

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

Target Corporation
Petitioner,

v

MTT Docket No. 369144

Charter Township of Benton,
Respondent.

Tribunal Judge Presiding
Marcus L. Abood

OPINION AND JUDGMENT

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

A hearing was held on November 8, 2011, to resolve the real property tax dispute. Michael B. Shapiro and Daniel L. Stanley, attorneys at Honigman Miller Schwartz and Cohn, LLP, appeared on behalf of Petitioner. Jessica A. Fette, attorney at Dettman & Fette Law Firm, appeared on behalf of Respondent. Laurence G. Allen, MAI, was Petitioner's valuation witness. Jeffrey Genzink, MAI, was Respondent's valuation witness. Antoinette Swisher, Michigan Advanced Assessing Officer, for Respondent.

Summary of Judgment

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

Parcel No. 03-0032-0001-18-7

	Respondent		
Year	TCV	SEV	TV
2009	\$4,963,000	\$2,481,500	\$2,477,039
2010	\$4,887,400	\$2,443,700	\$2,443,700
2011	\$4,537,200	\$2,268,600	\$2,268,600

Respondent also presented an appraisal contending the values are:

Parcel No. 03-0032-0001-18-7

	Petitioner		
Year	TCV	SEV	TV
2009	\$4,850,000	\$2,425,000	\$2,425,000
2010	\$4,250,000	\$2,125,000	\$2,125,000
2011	N/A	N/A	N/A

Petitioner's contentions are:

Parcel No. 03-0032-0001-18-7

	Petitioner		
Year	TCV	SEV	TV
2009	\$2,570,000	\$1,285,000	\$1,285,000
2010	\$2,200,000	\$1,100,000	\$1,100,000
2011	\$2,000,000	\$1,000,000	\$1,000,000

The Tribunal's conclusions are:

Parcel No. 03-0032-0001-18-7

Year	TCV	SEV	TV
2009	\$2,856,000	\$1,428,000	\$1,428,000
2010	\$2,448,000	\$1,224,000	\$1,224,000
2011	\$2,142,000	\$1,071,000	\$1,071,000

GENERAL PROPERTY DESCRIPTION

The subject property is known as a Target store, and is located at 960 Fairplain Drive, in Benton Charter Township, Berrien County, Michigan. The building contains 102,000 square feet on 8.77 acres. It is a typical big box construction built to suit the Target Store model.

SUMMARY OF PETITIONER'S CASE

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

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

- P-1: An Appraisal of the subject property, prepared by Laurence G. Allen.
- P-3: Maps of the subject property and surrounding area.
- P-4: Offering documents for Westland property.
- P-5: Offering documents for Warren property.
- P-6: Offering documents for Pontiac property.
- P-7: Offering documents for Roseville property.
- P-8: Offering documents for Madison Heights property.
- P-9: Offering documents for Muskegon property.
- P-10: Offering documents for Alma property.
- P-11: Offering documents for Waterford property.
- P-12: Offering documents for Holland property.
- P-13: Fairplain Plaza sketch.

Mr. Allen testified that the location of the subject property is less than desirable because it does not have good visibility or exposure. The subject property sits back off of Fairplain Drive. The traffic count on Fairplain Drive is 11,000 cars a day as compared to M-139,

which has a daily traffic count of 14,500 cars per day. As further comparison, 28th Street in Kentwood has a range of 36,000 to 44,000 cars per day.

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

When questioned as to what motivates a retailer to construct a big box store, Mr. Allen explained that they are built to fulfill a business plan and model. This is done to penetrate a particular market and to maximize the retail sales for the store and company. Big box retailers are not motivated by the resale value of the stores. They don't go to the bank to mortgage the property to construct buildings. Corporate lines of credit are used to finance new construction projects.

Mr. Allen was questioned about the cost of construction including those improvement costs that enhance Target's business and image. He responded:

Well, the whole design of the store is designed to be recognized by consumers, as a Target store. And to reflect their – their current inventory needs in terms of how they want to display merchandise, how much merchandise they need to display, how much storage from merchandise they need, and they – they generally build their prototype in different locations to build their business strategy. (TR, Vol 1, pp 120-121)

Mr. Allen explained that, when sold, big box stores are renovated or converted to a multi-tenant building. Another big box store purchaser will either change the facades, flooring, lighting etc., or will demolish the existing building and rebuild for its specific use. Mr. Allen gave several examples, including Comparable 2 (Source Club), which was a new big box store located in Westland. This store was closed because Meijer decided not to engage in this business model. The property was on the market for seven years before Lowe's purchased it and then demolished the building. Mr. Allen gave several other examples of existing big box stores that

were suitable for retail, but the cost to demolish was less than the cost to retrofit to a different business model.

Mr. Allen believes that the sales comparison approach is the most reliable indicator to determine the fee simple market value for the subject property. “. . . there is much better data on sales and offerings of big box stores than there is of re-leasing of existing big box stores.” (TR, Vol 1, p 124) The comparison analysis focused on big box stores that were owner-occupied and build-to-suit. Mr. Allen’s appraisal contains six sales and twelve listings of big box stores. The comparable sales data indicates variations in location and age, and dissimilarities in market conditions.

Mr. Allen testified that the big box sales unadjusted sale prices per square foot range are \$15.00 to \$41.00. The five year old Home Depot store, located in Holland, closed in 2010 and was initially listed for \$41.00 per square foot. Subsequently, it was listed with a local broker for \$22.00 per square foot.

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

The adjustment for difference in location was explained by Mr. Allen. Purchasing power within a market area is based on population, households, income, visibility, exposure, traffic count, accessibility, surrounding land uses, and neighborhood trends. The subject property is located in the Niles-Benton Harbor MSA, which indicates that the population, households, and retail sales are expected to decrease.

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

Sale #	1	2	3	4	5	6
Location	Dearborn	Holland	Denton	Sterling Ht.	Frenchtown	Auburn Hills
Sale Date	Jan-06	May-04	Jul-05	Mar-06	Dec-09	Apr-11
Square Feet	192,000	80,953	94,559	111,285	124,631	151,336
Year Built	1993	1990	1989	1996	1992	1996
Sale Price	\$9,650,000	\$2,350,000	\$1,425,000	\$4,500,000	\$2,765,000	\$2,250,000
SP/SF	\$50.26	\$29.03	\$15.07	\$40.44	\$22.19	\$14.87
Adjusted SP/SF (2009)	\$30.87	\$19.20	\$24.21	\$29.39	\$22.00	\$24.09
(2010)	\$27.79	\$17.28	\$21.79	\$26.45	\$19.80	\$21.68
(2011)	\$25.01	\$15.55	\$19.61	\$23.80	\$17.82	\$19.51

Mr. Allen adjusted all of the sales for differences in market condition. Sales 1, 2, 4, and 5 have superior locations and are adjusted downward. Sales 3 and 6 are located in inferior locations and were adjusted upward. Sales 1, 2, 3, 5, and 6 were all older construction and adjusted upward. Sale 4 is slightly older than the subject but received a downward adjustment. All six sales were adjusted for each year in contention.

In addition, Mr. Allen provided summary information of 12 comparable listings indicating the square feet, tenant(s), and listing price per square foot for the year(s) the property was listed. The summary includes the range of listing prices per square foot, as well as the average for each of the tax years at issue. The range of listings for 2008 is \$36.27 to \$47.75 with an average asking price of \$42.91 per square foot. The range of listings for 2009 is \$14.05 to \$43.89 with an average asking price of \$29.84 per square foot. The range of listings for 2010 is \$13.66 to \$41.05 with an average asking price of \$26.39.

Next, Mr. Allen also includes a summary of 32 big box stores throughout the state that were listed and sold from 2000 to 2010. Three other properties were noted in this summary as available for retail use but were eventually sold for total redevelopment.

After analyzing the comparable sales, adjusting for difference in amenities, and reviewing the listings, Mr. Allen concluded to a value for the subject property of \$25.00 per square foot (\$2,550,000) as of December 31, 2008; \$22.50 per square foot (\$2,300,000) as of December 31, 2009; and \$20.00 per square foot (\$2,040,000) as of December 31, 2010 for the opinions of market value.

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

Petitioner's valuation disclosure is conveyed on the foundation of a fee simple interest. Mr. Allen explained that the fee simple interest is an acquisition of a property as unleased and vacant. Contrarily, a leased fee interest is based on the value of a property subject to an existing

lease. There may be a value difference for the same property dependent on the interest appraised. Mr. Allen's explanation of fee simple and leased fee was necessary in determining market rent and market adjustments for the subject property within the income approach.

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

Mr. Allen provided ten rental comparable properties that were leased or offered for lease in the open market. These leases range from \$3.75 to \$5.75 per square foot. In addition, nine build-to-suit leases were identified with rents ranging from \$5.13 to \$9.50 per square foot. Next, there is an illustration of eleven build-to-suit leases that were vacant and re-leased in the open market. Mr. Allen compared the difference between the original build-to-suit leases and the existing market lease rates. The difference between the two leases (from eleven build-to suit leases that were re-leased) is a 47.21% average decrease in value. Mr. Allen concluded to a 35% deduction in value for the build-to-suit leases. The analyzed final triple net rent was \$4.00 per square foot as of December 31, 2008, \$3.50 per square foot as of December 31, 2009, and \$3.25 per square foot as of December 31, 2010.

The next step in the income approach was to determine the vacancy and credit loss. There was no national survey for the Benton Harbor retail community. Mr. Allen then relied upon conversations with real estate brokers and competing market data to conclude to a 15% vacancy and credit loss due to the subject property's size, shape, and location.

The reimbursable operating expenses are common area maintenance (CAM), property taxes, and insurance expenses. Mr. Allen estimated the expenses utilizing *Dollars and Cents of Shopping Centers* for 2008. These expenses are incurred by a landlord when the property is

vacant. The owner would be responsible for the management fee for the triple net lease, as well as reserves for capital improvements.

Mr. Allen calculated gross income from the rental rate per square foot. Vacancy and credit losses were deducted for an effective gross income; operating expenses were deducted to equal the net operating income (NOI). Mr. Allen considered capitalization rates from extracted sales, band-of-investment, and investor surveys. His decision for the overall capitalization rate (OAR) was 10.00%, 10.50%, and 10.50%, respectively, for the three years under appeal. Mr. Allen's opinion is that the Benton Township cap rates are higher relative to the range of Michigan rates for retail stores. "Benton Township is not as desirable a location for institutional investors who are looking for larger markets with greater demand." (TR, Vol 1, p 208)

After capitalizing the NOI, Mr. Allen deducted leasing commissions to arrive at final conclusions of true cash value of \$2,610,000 (\$25.58 per square foot) as of December 31, 2008; \$2,110,000 (\$20.68 per square foot) as of December 31, 2009; and \$1,930,000 (\$18.92 per square foot) as of December 31, 2010.

Mr. Allen also developed a cost approach to value, but it was not used as a primary indication of value. Rather, it served as a check to the sales comparison and income approaches. The sales comparison approach was the primary indicator of value because the sales data is considered more reliable than the rental data.

SUMMARY OF RESPONDENT'S CASE

Respondent presented testimony from its appraiser, Jeffrey Genzink, MAI and from its assessor, Antoinette Swisher, Michigan Advanced Assessing Officer. In support of its value contentions, Respondent offered the following exhibits, which were admitted into evidence:

R-1: Form L-4018R, 2009 State Tax Commission Real Property Analysis.

- R-2: Form T-4023 STC 2009 Analysis for Equalized Value for Benton Township.
- R-3: Berrien County Equalization Resolution, County Tax Spread and County School Tax Spread for 2009.
- R-4: Amended Berrien County Equalization Resolution, County Tax Spread and County School Tax Spread for 2009.
- R-5: Form L-4018R, 2009/2010 State Tax Commission Real Property Analysis.
- R-6: Form T-4023 STC 2009 Tentative Analysis for Equalized Valuation.
- R-7: Berrien County Equalization Resolution, County Tax Spread and County School Tax Spread for 2010.
- R-8: Amended Berrien County Equalization Resolution, County Tax Spread and County School Tax Spread for 2010.
- R-9: Form L-4018R, 2010/2011 State Tax Commission Real Property Analysis.
- R-10: Form T-4023 STC 2011 Tentative Analysis for Equalized Valuation.
- R-11: Berrien County Equalization Resolution 2011.
- R-12: Amended Berrien County Equalization Resolution, County Tax Spread and County School Tax Spread for 2011.
- R-13: An appraisal of the subject property prepared by Genzink Appraisal Company.
- R-14: Color map of commercial area around the subject property.
- R-15: Petitioner's appraisal of subject property by Laurence G. Allen.

Ms. Swisher testified to Respondent's Exhibits 1 through 12. The exhibits measure the level of assessment for the township. She testified that she used the cost approach to set the assessment for the subject property.

Jeffrey Genzink, MAI, prepared an appraisal of the subject property. He testified that the neighborhood surrounding the shopping center is in a state of decline. The factors that led Mr. Genzink to this conclusion are (1) total occupied space in the Benton Harbor area has been stagnant since 2006; (2) new space that was added in 2008 was not leased up; and (3) national cap rates were declining.

Mr. Genzink selected three comparable sales and one comparable listing in the direct comparison analysis.

Sale #	1	2	3	4
Location	Kentwood	Holland	Fremont	Muskegon
Sale Date	Sep-05	May-04	Feb-07	Listing
Square Feet	103,086	80,542	71,305	94,681
Year Built	1989	1989	1991	1995
Sale Price	\$7,100,000	\$2,350,000	\$1,802,825	\$3,500,000
SP/SF	\$68.87	\$29.18	\$25.28	\$36.97
Adjusted SP/SF (2009)	\$63.84	\$43.62	\$42.47	\$48.06
(2010)	\$55.78	\$39.07	\$36.28	\$37.08

Mr. Genzink selected these comparables because they were located on the western side of the state. Sales 1, 2, and 4 are all former Target big box stores; Sale 3 is a former Wal-Mart. The sales all required an adjustment for differences between the subject property and the comparable properties. All of the sales were adjusted for market conditions as of each tax date at issue. All of the comparable properties were adjusted downward to the subject for superior locations. Sale 3 was adjusted for its better access and visibility. Sales 1, 2, and 3 were adjusted up 10% for age/condition. Comparable 4 was adjusted because it is a listing. This results in a range of adjusted sale prices per square foot of \$42.47 to \$63.48.

Mr. Genzink determined that, based on the sales comparison approach, the indicated true cash value of the subject property as of December 31, 2008, is \$5,200,000 (\$50.25 per square foot), and as of December 31, 2009, is \$4,500,000 (\$43.38 per square foot). Respondent did not render an opinion of value conclusion for 2010.

Respondent developed and communicated an income approach to value. Mr. Genzink stated that the subject property is owner-occupied; however, he searched for market rental data for retail leases over 70,000 square feet on the west side of the state. He found two properties that met his criteria. Rental 1 is a former K-Mart property located on 28th Street SE, Kentwood, that appears to be occupied by Burlington Coat Factory. This property was remodeled in 2004

and leased in 2005 on a triple net basis for \$4.75 a square foot. Rental 2 is a former Mervyn's located in Portage that is also occupied by Burlington. This property has a tenant improvement allowance of \$25.00 per square foot and a 2006 triple net lease for \$6.80 per square foot.

Mr. Genzink adjusted Rental 1 for location due to its better visibility, and a positive \$2.00 adjustment for age/condition. The resulting market rent is \$5.25 per square foot. Rental 2 was adjusted a negative \$3.50 for tenant improvements, superior location, visibility, and age/condition. The resulting market rent is \$4.80 per square foot. Mr. Genzink determined that the adjusted rents ranged from \$4.80 to \$5.25. He indicates that the leasing agent for Fairplain Plaza (location of the subject property) was interviewed and stated that asking rent for square footage in excess of 15,000 ranged from \$5.00 to \$6.00 per square foot. The market rent for the subject property was determined to be \$5.00 per square foot.

The general vacancy and credit loss was estimated using Fairplain Plaza. Fifteen percent was determined to be reasonable. Mr. Genzink then determined the reimbursable expenses to be CAM, insurance, and property taxes (as loaded into the capitalization rate); non-reimbursable expenses were determined to be management costs, leasing commissions, replacement reserves, and tenant improvements. The capitalization rates from PwC *Real Estate Investor Survey*, Fourth Quarter, 2008, were considered. Mr. Genzink selected 8.5% from the power center section to reflect the risk of the subject property. The NOI was divided by the tax neutral capitalization rate. The indicated value via the income approach is \$4,500,000 (\$43.48 per square foot) as of December 31, 2008, and \$4,000,000 (\$38.65 per square foot) as of December 31, 2009.

FINDINGS OF FACT

1. Subject property is located at 960 Fairplain Drive, Benton Charter Township, Berrien County.
2. Subject building contains 102,000 square feet.
3. Subject property has a total of 8.77 acres.
4. Subject property is an owner-occupied big box store.
5. The occupant of subject property should not influence the market value of the property.
6. The subject is not an income-producing property, thus the income approach is not given weight in the final conclusion to value.
7. Benton Township borders the city of Benton Harbor, Berrien County.
8. The subject is located in the Niles-Benton Harbor Metropolitan Statistical Area.
9. The average household income is 20% less than the rates average and is the poorest in the state.
10. The total population for the Niles/Benton Harbor MSA is 159,000.
11. The demographics for the lower income level produced low retail sales in an area of minimal traffic.
12. The subject property is contrasted with the demographics of Respondent's comparable sales.
13. The neighborhood contains vacant boarded-up buildings.
14. The subject property's location and market area are economically depressed.
15. Both parties have furnished valuation disclosures in the form of appraisal reports.
16. Petitioner's valuation disclosure includes values for 2009, 2010, and 2011.
17. Respondent's valuation disclosure includes values for 2009 and 2010.
18. The parties have mutually stipulated that the cost approach is not relevant in this tax appeal.
19. Both parties have appraised the subject property as a fee simple interest.
20. Both parties have developed income approaches with a 15% vacancy rate.
21. Both parties have developed sales comparison approaches with two common comparable properties. Both parties have analyzed the comparable sale located at 12386 Felsh Road, Holland Township, and the comparable listing located at 1740 E. Sherman Boulevard, Muskegon.
22. Petitioner utilizes six comparable sales for analysis purposes.
23. Petitioner utilizes twelve comparable listings for analysis purposes.

APPLICABLE LAW

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

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

The Michigan Legislature has defined “true cash value” to mean:

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

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

A proceeding before the Tax Tribunal is original, independent and de novo. MCL 205.735(1); MSA 7.650(35)(1). The Tribunal’s factual findings must be supported by competent, material and substantial evidence. *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Department of Treasury*, 185 Mich App 458, 462-463; 452 NW2d 765 (1990). Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

“The petitioner has the burden of establishing the true cash value of the property....” MCL 205.737(3). This burden encompasses two separate concepts: (1) the risk of persuasion,

which does not shift during the course of the hearing; and (2) the burden of going forward with the evidence, which may shift to the opposing party. *Jones & Laughlin* at 354-355.

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

The three most common approaches to valuation are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach. *Meadowlanes*, at 484-485; *Pantlind Hotel Co v State Tax Commission*, 3 Mich App 170; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968). The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale*, p277. Pursuant to MCL 211.27(5), "the purchase price paid in a transfer of property is not the presumptive true cash value of the property transferred."

CONCLUSIONS OF LAW

Petitioner developed and analyzed all three approaches to value. Respondent developed and analyzed the income and sales comparison approaches. As noted, both parties have stipulated that the cost approach to value is not relevant to this appeal. The appraisers were

charged with determining market value of the subject property for the three years under appeal. The only evidence for the 2011 year value is Petitioner's valuation disclosure. Respondent's valuation disclosure only included values for 2009 and 2010.

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

Petitioner's comparison analysis and adjustments reflect market actions; however, Petitioner's reconciliation of the adjusted sale prices for the three years under appeal is incomplete. Petitioner concludes to the values by averaging the adjusted sales prices. The reconciliation of approaches is similar to the reconciliation of sales data. Reconciliation is an appraiser's opportunity to fill in gaps, and to prove overall logic and reasoning for the value conclusions. Averaging adjusted sales prices infers equal weight and consideration to the data. In this instance, Petitioner's data, even after adjustments, indicates a given range in adjusted sales prices. "Even when adjustments are supported by comparable data, the adjustment process and the values indicated reflect human judgment." Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13th ed, 2008), p 313. The strengths and weaknesses of each comparable sale are examined for reliability and appropriateness. Petitioner's adjustments for all three years are the same except for the market conditions adjustment. Petitioner has provided sufficient support

for the market conditions adjustment. Nonetheless, certain sales are more germane for each year under appeal. The sales comparison approach for each year is reconciled with the similarities and dissimilarities of each comparable sale. Petitioner's elaborative comparison analysis gives rise to more than averaged value conclusions. The Tribunal agrees with Petitioner's sales comparisons but disagrees with the reasoning for the concluded (averaged) prices per square foot.

In regards to the 2009 valuation, Petitioner's sale 4 has minimal location and market conditions adjustments and sold in March, 2006. This sale is more applicable to the 2009 value. Sales 5 and 6 sold after December 31, 2008 and are less applicable to the 2009 value. Sale 2 is located in west Michigan but is the oldest sale occurring in 2004; this sale is less reliable. Sales 1, 3, and 4 have relatively less adjustments. Therefore, a reasoned and reconciled price per square foot for the 2009 valuation is \$28 or calculated as a value of \$2,856,000.

In regards to the 2010 valuation, Petitioner's sale 5 is the closest to the December 31, 2009 tax date; this sale a zero market conditions adjustment. Sales 4 and 5 have the least adjustments for location. Sales 3, 4, and 5 have the fewer total adjustments. Sale 6 is beyond the relevant tax date. Moreover, this sale has larger adjustments over fifty percent. Therefore, a reasoned and reconciled price per square foot for the 2010 valuation is \$24 or calculated as a value of \$2,448,000.

In regards to the 2011 valuation, Petitioner's sales 5 and 6 are bracketed to and are more applicable to the December 31, 2010 tax date. These two sales have fewer overall adjustments. Further, sale 6 has a zero market conditions adjustment. Sales 4 and 5 have the least adjustments for the difference in location. Therefore, a reasoned and reconciled price per square foot for the 2011 valuation is \$21 or calculated as a value of \$2,142,000.

The effect of a common comparable sale and listing used by both parties is important. The noted common sale (located in Holland) occurred in May, 2004. The noted common listing (located in Muskegon) has had several price reductions. These comparables are important for analysis, but are not controlling for the three years under appeal.

Respondent's valuation expert develops the sales comparison approach to value. As part of his analysis, Mr. Genzink acknowledges the validity of offerings or listings for comparison purposes. The Tribunal finds Mr. Genzink's reasoning for the application of listed properties to be short sighted.

Well, it really depends on my audience. In the past when I have written appraisal reports for the Tribunal some of the Tribunal judges do not like listings. I happen to like listings. I like to use listings. But there's a certain audience, whether it's Tribunal or others, that do not like seeing them. So I'm a fan of using listings in my analysis. I would advocate for that, but, here, because it was within the range and we didn't want to have any type of negative feedback that we used a listing that wasn't a consummated sale, we decided to not consider it for final analysis.

Respondent's sales comparison adjustments lack consistency and clarification. For example, Mr. Genzink testified that certain comparables had "corner/visibility," but no adjustments were made for this difference. Comparable 4 has good visibility and is located on a corner lot, but is not adjusted for this difference in the sales comparison approach. In addition, Mr. Genzink considered several items for his location adjustments. In testimony, he admitted traffic count is important but it was not included in his considered items. As interestingly, this comparable listing was not adjusted for market conditions or an eventual sale transaction. Respondent's appraiser adjusts the list price as though it was a consummated sales price. Comparable 3 has net adjustments of seventy-five percent. This is an indication of less comparability. Comparable 2 is located in west Michigan but is the oldest sale (2004) from the data.

Respondent is unfamiliar with the concept of an outlier. Comparable 1 (4100 28th Street, Kentwood) has an adjusted price per square foot substantially higher than the other comparables' adjusted prices per square foot, but is given equal weight in the conclusion of value for the sales comparison approach. This comparable is located on a high traffic street of superior marketability and appeal. The adjusted prices per square feet for the other comparables (\$43.62, \$42.47, \$48.06) leaves no doubt that Comparable 1 is outside of the range of the other comparables.

The appraiser's decision whether or not to use offerings is based not on an audience but based on the scope of work necessary to provide credible assignment results. "Whenever possible, an appraiser should gather information about properties offered for sale. Listings and offerings can be useful indicators of the values anticipated by sellers and buyers and reflect the likely turnover of competitive properties." Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13th ed, 2008), pp 162-163. While Mr. Genzink omits Comparable 4 from the final analysis, this offering is still noteworthy and was analyzed by Petitioner's appraiser. Mr. Genzink's reasoning for the omission of this offering (or any offering) is not justified.

Respondent contends that searching for comparable sales throughout the state of Michigan is not necessarily the best methodology, and only focuses on comparable sales in western Michigan. Respondent's actions contradict its analysis of the subject property as an institutional power center. A property of this classification would not be relegated to investors in a smaller market area.

Regardless of the number of sales analyzed, the appraiser must understand each sale used for comparison to draw credible conclusions from comparisons. Many sales that cannot be effectively used for direct comparison are still part of the market at large and can be used for bracketing, understanding general market activity, and other analytical purposes. Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13th ed, 2008), p 302.

Respondent's income approach contains inconsistencies as well. For example, the two adjusted rental comparables have commencement dates of 4/1/05 and 8/1/06. (Respondent's Exhibit R-13, p 31) Mr. Genzink did not give any written or oral testimony as to why no rental data closer to the tax dates was used. Further, the leasing agent for Fairplain Plaza was interviewed regarding lease rates. Mr. Genzink testified there has been a thirty percent decrease in market rents in the area, yet, he makes no adjustments to the rental data for the difference in market conditions.

Respondent's appraisal report includes exterior and aerial photographs of the subject property, but no interior photographs. Mr. Genzink did observe the interior, but was unable to see beyond closed doors. This element of a summary report is meaningful to the description of improvements narrated by the appraiser. Moreover, relative to the scope of work acceptability, an appraiser's peers will commonly include interior photographs in the appraisal report. This omission (along with other elements of the appraiser's report) results in diminished reliability and credibility.

Respondent's appraiser concludes that ". . . equal emphasis is given to the sales comparison and income capitalization approaches." (Respondent's Exhibit R-13, p 40) This all-encompassing statement is not the equivalent of a reasoned reconciliation. Averaging the indicated approaches to value negates the strengths and weaknesses of data within each approach. Averaging indicated approaches to value is not an acceptable shortcut for the reconciliation. Respondent appraiser's varied sales comparison and income data cannot be reconciled by calculating an average. "The final value opinion does not simply represent the average of the different value indications derived. No mechanical formula is used to select one

indication over the others. Final reconciliation relies on the proper application of appraisal techniques and the appraiser's judgment." Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13th ed, 2008), p 560.

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

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

JUDGMENT

IT IS ORDERED that the subject property's true cash, assessed, and taxable values for the 2009, 2010 and 2011 tax years are those shown in the "Summary of Judgment" section of this Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the

assessed and taxable values in the amounts as finally shown in the “Final Values” section of this Opinion and Judgment, subject to the processes of equalization, within 20 days of the entry of this Opinion and Judgment. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Opinion and Judgment within 20 days of the entry of this Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Order. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (ii) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (iii) after December 31, 2005, at the rate of 3.66% for the calendar year 2006, (iv) after December 31, 2006, at the rate of 5.42% for the calendar year 2007, and (v) after December 31, 2007, at the rate of 5.81% for the calendar year 2008, (xiv) after December 31, 2008, at the rate of 3.31% for calendar year 2009, and (xv) after December 31, 2009, at the rate of 1.23% for calendar year 2010 (xvi) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (xvii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, and (xvi) after December 31, 2011, at the rate of 1.09 for calendar year 2012.

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

MICHIGAN TAX TRIBUNAL

Entered: March 9, 2012

By: Marcus L. Abood