

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

Sears, Roebuck & Company,  
Petitioner,

v

MTT Docket No. 337849

City of Novi,  
Respondent.

Tribunal Judge Presiding  
Kimbal R. Smith III

OPINION AND JUDGMENT

A hearing was held in the above-captioned matter on July 27 & 28, 2009. Petitioner was represented by Ellen G. Berkshire and Gregory J. Lafakis of the firm of Verros, Lafakis & Berkshire, P.C. Respondent was represented by Stephanie Simon Morita, of the law firm of Secret, Wardle.

This matter involves one parcel of real property located in the City of Novi, Oakland County, State of Michigan, identified by tax parcel number 50- 22-14-100-042. Petitioner timely invoked the jurisdiction of the Tribunal for tax years 2007 and 2008. At issue are assessed, taxable, and true cash values for each of the years for the subject property.

Information relevant to the property's contested true cash, assessed and taxable values on the assessment roll is as follows:

Parcel Number	Year	AV	SEV	TV
50-22-14-100-042	2007	\$7,417,900	\$7,419,900	\$6,938,260
50-22-14-100-042	2008	\$7,419,100	\$7,419,100	\$7,097,830

### FINAL VALUES

Parcel Number	Year	True Cash Value	SEV	TV
50-22-14-100-042	2007	\$12,503,000	\$6,251,500	\$6,251,500
50-22-14-100-042	2008	\$12,503,000	\$6,251,500	\$6,251,500

### THE SUBJECT PROPERTY

The subject property consists of one parcel of land located in the City of Novi, Oakland County, State of Michigan. Parcel No. 50-22-14-100-042 is located at 27600 Novi Road and consists of 17.84 +/- acres of land and a 242,053 +/- aggregate square foot structure constructed in 1977 and is owner occupied as a department store. Included in the gross building area is an approximate 22,229 square foot auto service center. The property is one of five anchor department stores in the mall, the others being Nordstrom's, J. C. Penney, Macy's, and Lord & Taylor. The property is located in the Twelve Oaks Mall, a regional mall with approximately 1,189,000 gross leasable square feet operated by the Taubman companies.

### PETITIONER'S CONTENTIONS

Petitioner contends that as of each valuation date the assessed value of the subject property exceeded 50% of its true cash value. In support of Petitioner's position, one Exhibit (P-1) was introduced, without objection. The exhibit is an appraisal prepared by LaSalle Appraisal Group, Inc., dated October 28, 2008, that concluded to a true cash value of the subject property for both the 2007 and 2008 tax years of \$9,700,000.

Petitioner states that the proper methodology to value the property is to utilize the income capitalization and sales comparison approaches to value and that the cost approach, although

considered, was not used because typical buyers/investors would not use this approach in estimating value.

Petitioner's basic theory was predicated upon its contention that retail sales per square foot of the subject property has been declining since 2002, which Petitioner attributes to changing customer habits and tastes, as well as increased competition from "category killers" and on-line retailing (P-1, p 75). Further, Petitioner contends that the original super-regional mall design, which is the basis of Twelve Oaks design, is now obsolete by industry standards and the mall concept as configured is losing market share to stand-alone and lifestyle retail concepts.

It is Petitioner's position that most anchor retail stores are owner occupied or owned by the mall operator and, in developing its value estimate using the sales comparison approach, Petitioner utilized the sales of thirteen (13) properties that it deemed comparable (See P-1 30-48) and to which it applied qualitative adjustments to arrive at a market value estimate of \$40 per square foot or \$9,669,000, rounded to \$9,700,000, on both valuation dates.

In arriving at its value estimate using the income approach, Petitioner used a \$4.00/SF rental rate, a vacancy and credit loss of 1%, which resulted in effective gross income of \$3.96 per SF from which operating expenses of \$.19 were deducted to arrive at a net operating income of \$3.77 per SF. Petitioner determined a 9.5% (tax adjusted) overall rate was appropriate, which resulted in a value of \$9,600,000 (rounded) or \$39.64 per square foot. Petitioner concludes that the Direct Capitalization method is applicable in its income capitalization approach.

Petitioner's Highest and Best Use determination of the subject property was "as vacant." After considering the four criteria required to be analyzed of physically possible, legally permissible, financially feasible, and maximally productive, Petitioner concluded to a highest and best use of the subject property as vacant would be a commercial use. Its determination of highest and best use of the subject "as improved" would be its continued use as an anchor department store and the most probable buyer considering that use would be an owner/user (P-1 p. 26).

#### Petitioner's Witness

James M. Ryan, MAI, testified in support of the appraisal he prepared (P-1). He was qualified as an expert in the valuation of real property without objection.

In the course of his testimony, Mr. Ryan explained that the subject property compared in size and general design to other anchor stores located in super regional malls that were constructed in the 1970's and that the current industry trend is for smaller anchors, and that currently auto centers such as that located in the subject are not popular or in vogue. Sears, Montgomery Ward, and JC Penney put auto centers in their properties in the late 70's, but Montgomery Ward no longer exists, and both Sears and JC Penney are changing the auto centers to other uses.

Ryan explained the methodology he employed in arriving at the thirteen sales that he ultimately utilized in arriving at his estimate of value using the sales comparison approach. The sales occurred between January 2000 (comparable #1) and April 2006 (comparable #13). The square footage of the building area of each comparable had a range of 94,341 (comparable #2-Saks Store/Dearborn) to 254,720 (comparable #5-Magellan's/Lombard, Illinois). All of Petitioner's

comparables had fewer square feet than the subject, with nine of the comparables having less than 200,000 square feet. Ryan stated that eight of the comparables required downward unit adjustments for their small building size (Ryan's adjustment methodology made it extremely difficult for the Tribunal to determine the magnitude and validity of his adjustments).

#### RESPONDENT'S CONTENTIONS

It is Respondent's contention that the true cash value of the subject property is in excess of twice the assessed value for each tax year in this matter. The true cash value of the subject property based upon twice the assessed value of the subject as it appears on the 2007 tax roll is \$14,835,800, whereas Respondent's contention of true cash value for tax year 2007 is \$16,850,000 based on its appraisal (R-1), and for tax year 2008 is \$17,050,000 in contrast to the \$14,838,200 on the roll, which would equal twice the city's assessed value of \$7,419,100.

In support of its contention, Respondent presented two witnesses; D. Glenn Lemmon, assessor, and Eugene Szkilnyk, appraiser, in addition to five exhibits that were admitted without objection: R-1 Appraisal of the Subject Property dated October 13, 2008 with valuation dates of December 31, 2006 and 2007, prepared by Kenneth A. Blondell, MAI, and Eugene Szkilnyk of Integra Realty Resources; R-2-Petitioner's Answers to Respondent's First Discovery Requests; R-3-Petitioner's Answers to Respondent's Second Discovery Requests; R-4-Petitioner's Answers to Respondent's Third Discovery Requests; and R-6 Property Record Cards.

In support of Respondent's valuation conclusion, Eugene Szkilnyk, appraiser, testified.

Respondent's basic theory is that although Petitioner, in response to Respondent's Interrogatories, reported significant decline in annual sales at the subject property in calendar years 2004, 2005 and 2006 that resulted in sales of \$147/SF, \$126/SF and \$106/SF, respectively, Respondent's expert attributes this to business factors (poor management), rather than the property itself (R-1 p5). Respondent utilizes various publications regarding average same-store sales, together with 10K and 8K SEC filings for Federated, JC Penney, Nordstrom, Dillard's, and Saks Fifth Avenue (see footnotes 1 and 2, p3-R-1) to support its conclusion. The Tribunal notes that at the outset Respondent's expert indicated in response to questioning from the Tribunal that he had no actual in-store sales data from the other anchor department stores at Twelve Oaks other than what he had received from Petitioner.

Respondent utilized all three approaches to value: cost, sales comparison, and income capitalization, and concluded that the income capitalization approach was most applicable (R-1. p 35). The analysis of the sales comparison approach by Respondent consisted of five properties: sale #1 located in Cincinnati, Ohio, not in an enclosed Mall, was a 178,596 square foot retail property that sold in May of 2006 for \$47,700,000 or \$43.11 per square foot before adjustments; Sale #2, a 234,804 square foot retail property located in an enclosed mall at Owings Mills, Maryland, which sold for \$14,400,938 or \$61.33 per square foot unadjusted; Sale #3, a 173,141 square foot retail property within an enclosed mall at Gloucester, New Jersey, sold in July of 2006 for \$9,210,000 or \$53.19 per square foot unadjusted; Sale #4, a 258,435 square foot retail property located in an enclosed mall sold for \$16,000,000 or \$61.91 per square foot in June of 2006, and Sale #5, a 149,644 square foot Lord & Taylor store located in an enclosed mall in

Montgomery County, Maryland, which sold in November of 2006 for \$10,861,297 or \$72.58 per square foot unadjusted.

After adjustments, Szkilnyk concluded an indicated value per square foot of \$67.00 for 218,310 square feet of general retail space for a total of \$14,600,000 before adding an additional \$2,850,000 for the Auto Service Center, which Szkilnyk determined should be valued separately, for a total value of \$17,000,000 (rounded). Szkilnyk considered three sales of automotive service centers located in Oakland and Macomb Counties between March of 2002 and March of 2004. Arriving at an average per square foot selling price for the detached auto centers of \$107.63 to which he made an upward market condition adjustment to arrive at a \$120 per square foot value for tax year 2007, and a further upward adjustment of 2% for tax year 2008 to arrive at a \$122 per square foot value for the auto center, translated to a value of \$2,910,000. For 2008, the same methodology was applied to the general merchandise section of the store to arrive at a value of \$14,626,000, rounded to \$14,600,000, which resulted in a total value conclusion of \$17,500,000 using the sales comparison approach.

Respondent, in arriving at a value estimate using the income capitalization approach, used two methods: (1) Market Rents and (2) Occupancy Cost Ratio (OCR).

For Respondent's Market Rents analysis it utilized four comparable rentals. Three of the four comparables were located in Michigan with two being in Oakland County. Comparable #1 located just west of the subject at 27600 Novi Road in the Fountain Walk (lifestyle) project was

originally leased by Galyan's Trading Company, and subsequently re-leased to Dick's Sporting Goods at 12.07 sf, triple net (unadjusted). The square foot building area is 83,492.

Comparable #2 occupied by Burlington Coat factory is located at the Crossroads Mall in Portage, Michigan, at a rate of \$6.88 sf (triple net) (unadjusted). The square foot building area is 80,072.

Comparable #3 is a JC Penney store built in 2005 located in the Pittsburg Mills mall in Pittsburg, PA. The square footage of the building is 99,935 and the rental rate is 6.25 (triple net)

(unadjusted). Comparable #4 is a JC Penney store located at the Great Lakes Crossing in Auburn Hills, Michigan. The comparable is 109,099 square foot in size and leases at a \$4.73 sf (unadjusted) (triple net) rate.

### **FINDINGS OF FACT**

The Tribunal, having considered all of the documentary evidence and testimony submitted by the parties and based upon that portion of the evidence that the Tribunal finds believable and credible upon the record before it, concludes:

The subject property is located at 27600 Novi Road, Novi, Michigan, has been assigned tax parcel # 50-22-14-100-042, and has been at all times owner occupied by Petitioner.

The parcel is an irregular shaped, interior site located within the Twelve Oaks Mall and contains a land area of 777,110 square feet. Located on the site is an anchor department store (one structure) containing 241,725 square feet +/- of aggregate building space, which includes a 22,229 square foot +/- auto center under the same roof.

Currently, in addition to Petitioner, there are four other anchor tenants located at the mall: Macy's, JC Penney, Lord & Taylor, and Nordstrom's (Nordstrom's opened after the first valuation date at issue in this matter).

The structure was constructed in 1977, contemporaneous with the initial opening of the mall. When the subject improvements were constructed in 1977, in addition to Petitioner, JC Penney and Montgomery Ward often included auto centers within their properties; however, current design and marketing has dictated removal or re-design of the auto centers. The Tribunal finds that auto centers add nothing of value to anchor department stores located in upscale malls, which Twelve Oaks is found to be.

The highest and best use of the subject property as improved is continued use as an anchor department store.

Petitioner's annual sales on per square foot basis at the subject property have steadily declined from \$145.03 in 2002 to \$96.83 in 2007 (P-1 p 65).

Neither party presented any evidence as to the annual sales per square foot of any of the other anchors located at Twelve Oaks Mall for either of the tax years at issue.

Respondent, in attempting to determine an Occupancy Cost Ratio (OCR) for the subject property, utilized information from SEC filings of various department store chains (R-1, p.57).

Respondent analyzed reports filed by Federated (Macy's), JC Penney, Nordstrom, Dillard's,

Neiman Marcus, and Saks Fifth Avenue, together with the subject and Sears Holdings. For 2007 (2006 figures), Federated showed \$172 per square foot in sales, JC Penney showed \$176 per square foot in sales; Nordstrom, \$393 per square foot in sales; Dillard's, \$135 per square foot in sales; Neiman Marcus, \$807 per square foot in sales; Saks Fifth Avenue, \$397 per square foot in sales; the subject showed \$107 per square foot in sales, and Sears Holdings, \$210 for tax year 2007. (R-1 p.57)

Based on the evidence presented and the Tribunal's general knowledge of the department store industry, the Tribunal finds that Nordstrom's, Saks Fifth Avenue, or Neiman Marcus bear very little similarity to anchor department stores the likes of the subject, Macy's, JC Penney or Dillard's.

#### APPLICABLE LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value, as equalized, and that beginning in 1995, the taxable value is limited by statutorily determined general price increases, adjusted for additions and losses.

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.

MCL 211.27a (2) provides:

- (2) Except as otherwise provided in subsection (3), for taxes levied in 1995 and for each year after 1995, the taxable value of each parcel of property is the lesser of the following:
- (a) The property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions. For taxes levied in 1995, the property's taxable value in the immediately preceding year is the property's state equalized valuation in 1994.
  - (b) The property's current state equalized valuation.

MCL 211.34d(1)(b)(iii) provides that "new construction" constitutes an "addition" for the calculation of a property's taxable value and provides in pertinent part:

- (c) For taxes levied after 1994, "additions" means, except as provided in subdivision (c) all of the following:

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- (iii) New construction. As used in this subparagraph, "new construction" means property not in existence on the immediately preceding tax day and not replacement construction. New construction includes the physical addition of equipment or furnishings, subject to the provisions set forth in Section 27(2)(a) to (o). For purposes of determining the taxable value of property under Section 27a, the value of new construction is the true cash value of the new construction multiplied by 0.50.

The Michigan Legislature has defined "true cash value" to mean "the usual selling price."

As used in this act, "cash value" means the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale. MCL 211.27(1); MSA 7.27(1).

“True cash value” is synonymous with “fair market value.” *CAF Investment Co v State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735 (1); MSA 7.650 (35)(1). The Tribunal’s factual findings are to be supported by competent, material, and substantial evidence. *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Dep’t of Treasury*, 185 Mich App 458, 462-463; 452 NW2d 765 (1990). “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.” (Citations omitted) *Jones and Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

“The petitioner has the burden of establishing the true cash value of the property....” MCL 205.737 (3); MSA 7.650 (37)(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 and Laughlin* at 354-355, citing: *Kar v Hogan*, 399 Mich 529, 539-540; 251 NW2d 77 (1976); *Holy Spirit Ass’n for the Unification of World Christianity v Dep’t of Treasury*, 131 Mich App 743, 752; 347 NW2d 707 (1984).

“There are three traditional methods of determining true cash value, or fair market value, which have been found acceptable and reliable by the Tax Tribunal and the courts. They are: (1) the cost-less-depreciation approach, (2) the sales-comparison or market approach, and (3) the capitalization-of-income approach.” *Meadowlanes Limited Dividend Housing Ass’n v City of Holland*, 437 Mich 473, 484-485; 473 NW2d 636 (1991); *Antisdale* at 276-277, n 1. The market

approach is the only appraisal method that directly reflects the balance of supply and demand for property in marketplace trading. *Antisdale* at 276, n 1. “Variations of these approaches and entirely new methods may be useful if found to be accurate and reasonably related to the fair market value of the subject property.” *Meadowlanes*, at 485, referencing *Antisdale* at 277, n 1. “It is the duty of the Tribunal to select the approach which provides the most accurate valuation under the circumstances of the individual case.” *Antisdale* at 277, citing *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170; 141 NW2d 699 (1966), aff’d 380 Mich 390 (1968).

Under MCL 205.737(1); MSA 7.650 (37)(1), the Tribunal must find a property’s true cash value in determining a lawful property assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal may not automatically accept a respondent’s assessment but must make its own findings of fact and arrive at a legally supportable true cash value. *Pinelake Housing Cooperative v Ann Arbor*, 159 Mich App 208, 220; 406 NW2d 832 (1987); *Consolidated Aluminum Corp v Richmond Twp*, 88 Mich App 229, 232-233; 276 NW2d 566 (1979).

The Tribunal is not bound to accept either of the parties’ theories of valuation. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 377 NW2d 908 (1985). The Tribunal may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination. *Meadowlanes* at 485-486; *Wolverine Tower Associates v City of Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980). A similar position is stated in *Tatham v City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982): “The Tax Tribunal is not required to accept the valuation figure advanced by the

taxpayer, the valuation figure advanced by the assessing unit, or some figure in between these two. It may reject both the taxpayer's and assessing unit's approaches."

#### CONCLUSIONS OF LAW

The central issue in this dispute is: what is the true cash (market) value of the subject property for tax years 2007 and 2008. This case requires the Tribunal to determine which valuation methods are useful to determine an accurate market value estimate of the subject property and to make an independent determination of the true cash value based upon its evaluation and analysis of the evidence.

The parties, through their respective appraisers, conclude to a widely disparate value estimate for the subject property.

The Tribunal finds that although neither party's valuation of the subject property using the various approaches offers a fully supportable indicator of value, there is sufficient evidence to allow the Tribunal to make an independent determination of true cash value for both tax years 2007 and 2008.

The Tribunal agrees with Petitioner that the cost approach is not a reliable indicator of value for a building of this age and further that potential purchasers/investors do not consider the cost approach in their purchase investment decisions.

Both parties utilized the sales comparison approach in arriving at their respective estimates of value. Although eleven of the thirteen sales upon which Petitioner based its sales comparison analysis were from the Midwest, including four from Michigan, the sales generally were from the years 2000 through 2005, which the Tribunal believes were sufficiently remote in time to limit their reliability especially given the adjustment methodology employed by Petitioner's expert. The Tribunal is also troubled that on cross-examination of Petitioner's expert by Respondent's counsel, it appears that the expert had been engaged by Petitioner to prepare at least two other tax appeal appraisals for other property owned and/or operated by Petitioner at other Michigan locations and in all appraisals concluded to the same \$40 per square foot figure.

Respondent's sales comparison analysis does not fare much better in the Tribunal's mind than Petitioner's. None of the sales upon which Respondent based its sales comparison analysis were located in Michigan and only one (comparable sale #1) was located in the Midwest. The Tribunal is unconvinced by Respondent's explanation of why it did not utilize any Michigan sales and further notes that the one Midwest sale (comparable #1) yielded the lowest unadjusted per sale foot price of \$43.11. Further, as stated in the finding of facts section of this Opinion and Judgment, the Tribunal rejects Respondent's notion that the auto center portion of the subject property should be somehow separated from the subject and valued separately and, as a result, does not consider the sales comparison analysis of free standing auto centers a reliable indicator of value of a portion of the subject property. The Tribunal believes that the methodology employed by Respondent's expert is nothing other than a disingenuous attempt to drive up its overall estimate of value of the subject property. If the Tribunal were to give any weight to Respondent's Sales Comparison analysis it would be to consider final adjusted value assigned to

comparable #1 of \$50.08, which would indicate a value based on the finding that the subject should be valued based on 241,725 square feet or \$12,105,599. The Tribunal uses this amount only to test its value conclusion using the income capitalization approach, which it finds to be the most reliable indicator of true cash value based on the evidence presented, for the reason that the value conclusion is the result of one comparable sale.

Both Petitioner and Respondent have considered the income capitalization approach using the direct capitalization method. The Tribunal concludes that Respondent's Market Rents method, which analyzed actual market rents of comparables, leads the Tribunal to a better indication of value than Respondent's Occupancy Cost Ratio (OCR) Analysis ( See R-1, p55-59) because the analysis is based on average sales and costs based on a survey rather than actual rents, coupled with the fact that Respondent presented no evidence whatsoever as to actual occupancy cost ratios of the other anchor department store tenants at Twelve Oaks.

The Tribunal, however, in Respondent's market rent comparison analysis, rejects rent comparable #1, which is a big box store not similar or representative of the subject. Further, the unadjusted per square foot rental rate is out of line with Respondent's other rent comparables and not reflective of the market for anchor department stores in enclosed malls. Averaging Respondent's three other rent comparables, adjusted, yields an average rental rate of \$5.41 per square foot (triple net).

The Tribunal, having considered both Petitioner's and Respondent's Income and Expense Projections (R-1, pp 60-61 and P-1, pp 67-70), and taking from each of those items that which

the Tribunal finds most credible and supported by competent and substantial evidence, recasts the income and expenses projections as follows:

<b>INCOME</b>	
Market Rent \$5.41 x 241,725 sq/ft	
Potential Gross Income	\$1,307,732
Vacancy and Collection Loss 6%	<u>-\$ 78,463</u>
<b>EFFECTIVE GROSS INCOME</b>	\$1,229,269
<b>EXPENSES<sup>1</sup></b>	
Management Fee 2% of EGI	-\$ 24,585
Replacement Reserves <sup>2</sup> @\$.07 per sf	<u>-\$ 16,920</u>
<b>TOTAL EXPENSES</b>	-\$ 41,505
<b>NET OPEATING INCOME (NOI)</b>	<b>\$1,187,764</b>

The Tribunal has considered both parties' Income Capitalization analyses and rates derived from those analyses. Petitioner's analysis resulted in a rate conclusion of a 9.5% (tax loaded) direct capitalization rate based partly on the fact that Petitioner's expert concluded that anchor department stores in regional malls have more risks than the malls themselves and have a very limited number of users/purchasers. (P-1, pp 71-72). Respondent concluded to an 8.25% capitalization rate before tax loading and then loaded the assumed vacancy rate of 6% to arrive at a tax load of .1538% to arrive at its ultimate rate conclusion of 8.4038% for both valuation dates. The Tribunal finds that Petitioner's rationale for arriving at the higher capitalization is well reasoned and also believes that for all valuation dates in question, Michigan's overall general deteriorating economic condition increases the risk incumbent in arriving at a proper rate and adopts the 9.5% rate for both tax years.

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<sup>1</sup> A triple net lease is assumed only on those items not reimbursed under the lease and charged as expenses.

<sup>2</sup> The subject was approximately a 30 year old structure as of the first valuation date. The Tribunal accepts Petitioner's \$.07 per square foot as being extremely conservative.

Applying the 9.5% rate to the \$1,187,764 yields a true cash value of the subject property for both tax years of \$12,502,778, rounded to \$12,503,000, using the income capitalization approach.

Having determined the true cash value of the parcel at issue for both tax years 2007 and 2008, the Tribunal concludes that the assessed and taxable values for each parcel is 50% of the above determined true cash values and is reflected in the final values section of this Opinion and Judgment.

#### 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 *Final Values* 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 as required by the Final Opinion and Judgment within 90 days of the entry of the Final Opinion and Judgment. If a

refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 1995, at a rate of 6.55% for calendar year 1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a 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, (xiii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, and after December 31, 2008 at the rate of 3.315% for calendar year 2009.

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

MICHIGAN TAX TRIBUNAL

Entered: August 31, 2009

By: Kimbal R. Smith III, Tribunal Judge