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

Redford Square Associates, LTD,
Petitioner,

v

MTT Docket No. 362195

Township of Redford,
Respondent.

Tribunal Judge Presiding
Marcus L. Abood

OPINION AND JUDGMENT

Petitioner, Redford Square Associates, appeals the ad valorem property tax assessment levied by Respondent, Township of Redford, against the real property owned by Petitioner for the 2009, 2010, and 2011 tax years.

A hearing was held on January 17, 2012, to resolve the real property tax dispute. Steven P. Schneider, attorney at Honigman Miller Schwartz and Cohn, LLP, appeared on behalf of Petitioner. Nevin A. Rose, and Claudia I. Rose, attorneys at Rose and Abraham, PC, appeared on behalf of Respondent. Laurence G. Allen, MAI, was Petitioner's valuation witness. Jere Neill was Respondent's valuation witness.

SUMMARY OF JUDGMENT

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

Parcel No. 79-025-99-0001-708

	Respondent		
Year	TCV	SEV	TV
2009	$4,453,200	$2,226,600	$1,815,620
2010	$4,071,400	$2,035,700	$1,810,173
2011	$3,821,400	$1,910,700	$1,840,945

Respondent also presented an appraisal contending the values are:

Parcel No. 79-025-99-0001-708

	Respondent		
Year	TCV	SEV	TV
2009	$4,420,000	$2,210,000	$1,815,000
2010	$3,875,000	$1,937,500	$1,810,173
2011	$3,310,000	$1,655,000	$1,655,000

Petitioner's contentions are:

Parcel No. 79-025-99-0001-708

	Petitioner		
Year	TCV	SEV	TV
2009	$3,000,000	$1,500,000	$1,500,000
2010	$2,400,000	$1,200,000	$1,200,000
2011	$2,100,000	$1,050,000	$1,050,000

The Tribunal's conclusions are:

Parcel No. 79-025-99-0001-708

Year	TCV	SEV	TV
2009	$3,500,000	$1,750,000	$1,750,000
2010	$2,822,000	$1,411,000	$1,411,000
2011	$2,555,000	$1,277,500	$1,277,500

GENERAL PROPERTY DESCRIPTION

The subject property is known as the Heritage Plaza, and is located at 14615 Telegraph Road, Redford Township, Wayne County, Michigan. The gross building area is 46,690 square feet. The subject site is comprised of 3.8 acres. It is a typical retail strip shopping center.

SUMMARY OF PETITIONER'S CASE

Petitioner presented testimony from the property manager, Albert Ludwig. He described his past experience in the development and management of strip centers. His employment history was also described in detail. Mr. Ludwig was involved in the initial development of Heritage Plaza (also referred to as Redford Square). Mr. Ludwig went on to identify various photographs of the subject property as well as the surrounding area. Various tenants were identified: Rose Jewelry occupies a "point position," which is highly visible space closest to Telegraph Road.

Mr. Ludwig distinguished between negotiations with new tenants and existing tenants, indicating that there is more bargaining power with existing tenants. He stated that their client base is already established in that specific location, and the existing tenant's improvements are already in place.

Petitioner presented testimony from its appraiser, Laurence G. Allen, MAI. Mr. Allen has appraised a wide range of shopping centers in southeast Michigan. These types of centers include strip centers, neighborhood centers, regional centers and power centers. Mr. Allen's largest clients include Crosson & Dannis, Greystone Financial, and Comerica Bank. Based on his experience and training, the Tribunal accepted Mr. Allen as an expert appraiser.

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

P-1: Petitioner's appraisal report prepared by Laurence G. Allen.
P-3: Resumé of Albert J. Ludwig.
P-4: Leasing Brochure for Subject Property by Beale Group.
P-5: The Beale Group Company Information Packet.
P-6: Lease Offer by Dollar General and Counter-offer by Albert Ludwig.
P-7: Lease Offer for Internet Café and Counter-offer by Albert Ludwig.
P-8: Lease between Rose Jewelry & Exchange and Redford Square Associates dated November, 2007.
P-9: Photographs of Subject Property.
P-10: Photographs of businesses on Telegraph across street or near Subject Property.
P-12: Demographic Data and Rental Data Concerning Locations of Petitioner's Appraiser's (Allen) Sales Comparables.
P-13: Demographic Data and Rental Data Concerning Locations of Respondent's Appraiser's (Neill) Sales Comparables.
P-14: Redford Square 2010 Lease Offers and Counter-offers.
P-15: Redford Square 2010 Renewal Rents.
P-17: ATM Kiosk value contribution.
P-18: Recalculated Income Approach Conclusions based on Counter-offered market rents.
P-19: Respondent's Appraiser's (Neill) Rental Data from work file.

Mr. Allen testified to the difference between a fee simple interest and a leased fee interest. His appraisal was based on fee simple subject to existing leases and market rent. This is contrasted by a leased fee, which is subject to an existing lease as a contract rent. Mr. Allen testified about the leases in the subject strip center. “Typically, during this time period most existing leases were above market because it was a time period of falling market rents.” (TR, Vol 1, p 184)

Mr. Allen testified about the subject market area, as well as the market conditions for the three years under appeal. Changes in the auto industry impacted the Detroit Metropolitan Statistical Area (MSA). The significance of a declining population and employment on retail sales was also discussed. The number of employees decreased and unemployment increased. Changes in building permits, the decline in residential values, and less consumer spending were acknowledged during this timeframe.

Mr. Allen stated that the subject market area and neighborhood are affected by Telegraph Road, which is a major commuter artery, and the subject’s proximity to the city of Detroit and Redford Township. The subject neighborhood is identified as the Eliza Howell Park area. Beyond the park are the Brightmoor neighborhoods, which are some of the most depressed neighborhoods in the city of Detroit. Mr. Allen indicated that neighborhood demographics are relevant to the value of a strip center, in that declining population and households mean declining retail demand.

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

The subject's primary trade area was described by Mr. Allen, noting the five-minute drive time and a designated 5-mile radius. He indicated that retail supply and demand has an impact on the subject strip center. These delineations were further analysis of the neighborhood and market area.

Mr. Allen considered the sales comparison, income, and cost approaches to value in his appraisal report. The cost approach was deemed inapplicable for this appraisal assignment, and he developed and analyzed the sales and income approaches to values to arrive at conclusions to value.

Mr. Allen concluded to a stabilized occupancy that is between the actual and primary trade area occupancy. The reasons for this were that the market conditions were very poor during this time period and the occupancy in the primary trade area was better than in the subject property. He testified that the income approach would be projecting income for more space than is actually rented in the subject as of each of the tax dates. (TR, Vol 1, pp 199-200)

In the income approach, Mr. Allen determined that the subject property should be valued as vacant and available subject to leases in place. He presented a lease comparable survey of four actual leases and five offered leases. These rentals were analyzed and compared to the subject's rent rolls. The most recent signed lease in the subject strip center is the Rose Jewelry lease. This lease was executed in late 2007; the lease rate is below all of the other existing leases in the subject center. Mr. Allen also reviewed CoStar rental data for rental trends for the fourth quarter of each year from 2006 to 2010. His rent decline is lower than the rent decrease from the CoStar rental data. Mr. Allen explained why he did not directly rely on rates from the historic leases of the subject:

> Generally because I was looking at market rent and the historic leases at the subject were leases that were entered into generally many years ago and not reflective of the changes in the current market that had occurred during these tax years. (TR, Vol 1, p 211)

The concluded rental rate was $10.00 per square foot as of December 31, 2008, $9.00 per square foot as of December 31, 2009, and $8.00 per square foot as of December 31, 2010.

The next step in the income approach was to determine the vacancy and credit loss. Mr. Allen relied upon CoStar Quarterly Reports, conversations with real estate brokers, and competing market data to conclude to 15.0%, 17.5%, and 20.0% vacancy and credit loss for the 2009, 2010, and 2011 tax years, respectively.

This is based on retail vacancies in the market and the length of travel time to a retail shopping center.

The reimbursable operating expenses are common area maintenance (CAM), property taxes, and insurance expenses. The non-reimbursable expenses are management fees, administrative expense, and replacement reserves. Mr. Allen analyzed the subject's historical income statement. The subject's actual expenses were then related to comparable expense information and industry expense surveys.

Mr. Allen calculated gross income from the rental rate per square foot. Vacancy and credit losses were deducted for an effective gross income; operating expenses were deducted to equal the net operating income (NOI). Mr. Allen considered capitalization rates from extracted sales, band-of-investment, and industry surveys. His decision for the overall capitalization rate (OAR) was 10.25%, 11.00%, and 10.25%, respectively, for the three years under appeal. The capitalization rates reflect the characteristics of the subject property's location and market conditions. (TR, Vol 1, p 227)

After capitalizing the NOI, Mr. Allen deducted stabilization costs (leasing fees and lost rent) to arrive at indications of true cash value of $3,130,000 ($67.48 per square foot) as of December 31, 2008; $2,460,000 ($53.04 per square foot) as of December 31, 2009; and $2,180,000 ($47.00 per square foot) as of December 31, 2010.

Mr. Allen developed and communicated indicated opinions of value for the sales comparison approach for the subject property. Data for sales and offerings of neighborhood strip centers was analyzed. The comparison analysis focused on existing centers that were owner-occupied and leased. Mr. Allen's appraisal contains four sales of multi-tenant strip centers. The comparable sales data indicates variations in location and age, and dissimilarities in market conditions.

Mr. Allen testified that the strip center sales unadjusted sale prices per square foot range from $41.00 to $86.00. All four comparables are located in southeast Michigan. There was sufficient data within southeast Michigan for comparison analysis. Write-ups and photographs of each comparable sale are included in Mr. Allen's appraisal report.

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

The adjustment for the difference in location was explained by Mr. Allen. Purchasing power within a market area is based on population, households, income, visibility, exposure, traffic count, accessibility, surrounding land uses, and neighborhood trends. The subject property is located in the Detroit Metropolitan Statistical Area ("MSA").

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

Sale #	1	2	3	4
Location	Clinton Twp	Westland	Detroit	Clinton
Sale Date	Jan-07	Dec-09	Mar-10	Dec-10
Square Feet	15,384	30,340	51,320	39,244
Year Built	1988	1973	1970/1998	2003
Sale Price	$1,330,000	$1,500,000	$2,100,000	$1,875,000
SP/SF	$86.45	$49.44	$40.92	$47.78
Adjusted SP/SF (2009)	$56.06	$62.55	$59.44	$51.52
(2010)	$43.85	$54.18	$51.35	$45.69
(2011)	$40.14	$47.69	$45.14	$40.72

Mr. Allen adjusted all of the sales for differences in market condition. Sales 1, 2, and 4 have superior sizes and are adjusted downward. These sales are similar in location and did not require a location adjustment. Sales 1 and 4 were adjusted downward for a minimal difference in age/condition. The comparable sales are all based on the property rights of leased fee. Mr. Allen stated, "Further, because of the decline in market rent it is probable that the sales include a premium for in-place above market rent." (Petitioner's Exhibit P-1, p 99)

The sales comparison analysis included CoStar retail market reports for building sales of 15,000 square feet or larger in the Detroit MSA. Interviews with the property owner and commercial brokers were conducted. This information culminates in the support for the adjustments made in the sales comparison grids.

After analyzing the comparable sales, adjusting for difference in amenities, and reviewing CoStar retail market reports, Mr. Allen concluded to a value for the subject property of $59.94 per square foot ($2,780,000) as of December 31, 2008; $50.02 per square foot ($2,320,000) as of December 31, 2009; and $45.06 per square foot ($2,090,000) as of December 31, 2010.

SUMMARY OF RESPONDENT'S CASE

Respondent presented testimony from its appraiser, Jere D. Neill, and its assessor, Aaron Powers. In support of its value contentions, Respondent offered the following exhibits, which were admitted into evidence:

R-1: Respondent's Valuation Disclosure.
R-2: 2009 Field Sheet for Subject Property.
R-3: 2010 Field Sheet for Subject Property.
R-4: 2011 Field Sheet for Subject Property.
R-5: Amendment to Respondent's Appraisal (Page 75).
R-6: Warranty Deed for 35700 Warren Road, Westland, Michigan.
R-7: Sale, Listing, Brochure, and Mortgage documentation for 18600 Fenkell Street, Detroit, Michigan.
R-8: Sale, Deed, and Assessors documentation for 6427 Canton Center Road, Canton, Michigan.

Aaron Powers, assessor for Redford Township, testified to the area surrounding the subject property.

Jere D. Neill developed and communicated the appraisal of the subject property. He inspected the subject property in May, 2011. The subject is a class C, average construction strip center built in 1988. It is located on the west side of Telegraph Road between Fenkel Street and I-96 freeway. Redford Township is an older western suburb of the city of Detroit. Mr. Neill further described the area.

> Redford in the 2010 census had a population of just a little over forty-eight thousand and a little over nineteen thousand households, of which eighty-eight percent of the homes were owner-occupied, which helps to make it a stable area. And then median housing value is about one hundred and five thousand dollars in 2010. (TR, Vol 3, 28)

Respondent considered all three approaches to value. Mr. Neill indicated that the cost approach was inapplicable because the subject is older and calculating depreciation is more difficult. In addition, the subject market area is mostly built-up and there are very few land sales. Therefore, the sales comparison and income approaches to value were developed and relied upon.

Respondent developed and communicated a sales comparison approach to value. Four sales within southeast Michigan were analyzed. The unadjusted sale prices per square foot range from $65.93 to $129.50.

All four sales were analyzed for the difference in market conditions, size, and age/condition. Sale 2 has a larger building size and is adjusted upward to the subject. Sales 1 and 4 have smaller building sizes and are adjusted downward to the subject. Other adjustments included differences for chronological age and condition.

Sale #	1	2	3	4
Location	Eureka Rd. Taylor	Beck Rd. Novi	Gr River Farmington	Ten Mile Novi
Sale Date	April 2007	Nov., 2008	January, 2008	June, 2009
Square Feet	11,744	74,440	38,610	18,200
Year Built	1990	2005	1973/1989	1971
Sale Price	$1,200,000	$5,300,000	$5,000,000	$1,200,000
SP/SF	$102.17	$70.28	$129.50	$65.93
Adj SP/SF (2009)	$82.75	$66.76	$129.50	
(2010)	$73.55	$60.08	$116.55	$65.93
(2011)		$53.40	$103.60	$65.93

After analyzing the comparable sales, and adjusting for differences in amenities, Mr. Neill concluded to a value for the subject property of $90.00 per square foot ($4,202,100) as of December 31, 2008; $75.00 per square foot ($3,501,750) as of December 31, 2009; and $70.00 per square foot ($3,268,300) as of December 31, 2010.

Respondent developed and communicated an income approach to value. Mr. Neill utilized a direct capitalization method to conclude to an indication of value. Initially, a CoStar market study was conducted (for each year) looking at approximately 400 properties within the subject market area. The study focused on retail shopping centers in the 4th quarters of 2008, 2009, and 2010. Mr. Neill concluded the subject's actual rents were within the range of market rents. The conclusion of market rents is $12.23, $12.28, and $12.48 per square foot for each year under appeal.

From the rent conclusions, potential gross income was calculated for each year. The vacancy and credit loss was considered and deducted. Tenant reimbursements were added to arrive at an effective gross income. Numerous expenses were analyzed by Mr. Neill. The result is net operating incomes of $544,951, $528,751, and $433,905 for each year.

Mr. Neill reviewed and considered two sources in the determination of capitalization rates for the income approach. Korpacz Real Estate Investor Surveys and sales of leased retail strip center properties were reviewed. Respondent reconciled the strengths and weaknesses of both sources to conclude to a capitalization rate for each year. More weight was given to the local market capitalization comparables. The national survey capitalization rates were lower and did not reflect the negative impact of reduced production and job cuts in the automotive industry.

The net operating income was divided by the capitalization rates. The indicated value via the income approach is $4,540,000 ($97.23 per square foot) as of December 31, 2008, $4,065,000 ($87.06 per square foot) as of December 31, 2009, and $3,335,000 ($71.42) as of December 31, 2010.

FINDINGS OF FACT

1. Subject property is located at 14615 Telegraph Road, Redford Township, Wayne County.
2. Subject building was constructed in 1988.
3. Subject property has a total of 3.8 acres.
4. Subject strip center has a total of 15 units.
5. Subject property is zoned C-3, Highway Service District.
6. Subject property is a multi-tenant occupied, retail strip center.
7. The subject is located in the Detroit Metropolitan Statistical Area (MSA).
8. The subject property is located on the west side of Telegraph Road between 5-Mile Road and I-96.
9. Both parties have furnished valuation disclosures in the form of appraisal reports.
10. Both parties have appraised the subject property as a fee simple interest.
11. Neither party developed a cost approach in the valuation of the subject property.
12. Petitioner analyzes the subject building on the basis of 46,380 net rentable square feet.
13. Respondent analyzes the subject on the basis of 46,690 gross building square feet.
14. Both parties’ final reconciliation places most weight on the income approach to value.

APPLICABLE LAW

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

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

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

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

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

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

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

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

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

The three most common approaches to valuation are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach. *Meadowlanes*, at 484-485; *Pantlind Hotel Co v State Tax Commission*, 3 Mich App 170; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968). The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale*, p 277. Pursuant to MCL 211.27(5), "the purchase price paid in a transfer of property is not the presumptive true cash value of the property transferred."

CONCLUSIONS OF LAW

Petitioner considered all three approaches to value, but only developed the sales and income approaches to value. Respondent considered all three approaches to value, but only developed the sales and income approaches to value in its appraisal report. The appraisers were charged with determining market value of the subject property for the three years under appeal.

Petitioner was able to explain and provide documentation for the income approach. Mr. Allen provided nine market leases for a market rental rate analysis. Two leases were in the subject development, four rent comparables were actual leases, and five rent comparables were lease offerings. The market area rent and vacancy trends illustrate to the Tribunal the decline in asking prices over a three-year period. The comparable data was analyzed in conjunction with supported market conditions. Mr. Allen's application of available data to the subject property is persuasive. Therefore, Petitioner's income approach is meaningful to the final conclusions of value.

Petitioner's rental analysis reflects market actions; this is demonstrated in the noted primary and secondary trade areas (Petitioner's Exhibit P-1, p 43); however, Petitioner's application of the concluded rental rates for the three years under appeal is understated. The rental data, industry publication data, and interviews with market participants are relevant for a proper reconciliation. Again, Petitioner has provided sufficient support for the market conditions. Nonetheless, the rental income data for each year is reconciled with the strengths and weaknesses of each rental source. The Tribunal agrees with Petitioner's rental sources, but disagrees with the reasoning for the concluded rents per square foot.

Petitioner analyzed three rental sources. The first source is a mix of comparable leases with a range of $5.00 to $12.00. This mix includes actual and offered leases. Further, there is only one lease occurring in 2008. The majority of this data is offered leases. The second source is the subject's actual averaged leases of $11.27, $11.09, and $11.71 for the three valuation dates, respectively. These averaged lease rates include leases initiated before 2008. Testimony shows that several subject leases have escalation clauses entered into before 2008. The third source is the 4th quarter CoStar rental rates for the subject's primary trade area of $12.19, $9.75, and $9.25. This source is reasonably reflective of the subject market area. Therefore, reasoned and reconciled rental rates per square foot for 2009, 2010, and 2011 are $11.00, $10.00, and $9.00, respectively.

The application of the reasoned rents per square foot results in an opinion of value for each year. Petitioner's potential gross income is $510,180, $463,800, and $417,420. The reimbursement revenue for each year remains at $164,034,

$145,034, and $140,034 to arrive at total potential gross income of $674,214, $608,834, and $557,454. Petitioner's vacancy rates are deducted to arrive at effective gross income of $566,340, $496,200, and $440,389. All of the operating expenses remain the same except for the calculated management fee (4%) from the effective gross income. After total operating expenses of $207,558, $185,753, and $178,520 are deducted, the result is operating income of $358,782, $310,447, and $261,869. Lastly, Petitioner's NOI is divided by capitalization rates of 10.25% 11.00%, and 10.25%. The concluded opinions of value from the income approach are $3,500,000, $2,822,000, and $2,555,000, respectively.

Petitioner has developed and communicated a sales comparison approach based on four retail strip center sales. Sale 1 (Pinewood Plaza, Clinton Township) is a significantly smaller strip center that sold in January, 2007. Sale 2 (35700 Warren Road, Westland) was a deed in lieu of foreclosure. Sale 3 (18600 Fenkell Street, Detroit) was a distressed sale. Sale 4 (Canton Center Crossing, Canton) was a bank-ordered sale. Petitioner's use of the same four sales for all three years indicates a limitation of this approach. Therefore, this approach does not serve as a primary indicator of value.

Respondent's valuation expert developed the sales comparison approach to value. As part of his analysis, Mr. Neill analyzed four comparable sales in a grid format. All four sales occurred between April, 2007, and June, 2009. Respondent does not analyze any sales between 2009 and 2011. All of the sales are adjusted downward except for sale 3 (35103 Grand River Avenue) in the 12-31-2008 grid and sale 4 (41563 Ten Mile Road) in the 12-31-2009 and 12-31-2010 adjustment grids. Sales 3 and 4 have zero net adjustments those particular years.

Mr. Neill's sales comparison approach lacks clarity and consistency. Sale 1 depicts a photograph with empty suites, but the description of this strip center indicates an 86% occupancy. Sale 2 is a newer building with more anchor tenants (including a Secretary of State branch office). Sale 3 has a strong corner influence at Grand River Avenue and Drake Road. Mr. Neill admitted that Sale 3 is a strategic corner location and that the property was purchased by Walgreen's at a substantial premium. (TR, Vol 3, pp 170-171) Sale 3 has an unadjusted price per square foot of $129.50. Mr. Neill's reasoning for the lack of any location adjustments is clearly unsupported with the acknowledgement of Sale 3. Further, the market conditions adjustment is not understandable. Mr. Neill contends that adjustments for less than twelve months are unwarranted and unsupported. He also believes market conditions flattened out in 2009. The varied market conditions adjustments for each of the three years exude discretionary inclinations as opposed to the actions of market participants. For example, Sale 3 (in the 2010 valuation) was adjusted downward 10% for the difference of 23 months. Sale 4 (in the 2011 valuation) was adjusted downward 20% for the difference of 24 months. Lastly, the range of adjusted prices per square foot ($53.40 to $129.50) is broader than the initial unadjusted prices per square foot of $65.93 to $129.50. These indicated ranges diminish the application of Respondent's adjustment process. Larger ranges do not necessarily signify an appraiser's adequate study of a market's reaction to comparable and competitive properties. Moreover, Respondent's concluded values from the sales comparison approach are $90.00, $75.00, and $70.00 per square feet. This decline in value contradicts other key analyses with Mr. Neill's report. Respondent's reasoning is not meaningful and is misleading. Therefore, Respondent's sales comparison approach is given no weight or credibility in the final conclusions of value.

Respondent's valuation expert develops an income approach to value. The initial analysis focused on a CoStar market surveys. For each year, approximately 400 retail properties were studied in terms of rentable building area, vacant square footage, vacancy percentage, and average lease rate (Respondent's Exhibit R-1, p 77) On cross-examination, Mr. Neill admitted that the referenced data is not based on "historical leases" but is based on offered lease rates. Mr. Neill then admitted he is inexperienced with running the CoStar analytics data.

Respondent's appraisal report did not disclose any rental data to arrive at its rent conclusions. Mr. Neill states, "I talked to brokers and/or owners about their range of market rent, their ranges of vacancy, but most of them didn't have new leases. But you're right, I didn't identify in this summary appraisal any leases, specific leases." (TR, Vol 3, p 121) Mr. Neill did consider rental data in southeast Michigan. This information was contained in his work file (Petitioner's Exhibit P-19) This information was testified to by Mr. Neill, but only increases the confusion of asking rents, actual rents, and estimated rents. Portions of his work file showed asking rents of several strip centers that were below the rental conclusions.

Mr. Neill did not account for the subject's lease escalations that were negotiated before the change in market conditions. The analysis of original lease rates without any adjustments to the renegotiated lease rates is problematic. Respondent claims that the subject actual rents are within the range of market rents, but the majority of subject leases were initiated prior to 2008. Mr. Neill admits the result is the overstatement of the rental rates for the subject property. (TR, Vol 3, p 105) Next, Mr. Neill adds more tenancy into the income analysis than what is actually leased. Simply, a potential gross income is derived from a 100% occupancy of the subject property. In this instance, Respondent relies on Petitioner's rents to back into a rental rate per square foot then adds tenancy of 3,268 square feet and 5,137 square feet to the last two tax years. Respondent admits that this assumption overstates the potential gross income. (TR, Vol 3, p 88) Lastly, Mr. Neill accounts for an ATM kiosk on the subject property in the form of rental income. This does not include an analysis of the kiosk on a square foot basis. This results in an overstatement of 3% of the rental rate for the subject. He admitted that the ATM income should have been treated separately from the strip center rents. (TR, Vol 3, pp 94, 124-125) Overall, Respondent's income approach is unpersuasive. Therefore, Respondent's income approach is given no weight or credibility in the final conclusions of value.

Respondent's elements of analysis in the sales comparison and income approaches do not result in a logical application of data. The sales comparison values decline for the three years under appeal. In contrast, Respondent's rental rates, vacancy rates, and capitalization rates increase. The culmination of these analytical elements creates an unclear picture. (TR, Vol 3, pp 97-98) Mr. Neill's final reconciliation acknowledges the market conditions in relation to the income approach:

> The income approach is the most reliable for evaluating investment property like the subject. The sales comparison approach was developed as a supportive technique, but the results represent distressed conditions. Most owners of retail properties breaking even or producing positive cash flows are choosing to hold these properties for an improving economy and a return of value. (Respondent's Exhibit R-1, p 95)

The subject property is a tenant-occupied building. The property has a history of an income stream. In other words, the subject is not an owner-occupied property. This is validated by both parties' analysis of the subject property in a fee simple interest subject to existing leases at market rents. Therefore, the sales comparison approach is not the primary indicator of value for the years under appeal. The primary focus is given to the income approach to value.

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

JUDGMENT

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

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the assessed and taxable values in the amounts as finally shown in the "Final Values" section of this Opinion and Judgment, subject to the processes of equalization, within 20 days of the entry of this Opinion and Judgment. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

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

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

MICHIGAN TAX TRIBUNAL

Entered: May 29, 2012 By: Marcus L. Abood