

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

Lars Associates, L.L.C.,
Petitioner,

v

MTT Docket No. 414127

City of Chelsea,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Lars Associates, L.L.C., appeals ad valorem property tax assessments levied by Respondent, City of Chelsea, against Parcel No. 06-06-13-150-002 for the 2011 and 2012 tax years. Stewart Mandell and Daniel Stanley, Attorneys, represented Petitioner, and Nevin Rose and Claudia Rose, Attorneys, represented Respondent.

A hearing on this matter was held on June 10, 2013 and June 11, 2013. Petitioner's witnesses were John Breza, licensed real estate broker and property manager and Jason Krentler, MAI, MRICS, Michigan Certified General Real Estate Appraiser. Petitioner also called Respondent's appraiser Jere D. Neill, as an adverse witness. Respondent's sole witness was Jere D. Neill, Michigan Certified General Real Estate Appraiser.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash values ("TCV"), state equalized values ("SEV"), and taxable values ("TV") of the subject property for the 2011 and 2012 tax years are as follows:

Parcel No.	Year	TCV	SEV	TV
06-06-13-150-002	2011	\$2,965,750	\$1,482,875	\$1,482,875
06-06-13-150-002	2012	\$3,019,400	\$1,509,700	\$1,509,700

PETITIONER'S CONTENTIONS

Petitioner contends that the evidence presented in this case strongly supports a determination that the true cash values of the subject property on the assessment roll are substantially overstated. Specifically, Petitioner contends that its appraisal evidence supports a value for the subject property of \$2,060,000 for the 2011 and 2012 tax years. Petitioner further contends that (i) the only substantive assumption the respective appraisers agree upon is that the cost approach should not be used to determine the true cash value of the subject property, (ii) the subject property suffered through a fire in 2008 and a major recession in Michigan beginning in 2009 that resulted in the loss of its two major tenants (Pamida in 2010 and Chelsea Pharmacy in 2009), (iii) during 2010, Petitioner received no offers to lease any of the 78% vacant space, even at \$3 to \$4 per square foot (triple net), (iv) Petitioner's appraiser reflected these adverse conditions in applying the sales comparison and income approaches to determine the true cash value of the subject property for the tax years at issue, (v) Petitioner's appraiser relied primarily on the income approach supported by the sales comparison approach, (vi) Petitioner's income approach, which included an adjustment for "lease-up costs," is supported by case law, including *Occidental Dev LLC v Waterford Twp*, ___MTTR___ (Docket No. 390705 (January 14, 2013), and *Freddie Mac v Ypsilanti Twp*, unpublished opinion per curiam of the Court of Appeals, issued November 1, 2005 (Docket No. 257504), (vii) Respondent's appraisal erroneously assumes that Pamida continued to occupy the subject property during 2010 and 2011, (viii) Respondent's appraiser

did not attempt to secure income and expense information from Petitioner, relying instead on rent rolls, (ix) Respondent's appraiser did not perform adequate due diligence regarding the subject property, and (x) Respondent's appraiser failed to adjust his determination of true cash value for "lease-up costs" to reflect the difference between market and actual vacancy.

As determined by Petitioner's appraiser, the TCV, SEV, and TV for the subject property for the tax years at issue should be as follows:

Parcel No.	Year	TCV	SEV	TV
06-06-13-150-002	2011	\$2,060,000	\$1,030,000	\$1,030,000
06-06-13-150-002	2012	\$2,060,000	\$1,030,000	\$1,030,000

PETITIONER'S ADMITTED EXHIBITS

- P-1 Petitioner's appraisal, prepared by Stout Risius Ross, dated March 18, 2013.
- P-4 May 25, 2010 letter terminating lease for Pamida store.
- P-5 2011 Budget for subject property.
- P-6 2012 Budget for subject property.
- P-7 Assessment records for Parcels 096-02-0425-009 and 096-02-0424-003.
- P-8 Covenant Deed for Parcels 096-02-0425-009 and 096-02-0424-003.
- P-9 Analysis of Respondent's appraiser's market-share adjustment.
- P-10 City of Chelsea Community Profile.
- P-11 City of Novi Community Profile.
- P-12 City of Livonia Community Profile.
- P-13 Chesterfield Township Community Profile.

PETITIONER'S WITNESSES

John Breza

John Breza, licensed real estate broker, attorney, and property manager at First Holding Management Company, was Petitioner's first witness. He testified that (i) he has been the primary responsible party for the management and operation of the subject property since January of 2006, (ii) in May of 2008, the subject was substantially damaged by fire and rebuilt, (iii) the fire required most of the tenants of the subject property to cease doing business for approximately one year and was very disruptive to shopping patterns, (iv) some of the tenants were unable to reopen, and others never saw a return to the business because of the reduced traffic at the subject, (v) the Pamida store located at the subject had to close for approximately six months and reopened occupying just 30,000 of the 56,000 square feet it was occupying prior to the fire, (vi) on May 25, 2010, Petitioner received a letter from Pamida, stating that Pamida would be exercising its right to terminate the lease, vacating Petitioner's space by December 31, 2010, and would stop paying rent as of May 31, 2011, (vii) Petitioner tried to find a replacement tenant or tenants, but was unsuccessful, (viii) after the fire, the subject also lost another significant tenant, Chelsea Pharmacy, which resulted in reduced traffic to the subject, (ix) the space previously occupied by the pharmacy "has been virtually unleaseable because of the fact that it doesn't have wide enough storefront space" (Transcript, Vol. 1, p. 91), (x) the reduced visibility of the subject from major roadways is a detriment to tenants and customers, (xi) although discussions were held in March 2011 with Family Farm & Home about a possible lease of the vacated Pamida space, those discussions did not progress to an executed lease, (xii) the subject property was sold at a foreclosure sale for \$1.4 million, (xiii) because Petitioner had a six-month redemption period and assumed it could redeem the

property for \$1.4 million, Petitioner was able to revisit some of its prospective tenants with new lease proposals, (xiv) on March 27, 2012, the day before redeeming the property, Petitioner negotiated a lease with Family Farm & Home, reducing the initial size of the lease to 42,000 square feet, with \$220,000 annual gross rent and tenant improvement (“TI”) requirements of about \$200,000, over a lease term of five years, and (xv) the rental rate with Family Farm & Home was \$5.22 per square foot, reduced by \$0.95 per square foot for TI and brokerage commissions, yielding a gross lease rate, before operating expenses, of \$4.27 per square foot. (Transcript, Vol. 1, pp. 47 – 171)

Jason J. Krentler

Jason Krentler, MAI, MRICS, and a Michigan Certified General Real Estate Appraiser, was Petitioner’s valuation expert. He testified that (i) the subject is a neighborhood shopping center in average condition, with 91,845 square feet of rentable area, (ii) the highest and best use is as a neighborhood shopping center, (iii) he relied primarily on the income approach when valuing the subject, (iv) the subject’s direct competition are the three other shopping centers in the neighborhood, which are all superior to the subject, with better visibility and access, (v) the subject is in the Detroit combined statistical area (“CSA”), specifically the Washtenaw west of 23 submarket, (vi) the west of 23 submarket “is relatively healthy, but it’s highly skewed by the presence of Ann Arbor and the surrounding communities” (Transcript, Vol. 1, p. 186), (vii) the subject is in a very rural location, and it is not reasonable to apply the statistics CoStar indicates for the submarket to the subject, (viii) he looked at information for the immediately surrounding neighborhood and found that comparable properties were performing at 88% occupancy, with rental rates ranging from \$12 to \$18 per square foot, (ix)

the three neighborhood shopping centers in the area perform below the west of 23 submarket but still perform at a higher level than the subject because they are superior properties, (x) the fire at the Chelsea Grill in 2008 adversely affected the subject, (xi) he did not use the cost approach to value the subject because market participants would not consider this approach, and valuing replacement costs and total depreciation is difficult, (xii) he identified five sale comparables that were used for both 2011 and 2012, (xiii) location adjustments to the comparables were considered but were not made because “the comparable sales were considered to be similar enough from a locational perspective that no adjustments were warranted” (Transcript, Vol. 1, p. 196), (xiv) market adjustments to the comparable sales were made for size and condition differences, (xv) a true cash value for the subject property of \$32 per square foot was determined for both tax years using the sales comparison approach, (xvi) in applying the income approach, five in-line lease comparables were selected, and after adjustments, the indicated value range was from \$6.93 to \$12.60 per square foot, with a concluded in-line market rent of \$10 per square foot for 2011, (xvii) five big-box lease comparables were also selected, with comparable #2 being the Family Farm & Home lease at the subject in 2012, (xviii) after adjustments, the indicated value range was from \$3.32 to \$3.94 per square foot, with a concluded big-box market rent of \$3.50 per square foot for 2011, (xix) he concluded a vacancy and credit loss of 15%, based on a survey of comparable sales, rent comparables, market reports, and the subject’s historical performance, (xx) the expenses used in the appraisal were determined based on the subject’s historical performance, expense comparables in the market, and industry surveys, (xxi) the 2011 and 2012 projected net operating income is the same because the income items and operating expenses were stabilized, (xxii)

he considered three approaches in determining the capitalization rate, which were market-derived rates, investor surveys, and band of investment, and concluded that a capitalization rate of 13% was appropriate, which included an increase of 100 base points “to reflect the specific risk at the subject . . .” (Transcript, Vol. 2, p. 78), (xxiii) because he valued the subject as though it had stabilized occupancy of 85%, and because actual occupancy for both tax years was 21.4%, a buyer would have to incur lease-up costs for each tax year of \$840,000, and (xxiv) the value of the five months of rent payments Pamida made in 2011 is not reflected in the appraisal because he “did not know whether or not a buyer of the subject would consider those cash flows income that they could reasonably collect” (Transcript, Vol. 1, p. 221). (Transcript, Vol. 1, pp. 172 – 222; Transcript, Vol. 2, pp. 4 – 111)

Mr. Krentler was also called as a rebuttal witness with respect to Respondent’s appraisal. Mr. Krentler testified that (i) data from CoStar is not reliable and that at least 75% of the time he has found significant errors, (ii) he reviewed Mr. Neill’s appraisal and found significant errors or discrepancies in a variety of the sales and rent comparables, (iii) the purchase price of sale comparable #2 for 2011, based on public records and confirmation from Signature Associates, was \$600,000, as opposed to the \$3 million listed in the appraisal, (iv) sales comparable #1 was very good quality and #3 was in a vastly superior location, (v) rent comparable #2 was a short-term lease, which he would expect to have a higher rate, given the increased risk, (vi) rent comparable #5 was also a short-term lease of one year, with two months of free rent, so the adjusted rental rate was actually \$10.83 per square foot, (vii) he spoke with the property owner of rent comparable #6, and 2,500 square feet at \$13 triple net did not lease at any point in the past few years, (viii) rent comparable #7 was a five-year lease at \$13

escalating to \$17, (ix) the big-box rent comparable #3 was not signed at \$9 per square foot, but was a ten-year contract starting at \$3 per square foot and escalating to \$6 and then \$7 after month 61, (x) the big box rent comparable #4 was confirmed at \$6.30 per square foot on a gross basis, which would be approximately \$4.00 on a net basis, and (xi) the capitalization rate comparables represented a much lower risk on cash flows than the subject and, therefore, much lower capitalization rates. (Transcript, Vol. 3, pp. 120 – 140)

RESPONDENT'S CONTENTIONS

Respondent contends that the true cash, state equalized, and taxable values initially determined by Respondent for the subject property for the tax years at issue should be increased. Specifically, Respondent contends that its appraisal evidence supports a value for the subject property of \$4,675,000 for the 2011 tax year and \$4,775,000 for the 2012 tax year. Respondent further contends that (i) Petitioner's appraisal is deficient because its appraiser (a) did not separately identify sales and rent comparables for each of the tax years at issue and erroneously adjusted the capitalization rate for vacancy, (b) did not correctly determine actual vacancy as of December 31, 2010, (c) was inconsistent in his comparison of the subject location to the locations of his sales and rent comparables, and (d) used erroneous or unsupported assumptions in calculating his adjustment for lease-up costs in applying the income approach, (ii) Petitioner provided erroneous rent roll information that caused Respondent's appraiser to assume an 85% occupancy rate for the 2012 tax year, (iii) Respondent's appraiser gave more weight to the income approach to value, with support provided by the sales comparison approach, and (iv) Respondent's appraiser appropriately

determined the true cash value of the subject property based on the market information available.

As determined by Respondent's appraiser, the TCV, SEV, and TV for the subject property for the tax years at issue should be:

Parcel No.	Year	TCV	SEV	TV
06-06-13-150-002	2011	\$4,675,000	\$2,337,500	\$2,337,500 ¹
06-06-13-150-002	2012	\$4,775,000	\$2,387,500	\$2,387,500

RESPONDENT'S ADMITTED EXHIBITS

- R-1 Respondent's appraisal prepared by Jere D. Neill, dated March 10, 2013.
- R-4 Assessing field sheets for the subject property for the 2011 and 2012 tax years.
- R-5 Lease with Family Farm & Home, Inc.
- R-6 Corrected pages 96, 101, and 105 to Respondent's appraisal.

RESPONDENT'S WITNESS

Jere D. Neill²

Jere D. Neill, Michigan Certified Real Estate Appraiser, was admitted as Respondent's valuation expert in this matter. Mr. Neill prepared a Retrospective Appraisal of the subject property for the tax years at issue, concluding that the true cash value of the subject property was \$4,675,000 for 2011 and \$4,775,000 for 2012. Mr. Neill testified that (i) the cost approach is given less consideration by buyers and would not be as reliable as the sales or income approaches, (ii) he prepared both a sales comparison and an income approach to value the subject

¹ The taxable value of the subject property for 2010 was 2,408,200. Thus, even though an increase in the true cash value of the subject property is proposed by Respondent, the proposed revised taxable value is not greater than the state equalized value, is less than the subject's 2010 taxable value, and is therefore consistent with the provisions of MCL 211.27a.

² This summary of Mr. Neill's testimony includes testimony by Mr. Neill when called as an adverse witness by Petitioner.

property, but gave the most weight to the income approach, (iii) the subject has a good retail commercial location, “with access and visibility from two main commercial streets, and it’s at a signalized corner with points of access from both roadways” (Transcript, Vol. 2, p. 138), (iv) the highest and best use of the subject property would be its continued use as a retail center, (v) he relied on the assessment records and drawings for the gross building area of 97,673 square feet and relied on Petitioner’s rent rolls for the total net rentable square feet, (vi) all three sales comparables for the 2011 tax year were superior to the subject in terms of location and, when adjusted, reflected a value of \$48 to \$54 per square foot for the subject, (vii) the comparables for the 2012 tax year had a wider range and required greater adjustments, with the adjusted sale prices ranging from \$44 to \$68 per square foot, (viii) in applying the income approach, he identified separate rent comparables for both in-line and big-box space, and he determined occupancy to be 85% for each tax year based on information provided by Petitioner (Transcript, Vol. 1, p. 28), (ix) Pamida had 63% of the net rentable area of the subject, and if Pamida was gone, that would have to be taken into consideration in concluding to typical market vacancy and occupancy rates, and (x) his capitalization rate was determined by (a) reviewing appraisals and comparables used in the past and searching for new comparables of neighborhood shopping centers, (b) national investor surveys, and (c) RealtyRates information. (Transcript, Vol. 1, pp. 16 – 47, Vol. 2, pp. 119 – 212, Vol. 3, pp. 5 – 120)

FINDINGS OF FACT

1. The subject property consists of one parcel of property located at 1020 S. Main, Chelsea, Michigan, (Washtenaw County), known as the Chelsea Shopping Center.
2. The subject property is a neighborhood shopping center containing a total of 97,673 square feet of gross area, located on a site containing 8.79 acres, with 91,845 square feet of rentable space.
3. The subject retail shopping center was initially constructed in 1988.
4. The subject was damaged by a fire in the Chelsea Grill in May 2008, affecting seven of the tenants, with renovations to the affected suites being completed in 2010.
5. The highest and best use of the subject property, as improved, is for shopping center use.
6. The subject property is zoned C-4, Restricted Commercial District.
7. The subject property was assessed for the tax years at issue as follows:

Parcel No.	Year	TCV	AV	TV
06-06-13-150-002	2011	\$4,334,800	\$2,167,400	\$2,167,400
06-06-13-150-002	2012	\$4,334,800	\$2,167,400	\$2,167,400

8. During 2010, Pamida occupied approximately 29,207 square feet³ at the subject. Pamida notified Petitioner in May 2010 that it was exercising its option to terminate the lease, with the last rent payment being May 31, 2011. Pamida was no longer operating at the subject as of December 31, 2010.

³ Pamida had occupied 56,850 square feet prior to the fire that occurred in 2008.

9. A foreclosure auction was held for the subject in December 2011, and a winning bid of \$1.4 million was entered, with Petitioner having a six-month redemption period.
10. On March 27, 2012, Petitioner leased 42,000 square feet of space previously occupied by Pamida to Family Farm & Home for 5 years. The effective lease rate (net of tenant improvements and commissions) was \$4.27 per square foot. (Transcript, Vol. 1, pp. 119 – 121)
11. Petitioner redeemed the subject property the day after entering into the lease with Family Farm & Home for \$1.4 million plus \$40,000 in interest.
12. The subject property was approximately 27% occupied as of December 31, 2010, and December 31, 2011.
13. Petitioner's appraiser gave primary weight to the income approach and secondary consideration to the sales comparison approach in determining the true cash value of the subject property for the tax years at issue.
14. In applying the sales comparison approach for both 2011 and 2012, Petitioner's appraiser identified five comparable sales, with sale dates ranging from October 2010 to April 2012, sizes ranging from 45,502 to 80,160 square feet, and adjusted per square foot prices ranging from \$29.09 to \$32.74, concluding that the true cash value of the subject property was \$2.9 million for both years.
15. Petitioner's appraiser adjusted his comparable sales for conditions of sale, building size, condition, land-to-building ratios, and economic factors, where applicable.
16. In applying the income approach to value, Petitioner's appraiser determined market rent rates of \$10 per square foot based on an analysis of comparable

in-line leases and \$3.50 per square foot based on an analysis of big-box leases for both tax years.

17. In applying the income approach to value, Petitioner's appraiser determined that a 15% vacancy rate and a collection loss rate of 1% were appropriate based on market information.

18. In applying the income approach to value, Petitioner's appraiser determined that because the subject leases were triple net, expense reimbursements in the amount of \$92,580 could be expected for each of the tax years at issue.

19. In applying the income approach to value for each of the tax years at issue, Petitioner's appraiser determined applicable expenses to be \$1.75 per square foot.

20. In applying the income approach to value, Petitioner's appraiser determined a capitalization rate of 13% for both tax years at issue, exclusive of the township's property tax rate equal to .47%.

21. In applying the income approach to value, Petitioner's appraiser determined "lease-up" costs of \$840,000, based on the premise that the subject was 21.4% occupied and the projection that the subject could achieve a stabilized occupancy after 45 months of lease-up.

22. Respondent's appraiser gave primary weight to the income approach and secondary consideration to the sales comparison approach in determining the true cash values of the subject property for the tax years at issue.

23. In applying the sales comparison approach, Respondent's appraiser identified three comparable sales for 2011 and three comparable sales for 2012, with sale dates ranging from November 2008 to May 2010 for 2011 and sale dates ranging from October 2011 to December 2011 for 2012, sizes

ranging from 52,825 to 74,440 square feet for 2011 and 93,171 to 223,225 square feet for 2012, and adjusted per square foot prices ranging from \$47.72 to \$54.02 for 2011 and from \$44.18 to \$68.70 for 2012 and concluded that the true cash value of the subject property was \$4,880,000 for both tax years at issue.

24. Respondent's appraiser adjusted his comparable sales for time of sale, age/conditions, building size, vacancy, and market share characteristics, where applicable.
25. In applying the income approach to value, Respondent's appraiser determined market rent rates of \$13.50 per square foot based on an analysis of comparable in-line leases for 2011 and \$14 per square foot for 2012 and \$6 per square foot based on an analysis of big-box leases for 2011 and 2012.
26. In applying the income approach to value, Respondent's appraiser determined that a 15% combined vacancy and collection loss rate should apply for each tax year.⁴
27. In applying the income approach to value, Respondent's appraiser determined that because the subject leases were triple net, expense reimbursements in the amount of \$157,440 could be expected for each of the tax years at issue.⁵
28. In applying the income approach to value, Respondent's appraiser determined applicable expenses of \$2 per square foot for CAM, insurance,

⁴ Although not separately designated or specifically stated, Respondent's appraisal (Respondent's Exhibit R-1, p. 98) states that "[w]e also added a small collection loss to the vacancy factor."

⁵ These expense reimbursements are \$1.50 per square foot for CAM and \$0.25 per square foot for insurance.

and reserves/replacements could be expected for both tax years, with an additional 5% of the estimated gross income (“EGI”) for management fees.⁶

29. In applying the income approach to value, Respondent’s appraiser determined a capitalization rate of 12.5% for 2011 and 12.4% for 2012, inclusive of a 3% tax capitalization.

30. Respondent’s appraiser determined the true cash value of the subject property using the income approach to be \$4,590,000 for 2011 and \$4,735,000 for 2012.

ISSUES AND 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. See MCL 211.27a.

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 percent 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).

⁶ Specifically, Respondent attributed \$1.50 per square foot to CAM, \$0.25 per square foot for insurance, \$0.25 per square foot for reserves/replacements, and \$48,260 in management fees for 2011 and \$49,106 in management fees for 2012.

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

Under MCL 205.737(1), the Tribunal must find a property's true cash value in determining a lawful property assessment. See *Alhi Dev 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. See *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (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. See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485-486; 473 NW2d 636 (1991).

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735a(2). The Tribunal's factual findings are to be supported by competent, material, and substantial evidence. See *Antisdale v Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 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 proof in establishing the true cash value of the property.” MCL 205.737(3). “This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing; and (2) the burden of going forward with the evidence, which may shift to the opposing party.” *Jones & Laughlin* at 354-355. However, “[t]he

assessing agency has the burden of proof in establishing the ratio of the average level of assessments 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 205.737(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. See *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). The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in marketplace trading. See *Antisdale*. 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. See *Antisdale* at 277.

Both parties agree that the cost approach should not be applied in valuing the subject shopping center, essentially concluding that the cost approach is less reliable given the accuracy of calculating depreciation, the amount of obsolescence in the market, and investors’ lack of reliance on the cost approach when considering the purchase of properties of this type. The Tribunal agrees and finds that the cost approach will be given no consideration in determining a value for the subject for the tax years under appeal.

Both parties prepared a sales comparison and income approach in determining the true cash value of the subject property for the tax years at issue. In comparing and contrasting the income and market approaches to value, The Appraisal Institute states:

Typically, the sales comparison approach provides the most credible indication of value for owner-occupied commercial and industrial properties, i.e., properties that are not purchased primarily for their income-producing characteristics. These types of properties are amenable to sales comparison because similar properties are commonly bought and sold in the same market. Buyers of income-producing properties usually concentrate on a property's economic characteristics and put more emphasis on the conclusions of the income capitalization approach. Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: Appraisal Institute, 13th ed, 2008) p. 300. [Emphasis added.]

Consistent with *The Appraisal of Real Estate* and because the subject property is the type of property that is bought and sold in the marketplace, the Tribunal finds that the income approach is the most appropriate method to use to determine the true cash value of an income-producing property, such as the subject, for the tax years at issue. While the Tribunal recognizes that each appraiser gave only "secondary weight" to the sales comparison approach, the Tribunal finds that both appraisers' failed to adequately support their selection of comparable sales and adequately explain adjustments to those comparables. Specifically, the Tribunal has concerns regarding Petitioner's appraiser's reliance on comparable sales in Oakland, Wayne, and Macomb counties for both tax years at issue, as well as his failure to appropriately adjust for differences in location, composition of lessees (to the extent that some comparables had no big-box anchors, while at least one of the comparables had no in-line tenants), occupancy, and size. The Tribunal also has concerns with Petitioner's appraiser's general failure to credibly support his sales comparison approach during testimony. Similarly, the Tribunal has concerns regarding Respondent's appraiser's reliance on comparable properties located in Oakland, Wayne, and Macomb counties, as well as his failure to

adequately recognize and adjust for differences, between the subject and his comparables, in occupancy, size, location, composition of lessees, and market conditions. The Tribunal has further concerns regarding a significant error made by Respondent's appraiser in determining the sale price for his comparable #2 for 2011. Finally, the Tribunal questions Respondent's appraiser's adjustment for "market share characteristics," which essentially takes into consideration population, annual household consumer spending, and median household income and then applies a percentage adjustment for the various ranges identified (see Respondent's Exhibit R-1, p. 88), especially since Respondent's appraiser acknowledged in testimony that there were "inconsistencies" in this adjustment and that the Tribunal would have to determine a location adjustment for the sales comparables. Given both appraisers' primary reliance on the income approach and the failure of both appraisers to adequately and credibly support their conclusions of value applying the sales comparison approach, the Tribunal finds that no weight should be given the sales comparison approach.

Based on the testimony and evidence presented in this matter, the Tribunal finds that the appropriate method of determining the true cash value of the subject property for the tax years at issue is the income approach, with primary emphasis placed on the approach taken by Petitioner's appraiser. The Tribunal has particular concerns that Respondent's appraiser was unaware that Pamida, the major tenant at the subject property, had vacated the subject property as of December 31, 2010, and, as a result, the subject was only 21.4% occupied on the two assessment dates at issue in this case. Respondent's appraiser acknowledged at the hearing that this information would have to be considered, along with typical market vacancy and occupancy rates. (see Transcript, Vol. 2, p. 186)

In this regard, Petitioner relied on the same rent comparables, adjustments, expenses, capitalization rate, and other variables in concluding to a true cash value of \$2.9 million for both tax years at issue. Respondent, on the other hand, relied on different comparables for 2011 and 2012, as well as slightly different capitalization rates, with vacancy and expenses adjustments unchanged for each year, to conclude to a true cash value of \$4,590,000 for 2011 and \$4,735,000 for 2012. Thus, although both parties offered a direct capitalization analysis⁷ in applying the income approach, the assumptions made by the respective parties varied greatly, as is indicated by the information listed below:

2011	Respondent	Petitioner
Base Rental Income		
In-line space ⁸	\$13.50 per square foot	\$10 per square foot
Big-box space ⁹	\$6 per square foot	\$3.50 per square foot
Potential Gross Income	\$788,166	\$548,925
Less: Vacancy/Collection ¹⁰	(\$141,841)	(\$87,828)
Plus: Expense Reimbursement	\$157,440 ¹¹	\$92,580 ¹²

⁷ Simply, a direct capitalization analysis is “a method used to convert an estimate of a single year’s income expectancy into an indication of value in one direct step, either by dividing the net income estimate by an appropriate capitalization rate or by multiplying the income estimate by an appropriate factor.” *The Appraisal of Real Estate*, p. 499.

⁸ Petitioner’s appraiser identified five rent comparables and adjusted the comparables for expense reimbursements, location, size, and condition to conclude to a market rental rate for 34,995 square feet of in-line space. Respondent’s appraiser identified five rent comparables and adjusted the comparables for demographics, age, and market share to conclude to a market rental rate for 33,116 square feet of in-line space.

⁹ Petitioner’s appraiser identified five rent comparables and adjusted the comparables for expense reimbursements, conditions of lease, location, tenant size, condition, and lease terms for 56,850 square feet of big-box space. Respondent’s appraiser identified six rent comparables and adjusted the comparables for demographics, age, and market share to conclude to a market rental rate for 56,850 square feet of big-box space.

¹⁰ Petitioner’s appraiser assumes a stabilized vacancy loss of 15% and a 1% collection loss. Respondent’s appraiser assumes a combined vacancy and collection loss of 15%. These assumptions are based on market information.

Gross Income	\$803,765	\$553,677
Operating Expenses	(\$230,118) ¹³	(\$160,859) ¹⁴
Net Operating Income	\$573,647	\$392,818
Capitalization Rate ¹⁵	12.5%	13.47%
Stabilized True Cash Value	\$4,590,000	\$2,900,000
Less: Lease-up Costs	(\$0)	(\$840,000)
True Cash Value	\$4,590,000	\$2,060,000
2012	Respondent	Petitioner
Base Rental Income		No Change ¹⁶
In-line space ¹⁷	\$14 per square foot	
Big-box space ¹⁸	\$6 per square foot	
Potential Gross Income	\$804,724	
Less: Vacancy/Collection ¹⁹	(\$144,324)	

¹¹ Respondent's appraiser determined expense reimbursements to include CAM of \$134,949, based on \$1.50 per square foot, and insurance of \$22,491, based on \$.25 per square foot.

¹² Petitioner's appraiser assumed expense reimbursements for taxes, insurance, and CAM based on stabilized occupancy.

¹³ Respondent's appraiser estimated expenses to be \$1.50 per square foot for CAM, \$.25 per square foot for reserves, \$.25 per square foot for insurance, and 6% of EGI for management, based on market information contained in his files.

¹⁴ Petitioner's appraiser estimated expenses to be \$.20 per square foot for insurance, \$1 per square foot for CAM, management fees of 5% of EGI, and non-recoverable expenses of \$.25 per square foot, based on four comparables.

¹⁵ A capitalization rate of 9.5% was determined by Respondent's appraiser based on comparable sales, as well as information derived from RealtyRates surveys. Respondent's appraiser added 3% for property tax capitalization. Petitioner's appraiser determined a capitalization rate of 13.47%, including property taxes, based on 11 market comparables and market information from RealtyRates and investor surveys.

¹⁶ Petitioner's appraiser concluded that all of the income, expense, and capitalization rate components assumed in applying the income approach for 2011 also apply for the 2012 tax year.

¹⁷ Petitioner's appraiser identified the same five rent comparables used for 2011 and similarly adjusted the comparables for expense reimbursements, location, size, and condition to conclude to a market rental rate for 34,995 square feet of in-line space. Respondent's appraiser identified seven rent comparables and adjusted the comparables for demographics, age, and market share to conclude to a market rental rate for 33,116 square feet of in-line space.

¹⁸ Petitioner's appraiser identified the same five rent comparables used for 2011 and similarly adjusted the comparables for expense reimbursements, conditions of lease, location, tenant size, condition, and lease terms for 56,850 square feet of big-box space. Respondent's appraiser identified six rent comparables and adjusted the comparables for demographics, age, and market share to conclude to a market rental rate for 56,850 square feet of big-box space.

Plus: Expense Reimbursement	\$157,440 ²⁰	
Gross Income	\$817,840	
Operating Expenses	(\$230,964) ²¹	
Net Operating Income	\$586,876	
Capitalization Rate ²²	12.4%	
Stabilized True Cash Value	\$4,735,000	\$2,900,000
Less: Lease-Up Costs	(\$0)	(\$840,000)
True Cash Value	\$4,735,000	\$2,060,000

In reviewing the above comparisons of the respective income approaches, it is evident that the respective appraisers generally disagree regarding virtually all of the variables (except a stabilized vacancy rate) utilized in determining the true cash values of the subject property using the income approach. In this regard, consistent with the following analysis, the Tribunal generally finds that Petitioner’s appraiser’s conclusions regarding rent rates, expenses and expense reimbursements, and capitalization rates are better supported and generally more credible.

Market Rents

Respondent’s appraiser identified numerous in-line and big-box rent comparables, but failed to adequately and credibly support his information relating to those comparables and his adjustments. Specifically, Respondent’s appraiser

¹⁹ Petitioner’s appraiser assumed a stabilized vacancy loss of 15% and a 1% collection loss. Respondent’s appraiser assumed a combined vacancy and collection loss of 15%.

²⁰ Includes CAM of \$134,949, based on \$1.50 per square foot, and insurance of \$22,491, based on \$.25 per square foot.

²¹ Respondent’s appraiser estimated expenses to be \$1.50 per square foot for CAM, \$.25 per square foot for reserves, \$.25 per square foot for insurance, and 6% of EGI for management, based on market information contained in his files.

²² A capitalization rate of 9.4% was determined by Respondent’s appraiser based on comparable sales, as well as information derived from RealtyRates surveys. Respondent’s appraiser added 3% for property tax capitalization. Petitioner’s appraiser determined a capitalization rate of Respondent determined a capitalization rate of 13.47%, including property taxes, based on comparable sales and market information from RealtyRates and investor surveys.

testified that he relied primarily on CoStar information with respect to his rent comparables, which, based on Mr. Krentler's testimony and the Tribunal's experience in numerous other cases, is often unreliable and not applicable to rural retail areas. Further, Respondent's appraiser applied only an unsupported age adjustment and a location adjustment, based on the same market share characteristics approach used in his sales comparison analysis, which the Tribunal found to be inadequate, inaccurate, inconsistent and unsupported. Respondent's appraiser did not thoroughly or accurately adjust the lease comparables used for 2011 and 2012 such that a reliable market rent for the in-line and big-box space could be derived. Therefore, the Tribunal gives no weight to Respondent's appraiser's determination that the market in-line rent rate should be \$13.50 per square foot for 2011 and \$14 per square foot for 2012, and that the rent rate for the big-box space should be \$6 per square foot for both tax years at issue.

In determining a market rent rate for 34,995 square feet of in-line space at the subject property, Petitioner's appraiser identified five rent comparables based on an average in-line suite space of 3,500 square feet for the 10 in-line spaces at the subject property.²³ After adjusting for expense reimbursement terms, location, tenant size, and condition, Petitioner's appraiser determined a range of market rents for the in-line space of \$6.93 to \$12.60 per square foot, concluding to a market rent of \$10 per square foot for both tax years. The Tribunal has reviewed Petitioner's appraiser's evidence and testimony and finds that comparables #1 and #3 are simply too small to be favorably compared to the subject, even as adjusted by Petitioner's appraiser. The Tribunal also gives less weight to Comparable #5 as

²³ The subject property has six suites sized under 2,200 square feet and four suites sized over 4,000 square feet.

it is not a triple net lease. The Tribunal finds that comparables #2 and #4, as adjusted (\$12.60 and \$10.05 per square foot, respectively), provide the most meaningful information to the Tribunal, and, as a result, finds that a market rent for the in-line space of \$11 per square foot for 2011 and 2012 is supported by the evidence presented in this matter. With respect to market rents for the big-box space, the Tribunal finds that Petitioner's rent comparables #1 and #4 should be given little weight as neither can be considered an anchor lease since both are stand-alone spaces (one a former Farmer Jack grocery and one a K-Mart retail store). The Tribunal further finds that Petitioner's comparable #2 is the lease of 42,000 square feet of the subject space to Family Farm & Home in March 2012. The Tribunal finds that comparables #3 (the lease of 60,000 square feet of a total of 260,695 square feet to Dick's Sporting Goods) and #5 (the lease of 41,000 square feet of a total of 143,177 square feet to Dunham's Sporting Goods) are comparable to the lease of 56,850 square feet of big-box space at the subject and support unadjusted market rent rates of \$6 and \$3.67 per square foot. However, as discussed above, Comparable #3 is not a triple net lease and therefore requires a substantial adjustment for expense reimbursement terms (as well as sizeable adjustments for location), and, and, as such, is given minimal consideration by the Tribunal. Based primarily on comparable #5, which required minimal adjustments, the Tribunal finds that Petitioner's appraiser's concluded market rent of \$3.50 for the 2011 tax year is credible and supported by the evidence and testimony presented. However, after giving consideration to the lease of 42,000 square feet of space at the subject to Family Farm & Home for \$4.29 per square foot, just three months after the December 31, 2011 assessment date, the Tribunal finds that an increase in market rent per square foot to \$4 for big-box space as of the December

31, 2011 assessment date is supported by the evidence.

Vacancy/Collection Loss

Both appraisers utilized a 15% vacancy rate. Respondent's appraiser, however, included an unspecified percentage for collection loss within that 15%. Petitioner's appraiser used a 15% vacancy and a separately identified 1% for collection loss, based on the vacancy seen in the Detroit market area and the subject's historical occupancy rates. The Tribunal accepts Petitioner's 15% vacancy loss and 1% collection loss as the more credible and better supported conclusion for both tax years at issue, based on the evidence and testimony presented.

Expenses and Expense Reimbursement

The respective appraisers did not substantively differ regarding their estimates of expenses that would be incurred by Petitioner in operating the subject property. However, because Respondent's appraiser essentially relied on market information contained in his files, with little explanation provided in his appraisal, and because Petitioner's appraiser provided some market analysis of anticipated expenses, including a review of actual expenses incurred, the Tribunal finds it appropriate to give more weight to Petitioner's appraiser's determination of expenses and expense reimbursement. However, it should be noted that after netting expenses and expense reimbursements estimated by both appraisers, the end result differs only slightly.

Capitalization Rate

Upon review of the information and testimony provided by both appraisers, the Tribunal finds that the capitalization rate applied in valuing the subject property should be reflective of the immediate market area. Thus, the Tribunal

finds that investor survey and band of investment information that primarily relies on national or regional information is not necessarily relevant to Michigan, particularly the rural area in which the subject property is located. In this regard, Petitioner's appraiser identified 11 sales of comparable properties during the period of July 2009 through December 2011, concluding to a range of capitalization rates of 5% to 14%. Petitioner's appraiser also relied on information derived from discussions with market participants indicating a range of capitalization rates of 11% to 13.5%. Based primarily on this information, Petitioner's appraiser concluded to a capitalization rate of 12%, which he then increased by 1% to reflect additional risk associated with the high vacancy rate at the subject property. Respondent's appraiser relied on survey information, as well as seven sales of comparable properties during 2010 and eight comparable sales during 2011 indicating a range of capitalization rates from approximately 7% to 12%, ultimately concluding to capitalization rates of 9.5% for 2010 and 9.4% for 2011. The respective appraisers also differed in determining a property tax capitalization rate, with Respondent's appraiser adding 3% to reflect the local tax rate and Petitioner's appraiser adding .47% to reflect the local tax rate, adjusted for 85% reimbursement of taxes from Petitioner's tenants. The Tribunal finds that Petitioner's appraiser has generally better supported his assumptions regarding a market-derived capitalization rate of 12% for the subject property and his calculation of an effective tax rate, as Respondent's appraiser's failed to provide credible explanation and support for his market information and reliance on national survey information. However, the Tribunal finds that Petitioner's appraiser failed to adequately explain or support his addition of 100 basis points to his derived capitalization rate for the increased risk associated with above-market

vacancy and a vacant big box suite. Therefore, the Tribunal finds that a capitalization rate of 12% plus .47% for property tax rate is the better supported and more credible evidence presented in this case.

Stabilization Costs

A critical difference in the respective appraisals presented as evidence in this appeal is the recognition by Petitioner's appraiser that "lease-up costs" must be quantified to reflect lost rental income and unrecoverable expenses incurred by the lessor attributable to vacant space exceeding market vacancies. Presumably because Respondent's appraiser assumed that the Pamida space was occupied as of the two assessment dates at issue, and thus concluded that the actual vacancy rate at the subject property was consistent with market vacancy rates, Respondent's appraiser did not consider any adjustment to true cash value for lease-up costs. The Tribunal finds that it is appropriate to account for stabilization when the subject is operating below the market in terms of stabilized occupancy.²⁴ However, the Tribunal has several concerns with the assumptions made by Petitioner's appraiser in calculating that lease-up cost adjustment of \$840,000 should be made to the stabilized true cash value. Specifically, the Tribunal finds that Petitioner's appraiser failed to adequately support or explain assumptions that (i) it would take 45 months for the subject property to achieve a stabilized occupancy level, (ii) entrepreneurial incentive of 5% of discounted lease-up costs

²⁴ "Leasing commissions and tenant's improvement allowances are not typically treated as operating expenses in a direct capitalization, stabilized income forecast. Instead, they are treated as capital expenditures after net operating income – i.e. 'handled below the line' because of their variability and the unwarranted impact they could have depending on when they are forecast." Appraisal Institute, *Shopping Center Appraisal and Analysis* (Chicago: 2nd ed, 2009), pp 227-228. See also *The Appraisal of Real Estate*, p. 480.

should be included, (iii) a discount rate of 5% was appropriate, and (iv) inclusion of 1,879 square feet of in-line space was appropriate in calculating lease-up costs. Further, the Tribunal finds that (i) Pamida continued to pay monthly rent for the first five months of 2011²⁵ and (ii) 42,000 square feet of the vacated Pamida space was leased by March 2012. Therefore, the Tribunal finds that substantial consideration should be given to Petitioner's lease of 42,000 square feet of big-box space to Family Farm & Home in March 2012 in determining appropriate costs for tenant improvements and commissions.²⁶ Therefore, in calculating lease-up costs for 2011 and 2012, the Tribunal finds that rent loss should reflect (i) the five months of rent actually paid by Pamida in 2011, (ii) the lease of 42,000 square feet of space to Family Farm & Home in 2012, and (iii) tenant improvements and commissions of \$200,000, based on 42,000 square feet of space leased over five years.

Upon careful review of the appraisals and testimony presented by the parties, the Tribunal finds the following in applying the income approach to determine the true cash value of the subject property for the tax years at issue:

2011		Comments
Potential Gross Rent Income		
In-line space	\$384,945	34,995 square feet at \$11 per square foot
Big-box space	\$198,975	56,850 square feet at \$3.50 per square foot

²⁵ Petitioner's appraiser acknowledged that the value of the five months of rent paid by Pamida during 2011 was not reflected in his appraisal because he was uncertain as to the collectability of those rent payments. Petitioner's appraiser further concluded that if these rent payments were included in his analysis, the true cash value of the subject property would have increased by \$80,000. (Transcript, Vol. 1, pp. 220, 221)

²⁶ Petitioner's representative testified that the \$200,000 of tenant improvements identified by Petitioner as included in the Family Farm & Home lease actually included \$130,000 of tenant improvements and \$70,000 of commissions. (Transcript, Vol. 1, p. 152)

Gross Income	\$583,920	
Less: Vacancy/Collection	(93,427)	16% (15% vacancy loss, 1% collection loss)
Expense Reimbursement	\$94,515	Net of stabilized vacancy and collection loss; because management expense was estimated to be 5% of EGI, EGI has increased, and expense and expense reimbursement for management expense has increased beyond Petitioner's appraiser's estimate.
Gross Income	\$585,008	
Less: Operating Expenses	(\$163,135)	See comment above
Net Operating Income	\$421,873	
Capitalization Rate	12.47%	12% capitalization rate; .47% property tax rate
Stabilized True Cash Value	\$3,383,100	
Less: Lease-up costs	\$417,350	Lost rent equal to 56,850 square feet at \$4 per square foot for 13 months = \$246,350; expense recovery loss equal to 56,850 at \$1.90 per square foot for 13 months = \$117,000; TI's and leasing commissions equal to 56,850 square feet at \$.95 per square foot = \$54,000
True Cash Value	\$2,965,750	
2012		
Potential Gross Rent Income		
In-line space	\$384,945	34,995 square feet at \$11 per square foot
Big-box space	\$227,400	56,850 square foot at \$4 per square foot
Gross Income	\$612,345	
Less: Vacancy/Collection	(\$97,975)	16% (15% vacancy loss, 1% collection loss)
Expense Reimbursement	\$95,275	Net of stabilized vacancy and collection loss; because management expense was estimated to be 5% of EGI, EGI has increased, and expense and expense reimbursement has increased beyond Petitioner's appraiser's estimate.
Gross Income	\$609,645	
Less: Operating Expenses	(\$163,657)	See comment above
Net Operating Income	\$445,988	
Capitalization Rate	12.47%	12% capitalization rate; .47% property tax rate
Stabilized True Cash Value	\$3,576,500	

Less: Lease-up costs	\$557,100	Lost rent equal to 56,850 square feet at \$4 per square foot for 18 months = \$341,100; expense recovery loss equal to 56,850 at \$1.90 per square foot for 18 months = \$162,000; TI's and leasing commissions equal to 56,850 square feet at \$.95 per square foot = \$54,000
True Cash value	\$3,019,400	

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner did prove by a preponderance of the evidence that the subject property is assessed in excess of 50% of market value. The subject property's true cash values (TCV), state equalized values (SEV), and taxable values (TV) are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that the property's state equalized and taxable values for the tax years at issue are MODIFIED as set forth in the Introduction section of this Final Opinion and Judgment.

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

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue

a refund as required by 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, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09% for calendar year 2012, and (iv) after June 30, 2012, and prior to January 1, 2014, at the rate of 4.25%.

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

By: Steven H. Lasher

Entered: August 23, 2013