

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

Easton Square, LLC,
Petitioner,

v

MTT Docket No. 351764

City of Flushing,
Respondent.

Tribunal Judge Presiding
Cynthia J Knoll

FINAL OPINION AND JUDGMENT

This case is an appeal of the true cash, assessed, and taxable values established by the City of Flushing (“Respondent”) under the general property tax act (GPTA) for one parcel of real property (the “subject property”) owned by Easton Square, LLC (“Petitioner”). A hearing on this matter was held on June 27, 2011. Tax years 2008, 2009, and 2010 are at issue. The subject property is located at 1563 E. Pierson Road, Flushing, Michigan, and is known as parcel no. 55-25-400-009. Petitioner was represented in this case by attorneys Daniel L. Stanley and Aaron M. Fales from the law firm of Honigman, Miller, Schwartz and Cohn, LLP. Respondent was represented by attorney Edward G. Henneke from the law firm of Henneke, McKone, Fraim & Dawes, P.C.

FINAL VALUES

The subject property’s 2008, 2009, and 2010 True Cash, State Equalized, and Taxable Values as determined by the Tribunal, are:

Year	TCV	SEV	TV
2008	\$203,000	\$101,500	\$101,500
2009	\$196,000	\$98,000	\$98,000
2010	\$170,000	\$85,000	\$85,000

PROPERTY DESCRIPTION

Petitioner owns three contiguous parcels subject to a common “site plan” approved by Respondent’s Planning Commission in or about 2002. The three parcels include i) the subject property, ii) the adjacent parcel to the south and west of the subject, upon which a Rite Aid store was built, and iii) the parcel to the south and east of the subject property, which is improved with a parking lot. Although part of the same site plan, neither the parcel that includes the Rite Aid store nor the corner parcel improved with a parking lot are at issue in this appeal.

The subject property is located in the City of Flushing, Genesee County. It is an “L” shaped site that contains approximately 99,317 gross square feet or 2.28 gross acres. The property has access to all utilities including sewer, water, gas, electric, and telephone. It is zoned “B-2” General Business District. The subject neighborhood consists of similar retail related sites along Pierson Road, and residential uses to the north along Elms Road. There is 388.77 feet of frontage on Elms Road with one curb cut. While both the parking lot parcel and Rite Aid parcel have frontage on Pierson Road, the subject property is located behind the other two parcels and does not directly have Pierson Road frontage. The subject parcel can be accessed from Pierson Road via the Rite Aid entrance, and from the east via Elms Road. Pierson Road is a heavily trafficked, five-lane, asphalt paved

road with concrete curbs and gutters that serves the area in an east-west direction. Elms Road, in the area of the subject property, is a two-lane asphalt paved road with concrete curbs and gutters that serves the subject neighborhood in a north-south direction.

As of each tax date at issue, the subject property included a building with approximately 46,208 square feet of usable space. The improvement, a one-story Class C retail building, was originally constructed in 1973. For the tax years at issue, the subject property was not subject to a lease or otherwise occupied by any tenant. The building includes concrete footings and the exterior consists of architectural block with brick covering the vertical walls. The floor is made of concrete with support beams located throughout the building. A metal mansard hangs over the upper portion of the vertical walls. The main building roof is flat with steel trusses and decking covered by a rubber membrane. There are several entrances made of aluminum framed glass doors. The windows are also aluminum and glass. The rear doors are metal pedestrian doors with exterior mounted security lights.

The interior is split into four units that had been used as individual commercial rental spaces prior to the tax years at issue. The largest unit, located at the eastern most portion of the building, was formerly used as a grocery store. The second largest unit was the former Rite Aid drug store. The last two units include a former doctor's office and vacant retail unit that was used as a pool hall at some point. The interior finishes for the former grocery store, former Rite Aid, and retail unit were typical for retail users. The former doctor's office is the smallest space in the building and is typical for a medical office with various rooms. Each of the

units has its own gas-forced air, heating and cooling¹ that are ground-mounted systems.

Additional improvements include approximately 35,000 square feet of asphalt drives and parking areas, with lighting, landscaped medians, and concrete curbs and gutters. There are 3,800 sq. ft. of concrete walks, slabs, and loading areas around the perimeter of the building, including a loading dock that is four feet below grade with two overhead doors.

The subject property’s 2008, 2009, and 2010 True Cash, State Equalized, and Taxable Values as confirmed by Respondent’s Board of Review and recorded on the assessment roll are as follows:

Parcel No. 55-25-400-009

Year	TCV	SEV	TV
2008	\$1,373,400	\$686,700	\$686,700
2009	\$1,288,400	\$644,200	\$644,200
2010	\$1,260,200	\$630,100	\$630,100

Respondent’s contended 2008, 2009, and 2010 True Cash, State Equalized, and Taxable Values as set forth in Respondent’s valuation disclosure are:

Parcel No. 55-25-400-009

Year	TCV	SEV	TV
2008	\$1,608,000	\$804,000	\$708,427
2009	\$1,500,000	\$750,000	\$739,597
2010	\$1,239,000	\$619,000	\$619,000

¹ Except the largest unit used as a grocery store did not have cooling. Rather, the refrigeration units were used to cool the store.

Petitioner’s revised contended 2008, 2009, and 2010 True Cash, State Equalized, and Taxable Values, as set forth in Petitioner’s valuation disclosure, are:

Parcel No. 55-25-400-009

Year	TCV	SEV	TV
2008	\$203,000	\$101,500	\$101,500
2009	\$196,000	\$98,000	\$98,000
2010	\$170,000	\$85,000	\$85,000

STIPULATED FACTS

On May 31, 2011, the parties submitted the following stipulated facts and the Tribunal finds:

- a. Tax years 2008, 2009, and 2010 are at issue.
- b. The only parcel at issue in this case is parcel number 55-25-400-009. The appeal for parcel number 55-25-400-008 is withdrawn and is not part of this case.
- c. On each relevant tax day there was a vacant retail building on the subject parcel. This building was effectively demolished and rendered unusable in December 2010.
- d. On each subject tax day there were approximately 35,000 square feet of asphalt parking and drives on the subject parcel.
- e. Rite Aid was not a tenant on the subject parcel for any of the relevant tax days.

PETITIONER’S CONTENTIONS

Petitioner contends that the subject property’s true cash, assessed, and taxable values as established by Respondent for the 2008, 2009, and 2010 tax years are excessive. More specifically, Petitioner contends that i) the subject improvements comprise a 46,658 square foot building which had been vacant since 2003; ii) the property was vacant notwithstanding Petitioner’s efforts to lease or

sell the property, which efforts included, but were not limited to, having the property listed with a nationally recognized brokerage firm and requesting construction bids to update and/or decrease the subject property's square footage; iii) the property's multi-year vacancy confirms that this property suffered from severe functional and external obsolescence; iv) at all times relevant to this matter, Genesee County was in poor economic condition, which negatively impacted the property; v) the subject property – as it existed on each of the relevant valuation dates – did not comply with zoning requirements with regard to available parking space.

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

- R-1B: Site Plan dated June 26, 2002, Proposed Rite Aid store and related site improvements, Pierson and Elms Shopping Center, Flushing, Michigan.
- P1: An appraisal of subject property prepared by Mark Bollinger, MAI.
- P3: Survey showing subject property dated 9/11/03.
- P6: Cost estimate for renovation.
- P15: Color photograph of property located at 5466 N. Genesee Road – Genesee Towne Square. This property was used by Respondent's appraiser as comparable property #3 in his income approach to value for all three years.

Also, in support of its contentions, Petitioner presented testimony from four witnesses. This testimony is summarized as follows:

(1) David Hanoute

Mr. Hanoute is an architect and president of CHMP, Incorporated, an architectural engineering and land surveying firm located in Grand Blanc, Michigan. He was qualified as an expert in the field of architecture. Mr. Hanoute testified that his company was hired by Petitioner to design the demolition of a portion of the subject building and to renovate it while at the same time carry the

Rite Aid project through site plan review with the City of Flushing. He testified that the site plan submitted to the City for approval included the Rite Aid building, the required parking area, and a portion of the existing building. Mr. Hanoute testified that the subject building, if renovated, would be reduced in size to a point where it had a little less than twenty thousand square feet of retail space in order “[to] meet the parking requirements for the shared parking on the entire site, considering the Rite Aid requirements as well as the existing building requirements.” Mr. Hanoute further testified that to the best of his knowledge the site plan was approved by Respondent’s Planning Commission on August 5, 2002. Mr. Hanoute testified that over the years, CHMP was engaged to prepare site plans for the subject property under various scenarios for certain, potential tenants. These scenarios included, among others, a drive-through restaurant, a tanning salon, a beauty salon, and a “dollar” store. Mr. Hanoute testified that although he did not calculate an estimate for the partial demolition and renovation, his initial thought based on his experience was that it would be between a “million and a half to a million seven hundred thousand dollars.” He also testified that, based on his experience and given the work required, the actual estimate of demolition and reconstruction costs of \$1,698,910.20 was reasonable as of 12/31/07, 12/31/08, and 12/31/09. See Transcript 1 (T1), pp 19-47.

(2) Mike Siwek

Mr. Siwek is employed by Siwek Construction, a full-service commercial design and build general contracting construction management firm located in Flint, Michigan. Mr. Siwek testified that his firm submitted an estimate of how much it would cost to partially demolish and refinish the subject building. He testified that he prepared the cost estimate admitted as Petitioner’s Exhibit P-6, and that it was predicated on complying with the site plan that had been approved by Respondent. See T1, pp 47-50.

To accomplish the partial demolition, Mr. Siwek testified that:

[W]e would be required to come in on the inside of the existing building and shore up that existing steel to ensure that the building that remained didn't fall down with the demolition of the front half. Once that shoring would be in place we would do that front demolition, then we would have to come in and put our new foundations in and set the new structural steel to carry that remaining building. And then we'd be able to do the front façade renovations along with all interior wall[s], dividing into white spaces, mechanical, electrical, plumbing and general trade work that would be required. T1, pp 50-51.

He further testified that the property would require a new roof and a new HVAC system. He stated "the HVAC system was really nonexistent." His total estimate of cost to partially demolish and renovate the building that existed to comply with the approved site plan was "\$1,698,910.20." The total was based on estimates he obtained from various subcontractors including demolition, site work, concrete, landscaping, etc. Mr. Siwek testified that, in his opinion, it was not economically feasible to demolish and partially renovate the existing building because "[it] was twice the cost compared to demolishing the existing building and building a brand new building in its place." He further testified that it is labor intensive and more complicated to do a major demolition trying to keep an existing building than to do a complete demolition. See T1, pp 51-58.

As to the condition of the building, Mr. Siwek testified that:

Structurally there [were] no major flaws with the building but again, the roof . . . was bad, it would need to be replaced. There seemed to be a lot of water damage on the inside of the building that could add into other issues. All the walls were damaged with drywall or vandalism. The HVAC systems were outdated and would need to be upgraded. T1, pp 58-59.

(3) Aaron Ranka

Mr. Ranka is a licensed Michigan real estate agent employed by Marcus & Millichap, a national commercial real estate brokerage firm. Mr. Ranka testified that he was hired by Petitioner in 2007 to market the subject property for sale or lease. Mr. Ranka testified that:

[We] took the same efforts we take with all of our listings, which is [use of a] local, regional and a national sales platform. We market via e-mail, mail, local phone contacts, we list properties on the Internet, through a couple different MLS type sources, and we have a national brokerage network of about twelve hundred agents here in the U.S. T1, p 71.

Mr. Ranka testified that he marketed the property on the Internet services LoopNet and CoStar. In addition, he stated that he talked to a couple of potential tenants for leasing, as well as national tenants, like Auto Zone, Family Dollar, Dollar General. He testified that he spoke with some local developers to buy the property. See T1, pp 71-72.

According to Mr. Ranka, a written offer to purchase the property was made in roughly August, 2007, by a West Coast based company that was planning to tear down the entire building and “start fresh.” He testified that the offer was “somewhere around six hundred thousand dollars.” Mr. Ranka testified that the prospective buyer performed a due diligence survey, and inspected the property and that “. . . upon their reviewing of the Rite Aid lease, they found that it wasn’t feasible for them to purchase the property based on some of the restrictions within that lease, so they chose to back out.” Mr. Ranka further clarified that the previously mentioned offer of approximately \$600,000 was for both the subject parcel and the “side corner [parking] lot, which was encumbered by the Rite Aid lease.” See T1, pp 73-74.

In cross-examination, Mr. Ranka testified that he sent an e-mail to roughly thirty-five hundred national property owners and investors on the day he took the listing and “. . . did a presentation in our Detroit office and our Chicago office to the local agents.” T1, p 77. He also stated that he “. . . did a national retail sales call with . . . about five hundred and fifty retail agents nationally to engage the brokerage force to sell the property.” *Id.* Mr. Ranka testified that he had the listing for a year and a half, and he “. . . brought in personally one group from out West, and . . . had agents locally that took other prospective tenants out there, and. . . developers that did their own drive-bys.” T1, p 78.

Mr. Ranka testified that when the property was originally taken to market it was listed “somewhere around a million dollars” and “we quickly reduced it back to something that would be more realistic, eight hundred and twenty-five thousand dollars.” T1, p 80. In listing the property, Mr. Ranka did not put a lease rate on it, but rather indicated that a lease rate was “negotiable.” Informally, his suggested lease rate was “[a]bout a dollar fifty a square foot” because “[w]e were eventually trying to lease the majority of the property. The majority of it was the grocery store and obviously that was a little bit under the market rent at the time, trying to entice an offer.” *Id.*

Regarding the depth of the subject building, Mr. Ranka testified that it is not desirable to have a retail space with the depth of one hundred and ninety feet because tenants prefer store frontage. He also testified that the building on the subject parcel was located in a pretty good location, however being set back behind the Rite Aid probably was not as desirable as it could be because it obscured visibility. See T1, p 74.

(4) Mark Bollinger, MAI

Mr. Bollinger is a licensed real estate appraiser in the state of Michigan and was qualified as an expert in valuation of real property. Mr. Bollinger authored

Petitioner's appraisal report in the instant case and testified at the hearing as to his procedures and conclusions.

On direct examination, Mr. Bollinger explained that he personally inspected the subject property several times prior to completing the appraisal, including in October 2010, when he took photographs. He testified that each of the units had its own gas, forced air, heating and cooling combined for ventilation. The only exception was the grocery store, which had used the freezers and coolers to keep the store cooled. He also stated that upon inspection he observed several needed repairs. Specifically, Mr. Bollinger noted in his appraisal report that "[t]he building was considered to be in poor condition and would have needed substantial improvements to be habitable." Petitioner's Appraisal (PA), p 40. Mr. Bollinger testified that "[f]or somebody to occupy [the subject building] it would have to have major, major renovations, because you have to meet building codes, and it was just in disrepair." T1, p 105.

Mr. Bollinger testified that under "Appraisal Principles" the highest and best use of a property must be a legal use and it must be financially feasible. He concluded that the highest and best use of the subject property was as vacant, commercial, improved. He stated:

My conclusion was that the building is at the end of its economic life, it's fully depreciated, it did not meet zoning requirements, it did not meet parking requirements as is, and it would have been not economical to fix it even if it did meet the legal zoning requirements, which it doesn't. So my highest and best use as improved is to tear it down and use it for a new site. T1, pp 106-107.

Mr. Bollinger testified that he "consulted with an architect" and "got actual cost estimates from contractors" to determine what it would cost to renovate and repair the building. T1, p 111. Based on that information and his experience, he determined that the amount required to renovate the existing building exceeded the

amount that it would have been worth after the renovation. T1, p 111. He further testified that he believed that the building on the subject property did not contribute to the value. T1, p 113. Based on his analysis of highest and best use, his determination that the building was at the end of its economic life, and his conclusion that the building had no contributory value, Mr. Bollinger used the sales comparison approach to value the land as vacant. T1, p 117.

Mr. Bollinger testified that in his sales comparison study, he identified six sales, used the four that were most comparable, and then made adjustments to those sales. He stated:

[F]rom the investigation, sales one, two, three and four were considered to be most similar. They were adjusted for property rights, financing terms, cash sale, time, location, size, and plottage. And in this case only one adjustment was made and that is to sale number three, which puts the range of the sales before adjustments from . . . a dollar and ten cents a square foot to two dollars and eighty-seven cents a square foot.

After the appropriate adjustments the range was from two dollars and ten cents a square foot to two dollars and eighty-seven cents a square foot. And two dollars and eighty-seven cents a square foot, which was the upper end, was used for the subject property in 2007 because it was a better economic climate. T1, pp 118-119.

Mr. Bollinger also stated that he did not make any adjustments for a leased fee interest because the property was unencumbered during the tax years at issue. His conclusion for the value of the land was \$285,000. Mr. Bollinger then testified that he deducted \$82,000 for demolition costs, which was an estimate provided by Mr. Siwek. Based on these factors, Mr. Bollinger concluded to a true cash value of \$203,000 as of December 31, 2007. As of December 31, 2008, that value was adjusted for market conditions to \$196,000, and further adjusted to \$170,000 as of December 31, 2009. T1, pp 122-125.

On cross-examination, Mr. Bollinger testified that he did one inspection in 2010 of the subject property in preparing the appraisal in this case. Mr. Bollinger testified that traffic on Elms Road was much less than on Pierson Road, based on traffic studies provided by the county. T1, p 138. He testified that “Pierson Road is a highly traveled road [that is] very commercial intense” and Elms Road has “nowhere near the same traffic count, and it’s more residential” than Pierson Road, which has “Kroger, Family Dollar, [and] retail franchise restaurants” T1, p 100. With regard to the subject land dimensions, Mr. Bollinger testified that he “went off information provided by the city” but “didn’t go out and measure the exact frontage.” T1, pp 139, 141-142. He testified that the front footage did not impact his calculations because he used the correct size of 2.28 acres on a price per square foot. *Id.* Mr. Bollinger also confirmed that in his appraisal, under the heading Description of Property on page 32, he reported that “rents in the area have been on the increase.” T1, pp 176-177. Mr. Bollinger also testified that he did not do an income approach and did not review specific rents from the subject market in developing this report. T1, pp 177-178. Mr. Bollinger testified that he did not review the adjacent parcels or the lease pertaining to the adjacent Rite Aid store because he “didn’t appraise [the Rite Aid] property.” T1, p 181.

SUMMARY OF RESPONDENT’S CASE

Respondent contends that the subject property has a “highest and best use” as a commercial retail building with value because of its location. It argues that there is a lot of traffic in the area, particularly on Pierson Road, and that there are other retail businesses and residential neighborhoods nearby contributing to the value as a retail building. Respondent asserts that the property is very accessible from two major roads with high traffic volume and adequate parking, assuming a variance is requested/granted. Respondent further argues that the subject building

has Pierson Road frontage, good access, and very good visibility because of the parking lot directly in front of the building. Respondent asserts that the building, as a shell with ceiling/roof and four walls, is more substantial in its existing condition than what is commonly being built today; i.e., cheaper construction versus cement block building which is structurally sound. Respondent contends that occupancy in the area is over 95% and that with maintenance and adequate marketing, the building could have been leased. See T3, pp 164-170.

In response to Petitioner's contentions, Respondent asserts that Petitioner neglected to maintain the premises, both inside and out. It also failed to adequately market the property. Respondent claims that the property could have been rented. It contends that numerous persons have contacted the City with interest, yet Respondent claims the property was never listed for sale or rental, nor posted for sale or rental.

In support of these contentions, Respondent offered the following exhibits, which were admitted into evidence:

- R-12d Substitute color photograph for black and white photograph of the subject property and neighboring parcels.
- R-10A Excerpt from Zoning Ordinance, City of Flushing, Michigan, Adopted May 23, 1994, pp 34, 68, 69, 71 & 72.
- R-10B Excerpt from Zoning Ordinance, City of Flushing, Michigan, in affect as of 2007, pp 3-1, 3-5, 3-6, 3-12, 5-1, 5-2 & 5-7.
- R-1A Demolition Plan dated June 26, 2002, Proposed Rite Aid store and related site improvements, Pierson – Elms Shopping Center, Flushing, Michigan.
- R-12B, p 1 Black and white photocopy of photograph of front façade of subject building showing exposed structure where fascia is missing.
- R-12A, pp 1-4 Black and white photocopies of photograph of interior of subject building
- R-14 Memo dated April 5, 2010, from Gerald Hall, Building Official, to Dennis Bow, City Manager, and Jan Walling, City Assessor.

- R-4 Appraisal Report dated January 10, 2011, effective December 31, 2007, December 31, 2008 and December 31, 2009.
- R-18 Spreadsheet: Front footage calculations
- R-6A Flushing Planning Commission Minutes, dated May 6, 2002.
- R-12C, pp 1-4 Black and white copies of photographs of the eastern side of the new Rite Aid store with the parking lot extended to the greenbelt along Elms Road, the entryway from Pierson Road going north, view of ingress and egress area, looking across the street south toward the Walgreen store across the street.

Also, in support of its contentions, Respondent presented testimony from five witnesses. This testimony is summarized as follows:

(1) Janet Walling

Ms. Walling is certified as a level III assessor by the State of Michigan and is contracted by Respondent as the City assessor. She testified that she is a life-long resident of the Flushing area and is familiar with the subject property. She testified that she prepared the assessment records and appraisal reports (Exhibits to Respondent's Appraisal, pp 1-3) following the guidelines in the assessor's manual. She stated that she used a cost-less-depreciation method based on square footage of the building, year built, condition, and observation. Ms. Walling testified that she did not see a For Sale sign on the property at any time since the year 2002, but that she did receive between five and ten inquiries per year as to the availability of the property. See T2, pp 11-37.

(2) John Douglas Piggott

Mr. Piggott is a professional planner and is employed by Rowe Professional Services Company, a multi-disciplined consulting firm to municipalities, and was found to be an expert in zoning and planning. Mr. Piggott testified that he is familiar with Respondent's planning and zoning regulations. (Exhibits R10 A, effective May 23, 1994 and R10 B, the 2003 zoning ordinance) He further testified that he reviewed a final site plan dated June 16, 2002, for the subject

property. (See Exhibit R1 B) Mr. Piggott testified at length as to the 2002, approved site plan and the specifics regarding parking requirements, had the site plan been implemented in its entirety. Mr. Piggott testified that the subject building could have been occupied from 2003 to 2010, despite the fact that the partial demolition did not take place, but that “[t]here obviously would be restrictions on the range of uses and the percent of occupancy based on those uses [from the standpoint of the ordinance], but it could be occupied.” See T2, pp 44-67.

On cross-examination, Mr. Piggott testified that the subject building conformed to the ordinance requirements for parking at the time it was constructed in 1973. He further testified that his review of the building was as proposed to be modified, which was after removal of a portion of the front of the building. He stated that he did not do an analysis of the setback requirements based on the existing building. As to the parking, Mr. Piggott testified that he did not know for fact the number of spaces that were actually on the site prior to the proposed partial demolition; however, he did state that because the Rite Aid required 55 spaces, the remainder of existing spaces placed a limitation as to the types of uses and the occupancy of the building. See T2, pp 76-98.

(3) Gerald G. Hall

Mr. Hall is a code official, building inspector, and plan reviewer for a small construction code authority called Regional Inspection. Mr. Hall’s office manages, administers, and inspects construction code compliance for new construction, repairs and remodels on behalf of Respondent. Mr. Hall testified that there was an ongoing code enforcement issue until the subject building was demolished. He testified that the violation was missing fascia on the front of the building “opening up into the interior of the building, bar joists were exposed, birds were flying in and out.” (See Exhibit R-12B, photograph) He testified that he inspected the

building on March 25, 2010, at the City's request. Mr. Hall testified that the building was unoccupied and was in need of repair. He stated that he could see where the maintenance had been neglected for a period of time, where the roof had leaked, and plumbing pipes were in need of repair. He testified that it had electrical and mechanical services because the lights and heater were on. Mr. Hall testified that in his opinion maintenance type repairs were needed, but otherwise the building appeared to be structurally sound and could have been rehabilitated. He further testified that he drafted a report to the city manager stating "[I]t is of my opinion that this building is habitable, notwithstanding the need for building maintenance." See Exhibit R-14. See T2, pp 104-116.

On cross-examination, Mr. Hall testified that he did not know whether the former grocery store section of the building had a functioning HVAC system, but that there was an operational hanging gas furnace that was not adequate for the entire building. He also testified that as of December 31, 2007, somebody would not have been allowed to move into the suite without some retrofitting. Regarding his use of the word "habitable" in the report to the City manager, Mr. Hall testified that he believed the building was not unsafe for a human. See T2, pp 116-136.

(4) Kevin Groves

Mr. Groves is a certified general real estate appraiser with a residential builder's license and real estate broker's license. Respondent offered Mr. Groves as an expert in appraisal to which Petitioner had no objection. Mr. Groves testified that he was retained by Respondent to prepare an appraisal and he described briefly the efforts he took to familiarize himself with the subject property. He testified that the city administration indicated that the use of the building in its current configuration as of the three tax days would have had sufficient parking and his opinion was that the property was likely a legal nonconforming use. He testified

that the traffic patterns and visibility are positive factors adding to the value of the property. See T2, pp 138-144.

Mr. Groves testified that as part of his analysis, he came to the conclusion that the property was viable and there was sufficient parking for retail use. He performed a highest and best use analysis based on zoning, the local demographics, and the economic conditions, and using selected comparables, he calculated a sales approach and an income approach to value. He testified that he gave a 70% weight to the income approach and 30% weight to the sales approach because “the most important consideration to an investor is how much money can [be made from the property].” See T2, pp 172-178.

Mr. Groves testified that he primarily used the income approach to value the subject property, stating that he surveyed the retail establishments within a couple miles and was unable to find any vacant stores. Mr. Groves testified that he did find contract rental rates for a shopping plaza located on the other side of town that ranged from a low of \$9.00 to a high of \$11.50 with a triple net basis. He also stated that he has an in-house database of rental rates that he used to determine what he considered to be a fair rental rate for each of the three years. He further testified that his research did not produce any retail establishments in Genesee County that were leased for less than \$6.00 a square foot. See T2, pp 147-149.

On cross-examination, Mr. Groves testified that he appraised the subject property as a leased fee interest because he believed there was a tenant in the property in 2007, although he had no documentation to that effect. Regardless, he said his valuation would have achieved the same result if he had used a fee simple interest. He further testified that it is possible to value a fee simple interest in a property using the income approach even if the property is not encumbered by a lease. See T2, pp 198-199.

Mr. Groves testified that his use of the income approach was predicated upon using income that could be derived by leasing all 46,000 + square feet of the existing building. He further testified that a tenant could have moved into the building if improvements were made, including the roof, fascia, and general maintenance items and parking lot, although he admitted that the only steps he took to determine what deferred maintenance existed was an inspection of the exterior as well as reliance on Mr. Hall's letter stating that the building was habitable. Based on this, he determined a deferred maintenance estimate of approximately \$250,000. See T2, pp 213-223.

(5) Dennis Bow

Mr. Bow is the City manager for the City of Flushing, whose responsibilities include, among others, zoning administration. His testimony was primarily with regard to the 2002 site plan and the issues surrounding the adequacy of parking. See T3, pp 5-99. His testimony was ancillary to that of the other witnesses and did not bring forth any additional facts.

FINDINGS OF FACT

The Tribunal finds the following facts and incorporates the information contained in the section of this Opinion and Judgment titled "Property Description" into these findings of fact.

1. The subject building was built in approximately 1973 and its actual age was 35 years.
2. The subject property was in disrepair and required significant improvements in order to be occupied. Necessary repairs included a new roof, fascia, heating and cooling systems, plumbing pipes, and parking lot resurfacing. In addition, tenant build-out would be required for ceiling, walls and floors.
3. The subject property was not encumbered by a lease on any relevant tax day.
4. The subject property was vacant during the years at issue.
5. The subject property did not have front footage on Pierson Road, although it had access and visibility.

6. There was not sufficient parking as required by the city zoning ordinance to utilize the entire building for retail use on any of the relevant tax days.
7. Petitioner did not attempt to secure a variance for the parking limitations based upon the “as is” footprint of the building.
8. Petitioner actively marketed the subject building for sale or lease through the efforts of a national investment commercial real estate brokerage firm.
9. Petitioner reduced the asking price shortly after listing the subject property for sale.
10. An offer was made to purchase the property, which was withdrawn after a due diligence was conducted by the purchaser.
11. The site plan approved in 2002 is not relevant to the fair market value on the tax dates for the sole reason that the proposed plan was not fully put into place, specifically as to the subject property.
12. Petitioner considered a number of different retail uses for the subject property including a “dollar” store, restaurants, national retail chains, and had several different plans drawn up for consideration.
13. The subject building was demolished in late 2010.
14. Respondent’s assessor “overwrote” the land value on the property record card for 2010 from a calculated value of \$422,840 to a value of \$202,000.
15. Respondent’s appraisal incorrectly reports the site size as 1.59 acres. Actual size is 2.28 acres.
16. Respondent’s appraisal report does not separately value the underlying land.
17. For 2008, Respondent’s sales comparison approach uses four comparison properties, none of which were located in Flushing. The report states that the comparable sales were located in areas with similar population, exposure and traffic counts and therefore no adjustment was made. The appraiser divided the sales price by the number of square feet to determine a base price for consideration. The comparable buildings ranged from 7,776 square feet to 168,300 square feet and no adjustment was made for relative size. The size of the comparable sites range from .75 acres to 8.82 acres and no adjustment was made for relative site size. The effective age as determined by the appraiser for three of the comps was 10 years and the fourth was five years with no explanation as to how the appraiser determined the effective ages. The report provides no support for the age adjustments made other than to apply 1.67% based upon an economic life of 60 years. There was no adjustment made for condition of the buildings. The date of sale for two of the comparable properties occurred in mid-2006, and the other two were in May and August, 2007. Time adjustments were made at a rate of negative .004 per month with no support or explanation other than a suggestion that economic conditions and sale prices have declined. Respondent’s appraiser

calculated adjusted value per square foot ranging from \$31.38 to \$80.64, determining the value near the mean at \$57.00 per square foot to be the best sales comparison. Respondent's 2008 sales comparison approach determined a value at \$2,634,000.

18. For 2009, Respondent's sales comparison approach is similar to 2008, and uses four comparison properties, three of which were the same as used for 2008. Respondent's appraiser calculated adjusted value per square foot ranging from \$29.83 to \$84.39, determining that the value near the mean at \$55.00 per square foot is the best sales comparison. Respondent's 2009 sales comparison approach determined a value at \$2,541,000.
19. For 2010, Respondent's sales comparison approach is similar to 2008 and 2009, and uses four comparison properties. Respondent's appraiser calculated adjusted value per square foot ranging from \$24.77 to \$55.98, determining the value near the mean at \$42.00 per square foot to be the best sales comparison. Respondent's 2010 sales comparison approach determined a value at \$1,941,000.
20. For 2008, Respondent's appraiser used the direct capitalization method for its income approach, using a market rental rate despite the subject building being vacant. Respondent's appraiser used three comparable properties for the income approach, with little detail about the properties provided. The available size and price per square foot were 1,400, 1,980 and 13,720 square feet at \$10.29, \$7.11 (gross \$11.11 less \$4 for triple net), and \$6.00 per square foot, respectively. The appraiser gave two of the comparable properties an effective age of 20 years yet indicated that he did not know when they were built. The third comparable was given an effective age of six years and an adjustment of 1.67% per year was applied. No other adjustments were made. Respondent's appraiser concluded that the rental rate range was \$6.00 to \$7.88 per square foot with a mean of \$7.00. He determined a vacancy and credit loss based on the down turn of the retail market in the county and applied a frictional vacancy of 10% with no additional explanation or support. He applied a management expense of 5% and a reserve for replacement of 2% with no explanation or support. The appraiser applied a capitalization rate of 14%, which is based on approximately 11% average overall capitalization rate and 3% real estate tax burden. Based on this income approach, Respondent's appraiser determined a value of \$1,913,000.
21. For 2009, Respondent's appraiser used the same methodology and comparable properties in the income approach to value as in 2008, the difference being that he elected to use a rental rate below the mean of the

range, at \$6.50 per square foot. All other assumptions were the same, with a resulting income approach determination of value at \$1,766,000.

22. For 2010, Respondent's appraiser used the same methodology and comparable properties in the income approach to value as in 2008 and 2009, the difference being that he elected to use a rental rate below the bottom of the range, and below that of 2009, at \$6.00 per square foot. All other assumptions were the same, with a resulting income approach determination of value at \$1,639,000.
23. For all three years, Respondent's appraiser calculated a weighted value by applying a 30% weight to the sales comparison approach and a 70% weight to the income approach, with little support for those percentage weights. He also calculated an "as is" valuation to consider a deferred maintenance expense of \$252,595, and "lease up costs" of six months vacancy, 5% for three years leasing commission and \$2.50 per square foot for six months operating expenses. The appraisal report provides no explanation to support these amounts or assumptions.
24. Respondent's final conclusions of value are \$1,608,000, \$1,500,000, and \$1,239,000 for 2008, 2009 and 2010, respectively.
25. Petitioner's appraisal concludes that based on sales comparables, the subject property's value "as-improved" would be approximately \$40.00 per square foot but that the costs to cure the improvements needed would have been \$40.00 to \$70.00, thus giving no value to the improvements and making them financially not feasible.
26. Petitioner's appraisal only considered the sales comparison approach to value vacant commercial land, taking into account an appropriate marketing period/exposure time, because the appraiser determined that the highest and best use was "as-vacant."
27. For 2008, Petitioner's appraiser considered six comparable properties, of which he determined four to be most similar to the subject property. He considered front footage and price per square foot, concluding that there is a tighter range for price per square foot. He determined that, similar to the subject property, all four comparables were sold with fee simple property rights transferring, were cash or similar to cash transactions, sold under an arm's-length situation, and were fairly recent within the time of the valuation date. As such, no adjustments were made for these. An adjustment of \$1.00 per square foot was made for comparable sale #3 because it was located in Mt. Morris Township, which is considered an inferior location. There were no adjustments made for the location of the other three comparable sales, nor were there adjustments for size or plottage. The appraiser determined an adjusted range from \$2.10 to \$2.87 per square

foot and used the upper range of \$2.87 to determine a value of \$285,000. Petitioner's appraiser then deducted the actual cost to demolish the existing building of \$82,000 concluding that the land value, minus the cost to demolish the existing improvements, indicates a market value for the site of \$203,000 as of December 31, 2007.

28. For 2009, Petitioner's appraiser evaluated eight properties, of which four sales were considered most similar: #3, #4, #7 and #8. The appraiser considered adjustments for property rights, financing terms, condition of sale, time, location, size and plottage and the only adjustment made was \$1.00 per square foot for comparable sale #4 because it was located next to an industrial park, which is considered an inferior location. The adjusted range was from \$2.55 to \$3.13 per square foot and the middle range of \$2.80 was used to determine a value of \$278,000. Petitioner's appraiser then deducted the actual cost to demolish the existing building of \$82,000 concluding that the land value, minus the cost to demolish the existing improvements, indicates a market value for the site of \$196,000 as of December 31, 2008.

29. For 2010, Petitioner's appraiser considered eight comparable properties, of which he determined sales #2, #6, #7 and #8 to be most similar to the subject property. He considered and made no adjustments for property rights, financing terms, condition of sale, time, location, size, and plottage. The adjusted range was from \$2.44 to \$3.38 per square foot and the lower end of the range of \$2.50 was used to determine a value of \$248,000. This value, minus the cost to demolish the existing building,² indicates a market value for the site of \$170,000 as of December 31, 2009.

CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value.

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such

² Petitioner's appraisal report is inconsistent with regard to the cost to demolish the existing improvements on 12/31/2009: page 74 states \$82,000, page 83 indicates \$45,000 and yet the calculation is not supported by either number (i.e., rounded value of \$248,000 minus Petitioner's proposed value of \$170,000 equals \$78,000).

property shall be uniformly assessed, which shall not...exceed 50%....
Const 1963, art 9, sec 3.

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

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

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

Under MCL 205.737(1); MSA 7.650(37)(1), the Tribunal must find a property's true cash value in determining a lawful property assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal is not bound to accept either of the parties' theories of valuation. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 377 NW2d 908 (1985). The Tribunal may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination. *Meadowlanes Limited Dividend Housing Association v City of Holland*, 437 Mich 473, 485- 486; 473 NW2d 636 (1991).

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 Department of Treasury*, 185 Mich App 458, 462-463; 452 NW2d 765 (1990). Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence. *Jones 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). This burden encompasses two separate concepts: (1) the risk of persuasion, which does not shift during the course of the hearing; and (2) the burden of going forth with the evidence, which may shift to the opposing party. *Jones and Laughlin* at 354-355. However, "[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessment in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question." MCL 205.735(3).

The three most common approaches to valuation are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach. *Meadowlanes*, at 484-485; *Pantlind Hotel Co v State Tax Commission*, 3 Mich App 170; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968). The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in marketplace trading. *Antisdale*, p278. The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale*, p 277.

Fundamental to the determination of a property's true cash value is the concept of "highest and best use." This concept recognizes that the use to which a prospective buyer would put the property will influence the price that the buyer would be willing to pay. *Rose Bldg Co v Independence Twp*, 436 Mich 620, 623; 426 NW2d 325 (1990). In the instant case, the parties do not agree as to the subject property's highest and best use. Respondent determined the highest and best use to be "improved commercial retail." This conclusion was based on Respondent's appraiser's consideration of the location, his assumed remaining

economic life of the building, and his estimate of \$250,000 for necessary repairs. Respondent believes that the building was structurally sound and habitable, that it could have been leased with some repairs, maintenance, and sufficient marketing.

Petitioner, on the other hand, asserts that the building was at the end of its economic life and regardless of the cost for necessary maintenance and repairs, there was insufficient parking to service the structure as it existed. Petitioner argues that the cost to cure the defects, update for any intended user, and increase parking space would exceed the market value of the property. Therefore, Petitioner's appraiser determined that the highest and best use would be as vacant land. He calculated the subject property's true cash value using a sales approach based on a vacant land value, less the actual cost to demolish the existing structure.

The Tribunal disagrees with Respondent and finds that the evidence supports Petitioner's assertion that the building held no value. The building was vacant for the tax years at issue and was essentially vacant since 2003, after the Rite Aid store relocated to the adjoining parcel. Petitioner marketed the building for both sale and lease, adjusting the price to reflect the poor condition and style. Respondent's appraiser testified that there was little or no vacant rental retail space available, which supports Petitioner's argument that the property was undesirable even in a tight rental market.

The Tribunal finds Respondent's appraisal completely unconvincing and unreliable. First, the report fails to value the underlying land as required. Second, the base rental rates applied in the appraisal are not well supported, having been determined partially based on an "in-house data base." Further, Respondent's appraisal report provides little or no support for the 10% vacancy rate, the management and reserve rate, and the general operating cost. Respondent's appraiser failed to inspect the interior of the building and seems to completely overlook the photographs of the interior that show the building was in significant

disrepair and stylishly outdated. Respondent seems to rely on a statement made in a memorandum that the building is habitable as its argument that the property could have been leased; however, Respondent does not provide any support to its estimate for repairing and maintaining the building to a level where it could be legally occupied.

The Tribunal finds that the frontage argument and adequacy of parking raised by the parties are largely side issues. Further, neither party approached the issue from a balanced viewpoint. That is, the subject property clearly benefited from both access and visibility; however, it did not have front footage on Pierson Road. Further, although no variance was sought, the parking did limit the use of the structure to low customer traffic or small retail floor uses. Clearly, and even without definitive dollar values assigned to the remaining uses, the universe of potential tenants/users is substantially reduced as a result. These issues alone do not render the property either viable or worthless.

Of greater concern is the utility of the building as it existed as of each relevant tax day. Based on the age and condition of the property, and considering that the property was marketed for sale or lease well below what the assessments would indicate, Respondent's asserted values are not credible. The building needed structural repairs, replacement of significant portions of the heating and cooling systems, reduction of the footprint and/or additional parking, and would still have been visually outdated in comparison to Respondent's purported comparable properties. The testimony provided by Petitioner's witnesses, including architectural, construction, and appraisal experts, was based on actual visual inspection of both the interior and exterior of the building.

Based on review of the testimony and evidence, the Tribunal finds that for each relevant tax year, there was no contributory value to the building. Testimony by Petitioner's witnesses was credible that the cost to repair exceeded the value

added, whereas Respondent's estimated cost to repair was completely unsupported by any credible evidence. The Tribunal further finds Petitioner's appraisal credible, noting that the appraiser used a number of different sales comparisons and made reasonable adjustments. The Tribunal also agrees that the demolition expense or "cost to cure" must be included to determine the true market value of the property.

JUDGMENT

IT IS ORDERED that the subject property's true cash, assessed, and taxable values for the 2008, 2009 and 2010 tax years are those shown in the "Final Values" section of this Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Final Opinion and Judgment within 28 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, 1999, at the rate of 5.49% for calendar year 2000, (ii) after December 31, 2000, at the rate of 6.56% for calendar year 2001, (iii) after December 31, 2001, at the rate of 5.56% for calendar year 2002, (iv) after

December 31, 2002 at the rate of 2.78% for calendar year 2003, (v) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (vi) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (vii) after December 31, 2006, at the rate of 3.66% for calendar year 2007, (viii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, (ix) after December 31, 2008, at the rate of 3.31% for calendar year 2009, (x) after December 31, 2009, at the rate of 1.23% for calendar year 2010, and (xi) after December 31, 2010 at the rate of 1.12% for calendar year 2011.

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

MICHIGAN TAX TRIBUNAL

Entered: November 3, 2011

By: Cynthia J Knoll