

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

Menard Inc.,
Petitioner,

v

MTT Docket Nos. 441600
and 14-001918

City of Escanaba,
Respondent.

Tribunal Judge Presiding
Marcus L. Abood

FINAL OPINION AND JUDGMENT

Petitioner, Menard Incorporated, appeals the ad valorem property tax assessment levied by Respondent, city of Escanaba, against the real property owned by Petitioner for the 2012, 2013, and 2014 tax years.

A hearing was held on August 14, 2014, to resolve the real property tax dispute. Carl Rashid, Jr., attorney at Dykema Gossett, PLLC, and Paul Bach, at Paradigm Tax Group, LLC appeared on behalf of Petitioner. Russell W. Hall, attorney at DeGrand, Reardon & Hall, PC, appeared on behalf of Respondent. Joseph L. Torzewski, MAI, was Petitioner's valuation witness. Daina Norden and Myles Anderson were Respondent's valuation witnesses.

SUMMARY OF JUDGMENT

The subject property's 2012, 2013, and 2014 True Cash Values (TCVs), Assessed Values (AVs), and Taxable Values (TVs) as determined by Respondent are:

Parcel No. 051-420-2825-100-006

Year	Respondent TCV	SEV	TV
2012	\$7,815,976	\$3,907,988	\$3,907,988
2013	\$7,995,596	\$3,997,798	\$3,997,798
2014	\$8,210,938	\$4,105,469	\$4,105,469

Petitioner's contentions are:

Parcel No. 051-420-2825-100-006

	Petitioner		
Year	TCV	SEV	TV
2012	\$3,300,000	\$1,650,000	\$1,650,000
2013	\$3,300,000	\$1,650,000	\$1,650,000
2014	\$3,300,000	\$1,650,000	\$1,650,000

The Tribunal's conclusions are:

Parcel No. 051-420-2825-100-006

	Petitioner		
Year	TCV	SEV	TV
2012	\$3,325,000	\$1,662,500	\$1,662,500
2013	\$3,350,000	\$1,675,000	\$1,675,000
2014	\$3,660,000	\$1,830,000	\$1,830,000

GENERAL PROPERTY DESCRIPTION

The subject property is known as a Menard store, and is located at 3300 Ludington Street, in the City of Escanaba, Delta County, Michigan. The building contains 166,196 square feet on 18.35 acres. It is a big box construction built to suit for the Menard's store model.

SUMMARY OF PETITIONER'S CASE

Petitioner presented testimony from its appraiser, Joseph L. Torzewski, MAI. Mr. Torzewski has appraised 20-30 big box stores including Art Van, Home Depot, Hobby Lobby and Menard on behalf of property owners, for tax appeals. Based on his education and experience, the Tribunal accepted Mr. Torzewski as an expert real estate appraiser.

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

P-1: Appraisal Report prepared by Joseph L. Torzewski.

Petitioner acknowledged a typographical error within its appraisal report. Specifically, the issued report date is February 25, 2014 and not February 25, 2013. Mr. Torzewski was assisted by Talia Mitchell in the completion of the appraisal report.

Mr. Torzewski described the regional overview, market analysis and neighborhood analysis for the subject property. (TR, pp 21-25) In addition, he analyzed traffic counts for the subject location. (TR, pp 117-118) From this information, further analysis was conducted regarding market inventory i.e., number of buildings, total available square footage, absorption, vacancy rates, new construction, etc. “It tells us that there’s not a whole lot of demand for retail space based on the absorption – the negative absorption that’s been going on in Escanaba over the – several years prior to the subject property’s appraisal.” (TR, p 26) Petitioner contends there is little demand for big box retail space once the build-to-suit, owner-occupant vacates the building. Further, the demand factors for big box stores are similar throughout Michigan. (TR, p 28)

Mr. Torzewski testified to the difference between a fee simple interest and a leased fee interest. The real property is being appraised, not the occupancy of the property. This analysis was performed to distinguish between first-generation built-to-suit owners versus second-generation tenants. He contends that following trends illustrate “. . . that first-generation space typically sells for a much higher price because it’s based on the built-to-suit cost involved in most cases, and it’s a whole different - - it’s a whole different ball game compared to just a general fee simple, vacant and available space.” (TR, p 29) The subject property was appraised in fee simple interest; the property was appraised as if unleased, vacant, and available for sale. Secondary users of these big box stores demolish the improvements for redevelopment of the

underlying land or purchased for alternative uses i.e., industrial development or multi-tenant retail. (TR, pp 121-122)

Mr. Torzewski described the highest and best of the subject property relative to the fee simple, owner-occupied elements. He identified the three approaches to value as the income approach, sales comparison approach and income capitalization approach. Further, he identified the LoopNet, MLS, assessors, brokers and third-party appraisers as data sources for this appraisal assignment.

Mr. Torzewski considered various areas and spaces surrounding the primary subject building. He noted the main structure is the Menard's warehouse. Other areas that were not included in the overall gross building area or analysis were the mezzanine, loading dock, special order area (supply garage), garden center, overhang canopy (shipping), and guard station.

Mr. Torzewski researched and analyzed eight comparable sales for the sales comparison approach to value. He contends that deed restrictions were investigated in each of the comparable sales.

One of the questions we always ask, particularly in a case like this where we know going in that a lot of the sales would have some sort of a deed restriction attached, is we ask did these deed restrictions have any effect on the sales price. And we try to get that information. If we can't get that information, we typically don't utilize that property as a sales comparable. There are many cases where they would have deed restrictions attached but they didn't have any effect on the sales price because the restrictions that were in place aren't anything really out of the ordinary or would affect the secondary user of the property, so, therefore, . . . there are no adjustments for that condition of sale factor. (TR, pp 47-48)

Mr. Torzewski explained that all of his comparable sales had some type of deed restrictions but none that impacted their sale prices. (TR, pp 63-66)

Mr. Torzewski explained all other transactional and physical characteristic adjustments made to his comparable sales. (TR, pp 48-54) In testimony, he revised his true cash values from

\$3,400,000 to \$3,300,000 for each year under appeal. This was based on the parties' stipulation to a gross building area of 166,196 square feet for the subject.

Through further testimony, Petitioner contends "other considerations" were given to additional sales of big box retail stores as well as additional local transactions (Petitioner's Exhibit P-1, pp 42-43) These additional sales were offered as further support in the comparative sales analysis.

Mr. Torzewski did not develop or communicate a cost approach to value for this appraisal assignment. He contends that the cost approach is not relevant or necessary because potential buyers do not place any reliance on this approach. Secondly, he testified that the functional obsolescence associated with built-to-suit, big box stores as well as external obsolescence is difficult to analyze properly. (TR, p 60) For these reasons, the cost approach was not utilized by Petitioner.

Mr. Torzewski developed and communicated an income approach to value. He submits that this approach was used as a "test of reasonableness for the sales comparison approach more than anything." (TR, p 61)

SUMMARY OF RESPONDENT'S CASE

Respondent presented testimony from its assessor, Daina Norden. She has been the assessor for the city of Escanaba since January of 2011. Prior to that employment, she worked for the Delta County Equalization Department for six years. Based on her education and experience, the Tribunal accepted Ms. Norden as an expert in real estate assessing and mass appraisal.

Respondent presented testimony from its review appraiser, Miles Anderson, SRA. Mr. Anderson was the assessor for the city of Escanaba for 20 years. Overlapping that timeframe he

was the part-time assessor for Wells Township. His employment as an assessor and as a real estate appraiser covers approximately 37 years. Mr. Anderson has reviewed hundreds of appraisals in a professional capacity. He has testified twice before the Michigan Tax Tribunal in the 1990s. Based on his education and experience, the Tribunal accepted Mr. Anderson as an expert real estate review appraiser.

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

- R-1: Sales (deed) Information pertaining to SRR Sales Comparison No. 1.
- R-2: Sales (deed) Information pertaining to SRR Sales Comparison No. 2.
- R-3: Sales (deed) Information pertaining to SRR Sales Comparison No. 3.
- R-4: Sales (deed) Information pertaining to SRR Sales Comparison No. 4.
- R-5: Sales (deed) Information pertaining to SRR Sales Comparison No. 5.
- R-6: Sales (deed) Information pertaining to SRR Sales Comparison No. 6.
- R-7: Sales (deed) Information pertaining to SRR Sales Comparison No. 7.
- R-8: Sales (deed) Information pertaining to SRR Sales Comparison No. 8.
- R-9: Respondent's Valuation Disclosure prepared by Daina Norden.
- R-10: Respondent's Review Appraisal prepared by Miles Anderson.
- R-11: Subject Building Dimensions and Square Footage.

Daina Norden, Assessor, described the Escanaba market area. (TR, pp 129-131) She testified, "I used the cost approach, which is an approved method by the State of Michigan to value property using the fee simple approach." (TR, p 144) As part of her cost approach, Ms. Norden described the subject property record card including the BS&A cost calculations (TR, pp 144-152)

Ms. Norden developed and communicated a sales comparison approach within her valuation disclosure. However, she contended that she was not comfortable with this approach based on the lack of sales. (TR, p 155)

Lastly, Ms. Norden researched Petitioner's eight comparables for deed information and restrictions. (TR, pp 157-163)

Respondent's 2nd witness, Miles Anderson, review appraiser, described his process for reviewing Petitioner's appraisal report. Specifically, Mr. Anderson contended that he performed a limited desk review of Petitioner's appraisal report. This is a review of the quality of Petitioner's work product. Mr. Anderson's research included the definition of a big box store which is noted as greater than 50,000 square feet. Mr. Anderson contends Petitioner's appraisal report lacks supporting data for the comparable adjustments. To test Petitioner's adjustments, Mr. Anderson converted the percentage adjustments into dollar adjustments. Based on the converted dollar adjustments, Respondent contends none of the comparable sales comes up to Petitioner's conclusions of value. (TR, p 215) Overall, Mr. Anderson disagrees with Petitioner's valuation disclosure because of a lack of explanatory narration for the adjustments.

Respondent's review appraiser contends Petitioner's sales data within the market analysis (Petitioner's Exhibit P-1, p 21) only identifies 6 sales that support the definition of a big box store with at least 50,000 square feet. Likewise, Mr. Anderson argues that Petitioner's sales data on page 22 only includes three sales that support the definition of a big box store with at least 50,000 square feet. Lastly, Mr. Anderson asserts that page 23 of Petitioner's appraisal report only identifies 7 sales that support the definition of a big box store with at least 50,000 square feet.

FINDINGS OF FACT

1. The subject property is located at 3300 Ludington Street, City of Escanaba, and within Delta County.
2. The subject parcel code number is 051-420-2825-100-006 and is zoned F, Light Manufacturing.
3. The parties submitted a stipulated statement of facts on the day of the hearing.
4. The parties stipulated that "the subject building contains 166,196 square feet on the 1st floor, per Respondent's Exhibit 11, attached hereto."
5. The parties stipulated that "the subject property has a total land area of 18.35 acres."
6. The parties stipulated that "the occupant of [the] subject property should not influence the market value of the property."

7. The parties stipulated that “the subject property is not an income-producing property, thus the income approach is not given weight in the final conclusion of value.”
8. The parties stipulated that “the subject property is located in the Escanaba Core Based Statistical Area (CBSA).”
9. The parties stipulated that “the total population for the Escanaba CBSA is 39,069 for Delta County. The total population for Escanaba is 12,616 (2010 Census).”
10. The parties stipulated that “the subject property is located on the north side of Ludington Street, west of North 30th Street.”
11. The parties stipulated that “the subject property is located near the western edge of the developed area of Escanaba.”
12. The parties stipulated that “the unemployment rates in the Escanaba CBSA decreased from 10.1% in 2011 to 8.9% in 2013.”
13. The parties stipulated that they “have appraised the subject property as a fee simple interest.”
14. Both parties valued the subject property as a single-tenant retail space.
15. The subject property was constructed in 2008 as a built-to-suit, owner-occupied big box store.
16. Petitioner’s valuation disclosure was submitted in the form of a narrative appraisal report prepared by Joseph L. Torzewski, Certified General Real Estate Appraiser in the state of Michigan.
17. Petitioner’s appraiser inspected the subject property on February 19, 2014. (TR, p 18)
18. Petitioner’s appraiser relies on the definition of a big box store from the Appraisal Institute, *Dictionary of Real Estate Appraisal* (Chicago: 5th ed, 2010), p 229.
19. Petitioner’s market analysis includes retail spaces in Delta County. (Petitioner’s Exhibit P-1, p 18)
20. Petitioner’s market analysis includes a stabilized occupancy for Delta County and the city of Escanaba. (Petitioner’s Exhibit P-1, p 19)
21. Petitioner’s market analysis includes rental rates of Metropolitan Detroit Big Box Retail. (Petitioner’s Exhibit P-1, p 20)
22. Petitioner’s market analysis includes 19 leased fee transactions of build-to-suit, first generation retail space. (Petitioner’s Exhibit P-1, p 21)
23. Petitioner’s market analysis includes 16 leased fee transactions of 2nd generation retail space. (Petitioner’s Exhibit P-1, p 22)
24. Petitioner’s market analysis includes 30 fee simple transactions. (Petitioner’s Exhibit P-1, p 23)
25. Petitioner’s appraiser analyzed the traffic counts in the subject market area. “So there’s a drop-off of about 50 percent of traffic between the commercial – between the traffic on 2 to the north side of Ludington Street and that where the subject is located. . . . At the subject property the traffic counts for 2012 were 12,783, and to the north along US-2 the traffic counts were as high as almost 28,000 – 27,917.” (TR, pp 117-118)
26. Petitioner’s appraiser considered various areas and spaces surrounding the subject’s main building. (TR, pp 44-46)
27. Petitioner’s appraiser considered, analyzed and applied various adjustments to his comparable sales. Mr. Torzewski considered deed restrictions and corresponding adjustments to the comparable sales. (TR, pp 47, 63-66)

28. Petitioner's appraiser considered, analyzed and adjusted the subject's other areas/spaces in the sales comparison adjustment grid. (TR, p 71)
29. Petitioner's appraisal report includes the income and sales comparison approaches to value for the years under appeal.
30. Petitioner's appraiser did not develop the cost approach because of the difficulty in determining the functional and external obsolescence attributable to the subject property. (TR, p 60)
31. Petitioner's sales comparison approach includes eight sales for a direct comparative analysis. The sales are located in Holland, Westland, Alma, Madison Heights, Auburn Hills, Flint, Dearborn and Monroe.
32. Petitioner's appraiser previously appraised its comparable sale 4. (TR, p 111)
33. Petitioner's appraiser acknowledged a typographical error in the condition label of sale 1 which resulted in a change in the adjusted price per square foot. This correction did not change Petitioner's conclusion of value for the three years under appeal.
34. Petitioner's appraiser acknowledged an incorrect site area for sale 7 (based on Respondent's Exhibit R-7). This correction did not change Petitioner's conclusion of value for the three years under appeal.
35. Petitioner's sale 8 discloses the separate sale of the big box store from the sale of a separate outlot. In other words, sale 8 did not include the separate sale of the transacted outlot.
36. Petitioner's appraiser identified additional big box transactions for consideration. (Petitioner's Exhibit P-1, p 42) The properties are located in Westland, Jenison, Berlin Township, and Warren.
37. Petitioner's appraiser identified additional local transactions for consideration. (Petitioner's Exhibit P-1, p 43) The properties are located in Marquette, Petoskey and Saint Ignace.
38. Petitioner's appraiser reviewed two Wisconsin sales located in Oshkosh and Green Bay. (Petitioner's Exhibit P-1, p 43)
39. Based on the parties' stipulated square footage of 166,196, Petitioner's appraiser revised opinion of value was \$3,300,000 for each year under appeal.
40. Respondent submitted a valuation disclosure prepared by Daina Norden.
41. Daina Norden is the assessor for the city of Escanaba. She is a Michigan Advanced Assessing Officer (MAAO) formerly known as a Level 4 Assessor.
42. Respondent's valuation disclosure includes the cost and sales comparison approaches to value for the years under appeal.
43. Respondent's cost approach is based entirely on the subject property assessment record cards.
44. Respondent's cost approach did not include any functional obsolescence for the subject property. (TR, pp 149 and 188)
45. Respondent's valuation disclosure includes the disclaimer, "The sole purpose of this 'Valuation Summary' is to properly disclose the methods used by the assessor to accurately value property using assessment practices as encouraged by the Michigan State Commission." (Respondent's Exhibit R-9, p 4)
46. Page 53 of Respondent's valuation disclosure includes a quote from the General Property Tax Act (Section 211.10e) which states, "[All assessing officials] . . . shall use only the official assessor's manual or any manual approved by the state tax commission,

- consistent with the official assessor's manual, with their latest supplements, as prepared or approved by the state tax commission as a guide in preparing assessments.”
47. Respondent's sales comparison approach includes two sales and two listings (Respondent's Exhibit R-9, p 48) as well as six other sales reviewed (Respondent's Exhibit R-9, p 50).
 48. Respondent's assessor did not make any adjustments to her comparable listings or sales data.
 49. Respondent's assessor researched and prepared Respondent's Exhibits 1 through 8. (TR, pp 155-163)
 50. Respondent's sales study included approximately 12 sales to derive an economic conditions factor (ECF). Ms. Norden was unable to identify the specific sales used to derive the ECF. (TR, pp 192-193)
 51. Respondent's assessor is not a licensed real estate appraiser in the state of Michigan.
 52. Respondent's review appraiser, Miles Anderson is a Certified General Real Estate Appraiser in the state of Michigan.
 53. Respondent's review appraiser is a designated member of the Appraisal Institute.
 54. Respondent's review appraiser performed a "limited appraisal review analysis" of Petitioner's appraisal. (TR, p 206) Further, Mr. Anderson stated that ". . . the scope of this review is characterized as a technical 'desk' review." (Respondent's Exhibit R-10, p 50)
 55. Respondent's review appraiser invokes professional appraisal standards for his review appraisal report. (Respondent's Exhibit R-10, p 48)
 56. Respondent's review appraiser states, "No USPAP standards or compliance will be reviewed or analyzed in this report. Should the client wish a USPAP review to be completed they should contract with a USPAP expert for review of the report." (Respondent's Exhibit R-10, p 2)
 57. Respondent's review appraiser sets forth three definition sources for a big box store. The sources are Investopedia, Business Dictionary.Com, and Wikipedia. (TR, p 220)
 58. Respondent's review appraiser did not rely on the definition of big box store from the Appraisal Institute, *The Dictionary of Real Estate*, (Chicago: 5th ed, 2010), p 229.
 59. Respondent's review appraiser converted Petitioner's percentage adjustments into dollar adjustments. (TR, pp 215-216, Respondent's Exhibit R-10, p 14)
 60. Respondent's review appraiser does not include his qualifications within the appraisal review report. (TR, pp 236-237)
 61. Respondent's review appraiser denotes the strengths of Petitioner's appraisal report on page 47 of Respondent's Exhibit R-10. The alphabetized list of sixteen strengths includes "highest and best use analysis", "sales comparison approach", and "appraiser credentials".

APPLICABLE LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value. See MCL 211.27a.

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. . . . Const 1963, art 9, sec 3.

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

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

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.” *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.” *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal is not bound to accept either of the parties' theories of valuation. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985). “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.” *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991). 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.” *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735a(2). The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.” *Dow Chemical Co v Dep’t of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990). “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.” *Jones & Laughlin Steel Corp, supra at 352-353*.

“The petitioner has the burden of proof in establishing the true cash value of the property.” MCL 205.737(3). “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.” *Jones & Laughlin Steel Corp, supra* at 354-355. 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.” MCL 205.737(3).

The three most common approaches to valuation are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach. *Meadowlanes, 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). “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.” *Jones & Laughlin Steel Corp, supra* at 353 (citing *Antisdale, supra* at 276 n 1). The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984).

CONCLUSIONS OF LAW

Petitioner developed and analyzed the income and sales comparison approaches to value. Respondent developed and analyzed cost and sales comparison approaches to value, but only conveys an indication of value from the cost approach. As reflected in the findings of fact, the parties have stipulated that the income approach to value is not relevant to this tax appeal. Petitioner’s appraiser was charged with determining the market value of the subject property for the 2012, 2013 and 2014 years under appeal. Respondent was charged with defending the assessments for the subject property for those years under appeal.

As noted in the extensive findings of fact, Respondent’s documentary and testimonial evidence has inconsistencies, contradictions and misrepresentations. Specifically, Respondent’s

steadfast adherence to the State Tax Commission guidelines for mass appraisal is commendable but misplaced for the valuation of a single property. Regarding a cost approach analysis, the subject improvements are less than ten years old and would indicate minimal physical depreciation. However, Respondent's assessor did not account for functional or external obsolescence within her cost approach to value. Petitioner's assertion to the limitations of the cost approach is noteworthy in this instance. Built-to-suit construction, 2nd generation users, and renovation costs demonstrate functional obsolescence which is difficult to calculate. Petitioner has convincingly articulated that 1st generation users develop big box retail space to enhance retail sales and not to optimize market value to the property. For these reasons, Respondent's cost approach is given no weight or credibility in the determination of market value for the subject property.

Respondent sets forth listings and sales data for the proposition of a sales comparison approach. The missing link between Ms. Norden's data and a comparative methodology is analytical adjustments. Respondent's general reference to this data is not the equivalent of comparative analysis. Respondent's ten properties are located in Michigan and Wisconsin; informational write-ups were included for six out of the 10 properties. Overall, the data lacks necessary and important information for sufficient analysis. Again, identification of these properties did not result in an application, an analysis or adjustments to the subject property. Ms. Norden's reluctance to analyze leased fee sales or alleged deed restricted sales is as much an indication of her valuation inexperience. (TR, pp 152-153) Respondent's listings and sales amount to raw, unadjusted, unapplied data relative to the subject property. Lastly, Respondent's challenge over Petitioner's use of southeastern Michigan sales is without merit. Respondent's own data includes sales in Flint, Berlin Township, and Fort Gratiot. For these reasons,

Respondent's listings and sales data is not sufficient to arrive at an independent determination of value for the subject property.

Next, Respondent's review of Petitioner's appraisal report lacks any substance or relevance to the valuation of the subject property. In other words, Respondent's scope of work outlining the limited desk review is devoid of any application to the market. First, Mr. Anderson's conclusory statements without the support of market evidence are not common or acceptable in appraisal practice and theory. Merely rejecting the value conclusions based on alleged errors is not persuasive. (Respondent's Exhibit R-10, p 2) Second, Mr. Anderson's reliance on internet definitions for a big box store is striking given his membership in the Appraisal Institute. The avoidance of a commonly used professional definition does not promote credibility or public trust. Third, Mr. Anderson's conversion of Petitioner's percentage adjustments into monetary adjustments is nonsensical.

Adjustments can be made either to total property prices or to appropriate units of comparison. Often the transactional adjustments – property rights conveyed, financing, conditions of sale (motivation), expenditures made immediately after purchase, and market conditions (date of sale) – are made to the total sale price. The adjusted sale price is then converted into a unit price and adjusted for property-related elements of comparison such as physical and legal characteristics. Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 14th ed, 2013), pp 389-390.

Mr. Anderson's conversion of Petitioner's adjustments is misguided and misplaced. Petitioner's percentage adjustments were derived from his opinions, analyses, and conclusions. Based on quantitative and qualitative methodologies, Petitioner's indications of value certainly would have changed based on monetary adjustments. Petitioner did not analyze its comparable sales on the basis of monetary adjustments. One measurement of adjustment is not reciprocal to the other measurement of adjustment. Again, Mr. Anderson's conversion of adjustments was not supported by anything other than his own inclination to challenge Petitioner's adjustments. Fourth, Mr. Anderson's own invoked professional standards and ethics do not apply to the

review of Petitioner's appraisal report. This oddity is compounded by Mr. Anderson's own admission of not knowing which professional standard is applied to his appraisal review assignment. (TR, p 237) Fifth, Mr. Anderson misconstrued the sales data within Petitioner's market analysis (Petitioner's Exhibit P-1, pp 21-23) based on his definition of big box stores of at least 50,000 square feet. In fact, Petitioner's market analysis encompasses sales of retail stores; Petitioner's appraiser did not portray this market analysis data exclusively as big box sales data. Lastly, Mr. Anderson's noted strengths of Petitioner's appraisal report include appraiser credentials. However, Mr. Anderson did not believe that his own credentials needed to be included in his appraisal review report. Overall, Mr. Anderson's acknowledged strengths of Petitioner's appraisal report contradict the subjective appraisal review. For these reasons, Respondent's appraisal review is not meaningful and is misleading. "An appraiser must not allow assignment conditions to limit the scope of work to such a degree that the assignment results are not credible in the context of the intended use."¹ In the instant case, the review appraiser's responsibility for the scope of work decisions are entirely his own and not based on the opinions and conclusions drawn from Respondent's attorney or assessor. "An appraiser must not allow the intended use of an assignment or a client's objectives to cause the assignment results to be biased."² As a final measure, there is no coincidence that an appraiser's credibility (based on invoked standards and ethics) is the same as the legal definition of credible.³ Respondent's appraisal review is so narrow as to be baseless in the context of this tax appeal. Therefore, Respondent's appraisal review is given no weight or credibility in the independent determination of market value for the subject property.

¹ The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice*, (Chicago: 2014-2015 Edition), p U-14.

² *Id.*, p U-14.

³ *Id.*, p U-2 and West, *Black's Law Dictionary*, (St. Paul, 9th ed. 2010), p 338.

Petitioner was able to explain and provide documentation for the sales comparison approach. Mr. Torzewski provided extensive sales of big box stores throughout the state. The data included comparables in southeast Michigan, as well as other competing market areas. This comparative data is further supported by sales data within the market analysis of his appraisal report. He analyzed eight sales for each year under appeal with five additional big box transactions and three local transactions for the sales comparison approach. The overall data illustrated to the Tribunal the impact of sales of retail big box stores for the three-year period. The comparable data was analyzed in conjunction with supported market conditions. Moreover, Mr. Torzewski's testimony regarding the consideration of deed restrictions is meaningful to his overall analysis. The application of available data to the subject property is persuasive. Therefore, Petitioner's sales comparison approach is meaningful to the independent determination of market value for the subject property.

Petitioner's comparison analysis and adjustments reflect market actions; however, Petitioner's reconciliation of the adjusted sale prices for the three years under appeal is incomplete. Petitioner concludes to the values by averaging the adjusted sales prices. The reconciliation of approaches is similar to the reconciliation of sales data. Reconciliation is an appraiser's opportunity to fill in gaps, and to prove overall logic and reasoning for the value conclusions. Averaging adjusted sales prices infers equal weight and consideration to the data. In this instance, Petitioner's data, even after adjustments, indicates a given range in adjusted sales prices. "Even when adjustments are supported by comparable data, the adjustment process and the values indicated reflect human judgment. . . . The sales comparison approach is not formulaic. It does not lend itself to detailed mathematic precision. Rather, it is based on judgment and experience as much as quantitative analysis." Appraisal Institute, *The Appraisal*

of Real Estate, (Chicago: 14th ed, 2013), p 394. The strengths and weaknesses of each comparable sale are examined for reliability and appropriateness. Petitioner's appraiser provided consistent testimony and explanatory narration for his comparison analysis and adjustments. Nonetheless, certain sales are more germane for each year under appeal. The sales comparison approach for each year is reconciled with the similarities and dissimilarities of each comparable sale. Petitioner's elaborative comparison analysis gives rise to more than averaged value conclusions. The Tribunal agrees with Petitioner's sales comparisons, but disagrees with the reasoning for the concluded (averaged) prices per square foot.

In regards to the 2012 valuation, Petitioner's sale 4 has minimal net adjustments and sold close to the December 31, 2011 tax day. Sales 1, 3, 4, 5, and 8 have gross building area greater than 100,000 square feet. Sales 3 and 7 are outliers to the overall dataset. Sale 5 is the closest to the subject in gross building area. Sale 8 is the oldest sale, occurring in 2009; this sale is less reliable. The smaller gross building area comparable sales indicate larger prices per square feet in the comparative analysis. Therefore, a reasoned and reconciled price per square foot for the 2012 valuation is \$20 or calculated as a value of \$3,325,000.

In regards to the 2013 valuation, Petitioner's sale 3 has minimal net adjustments and sold close to the December 31, 2012 tax day. However, Sales 3 and 7 are outliers to the overall dataset. Sales 1, 3, 4, 5, and 8 have gross building area greater than 100,000 square feet. Sale 5 is the closest to the subject in gross building area. Sale 8 is the oldest sale, occurring in 2009; this sale is less reliable. The smaller gross building area comparable sales indicate larger prices per square feet in the comparative analysis. Therefore, a reasoned and reconciled price per square foot for the 2013 valuation is \$21 or calculated as a value of \$3,350,000.

In regards to the 2014 valuation, Petitioner's sale 4 has zero net adjustments. Sale 1 sold closest to the December 31, 2013 tax day. Sales 3 and 7 are outliers to the overall dataset. Sales 1, 3, 4, 5, and 8 have gross building area greater than 100,000 square feet. Sale 5 is the closest to the subject in gross building area. Sale 8 is the oldest sale, occurring in 2009; this sale is less reliable. The smaller gross building area comparable sales indicate larger prices per square feet in the comparative analysis. Therefore, a reasoned and reconciled price per square foot for the 2013 valuation is \$22 or calculated as a value of \$3,660,000.

Again, the subject property is an owner-occupied building. The property has no history of an income stream. In other words, the subject is not an income-producing property. This is validated by both parties' stipulation that the income approach is not applicable in the analysis of the subject property in a fee simple interest. The primary focus is given to the sales comparison approach to value.

The Tribunal finds that Petitioner was able to show that the property was over-assessed for the tax years under appeal. The extensive findings of fact not only focus on Petitioner's significant evidence but focus on Respondent's insignificant evidence. To be certain, the Tribunal's deliberations are bound by the evidence as presented and not by any misguided perceptions of public policy motives. As such, and in light of the above, the Tribunal finds that Petitioner has succeeded in meeting its burden of going forward with competent evidence on the issue of true cash value, assessed value, and taxable value. Petitioner has provided credible documentary evidence and testimony for the 2012, 2013, and 2014 tax years at issue and, as such, the Tribunal finds Petitioner's data within the sales comparison approach is sufficient to arrive at an independent determination of value.

JUDGMENT

IT IS ORDERED that the subject property's true cash, assessed, and taxable values for the 2012, 2013 and 2014 tax years are those shown in the "Summary of Judgment" section of this Opinion and Judgment.

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

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Opinion and Judgment within 20 days of the entry of this 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, and prior to July 1, 2012, at the rate of 1.09%, and (iv) after June 30, 2012, through December 31, 2014, at the rate of 4.25%.

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

By: Marcus L. Abood

Entered: