

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

Detroit Lions, Inc., and WCF Land, LLC,
Petitioners,

MTT Docket Nos. 307900 and 314349

v

City of Dearborn and
City of Allen Park,
Respondents.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

Introduction

Petitioners, Detroit Lions, Inc. and WCF Land, LLC, (“Lions”) appeal ad valorem property tax assessments levied by Respondents City of Dearborn (“Dearborn”) (Docket No. 307900) and City of Allen Park (“Allen Park”) (Docket No. 314349) against the real property owned by Petitioners for the 2004 through the 2009 tax years. Myles B. Hoffert and David B. Marmon, attorneys, appeared on behalf of Petitioners. Stephanie Simon Morita, William DeBiasi, and Carl Rashid Jr., attorneys, appeared on behalf of Respondents. Witnesses appeared on behalf of both parties. Petitioners’ witnesses were David Bur, MAI; Mark Glenn, Facilities Manager; Charles Coffin, Head Grounds Keeper; Joseph Veryser, Architect; Thomas Lewand, President of Detroit Lions; Daniel S. Barrett, President of Barrett’s Sports Group; and Thomas Lesnau, Vice President of Finance and Chief Financial Officer. Respondents’ witnesses were Eric Waidelich, City of Allen Park Administrator, and William Schoenhut, MAI.

The proceedings were brought before this Tribunal on December 7, 2009, to resolve the real property assessment dispute.

At issue before the Tribunal is the determination of true cash value of Petitioners' real property for the 2004, 2005, 2006, 2007, 2008, and 2009 tax years. The value on the assessment rolls are as follows:

	TOTAL TCV ¹	Respondent's ²	Allen Park SEV ³	Allen Park TV	Dearborn SEV	Dearborn TV
	Both Units	Appraisal	30-001-02-0022-000		82-09-252-01-002	
2004	\$38,858,400	\$42,940,000	\$384,200	\$219,258	\$19,045,000	\$16,323,893
2005	\$46,090,000	\$55,000,000	\$4,000,000	\$4,000,000	\$19,045,000	\$16,699,342
2006	\$38,000,000	\$54,000,000	\$3,420,000	\$3,420,000	\$15,580,000	\$15,580,000
2007	\$38,000,000	\$53,000,000	\$3,420,000	\$3,420,000	\$15,580,000	\$15,580,000
2008	\$38,000,000	\$52,000,000	\$3,420,000	\$3,420,000	\$15,580,000	\$15,580,000
2009	\$38,000,000	\$53,000,000	\$3,420,000	\$3,420,000	\$15,580,000	\$15,580,000

Respondent amended the TCV from the original report; the above reflects the original contentions.

Petitioners contend the aggregate values are:

Year	TCV	SEV	TV	Alternative TCV
2004	\$29,600,000	\$14,800,000	\$14,800,000	\$12,800,000
2005	\$30,600,000	\$15,300,000	\$15,300,000	\$13,000,000
2006	\$30,500,000	\$15,250,000	\$15,250,000	\$13,400,000
2007	\$27,700,000	\$13,850,000	\$13,850,000	\$13,000,000
2008	\$27,700,000	\$13,850,000	\$13,850,000	\$11,000,000
2009	\$23,900,000	\$11,950,000	\$11,950,000	\$8,700,000

¹ This is the product of both units SEV multiplied by 2 to equal TCV.

² Respondent amended the TCV from the original valuation disclosure; the above reflects the original contentions.

³ Petitioner filed an appeal for tax year 2004 for the City of Dearborn only. The appeal for City of Allen Park was not filed until 2005. Both parties appraised subject property as one entity.

The Tribunal finds the values shall be:

	100%	Dearborn 82%			Allen Park 18%		
YEAR	TCV	TCV	SEV	TV	TCV	SEV	TV
2004	\$38,470,000	\$31,545,400	\$15,772,700	\$15,772,700	\$6,924,600	\$3,462,300	\$219,258
2005	\$39,734,700	\$32,582,454	\$16,291,227	\$16,135,472	\$7,152,246	\$3,576,123	\$224,301
2006	\$39,772,200	\$32,613,204	\$16,306,602	\$16,303,602	\$7,158,996	\$3,579,498	\$231,703
2007	\$36,650,500	\$30,053,410	\$15,026,705	\$15,026,705	\$6,597,090	\$3,298,545	\$240,276
2008	\$34,020,000	\$27,896,400	\$13,948,200	\$13,948,200	\$6,123,600	\$3,061,800	\$245,802
2009	\$31,510,000	\$25,838,200	\$12,919,100	\$12,919,100	\$5,671,800	\$2,835,900	\$256,618

The legal issue that was briefed by both parties prior to the hearing is the determination of whether a transfer of ownership took place between Ford Land Development Corporation (“Ford Land”) and WCF Land, LLC. The Tribunal finds that the April 29, 2004, transfer of ownership was between related companies and, therefore, the taxable value of the property is not uncapped.⁴

Background

At issue for tax years 2004 through 2009 is the true cash value for the Detroit Lion’s Training Facility, 222 Republic Drive, Allen Park, Wayne County. The property is located in both the City of Allen Park and the City of Dearborn. The Tribunal, in a prior decision, determined that the split between the two cities is 82% of the property in the City of Dearborn and the remaining 18% located in the City of Allen Park⁵. The portion of the subject property located in Dearborn is zoned B-C General Business District and the portion of the property located in Allen Park is zoned RD Research and Development.

⁴ The Tribunal’s analysis is located in the Findings of Fact.

⁵ MTT Docket 293748, p 29. The Tribunal found that, based upon a survey, the split was 82/18.

The subject property was constructed as a 219,735⁶ square foot Detroit Lions Training Facility (“Facility”) and office complex. The parties did not agree upon the square footage of the subject property. The property is classified as commercial real property for tax assessment purposes. The subject property consists of a two-story U-shaped office, and a recreational building with an indoor practice field, as well as outdoor practice fields. The subject is situated on 232.25 acres with 18.84 acres within the City of Dearborn and 4.41 acres in the City of Allen Park. The subject property is known as the Detroit Lions Headquarters and Training Facility, whose owner as of the 2005 tax year was WCF Land, LLC. The property was previously leased to the Lions by Ford Motor Land Development Corporation (“Ford Land”).

Petitioners believe that, based on the cost approach, the true cash value of the subject property should be reduced. Petitioners prepared a separate report for tax year 2009 and included the cost, sales, and income approaches to value. Petitioners also put forth an “alternative use” value for all tax years at issue in the separate 2009 appraisal.

Respondents believe that the assessments understate 50% of market value and request an increase based on an independent appraisal.

⁶ MTT Docket 293748 determined that the square footage was 219,735. The parties have not documented otherwise.

Petitioners' Arguments

Petitioners argue that the true cash value of the subject property is overstated and also propose an alternative value predicated on the Lions moving the training facility to Ford Field.

Petitioners' Admitted Exhibits:

- P-1 Bur Appraisal, December 31, 2003 through December 31, 2007.
- P-2 Bur Supplemental Appraisal, December 31, 2008 and Alternative Use Value for all years.
- P-3 NFL Headquarter Training Facility Overview.
- P-4 Spectrum Strategies (Veryser on Highest and Best Use).
- P-11 Dragun Corporation Baseline Environmental Report.
- P-16 January 17, 2001 Lease Agreement and Amendment.
- P-17 Lions Practice Field Lease Financial Analysis.
- P-18 Agreement for Purchase and Sale.
- P-19 Title policy.
- P-20 Declaration of covenants and restrictions.
- P-22 Soils and Engineers Summary Report.
- P-25 Bill of Sale unsigned copy.
- P-27 Buyer and Seller Statement.
- P-28 Real Estate Transfer Affidavit Dearborn.
- P-29 Real Estate Transfer Affidavit Allen Park.
- P-30 Photographs.
- P-31 Lease Agreement dated March 15, 2004.
- P-43 Termination of Lease and Release Agreement.

Mark Glenn, Facilities Manager, testified that he takes care of all the maintenance for the facility. His responsibilities include maintaining the entire interior and indoor practice field⁷. He stated that 2004 was his first year and there were issues with the fieldhouse. The gutters were being ripped off due to high volumes of snow and there was also a failure with the snow cutting system that was installed during construction. The snow guards are what Glenn has termed as snow cutters because they slow down the snow

⁷ Glenn and Coffin share in maintaining the indoor practice field.

from sliding off the roof when it is melting. Due to the failure of the system, the snow came down and knocked out the main gas line on the south side of the building.

Glenn testified that there were leaks in the auditorium in 2004. The drain tile was repaired. The parking lot also had issues with water coming through the asphalt parking lots, which was repaired.

When questioned about the electrical capacity, Glenn stated that currently there is sufficient capacity; however, if anything were to be added, such as a new compressor or additional air-conditioning, it would require DTE to add another circuit.

The indoor practice field is also maintained by Coffin. It does not contain a fire suppression system, but has a laser beam that will signal the life safety systems and set off alarms. Glenn explained that the area contains two rapid air unit heaters on the south side of the indoor practice field. The peaks of the building contain vents that are for makeup air. In the summer it helps to cool the building as four fans on the east and west sides will blow the air out.

Glenn testified on cross that the indoor practice field does not have fireproofed steel beams, but he believes the remainder of the facility does contain fireproof steel beams.

Glenn also assists Coffin with outside maintenance when necessary.

Charles Coffin, head groundskeeper, testified that he had some participation in overseeing the construction of the practice fields five and one half acres. He also participated in some of the construction meetings with input to changes such as larger showers for the players. He attended the meetings involving where the building was supposed to be constructed, and indicated that the design was altered because the quality of the soil and subgrade were found to be insufficient to hold the proposed building. The design and location were changed to accommodate the poor soil conditions, and a planned basement was eliminated. The indoor practice field was a larger footprint allowing the weight of the building to be spread over more surfaces. Coffin testified that below the subsurface is clay, which required a lot of material to be pulled out and replaced with better soil to build fields and have better drainage. Underground is a drain system that is self contained. All of the equipment that is used on the field picks up some of the chemicals, which are sprayed off. The water goes into the underground system in a large tank, and then microbes are added. The microbes are designed to eat all of the grass and chemicals off the water so that it can be reused to spray off equipment.

The purpose of the fan house is to exchange oxygen. The turf gets compacted during practice, and when that happens there is insufficient oxygen and the probability that the roots of the grass die. The practice fields have drain tiles underneath and the air is pumped through and into the sand and gravel layer, which keeps the turf healthy.

Coffin explained that the storm sewers for Dearborn were not able to handle the drainage of the five and one-half acres. The surface is designed so that the water goes to the wetland area near Rotunda Drive. The problem is, according to Coffin, that when it is wet (50% to 75% of the time), the mowers cannot go through because of the clay soil. The water sits on top and creates a mosquito problem. There is no curb on Rotunda Drive.

Coffin was asked about the golf hole that was built. He testified that it contains the same material as the practice field; the same drain tile was used, all that was done was change the type of grass. The length of the practice green is approximately 109 yards. The actual cost above the practice field was for grass seed and to have the drain tile installed.

When Coffin was asked to explain the materials that made up the indoor practice field he stated:

Yeah, it's a polypropylene plastic fibers and it has a layer of sand and rubber. And it's about two and a half inches of sand and rubber. They go in layers.

Joseph Veryser, Architect, testified that he was the main project person at Spectrum Technologies at the time a "Spectrum Strategies Report" was submitted⁸. One of the issues is the Spectrum Report was not signed.

⁸ This Tribunal takes notice that in MTT Docket 293748 this same report was not admitted into evidence because Petitioner did not provide a foundational witness.

Veryser prepared a report that is contained in and was relied upon by Petitioners' valuation expert. The report contains an alternative use to the current use of the subject property. If the facility was no longer used as the Lions Training Facility, an alternative use would be as a corporate facility for a first or second tier automotive corporation and used as a combination display, warehouse, light industrial, and office space. He went through the existing building and explained the changes that would be necessary for a conversion to another use.

Veryser testified that he has not been in the building since 2003 when the report was created. When questioned on cross if a tier one or two auto supplier would find the subject property an attractive opportunity as of December 31, 2008, he responded, "Not in today's market." The 2003 assumptions become more hypothetical as time goes on and the market conditions, especially for the automotive industry, worsen.

Veryser testified on cross that the indoor practice field is approximately 110 feet tall. He was not aware of any industrial properties with that ceiling height. The indoor practice field contains two layers of asphalt, and would require an additional two and one-half inches of concrete over it for an industrial use. He stated that it would still be too elastic to be used for anything other than light industrial.

Thomas J. Lewand, President of the Detroit Lions, testified that the location of the training facility was intertwined with a countywide tax referendum in 1996 that included Ford Field and the subject property. As part of an agreement, a downriver community

was selected for the training facility. In other words the stadium authority would pay for Ford Field if the Lions would put the practice facility in a certain location and invest a minimal amount of money.

Ford Land owned the vacant land and agreed to do a build-to-suit for the Facility. There were changes to the original design that in the end exceeded the original \$20,000,000 construction budget.

Lewand discussed the subject's two leases. The initial lease between Ford Land and the Lions was conducted as an arms-length transaction to protect the shareholders of Ford Motor Company, namely William Clay Ford, Sr. and William Clay Ford, Jr., who are obviously shareholders and officers of our corporation, the Detroit Lions, and also at the time both were members of the board of directors of Ford Motor Company. Lewand testified that 100% of the Detroit Lions shareholders are William Clay Ford, Sr., his wife and children. William Clay Ford Sr. is 100% shareholder of WCF Land.

Lewand explained that the lease between Detroit Lions and Ford Land became disadvantageous to the Lions. The lease between Ford Land and the Lions contained a schedule for potential purchase prices. WCF purchased the property from Ford Land for \$41,000,000. The basis for the Agreement for Purchase and Sale⁹ executed March

⁹ P-18.

25, 2004, but effective as of October 31, 2003, was to lock in the purchase price. The effective date sets the purchase price.

Lewand testified that there was only one lease after the WCF purchase. The lease between Ford Land and the Lions was terminated at the time of the sale to WCF.

Daniel S. Barrett, President of Barrett's Sports Group, was qualified as an expert in the analysis and evaluation of sports teams, franchises, arenas, public assembly facilities, economic development and finances of same. Barrett testified that he prepared a report entitled "Detroit Lions NFL Headquarters/Training Facility Overview." Although it states it is a "Preliminary Draft," it is a final report. Barrett gathered information that was part of the report and is part of Bur's appraisal of the subject property. The report contains the NFL Case Studies for Football Training Facilities. Barrett's report includes the following conclusions regarding NFL team headquarters and training/practice facilities:

1. 23% of the NFL teams pay less than \$500,000 a year for property tax or fees in lieu of tax.
2. A study of reuse of facilities or relocation of NFL teams, as a result he found:
 - a. Determined that the useful life of a facility is 26 years.
 - b. Determined that 18 miles is the typical distance from an NFL offsite practice facility to the respective home stadium.

Thomas Lesnau, Vice President of Finance and Chief Financial Officer, has been employed by the Lions for 31 years. He testified that the move from the Pontiac Silverdome was for financial reasons. The \$12,000 a month lease with the Pontiac Silverdome did not include any marketing rights, suite revenue, concession revenue, or parking revenue. The Lions tried negotiating for three years but were not able to come

to a new agreement. The City of Detroit, as part of the negotiations with the Lions to build Ford Field downtown, tied the Practice Facility to the stadium deal. The Lions entered into a lease with Ford Land that contained an option to purchase. The lease payments were \$342,000 a month, which Lesnau had not anticipated, and he looked at options to cut down expenses. WCF executed the option to purchase in 2003. Ford Land caused a delay in closing until March 25, 2004, because they found additional costs that were not known at the time of the original lease. The “as of” or effective date for determining the value was October 31, 2003. Ford Land calculated lease payments up to March 15, 2003; therefore, the new lease was effective March 15, 2003. WCF executed a new five year lease with the Lions for \$100,000 a month.

When asked how the \$100,000 a month lease rate was determined, Lesnau testified:

Well, what we did was when we determined what the buyout was going to be approximately, the Lions, themselves, did not have the borrowing capacity to go out and borrow to buy that practice facility. We looked at other alternatives.

And one of the alternatives we came up with was Mr. Ford had some bonds personally and he was earning 3.25% on those. And basically if he took the money out of those bonds and purchased the practice facility for the 44 million, it was equated that the hundred thousand dollar rent per month would give him approximately the same income flow stream that he would get from the bonds. TR 2, p 48.

Petitioners' Appraisal

David Bur, MAI, prepared two appraisals for Petitioners. Bur testified that the first appraisal (P-1) was prepared for tax years 2004, 2005, 2006, 2007 and 2008. The cost approach was used because Bur states that it is a special use facility¹⁰. The subject site has wetlands in the back, a retention pond, and was a former land fill. The property also has a high water table that would have added to construction costs.

Bur determined that the highest and best use of the land as vacant would be a mix of commercial and research and development. The property as improved is as the existing NFL team headquarters and practice facility.

Bur relied upon the Barrett report in determining the economic life of the subject property. Bur relied upon information from the Spectrum report to determine an alternative highest and best use, as well as costs to cure for an alternative use.

The most applicable approach for a special use facility is the cost approach. Bur explained that the first step was determining the value of the land as if vacant. He utilized sales of comparable vacant properties and adjusted them for differences in market conditions (time), location, size, zoning, and functional utility.

Bur determined that six sales of vacant land were applicable for the 2004 tax year. The sales were located in Dearborn, Allen Park, and Taylor. The sales ranged in size from

¹⁰ Tr. p 96.

5.0 acres to 104.66 acres. The unadjusted sale prices (per square foot (“SF”)) ranged from \$1.86 to \$8.93. The gross adjustments are as follows: Sale 1 45%; Sale 2 40%; Sale 3 44%; Sale 4 21%; Sale 5 67% and Sale 6 28%. The adjusted sale prices per SF range from \$2.09 to \$6.73. The same six vacant land sales were used for tax years 2005, 2006, 2007, and 2008. In a separate report (P-2), Bur replaced the Taylor vacant land sale with an Allen Park property.

The value of the subject’s 23.25 acres of land is:

Year	\$/SF	\$/Total
2004	\$5.40	\$5,470,000
2005	\$5.55	\$5,620,000
2006	\$5.70	\$5,770,000
2007	\$5.70	\$5,770,000
2008	\$5.55	\$5,620,000
2009	\$4.50	\$4,560,000

After determining land value Bur then used the replacement cost utilizing the calculator method for the improvements. The replacement cost is determined as replacing a facility with a comparable design, but using modern construction, modern materials, and removing any superadequacies. Bur explained that superadequacies are part of a facility that is overbuilt and that a buyer would not pay for. The subject property was split into three main areas for costing purposes: the office, indoor practice field, and the maintenance building. Bur extracted the square foot costs from Marshall Swift and adjusted for number of stories, story height, perimeter, current multiplier, local multiplier, and a comparative cost multiplier.

Bur determined that the office building was a class B, the practice facility was a class S, and the maintenance buildings were a class C construction. He added that the office building is U-shaped with a combination of class A and C construction. He selected Class B because the facility has steel beams and higher level finishes. Class A would indicate that the property has steel fireproof beams. The practice facility is a steel-sided building with metal panel walls, which is typical class S construction. The maintenance buildings were a good quality construction. Bur explained that the difference in actual costs of construction from approximately \$36,000,000 versus his \$28,000,000 cost was a factor. The Lions brought in a new construction manager who made significant changes to the building during construction and, due to the low lying land, a basement could not be built, resulting in another design change. The costs of the underground portion are also higher because of less than ideal soil conditions. However, the additional costs are not typically recouped in the market. Bur explained that subject's actual superadequacies were considered as excess construction that the market is not going to reflect, nor would Petitioners construct the same building.

Bur divided the improvements into three areas: Office, Indoor Field, and Maintenance.

The Replacement Cost New for 2004 is:

		Indirect		Developers	
Name	Cost New	Cost	Subtotal	Profit	Total
Office	\$13,485,455	\$674,272	\$14,159,717	\$1,415,972	\$15,575,689
Indoor Field	\$6,888,823	\$344,441	\$7,233,264	\$723,326	\$7,956,590
Maintenance	\$137,477	\$6,874	\$144,351	\$14,435	\$158,786
Total	\$20,511,755	\$1,025,587	\$21,537,332	\$2,153,733	\$23,691,065

Bur's physical depreciation is based on an analysis for the NFL team practice facilities. He considered the median economic life of similar properties and determined that the economic life of the subject property is 26 years. The Detroit Lions used their previous facility at the Silverdome for 26 years.

Bur stated that the Barrett report included information on the New York Jets and Seattle's newer training facilities that were constructed after the subject was constructed. These facilities included larger rooms for lockers, training rooms, air-conditioned indoor field, additional outdoor fields, and updated security systems. When comparing subject to the newer facilities, Bur stated the subject is no longer considered "state of the art." Bur included this in his consideration for the reduction in value due to functional obsolescence.

Bur discussed other areas of functional obsolescence. The location of the owner's offices is separate from the main offices, increasing the cost of the facility. The par three golf hole is also a feature that would not be rebuilt and is a superadequacy. The parking lot has issues in the winter because water bubbles up and freezes because of the low water table. Bur does not include the \$3,000,000 construction cost for the TV studio because it is a form of functional obsolescence. The building facilities are environmentally friendly, which also adds to the construction cost. Bur states the excess office space that is currently used for storage is not built-out and is not

productive.¹¹ Bur opined that although the subject property is fairly new it is no longer the state of the art, which he believes increases the functional obsolescence.

Bur came up with an effective age on the property that is based on its wear and tear level and the amount of maintenance that is performed on the building. As of December 31, 2003 the Facility was two years old. However, based upon the aforementioned items that render the subject property functionally obsolete for its actual age, Bur determined that a four-year effective age would be appropriate to account for the functional obsolescence.

When asked whether his depreciation analysis would be different if he used another method, Bur testified:

Yes, if I would have had to reproduce the for example, the television studio exactly as it was built. Then I would have to do--take it off later as a specific item of obsolescence. But in doing replacement cost, that it—automatically that comes off out of the estimate of replacement cost. You don't add it in and deduct it off like in reproduction cost. Tr. p 116.

The actual age of the subject property was two years plus an additional two years resulting in a total depreciation of 15.4%. Land improvements have a 15-year expected life and therefore their depreciation was 13%.

The result of Bur's cost approach for 2004 is:

Replacement Cost New (RCN)	
Building	\$23,691,065

¹¹ The Tribunal notes that Bur does not include in the cost approach the TV studio, Leeds construction, square footage of the unfinished office area or the Par 3 golf hole.

less Depreciation @ 15.4%	<u>\$3,644,779</u>	
Depreciated RCN Building		\$20,046,286
Land Imp	\$4,678,108	
Less Depreciation @ 13%	<u>\$623,748</u>	
Depreciated Land Imp		<u>\$4,054,360</u>
Cost New Total		\$24,100,646
Land Value		<u>\$5,470,000</u>
True Cash Value		\$29,600,000

Bur found that the local economy for the 2006 tax year experienced a recession. Rents and values declined below new construction costs thus no new construction occurred.

Bur considered the lack of supply and demand as economic obsolescence. He accounted for it in 2006 by removing entrepreneurial profit. A developer would not have earned a profit in 2006 due to declining values. Bur accounted for economic obsolescence in 2007 by again removing entrepreneurial profit and increasing the effective age of the property by an additional year¹² to take into account economic obsolescence as well as the two years for functional obsolescence.

Bur did not do an income or sales comparison approach for the subject property until the 2009 tax year. He concluded the following true cash values via the cost approach¹³:

2004	\$29,600,000
2005	\$30,600,000
2006	\$30,500,000
2007	\$27,700,000
2008	\$25,400,000
2009	\$23,900,000

¹² P-1 p 63.

¹³ Bur's December 31, 2008, \$23,900,000 value was in a separate report (P-2).

Bur's second valuation report was an Alternative-Use Values based upon the premise that if the subject property were to be sold, the current highest and best use would be changed to a commercial/industrial use. Bur used the Spectrum Strategies \$5,042,231 cost to retrofit the subject property as of December 31, 2002. The alternative value report included a sales comparison approach utilizing sales of eleven industrial/technology buildings located in Troy, Allen Park, Auburn Hills, Northville Township, Wixom, Dearborn, and Rochester Hills.

Bur adjusted the sales for property rights conveyed, time/market adjustment, size, quality, clear height, office percentage, and land to building ratio. Sale dates range from 2000 to 2008, building sizes range from 48,000 to 437,812 square feet. Unadjusted sale prices range from \$42.52 to \$120.12, the adjusted sale prices range from \$51.01 to \$134.24 per square foot. Bur determined \$85.00 per square foot was appropriate for the subject property or \$19,010,000. Bur then deducts the \$5,042,231 cost to renovate the subject property for the Alternative-Use Value. Bur applied cost multipliers from Marshall Valuation Service for a time adjustment. He concludes that the Alternative-Use Value is:

2004	\$13,140,000
2005	\$13,090,000
2006	\$13,120,000
2007	\$12,740,000
2008	\$10,710,000
2009	\$8,470,000

Bur continued with the Alternative-Use Value using eight properties that were leased to estimate a value based on an income approach. The unadjusted triple-net rent ranged

from \$5.92 to \$10.00 per square foot. Bur adjusted the rents for market conditions, location, size, age and quality. The concluded rent was \$9.00 per square foot multiplied by 223,695 square feet for a potential gross income of \$1,010,600 as of December 31, 2005. Bur then adjusts the market rent for changes in market conditions, 10% vacancy, 6% management, and 6% unrecovered operating expenses. The overall capitalization ranges start at 9.5% for December 31, 2004; 9.00% for December 31, 2005; and 8.5% for the remaining tax years at issue.

Bur's Alternative-Use Value using the income approach is:

2004	\$12,020,000
2005	\$12,970,000
2006	\$14,150,000
2007	\$13,770,000
2008	\$11,630,000
2009	\$9,290,000

Bur's final reconciliation for the Alternative Use Value is:

2004	\$12,800,000
2005	\$13,000,000
2006	\$13,400,000
2007	\$13,400,000
2008	\$11,000,000
2009	\$8,700,000

Petitioners' Arguments Regarding Uncapping Issue

Petitioners argue that the subject property should not be uncapped. Petitioners state that on January 17, 2001, the Detroit Lions, Inc. entered into a lease with Ford Motor Land Development Corporation. The initial lease was for 30 years with options for two additional five-year terms. The Detroit Lions, Inc. is a Michigan Corporation. It is controlled by William Clay Ford, Sr. who has a majority of all stock issued. The City of Dearborn uncapped the taxable value for 2002, which was affirmed by the Tribunal in an October 10, 2005 Order Denying Petitioner's Motion for Reconsideration in Docket 293748.

On March 25, 2004, WCF Land, LLC purchased the subject property effective October 31, 2003. WCF Land, LLC is a limited liability company with one member: William Clay Ford, Sr. Property transfer affidavits were filed with both cities.

Respondents' Argument

Respondents believe that the subject property's assessment does not exceed the applicable ratio of the property's true cash value, and therefore the properties'

assessments are valid under Michigan Law. Respondents have submitted an independent appraisal prepared by William Schoenhut indicating an increase in value.

Respondents' admitted exhibits are:

R-1 Schoenhut Appraisal December 31, 2003.
R-2 Schoenhut Appraisal December 31, 2004.
R-3 Schoenhut Appraisal December 31, 2005.
R-4 Schoenhut Appraisal December 31, 2006.
R-5 Schoenhut Appraisal December 31, 2007.
R-6 Schoenhut Appraisal December 31, 2008.
R-8 White Olson October 15, 2002 Invoice.
R-9 Transcripts Volumes I-IV docket 293748.
R-10 Deeds, Easements and Leases.
R-16 Documents provided by Petitioners.

The Tribunal notes that Schoenhut provided pages C-1A to correct the square footage for each year in contention.

Respondents' first witness was Thomas Lesnau, Vice President of Finance and CFO of the Detroit Lions. He testified that he was with the Lions when they were located at the Pontiac Silverdome. There was an outdoor practice facility in a "bubble" in the parking lot at the top of the tunnel where the offices were located. The problem with the bubble was it was prone to blowing away. Extensive studies were done to alleviate the issue but the wind affects the outdoor practice field. The interior field could only be used four days a week due to other commitments by the Silverdome.

Lesnau testified that when another event was booked at the Silverdome, it took a day before an event and a day after to prepare the indoor playing field. The playing field inside the Silverdome has a roll-up system that rolls the turf into a pit with air jets under

it. The system lifts the field and uses a large roller at one end to roll up the turf. After an event, the field had to be pulled from the pit, with the process taking six to eight hours.

Lesnau explained why in his opinion the subject property was not state of the art. He believes that the subject property has restrictions with the practice field. Lifts have to be brought in to film, instead of building film platforms. Newer facilities have more expansive conditioning tracks and individual areas that are set up to do running modes. The subject property is limited in acreage to accommodate both sledding activities and drill areas. Locker rooms should have contained room for additional lockers. The video rooms in newer facilities are wired for more computer capacity than the subject property. The cafeteria is too small to accommodate players, coaches and staff at the same time. None of the new facilities have a broadcast facility.

Lesnau explained that the offices at the Silverdome were small; however, the subject property has excess capacity.

Eric Waidelich, City Administrator for the City of Allen Park, testified to the specifics of the September 2008 vacant land sale (Comparable Land Sale 6) utilized by Bur. The sale was located at the corner of Enterprise Drive and I-94. The City of Allen Park sold it to Baker College for use as a parking lot for \$.92 a square foot. The location of this lot was on a road that had very little value to the City of Allen Park, other than a significant amount of underground utilities that were located on the parcel. There is only one road in and out of the property. The only use for the property is that of a parking lot to the

adjacent owner. In addition, there is a bridge that Baker agreed to maintain, as well as a portion of the road, which alleviated the taxpayers' day-to-day maintenance.

Respondents' Appraisal

William Schoenhut, Jr., MAI, is a certified general appraiser in eleven states, including Michigan. He prepared an individual appraisal of the subject property for each year in contention, using a cost and income approach. After listening to testimony he determined that the lease information that he used would not be considered arms-length and rescinded his income approach.

Schoenhut determined that the highest and best use for the subject property as vacant is as commercial/industrial use as demand warrants development. He found the highest and best use as improved is the current use. He opined that Bur's alternative highest and best use would not be appropriate because zoning in Dearborn would not allow an industrial facility.

Using the 2004 appraisal as the basis, Schoenhut explained that he used the same process to determine the value for each year in contention.

Schoenhut's 2004 appraisal includes three vacant land sales:

Sale 1 is 6.97 acres in Southgate, sold to the city for recreational development.
Sale 2 is 35.78 acres in Romulus, zoned agricultural, but rezoning to office technology.
Sale 3 is 5.47 acres in Westland, zoned commercial for use as a bank.

The range of sale prices per square foot is \$2.20 to \$3.62; after adjustments, the sale prices ranged from \$2.90 to \$4.02 per square foot. Schoenhut determined that \$3.60 per square foot for the subject's 22.788 acres resulted in a true cash value for the land of \$3,573,500. Some of the land sales changed for each year of the reports.

Schoenhut used a segregated cost using a reproduction method. Schoenhut explained that he had access to a set of plans for the subject property that he used to assist in the determination of the types of construction and the nature of what was behind the drywall, including the base, foundation, flooring and elevators. The physical structure was measured.

When questioned why a calculator cost method was not selected, Schoenhut testified:

Well, I didn't do it because there were so many extra unique things to the building. You had – just in the indoor practice facility, you have their playing field, which is a buildup of the special turf that they have in there, the gravel or tar base. I don't know what they call it. I'm trying to remember what the name of it is, a base. And then you have some sand so it's more like playing outside. It also has special lasers for smoke detection.

You go into the locker room and you have bigger – you have all the built-in lockers for the players. You have the hydro tanks, you have leaded walls in the X- ray areas, you have a large cafeteria. Let's see what else we got in there that I can think of. You have the training room, which has special flooring to it. And in that case, you don't have two full floors, you have maybe one and a third floors or one and a quarter floors, because of the balcony set up on it. So you have all these little different innuendoes in the building. Tr. Vol 4, pp 96, 97.

Schoenhut divided the subject into five separate areas. Building 1 is the Office/Training Area; Building 2 is the Indoor Practice Field; Building 3 is the Chairman's Section;

Building 4 is the Maintenance Building; and Building 5 is the Support Building, as well as site improvements.

Schoenhut determined the total reproduction cost new is:

Building	Name	RCN	Indirect Cost	Subtotal	Developers Profit	Total
1	Office/Training	\$22,359,072	\$235,907	\$24,594,979	\$2,459,498	\$27,054,477
2	Indoor Field	\$11,019,148	\$101,915	\$12,121,063	\$1,212,106	\$13,333,169
3	Chairman's	\$1,681,682	\$168,168	\$1,849,850	\$184,985	\$2,034,835
4	Maintenance	\$185,700	\$18,570	\$204,270	\$20,427	\$224,697
5	Support	\$30,324	\$3,032	\$33,356	\$3,336	\$36,692
	Total	\$35,275,926	\$3,527,593	\$38,803,519	\$3,880,352	\$42,683,871

Schoenhut considered 25 football training facilities and determined that 20 years economic life is reflective of the special design of training facilities, changes in technology and methods of training, market and locational externalities. Basing the economic age/life method and the two year effective age of subject property results in total depreciation of 10% based on a straight life calculation. Land improvements have a 15 year useful life and were depreciated 13%.

Schoenhut's appraisal explains:

Accrued depreciation reflects the difference between the RCN of an improvement and its market value as of the date of an appraisal; this difference in value may result from physical deterioration, functional obsolescence, external obsolescence, or any combination of the three. To estimate depreciation for the subject property we have processed the economic age life method. The concept of economic life, effective age and remaining economic life expectancy considers all elements of depreciation in one calculation. The effective age estimate considers not only physical wear and tear, but also any loss in value from functional and external considerations.¹⁴ In this method the appraiser abstracts from the market the economic life of the improvements and estimates the effective age of the improvements. R-1, p 58.

¹⁴ The Appraisal of Real Estate, 12th edition, (Chicago: Appraisal Institute, 2002) p. 410-413. The Tribunal corrects to page 392.

The result of Schoenhut's cost approach for 2004 is:

Reproduction Cost New (RCN)		
Building	\$42,683,871	
less Depreciation @ 10%	<u>\$4,268,387</u>	
Depreciated RCN Building		\$38,415,484
Land Imp	\$5,933,747	
Less Depreciation @ 13%	<u>\$771,387</u>	
Depreciated Land Imp		<u>\$5,162,360</u>
Cost New Total		\$43,577,844
Land Value		<u>\$3,573,500</u>
True Cash Value		\$47,150,000

Schoenhut also used the income approach; however, after listening to testimony he rescinded it, feeling it was an inappropriate technique for subject property. Initially, he thought that a lease commenced on January 17, 2001 was still in full force and effect. He used the lease as a basis for his income approach. After hearing testimony he stated he would not have done the income approach in the same manner. The income approach was weighted heavily.

Schoenhut's final values are:

True Cash Value Contentions		
Tax Year	Cost	Original
2004	\$47,150,000	\$42,940,000
2005	\$50,740,000	\$55,000,000
2006	\$48,990,000	\$54,000,000
2007	\$49,040,000	\$53,000,000
2008	\$46,740,000	\$52,000,000
2009	\$47,080,000	\$53,000,000

Respondent's Argument Regarding Uncapping Issue

Respondent Dearborn requests a retroactive uncapping for tax year 2003. Respondent Allen Park uncapped subject property for tax year 2005. Respondent Dearborn

believes that there is an issue as to whether the transfer of ownership from Ford Motor Land Development Corporation to WCF Land, LLC should result in an uncapping of taxable value, and if so, for which tax years. The City of Dearborn takes the position that a transfer of ownership did occur resulting in an uncapping of taxable value starting with the 2005 tax year.

Tribunal's Findings of Fact

The Tribunal finds that the subject's 219,735 square footage consists of approximately 122,795 square feet of office, 92,980 square feet of indoor practice field, and 3,960 square feet of maintenance buildings. Eighty-two percent of the subject property is located within the City of Dearborn; the remaining eighteen percent is located within the City of Allen Park. The subject property is addressed as 222 Republic Drive, Allen Park, Michigan.

Uncapping Issue

Petitioners' brief on the issue of uncapping states: "January 17, 2001, the Detroit Lions Inc. entered into a lease with Ford Motor Land Development Corporation. The initial lease was for 30 years with an option of renewing for additional five year term. The Detroit Lions Inc. is a Michigan Corporation, controlled by William Clay Ford, Sr., who owns the majority of all stock."

Petitioners state that the City of Dearborn uncapped the taxable value for tax year 2002. The Tribunal affirmed the uncapping in an Order Denying Petitioners' Motion for

Reconsideration entered October 10, 2005, in Docket 293748. The City of Allen Park is moot on this issue.

On March 25, 2004, WCF Land, LLC purchased the subject property. Petitioners filed a property transfer affidavit with both the City of Dearborn and the City of Allen Park.

WCF Land, LLC, has one shareholder: William Clay Ford, Sr.

Petitioners state that the City of Allen Park uncapped the property in 2005, pursuant to a Property Transfer Affidavit filed in 2004. The City of Allen Park filed an application with the State Tax Commission requesting a revision of the 2002 assessed and taxable value to be increased for 2002, as well as a request to uncap the property. Initially, the State Tax Commission granted the request, but rescinded it on September 29, 2006, due to a transfer of ownership. Neither party appealed the remaining issues to this Tribunal.

Petitioners plead that the property transfer affidavit was filed in both taxing jurisdictions.

The City of Dearborn cannot retroactively uncap the subject property. MCL 211.27b(1) is clear on the issue:

(1) If the buyer, grantee, or other transferee in the immediately preceding transfer of ownership of property does not notify the appropriate assessing office as required by section 27a(8), the property's taxable value shall be adjusted under section 27a(3) and all of the following shall be levied:

(a) Any additional taxes that would have been levied if the transfer of ownership had been recorded as required under this act from the date of transfer.

(b) Interest and penalty from the date the tax would have been originally levied.

(c) A penalty of \$5.00 per day for each separate failure beginning after the 45 days have elapsed, up to a maximum of \$200.00.

Alhi Development Co v Orion Twp, 110 Mich App 764, 767 (1981). In an unpublished Court of Appeals opinion, *Gary D. Morehouse and Susan C. Morehouse v Township of Mackinaw*, No. 281483, (2009) , the Court held that because the parties recorded a land contract, the assessor should have been notified under MCL 211.27a(6), and was therefore, barred from uncapping the property under MCL 211.27b, even though a property transfer affidavit was not filed.

Petitioners argue that although the deed was effective October 31, 2003, it was not recorded until March 25, 2004. Petitioners argue that the City of Dearborn uncapped the subject property in 2002 as a result of the long-term lease executed between Ford Motor Land Development Corporation and the Detroit Lions Inc., as tenants. The Detroit Lions and WCF Land Development, the grantee under the 2004 deed, are controlled by the same person: William Clay Ford, Sr.

MCL 211.27a(7) lists transactions exempt from transfer of ownership.

MCL 211.27a(7)(1) states in relevant part that the following transfer is exempt:

(1) A transfer of real property or other ownership interest among corporations, partnerships, limited liability companies, limited liability partnerships, or other legal entities if the entities involved are commonly controlled.

The Detroit Lions are controlled by William Clay Ford, Sr., WCF Land, LLC, is also controlled by the same William Clay Ford, Sr. Petitioners believe that the 2002 uncapping of the subject property was determined by the Tribunal to be proper. The transfer of the ownership interest to another legal entity, WCF Land, LLC, involves another commonly controlled entity. Petitioners do not agree that the property should be uncapped a second time for 2005, when the transferee is under common control with the previous transferee.

Petitioners continue, stating that the City of Allen Park failed to uncap the subject property for the 2001 long-term lease and, in late 2004, attempted to correct the assessed and taxable value found by the State Tax Commission as omitted property. The State Tax Commission did not allow the City of Allen Park the opportunity to uncap the subject property. The City of Allen Park uncapped the subject for 2005 increasing the assessed value from \$384,200 to \$4,000,000 and the taxable value from \$224,300 to \$4,000,000.

Petitioners contend that the City of Dearborn may not raise the taxable value for the years prior to this proceeding. The City of Allen Park cannot uncap the taxable value for years prior to 2005 under *res judicata*. The City of Allen Park's failure to timely appeal the State Tax Commission's final decision regarding 2002, 2003 and 2004 uncapping bars it from relitigating the same issue.

Petitioners state that both communities should be barred from uncapping the property for 2004 as the transfer affidavit was properly filed in both communities for 2005 pursuant to MCL 211.27b.

Respondent City of Dearborn's position is that a transfer of ownership occurred, which should result in an uncapping for tax year 2005. Respondent Dearborn states:

The Agreement for Sale and Purchase, Exhibit E hereto, is between Ford Motor Land Development Corporation and WCF Land, LLC. It was executed on March 25, 2004 and further states it is effective as of October 31, 2003. This Agreement provides in section 4.1(b)(ii), that the right of first offer, as contained within the lease, has been exercised by the Detroit Lions, Inc., who will be assigning the right to WCF Land, LLC. The purchase price is stated in Section 12 as \$44,015,000, with \$41,628,269 being allocated to the real property and the remainder to personal property. Importantly, the closing date is clearly stated in the Agreement in Section 5.1 as March 25, 2004. Specifically, and pursuant to section 5.1, the risk of loss of the subject property remained with Ford Motor Land Development Corporation until the March 25, 2004 closing date and the specific time when the purchase price funds were transferred to Ford Motor Land Development Corporation. Pursuant to Section 5.8, WCF Land, LLC does not obtain the right to possess the property until the time of closing of the sale. On page 21 is what appears as the signature of Thomas J. Lewand, who signed the purchase agreement as Vice-President of WCF Land, LLC. Section 5.4(c) provides that Ford Motor Land Development Corporation will provide to WCF Land, LLC, as a condition of closing, an assignment of the lease with The Detroit Lions, Inc. Exhibit F hereto is the title policy that was issued on March 31, 2004, as a condition of the sale. This policy provides an insurance amount matching the purchase price of \$41,628,269. Respondent Dearborn's brief, pp 3, 4.

Respondent argues that because the deed was not from the Detroit Lions, Inc., to WCF Land, LLC, but was from Ford Motor Land Development Corporation to WCF Land, LLC, they are not related entities. Respondent states that there has been no indication or proof that the two entities are 80% owned by the same entity or person. The property

has never transferred from the Detroit Lions, Inc. to WCF Land, LLC, and Respondent believes if it did the same individual who may claim complete ownership of WCF Land, LLC, does not claim to be an 80% owner of the Detroit Lions, Inc. as of the date of transfer. Respondent therefore states that MCL 211.27a(7) does not provide an exemption from uncapping in this case.

Respondent Allen Park uncapped subject property in 2005 based upon the property transfer affidavit that did not specify that the transfer was between related persons, or that it was subject to any other exemption that would prevent Respondent from uncapping the taxable value. Respondent states “Rather, Petitioner only later wove its story that the transaction was between related entities in order to avoid the uncapping of the taxable value.”

Respondent states that in order for the exception found in MCL 211.27a(7)(10) to apply, “(1) the transaction [must be] between legal entities, and (2) the legal entities involved are commonly controlled.” The Tribunal has held that common control exists under “circumstances where property or an ownership interest is conveyed from one entity to another entity and both entities are owned by the same individual(s) with the same percentage of ownership.” *C&J Investments of Grayling, LLC v City of Grayling*, MTT 306256 (2006). Respondent contends that there is no evidence that Ford Land and WCF Land are “owned by the same individual(s) with the same percentage of ownership.” Respondent contends that simply because Detroit Lions, Inc. has a long-term lease for the property, and Ford Land conveyed the property to an entity under

common control with Detroit Lions, Inc., does not make the transfer of ownership exempt under MCL 211.27a(7)(1).

The Tribunal finds that the testimony of Lewand, president of the Detroit Lions Inc., was of assistance in determining that WCF Land, LLC, was a new entity formed by William Clay Ford, Sr. for the purpose of acquiring the subject property. The transfer of ownership's effective date of October 2003 was to lock in the price based upon the existing lease which had a schedule for potential purchase price. The closing took place on March 25, 2004, but WCF Land, LLC, entered into a lease with the Detroit Lions on March 15, 2004. Lewand testified that there was a termination of the lease between Ford Land and the Detroit Lions, Inc.

P-18 page 11 paragraph Z states:

Termination of lease. Purchaser will terminate the lease with tenant in its current form prior to April 30, 2004. Seller acknowledges that nothing herein shall preclude purchaser from entering into a new lease with tenant after such termination.

Lewand also testified that WCF Land, LLC, is 100% owned by William Clay Ford, Sr.

The Detroit Lions, Inc. is owned by William Clay Ford, Sr., his wife and children.

Lewand explained the relationship between Ford Land Development, The Detroit Lions, WCF, LLC, and Mr. Ford, Sr., leading the Tribunal to the conclusion that there is no uncapping of the subject property for the WCF, LLC's purchase of the buy out of the Ford Land lease. The Tribunal finds that the uncapping request by the City of Dearborn for tax year 2002 is not within the current jurisdiction of this Tribunal. The March 2004

deed would uncap the subject property, if it were an actual transfer; however, the subject property is owned by corporations under common control.

Valuation Issues

Both parties presented appraisals to determine the true cash value of the subject property. There were substantial differences between the cost approach methods utilized by both parties. Petitioners' appraiser, Bur, did a replacement cost using a calculator method and increased the effective age of the subject property for items that would not be recognized in the market as enhancing value. Respondents' appraiser, Schoenhut, did a reproduction cost using a segregated method. Neither party's square footage was the same.

It is difficult at best for this Tribunal to begin to understand how the subject property with an effective age of two years and a verified final construction cost of \$33,261,190¹⁵ could depreciate to approximately one-third of its value based on Petitioners' cost of \$24,100,000 or its alternative value of \$12,800,000, a reduction of over 60%. The Tribunal also questions Respondents' request for an increase of approximately 30%. Respondents admitted R-8, subject's October 15, 2002 final invoice from White/Olson, LLC for \$33,261,190.¹⁶

¹⁵ This cost included additional items of construction based upon change orders.

¹⁶ The personal property was deducted .

Petitioners used a replacement cost, calculator method and Respondents used a reproduction cost segregated method. They are described as:

Replacement cost is the estimated cost to construct, at current prices as of the effective appraisal date, a substitute for the building being appraised using modern materials and current standards, design and layout.

Reproduction cost is the estimated cost to construct, at current prices as of the effective date of the appraisal, an exact duplicate or replica of the building being appraised, using the same materials, construction standards, design, layout, and quality of workmanship and embodying all the deficiencies, superadequacies, and obsolescence of the subject property. Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13th ed, 2008), p385.

The Tribunal finds that Petitioners' replacement cost may cure some existing obsolescence in the property. Respondents' reproduction cost includes the obsolescence and thus requires some adjustment for any obsolescence. In actuality, the opposite happened; Petitioners' appraiser had an effective age of four years to account for functional obsolescence. Respondents' appraiser determined an effective age of two years, which included all obsolescence.

The other larger difference was the classification of subject's office area. Bur utilized a class B construction, because the construction was indicative of both the higher class A and class B, but because it was two stories, he went with the lower cost basis.

Schoenhut determined that the office was class A excellent construction because the steel beams were fireproof. That issue was not resolved either through testimony, cost manuals, or photographs. Bur testified that the difference between the base cost per square foot for an average class A and class B office building is slightly under \$5.00.

The cost of a good quality class A office was \$175.11 per square foot¹⁷. Bur's adjusted cost for the office is \$111.70 per square foot. Schoenhut's reproduction cost per square foot of the office was above average/high cost. His office (including the chairman's area) is \$238 per square foot.

The cost new (with multipliers before depreciation) is:

Bur	Cost New	Total	Sq Ft	\$ / Sq Ft
Office	\$13,485,455	\$15,575,689	113,130	\$125.16
Indoor Field	\$6,888,823	\$7,956,590	92,980	\$77.79
Maintenance	\$137,477	\$158,786	3,960	\$36.45
Total	\$20,511,755	\$23,691,065	223,695	\$105.90

Schoenhut	RCN	Total	Sq Ft	\$ / Sq Ft
Office/Training	\$22,359,072	\$27,054,477	112,972	\$239.54
Indoor Field	\$11,019,148	\$13,333,169	93,840	\$142.08
Chairman's	\$1,681,682	\$2,034,835	9,180	\$221.65
Maintenance	\$185,700	\$224,697	3,960	\$56.74
Support	\$30,324	\$36,692	800	\$45.86
Total	\$35,275,926	\$42,683,871	220,752	\$193.35

Petitioners' replacement cost did not include all of the property's square footage, or some of the amenities that may or may not add value but should be included in a cost approach. Petitioners, however, did include in considering functional obsolescence the addition of two years for depreciation. This equates to 15.4% depreciation. The Tribunal finds that the deduction of approximately \$1,236,900 for the additional two years to account for the following: TV studio, premium cost for Leeds construction, 13,625 square feet of office that was not built-out, the location of the owner's offices and

¹⁷ TR 2 pp182-183.

the par-3 golf hole were considered as functional obsolescence increasing effective age by two years. However, NONE of the above were included in Bur's cost approach. We find that is double-dipping depreciation, which is simply not done nor found in any learned treatise.

The costs for the items that Bur found to be obsolete were amenities that he believed would not be recouped in the market and that he did not include in the cost approach. By not including the items in the cost approach effectively the amenities were not considered initially. The Tribunal finds that by not including an item in the cost approach and then deducting the same item from the cost approach is not acceptable.

The Tribunal finds that the 13,625 square feet of unfinished office area should be calculated and included in Petitioners' square feet. The Tribunal recalculates Petitioners' cost approach to include the 13,625 square feet and allow for an effective age of two years, which is the subject's actual age.

The Tribunal finds that Respondents' cost approach greatly exceeds actual cost and should not be considered excellent quality for costing purposes. The Tribunal does not have the ability to amend Respondents' cost to reflect an above average construction and therefore does not accept Respondents' appraisal as reliable. The cost approach two years after construction would not increase 28% above the known construction costs.

The Tribunal is aware that build to suit construction costs may reflect the cost of construction based on owner preferences and may or may not be typical. However, the Tribunal did not find any components that are unique to the owner other than the indoor practice field.

Petitioners' alternative value report was not accepted for the 2001 appeal prior to the completion of the subject property. Veryser prepared the Spectrum Report upon which Bur relied for costs to renovate the property to estimate the Alternative-Use Value. Veryser testified that the report was speculative when it was prepared prior to construction and more so as time elapses. He explained the thought process of the alternative use would be to determine a secondary use, if the subject property was not used for its intended purpose.

Bur took the analysis and relied on it for an alternative use value. The highest and best use analysis is dependent upon the current facility's existing use. If the building is sold separate from the Detroit Lions football team, he states that it would be a corporate office and research and development property, requiring some retrofitting.

Bur does a sales comparison approach using sales of industrial and technology buildings. The sales range in size from 48,000 to 437,812 square feet (subject is 223,695 square feet); land area ranges from 2.34 acres to 34.74 acres (subject has 23.24 acres); clear height ranges from 13 to 24 feet (subject is 60 feet). The adjusted sale prices per square foot range from \$51.02 to \$134.24. Bur estimates \$85.00 per

square foot for subject property or \$19,010,000. The renovation costs were estimated by Spectrum in 2002 to be \$5,042,231. Bur adjusts the Spectrum costs for changes in time using Marshall Valuation Services comparative cost multipliers for the Detroit metro area and then deducts it from the market value as renovated to estimate the Alternative-Use Value.

This Tribunal finds it noteworthy that an appraiser would actually come up with an alternative highest and best use that first would not be legal as zoning would not accommodate an industrial property; second, there is no market particularly in the latter years of this appeal for additional office/industrial space, and third, it violates the principals of highest and best use as the alternative use value reduced the 2004 value of subject property to \$12,800,000, by 62%, from the original \$33,000,000 cost determined by White/Olson, LLC. The Tribunal finds that the alternative use value would not be legally permissible, or financially feasible and, while a conversion to another use may be physically possible, neither Bur nor Veryser knew of an industrial or research and development building with ceiling heights in excess of 100 feet. Therefore, the Tribunal rejects Petitioners' alternative use value as extreme, unreliable, and casts doubt upon the appraiser's credibility. The Tribunal comprehends the reason for determining an alternative highest and best use, and understands that a secondary use is typically of less value than an original use.

The Tribunal, having considered the testimony, evidence and credibility of the witnesses, finds that the best evidence of the true cash value of the subject property is

the White/Olson, LLC final invoice excluding personal property of \$33,000,000. The build-to-suit did not appear to contain any extra ordinary expense and was the cost to build subject property. Bur's amended cost approach including the 13,625 square feet of unfinished office space and excluding the allowance for functional obsolescence (that was not included in the cost of the building) also is an indication of the cost new of subject property for tax year 2004 of \$33,000,000. Petitioners' land value appears reasonable for the area and is used to determine the value of the subject property.

Petitioners have carried the burden of proving that the subject property is assessed in excess of its true cash value. The Tribunal finds that the total assessments and resulting true cash value for the subsequent years are adjusted to reflect the percentage differences in Bur's cost approach for each year at issue¹⁸. The following is the Tribunal's true cash value for each year at issue:

	Land	Building	Total TCV
2004	\$5,470,000	\$33,000,000	\$38,470,000
2005	\$5,620,000	\$34,114,700	\$39,734,700
2006	\$5,770,000	\$34,002,200	\$39,772,200
2007	\$5,770,000	\$30,880,500	\$36,650,500
2008	\$5,620,000	\$28,400,000	\$34,020,000
2009	\$4,560,000	\$26,950,000	\$31,510,000

The Tribunal finds that the true cash value is for the real estate only. The true cash of the personal property is a separate case.

Conclusions of Law

¹⁸ The increase or decrease in land value corresponds with sales information provided by both parties.

Pursuant to Section 3 of Article IX of the State Constitution, the assessment of real property in Michigan must not exceed 50% of its true cash value. The Michigan Legislature has defined true cash value to mean the usual selling price at the place where the property to which the term is applied is at the time of the assessment, being the price which could be obtained for the property at private sale, and not forced or auction sale. See MCL 211.27(1). The Michigan Supreme Court in *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450 (1974), has also held that true cash value is synonymous with fair market value.

In that regard, the Tribunal is charged in such cases with finding a property's true cash value to determine the property's lawful assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767 (1981). The determination of the lawful assessment will, in turn, facilitate the calculation of the property's taxable value as provided by MCL 211.27a. A petitioner does, however, have the burden of establishing the property's true cash value. See MCL 205.737(3) and *Kern v Pontiac Twp*, 93 Mich App 612 (1974).

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law...The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not...exceed 50%....; and for a system of equalization of assessments. For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred. When ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value. Const 1963 Art IX , Sec 3.

The Tribunal finds that based on the cost approach, Petitioners were able to show that the subject property was overassessed for the tax years at issue.

Judgment

IT IS ORDERED that the property's assessed and taxable values for the tax years at issue shall be as set forth in the *Introduction* section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 90 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Order within 28 days of the entry of this Order. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the

date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of the Tribunal's order. As provided in 1994 PA 254, being MCL 205.737, as amended, interest shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest rate of the 94-day discount treasury bill rate for the first Monday in each month plus 1%. As provided in 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods after January 1, 1996 at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 1995 at the rate of 6.55% for calendar year 1996, (ii) after December 31, 1996 at the rate of 6.11% for calendar year 1997, (iii) after December 31, 1997 at the rate of 6.04% for calendar year 1998, (iv) after December 31, 1998 at the rate of 6.01% for calendar year 1999, (v) after December 31, 1999 at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000 at the rate of 6.56% for calendar year 2001, (vii) after December 31, 2001 at the rate of 5.56% for calendar year 2002, (viii) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ix) after December 31, 2003 at the rate of 2.16% for calendar year 2004, (x) after December 31, 2004 at the rate of 2.07% for calendar year 2005, (xi) after December 31, 2005 at the rate of 3.66% for calendar year 2006, (xii) after December 31, 2006 at the rate of 5.42% for calendar year 2007, and (xiii) after December 31, 2007 at the rate of 5.81% for calendar year 2008, (xiv) after December 31, 2008, at the rate of 3.31% for calendar year 2009, and (xv) after December 31, 2009, at the rate of 1.23% for calendar year 2010.

This Order resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: July 12, 2010

By: Victoria L. Enyart