



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

Cybernoor Holdings,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 18-001216

City of Southfield,
Respondent.

Presiding Judge
Preeti P Gadola

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Cybernoor Holdings, appeals the ad valorem property tax assessment levied by Respondent, City of Southfield, against Parcel No. 76-24-26-327-001 for the 2018 tax year. Mark Straetmans and Sandro DiMercurio, Attorneys represented Petitioner and Laura Hallahan and Seth O’Loughlin, Attorneys represented Respondent.

A hearing on this matter was held on September 9-10, 2019. Petitioner’s witnesses were Ahmed Alomari, CEO and Jumana Judeh, Appraiser. Respondent’s sole witness was Jacob Thurston, MAAO.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash value (“TCV”), state equalized value (“SEV”), and taxable value (“TV”) of the subject property for the 2018 tax year are as follows:

Parcel No.	Year	TCV	SEV	TV
76-24-26-327-001	2018	\$455,500	\$227,750	\$227,750

The subject property is a 12,600 square foot office building located at 23875 Northwestern Highway in Southfield.

PETITIONER'S CONTENTIONS

Petitioner contends that it purchased the subject property in October 2017 for \$262,000. This was approximately two months before the date of value of December 31, 2017, and as such, it contends the sale price is the best indication of market value. Petitioner's CEO, Mr. Alomari, contends that the property was in very poor condition on the date of value and that he spent \$500,000 to bring it into leasable condition. Mr. Alomari testified that on the date of value, only the parking lot, some interior demolition and a little bit of landscaping were completed.

Mr. Alomari requested a special inspection from the City of Southfield, to determine which repairs were necessary to obtain a Certificate of Occupancy ("C/O"). The inspection was completed in September 2017, and the property received the C/O in March 2018. Petitioner contends that at the time of purchase, the owner's daughter partially occupied the lower level of the property, which was in very poor condition, with the upper level barricaded off and lower level windows encased in saran wrap to keep out the elements.

Petitioner contends that at the time of purchase, the subject property had been on the market for almost 12 years. The asking price for the property was \$395,000, which is \$125,000 less than Respondent's contention of value of \$525,000.

Petitioner claims that the subject property is in a poor location and its road frontage is covered with potholes. It also has poor visibility and is difficult to enter and exit due to its location on a one-way service drive. Petitioner occupies 25% of the building for its own use; however, it has been unable to lease the remaining 75% at only \$10 per square foot, despite hiring two reputable listing agents, Farbman and Weichert.

Petitioner contends that based on the feedback from the brokers, potential tenants rejected the property because of its poor location and the condition of the roads; though they did approve of the renovations.

PETITIONER'S ADMITTED EXHIBITS

P-1: Appraisal Report by Jumana Judeh

P-4: City of Southfield's Inspection Report (9/27/17)

P-6: 2017-2018 Building Permits

P-11: Renovation Bills

P-12: Petitioner's Purchase Agreement for the subject property

P-14: Aerial map and photos

P-16: Certificate of Occupancy

P-18: NAI Farbman Listing

PETITIONER'S WITNESSES

Ahmed Alomari

Mr. Alomari is the CEO of Cybernoor Corporation which provides IT services and software development. He testified Petitioner purchased the property on October 16, 2017 for \$262,000, after three months of price negotiations. The property was listed by Colliers in 2005 and had an asking price of \$395,000.

Mr. Alomari testified that at the time of purchase, the condition of the property was very poor:

The roof was leaking, and the second floor was completely abandoned and barricaded. There was a lot of rotting and extreme water damage. The parking lot, of course, also had issues in terms of lots of potholes and water drainage issues. There were also landscaping issues in terms of overgrown trees that were running into the power lines. The windows were also busted.

The current occupant had Saran wrapped the windows to prevent, you know, cold air from coming in. The concrete sills on top of the building were -- that was also noted by the City of Southfield inspector -- were cracking. Pieces of concrete were falling, as was also a safety issue.¹

As a result of the condition of the property, Mr. Alomari requested a City of Southfield Special Inspection, prior to closing, which was completed in September 2017.² The inspection was requested to determine what renovations would be required before the issuance of a final C/O. After many renovations, the final C/O was issued by the City in March 2018.³

Petitioner contends it obtained building permits for the items requiring repair in the Special Inspection Report ("Report"), obtained repair estimates, and provided invoices and a copy of a check in payment for some of those repairs.⁴ The invoices included one from Techborne, for \$65,000 regarding the replacement of all HVAC units,⁵ a copy of a check to A & N Asphalt in the amount of approximately \$30,000 for repair and replacement of the parking lot, an invoice from Tri-Star Roofing for approximately \$60,000 to repair and replace the leaking roof, and an invoice from Rose Pest Control of approximately \$900, because the building was infested with rodents and insects due to neglect.⁶

Additionally, the lighting in the property had to be replaced with LED lighting at a cost of approximately \$63,000. The carpet and tile required replacement at a cost of

¹ Tr. Vol 1 at 13.

² See P-4.

³ See P-16.

⁴ Tr. Vol 1 at 14-23. See P-4 (Special Inspection Report), P-6 (Building Permits) and P-11 (Invoices and Receipts for Repair).

⁵ The special inspection report puts forth that no mechanical violations were found. See P-4 at 3.

⁶ See P-11.

approximately \$50,000, the concrete roof sills were cracked, broken and pieces were falling down off the building and the cost of repair was \$48,000. Approximately \$36,000 was spent on the landscaping, including maintenance of overgrown trees and replacement of general landscaping. Painting of the building in the interior and exterior cost approximately \$32,000. Drywall repair and replacement cost approximately \$30,000, and doors required replacement at a cost of \$30,000. Further, demolition costs were approximately \$25,000. Mr. Alomari testified that Petitioner “spent approximately \$500,000, which is approximately \$40 a square foot, to complete all renovations and repairs to the building.”⁷

Mr. Alomari testified the property is located at 23875 Northwestern Highway, on the corner of the one-way service drive of the Lodge Freeway and Maple Ridge Road, which is a residential street. He testified the roads on the service drive and Maple Ridge are in very poor condition and “[t]o be honest, it looks like a war zone, especially having to travel those roads day in and day out.”⁸

In February 2018, Mr. Alomari hired Farbman, a local well-respected real estate agency, to list the property for rent. He testified, “they ran various marketing campaigns and listing attempts to recruit tenants. To date - - to date we have not had a single tenant.”⁹ He testified,

Lots of viewings were made. Lots of prospects came and toured the facility, but everyone commented the same thing, that they appreciated the renovations that were done and noted that the building was in very well, you know, condition post renovation, but they did not like the location. The [comments] were - - that it was difficult to get there. It was difficult to re-enter the freeway because of location.

⁷ Tr. Vol 1 at 21.

⁸ Tr. Vol 1 at 25

⁹ Tr. Vol 1 at 32.

And the most common comment we received is the condition of the roads were very poor, and they didn't feel that their – they could bring customers, because this building is zoned for office professional use, so the typical, you know, tenants we would be looking for would be accountants, you know, attorneys or professional offices. And obviously they would be bringing their clients to this building, and, you know, most of them just said they could not bring a client to such a location.¹⁰

Mr. Alomari testified that its listing with Farbman expired in October 2018, and that during that time, 25 to 30 walk-throughs had occurred in an attempt to find potential tenants. After the listing with Farbman expired, Mr. Alomari hired Weichert Realty, who listed the property from November 2018 through April 2019. However, it also was unable to attract a tenant.

During cross-examination, Mr. Alomari testified that, at the time of purchase, he was aware there were issues with the parking lot, roof, and interior, among other issues, and that Petitioner would have to repair those items before utilizing the property. Consideration of those problems were taken into account when putting in an offer to purchase. He testified, “[a]ny purchase price of any property, as I mentioned, whether it’s commercial or residential, condition of the property is always a factor in the market value of a - -.”¹¹

Jumana Judeh

Ms. Judeh is a Certified Residential Appraiser and prepared an appraisal of the subject property utilizing both the sales and income approaches to value. In her sales approach, Ms. Judeh testified her primary criteria in choosing sales, were the condition

¹⁰ Tr. Vol 1 at 33.

¹¹ Tr. Vol 1 at 54. Mr. Alomari’s testimony was cut-off by counsel before he was able to finish his sentence.

of the building and its location. Ms. Judeh chose five sales comparables that were adjusted to be consistent with the characteristics of the subject property. The sales were not adjusted for condition and location, however, because she contends her sales were in fair condition and in similar locations. Ms. Judeh reconciled her sales approach to value as \$20 per square foot, or \$252,000.

Ms. Judeh also prepared an income approach to value that put forth four comparables adjusted to be consistent with the characteristics of the subject property. She testified that she was unable to find comparables situated in isolated areas such as the subject, so she expanded her search criteria.

Comparable one is located on Lahser in the City of Southfield which is just north of the subject property. It consists of an 1,834 square foot unit in a larger building, and due to its proximity to the subject property, did not require a location adjustment. Comparable two is on Schoolcraft in Livonia on a service drive, but there is tremendous activity at that location, so an adjustment was made. Comparable three is also located on Northwestern Highway, such as the subject, but it's a little further north, and comparable four is located on Melrose, a secondary road in the city of Southfield, about a mile or two from the subject property. Ms. Judeh testified that she reconciled her income comparables at \$6.80 a square foot, gross.¹²

Ms. Judeh testified that she applied a 20% vacancy rate because she is extremely familiar with the market that encompasses the subject property, and when

¹² Tr. Vol 1 at 63-64.

she drives up and down the Lodge, she sees numerous signs that say, “for sale or lease.”¹³ Ms. Judeh also consulted CoStar to determine her vacancy rate.¹⁴

Ms. Judeh applied a management fee of 2.5% of effective gross income, and a leasing commission of the same percentage. Insurance at \$0.52 per square foot and common area maintenance of \$1.00 were utilized. The parking lot and landscaping were considered at \$1.00 per square foot, and a reserve of \$0.52 a square foot was put forth derived from RealtyRates. A loaded cap rate of 12.73% was applied to reach a conclusion of value of \$259,000 pursuant to the income approach.¹⁵

Ms. Judeh testified that she did not view the property on tax day but had extensive discussions with Mr. Alomari to “establish and identify the condition of the subject on valuation date.”¹⁶

During cross-examination, relative to the sales approach, Ms. Judeh agreed that sales comparable one, which sold in 2015, was also transferred the year before from Fifth Third Bank to 23155 Northwestern Highway, which suggested it was foreclosed upon by the bank approximately five months before the 2015 sale occurred.¹⁷ With regard to comparable two, Ms. Judeh’s work file indicates a sale between related entities with deferred maintenance, which was not specifically addressed in the appraisal.¹⁸ Sales comparable three is located on Ten Mile Road which Ms. Judeh considers superior to the subject property. It sold in December 2015 for \$19.89 per square foot. However, according to public records, there were two sales after that sale,

¹³ Tr. Vol 1 at 65.

¹⁴ Tr. Vol 1 at 86.

¹⁵ Tr. Vol 1 at 66.

¹⁶ Tr. Vol 1 at 77.

¹⁷ Tr. Vol 1 at 133.

¹⁸ Tr. Vol 1 at 143-144, R-7 at 67, 71, 73.

including a sale that occurred in October 2016. At that time, the property sold for \$30.95 per square foot; however, Ms. Judeh chose to use the earlier sale because she determined the later sale was between related parties, per public records. However, as noted above, she did consider sales comparable two, which was also between related parties.¹⁹ Sales comparable four is on Eight Mile in Southfield, bordering Detroit, and consists of half warehouse space, which Ms. Judeh testified might be an asset, for file storage space, for example. She testified its location is inferior to the subject, but it does have higher traffic count, so she “felt one versus the other made it similar.”²⁰ Ms. Judeh agreed that she should have included in her appraisal report that 4,590 square feet of the comparable was warehouse space.²¹ Ms. Judeh acknowledged that her sales comparable five was the sale of the subject property, which sold approximately two months before the date of value, in October 2017, yet she applied a negative market conditions adjustment. Ms. Judeh admitted, due to the proximity of the sale date to the date of value, that she should have made no adjustment.²²

During cross examination relative to Ms. Judeh’s income approach to value, she acknowledged that her rental comparable one on Lahser has gross building area of 118,414 square feet, which is nine times more than the subject. She also acknowledged that comparable one was a renewal lease, but “[i]t doesn’t mean it’s not at market.”²³ Rental comparable two is located on Schoolcraft in Livonia, with an asking price of \$15.75 per square foot, plus electric. Ms. Judeh was questioned, “and you

¹⁹ Tr. Vol 1 at 147-150, R-7 at 135.

²⁰ Tr. Vol 1 at 156, 158, R-7 at 27.

²¹ Tr. Vol 1 at 159.

²² Tr. Vol 1 at 160.

²³ Tr. Vol 1 at 175, R-7 at 165, 167.

conclude to six fifty-five a square foot. Would that cause you to question whether or not that lease was an outlier or a renewal?" "A: No."²⁴ Ms. Judeh read from her work file that the comparable consists of "7,000 square feet of office, finished open area, conference room, lunchroom, lab areas of 13,000 square feet, warehouse, fully air conditioned, completely wired, heavy power."²⁵ Ms. Judeh conceded that the subject property has no lab area and is not wired for heavy industrial equipment, but is a typical, general office building.²⁶ She testified, "[t]he reason why I use this comparable is because it was on a service drive."²⁷

Rental comparable three, was a lease renewal in February 2017.²⁸ Refreshing her recollection with p 441 of her work file, she noted that the original lease was signed in 2014 and there was a renewal in 2017. Also per Ms. Judeh's work file, comparables 1 and 3 are renewals and she testified she is unaware if new leases were signed at the same time to determine if the renewals were at market.²⁹ However, new leases in the property went for \$15.95 to \$17.95 plus electric, for 707, 1,951, 2,067, and 6,725 square feet spaces per the CoStar report in her work file. The lease renewal, however, that Ms. Judeh utilized was for \$6 per square foot.³⁰

With regard to rental comparable four, the lease was signed in May 2015 and encompassed 4,036 square feet of a 21,500 square foot building with only 1,625 square feet of office space, per the CoStar report in Ms. Judeh's work file. Further, 19,875

²⁴ Tr. Vol 1 at 178.

²⁵ Tr. Vol 1 at 183; R-7 at 36.

²⁶ Tr. Vol 1 at 184.

²⁷ Tr. Vol 1 at 184.

²⁸ See R-7 at 97-98.

²⁹ Tr. Vol 1 at 190.

³⁰ Tr. Vol 1 at 191-192, R-7 at 98.

square feet of the entire space is industrial. Nevertheless, Ms. Judeh used it because it was office space in Southfield, near the subject.³¹

RESPONDENT'S CONTENTIONS

Respondent contends that the Tribunal should not rely on the purchase price of the subject property as its indication of value. Respondent claims that one sale does not make the market and the purchaser of the property was aware at the time of purchase that expenditures after the sale would be required and he factored those into his purchase price.

Respondent contends, that as of tax day, the subject property parking lot had been repaired. Further, additional remodeling was underway and as a result, on tax day, the property was not in the same condition as it was on the date of sale. Also, Mr. Alomari testified that renovations were complete in February 2018, less than two months after the date of value.

With regard to Ms. Judeh's appraisal, she made no adjustments to her sales comparables for location. Further, she testified comparable one was a foreclosure and then a bank sale, but there is no evidence the property was listed for sale. Comparable two was a sale between related parties, and Ms. Judeh relied on the earlier sale of comparable three that was \$10 per square foot less than its subsequent sale in 2016. Comparable three is also a Class D office building with wood trim, which is more costly to maintain than a Class C office building, such as the subject.

Ms. Judeh's comparable four borders Detroit and no location adjustment was made. Further the square footage of the property building is more than half warehouse

³¹ Tr. Vol 1 at 196-195, R-7 at 175.

space, which is a totally different market than office space. Ms. Judeh admitted that her market conditions adjustment to comparable five was erroneous. She also made no expenditures after the sale adjustment, despite the fact that she was aware the expenditures were required, and underway as of tax day.

Ms. Judeh's rental comparable one is a one-year renewal lease of 1,834 square feet in a 118,414 square foot building. The rental rate was at \$6.55 per square foot. She testified that with regard to this comparable, that she never inquired or determined the rental rate of new leases, or whether the renewal lease rate was at market. Rental comparable two is located in Livonia and no location adjustment was made. The property was also more than 50% warehouse with lab areas and heavy equipment wiring.

Rental comparable three was a renewal lease of 3,000 square feet at \$6 per square foot, however, Respondent demonstrated that new leases are being offered at between \$15.95 to \$17.95 per square foot, plus electrical. Rental comparable four was a lease in a building with 92.4% industrial and 7.6% office space.

Respondent's valuation expert, Mr. Thurston, prepared sales and income approaches to value, but he utilized only office buildings and no industrial comparables. Respondent also contends the space may be partially vacant because of poor management, or the owner is selective in choosing the tenants that he wants to co-exist with.

RESPONDENT'S ADMITTED EXHIBITS

R-1: Respondent's Valuation Disclosure

R-7: Petitioner's Appraiser's work file, pp. 27, 36, 67, 71, 73, 97, 98, 135, 165, 167, 175

R-10 Sheriff's Deed, Petitioner's Sales Comparable One

R-11: Assignment of Sheriff's Deed, Petitioner's Sales Comparable One

RESPONDENT'S WITNESS

Jacob Thurston

Mr. Thurston is the Deputy City Assessor for the City of Southfield and is master-level assessor, formerly known as a Level 4. He is also a real estate broker and Michigan Certified General Appraiser. Mr. Thurston was admitted as an expert in the assessing and appraising of real property by the Tribunal.³²

Mr. Thurston testified that Southfield has a large office market of about 27 million square feet, and he concluded that the highest and best use of the property to be continued office use of the subject property.

Mr. Thurston considered all three traditional approaches to value, the cost-less-depreciation approach, the sales approach and the income approach. He determined the cost approach was not appropriate in this instance, and testified, "I determined the cost approach was not applicable due to difficulties of accurately estimating accrued depreciation from all sources."³³ He also considered and utilized the sales and income approaches to value.

Mr. Thurston prepared a sales approach including three comparables, adjusted to be consistent with the characteristics of the subject property. The comparables were within one mile of the subject property or on the same road. Mr. Thurston considered

³² Tr. Vol 2 at 226.

³³ Tr. Vol 2 at 237.

adjustments for real property rights conveyed, financing terms, conditions of sale, expenditures required immediately after the purchase, market conditions, location, land-to-building ratio, building size and condition. He did not make adjustments to the comparables for property rights conveyed, financing terms or conditions of sale, finding those characteristics equal to the subject's.³⁴ Mr. Thurston did not make a market conditions adjustment to his comparables because they sold relatively close to the date of value.

Mr. Thurston's comparable one was the sale of the subject property in October 2017. Mr. Thurston does not find that the property sold at "its usual selling price," because it sold at a 66% discount from its asking price, while the normal discount from asking price to sale price in the City of Southfield is 10%.³⁵ He answered in the affirmative when questioned, "a 66% discount possibly indicate[s] that there were issues with the property or the sale that resulted in the discount."³⁶ He testified, "[t]hat's why though this is an indication of value, I don't put 100% weight on this one sale, because one sale does not make a market"³⁷

Mr. Thurston's sales comparable two is located about a half mile from the property. It consists of 5,548 square feet, was built in 1968, and is the same class C masonry-type of framing. Mr. Thurston testified that the land to building ratio is comparable to the subject and, at the time of sale it was reportedly in similar condition to the subject property. He testified, for example, the listing broker indicated the property needed a new parking lot. He also noted that the building permit history of both

³⁴ Tr. Vol 2 at 241.

³⁵ Tr. Vol 2 at 248-249.

³⁶ Tr. Vol 2 at 249.

³⁷ Tr. Vol 2 at 250.

properties was similar and the post-sale remodeling that has occurred at both properties is comparable. Sales comparable two is a two-story office building like the subject property and it sold on March 23, 2017 for \$325,000.³⁸ The only adjustment applied was (-5%) for size.³⁹ Mr. Thurston's final adjusted sale price for comparable two was \$55.65 a square foot.

Sales comparable three is situated on Northwestern Highway, the same street as the subject property, about 5 miles away. It consists of 26,500 square feet, was built in 1970 and is also class C construction. The land-to-building ratio is similar, and it's also a two-story office building. Sales comparable three sold on October 13, 2017 for \$2,050,000.⁴⁰ Mr. Thurston made a (-5%) adjustment for location and a 5% adjustment for size. Mr. Thurston consulted with the property broker and determined that comparable three was in superior condition to the subject property and, as such, a (-5%) adjustment was applied. His final adjusted sale price of comparable three was \$73.49.⁴¹

Mr. Thurston reconciled his three sales by placing 50% weight on sale one, which is the sale of the subject property. He testified,

Well, usually your best indication of value is a recent sale of the subject property, though it's not your only indication of value. This transaction does not exist in a vacuum all by itself, and one sale does not make a market. The property must compete against the other sales and the other properties that occur within the market. And so while I do believe that a recent sale of the subject property is at times your best indication of value, again, it's not the only indication. So that's why I gave it 50%, which is more weight than the others but not 100% weight.⁴²

³⁸ Tr. Vol 2 at 252.

³⁹ Tr. Vol 2 at 251-254.

⁴⁰ Tr. Vol 2 at 255-256.

⁴¹ Tr. Vol 2 at 258.

⁴² Tr. Vol 2 at 259.

Mr. Thurston placed 30% weight on sales comparable two because it's in closer proximity to the subject than comparable three. He placed 20% weight on sales comparable three. He testified that comparable three is a valid indication of value for the subject property because it occurred close to the date of value and is an office property within the city of Southfield. However, he also noted that it is the furthest away of the comparables, from the subject, therefore received the least weight. Mr. Thurston reconciled value per square foot from all three comparables is \$41.79 and multiplying that by 12,600 feet results in a value of \$525,000, rounded.⁴³

Mr. Thurston also prepared an income approach to value. He chose four rental comparables and considered adjustments for expense reimbursement terms, conditions of lease, market conditions, location, tenant size and condition. He did not make a market conditions adjustment because all the transactions occurred in calendar year 2017. Comparable one is an active listing of the subject property, and a (-10%) adjustment was made because it is a listing. The listing encompasses 6,500 feet of space with a triple net lease, which Mr. Thurston feels is unusual for office space. In a triple net lease, the tenant pays for all utilities, building maintenance, insurance, etc. and many office buildings are not separately metered so the landlord cannot charge the tenant for its electric if it doesn't know what the individual bill is. As such, generally gross rent is charged, and the landlord is responsible for all expenses. Further, most other office buildings in the area are offered at gross; therefore, it might give a potential tenant pause, to committing to the subject building.⁴⁴ An adjustment to the comparable

⁴³ Tr. Vol 2 at 261.

⁴⁴ Tr. Vol 2 at 265-267.

of \$1.76 per square foot was made for the difference between triple net and gross leases. Mr. Thurston also adjusted comparable one for condition because it was in worse condition on the date of value than its condition as an active listing. As such, a (-5%) adjustment was applied. Based on the total adjustments made to comparable one, it's adjusted rental rate is \$10.05 per square foot.

Comparable two is located off Northwestern Highway within the city of Southfield and is about ½ mile from the subject property. It consists of just less than 70,000 square feet, is an office building, was built in 1974, and was class C construction, similar to the subject property. The gross lease for this property was signed on December 20, 2017 for 748 square feet. The only adjustment made was for condition of the property of (-5%), based on its superior condition. The adjusted rental rate for sales comparable two was \$12.83.

Comparable three is located off Evergreen Road within the city of Southfield, less than half a mile from the subject property. It consists of 33,600 feet, was built in 1970, and is a class C building such as the subject. The leased area was 1,800 feet, was a gross lease and was signed on March 21, 2017. Because the property was on a different road than the subject property, a location adjustment was made of (-5%). The adjusted rental rate per square foot of comparable three was \$11.40.

Comparable four is located off W. Ten Mile Rd. in the city of Southfield. It is about 2 ½ miles from the subject property. It consists of 14,000 feet, was built in 1969 and has class C construction. It is a 5,000 square-foot gross lease which was signed on October 6, 2017. A condition adjustment was made and its adjusted rental rate per square foot was \$11.40.

Mr. Thurston gave 50% weight to rental comparable one which is the subject property. Comparables two and three were given 20% weight each, and comparable four, 10% weight. Mr. Thurston testified that he assigned 50% weight to the subject property because “usually a listing or sale of the subject property is your best indication of value, but you have to – – you can’t just trust that it is. You have to trust and then verify that it is; right? And the way you trust but verify is to weigh that against other comps of competing properties also within the same market.”⁴⁵ Based on a consideration of all four comparables, Mr. Thurston’s reconciled conclusion of adjusted rent was \$11 per square foot. As such, the potential gross income of the subject property would be \$138,600.

Mr. Thurston also considered operating expenses, market vacancy and credit loss. Market vacancy was extracted from a CoStar market report for two-star properties, such as the subject. The indicated vacancy for two-star office space in the Southfield, south of 10 Mile Road submarket was, 9.5%. This is consistent with what Mr. Thurston observed in the market, south of 10 Mile in his position as deputy assessor. Mr. Thurston utilized a credit loss of 1% and subtracting for vacancy and credit loss from potential rental income, the effective gross income of the subject property is \$124,047.

Operating expenses were extracted from expense comparables which are similar in size to the subject property and also similar to the subject property’s projected estimated gross income. Mr. Thurston’s concluded expense ratio was 19.42%, excluding management. Because a management fee was not included in the

⁴⁵ Tr. Vol 2 at 276.

comparables, he determined a separate management fee of 4%. Mr. Thurston's net operating income for the subject property as of December 31, 2017 was \$94,993.

Mr. Thurston considered a market derived capitalization rate extracted only from office properties. His overall unloaded capitalization rate was the average of his comparable rates or 11.06%. The City of Southfield has three separate school districts and the tax cap rate for the subject school district is 3.26%. As such, the tax loaded capitalization rate was determined to be 14.32%. Lease up costs were considered because the property was nearly vacant on the date of value, which includes items such as leasing commissions. Entrepreneurial incentive was included in order to account for a return on investment, as well as one month's free rent, as "is fairly typical for new office leases within the city of Southfield market."⁴⁶ After the considerations discussed above, Mr. Thurston concluded in a true cash value of the subject property for the 2018 tax year under the income approach, of \$515,000.

Mr. Thurston reconciled his sales and income approach to value the subject property, applying equal weight to both approaches, at \$520,000.⁴⁷

FINDINGS OF FACT

1. The subject property is a two-story office building consisting of 12,600 square feet, situated on 35,414 square feet of land. The improvement was constructed in 1966 and was in fair condition on the date of value.
2. The property was purchased in October 2017 for \$262,000.

⁴⁶ Tr. Vol 2 at 288.

⁴⁷ Tr. Vol 2 at 290.

3. Petitioner requested that the City of Southfield conduct a special inspection of the property in order for Petitioner to determine what repairs and improvements were required before the issuance of a certificate of occupancy.
4. The special inspection was completed by September 2017, before the closing date in October 2017. The certificate of occupancy was received in March 2018.
5. The subject property was on the market for 12 years before its purchase by Petitioner.
6. Petitioner was aware of the condition of the roads surrounding the property on the date of purchase.
7. Petitioner was aware of the location and condition of the property on the date of purchase and was also aware of the repairs required by the special inspection report, on the date of purchase.
8. There was a tenant occupying a portion of the lower level of the property at the time of purchase.
9. The tenant vacated the property and it was renovated by Petitioner, who occupies 25% of the space.
10. In February 2018, Petitioner hired a real estate agency to list the property for rent. Although viewings occurred, no tenants were secured. In November 2018, a second real estate agency was engaged through April 2019; however, it was also unable to attract a tenant.
11. The property is being offered pursuant to a triple net lease. In a triple net lease, the lessee pays for items such as utilities, insurance, and maintenance.

12. Other properties in the area were offered pursuant to gross leases. In a gross lease, the landlord absorbs these costs.
13. Both Petitioner and Respondent put forth valuation disclosures. Petitioner presented the Tribunal with an appraisal including both the sales and income approaches to value.
14. Petitioner's appraiser put forth five sales comparables and four rental comparables, adjusted to be consistent with the characteristics of the subject property.
15. Respondent's valuation expert put forth three sales, including the subject sale, and four rental comparables, including the subject. The comparables were adjusted to be consistent with the characteristics of the subject property.
16. The valuation experts agree on the highest and best use of the property and that the cost approach is inapplicable to value 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.⁴⁸

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

⁴⁸ See MCL 211.27a.

value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not . . . exceed 50 percent. . . .⁴⁹

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.⁵⁰

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”⁵¹

“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.”⁵² The Tribunal is not bound to accept either of the parties' theories of valuation.⁵³ “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.”⁵⁴ 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.”⁵⁵

A proceeding before the Tax Tribunal is original, independent, and de novo.⁵⁶

The Tribunal's factual findings must be supported “by competent, material, and

⁴⁹ Const 1963, art 9, sec 3.

⁵⁰ MCL 211.27(1).

⁵¹ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

⁵² *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

⁵³ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

⁵⁴ *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

⁵⁵ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

⁵⁶ MCL 205.735a(2).

substantial evidence.”⁵⁷ “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”⁵⁸

“The petitioner has the burden of proof in establishing the true cash value of the property.”⁵⁹ “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.”⁶⁰ 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.”⁶¹

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.⁶² “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”⁶³ 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.⁶⁴

⁵⁷ *Dow Chemical Co v Dep’t of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

⁵⁸ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

⁵⁹ MCL 205.737(3).

⁶⁰ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

⁶¹ MCL 205.737(3).

⁶² *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).

⁶³ *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

⁶⁴ *Antisdale*, *supra* at 277.

Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.⁶⁵ The Tribunal finds that the best indication of value for the subject, “income-producing” property is the income approach to value.

Highest and Best Use

Highest and best use is the crux to determining the market value of a property. As noted in the *Appraisal of Real Estate*,⁶⁶ “[t]he essential components of the analysis of highest and best use are contained in the following definition of the term: The reasonably probable use of the property that results in the highest value.”⁶⁷ In other words, in determining the true cash or fair market value of a property, it is the use that results in maximum productivity that is aimed for. Highest and best use “recognizes that the use to which a prospective buyer would put the property will influence the price which the buyer would be willing to pay.”⁶⁸ In determining highest and best use, the appraiser must consider whether the use is legally permissible, physically possible, financially feasible and the maximally productive use of the property.

In this matter, Petitioner’s appraiser determined the maximally productive use of the property to be continued use of the existing improvements.⁶⁹ Respondent’s

⁶⁵ See *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

⁶⁶ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), p 332.

The Appraisal of Real Estate is the appraisal profession’s “flagship text, reflects this recommitment to the essential principles of appraisal and the sound applications of recognized valuation methodology.” Further, “both appraisers and users of their services can be assured that this volume builds on time-tested foundational knowledge and contains the most up-to-date information and learning on valuation available anywhere.” *Appraisal of Real Estate*, Forward, written by Richard L. Borges II, MAI, SRA, 2013 President, Appraisal Institute.

⁶⁷ *The Appraisal of Real Estate* at 332.

⁶⁸ *Edward Rose Building Co v Independence Twp*, 436 Mich 620, 633; 462 NW2d 325 (1990).

⁶⁹ See P-1 at 44.

appraiser determined the maximally productive use of the property to be continued use of the existing improvements for office building use.⁷⁰ As such, the Tribunal finds there is no dispute regarding the highest and best use of the property and accepts the appraisers' conclusions.

Value Discussion

Cost Approach

Both valuation experts considered but rejected the cost approach to value. Ms. Judeh contends, "The fundamental weaknesses of the cost approach lie in the difficulty in accurately measuring all forms of accrued depreciation. In addition, investors are not considering new construction options in this semi-depressed market; consequently, this approach to value was not developed."⁷¹ Mr. Thurston testified, "I determined the cost approach was not applicable due to difficulties of accurately estimating accrued depreciation from all sources."⁷² The Tribunal agrees with both valuation experts that the cost approach is not the best approach to utilize in determining the true cash value of the subject property for the 2018 tax year, because accrued depreciation is difficult to measure in a property such as the subject.

Sales Approach

Proper application of the sales comparison approach involves "comparing similar properties that have recently sold . . . identifying appropriate units of comparison and making adjustments to the sale prices . . . of the comparable properties based on relevant, market-derived elements of comparison."⁷³ Both valuation experts put forth a

⁷⁰ See R-1 at 31.

⁷¹ See P-1 at 61.

⁷² Tr. Vol 2 at 237.

⁷³ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), p 377.

sales approach to value, but the Tribunal does not find this approach to provide the most persuasive determination of the true cash value of the subject property for the 2018 tax year.

MCL 211.27(1) states, “‘true cash’ value means 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.”

Ms. Judeh presented the Tribunal with five sales comparables that were adjusted to be consistent with the characteristics of the subject property. Sales comparable one is located at 23155 Northwestern Highway in Southfield. In her appraisal, Ms. Judeh chose the sale of the property that occurred in 2015; however, she also agreed the property was foreclosed upon by Fifth Third Bank approximately five months before the 2015 sale occurred.⁷⁴ After foreclosure, the sheriff’s deed was assigned to the grantor of the 2015 transaction, who Mr. Thurston believes is holding company of the bank.⁷⁵ As a result, the Tribunal finds it suspect that the sale price represents the usual selling price of the property, without any further analysis.

Ms. Judeh’s sales comparable two is located at 24400 Northwestern Highway in Southfield. Documents in Ms. Judeh’s work file indicate that the sale is between related parties with deferred maintenance which was not included in the appraisal.⁷⁶ Further, the land to building ratio was reported by Ms. Judeh at 1:39 and the subject’s land to

⁷⁴ Tr. Vol 1 at 133.

⁷⁵ Tr. Vol 2 at 297.

⁷⁶ See R-7, Tr. Vol 1 at 143-144.

building ratio is 2:81. The Tribunal finds this to be a substantial difference requiring adjustment, which was not made. Sales comparable three is located at 15919 W. 10 Mile in Southfield and sold in December 2015, for \$19.89 per square foot. However, according to public records, there were two additional sales of the property that occurred after that date, including a sale that occurred in October 2016, closer to the valuation date of December 31, 2017.⁷⁷ At that time, the property sold for \$30.95 per square foot, however, Ms. Judeh chose to use the earlier sale because she determined the later sale was between related parties, per public records, yet she utilized sales comparable two, which was also between related parties.⁷⁸

Sales comparable four is located on Eight Mile in Southfield, bordering Detroit and consists of half warehouse space, which Ms. Judeh agreed should have been included in her appraisal report.⁷⁹ She acknowledged that her sales comparable five was the sale of the subject property, which sold approximately two months before the date of value, in October 2017, yet she applied a negative market conditions adjustment. Ms. Judeh admitted, due to the proximity of the sale date to the date of value, that she should have made no adjustment.⁸⁰

Based on the issues discussed above, the Tribunal is not persuaded that the sales comparable approach was appropriately completed by Ms. Judeh, due to her choice of selective sale dates in properties with multiple sales, errors in her adjustments and withheld information, which the Tribunal finds could be inadvertent. Just the same,

⁷⁷ MCL 211.2(2) states: "The taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day, any provisions in the charter of any city or village to the contrary notwithstanding."

⁷⁸ Tr. Vol 1 at 148-150.

⁷⁹ Tr. Vol 1 at 159.

⁸⁰ Tr. Vol 1 at 160.

in order to be accepted as an indicator of value, a property must be proven to have sold “after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, [with] neither . . . under undue duress.”⁸¹ The Tribunal does not find a sale between related parties, for example, to be a sale with reasonable exposure to a competitive the market.

Mr. Thurston also presented the Tribunal with a sales approach to value in which he put forth three sales, adjusted to be consistent with the characteristics of the subject property. His sales comparable one was the sale of the subject property; however, Mr. Thurston does not conclude that the property sold at its usual selling price given it sold at a 66% discount from its asking price, while the normal discount from asking price to sale price in the City of Southfield is 10%.⁸² However, he also testified, “[w]ell, usually your best indication of value is a recent sale of the subject property, though it’s not your only indication of value,”⁸³ and he acknowledged that there were probably issues with the property or sale.⁸⁴ Mr. Thurston, however, gave the sale of the subject property 50% weight in his conclusion of the value of the property under the sales approach.⁸⁵

Mr. Thurston’s sales comparable two is located at 19189 W. 10 Mile Road, about a half mile from the property. It consists of 5,548 feet, was built in 1968, the land to building ratio is comparable to the subject and, at the time of sale it was reportedly in similar condition to the subject property. It is a two-story office building like the subject

⁸¹ *The Appraisal of Real Estate* at 58.

⁸² Tr. Vol 2 at 248-249.

⁸³ Tr. Vol 2 at 259.

⁸⁴ Tr. Vol 2 at 249.

⁸⁵ Tr. Vol 2 at 259.

property, and it sold on March 23, 2017 for \$325,000.⁸⁶ The only adjustment applied was (-5%) for size and Mr. Thurston's final adjusted sale price for comparable two was \$55.65 a square foot.

Mr. Thurston's sales comparable three is located on Northwestern Highway about five miles from the subject property. It is more than twice the size of the subject property at 26,500 square feet, was built in 1970 and is also class C construction. The land to building ratio is similar, and it's also a two-story office building. However, comparable three sold on October 13, 2017 for \$2,050,000.⁸⁷ Mr. Thurston made a (-5%) adjustment for location, a 5% adjustment for size and a (5%) adjustment for condition. The Tribunal finds sales comparable three to be an outlier, given the other comparables sold for \$262,000 and \$325,000, versus sales comparable three at \$2,050,000. Mr. Thurston testified, when questioned by the Tribunal about comparable three,

the answer to your question lies in the market, right, and that perhaps the reason why the sale prices are so different is because the participants that would be buying and selling properties similar to the subject would rely more on the income approach you know, and perhaps my sales comparison approach has such a variation in sale price because maybe that wasn't -- maybe that shouldn't have been given 50 percent weight.⁸⁸

The Tribunal finds the sale price of the subject property, just two months before the date of value, and Mr. Thurston's adjusted sales comparable two, provide some indication of the correct true cash value of the subject property for the tax

⁸⁶ Tr. Vol 2 at 252.

⁸⁷ Tr. Vol 2 at 255-256.

⁸⁸ Tr. Vol 2 at 385. In his reconciliation of value, Mr. Thurston applied 50% weight to his sales and income approaches to value. See R-1 at 49, Tr. Vol 2 at 290.

year in question. The actual purchase price of the subject property should be given some weight, and sales comparable two was built in 1968, the subject in 1966, it was in similar condition as the subject at the time of sale and is also a two-story office building in Southfield.

Income Approach

The Tribunal finds the income approach to be the best technique to utilize in valuing the subject income-producing property. Although not currently rented, the property was purchased by Petitioner for personal use and rental income. Further, continued use of the improvements is the property's highest and best use.

Ms. Judeh presented the Tribunal with four rental comparables. Comparable one is located in Southfield but has a gross building area nine times larger than the subject property, which makes it dissimilar to the property. It is also a renewal lease, which could be at market or not, however, this was not explored by Ms. Judeh. For example, she did not consider the rental rate of new leases at the subject property. Mr. Thurston testified,

Well, a renew, again, relates to a tenant in place, a tenant that's historically occupied that space or that building, and they're just saying we would like to continue to occupy the space. And at no point in time then would that space be exposed to the open market competitive forces that would then determine whether that renewal rate is at, above or below market. That can only be determined by exposing the space through an open market, and that's not possible through a renewal agreement.⁸⁹

In *The Appraisal of Real Estate*, it states, “[r]enewal options that allow a tenant to extend the lease term for one or more prescribed periods of time are frequently

⁸⁹ Tr. Vol 2 at 294.

included in leases.”⁹⁰ “Renewal options are binding on the landlord but allow the tenant to make a decision based on the circumstances at the time of renewal. Thus, renewal options tend to favor the tenant.”⁹¹ The Tribunal opines renewal leases may, or may not, be at market rates and must be compared to market exposed leases to be good indications of value.

Ms. Judeh’s rental comparable two is not located in Southfield, but Livonia, and no location adjustment was made. It also consists of more than 50% warehouse space, with lab area and heavy equipment wiring, which is not comparable to the subject property.⁹² Ms. Judeh’s rental comparable three is also a renewal lease at \$6.00 per square foot. However, Respondent contends new leases for the property are being offered at \$15.95 to \$17.95 per square foot, plus electrical, which is stated in the CoStar report in Ms. Judeh’s work file.⁹³ Ms. Judeh’s rental comparable four is a lease in a building with over 90% industrial space, which is not comparable to the subject property. The Tribunal is not persuaded that Ms. Judeh’s rental comparables can be relied upon to point to an accurate market rental rate.

Mr. Thurston brought forth four rental comparables, including the subject property. An adjustment of (10%) was applied because the property is currently a listing. An adjustment was also made because the subject property is being offered with a triple net lease, wherein the tenant pays for items such as building maintenance, insurance, and utilities, for example. Mr. Thurston testified that properties in Southfield generally rent pursuant to gross leases, wherein the lessor absorbs these expenses. In

⁹⁰ *The Appraisal of Real Estate* at 471.

⁹¹ *Id.*

⁹² Warehouse with heavy equipment wiring would suggest an industrial property. See MCL 211.34c.

⁹³ See R-7 at 98.

fact, Mr. Thurston testified that because the property is being offered with a triple net lease, the same may be a reason that it has not rented, given other properties in the vicinity offer gross leases. Further, Mr. Thurston testified it is difficult to maintain a triple net lease for items such as utilities, unless the property is separately metered per rental space.⁹⁴ The comparable was also properly adjusted for condition, given it was in worse condition on the date of value than its condition as an active listing.

Mr. Thurston's rental comparable two is located on the same street as the subject property in Southfield. It is an office building, consists of just shy of 70,000 square feet, its leased area is 748 square feet, it was built in 1974, and is offered as a gross lease. Because of its size and the small leased area, less emphasis is placed on comparable two. Rental comparable three is less than a half-mile from the subject property in Southfield, is an office building, was built in 1970 and is offered as a gross lease. It consists of 33,600 square feet and its leased area was 1800 square feet. Rental comparable four is about 2-1/4 miles from the subject property in Southfield, is an office building, built in 1969 and offers a gross lease. It consists of 14,000 square feet and the leased area is 5,000 square feet. The Tribunal is persuaded by Mr. Thurston's adjusted rental comparables, with the most emphasis on comparable four due to its size and leased area, that market rent was properly calculated at \$11 per square foot. However, when calculating potential gross income, Mr. Thurston multiplied the subject property's 12,600 square feet by \$11 per square foot, for a conclusion of \$138,600. The Tribunal finds, however, that Ms. Judeh's calculation of 11,500 net rentable square feet is more accurate. She testified,

⁹⁴ Tr Vol 2 at 261, 265-267.

I applied the market rent that I established of . . . to the net rentable area of the subject, which is 11,500 square foot. The subject gross building area is not all rented. There's a common area for a stairway in the front and a common area for the stairway in the back, so those had to be deducted from the gross building area.⁹⁵

The Tribunal finds market rent to be \$11 per square foot as put forth by Mr. Thurston, however this rental rate should be applied to 11,500 square feet, for potential gross income of \$126,500.

In her pro forma, Ms. Judeh utilized a vacancy rate of 20%. This was justified because, she travels up and down the Lodge Freeway and sees numerous signs that say, "for sale or lease."⁹⁶ She also testified, "I haven't seen new construction in Southfield in a while."⁹⁷ Mr. Thurston, on the other hand, testified when questioned about new construction in Southfield near the subject property,

Absolutely, yep Right at Northwestern and Civic Center Drive we have new -- new buildings going in there. Yeah, absolutely. There's new construction off Southfield Road. Throughout the city we have new construction of various pockets and places throughout the entire city, including the off-view service drive of Northwestern Highway.⁹⁸

Mr. Thurston utilized a vacancy rate of 9.5% which was extracted from CoStar and confirmed by his observations as Deputy Assessor for Southfield, which the Tribunal finds more convincing than Ms. Judeh's methodology, given she was unaware of new construction in the city of Southfield. Both valuation experts put forth collection loss of 1%, which the Tribunal finds to be appropriate. As such, the effective gross income (EGI), utilizing 11,500 square feet, is \$113,217. The Tribunal finds Mr. Thurston's operating expense ratio of 19.42% of EGI to be appropriate, given he extracted it from

⁹⁵ Tr. Vol 1 at 65.

⁹⁶ Tr. Vol 1 at 65.

⁹⁷ Tr. Vol 1 at 105.

⁹⁸ Tr. Vol 2 at 292.

expense comparables,⁹⁹ and as such, total operating expenses are calculated to be \$26,515 (including an additional 4% for management). Subtracting that number from EGI, puts forth a net operating income of \$86,702.

The Tribunal is persuaded by Mr. Thurston's capitalization rate of 11.06% because he extracted a market derived rate from only appropriate office properties. Mr. Thurston considered the comparables utilized by Ms. Judeh in determining her market extracted cap rate and found the majority were inapplicable. One comparable had multiple easements and required capital improvements (23800 West Ten Mile), one was a sale-leaseback (31561 West Ten Mile), and one was a surgery center (28500 Orchard Lake Road), and as such, not similar to the subject property. One sold at auction (17515 West Nine Mile Road) and another was a foreclosure sale (18557 Canal Road). The last inappropriate cap rate comparable was part of a package portfolio sale of a small office building selling alongside of two residential condominiums (1300 Batavia).¹⁰⁰

Mr. Thurston calculated the effective tax rate by utilizing, among other factors, the correct millage rate from the school district in which the subject property is located. He testified the city of Southfield has three school districts, while Ms. Judeh testified relative to her comparables, "they're all in the city of Southfield, which means they're all in the same school district."¹⁰¹ Mr. Thurston's calculated effective tax rate was 3.26%, which when added to his market capitalization rate of 11.06% (excluding real estate taxes), put forth a tax-adjusted capitalization rate of 14.32%. In order to conclude in

⁹⁹ See R-1 at 44.

¹⁰⁰ Tr. Vol 2 at 308-309.

¹⁰¹ Tr. Vol 1 at 119.

value under the income approach, the Tribunal divides its calculation of net operating income of \$113,217 by Mr. Thurston's tax loaded capitalization rate, for a value conclusion of \$605,500, rounded. From this conclusion, lease-up costs must be subtracted because the property was nearly vacant on the date of value. Lease-up costs included items such as lost income during the time it takes to lease the space, free rent, tenant improvements and leasing commissions. Mr. Thurston completed a lease-up cost analysis, concluded in lease-up costs of \$140,448, added entrepreneurial incentive of 5% or \$7,022, for a total of \$150,000, rounded.¹⁰² The Tribunal finds this number to be appropriate, subtracts it from its calculation of stabilized true cash value, for a concluded true cash value for the property for the 2018 tax year of \$455,500. In this determination of value, some nominal weight is given to Mr. Thurston's sales approach to value, which includes the purchase price of the subject property.

Additional Allegations by the Parties

Special Inspection Report

Mr. Alomari contends the property was in very poor condition at the time of purchase and he took that into account when agreeing to the purchase price. He testified he requested a city of Southfield special inspection, before closing on the property, in order to ensure a C/O would be forthcoming and he provided invoices and a copy of a check in payment for some items in the report that were repaired. However, upon examining the special inspection report, the Tribunal finds no evidence relative to other identified required, repairs. For example, Mr. Alomari testified he spent \$65,000 replacing all HVAC units, but the special inspection report indicates no mechanical

¹⁰² See R-1 at 46-47, Tr. Vol 2 at 287-288.

violations.¹⁰³ The special inspection report puts forth 1-1/2 pages of electrical issues, but there is no receipt, invoice or testimony relative to those issues, other than LED lighting, which is not mentioned in the report.

There are many items in the report that Mr. Alomari testified were repaired, such as roof, doors, parking lot and landscaping, but those items were taken into account when determining the purchase price. In fact, Ms. Judeh testified,

Q: What is – what does expenditure after sale mean?

A: To me it means any expenditures that took place after the acquisition of the property.

Q: Well, like what? Give me –

A: Like what happened with the subject property.

Q: Okay. And how does the appraisal book treat expenditures after sale? What does it tell you to do? It gives real estate appraisers guidance, correct, on what – when there are expenditures after the sale; right? Yes or no?

Q: Okay. What do you do? And do you believe – before you answer that, do you believe what you do with respect to expenditures after a sale or what the real estate 14th edition tells real estate appraisers they should do?

A: Yes.

Q: Okay. So what do you do with respect to expenditures after sale?

A: As long as they're not branding expenditures, they get adjusted to the sale price.

Q: Okay. So, if they're making expenditures after the sale for the roof or the parking lot or things of that nature, that goes – that goes into what they paid for – that's basically added to the purchase price; correct?

A: That is correct.¹⁰⁴

¹⁰³ See R-4 at 3.

¹⁰⁴ Tr. Vol 1 at 107-108.

Mr. Thurston testified,

Q: If you knew that it would take \$500,000 to put this building in the condition where it was reasonable to expect that a tenant would lease it, how would you take that into account in the income capitalization method?

A: Well, what I would do is -- first off, I need an engineering report or some sort of report from the contractor or engineer telling me exactly what's wrong with the subject property, and then I need a detailed breakdown from at least one, possibly multiple, contractors telling me how much it's going to be to fix said problems. And then what I would do is I would value the property using whatever applicable approach to value to come to a concluded, defensible, impartial opinion of market value for the property as if those things were not wrong with the property. And then from that market value conclusion I would do a cost-to-cure deduction for whatever items were reported on the engineering report. And - - and I would deduct for the cost of, you know, the said repairs as a cost-to-cure deduction at the end of the report.¹⁰⁵

Ms. Judeh concludes that the subject property repair expenses, are expenditures after the sale which would increase the sale price. Mr. Thurston testified that he would do a cost-to-cure deduction from any market value determination for verifiable issues. In any event, the Tribunal finds the check copy, invoices and the special inspection report do not provide it with enough information to adjust the sale price up or make a deduction for costs-to-cure, from market value. Further, there is no concrete evidence of what amount was spent in repairs as of the date of value, only limited testimony about parking lot repair, and some interior and landscaping repair.

Condition of the Property, Roads, Location, Lack of Tenants

As noted above, the condition of the property was poor at the time of purchase, and on the date of value not many repairs were completed. Nevertheless, it is

¹⁰⁵ Tr. Vol 2 at 359-360.

interesting to note, the property was rented at the time of purchase. Mr. Thurston testified,

And what I saw from the listing broker [of the subject property] was that it was leased at time of sale, and I talked with the listing broker. And the listing broker told me that the former owner would have continued to occupy the space they had been occupying, but the new owner didn't want them to and kicked them out, so —¹⁰⁶

Further, the condition of the property was taken into account by both valuation experts in their approaches to value. Ms. Judeh determined the subject and all of her comparable properties were in “fair” condition and all, but one of her income comparables were in “fair” condition.¹⁰⁷ Mr. Thurston concluded that all, but one, of his sales comparables were in “below average” condition such as the subject property, and his rentable comparables were properly adjusted down for condition.¹⁰⁸ Also, the location of the property was taken into account by choosing nearby comparables or adjusting them. Mr. Thurston’s comparables were 0, 0.5 (three comparables), 2.5 and 5 miles from the subject property and only the last required an adjustment.¹⁰⁹ Similarly, whether appropriate or not, Ms. Judeh only applied a location adjustment to one comparable.¹¹⁰

With regard to the state of the roads adjacent to the subject property and how they affect value, the Tribunal finds there is no evidence that the roads were better or worse at the time of purchase than on the date of value. Further, Mr. Thurston testified that he did not adjust his comparables for the condition of the roads surrounding the

¹⁰⁶ Tr. Vol 2 at 322. The broker’s name was Robert Bidaro. See Tr. at 322.

¹⁰⁷ See P-1 at 47, 53.

¹⁰⁸ See R-1 at 37, 42.

¹⁰⁹ *Id.*

¹¹⁰ See P-1 at 53.

subject property because, “the roads in the – front of the subject property appear to be very similar and indicative of the roads throughout the city of Southfield, and all of my comps come from the city of Southfield, so they would all have similar road issues, if you will.”¹¹¹ The Tribunal finds there is no evidence of how the condition of roads specifically affect the market value of the subject property, and as such, an additional adjustment is not warranted.

The final issue is, why hasn't the property rented and how does that fact affect the market value of the property? The property was partially rented at the time of purchase; however, it could be that the existing tenant was not the type envisioned for the property. Further, it appears that triple net leases are not the norm in the subject property area; therefore, tenants could turn away for that reason. Also, the property was on the market for 12 years and the Tribunal opines, Petitioner was aware at the time of purchase, that it was not a sought after property, the surrounding roads were poor, and the location was as it was, but now wants its market value reduced to its purchase price or below, if the Tribunal relies on Ms. Judeh's conclusion of value. On December 31, 2017, Mr. Alomari had some idea of the amount of money he would expend to bring the property into leasable condition, some of the repairs and improvements had been completed, and the Tribunal opines the roads were in the same condition in October 2017 as on December 31, 2017. In this instance, the Tribunal does not find the purchase price of the subject property, alone, to conclusively demonstrate its true cash value. On the other hand, it applies nominal weight to Mr. Thurston's sales approach which includes the purchase price of the subject property, but relies on his

¹¹¹ Tr. Vol 2 at 367-368.

income approach, with the appropriate modifications, to conclude in the true cash value of the subject property for the 2018 tax year.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the subject property is over assessed. The subject property's TCV, SEV, and TV for the tax year 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 year 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 year at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 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%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (ix) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (x) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, and (xi) after June 30, 2019 through December 31, 2019, at the rate of 6.39%.

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.¹¹² 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 petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.¹¹³ 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.¹¹⁴ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.¹¹⁵

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."¹¹⁶ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.¹¹⁷

¹¹² See TTR 261 and 257.

¹¹³ See TTR 217 and 267.

¹¹⁴ See TTR 261 and 225.

¹¹⁵ See TTR 261 and 257.

¹¹⁶ See MCL 205.753 and MCR 7.204.

¹¹⁷ See TTR 213.

The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.¹¹⁸

By Preeti Madole

Entered: November 15, 2019

¹¹⁸ See TTR 217 and 267.