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

Lakeshore Properties (McDonald's),
a.k.a. Lakeshore Partnership,
Petitioner,

v — MTT Docket No. 416431

City of Hudsonville,
Respondent.

Tribunal Judge Presiding
Preeti Gadola

FINAL OPINION AND JUDGMENT

Introduction

Petitioner, Lakeshore Properties (McDonald's), a.k.a. Lakeshore Partnership ("Lakeshore"), appeals the ad valorem property tax assessment levied by Respondent, City of Hudsonville, against the real property owned by Petitioner for the 2011 and 2012 tax years. The property under appeal is a McDonald's restaurant located at 4596 32nd Avenue, Hudsonville, Michigan. Petitioner was represented by L. Rider Brice III, attorney, and Mark Yost of Diversified Property Solutions, and Respondent was represented by Ryan M. Shannon, attorney. Petitioner's witness was Marc Nassif, MAI (Member, Appraisal Institute), and Respondent's witnesses were Bruce Soper, appraiser, and Janice Sal, Finance Director and Assessor, City of Hudsonville. The hearing of this matter occurred on August 21-

22, 2013. The issue before the Tribunal is to determine the true cash value, assessed value, and taxable value of the subject property.

Petitioner's contentions of true cash value ("TCV"), state equalized value ("SEV"), and taxable value ("TV"), for the 2011-2012 tax years, are as follows:

Parcel Number: 70-18-04-101-034

Year	TCV	SEV	TV
2011	$530,000	$265,000	$265,000
2012	$490,000	$245,000	$245,000

Respondent's contentions of value of the tax roll:

Parcel Number: 70-18-04-101-034

Year	TCV	SEV	TV
2011	$1,237,600	$618,800	$600,741
2012	$1,218,800	$609,400	$609,400

Respondent's revised contentions of value:

Parcel Number: 70-18-04-101-034

Year	TCV	SEV	TV
2011	$1,710,000	$855,000	$600,741
2012	$1,720,000	$860,000	$609,400

Based on the evidence, testimony, and case file, the Tribunal finds that the TCV, SEV, and TV of the subject property for the years under appeal are as follows:

Parcel Number: 70-18-04-101-034

Year	TCV	SEV	TV
2011	$800,000	$400,000	$400,000
2012	$750,000	$375,000	$375,000

PETITIONER'S ADMITTED EXHIBITS

P-1 Petitioner's Valuation Disclosure

P-3 Tenant Buildout Contracts

P-4 Lease Agreement from 9/30/1993 to 9/30/2011

P-5 Lease Agreement from 10/1/2011 to 9/30/2031

PETITIONER'S CONTENTIONS

Petitioner contends that Respondent has overstated the true cash value of the subject property on the tax roll. Petitioner's basis for the allegation of overstatement is an appraisal prepared by its witness, Marc Nassif, MAI.

Mr. Nassif prepared an appraisal of the subject property using the three approaches to value: cost-less-depreciation approach, sales or market approach, and income approach.

The subject property is a McDonald's restaurant which is considered a "fast-food" establishment. It consists of 4,453 square feet on 2.52 acres of land.

Mr. Nassif, Petitioner's appraiser, determined the highest and best use of the property to include the continued use of the long-lived items which were defined to be the property's structural components. He also stressed the eventual obsolescence of branding elements that are required during construction and continued operation of the McDonald's. Mr. Nasiff defined branding as the recognition of a structure when, among other things, driving by it (for example, the McDonald's "Golden Arches"). Branding contains the short-lived items that a secondary user would modify. Mr. Nassif prepared a fee-simple appraisal, which he defined to be, "an interest where an ownership has the full usage of rights to the property."

He further stated, “my appraisal is fee-simple with the understanding that it is based on a market –derived lease term.” (Transcript at 17)

For 2011, Mr. Nassif presented five sales comparables that he adjusted to be consistent with the characteristics of the subject property. The sales are as follows:

2011 Sales	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5	Subject
Prior Use	Burger King	Little Caesar’s	Steak and Shake	Wendy’s	Dairy Queen	Hudsonville
Location	Grand Rapids	Dowagiac	Okemos	Grand Rapids	Kalamazoo	
Sale Date	07/10	6/10	10/09	5/08	5/08	
Sale Price	$485,000	$140,000	$775,000	$525,000	$325,000	
SP/SF	$121.25	$83.33	$210.03	$183.05	$157.54	
Use	Razed Auto	Domino’s Pizza	Razed Gordon Food Service	Coney Island	Popeye’s	
Sq. Feet	4,000	1,680	3,690	2,868	2,063	4,453
Lot Size	2 acres	.73 acre	2.04 acres	1.0 acre	1 acre	2.52 acres

Adjustments:	Location Actual age Market conditions	Location Building size Site size Conditions of sale (short sale) Market conditions Actual Age	Location Market conditions Actual Age	Location Site size Market conditions Building size Actual Age	Location Building size Site size Conditions of sale (bank sale) Market conditions Actual Age
Value:	**$115.19**	**$86.25**	**$160.67**	**$116.70**	**$115.49**

The 2012 sales are as follows:

2012 Sales	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5	Sale 6	subject
Prior Use	Quizno's	Burger King	Little Caesar's	Steak and Shake	Wendy's	Dairy Queen	Hudsonville
Location	Stevensville	Grand Rapids	Dowagiac	Okemos	Grand Rapids	Kalamazoo	
Sale Date	02/12	07/10	6/10	10/09	5/08	5/08	
Sale Price	$300,000	$485,000	$140,000	$775,000	$525,000	$325,000	
SP/SF	$153.06	$121.25	$83.33	$210.03	$183.05	$157.54	
Use	Honey Ham	Razed Auto	Domino's Pizza	Razed Gordon Food Service	Coney Island	Popeye's	
Sq. Feet	1,960	4,000	1,680	3,690	2,868	2,063	4,453
Lot Size	1.05 acres	2 acres	.73 acre	2.04 acres	1.0 acre	1 acre	2.52 acres

Adjustments: Building size
Site size
Conditions of sale (short sale)
Actual Age

(The adjustments for sales 2-6 are the same as in 2011, other than the percentage of adjustment for market conditions increased in 2012. Mr. Nassif utilized sales 2-6 in both 2011 and 2012.)

Value: **$140.82** **$103.06** **$76.67** **$142.82** **$102.97** **$101.91**

All of Mr. Nassif's chosen sales were vacant at the time of sale. Mr. Nassif indicated that the new users of the properties would either raze the structures or tear out the existing interior design and layout the property to suit their own brand. All of the sales, except 2012 sale one, utilized by Mr. Nassif in valuing the property for the 2011 and 2012 tax years, were adjusted for market conditions and location. Mr. Nassif also utilized three short or bank sales and when questioned about whether a motivator for a short sale would be financial distress by the seller, he replied, “That could be a factor, yes.” (Transcript at 119) Mr. Nassif also wrote for both tax years, “No expenditures immediately after the sale were noted for any of the comparable[s]. No adjustments were warranted. Any expenditures that were made were for tenant or user specific build-out and therefore not considered in this analysis.” (P-1, pp. 45, 52)

Mr. Nassif also prepared an income approach to value by utilizing five rental comparables of fast-food restaurants. The comparables Mr. Nassif utilized for both 2011 and 2012 are as follows:

Leases	Name	Location	Date of Lease	Age	Sq. Ft	Term of Lease	$ / SF
1	Arby’s	Freemont	08/05	2005	2,974	20 yrs.	$34.78
2	KFC	Grand Blanc	11/08	2008	2,528	20 yrs.	$30.85
3	Burger King	Ithaca	05/10	1998	3,350	10 yrs.	$17.38
4	Burger King	Houghton Lake	12/10	2004	3,135	10 yrs.	$19.25
5	Wendy’s	Muskegon	9/12	2001	4,400	20 yrs.	$22.50

In 2011, Mr. Nassif made market-condition adjustments to all but comparable four, location adjustments to all comparables except comparable two, an actual age adjustment to all but comparable three, and tenant size (square footage) adjustments to all but comparable five. In 2012, he made market-condition adjustments to all five comparables, location adjustments to all but comparable two, actual age adjustments to all but comparable three, and tenant size (square footage) adjustments to all but comparable five. As a result of Mr. Nassif's rental analysis, he determined a $23.00 per square foot potential gross income for 2011 and a $21.00 per square foot potential gross income for 2012. For 2011, reimbursements at $1.40 were added and ($2.68) vacancy and collection loss (11%) was deducted for an effective gross income of $21.72 per square foot. Expenses included insurance, common area maintenance, and management and structural reserves totaling $2.20 per square foot to equal a net operating income of $19.51 per square foot. For 2012, reimbursements at $1.40 were added and ($2.46) in vacancy and collection loss (11%) was deducted for an effective gross income of $19.94 per square foot. Expenses once again included insurance, common area maintenance, and management, and structural reserves totaling $2.15 per square foot which results in a net operating income of $17.79 per square foot.

Mr. Nassif utilized an Investor's Survey, RealtyRates.com, for a mortgage equity analysis with 60% and 70% loan-to-value ratio. Interest rates for a 25-year amortization were 8% for 2011 and 2012. Capitalization rates were extracted from restaurant sales and were tax-loaded to determine a tax-adjusted overall rate. For 2011, the tax-adjusted overall rate was determined to be 9.77%, and for 2012, the tax-adjusted overall rate was determined to be 9.28%. Mr. Nassif then divided the net operating income by the overall rate, for each tax year, which resulted in an indication of value of $890,000 (rounded) for 2011 and $850,000 (rounded) for 2012. (Mr. Nassif made corrections to his appraisal at the hearing of this matter that resulted in the aforementioned values; Transcript at 73) Mr. Nassif, however, determined that leasing commissions of 6%, six months lease up costs (lost rents), and $300,000 of tenant finish should be deducted from the $890,000 and $850,000 values to result in a final value of the fee simple interest of $480,000 for 2011 and $450,000 for 2012.

With regard to determining the tenant finish component, Mr. Nasiff utilized two budgets for the actual construction costs of two Taco Bell restaurants (located in Novi and Allen Park, Michigan) to determine the value of the long-lived components that potential new users will see utility in. (Transcript at 84)

Mr. Nassif utilized a 2008 Proposal Commitment Sheet for the Taco Bell in Allen Park. He selected certain cost items that he testified would be specific to branding. Those items were:

Branding Cost P-2		
Misc. finish	p 4	$8,575
Int. Doors	p 5	$2,935
Ext windows	p 5	$11,600
Security door	p 5	$1,740
Into ceiling	p 5	$4,800
Gypsum walls	p 5	$6,500
Into Plywood	p 5	$5,000
Floor Tile	p 5	$23,995
FRP	p 6	$7,400
Paint Into	p 6	$8,000
Bath Partitions	p 6	$3,200
Fire Ext	p 6	$244
Louver	p 6	$254
Equal Install	p 6	$4,800
Décor Install	p 6	$4,800
SS corners	p 7	$1,318
Plumbing	p 7	$36,250
Fire/Annul	p 7	$1,815
Electrical	p 8	$60,798
Total		$194,024

In his testimony at the hearing of this matter, Mr. Nassif indicated that the Novi Taco Bell build-out of short-lived branded tenant finish costs was estimated to be $193,000, and the Allen Park Taco Bell build-out was estimated to be $252,625. (At the end of the Taco Bell Proposal Commitment Sheet for Allen Park it indicates, "Entrepreneurial and interior build out for a bathroom" which adds an additional dollar amount to the amount in the chart above to result in a total of $252,626 in build-out costs). (P-3) In addition to build-out costs, as stated above, Mr. Nassif took a deduction for leasing fees at 6% and six months lost rent of $51,210 for 2011 and $46,757 for 2012. (P-1, p. 67) Mr. Nassif testified that

McDonald's has a more expensive build-out than Taco Bell and his contention was based on a May 2006 Business Week article called "Mickey D's Makeover." (Transcript at 87-88, P-1, p. 67, R-7) He indicated in his appraisal that a McDonald's restaurant would require about $300,000 - $400,000 in rebranding costs; therefore, he settled on a tenant finish deduction, taking into the account the actual Taco Bell budgets and the article, of $300,000. (Transcript at 89, P-1, p. 67)

Mr. Nassif also prepared a cost approach to value the subject property. For 2011, he found three commercial land sales. Sale number one was located at 216 West Clay Avenue in Muskegon, sale number two was located at 4680 Kenowa Avenue SW in Grandville, and sale number three was located at 7661 36th Avenue, Hudsonville. The sales ranged in adjusted sale price per square foot of $1.12 to $3.88. Based on the sales, the land value for 2011 was determined by Mr. Nassif to be $2.00 per square foot. (P-1, pp. 74-75, 143-148) All three comparables were adjusted for location, and comparable one was adjusted for land size. They sold in August 2010, August 2009, and December 2008. The land size of the comparables was 15,681; 103,237; and 75,359 square feet, and the subject property is 109,771 square feet. (P-1, p. 74)

For 2012, Mr. Nassif found three commercial land sales. Sale number one was located at 2341 Riley in Hudsonville. Sale number two was located at 480 West 17st Street in Holland and sale number three was located at 1207 Beechtree in Grand Haven. The subject land value was also estimated at $2.00 per square foot in 2012 or $220,000, rounded, in both years. (P-1, pp. 74-75) Comparables one, two, and three in 2012 were adjusted for location and land size. The comparables sold in July 2011 (comparables two and three) and August 2011. The land size of the comparables was 29,621; 43,560; and 63,162 square feet. (P-1, p. 73)

The Marshall Valuation Service Cost Manual, Fast-Food Restaurant section, was utilized to determine the base replacement cost for the subject property. Direct costs based on the actual Taco Bell budgets were added to indirect costs, or soft costs, “such as architectural fees, engineering fees, permits are factored in.” (Transcript at 95-96) Accrued depreciation was subtracted, land value was added, and a replacement cost was determined for 2011 of $880,000 and for 2012 of $890,000. Again, Mr. Nassif subtracted leasing commissions, tenant finish, and six months lost rent for an adjusted value of $470,000 for 2011 and $490,000 for 2012. (P-1, p. 79)

RESPONDENT'S ADMITTED EXHIBITS

R-1 Respondent's 2011 Appraisal

R-2 Respondent's 2012 Appraisal

R-3 October 1, 2011 Franchise Agreement

R-4 October 1, 2011 Operator's Lease

R-5 Hudsonville Zoning Ordinance

R-6 Appraisal Excerpts

R-7 Mickey D's Makeover

R-8 Nassif Engagement Letter

R-9 Ben Muller Realty Company Listings

RESPONDENT'S CONTENTIONS

Respondent called Bruce Soper, appraiser, as its first witness. Mr. Soper prepared two appraisals of the subject property as of December 31, 2010 and December 31, 2011. Mr. Soper completed sales comparison and income approaches to value the subject property. Mr. Soper testified that the subject property is "on a main thoroughfare in immediate proximity to an expressway and surrounded by other high–intensity retail usages." (Transcript at 274)

In his sales comparison approach, Mr. Soper utilized four comparables and adjusted them to be consistent with the characteristics of the subject property. Comparable one was located at 816 East 16th Street in Holland; comparable two was located at 2215 Port Sheldon Street, Georgetown Township; comparable three was located at 461 Fuller Avenue, NE, Grand Rapids; and comparable four was located at 3922 Lake Michigan Drive, NW, Walker. (R-1, pp. 56-59) Comparables two and four were adjusted downward to reflect favorable sale/leaseback terms; all four comparables were adjusted downward for market conditions, and comparables one, two and four were adjusted for inferior locations. Comparable one was also adjusted for smaller building size, superior land to building ratio, effective age and fire suppression sprinkling. Comparable two was adjusted, in addition to sale/leaseback, market conditions and location, for smaller building size, land to building ratio, effective age, and fire suppression sprinkling. Comparable three was also adjusted for smaller building size, superior land to building ratio, effective age, condition and visibility. Comparable four was adjusted, in addition to sale/leaseback, market conditions and location, for smaller building size, superior land to building ratio, effective age, fire suppression sprinkling, inferior condition, access and visibility. (R-1, pp. 60-61) The adjusted unit rates per square foot ranged from $173.23 to $413.91. Mr. Soper gave equal weight to each comparable which indicated an overall unit rate of $340. Mr. Soper then multiplied the overall unit rate by the square footage of the subject property to come to a value conclusion for 2011 of $1,500,000. (R-1, p. 61)

For 2012, Mr. Soper utilized the same four sales comparables and all the same adjustments other than increasing the market conditions adjustments. (R-2, p. 62) The adjusted unit rates per square foot ranged from $169.42 to $405.10. Mr. Soper gave equal weight to each comparable which indicated an overall unit rate of $332. Mr. Soper then multiplied the overall unit rate by the square footage of the subject property to come a value conclusion for 2012 of $1,480,000. (R-2, p. 61)

Mr. Soper presented an income approach to value the subject property. For 2011, he presented rental comparables that were adjusted to be consistent with the characteristics of the subject property. Comparable one was located at 816 East 16th Street, Holland (it is the same comparable as sales comparable one). Comparable two was located at 638 East 16th Street, Holland; rental comparable three (sales comparable four) was located at 3922 Lake Michigan Drive, NW, Walker, and rental comparable four was located at 2215 Port Sheldon, Georgetown

Township (sales comparable two). Comparable five was located at 250 West Pine Lake Drive, Newaygo, and comparable six was located at 5118 Lake Michigan Drive, Allendale Township. (R-2, pp. 41-47) Comparable one was adjusted for smaller leased area, superior effective age, inferior parking availability, market conditions, location and owner-paid expenses. Comparable two was adjusted for smaller leased area, inferior effective age, condition, market conditions, conditions of lease, location and owner-paid expenses. Comparable three was adjusted for smaller leased area, superior effective age, inferior condition, access and visibility, market conditions, conditions of lease, location and owner-paid expenses. Comparable four was adjusted for smaller leased area, superior effective age, inferior condition, access, visibility, inferior parking availability, and market conditions, location, and owner-paid expenses. Comparable five was adjusted for smaller leased area, superior effective age, inferior access, market conditions, conditions of lease, and location. Comparable six was adjusted for larger leased area, inferior access, superior effective age and condition, market conditions, and location. (R-1, p. 47) Mr. Soper determined an adjusted unit rate per square foot of between $21.05 to $48.83. He applied 15% weight on comparables one, three, four, five and six and 25% weight on comparable two, concluding in an overall rate per unit of per square foot of $32.00. (R-1, p. 48)

For 2012, Mr. Soper utilized the same rental comparables as in 2011 and he made the same adjustments other than an increased market conditions adjustment. For 2012, the adjusted unit rates per square foot were between $21.72 and $47.96. He applied 15% weight on comparables one, three, four, five and six and 25% weight on comparable two, concluding in an overall rate per unit of per square foot of $31.50. (R-2, p. 48)

For 2011, Mr. Soper determined potential gross income of $142,800. To that figure a vacancy and rent loss of 5% was applied for an effective gross income of $135,660. Mr. Soper utilized 3% ($4,070) for management and administrative expenses, $267 for roof and structural maintenance, a $1,808 expense to vacancy, and a miscellaneous expense of $1,000. The total operating expenses were estimated at $7,145 for a net operating income of $128,515. Mr. Soper determined a capitalization rate of 9% "based upon a review of known sales as well as conversations with brokers active in the sale and rental of properties similar to the subject property." (R-1, p. 50) His market value determination, per the income approach, of the subject property for the 2011 tax year was $1,430,000. (R-1, pp. 51-52)

For 2012, Mr. Soper determined potential gross income of $140,400. To that figure, a vacancy and rent loss of 5% was applied for an effective gross income of $133,380. Mr. Soper utilized 3% ($4,001) for management and administrative expenses, $267 for roof and structural maintenance, a $1,726 expense to vacancy, and a miscellaneous expense of $1,000. The total operating expenses were estimated at $6,995 for a net operating income of $126,385.

Mr. Soper determined a capitalization rate of 8.75% and his market value determination, per the income approach, of the subject property for the 2012 tax year was $1,444,400. (R-2, pp. 52-53) Mr. Soper testified that he emphasized his conclusions of value for the subject property under the income approach, "because we felt that was the most indicative of what these properties trade for in the marketplace." (Transcript at 190)

In his appraisal, Mr. Soper also valued an excess parcel of land at $260,000 (part of the subject parcel) which he later declared to be inappropriate due to his misunderstanding of the zoning law in the subject property area. Mr. Soper testified that he was told by the zoning administrator "that a land area could be carved out of this site . . . and sold to an adjacent property owner or that the owners of this property could develop some additional improvements on the site if they so desired." (Transcript at 185) Mr. Soper identified that primary parcel as 1.32 acres. (Transcript at 184) It would follow that the excess land parcel would consist of 1.2 acres. (R-1, p. 36) (The total parcel size is 2.52 acres) Mr. Soper subsequently determined during another conversation with the zoning administrator, a few days before the hearing, that the zoning ordinance precluded the sale of the excess parcel. (Transcript at 240) He concluded that the ordinance would "cause us to reduce our initial appraised value…. by a major percentage" of $260,000. (Transcript at 186) In his 2011 reconciliation of value taking into consideration the income and sales approaches to value, Mr. Soper testified, "that the income approach was the best indicator of value and placed greater weight on that and concluded an overall value for the property, the primary parcel, at $1,450,[0]00. Then we added erroneously the $260,000 of excess land." (Transcript at 209) He was asked what the reconciliation of value without the error would be and he testified, "I would say in the neighborhood of $1,500,000, and we have not gone back and attempted to restructure the increased land size, to redo the concept." (Transcript at 209)

For 2012, Mr. Soper testified that the final value of the property would be $1,460,000 for the primary parcel. He testified, however, that the number “would not be affected” by the zoning ordinance. “It would go up somewhat, but not to the full extent of the $260,000 that we identified as the excess land parcel.” (Transcript at 210) Mr. Soper also testified that the zoning administrator indicated that City of Hudsonville was very receptive to variances and zoning changes thereby making the excess parcel saleable. (Transcript at 240)

Respondent subsequently called Janice Sal as a witness. Ms. Sal is the finance director and assessor for the City of Hudsonville. She testified that “she took a day-and-a-half and [she] drove to every one of their vacant land sales.” (Transcript at 327) Vacant land sales were utilized by Mr. Nassif in his cost-less-deprecation approach to value the subject property. Ms. Sal testified that none of Mr. Nassif’s land comparables were truly comparable to the subject property. She also presented the Tribunal with current listings of land for sale in the area directly adjacent to the subject property that were at a much higher price than Mr. Nasiff’s contention of value for the subject land as vacant, under the cost approach to value.

With regard to Mr. Nassif’s sale on Riley Street, Ms. Sal testified, “I drove south out of town past the cornfields and past the soybean fields, and then I made a left onto Riley and went into Jamestown. Jamestown consists of the Township Hall, a couple of older retail establishments and an automotive department." (Transcript at 328) She indicated that there were no fast-food restaurants in the area, and it was not a high traffic location, such as the subject property location. With regard to Mr. Nassif's comparable located at 480 West 17th Street, she testified that site was an "older industrial site. There is the Heinz plant." (Transcript at 329) She testified that there were not fast-food restaurants nearby and that the parcel was quite small. With regard to the comparable located at 1207 Beechtree, Ms. Sal testified that there were no fast-food restaurants nearby and that it is not a high traffic area. She indicated that there was industrial property there, residential, office, and possibly an elementary school. (Transcript at 330) With regard to the comparable located at 216 West Clay Avenue, Muskegon, Ms. Sal did not drive out to it because Muskegon "is a whole different world than Ottawa County." She testified that they have issues with crime and have a lower per-capita income. (Transcript at 330-331) With regard to the comparable located at 4680 Kenowa Avenue, Ms. Sal testified that it was not in a high traffic area and that the surrounding area is wetlands. She indicated that there is road flooding near the comparable. (Transcript at 331-332) With regard to the comparable located at

7661 36th Avenue, Ms. Sal testified that there is a new middle school and new residential construction nearby. She testified that "there is a little strip mall there with a Jet's Pizza and a Subway." (Transcript at 332) She testified, however, that it is not in a high traffic area, such as the subject property area.

Ms. Sal testified regarding recent listings of vacant land in the subject property area. She testified that the property located at 3320-1 Highland Drive is diagonally across from the subject property with the same highway exposure. She testified that the list price of the property is $438,117.65 per acre. (Transcript at 335) She further testified that the property located at 3320-2 Highland Drive is listed at $567,253.29 per acre and 3320-3 Highland Drive is listed at $543,701.56 per acre. (Transcript at 336-337, R-9) Ms. Sal determined a true cash value of the subject property parcel land alone would be $1,309,000 if extracted from the parcel listings. (Transcript at 337) She also testified that if she projected the value of the listed parcels back to 2010 and 2011, "[she] would say it would be the same, very similar." (Transcript at 338) On cross examination, Ms. Sal testified that the Highland Drive properties had been for sale for a while and "had a for sale sign on it that was pretty overgrown, and it hadn't been marketed." (Transcript at 342) She also testified that the parcels were currently “all one parcel” and that she was unaware as to whether a lot split had been applied for. (Transcript at 342)

FINDINGS OF FACT

1. The subject property consists of a McDonald’s restaurant located at 4596 32nd Avenue, Hudsonville, Michigan.
2. The subject property building has 4,453 square feet and is situated on 2.52 acres of land.
3. The subject property is classified as commercial, real.
4. Petitioner presented an appraisal of the subject property, prepared by Marc Nassif, MAI, utilizing a sales comparison approach to value, an income approach to value, and a cost-less-depreciation approach to value to determine the subject property’s fair market value as of December 31, 2010, and December 31, 2011.
5. Mr. Nassif presented five sales comparables for his 2011 valuation. One sale was a bank sale and another was a short sale.
6. Mr. Nassif presented six sales comparables for his 2012 valuation. Two sales were short sales and a third was a bank sale.

7. Mr. Nassif presented five leased property comparables in his income approach to value. Two of his comparables were sale lease-back transactions.

8. From his unadjusted value calculations for the property for each tax year, Mr. Nassif subtracted leasing commissions, lost rent, and branding costs.

9. Mr. Nassif prepared a cost-less-depreciation approach to value the subject property. Mr. Nassif used Marshall Valuation Service to calculate the cost of improvements.

10. From his unadjusted cost value calculations for the property for each tax year, Mr. Nassif subtracted leasing commissions, lost rent, and branding costs.

11. Mr. Nassif presented vacant land sales in his cost approach to value. Mr. Nassif presented three land comparables for 2011 and three land comparables for 2012.

12. Mr. Nassif adjusted all his vacant land sales for location and 2011, sale one; and 2012, sales two and three; were much smaller than the subject property.

13. Respondent presented an appraisal of the subject property prepared by Bruce Soper.

14. Mr. Soper prepared income and sales comparison approaches to value the property.
15. Mr. Soper utilized two sale lease-back transactions in his sales approach to value. Mr. Soper used three, or possibly four, sale lease-back transactions in his income approach to value.
16. Mr. Soper valued the subject property as having an excess parcel of land worth $260,000.
17. Mr. Soper alleged that the excess parcel could be sold to an adjacent property owner or that the owners of the subject property could develop some additional improvements, if desired.
18. Mr. Soper added the value of the excess parcel to his determination of value of the subject property “primary parcel” plus improvements.
19. Ms. Janice Sal, Finance Director and Assessor, City of Hudsonville, testified regarding Mr. Nassif’s vacant land sales utilized by him in his cost approach to value.
20. Ms. Sal testified regarding vacant land sale listings in the subject property area.

ISSUES PRESENTED AND CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value. See MCL 211.27(a).

> 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).

Under MCL 205.737(1), the Tribunal must find a property's true cash value in determining a lawful property assessment. See *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. See *Teledyne Continental Motors* *v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985). The Tribunal may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination. See *Meadowlanes Ltd. Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 485-486; 473 NW2d 636 (1991).

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

"The petitioner has the burden of establishing the true cash value of the property." MCL 205.737(3). "This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing; and (2) the burden of going forward with the evidence, which may shift to the opposing party." *Jones & Laughlin* at 354-355. However, "[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessment in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question." MCL 205.735(3).

The three most common approaches to valuation are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach. See *Meadowlanes* at 484-485; *Pantlind Hotel Co v State Tax Commission*, 3 Mich App 170; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968). The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in marketplace trading. See *Antisdale*. The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. See *Antisdale* at 277. In the matter before us, the Tribunal finds that the sales comparison and the income approaches are the correct approaches to apply when determining the fair market value of the subject property for the 2011-2012 tax years.

As noted in Petitioner's contentions above, Petitioner's appraiser, Mr. Nassif, prepared market, income, and cost approaches to value the subject property. Respondent's appraiser, Mr. Soper prepared market and income approaches to value.

Sales Comparison Approach

Mr. Nassif presented five sales comparables in his 2011 market approach to value and six sales comparables in his 2012 market approach to value. The sales for both years were the same other than Mr. Nassif added a sixth sale for 2012. The Tribunal finds that three of Mr. Nassif's sales were not probative to its independent determination of the true cash value of the subject property as they were not subject to normal market pressures. For 2011, sale number two was a short sale, and sale number five was a bank sale. For 2012, sales comparables one and three were short sales and sale number six was a bank-owned sale (2011 sales two and five were 2012 sales three and six). MCL 211.27(1) states:

> As used in this act, "true cash value" means the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale.

Further, when questioned about whether a motivator for a short sale would be financial distress by the seller, he replied, "That could be a factor, yes." (Transcript at 119) Finally, in his appraisal, Mr. Nassif wrote, “Sale one netted an upward adjustment due to being a short sale which is considered a distressed sale. . . . Sale five was a bank-owned sale which typically sells as a discounted price.” (P-1, p. 45) Again, the Tribunal finds that three of Mr. Nassif’s sales are not subject to normal market pressures.

The Tribunal finds that, for 2011, Mr. Nassif’s sales one, three, and four are probative. Sale one’s adjusted sales price is $115.19 per square foot, sale number three has an adjusted sale price of $160.67 per square foot, and sale number four has an adjusted sale price of $116.70 per square foot. The Tribunal finds that the value per square foot of the subject property should be $160.67 based on the adjusted sale price of comparable three. The subject property is most similar to Petitioner’s comparable three in actual age and lot size. The subject property consists of 4,453 square feet multiplied by $160.67 per square foot or $715,464 in true cash value for 2011, under the market approach to value.

For 2012, the Tribunal finds that Mr. Nassif’s sales two, four, and five are probative. It should be noted that the same sales persuasive to the Tribunal are utilized by Mr. Nassif for both years under contention; however, the sales are given a market adjustment for 2012 (except comparable one which sold in February

2012) to make them applicable to determining the 2012 market value of the property. Sale number two was given an adjusted sales price of $103.06 per square foot, sale number four was given an adjusted value of $142.82 per square foot, and sale number five was given an adjusted value of $102.97 per square foot. The Tribunal finds that sale number four is the most probative to it in determining the true cash value of the property for 2012; therefore it finds that the subject property's value in 2012 is $142.82 per square foot. The subject property consists of 4,453 square feet and that amount multiplied by $142.82 per square foot equals $635,977 in true cash value for 2012 under the market approach to value.

Mr. Soper also prepared a sales comparison approach to value the subject property. He utilized the same sales for both tax years 2011 and 2012. As stated in Respondent's contentions above, the sales comparables he utilized were comparable one located at 816 East 16th Street, Holland; comparable two located at 2215 Port Sheldon Street, Georgetown Township; comparable three located at 461 Fuller Ave, NE, Grand Rapids; and comparable four located at 3922 Lake Michigan Drive, NW, Walker. Comparables two and four are sale lease-back transactions, and the Tribunal finds that they are not subject to normal market pressures and therefore not probative to it in determining the true cash value of the subject property for the tax years in question.

A sale lease-back transaction is a financing tool, not a reflection of true cash value. The owner of a property sells it to a buyer and then leases that same property back from the buyer. The reason for a sale-leaseback is to generate capital for the original owner to fulfill financial obligations or perhaps to invest in additional properties. Mr. Nassif testified:

> A sale lease-back is an alternative to traditional financing to borrowing where an owner of a piece of real property will sell it to a separate party and then pay that party for the right to continue using it, and that will give them immediate cash flow for whatever their needs are at the time. (Transcript at 67-68)

When questioned on cross-examination regarding the "purpose of a sale lease-back arrangement," Mr. Soper answered: "the purpose? In most instances for a franchisee, it is to free up capital to build additional restaurants." (Transcript at 263) Mr. Soper further testified that "within the industry typically, leases are entered into on a percentage of gross sales." (Transcript at 266) "The tenant, in most instances, is setting its [lease rate] based upon a percentage of anticipated gross sales once they have a projection of those gross sales. Then they are going out in the marketplace to determine what it is that an investor would pay to capture that rental amount." (Transcript at 264) The Tribunal does not find sale lease-back transactions to be true market sales but complicated financing tools to generate cash for the seller/tenant. Instead of a potential buyer determining how much money it would pay for a property to get its desired return on its investment, the tenant goes out and finds a buyer willing to accept its lease rate. The Tribunal finds the sale lease-back financing transaction to be an inappropriately circuitous route to determine true cash value. In addition, Mr. Soper did not provide adequate information that the sale lease-back transactions were at market rent. Their adjusted rental rates were over $400 per square foot, while comparable three for 2011 and 2012 (termed by Mr. Soper to be at "Arm's Length") had an adjusted rate per square foot of only $169.42 for 2012, and $173.23 for 2011, or less than half of the sale lease-back transactions adjusted rents. (R-1, p. 61, R-2, p. 62) It its determination of the true cash value of the subject property, the Tribunal eliminates any sale lease-back transactions from its consideration. Mr. Soper's sales two and four are sale lease-back transactions. In fact the leases formed the same day as the sale of the properties are used as rental comparables in Mr. Soper's income approach to value. With regard to Respondent's comparables one and three (not sale lease-back transactions), in addition to comparables two and four, the Tribunal is not persuaded regarding their reliability due to the inaccuracy of the site value of the properties.

Mr. Soper determined in his appraisal that there was an excess parcel of land included in the subject property site that he was told by the zoning administrator "could be carved out of this site . . . and sold to an adjacent property owner or that the owners of this property could develop some additional improvements on the site if they so desired." (Transcript at 185) Mr. Soper identified that primary parcel as 1.32 acres. (Transcript at 184) It would follow that the excess land parcel would consist of 1.2 acres. (P-1, p. 37) In his appraisal, Mr. Soper valued the excess land at $260,000 and added that amount to his reconciliation of the value of the property for 2011 and 2012. (R-1, p. 62; R-2, p. 63) He subsequently determined during another conversation with the zoning administrator, a few days before the hearing, that the zoning ordinance precluded the sale of the excess parcel. (Transcript at 240) He testified, "[t]hen we added erroneously the $260,000 in excess land. (Transcript at 209) For tax year 2011, he concluded that the ordinance would "cause us to reduce our initial appraised value…. by a major percentage" of $260,000. (Transcript at 186) However, Mr. Soper also testified “we have not gone back and attempted to restructure the increased land size, to redo the concept.” (Transcript at 209) With regard to tax year 2012, Mr. Soper testified, that the final value of the property would be $1,460,000 for the primary parcel. He further testified, however, that the number “would not be affected” by the zoning ordinance. “It would go up somewhat, but not to the full extent of the $260,000 that we identified as the excess land parcel.” (Transcript at 210) The Tribunal finds that Mr. Soper initially erroneously added $260,000 in value to his final conclusion of value for the subject property, but admitted that he neglected to go back and “redo the concept.” He also concluded that the final number for 2012, “would not be affected” by the zoning ordinance even though he previously assigned **$260,000 in additional value** to the property. For the aforementioned reasons, the Tribunal does not find Mr. Soper’s sales comparison approach to value to be probative.

Income Approach to Value

With regard to Mr. Nassif’s income approach to value, the Tribunal notes that Mr. Nassif used two sale lease-back transactions. The comparables that were sale lease-backs were comparables three and four (Transcript at 309) (He used the same rental comparables for both tax years) For the reasons stated above, the

Tribunal does not find those comparables to be probative to it in determining the true cash value of the subject property for the 2011 and 2012 tax years. It should be noted, however, that Mr. Nassif's sale lease-back comparables demonstrated adjusted rent at rates just slightly below the adjusted rate of the "arm's length" comparables. Mr. Nassif's comparables one, three and five were utilized for both tax years and the Tribunal finds, upon careful analysis, the adjustments to the rental comparables to be accurate, and therefore it independently determines that those comparables reflect the market rental rate of properties in the subject property area. For 2011, the Tribunal finds the market rental rate to be $23.00 per square foot and for 2012, the Tribunal finds the market rental rate per square foot to be $21.00. The Tribunal, however, finds it troubling that Mr. Nassif took an "under-the-line adjustment" to his value determination for the property, under the income approach, for each tax year.

In 2011, Mr. Nassif made adjustments for leasing commissions, tenant finish, and lost rent. The Tribunal finds that the leasing commission deduction is appropriate; however, it also finds that tenant finish and lost rent are inappropriate. Mr. Nassif deducted $300,000 for tenant finish from his value indication under the income approach for both years based on his submitted Taco Bell build-outs. (P-2) and the “Mickey D’s Makeover” article. (R-7) In his 2008 Proposal Commitment Sheet for the Taco Bell in Allen Park, he selected certain cost items that he testified would be specific to branding (see chart above); however, the costs of drywall, painting, and electrical, for example, would be typical of a build-out for any type of commercial property. The only item that may be specific to a new owner or tenant of the property would be the “Décor Install” for $4,800, which is a far cry from $300,000. Furthermore, there was no market evidence provided that any new user would need to expend $300,000 to rebrand the subject property. Mr. Nassif states in his appraisal, “No expenditures immediately after the sale were noted for any comparable. No adjustments were warranted.” (P-1, pp. 45, 52)

As far as six months lost rent as a deduction from Mr. Nassif’s value indication for the subject property, it should be noted that he already took an 11% deduction for vacancy and credit loss. The Tribunal finds that it makes no sense that a deduction was made to account for a vacant property and then again to account for the loss of rent due to having a vacant property. Mr. Nassif has “double-dipped” or taken the same adjustment twice in his analysis.

The Tribunal finds that any weight afforded by it to Mr. Nassif’s income approach would require the subtraction of only leasing commissions from his unadjusted values rather than leasing commissions, branding, and lost rent. For 2011, the true cash value of the property, under the income approach, would be $890,000 in unadjusted value, minus $61,451 in leasing commissions, or $828,549. For 2012, the unadjusted value of the property is $850,000, minus $56,108 in leasing commissions, or $793,892.

With regard to Mr. Soper's income approach to value, the Tribunal does not find it probative in determining the true cash value of the subject property for the tax years in question. Respondent utilized the same rental comparables for tax years 2011 and 2012. Mr. Soper indicated in R-1 and R-2 that comparables two, three and five are sale lease-back transactions. (R-1, p. 49, R-2, p. 50) Further, in his testimony, Mr. Soper contended that rental comparable four may also be a sale lease-back: "It says in the additional comments sale lease-back." (Transcript at 258) Again, for the reasons stated above, the Tribunal does not find sale lease-back transactions to be subject to normal market pressures therefore it eliminates rental comparables two through five as a matter of course. It should also be noted that Mr. Soper's non-sale-leaseback comparables suggested adjusted rental rates of $42.58 per square foot and $23.20 per square foot for 2011 and $41.77 per square foot and $22.69 per square foot for 2012. The Tribunal finds that the large span between each year's rental rates adds additional weight to the contention that they are not reflective of the market, i.e., is market rent $23 per square foot or almost double that amount?

With regard to rental comparables one through six, the Tribunal, again, is not persuaded by Mr. Soper's income approach to value. Under the income approach, one determines market rent and multiplies that amount by the area leased to conclude with a gross potential income. Mr. Soper has attributed an additional $260,000 in value to the subject property for excess land. The Tribunal concludes that with his adjusted lease rate he is improperly including only his original 1.32 acre parcel size, then adding $260,000 to his determination for the excess 1.2 acre parcel; therefore, his adjusted rental rates included an inaccurate amount of land. For the reasons stated above, the Tribunal does not find Mr. Soper's income approach to be probative.

<u>Cost-Less-Depreciation Approach to Value</u>

Only Mr. Nassif prepared a cost approach to value the subject property. In his appraisal, Mr. Nassif states:

> The Cost Approach is based on the premise that **the value of a property can be indicated by the current cost to construct a** reproduction or **replacement** for the improvements minus the amount

> of depreciation evident in the structures from all causes plus the value of the land and entrepreneurial profit. (P-1, p. 41) [Emphasis added.]

In Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 13th ed, 2008), p. 142, it states:

> The cost approach is based on the understanding that market participants relate value to cost. In the cost approach, **the value of a property is derived by adding the estimated value of the site to the current cost of constructing a reproduction or replacement for the improvements** and then subtracting the amount of depreciation (i.e., deterioration and obsolescence) in the structures from all causes. [Emphasis added.]

In his cost approach to value, Mr. Nassif used Marshall Valuation Service to compute the replacement cost of the improvements on the property and, as indicated above, that is all a cost approach does. It does not consider leasing commissions, lost rent, or branding. If branding, for example, is to be included as a **cost** to replace, it would be added in a fee simple appraisal, not subtracted.

With regard to the land comparables presented by Mr. Nassif, the Tribunal finds that the sales are not probative given the testimony, among other things, of Janice Sal, Finance Director and Assessor for the City of Hudsonville. Ms. Sal testified that “she took a day-and-a-half and [she] drove to every one of their vacant land sales.” (Transcript at 327) Ms. Sal testified that none of Mr. Nassif’s land comparables were truly comparable to the subject property. Ms. Sal testified that she was familiar with the Hudsonville McDonald's. She testified: "I have been there. I have eaten there. I have walked through the restaurant. I have measured the property." (Transcript at 327) She testified that the property is in a very high traffic location and that she is in charge of assessing it. (Transcript at 327)

With regard to Mr. Nassif's specific land sales, Ms. Sal testified that none of them were in high traffic areas where other fast-food restaurants are located. For example, with regard to 2012, comparable one located on Riley Street, Ms. Sal testified, "I drove south out of town past the cornfields and past the soybean fields, and then I made a left onto Riley and went into Jamestown. Jamestown consists of the Township Hall, a couple of older retail establishments and an automotive department" (Transcript at 328) She indicated that there were no fast-food restaurants in the area and it was not a high traffic location, such as the subject property location. Ms. Sal similarly testified regarding the other five land comparables presented by Mr. Nassif as summarized in Respondent's contentions of value, above. The Tribunal found that Ms. Sal's testimony regarding the inappropriateness of the comparables to be probative. Further, Mr. Nassif made location adjustments to all his land comparables and also compared the subject

2.52 acre (109,771 square feet) parcel of land to parcels of 15,681; 29,621; 43,560; 63,162; and 75,359 square feet, demonstrating that the comparable parcels were not truly comparable to the subject property parcel.

The Tribunal did, however, also find Ms. Sal's testimony regarding vacant land listings to be unpersuasive in determining the true cash value of the subject property under the cost-less-depreciation approach to value. Ms. Sal testified regarding recent listings of vacant land in the subject property area. She testified that the property located at 3320-1 Highland Drive is diagonally across from the subject property with the same highway exposure. She testified that the list price of the property is $438,117.65 per acre. (Transcript at 335) She further testified that the property located at 3320-2 Highland Drive is listed at $567,253.29 per acre and 3320-3 Highland Drive is listed at $543.70, 1.56 per acre. (Transcript at 336-337, R-9) Ms. Sal determined a true cash value of the subject property parcel alone would be $1,309,000 if extracted from the parcel listings. (Transcript at 337) She also testified that if she projected the value of the listed parcels back to 2010 and 2011, "[she] would say it would be the same, very similar." (Transcript at 338)

The Tribunal finds that listings of properties are not proof of true cash value. It is only when there is a meeting of minds between a purchaser and a seller of property with regard to an agreed upon sale price, under normal market pressures, that a property can be persuasive evidence of market value. Further, Respondent's own appraiser, Mr. Soper, determined the value of the subject 1.2 acre excess parcel of land to be $260,000. (R-1, pp. 36-37; R-2, pp. 37-38) Under Ms. Sal's contentions, the true cash value of the subject property 2.52 acre parcel, without improvements, would be $1,309,000 if extracted from the parcel listings. However, translating that amount to the subject 2.52 acre parcel of land, the per acre value would be $519,444 or double Mr. Soper's value for 1.2 acres. The Tribunal is unpersuaded by Mr. Nassif's cost valuation of the subject property building added to his proposed market value of the subject land. The Tribunal also finds the testimony regarding listings in the subject property area, presented by Ms. Sal, to be unconvincing. For the aforementioned reasons, the Tribunal does not place any reliance on the cost approach to value the subject property.

In this case, the Tribunal concludes that the evidence, testimony, and case file indicate that the subject property is assessed in excess of 50% of market value. The Tribunal finds that Mr. Nassif's sales and income approaches to value are the appropriate techniques of valuation and utilized the same in making its independent determination of the true cash value of the subject property for the tax years in question. The Tribunal is charged in this valuation appeal to determine the true cash value of the property as of each tax year at issue. Petitioner was able to prove by a preponderance of the evidence that the assessment of the subject property should be modified.

JUDGMENT

IT IS ORDERED THAT the subject property's true cash value, state equalized value, and taxable value for the tax years at issue are as stated in the Introduction section above.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable value 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 as required by the Final Opinion and Judgment within 28 days of the entry of the Final 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 Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue 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% for calendar year 2012, and (iv) after June 30, 2012, through December 31, 2013, at the rate of 4.25%.

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

By: Preeti Gadola

Entered: Nov. 01, 2013