

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

Old West Properties,
Petitioner,

v

MTT Docket No. 416676

Township of Meridian,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

Introduction

Petitioner, Old West Properties, appeals the ad valorem property tax assessment levied by Respondent, Township of Meridian, against the real property owned by Petitioner for the 2011 and 2012 tax years. L. Rider Brice, attorney at Jaffe, Raitt, Heuer & Weiss P.C. appeared on behalf of Petitioner. Peter A. Teholiz, attorney at Hubbard Law Firm, P.C., appeared on behalf of Respondent. Petitioner's valuation witness was Marc Nassif, MAI; Respondent's witnesses were Terrell R. Oetzel, MAI and David Lee, Michigan Master Assessing Officer (4).

The proceedings were brought before this Tribunal on July 22, 2013, to resolve the real property dispute.

Summary of Judgment

Petitioner contends the values should be as follows:

Parcel No. 33-02-02-21-226-009

Petitioner			
Year	TCV	SEV	TV
2011	\$290,000	\$145,000	\$145,000
2012	\$280,000	\$140,000	\$140,000

Respondent has assessed the property on the tax roll as follows:

Parcel No. 3251-830-004-45

Respondent			
Year	TCV	SEV	TV
2011	\$674,800	\$337,400	\$295,836
2012	\$661,800	\$330,900	\$303,857

Respondent's appraisal contends the values should be as follows:

Parcel No. 3251-830-004-45

Respondent			
Year	TCV	SEV	TV
2011	\$600,000	\$300,000	\$295,836
2012	\$600,000	\$300,000	\$300,000

The Tribunal finds the values shall be:

Parcel No. 3251-830-004-45

Respondent			
Year	TCV	SEV	TV
2011	\$560,000	\$280,000	\$280,000
2012	\$570,000	\$285,000	\$285,000

Background

At issue is the true cash value for the subject property located at 2030 East Grand River, Okemos, Ingham County. The subject property is a Taco Bell

fast food restaurant. It contains 2,228 square feet. Both parties have an appraisal of the subject property. Petitioner objects to the admission of Respondent's appraisal. The Tribunal finds that Respondent's appraisal was timely contracted and is admitted. However, due to Petitioner's failure to timely exchange information that was required for Respondent's appraiser to complete the report, it was late.

Petitioner's Arguments

Petitioner believes that the true cash value of the subject property, for the tax years at issue, should be reduced based on Petitioner's appraisal.

Petitioner's Exhibits:

P-1 Appraisal of subject property as of December 31, 2010, and December 31, 2011.

P-2 List of all sales considered by appraiser.

P-6 Tenant build out contracts.

P-7 CoStar write up for 1166 N. Belsay Rd, Burton, Michigan.

Petitioner's valuation expert, Marc Nassif, MAI, of Butler Burgher Group, L.L.C. testified that he prepared an appraisal of the subject property.

Nassif explained that branding is the term used when a structure is recognized when driving by it. Branding contains the short-life items that a

secondary user would change. The national companies remodel (or construct) a property to fit their recognized branding.

The highest and best use of the subject property is the continued use of the long-life items which are the structural components. Sales of similar properties were considered. Five sales were selected based on the underlying land and the long-life items. All of the sales were vacant at the time of the sale. The new users will tear out the existing interior and exterior design and layout to suit their brand.

Nassif explained his sales. In 2011, Sales 1 and 4 were razed; Sales 2, 3, and 5 were redeveloped for restaurant uses. Two of the sales used for 2012 were also razed and an auto parts store was built. Sales 1 and 4 were utilized for retail.

The 2011 sales are as follows:

2011 Sales	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5
Prior Use	Burger King	Subway	Mr. Taco	Steak N Shake	Wendy's
Location	Grand Rapids	Southgate	Lansing	Okemos	Grand Rapids
Sale Date	07/10	09/10	03/10	10/09	05/08
Sale Price	\$485,000	\$225,000	\$175,000	\$775,000	\$525,000
SP/SF	\$121.25	\$125.00	\$90.86	\$210.03	\$183.05

Use	Razed Auto	Subway	Sushi Blue	Razed	Coney Island
Sq Feet	4,000	1,800	1,926	3,690	2,868
Lot Size	2 acres	0.24 acres	0.76 acres	2.04 acres	1.0 acre

The 2012 sales are as follows:

2012 Sales	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5
Prior Use	Quizno's	Arby's	Subway	Unknown	Burger King
Location	Stevensville	Melvindale	Trenton	Waterford	Grand Rapids
Sale Date	02/12	12/11	11/11	09/11	07/10
Sale Price	\$300,000	\$300,000	\$470,000	\$200,000	\$485,000
SP/SF	\$153.06	\$91.31	\$130.92	\$74.99	\$121.25
Use	Honey Ham	Razed Auto	Subway	Retail	Razed Auto
Sq Feet	1,960	3,264	3,590	2,667	4,000
Lot Size	1.05 acres	0.71 acres	1.14 acres	0.79 acres	2 acres

Nassif then discussed his income approach to value. The rental comps were selected. He found four fast-food restaurant leases that he utilized for both tax years at issue. The leases are:

Leases	Name	Location	Date of Lease	Age	Sq Ft	Term of Lease	\$ / SF
1	Arby's	Freemont	08/05	2005	2,974	20 yrs.	\$34.78
2	Church's	Detroit	02/08	1977	1,104	16 yrs.	\$25.15
3	Qdoba	Grand Blanc	04/08	2006	2,600	5 yrs.	\$34.62
4	Burger King	Ithaca	05/10	1998	3,350	10 yrs.	\$17.38

Nassif adjusted rental Comps 1, 2, and 3 in 2011 and all of the comps for 2012, for superior market conditions. In addition, all of the comps were adjusted upward for inferior locations. Comparable 2 was also adjusted for

its inferior size and age. Lease 4 was also adjusted for its inferior age. The result is a \$29.00 per square foot potential gross income. Reimbursements at \$1.40 were added; \$1.52 (5%) vacancy and credit is deducted for an effective gross income of \$28.88 per square foot. Expenses include insurance, common area maintenance, management and structural reserves of \$2.42 per square foot to equal net operating income of \$26.46 per square foot for 2011 and \$27.39 for 2012.

Nassif utilized an Investor's Survey, RealtyRates.com, for a mortgage equity analysis with 60% and 70% loan to value ratio. Interest rates for a 25-year amortization are 8.75% for 2011 and 8.00 for 2012. Capitalization rates were also extracted from restaurant sales that indicate a downward trend. The tax rate was added to the final rate of 10.5% for both tax years. The tax rate is added to the capitalization rate. The final step is to divide the net operating income by the overall rate to result in an indication of value via the income approach of \$570,000 and \$550,000 for the tax years at issue.

Nassif, however, determined that the leasing commission (6%), six months lease up (lost rent), and \$200,000 of tenant finish should be deducted to

result in a final value of the fee simple interest of \$300,000 for 2011 and \$280,000 for 2012.

The cost-less-depreciation approach was the last approach applied by Nassif. He found three land sales that ranged in sale price per square foot before adjustments of \$2.94 to \$10.54. The subject land value was estimated at \$10.00 per square foot for both years at issue. Marshall Valuation Services Fast Food Restaurant was utilized to determine the direct and indirect costs. Nassif found no functional or external obsolescence. The depreciated value of the building was added to the land value for an indicated value of \$560,000 for both tax years.

Nassif again determined that; i. leasing commission (6%); ii. six months lease up (lost rent); and iii. \$200,000 of tenant finish should be deducted to result in a deduction of \$271,073 for 2011 and \$273,524 for 2012 from the final "as is" value.

Nassif utilized a 2008 Proposal Commitment Sheet for a Taco Bell in Allen Park. He selected specific cost items that he testified would be specific to branding. Those items are:

Branding Cost P-6		
Misc finish	p 4	\$8,575
Int. Doors	p 5	\$2,935
Ext windows	p 5	\$11,600
Security door	p 5	\$1,740
Int ceiling	p 5	\$4,800
Gypsum walls	p 5	\$6,500
Int Plywood	p 5	\$5,000
Floor Tile	p 5	\$23,995
FRP	p 6	\$7,400
Paint Int	p 6	\$8,000
Bath Partitions	p 6	\$3,200
Fire Ext	p 6	\$244
Louver	p 6	\$254
Equ Install	p 6	\$4,800
Décor Install	p 6	\$4,800
SS corners	p 7	\$1,318
Plumbing	p 7	\$36,250
Fire/Ansul	p 7	\$1,815
Electrical	p 8	\$60,798
Total		\$194,024

Many of the above costs are applicable regardless of the type of construction. Drywall, painting, electrical, flooring, etcetera, are all part of a typical build-out of any property. There is nothing unusual for the subject property.

Respondent's Arguments

Respondent believes that the assessment is proper and reflective of the market value of the subject property.

Respondent's admitted exhibits are:

R-1 Appraisal of subject property as of December 31, 2012, with no adjustments for December 31, 2010 and December 31, 2011.

R-2 Valuation Report from assessor's office.

R-3 Property record cards for 2010-2013.

Terrell R. Oetzel, MAI, was Respondent's expert valuation witness. He prepared an appraisal that detailed the 2013 tax year. He determined that the gross income for four years was approximately the same and "The SEV (based upon the Equalization Department for Ingham County) has reduced a -1.93% between 2011 and 2012 and a -.75% between 2012 and 2013. Their factors show a fairly stable market for the valuation dates." R-1, page 65. Due to the steady income, the \$600,000 market value for 2011 and 2012 is the same as 2013.

The area has limited sales and leases; therefore, the market area was expanded to include areas outside of the county. The highest and best use of the subject property is the current use as a commercial restaurant.

Oetzel's income approach has the following nine leases:

Leases	Name	Location	Date of Lease	Age	Sq Ft	Term of Lease	\$ / SF
1	Burger King	Sterling Heights	01/11	2011	3,161	20 yrs.	\$32.27
2	Giulio's	Livonia	04/11	2004	4,364	3 yrs.	\$21.40
3	Halo/Subway	Burton	12/12	1980/2012	3,924	20 yrs.	\$25.00
4	Qdoba	Midland	11/08	2008	2,912	5 yrs.	\$21.15
5	Olga's	Sterling Heights	11/10	1997/2004	5,136	10 yrs.	\$20.00
6	KFC	Mundy	01/10	2008	2,528	20 yrs.	\$30.85
7	Burger King	Rochester Hills	01/10	1983/2010	4,056	20 yrs.	\$30.57
8	Burger King	Shelby	02/10	1998	4,056	20 yrs.	\$30.57
9	Burger King	Rochester	01/09	1996	4,534	20 yrs.	\$18.53

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Oetzel considered Leases 2, 4, 5, and 9 to have an inferior location to the subject property. He determined that Leases 1, 7, and 8 were superior locations to the subject property. He did not show any adjustments to the leases but determined that the subject would lease for \$27.00 per square foot. Expenses were estimated at what a typical informed investor would consider reasonable at 5% vacancy and credit, 3% for management, \$0.10 for reserves. The net operating income is \$24.78 per square foot.

Upon cross-examination, the leases were all questioned. Oetzel was questioned why he did not have any support for adjustments. He responded that the adjustments were made based on his general knowledge. Oetzel also utilized a direct capitalization technique because the subject property is a single occupant with a stabilized income flow. National investor surveys (RealtyRates.com, Korpacz Real Estate Investor Survey, and RERC) were considered to estimate the typical loan terms. Typical loan terms were a fixed interest rate of 6.5%, 20-year amortization, and 65% loan-to-value ratio. The surveys resulted in 9.3% overall rate. The market extracted rate averaged 9.59%, based on 17 leases. Oetzel concluded to 9.5% overall rate. The result is \$580,000 or \$280.32 per square foot for the subject property as of December 31, 2012.

Thirty sales were considered by Oetzel before selecting five to use in the sales comparison approach. The sales are:

Sales	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5
Prior Use	Hangar Bar	Boston Market	Fazoli's	Culver's	Boston Market
Location	Kalamazoo	Wyoming	Adrian	Stevensville	Okemos
Sale Date	11/11	10/11	03/11	05/11	12/12
Sale Price	\$840,000	\$650,000	\$525,000	\$1,500,000	\$575,000
SP/SF	\$278.25	\$248.65	\$246.74	\$318.06	\$248.14
Use	Restaurant	Restaurant	Restaurant	Same	TBD
Sq Feet	3,200	3,048	3,247	4,584	3,360

Lot Size	.53 acre	.52 acre	.78 acre	2.0 acres	12.8 acres
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Sale 3 was a lease purchase of a 2008 option. Oetzel explained that the market went down in 2008 and the sale closed in 2011. He was not aware if the lease-option was renegotiated. Sale 4 was listed on CBRE as an in-place tenant. Oetzel made no additional adjustment to Sale 4 as he found it was a market sale. Sale 5 is close to the subject property but was in poor condition and location.

Five percent (5%) adjustment per annum was applied to all of the sales. In addition, Sales 3 and 5 were adjusted for their inferior locations. Sale 2 was adjusted for its inferior age. Sales 4 and 5 were adjusted for their superior land to building ratio. The resulting range of adjusted value is \$246.74 to \$318.06 per square foot. Oetzel concluded to \$270 per square foot for an indicated market value of \$600,000.

Oetzel also considered the value of the vacant land to determine that the highest and best use of the subject property as improved is the commercial use. The estimated land value was \$230,000.

David Lee, Michigan Master Assessing Officer (4), testified that the property records and summary sheets were prepared utilizing a modified cost-less-depreciation approach. The land value is based on sales of commercial property. The State Tax Commission cost manual was used for the base building costs. The costs are adjusted using an economic condition factor (“ECF”)¹. The cost approach was not adjusted for economic or functional obsolescence.

Tribunal’s Findings of Fact

1. The subject property involves a 2,228 square foot Taco Bell restaurant.
2. The subject property is located at 2030 East Grand River, Okemos.
3. The parcel identification number is 33-02-02-21-226-009.
4. The parties both agreed that the subject property is in good condition.
5. The highest and best use of the subject property, as improved, is the current use.
6. Petitioner presented an appraisal utilizing all three approaches to value.

¹The economic condition factor adjusts the cost approach to reflect a 50% assessment ratio for a neighborhood. This is only used in mass appraisals. This is calculated for neighborhoods that have similar market influences. Simplistically, it is the sale price minus land value divided by the assessment at the time of the sale, for sales within a neighborhood. The factor calculated is used to adjust the improvement value closer to the market. Land value is calculated pursuant to the market and does not receive an ECF.

7. Respondent presented evidence utilizing all three approaches to value.
8. Respondent's appraisal for 2013 and declaring the value is the same for the previous two years based upon equalization, and the income of the property is also not found in any learned treaties.
9. Respondent does not have the burden of proof but the burden of defending the assessment and assuring that it does not exceed 50% of market value.

APPLICABLE 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 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). The Michigan Supreme Court in *CAF Investment Co v State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (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. See *Alhi Dev v Orion Twp*, 110 Mich App 764, 767; 314 NW 2d 479 (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; 287 NW2d 603 (1979).

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; 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 Holland*, 437 Mich 473, 484; 473 NW2d 636 (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).

“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 Steel v City of Warren*, 193 Mich App 348, 354-355; 483 NW2d 416 (1992).

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, supra*, at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170; 141 NW2d 699 (1966); *Antisdale, supra*, 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, supra*, at 277. Petitioner utilized a sales comparison approach.

Respondent also used the sales comparison approach to value 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. See *Pinelake Housing Co-op v Ann Arbor*, 159 Mich App 208, 220; 406 NW2d 832 (1987); *Consolidated Aluminum Corp, Inc 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. 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, supra*, at 485-486; *Wolverine Tower Assoc v Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980); *Tatham v Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982).

CONCLUSIONS OF LAW

The Tribunal, having considered the testimony and evidence and applying sound appraisal theory and techniques, finds that the appraisal submitted

by both parties has flaws. The appraisers were charged with determining the market value of the fee simple interest for the subject property.

Petitioner's appraiser after applying all three approaches does not accept the answer but deducts² in the income and cost approach the following three items; i. leasing commission (6%); ii. six months lease up (lost rent); and iii. \$200,000 of tenant finish to result in a deduction of \$271,073 for 2011 and \$273,524 for 2012 from the final "as is" value.

The first issue is the one-time leasing commission which is an appropriate below the line deduction from the income approach's indicated value.

However, the other two deductions are considered inappropriate for the subject property. The information is better taken from the transcripts rather than paraphrasing.

Nassif states:

The appraisal problem in this assignment is to determine the fee simple true cash value for the subject. As such, the property was valued as if "stabilized". At this point, the necessary expenses will be removed to achieve this stabilization, thus indicating the fee simple condition of the subject property....The sum of these deductions are as follows,

² The amount deducted after the income is capitalized and a value is reached is considered "below the line deductions."

thus indicating the “as is” position of the subject will be deducted for each tax year in the Income Capitalization and Cost Approaches. P-1, p 65.

Nassif testified:

You start with an unadjusted base cost from MVS, from Marshall and Swift, and they are the costs to vertically construct what they define as an average fast-food restaurant.

So MVS--and I called to understand what is exactly included in these numbers—they told me that their data set ranges from across the country, across the spectrum in terms of users.

So McDonald's, every chain. They use the phrase “every chain you can think of,” and these are the average numbers for the cost to construct.

So the finishes that—and this includes all the way through interior finishes, according to MVS. They classify them as average interior finishes. Tr. p 103.

After the parties rested, the Tribunal had some issues yet to be clarified.

Tribunal: I have some questions. Let me make sure I clearly understand on page 77 of Petitioner's Exhibit 1, you have done a Cost Approach.

You ended up with a True Cash Value of \$560,000 for both 2011 and 2012 tax year. I got that part. I understand that, and I understand why you would do a leasing commission below the line.

Explain to me. In your Cost Approach, if you have costed this out using Marshall Valuation Services as a fast-food restaurant, why you would deduct \$200,000 for your tenant finish for Taco Bell?

Nassif: Because MVS includes that tenant finish in their base cost. So that—

Tribunal: Right, a tenant cost for some tenants, not specifically Taco Bell. Correct?

Nassif: That is correct.

Tribunal: So you didn't include a build-out for Taco Bell, but you deducted \$200,000 to them? Correct? Am I understanding that correctly sir?

Nassif: Your understanding is correct in that base cost is not solely representative of a Taco Bell, but my methodology, based on what MVS told me, was that because their base costs are across-the-board of various chains, because they are average, MVS has stated that if you want it to be a fee simple with no build-out that is specific to anything, then you back out your property.

So I did this methodology based on the directions from MVS because of the way they do their base costs, because of the data set they rely on. Tr. pp 172,173.

This Tribunal does not find any indication in Marshall Valuation Services that states that the cost approach is leased fee. The replacement and reproduction costs are explained in the introduction of Marshall Valuation Services. Fee simple and leased fee are not found within the confines of Marshall Valuation Services manual. The interest appraised is based on the type of subject property, the purpose of the appraisal, and scope of work that an appraiser finds appropriate and necessary depending upon

the purpose for which the appraisal is done. Possessory interest³ is an element of value not cost. Marshall Valuation Services provides costs to construct as a tool to determine market value.

Fee simple estate is:

Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power and escheat. Appraisal Institute, *The Dictionary of Real Estate Appraisal*, (Chicago: 5th ed, 2010), p 78.

Leased fee interest is:

A freehold (ownership interest) where the possessory interest has been granted to another party by creation of a contractual land-lord-tenant relationship (i.e., a lease). *The Dictionary of Real Estate Appraisal*, (Chicago: 5th ed, 2010), p 111.

It is unclear to this Tribunal why Nassif's income approach did not consider the subject property had a stabilized income. The subject property is owner-occupied. The deduction of tenant finish would be a cost to a tenant for any lease-hold improvements.

³ Possessory interest: The right to the use and occupancy of real estate, as distinguished from any interest in title. Possessory interests are created by contracts such as leases, permits, or licenses. For example, a leasehold estate is a possessory interest.

The costs as testified to by Nassif and contained in Petitioner's Exhibit 6 are applicable, regardless of the business model. Drywall, painting, electrical, flooring, etcetera, are all part of a typical build-out of any commercial property. There is nothing unusual in the construction of the subject property.

There is no market evidence provided that a new user would have an expenditure of \$200,000 to rebrand the subject property. In fact Nassif states:

No expenditures immediately after sale were noted for any of the comparable. No adjustments were warranted. Any expenditures that were made were for tenant or user specific build-out, and therefore not considered in this analysis. P-1, p 45.

The evidence presented (P-6 Tenant build out contracts.) does indicate that the new construction of a Taco Bell in Allen Park includes all of the necessary elements of a completed structure. The components that Nassif deducted include miscellaneous finish, interior doors, exterior windows, security door, interior ceiling, gypsum walls, interior plywood, floor tile, FRP, interior paint, bathroom partitions, louver, installation of equipment, and plumbing as well as electrical. The only items that may be specific to the subject property would be the "install decor package;"

however, it was found under furnishings and would be required to be reported on a personal property statement.

Nassif provided information on the cost of new construction for two Taco Bells. The comparable leases utilized by Nassif in the income approach do not indicate that in addition to the agreed upon rent that a landlord would be responsible for branding. If the landlord were responsible, the expenditure would be amortized over the term of the lease. The recapture of any retrofitting would be included in the rent if the leasehold improvements were paid for by the landlord. The Tribunal finds that the second issue, the expenditure of \$200,000 after the capitalization of income for branding is an inappropriate deduction in this instance.

Nassif did not take into consideration that the comparable leases already considered any leasehold improvements that would be required for the lessee's business requirements.

Nassif's third below the line deduction is six months of lost rent. The Tribunal finds that vacancy and credit was deducted in the calculations of the income approach. To again deduct an amount for lost rent is akin to

double –dipping a chip in guacamole and it is not acceptable. Double-dipping for lost rent above the vacancy and credit is not allowed as deduction in this instance.

Nassif utilized the same three deductions in the cost approach. This makes less sense to the Tribunal. The cost approach yielded approximately the same value as the income approach and then the \$271,073 in 2011 and \$273,524 was again deducted. The cost new less depreciation does not have a leasing commission or loss of rent. If the subject was properly costed out, the deduction for \$200,000 for tenant finish is inappropriate. If tenant finish is part of the “cost,” then it should be added to the value, not a deduction unless Petitioner was doing a leased fee appraisal.

This leaves the Tribunal with Nassif’s sales comparison approach. The 2011 sales grid contains five sales. Sale dates ranged from May 2008 to September 2010. All of the sales were vacant buildings. The sale prices per square foot ranged from \$90.86 to \$210.03. Adjustments were made for market conditions, location, and site size which resulted in a range of \$85.86 to \$163.68 per square foot. Two of the five sales razed the existing

improvements. Nassif indicated in his testimony that the long-life components could still be used indicating that the age of the buildings is not important.

The Tribunal finds that the sale of a property that was razed and utilized for a different use is not an indication of market value for the subject property as improved. It also does not comport with Nassif's highest and best use of the subject property. The sale of existing vacant buildings for an alternative highest and best use (or demolition) is not an indication of the market value of the existing property. Nassif's sales that were purchased for a different use and razed indicate that the larger lot sizes are more desirable for an alternative use or utilized as vacant land sales. Sale 1 (former Burger King) and Sale 4 (former Steak and Shake) both have slightly over two acres. The indicated sale price for land ranges from \$5.56 to \$8.72 per square foot or approximately \$44,000 per acre. The estimate for Sale 1 and Sale 4 did not include any demolition costs. Sale 2 is a Subway that was older construction than the subject when sold, but renovated after purchase. Expenditures immediately after the sale were not included in the appraisal. Sale 3 is a vacant Mr. Taco. The building is older construction, and the terms and after-market use of the building was unknown. Sale 5

was the same Burger King that sold for demo and construction of an auto parts store.

Sale 1 at the high end of the range was a Quiznos that was a short sale.

The original listing price was \$459,000; time on the market was unknown.

Sale 4 was a bank owned property and at the low end of the sale prices.

The sales appear to be not reflective of the subject property other than the fact that they started as fast food restaurants.

Nassif's sales appear to be selected to match the deductions taken for the sales and income approaches.

The Tribunal considers Oetzel's appraisal for 2013, a year not before the Tribunal. This concept is interesting, doing an appraisal for a year not under contention and then adjusting it for the prior years. In this instance, the Tribunal starts with the reconciliation and then comments on the sales and income approaches. The tax years at issue are December 31, 2010 and December 31, 2011.

Oetzel opined retroactively that the 2013 market value of the subject property is \$600,000. He bases the use of the same value for the prior two years on two factors. The first basis is that the subject's actual income for several years was stable. His second observation was using the Ingham County Equalization Departments annual adjustments of State Equalized Value ("SEV") for the commercial class of property within the county. Oetzel concluded that the two indications are reflective of a stable market and applied \$600,000 as market value for the prior two tax years.

Oetzel did not know how Ingham County Equalization does their sales studies. He believes that they are measuring the increase or decrease or the movement of sales within the market. However, he is incorrect. The County Equalization departments are measuring the sale prices against the assessments to determine if the local units of governments are assessing individual classes of property at a 50% ratio. If an assessor is only valuing the commercial class of property at 45%, the unit would receive a factor of 1.111 to bring the commercial classed property up to a 50% ratio. The pertinent STC Guide for Basic Assessing excerpt is as follows:

Equalization departments are required to conduct Equalization studies for each class of property in the County. Real property studies use either a sales study or an appraisal study. Sales Studies are typically done in the larger classes with adequate

market transactions to accurately measure the assessment to value ratio. STC Guide for Basic Assessing, p 31.

The County Equalization Director reviews each assessment roll in the County on behalf of the County Board of Commissioners. The Equalization Director summarizes the local units on form L-4411, [which becomes the basis for] [r]ecommendation to the County Board of Commissioners.

The County Board of Commissioners must begin their review on the Tuesday following the second Monday in April and must complete their work by the first Monday in May.

The Commissioners must determine whether the properties in each local unit [within their respective county] have been equally and uniformly assessed [at the statutory level of 50% of true cash value on a per classification basis] If they determine that an inequality exists [i.e. assessing at a level other than 50% of True cash value], the Board is required by Statute to correct the inequality [by adding to or subtracting from the assessment in the form of a county factor to arrive at county equalized value (CEV) at the] statutory 50% assessment [ratio]. STC Guide for Basic Assessing, p 29.

The State Tax Commission (STC) repeats this process on a state wide basis in the same manor to establish State Equalized Value or SEV. If the STC finds that a given classification for the county as a whole is not at the 50% ratio then they issue a factor or multiplier to be placed against the assessments within a given classification that corrects the level of assessment for a given county and for a given classification at the statutory level. This process results in the establishment of the State Equalized

Value (SEV) for both the classification totals of a given county, but also for each individual assessment.

This action does not affect the assessment rolls of the individual communities but may affect the final determination of State Equalized value for individual properties. When the County Board of Commissioners completes this process, they send form L-4044, Assessment Roll Certification of Equalization by County Board of Commissioners, to the local units and L-4024, Statement of Acreage and Valuation, to the State Tax Commission.

The sales studies are done to determine the level of assessment for a class of property within a taxing jurisdiction. The sales studies are usually reflective of whether a specific market is increasing or decreasing. The studies lag the market by months. If a taxing unit is not assessing at 50% for a class of property, the entire class of property receives a factor to adjust the value. This is a study of assessment practices and the relationship between the assessed values and true cash values or market values. It is not a direct measurement of change within a given market and thus is not indicative or reflective of market conditions (that the market is stable, declining, or improving) as of tax day. It is a tool used in the overall

assessing process to assist equalization departments in determining the level of assessment in a class of property. It is not, and most likely should not be, used for determining that an individual property within the commercial class of a specific assessing jurisdiction within Ingham County was “stable.”

Oetzel, in the extraction of a capitalization rate has 17 sales⁴ from 2009 through 2011. This includes two 2009 sales, thirteen sales in 2010, one 2011 sale. Oetzel did consider any of the 2011 sales to determine the market value for tax year 2012. He concluded instead⁵ that based the actual income of the subject property and the equalization factors that the value for the 2011 and 2012 tax years was stable and therefore was also \$600,000.

Oetzel in his income approach considers nine comparables. Rent comparables 5, 6, 7, and 8 are 2010 leases. Rent comparables 1 and 2 are 2010 leases. Rent comparable 4 is a 2008 lease. It is not clear to this Tribunal why valuations were not done for the December 31, 2010 tax year.

⁴ Respondent's Exhibit 1, page 56.

⁵ Respondent's Exhibit 1, page 65.

The four 2010 leases indicate that some information was available. The Tribunal notes that some of the properties were leases contemporaneous with sales. The properties may have been sale-leasebacks. Oetzel explained that he spoke to the brokers and determined that they were at market rates.

Sale-leaseback is defined as:

A financing arrangement in which real property is sold by its owner-user, who simultaneously leases the property from the buyer for continued use. Under this arrangement, the seller receives cash from the transaction and the buyer is assured a tenant. *The Dictionary of Real Estate*, (Chicago: 5th ed, 2010), p 175.

Oetzel's adjustments determined market rent was \$27.00 per square foot. After deductions, the effective gross rent was \$25.65. The result after capitalizing net operating income was an indicated value of \$580,000.

The Tribunal, after considering the testimony presented by two MAIs, expert witnesses that prepared appraisals, determines neither appraisal is accepted on its own merits for the reasons stated above.

The sales comparison approach should be a reliable indication of value for the subject property. However, of Petitioner's nine different sale properties, three were razed and used for a retail purpose, and three other sales were used for retail purposes after remodeling. This left Petitioner with three sales at \$125-\$130-\$183 unadjusted price per square foot. This does not reconcile with Petitioner's Income Approach or Cost Approach.

Respondent's five sales were also somewhat tainted. Sales 1 and 2 appeared to be arms-length transactions. Sale 3 was a purchase of a 2008 purchase option. Sale 3 had net adjustments of 40% indicating that it is not very comparable to the subject property. Sale 4 was a sale and leaseback for a Culver's Restaurant with two acres of land. Sale 5 is a sale of a Boston Market Restaurant that was in poor condition and in a less desirable location. This sale is considered for use as an urgent medical center. Respondent's Sale 5 is not considered as a comparable property after net adjustments of 45%. The Tribunal notes that gross adjustments are 75%. The remaining Sale 1 and Sale 2 have adjusted sale price per square foot of \$278.25 and \$248.65. This is fairly consistent with the income approach.

The Income Approach for both parties is within reason. Petitioner's income and expenses result in an indicated value before any below the line deductions are taken of \$550,000 and \$570,000. Respondent's income conclusion is \$580,000 and \$580,000 with no below the line deductions.

The leases from both parties are arrayed per year as follows:

Leases	Name	Location	Date of Lease	Age	Sq Ft	Term of Lease	\$ / SF
P-2	Church's	Detroit	02/08	1977	1,104	16 yrs.	\$25.15
P-3	Qdoba	Grand Blanc	04/08	2006	2,600	5 yrs.	\$34.62
R-4	Qdoba	Midland	11/08	2008	2,912	5 yrs.	\$21.15
R-9	Burger King	Rochester Hills	01/09	1996	4,534	20 yrs.	\$18.53

The 2010 leases from both parties are:

Leases	Name	Location	Date of Lease	Age	Sq Ft	Term of Lease	\$ / SF
P-4	Burger King	Ithaca	05/10	1998	3,350	10 yrs.	\$17.38
R-5	Olga's	Sterling Heights	11/10	1997/2004	5,136	10 yrs.	\$20.00
R-7	Burger King	Rochester Hills	01/10	1983/2010	4,056	20 yrs.	\$30.57
R-8	Burger King	Shelby	02/10	1998	4,056	20 yrs.	\$30.57
R-6	KFC	Mundy	01/10	2008	2,528	20 yrs.	\$30.85

Nassif used a market rent of \$29 and \$30 per square foot. Oetzel used \$27 per square foot for all years. The Tribunal finds that based on the 2010 leases (see above) the 2011 tax year would indicate \$30 per square foot. Therefore, Nassif's gross income is appropriate for both the 2010 and

2011 tax years. Both parties have reasonable expenses deducted and capitalization rates that are similar. Nassif properly included the effective tax rate for the percentage of time when an owner would pay for property taxes. He used an incorrect assumption, but the result was the same when the proper overall rate was applied.

Nassif's below the line deductions, however, are troublesome to this Tribunal. The leasing commission is not an issue. The deduction for "Tenant Finish" of \$200,000 and Lost Rent \$32,306 and \$33,420 are not proper.

Nassif states in the sales comparison approach "No expenditures immediately after sale were noted for any of the comparable. No adjustments were warranted. Any expenditures that were made for tenant or user specific build-out, and therefore not considered in this analysis." (P-1, page 45). It is improper to deduct for the tenant finish in the income approach. The income approach is adjusted below the value indication for leasing commission only⁶.

⁶ The Tribunal determined that the deduction for six months lost rent was not an appropriate deduction.

Both parties presented vacant land sales. Nassif found \$170,000 (\$10 per square foot) land value for both years. Oetzel found \$230,000 (\$13 per square foot) in land value. The assessor testified that the land value on the property record was determined based on commercial sales. Land value on the assessment record is \$256,000 (\$14.57 per square foot).

Nassif's sale prices per square foot for the three land sales are: \$10.65- \$2.94- \$3.44. Oetzel's sales before adjustments range from \$8.09 to \$15.78. Nassif's land value is low based on both Oetzel's sales which indicated that the assessor's land value was appropriate.

Nassif used Marshall Valuation Services to estimate a cost new of an average quality, Class C Fast-Food Restaurant building. He properly made deductions for indirect costs and entrepreneurial profit using new construction of another fast food restaurant. He determined that the only accrued depreciation was physical. The low land value was added; however, the overall end result was very close to the income approach. The Tribunal again finds that the deductions for leasing commissions, tenant finish, and lost rent are not a proper deduction from the cost approach.

Both appraisals were considered and while neither party prevailed in its entirety, the Tribunal, in its independent determination of value utilized information from both parties. It was found that without the extra deductions made by Nassif for tenant finish, six months lost rent and (in the cost approach) leasing commission, that the parties were close in value. The Tribunal finds that the market value for the subject property as of each tax day at issue is amended based upon the income and cost approaches. Neither appraisal prevailed; however, Petitioner does have a reduction in market value.

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 the Final Opinion and Judgment within 28 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 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, through December 31, 2013, at the rate of 4.25%.

This Opinion and Judgment resolves the last pending claim and closes this case.

MICHIGAN TAX TRIBUNAL

By: Victoria L. Enyart

Entered: September 09, 2013