

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

Calder Plaza Investors,
New BVD, LLC, and
Partners V, LLC,
Petitioners,

MTT Docket No. 308994
MTT Docket No. 309000
MTT Docket No. 318169

v

City of Grand Rapids,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

FINAL OPINION AND JUDGMENT

A hearing was held in this case commencing on August 20, 2007, and continuing through August 23, 2007, before then Tribunal Member Susan Munsell Width. Petitioner was represented by William H. Bowie (P22966). Respondent was represented by Bernard Schaefer (P 40114). Ms. Width's term as a member of the Michigan Tax Tribunal ended on June 30, 2009. Pursuant to TTR 140, this matter was, on November 6, 2009, assigned to this member for decision.

This matter involves three separate office condominium units located in the same office building in the City of Grand Rapids, Kent County, which are under separate ownership and have been assigned separate tax parcel identification numbers to-wit: 41-13-25-231-013, 41-13-25-231-016 and 41-13-25-231-017. Tax parcels 41-13-25-231-13 and 41-23-25-231-16 are owned by Calder Plaza Investors and the years under appeal are 2004, 2005 and 2006. Tax parcel 41-13-25-231-017 is owned by New BVD, LLC, and Partners V, LLC, and the years under appeal are 2005 and 2006.

These matters were initially filed as separate appeals and were assigned separate Michigan Tax

Tribunal docket numbers. The Tribunal, by order dated August 23, 2006, consolidated the above three docket numbers for hearing.

At issue in this matter are the true cash, assessed and taxable values for each year properly before the Tribunal for each tax parcel.

FINAL VALUES

The Tribunal finds that the true cash value (TCV), assessed value (AV), and the taxable value (TV) for each of the subject properties are as follows:

Parcel No. 41-13-25-231-013, MTT Docket No. 308994, Calder Plaza Unit One

	TCV	AV	TV
2004	\$823,027	\$411,513	\$411,513
2005	\$848,668	\$424,334	\$420,977
2006	\$874,128	\$437,064	\$434,869

Parcel No. 41-13-25-231-016, MTT Docket No. 309000, Calder Plaza Unit Four

	TCV	AV	TV
2004	\$2,212,227	\$1,106,113	\$1,106,113
2005	\$2,278,539	\$1,139,269	\$1,131,553
2006	\$2,346,951	\$1,173,478	\$1,149,889

Parcel No.41-13-25-231-017, MTT Docket No. 318169, Calder Plaza Unit Five

	TCV	AV	TV
2005	\$2,277,466	\$1,138,733	\$1,138,733
2006	\$2,334,274	\$1,167,137	\$1,167,137

PETITIONERS' CONTENTIONS

Petitioners contend that the proper approach to determine the true cash value of all parcels under appeal for all years at issue is the income approach with the sales approach utilized as a back-up method to confirm the reliability of the income approach. In utilizing their income approach, Petitioners use the Discounted Cash Flow (DCF) method to arrive at the ultimate value

determination.

To support their sale comparison method Petitioners' appraiser adjusted sales for time and other factors such as rental conditions, tenant improvements, and leasing commissions.

Petitioners further contend that office condominiums of this size are not owner-occupied, but rather, are purchased as rental properties and, as a result, the income capitalization approach is the preferable method to apply. Petitioners also contend the reason that Unit I had never been offered for sale was because it is Petitioners' position the unit would be purchased as an income producing property, and no one would buy a unit that was vacant.

RESPONDENT'S CONTENTIONS

Respondent asserts that over the last five to ten years there has been an explosion of commercial condominium units in downtown Grand Rapids and, like residential condominiums, should be valued using the sales comparison approach (Tr Vol 1, p 15) and, like residential condos, purchasers buy them to use them not to rent them.

Respondent believes that there are enough commercial condominium sales sufficiently similar to the subject parcels to establish that the sales comparable approach is the best indicator of value.

To the extent the income approach to value is considered, at least as to Unit 4, a stabilized income flow exists so the direct cash flow method should be used. As to the other parcels, due to some anomalies, Respondent believes that the direct capitalization method should be used also for Units 1 and 5.

At the onset of the hearing, the parties entered into the record a Stipulation of Uncontroverted Facts that, for purposes of this hearing, the Tribunal will accept as fact without further analysis or proofs.

JOINT STIPULATION OF UNCONTROVERTED FACTS

The addresses of the three properties that are the subject of this action are: Unit 1-220 Monroe Ave NW; Unit 4-252 Monroe Ave NW; and Unit 5-260 Monroe Ave NW, Grand Rapids, Michigan. The permanent tax parcel identification numbers are: Unit 1-220 Monroe Ave NW: 41-13-25-231-013; Unit 4-252 Monroe Ave NW: 41-13-231-016; and Unit 5-260 Monroe Ave NW: 41-13-25-231-017.

The owners of record for each respective parcel for all years under appeal are: Unit 1-Calder Plaza Investors, Unit 4-Calder Plaza Investors, and Unit 5-Fifth Floor Partners, a joint venture consisting of Partners V, LLC and New BVD, LLC.

The property rights at issue concern the subject properties' value as a whole, one in fee simple and unencumbered.

The subject property is located in the 200 block of Monroe Ave NW, in the City of Grand Rapids, Kent County, Michigan on the east side of Monroe avenue. It is just south of the City-County office complex and north of the Fifth Third Bank complex. Parking is in close proximity. It is a 1979-1980 built 10-story brick and glass office building of good quality construction, well maintained and in good condition.

The approximate location of each Unit within the building is as follows: Unit 1-6,330 square feet of the Plaza level/590 square feet of the Monroe level; Unit 4-the 4th floor; and Unit 5-the 5th floor.

The subject properties are in the Grand Rapids School District and Kent Intermediate School District. The assessment and tax data for the tax years at issue are:

Parcel No. 41-13-25-231-013, MTT Docket No. 308994, Calder Plaza Unit 1

	TCV	AV	TV
2004	\$1,0997,200	\$548,600	\$423,127
2005	\$1,145,400	\$572,700	\$432,858
2006	\$1,145,400	\$572,700	\$447,142

Parcel No. 41-13-25-231-016, MTT Docket No. 309000, Calder Plaza Unit 4

	TCV	AV	TV
2004	\$2,371,800	\$1,185,900	\$1,113,822
2005	\$2,476,200	\$1,238,100	\$1,139,439
2006	\$2,476,200	\$1,238,100	\$1,177,040

Parcel No.41-13-25-231-017, MTT Docket No. 318169, Calder Plaza Unit 5

	TCV	AV	TV
2005	\$2,376,000	\$1,188,000	\$1,188,000
2006	\$2,376,000	\$1,188,000	\$1,188,000

There was no equalization factor on the parcels under appeal and the level of assessment was 50% for the commercial class for all years at issue.

The highest and best use of the subjects, both as vacant and as improved, is as the existing or similar use of the site.

The building management office is on the Monroe level of Unit 1-220 Monroe Ave NW and the Plaza level has been used for offices. Unit 4-252 Monroe Ave NW was occupied by MCI and

Fifth Third Bank, although the bank lease expired in January of 2006 and was re-leased to HQ Global pursuant to a Lease dated September 5, 2006. Unit 5-260 Monroe Ave NW has been occupied by the law firm of Miller Johnson.

Assessor's records show no sales of Unit 1-220 Monroe Ave NW or Unit 4-251 Monroe Ave NW in the last ten years, but Unit 5-260 Monroe Ave NW was sold on October 31, 2003 for \$2,375,000, and sold again on January 1, 1997 for \$1,600,000.

The subject property is zoned C-3A, City Center Mixed Use Zone. Rezoning is unlikely. The C-3A Zone allows public service uses including parks, courthouses, police stations, etc.; cultural uses such as art galleries, libraries, museums, etc; educational uses such as schools, daycares, and colleges, etc; transportation and utility related uses; office uses such as governmental offices, general and professional offices, bank offices, medical offices, etc.; institutional uses such as churches and other charities, etc; retail commercial uses such as clothing and furniture stores, etc; other commercial uses such as eating establishments, health clubs, beauty shops etc; and residential uses. The current use is likely to continue into the future.

The subject properties are located on Monroe Avenue in the heart of downtown Grand Rapids. They are condominium units in as multi-story office building. Unit 1 consists of 6,330 square feet on the Plaza level and 590 square feet on the Monroe level. Unit 4 and Unit 5 each consist of an entire floor with 17,126 square feet (17,063 SF per condominium documents).

The building site is rectangular in shape with about 1,996 feet of frontage on Monroe Avenue

and 210 feet of depth for a total area of 41,460 square feet or .945 acres. The size of the subject is adequate for its use. Public ingress and egress to the building is from Monroe Ave.

All public utilities service the site. The City of Grand Rapids provides police and fire protection. Public transportation is available to the subject property. Sidewalks, curb, and gutters are present.

The subject property is in Floor Zone B community #260106 Panel 002C map date November 5, 1982. This means it is in the area between the 100 year flood boundary and the 500 year flood boundary.

Unit 1 is vacant except for temporary renters of portions and except for building management, which occupies the Monroe level.

Part of Unit 4 is leased to MCI according to Bruce Parsons, building manager. MCI leases about a quarter of the floor for its equipment and the lease was renewed in July 2005 for 42 months. The rent is approximately \$22.50 or more per square foot. This includes the ability to have wiring in common areas. The remainder of the floor was leased to Fifth Third Bank through January of 2006 at \$18.25 per square foot, plus pass-through increases. This space was re-leased to HQ Global pursuant to a Lease dated September 5, 2006.

The lease for Unit 5 expired in April of 2005 and was renegotiated at \$17.00 per rentable square foot, when a core area factor is applied to the unit size 17,126 SF (17,063 SF per Condominium

Documents) makes the area utilized to calculate this, 19,181 square feet. Applying the yearly rental to the physical size of 17,126 makes the rental rate \$19.04 per usable square foot.

PETITIONERS' WITNESSES AND EXHIBITS

In support of their contentions, Petitioners called four witnesses: William Bowling, Tricia Foster, Bruce N. Parsons, and Terrell R. Oetzel, MAI. In addition, Petitioners offered the following exhibits:

1. Complete Appraisal Summary Report of Unit 1 Office Condominium dated May 24, 2006 by the Oetzel-Hartman Group.
2. Complete Appraisal Summary Report of Unit 4 Office Condominium dated June 19, 2006 by the Oetzel-Hartman Group.
3. Complete Appraisal Summary Report of Unit 5 Office Condominium dated May 24, 2006 by the Oetzel-Hartman Group.
4. Oetzel-Hartman Group Appraisal dated March 31, 2006 in connection with the Owner's refinancing covering Units 1, 3, 4, 5, 6, 7, 8, 9 and 12 of 134,677 leasable square feet as \$12,400,000 or \$92.04 per leasable square foot.
5. Summary schedule of income collected and expenses paid for each of the Units 1, 4 and 5 for each of the years 2002, 2003, 2004 and 2005.
6. Campau Square Plaza Building History of Operating Expenses for 2003 – 2006.
7. Calder Plaza Investors Operating Expenses for July 1, 2001 – June 30, 2002.
8. Calder Plaza Investors Operating Expenses for July 1, 2002 – June 30, 2003.
9. Calder Plaza Investors Operating Expenses for July 1, 2003 – June 30, 2004.
10. Calder Plaza Investors Operating Expenses for July 1, 2004 – June 30, 2005.
11. Calder Plaza Investors Operating Expenses for July 1, 2005 – June 30, 2006.
12. Unit 5 Operating Expenses for November 1, 2003 – June 30, 2004.
13. Unit 5 Operating Expenses for July 1, 2004 – June 30, 2005.
14. Unit 5 Operating Expenses for July 1, 2005 – June 30, 2006.
15. Calder Plaza Investors Operating Expenses net of Real Estate Taxes calculated on a Rentable Square Footage basis and a Usable Square Footage Basis.
16. Downtown City of Grand Rapids Office Building Occupancy and Vacancy Levels 2002 – 2005 obtained from the BOMA Survey.
17. Lease to Old Kent Bank, now Fifth Third Bank, dated October 23, 1998.
18. Lease to HQ Global Workplaces, LLC dated September 5, 2006 and the previous lease to Fifth Third Bank.
19. Brooks (formerly World Com) Lease dated November 3, 1983 for 2,800 square feet with Dial America.
20. Brooks (formerly World Com) First Amendment dated February 1, 1984 for 3,276 square feet with Dial America.

21. Brooks (formerly World Com) Second Amendment dated March 30, 1987 with Teledial America.
22. Brooks (formerly World Com) Third Amendment dated July 29, 1994 for 2,226 square feet with Teledial America.
23. Brooks (formerly World Com) Fourth Amendment dated February 20, 1998 for 2,346 square feet with Brooks Fiber Communications of Michigan, Inc.
24. Brooks (formerly World Com) Fifth Amendment dated October 7, 1998 for 4,346 square feet with Brooks Fiber Communications of Michigan, Inc.
25. Lease to Humana of Unit 12 dated February 6, 2004.
26. Miller Johnson Lease affecting Floors 5, 7, 8 and 9 dated August 30, 2005.
27. Miller Johnson Early Termination Rider affecting Floors 5, 7, 8 and 9 dated August 30, 2005.
28. Miller Johnson Memorandum of Lease recorded September 2, 2005, Instrument No. 20050902-0205697.
29. Miller Johnson Waiver Notice dated September 14, 2005.
30. Miller Johnson Plaza Level Space Rental Agreement for Unit 1 dated June 27, 2003.
31. Smith Haughey Lease for Suite 100 dated October 6, 1993.
32. Smith Haughey Lease Amendment for Suite 100 and 140 dated December 31, 2002.
33. Management Agreement dated January 1, 2006 with Executive Property Management, L.L.C.

Petitioners' Witnesses

William Bowling was offered and was qualified as an expert in sales and leasing of downtown office buildings and commercial office condominiums.

The witness indicated that today's market is soft with an over-supply and less demand and that the condition has existed for the last five years. The typical lease rate, on a modified gross basis, is \$15 to \$16 per rentable square foot for a period of five to ten years. For space the size of the subject properties Units 4 and 5, with a ten-year lease, it is common to give one year of free rent. The witness also indicated that a tenant improvement allowance (TIA) of \$25 to \$35 per rentable square foot was expected to be paid by the landlord. Additionally, the witness indicated that the landlord would be expected to pay a leasing commission of 6% of the modified gross rent over the first five years and 3% of the modified gross rent over the second five years. The witness

also indicated that moving costs are sometimes an issue in the negotiation between landlord and tenant as well as ongoing parking costs. Both these items can impact the final rental rate.

Bowling also explained the location of several Renaissance Zones in the Grand Rapids area and indicated that Petitioners were at a disadvantage when competing with office space for lease in these zones. Occupants in Renaissance Zones do not pay Michigan Single Business Tax, Grand Rapids City Income Tax or property taxes. The witness indicated that competition is so fierce in the market currently that “Reduction in the rent when leases come back up is exactly what’s happening in the market.”

When cross-examined by Respondent, the witness stated that 50% of the purchasers of commercial condominium space were going to be the occupants of that space. When questioned about six specific sales, the witness indicated that the buyer in four of these sales occupied the space entirely. He then indicated that the buyer in the other two sales occupied one-half of the space and attempted to lease the other half.

Bowling indicated that the building in which the subject properties are housed is a Class A building. The witness indicated that a building is considered Class A if it has on-site parking, a “deli” or restaurant in the building and is no older than 25 years of age, although in Grand Rapids the age may be higher. Class A buildings also tend to offer higher tenant improvements (TI). The witness cited five specific companies which he represented in lease negotiations in the 2003-2005 time period: his own company (Grubb Ellis), Smith Barney, Lambert Edwards, AON, and MetLife. He indicated that the first four tenants paid \$15-\$16 per square foot and MetLife

paid \$13.50 on a space of approximately 1,500 square feet.

Upon re-direct examination, Petitioners refocused the witness on the six specific sales that Respondent queried as to owner use. The witness indicated that all six of these spaces were 4,200 square feet or less.

Tricia Foster was offered and qualified by the Tribunal as an expert in property management.

Ms. Foster testified that she had completed all the course work involved in being designated a certified property manager (CPM) through the Institute of Real Estate Management (IREM). She still needs to complete the test required for the CPM designation. The witness also indicated that she is a member of the Building Owners and Managers Association (BOMA). The witness indicated that her duties include supervising the managers that are placed by CB Richard Ellis/Martin, her employer, in individual buildings, the square footage of which totals approximately 1,500,000 square feet in Western Michigan. Over Respondent's objection, the witness was recognized as an expert in property management, including related income and expenses.

After a review of Petitioners' Exhibit Six, Ms. Foster stated that her company's goal in managing a Class A building in a central business district (CBD) is an expense rate, without real estate tax, of \$4.50 to \$5.50 per rentable square foot. When reviewing Petitioners' Exhibit 15 the witness indicated that the expenses reflected per square foot on an annualized basis for the building where the subject properties are located seemed "reasonable." This witness spent time during the

cross-examination, the re-direct examination, and the re-cross-examination explaining that tenants are billed their pro-rata share of the operating expenses over their base year.

Bruce N. Parsons

The witness indicated that three Limited Liability Corporations (LLCs) have joint ownership of the three condominiums that comprise the subject property. Parsons is the managing member of these LLCs. The witness also identified himself as President of Executive Property Management, which manages the entire building where the subject property is located.

The witness spoke to the rental history of Unit 1, indicating that it has been available through the Multiple Listing Service (MLS) since December 31, 2003. The rental rate was originally listed as \$22, but has been reduced over time and is currently \$17.75. He indicated that the owners would grant \$30 per square foot of TI. His opinion of why this unit hadn't been occupied was its lack of access from Monroe Street and its lack of sight line visibility from Ottawa Street, sitting one-half block behind the parking lot. When two different judges considered it for space, they objected to the multitude of glass and access from a security perspective.

The witness then addressed himself to Unit 4 and its status on December 31, 2003. At that time it was divided into two suites, the northern portion leased to Fifth Third Bank, but not occupied, and Suite 450, leased to MCI Metro Access, which houses large battery packs and is the fiber hub for downtown. The Fifth Third Bank portion sat empty until January 31, 2006, when its lease expired. The MCI lease began July 1, 2005 and expired December 31, 2008, at which time MCI indicated it would be vacating the space. The basic rent from MCI was \$25.25 per square

foot, substantially above the market. The witness indicated that this was due to MCI's use of the building runs for a multitude of wiring. The witness then explained the terms of the HQ Global/Regus lease, which began December 1, 2006. The arrangement with this tenant represents more of a joint venture arrangement than a typical landlord/tenant arrangement.

The witness reminded the Tribunal that the appeal on Unit 5 started with tax date December 31, 2004. Petitioners had purchased this Unit in 2003 for \$2,350,000, with an existing lease dated August 29, 1997. The lease was amended as of March 31, 2005. Prior to the amendment the terms of the lease included a 10% core factor and a base rent of \$18.70. The pass-through for expenses was \$1.98 for the first year of this tax appeal. The new lease covered the space on Unit 5 as well as on floors seven, eight and nine. The base rent rate of this lease was \$17.00. A TI of \$10.81 per square foot was also paid, as well as a lease commission of \$65,000 or \$.95 per square foot on a 12% core factor. The total cost was \$11.76 per square foot to enter this eleven-year lease.

The witness also indicated that Petitioners believed that the purchase price was in excess of the true cash value, but if they hadn't bought the Unit they might have been in danger of losing the space for the tenant who also occupied three other floors. The witness felt this belief was supported by the fact that the market rent would not support this price and Petitioners had purchased Unit 6, all of floor six, the same basic footprint, for \$1,950,000 in July of 2002. Petitioners paid an additional \$7.96 per square foot for TI and leasing commissions.

The witness presented details regarding the services that result in landlord expenses that are not

passed on. In the subject building, cleaning and trash removal is provided six days a week rather than the standard five days. The air conditioning in the subject building is humidified and starts at 5 AM and runs to 7 PM Monday through Friday, from 5 AM until 3 PM on Saturday, with a four-hours-off/four-hours-on pattern for the remaining times of the week. Additionally, the landlord does not charge the tenant for light bulb replacement or minor repairs.

The witness indicated that the landlord experienced unusual expenses with the HQ Global/Regus lease. TI of \$518,233.04 was paid and leasing commissions of \$90,000 to CB Richard Ellis and \$30,000 to Executive Property Management.

In cross-examination, the witness was questioned as to the size of the management fee for the subject property, the Calder Building, in comparison with that of the Campau Building. In re-direct examination the witness indicated that the management fee was established at 4% of gross revenue, which is the standard for the Grand Rapids Area.

Terrell R. Oetzel, MAI, was qualified as an expert in the valuation of real property and testified in support of the valuation disclosures prepared for each of the three tax parcels (Units 1, 4, and 5) under appeal (P-1-2-3).

The witness indicated that his work began with an inspection of the building in which the subject properties were located, discussions with the client, and then research to determine the highest and best use, which he determined to be the continuation of the properties as condominium office space. The witness indicated that the cost method of determining TCV is not appropriate in this

case due partly to the age of the building. He indicated that buyers and sellers would be using the income approach and the sales comparison approach so the appraisal should reflect the market and do the same thing.

Income Approach

Oetzel indicated that he puts more weight on the income approach because the cost associated with the turnover of clients is not reflected in the sales comparison method. He uses the sales comparison method as support to the income method. The witness also indicated that he used the *equity yield* or *yield capitalization* income method, more commonly known as the *discounted cash flow method*, rather than the *direct capitalization* method used by Respondent because the income does not come in evenly over time. He indicated that the discounted cash flow method allowed him to better account for the necessary payment of items such as TI and leasing commissions. The witness explained that since the appraisals were completed on a *fee simple* basis as opposed to a *lease fee* basis, market rents and expenses were used when computing TCV with the income method.

The witness explained, as set forth in his appraisals, that the Grand Rapids Central Business District (CBD) office market is experiencing decreasing occupancies and increasing vacancies, and therefore declining rental rates. He indicated that he used a rentable square foot rate of \$18.00 in his calculations based on the data collected by CB Richard Ellis and BOMA as set forth in the Summary of Rental Rates table in the appraisal. For the lower level space, with no windows, Oetzel indicated he used a rate of \$17.00.

Specific to Unit 1

Specific to the Unit 1 Appraisal, the witness indicated that at the date of the report, May 24, 2006, this space was available for \$19.50 and that this space has been vacant and available since January 2003. Additionally, the witness stated that Petitioner had indicated that up to \$30 per square foot was available for TI. When estimating the market expense rate to use in the discounted cash flow method, the witness explained that his calculations in the appraisal are based on the specifics of the Calder Building and represent the market rate. . . “there wasn’t anything out of line with the other buildings that I had data on.” The appraisal includes an expense rate of \$6.43, a dollar of which is reimbursed by tenant for electricity. The calculations also use \$20 per square foot of TI for the upper 7,143 square feet and \$4 per square foot for the lower 590 square feet.

The witness then explained that he established a reversion capitalization rate to determine what the subject property could be sold for after five years and he established a yield rate to bring the annual cash flows and sales proceeds back to present value, to determine the TCV of the subject property now. In the appraisal the witness stated:

The yield rate required for individual property types does not follow a static pattern, but reflects investor perceptions of the market relative to risk in a particular property type. Over the last year, general yield rates have decreased. While many of the real estate markets appear to be stabilizing, the downward pressure on rates is from demand for properties fueled by the weak returns on other investment opportunities.

Applying a reversion capitalization rate of 10.96% to determine the property’s TCV after five years and a yield rate of 13.86% to state the annual income and the TCV after five years in present dollars, the witness indicated that the December 31, 2004, value was \$590,000. The

figures for December 31, 2003 were 10.77% capitalization rate, and yield rate of 13.67% and \$605,000 value as of that date. The difference between the two years is a result of the difference between the property tax rates for each year.

Sales Comparison Approach

Oetzel explained his implementation of the sales comparison method. As comparables, the witness indicated that he used two sales in the same building as the subject: Unit 5 and Unit 6. He also used two units in a building located at 57 Campau Avenue, NW, Unit 1 and Unit 2. His conclusion for TCV on December 31, 2003, was \$82 per square foot or \$630,000. His conclusion for TCV on December 31, 2004 was \$84.50 per square foot or \$650,000.

Specific to Unit 4

In the appraisal the witness indicated that the Unit 4 rentable square feet of 17,601 was divided between two tenants: Fifth Third Bank leased 12,733 square feet although it did not occupy this space, and MCI/WorldCom leased and occupied the remaining 4,868 square feet.

On December 31, 2003, Fifth Third Bank was paying \$19.57 per square foot, including pass-through and on December 31, 2004, they were paying \$19.73, including pass-throughs. This space has been empty since January 2003 and had been offered for rent, most recently at \$18.40, which the witness states is above market rate. The Fifth Third Bank lease expired on January 31, 2006.

The witness also indicated that the MCI space was leased at \$26.08 per square foot, including

pass-throughs on December 31, 2003, and at \$26.72 on December 31, 2004. This space is leased by MCI through December 31, 2008. The appraisal states: “The lease rate for WorldCom appears high but this higher rental rate is due to additional requirements for this tenant such as having extensive wiring through the building, steel supports, window coverings, using the roof for towers, etc.”

Income Approach

In projecting Net Operating Income for this unit under the income approach Oetzel indicated the use of an \$18 market rent rate for the vacant 12,733 square feet. In projecting income for the 4,868 square feet covered by an ongoing lease, the witness indicated a lack of comparable leases and therefore used \$26 per square foot, the current lease rate. Six months without rent for each section of Unit 4 is projected because . . . “We are providing a fee simple analysis and assume that the subject is vacant and available to lease as of the date of Value. After the initial lease-up period the subject is considered to be 100% physically occupied for the analysis period.”

However, while TI of \$40 per square foot is estimated for the space leased by Fifth Third, no TI is estimated to be expended for the MCI space, which has been uniquely adapted to this renter who has renewed. Leasing commissions were also projected only on the larger, vacant space.

Sales Comparison Approach

As comparables, two sales in the same building as the subject, Unit 5 and Unit 6, were utilized. Two Units in a building located at 57 Campau Avenue, NW, Unit 1 and Unit 2, were also utilized. The witness indicated:

This is the perfect example of why I don't think the sales comparison approach is

really a good comparison because I couldn't find condominiums that sold – they really were the smaller ones under 5,000 square feet were most of what the condominium market is and here I am dealing with a condominium that's 19,000 or 17,000 square feet and so you have to make major adjustment for size in here which I didn't like to make but that was the only alternative. That's why I felt the income approach is more appropriate. (TR Vol 2, p 281)

The resultant TCV for both December 31, 2003, and December 31, 2004, was \$1,600,000 using the sales comparison Approach.

Specific to Unit 5

The law firm of Miller, Johnson, Snell and Cummsky, PLC, occupies the entire Unit 5, which, according to Petitioners' valuation disclosure, consists of 19,181 square feet rentable area (17,126 usable sq. ft.). The Tribunal notes that the valuation disclosures for Unit 5 (P-3) and Unit 4 (P-2) indicate at page 78 in P-3 and at page 80 in P-4 that both Units 4 and 5 have 19,181 square feet of gross building area, whereas at page 83 of P-2, Oetzel indicates a square footage of 17,601.

Petitioners' expert testified that Unit 5 is essentially the same size as Unit 4; however, his valuation dates for Unit 5 are December 31, 2004 and 2005, whereas for Units 1 and 4 the valuations dates are December 31, 2003, 2004 and 2005. He determined the market rent for the entire floor was \$18 per square foot (P-3, p 52).

Oetzel testified that he utilized the same general methodology for Unit 5 as he had employed for units 1 and 4, which resulted in his estimate of true cash value for Unit 5 of \$1,725,000 as of December 31, 2004 (2005 tax year) and \$1,730,000 as of December 31,

2005 (2006 tax year).

RESPONDENT'S WITNESS AND EXHIBITS

Donna Beth Stokes, CMAE IV, prepared Respondent's Valuation Disclosure, which consisted

of:

- A. Valuation Disclosure (Three sets of 'A' Exhibits, one for each of Unit 1, 4 and 5).
 - 1. Assessor's Record Card with Property Description and Site Plans.
 - 2. Zoning Code.
 - 3. Neighborhood Map.
 - 4. Floor Plan.
 - 5. Sales Comparable Location Map.
 - 6. Korpacz Cap Rate Data.
 - 7. Qualifications of Appraiser.
 - 8. Building Listings.
 - 9. BOMA Data.
 - 10. Downtown Commercial Condo Sale.
 - 11. Downtown Commercial Condo Listings.
 - 12. Building Photographs.
- B. Withdrawn.
- C. Withdrawn.
- D. Tenant Leases received from Petitioner.
- E. Rent rolls and Income Expense Data received from Petitioner.
- F. Assessor's Office Records for the following properties: Admitted over objection.
 - 1. 57 Campau NW – Units 1, 5, 6, 7, 8, 9, 10, 11 and 12.
 - 2. 266 Monroe NW.
 - 3. 99 Monroe NW.
 - 4. 25 Jefferson SE – Unit 4.
 - 5. 70 Ionia SW – Unit 2.
 - 6. 260 Monroe NW.
 - 7. 333 Bridge NW.
 - 8. 190 Monroe NW - Units 1A, 1B, 2 and 4.
 - 9. 25 Commerce SW – Units 2, 3, 4 and 5.
 - 10. 124 East Fulton – Units 2 and 3.
 - 11. 168 Louis Campau NW – Units 1, 2, 3 and 4.
 - 12. 801 Monroe NW – Unit 8.
 - 13. 600 Monroe Terrace NW – Units 104, 105, 106, 107, 108, 109, 110, 111 and 112.
 - 14. 248 Louis NW – Unit 2 (formerly 57 Campau NW – Unit 2).
- G. Comp Sheets for Following Properties:
 - 1. 101 North Main.
 - 2. 333 Bridge NW.

3. 99 Monroe NW.
4. 235 South Grand.
- H. Condominium Documents received from Petitioner.
- I. BOMA office market data.
- J. Lease data for Chase and Frey Buildings.
- K. Lease listings for other comparable properties. Admitted over objection of Petitioner.
- L. Appraisal of 250 Monroe NW dated March 13, 2006 by Oetzel-Hartman Group.
- M. Valuation Disclosure for 250 Monroe NW, Unit 12, by Oetzel-Hartman Group. Admitted over objection of Petitioner.
- N. Assessment appeal information on comparable properties. Admitted over objection of Petitioner.
- O. Comp sheets on comparable properties., admitted over objection of Petitioner
- P. Property transfer affidavits. Admitted over objection of Petitioner except transfer affidavits dated 2007.
- Q. Current listings for Monroe Avenue NW. Not admitted, withdrawn by Respondent.
- R. Crowe Chizek sale/lease back information. Withdrawn
- S. Current condo purchase listings. Not admitted.
- T. Any exhibit necessary to rebut the claims of Petitioner and the testimony of their witnesses, including:
 1. Updated Downtown Commercial Condo Sales data.
 2. Additional BOMA Market Data.
 3. Appraisal Excerpt – Unit 5 Old Lease Terms.
 4. Second Amendment to Unit 6 Lease.

Stokes was qualified as an expert in the assessment and valuation of property and testified in support of the Valuation Disclosures she prepared for each of the three units under appeal in this case.

Unit 1, located at 220 Monroe, was identified as having 6,330 square feet located on the plaza floor and 590 feet on Monroe level floor space. She indicated that the neighborhood where the property is located is a stable to growing area with several new renovation construction projects underway that have a positive impact on the area. As to all three properties, Stokes indicated that although she had considered all three approaches to value in arriving at her conclusions of value, she dismissed the cost approach for the reason that the subjects were 20+ year old

properties and, as a result, would be difficult to estimate accrued depreciation, effective age, and other subjective variables. It was her opinion that a prospective purchaser would not utilize the cost approach.

The witness further indicated that she actually performed an income approach and a sales comparison, but gave the sales comparison approach primary weight because the data she received from market participants and the published data and treatises led her to believe that the sales comparison approach yielded the most accurate estimate of value.

For all Units, Stokes considered the Income Approach, and conducted a search for downtown office rents which she deemed similar (R-A-1, 2 and 3) to arrive at the potential gross rent for each unit. Once the potential gross rent had been calculated, a vacancy and collection loss was arrived at from which operating expenses of \$4.00 per square foot was deducted. In the case of Unit 1, effective gross income of \$121,900 was determined, less \$27,680 in Operating Expenses, to arrive at \$94,220 net operating income. Based on her research, Stokes arrived at an 8.5% capitalization rate to which she tax loaded 2.34% to arrive at an overall capitalization rate of 10.84%, for a value as of December 31, 2003, of \$869,000 for Unit 1.

The witness utilized essentially the same methodology for Units 4 and 5. For Unit 4 she concluded to gross potential income of \$315,665 based on 17,063 square feet and an \$18.50 income per square foot less vacancy and collection loss of \$25,253 at 8% of gross potential income to arrive at net operating income of \$222,160 to which a tax load capitalization rate of 10.86% was applied to arrive at a value of \$2,045,000 as of December 31, 2003. For Unit 4, the

witness concluded to a \$19.71 per square foot rental rate for the 17,063 square feet for the Unit for potential annual gross rent of \$336,312 with a collection and vacancy loss of 8% to arrive at effective gross income of \$309,407 from which operating expenses of \$4.00 per square foot were deducted, the result of which was annual net operating income of \$241,155 to which a tax loaded capitalization of 10.84% was applied resulting in an estimated value estimate for Unit 5 as of December 31, 2004, of \$2,200,000.

Respondent's Sales Comparison Approach

Stokes utilized six sales of properties she deemed comparable to the subjects. The Tribunal notes that three of the six sales were also utilized by Petitioners' expert in the preparation of his appraisal. The six sales were all located in downtown Grand Rapids with two located in the same structure as the subject for Unit 1 and 5. For Unit 4, four sales were considered. Stokes explained her adjustments for time/market conditions, size, location, age/condition, parking, and basement. She indicated that as a result of her research she found that the market did not differentiate based on size.

Stokes explained that although she considered both the sales comparison and income capitalization in arriving at her ultimate conclusions of value, she found the sales comparison method yielded the most accurate estimate of value. Her rationale was also set out in the three valuation disclosures she filed for each of the parcels under appeal.

APPLICABLE LAW

The assessment of real and personal property in Michigan is governed by the constitutional

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

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

MCL 211.27a (2) provides:

(2) Except as otherwise provided in subsection (3), for taxes levied in 1995 and for each year after 1995, the taxable value of each parcel of property is the lesser of the following:

- (a) The property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions. For taxes levied in 1995, the property's taxable value in the immediately preceding year is the property's state equalized valuation in 1994.
- (b) The property's current state equalized valuation.

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

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

- (iii) New construction. As used in this subparagraph, "new construction" means

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

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

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

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

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

“The petitioner has the burden of establishing the true cash value of the property....” MCL 205.737 (3); MSA 7.650 (37)(3). “This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing; and (2) the burden of going forward with the evidence, which may shift to the opposing party.” *Jones and Laughlin at*

354-355, citing: *Kar v Hogan*, 399 Mich 529, 539-540; 251 NW2d 77 (1976); *Holy Spirit Ass'n for the Unification of World Christianity v Dep't of Treasury*, 131 Mich App 743, 752; 347 NW2d 707 (1984).

“There are three traditional methods of determining true cash value, or fair market value, which have been found acceptable and reliable by the Tax Tribunal and the courts. They are: (1) the cost-less-depreciation approach, (2) the sales-comparison or market approach, and (3) the capitalization-of-income approach.” *Meadowlanes Limited Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 484-485; 473 NW2d 636 (1991); *Antisdale* at 276-277, n 1. The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in marketplace trading. *Antisdale* at 276, n 1. “Variations of these approaches and entirely new methods may be useful if found to be accurate and reasonably related to the fair market value of the subject property.” *Meadowlanes*, at 485, referencing *Antisdale* at 277, n 1. “It is the duty of the Tribunal to select the approach which provides the most accurate valuation under the circumstances of the individual case.” *Antisdale* at 277, citing *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968).

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

566 (1979).

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

ANALYSIS OF VALUATION PROBLEM

Both parties have concluded that the cost approach to value is inappropriate in this matter and, further, both parties utilized the income capitalization and sales comparison approaches with Petitioners utilizing the discounted cash flow (DCF) method for their income approach and Respondent using the direct capitalization method. The Tribunal will analyze the methodology employed by both parties in arriving at their respective conclusions of value utilizing the sales comparison and income approaches to value. We will further analyze which of these two approaches or combination achieve the best indication of value for each of the three parcels under appeal.

Petitioner's expert concluded that the income approach using the discounted cash flow method

yielded the best indication of value, and Respondent determined that the sales comparison approach yielded the best indication of value.

The basic tenet to the sales comparison approach is that an informed purchaser would pay no more for a property than the cost of acquiring another existing property with the same utility.

The sales comparison approach is especially appropriate when an active market provides sufficient reliable data that can be verified.

Both parties utilized the income capitalization approach. Petitioners determined that it was the most appropriate method to value, and Respondent used it to test its conclusion reached by using the sales comparison. Petitioners used the discounted cash flow (DCF) method and Respondent the direct capitalization method. The Tribunal will discuss which of these two income capitalization methods it deems appropriate, if any.

FINDINGS OF FACT

The Tribunal, having considered all of the documentary evidence and testimony submitted by the parties and based upon the record before it, concludes in addition to those facts stipulated by the parties in the Joint Stipulation of Uncontroverted Facts portion of this Opinion and Judgment, the following facts which it deems relevant:

Unit 1, with the exception of the portion of the Unit located on the Monroe level occupied by building management, has essentially been vacant during all tax years at issue. The owner of this Unit has not subjected the Unit for sale, believing that a purchaser would not purchase a vacant unit based on its assumption that the property would only sell to one who intended to rent rather

than occupy the unit, which, based on the record, Petitioners failed to prove.

There existed in downtown Grand Rapids at all times pertinent to this case an active market for the sale and purchase of office condominiums from which sufficient reliable data was available and subject to verification for the sales comparison approach to be reliably employed.

Nothing exists on this record for any of the years under appeal indicating that there were any “additions or losses” as set forth in MCL 211.34d.

Both Petitioners’ and Respondent’s valuation experts included in their respective sales comparison analysis the July 2002 sale of 266 Monroe Ave. (Sixth Floor of same building as the parcels under appeal) and the October 2003 sale of 260 Monroe Ave. (Unit 5-Fifth Floor same building and one of the same parcels under appeal), together with the September 2003 sale at 57 Campau Ave., NW (Petitioners’ sale one and Respondent’s sale 1). The Tribunal finds the two sales used by both parties in the same building as the subjects to be most similar and comparable to the subjects requiring the least adjustments and will be utilized by the Tribunal in arriving at its ultimate conclusion of true cash value.

The actual square footage of Units 4 and 5 is 17,063 as reflected on the master deed.

The inflation multipliers for calendar year 2005 and 2006 as issued by the State Tax Commission are 1.023 for 2005 and 1.033 for 2006.

CONCLUSIONS OF LAW

The Tribunal, having considered all of the evidence properly before it in this matter and having made its findings of fact based upon evidence that it has found credible, competent, material and substantial, concludes that the approach to value that provides the most accurate valuation of the subject properties is the sales comparison approach. As a result, the Tribunal will not enter into a detailed discussion of the parties' income capitalization methods. The Tribunal, although having considered this approach, finds that it does not provide for the most accurate valuation under the circumstances of this case.

In arriving at its ultimate determination of true cash value of the subject property for all valuation dates for all three parcels under appeal, the Tribunal has primarily adopted the comparable sales analysis and value estimates espoused by Respondent for the reasons herein set forth and subject to the revisions in those estimates of value made herein by the Tribunal.

Petitioners' counsel, in his examination of Respondent's expert and in his argument, has made much of the fact that Petitioners' expert, Terrell Oetzel, is an MAI whereas Respondent's expert, Donna Stokes, was not an MAI. The Tribunal is less interested in the initials after an individual's name than the quality of the work product produced and testimony presented. The Tribunal finds that the analysis and conclusions of Ms. Stokes taken as a whole, even though she does not have the MAI designation, to be more logical and in conformity to accepted appraisal standards and principles than those presented by Petitioners expert, Mr. Oetzel. The Tribunal notes as an aside if it were impressed with degrees and designations alone that Ms. Stokes' Bachelor's, Master's and Juris Doctor degrees, coupled with her level IV assessor certification,

general property appraiser designation, and certification as a Certified Public Accountant, would clearly trump Mr. Oetzel's designation as an MAI.

Further, the Tribunal concludes that Petitioners' contention that office condominium units should be valued based on a discounted cash flow income capitalization approach unsupported on this record and by the Grand Rapids market.

An example of why the Tribunal finds Stokes' analysis to be superior is her explanation of why she did not make "size" adjustments to her sale comparables one, three, four, and five (see sale comparison adjustment grid in Valuation Disclosures for each Unit), all of which were substantially smaller than the parcels under appeal. Stokes explained that, as a result of her research, she ascertained that the "market" did not place a premium on a square foot basis to smaller properties as evidenced by sale price per square foot of all of her comparables, including the two in the subject building. Petitioners' expert, on the other hand, was unable to justify his "size" adjustments by any "market" based analysis but rather rested his conclusion on the conventional wisdom that all things being equal, smaller properties sell for a higher price per square foot than larger properties.

The Tribunal believes that the "market" is both the July 2002 sale of Unit 6 in the building where the three subject parcels are located and the October 31, 2003, sale of Unit 5 (one of the parcels under appeal in this case) to be transactions between willing and knowledgeable buyers and sellers aware of general market conditions, including then-existing supply and demand levels of similar properties, and that leases on Units 4 and 5 were nearing expiration. Petitioners'

contention that the sale of Unit 5 was a “put up” price is not supported by the record, in particular, the testimony of Bruce Parsons, a witness called by Petitioners (see Tr, pp 169-171), and is specifically rejected by the Tribunal.

In Petitioners’ application of the sales approach, the Tribunal is less than impressed with Petitioners’ conclusions and adjustments to the two in common comparables utilized by both parties, which are identified above. Oetzel identifies the square footage of both Units 5 and 6 as 19,181 square feet, which includes a “core factor” that, in fact, does not exist in the Unit itself. Oetzel divides the respective sale prices by that number to arrive at an unadjusted price per square foot. The result of this method is to lower the price per square foot. In the sales comparable using Unit 5, which had a sale price of \$2,375,000, Oetzel’s indication of value was \$123.82 whereas Respondent’s calculation using the same sale price, but using the actual square footage as set forth in the master deed, yielded an unadjusted price per square foot of \$139.19. However, after applied adjustments, Oetzel then determines his estimate of value using the sales comparison approach by taking his adjusted value per square foot and multiplying by the actual square footage of Units 4 and 5, which he states is 17,601. The Tribunal concludes that this is a thinly veiled attempt to drive down his value conclusion using this approach. It may be argued if one were to utilize the income capitalization approach that a “core factor” should be applied; however, the Tribunal believes that such a method in the sales comparison approach is without merit, consistent with its finding that the square footage of Units 4 and 5 is 17,063. Since the parties have stipulated as to the square footage of Unit 1 as 6,920 square feet, the Tribunal does not have to conduct the same analysis for that Unit, although we note that Oetzel in his appraisal states the square footage of Unit 1 is 7,733, notwithstanding the stipulation.

Reviewing the record before it as a whole, the Tribunal concludes that Respondent's market condition adjustment of 5% annually is excessive and finds that Petitioners' market condition/time adjustment of 3% better reflects the market during the relevant period. Other than the market condition adjustment in Respondent's sales comparison analysis, the Tribunal determines all other adjustments to sales two and six for all parcels for all years are appropriate and provide great assistance to the Tribunal in determining the true cash values of the respective parcels.

For **Unit 1**, the Tribunal adjusts Respondent's price per square foot on comparable two to \$116.43 using a 3% per year market adjustment and for sale six to \$136.94, which results in an average price per square foot of \$122.64 for a true cash value of the Unit as of **December 31, 2004 of \$848,668**. Discounting the December 31, 2004, amount by the 3% market adjustment, the Tribunal arrives at a **December 31, 2003, true cash value of \$823,207**, and a December 31, 2005, value of **\$874,128** ($848,668 \times 1.03 \times 6,920$).

For **Unit 4**, the Tribunal adjusts Respondent's price per square foot on comparable two to \$119.42 using a 3% per year adjustment, and for sale six, for a value of \$139.88, which results in an average price per square foot of \$129.65 as of December 31, 2003. Although Respondent did not separately value Unit 4 for tax year 2005 and 2006, the Tribunal will apply a 3% market adjustment for each year to determine its true cash value. Applying an average adjusted sale price of the two comparables the Tribunal is utilizing, which is \$129.09 per square foot to the Unit's 17,063 square feet, the Tribunal concludes to a value of **\$2,212,227 as of December 31, 2003; \$2,278,539** ($\$2,212,227 \times 1.03 \times 17,063$) **as of December 31, 2004, and \$2,346,951**

(\$2,278,539 x 1.03 x 17,063) as of December 31, 2005.

For **Unit 5**, the Tribunal adjusts Respondent's price per square foot of comparable two to \$122.56 per square foot using a 3% per year market/time adjustment and for sale six to \$144.06, which results in an average price per square foot as of \$133.31 as of December 31, 2004, and using the 3% market adjustment to arrive at an average price per square foot of \$137.30 as of December 31, 2005. Applying the adjusted per square foot price to the 17,063 square feet of the Unit, the Tribunal arrives at a **true cash value of the unit as of December 31, 2004 of \$2,277,466 (\$133.31 x 17,063) and \$2,334,274 as of December 31, 2005.**

For Units 1 and 4, the Tribunal has determined the taxable value for tax years 2005 and 2006 as the lesser of the assessed value of the parcel or the prior year's taxable value multiplied by the appropriate inflation rate multiplier.

For Unit 5, the Tribunal has determined the taxable value for tax year 2006 as the lesser of the assessed value of the parcel or the prior year's taxable value times the appropriate inflation rate multiplier.

JUDGMENT

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

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for

the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by the Final Opinion and Judgment within 90 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 1995, at a rate of 6.55% for calendar year 1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a rate of 6.04% for calendar year 1998, (iv) after December 31, 1998, at the rate of 6.01% for calendar year 1999, (v) after December 31, 1999, at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000, at the rate of 6.56% for calendar year 2001, (vii) after December 31, 2001, at the rate of 5.56% for calendar year 2002, (viii) after

December 31, 2002 at the rate of 2.78% for calendar year 2003, (ix) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (x) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (xi) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (xii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (xiii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, and (xiv) after December 31, 2008 at the rate of 3.31% for calendar year 2009.

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

MICHIGAN TAX TRIBUNAL

Entered: December 11, 2009

By: Kimbal R. Smith III, Tribunal Judge