

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

John Elieff,
Petitioner,

v

MTT Docket No. 330560

City of Garden City,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

Introduction

Petitioner, John Elieff (“Elieff”) appeals ad valorem property tax assessments levied by Respondent, City of Garden City, against the real property owned by Petitioner for the 2007, 2008 and 2009 tax years. David B. Marmon, attorney, appeared on behalf of Petitioner. Nevin A. Rose, attorney, appeared on behalf of Respondent. Witnesses appeared on behalf of both parties. They include: Myles B. Hoffert, attorney for Petitioner, and F. Scott Miller, Certified Michigan Assessor Evaluator III, for Respondent. Both witnesses prepared a valuation disclosure.

The proceedings were brought before this Tribunal on February 24, 2010, to resolve the real property dispute.

The City of Garden City has assessed the property on the tax roll at:

Parcel No. 35-016-01-0024-304

Year	TCV	AV/SEV	TV
2007	\$2,202,400	\$1,101,200	\$744,023
2008	\$2,202,400	\$1,101,200	\$761,135
2009	\$2,202,400	\$1,101,200	\$794,624

Respondent's appraisal for the three years at issue states the values as:

Parcel No. 35-016-01-0024-304

Year	TCV	AV/SEV	TV
2007	\$1,600,000	\$800,000	\$744,023
2008	\$1,550,000	\$775,000	\$761,135
2009	\$1,450,000	\$725,000	\$725,000

Petitioner's attorney believes that the values of the subject property are:

Parcel No. 35-016-01-0024-304

Year	TCV	AV/SEV	TV
2007	\$714,210	\$357,105	\$357,105
2008	\$767,250	\$383,625	\$383,625
2009	\$709,500	\$354,750	\$354,750

The Tribunal finds the values shall be:

Parcel No. 35-016-01-0024-304

Year	TCV	AV/SEV	TV
2007	\$2,202,400	\$1,101,200	\$744,023
2008	\$2,202,400	\$1,101,200	\$761,135
2009	\$2,202,400	\$1,101,200	\$794,624

Background and Introduction

At issue is the true cash value for a commercial retail property located at 29611 Ford Road, Garden City, Wayne County, Michigan. This is a single tenant retail building with 22,066 square feet on approximately 1.83 acres. The property is encumbered with a

twenty-year land lease. The improvement was constructed by Pep Boys Auto Parts and repair store; Dollar Castle is the current tenant.

Petitioner's appraiser suffered a heart attack late January 2010. Petitioner's counsel, Myles B. Hoffert, switched from counsel to Petitioner's only valuation witness.

Respondent's independent valuation disclosure indicates that the subject property is over-assessed and suggests a reduction in the true cash value.

Petitioner's Arguments

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

Petitioner's only witness is Myles B. Hoffert, Attorney and CPA, who was, until the hearing, also the attorney whose signature appears on the pleadings. This includes the January 22, 2010 fax with Hoffert & Associates, P.C. letterhead indicating "Enclosed for filing please find the Petitioner's Valuation disclosure for Years 2008 and 2009, Revised Valuation disclosure as of December 31, 2006 and Proof of Service for the above referenced matter." The same cover letter, which was signed by Myles B. Hoffert, contains a real property valuation disclosure for 2008 and 2009 as prepared by Hoffert.

Hoffert testified that he is not a disinterested party. He was reminded by Respondent that Michigan Rules of Professional Conduct Rule 3.7, prescribes a lawyer from acting as a witness for his client. Petitioner states that 3.7(b) says:

A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by Rule 1.7 or 1.9. Tr pp 17, 18.

Petitioner offered the following exhibits:

P-1 Hoffert valuation disclosure.

P-2 Ground Lease Agreement dated May 20, 1997.

Petitioner's only witness was Hoffert. This Tribunal did not qualify him as an expert in valuation, but allowed him to testify to the valuation disclosure that he authored. Hoffert testified that the subject property is covered under a ground lease. Pep Boys put a building on the property. Hoffert utilized Petitioner's actual income pursuant to the ground lease on subject property.

Hoffert considered 29600 Ford Road (located across the street from the subject property) as an indication of the maximum rent that could be expected for subject property as improved. Hoffert testified that he spoke to Tomlinson, the original appraiser who could not complete the project. He also spoke to the broker, Ludwig, when verifying the \$3.00 per square foot asking rent.

Hoffert determined that the actual rent from the ground lease was above market but a good indication of the gross income for subject property.

Hoffert testified that a triple net lease does not include insurance or reserves for replacement. He estimated that vacancy and collection was 10%. The 10% vacancy and credit calculation was explained by Hoffert as the standard is 5% and an extra 5% because Pep Boys are closing off the Michigan operations.

Hoffert considered the following expenses for subject property; 3% for insurance, 7% reserves for replacement and an additional \$0.10 per square foot for roof and outer walls.

Hoffert's sources for capitalization rates were Real Estate Research Corporation ("RERC") 4th Quarter 2007 and 2008, RealtyRates.com 4th Quarter 2007 and 2008.

Hoffert stated that he discussed rates with Dan Tomlinson. Hoffert's capitalization rate for the three years at issue was 10%.

The net operating income was then capitalized into an indication of value.

Petitioner's 2006 valuation consists of a cover page and the following:

Initial lease 20 year + 4 (5) year options Lease Date September 21, 1977.

Rental rate	years 6-10	\$85,000
	Years 11-15	<u>\$94,380</u>
	Average	\$90,900

Gross Income	\$90,000	
Vacancy & collection	<u>\$ 9,090</u>	
Effective Gross Income		\$81,810

Expenses:

Insurance 3%	\$ 2,457
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Reserve 7%	\$ 5,726	
Roof outer walls .10 per foot	<u>\$ 2,206</u>	
Total		\$10,389
Net operating income		\$71,421
Divided by cap rate of 10% =		\$714,210

Petitioner's 2008 and 2009 valuation disclosure included a page indicating averaged actual gross rent (based on the 1977 ground lease) and the \$3.00 per square foot rent (from the 29600 Ford Road property across the street). Page 19 of Hoffert's report indicates that the \$3.00 per square foot rental agreement did not close because the prospective tenant failed a credit review. Regardless, Hoffert determined that \$3.00 per square foot should be used to determine market rent. He insists that the building could be purchased but provided no documentation to substantiate an asking price. Hoffert stated that actual rent, albeit the land lease, is market rent for the subject property as improved because it would not command additional rent for the building. Hoffert, therefore, used actual rent as a basis for market rent because it was greater than the actual rent across the street. The subject's land lease was for the vacant land prior to construction by Pep Boys.

When questioned on cross whether he was developing a leased fee value, Hoffert stated "no, because it's a twenty-five year lease, until it reaches thirty-five years it is fee simple."

The capitalization rate that Hoffert utilized was for retail property; however, the actual income was based on a land lease, not a building lease. Hoffert testified that the cap

rate and income is based on what he considers proper for both. The final value indication is an average of the actual gross rent and the “average” gross rent. The chart below is the actual calculations for 2007 and the average gross rent and expenses for tax years 2008 and 2009:

Year/Line Item	2007	2008	2009
Potential Gross Income	\$90,900	\$96,811	\$96,811
Vacancy/Collection Loss	\$9,090	\$9,681	\$9,681
Effective Gross Income	\$81,810	\$87,130	\$87,130
Expenses			
Insurance (3%)	\$2,457	\$2,615	\$2,615
Reserves Replacement (7%)	\$5,726	\$4,356	\$4,356
Roof outer walls (\$.10/SF)	\$2,206	\$1,742	\$1,742
Total Expenses	\$10,389	\$8,713	\$8,713
Net Operating Income	\$71,421	\$78,417	\$78,417
Capitalization Rate	10.00%	9.64%	9.64%
Indicated Value	\$714,210	\$813,500	\$813,500

Respondent's Arguments

Respondent states that the true cash value of subject property is over assessed based on its appraisal. Respondent requests that the Tribunal dismiss the case. In addition to Petitioner's burden of proof there is also a burden of going forward with the evidence. Respondent believes that the burden has not been met. Petitioner provided the Tribunal with a flawed analysis of a lease that had rents negotiated ten years prior to the first tax year. The cap rate and deductions are both suspect and without basis. The one comparable property actually had no lease, was not listed for sale, and was less than stellar as a comparable property. Respondent states that Petitioner's counsel presented his own version of an income approach based on his position of advocacy, not one of impartiality.

Respondent offered the following exhibits:

R-1 Valuation disclosure.

R-3 Listing of Petitioner's comparable property.

R-4 Photographs.

R-5 Real Estate Research Corporation 2008 ("RERC").

R-6 RERC 2007.

R-7 Cushman Wakefield 2008 Sale #1.

R-8 HES Builders re: conversion of Pep Boys building at Telegraph Road, Redford.

F. Scott Miller, Certified Michigan Assessor Evaluator III, prepared a valuation disclosure. He determined that the highest and best use of subject property as improved is to continue the current occupancy, as the building still contributes to value.

Miller explained that the market analysis came from CoStar because it gives the basis for conclusions. The average rental rate came from CoStar; however, Miller adjusted the rental rates down 15% because they are asking rent, not actual rent. The total square footage was multiplied by the adjusted rent of \$11.39 for 2007, \$11.50 for 2008, and \$11.19 for 2009, multiplied by subject property's 22,066 square feet, resulting in the potential gross rent for each year at issue.

Miller's next step was to estimate vacancy and collection loss. He used CoStar again for historical vacancy rates, which were 10% for 2006, 10.7% for 2007, and 11.1% for year end 2008. Miller concluded that the overall average was 10.75% for all three years at issue. The vacancy and credit was deducted from the potential gross income for an effective gross income.

Miller testified that operating expenses were typically found in the market through interviews and speaking with brokers and appraisers. The management fee, reserves for replacement, and a small allowance for common area maintenance is typical.

Because the rents were decreasing and the vacancy was increasing Miller found that the landlords are picking up additional cost to keep or attract tenants, so he included a small allowance for common area maintenance. The operating costs were deducted from the effective gross income for net operating income.

Miller then discussed capitalization rates. There are three approaches for determining capitalization rates; they are band of investment, source data, and extraction from the market. He used all three for 2008. He testified that he used some source data and extraction from sales for 2007, and just source data for 2006. Miller also added the effective tax rate for all three years. He assumed that the landlord would be paying the taxes on the property.

The income approach summary is:

Year/Line Item	2007	2008	2009
Potential Gross Income	\$246,919	\$253,759	\$251,332
Vacancy/Collection Loss	\$26,544	\$27,279	\$27,018
Effective Gross Income	\$220,375	\$226,480	\$224,314
Fixed Expenses			
Property Taxes			
Insurance (\$.10/SF)	\$2,206	\$2,206	\$2,206
Variable Expenses			
Management Fee (5% of EGI)	\$11,018	\$11,324	\$11,216
CAM (\$.25/SF)	\$5,516	\$5,516	\$5,516
Reserves Replacement (\$.15/SF)	\$3,309	\$3,309	\$3,309
Total Expenses	\$22,049	\$22,355	\$22,247

Net Operating Income	\$198,326	\$204,125	\$202,067
Capitalization Rate	11.35%	11.83%	12.32%
Indicated Value	\$1,780,000	\$1,725,000	\$1,600,000

Miller then explained his sales comparison approach. For each year at issue he selected three properties with similar market influences to estimate the market value of subject property. Miller states that, in each tax year, "In the analysis of the market data, elements of comparison considered include: conditions of sale, property rights conveyed, market conditions, location and physical characteristics." R-1 pp 33, 39, and 46. The following includes the sales grid and comments for each year in contention:

2007 Tax Year

	Subject	Sale 1	Sale 2	Sale 3
Tenant	Retail	Office	Retail	Retail
Address	29611 Ford Rd	35713 W Michigan	36534 Plymouth	8177 N Sheldon
City	Garden City	Wayne	Livonia	Canton
Condition	Avg	Below Avg	Avg	Avg
Square Feet	22,066	14,439	9,801	8,358
SP/SF		\$56.10	\$95.40	\$83.75

Miller made a 20% negative adjustment for the superior location of Sales 2 and 3. He states that Signature Associates' 2006 year end market report indicates Westland's community neighborhood rents are \$16.00 per square foot. The other communities command \$20.00 per square foot rent. Miller determined that a 20% increase was appropriate for the inferior condition of Sale 1. The adjusted sale prices for Sales 1, 2 and 3 are \$67.32, \$76.32 and \$67.00 per square foot, respectively. The final value was \$70.00 per square foot for a true cash value of \$1,550,000.

2008 Tax Year				
	Subject	Sale 4	Sale 5	Sale 6
Tenant	Retail	Retail	Retail	Retail
Address	29611 Ford Rd	15630 Middlebelt	10550 Telegraph	29100 Plymouth
City	Garden City	Livonia	Taylor	Livonia
Condition	Avg	Average	Good	Good
Square Feet	22,066	11,030	10,415	8,920
SP/SF		\$57.75	\$102.26	\$109.30

Miller adjusted Sale 4 a positive 10% because it was sold based on the agreement that it would be leased back to seller. The seller is motivated to give a discounted sale price and that was the basis for the positive adjustment.

Miller made a 20% negative adjustment for the superior location of Sale 5. He states that Signature Associates' 2007 year end market report indicates that the more affluent areas of Livonia command \$20.00 per square foot rent. Sale 6 is near a major intersection with a higher traffic count, thus a 30% negative adjustment was applied. Miller determined that a 12% adjustment was appropriate for Sale 6 for the superior condition.¹ The adjustment is based on the differences between the following two sales:

	Sale 2	Sale 6
Tenant	Retail/Vacant	Retail
Address	36534 Plymouth	29100 Plymouth
City	Livonia	Livonia
Contition	Avg	Good
Square Feet	9,801	8,920
Sale Date	May-06	Jun-07
Year Built	1973	1998

¹ The Tribunal notes that no adjustment was made to Sale 2 for the superior condition.

SP/SF	\$95.40	\$109.30
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Miller believes the only difference in the two Livonia sales is the condition of the property at the time of the sale.

The adjusted sale prices for Sales 4, 5 and 6 (in order) are: \$63.53, \$71.58 and \$74.32 per square foot. The final value was \$70.00 per square foot for a true cash value of \$1,550,000.

2009 Tax Year				
	Subject	Sale 7	Sale 8	Sale 9
Tenant	Retail	Multi-tenant	Retail	Retail
Address	29611 Ford Rd	9009 Telegraph	13697 Dix-Toledo	25001 W 8 Mile Rd
City	Garden City	Redford	Southgate	Redford
Condition	Avg	Below Avg	Avg	Avg
Square Feet	22,066	23,916	8,400	8,025
SP/SF		\$37.63	\$68.45	\$41.74

Miller states that Sale 7 was a former Pep Boys building with approximately \$300,000 of structural damage. He adjusted the property up by \$300,000. Sales 7 and 9 were in inferior markets per Signature Associates' 2008 year end report. Westland was estimated at \$17.00 and average neighborhood center was \$14.50. A 15% upward adjustment was made for the inferior locations.

Miller explained that Sale 9 was a real estate owned property where the mortgage lender repossessed the property. The sale was adjusted upwards by 25% to account for the condition of the sale. This property also resold in December 2008; however, Miller did not have the later sale price.

The adjusted sale prices for Sales 7, 8 and 9 (in order) are: \$63.48, \$68.45 and \$60.00 per square foot. The final value was \$65.00 per square foot for a true cash value of \$1,435,000.

On cross Miller was asked how many of the nine sale comparables were within 10% of the size of subject. His response was that Sale 7 was the only comparable within that size range of subject property. He made no adjustments to any of the sales for differences in size, which ranged from 10% to over 50% smaller than the subject property.

When questioned on Sale 7 Miller testified that the purchaser reported \$300,000 in repairs, which included foundation repair, and that an additional \$150,000 was spent for new doors, expanded HVAC, and flooring. Miller further testified that the information came from an appraisal by an MAI at Cushman & Wakefield and no permission was requested to use the data.

Miller was questioned by the Tribunal as to how comparable the rental properties were that he used. He testified "I felt they were fairly comparable. I didn't have all the information." Tr p165. He did not know how many of the 1,621 rental properties were comparable to subject property, and believed that they were located in Western Wayne County. The rental rates from CoStar were based on triple net. Miller modified the CoStar reported rent because gross rent is when the landlord pays expenses; triple net has minimal expenses to the landlord. Miller explained that his modified rent is

somewhere in between gross and triple net income. He stated the term is something he has heard and read.

Miller further testified when questioned about the specificity of the income approach and rental comparables, "I think it's more of a general overall picture of what's going on in the retail market within this area." Tr p 170.

Tribunal's Findings of Fact

The Tribunal finds that Petitioner was not able to successfully carry its burden of proving that the assessments exceed 50% of market value.

The Tribunal finds that Respondent treated the land and building as one entity. It is unclear what Petitioner was valuing, as Hoffert used the actual ground lease as the basis for an income approach and did not attempt to place a value on the improvement. Hoffert determined that the income produced solely by the land lease was equivalent to the income that would be received if the land and building were leased as one entity.

When questioned why the value of the building was not added in Hoffert stated:

I looked at the lease rate across the street, the market rent for a similar type building across the street. I found that market rent to be less than the lease rate for the land lease plus the value of any building. It was even less than the land lease, so I was over conservative and took the land lease numbers because that was way above market even with a building as evidenced by that property across the street. . . .

Tr pp 41, 42.

The Tribunal finds that Petitioner's logic is nonsensical. Petitioner spoke to one broker about a property across the street that was not advertised for lease and used \$3.00 per

square foot as the market rent for subject property. Respondent presented an exhibit (R-3) that 29600 Ford Road is part of an ad for a sublease; however, no asking rent was published. Neither party presented any evidence on the asking price of the sublease, other than Hoffert testifying that he spoke to Doc Ludwig, a broker, that the building could be bought. The plot thickens, however, as Mr. Tomlinson told Hoffert that he was told by Mr. Seeley that the building might be able to be bought for \$8.00 to \$10.00 per square foot. Page 7 of Petitioner's exhibit 1 has handwritten notes that Hoffert testified were written by Mr. Tomlinson, indicating that \$3.00 was the asking price, but a deal did not go through. Hoffert used \$3.00 per square foot as the maximum rent that the subject property would command. The Tribunal notes, however, that the subject property appears to be subleased to Dollar Castle. Neither party discussed that sublease or if the Lessor was Pep Boys or Petitioner. Hoffert relied on a non-leased property used as a comparable, but without any documentation other than someone else's writing on a copy of a January 20, 2010 Loopnet.com printout. The actual document² only states "rental rate negotiable." The Tribunal finds that the evidence presented for the 29600 Ford Road property across the street from subject property is not persuasive that it is or should be an indication of the value of subject property.

Petitioner's counsel up to the hearing was Myles B. Hoffert, who switched positions at that time to the preparer of the valuation disclosure. This Tribunal has discussed woefully inadequate valuation disclosures during various prior Prehearings. Hoffert is not a disinterested party; he prepared an income approach using actual income, and "market" income. Although the market was a property across the street and it was an

² P-1, p 7.

asking rent, not an actual rent, Hoffert determined that the singular rental comparable was appropriate, averaged his estimate and called it good. Continuing further, Hoffert's vacancy and credit estimate was based on his understanding of 5% being the standard, plus an additional 5% because Pep Boys (the originator of the ground lease) was closing its operations in Michigan. This was not outlined in the valuation disclosure.

There were no surveys taken of actual vacancy for the central business district where subject property was located to determine if 10% was accurate. Hoffert denied that his analysis was a yield approach. Hoffert was not effective in communicating the type of approach that he actually used to determine the value of the ground lease. The best description of Hoffert's approach is that he used the actual ground lease income to value the subject property in its entirety. After much research this approach is not found in any learned treatise. The capitalization of ground lease income should have included a somewhat reduced capitalization rate because it values the land only. The value of any improvement should have been included. For example, the sublease of the improvement should have been considered to determine what, if any, value should have been added to the value of the land. Petitioner's use of the \$3.00 asking rent for 29600 Ford Road was determined to be unpersuasive. Petitioner's valuation witness and income approach are not found to be credible for the subject property in its entirety.

The actual lease was entered as an exhibit. Petitioner is the owner of the subject property and has the long term ground lease for the property. The lessee, Pep Boys, constructed the 22,066 square foot building. Petitioner does not own the building until

the lease expires. There was no testimony as to the party that is currently subleasing subject property to Dollar Castle. Pursuant to The Appraisal Journal:

Land leases, also commonly referred to as ground leases, serve as a mechanism for a property owner to retain long-term ownership of a particular parcel while at the same time allowing a user to control the property for a length of time sufficient to make him or her willing to invest in site and building improvements. Carneghi, *Determining Ground-Lease Rental Rates*, *The Appraisal Journal* (Chicago, April 1994).

At the end of the term of the lease, all building improvements revert or become the property of the property owner, not the lessee. The Tribunal finds that Respondent did not separate the building and the land into two separate ownerships, but assessed both the land and improvements to Pep Boys.³

Respondent's generalized income approach is also not accepted as an indication of the value of subject property. Respondent used CoStar's year end reports, but was not clear on how many, if any, of the 1,600 +/- properties that were used to determine the average rent were located in Garden City, the size of the properties, or if they were truly comparable.

Miller reduced the quoted rents because he assumed that the negotiated contract rent would be 15% less. He then averages the vacancy rates for the three years to 10.75%. The Tribunal notes that the vacancy rates quoted were 10.00% for 2006, 10.7% for 2007 and 11.1% for 2008.

³ Property record card as inserted into Respondent's valuation disclosure, no page number.

Miller's capitalization rates were a compilation of rates taken from source data, band of investment method, as well as extracted from seven sales (some were not retail occupancy). He used the mean of the extreme of the ranges of capitalization rates for a resulting capitalization rate of 8.25% for 2006, 8.80% for 2007 and 9.25% for 2008.

Miller added the effective tax rate to the capitalization rate, stating "This is because I was assuming that the landlord would be paying the taxes on the property as well. So this would be an expense that they would have." Tr p 109. Triple net leases indicate just the opposite; the tenant is responsible for the expenses including property taxes. "A lease in which the tenant assumes all expenses (fixed and variable) of operating a property except that the landlord is responsible for structural maintenance, building reserves, and management." Appraisal Institute, *The Dictionary of Real Estate Appraisal*, (Chicago: 5th ed, 2010) p 134. Therefore, to accept Miller's generalized income approach, the effective tax rate would be excluded from the overall capitalization rate.

The Tribunal, using the actual vacancy and credit for each year and the capitalization rate excluding the effective tax rate, finds that the true cash indications via the income approach should be \$2,400,000 for 2007, \$2,300,000 for 2008, and \$2,200,000 for 2009. This indication is sufficiently close to the actual values placed on the tax rolls for the three years at issue.

Miller's sales comparison approach is also an inaccurate reflection of the value of subject property. The comparable properties ranged in unadjusted sale prices per square foot of \$55.16 to \$95.40 for 2007, \$57.75 to \$109.30 in 2008, and \$37.63 to \$68.45 in 2009. Only one of the sales was similar in size to the subject; the remaining eight sales ranged from 36% to 65% smaller than subject property. The failure to adjust for differences in size or explain why no adjustment was necessary reflects upon the credibility of the sales comparison approach. Further, the inclusion of a sale-leaseback without an adjustment is questionable. The widespread range of sale prices per square foot indicates to the Tribunal that the range in sale prices could be indicative of the following; insufficient sales, sales of insufficient size to be comparable to subject property, or the highest and best use of the sales varied from subject property.

Respondent questioned Hoffert's position as one of the principals in Hoffert & Associates Law firm, which represents Petitioner, and Hoffert's interest in the outcome of the litigation. Respondent asked if, in light of Michigan Rules of Professional Conduct Rule 3.7, Hoffert still wished to testify as an expert. Hoffert stated he believes that a lawyer may act as an advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded to do so by Rule 1.7 or 1.9. The Tribunal's charge is not to police violations of professional or ethical conduct for attorney, appraiser or assessor. Each professional discipline has its own proper agency to enforce standards.

Section 46 of the Tax Tribunal Act governs the admissibility of evidence in a Tax Tribunal proceeding. The Tribunal is given wide discretion to admit and give probative effect to evidence. An individual may qualify as an expert appraisal witness based upon skill, knowledge, education, experience, and training. The licensing of a real estate appraiser does not guarantee to the Tribunal that a witness will have the ability to credibly testify, but does insure, based upon the skills, knowledge, education, experience, and training necessary to attain the appraisal license, that the licensed appraiser would have the minimum requirements to be qualified as an expert. Admissibility and/or credibility are not exclusively reserved to Michigan license holders. A practitioner could have one or more of a number of designations granted by national appraisal associations that attest, through independent third party auspices of the respective association, to various levels of education, training, experience, and competency. Many of these associations have significant penalties attached to failing to meet their association standards, as well as USPAP Standards. Hoffert was not designated as an expert witness. He did testify to the woefully inadequate valuation disclosure that he prepared and signed for his client. An appraiser is defined as "One who is expected to perform valuation services competently and in a manner that is independent, impartial, and objective." (USPAP, 2010-2011 ed.) The Tribunal understands that Hoffert was not testifying as an appraiser; however, no less consideration will be given as the report was not independent, impartial or objective. Therefore, no weight is given to this report, as the Tribunal recognized the author as an advocate interested in the outcome of the litigation.

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.

As used in the General Property Tax Act, “true cash value” means the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale. MCL 211.27(1).

“True cash value” is synonymous with “fair market value.” *CAF Investment Co v State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974). The Michigan Supreme Court, in *Meadowlanes, supra*, acknowledged that the goal of the assessment process is to determine “the usual selling price for a given piece of property.” In determining a property’s true cash value or fair market value, Michigan courts and the Tribunal recognize the three traditional valuation approaches as reliable evidence of value. See *Antisdale v Galesburg, supra*.

“The petitioner has the burden of establishing the true cash value of the property....” MCL 205.737(3); MCL 211.27(1); *Meadowlands 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 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, supra* 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; *Pantilind 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 properly assessed at 50% of market value. An appraisal of fair market value requires a determination of the property's "highest and best use," which is "the reasonably probable and legal use of vacant land or an improved property that is legally permissible, physically possible, financially feasible, and that results in the highest value." Appraisal Institute, *Appraising Residential Properties*, (Chicago, 3rd ed., 1999), p 211.

Neither party appropriately executed the income approach. It is clear to this Tribunal that Petitioner's use of the land lease is not market value but value in use to the property owner. Petitioner did not consider or present evidence of the rent for the building and land. When assessors present information to the Tribunal the subject property is not valued on a mass assessment process as the individual true cash value of the subject property as of each tax year at issue is sought.

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 was not able to prove by a preponderance of its evidence that the assessment of the subject property should be reduced for any tax years at issue.

JUDGMENT

IT IS ORDERED that the property's assessed and taxable values for the tax years at issue are AFFIRMED 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: July 27, 2010

By: Victoria L. Enyart