000 for tax year 2009. Bologna followed the same format for the subsequent two tax years at issue. He also used the same six sales for all three tax years.

Tribunal's Findings of Fact

The Tribunal finds that the subject property was built as a corporate headquarters for Petitioner. For another user/investor, the property has a functional inutility, i.e.

the subject property is 100 feet deep by approximately 850 feet long in an arc design with a three-story atrium, hindering access to the opposite sides of the 2nd and 3rd floors difficult.

Functional Utility and Functional Inutility are described as:

> The ability of a property or building to be useful and to perform the function for which it is intended according to current market tastes and standards; the efficiency of a building's use in terms of architectural style, design, and layout, traffic patterns, and the size and type of rooms.
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> Impairment of the functional capacity of a property or building according to market tastes and standards; equivalent to functional obsolescence because ongoing change makes layouts and features obsolete. Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13th ed, 2008), p 262.

The Tribunal finds that the design and layout of the subject property is functionally obsolete. Petitioner recognized that the property has functional obsolescence. Petitioner states, "The improvements are not considered functionally adequate for other potential users without significant financial reinvestment in the layout and design of the office areas." (P-1 p 43). Respondent states, "There were no signs of functional problems or unusual physical deterioration at the time of the inspection." (R-1 p 31) The Tribunal finds that the subject property's configuration and design has functional obsolescence built into the design.

Petitioner also considers economic obsolescence due to the market's downward trend in 2008 which influences the value of subject property. Petitioner indicates that job losses resulted in lower rents, higher vacancies, and an increased risk for investors.

This is reflected in the income approach. Respondent reached the conclusion that there was no economic obsolescence associated with a large, single user building due to lack of demand. Respondent does consider some rent decrease in 2008 in the income approach.

Petitioner did not use the cost less depreciation approach because of the inherent risk of estimation of functional obsolescence. Respondent's cost approach only reflected physical obsolescence. The Tribunal finds that it is appropriate to exclude the cost approach when obsolescence is difficult to measure or if it is a high percentage, making the cost approach less reliable.

Both parties included the sales comparison approach. Petitioner used different sales for each year at issue. Respondent utilized the same sales for all three years at issue. Petitioner's sales comparables 1, 4, 7, 10, 13, 14, and 15 were less than 100,000 square feet. Seven out of 15 sales were substantially smaller than the subject property. The adjustments ranged from -2% to -78%.

Respondent's six sales comparables all exceed 100,000 square feet. The adjustments range from -6% to 102%.

The Tribunal finds that the sales comparison approach uses properties that require substantial adjustments for differences in amenities. This diminishes the reliability of this approach.

Both parties also calculated an income approach. The Tribunal finds that Petitioner's use of gross rent and expenses is a difficult concept to rationalize. It is unusual that a 300,000 square foot plus office building would pay rent and the landlord would pay for utilities, repairs and maintenance, or janitorial on a monthly basis. The triple net lease that Respondent presents appears to be more appropriate for the subject property. The expenses at zero are not accepted, the market would allow expenses for vacancies, insurance, management, and janitorial. This leaves the tenant to pay utilities and janitorial, as well as repairs and maintenance. The Tribunal finds that there is a vacancy, as put forth by both parties that is similar. Respondent's triple net rent is slightly less than Petitioner's gross rent. Respondent discussed vacancy, which was in the same range as Petitioner's. However, Respondent also determined zero expenses. Therefore, the expenses put forth by Petitioner are fixed expenses and would be the same whether the income is gross or net. The capitalization rate used by Petitioner included the effective tax rate. Respondent's overall rate is lower than Petitioner's resulting in a slightly higher value. An income approach utilizing triple net rent would not include the effective tax rate ("ETR").

The Tribunal reconstructs the expenses as follows:

	2006	2007	2008
Gross Income	$5,072,190	$5,053,180	$4,759,260
Less Vacancies	15.00%	15.50%	18%
Effective Gross Income	$4,311,361	$4,269,937	$3,902,593
Expenses			
Insurance	$48,800	$51,600	$51,600
Management Fee	$86,227	$85,399	$78,052
Reserves	$65,073	$68,806	$68,806
Total Expenses			
Net Operating Income	$4,111,261	$4,064,132	$3,704,135
OAR w/o ETR	7.65%	7.65%	8.58%
TCV rounded	**$53,700,000**	**$53,100,000**	**$43,200,000**

The Tribunal finds that the use of triple net for the income approach yields a value that is applicable to the subject property's large corporate headquarters.

Conclusions of Law

Pursuant to Section 3 of Article IX of the State Constitution, the assessment of real property in Michigan must not exceed 50% of its true cash value. The Michigan Legislature has defined true cash value to mean the usual selling price at the place where the property to which the term is applied is at the time of the assessment, being the price which could be obtained for the property at private sale, and not forced or auction sale. See MCL 211.27(1). The Michigan Supreme Court in *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450 (1974), has also held that true cash value is synonymous with fair market value.

In that regard, the Tribunal is charged in such cases with finding a property's true cash value to determine the property's lawful assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767 (1981). The determination of the lawful assessment will, in turn, facilitate the calculation of the property's taxable value as provided by MCL 211.27a. A petitioner does, however, have the burden of establishing the property's true cash value. See MCL 205.737(3) and *Kern v Pontiac Twp*, 93 Mich App 612 (1974).

> 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.

The Michigan Supreme Court, in *Meadowlanes Limited Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 483-484; 473 NW2d 363 (1991), acknowledged that the goal of the assessment process is to determine "the usual selling price for a given piece of property." In determining a property's true cash value or fair market value, Michigan courts and the Tribunal recognize the three traditional valuation approaches as reliable evidence of value. See *Antisdale v City of Galesburg*, 420 Mich 265, 276; 362 NW2d 632 (1984).

"The petitioner has the burden of establishing the true cash value of the property . . . ." MCL 205.737(3); MCL 211.27(1); *Meadowlanes Limited Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 483-484; 473 NW2d 363 (1991). "This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing; and (2) the burden of going forward with the evidence, which may shift to the opposing party." *Jones & Laughlin Steel Corp* v *City of Warren*, 193 Mich App 348; 483 NW2d 416 (1992) 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 Dept of Treasury*, 131 Mich App 743, 752; 347 NW2d 707(1984).

The three most common approaches to valuation are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach. *Meadowlanes*, at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968); *Antisdale*, at 276. The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale*, at 277.

Under MCL 205.737(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 finding 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); *Tatham v City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982).

In this case, the Tribunal concludes that the evidence, testimony, and law indicate that subject property is assessed in excess of 50% of market value.

The Tribunal is charged in a valuation appeal to determine the true cash value of the subject property as of each tax year at issue. Petitioner’s value did not prevail; however, Petitioner was able to prove by a preponderance of its evidence that the assessment of the subject property should be modified.

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. As provided in 1994 PA 254, being MCL 205.737, as amended, interest shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest rate of the 94-day discount treasury bill rate for the first Monday in each month plus 1%. As provided in 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods after January 1, 1996 at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 1995 at the rate of 6.55% for calendar year 1996, (ii) after December 31, 1996 at the rate of 6.11% for calendar year 1997, (iii) after December 31, 1997 at the 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, and (xiii) after December 31, 2007 at the rate of 5.81% for calendar year 2008, (xiv) after December 31, 2008, at the rate of 3.31% for calendar year 2009, and (xv) after December 31, 2009, at the rate of 1.23% for calendar year 2010.

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

MICHIGAN TAX TRIBUNAL

Entered: December 22, 2010 By: Victoria L. Enyart