

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

CNJ Properties, LLC,
Petitioner,

v

MTT Docket Nos. 385097

West Bloomfield Township,
Respondent.

Tribunal Judge Presiding
Preeti Gadola

FINAL OPINION AND JUDGMENT

Introduction

Petitioner, CNJ Properties, LLC, appeals the ad valorem property tax assessment levied by Respondent, West Bloomfield Township, against the real property owned by Petitioner (Parcel No. X-18-29-226-002) for the 2010 and 2011 tax years. The 2012 tax appeal was severed from this matter and assigned Docket Number 448695 at the hearing.

Randall Whately, attorney, appeared on behalf of Petitioner. Derk Beckerleg, attorney, appeared on behalf of Respondent. A hearing of the matter occurred on October 1-2, 2012. Petitioner's witnesses were Antonina Clements, Certified General Real Estate Appraiser, Integra Realty Resources, and Dr. Christopher N. Jaghab, managing member of CNJ Properties and owner of the subject property. Respondent's witness was J. Ryan Runnels, Senior Appraiser, West Bloomfield Township.

The subject property consists of an office building with a single occupant. It is located at 5760 Drake Road, West Bloomfield Township, Michigan. It consists of 2,805 square feet and is situated on .440 acre. There was an offer to purchase the subject property made by Petitioner in September, 2008, for \$525,000. The sale of the property was closed on December 19, 2008, for \$525,000. On December 23, 2009, Petitioner took out a building permit to renovate the subject

property for his personal use as a dental office. A temporary certificate of occupancy was received by Petitioner on April 26, 2010, and the final certificate of occupancy for the subject property was presented to Petitioner on July 1, 2010.

Summary of Judgment

Based on the evidence, testimony, and case file, the Tribunal finds that Petitioner has met the burden of proof in establishing that a modification of true cash value, as determined by the Tribunal, is appropriate. The Tribunal further finds the true cash values (“TCV”), the state equalized values (“SEV”), and the taxable values (“TV”) of the subject property for the years under appeal are as follows:

Parcel Number: X-18-29-226-002

	TCV	SEV	TV
2010	\$347,790	\$173,898	\$173,898
2011	\$561,000	\$280,500	\$246,979

PETITIONER’S CONTENTIONS

Petitioner contends that the evidence presented in this case strongly supports a determination that the true cash value of the subject property as calculated by Respondent is substantially overstated. As determined by Petitioner’s appraiser, the TCV, SEV, and TV for the property for the tax years at issue should be:

Parcel Number: X-18-29-226-002

	TCV	SEV	TV
2010	\$250,000	\$125,000	\$125,000
2011	\$350,000	\$175,000	\$175,000

Petitioner's appraiser prepared both a sales comparison and income analysis to determine the value of the subject property. Petitioner's appraiser determined the highest and best use of the property to be continued use as an office building with the most likely buyer to be an owner-user of the property.

PETITIONER'S ADMITTED EXHIBITS

P-1 Petitioner's Valuation Disclosure

P-2 Respondent's Valuation Disclosure

P-3 Offer to Purchase (dated September 1, 2008)

P-6 Construction Contract (dated December 16, 2009)

P-7 Date-stamped photographs of the subject property (dated December 28, 2009)

P-8 Final Invoice from R&G Contractors, Inc. (dated October 5, 2012)

Petitioner's Rebuttal Exhibit ("PRE") 1: Integra Realty Resources, Inc. property information for the property located at 626 N. Crooks Road, Clawson, MI

PRE-2 Integra Realty Resources, Inc. property information for the property located at 43420 Grand River Ave., Novi, MI

PRE-3 Integra Realty Resources, Inc. property information for the property located at 5799 S. Main, Clarkston, MI

PRE-4 Integra Realty Resources, Inc. property information for the property located at 4300 Orchard Lake Road, W. Bloomfield, MI

WITNESSES CALLED BY PETITIONER

Dr. Christopher Jaghab

Dr. Jaghab testified that he is the managing member of CNJ Properties, LLC, and the owner of the subject property. He testified that he closed on the property on December 19, 2008, and that the purchase price was \$525,000. (P-3, Transcript, Volume 1, pp. 9-12) On December 23, 2009, he obtained a building permit to renovate the subject property in order to convert it into

a dental office. At the time of purchase, the property was utilized as office space for the marketing firm, MNJ Properties, and the offices were complete and usable. MNJ Properties paid rent of \$672.92 per month to Petitioner until April, 2009. (Transcript, Volume 1, pp. 23, 26). Dr. Jaghab obtained a construction contract for the renovation of the subject property in the amount of \$210,073; however, he paid a total of \$212,960 for the completed renovation. (Transcript, Volume 1, p. 13)

Dr. Jaghab testified that he took photographs of the subject property on December 28, 2009, and at that time the subject property was under renovation and consisted of a “shell.” (P-7, Transcript, Volume 1, pp. 12-13) He further testified that on April 26, 2010, R & G Contractors finished its renovation and a temporary certificate of occupancy was received for the subject property at that time. On July 1, 2010, a final certificate of occupancy for the property was obtained. (Transcript, Volume 1, pp.19-20)

J. Ryan Runnels

Mr. Runnels, appraiser for Respondent, was called by Petitioner’s attorney as an adverse witness. Mr. Runnels was questioned by Respondent regarding the comparables he utilized in preparing his sales comparison approach to value of the subject property. Mr. Runnels was shown Integra Realty Resources comparable sales data sheets (PRE 1-4) to discredit the sales comparables he utilized in his appraisal. Mr. Runnels testified that he would characterize the comparable data sheets as analogous to the Oakland County Equalization books he utilized in completing his sales comparison approach to value. (Transcript, Volume 1, pp. 35, 45, 241)

With regard to 2010 comparable one (626 N. Crooks), Mr. Runnels was asked if he was aware the tenant of the property was also the purchaser. Mr. Runnels answered that he was unaware of such allegation. (Transcript, Volume 1, pp. 35-36) With regard to comparable two for the 2010 tax year (5799 Main), Mr. Runnels was questioned as to whether he was aware that the comparable consisted of the Clarkston, MI Post Office. Mr. Runnels answered in the affirmative; however, he testified at the time of sale the property was vacant. (Transcript, Volume 1, p. 61) With regard to 2010 comparable four (43420 Grand River), Mr. Runnels was questioned as to whether he knew that the comparable was a multi-tenant retail office building within a quarter-mile of 12 Oaks Mall. He answered in the affirmative. He was also questioned as to whether he was aware that the property was sold by sheriff's deed and that the buyer and seller was Huntington Bank. Mr. Runnels testified that he was unaware of such terms of sale of the comparable property and it was his understanding that the sale was at arm's length. (Transcript, Volume 1, pp. 57-60)

With regard to comparable one for the 2011 tax year (3383 Highland), Mr. Runnels was questioned as to whether he was aware that the Waterford Township comparable consisted of a used car lot. Mr. Runnels answered in the affirmative, testifying that it also contained a small office situated on the lot of 728 square feet. With regard to comparable two for the 2011 tax year (4300 Orchard Lake), Mr. Runnels was questioned if he thought the sale of the comparable was at arm's length given that the buyer and seller was Orchard Lake Animal Hospital. Mr. Runnels testified that he considered the sale to be at arm's length and that it could have been a "business sale" as the sale was to and from Orchard Lake Animal Hospital; however, two different individual buyer names were listed with the sale and purchase. (Transcript, Volume 1, pp. 71-74)

Mr. Runnels was questioned regarding his cost approach to value and he testified that he valued the property as complete on December 31, 2009, and did not discount the true cash value of the property for the demolition that commenced on December 23, 2009. (Transcript, Volume 1, p. 79) Mr. Runnels also testified that he did not, personally, complete the cost approach to value for the subject property, but that it was completed by a staff member in the ordinary course of valuation in the Township with BS&A software. (Transcript, Volume 1, pp. 81-82)

Antonina Clements

Ms. Clements was called in Petitioner's case-in-chief and as a rebuttal witness. Ms. Clements testified that she is the appraiser for Petitioner and therefore the author of Petitioner's appraisal presenting its contention of value of the subject property for the 2010 and 2011 tax years. Ms. Clements prepared both a sales and income approach to value of the subject property and made a final determination as to the true cash value of the property for the 2010 tax year of \$250,000 and for the 2011 tax year of \$350,000. Ms. Clements testified that she has been a state licensed appraiser for 15 years and that her area of specialization is office buildings including medical and dental buildings. (Transcript, Volume 1, pp. 84-86)

Ms. Clements reiterated Dr. Jaghab's testimony regarding the building permit and demolition of the property interior in December, 2009. She testified, however, that she valued the subject property as complete and then took a deduction from the value based on the market build-out cost she concluded. As of December 31, 2009, Ms. Clements valued the property at \$392,700, with a deduction of \$140,000 in build-out costs under the sales approach to value. (Transcript, Volume 1, pp. 110-111) The 2011 true cash value of the property was computed for a complete property, as a certificate of occupancy was received by Petitioner in July, 2010.

Ms. Clements further testified that an adjustment was necessary to any sales comparables to the subject for the type of office building. She indicated that medical/dental office buildings had a higher true cash value than general office buildings and that she reflected such difference in her “quality” adjustment. (Transcript, Volume 1, p. 116) Ms. Clements also prepared an income approach to value of the subject property.

Ms. Clements did not prepare a cost-less-depreciation approach to value for the subject property. She testified that in her 15 years of working for Integra (appraisal firm), she had only prepared one cost approach of an office building. She indicated that in that one instance the architect and builder of the property felt that the cost approach was the most reliable method of valuation and such was prepared, at the client’s request. However, Ms. Clements testified that the cost approach was not relied upon by her in determining the true cash value of the building. (Transcript, Volume 1, p. 87)

On cross-examination, Ms. Clements testified that she determined the highest and best use of the property to be continued use as an office building with the most likely buyer to be an owner-user of the property. (Transcript, Volume 1, p. 171) She was questioned as to why she utilized an income approach to property when she determined the most likely buyer to be an owner/user of the property and not a lessor. She answered that the property could be leased by an owner and that such circumstances did exist. She also indicated that she prepared an income approach to value as a check of her sales approach. (Transcript, Volume 1, pp. 174-175)

Ms. Clements was questioned regarding her build-out value deduction, from the subject property value as complete, for 2010. She testified that she utilized a \$50.00 per square foot build-out cost for the subject property and such was based on comparable data from two rental

comparables that included tenant improvement allowances of \$65.00 per square foot and \$40.00 per square foot. (Transcript, Volume 1, pp. 188-191)

With regard to the specifics of Ms. Clements’ income approach to value, she was questioned as to whether virtually all of her rental comparables were multi-tenant office buildings. She answered in the affirmative. (Transcript, Volume 1, pp. 175-176) She testified that she viewed the property for the first time in 2012 and she had no personal knowledge that the property was gutted on December 31, 2009, though she saw Dr. Jaghab’s date-stamped photographs and was told such was the case by him. (Transcript, Volume 1, pp. 148-149)

RESPONDENT’S CONTENTIONS

Respondent’s contentions of value on the tax roll, supported by its valuation disclosure, are as follows:

Parcel Number: X-18-29-226-002

	TCV	SEV	TV
2010	\$704,400	\$352,200	\$352,200
2011	\$662,580	\$331,290	\$331,290

Respondent contends that the subject property has been fairly and accurately assessed at 50% of its true cash value. Respondent’s appraiser prepared his appraisal relying on the cost and sales comparison approaches to value. Respondent’s appraisal affirmed its contentions of value, on the tax roll, of the subject property for the 2010 and 2011 tax years.

RESPONDENT’S ADMITTED EXHIBITS

R-1 Respondent’s Valuation Disclosure for 2010 and 2011 Tax Year

WITNESSES CALLED BY RESPONDENT

J.Ryan Runnels

Mr. Runnels was again called to the stand by Respondent in its case-in-chief. Mr. Runnels testified that he is a Michigan Advanced Assessing Officer (formerly known as Level Three assessor) and the senior appraiser for West Bloomfield Township. He testified that he has assessed many office buildings in his career and a couple of medical office buildings in West Bloomfield Township. (Transcript, Volume 1, pp. 217-220) Mr. Runnels testified that he completed a formal inspection of the subject property on July 16, 2010, and that he had driven by it a week before the hearing date. (Transcript, Volume 1, pp. 221-222) Mr. Runnels was unable to inspect the interior of the property in July, 2010, as the office was closed. (Transcript, Volume 1, p. 222)

Mr. Runnels testified that the subject property is located on a major thoroughfare in a densely populated area. (Transcript, Volume 1, p. 228) He testified that the highest and best use of the property is for continued use as a medical/dental office. (Transcript, Volume 1, p. 232)

Mr. Runnels testified that he prepared a cost and sales approach to value of the subject property. He testified that under both approaches he determined the true cash value of the subject property as complete. Mr. Runnels testified that he relied on the 2825 University Drive comparable when determining the true cash value of the subject property under the sales approach. He testified that the comparable was the most similar to the subject in size, utility, and original year built. (Transcript, Volume 1, p. 243) He also testified that he drove by the property every day but he could not recall what type of office it was or whether or not it was vacant. (Transcript, Volume 1, p. 68) Mr. Runnels testified that he gathered his data for his sales comparison approach to value from Oakland County Equalization lists, books, and data relevant

to comparable sales. He testified that the Oakland books are somewhat analogous to the comparable data sheets from Integra Realty Resources shown to him by Mr. Whately.

(Transcript, Volume 1, pp. 240-241) He further testified that pertinent information, such as buyer and seller name or sheriff's deed, are listed on the data sheets, hence he was surprised by Integra's information regarding some of his comparables. (Transcript, Volume 1, p. 241)

As stated above, Mr. Runnels prepared a cost approach to value of the subject property. He testified that the cost approach was relevant as the property was new or renewed. He testified that the cost approach was more applicable than the income approach as there was insufficient rental data with which to prepare the approach. (Transcript, Volume 1, p. 247)

FINDINGS OF FACT

1. The subject property is located at 5760 Drake Road, West Bloomfield Township, in the County of Oakland. It is identified as Parcel No. X-18-29-226-002.
2. The subject property is classified 201, Commercial Real, and consists of an owner-occupied dental office.
3. The subject building consists of 2,805 square feet situated on .440 acre of land.
4. Petitioner made an offer to purchase the subject property in September, 2008.
5. Petitioner closed on the subject property on December 19, 2008. The purchase price of the property was \$525,000.
6. Petitioner took out a building permit on the property on December 23, 2009.
7. Petitioner provided date-stamped photographs of the subject property taken on December 29, 2009, which demonstrated that the subject property consisted of a shell at that time.
8. Both parties have provided valuation disclosures in the form of appraisal reports.
9. Petitioner's final determination of the true cash value of the subject property was based on the sales comparison approach to value and an income approach was completed to support such value.

10. Respondent's final determination of the true cash value of the subject property was based on the cost and sales approaches to value.
11. Petitioner's appraiser found the highest and best use of the property, as improved, to be as a medical office building. Petitioner's appraiser determined the most likely buyer of the property to be an owner-user.
12. Respondent found the highest and best use of the property, as improved, to be as a medical/dental office building.

ISSUES PRESENTED AND CONCLUSIONS OF LAW

Pursuant to Section 3 of Article IX of the State Constitution, the assessment of real property in Michigan must not exceed 50% of its true cash value. The Michigan Legislature has defined true cash value to mean the usual selling price at the place where the property to which the term is applied is at the time of the assessment, being the price which could be obtained for the property at private sale, and not forced or auction sale. See MCL 211.27(1). The Michigan Supreme Court in *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450 (1974), has also held that true cash value is synonymous with fair market value.

In that regard, the Tribunal is charged in such cases with finding a property's true cash value to determine the property's lawful assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767 (1981). The determination of the lawful assessment will, in turn, facilitate the calculation of the property's taxable value as provided by MCL 211.27a. A petitioner does, however, have the burden of establishing the property's true cash value. See MCL 205.737(3) and *Kern v Pontiac Twp*, 93 Mich App 612 (1974).

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law...The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not...exceed 50%....; and for a system of equalization of assessments. For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding

year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred. When ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value. Const 1963 Art IX , Sec 3.

The Michigan Supreme Court, in *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473; 473 NW2d 363 (1991), acknowledged that the goal of the assessment process is to determine “the usual selling price for a given piece of property.” In determining a property’s true cash value or fair market value, Michigan courts and the Tribunal recognize the three traditional valuation approaches as reliable evidence of value. See *Antisdale v Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984).

To determine a property’s true cash value, the property must be assessed at its highest and best use. *Huron Ridge LP v Ypsilanti Twp*, 275 Mich App 23, 33; 737 NW2d 187 (2007). The highest and best use “means the most profitable and advantageous use the owner may make of the property even if the property is presently used for a different purpose or is vacant, so long as there is a market demand for such use.” *Detroit/Wayne Co Stadium Auth v Drinkwater, Taylor & Merrill, Inc*, 267 Mich App 625, 633; 705 NW2d 549 (2005) (quotation omitted). A highest and best use is one that is legally permissible, physically possible, financially feasible, and maximally productive. *Detroit v Detroit Plaza Ltd Partnership*, 273 Mich App 260, 285; 730 NW2d 523 (2006).

The petitioner has the burden of establishing the true cash value of the property. . . .” MCL 205.737(3); MCL 211.27(1); *Meadowlanes, supra*. “This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing; and (2) the burden of going forward with the evidence, which may shift to the opposing party.” *Jones & Laughlin Steel v City of Warren*, 193 Mich App 348, 483 NW2nd, 416 (1992), at

354-355, citing: *Kar v Hogan*, 399 Mich 529, 539-540; 251 NW2d 77 (1976); *Holy Spirit Ass'n for the Unification of World Christianity v Dept of Treasury*, 131 Mich App 743, 752; 347 NW2d 707(1984).

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 Comm*, 3 Mich App 170; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968); *Antisdale*, at 276. The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale*, at 277. The Tribunal finds that Petitioner used typical appraisal methods to determine the true cash value of the subject property.

The Tribunal may not automatically accept a respondent's assessment but must make its own finding of fact and arrive at a legally supportable true cash value. *Pinelake Housing Cooperative v Ann Arbor*, 159 Mich App 208, 220; 406 NW2d 832 (1987); *Consolidated Aluminum Corp v Richmond Twp*, 88 Mich App 229, 232-233; 276 NW2d 566 (1979). The Tribunal is not bound to accept either of the parties' theories of valuation. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 377 NW2d 908 (1985). The Tribunal may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination. *Meadowlanes*, at 485-486; *Wolverine Tower Associates v City of Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980); *Tatham v City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982).

After careful review of the valuation disclosures, other exhibits, and testimony of the witnesses, the Tribunal finds that the sales comparison approach to value is the most probative in

its independent determination of the true cash value of the subject property for the 2010 and 2011 tax years. In order to demonstrate the finding that the sales approach is the correct method of valuation of the property, a discussion of the inapplicability of the cost and income approaches follows.

Cost approach

The Tribunal finds that the cost-less-depreciation approach used by Respondent's appraiser to value the subject property for all tax years at issue is not appropriate. Generally, the cost-less-depreciation approach is applicable to a newly constructed property. The cost approach values a property based on a comparison with the cost to build a new or substitute property, presumably taking into consideration market influences. Land value is added to the cost, new for a total presentation of the true cash value of a property. In the instant case, Respondent's appraiser did not provide any evidence regarding his land value for the subject property. He testified that a member of his staff put the subject property land size into BS&A software and a land value was computed (Transcript, Volume 1, pp. 234-235). The Tribunal is therefore unable to determine what sales, if any, the value per acre or square foot is based on. It should also be noted that the subject property is not new, but had a new interior on December 31, 2010 (tax day for determination of the 2011 market value of the subject property). The walls, foundation, HVAC, hot water system, and roof were not replaced. (Transcript, Volume 1, pp. 15-16) For 2011, Respondent's appraiser indicated that the subject property had an effective age of one year and was 98% good. The Tribunal does not find such numbers to reflect a new interior, only, in the subject property, but rather something more. For 2010, Respondent did not take into account in its cost approach that the interior of the property was a shell on December 31, 2009, thereby diminishing its value to a buyer on tax day.

Income approach

The Tribunal does not find the income approach to value to be probative in determining the true cash value of the subject, non-income-producing property. Both Petitioner and Respondent acknowledge that the highest and best use of the property is as a medical office building and Petitioner's appraiser determined that the most likely buyer of the property would be an owner-user. (Transcript, Volume 1, p. 171) Petitioner's income approach utilized a number of rental comparables that were not single tenant buildings, further demonstrating that while possible, it is not probable, as demonstrated by the market, that a buyer would purchase a medical office to rent it out to another, thereby making it an income-producing property.

Petitioner's appraiser did not rely on her income approach to value, but indicated that she prepared it to support her sales approach. (Transcript, Volume 1, pp. 174-175) Her reconciliation of value between the two approaches either mirrored or came closest to her sales approach to value. (P-1, p. 56) The Tribunal does not find Petitioner's income approach to be probative in determining the true cash value of the subject property for the 2010 and 2011 tax years. It should be noted that Respondent did not prepare an income approach to value.

Sales Approach

The Tribunal finds that the sales approach to value is determinative of the true cash value of the subject property for the tax years in question. After carefully considering all the sales comparables presented by both Petitioner and Respondent, the Tribunal finds that Petitioner's comparables located at 2340 S. Commerce Road and 2520 Livernois to be the most comparable to the subject property for the 2010 and 2011 tax years. 2340 S. Commerce is a dental office and is of similar size to the subject. 2520 Livernois is a medical office with a similar square footage

as the subject. Based on the aforementioned comparables, the Tribunal determines an adjusted price per square foot of \$150.00 for 2010 and 2011.

The Tribunal does not find Respondent's comparables to be probative in determining the true cash value of the subject property. The comparables consist of a post office, used car lot office, sheriff's deed, a transaction where the lessor purchased the property, a veterinary clinic, and a small office that Respondent's appraiser passes every day, but is unsure as to what type of office it is and whether or not it is vacant. (Transcript, Volume 1, p. 68) Respondent's appraiser also admitted that he had never seen the interior of the subject property (Transcript, Volume 1, p. 222) in order to compare it to his sales comparables.

The Tribunal finds the true cash value of the subject property as complete, to be \$420,750 for 2010. The Tribunal, however, also finds that the true cash value as complete must be adjusted downward for its interior shell status on December 31, 2009. Dr. Jaghab presented the Tribunal with date-stamped photos of the demolition of the subject property interior and testified to the same. The Tribunal finds the photographs and testimony to be probative in determining that the subject property interior was a shell on December 31, 2009.

The true cash value of a property is determined as it exists on tax day. MCL 211.2(2) states:

The taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day, any provisions in the charter of any city or village to the contrary notwithstanding. . . .

MCL 211.29(3) states: "The [tax] roll shall be reviewed according to the facts existing on the tax day." In other words, if the subject property's interior was demolished on December 31, 2009, it will be assessed as such.

As stated above, on December 31, 2009, the subject property renovation was not complete and its interior was a shell; therefore, the true cash value of the property should be reduced to reflect its lack of interior finish on tax day. In order to determine the true cash value of the subject property for 2010, the demolition costs of the interior need to be calculated. No demolition costs were presented to the Tribunal by any witness or any exhibit; however, Petitioner's appraiser testified that the actual interior build-out costs were close to \$140,000. (Transcript, Volume 1, p. 112) Therefore, if the total cost of tear down and build-out of the subject property interior was \$212,960 (Transcript, Volume 1, p. 13), then the best evidence provided would indicate that the cost of demolition would be \$72,960. The Tribunal acknowledges that cost of demolition and the value reduction of demolition are not always synonymous; however, the cost of demolition is the best evidence presented to the Tribunal in order to determine the decrease in value of the property for 2010.

The Tribunal finds the market value of the subject property as complete for the 2010 tax year to be \$420,750 ($\150×2805 square feet). That amount minus \$72,960 in demolition costs equals \$347,790 in true cash value. For 2011, the Tribunal finds the true cash value of the subject property to be \$561,000. The 2011 true cash value of the property is determined by starting with a base of \$420,750 and adding the market value of the new construction of \$140,250. The Tribunal finds the best evidence presented with regard to the market value of the improvements to the property to be Petitioner's appraiser's comparable market build-out rates for office buildings in the subject property area. The build-out rates ranged from \$65.00 per square foot (1 William Carls Drive) to \$40.00 per square foot (2455 Union Lake Road). Petitioner's appraiser used a market build-out square foot rate of \$50.00 and the Tribunal finds such figure to be probative in determining the 2011 market value of the subject property new interior

construction. The subject property consists of 2805 square feet, and that number x \$50 per square foot equals a true cash value of \$140,250 in new interior construction. The state equalized value of the property for 2011 is \$280,500.

The taxable value of the property is determined under MCL 211.27a(2)(a) and (b) and under 211.34d(1)(b)(iii). MCL 211.27a(2)(a) and (b) state:

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

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

(b) **The property's current state equalized valuation.** (Emphasis added).

MCL 211.34d(1)(b)(iii) states:

(1) As used in this section or section 27a, or section 3 or 31 of article IX of the state constitution of 1963:

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

(iii) **New construction.** As used in this subparagraph, "new construction" means property not in existence on the immediately preceding tax day and not replacement construction. New construction **includes the physical addition of equipment or furnishings**, subject to the provisions set forth in section 27(2)(a) to (o). **For purposes of determining the taxable value of property under section 27a, the value of new construction is the true cash value of the new construction multiplied by 0.50.** (Emphasis added).

For the computation of the "value of new construction" under MCL 211.34(1)(d)(iii), above, the Tribunal again finds the best evidence presented to be Petitioner's appraiser's comparable market build-out rates for office buildings in the subject property area. The taxable value computation of the subject property for the 2011 tax year is therefore calculated to be 2010

taxable value (\$173,898) x 1.017 (2011 inflation rate multiplier) + 50% of the true cash value of the subject property new interior build-out (\$70,125) = \$246,979 in taxable value.¹

A quick calculation of the 2010 taxable value of the subject property would be: \$367,430² (2009 taxable value) – losses of \$36,480 ($\$72,960/2$) x .997 (2010 inflation rate multiplier) = \$329, 957. The taxable value of the property cannot exceed the the state equalized value of the property for the 2010 tax year, so the taxable value remains at \$173,898 for 2010. MCL 211.27a(2)(b), *supra*.

Conclusion of Value

In this case, the Tribunal concludes that the evidence, testimony, and case file indicate that the subject property is assessed in excess of 50% of market value. In an owner-user, non - income-producing property, the Tribunal finds the sales comparison approach to be the appropriate technique of valuation and utilized the same in making its independent determination of the true cash value of the subject property for the tax years in question. The Tribunal is charged in this valuation appeal to determine the true cash value of the subject property as of each tax year at issue. Petitioner was able to prove by a preponderance of the evidence that the assessment of the subject property should be modified.

¹ The Tax Tribunal defined “new construction” as an “addition” in its decision in *Medwid v Township of West Bloomfield*, MTT Docket No. 226142; 199 WL 284157 (1999). Such decision was designated as precedent under MCL 205.765.

² Taken from R-1.

JUDGMENT

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

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

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Order within 28 days of the entry of this Order. 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 the Tribunal's order. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 2008, at the rate of 3.31% for calendar year 2009, (ii) after December 31, 2009, at the rate of 1.23% for calendar

year 2010, (iii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iv) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09% for calendar year 2012 and (v) after June 30, 2012 and prior to January 1, 2013, at the rate of 4.25%.

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

MICHIGAN TAX TRIBUNAL

By: Preeti Gadola

Entered: 11/08/12