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

Target Corporation
Petitioner,

v

MTT Docket No. 361955

City of Auburn Hills,
Respondent.

Tribunal Judge Presiding
Marcus L. Abood

**OPINION AND JUDGMENT**

Petitioner, Target Corporation, appeals the ad valorem property tax assessment levied by Respondent, City of Auburn Hills, against the real property owned by Petitioner for the 2009, 2010, and 2011 tax years.

A hearing was held on January 23, 2012, to resolve the real property tax dispute. Michael B. Shapiro and Daniel L. Stanley, attorneys at Honigman Miller Schwartz and Cohn, LLP, appeared on behalf of Petitioner. Derk W. Beckerleg, attorney at Secrest Wardle PLC, appeared on behalf of Respondent. Laurence G. Allen, MAI, was Petitioner's valuation witness. Larry T. McKnight, MAI, and Micheal R. Lohmeier, MAI, were Respondent's valuation witness.

SUMMARY OF JUDGMENT

The subject property's 2009, 2010, and 2011 True Cash Values (TCVs), Assessed Values (AVs), and Taxable Values (TVs) as determined by Respondent are:

Parcel No. 14-04101-007

| | Respondent | | |
|---|---|---|---|
| Year | TCV | SEV | TV |
| 2009 | $10,706,340 | $5,535,170 | $5,066,510 |
| 2010 | $9,721,340 | $4,860,670 | $4,860,670 |
| 2011 | $8,818,540 | $4,409,270 | $4,409,270 |

Respondent also presented an appraisal contending the values are:

Parcel No. 14-04101-007

| | Respondent | | |
|---|---|---|---|
| Year | TCV | SEV | TV |
| 2009 | $11,692,000 | $5,846,000 | $5,066,510 |
| 2010 | $10,947,000 | $5,473,500 | $4,860,670 |
| 2011 | $10,926,000 | $5,463,000 | $4,409,270 |

Petitioner's contentions are:

Parcel No. 14-04101-007

| | Petitioner | | |
|---|---|---|---|
| Year | TCV | SEV | TV |
| 2009 | $8,000,000 | $4,000,000 | $4,000,000 |
| 2010 | $6,450,000 | $3,225,000 | $3,225,000 |
| 2011 | $6,000,000 | $3,000,000 | $3,000,000 |

The Tribunal's conclusions are:

Parcel No. 14-04101-007

| | | | |
|---|---|---|---|
| Year | TCV | SEV | TV |
| 2009 | $7,956,000 | $3,978,000 | $3,978,000 |
| 2010 | $6,713,000 | $3,356,500 | $3,356,500 |
| 2011 | $6,216,000 | $3,108,000 | $3,108,000 |

## GENERAL PROPERTY DESCRIPTION

The subject property is known as a Target store, and is located at 650 Brown Road, in the city of Auburn Hills, Oakland County, Michigan. The building contains 124,315 square feet on 9.47 acres. It is a typical big box construction built to suit the Target Store model.

## SUMMARY OF PETITIONER'S CASE

Petitioner presented testimony from its appraiser, Laurence G. Allen, MAI. Mr. Allen has appraised big box stores for Wal-Mart, Target, K-Mart, and Lowe's on behalf of property owners, for tax appeals, and for the Michigan Department of Treasury. Based on his experience and training, the Tribunal accepted Mr. Allen as an expert appraiser.

In support of its value contentions, Petitioner offered the following exhibits, which were admitted into evidence:

P-1: Petitioner's appraisal report prepared by Laurence G. Allen.
J-1: Covenant Deed for 2150 N. Telegraph Road, Frenchtown Township, Monroe, Michigan.
J-2: Covenant Deed for 300 N. Opdyke Road, Oakland County, Auburn Hills, Michigan.

Mr. Allen testified to the difference between a fee simple interest and a leased fee interest. The real property is being appraised, not the occupancy of the property. The subject property was appraised in fee simple interest; the property was appraised as if unleased, vacant, and available for sale.

Mr. Allen testified about the subject market area, as well as the market conditions for the three years under appeal. Changes in the auto industry impacted the Detroit Metropolitan Statistical Area (MSA). The number of employees decreased, and unemployment increased. Changes in building permits, the decline in residential values, and less consumer spending were acknowledged during this timeframe.

The subject property and neighborhood are dominated by two major developments; the Auburn Mile, is a retail development and the Great Lakes Crossing, a regional value center. The subject directly fronts I-75 and has excellent visibility. Mr. Allen states, “[t]he access to the subject site is off of Brown Road through a shared access road that provides access to the JoAnn property, Target property, the Meijer property and several restaurant properties.” (TR, Vol 1, p 256) The traffic count on I-75 near the subject property is 80,000 – 90,000 a day.

Mr. Allen identifies the subject building as an average quality discount store. He inspected the building in May and July, 2011. Numerous interior and exterior photographs were taken of the subject property.

When questioned as to what motivates a retailer to construct a big box store, Mr. Allen explained that they are built to fulfill a business plan and model. This is done to penetrate a particular market and to maximize the retail sales for the store and company. Big box retailers are not motivated by the resale value of the stores. Big box stores have the lowest selling prices per square foot of retail properties. Mr. Allen explained that, when sold, big box stores are renovated or converted to a multi-tenant building. Another big box store purchaser will either change the facades, flooring, lighting, etc., or will demolish the existing building and rebuild for its specific use.

Petitioner references an obsolescence analysis on page 86 of Petitioner's Exhibit P-1. Mr. Allen states, "[t]hat's some examples of retail stores that were purchased and principally demolished for redevelopment by another retailer." (TR, Vol 1, p 264) These are newer big box stores that were suitable for retail but were more cost effective to demolish and build a new store.

Mr. Allen considered the sales comparison, income, and cost approaches to value in his appraisal report. Further, all three approaches were developed and analyzed to arrive at conclusions to value.

Mr. Allen believes that the sales comparison approach is the most reliable indicator to determine the fee simple market value for the subject property. Data for sales and offerings of big box stores is better than data of re-leasing of existing big box stores. The comparison analysis focused on existing big box stores that were owner occupied and build-to-suit. Mr. Allen's appraisal contains six sales and eight listings of big box stores. The comparable sales data indicates variations in location, age, and dissimilarities in market conditions.

Mr. Allen testified that the unadjusted sale prices per square foot range are $15.00 to $54.00. All fourteen comparables are located in southeast Michigan. There was sufficient data within southeast Michigan for comparison analysis. Write-ups and photographs of each comparable sale are included in the appraisal report.

Mr. Allen stated that the two biggest factors to consider in sales comparison adjustments are the difference in market conditions (with the economic collapse that occurred in late 2008) and then the difference in location. The age and condition of a comparable sale is less significant because a purchaser is going to make major renovations or demolish the existing structure.

The adjustment for difference in location was explained by Mr. Allen. Purchasing power within a market area is based on population, households, income, visibility, exposure, traffic count, accessibility, surrounding land uses, and neighborhood trends. The subject property is located in the Detroit Metropolitan Statistical Area ("MSA").

The following six sales are analyzed by Mr. Allen in determining the market value of the subject property:

| Sale # | 1 | 2 | 3 | 4 | 5 | 6 |
|---|---|---|---|---|---|---|
| Location | Dearborn | Lincoln Pk | Madison | Sterling Ht. | Frenchtown | Auburn Hills |
| Sale Date | Jan-06 | Dec-04 | Feb-05 | Mar-06 | Dec-09 | Apr-11 |
| Square Feet | 192,000 | 193,446 | 113,290 | 111,285 | 124,631 | 151,336 |
| Year Built | 1993 | 1994 | 1986 | 1996 | 1992 | 1996 |
| Sale Price | $9,650,000 | $10,500,000 | $7,250,000 | $4,500,000 | $2,765,000 | $2,250,000 |
| SP/SF | $50.26 | $54.28 | $64.00 | $40.44 | $22.19 | $14.87 |
| Adjusted SP/SF<br>(2009)<br>(2010)<br>(2011) | <br><br>$63.33<br>$50.66<br>$48.13 | <br><br>$71.13<br>$56.90<br>$54.06 | <br><br>$60.05<br>$48.04<br>$45.64 | <br><br>$67.93<br>$54.35<br>$51.63 | <br><br>$61.01<br>$48.81<br>$46.37 | <br><br>$53.80<br>$43.04<br>$40.89 |

Mr. Allen adjusted all of the sales for differences in market condition. All six comparables have inferior locations and are adjusted upward. All six sales comparables were similar to the subject in size. All six sales are superior in age/condition and are adjusted downward to the subject. Testimony was given regarding qualitative adjustments applied to each of the comparable sales.

Deed restrictions in two of the sales were considered and analyzed. Mr. Allen had discussions with brokers and buyers about any negative impact to the sale prices. “Well, the buyers had particular uses for the property and the deed restrictions were negotiated in such a way that they didn’t impact the use or wouldn’t impact the price that the buyer was paying for the property.” (TR, Vol 2, p 10)

In addition, Mr. Allen provided summary information of eight comparable listings indicating the square feet, tenant(s), and listing price per square foot for the year(s) the property was listed. The summary includes the range of listing prices per square foot, as well as the average for each of the tax years at issue. The range of listings for 2008 is $36.88 to $47.75 with an average asking price of $44.57 per square foot. The range of listings for 2009 is $14.05 to $43.89 with an average asking price of $30.15 per square foot. The range of listings for 2010 is $15.26 to $36.36 with an average asking price of $26.67.

After analyzing the comparable sales, adjusting for differences in amenities, and reviewing the listings, Mr. Allen concluded to a value for the subject property of $65.00 per square foot ($8,080,000) as of December 31, 2008; $52.00 per square foot ($6,460,000) as of December 31, 2009; and $49.00 per square foot ($6,090,000) as of December 31, 2010, for the opinions of market value.

Mr. Allen began the discussion of his income approach by distinguishing between three different markets for big box stores: the existing rental market; the build-to-suit lease market; and the build-to-suit re-lease market. The rental market for existing stores is based on market conditions, as well as supply and demand. In this market, an existing property is exposed to the market for a reasonable amount of time. On the other hand, the build-to-suit lease is based on a direct negotiation between a developer and a user. This cost of construction is based on custom design that includes a profit to the developer. The build-to-suit lease involves a property that is not yet in existence. Rents vary between an existing building, and a non-existent, build-to-suit property. In general, market rents are lower than build-to-suit leases, because discounting is required for extensive retrofitting. A build-to-suit store is custom designed based on the specific needs of the original user. Petitioner has placed emphasis and reliance on existing leases as opposed to build-to-suit leases for these noted differences.

Petitioner's valuation disclosure is conveyed on the foundation of a fee simple interest. Mr. Allen explained that the fee simple interest is an acquisition of a property as unleased and vacant. Contrarily, a leased fee interest is based on the value of a property subject to an existing lease. There may be a value difference for the same property dependent on the interest appraised. Mr. Allen's explanation of fee simple and leased fee was necessary in determining market rent and market adjustments for the subject property within the income approach.

In the income approach, Mr. Allen determined that the subject property should be valued as vacant and available for lease in fee simple manner. He presented big box store leases, build-to-suit leases, and build-to-suit big box store re-leases.

Mr. Allen provided twenty rental comparable properties that were leased or offered for lease in the open market. Specifically, seven properties were build-to-suit leases ranging from $6.16 to $12.25 per square foot. Thirteen properties were existing leases ranging from $2.00 to $6.80 per square foot. Mr. Allen compared the difference between the original build-to-suit leases and the existing market lease rates. Several leases were adjusted for tenant improvement allowances. The average build-to-suit lease was $9.22 per square foot. The average existing building lease was $5.32. The overall average lease was $6.68 per square foot. The analyzed final triple net rent was $7.25 per square foot as of December 31, 2008, $6.75 per square foot as of December 31, 2009, and $6.25 per square foot as of December 31, 2010.

The next step in the income approach was to determine the vacancy and credit loss. Mr. Allen relied upon CoStar Quarterly Reports, conversations with real estate brokers, and competing market data to conclude to a 10% vacancy and credit loss. This is based on retail vacancies in the market and the length of time to lease a big box store.

The reimbursable operating expenses are common area maintenance (CAM), property taxes, and insurance expenses. Mr. Allen estimated the expenses utilizing *Dollars and Cents of Shopping Centers* for 2008. These expenses are incurred by a landlord when the property is vacant. The owner would be responsible for the management fee for the triple net lease, as well as reserves for capital improvements.

Mr. Allen calculated gross income from the rental rate per square foot. Vacancy and credit losses were deducted for an effective gross income; operating expenses were deducted to equal the net operating income (NOI). Mr. Allen considered capitalization rates from extracted sales, band-of-investment, and investor surveys. His decision for the overall capitalization rate (OAR) was 9.00%, 10.00%, and 10.00%, respectively, for the three years under appeal. Emphasis and reliance was placed on RealtyRates surveys because they relate to investor expectations with respect to single occupant retail buildings. (TR, Vol 2, p 49)

After capitalizing the NOI, Mr. Allen deducted leasing commissions to arrive at indications of true cash value of $7,650,000 ($61.53 per square foot) as of December 31, 2008; $6,370,000 ($51.24 per square foot) as of December 31, 2009; and $5,860,000 ($47.13 per square foot) as of December 31, 2010.

Mr. Allen also developed a cost approach to value, but it was not used as a primary indication of value. The cost analysis included a re-lease study and an obsolescence analysis. He states, "[t]he primary reason is during this time period in this market the buyers weren't relying on the cost approach and their acquisitions. And with the cost approach there's substantial depreciation, especially in the form of functional and external obsolescence. It's difficult to accurately quantify." (TR, Vol 2, p 56) Rather, this approach served as a check to the sales comparison and income approaches. The sales comparison approach was the primary indicator of value because the sales data is considered more reliable than the rental data.

SUMMARY OF RESPONDENT'S CASE

Respondent presented testimony from its appraisers, Micheal R. Lohmeier, MAI, and Larry T. McKnight, MAI as well as its assessor, Victor Bennett. In support of its value contentions, Respondent offered the following exhibits, which were admitted into evidence:

R-1: Respondent's Appraisal Report prepared by Micheal R. Lohmeier and Larry T. McKnight.
J-1: Covenant Deed for 2150 N. Telegraph Road, Frenchtown Township, Monroe, Michigan.
J-2: Covenant Deed for 300 N. Opdyke Road, Oakland County, Auburn Hills, Michigan.

Larry T. McKnight, MAI, co-authored an appraisal of the subject property. He testified that the sales and income approaches did not show any obsolescence. Rents in the Auburn Hills market area were stabilized and were not in decline. Likewise, there was no application of vacancy and credit loss, because Auburn Hills is market responsive.

Micheal R. Lohmeier, MAI, also co-authored the appraisal of the subject property. He described and analyzed the southeast Michigan, Oakland County, and Auburn Hills market areas. He testified to population, employment, and employers in the subject market area. It was noted that approximately 80% of Auburn Hills is developed with commercial/industrial. There is a small percentage of residential development. This is an important consideration because most of the people that work in Auburn Hills are commuters. Analysis of big box retail development in nearby or adjacent communities is necessary.

Mr. Lohmeier further describes major activities that have occurred in Auburn Hills since 2005. (TR, Vol 3, pp 193-194) This description included such activity as the opening of a Cooley Law School campus on Featherstone Road. FEV Engine Tech, Bose North America, Magna-E-Car all have expanded operations in Auburn Hills.

Respondent analyzed the sales volume of the subject store. The store manager was interviewed and the store sales for the first 10 months of the year were $3.0 to $3.5 million per month. For November and December (peak months) the average is $6.0 million per month. The total average sales are divided by the gross building area to arrive at an indication of sales volume per square feet. (Respondent’s Exhibit R-1, p 58) Mr. Lohmeier testified that this analysis was not for the purpose of valuation, but used for an indication of the subject’s favorable location.

In regards to obsolescence, Mr. Lohmeier reiterates, “[t]he benefit of the subject property’s existing floor plan and design is one that offers opportunities for big box retail…With that stated, we have found no indication for functional obsolescence in this property. We further have found no evidence that the property would incur any external obsolescence.” (Respondent’s Exhibit R-1, p 71)

Respondent considered and applied all three approaches to value. The cost approach was applicable because the subject is newer and is void of functional or external depreciation. Buyers and sellers would consider the cost approach based on the new construction that took place in the last five or six years prior to the tax years under appeal. The income approach is applicable because the opportunity to rent an existing property is potentially more economical than buying a new existing property. The sales comparison approach is applicable because it provides a principle of the motivations between a buyer and seller for what a property is worth. (TR, Vol 3, p 226) In other words, the sales comparison approach reflects the actions and motivations of buyers and sellers in this real estate market. Respondent then concludes that all three approaches are given equal weight and consideration in the final conclusions of value.

Respondent developed and communicated a cost approach to value. The initial step in this approach was developing a land value. Seven land sales with unadjusted prices per square foot of $5.34 to $10.14 were analyzed. After concluding to land values for the three years under appeal, replacement costs were developed for the subject improvements. An age-life method for depreciation was calculated but reliance was placed on Marshall Valuation Service for the physical depreciation of five percent. Respondent's appraisal co-authors stated, "[w]e did not identify, recognize, or measure functional or external obsolescence associated with the subject property. Therefore, no deduction is made in this regard." (Respondent's Exhibit R-1, p 118) The following is Respondent's cost approach conclusions table:

| As of | 12-31-2008 | 12-31-2009 | 12-31-2010 |
|---|---|---|---|
| Replacement Cost | $9,410,770 | $9,076,361 | $9,361,043 |
| Depreciated Cost | $8,940,232 | $8,622,543 | $8,892,991 |
| Plus Land Value | $3,110,000 | $2,448,000 | $2,116,000 |
| Indicated Value | $12,050,232 | $11,070,543 | $11,008,991 |
| Concluded Value (Rounded) | $12,050,000 | $11,071,000 | $11,009,000 |

Respondent developed and communicated a sales comparison approach to value. Seven sales within southeast Michigan were analyzed. The unadjusted sale prices per square foot range from $64.00 to $118.38.

| Sale # | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|---|
| Location | Dearborn | Madison Heights | Port Huron | St. Clair Shores | Lincoln Park | Dearborn | Westland |
| Sale Date | Jan. 2006 | Feb. 2005 | April 2006 | June 2004 | March 2004 | Jan. 2008 | Jan. 2008 |
| Square Feet | 192,902 | 113,290 | 136,430 | 127,371 | 205,459 | 76,581 | 77,065 |
| Year Built | 1993 | 1986 | 1993 | 1967 | 1994 | 1986 | 1987 |
| Sale Price | $19,650,000 | $7,250,000 | $16,150,000 | $10,000,000 | $14,900,000 | $6,804,000 | $6,808,000 |

| Sale # | 1 | 2 | 3 | 4 | 5 | 6 | 7 |
|---|---|---|---|---|---|---|---|
| SP/SF | $101.87 | $64.00 | $118.38 | $78.51 | $72.52 | $88.85 | $88.34 |
| Adj SP/SF (2009) | $94.82 | $86.94 | $111.98 | $88.43 | $86.52 | $107.02 | $106.43 |
| (2010) | $84.29 | $77.28 | $ 99.54 | $78.61 | $76.90 | $ 95.24 | $ 94.72 |
| (2011) | $84.29 | $77.28 | $ 99.54 | $78.61 | $76.90 | $ 95.24 | $ 94.72 |

All seven sales were adjusted downward for the difference of superior market conditions. Sales 2, 5, 6, and 7 were adjusted upward for inferior locations. Sales 1, 3, and 5 have larger building sizes and are adjusted downward to the subject. Sales 2, 6, and 7 have smaller building sizes and are adjusted upward to the subject. Other adjustments included differences for effective age and clear height.

After analyzing the comparable sales, and adjusting for difference in amenities, Mr. Lohmeier concluded to a value for the subject property of $90.00 per square foot ($11,188,000) as of December 31, 2008; $80.00 per square foot ($9,945,000) as of December 31, 2009; and $80.00 per square foot ($9,945,000) as of December 31, 2010, for the opinions of market value.

Respondent developed and communicated an income approach to value. Mr. Lohmeier utilized a direct capitalization method to conclude to an indication of value. "We felt looking at one year's income and capitalization process was relevant for this property, and it's the most meaningful in this valuation and the most easiest to understand from a user perspective." (TR, Vol 4, p 8) Initially, six big box leases were analyzed on a triple net basis. Rental 1 is JoAnn Etc. which is connected to the subject property. Mr. Lohmeier's concluded rental rate of $9.00 per square foot is the same for each year under appeal. He stated his reasons:

> Majority of consideration is applied to Rental 1 as it is located adjacent to the subject property. Therefore a reasonable unit of comparison for the subject property's economic (i.e., market) rent is $9.00 per square foot. Because <u>no market conditions adjustment</u> are considered warranted, this $9.00 per square foot is used as the basis for our analyses for all three effective dates of appraisal, despite the little change that occurs as a result of any lease escalation step-ups. (Respondent's Exhibit, R-1, p 158)

This concluded rent per square foot was cross checked with an estimated rents for feasibility study (Respondent's Exhibit, R-1, p 162) This feasibility study was another test of logic for the older rental rates that were applied to the current effective dates of the appraisal.

The potential gross income for the subject property for each year is $1,118,835.00 (124,315 square feet multiplied by $9.00 per square foot). The vacancy and credit loss was considered, but there has been no vacancy for big box stores in the Auburn Hills market area in the past ten years. The subject would be leased out on a relatively long-term basis and an investor would not consider an amount for vacancy and bad debt for the property. The potential gross income and effective gross income are the same. Mr. Lohmeier's further analysis indicates an estimated 2% deduction for a management expense and a $0.25 per square foot deduction for replacement expenses as of December 31, 2008. Replacement expenses for December 31, 2009 and December 31, 2010 are $0.26 per square foot. The result is net operating incomes of $1,065,380, $1,064,136, and $1,064,136 for each year.

Mr. Lohmeier reviewed and considered several sources in the determination of capitalization rates for the income approach. PriceWaterhouseCoopers/Korpacz Real Estate Investor Survey, RealtyRates.com Regional Market Survey, and Real Estate Research Corporation (RERC) were reviewed. Respondent reconciled the strengths and weaknesses of each source to conclude to a capitalization rate of 9.00% for each year.

The net operating income was divided by the capitalization rates. The indicated value via the income approach is $11,838,000 ($95.22 per square foot) as of December 31, 2008, $11,824,000 ($95.11 per square foot) as of December 31, 2009, and $11,824,000 ($95.11) as of December 31, 2010.

Mr. Lohmeier researched additional lease and sale data of ten big box stores. This data is described as ancillary information that was considered in addition to his three approaches to value. In the final reconciliation, all three approaches were considered and used in the appraisal assignment. In other words, equal weight was given to all three approaches to value in the final conclusions.

## FINDINGS OF FACT

1. Subject property is located at 650 Brown Road, city of Auburn Hills, Oakland County.
2. Subject building was constructed in 2000.
3. Subject building contains 124,315 square feet.
4. Subject property has a total of 9.47 acres.
5. Subject property is zoned B-2, General Commercial District.
6. Subject property is an owner-occupied big box store.
7. The occupant of subject property should not influence the market value of the property.
8. The subject is not an income-producing property; the property is owner-occupied.
9. The subject is located in the Detroit Metropolitan Statistical Area (MSA).
10. The subject is located east of Baldwin Road, north of I-75, and west of Joslyn Road.
11. The subject property is located within the “Auburn Mile”.
12. The population of Auburn Hills is approximately 20,000.
13. The traffic count for the subject near Interstate 75 in 2009 was 82,800 vehicles.
14. Both parties have furnished valuation disclosures in the form of appraisal reports.
15. Both parties have appraised the subject property as a fee simple interest.
16. Petitioner values the subject as vacant and available for use.
17. Respondent values the subject as a single occupant use property.
18. Petitioner analyzed functional and external obsolescence in the subject property.
19. Respondent does not consider any functional or external obsolescence in the subject property.
20. Petitioner’s final reconciliation places greatest weight on the sales comparison approach.
21. Respondent’s final reconciliation places equal weight on all three approaches to value.
22. Both parties have analyzed the comparable sales located at 5851 Mercury Rive, Dearborn, 800 East 14 Mile Road, Madison Heights, and 3710 Dix Highway, Lincoln Park.
23. Petitioner utilizes six comparable sales for analysis purposes.
24. Petitioner utilizes eight comparable listings for analysis purposes.

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.

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

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

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

The Michigan Supreme Court has determined that "true cash value" is synonymous with "fair market value." See *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450; 221 NW2d 588 (1974).

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 must 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 Department 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. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

"The petitioner has the burden of establishing the true cash value of the property...." MCL 205.737(3). This burden encompasses two separate concepts: (1) the risk of persuasion, which does not shift during the course of the hearing; and (2) the burden of going forward with the evidence, which may shift to the opposing party. *Jones & Laughlin* at 354-355.

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 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 Limited Dividend Housing Association v City of Holland*, 437 Mich 473, 485- 486; 473 NW2d 636 (1991).

The three most common approaches to valuation are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach. *Meadowlanes*, at 484-485; *Pantlind Hotel Co v State Tax Commission*, 3 Mich App 170; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968).

The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale*, p 277. Pursuant to MCL 211.27(5), “the purchase price paid in a transfer of property is not the presumptive true cash value of the property transferred.”

## CONCLUSIONS OF LAW

Petitioner developed and analyzed all three approaches to value, but places primary weight on the sales comparison approach. Respondent developed and analyzed all three approaches to value; all three approaches were given equal weight in its final conclusions of value. The appraisers were charged with determining market value of the subject property for the three years under appeal.

Petitioner was able to explain and provide documentation for the sales comparison approach. Mr. Allen provided extensive listings and sales of big box stores throughout the state. The data included comparables in southeast Michigan. He analyzed six sales and eight listings for each year under appeal. The data illustrated to the Tribunal the decline in asking prices over a three-year period. The comparable data was analyzed in conjunction with supported market conditions. Mr. Allen’s application of available data to the subject property is persuasive. Therefore, Petitioner's sales comparison approach is meaningful to the final conclusions of value.

Petitioner's comparison analysis and adjustments reflect market actions; however, Petitioner's reconciliation of the adjusted sale prices for the three years under appeal is incomplete. The reconciliation of approaches is similar to the reconciliation of sales data. Reconciliation is an appraiser's opportunity to fill in gaps, and to prove overall logic and reasoning for the value conclusions. In this instance, Petitioner's data, even after adjustments, indicates a given range in adjusted sales prices. "Even when adjustments are supported by comparable data, the adjustment process and the values indicated reflect human judgment." Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13th ed, 2008), p 313. The strengths and weaknesses of each comparable sale are examined for reliability and appropriateness. Petitioner's adjustments for all three years are the same, except for the market conditions adjustment. Petitioner has provided sufficient support for the market conditions adjustment; nonetheless, certain sales are more germane for each year under appeal. The sales comparison approach for each year is reconciled with the similarities and dissimilarities of each comparable sale. The Tribunal agrees with Petitioner's sales comparisons, but disagrees with the reasoning for the concluded prices per square foot.

In regards to the 2009 valuation, Petitioner's sale 4 has minimal market condition adjustments and sold in March, 2006. This sale is more applicable to the 2009 value. While Sales 5 and 6 help to bracket the relevant time period, they sold after December 31, 2008, and are less applicable to the 2009 value. Sale 2 is the oldest sale occurring in 2004; this sale is less reliable. Sale 3 has relatively less adjustments. Therefore, a reasoned and reconciled price per square foot for the 2009 valuation is $64 or calculated as a value of $7,956,160.

In regards to the 2010 valuation, Petitioner's sale 5 is the closest to the December 31, 2009, tax date. This sale has a zero market conditions adjustment, but has larger total adjustments. Sale 3 has the least adjustments for location. Sale 1 has the fewest total adjustments. Sale 6 is beyond the relevant tax date. Therefore, a reasoned and reconciled price per square foot for the 2010 valuation is $54 or calculated as a value of $6,713,010.

In regards to the 2011 valuation, Petitioner's sales 5 and 6 are bracketed to and are more applicable to the December 31, 2010, tax date. These two sales have fewest market condition adjustments. Sales 4, 5, and 6 are tempered by larger locational adjustments. Sale 3 has the smallest location adjustment. Sale 1 has fewer overall total adjustments. Therefore, a reasoned and reconciled price per square foot for the 2011 valuation is $50 or calculated as a value of $6,215,750.

The effect of common comparable sales used by both parties is important. The noted common sales are located at 5851 Mercury Drive in Dearborn, 800 East 14 Mile Road in Madison Heights, and 3710 Dix Highway in Lincoln Park. These comparables are important for analysis, but are not controlling for the three years under appeal.

Respondent's valuation expert develops the sales comparison approach to value. As part of his analysis, Mr. Lohmeier analyzes seven comparable sales in a grid format. All seven sales occurred between March, 2004 and January, 2008. Respondent does not analyze any sales between 2009 and 2011. All seven sales are adjusted upward for all three years under appeal. In other words, Respondent has not analyzed any sale that adjusts downward to the subject. No explanation has been given for the lack of bracketing. Respondent's skewed data is not representative of the real estate market. Sales 6 and 7 were not given any weight or consideration, but Respondent admitted that these sales involved significant seller financing. These sales were found to be leased fee properties and not fee simple. Moreover, Sales 2, 3, and 4 were denoted as leased fee properties. Respondent made no adjustments for the difference between fee simple and leased fee. Lastly, Petitioner's contentions about expenditures after sale are noteworthy in regards to Sales 1, 5, and 6. Respondent claims that these expenditures are a necessary and integral part of the sales price. Respondent was unable to articulate the delineation of these expenditures. Sale 1 sold for $9,650,000, but included expenditures of $10,000,000 for a total sale price of $19,650,000. An assumption that the total amount is attributable to a previously negotiated sales price is not reasonable. "These costs are often quantified in price negotiations and can be discovered through verification of transaction data. The relevant figure is not the actual cost that was incurred but the cost that was anticipated by both the buyer and seller." Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13th ed, 2008), p 331. There is no distinction between cost-to-cure items and aesthetic items (required to satisfy the tastes of the buyer and not necessarily the market). Therefore, the Tribunal is unable to ascertain the specific allocations from the expenditures to this sale. In light of Petitioner's more extensive sales data analysis, Respondent's limited data and analysis is not supportive. Respondent's reasoning is not meaningful and is misleading. Therefore, Respondent's sales comparison approach is given no weight or credibility in the final conclusions of value.

Respondent's valuation expert develops an income approach to value. The initial analysis was based on six comparable lease data (Respondent's Exhibit R-1, p 147) Respondent states, "[a]ll of the rentals are considered arm's-length contracts with no atypical conditions known." (Respondent's Exhibit, R-1, p 157) In testimony, Mr. Lohmeier admitted that rental 2 was a lease between subsidiaries of Lifetime Fitness and was not an arm's-length lease.

Respondent places most reliance on rental 1 for all three years. This rental is located next door to the subject property. Respondent concludes to $9.00 per square foot for all three years under appeal. For December 31, 2008, the concluded rental rate falls within an adjusted range of $8.80 to $12.58. For December 31, 2009, the concluded rental rate of $9.00 is outside of the adjusted range of $9.05 to $12.58. The adjusted rate for rental 1 is $9.24, but Respondent's conclusion rests closer to rental 4. For December 31, 2010, the concluded rental rate of $9.00 is also outside of the adjusted range of $9.24 to $13.09. The adjusted rental ranges for all three years do not include any adjustments for market conditions, or age and condition. The omission of a market conditions adjustment for the rental data is not consistent with market condition adjustments applied in Respondent's sales comparison approach. Market conditions have changed in southeast Michigan for the three years under appeal. The subject property's strong location does not offset changes in market conditions. Respondent utilizes the same rental rate of $9.00 per square foot and the same capitalization rate of 9%. In addition, Respondent does not include any vacancy or credit loss within the income analysis. The totality of these actions defies the market conditions of southeast Michigan in the relevant time period. Lastly, Respondent's analysis of the income components contradicts the statistical analysis for the North Oakland market (Respondent's Exhibit, R-1, p 54) Overall, Respondent's income approach lacks clarity and consistency; therefore, Respondent's income approach is given no weight or credibility in the final conclusions of value.

Respondent develops and communicates a cost approach. The analysis includes adjustments to vacant land sales for the difference of market conditions. As noted, Respondent has omitted market condition adjustments to its rental data in the income approach. The lack of consistency regarding market changes with each approach to value is not persuasive. Further, this analysis omits any functional or external obsolescence attributable to the subject property. This omission in light of Petitioner's analysis of existing big box leases and built-to-suit leases is striking. "Unlike many other commercial properties, free standing 'big box' stores like the subject are not constructed for the purpose of thereafter selling or leasing the property in the marketplace. This is because no prudent person would expect to realize a positive return on such an investment." (Petitioner's Exhibit P-1, p 82) Petitioner's big box store was constructed for exclusively its own image, without regard to market influences. Petitioner's custom design and features were not based upon market acceptance. Respondent's disregard of relevant elements of analysis within the cost approach is unpersuasive. Therefore, Respondent's income approach is given no weight or credibility in the final conclusions of value.

Respondent's appraisers admit that the three approaches to value were averaged to arrive at the final values. In essence, equal weight and consideration was given to all three approaches. (TR, Vol 1, p 164 and Respondent's Exhibit R-1, p 60) This all-encompassing statement is not the equivalent of a reasoned reconciliation. Averaging the indicated approaches to value negates the strengths and weaknesses of data within each approach. Averaging indicated approaches to value is not an acceptable shortcut for the reconciliation. Respondent's varied sales comparison, income, and cost data cannot be reconciled by calculating an average. "The final value opinion does not simply represent the average of the different value indications derived. No mechanical formula is used to select one indication over the others. Final reconciliation relies on the proper application of appraisal techniques and the appraiser's judgment." Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13th ed, 2008), p 560.

The subject property is an owner-occupied building. The property has no history of an income stream. In other words, the subject is not an income-producing property. This is validated by both parties' analysis of the subject property in a fee simple interest; therefore, the income approach is not the primary indicator of value for the years under appeal. The primary focus is given to the sales comparison approach to value.

The Tribunal finds that Petitioner was able to show that the property was over-assessed for the tax years under appeal. As such, and in light of the above, the Tribunal finds that Petitioner has succeeded in meeting its burden of going forward with competent evidence on the issue of true cash value, assessed value, and taxable value. Petitioner has provided credible documentary evidence and testimony for the 2009, 2010, and 2011 tax years at issue and, as such, the Tribunal finds Petitioner's data within the sales comparison approach is sufficient to arrive at an independent determination of value.

## JUDGMENT

IT IS ORDERED that the subject property's true cash, assessed, and taxable values for the 2009, 2010 and 2011 tax years are those shown in the "Summary of Judgment" section of this 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 assessed and taxable values in the amounts as finally shown in the "Final Values" section of this Opinion and Judgment, subject to the processes of equalization, within 20 days of the entry of this Opinion and

Judgment. 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 Opinion and Judgment within 20 days of the entry of this 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 Order. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (ii) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (iii) after December 31, 2005, at the rate of 3.66% for the calendar year 2006, (iv) after December 31, 2006, at the rate of 5.42% for the calendar year 2007, and (v) after December 31, 2007, at the rate of 5.81% for the 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 (xvi) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (xvii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, and (xvi) after December 31, 2011, at the rate of 1.09% for calendar year 2012.

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

MICHIGAN TAX TRIBUNAL

Entered: April 24, 2012 By: Marcus L. Abood