

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

B & L Development,
Petitioner,

v

MTT Docket No. 365860

City of Norton Shores,
Respondent.

Tribunal Judge Presiding
Marcus L. Abood

OPINION AND JUDGMENT

INTRODUCTION

Petitioner, B & L Development, through its amended Petition in the above-captioned case, is appealing the ad valorem property tax assessment levied by Respondent, City of Norton Shores, for the 2009 and 2010 tax years. A hearing was held in the matter on March 5, 2012. Steven P. Schneider, attorney at Honigman Miller Schwartz and Cohn, LLP, and Edward U. Blanchard and Michael Clary of Diversified Property Solutions, LLC, appeared on behalf of Petitioner. Eric C. Grimm, attorney at Williams Hughes, PLLC, and appeared on behalf of Respondent. Laurence G. Allen, MAI, was Petitioner's valuation witness. Elden J. Nedeau was Respondent's valuation witness.

SUMMARY OF JUDGMENT

The property’s True Cash Value (TCV), State Equalized Value (SEV), and Taxable Value (TV) as established by the Board of Review for the tax years at issue are as follows:

Parcel No. 61-27-705-000-0001-00			
Year	TCV	SEV	TV
2009	6,175,432	3,087,700	3,087,700
2010	5,891,503	2,945,800	2,945,800

Respondent’s revised contentions of True Cash Value (TCV), State Equalized Value (SEV), and Taxable Value (TV) as determined by Respondent’s appraiser for the tax years at issue are as follows:

Parcel No. 61-27-705-000-0001-00			
Year	TCV	SEV	TV
2009	5,350,000	2,675,000	2,675,000
2010	5,000,000	2,500,000	2,500,000

Petitioner’s contentions of True Cash Value (TCV), State Equalized Value (SEV), and Taxable Value (TV) as determined by Petitioner’s appraiser for the tax years at issue are as follows:

Parcel No. 61-27-705-000-0001-00			
Year	TCV	SEV	TV
2009	3,800,000	1,900,000	1,900,000
2010	3,230,000	1,615,000	1,615,000

The property’s True Cash Value (TCV), State Equalized Value (SEV), and Taxable Value (TV) as determined by the Tribunal for the tax years at issue are as follows:

Parcel No. 61-27-705-000-0001-00			
Year	TCV	SEV	TV
2009	3,800,000	1,900,000	1,900,000
2010	3,230,000	1,615,000	1,615,000

GENERAL PROPERTY DESCRIPTION

The subject property, commonly known as The Pointes Shopping Center, consists of a 15.61-acre parcel of property located at 5280 Grand Haven Road, City of Norton Shores, Muskegon County, Michigan. It is classified 201-Commercial, zoned C-2, General Retail District, and improved with a single story, multi-tenant retail center originally constructed in 2001. The building has a total gross area of 58,063 square feet and net rentable area of 56,019 square feet.

SUMMARY OF PETITIONER'S CASE

In support of its value contentions, Petitioner offered the following exhibits, which were admitted into evidence:

- P-1: Appraisal Report Prepared by Laurence G. Allen, dated September 12, 2011.
- P-3: Resumé of Robert Richmond.
- P-4: Before/After Development Photographs of the Subject Property.
- P-5: Photographs of Grand Haven/Sternberg Road Intersection and Surrounding Area, Including Airport to the North.
- P-6: Photographs of Main Retail Corridor East of the Subject Property, Across Highway 31.
- P-7: Photographs of Subject Property and Main Retail Corridor from Highway 31.
- P-8: Subject's Offering Rent by Signature Associates.

P-11: Article from the Appraisal Institute’s Valuation Insights and Perspectives, written by William T. Anglyn, MAI, entitled “*Appraising in the Next Cycle-The Profit Issue.*”

P-12: Realty Rates.com Investor Survey Cap Rate Data.

P-13: S.J. Wisinski Pre-2004 Listing for Vacant Excess Land with Driesenga & Associates Survey and Drawing.

P-14: The Pointes 2008 New Leases/Concessions/Renewals.

P-15: Photographs of Respondent’s Sales Comparables.

P-16: BS&A printout of Respondent’s Sales Comparable 1.

P-17: Photograph of Horrocks Market next to Respondent’s Sales Comparable 2. Respondent objected to the admission of Petitioner’s Exhibit 1, and moved

for the exclusion of the valuation opinion of Petitioner’s valuation expert pursuant

to MRE 702. Respondent asserted that “the opinion of value contained in the

Petitioner’s Valuation Disclosure does not adequately meet the three-part test for

reliability that serves as a pre-condition for the Petitioner to be permitted to offer

that opinion in evidence.”¹ Respondent further asserted that “the remedy is for this

honorable tribunal to exercise its role as ‘gatekeeper,’ and to exclude the defective

and unreliable valuation opinion from evidence altogether.”² The Tribunal

overruled Respondent’s objection and denied its Motion stating,

¹ Respondent’s Motion to Exclude Valuation Opinion of Petitioner’s Valuation Expert, page 2.

² Respondent’s Motion to Exclude Valuation Opinion of Petitioner’s Valuation Expert, page 2. Respondent cites *May Company v Taylor*, 16 MTT 266, in support of its argument. Contrary to Respondent’s implication, the Tribunal in that case overruled Respondent’s objection to the admission of the petitioner’s appraisal stating “the question of whether Petitioner’s principles and methodology are reliable would be dealt with in this Opinion and Judgment.” 16 MTT 266, 278. Further, the Supreme Court in *Gilbert v Daimler-Chrysler*, 468 Mich 883, 661 NW2d 232 (2003), states “MRE 702 [provides] the factors that a court may consider in determining whether expert opinion evidence is admissible. It . . . [is] the court’s fundamental duty of ensuring that *all* expert opinion testimony—regardless of whether the testimony is based on ‘novel’ science—is reliable.” In that case, “the faux ‘medical’ opinion of an individual who lacked any medical education, experience, training, skill, or knowledge became the linchpin of plaintiff’s case and unmistakably affected the verdict.” In the present case, there is no question. Petitioner’s appraiser is qualified by education, experience, training, skill, and knowledge to perform an appraisal. Further, the Tribunal is satisfied that both the testimonial and documentary evidence provided is not only based on

[t]he Tribunal's independent determination does not start and end at this juncture. In order to have an independent determination, the Tribunal is going to receive this exchanged information, the valuation disclosures, to give it the weight and credibility that it requires. In order to do that, the Tribunal has every reason and effort to not only receive this information but hear testimony on it.”³

Petitioner's Exhibit 1 was admitted into evidence.

Petitioner presented testimony from co-owner and property manager, Robert Richmond. Mr. Richmond described his past experience in the development of industrial buildings, which began in 1992, and also discussed the reasons behind his shift into retail and the development of the subject property. Mr. Richmond went on to identify various photographs of the subject and the surrounding area, and discussed generally the development and growth of both. Testimony was also provided on the historical and present management of the property, including marketing strategies and efforts, rental rates, vacancy, and new lease and renewal concession activity.

Petitioner also presented testimony from its appraiser, Laurence G. Allen, MAI. In addition to various other residential and commercial properties, Mr. Allen has appraised a wide range of retail shopping centers in and around southeast Michigan, including strip centers, neighborhood centers, regional centers, and

sufficient facts and data, but also is the product of reliable principles and methodologies, which were reliably applied to the specific facts of this case.

³ TR, Vol 2, pp 19-20.

power centers. Mr. Allen's largest clients include Crosson & Dannis and Comerica Bank. Based on his experience and training, the Tribunal accepted Mr. Allen as an expert appraiser.

As Petitioner's valuation expert, Mr. Allen developed and communicated an appraisal of the subject property. Mr. Allen testified to the demographic and economic base of the subject market area. The significance of a declining population and employment on both market conditions and retail supply and demand was also discussed.

Mr. Allen described the property's primary trade area, which included a 3-mile trade ring and 5-minute drive time zone around the subject. The surrounding portion of Muskegon County was included in the neighborhood census tract. The secondary trade area was concluded to be the larger Grand Rapids Combined Metropolitan Statistical Area (CMSA), which includes both Muskegon and Kent counties, among others.

The subject property itself is located at the corner of Grand Haven and Sternberg roads. This area is heavily influenced by the close proximity of US-31 and the Harvey Street retail corridor. The subject is positioned westward of the expressway. Most of the retail development, including the regional mall, major power centers, and big box stores, is located east of the expressway.

Mr. Allen inspected the subject property on several occasions, most recently in June, 2011. Numerous interior and exterior photographs were taken. Because of the subject's specific composition (including an estimated excess land area of approximately 8.1 acres) the highest and best use was determined to be multi-tenant retail use with excess land for future build-to-suit commercial development. All three approaches to value were considered, but the cost approach lacks reliability due to market obsolescence. Only the sales and income approaches were developed and analyzed by Mr. Allen in arriving at his final determinations of value for the tax years at issue.

PETITIONER'S INCOME APPROACH (SHOPPING CENTER)

Mr. Allen's income approach is based on a direct capitalization methodology. The subject is valued as vacant and available subject to leases in place. A market position analysis examined both market rental and vacancy rates, as well as stabilization levels. A comparable survey of seven leases was presented. The first three, representing leases at the subject property, indicated a range in lease rates of \$5.48/SF to \$8.43/SF. The remaining four, representing local lease comparables, indicated a range of \$10.50/SF to \$18.00/SF.

The concluded market rate for retail spaces with unobstructed visibility was \$10.00/SF as of December 31, 2008. Based on changes in market conditions,

which were assessed through a review of various industry publications, the lease rate for December 31, 2009, was \$9.00/SF. Spaces with obstructed visibility would command different rental rates than unobstructed spaces. As a result, Mr. Allen determined the market rate for such spaces to be \$7.00/SF as of December 31, 2008, and \$6.00/SF as of December 31, 2009. With these rates and the actual physical composition of the subject property, weighted average market rental rates of \$8.94 and \$7.94 were calculated for the December 31, 2008, and December 31, 2009, valuation dates, respectively.

A stabilized vacancy rate of 15% was applied to each year and was based on reported regional market occupancy/vacancy trends. The actual vacancy of the subject was approximately 31% as of December 31, 2008, and 26% as of December 31, 2009. Mr. Allen developed an absorption analysis to estimate the amount of time it would take for the subject property to achieve stabilized occupancy. Based on a review of gross leasing activity in the market, the absorption period was determined to be one and two years for the December 31, 2008, and December 31, 2009, valuation dates, respectively.

Mr. Allen then calculated gross income from the base rental and prospective reimbursement rates per square foot. Reimbursable expenses include common area maintenance (CAM), property taxes, and insurance expenses. These reimbursements are generally considered additional rent to the landlord and are

considered part of the rental income. Vacancy and collection losses of 15% were deducted to arrive at an effective gross income. Mr. Allen analyzed the subject's 2009 income and expense summary, and the subject's actual non-reimbursable expenses were then related to comparable expense information and industry surveys. The concluded operating expenses were then deducted to equal the net operating income (NOI).

Mr. Allen revised capitalization rates from various retail center sales, band-of-investment techniques, and investment surveys. He concluded to overall capitalization rates (OAR) of 10.5% and 11.0% for the 2009 and 2010 tax years, respectively. After capitalizing the NOI, the stabilization costs (leasing fees and lost rent) were deducted to arrive at true cash value determinations of \$3,430,000 as of December 31, 2008, and \$2,880,000 as of December 31, 2009.

PETITIONER'S SALES COMPARISON APPROACH (SHOPPING CENTER)

Mr. Allen's sales comparison approach developed a separate analysis for the improved strip center and an analysis for the excess land. Mr. Allen first analyzed three sales and one current offering of multi-tenant neighborhood shopping centers. Write-ups and photographs of each of the four comparables are included in the appraisal report. A summary of the properties is as follows:

Sale #	1	2	3	4
Location	Kalamazoo Twp	Muskegon	Muskegon	Muskegon Twp
Sale Date	Jun-09	Feb-07	Sep-08	Offering
Year Built	1970	1996	2001	2001
Rentable Area (SF)	34,510	85,577	26,263	54,900
Occupancy	96%	100%	57.1%	62%
Sale Price	\$1,300,000	\$10,200,000	\$2,050,000	\$5,000,000
SP/SF	\$38	\$119	\$78	\$91
Adj \$/SF (2009)	\$52	\$48	\$55	\$53
(2010)	\$44	\$41	\$47	\$53

The comparable sales data indicates variations in a number of elements of comparison, with the two biggest factors being the difference in market conditions and the location of the properties. These considerations were significant because of the changes in the market over the last several years, the lack of recent sales transactions, and location of the subject property outside of the primary retail corridor for the area.

All four comparables were adjusted for the difference in market conditions as well as for differences in location. Additionally, an upward adjustment was made to Comparable 1 for its below average condition, while a downward adjustment was made to the above average Comparable 2. A “conditions of sale” adjustment was made to Comparable 4 for its status as a current offering. Varying “occupancy at time of sale” adjustments were made to Comparables 1 and 2. “Tenant composition” adjustments were applied to Comparables 2, 3, and 4.

After analyzing and adjusting the comparable sales, Mr. Allen concluded to opinions of value of \$2,970,000 as of December 31, 2008, and \$2,520,000 as of December 31, 2009.

PETITIONER'S SALES COMPARISON (EXCESS LAND)

In the second part of his sales comparison approach to value, Mr. Allen analyzed three sales and one current offering of vacant land. Write-ups and photographs of each of the four comparables are included in the appraisal report.

A summary of the properties is as follows:

Sale #	1	2	3	4
Location	Norton Shores	Muskegon	Norton Shores	Norton Shores
Sale Date	Offering	Jan-10	Jun-06	Jan-10
Land Area (Acres)	1.50	22.04	2.00	10.48
Land Area (SF)	65,340	960,062	87,120	456,509
Sale Price	\$70,000	\$3,367,000	\$875,000	\$1,357,000
SP/SF	\$1.04	\$4.20	\$5.92	\$3.51
Adjusted SP/SF (2009)	\$1.00	\$1.81	\$1.05	\$1.66
(2010)	\$1.04	\$1.29	\$1.51	\$1.20

As with the foregoing shopping center analysis, the vacant land comparable sales data indicates variations in a number of elements of comparison. The two biggest factors were the difference in market conditions and location. In addition, size was also a significant consideration. Similar reasoning and conclusions were utilized as the basis for the specific adjustments. Each comparable, with the exception of Comparable 1, was superior in location and adjusted downward.

Comparables 1 and 3 also required downward adjustments to account for smaller sizes. Comparables 2 and 4 were adjusted upward for larger sizes. Finally, a downward functional utility adjustment was made to Comparable 2.

After analyzing and adjusting the comparable sales for noted differences, Mr. Allen concluded to opinions of value of \$460,000 as of December 31, 2008 and \$420,000 as of December 31, 2009.

PETITIONER'S RECONCILIATION

In reconciling the improved portion of the subject property, Mr. Allen placed primary reliance on the income approach. The sales comparison approach served as secondary methodology and a check to the opinion of value via the income approach. These analyses resulted in final opinions of value of \$3,340,000 as of December 31, 2008, and \$2,810,000 as of December 31, 2009. These values were then considered in conjunction with the excess land value conclusions for each year. Mr. Allen determined the total opinions of value of \$3,910,000 as of December 31, 2008, and \$3,230,000 as of December 31, 2009.

SUMMARY OF RESPONDENT'S CASE

In support of its value contentions, Respondent offered the following exhibits, which were admitted into evidence:

- R-1: Valuation Disclosure prepared by Elden J. Nedeau, dated September 13, 2011.
- R-3: Resumé/CV of Elden Nedeau.
- R-4: Resumé/CV of Donna Vander Vries.
- R-5: Resumé/CV of Thomas VanBruggen.
- R-6: Petitioner's Revised Valuation Disclosure, in *Target Corporation v Norton Shores*, MTT Docket No. 361952.
- R-7: Map titled "The Pointes Retail Shopping Center Muskegon, Michigan 2008 Aerial Photography."
- R-8: Map titled "The Pointes Retail Shopping Center and Vicinity Within Major Commercial Corridor Development Muskegon, Michigan 2010 Aerial Photography."
- R-18: Agency Agreement, Vacancy Summary, Floor Plan, Site Survey, and Sale Listing from B&L Responses to Respondent's Interrogatories.
- R-19: *McPherson Mansion, LLC v City of Howell*, MTT Docket Nos. 348645 and 373570, 2011 WL 3890322 (August 2, 2011).
- R-20: *Aldridge v Township of Greenbush*, MTT Docket No. 316677, 2011 WL 2520187 (May 11, 2011).
- R-21: *Lansing Tower Apts v City of Lansing*, MTT Docket No. 332843, 2010 WL 5812697 (Oct. 4, 2010).
- R-22: *Johnson Controls Interiors, LLC v City of Holland*, MTT Docket No. 307846, 2010 WL 4547376, 18 MTT 375 (April 1, 2010).
- R-23: *Target Corp v City of Novi*, 18 MTT 153 (September 21, 2010).
- R-24: *Highland-Howell Development Co v Township of Marion*, 17 MTT 350 (Sept. 23, 2009).
- R-25: *Terrace Partners, LLC v City of Muskegon*, 16 MTT 808 (Dec. 10, 2007).
- R-26: *Bay Harbor Yacht Club v City of Petoskey*, 16 MTT 339 (May 2, 2006).
- R-27: *Kohl's Department Stores v Township of Northville*, 15 MTT 315 (July 31, 2006).
- R-28: *Melling Resorts Int'l v Township of Dover*, 14 MTT 379 (March 24, 2004).
- R-29: *Kohl's Department Stores, Inc v City of Kentwood*, 14 MTT325 (Feb. 7, 2003).
- R-30: *Art Van Furniture, Inc v City of Warren*, 14 MTT 237 (Nov. 16, 2004).
- R-31: *CAPCO 1998-D7 Pipestone, LLC v Township of Benton*, 14 MTT 74 (Jan. 26, 2005).
- R-32: *Steelcase, Inc v City of Kentwood*, 13 MTT 475 (March 19, 2004).
- R-33: *Freddie Mac, McKinley Properties v Township of Ypsilanti*, 13 MTT 319 (Aug. 3, 2004).

- R-34: *Amway Grand Plaza Hotel v City of Grand Rapids*, 11 MTT 496 (Nov. 26, 2011).
- R-35: *Flint Ink Corp v Township of Holland*, 11 MTT 198 (Dec. 5, 2001).
- R-36: *Autodie Int'l, Inc v City of Grand Rapids*, 11 MTT 36 (Feb. 2, 2001).
- R-37: *Stoneridge Ltd Partnership v City of Bloomfield Hills*, 10 MTT 753 (Oct. 9, 1997).
- R-38: *Simplicity Engineering, Inc v City of Durand*, 10 MTT 735 (May 28, 1999).
- R-39: *Midland Soccer Club v City of Midland*, 10 MTT 490 (July 28, 1998).
- R-40: *Grosse Ile Bridge Co v City of Riverview*, 10 MTT 419 (Aug. 4, 1998).
- R-41: *Meijer, Inc v City of Midland*, 10 MTT 287 (Dec. 17, 1997).
- R-42: *Accent Leasing, Inc v City of Lansing*, 10 MTT 1 (July 28, 1997).
- R-43: *Whitney Young Village Apartments, Inc v City of Kentwood*, 9 MTT 771 (Oct. 1, 1996).
- R-44: *Thrifty Kraft, Inc v City of Holland*, 9 MTT 619 (Jan. 29, 1997).
- R-45: *Oakwood Manor Ltd Partnership v Township of Pleasant Plains*, 9 MTT 657 (Aug. 5, 1996).
- R-46: *Melling Resorts, Int'l v Township of Dover*, 9 MTT 619 (Jan. 29, 1997).
- R-47: *Big Rapids Village Green Apts v City of Big Rapids*, 9 MTT 341 (Oct. 17, 1996).
- R-48: *Rospatch Corp/Jessco v City of Dowagiac*, 8 MTT 662 (Nov. 8, 1994).
- R-49: *Central Detroit Warehouse v City of Melvindale*, 8 MTT 629 (Feb. 7, 1996).
- R-50: *American Center Prop, Inc v City of Southfield*, 8 MTT 419 (July 7, 1995).
- R-51: *Uniroyal Goodrich Tire Co v City of Troy*, 8 MTT 361 (Jan. 27, 1994).
- R-52: *Campbell v City of Novi*, 5 MTT 114 (Feb. 27, 1987).
- R-53: *Antisdale v City of Galesburg*, 4 MTT 606 (Sept. 4, 1986).
- R-54: *Edward Rose Building Co v Independence Township*, 4 MTT 273 (March 21, 1986).
- R-55: *Tradewinds East Assocs Ltd Dividend Housing Ass'n v Hampton Charter Township*, 3 MTT 429 (April 4, 1985).
- R-56: *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 3 MTT 173 (Jan. 6, 1984).
- R-57: Photograph of Retail Center at Hile Road.
- R-58: Photograph of IMAX Movie Theatre.
- R-59: Photograph of Residential area across from theatre.
- R-60: Photograph of Parking lot of theatre.
- R-61: Photograph of Structural Concepts Building.
- R-62: Photograph of the DIETECH Building on Grand Haven Road.
- R-63: Photograph of Emerson Building on Porter Road.
- R-64: Photograph of Port City Castings Corporation.

- R-65: Photograph of Port City Castings Corporation.
- R-66: Photograph of Port City Castings Corporation.
- R-67: Photograph of Great Lakes Preventative Solutions, Inc.
- R-68: Photograph of Integra Coat Building.
- R-69: Photograph of Silver Creek Manufacturing Building.
- R-70: Photograph of First General Credit Union.
- R-71: Photograph of Aero Vision Building.
- R-72: Photograph of Aero Vision Building.
- R-73: Photograph of Inter Dyne Systems Building.
- R-74: Photograph of Inter Dyne Systems Building.
- R-75: Photograph of 800 Ellis Road.
- R-76: Photograph of Harding Building.
- R-77: Photograph of Western Michigan Christian High School.
- R-78: Photograph of Horizon Headquarters Building.
- R-79: Photograph of a Financial Service Company Building.
- R-80: Photograph of Pratt & Whitney Building.
- R-81: Photograph of Prein & Newhof Building.
- R-82: Photograph of Soils & Structures Building.
- R-83: Photograph of apartment complex on Grand Haven Road.
- R-84: Photograph of Hamptons Apartment Complex.
- R-85: Photograph of Allied Industrial Building.
- R-86: Photograph of Alta Equipment Company Building.
- R-87: Photograph of Dynamic Conveyor Building.
- R-88: Photograph of Shoreline Family Medicine Building.
- R-89: Photograph of Monarch Building.
- R-90: Photograph of Shoreline Family Medicine Building.
- R-91: Photograph of Sandalwood Shores Residential Development.
- R-120 through R-124: Photographs of Lease Comparable 6.
- R-148: Photographs of Hackley Community Care Offices (Lease Comparable 6).
- R-151: Photograph of Comparable sale 1 located in Kalamazoo.

Respondent presented testimony from Donna Beth Vander Vries, Muskegon County Equalization Director, and Elden J. Nedeau, Muskegon County Equalization Department.

Mr. Nedeau is a Michigan licensed appraiser and advanced assessing officer with thirty years of experience. He is responsible for completion of Muskegon County equalization studies on an annual basis and preparation of valuation disclosures. His duties also include day-to-day assessments in the City of White Hall. Mr. Nedeau has prepared valuation disclosures for a big box store, a mobile home park, and a number of apartment complexes. He has personally visited, inspected, and measured virtually every type of property (commercial and industrial class properties) ranging from small convenience stores to large foundries. Based on his experience and training, the Tribunal accepted Mr. Nedeau as an expert in the valuation of real property.

Mr. Nedeau developed and communicated an appraisal of the subject property. He provided testimony on the location of the property, the surrounding area, and the market conditions. The subject is located at the corner of Grand Haven and Sternberg roads, an area that is heavily influenced by the proximity of US-31 and the Harvey Street retail corridor. The subject is also close to the business industrial park, which is adjacent to the Muskegon County International Airport, and several condominium and apartment complexes. There is considerable traffic by the subject site on a daily basis.

Mr. Nedeau inspected the subject property on several occasions, most recently in August 2011. In addition to the most recent exterior inspection, Mr.

Nedeau also made observations of the interior from storefront windows. During a prior inspection several years ago, Mr. Nedeau visited every retail space open for business, took photographs and measurements of the property, and completed several building permits.

Because of the subject's specific composition (including an estimated excess land area of approximately nine acres) the highest and best use of the property was determined to be a retail strip center with excess land for future commercial development. All three approaches to value were considered in his appraisal, but Mr. Nedeau only developed and analyzed the sales and income approaches to arrive at his final opinion of value conclusions.

RESPONDENT'S INCOME APPROACH (SHOPPING CENTER)

Mr. Nedeau's income approach is based on a direct capitalization methodology, and the subject is valued as vacant and available subject to leases in place. A comparable survey of five leases were analyzed and adjusted for varying attributes, including market conditions, location, building size, age, and condition. Three of the comparables are located in the City of Roosevelt Park, which is adjacent to the City of Norton Shores. The remaining two rentals are located in Fruitport Township and the City of Fremont. The comparables indicate an unadjusted range in lease rates of \$8.50/SF to \$14.25/SF and an adjusted range of

\$7.97/SF to \$10.10/SF. A weighted analysis of these rates allotted 30% to Comparable 1, 20% to Comparables 2, 4, and 5, and 10% to Comparable 3. Mr. Nedeau concluded to a market rate for the subject of \$9.00/SF as of December 31, 2008.

Mr. Nedeau calculated a gross income from the base rental rate. Vacancy and collection losses of 15% (based on market observations) were deducted for an effective gross income. The concluded operating expenses and management fees were deducted to equal the net operating income (NOI). Mr. Nedeau considered capitalization rates from national investment surveys such as Realty Rates and Korpacz, as well as market sales of retail centers from various locations throughout the state of Michigan. His decision for the overall capitalization rate (OAR) was 10.0% and 10.5%, respectively, for the two years under appeal. After capitalizing the NOI, Mr. Nedeau arrived at true cash value determinations of \$5,035,000 as of December 31, 2008, and \$4,540,000 as of December 31, 2009.

RESPONDENT'S SALES COMPARISON APPROACH (SHOPPING CENTER)

Mr. Nedeau's sales comparison approach to value separately considered the improved portion of the subject property and the excess vacant land. Mr. Nedeau first analyzed five sales of multi-tenant neighborhood shopping centers. Write-ups

and photographs of each of the five comparables are included in the appraisal report. A summary of the properties is as follows:

Sale #	1	2	3	4	5
Location	Caledonia Twp	Kentwood	Georgetown Twp	Grayling	Novi
Sale Date	Aug-07	Oct-06	Mar-07	Dec-08	Nov-08
Year Built	1997, 2002	1985	1993	2002	2004
Building Area (SF)	57,540	31,170	84,933	31,305	74,440
Land Area (Acre)	6.56	3.97	8.59	5.27	10.95
Sale Price	\$6,160,000	\$2,525,000	\$5,290,000	\$2,580,283	\$5,300,000
SP/SF	\$107.06	\$81.01	\$62.28	\$82.42	\$71.20
Adjusted SP/SF	\$97.64	\$80.93	\$69.36	\$79.54	\$64.08

The comparable sales data indicates variations in a number of elements of comparison. The two biggest factors are the difference in market conditions and size. With the exception of Comparables 4 and 5 (both of which sold in the latter half of 2008) the comparables were adjusted for the difference in market conditions. Comparables 2 and 4 were adjusted for their smaller size. Comparables 3 and 5 were larger and adjusted upward. Although less significant, location and age/condition were also important factors. Notably, Comparable 4 was inferior in location and is adjusted upward to the subject. Comparable 5, in contrast, was adjusted downward for a required superior location. Comparables 2 and 3 have inferior conditions and were adjusted upward. Comparables 4 and 5 are newer buildings superior to the subject in condition. Other differences include land-to-building ratio adjustments to Comparables 4 and 5, and quality adjustments to Comparables 1 and 5.

After analyzing and adjusting the comparable sales, Mr. Nedeau concluded to a value for the subject property of \$4,800,000 as of December 31, 2008.

Comparable 1 had the least amount of gross adjustments and was given the most weighted consideration of 40%. Each of the remaining comparables was weighted equally at 15% each.

RESPONDENT'S SALES COMPARISON (EXCESS LAND)

In the second part of his sales comparison approach to value, Mr. Nedeau analyzed four vacant land sales. Write-ups and photographs of each of the four comparables are included in the appraisal report. A summary of the properties is as follows:

Sale #	1	2	3	4
Location	Norton Shores	Norton Shores	Norton Shores	Fruitport Twp
Sale Date	April-05	Jan-10	Jan-10	Dec-04
Land Area (Acres)	14.53	10.48	22.04	6.7
Sale Price	\$1,287,920	\$1,357,000	\$3,367,000	\$1,935,311
SP/Acre	\$88,639	\$129,485	\$152,768	\$288,852
Adjusted SP/Acre (2009)	\$93,580	\$104,862	\$124,365	\$171,682

As with the foregoing shopping center analysis, the vacant land comparable sales data indicates variations in a number of elements of comparison. Location is a primary factor affecting value because all of the comparables are located in the Harvey Street commercial corridor, which is Muskegon County's primary retail area. As such, all comparables not only required varying market condition

adjustments, but each comparable was adjusted downward for a superior location. Comparables 1, 2, and 3 were adjusted upward for their larger size. Comparable 4 is smaller in size and is adjusted downward. Other differences include accessibility adjustments to Comparables 1 and 4, visibility adjustments to Comparables 1, 2, and 4, and conditions of sale adjustments to Comparables 2, 3, and 4.

After analyzing and adjusting the comparable sales, Mr. Nedeau's conclusion of value for the excess land is \$1,040,000 as of December 31, 2008. Comparables 2 and 3 were most similar with the least amount of gross adjustments; each was weighted at 35%. Comparable 1 was the third most comparable property and was weighted at 20%. Comparable 4 was weighted at only 10%.

RESPONDENT'S RECONCILIATION

For the improved portion of the subject property, primary reliance was placed on the income approach because this approach reflects the actions of buyers and sellers in the market. The subject property is an income-producing property and is typically held for investment purposes. The sales comparison approach was also found to be reliable and was given some weight. A 60% and 40% weighted determination of value for the shopping center was considered in conjunction with

the excess land value determination. Mr. Nedeau concluded to a total property market value of \$5,350,000 as of December 31, 2008. This value was adjusted by negative 6% to reflect declining market conditions and resulted in a final value opinion of \$5,000,000 as of December 31, 2009.

FINDINGS OF FACT

1. The subject property is located at 5280 Grand Haven Road in the City of Norton Shores, Muskegon County, Michigan.
2. The subject is located north of Sternberg Road, west of US-31, and east of Grand Haven Road.
3. The subject site is outside of the primary retail corridor (Harvey Street) for its area and has below average traffic volumes (3,960 Daily Vehicles) as compared to the Harvey Street corridor (17,869 Daily Vehicles).
4. The subject is located in the Grand Rapids/Muskegon/Holland Combined Metropolitan Statistical Area (CMSA), which includes Barry, Ionia, Kent, Newaygo, Ottawa, and Muskegon Counties.
5. The subject property is identified as Parcel No. 61-27-705-000-0001-00 and commonly known as The Pointes Shopping Center.
6. The subject property is classified 201, Commercial Real, and zoned C-2, General Retail District.
7. The subject parcel has a total land area of 15.61 acres. Less than half of its total acreage was improved and used for commercial purposes as of the relevant valuation dates for the tax years at issue. The remaining 8-9 acres is considered excess land.
8. The subject building is a single story, average quality, class C structure that was originally constructed in 2001. It has a total gross area of 58,063 square feet and net rentable area of 56,019 square feet.
9. The subject property is an income-producing property.
10. Both parties have furnished valuation disclosures in the form of fee simple appraisal reports. Both parties considered all three approaches to value, but applied only the income and sales comparison approaches, with primary consideration given to the income approach.

11. The appraisers for both parties determined the highest and best use of the subject property as improved to be its current use, with excess land for future commercial development.

APPLICABLE LAW

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

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%.... 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); MSA 7.27(1).

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

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735(1); MSA 7.650(35)(1). The Tribunal’s factual findings must be supported by competent, material, and substantial evidence. *Antisdale v City of*

Galesburg, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Department of Treasury*, 185 Mich App 458, 462-463; 452 NW2d 765 (1990).

Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

“The petitioner has the burden of establishing the true cash value of the property” MCL 205.737(3). This burden encompasses two separate concepts: (1) the risk 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.

Under MCL 205.737(1); MSA 7.650(37)(1), the Tribunal must find a property’s true cash value in determining a lawful property assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal 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 Limited Dividend Housing Association v City of Holland*, 437 Mich 473, 485- 486; 473 NW2d 636 (1991).

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 Commission*, 3 Mich App 170; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968). 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*, p277. Pursuant to MCL 211.27(5), “the purchase price paid in a transfer of property is not the presumptive true cash value of the property transferred.”

CONCLUSIONS OF LAW

The parties' appraisers were charged with determining market value of the subject property for the two years under appeal. Both considered all three approaches to value, but only the sales and income approaches to value were developed. Primary reliance was placed on the income approach, with both parties' analysis valuing the property in a fee simple interest subject to existing leases at market rents.

Regarding Petitioner's income approach, Mr. Allen considered seven individual leases for a market rental rate analysis. Three of these leases were from the subject development, while the remaining four were local lease comparables.

The comparable data was analyzed in conjunction with various market studies and industry publications. This included market area rent and vacancy trends, as well as interviews with market participants. This analysis illustrates to the Tribunal a decline in asking prices over a period of several years. The Tribunal agrees with Mr. Allen's rental sources as well as the reasoning for his concluded rents per square foot, and finds that the rental data is properly reconciled. Further, Mr. Allen's consideration of the actual physical composition of the subject property (i.e., the size, location, and visibility of each retail space) is particularly relevant and appropriate in the determination of market rents. The same is true for the review and consideration of the subject's actual rent rolls for each of the tax years at issue. Accordingly, Petitioner's logical application of available data to the subject property is persuasive; the income approach is meaningful to the final conclusions of value.

Respondent contends that it was improper for Mr. Allen to include real estate taxes as an operating expense in his income analysis. Respondent notes that under a triple net lease the lessee is responsible for taxes. Respondent also asserts that if taxes were to be given any consideration at all, the proper approach would be to combine the effective tax rate with the capitalization rate. Mr. Allen testified that either approach was appropriate, particularly in light of the fact that the owner is ultimately responsible for payment of the taxes, with only the expectation of

reimbursement from the lessee, regardless of the type of lease involved. (TR, Vol 2, pp 56-58) Mr. Allen also testified that the real estate tax expense utilized in his analysis was not the actual expense of the subject, but rather was based on a hypothetical assessment at fifty percent of the appraised value and income approach. (TR, Vol 2, p 88) Additionally, because triple net leases are being utilized, property taxes are properly reflected as both income and expenses in his analysis. Further, with consideration of the stated vacancy rates, the ultimate mathematical result is that only 15% of the same were considered non-reimbursable expenses. (TR, Vol 2, pp 88-89) The Tribunal notes that The Appraisal of Real Estate states in this regard as follows:

Most reconstructed operating statements contain line items for real estate taxes and building insurance costs If a property is assessed unfairly, the real estate tax expense may need to be adjusted in the reconstructed operating statement. If the subject property has an unusually low assessment compared to other, similar properties or appears to deviate from the general pattern of taxation in the jurisdiction, the most probable amount and trend of future taxes must be considered For proposed properties or properties that are not currently assessed, appraisers can develop operating statement projections without including real estate taxes. The resulting estimate is net operating income before real estate taxes, and a provision for real estate taxes is included in the capitalization rate used to convert this net income into property value. *Appraisal Institute: The Appraisal of Real Estate* (Chicago, Appraisal Institute, 13th ed, 2008), p 485.

Accordingly, and in light of the above, the Tribunal finds that Petitioner's approach is not only permissible, but also warranted under the specific facts and circumstances of this case.

Respondent also asserts that Petitioner attempts to "double-dip" by taking both a vacancy and collection loss expense *and* stabilization deduction in calculating income. Mr. Allen testified that stabilized values represent a future value as if the property were stabilized based upon an assumption that the property will become stabilized in the future. (TR, Vol 2, p 60) The subject property is not stabilized, so additional steps are needed to develop the value as it existed as of the tax dates from the future stabilized values, i.e., stabilization deduction.

Again, Mr. Allen developed a two-part sales comparison approach to value with separate consideration to the improved portion of the subject property and the excess vacant land. The analysis of the subject shopping center is based on a comparison of three sales and one current offering of retail strip centers. Three comparables are located in either the City of Muskegon or Muskegon Township. The excess land evaluation similarly considered three sales and one current offering of vacant land sales within the subject market area. Respondent objected to the inclusion of retail sales Comparable 1, which is located in the Eastwood Center in Kalamazoo Township, Michigan. The specific objections were related to both the location and condition of the property. (TR, Vol 4, p 8) Mr. Allen

acknowledged that this property is located in an older center, but testified that it was chosen specifically for its similar size to the subject. (TR, Vol 2, p 90 and TR, Vol 3, pp 115-117) The inclusion of the Kalamazoo comparable is not necessarily improper. Mr. Allen's comparison analysis does not rest entirely on this comparable sale. The same is true of Respondent's arguments with respect to Petitioner's exclusion and nonconsideration of a particular vacant land sale that sold in September of 2006 for \$2,600,000. All relevant sales were given appropriate weight and consideration in Mr. Allen's opinion of value for the subject property. Further, Mr. Allen adjusted the selected comparables for each of the disputed elements of comparison. Overall, the adjustments are reasonably analyzed and supported.

Respondent also objected to Petitioner's use of a quality point methodology in its sales comparison analysis. Specifically, Respondent asserted that such an approach was both subjective and unreliable, as evidenced by prior Tribunal decisions. In addition, without adequate support on the record, this Tribunal should not accept this methodology. Petitioner argued that the quality point analysis used by Mr. Allen was only to check the consistency of his adjustments with the final conclusion of value. (TR, Vol 2, p 119) "It is a statistical analysis that's not used for the valuation. That was used as a check on the valuation [I]t's just a mathematical technique, a statistical technique for analyzing data."

(TR, Vol 2, p 119) The use of this quality point test did not affect Mr. Allen's final value conclusions. As such, Respondent's contention that Petitioner's sales comparison analysis should be given no weight or credibility is not supported. Moreover, as noted above, the sales comparison analysis serves only as a secondary methodology and as a check to Mr. Allen's income approach valuation in his final reconciliation.

Respondent's valuation of the subject property is based on the premise that its design and size comply with the market place, and that it has good functional utility. (Respondent's Exhibit R-1, p 19 and TR, Vol 4, p 97) With respect to the income approach to value, Mr. Nedeau developed five comparable leases. The rental rates were analyzed and adjusted for varying attributes. It is first noted that the market condition adjustments made to these rental comparables have the same basis as those used in Mr. Nedeau's sales comparison analyses. This is based on the ratio study used by the City of Norton Shores to develop its economic condition factor. (TR, Vol 4, pp 180-182) This methodology is relevant in mass appraisal for a cost approach to value; however, it is neither relevant nor reliable for purposes of the income and sales comparison approaches to value for a singular property.

Unlike Petitioner's analysis, none of Respondent's rent comparables are located within the subject property. It appears that the rents of the subject were not

considered in any way, despite Mr. Nedeau's acknowledgement that the goal of the income approach is to find market rents, i.e., what the market would pay to lease space in the subject. (TR, Vol 4, p 104) Mr. Nedeau's conclusion of market rents is not applied to the physical composition of the subject property (specifically, the size, location, and visibility of each retail space). (TR, Vol 4, pp 113-114) Market rents are particularly relevant, especially in light of the fact that the subject property's actual asking rents as of the December 31, 2008, valuation date were substantially below that of any of the comparables, ranging between \$7.00 and \$9.00 per square foot. (Petitioner's Exhibit P-8)

Mr. Nedeau utilized lease rates in effect as of September 2008, but did not review any of the lease contracts. He had no knowledge of when the leases were entered into, nor whether they reflected actual market conditions as of the valuation dates. (TR, Vol 4, p 124). Mr. Nedeau also testified to the possible existence of rent escalation clauses in his lease comparable contracts. (TR, Vol 4, p 119) Respondent's failure to verify and properly account for such considerations is problematic, as it has potential to skew the final determination of market rates. Mr. Nedeau acknowledged that the stated rents reflected the rates for "one or more spaces" in the majority of his comparables, but could not testify to the exact number of spaces, or provide specific details to the same. (TR, Vol 4, pp 118-123) There was also a question as to the correct rental rate for Comparable 5, and

whether it was the \$7.12 listed on the data sheet in the appraisal or the \$8.50 listed on the comparison grid. (TR, Vol 4, pp 121-123)

Mr. Nedeau adds more tenancy into the income analysis than what is actually leased, and calculates a gross income utilizing the base rental rate and the total gross building area of the subject property. (Respondent's Exhibit R-1, p 40 and TR, Vol 4, p 102) This assumption again is problematic, inasmuch as it has the potential to skew and overstate the potential gross income. After vacancy and collection losses, the concluded operating expenses and management fees were deducted to equal the net operating income (NOI). Mr. Nedeau initially determined a capitalization rate of 9% was appropriate for the December 31, 2008, valuation date. This was based on his review of RealtyRates, a national investment survey, as well as sales of retail centers throughout the state of Michigan (including Georgetown, Plainfield, and Gaines Townships, and the cities of Grayling, Saugatuck, and Wyoming). (Respondent's Exhibit R-1, p 41) In testimony, Mr. Nedeau indicated that this capitalization rate determination was made in error because the fourth quarter 2008 data was admittedly outdated. (TR, Vol 4, p 135) The relevant RealtyRates data actually indicated a rate of 9.81%. (TR, Vol 4, p 140) An additional source, Korpacz, was not used in his original determination, but considered by Mr. Nedeau in his revised capitalization rate conclusion. (Respondent's Exhibit R-1, p 41 and TR, Vol 4, p 137) Mr. Nedeau's

revised rate is slightly over 10%; however, the specific data relied upon was not provided to the Tribunal or the opposing party for review. (TR, Vol 4, p 140)

Based upon this information and discussions with various unidentified west Michigan appraisers, he made the decision to use a capitalization rate of 10.0% for December 31, 2008, and 10.5% as of December 31, 2009. (TR, Vol 4, p 140)

After capitalizing the NOI, Mr. Nedeau arrived at opinions of value of \$5,035,000 as of December 31, 2008, and \$4,540,000 as of December 31, 2009. The 2010 value conclusion determination made in Mr. Nedeau's original appraisal report was based solely on a 6% market deduction from the 2009 value. Respondent did not complete any elements of analysis or methodologies for the 2010 tax year.

Respondent's valuation expert also developed a two-part sales comparison approach to value that considered the improved parcel separately from the excess vacant land. The sales analysis of the subject shopping center analyzes five comparable sales. Three of the comparables are located in the City of Roosevelt Park, which is adjacent to the City of Norton Shores. The remaining two sales are located in Fruitport Township and the City of Fremont. All of the comparable sales are 50 miles or more away from the subject property. (TR, Vol 4, p 181)

Comparable 1 was a sale between related parties and had questionable terms of sale. (TR, Vol 4, pp 152-153) Each of the remaining comparables had notable anchor and/or national tenants. Further, Comparable 4 is located more than 187

miles from the subject in Grayling, Michigan. This sale is right off Business I-75, which is a popular tourism route. (TR, Vol 4, pp 164-165) Similarly, Comparable 5 is located in Novi, widely known as being one of the best retail areas in the entire state. (TR, Vol 4, p 165) Mr. Nedeau acknowledged that it is better to have a nationally known tenant or a tenant from a national chain than it is to have a locally owned business as a tenant. (TR, Vol 4, p 161) While the subject does have the nationally known Edward Jones as a tenant, it is a brokerage firm and admittedly would not bring as many people to the center. (TR, Vol 4, p 161) Further, all of the comparables have closer accessibility to their respective thoroughfares than does the subject. (TR, Vol 4, pp 158-160) Additionally, the comparables' vacancies were not identified and no adjustments were made. (TR, Vol 4, p 162) Therefore, Respondent's sales comparison approach is given no weight or credibility in the final conclusions of value.

Petitioner no doubt built the subject strip center to anticipate value from an income stream. Petitioner's actions in retaining engineers, architects, and real estate brokers demonstrate a desire to capture rental income. Its decision to develop *this* building on *this* lot, however, proves certain inexperience in being competitive in the market. Notably, the design (smaller suites) and distance from Sternberg Road (visibility) directly impacts the ability to attract tenants.

Petitioner's inexperience has impacted the property's marketability, appeal, and value.

It is true that the commercial market area has encountered some growth. Moreover, retail growth is undeniably more evident on the east side of US-31. Further, although Petitioner may not have properly developed or managed the subject property, market competition has influenced the subject's marketability and appeal. This is apparent with the subject's excess vacant land. This vacant land has been exposed to the market for many years. The same market conditions and market competition sway the value of the subject's vacant land.

The Tribunal finds, in light of the above, that Petitioner has succeeded in meeting its burden of going forward with competent evidence on the issue of true cash value, assessed value, and taxable value for each of the tax years at issue in this appeal. Petitioner has provided credible testimony and documentary evidence and the Tribunal finds Petitioner's data within the income and sales comparison approaches to value persuasive and sufficient to support its specified contentions of value for both the 2009 and 2010 tax years. As such, and inasmuch as Petitioner has established that the property was over-assessed for the tax years under appeal, the assessments should be adjusted accordingly.

JUDGMENT

IT IS FURTHER ORDERED that the subject property's true cash, assessed, and taxable values for the 2009 and 2010 tax years are those shown in the "Summary of Judgment" section of this 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 assessed and taxable values in the amounts as finally shown in the "Final Values" section of this Opinion and Judgment, subject to the processes of equalization, within 20 days of the entry of this Opinion and Judgment. 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 Opinion and Judgment within 20 days of the entry of this Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to

have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Order. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 2008, at the rate of 3.31% for calendar year 2009, and (ii) after December 31, 2009, at the rate of 1.23% for calendar year 2010 (iii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, and (iv) after December 31, 2011, at the rate of 1.09% for calendar year 2012.

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

MICHIGAN TAX TRIBUNAL

Entered: June 13, 2012

By: Marcus L. Abood