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

Meritax, LLC,
as Agent for CVS #8024-02,
Petitioner,

v — MTT Docket No. 425425

City of Richmond,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith, III

OPINION AND JUDGMENT

I. INTRODUCTION

Petitioner, Meritax, LLC as Agent for CVS #8024-02, through its amended Petition in the above-captioned case, is appealing the ad valorem property tax assessment levied by Respondent, City of Richmond, for the 2011 and 2012 tax years. A hearing was held in the matter on September 10, 2012. Peter Ellenson and Fred Gordon of the Law Offices of Fred Gordon, PC, appeared on behalf of Petitioner. Heidi Sharp, attorney at Burgess & Sharp, PLLC, appeared on behalf of Respondent. Joseph L. Torzewski, MAI, was Petitioner's valuation witness. Michael F. Kurschat, MAI,[1] was Respondent's valuation witness, together with Respondent's assessing officer, Lynne Houston.

[1] Also holds ASA & MSF designations.

II. SUMMARY OF JUDGMENT

The property's TCV, SEV, and TV as established by the Board of Review for the tax years at issue are as follows:

Parcel Number: 50-07-06-01-451-054

Year	TCV	SEV	TV
2011	$2,176,600	$1,088,300	$1,088,300
2012	$2,177,200	$1,088,600	$1,088,600

The property's TCV, SEV, and TV as established by the Tribunal for the tax years at issue shall be as follows:

Parcel Number: 50-07-06-01-451-054

Year	TCV	SEV	TV
2011	$1,069,360	$534,680	$534,680
2012	$1,002,524	$501,262	$501,262

III. GENERAL PROPERTY DESCRIPTION

The subject property, commonly known as CVS Pharmacy, consists of a 1.22-acre parcel of property located at 67181 Main Street, City of Richmond, Macomb County, Michigan. It is classified 201-Commercial, zoned B-2, General Business District, and improved with a free-standing, single-tenant commercial building originally constructed as a build-to-suit in 2009 for CVS. The building has a total gross area of 13,367 square feet. The property is leased 100% to CVS pursuant to a sale-leaseback agreement.

IV. SUMMARY OF PETITIONER'S CASE

Petitioner contends that the subject property is assessed in excess of 50% of its true cash value. Petitioner's contentions of TCV, SEV and TV are as follows:

Parcel Number: 50-07-06-01-451-054

Year	TCV	SEV	TV
2011	$1,100,000	$550,000	$550,000
2012	$1,000,000	$500,000	$500,000

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

P-1: Appraisal Report prepared by Joseph L. Torzewski, MAI.
P-2: Appraisal Report Back Up File prepared by Joseph L. Torzewski, MAI.

Petitioner presented testimony from its appraiser, Joseph L. Torzewski, MAI. Based on his experience and training, the Tribunal accepted Mr. Torzewski as an expert in the valuation of real property. Mr. Torzewski prepared and communicated an appraisal of the subject property. The appraisal sets forth both a sales comparison and income analysis for each of the tax years at issue. The cost approach was considered but not developed for reasons explained throughout the course of the trial, which will be explored in greater detail below.

Mr. Torzewski testified that he appraised the fee simple interest of the subject property, which represents “absolute ownership that's unencumbered by any leases [or] any other interest.” TR pp. 20-21. He concluded the highest and best use of the property as improved to be a continuation of its current use as a commercial retail building, which is different than the more specific business use as a CVS Pharmacy. Accordingly, the property was valued as vacant and available at the time of sale. Mr. Torzewski explained that the modern pharmacy market is a very unique market. Retailers in this area "have a very specific [recognized] template that they use….Most often it's the same all over the country." TR p. 28. With respect to CVS properties in particular:

> [I]t's essentially a rectangle of a building with a drive-through, and then they have a pharmacy set in the back of the building. They have a storage/warehouse area with a loading dock, and then they have the front retail area. A majority of the building is actually just open space. It's a retail open space area. TR p. 28.

Mr. Torzewski indicated that once these types of properties are developed and construction is complete, they are generally sold in sale leaseback or leased fee transactions. He explained:

> [T]hey'll take a look at the entire construction costs, all the costs involved with developing that one particular site. It'll be land procurement, it'll be all the stuff that went into procuring the site including all the costs of the 10 to 15 people that are looking at the 10 to 15 sites. And up front it's the entrepreneurial incentive that's involved with the preferred developer. They actually have a fee that -- it's a developer fee that gets charged, and that goes right into the pool. Most often the developer isn't the actual construction company that's doing the construction of the property, so there's the incentive involved with the construction company on top of that. There is all the time for the regional managers that goes into looking at all the different sites and looking and researching and in making that decision. Any cost that's involved with getting into a singular market is all rolled into the one particular building that ends up getting built. So it's not even like a regular retail building where you're looking at just a specific site and looking at building that building. There are several other additional costs on top of the normal soft costs that gets rolled into these construction costs. And then what they do is they come up with a total tally of what it costs to develop this one particular site, and they will generally package that with several other new facilities that they've built throughout the country, and they'll sell

> that portfolio properties to a REIT or to a financial institution on either sale leaseback or -- TR pp. 30-31.

The purchase price paid in such transactions is based largely on the lease rate that the retailer is prepared to pay given the total of the costs involved. Accordingly, the sales prices reflect only the lease in place. “And a lot of times it's based on the remaining term. So a newer building with a full lease in place with the full lease rate will…have a higher value. A lease with only ten years left, you know, you'll see the property sells for significantly less.” TR p. 39.

SALES COMPARISON APPROACH

Mr. Torzewski’s sales comparison analysis examines five sales of both free-standing and multi-tenant commercial properties for each of the tax years at issue. Write-ups and photographs of each comparable are included in the appraisal report. A summary of the properties is as follows:

Sale #	1	2	3	4	5
Location	New Baltimore	Fort Gratiot	Farmington Hills	Madison Heights	Sterling Heights
Sale Date	Dec-11	Oct-11	Feb-10	Jun-09	Apr-09
Property Type	Free-standing	Free-standing	Multi-Tenant	Free-standing	Free-standing
Year Built	1976	2003	1972	1984	1976
Rentable Area (SF)	3,182	9,460	27,620	7,041	5,489
Land Area (SF)	14,810	79,715	115,870	59,677	36,155
Sale Price	$185,000	$340,000	$2,600,000	$650,000	$500,000
SP/SF	$58.14	$35.94	$94.13	$92.32	$91.09
Adj SP/SF	$61.05	$44.85	$94.49	$80.86	

(2011) (2012)	$58.14	$42.70	$89.55	$76.47	$79.09 $74.77

The comparable sales data indicates differences in various elements of comparison, with the two biggest factors being building size and condition. All five comparables were adjusted for each of these elements, as well as for the difference in market conditions between the dates of sale and the relevant valuation date. Additionally, an upward adjustment was made to Comparable 2 for its inferior location, while downward adjustments were made to Comparables 3, 4, and 5 for their superior locations. After adjustments, Mr. Torzewski concluded to a market value of $75/square foot for the 2011 tax year, which resulted in a final value determination of $1,000,000 for the subject property. A similar analysis utilizing the same comparables with additional adjustments to reflect the change in market conditions was prepared for the 2012 tax year. This analysis resulted in a final value of $70/square foot or $900,000.

INCOME APPROACH

Mr. Torzewski's income approach is based on a direct capitalization methodology. A comparable survey of five commercial leases was presented. Write-ups and photographs of each comparable are included in the appraisal report. A summary of the properties is as follows:

Lease#	1	2	3	4	5
Location	Marysville	Chesterfield Twp	Shelby Twp	Chesterfield Twp	Shelby Twp
Lease Date	Oct-11	Jun-11	Jul-10	Mar-10	Nov-09
Year Built	1987	2007	1997	1995	1971
Building Area (SF)	70,084	10,000	63,680	114,459	12,000
Suite Size (SF)	10,220	4,004	4,000	20,000	7,000
Lease Length	N/A	4.6 Years	5 Years	5 Years	10 Years
Rent/SF	$6.58	$14.99	$12.00	$8.95	$11.00
Terms	NNN	NNN	Gross	NNN	NNN
Adj Rent/SF (2011) (2012)	$8.89 $8.46	$13.10 $12.43	$7.80 $7.40	$10.31 $9.77	$10.88 $10.30

As with the comparable sales data, differences in various elements of comparison are indicated for the lease comparables, with the two biggest factors being size[2] and condition. After adjustments, Mr. Torzewski concluded to a market rent of $11/square foot for the 2011 tax year, which resulted in a total potential rental income of $147,037 for the subject property. Based on a review of local market data, Mr. Torzewski determined a 15%[3] stabilized vacancy rate and 1% credit loss to be appropriate, the application of which resulted in a net rental income of $123,511. Expense reimbursements in the amount of $36,492 were

[2]Individual tenant spaces are considered, not gross building area.
[3]Corrected at the hearing from the original 10% utilized in admitted appraisal report. Mr. Torzewski testified that "this was a typo….from a different report that was linked-in incorrectly….[U]nder 'Market Reports'…for Richmond, it should read…83%, 79.7%, 84.1% and 85.2%. And the concluded stabilized occupancy should actually be 85%. With a…vacancy factor of 15%." TR p. 76. Mr. Torzewski indicated that this did not change his income calculations because "it was [only] wrong in the chart...the analysis is correct." TR pp. 80-81.

added to arrive at an effective gross income of $160,003. Operating expenses of $51,180 were then deducted and resulted in a net operating income of $108,823. A base capitalization rate of 8.5% was derived from three separate sources, including capitalization rate comparables, band of investment techniques, and investment surveys. This rate was then loaded with a tax capitalization factor for a final tax-adjusted capitalization rate of 8.91%.[4] After capitalization, Mr. Torzewski concluded to a true cash value of $1,200,000[5] for the 2011 tax year. As with the foregoing sales comparison approach, a similar analysis utilizing the same lease comparables with additional adjustments for market conditions was prepared for the 2012 tax year. This analysis resulted in a final true cash value indication of $1,160,000[6].

RECONCILIATION

After considering both the sales comparison and income approaches to value, Mr. Torzewski determined that the sales comparison approach yielded the most reliable indicator of value, and as such should be given the most weight in his

---

[4]Corrected at the hearing from the original 11.23% utilized in admitted appraisal report. Mr. Torzewski testified that "you have the millage rate…which is 0.0547…and then, since it's taxed at 50%, it's given a 50% [] applied which gets to 2.73% adjustment. However, there should also be another line in there where that's being multiplied by the vacancy factor which is 15%. So it would be 2.73% times 0.15, and that would equal 0.4095 or 0.41%. And that will be added then to the market capitalization rate, so you have a tax adjusted capitalization rate of 8.91%." TR pp.79-80.

[5]Revised at the hearing from the original $1,000,000 indicated by the admitted appraisal report based upon the corrected tax-adjusted capitalization rate. TR pp. 20, 82.

[6]Revised at the hearing from the original $900,000 indicated by the admitted appraisal report based upon the corrected tax-adjusted capitalization rate. TR pp. 20, 82.

final value determinations. Reconciling the values indicated by these approaches, Mr. Torzewski concluded to a final value indication of $1,100,000[7] for the subject property for the 2011 tax year. Likewise in 2012, Mr. Torzewski reconciled the sales and income approaches to value, which resulted in a final value indication of $1,000,000.[8]

V. SUMMARY OF RESPONDENT'S CASE

Respondent contends that the subject property is not assessed in excess of 50% of its true cash value. Respondent's contentions of TCV, SEV, and TV are as follows:

Parcel Number: 50-07-06-01-451-054

Year	TCV	SEV	TV
2011	2,630,000	1,315,000	1,088,300
2012	2,177,200	1,088,600	1,088,600

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

R-1: 2011 Parcel Record Card for the subject property.
R-2: 2012 Parcel Record Card for the subject property.
R-4: Appraisal Report Prepared by Michael F. Kurschat, MAI.

Respondent presented testimony from its assessing officer, Lynne Houston. Based upon her experience and training, the Tribunal accepted Ms. Houston as a

[7] Revised at the hearing from the original $1,000,000 indicated by the admitted appraisal report based upon corrections to the income approach to value. TR pp. 20, 83.
[8] Revised at the hearing from the original $9,000,000 indicated by the admitted appraisal report based upon corrections to the income approach to value. TR pp. 20, 83.

Level III expert in assessing real and personal property. Ms. Houston prepared and communicated parcel record cards for the subject property for each of the tax years at issue, which evidence Respondent's cost less depreciation approach to value, as set forth and mandated by the State Tax Commission.

Respondent also presented testimony from its appraiser, Michael F. Kurschat, MAI. Based on his experience and training, the Tribunal accepted Mr. Kurschat as an expert in the valuation of real property. Mr. Kurschat developed and communicated an appraisal of the subject property. The appraisal sets forth a cost, sales comparison, and income analysis for the 2011 tax year.

Mr. Kurschat testified that he appraised the fee simple interest of the subject property, specifically excluding the lease. TR p. 160. He concluded that the highest and best use of the property as improved to be continuation of its current use as a pharmacy or drugstore. He explained:

> In concluding the highest and best use of the property, we have to conclude the most likely use of the property, what's the most…likely profitable use of the property. And this is a pharmacy-type building. It has characteristics that are specific to pharmacy-type buildings. There's a market for pharmacy-type buildings. There's a huge demand for pharmacy-type buildings. We see there are three major drugstore chains, and they develop these type of modern pharmacy-type buildings all the time. They're built new, they're leased, and they're commonly leased to pharmacy tenants. TR pp. 154-155.

COST APPROACH

Mr. Kurschat's cost approach does not recognize any functional or economic obsolescence. He explained that such factors were inapplicable to the subject property, and as such, consideration of the same was unnecessary:

> [P]harmacy chains…have and continue to develop new sites. And as of the date of value, they had been developing new sites during that entire time. It's not like the shopping centers where they've built and now they're stuck with these huge vacancies, they don't have anyone to fill them….They're pharmacies, and they're continuing to develop new pharmacies. TR p. 194.

In his analysis, Mr. Kurschat utilized replacement costs (i.e., the cost of creating buildings of equal utility, using newer materials and techniques). To estimate the replacement cost of the subject improvements, he consulted the cost schedules provided by the Marshall Valuation Service for a Class C Good Drug Store,[9] which indicated a Cost per Square Foot of $127.00 for the subject building improvements. These costs resulted in a building value of $1,700,000, to which a site improvement[10] value of $130,000 was added. Mr. Kurschat estimated the effective age of the subject building at one year, and a depreciation rate of 2.5% was deemed appropriate based on the straight-line method and projected building life of approximately 40 years. Land value of $80,000 was then added to the indicated Depreciated Cost of Improvements of $1,780,000.

---

[9] Mr. Kurschat testified that the costs utilized were current as of June 2012. TR p. 192.
[10] Site improvements included 22,900 SF of Paving, 670 SF of Sidewalk, a Double-Sided Digital Sign, and a Landscaping Lump Sum.

To estimate the value of the subject land, Mr. Kurschat utilized the sales comparison approach. His analysis examines five sales of vacant land. Write-ups and photographs of each comparable are included in the submitted appraisal report. The comparable sales data indicates differences in various elements of comparison, with the biggest factor being traffic count. After adjustments, and consideration of the sale of the subject property itself, Mr. Kurschat concluded to a market value of $16/square foot for the 2011 tax year. This resulted in a land value determination of $850,000, which in turn resulted in a final value determination of $2,630,000 for the subject property.

SALES AND INCOME APPROACHES/RECONCILIATION

Respondent's sales comparison and income approaches indicate very similar values for the subject property, both of which are substantially higher than that indicated by its cost approach. Mr. Kurschat concluded that the higher values associated with these approaches reflect entrepreneurial profit or some other business-related value. Because the cost approach is the only methodology that does not recognize or reflect any such value, it effectively was the only one given any weight in his final determination of value. Accordingly, the Tribunal finds only a brief summary of Respondent's submitted income and sales comparison approaches necessary.

Mr. Kurschat's income and sales comparison analyses utilize the same four comparable properties. Write-ups and photographs of each comparable are included in the submitted appraisal report. A summary of the properties is as follows:

Sale/Lease#	1	2	3	4
Location	Algonac	Clarkston	Eastpointe	South Lyon
Date of Sale	Feb-12	Jun-11	Jan-12	Jul-10
SP/SF	$293.94	$362.03	$251.32	$349.53
Rent/SF	$47.49	$30.50	$22.86	$27.53
Year Built	2005	2000	1998	2007
Building Area (SF)	13,013	13,905	15,120	14,820
Land Area (SF)	64,468	118,483	91,476	116,305
Lease Terms	NN	NN	NNN	NNN
Adj SP/SF	$323.33	$380.13	$276.45	$349.53
Adj Rent/SF	$21.96	$30.50	$22.86	$27.53

The income approach reflects lease rates for pharmacies, which are typically based on construction costs plus the cost to acquire the land. After adjustment of the comparables, Mr. Kurschat concluded to a market rent of $26/square foot, which resulted in a total potential rental and net operating income of $347,540 for the subject property. No stabilization or expense adjustments were made, and after capitalization at an overall rate of 8%, Mr. Kurschat concluded to a true cash value of $4,340,000. Mr. Kurschat indicated that once construction is completed and the building is occupied, the properties are commonly sold with the long-term leases in place. His sales comparison approach reflects these types of sales with tenants in place. After adjustments, Mr. Kurschat concluded to a market value of $340/ square foot, which resulted in a final value determination of $4,540,000 for the subject property.

VI. FINDINGS OF FACT

1. The subject property is located at 67181 Main Street, City of Richmond, Macomb County, Michigan. It is situated at a high traffic intersection with adequate parking and lighting.

2. The subject property is identified as Parcel No. 0-07-06-01-451-054 and commonly known as CVS Pharmacy.

3. The subject parcel has a total land area of 1.22 acres. It is improved with a free-standing, single-tenant commercial building originally constructed as a build-to-suit in 2009 for CVS Pharmacy.

4. The subject building is a modern, single story, small-box retail structure. It is rectangular in shape and has a total gross area of 13,367 square feet. It consists of a drive-through pharmacy and storage area in the rear and an open general merchandise area in the front.

5. The subject property is leased 100% to CVS Pharmacy pursuant to a sale-leaseback agreement with its current owner, Woodward Detroit CVS, LLC.

6. The subject property is classified as 201-Commercial and zoned B-2 General Business District. The highest and best use of the property as improved is as a commercial retail store.

7. The parties’ valuation experts were charged with developing and communicating appraisals of the subject property to support their specified contentions of value and assist the Tribunal in a determination of its true cash or fair market value (usual selling price) for the two years under appeal.

8. Respondent’s appraisal sets forth a cost, sales comparison, and income analysis for the 2011 tax year. The cost approach was the only methodology given any weight in Respondent’s final determination of value.

9. In developing his cost approach, Respondent's appraiser consulted the Marshall Valuation Service for a Class C Good Drug Store to determine the replacement cost new of the subject building and site improvements, and then calculated physical depreciation using the straight-line method with a useful life of 40 years. Land value was estimated using the sales comparison approach to value and added to the depreciated cost of improvements. No functional or economic obsolescence was considered.

10. In developing his sales comparison and income approaches, Respondent's appraiser identified and examined a total of four comparable sales, with dates of sale ranging from July 2010 to February 2012. All sales are the result of sale-leaseback or leased fee transactions.

11. Petitioner's appraisal sets forth a sales comparison and income analysis for each of the tax years at issue. The cost approach was considered, but not developed.

12. In developing his sales comparison analyses, Petitioner's appraiser identified and examined a total of five comparable sales, with dates of sale ranging from April 2009 to December 2011. All comparables were vacant and available at the time of sale.

13. Petitioner's appraiser adjusted each comparable sale for real property rights conveyed, financing terms, conditions of sale, expenditures after sale, market conditions, location, building size, condition, quality of construction, land-to-building ratio, and other/economic factors. The appraiser's adjustments are reasonable and supported on the record.

14. From the adjusted sales prices of the selected comparables, Petitioner's appraiser concluded to a market value of $75/SF for the 2011 tax year and $70/SF for the 2012 tax year.

15. Petitioner's sales Comparables 2 and 3 are not reliable indicators of value. Comparable 2 not only lacks a prominent location with access to a main road, but also is subject to a ground lease. Comparable 3 is a multi-tenant commercial property located on a contaminated site.

16. Petitioner's Comparables 1, 4, and 5 are reliable indicators of value. These properties have unadjusted sales prices ranging from $58.14/SF to $92.32/SF and adjusted sales prices ranging from $61.05/SF to $80.86/SF for the 2011

tax year and from $58.14/SF to $76.47/SF for the 2012 tax year. Gross adjustments range from 25% for Comparable 1 to 43.6% for Comparable 5.

17. Petitioner's Comparable 1 is located closest in proximity to the subject property and also sold closest in time to the December 31, 2011, valuation date for the 2012 tax year. As for the 2011 tax year, Comparables 4 and 5 sold closest in time to the relevant valuation date.

18. In developing his income analyses, Petitioner's appraiser identified and examined 20 lease/Sublease listings for drugstores, the asking rent of which ranges between $3/SF and $14/SF. Petitioner's appraiser also identified and examined 12 actual subleases of former drugstore space, the lease rates of which range between $4.50 and $13/SF.

19. In developing his income analyses, Petitioner's appraiser identified and examined a comparable survey of five commercial leases. All comparables are located in multi-tenant commercial buildings. None are occupied by drugstore or pharmaceutical retailers. The comparables have unadjusted lease rates ranging between $6.58/SF to $14.99/SF.

20. Petitioner's appraiser adjusted each comparable lease for expense reimbursement terms, conditions of lease, market conditions, location, tenant size, condition, quality of construction, and other factors/lease terms. With the exception of the negative 10% adjustment made to Comparable 5 for tenant size, the appraiser's adjustments are reasonable and supported on the record.

21. From the adjusted lease of the selected comparables, which range from $7.80/SF to $13.10/SF for the 2011 tax year and $7.40/SF to $12.43/SF for the 2012 tax year, Petitioner's appraiser concluded to market rents of $11/SF and $10.50, respectively.

22. Petitioner's appraiser concluded to a 15% stabilized vacancy rate, 1% credit loss, and a base capitalization rate of 8.5%. When loaded with Petitioner's tax capitalization factor, the result is a final tax-adjusted capitalization rate of 8.91% for both the 2011 and 2012 tax years.

VII. 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 defined "true cash value" as "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 which could be obtained for the property at private sale, and not at forced or auction sale." See MCL 211.27(1). The Michigan Supreme Court, in *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450; 221 NW2d 588 (1974), held that "true cash value" is synonymous with "fair market value."

The Tribunal is charged with finding a property's true cash value to determine the property's lawful assessment. *Alhi Development Co v Orion Twp*, 110, Mich App 764, 767; 314 NW2d 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. Fundamental to the determination of a property's true cash value is the concept of "highest and best use." It recognizes that the use to which a prospective buyer would put the property will influence the price which the buyer would be willing to pay. *Rose Bldg Co v Independence Twp*, 436 Mich 620, 623; 426 NW2d 325 (1990).

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735(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).

MCL 205.737 provides that "[t]he petitioner has the burden of proof in establishing the property's true cash value." The Michigan Court of Appeals has held that "[t]his 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 Corp v City of Warren*, 193 Mich App 348, 355-356; 483 NW2d 416 (1992). Nonetheless, the tribunal *must* make an independent determination of true cash value. *Id* at 355. The Tribunal is also obligated to select the valuation methodology that is accurate and bears a reasonable relation to the property's true cash value. *Safran Printing Co v Detroit,* 88 Mich App 376; 276 NW2d 602 (1979), lv den 411 Mich 880 (1981). The Tribunal is not, however, "bound to accept either of the parties' theories of valuation. It may accept one theory and reject the other, it may reject both theories, or…utilize a combination of both in arriving at its determination." *Jones, supra* at 356. Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject property would sell. *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473; 473 NW2d 636 (1991).

VIII. CONCLUSIONS OF LAW

The parties' valuation experts were charged with developing and communicating appraisals of the subject property to assist the Tribunal in a determination of its true cash or fair market value (usual selling price) for the two years under appeal. True cash value (usual selling price) is properly determined using one of three widely accepted appraisal methods: cost less depreciation, sales comparison, and capitalization of income. See *Meadowlanes Limited Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 484-485; 473 NW2d 636 (1991); *Antisdale v City of Galesburg*, 420 Mich 265, at 276-277, n 1; 362 NW2d 632 (1984). Petitioner's appraiser, Mr. Torzewski, relies primarily on the sales comparison approach, while Mr. Kurschat relies primarily on the cost approach to support Respondent's specified contentions of value. Ultimately the parties' experts, through their respective methodologies, conclude to widely disparate estimates of value for the subject property.

The Tribunal, having considered all of the documentary evidence and testimony submitted by the parties, and based upon that portion of the evidence that the Tribunal finds believable and credible upon the record before it, concludes that neither party's valuation of the subject property using the various approaches offers a fully supportable indicator of the true cash value (usual selling price) of the subject property in fee simple as of the two valuation dates. There is, however, sufficient evidence to allow the Tribunal to make an independent determination of true cash value (usual selling price) for each of the tax years at issue in this appeal. The Tribunal concludes that the valuation methodology that is most useful in assisting it in determining the true cash value (usual selling price) of the subject property is the sales comparison approach. Based on its experience in hearing cases of this nature and the fact that Michigan is a market (usual selling price) state, the Tribunal believes that this approach is the best indicator of value for properties like the subject. For the reasons set forth below, the Tribunal will, as a starting point, consider Petitioner's sales comparison analyses and the adjustments contained therein, as supported by its income capitalization analyses.

The Tribunal does not believe Respondent's cost approach assists it in arriving at its ultimate determination of value for the reason that it fails to consider obsolescence factors. In that regard, Petitioner's appraiser successfully established that pharmacy retailers are not motivated by the resale value of the stores and that secondary uses of such properties, much like big-box stores, result in a lower market value than the original construction cost. This is because, like big-box stores, modern pharmacies and drugstores are specifically constructed to meet the design, location, and physical requirements of one major retailer's business needs. The build-to-suit nature of these properties creates a certain degree of functional and economic obsolescence. Further, the Tribunal believes that it is extremely difficult to determine both depreciation and obsolescence using the cost approach, and the market itself takes these items into consideration in the sales comparison approach to value. As such, and inasmuch as it also fails to consider time-relevant costs, the Tribunal will give no weight to Respondent's cost approach in making its determination of value.

The Tribunal also accepts Respondent's expert's conclusion that its sales and income approaches do not provide reliable indications of value for the reason that both reflect entrepreneurial profit or some other use-related value. In that regard, Respondent's selected comparables were all sales of properties subject to leases in place, otherwise known as sale-leaseback or leased fee transactions. Payments in such transactions are not predicated on market rent, however, but rather upon the amount the business can afford to pay based on its operations. Accordingly, sale-leasebacks are not true sales, but are more in the nature of a financing tool similar to a mortgage. In utilizing these comparables to develop its income and sales comparison approaches to value, Respondent distorts in an upward fashion the value of the subject property and also demonstrates a serious lack of understanding of basic appraisal process. As such, its value conclusions using these approaches will similarly be given no weight or consideration in the Tribunal's final value determinations.

Although Respondent purports to value the subject property in fee simple, the Tribunal concludes, in light of the above, that it is instead valuing the leased fee interest of the same. Respondent's appraiser determined the highest and best use of the property as improved to be its current use as a pharmacy or drugstore and valued it as such in all three of its approaches to value. The subject property was built for CVS as a pharmacy and continues to be used as such. The Tribunal is not looking for the value of a CVS Pharmacy, however, but rather the value of a small-box commercial retail building. Petitioner's selected comparables were vacant and available at the time of sale and the Tribunal finds that these sales best represent the fee simple interest in the subject property.

Notwithstanding the above, the testimony provided by Mr. Kurschat on Petitioner's sales Comparables 2 and 3 establishes some fairly significant value-affecting characteristics and, in light of that fact, the Tribunal is not persuaded that the same are reliable indicators of value. The Tribunal is satisfied, however, that Petitioner's sales Comparables 1, 4, and 5 are sufficiently similar to the subject to properly be considered comparable. The Tribunal is further satisfied, based upon the testimony and evidence provided, that the properties had reasonable market exposure, subject to normal market conditions and pressures, so as to provide reliable indications of value. Moreover, Mr. Torzewski's adjustments are both reasonable and supported on the record. Consequently, these sales provide the Tribunal the most assistance in determining the true cash value (usual selling price) of the subject property.

Given its agreement with Mr. Torzewski's stated reasoning, the Tribunal concludes that Comparables 4 and 5 should be given the most weight in the final determination of value for the 2011 tax year. The Tribunal concludes further that the adjusted sales prices of these comparables, with appropriate weight and consideration given thereto, support a market value of $80/square foot for the 2011 tax year, which results in a true cash value of $1,069,360. As for the 2012 tax year, the Tribunal concludes that the adjusted sales prices support a market value of $75/SF, which results in a true cash value of $1,002,524.

Although Petitioner's sales comparison analysis is found to provide the most reliable indicator of value, Mr. Torzewski was able to prove that build-to-suit leases are above market rent, and through the use of lease and sublease listings, as well as actual leasings of former drugstore space throughout Michigan, was able to show the decline in value for the secondary user. Notwithstanding that all of

Petitioner's lease comparables are located in multi-tenant commercial buildings, and none are occupied by pharmaceutical retailers, the Tribunal is satisfied that they are sufficiently similar to the subject property to be properly considered both comparable and reliable indicators of value. Further, with the exception of the negative 10% adjustment made to Comparable 5 for tenant size, Mr. Torzewski's adjustments are reasonable and supported on the record. Accordingly, the Tribunal concludes that Petitioner's income analyses sufficiently support Petitioner's contention that the subject property is assessed in excess of 50% of its true cash value, as well as the Tribunal's final value conclusions via the sales comparison approach.

IX. JUDGMENT

IT IS ORDERED that the subject property's true cash, assessed, and taxable values for the 2011 and 2012 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 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 and prior to January 1, 2013, at the rate of 4.25%.

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

MICHIGAN TAX TRIBUNAL

Entered: 10/18/12 By: Kimbal R. Smith III