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

Dunning Motors,
ACD Investments LLC,
Petitioner,

v

MTT Docket No. 14-004710

Scio Township,
Respondent.

Tribunal Judge Presiding
David B. Marmon

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Dunning Motors, ACD Investments LLC, appeals ad valorem property tax assessments levied by Respondent, Scio Township, against Parcel No. H-08-26-100-029 for the 2014 and 2015 tax years. Ellen Berkshire and Gregory Diamantopoulos, Attorneys, represented Petitioner, and Victor Lillich and John Etter, Attorneys, represented Respondent.

A hearing on this matter was held on April 26 and April 27, 2016. Petitioner's witnesses were Daniel Tomlinson and John Taylor. Respondent's witnesses were James Merte and David Heinowski.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash values ("TCV"), state equalized values ("SEV"), and taxable values ("TV") of the subject property for the 2014 and 2015 tax years are as follows:

Parcel Number: H-08-26-100-029

Year	TCV	SEV	TV
2014	$4,800,000	$2,400,000	$2,400,000
2015	$5,000,000	$2,500,000	$2,438,400

PARTIES' CONTENTIONS

Parcel Number: H-08-26-100-029

	Petitioner			Respondent		
Year	TCV	SEV	TV	TCV	SEV	TV
2014	$4,300,000	$2,150,000	$2,150,000	$7,750,000	$3,875,000	$3,232,892
2015	$4,300,000	$2,150,000	$2,150,000	$9,160,000	$4,580,000	$3,284,618

PETITIONER'S ADMITTED EXHIBITS

P-1	Appraisal prepared by Daniel J. Tomlinson as of 12/31/13
P-6	Appraiser's work file, Section E
P-8	Ducharme McMillen & Associates ("DMA") transaction sheet for 5436 Jackson
P-9	DMA transaction sheet for 41840 Michigan Ave.
P-10	DMA transaction sheet for 500 Auto Mall Dr.
P-11	Record card for 500 Auto Mall Dr.
P-12	DMA transaction sheet for 28300 Northwestern Hwy.
P-13	DMA transaction sheet and record card for 12000 Telegraph Rd.
P-14	DMA transaction sheet for 5470 Ali Dr.
P-15	DMA transaction sheet for 4140 Miller Rd.
P-16	DMA transaction sheet for 9700 Belleville Rd.
P-17	DMA transaction sheet for 14765 Michigan Ave.

PETITIONER'S WITNESSES

Daniel J. Tomlinson

Petitioner's first witness was Daniel Tomlinson, its valuation witness. Mr. Tomlinson holds the MAI designation from the Appraisal Institute, is a licensed Michigan appraiser and has appraised in his estimation, "at least 20 or 25, [dealerships] in excess of that, for a variety of purposes." He was accepted as an expert in valuation with a specialty in auto dealerships.[1]

Tomlinson described the site as 14.36 acres on a long and narrow parcel with 560 feet of frontage on Jackson Rd. Roughly 4 acres of the parcel is low, wet and wooded, and limited for

[1] T1 p. 11-13

development.[2] As to improvements, Tomlinson described building #1 as the Toyota dealership portion containing 34,992 square feet, Class C construction, and average condition. Building #2 is the Subaru dealership portion that contains 9,948 square feet, not including the mezzanine of 840 square feet, also Class C construction in average condition. He concluded that the effective build date was 2001.[3]

Regarding characteristics unique to an automobile dealership, Tomlinson testified as follows:

> Well, one, the site is very important. You want to have a commercial site that has good visibility and exposure. The ideal configuration of the resale -- of retail site is where you have the front-to-depth ratio of nearing one, because then the improvements can max out on its exposure and visibility toward the road. The second thing is branding. What has happened -- and I'll discuss this later -- but in the auto industry there has been a tremendous amount of pressure from the OEMs -- that's defined as the original equipment manufacturers, which is Ford and Chrysler and General Motors and all the other major automobile companies -- and they have been pretty insistent in meeting certain what I call "franchise standards" or "branding standards"; and that has required many ownership dealers who are owners of the real property to make improvements where they normally would not. And that's where you come to the term "super adequacy," that you're making renovations, you're putting in features in the building that is required by the OEM.[4]

Tomlinson added:

> Automobile dealership properties, the real property, is associated with the business, and the business has other components other than real property, and an appraiser must be careful not to incorporate those other components in his analysis.[5]

He further testified that in conversations with Petitioner, and other auto dealers, as well as in reliance upon the Appraisal Institute's text book on car dealerships, he concluded that dealers are under constant pressure of meeting franchise standards as to real property.[6] He stated:

> They also brought up the term "re-imaging," and that's an industry jargon for renovation or, you know, new construction toward the brand. It's just not

[2] T1 p. 21
[3] T1 p. 22-23.
[4] T1 p. 23-24
[5] T1 p. 25
[6] T1 p. 26-28. The Textbook relied upon is Carter, Bradley R,, *A Guide to Appraising Automobile Dealerships* (Chicago: Appraisal Institute 2015), referenced in Tomlinson's work file.

> renovation. It is creating the standardization that the OEM wants, and also the ultimate brand image that the OEM wants. So those are tremendous forces now in the industry.[7]

Tomlinson testified that to avoid including other non-real estate components in his analysis, he chose sales that did not include a franchise with the sale of realty.[8]

> Regarding the market for automobile dealerships, Tomlinson stated:
>
> Again, you have to go back to 2008. You know, General Motors and Chrysler went into bankruptcy. It was a very difficult time for the automobile industry. Sales had plummeted. They also recognized that, you know, there were too many dealerships with franchises and that things, you know, had to -- had to change. So what they decided to do -- I'm talking about the OEMs -- that they took away franchises and they left a lot of dealership properties vacant, and they consolidated the existing dealerships with a smaller number of franchise. So it was certainly a consolidation process that stemmed, you know, with the bankruptcies, with General Motors and Chrysler. The other thing that went on is as the number of franchises declined, as I mentioned before, the OEMs said, "Okay. Well, you have a franchise. You have a requirement to be a modern facility," and there was constant pressure that was put on the dealerships.[9]

On cross examination, Tomlinson was pressed by Respondent's counsel on the fact that he did not assign value to finish which distinguishes a new car dealership from something else:

> Q But a new dealership wouldn't just come in and just remove all the fixtures of a property. I mean, they would try to make due with what's there; isn't that right?
>
> A No. I don't -- I don't think you'd ever convince a Ford dealership to take over a Chevrolet dealership. They'd rip it all out and start from scratch to try and keep the four walls.
>
> Q But there's value in this property as a going concern; correct? I mean, this is a going concern. So there's no need to deduct intangibles or tangibles from the cost of the value of the property; correct?
>
> A Well, if you're talking about going concern, which is a business enterprise value –
>
> Q Well, that's what we're talking about, isn't it?

[7] T1 p. 28
[8] T1 p. 25
[9] T1 p. 32-33

> A No. We're talking about the market value of the real property. We're talking about the land and the building, not the -- you know, logos or color schemes or showroom layouts and how you have the drive-through versus the oil change versus the used car area versus where the -- literally, where the coffee pot is. They go down to that micro level. They want to make the experience the most enjoyable, the most memorable for that car owner to come back. And there's -- there's a lot of money and science spent to do that.[10]

The issue of highest and best use also came up in cross examination, as illustrated in the following exchange:

> Q All right. And it's [the sales comparable] supposed to be an equally desirable property -- right? -- for the intended use. In this particular case, the intended use is for a Subaru and Toyota dealership, new dealership; correct?
>
> A It says "for a dealership"; correct.
>
> Q Well, in this particular case, we're evaluating a Toyota and a Subaru dealership; correct?
>
> A No, I'm valuing the real property, which is regardless if it's a Toyota or a Subaru dealership.
>
> Q But it would still have to be a desirable property that a new car dealer would want; correct?
>
> A Not necessarily. It has to be a property that has similar utility and similar location that would reflect the real property.[11]

Tomlinson considered the three traditional approaches to valuation, but did not develop an income approach, because many auto dealerships are owner-occupied, and thus that approach would not be reliable for the subject.[12] He did develop a cost approach and a sales approach. The first step he used in developing a cost approach was to find land sale comparables. He noted that he could not find land sales that were similar in size, but all had frontages on a commercial corridor.[13] Tomlinson went on to describe the three land sales he used, and adjustments.[14]

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[10] T1 p. 91-92
[11] T1 p. 98-99
[12] T1 p. 36-37
[13] T1 p. 38
[14] T1 p. 39-44

Tomlinson also testified regarding his unit of land measurement for dealerships as the front foot, rather than the square foot, pointing out that dealerships want visibility and exposure and access, so the front portion of a site is important in site selection criteria.[15] As to why he used front foot as a unit of land measurement rather than square foot, Tomlinson went through Section E of his work file,[16] stating:

> So what I was trying to do is trying to what we call "pair," do a pair adjustment. Land sale two is probably the most similar to the subject. It doesn't have the size or the exact, you know, depth-to-front ratio, but it is irregular and has less frontage in its depth, and I compared land sale two to land sale one and land sale two to land sale three. That goes to my next table. And what I tried to do here is try to estimate the percentage difference between land sale one, land sale two, and it looks like two is about just under 20 percent on a per square foot basis, while -- if you'll, you know, look at the difference between one and two, it's about 80 percent; meaning if you just look at the front-to-depth ratio and you're trying to pair one to two, one is significantly superior. And when you're trying to adjust to two, you would have to make an 80 percent adjustment to narrow the difference on a per square foot basis. I did the same thing with three and two. Again, you know, if you look at three divided by land sale two, it's about 25 percent. Overall, it's about 74 percent difference. So when you look at the premium of one over two and three over two, it comes out to, I say, about 78 percent premium.[17]

Tomlinson then contrasted the differences when comparing on a square foot basis:

> So then what I did here is rather than on a per front foot I did a per square foot. Obviously, for configuration and size, I did a minus 83 percent, which is 5 percent plus 78 percent, and you could see that the result is $1.47 to $2.25 per square foot is the range, and if you look at the average it comes out to $1 -- $1,100,000 based on this square foot analysis. The problem here is there's such a huge adjustment it -- you wouldn't want to use a per square foot basis. You want to go to per front foot that would give a more reasonable percentage of adjustment, which in my mind indicates a more reliable analysis. So what this test of reasonableness does is reflects why you really shouldn't use a per square foot analysis, but a per front foot analysis.[18]

After concluding to a land value of $1,200,000, he estimated the replacement cost of the building using Marshall Valuation Service, complete auto dealerships, Class C, average cost on each building and summed them up. He added adjustments for HVAC, comparative costs

[15] T1 p. 24
[16] Exhibit P-6
[17] T1 p. 45-46
[18] T1 p. 46-47

multiplier, and adjusted the costs back to the valuation date of December 31, 2013. He did not apply entrepreneurial incentive, because a builder would not have gone out and built a spec building as a car dealership.[19] He then applied physical obsolescence figuring the economic life of the building was 40 years, along with external obsolescence. To calculate this amount, he used his improved sale 2[20] which was built in 2007 and sold in 2012. After subtracting the land, and calculating the cost new, he came up with total depreciation of 63 percent for this comparable. After backing out physical depreciation of 12 percent, he was left with external obsolescence of 50%, which he argued made his 10% external obsolescence seem reasonable.[21] Tomlinson had also dealt with superadequacy as functional obsolescence by using replacement rather than reproduction costs, and using costs for average quality rather than good quality construction.[22] When asked by the bench whether he double counted superadequacy by first calculating replacement cost using average, rather than good, and then taking an additional 10 percent, he denied doing so, stating in effect that there was additional external obsolescence in addition to super adequacy as "forces outside the location . . . still some left for car dealership properties."[23] Presumably, he was referring to the glut of dealership properties resulting from the large loss of franchises from the 2008 recession. Tomlinson's concluded value under the cost approach was $4,300,000.[24]

Tomlinson also testified regarding his sales comparison approach, where he looked for sales in southeastern Michigan. He testified that he excluded a sale at 500 Auto Mall Drive, because the sale was to a tenant under an option to buy in the lease.[25] Regarding the comparables he did choose, Tomlinson stated they were "primarily properties that have similar highest and best use, and also properties certainly that did not contain . . . other components of value that we talked about; personal property or intangible value."[26] His best explanation for choosing the comparables he chose was given on cross examination in the following exchange:

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[19] T1 p. 47-50
[20] This sale was located at 56145 Pontiac Trail, in New Hudson. See Exhibit P1, p. 44
[21] T1 p. 51
[22] T1 p. 96
[23] T1 p. 158-159
[24] Exhibit P-1, p. 56
[25] T1 p. 53. This sale was used as Respondent's adjusted improved sale 3 in Exhibits R1, R13 and R14.
[26] T1 p. 53-54

> Q . . . It seems to me that we're comparing apples with whatever. When your comps are related to used cars, heavy equipments [sic]-- heavy equipment dealers as opposed to new car dealers, is there any -- does that make any sense to you whatsoever? I mean –
>
> A Yeah, I think it makes a lot of sense to me, because with –
>
> Q When it -- okay. Go ahead.
>
> A With new -- when you're talking about a dealership as a business, there's a franchise there. And when there's a sale that has a franchise with it, the question comes up, does that -- is that transaction only reflecting real property or is it reflecting real property and other components? The beauty of my sales, they truly reflect real property. There are no franchises. They're not, as you pointed out, new car dealerships. They're actually really, in that sense, really good comparables for the real property.[27]

On direct examination, Tomlinson described each of his five sales comparables. Sale #1 which took place in July 2011 was a Buick dealership with 35,000 square feet of building, 10.84 acres of land built in 1990, improved in 2001. It is located just outside of Brighton on 7885 West Grand River Ave.[28] On cross examination, Tomlinson agreed that this was his only sale from new car dealership (Pontiac/Buick) to new car dealership, (Buick/GMC).[29] He further testified that he believed Genoa Township and the City of Brighton were similar to Scio Township, and Grand River in that stretch had major commercial development. He agreed with opposing counsel that there were not 13 automobile dealerships within a mile of Sale 1.[30] Tomlinson did testify that there were other dealerships in that corridor.[31]

Tomlinson's improved Sale 2 located at 56145 Pontiac Trail in New Hudson was originally a Pontiac dealership with 40,000 square feet of building, just off the Milford Rd. exit of I-96 that sold for $1,700,000. That property was sold to a heavy equipment dealer. When

[27] T1 p. 144-145
[28] T1 p. 54
[29] T1 p. 69
[30] T1 p. 110-113
[31] T1 p. 62

confronted on cross that the property was sold out of a receivership,[32] Tomlinson stated that it was properly marketed by CBRE.[33]

Regarding improved Sale 3 at 7830 Convention Blvd. in Warren, off of Van Dyke Ave., a major commercial corridor, Tomlinson described the building as having only 16,000 square feet. He also stated that there were reportedly restrictions on the property that will not allow OEMs to buy or occupy it as a new car dealership. He further testified that the property is now used by Enterprise Rent-A-Car for vehicle rentals and sales.[34] As to why he used this comparable when it had this restriction, Tomlinson gave the following explanation:

> When I talk about property rights, I do want to comment about improved sale number three; that's the one on Convention Boulevard in the city of Warren where reportedly there was a restriction that OEMs could not buy or use the property. Typically, you would say that that would not constitute the entire bundle of rights there, but I think because it was where an OEM could not use it and bring a franchise to that location that's actually a better representative of the real property that I'm trying to value; that the restriction in terms of coming to a real property valuation actually supports my final opinion. So that's the reason why I did not make an adjustment there for comp number three under property rights.[35]

Tomlinson described improved Sale 4 located at 101 W. 14 Mile Rd., Madison Heights as across from Oakland Mall, near the I-75 interchange, built in 1969 with 33,000 square feet in the main building on 4.7 acres. He testified that it was reported that the buyer had to spend an estimated $600,000 after the sale to repair damage from scrappers. Tomlinson included the expenditure as a dollar adjustment to his sales price. The property which was formerly a Dodge dealership now sells used cars.[36] Tomlinson stated that he relied upon the adjusted price for this comparable most at $95.00 per square foot in concluding to his value under the sales approach.[37] When asked on cross examination whether he was familiar with area as to demographics, Tomlinson responded:

> Very, very. I appraised about five apartments around the area. So I'm very, very familiar with this location, especially the fact that within a two-year time span

[32] See Exhibit R-6, Covenant Deed from CBRE as Court appointed Receiver to Republic West LLC, dated March 23, 2012.
[33] T1 p. 105-106
[34] T1 p. 55
[35] T1 p. 59
[36] T1 p. 55-56
[37] T1 p. 62

> apartment rents spiked by about 15 percent as well as the occupancy. But it is an older area. I do agree with you. Like the other comp on Van Dyke, it's reinventing itself. In Oakland Mall there's the new Field and Stream outlet parcel to the left. There is also -- before the recession three new buildings were put in, which Valeo is one of the tenants. This is the corner of Stephenson and Fourteen Mile. It's just directly west of the freeway. These older industrial buildings along Stephenson -- three new hotels were built recently, showing, you know, how the economic activity has really came back in the area. So, you know, it's -- it's a -- it has -- you know, has reinvented itself. I've been amazed how well not only apartments have done but retail has done here, and the beauty of this, too, it's a strong employment base. You have all these industrial buildings to the right or to the east, and then as you go north on Stephenson you get into high tech properties. As well as John R you get into all sorts of what I call engineering space, you know, people with good incomes, like to spend money and certainly like to buy cars.[38]

Tomlinson's improved Sale 5 located at 10700 Ford Rd in Dearborn is the old Bill Wink Chevrolet dealership, with about 50,000 square feet and 7.71 acres, which sold for $2,000,000.[39] On cross, Tomlinson responded to questions concerning the inferiority of the Sale 5's location in East Dearborn bordering Detroit:

> Okay. So I did do -- I added a 10 percent adjustment for improved sale number five, because, you know, you're correct. It is in an inferior location. It has seen better days. And then I went through the other physical features of this property and mainly I considered them basically all inferior and made all positive adjustments accordingly. And I believe in my testimony I said, you know, comparables two, three, and five -- you know, I looked at them as more secondary support in my final reconciliation. So, I mean, the beauty of the comparable is -- it is a pure real estate sale, a real property sale. It didn't have a franchise. Bill Wink Chevrolet went away, and there was a user that needs -- needed the utility of the building and land that was there, and he paid accordingly. . . . This location is definitely inferior to Jackson – Jackson Road.[40]

Tomlinson concluded to the same value of $4,300,000 under his sales approach, thus taking any mystery out the value he concluded to in his final reconciliation of $4,300,000.[41]

John Taylor

Petitioner's other witness was John Taylor, Petitioner's general manager and vice-president, who has worked for Petitioner for nearly 11 years. Taylor testified regarding

[38] T1 p. 126-127
[39] T1 p. 56-57
[40] T1 p. 132-133
[41] Exhibit P-1, p. 56

Petitioner's relationship with Toyota and Subaru as to their input as to the design of the dealership stating, "Well, it's basically a hundred percent. I mean, we don't have any -- they tell us what to do and we do it. If you don't do it, then you have issues with your dealer license."[42]

Taylor further testified that the franchise came in and pushed them to "build build build," and that they had to approve 100% of whatever is put into the store, and "the bottom line is they get what they want."[43] He further testified that with Toyota there is a 6 year franchise agreement, and a three year agreement with Subaru, which is the maximum either manufacturer will allow, and the manufacturer can pull the franchise if the facility isn't built and run to their standards.[44] When asked by the bench for specifics as to the manufacturer's input, Taylor responded:

> So for an example, the front of our dealership has a -- they call it a "facade." So it's this big huge -- almost like an illuminated light. It's all white. I'm sure you've probably seen the Toyota emblem, if you recognize Toyota dealerships, and you basically walk underneath it to get into the front door, and it's got our name on the right side and it's got the Toyota emblem on the left side. And the wrap of the building -- the entire wrap of the building has -- has to have its standardized Toyota -- I'm not too sure what they call it, but it's like an aluminum type looking thing that has to wrap all the way around the building. The exterior color has to be a certain exterior color. The entranceways have to have certain markings on them. They have to have, you know, customer entranceways and things like that. When you get inside the dealership, the tile -- the color of the tile, the color of the paint on the walls, the carpeting, the furniture -- as we heard earlier, where the coffee pot goes -- all of it is basically told -- or told "This is what we have to do." So I hope that answers it correctly.
>
> Q Is it the same for Subaru as it is for Toyota or do they have different requirements?
>
> A They have different requirements, but it's -- generally it's the same principle where we are held accountable to their standards of what it is that they want.
>
> Q And they can dictate -- they dictate the quality of trim inside and out or –
>
> A They dictate it all, sir -- Judge.[45]

RESPONDENT'S ADMITTED EXHIBITS

[42] T1 p. 161
[43] T1 p. 162-163
[44] T1 p. 164
[45] T1 p. 166-167

R-1	Respondent's Valuation Disclosure dated 12/17/16
R-2	Page 50 of Tomlinson Appraisal with additional information by David Heinowski
R-3	Scio Twp Assessor's Parcel Map
R-4	Excerpt from STC Manual
R-5	Excerpt from, Guide to Appraising Auto Dealerships
R-6	Deed to 56195 Pontiac Trail and Order Approving Sale of Receivership Property
R-7	Google Map photos of 7885 Grand River (excluding hand-written notes)
R-8	Google Map photos of 56145 Pontiac Trail (excluding hand-written notes)
R-9	Google Map photos of 7830 Convention Blvd (excluding hand-written notes)
R-10	Google Map photos of 101W 14 Mile Rd.
R-11	Google Map photos of 10700 Ford Rd. (excluding hand-written notes)
R-12	Corrected Sales back-up for 3900 Jackson Rd.
R-13	Sales Grid correcting R-1, p. RV17 2015 tax year
R-14	Sales Grid correcting R-1 p. RV 18 and 19 for 2014 tax year

RESPONDENT'S WITNESSES

James Merte

Respondent's first witness was its assessor for the past 37 years, James Merte. Merte testified regarding the mechanics of using BS&A software which spits out the mass appraisal number. Merte testified as to inputs that required expertise, including depreciation, and the proper quality of the building.[46] While not explicitly mentioned, the land value is also an important input.

Merte used five land sales to determine the land value of the subject. He agreed on cross examination that all of his sales were smaller than the subject. He also acknowledged that in lieu

[46] T2 p. 179-182

of individual adjustments, he concluded to an average price, and reduced that average by 25% to adjust for the subject's larger size and irregular shape.[47] Regarding Land Sale 1, he conceded that it had different zoning than the subject, as well as having sold with a 19,000 square foot building.[48] As to Land Sale #2, which sold to TCF bank back in 2007, the property was an out lot for Meijer. Merte agreed that an out lot's value would be influenced by its proximity to a store such as Meijer or Kroger. Similarly, he agreed that Land Sale #4 was also an out lot to Meijer. As to Land Sale #5, Merte agreed that the sale included not only a building, but a tenant who continues to occupy the building. Further, he agreed that Land Sale #5 was part of an assemblage.[49]

Regarding land values in the area where the subject sits, Merte stated:

> The sales of all these to me indicated that there was a fairly stable unit -- unit price, being price per square foot, of around $10 a square foot, which had even persisted from before the recession, and that the -- the $10 per square foot seemed to be a fairly relevant and fairly persistent price per square foot that was being paid for commercial property along Jackson, and Zeeb Road is considered to be kind of the town center. So it was – the comparable number one was good, because it showed something that was a little bit -- a little further down or easterly towards the -- what I call the "dealership corridor"; in fact, was purchased by a dealer -- a dealer company, which also helped to support the $10 a square foot.[50]

For tax year 2015, Merte used Heinowski's paired sales analysis and increased the 2015 true cash value of the land by 18.72 percent.[51] He also admitted that his land value used in his record card for property across the street was $4.95 per square foot.[52] Merte concluded to a land value of $3,200,000 for 2014 and $3,800,000 for 2015. The land value indicated on the record cards he prepared for the subject is $2,067,200 for both years.[53]

Regarding the Economic Condition Factor, ("ECF") Merte testified on direct examination that the ECFs used were "developed and used primarily to – for compliance with county and state equalization."[54] As for the County Multiplier, Merte testified that it was developed by the

[47] T2 p. 226
[48] T2 p. 227
[49] T2 p. 228-229
[50] T2 p. 218
[51] T2 p. 224-225
[52] T2 p. 235
[53] Exhibit R-1, p. RV-28, RV-33(2 x Land Value component of assessed value).
[54] T2 p. 206

State Tax Commission, which requires assessors to apply the factor, based upon what the STC publishes.[55] Merte concluded that pursuant to the cost approach, the subject was worth $7,740,000 for 2014 and $8,470,000 for 2015.[56]

David Heinowski

Respondent's second and final witness was David Heinowski, a licensed appraiser and holder of the designation of MAI from the Appraisal Institute, and was found to be qualified by the Tribunal as an expert in appraisal. On voir dire, Heinowski explained what portion of the valuation report he was responsible for:

> As an appraiser. I did a portion of the report. We basically had about three days to get it done, so Jim [Merte] and I divided and conquered it. And I did the market approach to value on it. As it did reach a valuation conclusion, I felt it necessary to put a -- assumptions and limiting conditions and a -- there's a certification on the appraisal, and sign it thusly.[57]

In preparing his sales approach, Heinowski began with 54 automobile dealership sales which he pared down to 32, eliminating the sale of used car dealerships, "trying to keep in the same generation of properties similar to that of the subject."[58] He then reduced that list to six dealerships, (which happened to be 6 of the 7 highest price per square foot sales),[59] and concluded to a price per foot, and multiplied that price by the subject's square footage to produce the 2014 true cash value. For 2015, he conducted a paired sales study of four dealerships, and concluded that the market for 2015 increased by 1.56% per month. He then adjusted the same six comparables by this factor to conclude to a true cash value for tax year 2015. Under his sales approach, Heinowski concluded to a value of $7,750,000 for 2014 and $9,160,000 for 2015, which were also the reconciled conclusions of value. In reconciling the two approaches, he testified that his value and Merte's value were developed independently during the week, but were so close that each felt some comfort in their conclusion.[60]

Heinowski gave the following critique of Tomlinson's front foot unit of valuation:

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[55] T2 p. 238
[56] Exhibit R-1, p. RV27
[57] T2 p. 247
[58] T2 p. 253
[59] Exhibit R-1, p. RV-12, T2 p. 344
[60] T2 p. 294-295

> I didn't feel it was appropriate for multiple reasons. Number one, the sale comps we -- well, we only had three sale comps that went down from the 0.5 acres up to about 12 acres, but, more importantly, he gave us the front footage of the three sales and he gave us the overall square footage so we could figure out the depth, or the average depth. And in doing so, we found that one sale was 132 feet deep, which is about the depth of a -- of a residence . . . in a suburban area, to 1100, almost – in fact, just over -- right around the 12,000 lineal feet mark for going out back. The front foot method or methodology is usually used where there is a consistent depth or something that has become a given so that the difference between, say, 100 foot of frontage versus 200 foot of frontage could be ascertained. But in this case the subject is around 1100 square foot or 1100 linear foot in depth. We have comps that are 1200, 200, 132. So, you know, we're all over the place. There is no standardized depth. So there is no way that a front foot approach would recognize all of the property. By the way Mr. Tomlinson billed it, unfortunately, it becomes that if X is the rate per front foot for 500 foot of frontage and was 500 foot deep, it would be value of Y. If the same 500 foot of frontage was now 1,000 foot deep, it would still be a value of Y. So at last, 500 foot of land -- 500 by 500 -- is not accounted for. So without having a consistent depth or a depth factor table so you're adjusting for this variance between the comps and the subject, which was not included in the appraisal, a front foot really doesn't work. It works great in residential neighborhoods. It works great along lake lots is the other place you usually see it.
>
> Q What about commercial properties?
>
> A Commercial properties, very, very unusual to see it. Even in -- even in Vegas, that's the only other town I can think of that uses a front foot, but the depth of the lots is somewhat -- is standardized back to what is now the railway that goes out to the airport. So they have that constant of the depth, so they can say that the frontage is worth – I think the figure I was going -- the last time I talked to someone on that at a IAAO conference was over a million dollars a front foot. Some of the more expensive property in the United States. But without that -- without having one of the factors being a standard, you could be all over the place and not fully representing -- like -- like in the case of the subject. The subject is so much deeper than two of the three comps given; that if by using a front foot rate you're not covering the whole area or recognizing the utility of the whole subject parcel.[61]

On cross examination, Heinowski conceded immediately that his report fell short of Uniform Standards of Professional Appraisal Practice, ("USPAP").[62] He also conceded that the

[61] T2 p. 296-298
[62] T2 p. 301

certification he signed at the end of his report that he complied with USPAP was false.[63] The following exchange illustrates Heinowski's deviation from USPAP:

> Q Okay. So your report fails to identify a definition of true cash value or market value; correct?
>
> A That is correct.
>
> Q And you don't identify the property rights that you're appraising; correct?
>
> A That is correct.
>
> Q And your report doesn't include an estimate of exposure time; correct?
>
> A That is correct.
>
> Q Your report doesn't state when you inspected the property, does it?
>
> A No, it does not.
>
> Q And your inspection of the property was exterior only; correct?
>
> A That is correct.
>
> Q So the report, you would admit, has some shortcomings when it comes to the Uniform Standards of Professional Appraisal Practice; correct?
>
> A Most definitely. It was prepared, as I said, for a valuation disclosure for the Michigan Tax Tribunal and not as a -- not like my regular product, which is USPAP compliant.[64]

On redirect, Heinowski minimized the lack of USPAP compliance, indicating that the only difference between his appraisal and a USPAP appraisal is "five pounds of paper. . . ."[65]

Regarding his list of 32 comparables, Heinowski acknowledged that the first sale listed at 5436 Jackson Rd. was nearly across the street from the subject, was arm's length, and was renovated in 2003, but was not used as an adjusted comparable, having a price of $84.68 per square foot; well below the other comparables chosen.[66] The fourth comparable on his list of 32

[63] T2 p. 302
[64] T2 p. 302-303
[65] T2 p. 360
[66] T2 p. 307-309

located at 1185 S Rochester, Rochester Hills, with a sales price of $217.98 was chosen, even though this facility was built in 1971, and age of improvements was one of the criteria used by Heinowski in selecting comparables. However, this comparable was not given weight in concluding to a price per square foot.[67] In a similar vein, the sales at 110 S. Ortonville at $46.05 per square foot, 1640 N. Lapeer at $30.36 per square foot, 56195 Pontiac Trail at $39.14 per square foot, 2798 E Grand River at $148.19 per square foot (which sold from a Ford dealer to a Ford dealer), 7830 Convention Dr. at $44.80 per square foot and 101 W. Fourteen Mile at $56.05 per square foot were not included in his grid. Heinowski did state that these sales occurred in different markets than the subject, or were used for something other than a new car dealership.[68] Heinowski later acknowledged that he did not choose the sale at 23405 Hall Rd., which sold at $111.79 per square foot and is in an auto dealer corridor; or 1950 W. Maple in Troy, near the Troy Motor Mall which sold for $70.96 per square foot. Heinowski could not verify which automobile brands were involved, or changed after the sale.[69] He also did not use 9700 Belleville Rd. which sold for $96.56 per square foot as a direct comparable, but did use it in his paired sales analysis.

As to sales that Heinowski did use in his grid, the sale of 41840 Michigan Ave. in Canton (Comp 2) which sold for $125.13 per square foot has only 9,950 square feet, and no information as to its age. Further, per the CoStar write up,[70] (which Heinowski stated "if that's what CoStar says, I have no reason to doubt them"), the buyer was a tenant. Further, Heinowski admitted that he did not review the underlying lease.[71] Similarly, Heinowski's Comp 3 across Jackson Rd. from the subject at 500 Auto Mall also, per CoStar, sold as a lease option.[72] Again, Heinowski stated "if there is a statement on CoStar, I would have no reason to disagree with it."[73] He also agreed that the tenant got to continue to use the location as the same type of dealership before and after the transaction.[74]

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[67] T2 p. 311-312
[68] T2 p. 313-314
[69] T2 p. 340-341
[70] Exhibit P-9
[71] T2 p. 318-320
[72] Exhibit P-10
[73] T2 p. 323
[74] T2 p. 325

Heinowski was next quizzed regarding his Comp 4, the sale of 28300 Northwestern Hwy. in Southfield which sold for $262.16 per square foot. Per the CoStar listing,[75] the property was sold by Meade Lexus of Lakeside to its tenant, Meade Lexus of Southfield, and continues to operate as Meade Lexus of Southfield. Heinowski conceded that it could have been an option to purchase, or it might have been a sale of a leased fee interest, but Heinowski never reviewed the lease, nor made any adjustments for property rights or conditions of sale.[76]

Heinowski's 5th comparable identified as 1200 Telegraph Rd.[77] in Taylor was listed in his valuation chart as having 28,532 square feet, and when divided into the sales price of $5,700,000 rendered a price per square foot of $199.78. Per the City of Taylor's assessment records,[78] a second parcel was involved in the same sale. Heinowski's testimony on cross is as follows:

> So the transfer that you relied upon as comp number five appears to include both of these parcels in the city of Taylor; correct?
>
> A It includes multiple properties, and it appears that maybe 12000 and 12100.
>
> Q And according to the assessment records pulled from the BS&A software, under parcel 60-056-99-0021-001, at 12000 Telegraph, what is the improvement size?
>
> A 28,532.
>
> Q According to the City of Taylor's records?
>
> A Well, I was going to say, Taylor's record. I had no reason not to believe City of Southfield or city -- CoStar, so I didn't go that far. But that's the City of Taylor -- building size. It has two buildings, 33,330 square feet and 4,872 feet.
>
> Q Okay.
>
> A And it looks like the math is correct, that it comes out to a total of 38,202.
>
> Q And then with respect to parcel 60-056-99-0022-000 at 12100 Telegraph Road, according to the City of Taylor assessor records building information, is there a second building on that parcel with an auto dealership and garage?

[75] Exhibit P-12
[76] T2 p. 330-331
[77] The correct address is 12000 Telegraph, per CoStar listing, Exhibit P-13 and Heinowski's testimony, T2 p. 336.
[78] Included in Exhibit P-13

A Yes, there is.

Q And what is the size of that building?

A Looks like a combined size of 27,270 square feet.

Q And if you add both building sizes together, the 27,270 and the 38,202, what is the -- according to the City of Taylor assessor records -- total square footage of the buildings on these parcels?

A Well, if they're under all the same ownership, which I don't know if 2000 -- or 12000 and 12100 is, but to answer your question, 65,472.

Q With respect to ownership, does the City of Taylor assessment records indicate that for both properties there was an October 2014 sale from grantor -- grantor, being Telegraph Chrysler/Jeep, and the grantee being Garff Properties Michigan LLC?

A Yes, there is.

Q And it appears that the same instruments transfer both parcels; correct?

A I'm not seeing where you come up with "instrument." I'm sorry.

Q Okay. That's okay. If the building size of this property is 65,472, what is the 2014 unit transfer price of this property?

A $87.06.[79]

As to Heinowski's Comp 6, 1185 S Main in Chelsea, which was used before and after the sale as a Chrysler dealership, and sold for $207.31 per square foot, having only 6,512 square feet, Heinowski acknowledged that he did not include the sale of 1500 S Main St., Chelsea, which sold for $137.10 down the street to the same buyer, even though the dealership was much newer.[80]

Heinowski was also asked about the specific sales comparables used in his paired sales analysis. Regarding the 2011 sale of 5470 Ali Dr. in Grand Blanc, Heinowski acknowledged that it was a bank sale, but did not realize that it was an auction sale until handed the CoStar print

[79] T2 p. 337-338
[80] T2 p. 342-343

out.[81] As to his second set of paired sales at 4140 Miller Rd. in Flint, the second sale on CoStar states, "Sale on 11/19/2014 for $1,050,000 ($43.90/SF) – Research Complete 23,920 SF Demolished Retail Auto Dealership Building Demolished." Heinowski testified that he did not drive by this property in recent years.[82] When asked on redirect whether tearing down the improvements made a difference in his using the sale, Heinowski answered, "It's still a sale, but the secondary sale is for what it's for, a different improvement that the ones that are originally. Petitioner has a very good point. Then it's not apples to apples anymore. It's apples to kumquats."[83]

Regarding his third set of sales at 9700 Belleville Rd., the CoStar notes indicate that the property sold to the owner of 9800 Belleville Rd. to expand this location. Additionally, the 2011 transfer indicates that the property was purchased by a tenant, but there was no adjustment made.[84] As to his final paired sales at 14765 Michigan Ave. in Dearborn, the grantor in the 2012 sale was Fifth Third Bank. Heinowski admitted that the bank being a seller raised questions, or should have raised questions, but he was content to use the raw data. Further, he acknowledged that the later sale of the property might have involved tenants, and a leased fee transfer.[85]

FINDINGS OF FACT

1. The subject is an automobile dealership located at 3745 Jackson Rd on 14.36 acres of land with 560 feet of frontage on Jackson Rd.
2. Approximately four acres of the subject are wooded or wet, and unsuitable for building or development.
3. The subject has a franchise agreement with Toyota and Subaru to sell and service their brands.
4. Toyota's franchise agreement runs for six years, while Subaru's franchise agreement runs for three years.

[81] Exhibit P-14, T2 p. 345-346
[82] T2 p. 349
[83] T2 p. 366
[84] T2 p. 353; Exhibit P-16
[85] T2 p. 354-355; Exhibit P-17

5. The dealership has two buildings with total square footage of 44,940 square feet; 34,992 square feet is in the Toyota dealership building, while 9,948 is in the Subaru dealership building.
6. The dealership was built in 2000 and 2004, and had additional square footage and remodeling added in 2012.
7. Per the undisputed testimony of Dan Tomlinson and John Taylor for new car dealerships, the franchisor manufacturers determine the lay-out, design, materials, colors, fixtures, and finishes of the building.
8. Petitioner submitted an appraisal for 2014 only, prepared by Daniel Tomlinson using the sales comparison approach, and the cost less depreciation approach.
9. In his sales approach, Tomlinson used five sales comparables ranging in price from $42.04 per square foot to $99.83 per square foot, with adjusted prices ranging from $42.38 to $105.62.
10. Tomlinson's improved Sale 1 located at 7885 W. Grand River Ave., in Genoa Township sold on July 1, 2011, contained 35,061 square feet of building, continued as a new car dealership, sold for $99.83 per square foot, and was adjusted to $105.62 per square foot.
11. Tomlinson's improved Sale 2 located at 56145 Pontiac Trail, New Hudson was sold out of a receivership in a court approved sale for $42.04 per square foot to a heavy equipment dealer.
12. Tomlinson's improved Sale 3 at 7830 Convention Blvd. in Warren had a deed restriction prohibiting it from being sold as a new car dealership, and it sold instead to Enterprise Rent-A-Car for $44.80 per square foot.
13. Tomlinson's improved Sale 4 at 101 W Fourteen Mile, Madison Heights was built in 1969, required a rumored $600,000 in repairs after the sale, (which was included in Tomlinson's adjustments to sale price), sold to a used car dealership for $56.05 per square foot, and was adjusted by Tomlinson to $92.78 per square foot.
14. Tomlinson's improved Sale 5 at 10700 Ford Rd., Dearborn, remodeled in 1986, sold in June 2013 for $46.16 to a used car dealership and was adjusted to $62.31.
15. Tomlinson gave negative market (or time) adjustments for properties that sold prior to 2013.

16. Tomlinson's cost approach began with three land sales of much smaller properties and different proportions of front footage to depth off of major roads in Scio and Ypsilanti Townships.
17. Tomlinson concluded to a land value based upon front footage rather than square footage.
18. Tomlinson valued the buildings on the subject using production costs found in Marshall Swift using "average" rather than "good" for quality of construction to account for superadequacy.
19. Tomlinson also found additional functional obsolescence of 10% due to residual effects of the 2008 recession, which caused a large glut of former automobile dealership properties.
20. Respondent submitted a valuation in which the sales comparison approach was performed by David Heinowski, and the cost approach was prepared by James Merte.
21. Other than the signed certification which he disavowed under oath, Heinowski's valuation made no pretense of complying with USPAP.
22. Heinowski testified that he only had three days in which to prepare his portion of the valuation.
23. Heinowski compiled a list of 54 sales of automobile dealerships, which he pared down to a list of 32 dealerships.
24. Heinowski did not review the lease of any of his sales comparables.
25. From this list of 32 comparables, he chose 6 of the 7 highest price comparables in which to determine the subject's true cash value.
26. Heinowski's conclusion of true cash value for both 2014 and 2015 is higher than the highest price reported among his 32 sales (the Lexus dealership in Southfield, which included a lease) by $986,000 for 2014 and $2,396,000 for 2015.
27. Heinowski's Comp 1 located at 1185 S Rochester, Rochester Hills was built in 1971, contained 13,763 square feet and sold in October 2011 for $217.98 per square foot, and was adjusted to $232.87 per square foot for 2015.
28. Heinowski's Comp 2 located at 41840 Michigan Ave. in Canton sold for $125.13 per square foot was per CoStar, sold to the tenant has only 9,950 square feet of building area,

with no reported information as to its age, was adjusted to $154.82 for 2014 and to $189.75 for 2015.

29. Heinowski's Comp 3 located at 500 Auto Mall Dr. in Scio with 17, 361 square feet of building area sold, per CoStar, for $190.08 per square foot as a lease option, and was adjusted to $189.75 for 2014 and to $221.78 for 2015.
30. Heinowski's Comp 4 located at 28300 Northwestern Hwy., with a 25,801 square foot building was a Lexus dealership prior to and after the sale, sold to an investor with a tenant in place for $262.16, which was adjusted to $172.08 for 2014 and to $208.89 for 2015.
31. Heinowski's Comp 5 at 12000 Telegraph Rd. sold for $5,700,000, and per the City of Taylor's online records, had dealership square footage of 65,472 for the buildings on two adjoining parcels.
32. Heinowski's Comp 6 located at 1185 S. Main St. in Chelsea with a building of only 6,512 square feet built in 1984, and was a Chrysler dealership prior to and after the sale for $207.31 per square feet, which he adjusted to $153.93 for 2014 and $190.80 for 2015.
33. Heinowski used four automobile dealerships that each sold twice between 2011 and 2014 to "abstract [sic] a market condition adjustment "[86]
34. Heinowski's first paired sale located at 5470 Ali Dr. in Grand Blanc initially sold at a bank sale in 2011.
35. Heinowski's second paired sale at 4140 Miller Rd. in Flint was sold a second time in 2014, and it was noted that 23,920 square feet of retail auto dealership building was demolished.
36. Heinowski's third paired sale at 9700 Belleville, in Belleville, per CoStar was purchased by a tenant in the initial sale, and then purchased by a neighbor to expand its business in the second sale.
37. Heinowski's fourth paired sale at 14765 Michigan Ave., Dearborn, was initially sold in 2012 as a bank sale, and possibly sold to tenants in the second sale.
38. James Merte presented his own cost approach for the subject.

[86] R-1, p. RV-15

39. Merte relied upon a market adjustment derived from Heinowski's four paired sales applied to his 2014 land value to determine the land value for 2015.
40. For 2014, Merte relied upon five land sales, with acreage of 8.22, 1.72, 1.47, 1.92 and 2.61 to conclude to a land value of $3,200,000 for 2014 and $3,800,000 for 2015.
41. Land Sale 1 has different zoning than the subject, and sold with a 19,000 square foot building.
42. Land Sale 2 which sold in 2007, and Land Sale 4 were out lots to Meijer.
43. Land Sale 5 included not only a building, but a tenant who continues to occupy the building, and was purchased as part of an assemblage.
44. Merte's land value per his record cards is $2,067,200 for 2014 and 2015
45. Merte found no functional obsolescence on the subject property.

CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value.[87]

> The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not . . . exceed 50 percent. . . .[88]

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.[89]

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value' . . . are synonymous."[90]

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[87] See MCL 211.27a.
[88] Const 1963, art 9, sec 3.
[89] MCL 211.27(1).
[90] *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

"By provisions of [MCL] 205.737(1) . . . , the Legislature requires the Tax Tribunal to make a finding of true cash value in arriving at its determination of a lawful property assessment."[91] The Tribunal is not bound to accept either of the parties' theories of valuation.[92] "It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case."[93] In that regard, 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."[94]

A proceeding before the Tax Tribunal is original, independent, and de novo.[95] The Tribunal's factual findings must be supported "by competent, material, and substantial evidence."[96] "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence."[97]

"The petitioner has the burden of proof in establishing the true cash value of the property."[98] "This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party."[99] However, "[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question."[100]

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.[101] "The market approach is the only valuation method that directly reflects the balance of supply

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[91] *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).
[92] *Teledyne Continental Motors v Muskegon Twp,* 145 Mich App 749, 754; 378 NW2d 590 (1985).
[93] *Meadowlanes Ltd Dividend Housing Ass'n v Holland,* 437 Mich 473, 485; 473 NW2d 636 (1991).
[94] *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).
[95] MCL 205.735a(2).
[96] *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).
[97] *Jones & Laughlin Steel Corp, supra* at 352-353.
[98] MCL 205.737(3).
[99] *Jones & Laughlin Steel Corp, supra* at 354-355.
[100] MCL 205.737(3).
[101] *Meadowlanes, supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968).

and demand for property in marketplace trading."[102] 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.[103] Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.[104]

The subject property is an automobile dealership that has a franchise agreement with Toyota and Subaru. The challenge for the Tribunal in this case is finding the true cash value of the real estate without valuing the business. Undoubtedly, a Toyota franchise has great value, as does a franchise agreement with most manufacturers. A related concern is that automobile companies in general, and Toyota and Subaru specifically in this case, have stringent and lengthy requirements as to what an automobile dealership selling their brand must look like in terms of layout, materials and finish. Accordingly, part of the real estate is brand specific, and a portion of the improvements would not be interchangeable among the many different brands. An additional problem is that dealerships often sell with a tenant in place, or as part of the sale of the franchise.

HIGHEST AND BEST USE

The first issue in this appeal is how narrowly or broadly should the subject's highest and best use be defined. Petitioner's expert, applying the four tests to the subject as vacant, and as improved, found that the improvements contributed to the value of the subject, and found the highest and best use for the subject in exchange is as a vehicle dealership. Respondent's counsel apparently argues that the highest and best use is as a Toyota and Subaru dealership.[105] Respondent's appraiser, while not going through the four tests, opined on p. RV-10 of his valuation[106] that the highest and best use is as an automobile dealership. At hearing, he narrowed

[102] *Jones & Laughlin Steel Corp, supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).
[103] *Antisdale, supra* at 277.
[104] See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).
[105] T1 p. 99
[106] Exhibit R-1

that finding to a new car dealership because of physical utility and keeping "the same generation" of use as the subject.[107]

The Appraisal of Real Estate[108] sets forth the four tests to be applied as vacant, and again as developed. Those tests are legal permissibility, physical possibility, financial feasibility and maximum productivity. The Tribunal holds that the highest and best use is as an automobile dealership, which not only takes advantage of the subject's improvements, it takes advantage of its location in a corridor with another dozen dealerships with a mile. As to a distinction between a new car dealership and a used car dealership, Marshall Valuation Service makes no such distinction. Rather, it provides a cost category for complete auto dealerships, and has various levels of quality to choose from.[109]

If the definition of highest and best use is narrowed to the point that every improvement in the subject is utilized, then the subject's highest and best use would only be as a Toyota and Subaru dealership. Such a finding would render the subject special use property, as there would be no market for a use that narrow. A similar analysis of any other branded commercial property would also push out likely market participants for the real estate, and render those properties special use as well. A special use property does not fit into Michigan's definition of true cash value which is the real estate's *usual selling price*,[110] as sales of special purpose property are unusual and generally do not sell for that purpose. That definition does not explicitly recognize special use as an exception to the requirement of usual selling price, or per *CAF Investment supra*, synonymous with market value.

The evidence presented shows that there are market participants for automobile dealerships. The challenge is to find sales of buildings and locations of similar utility, while separating out the value of franchises, leases, and brand-specific over-build, which the free market would not recognize. The Tribunal holds that there are enough sales to review to meet this challenge.

VALUATION

[107] T2 p. 253
[108] Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), p. 335
[109] T1 p. 48, T2 p. 180
[110] MCL 211.27

Per *Meadowlanes, supra,* the Tribunal is to consider the three traditional approaches to value of Cost Less Depreciation, Sales Comparison and the Income Capitalization approach. Neither party submitted an income capitalization approach. Tomlinson considered the income approach, but did not apply it, because "it was the least reliable and the fact that many dealerships are owner occupied."[111] Respondents concluded on p. RV-11 that the income approach was unreliable. Heinowski testified that he did not perform an income approach because it was beyond his assignment.[112] The Tribunal notes that among the sales presented, several involved leased fees, indicating that not all dealerships are owner-occupied. Perhaps an income approach would have been helpful. However, as neither party submitted such an approach, the Tribunal will rule upon the evidence before it.[113]

COST APPROACH

Both parties submitted a cost-less depreciation approach. Tomlinson testified that he gave the cost approach equal weight to the sales approach.[114] Heinowski testified that the sales approach was more representative of the market, as the cost approach "has so many moving parts."[115] The Tribunal will review the evidence to determine the reliability of each party's cost approach.

The first step in the cost approach is to "[e]stimate the value of the site as vacant and available to be developed to its highest and best use."[116] Tomlinson used three vacant land sales of sites that were on main roads, including Jackson Rd., but each was significantly smaller than the subject's 14 acres. PL-1 has only 1.15 acres; PL-2 has 7.53 acres, and PL-3 has 0.58 acres.[117] The price per square foot has wild undulations from $12.71 for PL-1, $2.43 for PL-2 and $9.57 for PL-3. Interestingly, PL-2 the land with the square footage and front footage closest in size to

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[111] T1 p. 37
[112] T2 p. 304-305
[113] In the recent published decision of *Menard Inc v. City of Escanaba* __ Mich App ___; __ NW2d ___ (Docket No. 325718, decided May 26, 2016), the Court of Appeals ordered the Tribunal to take more evidence where the appellate court found the record lacking, and implicitly suggested that the Tribunal erred by not taking more evidence than presented. As both parties herein apparently agree that the income approach is inapplicable, (as they did in *Menard*, see footnote 8), and because other evidence is available in which the Tribunal can make an independent determination of true cash value, the Tribunal declines to put the parties through the extra expense of re-doing their appraisals, and instead, will perform its quasi-judicial function of weighing the evidence each party decided to submit.
[114] T1 p. 64
[115] T2 p. 295
[116] Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), p.568
[117] P1, p. P1-55

the subject sold for by far the smallest price per square foot of $2.43, but the intermediate unit price of $3,200 per front foot. Tomlinson decided to abandon price per square foot and instead, relied on front footage as his unit of comparison. He then concluded to an average of $2,161.15 per front foot which he applied to the subject's 560 foot frontage, and rounding down, concluded to $1,200,000 land value for the subject. To support the use of front foot as a unit of comparison, Tomlinson testified that front footage is the portion of land that has value to an automobile dealership, where visibility is a very important factor. His work papers[118] were also offered into evidence to provide a test of reasonableness. This test basically showed that there was less of a percentage difference between comparables if front footage was used as the unit of comparison, over square footage.

Heinowski was extremely critical of the front foot, testifying that this method fails to value the rest of the land, which has utility for a dealership as parking for its inventory, and makes no sense when the lot depths are not constant. Further, it is rarely used outside of residential waterfront property.[119] Respondent also submitted an STC Manual excerpt,[120] as well as an excerpt from *A Guide to Appraising Automobile Dealerships*[121] to support its position. While the Tribunal was not persuaded by either excerpt, The Tribunal agrees with Heinowski that Tomlinson's method for determining land value is problematic in that it fails to value the depth in any meaningful way. Further, it is difficult to determine a reliable land value, given the dearth of vacant land sales of property with similar acreage.

Respondent's valuation of vacant land is also difficult to rely upon. While using more sales, each of its sales also contained significantly less land than the subject. The acreage of Respondent's land comparables is 8.22, 1.72, 1.47, 1.92 and 2.61 for RL-1 through RL-5 respectively. Moreover, two of its sales, (RL-1 and RL-5) in fact sold with improvements. RL-1 has a 19,000 square foot building on it and is zoned Industrial, rather than Commercial. RL-5 not only sold with a building, it sold with a tenant. The land was also acquired as part of an assemblage. Accordingly, neither of these two comparables are reliable indicators of the subject's land value. Respondent's RL-2 and RL-4 were sold and developed as out lots to the

[118] Exhibit P6.
[119] T2 p. 296-297
[120] Exhibit R-4
[121] Carter, Bradley R, *A Guide to Appraising Automobile Dealerships* (Chicago: Appraisal Institute 2015), p. 129, Exhibit R-5.

Meijer store. Merte conceded that this status would certainly affect each comparable's unit price.[122] As to RL-3, that sale involved a parcel less than a tenth the size of the subject.

While Merte testified that it was his opinion that land sold for roughly $10.00 per square foot, he significantly adjusted this number from $10.00 per square foot to $7.30[123] per square foot because of the subject's size and irregular shape,[124] and because its back acreage of woodlands and wetland could not be built upon. He also subtracted 3.92 acres in applying the $7.30 per square foot unit price determining the subject's land value to be worth $3,200,000.[125] This conclusion did not match his determination when preparing the assessment. Per his record cards, the land value is listed as the equivalent of $2,067,200 for 2013, 2014 and 2015. Merte's own inconsistency between his cost approach, which he testified was a mass appraisal approach, and his actual mass appraisal undermined the land value credibility.

Not only did neither party find sales of vacant land close in size to the subject, neither party provided any information allowing the Tribunal to conclude that the vacant land sales were arm's length, and without restriction. Respondent at hearing provided Exhibit R-12 to substitute for page RV-38 of Exhibit 1, concerning the back-up for sales RL-1 and RL-5. The original backup provided in the appraisal showed a 2003 sale for RL-1 and a 2006 sale for RL-5 for the exact same amounts as the sales that took place in 2013 and 2014, and which were reflected in Respondent's sales grid. The fact that both sales sold a decade or more apart for the exact price raises questions as to whether the second sales were somehow tied to the first sales.[126] In any case, the lack of backup concerning the land sales does not promote confidence in relying upon them to determine land values. Tomlinson's appraisal on behalf of Petitioner also lacks any information concerning the land sales. However, the portion of the work file submitted as evidence gives information regarding the land comparables.[127] In the present case, land value is a substantial percentage of the value of the subject, according to both parties. As the land value provides the foundation for value under the cost approach, the inability for either party to credibly value it places each party's cost approach on shaky ground.

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[122] T2 p. 227
[123] Exhibit R-1 p. RV-20; T2 p. 222
[124] Merte also indicated that the missing 1 acre parcel that made the subject irregular was also owned by Petitioner and used as part of the dealership's operations. T2 p. 222.
[125] T2 p. 223-224
[126] These sales also contradict Respondent's determination that land values went up by 18.72 percent for 2015.
[127] Exhibit P-6

As to valuing the improvements themselves, Tomlinson testified that he found current values in Marshall Swift, and discounted them back to the date of valuation. He also testified that he valued the property as average condition rather than good condition to account for superadequacy.

The concept of superadequacy can be best understood in a discussion of contribution. *The Appraisal of Real Estate* states:

> Conversely, the principle of contribution implies that the value of a component may be measured as the amount its absence would detract from the value of the property as a whole. From this prospective, the estimation of depreciation can be seen as an application of the principle of contribution.
>
> * **
>
> In the cost approach, the effect on value of a deficiency or super-adequacy is addressed in the estimate of a form of depreciation known as functional obsolescence.[128]

However, no evidence was presented showing whether, or how, costing the building with an inferior level of construction was in fact a measurement for superadequacy. While Petitioner convincingly showed that superadequacy for the subject exists, in that each brand has specific requirements for the finish of a building, Tomlinson failed to explicitly quantify that number. Accordingly, Tomlinson's value of the building under the cost approach is not reliable.

Respondent did not use the current costs found in Marshall Swift. Rather, he picked a few variables, and the BS&A software spit out a value for the cost. Merte testified that he believed the data used in the software was developed in 2004.[129] While the STC may mandate that assessors use this cost information, it takes a leap of faith to conclude that 2004 costs are the same as costs in 2013, 2014 or 2015.

In order to attempt to calibrate the stale data in the BS&A program, the assessor develops and applies an Economic Condition Factor ("ECF") and a County Multiplier, (some of the moving parts referenced by Heinowski). Merte's testimony however provided no reassurance that either factor was employed to accurately update the stale cost data. As to ECF, which he developed, Merte testified that it was developed for equalization purposes rather than for

[128] *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), P. 564
[129] T2 p. 237

valuation.[130]As to the County Multiplier which someone from the State Tax Commission develops and mandates, Merte could not testify as to its development or accuracy.

As far as depreciation, Merte did not find any functional obsolescence or superadequacy. Regarding superadequacy, it appears that Merte did not look too hard. Taylor's testimony set forth the extent that the design and materials of a dealership are mandated by both Toyota and Subaru, whose specifications are neither interchangeable with other brands, nor in fact, interchangeable with each other. Combined with the short franchise agreements of six years and three years respectively, any buyer of the realty, (even another Toyota and Subaru dealer) can expect to have to either rip out certain improvements, or remodel all together, as the automobile manufacturer demands. Accordingly, the Tribunal finds that neither party's cost less depreciation method is reliable in valuing the improvements on the subject property. As the underlying land value is also not reliable, the Tribunal declines to rely upon the cost approach in determining value.

SALES COMPARISON APPROACH

Both parties submitted a sales comparison approach to value. For Respondent, David Heinowski presented a list of 32 sales and used 6 of the 7 highest sales per square foot to establish a true cash value of $7,750,000. None of the 32 sales reported approached this figure, so there is no bracketing of the upper end for what a dealership facility can sell for. Additionally, the fact that Heinowski would knowingly violate USPAP[131] to take this assignment due in less than a week not only leaves him exposed professionally, but defoliates any fig leaf of objectivity he wore to the hearing. Further, while the Tribunal appreciates Heinowski's efforts to save "five pounds of paper"[132] by ignoring USPAP, perhaps a USPAP compliant appraisal might have provided the Tribunal with better, verified sales.

USPAP aside, the Tribunal typically looks at the underlying data to decide whether or not to accept the conclusions an appraiser puts forth in a document he signs. In the present case, Heinowski's selection of comparables appears to be skewed toward the high end of sales, despite his stated criteria for selection. Heinowski's Comp 1 located at 1185 S Rochester, Rochester Hills was built in 1971, 30 years prior to the subject and contained 13,763 square feet (30,000

[130] T2 p. 205-206
[131] Ignoring USPAP violates the Michigan Occupational Code under which he is licensed, per MCL 339.2609(b).
[132] T2 p. 360

less than the subject), and sold in October 2011 for $217.98 per square foot, and was adjusted to $232.87 per square foot for 2015. Heinowski conceded that this comparable was in fact excluded from his 2014 valuation conclusion. Heinowski's Comp 2, sold to the tenant and has only 9,950 square feet of building area, with no reported information as to its age, whereas the subject's building area is much larger at 44,940 square feet. Similarly, his Comp 3 was also sold to a tenant under a lease option. Heinowski conceded that he never reviewed the underlying leases which likely determined the sales price. Accordingly, the Tribunal finds that neither Comp 2 nor Comp 3 appears to be arm's length transactions, because a buyer who owns a business taking place at each facility has other interests, such as assuring his business is not interrupted by changing locations.

Heinowski's Comp 4 was a Lexus dealership owned by Meade Lexus, and occupied by Meade Lexus. After the sale, the premises, which sold for a Lexus price at $6,794,000 continued to be occupied by the same business. The Court of Appeals in *Menard*, while reversing the Tribunal reaffirmed its previous recent unpublished decisions that comparables used are to be valued as if vacant and available.[133] Here, Heinowski's Comp 4 sale price is valuing the stream of income paid by the Lexus dealership on top of the value of property located in Southfield. No adjustment was made for the value of the leasehold, or for property rights. Accordingly, Heinowski's Comp 4 is not reliable.

Heinowski's Comp 5 at 12000 Telegraph Rd. sold for $5,700,000, and per the City of Taylor's property tax records, had dealership square footage of 65,472 for the buildings on two adjoining parcels. The result is that Heinowski's unadjusted price per square foot is overstated at $199.70, when in fact it should be $87.06. No other evidence was brought forth discrediting this sale, and the Tribunal agrees that this sale price properly adjusted is useful in determining the subject's true cash value.

Heinowski's Comp 6 located at 1185 S. Main St. in Chelsea with a building of only 6,512 square feet built in 1984 for $207.31 per square feet. As this comparable is only 15% of the size of the subject, and was picked over a neighboring property on Main St. in Chelsea purchased by

[133] *Menard, supra*, footnote 5. The unpublished cases referred to are *Lowe's Home Ctrs v Marquette Twp*, unpublished opinion per curiam of the Court of Appeals, issued April 22, 2014 (Docket Nos 314111 and 314301) and *Lowe's Home Ctrs v Grandville*, unpublished opinion per curiam of the Court of Appeals, issued December 30, 2014 (Docket No. 317986).

the same purchaser, of a 9,300 square foot property which sold for significantly less, ($137.10 per square foot), the Tribunal finds that this comparable is too small and too old to be relied upon. Moreover, this comparable sold with a Chrysler dealership, and thus sold with the value of that franchise, which was not accounted for in any adjustment.

For 2014, Tomlinson's sales approach relied upon 5 sales comparables. Tomlinson picked comparables that did not have a franchise sold with the property. While his choice of sales is supported by *A Guide to Appraising Automobile Dealerships supra*,[134] most of his comparables were older, inferior properties. Interestingly, four of his five comparables had unadjusted prices well below his concluded price of $95.00 per square foot. The sale he relied upon most heavily at 101 W. 14 Mile Rd. was also the most heavily adjusted from $56.05 actual to $92.78 per square foot. Petitioner's Sale 5 at 10700 Ford Rd. in Dearborn is a former Chevrolet dealership that was sold to be a used car dealership. Tomlinson admitted that the East Dearborn neighborhood in which this property sits has seen better days, since the McGraw Glass facility nearby shut down.[135] The Tribunal agrees, and does not place any weight on this comparable.

Nor does the Tribunal put any weight on Sale 4 at 101 W. 14 Mile. That property which was built in 1969 was vacant and apparently vandalized at the time of sale. Tomlinson adjusted the purchase price by the rumored $600,000 spent by the purchaser after the sale. Because this property was so heavily adjusted, and because the amount spent after the sale was not verified, the adjusted price is not reliable in determining the value of the subject.

Tomlinson's Sale 2 at 56145 Pontiac Trail is also not reliable. First of all, it sold for a different highest and best use than what the Tribunal concludes the subject's use to be. The purchaser sells heavy construction equipment, rather than new cars, which appeal to a different buyer altogether. Even if the Tribunal were to accept that the highest and best use of the subject was broad enough to include the sales of tractors and Bobcats, Exhibit R-6 clearly shows that this sale was from a receiver. While the sale was approved by the Oakland County Circuit Court, the receiver's motivation in selling this property are likely different than the typical seller of car dealerships. Accordingly, Sale 2 is rejected.

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[134] P. 167, provided by Respondent as part of Exhibit R-5.
[135] T1 p. 130

Tomlinson's Sale 3 in Warren was to Enterprise Rent-A-Car. Tomlinson testified that there was a deed restriction, prohibiting that comparable from being sold to a new car dealer. In *Menard supra*, the Court of Appeals explicitly rejected sales comparables for property that was subject to deed restrictions. The Court of Appeals stated:

> Although Torzewski testified that he considered the deed restrictions, the record is insufficient to support his assertion that they had no effect on the sales price for the restricted comparables. His testimony is that he consulted the brokers, sellers, and buyers of the comparables. Thus, that testimony is only sufficient to establish that *to the parties involved in the actual transaction*, the deed restrictions did not affect the sales price they were willing to pay. In other words, the market for sale was limited to those purchasers who were willing to accept the restrictions and so did not reflect the full value of the unrestricted fee simple.
>
> However, in assessing TCV, the property "must be assessed at its highest and best use," *Huron Ridge*, 275 Mich App at 33, which in this case is as an owner-occupied freestanding retail building. Deed restrictions that limit the ability of prospective buyers to use the comparable properties for the subject property's HBU necessarily limit, if not eliminate, the willingness of those buyers to purchase the restricted property. Those who would be interested in buying the property *with restrictions* would need to make modifications to convert the building from retail to something else, like industrial use. Given the need to convert, the buyers would necessarily pay a lower price.
>
> For the same reasons, the anti-competitive nature of the deed restrictions means that the deed-restricted comparables could not be sold for their HBU. The potential buyers of the comparables were therefore limited to buyers willing to accept the use restrictions. Further, because of the prevalence of the self-imposed deed restrictions on big-box stores, there is essentially no market for big-box stores being sold for the HBU of the subject property. Thus, half of Torzewski's comparables were not evaluated at the HBU of the subject property because the deed restrictions expressly prohibited their use as a freestanding retail center.

The fact scenario regarding this comparable is on all fours with *Menard*. While the property in front of the Court of Appeals was a big box store, the principle regarding restrictive covenants by definition resulting in a lower sales price is applicable to any type of property. Accordingly, the Tribunal must, as a matter of law, reject Sale 3 as a comparable.

The only comparable that survives from Tomlinson's analysis is Sale 1, located at 7885 W. Grand River in Genoa Twp. Respondent argued that this comparable was different from the subject in that it is not in a "cluster" of dealerships. However, it is in a commercial corridor, and

has several dealerships to the east, and one to the west on Grand River. The Tribunal also notes that Heinowski negatively adjusted four of his comparables by 10% for "proximity to competition," for dealers that were in a dealership cluster. In other words, Heinowski found that such properties were superior if they were not surrounded by other dealerships. Accordingly, Respondent's argument that Tomlinson's Sale 1 is inferior because it is not in a sales cluster is contradicted by its own evidence.

Both Tomlinson and Heinowski made market adjustments for date of sale. Tomlinson argued that his comparables which sold prior to 2012 were superior as to market from the valuation date of December 31, 2013. However, nothing other than his opinion was presented to support that determination. The Tribunal is skeptical that Sale 1 which sold in July 2011 sold at a time where the market was superior to the valuation date, approximately two years removed from General Motors' and Chrysler's bankruptcy filings. Without data to bolster this opinion, the Tribunal rejects Tomlinson's market adjustment.

Heinowski provided data in the form of four paired sales to bolster his market adjustment of 1.56% a month. However, as explained below, the Tribunal rejects his market adjustment as well. Accepting Tomlinson's Sale 1, and keeping his 10% adjustment for office/show room percentage, and 5% adjustment for average height, results in an adjusted price per square foot of $114.80. Taking Heinowski's Comp 5 corrected price of $87.06 and accepting his +5% for location, rejecting his -10% adjustment for proximity to competition and -5% adjustment for size, and +5% for land to building ratio (as its building is no longer smaller than the subject and land to building ratio is therefore based on false data), and accepting his age and condition adjustment of +5%, the adjusted sales price for Sale 5 is $95.76. Both sales bracket the valuation date, and the Tribunal finds the sales bracket the subject as well in terms of size, providing a range of values. The Tribunal finds that the subject is slightly more similar to Tomlinson's Sale 1 than Heinowski's Comp 5, the Tribunal concludes that the price per square foot of the subject is $107. Multiplying this figure results in a value of $4,808,580, or $4,800,000 rounded. The Tribunal concludes this to be the 2014 true cash value.

2015 VALUE

Petitioner did not prepare an appraisal for 2015, being content to rely upon the 2014 taxable value, which can only increase by the consumer price index per MCL 211.27a.

Accordingly, the Tribunal is left only with evidence provided by Respondent as to 2015's true cash value. As noted above, Respondent relied upon Heinowski's paired sales analysis to adjust the sales used to value 2014 to the valuation date for 2015. However, there are problems with the raw data used by Heinowski to derive his 18.72% inflator. First of all, Respondent's conclusion of value using this inflator is $9,160,000, which is over $2.3 million higher than Respondent's highest sale; an occupied Lexus dealership which sold for $6,764,000. No sale supports such a high value. As applied to Merte's land value for 2015, this 18.72% inflator contradicts his testimony that land prices in Scio have been constant and consistent, going back to 2003, per Merte's Land Sale 1 described above.

The Tribunal is also unconvinced by the paired sales presented by Respondent. Heinowski's first paired sale located at 5470 Ali Dr. in Grand Blanc initially sold as a bank sale in 2011. The notes in the write-up for the first sale of this property indicate that the buyer intends to occupy the property as an auto parts store, and that the property was purchased at auction. Auction sales are generally not considered arm's length unless proven otherwise, per MCL 211.27. The fact that the dealership property sold for a different highest and best use also reduces the reliability of this sale as a barometer of the market for automobile dealership properties. As the initial sale is artificially low in 2011, the difference in price for the second sale in 2013 is not a reliable finding of the market in general. The Tribunal is further troubled by the fact that this sale is in Grand Blanc, (a Flint suburb) which is not likely to have the same price trends as Scio, which is a neighbor of Ann Arbor. Accordingly, this first set of paired sales is rejected.

Heinowski's second paired sale set at 4140 Miller Rd. in Flint was sold a second time in 2014, and it was noted that 23,920 square feet of a retail auto dealership building was demolished. As Heinowski volunteered on redirect, this sale's reliability for measuring automobile dealership appreciation must be called into question when it sold for a different highest and best use. Heinowski also admitted that he did not visually inspect this comparable, not having been to Flint for several years. The fact that this comparable is in Greater Flint, also calls into question the reliability of this set of sales as a valid indicator of the market inflator for a property in Greater Ann Arbor. Accordingly, this second set is rejected.

Heinowski's third paired sale at 9700 Belleville, in Belleville, per P-16 was purchased by a tenant in the initial sale, and then purchased by a neighbor to expand its business in the second sale. The initial sale price would likely be determined by the lease in place, which Heinowski admitted he never reviewed. The initial sale is therefore unreliable. The second sale of this property is also unreliable, being sold to a neighboring business for business expansion. Per Exhibit P-16 there was no buyer broker on the deal. These facts indicate that the second sale was not likely a market transaction, but rather, a business decision by the neighboring business. Accordingly, the Tribunal does not give this third set of paired sales any weight in determining a market condition adjustment.

Heinowski's fourth paired sale at 14765 Michigan Ave., Dearborn, was initially sold in 2012 as a bank sale, and possibly sold to tenants in the second sale. Again, the initial sale is likely to be artificially low as a bank sale, while the second sale is likely to be non-arm's length, pursuant to a lease, or the business decisions of the tenant. Accordingly, this forth set of paired sales is rejected.

The Tribunal does however, have a list of unadjusted sales on p. RV-12 of Respondent's valuation. The last 13 sales listed occurred from February 17, 2014 through May 3, 2015, and thus give an indication of value as of the valuation date for tax year 2015. The sale of 23405 Hall Rd. in Macomb which was built in 2004 and has 28,532 square feet of building area appears to be most similar in size and age. That facility sold for $111.79 per square foot. Applying that figure to the subject's 44,940 square feet renders a true cash value of $5,023,842, or $5,000,000 rounded, which the Tribunal finds to be the true cash value for the subject in 2015.

The subject property's TCV, SEV, and TV for the tax year(s) at issue are as stated in the Introduction section above.

JUDGMENT

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

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment

within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of 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 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, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, and (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%.

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

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.[136] Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is $50.00 in the Entire Tribunal and $25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the

[136] See TTR 261 and 257.

petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.[137] A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.[138] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[139]

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."[140] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[141] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[142]

By: David B. Marmon

Entered: July 1, 2016

[137] See TTR 217 and 267.
[138] See TTR 261 and 225.
[139] See TTR 261 and 257.
[140] See MCL 205.753 and MCR 7.204.
[141] See TTR 213.
[142] See TTR 217 and 267.