

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

John Chase, Jr.,  
Petitioner,

v

MTT Docket No. 416556

City of Hillsdale,  
Respondent.

Tribunal Judge Presiding  
Steven H. Lasher

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, John Chase, Jr., appeals ad valorem property tax assessments levied by Respondent, City of Hillsdale, against Parcel No. 006-227-285-22 for the 2011, 2012, and 2013 tax years. Karlye A. Horton, Attorney, represented Petitioner, and Thomas G. King, Attorney, represented Respondent.

A hearing on this matter was held on August 22, 2013. Petitioner's sole witness was David J. Pavka, Michigan Certified General Real Estate Appraiser. Respondent's witnesses were Kimberly Thomas, MAAO, the current City assessor, and Deborah Sikorski, MAAO, the previous City assessor.

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, 2012, and 2013 tax years are as follows:

Parcel No.	Year	TCV	SEV	TV
006-227-285-22	2011	\$463,760	\$231,880	\$231,880
006-227-285-22	2012	\$444,810	\$222,405	\$222,405
006-227-285-22	2013	\$405,500	\$202,750	\$202,750

### 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 his appraisal evidence supports a value for the subject property of \$300,000 for 2011 and that the value should remain the same for 2012 and 2013. Petitioner further contends that (i) he relies on the appraisal to value the property for 2011, (ii) Respondent's contention of inappropriate factors in the appraisal's cost approach was not supported by any evidence to demonstrate what those factors should have been, (iii) even with Respondent's suggested recalculations of the appraisal's cost approach, the subject property would still be valued lower than it was originally assessed for 2011, (iv) for the income approach, testimony suggests that market rent for a storage area would be between \$2.25 and \$3.00 per square foot, and the appraiser's estimate of \$4.22 per square foot would still be high, (v) the pictures of the subject in the appraisal indicate the condition of the second floor and substantiate that it is not in rentable condition, (vi) with respect to the sales comparison approach, although there are insufficient sales of comparable properties located in the City, resulting in large adjustments to the comparable sales, the sales comparison approach is the most reliable of the three approaches to value, and (vii) Petitioner acknowledges that there was no valuation disclosure submitted for 2012 or 2013, but Respondent's own property record cards and the witnesses' testimony reflect that values are going down for these years.

As determined by Petitioner, 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
006-227-285-22	2011	\$300,000	\$150,000	\$150,000
006-227-285-22	2012	\$300,000	\$150,000	\$150,000
006-227-285-22	2013	\$300,000	\$150,000	\$150,000

PETITIONER'S ADMITTED EXHIBITS

P-1 Summary Appraisal Report prepared by David J. Pavka, dated May 17, 2011.

PETITIONER'S WITNESS

David J. Pavka

David J. Pavka, a Michigan Certified General Real Estate Appraiser, was Petitioner's valuation expert. He testified that (i) the subject property is located in a secondary central business district and is 18,000 square feet, with 9,000 square feet on each floor, (ii) the main floor has two tenants, MedWest, occupying 3,900 square feet, and Classic Cuts, occupying 1,590 square feet, (iii) the second floor is in poor condition and is essentially not useable, with nobody paying rent and the area being used for storage, (iv) he is aware that the second floor has been used as an alternate high school, but does not recall the timeframe, (v) he developed all three approaches to value with primary reliance on the sales comparison approach, (vi) his cost approach relied on cost information from Marshall Swift from 2002 for class B department stores, (vii) in applying the sales comparison approach, he considered six sales, with five being central business district storefront-type sales, but none being ideal comparables given the shortage of truly comparable sales, and all comparables being much smaller than the subject requiring large size adjustments, (viii) in applying the income approach, he used actual rents paid by MedWest and Classic Cuts, as well as actual expenses incurred by Petitioner, and applied a capitalization rate of 9.24% based on a band-of-investment method, (ix) there is a significant portion of the main floor that is not under written lease but he

did not allocate any additional rent for this or for the second floor in the income approach because it represents common area, storage, stairwells, elevator shaft, restrooms, and space being occupied by Classic Cuts at no charge, (x) he is familiar with storage rates in the area, and for small segmented units, it is about \$2.50 to \$3.00 per square foot, but he is not aware of what the rental rate would be for warehouse storage space, and (xi) Respondent's cost-less-depreciation method is flawed as its determination of total depreciation is insufficient, and its Economic Condition Factor ("ECF") sales study includes properties not comparable to the subject.

#### RESPONDENT'S CONTENTIONS

Respondent contends that the true cash, state equalized, and taxable values initially determined by Respondent for the subject property for the tax years at issue should be affirmed. Specifically, Respondent contends that (i) the appraisal submitted by Petitioner is flawed because his income approach did not consider all of the subject space as leasable and did not consider market income and expense information, his cost approach did not consider current costs pursuant to Marshall Swift cost information, and its sales comparison approach is based on incredible adjustments for size differences and is totally subjective, (ii) the total value amount in Petitioner's appraisal changes dramatically if you make adjustments for the computation errors in the cost approach, (iii) Petitioner's value conclusion using a \$4.00 per square foot market-based rent rate in applying the income approach yields a value essentially the same as Respondent's adjusted cost approach, and (iv) Respondent's cost-less-depreciation approach is the best evidence of the value of the subject property presented in this matter.

As determined by Respondent, the TCV, SEV, and TV for the subject property for the tax years at issue should be as originally assessed:

Parcel No.	Year	TCV	SEV	TV
006-227-285-22	2011	\$543,720	\$271,860	\$197,944
006-227-285-22	2012	\$521,300	\$260,650	\$203,288
006-227-285-22	2013	\$480,000	\$240,000	\$208,166

#### RESPONDENT'S ADMITTED EXHIBITS

R-1 2011, 2012, and 2013 property record cards for subject property.

R-2 2011 Downtown Commercial Studies.

R-3 2012 Downtown Commercial Studies.

R-4 2013 Downtown Commercial Studies.

R-5 County Equalization Study

#### RESPONDENT'S WITNESSES

##### Kimberly Thomas

Kimberly Thomas, assessor for the City of Hillsdale since May 2013 and a Michigan Advanced Assessing Officer, was Respondent's first expert witness. Ms. Thomas testified that (i) she reviewed Petitioner's appraisal, and the value he determined using a cost approach based on Marshall Swift was flawed because he did not use current values and such cost values should be adjusted for average building height, perimeter multiplier, current cost, and local area because Marshall Swift is a national average manual, and there are differences in construction costs throughout the country, (ii) she reviewed the Marshall Swift information, and the perimeter multiplier for the subject would be 0.923, the current cost multiplier would be 1.552, and the local cost multiplier would be 1.04, (iii) when all of the multipliers are applied, the cost of the subject building is \$116.10 per square foot, (iv) the 79% depreciation indicated under Petitioner's cost approach could possibly be correct,

because it appears that the appraiser included some functional and other types of obsolescence in that overall rate, (v) Petitioner's appraiser failed to provide any support or explanation for the square footage or site value adjustments made in applying the sales comparison approach, (vi) the sales comparables selected should not have been used because they are not of similar size and are all adjacent downtown buildings while the subject is freestanding, (vii) in applying the income approach, Petitioner's appraiser should have used market rental rates, as required by MCL 211.27, unless there was a long-term lease in place, (viii) the actual rental rates of \$4.22 and \$4.53 per square foot are probably low for the market, but may be within the range, (ix) Petitioner's appraiser erred in developing a capitalization rate because the mortgage constant was incorrect, and (x) Petitioner's appraiser incorrectly reflected property taxes as an expense rather than as a component of the capitalization rate.

Deborah Sikorski

Deborah Sikorski, the former assessor for the City of Hillsdale for the tax years under appeal and a Michigan Advanced Assessing Officer, was Respondent's second expert witness. Ms. Sikorski testified that (i) the 2011 property record card reflects a land value of \$1.40 per square foot which was based on the value range of \$1.40 to \$2.00 per square foot for downtown Hillsdale, (ii) the effective age of the building was determined to be 29 years, based on the condition, original age of the building, and amount of time it is supposed to last, (iii) the overall percent good for the building was 52%, with the economic life being 60 years, (iv) the percent good increased in the next two years because there were some renovations to the first floor, (v) the building was probably last inspected by Respondent in 2005, (vi) a school was located on the second floor of the subject building until 2010, (vii) the

2011 ECF was 0.869, (viii) for the 2012 tax year, the effective age of the subject property changed based on renovations, the county multiplier changed from 1.27 to 1.30, and ECF was 0.797, (ix) the only differences in applying the cost approach for the 2013 tax year were the county multiplier of 1.34 and the ECF at 0.709, (x) the ECF reflected in the sales study shows 0.701, and she is not sure if there was a typographical error that made this different from the 0.709 reflected on the record card, (xi) the ECF analysis is conducted by neighborhood, irrespective of the type or size of the building, and (xii) in her opinion, market rates for warehouse storage space in the City are between \$2.50 and \$3.00 per square foot.

#### FINDINGS OF FACT

1. The subject property consists of one parcel of property located at 34 McCollum Street, Hillsdale, Michigan, Hillsdale County, known as the Midtown Building.
2. The subject property is a two-story, multi-tenant commercial building containing a total of 18,000 square feet of gross area, located on a site containing 17,151 square feet.
3. The subject property has two tenants on the main floor; Professional Breathing Associates, Inc. (referred to by the parties as Midwest), occupying 3,900 square feet at a rate of \$1,370 per month, and Classic Cuts Plus Salon and Spa, PLLC (“Classic Cuts”), occupying 1,590 square feet at a rate of \$600 per month.
4. The Classic Cuts lease was effective November 1, 2009, through September 30, 2014, at an escalating rate starting at \$250 per month for the first five months and ending in a rate of \$600 per month.

5. The second floor of the subject is vacant and used for storage, including storage by Classic Cuts.
6. The highest and best use of the subject property, as improved, is as currently used as a multi-tenant commercial building.
7. The subject property is zoned B-2, Central Business District.
8. The subject property was assessed for the tax years at issue as follows:

Parcel No.	Year	TCV	SEV	TV
006-227-285-22	2011	\$543,720	\$271,860	\$197,944
006-227-285-22	2012	\$521,300	\$260,650	\$203,288
006-227-285-22	2013	\$480,000	\$240,000	\$208,166

9. Petitioner's appraiser developed all three approaches in determining the true cash value of the subject property for the tax years at issue.
10. Petitioner did not present an appraisal or other evidence of the value of the subject property for the 2012 and 2013 tax years.
11. In applying the cost-less-depreciation approach, Petitioner's appraiser utilized a value of \$77.93 per square foot, derived from the 2002 Marshall Swift cost tables, to calculate a cost "new" for the subject. The appraiser then applied a 79% depreciation rate and added a value of \$5,000 for site improvements and \$34,300 (\$2/square foot) for the land value, concluding that the true cash value of the subject property under this approach was \$333,875.
12. In applying the sales comparison approach, Petitioner's appraiser identified six comparable sales, with sale dates ranging from June 2007<sup>1</sup> to January 2011, sizes ranging from 2,292 to 10,000 square feet, and adjusted per

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<sup>1</sup> Comparable #3 is indicated in the appraisal to have a sale date of June 7, 2008. However, it was stated in testimony that the actual sale date was June 7, 2007. (Transcript, p. 82)

square foot prices ranging from \$10.42 to \$24.26 (prior to any size adjustment)<sup>2</sup>, concluding that the true cash value of the subject property was \$300,000.

13. Petitioner's appraiser made adjustments to the sales comparables for date of sale, site size, condition, location, floor area, amenities, and appeal.

14. In applying the income approach to value, Petitioner's appraiser utilized the actual rental rates for the two tenants, for a total effective gross income of \$23,640.

15. In applying the income approach to value, Petitioner's appraiser determined that a 5% vacancy and credit loss rate was appropriate.

16. In applying the income approach to value, Petitioner's appraiser determined applicable expenses to be \$16,488, including property taxes based on the 2010 SEV,<sup>3</sup> insurance, management, utilities, janitorial, maintenance, trash removal, and replacement reserves at 7%.

17. In applying the income approach to value, Petitioner's appraiser determined a capitalization rate of 0.92410 based on the band-of-investment technique.

18. Respondent's assessor provided the property record cards for each tax year at issue.

19. The land value reflected on the property record cards for all three tax years remained the same at \$24,047 (\$1.40 per square foot).

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<sup>2</sup> The adjusted price per square foot, inclusive of the size adjustment, ranged from \$23.29 to \$125.09 per square foot.

<sup>3</sup> Petitioner's appraisal states this was based on the '08 SEV; however, in testimony, the appraiser indicated that this was a typographical error, and he used the 2010 SEV.

20. The subject building is a class C,<sup>4</sup> community shopping center, low quality, with an effective age of 29 years for the 2011 tax year, with physical depreciation at 52%.

21. For 2012 and 2013, the effective age was changed to 28 years, with physical depreciation at 53%, based on renovations to the Classic Cuts suite.

#### 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).

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<sup>4</sup> Petitioner’s appraisal identifies the subject as a class B-average quality department store. (P-1, p. 33)

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.

In this case, Petitioner determined the true cash value of the subject property for 2011 by applying all three approaches to value, although the appraisal states that “only the sales comparison approach was utilized. The other two approaches were not considered relevant to the appraisal problem.” (P-1, p. 51) Respondent relied on its cost-less-depreciation approach as reflected on the property record cards for the tax years at issue, as well as its ECF studies. The Tribunal finds that typically, when there is an income-producing property, the income approach to value is the most reliable. 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. Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 13<sup>th</sup> ed, 2008) p. 300. [Emphasis added.]

Although the income approach is typically the most appropriate method to use to determine the true cash value of an income-producing property such as the subject, the income approach submitted by Petitioner in this case is so flawed and lacking in foundation or support that it cannot be found to be reflective of the value of the subject property. Petitioner’s appraiser utilized the *actual* rents for the two tenants to calculate the total effective gross income. Not only did Petitioner’s appraiser ignore the remainder of the unrented space as potentially rentable, Petitioner’s appraiser also relied on actual rents and expenses rather than using market information. The Tribunal finds that the Court of Appeals generally interprets MCL 211.27(4) 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. However, the Tribunal further finds that, consistent with the line of cases on this topic,<sup>5</sup> except in unusual circumstances, the appraiser

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<sup>5</sup> See *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442; 221 NW2d 588 (1974), “CAF II” *CAF Investment Co v Saginaw Twp*, 410 Mich 428; 302 NW2d 164 (1981), *Uniroyal, Inc v Allen Park*, 138 Mich App 156; 360 NW2d 156 (1984), *Fifty-nine Seventy-three Corp v Detroit*, unpublished opinion per curiam of the Court of Appeals, issued July 24, 1998 (Docket No. 202520), *Amurcon/Ridgewood Vista v Leoni Twp*, unpublished opinion per curiam of the

of a property subject to a long-term net lease 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, used in applying the income method, reflect current market conditions as of the applicable assessment date and do not reflect rents negotiated several years prior. In the present case, the Medwest lease was entered in 2003 at a rate of \$1,370 per month, and the two subsequent lease extensions were also at this same original \$1,370 monthly rate established in 2003. The Classic Cuts lease was at \$350 per month from April 1, 2010, to September 30, 2011, and increased to \$600 per month until September 30, 2012. The Tribunal finds that Petitioner has failed to establish that the actual leases in place at the subject reflect the “present economic income” for the subject that could be negotiated under current market conditions. Petitioner has supplied no evidence or information that would reflect what the actual market rents under current conditions are for the subject neighborhood, township, county, or other geographic or economic area. Petitioner’s appraiser also failed to account for the fact that only 5,490 square feet out of the 9,000 square feet on the main floor is rented and further did not attribute any value to the 9,000 square feet of space on the second floor. While it may be in poor condition, the second floor is useable, at

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Court of Appeals, issued March 7, 1997 (Docket No. 192485), *Troy Technology Park v City of Troy*, unpublished opinion per curiam of the Court of Appeals, issued July 25, 1997 (Docket No. 193934), *Royal Industrial Ctr v Royal Oak Twp.*, unpublished opinion per curiam of the Court of Appeals, issued February 8, 2002 (Docket No. 225361), and *Palace Sports & Entertainment, Inc v Auburn Hills*, unpublished opinion per curiam of the Court of Appeals, issued June 21, 2012 (Docket Nos. 294051, 294185).

a minimum, as additional storage, and is actually being used in part by Classic Cuts for storage (although at no additional charge). Again, there has been no evidence presented as to the market rental rate of storage space of the type available at the subject. Respondent's witness stated her belief that storage space in the township would be rented at a rate of \$2.50 to \$3.00 per square foot. These statements, however, were not supported by any sales or rental data submitted as evidence to the Tribunal. Also troubling is Petitioner's appraiser's use of property taxes based on the 2010 taxable SEV as an expense item in calculating the final net operating income. First, the Tribunal finds that there is no such term as "taxable SEV" but that the actual property taxes charged are based on the *taxable value* for a particular tax year and the applicable millage rate, not the SEV. Second, and most importantly, it is not appropriate to include the property taxes for the subject as an expense item when calculating the net operating income. Given that the function of the appraisal is to assist in the determination of the true cash value of the subject property as part of an ad valorem tax appeal, real estate taxes should not be included as an expense. Instead, a tax capitalization component should be added to the overall rate utilized to value the subject property. There is also a lack of supporting data with respect to the band-of-investment technique used by Petitioner's appraiser to calculate the capitalization rate, as well as testimony from Respondent's witness that there may have been an error in the calculation. Given these substantial errors, the Tribunal finds that the income approach contained in Petitioner's appraisal lacks credibility and simply cannot be used in any fashion to establish a value for the subject property for the 2011 tax year.

Similarly, the Tribunal finds that Petitioner's appraiser's sales comparison approach is flawed as Petitioner's appraiser failed to select comparable sales that

are reflective of the subject property and further relied on extensive unsupported adjustments to these comparables in an attempt to determine a value for the subject property. Specifically, the subject property has a total of 18,000 square feet. Five of the six comparables selected by Petitioner's appraiser had a total square footage below 5,000 (with two of those comparables being below 3,000 square feet). To compensate for this large size difference, the appraiser made an adjustment of \$20 per square foot for the main floor, \$10 per square foot for the second floor, and \$5 per square foot for the comparables with an additional third floor. The appraisal does not contain any explanation as to how such adjustments were derived. Further, Petitioner's appraiser did not elaborate during testimony on the data or specific market-based information he used to determine the price per square foot adjustments for the various floors. Regardless of how the adjustments were arrived at, any adjustments made were so excessive that the comparables cannot be considered to adequately reflect what the subject property would sell for. The gross adjustments ranged from 72% for comparable #6 to 389% for comparable #1 (with comparables #2 through #5 all having gross adjustments over 200%). While there may have been a lack of comparables readily available in the immediate neighborhood, it does not appear that the appraiser made any effort to find more similar properties located in nearby locations that may have experienced similar market influences or that could have been reasonably adjusted. There was also no data and no sufficient explanation by the appraiser with respect to how the other adjustments for site, sale date, condition, etc. were established. The Tribunal finds it incomprehensible that Petitioner's appraiser essentially relied on a sales comparison approach that failed to identify sales of properties even remotely comparable to the subject and then failed to adequately support or explain the

extensive adjustments necessitated by the lack of comparability of these comparables to the subject. The Tribunal finds that, similar to Petitioner's appraiser's income approach, the sales comparison approach contained in Petitioner's appraisal also lacks credibility and simply cannot be used in any fashion to establish a value for the subject property for the 2011 tax year.

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 cost-less-depreciation approach. Although the cost approach is not generally the most appropriate method to use in determining the true cash value of an older property,<sup>6</sup> the parties, particularly Petitioner, leave the Tribunal with no choice but to determine the true cash value of the subject property using the cost approach, as the income and market approaches offered by Petitioner were so flawed as to render them useless to the Tribunal. Petitioner's appraiser calculated a value under the cost approach utilizing the 2002 Marshall Swift cost tables for a Class B average quality department store,<sup>7</sup> but the appraisal states that the highest and best use is as a multi-tenant commercial building. While it is clear from a review of the appraisal and testimony that Petitioner's appraiser applied outdated Marshall Swift cost tables and failed to apply any of the additional factors or multipliers to bring these costs current to the December 31, 2010 valuation date, the testimony of Respondent's witness

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<sup>6</sup> The cost "approach is especially persuasive when land value is well supported and the improvements are new or suffer only minor depreciation . . . ([T]he cost approach can also be applied to older properties given adequate data to measure depreciation." *The Appraisal of Real Estate, supra*.

<sup>7</sup> If Respondent had assessed the subject as a Class B average quality department store, the base cost, prior to any further adjustments, would be \$92.80/sf, as opposed to the \$55.45/sf Respondent utilized in assessing the subject as a community shopping center. See 2003 State of Michigan Assessor's Manual.

regarding the correct numbers to be applied has not been supported by any evidence. The actual data that Respondent's witness purportedly relied on to update the values adopted by Petitioner's appraiser was not submitted as evidence to this Tribunal, and the Tribunal is, therefore unable to determine the accuracy of the information testified to. Neither Petitioner's cost approach calculations nor the corrections testified to by Respondent's witnesses can be used as a reliable indicator of value. The Tribunal finds that the original cost-less-depreciation approach, as reflected on the property record cards, is the only persuasive and verifiable method of valuation submitted by either party for the tax years under appeal. This method, however, is not without its flaws. For 2011, the subject property was assessed as 52% good. For 2012 and 2013, Respondent changed this to 53% good, based on the renovations made by Classic Cuts. Respondent did not give any additional consideration for any of the tax years under appeal for the condition of the second floor. The photos included in Petitioner's appraisal reflect that the second floor area is in very poor condition and would clearly need repairs and renovation to be used as rentable space. Despite this, Respondent did not apply any functional or economic obsolescence on the record cards and is not proposing to apply a different rate per square foot to the second floor. The Tribunal finds that a different cost per square foot should be applied to this second floor area, given its condition and actual use as storage as opposed to tenant suites or other useable space. Per the State of Michigan Assessor's Manual, the base cost for warehouse storage, class C average quality (which is appropriate for the subject's second-floor condition) is \$29.80, with an additional increase of \$6.85 for heating and cooling. This base cost of \$36.65 per square foot is then adjusted by the 0.96 height and 0.99 perimeter multipliers, for a final revised square foot cost

for the second floor of \$34.83. This value will be applied by the Tribunal (after application of the county multiplier for each year) to the 9,000 square feet of space on the second floor.

The Tribunal further finds that the ECF applied by Respondent on the property record card for 2013 of 0.709 does not correspond with the ECF study at 0.701. Respondent's witness testified that she does not know why there is a discrepancy, unless it was a typo. The Tribunal finds that the ECF study reflects 0.701 and that is the ECF that should be applied to the subject for the 2013 tax year.

Lastly, the Tribunal finds that neither party submitted any evidence as to vacant land sales or land values in the area. The Tribunal finds Respondent's witness' testimony to be credible with respect to land values in downtown Hillsdale ranging from \$1.40 to \$2.00 per square foot, with the subject being assessed at the low end at \$1.40 per square foot. As such, the Tribunal finds that the land value as assessed for all three tax years at \$24,047 will be utilized in calculating the final true cash value of the subject property for the tax years at issue. The calculation of the true cash value of the subject property, based on the above findings, is explained as follows:

	<b>2011</b>	<b>2012</b>	<b>2013</b>
Refined square foot cost 2 <sup>nd</sup> floor <sup>8</sup>	\$34.83	\$34.83	\$34.83
County Multiplier	1.27	1.30	1.34
Final square foot cost	\$44.23	\$45.28	\$46.67
Total floor area (2nd floor)	9,000	9,000	9,000

<sup>8</sup> Revised square foot cost was calculated based on \$29.80 average Class C warehouse storage, plus \$6.85 heating adjustment, multiplied by the 0.96 height multiplier and 0.99 perimeter multiplier found in the 2003 State of Michigan Assessor's Manual.

Base cost new 2 <sup>nd</sup> floor	\$398,070	\$407,520	\$420,030
Revised base cost new 1 <sup>st</sup> floor (based on 9,000 square feet)	\$575,010	\$588,591	\$606,699
Total base cost new (1 <sup>st</sup> and 2 <sup>nd</sup> floors)	\$973,080	\$996,111	\$1,026,729
Depreciation	0.52	0.53	0.53
Total depreciated cost	\$506,001	\$527,938	\$544,166
ECF	0.869	0.797	0.701
TCV of building	\$439,715	\$420,766	\$381,460
TCV of land	\$24,047	\$24,047	\$24,047
<b>Final TCV (rounded)</b>	<b>\$463,760</b>	<b>\$444,810</b>	<b>\$405,500</b>

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner failed to prove by a preponderance of the evidence that the subject property is assessed in excess of 50% of market value. The Tribunal further finds, however, based upon its independent review of the testimony and evidence submitted, that the original assessments established for the subject property should be modified, based on a valuation as warehouse storage space for the condition of the second floor and a correction to the 2013 ECF. The subject property's TCVs, SEVs, and TVs 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%, and (iv) after June 30, 2012, and prior to January 1, 2014, at the rate of 4.25%.

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

By: Steven H. Lasher

Entered: Sept. 26, 2013