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

Ferndale Laboratories, Inc.,

MTT Dockets 315338 & 329408

v

City of Ferndale,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

Petitioner, Ferndale Laboratories, Inc. ("Lab"), appeals ad valorem property tax assessments levied by Respondent City of Ferndale (also "City"), against the personal property owned by Petitioner for the 2004, 2005, 2006 and 2007 tax years. David B. Marmon, attorney, appeared on behalf of Petitioner. P. Daniel Christ, attorney, appeared on behalf of Respondent. Witnesses appeared on behalf of both parties. They include: Petitioner's valuation expert, Michael Clarkson, appraiser, and Mark T. Diekman, Chief Financial Officer, Ferndale Laboratories, Inc., Respondent's assessment expert, Jagminder Singh, CMAE3, Assessor-Treasurer for the City of Ferndale.

The proceedings were brought to this Tribunal on January 22, 2009, to resolve the personal property assessment dispute.

At issue before the Tribunal is the determination of true cash value of Petitioner's personal property for the 2004, 2005, 2006, and 2007 tax years. The pertinent information to the contested assessments is as follows:

PARCEL #	63-24-99-10-000-780			
Year	AV	TV	PET'S TCV	RESP'S TCV
2004	$2,078,630	$2,078,630	$2,000,000	$5,382,143
2005	$2,015,300	$2,015,300	$2,100,000	$5,570,485
2006	$1,886,130	$1,886,130	$1,900,000	$5,300,249
2007	$1,772,830	$1,772,830	$1,800,000	$4,859,726

Based upon its examination of the evidence received at the hearing conducted in this matter, the Tribunal concludes the true cash value, state equalized value, assessed value and taxable value of the subject properties for the 2004, 2005, 2006, and 2007 tax years are as follows:

Parcel No. 63-24-99-10-000-780

Year	TCV	AV/SEV	TV
2004	$2,180,000	$1,090,000	$1,090,000
2005	$2,270,000	$1,135,000	$1,135,000
2006	$2,170,000	$1,085,000	$1,085,000
2007	$2,020,000	$1,010,000	$1,010,000

Background and Introduction

The subject property is located within the City of Ferndale, Oakland County, Michigan, at 788 West Eight Mile Road, Ferndale, Michigan.

Petitioner argues that Respondent has overvalued the personal property. Petitioner has an appraisal of subject property. Petitioner states that one of the issues is the leasehold improvements that Respondent believes Petitioner is responsible for as personal property. Petitioner states that in *Ferndale Labs, Inc v City of Ferndale*, MTT Docket 301900, the Tribunal determined that the elements listed as leasehold improvements were considered in

valuing the real property. Petitioner states that the building is owner-occupied and is not subject to omitted personal property categorized as leasehold improvements.

Respondent states this is a personal property appeal involving furniture, fixtures, machinery and equipment, computer equipment, and leasehold improvements. Respondent states that Petitioner has failed to timely and accurately report on the STC Personal Property Statement. Respondent believes that Petitioner has under reported and misreported equipment, and has claimed idle and obsolete equipment for each of the years. Respondent attempted to invoke MCL 211.154 (as omitted property) while this appeal was properly pending before the Tribunal. Respondent states that some leasehold improvements were already assessed as real property, but Petitioner reported them as Personal property, creating in Respondent's eyes a mutual mistake of fact that was the basis for filing under MCL 211.154 as omitted property. The STC issued an order in October, 2006, for the 2004 tax year. Respondent (TR V1 p 160) claims that Petitioner has $4,075,470.74 in leasehold improvements that are not accurately reported.

The two issues the Tribunal will address are the market value of the personal property and leasehold improvements that Respondent believes were omitted from the personal property.

Petitioner's Arguments

Petitioner states that the issue is the lawful assessment of the properties. Petitioner contends that the market value of subject properties has decreased due to the economy, location and age of the improvements. Petitioner states that Respondent did not rely upon an appraisal or any study of the true cash value of specific assets. Rather, Respondent relied on the cost approach as used in

mass appraisal and found in the State Tax Commission Manual. Petitioner believes that Respondent has included leasehold improvements that are inappropriate to be included in the personal property. Petitioner states it will prove that the property is owned by Petitioner and should be included in the real estate assessment.

Petitioner's first witness was Michael Clarkson, personal property appraiser who was qualified as an expert in personal property valuation. He described the process that he used to determine the market value of the personal property. Petitioner's exhibit P-1, the appraisal, describes the property which is a combination of lists that Ferndale Labs provided. Clarkson did a physical walk-through with an associate, Keith Martin. They wrote down items, model number, characteristics, chairs, tables, thermometers, and microscopes. That was supplemented with a list of computer and operating equipment provided by Petitioner. Clarkson cross-referenced the lists and then met with Petitioner to verify the accuracy of the list. Because multiple years are under appeal, Clarkson also added in any disposals and acquisitions prior to the inspection. The end result is a reconciled list for the appraisal dates at issue.

Clarkson stated that as a result of reconciliation, an amended exhibit P-8, a list of additional personal items, was offered and admitted into evidence. This amended exhibit P-8 revised the market value. Some of the equipment was located in Warren and was not included. There were approximately 1,800 items valued. Clarkson testified that in the final draft of P-1 (the appraisal) some of the documentation was dated August, 2008. He stated that he did not use documentation gathered and printed after the February 20, 2007, signature date for the report to change his

conclusion of value. P-8 is additional documentation included in the final report that was not originally included in the appraisal.

Clarkson explained that the cost less depreciation method was used to determine a few of the special purpose properties at the Lab. Special purpose properties do not have marketability and are not traded actively in the market. These are new properties that don't have a market value because people hold onto them and use new items so they are not traded actively. For those few items, he used a cost approach and for the remainder of the items a market approach was used.

The income approach was not used because, according to the witness, it "captures value to the business and to the real estate into one lump sum and I would have had to break those segments out." He further testified that "intangible value contributes to business income that is difficult to identify and quantify." TR V1 p32.

Clarkson testified that "The market data approach looks at comparable sales or offers for sale and compares them back to the subject and makes any adjustments necessary to compare the subject property with items that are on the market and currently available for sale or have been sold and have sale prices for them." TR V1 p 32. He explained that he used the detailed list and either went to e-commerce sites, which are electronic catalogs of furniture and equipment that are for sale, or called the manufacturer, seller or dealer and asked for a price. However, most of the time he found that the price is posted on the internet sites. He made adjustments for differences in condition or any accessories. He put a Bates stamp number on each item that was valued and printed out the record of one of the sites as an example of where the market

information was found. Generally, he used an average price if an item was on multiple listing sites.

Clarkson went through several examples of items and how to find it on his list. The Tribunal will go through one example so the reader can follow the process. A Kubota bench scale has a Bates number from Clarkson. This bench scale references the Bates number on the back-up sheet, which is a print-out of an e-bay page. The seller is Sivart Products. The 440 pound industrial bench counting scale has a "buy now" price of $180. The scale is larger than subject's scale. Clarkson values the scale as of December 31, 2006 for $150 because of the difference in size. The December 31, 2005 value is $160; December 31, 2004 is $180; and December 31, 2003 is $190. He used the Marshall & Swift Manual for a typical depreciation table to find out the annual increase or decrease over time and determined that 6% to 10% was typical on an annual basis. This allowed Clarkson to appreciate or depreciate the items as necessary.

Clarkson explained that over the last few years the internet has made a difference in the speed in which data is gathered, and the depth of the information. Further, the ability to print out the tangible documentation adds to the credibility. Clarkson stated that, depending upon the purpose of the appraisal, sometimes an income or cost approach is more appropriate.

Clarkson stated he reviewed Petitioner's fixed asset and depreciation schedules, but did not review the personal property statements. When questioned about leasehold improvements, he reiterated that he was not a real property appraiser. He defined leasehold improvements as "improvements added by a tenant to a leased property of a permanent nature that would not be

economically removed upon the termination of the lease." TR V1 p76. He was not aware of any leasehold improvements as he understood that Ferndale Labs owned the real estate and the personal property.

Sales tax and transportation expenses were not added to the personal property because, according to Clarkson:

> Sales tax is pretty straightforward. I believe that the fact is that sales tax is not money that is exchanged between a willing buyer and a willing seller but money that is paid to a third party to complete a transaction. And market values are based on the sales price, not the sale price plus sales tax, sales commission, or any other extraneous tax that goes to third parties.
>
> Transportation. The cost approach includes transportation because you start off with what it costs new and you transport – transport it to your place of business. But in order to use the market approach – I have to read this from the report. TR V1 p 93.
>
> A willing buyer has a choice between buying it from Federal Equipment that has been shown – his equipment is shown in this – in my report, or he can buy it from subject property or the owner. And if they're the same, then he's going to pay – he's not going to pay more for one or the other. That is an equilibrium of value. He'll buy it as it sits where it's advertised or as it sits where it is now in Ferndale and there's no need for transportation cost. It's inherent in the market price. TR V1 p 94.

Clarkson gives the following example of why the market approach doesn't use transportation costs:

> So if I'm a prudent, willing buyer and I wanted to buy a Fairbanks floor scale and there's one advertised in the Internet for a hundred dollars and Ferndale labs has one for sale for a hundred dollars, I would reasonably pay somewhere in the range of a hundred dollars. And that's why I did not include a transportation value. I wouldn't know where to put the value, from where to where. You don't know what the buyer is or where it's going or coming from, so it's very difficult. So the market approach doesn't use the transportation costs at all. TR V1 p 95.

Clarkson states that the difference in the cost approach is it starts off with the transportation or the cost of bringing the item to where it will be used. The market approach is what the property would sell for in an arms-length transaction.

Mark Diekman, the CFO of Petitioner, testified that Ferndale Labs, Inc. owns the personal property. He also stated that the property is owner occupied. On redirect he testified that Ferndale Pharma Group owns Ferndale Labs 100%. Ferndale Pharma Group is a holding company for the whole group. There is no arms-length lease between Ferndale Pharma Group and Ferndale Labs.

Respondent's Arguments

Respondent stated that it believes that the Tribunal determined that the space used as labs with specialized features were specifically included in personal property returns and relied on such representations that such property was on those personal property statements. The assessor determined that a mutual mistake over what was being recorded and what was being assessed took place. Respondent stated that it will show the Tribunal that the personal property statements only included some personal property, not all. Respondent stated that Petitioner's appraisal was done in a careless manner. Respondent stated that substantial leasehold improvements that are part of Ferndale Lab's financial statements were not included on the personal property statements. Respondent stated that it will show the separate entities between Ferndale Laboratories and FPG Real Estate Company. Respondent took issue with the idle and obsolete equipment that Petitioner has reported, but has not allowed Respondent to confirm with a site visit.

Respondent's valuation witness is Jagminder Singh. Singh testified that he holds a personal property examiners certificate and an MBA degree concentrated in accounting and finance. The annual process of sending out a personal property statement to each taxpayer was explained. The Form L-4175 is four pages and requests that the taxpayers report different assets under different sections. This is to allow the assets to be grouped in the same depreciation category. He testified that Petitioner did report close to or slightly after the statutory February 20th filing date. He stated that the statements are on an honor system and there is no way short of an audit or a copy of financial statement, specifically the depreciation schedule, to determine if everything has been reported.

Singh testified that he filed an MCL 211.154 (incorrectly reported and omitted personal property) claim with the State Tax Commission because he noticed omissions and one misclassification of assets and obsolete and idle equipment, and leasehold improvements reported under section M. After the filing he received the financial statements and noticed that the leasehold improvements stopped at the 1999 filing. Respondent's valuation disclosure, exhibit R-1, p 31, shows the omitted entries. Singh believes that as of December 31, 2003, $103,580 in furniture and fixtures (purchased in 1999) were not reported. Additionally some telephone equipment did not appear to be disposed and was added for $227,782 total omitted as of December 31, 2003. After the STC 211.154 filing, Singh discovered that Schedule M was void of leasehold improvements that were reported from 1989 to 1999. He questioned Petitioner, who had no explanation as to why the leasehold assets were not reported.

Singh went through parts of exhibit No. R-10, Respondent's Revised Property Depreciation Calculation for Assessment, as of December 31, 2003, giving the Tribunal a sampling of property that was on the depreciation schedule but not reported on the personal property statement. He testified that he used the cost-less-depreciation method. He stated that is the only approach used for [personal property] assessment purposes. TR V1 p 137. The recalculated totals for the following years are:

2004	TCV	$5,382,143
2005	TCV	$5,570,485
2006	TCV	$5,300,249

Singh stated that the underreported leasehold improvements for 2004 totaled $3,850,517. TR V1 p 143. Singh identified the items as: venetian blinds, ceramic tile, carpeting, facility renovation, KSI water system, boilers, vacuum system, HVAC system, wet heat, chillers, UPS system, fire alarm, light fixtures, and pharmacy doors.[1] This came from comparing the depreciation schedule with the personal property statement. He indicated that he believed the leasehold improvements should be included in the personal property statements because FPG Real Estate Company owns the building based on property transfer affidavits between Ferndale Labs to FPG Real Estate Company. Singh stated that he has a transfer from Cinelli Lab to Ferndale Laboratories in 2002 for $602,000. R-11 is a property transfer affidavit dated June 1, 2004, from Ferndale Laboratories, Inc. to Ferndale Pharma Group, Inc. R-12 is a property transfer affidavit also dated June 1, 2004 from Ferndale Pharma Group, Inc. to FPG Real Estate Co. Both transfers indicate that the transfer is between entities under common control or among members of an affiliated group and transfer resulting from transactions that qualify as a tax-free reorganization. The real estate was not "uncapped" for taxable value purposes. They did, however, alert Singh that the property contained items that should have been reported as leasehold improvements.

[1] The Tribunal notes in R-3 p 143, that the year of acquisition for the above items is 1994 and 1995.

Singh states that Petitioner did not report on Section M of its 2004 personal property statement the 1995 entry which states: sink, doors, sign, water, kit. and cabinets. The total amount reported for 1995 is $54,422. The $54,422 is substantially shy of Singh's $3,850,517 calculation for the leasehold improvements that were not reported on the 2004 personal property statement.

Singh testified that:

> State Tax Commission Bulletin 12 of 1999, as updated, speaks of the leasehold improvements. Leasehold improvements, if you ask me to define, are in the real property nature. However, quite often when the owner of the real estate, land and building, and the user of the facility are not the same, then the user incurs certain expenses for improving the real estate by attaching things like cabinets, specialty boiler, heating, cooling systems, things of that nature, which are reflected on this and books it as leasehold improvements, they are – they are to be reported, yes. TR V1 pp 154-155.

Singh stated that he reviewed the field card of the real estate and it did not have the special water system or the additional heat. He clearly stated that there was no reporting of leasehold equipment until 2004. TR V1 p 157. He believes that the 2004 leasehold improvements that were reported are incorrect and under reported. He discussed the discrepancy between the reported leasehold improvements and the depreciation schedule with Diekman. Diekman provided Respondent with a document that reflected leasehold improvements that were not included in Section M. He explained most of the entries. Singh contends that the amount of leasehold improvements not reported is $4,075,470.74. TR V1 p 160.

Singh believes that auction sites provide prices that can only be considered if that has become commonplace in the assessment jurisdiction. He does not believe that Petitioner has ever sold or purchased equipment, machinery or furniture or fixtures that way. He does not think that

Petitioner's method of valuing subject property is the correct way of coming up with market value.

Singh filed a claim under MCL 211.154 for 2004, 2005 and 2006 to the State Tax Commission. He stated:

> We are enclosing herewith forms L-4154 for incorrectly reported and omitted personal property for 2004, 2005 and 2006 in the case of Ferndale Laboratories. We had proposed to assess the tax payer for lease hold improvements that qualified as omitted due to a mutual mistake of fact as explained on the form L-4154, however in spite of the sworn testimony before the Tax Tribunal in a case involving real property assessments for 2003 and 2004, by their officers, the tax payer does not want to be assessed for the omitted lease hold improvements, (see their denial to concur) vide [sic] their letter of May 22, 2006. The taxpayer has also been reporting [albeit often late] some machinery and equipment on form 2698 since some time. On our request for audit and verification, mandated and stated on the form by State Tax Commission the taxpayer has refused on the [pretext] of disrupting operations, that proves likelihood that the equipment being reported is not disconnected and stored in a separate facility. Because of this likelihood we believe that this equipment is incorrectly reported as idle, obsolete and surplus personal property.
>
> Taxpayer is arguing that the 2005 assessment being under appeal is not within the State Tax Commission's jurisdiction. We believe that the MTT does not have jurisdiction to hear this matter because the taxpayer did not meet their obligations to file personal property statement in time, as you would notice that the 2005 statement was received on February 22, 2005 that is 2 days after the last day to file. The State Tax Commission has authority under sec 211.154 to revise assessments for the years under question for the value of lease hold improvements as omitted property due to a mutual mistake of fact, and value of the incorrectly reported equipment on form 2698. Respondent's exhibit R-7. (Emphasis in original.)

The State Tax Commission acted on the 2004 assessment and Petitioner then appealed the decision, and the Tribunal combined the appeal with the instant appeal.

Tribunal's Finding's of Fact

Petitioner was able to convince the Tribunal that the practice of determining market value of personal property using an e-bay "buy now" price is an updated method used by personal property appraisers and is a reliable method. The use of the Internet to determine the market value of each specific asset only assists the appraiser in accomplishing the task more efficiently. The ability to print out a specific page also assists the appraiser in documentation. Prior to the Internet, appraisers would have to call individual sellers of similar equipment without any paper documentation.

Value is defined in Appraisal Institute, *The Dictionary of Real Estate Appraisal*, Chicago: 4th ed, 2002 as: "The monetary worth of a property, good, or service to buyers and sellers at a given time."

The State Tax Commission[2] discusses proper audit procedures as:

> Verify that the taxpayer has reported the furnishings, machinery and equipment at usual selling price new in the year that each item was originally placed in service. In this regard, the following should be verified:
>
> It should be determined whether the reported cost represents usual selling price new in the year that the property was originally placed in service. See Section O below for specific procedures. Reporting "rebooked costs" is permitted only in cases where the original historic cost and year are **neither** known **nor** reasonably ascertainable. If "rebooked" costs are reported, the assessor should appraise the property or follow another of the procedures outlined in the December, 2000, issue of the Michigan Assessor (see Introduction). b) It should be determined whether the cost is based on the correct "level of trade". In other words, the usual selling price is the price at which a dealer in the goods would sell the goods to the end user of the goods. Frequently, the taxpayer will assert that the usual selling price is a price which he or she paid, even though he or she is not going to be the end user (this is particularly applicable to leasing companies) or, in the alternative, is the price at which he or she could sell the goods to a broker. In fact, it may be the broker who is the dealer and the usual selling price may be the price at which the

[2] Michigan Department of Treasury, 2008 Property Tax Information, Personal Property Tax Tables; Introduction to Model Audit Program. http://www.michigan.gov/documents.

> broker would sell to the end user. c) If the taxpayer acquired a pre-existing business interest, the auditor should be alert to the fact that the allocation of the purchase price may be influenced by the relative bargaining power of the parties and by tax considerations. In addition, in the case of lease interests, the price paid may reflect the value of the income stream rather than the value of the property. (In other words, the value of the lease to the lessee, because of bargain purchase rights, etc. may not be included.)

The State Tax Commission prescribes the method to be used for the cost-less-depreciation method. They do not cover in any bulletins the appropriate method to determine the market value of the assets.

It is clear to this Tribunal that Respondent did not do an audit to determine what property was located at the facility. Respondent did use the depreciation schedule provided by Petitioner to determine that some personal property was on the depreciation schedule that Respondent believes should be included as leasehold improvements. Some of the items that Singh stated include the following: venetian blinds, ceramic tile, carpeting, facility renovation, KSI water systems, boilers, vacuum system, HVAC system, wet heat chillers, UPS system, fire alarm, light fixtures, and pharmacy doors. TR V1 pp 143-144. Exhibit R3, p 143 indicates that these specific items were acquired in 1994 and 1995. Singh did not identify in what part of the building these items were located or why he believes that they should now be included as leasehold improvements. At the time the “leasehold improvements” were acquired Ferndale Laboratories owned most of the building with the exception of the Cinelli Lab, which was acquired in 2002, all of which was prior to the June 1, 2004, transfer to FPG Real Estate. The leasehold improvements (acquired prior to 2004) became the property of Ferndale Laboratories when it purchased Cinelli Lab and Ferndale Labs owned the entire building.

The remaining issue is that of leasehold improvements. Leasehold improvements are described on L-4175 instructions for the 2004 Personal Property Statement under Section M as:

> This section is to be completed by tenants who are renting or leasing real property. All improvements (leasehold improvements) you have made to the real property should be reported, even if you believe that the improvements are not subject to assessment as personal property. Provide as much detail as possible so that the assessor can determine whether an assessment should be made. Coaxial and/or fiber-optic wiring costs and associated infrastructure of audio and/or visual systems serving subscribers of one or more multiple unit dwellings or temporary habitations under common ownership, and which do not use public rights-of-way shall be reported in this section and be clearly identified as such. You may use attachments, but only if your attachment provides all the information requested in this section and if you insert the Total Cost Incurred where required on the form.

Subject property did report leasehold equipment for property in prior years, however, Cinelli Lab transferred to Ferndale Laboratories in 2002 for $602,000. This indicates to the Tribunal that the property was entirely owned by Ferndale Laboratories and would therefore not be subject to any leasehold improvements. Subject property was owner-occupied and should not have contained any leasehold improvements. There were two June 1, 2004 transfers. The assessor did not uncap the real property at that time, indicating that, based on documents submitted to the assessor, the property was transferred between entities under common control or among members of an affiliated group.

The parties briefed the issue of whether leasehold improvements should be subject to personal property taxation when the tenancy is between commonly controlled entities.

Petitioner states that Ferndale Laboratories Inc., is a Michigan corporation 100% owned by Ferndale Pharma Group Inc., a holding company. The only assets are stock of subsidiaries, who also own 100% of FPG Real Estate. Ferndale Laboratories, Ferndale Pharma Group Inc., and FPG Real Estate have common officers and directors. All three entities share the same address

of 780 W. Eight Mile Rd., Ferndale, Michigan. There is a written lease between Ferndale Laboratories and FPG Real Estate Inc., dated June, 2004. Ferndale Laboratories leases 89,324 square feet of the building that houses the offices, warehouses and manufacturing areas and the land. The lease excludes 15,926 square feet that was simultaneously leased to Ferndale IP Inc., also a wholly owned entity of Ferndale Pharma Group, Inc.

Petitioner states that Respondent did not present any evidence or testimony identifying where the leasehold improvements resided within the building. Section 15.01 of the lease gives the Landlord, rather than Petitioner, all fixtures paid for by either party if their removal would involve damage or structural change to the premises. The lease was entered into on June 1, 2004; the "leasehold improvements" that Respondent is attempting to tax as omitted personal property were already on the premise as part of the real estate.

Petitioner notes that the signature page in the lease was signed via James T. McMillan II, Chairman and CEO, and Ferndale Laboratories signature was the same James T. McMillan II, Chairman and CEO.

Petitioner's brief, p 8, states "Leasehold improvements are not to be taxed as personal property to the lessee if these improvements did not add to the true cash value of real property, or the value added by these improvements is already included in the assessment of the real property." MCL 211.8(h) states:

> During the tenancy of a lease, leasehold improvements and structures installed and constructed on real property by lessee, provided and to the extent the improvements or structures add to the true cash taxable value of real property notwithstanding that the real property is encumbered by a lease agreement, and the

> value added by the improvements and structures is not otherwise included in the assessment of real property or not otherwise assessable under subdivision (j). The cost of leasehold improvements and structures on real property shall not be the sole indicator of value. Leasehold improvements and structures assessed under this subdivision shall be assessed to the lessee.

Petitioner argues that all of the leasehold improvements that the assessor wants to add were placed in service prior to the June 2004 lease. The Tribunal found in MTT Docket 301900, *Ferndale Labs, Inc. v City of Ferndale*, the real property case for tax years 2003 and 2004 that:

> The Tribunal finds that the property has basically three areas of utility: laboratory, warehouse and shipping/receiving. Based on the testimony of the witnesses and the evidence submitted, none of these uses are consistently dominant in the day to day activity of Petitioner. In addition, it was pointed out by Petitioner's employees that the space used as the laboratory (presumably the type of space of the three that carries the highest square foot value) contains features specialized as to laboratory that are specifically included in Petitioner's Personal Property Tax returns. It seems that it is the movable personal property that tends to characterize the laboratory space rather than permanent leasehold, i.e., real property characteristics. MTT Docket No. 301900, p 98.

Petitioner states that the Tribunal has already considered the leasehold improvements in the present appeal and it was determined that these items did not contribute to the true cash value of the real property. *Ferndale Laboratories Inc., supra,* p 100. It is an attempt by Respondent to tax the leasehold improvements as personal property when they clearly did not add value to the real property.

Petitioner states that Respondent did not segregate the improvements taxable to Ferndale Laboratories Inc., and Ferndale IP, Inc. The lease is for specific areas of the property. The leasehold improvements, even if they were taxable, are part of a consolidated personal property statement.

Petitioner indicates that it does not believe that Respondent should be allowed to reclassify the real property as personal. The property was identified as real property when it was installed and Respondent has failed to show that it was omitted. Taxable value cannot be increased by changing the class of the property from real to personal.

Respondent states that the assessor testified that the leasehold improvements were not taxed as real so, therefore, they must be taxed as personal property. There is evidence of separate legal entities, evidence of an arms-length lease, and evidence of consideration for rent being recorded by the lessee.

Respondent states that Petitioner is a separate legal entity leasing property at 780 West Eight Mile Road, Ferndale, Michigan. MCL 211.8(h) clearly and unambiguously states in relevant part, "… Leasehold improvements and structures assessed under this subdivision shall be assessed to the lessee." Respondent requests the Tribunal to find that significant and substantial leasehold improvements were not reported on Petitioner's Personal Property Statements and that evidence supports an established true cash value of personal property as set forth in Respondent's contentions.

The Tribunal finds that the leasehold improvements became part of the real estate in 2002 when Ferndale Laboratories acquired Cinelli Labs. Any leasehold improvement became part of the real estate. There was no lease, either arms-length or not, between any entities until June 1, 2004. Therefore, the Tribunal finds that the "leasehold improvements" were already in place and part of the real estate at the time the Tribunal decided the 2003 and 2004 value of the real estate

in *Ferndale Laboratories Inc., supra*. The Tribunal finds no leasehold improvements are omitted property.

The Tribunal finds that Petitioner has presented a good market approach to value for the personal property. Clarkson physically inventoried the assets; the inventoried list was compared to the depreciation schedule. For years prior to the inspection year, Clarkson received additions and disposals so that they would be appropriately considered. If an asset was new or a special item, the cost new less depreciation method was used to determine value. The remainder of the assets was listed and the specific web site printed to document the base value. Clarkson did not randomly select depreciation for an entire classification of equipment. He looked at the quality, manufacturer, size, age and condition of each asset and selected to the best of his ability the current counterpart. This is akin to doing a sales comparison approach for each individual residential property in a subdivision with 1,800 properties. This method appears to be contemporary information and values the property as of the date instead of the outdated "blue book" that has been used in years past. Clarkson presented material, competent and substantial evidence for the Tribunal. This is in contrast to Respondent's witness who insisted that Petitioner was not reporting all of its assets, and did not have a specific location for the under reported "leasehold improvements." Petitioner's witness was qualified as an expert in the field of appraising personal property based on his skill, knowledge, education, experience and training. Respondent did not have sufficient substance to back his opinion of value. Respondent provided copies of personal property statements, his rendition of what the personal property should be, but did not do an audit, did not verify the assets, and could not testify where the "omitted" leasehold equipment was located.

The Tribunal finds Petitioner has met its burden of proof through the use of market data and market-based techniques, providing convincing evidence of the true cash value of subject property. Based upon its examination of the evidence received at the hearing conducted in this matter, the Tribunal concludes the true cash value, state equalized value, assessed value and taxable value of the subject property for the 2004, 2005, 2006 and 2007 tax years are as follows:

Parcel No. 63-24-99-10-000-780

Year	TCV	AV/SEV	TV
2004	$2,180,000	$1,090,000	$1,090,000
2005	$2,270,000	$1,135,000	$1,135,000
2006	$2,170,000	$1,085,000	$1,085,000
2007	$2,020,000	$1,010,000	$1,010,000

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).

Under MCL 205.737(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 NW2nd 479 (1981). The Tribunal may not automatically adopt 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 NW2nd 832 (1987); *Consolidated Aluminum Corp v Richmond Twp*, 88 Mich App 229, 232-233; 276 NW2d 566 (1979). 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.

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 Limited Dividend Housing Assn v City of Holland*, 437, 484-485; 473 NW2d 636 (1991); *Pantlind Hotel Co v State Tax Commission*, 3 Mich App 170; 141 NW2d 699 (1966); 380 Mich 390; 157 NW2d 293 (1968); *Antisdale v City of Galesburg*, 420 Mich 265, 276; 362 NW2d 632 (1984). The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in the marketplace trading. *Antisdale* at 276, n 1. The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate

method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale*, at 277.

The Tribunal finds *Producers Color v City of Clawson*, MTT Docket No. 216818, is on point and states in part:

> Therefore, Petitioner's burden of proof, in challenging Respondent's use of the STC Manual and multiplier methodology, is to provide convincing evidence of the subject's market value. Since "true cash value" means "the usual selling price," which is synonymous with "fair market value," the valuation problem here is best addressed by use of applicable and reliable market data, applied to a market-based methodology. That "market-based methodology" for personal property is preferably the market/sales comparison approach, but when appropriate data is not fully available, a cost-less-depreciation approach with market data input; only in unusual circumstances is an income analysis appropriate.
>
> Therefore, critical to a Tribunal finding is consideration of whether Petitioner has presented market methodology and analysis capable of making a *prima facie* case in attempting to carry the burden of proof. Offset against that presentation is further consideration of Respondent's challenge found in its case for rebuttal, and offering of alternate methodology and conclusions for acceptance of its own valuation work. Finally, the Tribunal will make an independent determination of true cash value, for which the results may include these options: (1) accepting Petitioner's case as having met its burden; (2) finding Petitioner to have failed in its burden, and Respondent having succeeded in both rebuttal and presentation of its valuation; (3) a finding resulting from an acceptance in part of one or the other valuation proofs, but with modification to the portion(s) found not to be acceptable; (4) acceptance in part of each of the valuation proofs, with the finding being a combination of each; (5) rejection of both, with a finding based on acceptable data and components excerpted from one, the other, or each party's valuation proofs. (*Meadowlanes* at 485-486; *Tatham* at 597). p 10.
>
> 2. Summary of Opposing Valuation Methodologies. In overview, this case follows a general pattern of contention and methodology reviewed by the Tribunal in prior cases. The observed pattern is one where Petitioner presents a challenge to the assessment by producing an independent appraisal of the personal property's market value. The values reported are based on data usually secured from independent third-party sources, such as contact with sellers/buyers/dealers in the marketplace, or use of published pricing information. That data is then applied to a market comparison process, or if sales/offering data is not readily

available, such data as is available forms a cost-less-depreciation analysis. Respondent's case usually consists of placing into evidence the results of its mass appraisal process. That procedure employs the owner's reported personal property original acquisition costs, applied to the STC multipliers, as selected to represent facts of age, and whether in-use or not. Both parties' procedures are buttressed by testimony pertaining to data and method. With variations on the theme, this case falls into that scenario. p 10.

The importance of market data to implement the standard cost approach was stated in *Uniroyal Goodrich Tire Company v City of Troy*, 8 MTT 361 (1994) at 376:

Since market-based answers are mandatory in assessment matters, the valuation expert is faced with a difficult situation where there is a strong reliance upon only the cost approach, or cost-based support. For example, in the cost approach it is essential that available and applicable market data support all components of the cost approach, beginning with cost new, extending into the various forms of value loss (physical deterioration, function and external obsolescence), and ending with land value.

Market data is the foundation of all three approaches to value, and is an essential component in the valuation of personal property, just as it is in the valuation of real property. Whether personal property is valued by single-property method using cost and market approaches, as did Petitioner, or by the use of a mass appraisal method as did Respondent, there must be an infusion of market data for the result to be market-based. Respondent's use of a variant cost approach, without reference to any market data in support of that method, renders it difficult to accept the valuation conclusion as being market-based. For the STC Multiplier method to be a reflection of market values, it would be necessary to view evidence of current market information having been introduced at some effective point of the process. Absent such evidence, the Tribunal has only the statement of witness Hobart that the multipliers are being constantly monitored to assure they remain current. While doubt is not being cast upon this being a factual representation, such an assurance, of itself, is not sufficient market evidence.

It appears to the Tribunal that the STC Multiplier method is a valuation process better employed as a mass appraisal technique for its uniformity of result and ease of administration. The method does not appear well-suited to defense as a market-based methodology in Tribunal appeals. A more effective process would be to employ market data directly in support of a market-based appraisal methodology. Respondent had that choice, the choice of changing valuation systems in challenging Petitioner's proofs and defending its own position. It was not necessary that the true cash value upon which the assessment is based be defended by the same assessment mass appraisal system used in its derivation. p 14.

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 *Findings of Fact* section of this Final Opinion and Judgment.

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

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by 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, and (xiii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, and (xiv) after December 31, 2008, at the rate of 3.31% for calendar year 2009.

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

MICHIGAN TAX TRIBUNAL

Entered: March 18, 2009 By: Victoria L. Enyart, Tribunal Member