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

Main Street Business Center at
Celebration Village, LLC,
Petitioner,

v MTT Docket No. 440757

City of Grand Rapids, Tribunal Judge Presiding
Respondent. Victoria L. Enyart

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Main Street Business Center at Celebration Village, LLC, appeals ad valorem property tax assessments levied by Respondent, City of Grand Rapids, against Parcel No. 41-14-10-477-006 for the 2012 and 2013 tax years. Donovan J. Visser and Kenneth Robert Bauman, Attorney's, represented Petitioner, and Jessica L. Woods, Attorney, represented Respondent. A hearing on this matter was held on July 9, 2014. Petitioner's sole witness was Marc DeHollander. Respondent's sole witness was William Bassford.

The parties' contentions are as follows:

Parcel No. 41-14-10-477-006

	Petitioner			Respondent		
Year	TCV	SEV	TV	TCV	SEV	TV
2012	$4,515,000	$2,257,500	$2,257,500	$6,099,400	$3,049,700	$3,049,700
2013	$4,560,000	$2,280,000	$2,280,000	$6,192,400	$3,096,200	$3,096,200

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 2012 and 2013 tax years are as follows:

Parcel No. 41-14-10-477-006

Year	TCV	SEV	TV
2012	$6,099,400	$3,049,700	$3,049,700
2013	$6,192,400	$3,096,200	$3,096,200

PETITIONER'S CONTENTIONS

Petitioner contends that the subject property is over-assessed based upon an appraisal prepared for the hearing by Marc DeHollander. The biggest dispute between the parties' valuation disclosures is the appropriate capitalization rate to be applied to the net operating income under the income approach.

PETITIONER'S ADMITTED EXHIBITS

P-1 Appraisal by Marc DeHollander.
P-2 MLS office sales.
P-3 MLS retail sales.
P-4 MLS industrial sales.
P-5 MLS 5118 28th Street, Grand Rapids.

PETITIONER'S WITNESS[1]

Petitioner presented the testimony of Marc DeHollander, certified general appraiser, licensed in Michigan. DeHollander was admitted as an expert in valuation. He prepared an appraisal of the subject property for the 2012 and 2013 tax years, using the income approach.

DeHollander testified that there was no material difference between his appraisal and that of Respondent's expert, William Bassford, with respect to square footage, condition or quality. The sales and cost approaches support both parties' claim that no appropriate sales existed that could be used to developed a sales comparison approach. DeHollander indicated the following reasons for the lack of sales comparables: (i) the primary purchaser of multi-tenant properties like the subject is an investor; (ii) the market and conditions for 2011 and 2102 were still challenging; and (iii) the lending market was tight and money was not readily available for purchasing property in late 2011. As a result, DeHollander opined that the office and retail properties suffered and that the retail market rebounded first with the office market following later.

DeHollander stated that the rights he appraised are the fee simple interest (considered the same as leased fee value). DeHollander testified that he placed more emphasis on the subject's actual income and expenses with historical income information from the subject utilized to extrapolate data. He made projections of income and expenses utilizing the actual numbers. Specifically he testified:

[1] Petitioner called William Bassford as an adverse witness.

> I analyzed the rent rolls that were provided for both tax years. I looked at what types of rates they got for the different spaces during those times. I also considered market reports for what average asking rates were for both retail and office classes during those years. And I had to make a – I had to factor in the vacant space. And so when I had to project my next 12 months income expense information, I would utilize the information from the actual leases in place since I concluded that I felt that they were at or very near market and therefore similar to fee simple, not lease fee . . . . The average rates were similar enough to the market data I found that I did not feel there were excessive overage rents or any excess leased fee value included.
>
> So for those existing leases that were going to continue into the future, I used a rate similar to what they were actually, and I used a round rate for retail of $18, I used a round rate for the office at $12. [Tr. at 153.]

DeHollander utilized expenses provided by the property manager and actual numbers and projections. DeHollander testified that the office portion of the subject property was underperforming. The market reports indicated 25% vacancy but the subject had an actual vacancy of 60%. DeHollander further determined that approximately 40.5% of the base rent was reimbursed by CAM for both tax years at issue.

The last expense that DeHollander considered was property taxes. He testified that the property taxes were an expense and reimbursement for CAM; "I considered taking them out of the expenses. But then to be fair, I would also have to take them out of the CAM reimbursements. The net result is zero." [Tr. at 156.]

DeHollander's report did not identify the sources he utilized when determining the cap rate but he stated that in determining the capitalization rate, he placed the most weight on his discussions with four local real estate agents.[2] Peter Colvin, of Sperry VanEss, estimated 9.5-10.0% for single tenant, triple net, long term leases for national tenants for 2011, and he estimated double digits for the subject property. Chip Bowling, owner of X-Ventures, estimated that a cap rate for the subject property would be in the range of 12-15%. Scott Nurski, NAI, believed a range of 11-12% for the subject was appropriate. Jeff Klassen, Kwekel Companies, does investment deals with a focus on sale-leasebacks and indicated that the cap rate should be in the double digits.

In determining the cap rate to be applied, DeHollander consider that the leases were all short-term predominantly local clients. From an investment standpoint, shorter term, non-

[2] P-1 at 69 "Discussion with realtors and other appraisers for my observation of market data and discussions."

national tenants would have a higher risk factor thus increasing the overall capitalization rate. DeHollander calculated a band of investment with a 70% loan to value ratio, 15 year amortization, with a five year balloon, interest rates from 4-6%, and equity dividend rate of 12%.

The overall rate utilized in his appraisal for 2012 (tax year) was11.75%. The same methodology was utilized for 2013 (tax year) with a resulting overall rate of 11.5%. The income calculations for 2012 are as follows:

Base Income	$704,634
Cam/TI	$285,377
Fees	$500
Interest	$500
Vacancy/Credit	$78,816
Total	
EGI	$991,011
Expenses	
Cam/TI	$345,271
Maintenance	$2,250
Utilities	$1,750
Legal/Acct	$3,500
Leasing	$55,000
Write offs	$0
Build out	$15,000
Off/Lease	$1,000
Reserves	$12,258
Insurance	
Total	$436,029
NOI	$554,983
OAR	11.75%
TCV	$4,725,000
TCV/SF	$96.37

DeHollander concluded to a true cash value of $4,725,000 for tax year 2012, and $4,825,936 for tax year 2013 utilizing the same methodology. Lease-up costs were then deducted from this stabilized true cash value. Further, Suite 204-205 has never been occupied and lacks any build-out. This 3,476 square feet needed finish to a “white box” condition. Using

his experience, DeHollander estimated $15 a square foot for the electrical and drywall to be completed. DeHollander stated his lease-up cost deduction is based on an estimate of 24 months to reach a stabilized occupancy. The 5,820 square feet of vacant office space is calculated at $12 per square foot for a rent loss of $139,680 for the two years it is vacant. In addition, DeHollander estimated 5% leasing commission and unrecovered expenses of 8.5% to derive the $159,000 deduction for the as-is value.

The recap of this is $4,712,000 as stabilized, with deductions of $158,537 for lease-up cost and $52,140 for build-out to white box space. The final as-is value as of December 31, 2011 is $4,515,000. The December 31, 2012 final as-is value is $4,560,000.

DeHollander testified that although Petitioner's agent provided him with a variety of MLS pages from Loopnet or a commercial real estate service he did not rely upon this information (Petitioner's Exhibits 2-5).

RESPONDENT'S CONTENTIONS

Respondent contends that the subject property is over assessed based upon the valuation disclosure prepared by its witness, William Bassford. Respondent agrees with Petitioner that the main point of contention is the overall capitalization rate that is used to determine value in the income approach.

RESPONDENT'S ADMITTED EXHIBITS

R-1 Expense comparables.
R-2 Capitalization rate indicators.
R-3 Mortgage equity rate analysis and comparables.
R-4 Vacancy rate comparison.
R-5 Leasing Commissions.
R-6 Subject property lease listing.
R-7 Valuation Disclosure.
R-8 was offered and admitted but I didn't have it to see what it was

RESPONDENT'S WITNESS

William Bassford, certified real estate appraiser, prepared a valuation disclosure for Respondent. He testified as an adverse witness and then as Respondent's valuation witness. He prepared a sales comparison and income approach to value the subject property. He concluded that the sales comparison approach was given minimal weight due to the disparity with the subject property in size, tenants, and income stream.

Although Bassford is employed by the City of Grand Rapids, he testified that he does not set the assessments and does not assist in the assessment process. He stated that he appraises property for the city using the same techniques that would be applicable if it were done for an independent third party. He testified:

> I'm an employee of the city. I get a paycheck just like everyone else, but I'm independent in the way I function. I don't – I'm not under any kind of influence from the city to appraise things a certain way. I'm not there to protect the taxpayers or anything like that. I'm just a – I'm – hey, I'm an employee of the city, but I'm a very independent employee of the city. [Tr. at 13.]

Bassford testified that he used a CB Richard Ellis survey for their study of vacancy rates in some of the local submarkets, mainly the office and retail areas. The report is subdivided into different areas of the city. The subject property is located close to the border of Grand Rapids Township. He testified that based on traffic, the subject property would be in the East Beltline corridor. The office vacancy rate is 21.48%, with retail vacancy at 4.803%.

Bassford further testified that the majority of the tenants are not national tenants with long-term leases. The tenant mix and length of leases does influence the capitalization rate. The established national tenants are more creditworthy which equals less risk and a lower capitalization rate. Approximately 45% of the subject property is retail with the remaining 55% office. The actual income for the subject is above-market.

Bassford stated that some income comparables were sought as a comparison with the subject's actual income and expenses. CAM reimbursements and taxes were estimated and vacancy rates applied. The net operating income is a result of the income minus the expenses. Bassford reconciled the estimates with actual data and the comparable properties. Real estate taxes, however, were handled in a different manner. He stated:

> Real estate taxes are included in the projections on the following pages. Typically when appraising commercial real estate for tax appeal purposes, real estate taxes are accounted for in the capitalization rate and are not listed as an expense item. Market rent has been estimated on a triple net basis with tenants paying taxes and most other expenses. As such, the tenants will be reimbursing the property owner for taxes. Instead of trying to adjust the expense reimbursements for the tax component, taxes have been estimated based on a revised assessment that will likely occur based on the value conclusion in this report. Real estate taxes are shown to be less that the actual taxes paid in 2012 and 2013. [Tr. at 45.]

After the net operating income is calculated, the next step is selecting the capitalization rate. Bassford utilized three methods for determining an appropriate capitalization rate. First, he considered RealtyRates.com. The rate for retail in was 2011 9.28%, 2012 was 9.15%, and 2013 was 9.04%. The office rates were 9.26%, 9.47, and 9.44% respectively. Next, a band of investment was also calculated using a 7% rate for the mortgage interest rate, with a 25-year term, and loan to value ratio of 70% with an 11% return on the investment (equity rate). This results in an overall rate of 9.24%. Bassford's third calculation to determine the appropriate capitalization rate is an extraction method. This involves estimating the net operating income at time of sale and dividing it by the sale price. He stated that several office buildings in downtown Grand Rapids sold with significant first floor retail spaces. The downtown properties were utilized because no properties within closer proximity to the subject were available. Three properties sold in 2012 with an overall capitalization rate of 9.0%, 9.08% and 9.06%. Bassford selected a capitalization rate of 9.5% for the 2012 tax year and 9.25% for the 2013 tax year. The income approach calculation for the 2012 tax year is as follows:

Base Income	$685,380
Cam/TI	$245,100
Vacancy/Credit	-$103,974
EGI	$826,506
Expenses	
Mgt	$41,325
Maintenance	$61,275
Utilities	$36,765
Legal/Acct	$4,133
Leasing	$17,157
Misc	$4,902
Build out	$7,353
Prop Taxes	$134,805
Reserves	$9,804
Insurance	$6,863
Total	$342,382
NOI	$502,124
OAR	9.50%
TCV	$5,285,513
TCV/SF	$107.82

Bassford employed a similar calculation for 2013. The final estimated market value is $5,285,000 as of December 31, 2011 for the 2012 tax year, and $5,500,000 as of December 31, 2012 for the 2013 tax year.

FINDINGS OF FACT

1. The subject property is located at 2090 Celebration drive NE, City of Grand Rapids, Kent County.
2. The subject property is identified as Parcel Number 41-14-10-477-006, commonly referred to as Main Street Business Center.
3. The tax years at issue are 2012 and 2013.
4. The subject property is classified as commercial.
5. The highest and best use of the subject property is its current use as a multi-tenant retail/office building.
6. The subject property is Unit 6 Main Street Condominiums with approximately 2.26 acres. On-site parking for 197 spaces is available.
7. The subject is located on the outskirts of Grand Rapids, in the East Beltline corridor.
8. Construction of the subject is good with good quality interior finishes.
9. The subject property contains a three-story building with retail and office uses on the first and second floor. The third floor is a partial level with strictly offices.
10. The gross square footage is 54,388 net leasable is approximately 49,000 square feet. It was constructed in 2005.
11. Petitioner's breakdown of square footage is 32,513 square feet retail and 16,518 square feet office.
12. Respondent's square footage is 32,643 square feet retail and 16,377 square feet office.
13. Both parties agree that the subject is a multi-tenant investment property with the income approach as the most appropriate method of determining value.
14. Petitioner's appraiser presented an appraisal that sets forth an income approach for the two tax years at issue. The sales comparison and cost approaches were not developed.
15. Petitioner's appraiser did not identify any comparable leases.
16. Petitioner's appraiser utilized average price per square foot based on the rent roll.
17. Petitioner's appraiser utilizes market reports which state an average asking rent for retail is $17.89 and for office is $14.21 per square foot.
18. The concluded rent utilized by Petitioner's appraiser for both tax years at issue for the retail is $18.00 per square foot and $12.00 per square foot for the office.
19. Petitioner's appraiser used vacancy and credit for retail of 5%, and 25% for office.
20. Petitioner's appraiser concluded to overall capitalization rate of 11.75% and 11.5% for each tax year, respectively.
21. Petitioner's appraiser made further deductions to the "as stabilized" value for rent loss and returning the 3,476 square feet of unfinished space to a white box condition.
22. Respondent's appraiser presented an appraisal that sets forth the sales comparison approach and an income approach, as well as the cost less depreciation approach.
23. In developing the sales comparison analysis, Respondent's appraiser identified four sales and six listings of properties that were considered but found to have multiple differences

that were impossible to adjust for the dissimilarities and were found to be inconclusive of value for the subject.

24. Respondent's appraiser also developed an income approach. Four comparable rental properties were considered and utilized for both tax years for income and expense data.
25. Respondent's appraiser adjusted the rental comparables for market influences, size and location differences and determined that the actual rent at the subject property was above market.
26. Market rent for the 2012 tax year after adjustments was determined by Respondent's appraiser to be $17 per square foot for the first floor, $11 per square foot for the second floor and $10 per square foot for the third floor. Potential gross rent per square foot is $13 based on gross rent divided by square footage. The market rent increased for the 2013 tax year to $18, $11.50 and $10 per square foot.
27. Respondent's appraiser also considered other properties for vacancies and an estimate of total operating expenses. He concluded to 6% vacancy for the first floor and 18% vacancy for the second and third floors for both tax years.
28. Respondent's appraiser differed from Petitioner's appraiser in the analysis of the capitalization rate which did not include an effective tax rate adjusted for vacancy and credit. Property taxes were estimated on a reduced value and left in as an expense. The overall capitalization rates were 9.5% and 9.25% respectively.

CONCLUSIONS OF LAW

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

> The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not . . . exceed 50 percent. . . . Const 1963, art 9, sec 3.

The Michigan Legislature has defined "true cash value" to mean:

> The usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale. MCL 211.27(1).

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value' . . . are synonymous." *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

"By provisions of [MCL] 205.737(1) . . . , the Legislature requires the Tax Tribunal to make a finding of true cash value in arriving at its determination of a lawful property assessment." *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal is not bound to accept either of the parties' theories of valuation. *Teledyne Continental Motors v Muskegon Twp,* 145 Mich App 749, 754; 378 NW2d 590 (1985). "It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case." *Meadowlanes Ltd Dividend Housing Ass'n v Holland,* 437 Mich 473, 485; 473 NW2d 636 (1991). In that regard, 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." *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

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." *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, supra* at 352-353.

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

The three most common approaches to valuation are the capitalization of income approach, the sales comparison, or market, approach, and the cost-less-depreciation approach. *Meadowlanes, supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968). "The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading." *Jones & Laughlin Steel Corp, supra* at 353 (citing *Antisdale v City of Galesburg*, 420

Mich 265; 362 NW2d 632 (1984) at 276 n 1). The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale, supra* at 277.

Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell. See *Meadowlanes Ltd Dividend Housing Ass'n v Holland,* 437 Mich 473, 485; 473 NW2d 636 (1991). In this matter, The Tribunal finds that cost less depreciation approach, as supported by the income approach, is the correct method to utilize in valuing the subject property for the two tax years in question.

The subject property was described in Respondent's appraisal as:

> [A] three-story building that consists of retail and office uses on both first and second floors and strictly office use on the third floor. The third level is a partial level that is accessible like the second floor by interior stair wells and an elevator. The primary nature of the first floor is retail with (2014) tenants including restaurants, beauty and nail salons, a bank branch office, cell phone repair and military recruiting center. The first floor unit sizes range from 720 to 5,582 square feet with the largest being the "Melting Pot" restaurant space.
>
> Nearly half of the second floor is used as a restaurant (Ming Ten), and the remaining second floor space is used for multi-tenant office use. The office spaces range in size from 561 to 2,605 square feet, and the Ming Ten restaurant is 9,120 square feet.
>
> The third floor is divided into two tenant spaces. One is a 5,877 square foot space and the other is 863 square feet. The 5,877 square foot space is currently vacated but the property manager indicated that the space has been leased and will be occupied shortly. [R-7 at 38.]

The parties' valuation experts were charged with presenting appraisals of the subject property to assist the Tribunal in making an independent determination of true cash value for the two years under appeal. Petitioner's appraiser failed to include in his appraisal any income or expense comparables. Petitioner's attorney did prepare some properties that sold but were not comparable to the subject property and DeHollander did not rely upon Petitioner's exhibits 2, 3, 4, or 5. Therefore, no weight is given to those exhibits as they do not assist the Tribunal in determining the true cash value of the subject property.

Petitioner's appraiser states in the appraisal that "[i]n my calculations, I will use a rate near the average contract rate of $18.00 for the retail space. A majority of the vacant space is

located on the 2nd and 3rd floors . . . . The subjects leases appear to be at market so the fee simple and leased fee interests are considered to be the same." [P-1 at 67 and 73.] The expense estimates in his appraisal were also based on actual expenses and "estimates by the appraiser." [P-1 at 68 and 74.]

Petitioner's appraiser put forth an appraisal that was based on rounding actual income and expenses. There was no market information for this Tribunal to rely upon. Colliers International publishes a *West Michigan Research and Forecast Report* found within DeHollander's appraisal (pages 26 through 45). DeHollander states on page 25 of his report "[t]he following pages discuss the retail and office market segments in 2011." Akin to the majority of his report he does no independent analysis. In fact, he does not rely upon Collier's vacancy or average rental rates. This is apparent where the retail rent utilized by DeHollander was $18.00 with 5% vacancy and credit, but Colliers was $16.01 per square foot with 6.2% vacancy. There is a larger disparity with the office space, with DeHollander valuing the rent at $12.00 per square foot with 25% vacancy, but Colliers average office rent is $20.50 with 26.7% vacancy.

The Tribunal gives little credibility to Petitioner's appraisal as DeHollander's income approach utilizes actual rounded income and expenses to arrive at a value-in-use to its owner. The value-in-use, however, is not an appropriate measure of the market value of the subject property because XXXXX. Petitioner's appraisal includes some general information from Collier's International but this data was not incorporated into the income approach calculations in the appraisal. The Tribunal finds that Petitioner's appraiser appeared to go down the correct path when estimating the capitalization rate; however, he relied upon opinions from four realtors that were unnamed in the report. While Petitioner's appraiser did appropriately add the effective tax rate adjusted for vacancy and credit loss, this does not add additional credibility to the base rates relied upon for the capitalization rate used in the appraisal.

In contrast to Petitioner's appraiser, Respondent's appraiser included an addendum with the data utilized in the sales comparison approach as well as properties utilized in determining market income, operating expenses, vacancy, and the selection of the capitalization rate. Although Respondent's appraiser works for the City of Grand Rapids, he was not involved in the assessment process for the subject property and his valuation disclosure is more akin to a market

valuation of the subject property. In addition, Bassford did substantiate his income, vacancy, and operating expenses with his source documents (see Respondent's exhibits 2 through 7).

Respondent's appraiser does have a market-based valuation disclosure that includes the source for every input. The valuation disclosure overall was more appropriate for a fee simple market value indication for the subject property than Petitioner's appraisal. The Tribunal finds, however, that Respondent's income approach has an error that after correction indicates that the reduction in true cash value is not warranted. Respondent's appraiser added in the property taxes based upon an indicated reduction in value. The Tribunal understands the concept; however, by contesting the value of the subject, Petitioner is also contesting the amount of taxes due. Thus, deducting the property taxes as an expense is inappropriate. Rather, the income approach should reflect "the net income of the property before the payment of real estate taxes and then add the real estate tax factor to the overall capitalization rate to arrive at the indicate value of the property . . . ." Appraisal Institute, *Real Estate Valuation in Litigation (Chicago: Appraisal Institute*, 2nd ed, 1995) at 521. The Tribunal finds that the inclusion of the effective tax rate adjusted for the time that the subject is vacant and that the owner pays for the taxes is the more appropriate methodology. Once the effective tax rate is adjusted for the vacancy, as utilized in Respondent's income approach, the indicated true cash value under the income approach increases over a million dollars from what Respondent's appraiser originally indicated. The net operating income, after removal of the property taxes for the expenses, is $636,929 for the 2012 tax year and $643,760 for the 2013 tax year. The net operating income (NOI) is then divided by the capitalization rate (with the effective tax rate less the vacancy), to get the overall tax-loaded cap rate of 9.804% for 2012[3] and 9.55% for 2013.[4] Application of the revised cap rate to the NOI calculated by Respondent for each tax year results in an indicated true cash value of

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[3] In this case, the millage rate for the 2012 tax year is 0.0543524 and the assessment factor is 50 percent which results in a real estate tax factor of 2.71762 percent. The vacancy, based on Respondent's income approach, is 11.17 percent. When this tax factor is reduced to reflect a rate only for when the subject is vacant and Petitioner is liable for the property taxes, the resulting value is 0.30356 percent, which is then added to the capitalization rate of 9.50 percent.

[4] The millage rate for the 2013 tax year is 0.0544127 and the assessment factor is 50 percent which results in a real estate tax factor of 2.7206 percent. The vacancy, based on Respondent's income approach, is 11.19 percent. When this tax factor is reduced to reflect a rate only for when the subject is vacant and Petitioner is liable for the property taxes, the resulting value is 0.30444 percent, which is then added to the capitalization rate of 9.25 percent.

$6,496,624 for the 2012 tax year and $6,740,942 for the 2013 tax year. Both of these values under the corrected income approach are *higher* than the original assessment established by Respondent under the cost less depreciation approach.

This Tribunal is reluctant to increase the true cash value of the subject property when the economy is just starting to recover. Therefore, recalculation of Respondent's income approach (albeit with a higher result) reflects a value in-line with the original assessments. The property record cards and cost approach calculations were included in Respondent's valuation disclosure and have been reviewed by the Tribunal. The Tribunal in making an independent determination of value, having considered the flaws in Petitioner's appraisal and issues with Respondent's income approach finds that the subject property is not over assessed and the value as placed on the roll is at 50% of market value.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the subject property is not over assessed. 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 years at issue are affirmed as set forth in the Introduction section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 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: Victoria L. Enyart

Entered: September 12, 2014