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

IAC Group NA,
Petitioner,

v MTT Docket No. 439157

City of St. Clair,
Respondent.

Tribunal Judge Presiding
Preeti P. Gadola

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, IAC Group NA, appeals ad valorem property tax assessments levied by Respondent, City of St. Clair, against Parcel Nos. 07-295-0001-000, 07-900-0035-000, and 07-900-0036-000 for the 2012 and 2013 tax years. A hearing on this matter was held on April 28, 2014. L. Rider Brice III, Attorney at Jaffe, Raitt, Heuer & Weiss, PC, appeared on behalf of Petitioner, and Heidi T. Sharp, Attorney at Burgess & Sharp, PLLC, appeared on behalf of Respondent. Petitioner's sole witness and valuation expert was David Bur, MAI. Respondent's sole witness and valuation expert was Frank Sharp, SRA, GAA.

The subject building is a class C/S industrial manufacturing building with a steel and concrete block frame and a concrete foundation. It was originally constructed in 1991. An unheated storage building was added in 2001.

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

Parcel No.	Year	TCV	SEV	TV
07-295-0001-000	2012	$1,677,578	$838,789	$838,789
07-295-0001-000	2013	$1,147,816	$573,908	$573,908

Parcel No.	Year	TCV	SEV	TV
07-900-0035-000	2012	$416,406	$208,203	$208,203
07-900-0035-000	2013	$284,910	$142,455	$142,455

Parcel No.	Year	TCV	SEV	TV
07-900-0036-000	2012	$41,426	$20,713	$20,713
07-900-0036-000	2013	$28,344	$14,172	$14,172

PETITIONER’S CONTENTIONS

Petitioner contends that the subject property is assessed in excess of 50% of its true cash value.

Petitioner’s contentions of TCV, SEV, and TV, as established by its valuation disclosure, are as follows:

Parcel No.	Year	TCV	SEV	TV
07-295-0001-000	2012	$1,398,418	$699,209	$699,209
07-295-0001-000	2013	$1,232,732	$616,366	$616,366

Parcel No.	Year	TCV	SEV	TV
07-900-0035-000	2012	$347,087	$173,543.50	$173,543.50
07-900-0035-000	2013	$334,259	$167,129.50	$167,129.50

Parcel No.	Year	TCV	SEV	TV
07-900-0036-000	2012	$34,495	$17,247.50	$17,247.50
07-900-0036-000	2013	$33,009	$16,504.50	$16,504.50

PETITIONER’S ADMITTED EXHIBITS

P1: Appraisal Report prepared by David Bur, MAI

P2: Allocation of Value by Tax Parcel

P3: Certificate of Merger

P4: BS&A Property Card

PETITIONER'S WITNESS

David Bur, MAI

Petitioner presented testimony from its appraiser, David Bur, MAI. Based on his experience and training, the Tribunal accepted Mr. Bur as an expert in the valuation of real property. Mr. Bur prepared and communicated an appraisal of the subject property. The appraisal sets forth both a sales comparison and income analysis for each of the tax years at issue. The cost approach was considered but not developed due to the large amount of physical depreciation and economic obsolescence associated with the subject property. Also, market participants do not look to the cost approach when estimating the value of a property like the subject. All approaches are conveyed on the foundation of a fee simple interest.

INCOME APPROACH

Mr. Bur's income approach is based on a direct capitalization methodology. To estimate market rent for the subject property, he examined the leases of nine industrial properties.

Rental #	1	2	3	4	5	6	7	8	9
Location	Sterling Heights	Chesterfield Twp.	Macomb Twp.	Warren	Harrison Twp.	Warren	Port Huron	Fraser	Warren
Lease Date	April 2011	April 2011	May 2011	May 2012	May 2012	Dec 2012	Aug 2013	Nov 2013	Dec 2013
Lease Terms	Triple Net	Triple Net	Triple Net	Triple Net	Triple Net	Triple Net	Triple Net	Gross + Utilities	Triple Net
Leased Area (SF)	90,621	78,894	70,268	145,389	110,266	138,268	173,900	68,000	140,882
Year Built	1968	1966	2000	1960 (2000sR)	1999	1967 (2000R)	1991	1972	1967 (2000R)
Construction Quality	Average	Average	Average	Average	Average	Average	Average	Average	Average
Clear Height	16-18	18-22	26	24-43	18-30	23-28	25-40	22	27-28
Office Percentage	0%	13%	14%	1%	5%	0%	10%	11%	8%
Rental Rate per SF	$2.73	$2.75	$3.46	$3.45	$2.35	$4.10	$3.85	$4.20	$3.76
Adj. Rate per SF	$2.87	$2.34	$2.60	$3.11	$2.12	$3.70	$2.84	$2.46	$3.11

Comparables 1-5 were utilized in the December 31, 2011 valuation analysis, while Comparables 5-9 were utilized in the December 31, 2012 valuation analysis. Comparables 6 and 9 are two units of the same multi-tenant building. All of the comparables are located outside of the City of St. Clair. Comparable 7 is located north of the subject in Port Huron, and the remainder of the properties are located in Macomb County. Mr. Bur explained that the majority of industrial properties in the City of St. Clair are owner-occupied, and as you move out from that area, "the nearest industrial properties are in Marysville and Port Huron, and the next nearest location is Macomb County to the south." TR, p. 25. Further, while there were more rentals in St. Clair County than just the one selected, "they tended to be much smaller properties or older data," and in his judgment, "less similar to the subject" than the Macomb County properties. TR, p. 25. Mr. Bur testified that while size and location are both important factors, "a tenant who is looking for a 100,000 SF building . . . . [is] going to be looking over a wider geographic region. It's going to extend into Macomb County . . . . [and they] could have no use for a 20,000 SF building. It wouldn't fit their business needs." TR, p. 26.

The individual attributes of each lease comparable were analyzed and compared to the subject, and adjustments were made to account for differences between the properties. Various elements of comparison, including lease terms, conditions of lease, market conditions, location, physical features, economic characteristics, zoning, and non-realty components were considered in the analysis. For example, because larger properties command lower rental rates per square foot as compared to smaller developments, Comparables 2, 3, and 8, all of which are smaller than the subject, received downward adjustments for size, and the larger Comparable 7 received an upward adjustment. Other adjustments include, among others, an adjustment to comparable 2 as it had been well maintained for its age and Comparable 4 was completely renovated by a developer in the 2000s. Comparable 7, a heavy industrial manufacturing facility that had cranes, more electrical capacity and a much higher cost of construction than the subject, was also adjusted downward for both quality and clear height. Mr. Bur testified that “[a] clear height is important to a manufacturer for getting equipment in, crane space and for storing goods . . . .” TR, p. 28. Comparables 4 and 9 were similarly adjusted downward for height, and Comparable 1, which has lower clear ceiling heights than the subject, was adjusted upward. Comparables 2, 3 and 8 had more office space for the subject, and inasmuch as such space is more expensive to build than industrial space, were adjusted downward for that feature. Comparable 8 was adjusted down for lease terms. It is “leased on a gross plus utilities basis, where the vast majority of industrial buildings are leased on a triple net basis.” TR, p. 35. Since Mr. Bur was concluding to a triple net basis rental rate for the subject property, it was necessary to adjust for this element of comparison: “In a gross plus utilities lease, the tenant only pays rent plus their utilities. They do not reimburse the owner of the building for common area maintenance, real estate taxes and insurance.” TR, p. 35.

After analyzing the lease comparables and adjusting for differences in amenities, Mr. Bur concluded to market rent rates of $2.35/SF for the 2012 tax year and $2.50/SF for the 2013 tax year. Comparables 3 and 5 were considered most similar and given most weight in the 2012 valuation, while Comparables 5 and 7 were considered most similar and given most weight in the 2013 valuation.

Following his estimation of market rents, Mr. Bur reviewed local market data and conversed with market participants to determine appropriate vacancy and credit loss factors for the St. Clair County industrial market. Based upon his research and experience, he concluded that a typical credit loss (i.e., bad debt) would fall between 1% and 2%. CoStar, which keeps track of all of the industrial buildings in the market and the vacancy within each building, indicated that the vacancy rate in St. Clair County was 17% in the fourth quarter of 2011, and 15% in the fourth quarter of 2012. From these figures, Mr. Bur concluded to vacancy rates of 18% and 15% for the 2012 and 2013 tax years, respectively. Because the tenant is responsible for all expenses in a triple net lease, operating expenses included only management fees, which Mr. Bur opined can range from 2% to 6% depending on the number of tenants and lease structures, and unrecovered operating expenses. Unrecovered expenses include common area maintenance and insurance during periods when the building is vacant. Management fees for the subject were estimated at 2% for both years, and unrecovered expenses were estimated at $0.18 per square foot as of December 31, 2011 and $0.15 per square foot as of December 31, 2012. Base capitalization rates were derived from three sources: industrial sales in the Detroit Metropolitan Area, band-of-investment techniques and investment surveys. In the market analysis, two of the properties surveyed were concluded to be most similar to the subject. These properties had capitalization rates of 14% and 11.5%, respectively. The band-of-investment analyses reviewed fourth quarter data for 2011 and 2012, both of which indicated a rate of 10.52%. Industry surveys, which similarly reviewed relevant fourth quarter data, indicated rates ranging from 7.48% to 9.76% for the 2012 tax year, and 6.73% to 10.01% for the 2013 tax year. The lower end of the ranges reflects rates as indicated by Korpacz, which Mr. Bur indicated is generally more representative of the national market rather than the local market. Mr. Bur placed primary emphasis on the market-derived rates, and concluded to a 10.5% base rate for both years. After tax-loading the rates and capitalizing the net operating incomes, Mr. Bur arrived at final true cash value indications as follows: $1,740,000 as of December 31, 2011, and $1,990,000 as of December 31, 2012.

SALES COMPARISON APPROACH

Mr. Bur's sales comparison analysis examines seven sales of industrial properties. Write-ups and photographs of each comparable are included in the appraisal report. A summary of the sales is as follows:

Sale #	1	2	3	4	5	6	7
Location	St. Clair	Port Huron	Port Huron	New Baltimore	St. Clair	St. Clair	Port Huron
Sale Date	Oct 2009	Feb 2011	Oct 2011	Mar 2012	Dec 2012	Mar 2013	Jun 2013
Sale Price	$2,000,000	$2,387,500	$1,456,000	$590,000	$800,000	$665,000	$875,000
Building Area (SF)	133,000	140,230	55,000	87,400	55,227	74,400	108,505
Land Area (Acres)	11.69	7.90	4.37	7.49	3.54	7.52	6.20
Year Built	1995-2005	1985-1990	1986-2000	1970 (1991R)	1973 (2001R)	1991	1970 (2005R)
Construction Quality	Average	Average	Average	Average	Average	Average	Average
Clear Height	30	20-30	20-22	14-22	22	24	20
Office Percentage	5%	4%	9%	5%	21%	3%	8%
Price Per Unit	$15.04	$17.03	$26.47	$6.75	$14.49	$8.94	$8.06
Adjusted Sale Price	$14.29	$17.03	$23.83	$7.43	$13.04	$11.67	$11.08

Comparables 1-4 were utilized in the December 31, 2011 valuation analysis, while Comparables 4-7 were utilized in the December 31, 2012 valuation analysis. As with the lease comparables, the individual attributes of each sale were analyzed and compared to the subject, and adjustments were made to account for differences between the properties. Various elements of comparison, including property rights conveyed, financing terms, conditions of sale, expenditures made immediately after sale, market conditions, location, physical features, economic characteristics, zoning, and non-realty components of value were considered in the analysis. Unlike the lease comparables, however, almost all of the sales were located in St. Clair County. Mr. Bur explained that because "[t]he majority of industrial buildings in St. Clair County are owner-occupied . . . there is a lot more data for sales of buildings than there is for rents of buildings." TR, p. 50. Accordingly, only Comparable 4, which is located just across the county line in New Baltimore, required a location adjustment. Comparable 1, which is located across the street from the subject property, had only one adjustment. This property had higher clear ceiling heights and was adjusted downward for that superior quality. Comparable two had no adjustments. Comparable 6, which is located next door to the subject, had several adjustments, including an adjustment for conditions of sale. This property sold in a short sale, and unlike Comparable 1, which sold out of foreclosure, was concluded to require an adjustment for that fact. Comparable 4 required an upward adjustment for ceiling height, and along with Comparables 5, 6 and 7, an upward adjustment for condition. Further, based upon the same principles utilized in the market rent analysis, Comparables 3, 5 and 6 were adjusted downward for size. Comparable 5 was also adjusted downward for having more office space. Comparable 7 was adjusted upward for expenditures after sale based on the costs of necessary repairs and maintenance, as indicated by the buyer.

After analyzing the comparable sales and adjusting for differences in amenities, Mr. Bur concluded to final true cash value indications as follows: $16.00/SF or $1,800,000 as of December 31, 2011, and $13.00/SF or $1,460,000 as of December 31, 2012.

RECONCILIATION

	December 31, 2011	**December 31, 2012**
Income Approach	$1,740,000	$1,990,000
Sales Comparison Approach	$1,800,000	$1,460,000

After considering both the sales comparison and income approaches to value, Mr. Bur concluded that the sales comparison approach yielded the most reliable indicator of value and as such should be given the most weight in his final value determinations. Reconciling the values indicated by these approaches, Mr. Bur concluded to a final true cash value indication of $1,780,000 for the 2011 tax year. Likewise, in 2012, Mr. Bur reconciled the sales and income approaches to value, which resulted in a final true cash value indication of $1,600,000.

RESPONDENT’S CONTENTIONS

Pursuant to its valuation disclosure, Respondent agrees that the subject property is assessed in excess of 50% of its true cash value. Respondent contends, however, that the assessment is not excessive to the extent asserted by Petitioner.

The property’s TCV, SEV, and TV as established by the Board of Review for the tax years at issue are as follows:

Parcel No.	Year	TCV	SEV	TV
07-295-0001-000	2012	$2,221,600	$1,110,800	$1,110,800
07-295-0001-000	2013	$2,009,200	$1,004,600	$1,004,600

Parcel No.	Year	TCV	SEV	TV
07-900-0035-000	2012	$551,400	$275,700	$275,700
07-900-0035-000	2013	$544,800	$272,400	$272,400

Parcel No.	Year	TCV	SEV	TV
07-900-0036-000	2012	$54,800	$27,400	$27,400
07-900-0036-000	2013	$53,800	$26,900	$26,900

Respondent's contentions of TCV, SEV, and TV, as established by its valuation disclosure, are as follows:

Parcel No.	Year	TCV	SEV	TV
07-295-0001-000	2012	$2,101,480	$1,050,740	$1,050,740
07-295-0001-000	2013	$2,121,120	$1,060,560	$1,004,600

Parcel No.	Year	TCV	SEV	TV
07-900-0035-000	2012	$521,625	$260,810	$260,810
07-900-0035-000	2013	$526,500	$263,250	$263,250

Parcel No.	Year	TCV	SEV	TV
07-900-0036-000	2012	$51,895	$25,947.50	$25,947.50
07-900-0036-000	2013	$52,380	$26,190	$26,190

RESPONDENT'S ADMITTED EXHIBITS

R2: Work File Documents

R3: Appraisal Report prepared by Frank J. Sharp, SRA, GAA

R4: Work File Documents

RESPONDENT'S WITNESS

Frank J. Sharp, SRA, GAA

Respondent presented testimony from its appraiser, Frank J. Sharp, SRA, GAA. Based on his experience and training, the Tribunal accepted Mr. Sharp as an expert in the valuation of real property. Mr. Sharp prepared and communicated an appraisal of the subject property. The appraisal sets forth both a sales comparison and income analysis for each of the tax years at issue. The cost approach was considered but not developed due to the significant depreciation and obsolescence associated with the subject building improvements. All approaches are conveyed on the foundation of a fee simple interest.

INCOME APPROACH

Mr. Sharp's income approach is based on a direct capitalization methodology. To determine appropriate rental rates for the subject property, he examined the leases of four industrial properties. Write-ups and photographs of each comparable are included in the appraisal report. A summary of the properties is as follows:

Rental #	1	2	3	4
Location	Marysville	Port Huron	St. Clair	Port Huron
Price per SF	$2.79	$3.25	$3.50	$4.04
Terms	Full Net	Full Net	Full Net	Full Net
Size (SF)	168,180	87,100	38,800	46,020
Condition/Quality	Inferior	Inferior	Average	Average
Functional Utility	Inferior	Average	Average	Average
Adj Price per SF	$3.85	$4.10	$3.95	$4.20

Mr. Sharp testified that in his opinion, which was based on "working in the St. Clair County market area, and . . . discussions with industrial brokers[,] [appraisers, and assessors] from the area," there had been no change in market trends between the 2011 and 2012 tax years. TR, p.

130. As such, the same four comparables are utilized in both the December 31, 2011 and December 31, 2012 valuation analyses. Further, unlike Mr. Bur's lease comparables, all properties were located in St. Clair County. Mr. Sharp explained: "I wasn't so concerned about size as I was maybe that I had physically inspected the insides . . . . I just felt staying in St. Clair County where I had physically inspected or appraised these properties was more applicable than going outside the County." TR, p. 140. The individual attributes of each lease comparable were analyzed and compared to the subject and adjustments were made to account for differences between the properties. Various elements of comparison, including lease terms and conditions, location, availability of public utilities, size, quality and condition, and overall functional utility were considered in the analysis. The biggest factors were lease terms and size. With respect to the former, Mr. Sharp's appraisal indicates that "[t]he rentals are considered full net; however, when a property is appraised for ad valorem tax purposes, the effective tax rate is included in the capitalization rate as previously discussed. The actual taxes as of the valuation dates were verified and the adjustments calculated based on square footage and the rental rates." R3, p. 65. In further explanation, Mr. Sharp testified "I took the taxes and divided by the square footage of the building to come up with a price per square foot reflecting the taxes, and I turned that into a ratio." TR, p. 136. All comparables were adjusted upward for this factor. Mr. Sharp agreed with Mr. Bur that larger properties command lower rental rates per square foot as compared to smaller developments, and as such, Comparables 2, 3, and 4 were adjusted downward for their smaller sizes, while Comparable 1 was adjusted upward for this element of comparison. Comparable 1 was also adjusted upward for inferior condition and functional utility. Layout and under-beam heights were the primary factors considered in the latter determination. After

adjusting the lease comparables for relevant elements of comparison, Mr. Sharp concluded to a market rent rate of $4.00/SF for both tax years. He testified that he felt this rate was supportable given the indicated range and average rent per square foot of $4.05. See TR, p. 142.

Mr. Sharp testified that based upon conversations he had with the Executive Director of the Economic Development Alliance in St. Clair County, he concluded that the vacancy rate for both of the tax years at issue was "in the 10% range." TR, p. 129. According to his appraisal, this conclusion takes into consideration the market and economic conditions as of the effective dates of value, the availability of competing industrial type space and size, and the condition and quality of the improvements. See R3 p. 63. Expenses included "all normal operating expenses that are not passed on to the tenants but paid by the owners," i.e., management fees and reserves. Mr. Sharp also included an amount for miscellaneous expenses: "Then the miscellaneous—and I had an instructor through the Appraisal Institute, and he said, 'whatever you do, put some miscellaneous in, miscellaneous expenses.' There is a 'just because' expense. I felt it was reasonable, based on the size of this building and possibly what could go wrong as far as an owner's expense." TR, p. 148. Mr. Sharp indicated that property managers typically charge a fee ranging between 3% and 5% based on the effective gross income for similar properties. Here, he concluded that a fee of $16,000, or approximately 4%, was reasonable. Reserves were estimated at $12,000, and miscellaneous expenses at $3,000. "I felt it was reasonable, based on the size of this building and possibly what could go wrong as far as an owner's expense . . . ." TR, p. 148. Base capitalization rates were derived from a single source: band-of-investment techniques. It was noted that "as of the valuation dates, area research failed to disclose market support for an overall capitalization rate. Comparable market sales, rented at the time of sale, were not readily available in the subject area. Searching outside the subject and St. Clair county market areas reflects market and economic conditions not comparable to the subject area. Therefore, deriving an overall rate via market extraction was not supportable." R3, p. 59. The band-of-investment analysis reviewed (i) information obtained from local commercial banks, insurance companies, and area mortgage brokers, relating to the availability of financing capital for properties of the subject type and location, (ii) actual mortgage commitments made by local area lenders, (iii) equity dividend, or cash on cash return rate demands of investors active in the marketplace, and (iv) actual cash low rates of return abstracted from sales of properties possessing similar magnitude and investment objectives to the subject. R3, p. 60. From this analysis, Mr. Sharp concluded to base rates of 10.85% and 10.6% for the 2012 and 2013 tax years respectively. After tax-loading the rates and capitalizing the net operating incomes, Mr. Sharp arrived at final true cash value indications as follows: $2,750,000 as of December 31, 2011, and $2,800,000 as of December 31, 2012.

SALES COMPARISON APPROACH

Mr. Sharp's sales comparison analysis examines five sales. Write-ups and photographs of each comparable are included in the appraisal report. A summary of the sales is as follows:

Sale #	1	2	3	4	5
Location	Port Huron	Port Huron	Port Huron	Port Huron	St. Clair
Sale Price	$2,387,500	$1,456,000	$860,000	$530,000	$396,000
Price per SF	$17.05	$26.00	$30.71	$28.12	$14.56
Sale Date	Feb 2011	Oct 2011	Feb 2011	Dec 2010	Oct 2012

Size (SF)	140,000	56,000	28,000	18,850	27,200
Condition/Quality	Inferior	Average	Average	Average	Inferior
Functional Utility	Average	Average	Average	Average	Inferior
Adj SP/SF (2012) (2013)	 $21.25 $21.25	 $22.00 $22.00	 $24.50 $24.50	 $22.50 N/A	 N/A $20.50

Comparables 1-4 were utilized in the December 31, 2011 valuation analysis, while Comparables 1, 2, 3 and 5 were utilized in the December 31, 2012 valuation analysis. As with the lease comparables, the individual attributes of each sale were analyzed and compared to the subject, and adjustments were made to account for differences between the properties. Various elements of comparison, including time of sale, terms/conditions of sale, property rights, location, availability of utilities, size, condition/quality of construction, and overall functional utility. Further, like the lease comparables, all of the sales were located in St. Clair County. Also, with the exception of Comparable 5, all were located in similar industrial park settings. Comparable 5 is located in a more rural area of St. Clair County, which was concluded to be inferior to the subject's industrial park location. Accordingly, this property was adjusted upward for location, and in addition, for the resulting lack of public water and sewer. It was also adjusted upward for interior condition and functional utility. The only downward adjustment the property received was for its smaller size. Size was again the biggest factor in Mr. Sharp's analysis, and all but Comparable 1 were adjusted downward for this element of comparison. Comparable 1, which was also utilized by Mr. Bur in his analysis, was adjusted upward for its larger size. Comparable 1 was also adjusted upward for its inferior condition.

After analyzing the comparable sales, adjusting for differences in amenities and reviewing the supplemental listings, Mr. Sharp concluded to final true cash value indications as follows:

$23.00/SF or $2,593,480 ($2,600,000 rounded) as of both December 31, 2011 and December 31, 2012. Most weight was given to sales 1, 2 and 3, which had the least amount of gross adjustments and an average adjusted price per square foot of $22.50.

RECONCILIATION

	December 31, 2011	**December 31, 2012**
Sales Comparison Approach	$2,600,000	$2,600,000
Income Approach	$2,750,000	$2,800,000

After considering both the sales comparison and income approaches to value, Mr. Sharp concluded that comparable weight should be given to both approaches to value. Reconciling the values indicated by these approaches, Mr. Sharp concluded to a final true cash value indication of $2,675,000 for the 2012 tax year. Likewise, in 2013, Mr. Sharp reconciled the sales and income approaches to value, which resulted in a final true cash value indication of $2,700,000.

FINDINGS OF FACT

1. The subject property is located at 2001 Christian B. Haas Drive in the City of St. Clair, St. Clair County, Michigan.

2. The subject property is identified as Parcel Nos. 07-295-0001-000, 07-900-0035-000, and 07-900-0036-000 and commonly known as International Automotive Components.

3. The subject property is classified as Industrial and zoned M-1, Light Industrial. It is located in the Christian B. Haas Industrial Park.

4. The subject site is slightly irregular in shape and has a total land area of 11.91 acres. It is located at the southeast corner of Christian B. Haas Drive and Yankee Road, with three access points to Christian B. Haas Drive and none to Yankee Road.

5. Site improvements consist of asphalt with some concrete parking, metal light posts in the parking lot, private sidewalks to the main building entrances, and typical landscaping. A portion of the eastern boundary of the parcel is fenced with chain link fencing. The property is also improved with a freestanding, single-story industrial building.

6. The subject building is a class C/S industrial manufacturing building with a steel and concrete block frame and a concrete foundation. It was originally constructed in 1991. An unheated storage building was added in 2001.

7. The subject building's office space includes a reception area, conference room, copy room, communications room, bathrooms and a mixture of enclosed and open office areas. It has a mixture of hard tile and carpeted floors, suspended tile ceilings, painted drywall walls, insulated glass windows, and is heated and cooled by forced air units.

8. The building's shop area is mostly open space, but also includes a fire-pump room, break room, maintenance area, offices, bathrooms and a dock area with seven truck wells. It has a concrete floor, concrete block and insulated metal walls, exposed ceilings, and is heated by gas-fired heaters and air make-up units. There is no air conditioning.

9. Parcel No. 07-295-0001-000 is the majority of the property, includes all of the land and the original structure, which is a little over 100,000 square feet. The second parcel, which is identified as Parcel No. 07-900-0035-000 is the addition to the building that was put on in 2001, the third parcel, identified as Parcel No. 07-900-0036-000 encompasses part of the original building that was renovated.

10. Parcel No. 07-295-0001-000 is owned by Easy Simi Investors and the two smaller parcels are owned by International Automotive Components.

11. Parcel No. 07-295-0001-000 is subject to a lease agreement between the owners of record and IAC 2001 Christian B. Haas Drive, LLC. The property is occupied by the tenant's business, International Automotive Components. Pursuant to a Memorandum of Lease dated December 3, 2007, the original lease was dated September 24, 2004, expiring on October 1, 2019, with two five-year extensions available.

12. The highest and best use of the parcels is the existing industrial use as a single property, as Parcel No. 07-900-0035-000 only includes the addition, which is at the back of the property and has no separate access, and Parcel No. 07-900-0036-000 is a part of the main building and could not be sold separately.

13. Petitioner’s appraiser developed and communicated a valuation disclosure in the form of a summary appraisal report. Petitioner’s appraisal sets forth a sales comparison and income analysis for each of the tax years at issue. The cost approach was not developed.

14. In developing his sales comparison analyses, Petitioner’s appraiser identified and examined a total of seven comparable sales. Comparables 1-4, with dates of sale ranging from May of 2009 to March of 2012, were utilized in the December 31, 2011 valuation analysis, and Comparables 4-7, with dates of sale ranging from March of 2012 to June of 2013, were utilized in the December 31, 2012 valuation analysis.

15. Petitioner’s sales Comparables 1-4 have unadjusted sales prices ranging between $6.75/SF and $26.47/SF, while Comparables 4-7 have unadjusted sales prices ranging between $6.75/SF and $14.49/SF.

16. Petitioner’s appraiser adjusted each comparable sale for property rights conveyed, financing terms, conditions of sale, expenditures made immediately after sale, market conditions, location, physical features, economic characteristics, use (zoning) and non-realty components of value.

17. After adjustments, Petitioner’s sales Comparables 1-4 have sales prices ranging between $7.43/SF and $23.83/SF, while Comparables 4-7 have sales prices ranging between $7.60/SF and $13.04/SF.

18. From the adjusted sales prices of the sales comparables, Petitioner's appraiser concluded to a market value of $16.00/SF for the 2012 tax year and $13.00/SF for the 2013 tax year.

19. In developing his income analyses, Petitioner's appraiser identified and examined the leases of nine comparable properties. Comparables 1-5, with lease dates ranging from April of 2011 to May of 2012, were utilized in Petitioner's December 31, 2011 valuation analysis, and Comparables 5-9, with lease dates ranging from May of 2012 to December of 2013, were utilized in Petitioner's December 31, 2012 valuation analysis.

20. Petitioner's lease Comparables 1-5 have unadjusted rental rates ranging from $2.35/SF to $3.46/SF, while Comparables 5-9 have unadjusted rental rates ranging from $2.35/SF to $4.20/SF.

21. Petitioner's appraiser adjusted each comparable lease for lease terms, conditions of lease, market conditions, location, physical features, economic characteristics, use (zoning), and non-realty components.

22. After adjustments, Petitioner's lease Comparables 1-5 have rental rates ranging from $2.12/SF to $3.11/SF, while Comparables 5-9 have rental rates ranging from $2.16/SF to $3.70/SF.

23. From the adjusted rental rates of the lease comparables, Petitioner's appraiser concluded to final market rent rates of $2.35/SF for the 2012 tax year and $2.50/SF for the 2013 tax year. Comparables 3 and 5 were considered most similar and given most weight in the 2012 valuation, while Comparables 5 and 7 were considered most similar and given most weight in the 2013 valuation.

24. Petitioner's appraiser concluded to stabilized vacancy rates of $18% and 15% for the 2012 and 2013 tax years, respectively, and a base overall capitalization rate of 10.5% for both tax years.

25. Respondent's appraiser developed and communicated a valuation disclosure in the form of a summary appraisal report. Respondent's appraisal sets forth a sales comparison and income analysis for each of the tax years at issue. The cost approach was considered but not developed due to the various ages and condition of the improvements and difficulty in estimating accrued depreciation.

26. In developing his sales comparison analyses, Respondent's appraiser identified and examined a total of five comparable sales, with dates of sale ranging between December 2010 and October 2012. Four sales comparables were utilized in the December 31, 2011 valuation analysis and the December 31, 2012 valuation analysis.

27. Respondent’s sales comparables have unadjusted sales prices ranging between $14.56/SF and $30.71/SF.

28. Respondent’s appraiser adjusted each comparable sale for time of sale, terms and conditions of sale, property rights, location, availability of utilities, size, condition and quality of construction, and overall functional utility.

29. After adjustments, Respondent’s sales comparables have sales prices ranging between $21.25/SF and $24.50/SF for the 2012 tax year, and $20.50/SF and $24.50/SF for the 2013 tax year.

30. From the adjusted sales prices of the sales comparables, Respondent’s appraiser concluded to a market value of $23.00/SF for both of the tax years at issue.

31. In developing his income analyses, Respondent’s appraiser identified and examined the leases of four comparable properties. All four lease comparables were utilized in both the December 31, 2011 valuation analysis and the December 31, 2012 valuation analysis.

32. Respondent’s lease Comparables have unadjusted rental rates ranging from $2.79/SF to $4.04/SF.

33. Respondent's appraiser adjusted each comparable lease for lease terms and conditions, location/site, availability of public utilities, size, condition/quality, and overall functional utility.

34. After adjustments, Respondent's lease comparables have rental rates ranging from $3.85/SF to $4.20/SF for both tax years at issue.

35. From the adjusted rental rates of the lease comparables, Respondent's appraiser concluded to final market rent rates of $4.00/SF for both tax years at issue.

36. Respondent's appraiser concluded to stabilize vacancy rates of 10% for both of the tax years at issue, and overall capitalization rates of 10.75% and 10.5% for the 2012 and 2013 tax years, respectively.

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 defined "true cash value" as "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." See MCL 211.27(1). The Michigan Supreme Court, in *CAF Investment Co v State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974), held that "true cash value" is synonymous with "fair market value."

The Tribunal is charged with finding a property's true cash value to determine the property's lawful assessment. See *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (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. Fundamental to the determination of a property's true cash value is the concept of "highest and best use." It recognizes that the use to which a prospective buyer would put the property will influence the price which the buyer would be willing to pay. See *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 623; 462 NW2d 325 (1990).

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

MCL 205.737(3) provides that "[t]he petitioner has the burden of proof in establishing the true cash value of the property." The Michigan Court of Appeals has held that "[t]his burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party." *Jones & Laughlin, supra* at 354-355. Nonetheless, the tribunal *must* make an independent determination of true cash value. *Id.* at 355. The Tribunal is also obligated to select the valuation methodology that is accurate and bears a reasonable relation to the property's true cash value. See *Safran Printing Co v Detroit,* 88 Mich App 376; 276 NW2d 602 (1979). The Tribunal is not, however, "bound to accept either of the parties' theories of valuation. It may accept one theory and reject the other, it may reject both theories, or . . . utilize a combination of both in arriving at its determination." *Jones & Laughlin, supra* at 356. Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject property would sell. See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473; 473 NW2d 636 (1991). In this matter, the Tribunal finds that the sales comparison approach is the correct approach to utilize in valuing the subject property for the tax years in question.

Here, the parties' valuation experts were charged with developing and communicating appraisals of the subject property to assist the Tribunal in making an independent determination of its true cash value for the two years under appeal. Both appraisers developed the income and sales comparison approaches to value. Petitioner's appraiser, Mr. Bur, relies primarily on the sales approach, while Mr. Sharp considered the two approaches equally to support Respondent's contentions of value. Pursuant to Mr. Sharp's testimony, his final value estimates reflect the median, or "average" of the two approaches. See TR, p. 166. The Tribunal finds, however, that in a proper reconciliation process, "[t]he final value opinion is not the average of the different value indications derived. No mechanical formula is used to select one indication over the others. The strengths and weakness of each of the approaches used must be discussed, and the appraiser must explain why one approach may be relied upon more than another in a particular assignment." *Appraisal of Real Estate*, (Chicago: Appraisal Institute, 14th ed, 2013), p. 642. Mr. Sharp provided no explanation as to why the sales comparison and income approaches to value were considered equally reliable, and notwithstanding that they do present a relatively tight range of value, the Tribunal is not persuaded by his reconciliation. Pursuant to the *Appraisal of Real Estate*, the relevance of a valuation approach is directly related to property type:

> All three approaches are applicable to many appraisal problems, but one or more of the approaches may have greater significance in a given assignment. For example, the sales comparison approach is usually emphasized in the valuation of single-unit residential properties. However, this approach may not be applicable to specialized properties such as garbage disposal plants because the comparable data may not be available. The income capitalization approach is used to value most income-producing properties, but it can be particularly unreliable in the market for commercial or industrial property where owner-occupants outbid investors. The income capitalization approach is not typically applied in valuing homes. The cost approach may be more applicable to new and special-purpose properties and less applicable in valuing properties with older improvements that suffer from substantial depreciation, which can be difficult to estimate. *Id*. at 45.

Mr. Bur testified that the majority of industrial properties in the City of St. Clair and surrounding areas are owner-occupied, while the subject is not. Given the above, such testimony supports a finding that the sales comparison approach is a more reliable indicator of value, than the income approach (better sales than rental information) and should be given primary consideration.

Although the Tribunal finds that the sales approach is the correct valuation method in this matter, the income approach will be discussed as follows: Mr. Sharp was adamant that an appraiser should stay local when searching for comparables, and testified that he was more concerned with staying within St. Clair County than size in his own search, this concern appears to arise more out of his familiarity with the properties than it does their actual comparability. This focus is somewhat questionable, given that Mr. Sharp acknowledged that while he or someone in his firm had personally inspected the selected lease comparables, such inspections were not done for this specific appraisal assignment, and had in fact taken place several years before. See TR, p. 208. On cross examination, Mr. Sharp agreed that a purchaser needing an industrial building the size of the subject would not purchase a smaller building to stay in St. Clair, but more likely would search a wider geographical area until they found a building that suited their needs. TR, p. 237. He also seemed to acknowledge that if a buyer is searching a wider geographical area, that area then becomes the market. *Id.*

Unlike Mr. Sharp, who indicated that he had not taken any steps to determine whether there had been any changes to his comparables in the years since his initial inspection, Mr. Bur testified that for all comparables, lease and sales alike, he contacted the broker, buyer, seller, tenant and/or landlord to verify that the information he obtained from his internal files and other sources was correct, and to make sure that he had an understanding of all the circumstances surrounding the same. TR, p. 50. The Tribunal similarly finds no merit in the argument that Mr. Bur's comparables were not true comparables because he expanded his search beyond St. Clair County. On the contrary, the Tribunal finds that Mr. Sharp's self-imposed limitation lessens not only the reliability of his lease comparables, but other factors of his income approach as well. Notably, his reluctance to go out of the St. Clair area resulted in the absence of a market-derived capitalization rate.[1] Further, while Mr. Sharp's base capitalization rates are very similar

[1] The information utilized by Mr. Sharp in his band-of-investment analysis, which was his sole source of capitalization, was from appraisals that he had completed in 2011 and 2012 and prior discussions with lenders. He

nonetheless to those estimated by Mr. Bur, his tax-loaded rates are not. Loading the capitalization rate generally has the same effect as deducting property taxes as an expense, and with the application of the capitalization rate, the higher the rate, the lower the value. Here, however, Mr. Sharp's adjustments for "lease terms," which he testified represented the ratio of taxes per square foot for each comparable, effectively add some or all of that same value, possibly even more, back in to the analysis and artificially inflate the adjusted prices of the comparables. Even putting aside that Mr. Sharp used data not relevant to the tax years at issue in these calculations; it is, as argued by Petitioner, unclear exactly what we are left with, given the varying millages within each jurisdiction.[2]

Ultimately, the Tribunal finds that Mr. Sharp's questionable methodologies, combined with his failure to sufficiently explain or support the same, result in an inability to rely on his income analyses. Furthermore, size was a factor in Mr. Sharp's sales and income analyses. In his income approach two of the four rental comparables were less than half the size of the subject property and in his sales approach four of the five comparables were half, or less than half, the size of the subject. As indicated above, the Tribunal finds that a buyer of an industrial building would primarily be looking to purchase a building of the size it required, therefore comparable sales

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did not do any new investigation or fact-checking for purposes of this appraisal. Similarly, Mr. Sharp conducted no independent research on vacancy rates, but relied solely on second-hand knowledge from the Executive Director of the Economic Development Alliance. The questionable nature of his concluded rate, which purports to include credit loss, is further evidenced by his inability to break down what percentage was attributed to each. TR, p. 206.

[2] It was discovered during the course of the hearing that Mr. Sharp utilized the actual taxes paid on each of the comparables in the 2011 and 2012 tax years, as opposed to the 2012 and 2013 tax years at issue in this appeal, to calculate his lease term adjustments, and St. Clair millage rates for the same years for purposes of tax-loading his capitalization rates. TR, p. 214-215.

outside of St. Clair County of similar size, rather than buildings in St. Clair County of smaller size, would be truly comparable to the subject property.

With regard to the sales approach, the Tribunal is not persuaded by Mr. Sharp's analysis due to, among other things, the smaller size of the comparables. Petitioner's analyses, however, are generally supported by the evidence and testimony presented and all appropriate considerations were accounted for. Further, Mr. Bur's application of available data is logical and persuasive. Despite Respondent's assertions to the contrary, the Tribunal is satisfied that Petitioner's Sales Comparable 1 is a reliable indicator of value. Although this property sold out of foreclosure, the "Tribunal may not summarily reject evidence solely because a bank-owned sale is involved. . . ." See *Abbas v City of Dearborn*, unpublished opinion per curiam of the Court of Appeals, issued December 27, 2012. Further, regardless of the nature of the transaction, a property must, in order to be accepted as a reliable indicator of value, be proven to have sold "after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, [with] neither…under undue duress." *Appraisal Institute*: The Appraisal of Real Estate (Chicago, Appraisal Institute, 14th ed, 2013), p. 58. Mr. Bur provided detailed testimony on the facts and circumstances surrounding the sale of Comparable 1, and the Tribunal is persuaded that it had reasonable market exposure and was subject to normal market conditions and pressures. This property was one of five taken by the bank from one particular borrower; it sold separately from the rest to the tenant of the building. Mr. Bur testified that "oftentimes when a tenant buys a property, they will pay more than market value because they don't have to move and incur those costs, but in this particular case, the broker felt very strongly that the balance between it being sold by a bank and being purchased by the tenant, this property was sold at market value." TR, p. 52. Notably, the other four properties sold for prices ranging between $3.00 and $7.00 per square foot, while comparable one sold for just over $15.00 per square foot.

The same is not true of Comparable 4, however, which sold in a short sale after 954 days of market exposure. Despite substantial market exposure, the property is an outlier with respect to both the unadjusted and adjusted sales ranges indicated by each of Mr. Bur's other comparables, and outliers are often evidence of an error or something other than "usual selling price." See *The Dictionary of Real Estate Appraisal*, 4th ed, 2002, which defines the same as "[o]bservations that have atypical values, that is, they differ significantly from a measure of central tendency. Some outliers occur naturally; others are due to data errors." *Id*. at 204.

While accepting comparable 1 as a sale subject to normal market pressures, the Tribunal is not persuaded that Mr. Bur's failure to adjust it for market conditions is proper or supported given it sold in 2009. Although his appraisal report indicates that "[c]ommercial and industrial properties also saw property values drop over the past few years, but most property types saw values stabilize in 2012," and he testified that the market did not begin increasing until sometime in 2012, both statements are contradicted by the market evidence provided. Notably, for the December 31, 2011 valuation date, both the unadjusted and adjusted sales prices of the comparables, excluding the outlier, demonstrate an increase in value between October of 2009 and October 2011. As for the December 31, 2012 valuation date, the indicated prices demonstrate a decrease in value between both the prior year's analysis and the dates of sale, which range between December 2012 and June of 2013. Additionally, with respect to sales Comparable 2, Mr. Bur testified that:

> [i]n confirming this sale with Phil McCarty, who is the broker in this deal, he explained to me that the buyer was coming in. They are, I think, a Budweiser distributor. They were going to spend quite a bit of money on this property to fix it up, but it wasn't because the property was in poor condition. It's because Budweiser requires that beer be stored at a certain temperature. So the entire facility needs to be air-conditioned. It wasn't prior to the sale. They had to put all that money in to insulate it and put that air-conditioning in, and to include other costs that beer distributors have to have as far as the way the building is laid out. They have a lot of side panel trucks that they load in addition to the rear semi-trucks, so they have to have special features for that. So all of those are specific to the buyer of the property, and he explained to me that . . . this is a very similar building to the subject property. TR, p. 57.

This testimony suggests that an adjustment for expenditures after sale was both necessary and proper. As noted in the *Appraisal of Real Estate, supra*, "[a] knowledgeable buyer considers expenditures that will have to be made upon purchase of a property because these costs affect the purchase price the buyer agrees to pay . . . . These costs are often quantified in price negotiations and can be discovered through verification of the transaction data. The relevant figure is not the actual cost that was incurred but the cost that was anticipated by both the buyer and seller." *Id*. at 412. Further, "[i]n sales comparison analysis, costs incurred by the new owners of comparable properties are reflected as positive adjustments to the sales prices of those properties." *Id* at 413. And "[a]n adjustment for expenditures made immediately after purchase is distance from an adjustment for the physical condition of a property." *Id*.

The remainder of adjustments to this and all other sales comparables appear reasonable. Moreover, the adjustments are supported by the evidence and testimony provided. Mr. Bur explained:

> A lot of them are based upon factual data, which may include CoStar information on sales prices in different regions or asking rents in different regions to support location adjustment. I prepare some multiple regression analysis, looking at factors such as how building price per square foot is affected by size, how it is affected by the age of the building, the clear height to support the amount of the adjustments that I make to those for those factors. In addition, in confirming each property I spoke with somebody in regards to the sale to judge exactly what the impact on that may have been to the buyer and seller. Finally, you know, it's just based on my experience of appraising over 1,000 industrial buildings. TR, p. 55

In its independent determination of value, the Tribunal finds that given Mr. Bur's failure to adjust for several relevant elements of comparison in his analysis for the 2012 tax year, the Tribunal finds that his value estimate of $16.00/SF is not supported. The Tribunal finds, given the indicated range, that a value of $19.00/SF is proper. The Tribunal further independently finds that after careful consideration and analysis of both Mr. Bur's and Mr. Sharp's appraisals, Mr. Bur's adjustments and value conclusion of $13.00/SF are supported for the 2013 tax year. For the reasons stated above, Mr. Sharp's sales and income approaches to value the subject property are not probative. As a result, the subject property's TCV, SEV, and TV for the tax years at issue are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that the property's state equalized and taxable values for the tax year(s) at issue are MODIFIED as set forth in the Introduction section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 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 within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and 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 Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09%, and (iv) after June 30, 2012, through December 31, 2014, at the rate of 4.25%.

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

By____

Entered: