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

McPherson Mansion, LLC,
Petitioner,

v

MTT Docket Nos. 348645
and 373570

City of Howell,
Respondent.

Tribunal Judge Presiding
Marcus L. Abood

FINAL OPINION AND JUDGMENT

Introduction

Petitioner, McPherson Mansion LLC, appeals the assessed value, taxable value and true cash value determined by Respondent, City of Howell, against the real property owned by Petitioner for the 2008, 2009 and 2010 tax years. Roger L. Myers, attorney, appeared on behalf of Petitioner. Dennis L. Perkins, attorney, appeared on behalf of Respondent. Witnesses appeared on behalf of both parties. They include: Steven Gronow and Laurence G. Allen for McPherson Mansion, LLC; Erin Perdu and Gladys Niemi, assessor, for the City of Howell.

The proceedings were brought before this Tribunal on April 5, 2011, to resolve the real property dispute.

At issue before the Tribunal is the determination of the assessed value, taxable value and true cash value of Petitioner's real property.

A. The property's state equalized value (SEV), assessed value (AV), and taxable value (TV), as confirmed by Board of Review or on the assessment roll:

Parcel Number 4717-36-200-001

Year	SEV	AV	TV
2008	$400,000	$400,000	$400,000
2009	$499,500	$499,500	$494,991
2010	$825,000	$825,000	$825,000

B. Respondent's revised contentions of the property's True Cash Value (TCV), SEV, and TV:

Parcel Number 4717-36-200-001

Year	TCV	SEV	TV
2008	$ 800,000	$400,000	$400,000
2009	$ 989,982	$494,991	$494,991
2010	$1,650,000	$850,000	$825,000

C. Petitioner's contentions of the property's True Cash Value (TCV), SEV, and TV:

Parcel Number 4717-36-200-001

Year	TCV	SEV	TV
2008	$ 770,000	$385,000	$385,000
2009	$ 800,000	$400,000	$400,000
2010	$ 910,000	$455,000	$455,000

D. Amounts in contention:

Parcel Number 4717-36-200-001

Year	TCV	SEV	TV
2008	$ 30,000	$ 15,000	$ 15,000
2009	$189,982	$ 94,991	$ 94,991
2010	$740,000	$395,000	$395,000

Background and Introduction

At issue for the tax years is the true cash value, assessed value and taxable value for the property located at 915 N. Michigan Avenue, Howell, Michigan. The subject parcel of land is located in the city of Howell and within Livingston County. Specifically, the subject property is located at the northeast corner of Thompson Street and North Michigan Avenue. Petitioner

purchased the subject property from Roger and Kelly Myers on August 2, 2007 for $1.00 by a quitclaim deed. Prior to this transaction, the subject property was purchased by Roger and Kelly Myers from Deutsche Bank on July 25, 2007 for $650,000 by a covenant deed. The property was originally zoned residential but converted to office use in 2009.

Petitioner's initial appeal was received by the Tribunal on May 30, 2008, and Petitioner filed motions to consolidate Docket 373570 (2009 appeal) and amend to include subsequent tax year 2010 and Orders were entered on October 29, 2010, granting those motions.

Petitioner's Arguments

Petitioner contends that the subject assessments are in excess of 50% of the true cash value of the subject property for each tax year at issue.

The subject building is a very unique structure that has a specific design consistent with historical architecture. The addition and renovations limit the marketability of the building. The design of the building is specifically for the owner occupant with the opportunity to sublease during the interim period.

Petitioner's first witness was Steve Gronow, co-owner and property manager, called to describe the physical property. Mr. Gronow described his background, involvement and development in real estate. His testimony included the historical use of the subject property, the improvements that were constructed to the property, and the use of the constructed property. Mr. Gronow was involved in the sale transaction of the subject property in August, 2007. At the time of purchase, the property was described by Mr. Gronow:

> Well at the time the LLC purchased the property, the pool had been unused for a number of years and was pretty well debilitated and in an overgrown state. The tennis court in very similar condition had been neglected for a number of years and there was a tree that had fallen into it and destroyed the fencing around it. The carriage house was in a little bit of a state of disrepair. There was a roof – some roof issues and the building needed

> work to stabilize it. The home itself was beautifully done inside due to the insurance claim on the fire, and the exterior was in reasonable condition. The grounds overall needed some maintenance with tree trimming and obviously deferred maintenance on landscaping, but the home appears to be kind of in move-in condition from an interior perspective. There was really nothing major wrong with the home itself. Day 1, TR p 16.

In other words, the condition of the dwelling was the way that Petitioner had purchased it. Various interior photographs were described depicting the condition and layout of the building.

A special use permit was applied for in order to construct an addition onto the original structure. Mr. Gronow stated, there was "…an extensive underground storm water management plan, above ground retention basins, a lot of inverted basins in the front lawns, and a complicated system of storm water management that we didn't feel was necessary but we were forced to do." Day 1, TR p 28. The site contains two principal storm water detention basins. Further, the parking requirements were revised; the number of parking spaces was reduced by the City Planning Commission.

Mr. Gronow claims the requirements for constructing the addition leaves "little flexibility in the configuration of the building." Day 1, TR p 37. In other words, the layout of the original structure and addition does not allow any changes for potential tenants.

Lastly, a description of a carriage house was given by Mr. Gronow. This structure was intended to be renovated into office space. However, no changes have taken place and this structure is used as general storage.

On cross-examination, Mr. Gronow admitted that prior to the purchase of the property he had communications with the City of Howell about the development of the McPherson property. Mr. Gronow was aware that the subject property did not have visibility or exposure similar to properties located on Grand River Avenue. Two other properties were identified as being

similar to the subject property in amenities – The Mill Pond building and the Banker's Square building. Both properties are located within Livingston County and in the city of Howell.

Mr. Gronow presented his understanding of the Cost Approach. "I think the cost approach is valid in stable economic times, but I don't believe it has any relevance in the last four years, five years." Day 1, TR p 83.

Petitioner's second witness, Laurence G. Allen, MAI, was called to discuss the valuation of the subject property. Mr. Allen is a certified general licensed real estate appraiser in the state of Michigan. The majority of his work is concentrated in the state. He primarily appraises commercial properties, including apartment buildings, office buildings, shopping centers and industrial buildings.

Mr. Allen testified to the steps he took in appraising the subject property. Mr. Allen obtained information on the property, leases, operating expenses, costs, and the cost of construction. He inspected the property and interviewed the property owners. Regarding the initial analysis, Mr. Allen considered the cost approach. However, this approach was not developed because of the unique nature of the building. The subject is not the type of building that one would replace or reproduce. There is extensive functional and external obsolescence. The building has large common areas and wide hallways. The cost approach would not provide credible determination of value for the property. The Sales Comparison and Income Approaches to value are developed in the appraisal report.

Mr. Allen discussed the issue of parking on the subject property. There are approximately 38 parking spaces but the industry standards call for 70 parking spaces. Mr. Allen stated that the parking is inadequate for the full utilization of the building. Compared to other competing properties, the deficient parking is a problem in leasing out the subject building.

Respondent's Argument

Respondent contends that the assessment shows fair market value from the initial date of purchase through 2010. Increases reflect the addition to the subject building as well as a change in zoning.

Respondent's first witness was Ms. Erin Perdu, Interim Community Development Director for the City of Howell. Ms. Perdu has been a contract employee for the past three and a half years. She is a certified planner running her own business for 13 years. Ms. Perdu testified as to the Historic Limited (HL) District for residential properties. The intent of the historic limited district is to allow residential uses in the district, preserve the integrity of historic structures, and allow some flexibility in the use of these structures through the special land use process. In particular, she testified to the relationship of this zoning to the subject property. Ms. Perdu was involved in the site plan review and the special land use request for the office use. The basic nature of the request was to renovate the existing mansion and construct an addition to the existing mansion for professional office use. Requirements imposed by the Planning Commission involved the new addition matching the existing structure in terms of materials, design, and style of the building. Planning Commission discussions did not involve how the interior of the addition was going to be configured. The only discussion regarding the interior involved the placement of windows. Again, the intent of the district deals with the exterior appearance and maintenance of the historic integrity of the site as a whole.

Respondent's second witness was Ms. Gladys Niemi, City of Howell assessor. Ms. Niemi has been the city assessor for a little over five years. She discussed the historical perspective and uncapping of the subject property. Specifically, in 2007, the classification of the property changed to commercial based on the Site Plan Approval for the proposed McPherson

LLC office complex. Prior to this event, Mr. and Mrs. Myers purchased the property from the bank for $650,000. This was a distressed sale that could not be used in the mass appraisal process.

Ms. Niemi explained her reasoning for the assessment of the subject property. The income approach was not developed for the 2008 assessment. There were no income possibilities for the property at this time. Moreover, there was an overall lack of income data within the market area. Income and expense surveys were sent out through Livingston County. Insufficient information was received from property owners to determine income data. A rent survey questionnaire was sent to Petitioner but was never returned. However, the cost and sales comparison approaches were developed by Ms. Niemi. A search for relevant sales and listings was conducted for the sales comparison approach. There were no comparable sales of niche, executive office buildings. Ms. Niemi then looked for sales of general office buildings to see if they were in line with the assessments of the subject property. Regarding the cost approach, the original portion of the building was calculated separately from the new addition. The two building portions were not considered to be equal. The calculations came up high and Ms. Niemi basically assessed the property as a general office in average condition. Ms. Niemi knows that the subject property is a unique, niche property with special amenities. "It is in no way a typical general office." Day 2, TR p 42.

For December 31, 2008, the subject property was near completion, but Ms. Niemi only made a nominal assessment change for the property. She understood the difficulties in the real estate market and gave the property owners time to secure tenants for the property. As of December 31, 2009, the construction project was complete and the property was assessed as a completed commercial building. There was a general decrease to commercial land values due to

the economy and real estate market. There was an increase in building value due to the addition.

Tribunal's Findings of Fact

The subject property is located within the city of Howell and Livingston County. Specifically, the subject property is located at the northeast corner of Thompson Street and North Michigan Avenue. The subject property was constructed in 1915 for residential use. This residential use continued up to the point of a fire that occurred between 2002 and 2004. The previous owners successfully filed an insurance claim to renovate the dwelling. However, the dwelling was never occupied after the renovations. Subsequently, the property was purchased by Petitioner in August of 2007. The entity McPherson Mansion, LLC, is comprised of Roger and Kelly Myers and Steven and Patricia Gronow. Petitioner secured a mortgage of $2,184,500 from State Bank. The building permits for the construction were issued on August 13, 2007, September 10, 2007, and May 22, 2008. A special land use permit was requested on October 10, 2007. Construction of the building addition commenced in September, 2007. A certificate of occupancy was granted in January, 2009 for the building.

Conclusions of Law

Pursuant to Section 3 of Article IX of the State Constitution, the assessment of real property in Michigan must not exceed 50% of its true cash value. The Michigan Legislature 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 burden of proof in a tax matter encompasses two 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." *Great Lakes Div of Nat'l Steel Corp*, 227 Mich App at pages 404-409. The Tribunal has a duty to make its own independent determination of true cash value only when the plaintiff has met its burden of going forward with the evidence. *Id*. at 410. In this instance, Petitioner has provided a valuation disclosure to show that the subject property was improperly assessed. This valuation disclosure was presented as an appraisal report that is purported to comply with the Uniform Standards of Professional Appraisal Practice (USPAP). The appraisal report is communicated as a "summary appraisal report." Specifically, the appraisal report develops two approaches to value – the

Income Approach and the Sales Comparison Approach. The Cost Approach was omitted from analysis.

Petitioner's appraiser, Mr. Allen, testified that the effective dates for the appraisal report were set forth in a "retrospective" fashion. Moreover, Mr. Allen analyzed the subject property on an "AS-IS" basis. However, he has no basis or knowledge of the subject property as of 7-31-2007 or 7-31-2008. Mr. Allen was unable to personally attest to the condition of the subject property as of those dates. Since Mr. Allen was unable to personally inspect or verify the condition of the subject property as of those dates, an "extraordinary" assumption must be made. Extraordinary Assumption is defined as "an assumption, directly related to a specific assignment, which, if found to be false, could alter the appraiser's opinions or conclusions." (The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice,* Washington DC: 2010-2011 edition), p U-3. Mr. Allen's reliance upon "sworn statements" as the reason for omitting conditions or assumptions is not valid. The sworn statements relate to the proposed construction of the addition to the original structure. Referencing what Petitioner could have done to the building, Mr. Allen stated, "The fact that they could have done something else doesn't really matter since we're valuing what exists as of the valuation date." Day 1, TR p 188. As of the dates under appeal, the addition did not exist. Mr. Allen's deductions (based on sworn statements) are for cost to complete and are therefore going back in time (retrospectively) to the "AS-IS" condition of the subject property. Mr. Allen analyzes the subject property in "AS-IS" for all three years under appeal. However, in doing so, the appraiser includes the subject's addition as if complete and then backs out the 'cost to complete' the addition. This methodology is flawed for two reasons. First, the subject property in "AS-IS" for the three years did not include a completed addition; the new construction was not complete until January, 2009.

Second, the appraiser says "AS-IS" by including the addition and then deducting the cost to complete (based on sworn statements). The appraiser admits he did not review any cost manuals, plans and specifications, blueprints, or previous appraisal reports in order to analyze the contributory value of the proposed construction. Personal discretion was used in relying solely on sworn statements; no other source of information was researched or verified. In addition, the analysis and use of other sources for this "cost to complete" would have negated the reason for not developing the Cost Approach.

Next, Petitioner's appraiser failed to understand and apply the analyses for the three year sales history for the subject property. Mr. Allen claims that researching the subject property's three-year sales history only involves those sales that are "arm's length" in nature. Distressed sales should not be analyzed. This contradicts the appraiser's acknowledged USPAP obligations. Mr. Allen stated, "Well we looked at the only arms length sales within the last three years." Day 1, TR p 159. On cross-examination, Mr. Allen was asked about the three-year sales history under USPAP. "It's my understanding that USPAP, you need to report ANY sales of the property within the last three years or any listings of the property for sale as of the current date." Day 1, TR p 200. Specifically, Respondent's Exhibit 3 was omitted by Mr. Allen from the sales history of the subject property. This exhibit is the warranty deed in lieu of foreclosure dated March 1, 2007 between Alfred Weston and Gloria Neville, as grantors, to Deutsche Bank, as grantee. Likewise, Respondent's Exhibit 4 was omitted from the sales history requirement. This exhibit is the quitclaim deed dated August 2, 2007 between Roger and Kelly Myers, as grantors, to McPherson Mansion, LLC, as grantee. The point of emphasis is the appraiser ***must*** disclose all sales within the past three years whether or not those sales impact the value of the subject property.

> When the value opinion to be developed is market value, an appraiser must, if such information is available to the appraiser in the normal course of business:
>
> (a) analyze all agreements of sale, options, and listings of the subject property current as of the effective date of the appraisal; and
> (b) analyze all sales of the subject property that occurred within the three (3) years prior to the effective date of the appraisal.
>
> (The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice,* Washington DC: 2010-2011 edition), Standards Rule 1-5, p U-20.

Prior sales information about the subject property was available to the appraiser in the normal course of business. The availability of any sales history data is indistinguishable; the appraiser is unable to claim retrieving one prior sale is more relevant than any other prior sale.

Next, within the Income Approach, Petitioner's appraiser has utilized only one rental comparable outside of the subject development. Lease comparables 1 through 5 are located within the McPherson Mansion. The sixth lease comparable is located in the city of Brighton. The subject leases are arms length in nature. However, these leases are not the complete evidence of market activity. Previous testimony by Mr. Gronow identified two office buildings located in the city of Howell. The Mill Pond building and the Banker's Square Building are acknowledged as having similar amenities as the subject property. However, Mr. Allen does not identify these properties in his appraisal report. No testimony was given as to the reason for not including this market rental data in the appraisal analysis. Additional rental comparable data would be relevant because the appraiser says the subject rents are close to market rents. Mr. Allen stated, "So even though the subject property has generally an inferior location to a lot of buildings and it's a rather residential neighborhood, its rents are close to like the average office rents in the market." Day 1, TR p 131. The appraiser admits there is minimal difference between general office rents and executive office rents. Thus, other lease comparables outside of the

subject building would be relevant and appropriate. Petitioner creates a second contradiction in referring to the Myers and Myers lease. Mr. Allen observed that the Myers and Myers lease is $54 per square foot, which is significantly above market rents. Mr. Allen further stated, "I concluded rent was $37.50 a square foot, which is way above any lease you'll find in this market." Day 1, TR p 136. Petitioner acknowledged that the Myers and Myers lease was not used as a comparable rental lease. However, Mr. Allen's application of an admitted larger lease rate calls into question the validity of all of the subject rental leases used in the income analysis. Basically, the subject building is predominantly owner-occupied. The building is tailored to the specific needs of the owner-occupant. The owner's needs were met above the needs of market participants. This fact diminishes the applicability of the Income Approach.

Petitioner failed to analyze/employ a functional obsolescence adjustment considering the addition to the original structure. Again, a cost approach was not developed because the appraiser relied solely upon sworn statements from the contractor. The appraiser's singular reliance on sworn statements is not a reasonable basis for overlooking functional obsolescence. The omission of additional information to analyze the proposed addition to determine the adverse effect from functional obsolescence is relevant and necessary. Ample testimony was given about the unique, niche quality of the building. Mr. Allen's cavalier approach allows the subject's exceptional condition to off-set the functional obsolescence of the building. He stated:

> I guess at the time I was thinking about this property in terms of the quality of the property. Even though it was like functional deficiencies, it's also a very nice property. And when comparing it to other properties, I felt that those positive aspects kind of washed out like the negative functional utility. Day 1, TR p 228.

Petitioner strongly believes functional obsolescence should be taken into consideration of the true cash value of the property. Yet, Petitioner's appraiser did not believe that this form of

obsolescence was necessary for analysis in the Sales Comparison Approach. Mr. Allen makes this off-setting without any discussion in this appraisal report.

Respondent did not ignore the element of functional obsolescence within the subject building. This item was not applied to the subject because the building was not yet complete. Respondent was working from a forward position; the completion of the building was the point that the property was fully assessed. This is contrary to what Petitioner did in its analysis. Petitioner worked retrospectively and assumed the building's completion to then deduct a cost to complete. The distinction here is Petitioner backed out costs from an assumed completion in retrospective fashion. Respondent went forward in time with an incomplete assessment until the subject was complete. Respondent did not ignore functional obsolescence but chose not to apply it until the subject was complete. Petitioner did ignore functional obsolescence by choosing not to apply it to a subject that was assumed to be complete.

Petitioner uses a particular methodology as a cross check to his adjustments in the Sales Comparison Approach. A "quality point" analysis was shown in the addenda portion of the appraisal report. This methodology was not explained in the report or by Mr. Allen in testimony.

> First of all, it's not a primary method of valuation, it's just a check on the adjustments that were made in the report to determine how well these adjustments account for the difference in sale prices of the comparables, so it's --- it's a test or a check. And second, this is a summary report, and this is a summary of analyses. Day 1, TR p 231.

Petitioner believes this quality point grid by itself is a sufficient summary for a reader to understand the analysis. Again, Mr. Allen does not give any basic narration to lead a reader through this process. There was no evidence showing that this methodology is commonplace in appraisal practice or theory. Mr. Allen's report did not give any explanatory narration about the attributes of this methodology. Again, this analysis is set outside of the report in an appendix.

An appraiser has the responsibility to explain a process that supports his adjustments. This is the essence of the appraisal standards that an appraiser must do when he invokes USPAP.

Mr. Allen testified that he alone had full control of his appraisal report. He is the only signing author of his appraisal report. As is common in appraisal practice, the signing author may acknowledge the assistance of other individuals. In this instance, the appraiser includes the following statement within the certification on page 11 of his appraisal report.

> The appraiser acknowledges the assistance of David Lieberman in the market research, analyses and drafting of this report. The conclusions and opinions concerning the real estate that are set forth in this appraisal report are those of the appraiser. Laurence G. Allen, MAI and David Lieberman have personally inspected the property.

David Lieberman assisted in some analyses of this report. Mr. Allen testifies to this fact in a quite confusing manner. "He didn't do any analysis. He assisted me with the analysis, so that means he did some field work and that he prepared drafts and he worked with me on developing charts, but it was my opinions on all the valuation issues that are in this report." Day 1, TR p 197. Simply, Mr. Allen's written certification is not consistent with his testimony. The clarification of what is meant by "analysis" is not clear. There are different types of analysis that Mr. Allen fails to articulate. This is a crucial point because Mr. Allen is unclear how assessor's cards were obtained for his analysis. In initial testimony, Mr. Allen claims he didn't know if assessor's records for the subject property were in his workfile. In later testimony, he restated this information was obtained by Mr. Lieberman. The retrieval and analysis of this assessor's information is significant in light of facts presented by Ms. Niemi, City of Howell Assessor. For tax years 2008, 2009, and 2010 the millage rates for the property are not 55.8527, 56.9173, and 56.8173, respectively as stated by Mr. Allen in his report. Rather, the correct millage rates are 53.5166, 54.5812, and 54.5812 respectively. Regardless of how information is gathered or who

gathers information, the signing author is responsible for the entire appraisal report. In fact, David Lieberman is a Limited Appraiser within the State of Michigan. This is not disclosed in the appraisal report. Mr. Allen's explanation of Mr. Lieberman's assistance is not meaningful or convincing.

Petitioner admits to "significant obstacles….that came with the property and was a fundamental part of what was going to need to be addressed as part of the conversion to a non-residential use." Day 2, TR p 143. Petitioner admits that the property had difficulties right from the onset. Petitioner's necessity in purchasing the subject property is unclear where other buildings may have been offered for sale. Again, Petitioner was aware of the complexities of the property at the point of sale. The unique, niche aspects of the building did not surface after the sale transaction date. Petitioner had full avail of decision-making processes to step aside from the purchase of the property. However, it was Petitioner's decision alone to construct an addition to the original dwelling. The floorplan and layout was suitable for Petitioner's law practice. Petitioner proceeded to construct an addition that presented similar functional issues. Petitioner was not required to construct an addition; the owners had a grand plan to grow their law practice with greater space. Petitioner states "….and the ultimate construction of the addition was one that was borne not necessarily out of desire, but out of necessity to preserve the original integrity of the building that this city so desired to have that they adopted a historic limited district to preserve that original building." Day 2, TR p 175. Petitioner had an obligation to construct an addition that was consistent with the exterior of the original dwelling. The interior of the addition was not required to conform to the interior of the original structure. Petitioner created an interior suited for its needs and then attempted to present this layout to the

market as executive offices. There is no evidence or testimony that showed Petitioner was required to follow the same interior pattern for the addition as existed in the original building.

The marketability and appeal of the subject property was noteworthy before the number of parking spaces became an issue. In other words, Petitioner knew this was a unique, niche property well before the change in parking spaces occurred. Initially, a greater number of parking spaces were allowed based on the gross building area of the subject. The reduction in the number of parking spaces did not singularly impact the property's marketability and appeal.

Petitioner questions Respondent's absolute adherence to a cost approach as the best methodology to determine the fair market value. Yet, Petitioner maintains "this building has always been owner-occupied, and it still is owner-occupied." Day 2, TR p 172. Petitioner admits the lack of data for the income approach but does not allow the same consideration to Respondent's omission of this approach to value.

> The reality, though, is that the lease rates are not there, the cap rates are not there and the overall what an investor in this market, what a willing buyer would pay, which determination of the fair market value, they're suggesting that a willing buyer would come and look at this property and say whatever it costs to do this, that's what I'd be willing to pay. *Id.* 172

Respondent's consideration of other approaches to value does not automatically evolve into an actual use of an approach to value. Moreover, this consideration does not carry the responsibility of producing elements of analyses such as capitalization rates, rental rates or comparable sales. Respondent's omission of these approaches to value was based on a lack of data. Petitioner's appraiser admits to the same lack of rental and sales data in his report.

Petitioner's argument that Respondent's application of the Cost Approach strengthens Petitioner's Sales/Income Approaches is unrelated. Petitioner must prove that its applied

approaches are more credible and thus meet its burden of proof. Petitioner is unsuccessful in this regard. Petitioner's opinions, analyses and conclusions are not reasonably supported. Moreover, Petitioner's valuation disclosure presented as an appraisal report is not meaningful (Standard 1) and is misleading (Standard 2) by the very standards and ethics that Petitioner's appraiser invokes.

The Tribunal finds that Petitioner was not able to show that the property was over-assessed for the tax years at issue. As such, and in light of the above, the Tribunal finds that Petitioner has failed to meet its burden of going forward with competent evidence on the issue of true cash value, assessed value and taxable value. Respondent has provided credible documentary evidence and testimony to support the subject property's assessment for the tax years at issue and, as such, the Tribunal finds that the assessment is fair and reasonable.

Judgment

IT IS ORDERED that the revised assessments at issue are AFFIRMED.

IT IS FURTHER ORDERED that the property's 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 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 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, 2006 at the rate of 5.42% for calendar year 2007, (ii) after December 31, 2007 at the rate of 5.81% for calendar year 2008, (iii) after December 31, 2008, at the rate of 3.31% for calendar year 2009, (iv) after December 31, 2009, at the rate of 1.23% for calendar year 2010, and (v) after December 31, 2010, at the rate of 1.12% for calendar year 2011.

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

MICHIGAN TAX TRIBUNAL

Entered: August 2, 2011 By: Marcus L. Abood