

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL
PROPERTY TAX APPEAL

Cord LLC,
Petitioner,

v

MTT Docket No. 338837

Township of Flint,
Respondent.

Tribunal Judge Presiding
Rachel J. Asbury

FINAL OPINION AND JUDGMENT

INTRODUCTION

A hearing was held in the above-captioned case on September 5, 2009. Petitioner was represented by Matthew D. Scholz and David B. Marmon. Respondent was represented by Peter E. Goodstein.

BACKGROUND

Petitioner appeals Respondent's ad valorem assessment of parcel no. 07-16-300-087, commercial real property owned by Petitioner, for the 2007, 2008, and 2009 tax years. The subject property is a gas station with convenience store, and a fast food restaurant located at 4314 Corunna Road, Flint Township. The Wendy's restaurant is owner-occupied and the gas station is tenant occupied. The subject property is located approximately 20 minutes from downtown Flint.

The subject property was built in 1998 and is located on 3.82 acres. It is a Class C Average steel frame building with reinforced concrete foundation. The subject consists of a total of 9,544 square feet distributed as follows:

Convenience store:	3,909/SF
Wendy's	3,200/SF

Car wash 2,435/SF

Property improvements include:

- One canopy, 7,638/SF with lighting, support columns, drainage, and downspouts
- Three underground storage tanks installed in 1999, 12,000 gallon capacity
- Leak detectors, and spill containers
- Eight gasoline dual-hoes dispensers with card-readers, auto nozzles, breakaway, hoses, and splash guards
- Coolers for product display in the convenience store and food storage in the restaurant
- Cash register, shelving, cabinets, other personal property

The assessment, as confirmed by Respondent’s Board of Review, of true cash value, state equalized value, and taxable value, are:

Parcel Number	Year	TCV	SEV	TV
07-16-300-087	2007	\$ 3,270,600	\$ 1,635,300	\$ 1,091,310
07-16-300-087	2008	\$ 3,238,200	\$ 1,619,100	\$ 1,116,410
07-16-300-087	2009	\$ 3,126,400	\$ 1,563,200	\$ 1,165,530

Respondent’s contentions of true cash value, state equalized value, and taxable value, are:

Parcel Number	Year	TCV	SEV	TV
07-16-300-087	2007	\$ 2,971,779	\$ 1,485,890	\$ 1,091,310
07-16-300-087	2008	\$ 2,924,812	\$ 1,462,406	\$ 1,116,410
07-16-300-087	2009	\$ 2,811,641	\$ 1,405,820	\$ 1,165,530

Petitioner’s contentions¹ of the property’s true cash value, state equalized value, and taxable value are:

Parcel Number	Year	TCV	SEV	Petitioner’s TV
07-16-300-087	2007	\$ 1,680,000	\$ 840,000	\$ 840,000
07-16-300-087	2008	\$ 1,680,000	\$ 840,000	\$ 840,000
07-16-300-087	2009	\$ 1,680,000	\$ 840,000	\$ 840,000

PETITIONER’S CONTENTIONS

Petitioner offered the following proposed exhibit:

- P-1 Petitioner’s valuation disclosure dated June 24, 2006, valuation dates of December 31, 2006 and December 31, 2007

¹ Petitioner did not submit an appraisal or valuation disclosure with value conclusions for the 2009 tax year. Petitioner chose to “rely on . . . what we had submitted for 2007 and 2008.” Transcript page 5, 19-page 6, 16

Petitioner asserts that the assessment of the subject property is excessive. Petitioner offered the testimony of Jumana Judeh, a licensed appraiser with an MAI designation. Ms. Judeh’s appraisal of the subject property was admitted as Petitioner’s exhibit 1. At the outset of her testimony, Ms. Judeh asked to make a correction to page 76 of her appraisal asking that the phrase “[a]ll the comparables include similar zoning requiring no adjustment” with the statement, “[a]ll the comparables include similar functional utility requiring no adjustments.”²

Ms. Judeh testified that she personally inspected the building, walking the entire interior and exterior of the property, including the car wash. She measured the buildings and took pictures. Ms. Judeh testified that “almost half of the land to the rear is zoned residential and . . . half . . . is zoned commercial.”³ The residential classification limits the use to residential or parking. She determined that the “highest and best use of the property . . . as if vacant, is commercial, with supporting parking . . . And the highest and best use as if improved is the existing improvements, is the existing use.”⁴

Ms. Judeh testified that the subject property consists of two buildings, one containing the convenience store and the Wendy’s restaurant, which share a single entryway and no dividing wall. The car wash is a separate building. Ms. Judeh’s measurements, which she testified are in conflict with Respondent’s are:

Convenience store:	3,909/SF
Wendy’s	3,200/SF
Car wash	2,435/SF

² Transcript page 13, ll 10-13

³ Transcript page 14, l 24-page 15, l 1

⁴ Transcript page 15, l 22-page 16, l 1

Ms. Judeh testified that she considered the cost approach to be unreliable for the tax years at issue as the improvements are existing and her opinion that economic factors indicated that this approach would not be reliable. She did, however, offer a conclusion of value based upon a cost approach using Marshall & Swift to calculate replacement cost separately for the convenience store, Wendy's, and car wash. She applied a total accrued depreciation rate of 11%, the derivation of which was unclear, and separately determined the depreciated value of the "trade improvements, which in this case were the underground storage tanks and the canopy."⁵ The values she used reflected her adjustment of the 2008 Marshall & Swift indices to reflect back to 2006.

Ms. Judeh used seven comparables to establish her land value, four of which were in the Township of Flint, and determined a reconciled value of \$2/SF. She testified that the land sales she used were sufficiently comparable so that no adjustments needed to be made in her determination of the applicable price per square foot. Ms. Judeh's conclusion of estimated market value based on the cost approach was \$1,580,000 as of December 31, 2006.

For sales comparison approach, Ms. Judeh chose seven comparable sales all within Genesee County with a goal of choosing properties that were gas station/mini marts that included an amenity such as Wendy's. Comparables 2, 3, and 7 are gas station/mini marts with car washes and comparable 4 is a gas station/mini mart with a fast food establishment. Ms. Judeh testified that she made adjustments for building size, minimal adjustments for effective age, and major adjustments for lack of a related fast food establishment or a car wash. She made no adjustments

⁵ Transcript page 21, ll 5-6

for land to building ratio as she “took the position that land is much more available in the area and I did not feel that any excess land warranted an adjustment based on the sale price.”⁶

Ms. Judeh testified that it was her opinion that the market for a gas station/convenience store, fast food, car wash combination was different than the market for each of those types of businesses individually. To run “an operation similar to the subject property requires tremendous management skills”⁷ and running a gas station is very different than running a car wash. Ms. Judeh determined an adjusted median price per square foot of \$170 and stated that she relied “on the adjusted median as the best indicator of an estimated market value.”⁸ Her estimated market value based on the sales comparison approach was \$1,620,000.

Ms. Judeh performed an income capitalization approach to value. She testified that based on an extensive project she had done, a valuation of 15 gas stations, she had accumulated extensive applicable data directly from lessors and tenants of such entities. Ms. Judeh chose five rent comparables for gasoline stations and five separate comparables for the restaurant. Unlike her sales comparables, three of the rent comparables were located outside of Genesee County. Ms. Judeh testified that the expenses she used were “derived from various discussions with property managers and brokers [and] . . . colleagues that . . . typically lease these gas stations and such facilities.”⁹ She testified that the values she used are “very typical for a triple net lease six percent management fee, six percent leasing commission and a vacancy expense.”¹⁰ She relied

⁶ Transcript page 27, ll 23-25

⁷ Transcript page 28, ll 15-17

⁸ Petitioner’s exhibit page 81

⁹ Transcript page 30, ll 12-16

¹⁰ Transcript page 30, ll 18-20

on various publications, such as Korpacz, for replacement reserve amounts. Her income figures were derived from similar sources of data.

Ms. Judeh testified that her capitalization rate was developed “under two methodologies. . . . the band of investment, based on interest rates, based on a return to equity, based on a loan to value ratio”¹¹ resulting in a rate of 9.77. She tested her conclusion “via the underwriter method,”¹² which indicated that 9.77 was “what the market can bear”¹³ and validated that capitalization rate. Her conclusion of value based on the income capitalization approach was \$1,680,000, as of December 31, 2006.

Ms. Judeh testified that she gave the greatest weight to the income approach “due to the fact that the property has an unusual size, and it's unusually large for the market that it's in. And I felt that the market approach really did not represent the . . . true value.”¹⁴ She considered the values used in her income approach to be very solid as they were obtained directly by her from market participants. She testified that based on her analysis, values did not change from the 2007 tax year to the 2008 tax year and her final conclusion of value was \$1,680,000 for both tax years.

On cross-examination, Respondent showed Ms. Judeh documents¹⁵ related to a sale of her comparables 1 and 2 subsequent to the sale she used in her analysis. Ms. Judeh questioned where and when the documentation was made public. Further, as to the subsequent sale of comparable 2, although conceding that the price she used did not reflect the most recent sale, the price on the

¹¹ Transcript page 31, ll 3-8

¹² Transcript page 31, ll 14-15

¹³ Transcript page 31, ll 13-14

¹⁴ Transcript page 31, l 24-page 32, l 3

¹⁵ Respondent's exhibits 24, 29

“confidential Real Property Statement,”¹⁶ Ms. Judeh testified that the statement was clear that the price was “including inventory and miscellaneous equipment, and probably the car wash equipment,”¹⁷ not solely the real property. Ms. Judeh further stated:

If you're asking me to concede that these sales took place after my grid, yes, I can. . . . but we don't know what the conditions of the sale were and we don't know whether these sales were recorded in a timely fashion. And we don't know if they were available in public record that a typical person would have access to them.¹⁸

Ms. Judeh responded that the language in Respondent's Exhibit B to the Deed¹⁹ that “[n]o part of the property shall be used by the grantee or any other grantee directly or indirectly for an auto service station . . . unless any such use is in connection with the operation of the property as a grantor-branded service station”²⁰ is very typical in the marketplace and “may or may not”²¹ impact value. The same restrictions were contained in the deeds related to sales of Petitioner's sales comparables 5, 6, and 7.²²

Ms. Judeh testified that “having a fast food restaurant and a gasoline/mini mart is very unique in the marketplace”²³ and agreed with Respondent that she did not have any comparables for the fast food portion of her sales analysis.

Ms. Judeh testified that to determine her capitalization rate for her income approach she used comparables in Wayne County. In response to Respondent's inquiry as to why she did not use these as sales comparables, she testified that she did not consider Detroit to be a comparable

¹⁶ Respondent's exhibit 29

¹⁷ Transcript page 41, ll 12-14

¹⁸ Transcript page 41, l 25-page 42, l 7

¹⁹ Respondent's exhibit 25, page 4

²⁰ Transcript page 47, ll 19-24

²¹ Transcript page 49, l 13

²² Respondent's exhibits 26, 27, and 28

²³ Transcript page 52, ll 16-18

market to Flint Township but “if you can find comparables within that submarket it's better that you do so.”²⁴ In reviewing her capitalization rate for her rent comparables, Ms. Judeh testified that using a “different market . . . applied to the subject . . . provides some sort of a benchmark.”²⁵ Ms. Judeh testified that the capitalization rate she used was exactly the same as the capitalization rate for comparable 4, located in Livingston County, which she considered part of the same submarket as the subject.

Respondent questioned Ms. Judeh’s determination of a vacancy rate of 18% with “two percent collection”²⁶ loss which she stated was based on a survey of the immediate area, the results of which were not included in her report.

Ms. Judeh testified that her statement on page 81 of her appraisal,²⁷ “and includes potential leasing fees” under the heading Management Fee, was a mistake and should be removed. The application time for anticipated lease-up should have read 12 months and not 8 months.²⁸ Ms. Judeh allowed \$0.25 per square foot as a reserve account based on her conclusion that it was “inevitable that the roof would have to be changed or the heating and cooling units are in need of replacement.”²⁹ Respondent questioned why, if the agreement between Petitioner and Davison Oil & Gas for the gas station portion of the subject property provided that the lessee “at its sole expense and cost during the continuation of the lease term, make currently such repairs, maintenance, restoration, and replacement . . . to keep . . . the Premises in good condition,” Ms.

²⁴ Transcript page 53, ll 12-14

²⁵ Transcript page 53, ll 22-24

²⁶ Transcript page 57, l 9

²⁷ Petitioner’s exhibit 1, page 91

²⁸ Petitioner’s exhibit 1, page 91

²⁹ Petitioner’s exhibit 1, page 91

Judeh included a reserve account expense. Ms. Judeh explained that “despite the lease . . . it would behoove the landlord to protect himself by putting money aside in case the tenant does not fulfill their obligation.”³⁰

Ms. Judeh testified that she took the information she used to develop her vacant land sale conclusions from public records of the township that were available to her at the time the research was done. She conceded that she did not actually go to the register of deeds office or view actual deeds related to the sales she used. Ms. Judeh testified that she made no distinction between properties that had well water and those with city supplied water. She further conceded that the map included in her appraisal mismarked the subject property.

In response to questioning from Respondent, Ms. Judeh testified that in her cost analysis she used Marshall and Swift “in addition to this writer’s experience in this arena as well as local builders’ information” in her calculations to explain the discrepancies between the car wash and gas station/mini-mart costs quoted in Marshall and Swift. Ms. Judeh did not identify the local builder or how her experience impacted her conclusions. The cost differences were:

	<u>Marshall and Swift</u>	<u>Appraisal</u>
Gas station/mini-mart	\$ 121.75	\$ 112.70
Underground tanks	\$50,025.00	\$32,175.00
Leakage monitor system	\$ 3,856.50	included in tank cost

On re-direct, Ms. Judeh testified that she collected the data in compliance with the requirements of USPAP and she stated that, as to the USPAP requirements, “I actually believe that I go over and above what other appraisers use.”³¹ She further explained that her use of a 40% adjustment of her sales comparables for building size is very typical when dealing with “a building that is

³⁰ Transcript page 65, ll 12-18

³¹ Transcript page 103, ll1-2

ninety-five hundred square feet in a market where a building is typically three thousand square feet.”³²

RESPONDENT’S CONTENTIONS

Respondent offered the following proposed exhibits:

- R-1 Valuation Disclosure in Support of Property Record Card by Respondent 2007/2008
- R-2 Valuation Disclosure in Support of Property Record Card by Respondent 2009 Update
- R-3 Petitioner’s response to Respondent’s first set of Interrogatories and Request for Documents
- R-4 Lease agreement dated May 11, 2000 between Cord LLC and Davison Oil & Gas
- R-5 Deed dated April 15, 2002 for 2518 W Bristol Rd
- R-6 Memorandum of Land Contract dated February 10, 2003 and Deed dated October 12, 2005 for 3021 S Linden Rd
- R-7 Deed in Fulfillment of a Land Contract dated January 30, 2002; Deed dated July 26, 2002 for 3356 Miller Rd
- R-8 Deed dated March 17, 2008 for 4314 Mt Morris
- R-9 Deed dated January 2, 2006 for 3452 Old US 23 and 9930 Legion Dr
- R-10 Deed dated June 7, 2005 and recorded March 24, 2006 for 850 E Main
- R-11 Transfer affidavit for 850 E Main dated June 7, 2005
- R-12 Deed dated October 23, 2006 for 7620 M36
- R-13 Deed dated March 20, 2007 for 3366 Corunna Rd
- R-14 Transfer Affidavit dated March 20, 2007 for 3366 Corunna Rd
- R-15 Deed dated March 5, 2008 for 5100 Corunna Rd
- R-16 Transfer Affidavit dated March 5, 2008 for 5100 Corunna Rd
- R-17 Deed dated September 28, 2006 for 3459 Miller Rd
- R-18 Transfer Affidavit for 3459 Miller Rd dated September 28, 2006
- R-19 Deed dated December 18, 2006 for 1445 W Bristol Rd
- R-20 Transfer Affidavit dated December 18, 2006 for 1445 W Bristol Rd
- R-21 Deed dated July 15, 2005 for 3780 Grand River
- R-22 Deed dated September 20, 2004 for 1382 Burkhart
- R-23 Deed dated January 22, 2008 for 1382 Burkhart
- R-24 Deed dated August 1, 2006 for 2514 S Belsay Rd
- R-25 Deed dated November 1, 2006 for 5520 N. Genesee Rd
- R-26 Deed dated August 15, 2006 for 6010 S. Saginaw
- R-27 Deed dated September 6, 2006 for 1180 S. State St.
- R-28 Deed dated October 24, 2006 for 4141 W. Vienna Rd.
- R-29 Real Property Statement for 8005 Davison Rd – Parcel Number 05-05-300-025 certified date of December 13, 2006
- R-30 Deed dated July 18, 2006 for 8005 Davison Rd

³² Transcript page 103, ll 9-12

- R-31 Valuation Disclosure in Support of Property Record Card by Respondent 2007/2008 Corrected
- R-32 Real Property Statement for 8005 Davison Rd – Parcel Number 05-05-300-025 certified date of May 17, 2006
- R-33 Warranty deed dated June 19, 2006 for 8005 Davison Rd.

All of Respondent's exhibits were admitted without objection. Respondent asserts that "Petitioner's facility is well designed for the purpose for which it is used and that there is a market in Flint Township for the subject at the level it is assessed."³³

Respondent offered the testimony of Mark MacDermaid. Mr. MacDermaid is a Level III assessor and part owner of Landmark Appraisal Company. He testified that he has done "hundreds"³⁴ of appraisals of gas stations and fast food restaurants and is familiar with Flint Township. Mr. MacDermaid testified that he prepared Respondent's valuation disclosure and is not a licensed appraiser. Mr. MacDermaid testified assessments are set "en masse"³⁵ and that for this matter, he looked at the "sale of convenience stores, gas stations and fast food restaurants"³⁶ to verify that the assessment is supported in the marketplace.

Mr. MacDermaid testified that to establish the assessment, "we used a myriad of sales"³⁷ but the sales used in this matter to support his land value were of 4250 Corunna Rd., a September, 2005 sale; 4420 Corunna Rd., a September, 2007 sale; 5020 Corunna Rd., a June, 2003 sale; and 4150 Miller Rd., a February 2007 sale. He further testified that he used a portion of Marshall & Swift

³³ Respondent's prehearing statement

³⁴ Transcript page 110, l 1

³⁵ Transcript page 114, l 3

³⁶ Transcript page 114, ll 11-12

³⁷ Transcript page 116, l 1

“developed by [the head assessor for Flint Township] for use in pricing out paving and land improvements.”³⁸

Mr. MacDermaid testified that his estimate of value based on the cost approach was done by using the Marshall Valuation Service and the State Tax Commission’s Manual, adapted for equalizer software.

Mr. MacDermaid testified that he did not do an income approach or analysis because the fast food restaurant and the gas station sales that he found were “sold to be owner occupied and not income producing properties, though this particular property does have some income. It is partially leased.”³⁹

Mr. MacDermaid testified that he did a “sales analysis.”⁴⁰ Mr. MacDermaid presented⁴¹ a grid that listed sales of “convenience markets that sold gas”⁴² and a separate grid that listed sales of fast food restaurants. Mr. MacDermaid testified that for the gas station/convenience markets he identified sales and determined a price per square foot and a price per gallon of gas for each. Mr. MacDermaid used \$325/SF for the convenience market and the car wash and used \$260/SF to value the fast food portion of the property. To arrive at his conclusion of value, Mr. MacDermaid testified that “we . . . look at them by the gallons. And then from there we see that the assessment doesn't fit in line. We do similar work as anybody in the appraisal, except we don't

³⁸ Transcript page 119, ll 9-11

³⁹ Transcript page 120, ll 13-15

⁴⁰ Transcript page 121, l 19

⁴¹ Respondent’s exhibit

⁴² Transcript page 122, l 3

make adjustment per adjustment. We check to see that the assessment matches what's going on in the marketplace.”⁴³

Mr. MacDermaid reviewed Petitioner’s land sales. Mr. MacDermaid stated that he did not use Petitioner’s land sale 1 and that the transaction represented in the appraisal was of only one of three parcels sold to create this parcel, that the entire new parcel sold for \$536,000. Mr. MacDermaid did not testify as to any separate value of the “very small portion of the property”⁴⁴ represented in Respondent’s appraisal information. Mr. MacDermaid stated he did not use Petitioner’s land sales 2 and 4 because a gas station would not be a permitted use on those parcels, Petitioner’s sales 3 and 6 are too far away, and Petitioner’s sale 5 was in a low traffic area.

Mr. MacDermaid’s determination of true cash value is \$2,971,779 as of December 31, 2006; \$2,924,800 as of December 31, 2007; and \$2,811,641 as of December 31, 2008. Mr. MacDermaid testified that he relied primarily on the cost approach for his value determinations.

On cross-examination, Mr. MacDermaid testified that the vacant land sale comparables he used did not appear anywhere in his valuation disclosure. He further testified that there was no adjustment grid related to the property and that he made no adjustments for time or land size. Mr. MacDermaid testified that the 1.80 cost rate for land improvements was developed by Mr. Hungerford⁴⁵ and that he could not testify as to how Mr. Hungerford determined that rate.

⁴³ Transcript page 123, ll 2-7

⁴⁴ Transcript page 125, ll 21-22

⁴⁵ Transcript page 13, l 19; Mr. Hungerford is the head assessor for Respondent.

Mr. MacDermaid testified that the sale prices used in his grid for his “sales comparison check”⁴⁶ did not distinguish between land values and building values. He further testified that his information came from the county and were based on real property statements so that personal property was not included in the sales information. In response to Petitioner’s questions, Mr. MacDermaid testified that he did make adjustments to the comparables and that they were “not in the report, they’re in my work papers.”⁴⁷ He stated that he did not have his work papers⁴⁸ with him, he did not make any size adjustments⁴⁹, he did not make adjustments based on the time difference between dates of sale and tax years at issue,⁵⁰ did not make adjustments for differences in square footage of properties,⁵¹ and admitted to making no adjustments to his comparable 3 even though it did not include a gas station. Mr. MacDermaid testified that it would be inappropriate to make size adjustments as the subject property includes “three components. It’s not one big empty -- or, one big convenience market.”⁵² Mr. MacDermaid testified that he believed the period covered by his comparable properties, 2002 through 2008, was an appreciating market for commercial properties in Flint Township.

As to his fast food restaurant comparables, Mr. MacDermaid testified that none of the purchasers purchased the business. “Some of them had the same business in them, but is not the owner of the real estate. They did not assume the real estate ownership, so there would have been no business value at all.”⁵³

⁴⁶ Respondent’s exhibit 31-17

⁴⁷ Transcript page 143, l 12

⁴⁸ Transcript page 143, ll 21-23

⁴⁹ Transcript page 143, ll 13-14

⁵⁰ Transcript page 145, ll 1-3, page 146, ll 4-6, page 146 ll 17-20

⁵¹ Transcript page 149, ll 13-15

⁵² Transcript page 150, ll 2-3

⁵³ Transcript page 152, ll 21-24

FINDINGS OF FACT

The Tribunal finds that the subject property is a combination gas station, convenience store, and fast food restaurant located in Flint Township. The Wendy's restaurant is owner-occupied and the gas station/convenience store is tenant occupied. The subject property is located on approximately 3.82 acres with a total of 9,544 square feet distributed between the convenience store, 3,909/SF; the Wendy's, 3,200/SF; and the car wash, 2,435/SF.

Petitioner's appraiser submitted an appraisal that included all three approaches to value. Respondent's assessor submitted a valuation disclosure that included property record cards representing his cost-less-depreciation valuation and what he labeled a sales comparison check. Respondent offered conclusions of value for all three tax years at issue, Petitioner offered conclusions of value only for tax years 2007 and 2008. There is no dispute that the current use is the highest and best use of the subject property. Neither Petitioner nor Respondent utilized, in either their sales approach or income approach, any comparable that included all three elements of the subject property.

Respondent provided two valuation disclosures, one as initially filed and exchanged⁵⁴ and one labeled "corrected."⁵⁵ The Tribunal finds that the values reflected in Respondent's exhibit 1 are the values as originally assessed and affirmed by Respondent's Board of Review, and that the values reflected in Respondent's exhibit 31 are Respondent's contentions of values other than as assessed. Respondent's contentions of value in exhibit 31 reflect reductions in overall percentage good, a reduction in percentage good for land improvements, and a change in percent good for in

⁵⁴ Respondent's exhibit 1

⁵⁵ Respondent's exhibit 31

place items.⁵⁶ In Respondent's original assessment, these percentages were 99% good, even though the buildings and improvements were 6 and 8 years old. The revised percentages were significantly lower: 70% for land improvements, and 91%, 90%, and 89% for overall percentage good for the 2007, 2008, and 2009 tax years, respectively.

Mr. MacDermaid based his cost-less-depreciation value conclusions on the computerized valuation system that relies on Marshall and Swift data and his observation of sales in the same classification as the subject property. Mr. MacDermaid's land value was based on several sales, but he did not include any documentation of those properties or sales in his valuation disclosure or as exhibits.

Ms. Judeh used Marshall & Swift data as well. While the Tribunal finds Ms. Judeh's testimony that some of the values she used for costs of gas station/mini mart values, underground storage tanks, and the dispensers were based on her adjustments for time between the publication of the Marshall & Swift edition that she used, 2008, and the tax years at issue to be credible, the Tribunal finds that she provided no documentation of how she quantified her personal experience and the information she used "from a builder that specializes in building gas stations."⁵⁷ The Tribunal finds that Ms. Judeh provided no explanation of why the value she chose for the double wall fiberglass reinforced plastic finish underground storage tank were the same as the Marshall & Swift value for single wall tanks. Ms. Judeh's explanation that she talked to unnamed local builders without documentation of the information she received, the lack of any documentation of how she determined her tank value, and no separate valuation of the monitoring system,

⁵⁶ Respondent's exhibits 1, 2, and 31, includes car wash, tanks, piping, and the canopy

⁵⁷ Transcript page 96, ll 1-2

provides incomplete information for the Tribunal's consideration of her final conclusions. The Tribunal further finds that Ms. Judah did not credibly explain the lack of any adjustment to the seven vacant land parcels Ms. Judeh used to determine a land value. Thus, the Tribunal finds that her conclusions as to land value are not reliable.

Ms. Judeh's seven comparables properties for her sales comparison approach were all in Genesee County but none included a gas station/mini-mart, car wash, and fast food restaurant. Three had car washes and one had a restaurant. Only one property had comparable square footage. Further, Ms. Judeh made a uniform negative 40% reduction to all the comparable properties for less square footage, regardless of percentage differences ranging from 28% to 50% of the subject's area, and negative 15% adjustment for lack of both a fast food restaurant and car wash. She made no adjustment for the lack of one improvement or the other but testified that the market for each type of establishment is very different.⁵⁸ The Tribunal finds that these adjustments were not adequately or credibly explained or supported.

The Tribunal finds that although Respondent attempted to call into question the sales price data used by Ms. Judeh by showing subsequent sales for higher prices, Respondent's rebuttal documents were nonexistent or not reliable. Some were incomplete, some did not contain sale price information, some had language crossed through and substituted language hand written in, one was marked confidential, and other sales documents indicated that personal property had been included in the higher prices. Further, Respondent's property record cards in some cases did not indicate the sales suggested by Respondent. The Tribunal finds that the rebuttal documents submitted by Respondent are insufficient to erode the presumption that Ms. Judeh testified

⁵⁸ Transcript page 28, 1 10-page 29, 11

truthfully. Although Respondent asserted that several of Ms. Judeh's sales comparables were subject to restrictions to only "use . . . in connection with the operation of the property as a grantor-branded service stations,"⁵⁹ Respondent offered no evidence or testimony on how or by how much the value of the property would be diminished because of this provision.

Mr. MacDermaid's "sales comparison check"⁶⁰ portion of his valuation disclosure consisted of a listing, by address and area, of seven convenience markets, the sales date, the amounts for which they sold, the square footages, the price per square foot, the number of gallons and a per gallon value. Mr. MacDermaid totaled the sale prices, totaled the square footage, divided, and determined an average price per square foot. There were no description of the properties and the sale dates include three from January, February, and April of 2002. He made no adjustments to the sales, not even for the time difference between sales date and tax date, and gave no explanation for the lack of adjustments. Mr. MacDermaid similarly provided a chart with seven sales of six fast food restaurants. The chart listed the address, area, date of sale, sale price, square footage, and price per square foot. He again added sales prices, totaled square footage, divided, and determined an average price per square foot. He made no comparisons to the subject property and made no adjustments.

Mr. MacDermaid's testimony that "we don't make adjustment per adjustment. We check to see that the assessment matches what's going on in the marketplace"⁶¹ is not supported by any calculation or explanation provided in his valuation disclosure to demonstrate how this matching check was made or applied to the comparable properties he offered. The Tribunal could not find

⁵⁹ Transcript page 47, ll 22-24

⁶⁰ Respondent's exhibit 1, page 15

⁶¹ Transcript page 123, ll 5-7

any evidence of this “check” anywhere in Mr. MacDermaid’s documentation. There is no evidence of how Mr. MacDermaid determined per square foot values on which he based his conclusion of value using a sales comparison analysis. He simply makes a chart using \$325/SF value for the convenience market and car wash and a \$260/SF for the fast food restaurant and totals the separate amounts. There is not even a conclusion of value statement or an analysis of how this calculation supports his assessment. The Tribunal finds that Mr. MacDermaid’s sales comparison check, devoid of supporting documentation and data, with unadjusted general sales information, and no conclusion or analysis, is not a reliable source of data for the Tribunal to use in its value determination nor as support for Mr. MacDermaid’s value conclusion.

Mr. MacDermaid did not do an income approach to value. Ms. Judeh did do an income approach to value. Ms. Judeh used five rent comparables, four of which are located in Wayne County. She made no adjustments for location and the Tribunal is not convinced by her explanation that because “all of the comparables are located in stable communities similar to the location of the subject property,” the income data related to properties in Detroit is comparable and applicable to the subject property. Ms. Judeh made no adjustments for land to building ratio although three of the comparables had ratios of 10% or less and the other two had ratios of 16% and 14% while her determination for the subject property was 52%. Her explanation that “differences could not be quantified . . . [and] no expansion is ever possible for the subject property”⁶² is not sufficient to support a finding that the smaller ratio properties are within a reasonably comparable status to the subject.

⁶² Petitioner’s exhibit 1, page 84

The Tribunal finds Mr. MacDermaid's statements contradicting Ms. Judeh's rent and sales comparables, without any substantiation, to be insufficient to convince the Tribunal that her documentation and testimony was not reliable.

The Tribunal finds that based on the unique nature of this property and the fact that neither Ms. Judeh nor Mr. MacDermaid were able to find truly comparables properties, the cost less depreciation method of valuation is the most appropriate methodology for valuing the subject property.

CONCLUSIONS OF LAW

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

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

Under MCL 205.737(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 may not automatically adopt a respondent's assessment but must make its own findings of fact and arrive at a legally supportable true cash value. *Pinelake Housing Cooperative v Ann Arbor*, 159 Mich App 208, 220; 406 NW2d 832 (1987); *Consolidated Aluminum Corp v Richmond Twp*, 88 Mich App 229, 232-233; 276 NW2d 566 (1979). The Tribunal may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination. *Meadowlanes*, at 485-486; *Wolverine Tower Associates v City of Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980). A similar position is stated in *Tatham v City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982): The Tax Tribunal is not required to accept the valuation figure advanced by the taxpayer, the valuation figure advanced by the assessing unit, or some figure in between these two. It may reject both the taxpayer's and assessing unit's approaches.

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 Limited Dividend Housing Assn v City of Holland*, 437, 484-485; 473 NW2d 636 (1991); *Pantlind Hotel Co v State Tax Commission*, 3 Mich App 170; 141 NW2d 699 (1966); 380 Mich 390; 157 NW2d 293 (1968); *Antisdale v City of Galesburg*, 420 Mich 265, 276; 362 NW2d 632 (1984). The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in the marketplace trading. *Antisdale* at 276, n 1. The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate

method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale*, at 277.

Petitioner's sales comparison approach to value did not use even one sale that included all of the elements of the subject, gas station, mini-mart, restaurant, and car wash. It did not provide support for the identical adjustments made for very different amenities or for very different land-to-building ratios. The Tribunal is unable to independently analyze the credibility of her data or understand the basis of her results. Petitioner's income capitalization approach to value derived rent and income data from properties unlike the subject and located in Wayne County without location adjustments. The Tribunal does not find these unadjusted values from a market area very dissimilar to Flint Township to be reliable.

Petitioner's value conclusions based on a cost-less-depreciation method include unexplained, unsupported, and arguably excessive depreciation on both the canopy (60%) and tanks (26.67%) and no separate value for the piping and monitoring. Petitioner's value conclusions are questionable based on the use of costs associated with unlike improvements, such as the tanks, and exclusion of costs for some improvements, piping and monitoring systems. Petitioner's vacant land analysis does not include land similarly located or utilized and, further, square footage is not a typical or reliable methodology for valuing land.

Because Petitioner did not present truly comparable properties, did not offer sufficient substantiation of adjustments made, and made excessive adjustments, the Tribunal is unable to

rely on Petitioner's value conclusions based on the sales comparison, cost-less-depreciation, or income capitalization methods of valuation.

Respondent relied on a cost-less-depreciation method of valuation. Respondent did not attempt an income capitalization valuation approach. His sales comparison "check," consisting of a list of unadjusted sales and broad unsubstantiated conclusions, and which was silent as to how any of the data presented was used in arriving at the conclusions of value, was so lacking in substance as to provide no reliable data on which the Tribunal could rely. As such, other than the property record cards separately submitted, Respondent's valuation disclosure provides little or no reliable or credible information to aid the Tribunal in determining value for the subject property. Further, Respondent's initially submitted estimate of value, based on its cost-less-depreciation method using a 99% good determination, is equally unreliable for a building that is six years old in the first year at issue.

The Tribunal finds that Respondent's revised cost-less-depreciation calculation, which adjusted the percentage good factors from 99% good to 70% good for the land improvements, and, for the building and other improvements, from 99% to 91% good for the 2007 tax year, 90% good for the 2008 tax year, and 89% good for the 2009 tax year, to most accurately reflect the true cash value of the subject property. Further, the Tribunal finds Respondent's use of a front footage value for the land to be the more reliable methodology for valuation of the land.

The subject is a unique property. It encompasses a gas station with mini-mart and restaurant and a car wash. Neither appraiser presented even one comparable property that included all of the

same elements as the subject in support of any valuation methodology. The Tribunal concludes that the approach that provides the most accurate valuation of the subject property in this case is the cost-less-depreciation method. The property was built in 2000 and values for the improvements, components and amenities are available and reliable. Respondent offered, as the basis of its cost-less-depreciation value conclusions, a revision of the values as assessed based primarily on changes in the designation of percentage good. The Tribunal finds Respondent's initial assertion that the property and improvements were 99% good to be inconsistent with the age and condition of the property. However, Respondent's revised indication of 70% good for the property improvements and 91%-89% for the years at issue for the building are supportable and consistent with the age and condition of the property. The Tribunal finds these revised percentages a reliable and credible indicator of the subject property's value.

Having considered the file, the applicable statutory and case law, and the testimony and evidence presented, and having made findings of fact based upon evidence found to be credible, competent, and material, the Tribunal concludes that Petitioner failed to meet its burden of proof to establish the true cash value, state equalized value, and taxable value of the subject property other than that as assessed. Further, the Tribunal concludes that Respondent presented reliable and credible evidence to establish a true cash value, state equalized value, and taxable value other than that as assessed for the tax years at issue. Therefore, the Tribunal concludes that the true cash value, state equalized value, and taxable value of the subject property are as follows:

Parcel Number	Year	TCV	SEV	TV
07-16-300-087	2007	\$ 2,971,779	\$ 1,485,890	\$ 1,091,310
07-16-300-087	2008	\$ 2,924,812	\$ 1,462,406	\$ 1,116,410
07-16-300-087	2009	\$ 2,811,641	\$ 1,405,820	\$ 1,165,530

JUDGMENT

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

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of this Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Final Opinion and Judgment within 28 days of the entry of this 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 interest shall accrue (i) after December 31, 2003, at the rate of

2.16% for calendar year 2004, (ii) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (iii) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (iv) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (v) after December 31, 2007, at the rate of 5.81% for calendar year 2008, (vi) and after December 31, 2009, at the rate of 1.23% for calendar year 2010.

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

MICHIGAN TAX TRIBUNAL

Entered: April 13, 2010

By: Rachel Asbury