STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

GRETCHEN WHITMER
GOVERNOR

ORLENE HAWKS
DIRECTOR

Pryce Limited LLC,
Petitioner,

v

Redford Township,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 19-001121

Presiding Judge
Christine Schauer

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Pryce Limited LLC, appeals ad valorem property tax assessments levied by Respondent, Redford Township, against parcel numbers 79-015-01-0171-300 and 79-015-01-0115-000 for the 2019 tax year. Jason Conti, Attorney, represented Petitioner, and Aaron Powers represented Respondent.

A hearing on this matter was held on October 21, 2020. Petitioner's witnesses were Donald Treadwell, Jr., appraiser, and Jessica Gracer, Respondent's assessor. Respondent's sole witness was Jessica Gracer, assessor.

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 2019 tax year are as follows:

Parcel Number	Tax Year	TCV	SEV	TV
79-015-01-0171-300	2019	$247,500	$123,750	$123,750
79-015-01-0115-000	2019	$27,500	$13,750	$13,750

PETITIONER'S CONTENTIONS

Petitioner contends that the 2019 assessment, including SEV and TV, imposed on the subject property, and the taxes to be levied and collected thereon, are invalid and unlawful and operate as fraud upon the taxpayer. Petitioner contends that the combined TCV on December 31, 2018, of the two parcels that make up the subject property is $120,000 as concluded in its appraisal. Petitioner contends that the TCV for parcel number 79-015-01-0171-300 is $108,000, and the TCV for parcel number 79-015-01-0115-000 is $12,000.

PETITIONER'S ADMITTED EXHIBIT

P1 – Appraisal of subject property as of December 31, 2018, prepared and signed by Donald Treadwell, Jr.

PETITIONER'S WITNESSES

Donald Treadwell, Jr.

Petitioner presented evidence from its certified general appraiser, Donald Treadwell, Jr. Based on his experience and training, the Tribunal accepted Mr. Treadwell as an expert in real estate appraisal, including multi-tenant properties. Mr. Treadwell prepared an appraisal of the subject property as of December 31, 2018, and testified that he used both the comparable sales approach and the income approach in concluding the TCV of the subject property.

Mr. Treadwell testified that he inspected both the inside and outside of the subject property as a part of his appraisal and took photographs which are in his appraisal report (admitted as exhibit P-1). Mr. Treadwell testified that the interest

appraised was “the fee simple interest at market rents”[1] and his TCV conclusion for the subject property was $120,000, as of December 31, 2018. Mr. Treadwell described the subject property as two parcels, one improved with a building which he referred to as “Parcel A,” and the other, a rear parking lot referred to as “Parcel B.” The building is a two-story masonry structure built in 1950 but is not a full two-story structure. The first floor has gross building area of 19,548 square feet and the second floor has 10,038 square feet, both measured from the outside walls. There is no elevator.

Mr. Treadwell testified that there are seven individual rental units on the first floor totaling 18,732 square feet of rentable area and that the remaining 816 square feet is taken up by stairways and entry vestibules. Most units were unfinished spaces, but some had office areas and restrooms. Mr. Treadwell claims that only one of these seven units on the first floor was rented on the valuation date, for medical records storage. Mr. Treadwell went on to testify that the second floor of the building had 15 units which were all vacant at the time he inspected the building. As of December 31, 2018, one of the second-floor units was rented for, “$1,500 a month plus utilities. They were using it for record storage . . . .”[2] In describing the condition of the building on valuation day, Mr. Treadwell contends that it needed significant repairs and replacement of some plumbing, electrical, and mechanical components.

Mr. Treadwell testified that Petitioner purchased the subject property from Real Estate Donations USA on December 27, 2018, just four days before the valuation date. Mr. Treadwell claims that the purchase price of the subject property was $130,000 but

[1] Transcript (Tr.) at 23.
[2] Tr. at 34

that Petitioner also purchased personal property for $300,000 as a part of the transaction. Mr. Treadwell went on to testify that he believes the sale was an arm's-length transaction because the subject property had been marketed plus the buyer and seller were not related and the price was negotiated between them.

Mr. Treadwell testified that his opinion is that the highest and best use of the subject property as vacant would be development as commercial and office space. As improved, Mr. Treadwell claims the highest and best use of the subject property once it is physically brought into compliance would be "a multiple-tenant commercial building providing low-cost first-floor retail[,] wholesale[,] or commercial service or office space, and second-floor low-cost studio or office space that range of office space would include record storage."[3]

Mr. Treadwell testified that he considered all three approaches to value, including the cost approach, the income approach, and the sales comparison approach, but only developed the sales comparison and income approaches as a part of his appraisal. He relied upon both in reaching his conclusion of value.

In describing his sales comparison approach, Mr. Treadwell testified that he used two different types of comparable sale properties consisting of a group of four properties with significant second-story space and another group of four properties that had only first-floor space but with levels of finish similar to what the subject property will be after the renovations are completed. When questioned why he used two different categories of comparable sales, Mr. Treadwell responded:

> Well, I wanted to try to get a test as to what the values of the subject property would be, and it was my opinion the best way of testing that was

[3] Tr. at 47-48.

> to look at these two different sets of comparables and what data they provided. There aren't very many properties identical to the subject property out there.[4]

Beginning with the first-floor comparable sales, which were comparable numbers two, three, four, and five, Mr. Treadwell described the characteristics and location of each comparable sale. Mr. Treadwell's two-story comparable sales were comparable numbers one, six, seven, and the subject property itself. A separate grid was developed for each group and adjustments were applied to various comparable sales for market conditions based on the date of sale, building size, interior finish, available parking, and location. All comparable sales, except the comparable sale of the subject itself, were adjusted for "subject deferred maintenance," which Mr. Treadwell explained in his testimony as follows:

> Well, that adjustment is applied for the fact that the subject property at the valuation date for the most part was not occupiable. It required a major investment in repairs and maintenance to correct the deferred items. And so that adjustment is applied to the comparables because they did not require such a magnitude of expenditure.[5]

In specifically describing how the amount of this adjustment was calculated, Mr. Treadwell explained that he started with the actual expenditure amount of approximately $225,000 made by Petitioner after purchase to repair the subject property and applied a percentage to each comparable sale based on its condition at the time of sale.

Mr. Treadwell testified that the adjusted price per square foot of the single-story comparable sales was a range of values from $5.21 per square foot to $6.71 per square foot. He concluded a value of $5.98 per square foot, or $117,000, for just the first floor

[4] Tr. at 51.
[5] Tr. at 62.

of the subject property based on the single-story comparable sales. Mr. Treadwell testified that applying this same per-square foot value to the entire building would result in a value of $177,000, which he claims would overstate the value of the subject property.

Mr. Treadwell then testified regarding the specific adjustments made to the two-story comparable sales. As in the one-story comparable sales, various adjustments were made but Mr. Treadwell testified that the formula he used for making the "subject deferred maintenance" adjustment on the two-story comparable sales was different than for the one-story sales. "For the two-story comparables, 70 percent rather than 80 percent was used to reflect the fact that these buildings required more remodeling, had more deferred maintenance than the one-story comparables."[6] Mr. Treadwell concluded a value per square foot of $4.52 for the subject property based on the two-story comparable sales and then applied it to the entire building. He claimed, "because we were using two-story comparables[,] it is perfectly reasonable and appropriate to apply that to a total building area of 29,586 square feet."[7] Mr. Treadwell testified that his conclusion of value of the subject property based on his comparable sales approach as of December 31, 2018, was $134,000. In reconciling the value from the one-story properties versus the two-story properties, Mr. Treadwell testified that while the two-story comparable sales were physically more like the subject property, the one-story comparable sales provided a value range indication "that the two-story value estimate of $134,000 was reasonable and appropriate."[8]

[6] Tr. at 67.
[7] Tr. at 69.
[8] Tr. at 70.

Mr. Treadwell testified that he also developed an income approach but noted that the subject property was largely vacant on the valuation date. Mr. Treadwell claims that there were really two types of space in the subject which “required different sets of market data to reach the market estimates.”[9] Mr. Treadwell testified that he used five sales of first-floor space in Redford Township as rent comparables that “provided useful indications of what the market rent would be for the subject property's first-floor units.”[10]

Mr. Treadwell went on to describe the adjustments he made to the various properties indicating that the adjustments were similar to those made to the comparable properties. Mr. Treadwell did not make any adjustment for “subject deferred maintenance” as he did in the comparable sales because “the subject's market rents are premised on the deferred maintenance being corrected.”[11]

Mr. Treadwell testified that, for the first-floor units, he concluded a price of $5 per square foot for the two units that front the parking lot to the east of the building, and $6.50 per square foot for the three larger units because they front Five Mile Road and have large windows which makes for a good approach to them. Further, Mr. Treadwell testified that some of the smaller units that had partially finished office spaces and Five Mile Road frontage would have rents of $7 per square foot. For the second-floor units, Mr. Treadwell used the rent from his sales comparable number one which was a two-story office building where two units were rented on a month-to-month basis using the same expense allocations as he used for the subject property. One rented for $4.07 per square foot and the other for $3.42 per square foot which led him to his conclusion of

[9] Tr. at 71.
[10] Tr. at 72.
[11] Tr. at 75.

market rent for the subject property of $4 per square foot. Mr. Treadwell testified that based on the foregoing information, he determined the gross potential income of the subject property would be $145,329.

Mr. Treadwell went on to testify that he reached a vacancy rate of 20 percent for the first floor units based on “looking at other buildings and their turnover and considering the level of finish of the space and its proximity to parking and potential uses.”[12] For the second-floor units, Mr. Treadwell explained that he used 35 percent as his vacancy rate because, “my experience in southeastern Michigan has been that second-floor space such as that in the subject property is not heavily in demand and as a consequence has a very high vacancy rate.”[13] He then testified that he used a five percent collection loss. After applying these factors, Mr. Treadwell concluded an effective gross revenue of $104,480.

Mr. Treadwell then referenced the table on page 126 of his appraisal where the expenses are detailed and noted that the information was largely obtained from other commercial properties because most of the subject property was unoccupied during 2019. Mr. Treadwell testified that he had made a calculation error on page 128 of his appraisal where he failed to pick up the deduction on the vacancy and collection allowances for the second floor and that the amount shown in exhibit P-1 should be $6,269 rather than the $7,997 shown there as “Management Expense.” When asked if this correction materially changed his value conclusion, Mr. Treadwell testified, “it changes the income approach value, although not significantly.”[14] Mr. Treadwell went

[12] Tr. at 79.
[13] Tr. at 79-80.
[14] Tr. at 83.

on to explain his calculations to reach a total corrected expense figure of $47,045 which he then divided by the square footage of the building of 29,586 to get $1.59 per square foot expense rate which is the corrected value rather than the $1.65 per square foot shown in the table on page 128.

On further testimony, Mr. Treadwell explained his calculations to reach a market-derived capitalization rate of 11.5% and then added the effective tax rate for 2019 at 3.97% to produce an effective capitalization rate of 15.47%. Dividing gross revenue by the capitalization rate produced a value quotient of $371,267 using the corrected figures. Mr. Treadwell then testified that this figure needed to be reduced because the subject property does not have stabilized occupancy. Mr. Treadwell testified that two deductions were applied. The first was $37,000 which was the estimated brokerage expense that would be incurred to get the spaces leased out and the holding costs for vacant units. The second deduction of $225,395, the same deferred maintenance figure used in the sales approach, was the cost to make the units habitable. "So when you make those deductions, as page 128 shows, you reach a value rounded to 98,000. With the correct management expense[,] it would round to $109,000."[15] Mr. Treadwell testified that the deferred maintenance figure represented the actual expenditures made by Petitioner at the subject property since purchasing it. Mr. Treadwell testified that his value conclusion based on the income approach was $109,000 after correcting his figures as discussed previously.

Mr. Treadwell went on to testify regarding his reconciliation of the sales approach and income approach in which he claims to have given significant weight to both the

[15] Tr. at 87-88.

sales approach and income approach but that he also relied on the actual sales price of the subject property because he contends it was an arm's-length transaction just four days before the valuation date. Mr. Treadwell testified that his final conclusion of the TCV is $120,000 which included both parcels of the subject property.

On cross-examination, Mr. Treadwell contends that market exposure at a typical rate was not a requirement of an arm's-length sale and that he determined that the sale of the subject property to Petitioner was an arm's-length transaction after "discussing it with the principal of the purchaser, reviewing the assessor records, reviewing the copy of the deed, which showed the revenue stamps, although it did not show the consideration. And the fact that the purchaser and the seller in the transaction were not -- were unrelated parties, they were not related."[16]

Mr. Treadwell testified that Petitioner purchased the subject property from Real Estate Donations USA as seller but that he was not specifically aware of how seller had obtained the subject property. However, he did testify that, "[t]ypically it's in conjunction with a donation for tax deduction on a gift."[17] Further, Mr. Treadwell testified that Real Estate Donations USA came to own the property on the same date it was then acquired by Petitioner. Mr. Treadwell testified that he knew that Real Estate Donations USA was a 501(c)(3) organization but knew nothing else about it.

Mr. Treadwell confirmed his earlier testimony that the sale of the subject property to Petitioner was an allocation between real and personal property although he

[16] Tr. at 102.
[17] Tr. at 94.

acknowledged that in the Offer to Purchase signed by seller and Petitioner, Respondent's Exhibit R-3, the sale price indicated was $430,000.

Mr. Treadwell testified that he had not inspected the property at the time of the sale but was familiar with the deferred maintenance that existed at the subject property as of the date of acquisitions, "based on the actual expenses incurred in repairing and correcting deferred maintenance on the property."[18] Mr. Treadwell testified that he made significant adjustments to his comparable sales and rental comparable properties based on the actual costs of items contained in a list submitted in his appraisal.

On continuing cross-examination, Mr. Treadwell testified that he had no knowledge of whether the items of personal property included in the sale of the subject property were used to perform maintenance and repairs at the subject property although he acknowledged that such items were on the list of personal property included in the sale. Mr. Treadwell claims that many of the units within the subject property were unoccupiable without the correction of the deferred maintenance including "all of the first-floor units, other than the one at the southeast corner of the building, and parts of the second floor."[19] However, Mr. Treadwell testified that he did not inspect the subject property as of the valuation date and became aware of the missing items "based on the photographs I referenced earlier that are not in my report, and the information provided by the principal of the purchaser, property owner."[20]

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[18] Tr. at 113.
[19] Tr. at 120.
[20] Tr. At 121.

When questioned how Real Estate Donations USA acquired the subject property prior to selling to Petitioner, Mr. Treadwell testified, "It was donated -- or, title was transferred to Donations USA prior to the sale to Pryce."[21]

Reviewing his opinion of highest and best use of the subject property, Mr. Treadwell testified, "I have as improved is repair and maintenance to make it usable as a multiple-tenant commercial building, providing low-cost first-floor retail wholesale, commercial service or office space, and second-floor low-cost studio or office space."[22] Mr. Treadwell then went on to testify to the adjustments made to his comparable sales.

Comparable sale one was an office complex but had no retail space and was used as one of his rent comparable properties. Mr. Treadwell testified that he utilized the rents of comparable number one for his determination of market rent of the subject property and that he got the information about this comparable from the owner, Mr. Curis. When asked whether any personal property was acquired with the acquisition of the real estate in this sale, Mr. Treadwell responded, "Not to my recollection."[23] Mr. Treadwell went on to testify that comparable one has three buildings on the parcel and required remodeling and correction at the time of sale.

Mr. Treadwell confirmed in his testimony that his comparable sale two was acquired by the seller on a tax sale and then the seller simply did a quick flip of the property. Mr. Treadwell testified that he made a 31.2% adjustment for size for comparable two, which was 3,320 square feet, and net adjustments of -68.51%.

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[21] Tr. at 124.
[22] Tr. at 127.
[23] Tr. at 131.

For his comparable number three, Mr. Treadwell testified that he adjusted it for size based the square footage of only the first floor of the subject property. Mr. Treadwell further testified that there was also a significant adjustment of nearly 50% for deferred maintenance for comparable three which was based on the cost of the deferred maintenance for the subject property provided by Petitioner.

Mr. Treadwell testified that he adjusted his comparable number four for interior finish at “$10 per square foot premium for the retail space and 63.8 percent roughly of the building leased as retail space, thus the $6.38 negative adjustment.”[24] Further, Mr. Treadwell acknowledged that he did not use market data to support this adjustment, but it was his opinion based on past appraisals.

Mr. Treadwell testified that he did not make a size adjustment for his comparable number five, “[b]ecause at 10,420 square feet, the correlation between building size and price per square foot no longer was significant.”[25] Mr. Treadwell claims that he did not use any specific market data to support the amount of this adjustment but that it was based on his opinion.

Mr. Treadwell testified that comparable six was a former Masonic Temple and was designed for single occupancy. It had a single main entrance that would need to be used to access any of the individual rooms within the building which is not a similar feature at the subject property. When asked if the subject property was superior to comparable six because it is already set up for multiple occupancy, Mr. Treadwell responded that, “the comparable was in fair condition and occupiable and the subject

[24] Tr. at 144.
[25] Tr. at 143.

required substantial work to become occupiable compared to comparable 6."[26] Mr. Treadwell went on to testify that he had characterized comparable six as having deferred maintenance but only the subject property had to have deferred maintenance to become occupiable because "there's a difference between deferred maintenance for remodeling and so forth versus doing plumbing upgrades, electrical upgrades, heating and cooling upgrades, and repair and replacement."[27] Mr. Treadwell testified that he subject needed upgrades of mechanical components and also restorations or updates.

Mr. Treadwell testified that comparable number seven is an office located on a street in Trenton with higher traffic volumes than the subject which is in Redford. Mr. Treadwell testified that this property was bought and then sold within a two-year period and was not occupied during that time, but no adjustment for seller motivation was made. An adjustment for parking was made based on the fact that there was more free parking within a block than at the subject property and that the parking at the subject was less convenient and there were fewer spaces per square foot of building area. Mr. Treadwell testified that he did not use market data to calculate his parking adjustments to comparable seven or comparable six but instead it was his opinion based on experience.

Mr. Treadwell testified that he gave little weight to comparable sales two, three, and four but primarily used comparable sales one, six and seven in his final value conclusion. Mr. Treadwell testified that the gross adjustment of comparable six was 97.23% and the gross adjustment of comparable seven was 70.38%. When asked if this

[26] Tr. at 148.
[27] *Id.*

was a significant adjustment, Mr. Treadwell testified, "[y]es, because of the large subject deferred maintenance adjustment."[28] He further testified that this same situation was found in comparable sales one and six as well. Mr. Treadwell testified that he used the per-square foot price it cost Petitioner to correct the deferred maintenance of the subject property and applied it as the deferred maintenance adjustment to the comparable sales.

Turning to the income approach used by Petitioner, Mr. Treadwell testified that he used five rental comparisons to estimate the potential gross rent of the subject property's first floor and admitted that no descriptions of the lease terms of the rental properties were provided. Mr. Treadwell testified that he adjusted three of the five comparable rentals for condition. According to Mr. Treadwell, comparable rentals one and two were listed as asking prices and all of the adjustments made were based on his own experience and analysis rather than market data. Further, when asked if he adjusted comparable rentals one, two, and three for their lease dates of 2014 through 2016, Mr. Treadwell testified that he did not and that he was not aware of other leases near the subject property closer to the date of the appraisal.

Mr. Treadwell testified that he had concluded an estimated market rent for the first floor of the subject property of between $5.00 and $7.00 and roughly $4 for the second floor. He estimated a vacancy rate of 25% for the first floor and 40% for the second floor which resulted in an overall stabilized occupancy rate for the subject property of 72% using weighting of the two floors. Mr. Treadwell acknowledged that in his appraisal he indicated the overall vacancy rate for commercial, flex, and industrial

[28] Tr. at 157.

property in Redford Township over the last 10 years has been less than 10% but testified that the subject property is not typical.

Mr. Treadwell testified that he determined a capitalization rate of 11.52%. He used an interest rate based on current rates and past trends and a cash flow rate based on talking with different investors and consulting CoStar. He looked at expenses of six expense comparable properties listed in a grid on page 126 of his appraisal to determine "whether the subject property's reported expenses were within a reasonable range that would be experienced by other centers."[29] Mr. Treadwell claims that his value conclusion from his income approach of $109,000 on December 31, 2018, is not the stabilized value because of the condition the subject property on the valuation date and that if the subject were in better condition on the valuation date, his value conclusion may be different. Mr. Treadwell claims that he started with the potential revenue and then deducted the two vacancy allowances to reach a net revenue from which he subtracted recurring expenses to reach an income to be capitalized. Then, Mr. Treadwell claims he made a one-time deduction for the holding cost to get to stabilization and another one-time deduction for the expenditure made during 2019 to make the units of the subject property occupiable.

[29] Tr. at 171-172.

Jessica Gracer

Petitioner presented evidence from Jessica Gracer, Respondent's Assessor. Ms. Gracer testified that she prepared the property record cards for the two parcels that make up the subject property which were submitted as Respondent's proposed exhibit R-1 sometime in January or February 2019. Ms. Gracer testified that the property record cards represent the mass-appraisal cost approach based on the State Tax Commission (STC) Assessor Manual. Ms. Gracer testified that an economic condition factor (ECF) is used as a part of the mass-appraisal process and that the ECF is based on sales of properties within the same area and similar to the subject property in terms of size and use. Ms. Gracer testified that a land sales study was used to determine the land value of the subject property.

Ms. Gracer testified that the sale of the subject property to Petitioner was deemed not to be an arm's-length transaction by the county equalization department, that she agreed with that decision, and it is noted as such on the property record card. Ms. Gracer contends that the sale price of the subject property did not appear to be typical for that type of property and did not think that it represented the fair market value. Further, Ms. Gracer testified that the seller, Real Estate Donations LLC, was a red flag.

Ms. Gracer testified that for the 2019 assessment of the subject property, the process was automated and based on data that was in the property record and that she did not do any analysis of the costs. Ms. Gracer testified that she does a drive-by inspection of the subject property every year but has not been inside of the building and has never personally measured it. The square footage on the property record would

have come from the original record card from the assessor when it was originally built and that it would likely represent exterior dimensions. Ms. Gracer reviewed how the total square footage of the building was determined to be the 33,600 square feet which was valued on the property record card. Ms. Gracer testified that her computerized assessing program has the STC manual rates built in and based on that and the building dimensions, classification, and features, it determines the replacement cost for a building of similar utility. Ms. Gracer further testified that the subject property was rated as 39% good, which is the lowest effective age allowed, and then was also reduced for 35% functional obsolescence. Ms. Gracer testified that she does the ECF analyses for different neighborhoods, "determined by location and use within my commercial industrial class that each get their own ECF value, essentially."[30] Ms. Gracer testified that the subject property is classed commercial miscellaneous as is shown on the property record card. Ms. Gracer testified that the land value was based on a land sales analysis which concluded a per-square foot value which was then applied to the square footage of the site. Ms. Gracer testified that the parking lot parcel falls under a different property type and therefore under a different land analysis rate.

Ms. Gracer testified that, while the property record card does not necessarily conclude an incorrect TCV, she may not rely on it by itself to determine the TCV of the subject property.

On cross-examination, Ms. Gracer testified that property record cards only print out the rates for "upper floor" no matter how many floors there are and that other items are listed on the card the way they are because that is the way the software is written.

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[30] Tr. at 221.

RESPONDENT'S CONTENTIONS

Respondent contends that it lawfully and uniformly assessed the subject property and that its assessment in this appeal is the best indicator of market value of the subject property on December 31, 2018. Respondent's contention of TCV was $425,400 for parcel number 79-015-01-0171-300 and $44,800 for parcel number 79-015-01-0115-000 as of December 31, 2018.

RESPONDENT'S ADMITTED EXHIBITS

R1 – Respondent's Valuation Statement consisting of the property record cards and valuation reports for the subject property as of December 31, 2018.

R3 – Purchase Agreement of subject property dated December 3, 2018.

RESPONDENT'S WITNESS

Jessica Gracer

Respondent presented evidence from its assessor, Jessica Gracer, who is an employee of WCA Assessing. Based on her experience and training, the Tribunal accepted Ms. Gracer as an expert in property assessment. Ms. Gracer prepared a mass-appraisal cost-less-depreciation approach to value for subject property as of December 31, 2018. Ms. Gracer testified that she concluded that the improved lot on Five Mile Road had a TCV of $425,400 and the parking lot parcel had a TCV of $44,000 on December 31, 2018. Ms. Gracer testified that the same mass-appraisal method of determining the land value and ECF with specific sales studies was uniformly applied to all commercial and industrial land values in Redford Township for the 2019 year. Ms. Gracer claims that she uses BS&A software approved by the STC which incorporates the STC cost manuals for assessors. Ms. Gracer explained how a cost-less-

depreciation approach is structured to result in a TCV for a property and that this method is required by the STC in Michigan.

Ms. Gracer testified that the subject property is in the township's downtown district authority (DDA) and that it shares a parking lot with a CVS pharmacy to the east, is adjacent to general retail to the west, and is directly across the street from a credit union. Ms. Gracer claims that this is a desirable part of town that is attractive to investors. Ms. Gracer contends that the exterior of the subject property did not show any indication that the building needed repairs to ready it for occupancy and she knew of no building violations or code enforcement issues for the subject property.

On cross-examination, Ms. Gracer confirmed that she has not been inside the building but that it was depreciated on the property record card by 75%. When asked if that indicated that there are likely issues and problems needing maintenance and repair at the property, Ms. Gracer testified, "Not necessarily. There's a certain kind of assumption with the properties that they are being maintained to a certain point over the years to make them able to function and be occupied and used."[31]

FINDINGS OF FACT

The Tribunal's Findings of Fact concern only evidence and inferences found to be significantly relevant to the legal issues involved; the Tribunal has not addressed every piece of evidence or every inference that might lead to conflicting conclusion and has rejected evidence contrary to those findings.

1. The subject property consists of two parcels of commercial real property in Wayne County.

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[31] Tr. at 245.

2. Parcel number 79-015-01-0171-300 has a multi-unit commercial building and is located at 25440-54 Five Mile Road. Parcel number 79-015-01-0115-000 is an associated parking parcel on Student Avenue.
3. Real Estate Donations USA acquired the subject property from 24550 Five Mile LLC via a warranty deed dated December 27, 2018.
4. Petitioner purchased the subject property on December 27, 2018, from Real Estate Donations USA.
    a. The subject property was not exposed to the market prior to Petitioner purchasing it from Real Estate Donations USA.
    b. No property transfer affidavit for the subject property was submitted to the Tribunal.
    c. No deed of sale for Petitioner's purchase of the subject property was submitted to the Tribunal.
5. Petitioner provided an appraisal as of December 31, 2018, which valued the subject property using the sales comparison approach and the income approach and reconciling the two approaches for a TCV contention of $120,000 for both parcels.
6. Respondent provided its property record cards and valuation reports for the two parcels that make up the subject property which used the mass-appraisal cost-less-depreciation approach in concluding a combined TCV for the subject property of $470,200.

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 TCV.[32]

> 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.[33]

The Michigan Legislature has defined TCV 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.[34]

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”[35]

“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.”[36] The Tribunal is not bound to accept either of the parties' theories of valuation.[37] “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.”[38] In that regard, the Tribunal “may accept one theory and reject the other, it may

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[32] See MCL 211.27a.
[33] Const 1963, art 9, sec 3.
[34] MCL 211.27(1).
[35] *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).
[36] *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).
[37] *Teledyne Continental Motors v Muskegon Twp,* 145 Mich App 749, 754; 378 NW2d 590 (1985).
[38] *Meadowlanes Ltd Dividend Housing Ass’n v Holland,* 437 Mich 473, 485; 473 NW2d 636 (1991).

reject both theories, or it may utilize a combination of both in arriving at its determination."[39]

A proceeding before the Tax Tribunal is original, independent, and de novo.[40] The Tribunal's factual findings must be supported "by competent, material, and substantial evidence."[41] "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence."[42]

"The petitioner has the burden of proof in establishing the true cash value of the property."[43] "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."[44] 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."[45]

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.[46] "The market approach is the only valuation method that directly reflects the

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[39] *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).
[40] MCL 205.735a(2).
[41] *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).
[42] *Jones & Laughlin Steel Corp, supra* at 352-353.
[43] MCL 205.737(3).
[44] *Jones & Laughlin Steel Corp, supra* at 354-355.
[45] MCL 205.737(3).
[46] *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).

balance of supply and demand for property in marketplace trading."[47] 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 TCV of the property, utilizing an approach that provides the most accurate valuation under the circumstances.[48] Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.[49]

Here, the subject property consists of two parcels, one that is improved with a multi-tenant building, and the other a parking lot to serve the improved parcel. Petitioner presented an appraisal prepared by a licensed professional appraiser with many years of experience in the appraisal of commercial properties. Both the comparable sales and income approaches were employed by Petitioner's appraiser, which he then reconciled to form his conclusion of the combined TCV for both parcels that make up the subject property. Respondent did not submit an appraisal but instead relied upon its mass-appraisal cost-less-depreciation approach to form its contention of value for each of the parcels that make up the subject property.

While the burden of proof falls squarely on the side of Petitioner and we will review its evidence below, the Tribunal finds that Respondent has not provided any reliable documentary evidence in defense of its contentions. Respondent provided the cost-less-depreciation approach presented on its property record cards and valuation reports as its only valuation disclosure. No land sales studies nor ECF studies were provided to support the values contained in Respondent's cost approach. Without

[47] *Jones & Laughlin Steel Corp, supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).
[48] *Antisdale, supra* at 277.
[49] See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

these, the values presented on the property record cards and valuation reports are unsupported and unreliable. Therefore, the Tribunal gives no weight to Respondent's valuation disclosure in its independent determination of the TCV for the subject property.

Petitioner's appraisal is the only remaining evidence in this case, but the Tribunal finds that there are some issues within Petitioner's appraisal that are troubling. Specifically, Petitioner's appraiser, Mr. Treadwell, claimed that the sale of the subject property was an arm's-length transaction. Mr. Treadwell testified regarding the requirements of an arm's-length transaction as follows:

> Q. Does the sale of a property also require exposure upon the market at a typical rate to be considered an arm's length transaction?
> A. I would say no, in my opinion.
> Q. So if two individual property owners decided to transfer the property between each other without having any other opportunity for any other interested party to be able to purchase the property, in your opinion that would be exposure to the marketplace?
> A. That would be an arm's-length transaction, yes.[50]

Mr. Treadwell is technically correct in his claim that Petitioner purchased the subject property via an arm's-length transaction which is defined as, "A transaction between unrelated parties who are each acting in his or her own best interest."[51] However, the Tribunal is not convinced that the subject property sale was at market value. *The Appraisal of Real Estate* cites a definition of market value used in the International Valuation Standards which references an arm's-length transaction as a component of market value which is defined as follows:

> [T]he estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's-

[50] Tr. at 94.
[51] *The Dictionary of Real Estate Appraisal*, 6th ed, Appraisal Institute (2015) at 13.

> length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently, and without compulsion.[52]

The subject property here was not exposed to the open market as evidenced by its purchase from a seller, Real Estate Donations USA, who had acquired the subject property on December 27, 2019, and then immediately conveyed it to Petitioner on that same day. By virtue of this timing, the subject property could not possibly have been adequately exposed to the market. Further, there was much testimony around the sale of the subject property to Petitioner also including $300,000 worth of personal property.

The only admitted evidence that contains any information about the terms of the sale of the subject property was Respondent's R-3, Offer to Purchase, which was signed by Jason M Curis, as Manager of the purchaser, Michigan Asset Holdings, LLC, as Agent on Behalf of an Entity to be Formed, and accepted by the signature of the seller's agent on December 3, 2018. The purchase price was listed as $430,000 with only a notation that "any and all other personal and real property"[53] was included in the sale but no specific breakdown of the price between such property and the real estate. A later addendum to this offer was referred to by Petitioner's appraiser but was never admitted into evidence by either party. It appears to the Tribunal that Exhibit R-3 is evidence that a purchase agreement for the subject property was executed between the Principal of Petitioner and the seller, Real Estate Donations LLC, prior to the seller even owning the subject property.

When asked if he relied on the sale of the subject property to reach his value conclusion as of December 31, 2018, Mr. Treadwell testified as follows:

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[52] *The Appraisal of Real Estate,* 15th ed, Appraisal Institute (2020) at p 48.
[53] See MOAHR Docket No. 19-001121, Exhibit R-2 at p 1.

> Q. Did you rely in any way on the sale of the subject property December of 2018?
> A. Yes, it was -- based on my research it was an arm's length transaction. It was four days prior to the valuation date. And I think it's reasonable and appropriate to give it significant weight.
> Q. How did you use it, that sale?
> A. Well, I basically used it as a check against my value analysis. The value conclusions were within a reasonable range of [the] sale price and so I felt that completed the circle.[54]

For the reasons discussed above, the Tribunal finds that the sale of the subject property to Petitioner on December 27, 2018, cannot be considered an exchange at market value. Further, the Tribunal finds that Mr. Treadwell's opinion and testimony that the sale was an arm's-length transaction and therefore appropriate to use as evidence of the TCV of the subject property in this case demonstrates that he either does not understand what constitutes market value or he has chosen not to apply it in the instant case. Either way, his assertion here and reliance upon the subject sale price in his value conclusion calls into question his credibility. The Tribunal gives no weight to the sale price of the subject property in its determination of the TCV on the valuation date at issue here.

A second issue with the appraisal that is of concern to the Tribunal is Mr. Treadwell's use of an arbitrary proportion of the actual expenses of approximately $225,000 incurred by Petitioner to repair and update the subject during the year following the purchase of the subject property as the basis for the amount of the "deferred maintenance" adjustments he made to his comparable sales in his appraisal and referenced throughout his testimony. Mr. Treadwell used a list of expenditures

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[54] Tr. at 89-90.

made on the building for maintenance and repair items required after the purchase of the building that was supplied by Petitioner. Mr. Treadwell testified as follows:

> *Q.* What was the condition of the subject building as of the relevant tax date of 12/31/18?
> *A.* It . . . needed significant repairs, replacement of some of the plumbing and mechanical components, electrical components. It really, particularly on the first floor, was not occupiable space in its condition.
> *Q.* Referencing page 80, summarize the required maintenance of the subject property as of the tax date.
> *A.* Well, the repairs, including replacement from the doors and windows, the heating and cooling system needed some upgrades. . . . So you have -- work was done to the heating and cooling systems, the electrical system. There was some repair work done on the roof. The plumbing included replacement of some of the fixtures as well as some of the new both waste and water distribution piping, and then there was some work on-site improvements, mostly striping and some patching. Then general construction which mostly was upgrading and repairing partitions, such as the gypsum board and putting in some boards, that sort of thing.[55]

Later, he went on to testify in relation to the adjustments made to his comparable sales for "deferred maintenance" in relation to the subject property as follows:

> *Q.* Let's talk about the actual adjustments you made to these four comparables. Let's start with the subject deferred maintenance. Can you describe in comparable number 2 how you -- how you derived that adjustment of $8.22?
> *A.* Well, I took the roughly approximately $225,000 of deferred maintenance in the subject property, then I multiplied it by 80 percent. The reason for the 80 percent is the sales required -- that would be used all required some work, but nowhere near the magnitude of the subject property. So that was the reason for the 80 percent. Then that was divided by the square footage of the comparables to produce the estimated value impact.
> *Q.* And you did that for all four comparables?
> *A.* That is correct.[56]

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[55] Tr. at 34-36. Also see Petitioner's Exhibit P-1, p 80, where Petitioner's appraisal lists reported expenditures made at subject property in 2019 and notes that "$225,395 of the expended amount are considered required repairs and maintenance."
[56] Tr. at 62-63.

In his appraisal, Mr. Treadwell states, in relation to his two-story comparable sales, "The condition and effective age of these comparables is considered including partial offsets for the adjustment for the subject's deferred maintenance."[57]

The Tribunal acknowledges that an adjustment for expenditures made immediately after purchase may be appropriate as would a condition adjustment, however, using an arbitrary proportion of the actual costs for a year's worth of maintenance and repair for the subject property to adjust the comparable sales for "deferred maintenance," or condition, rather than using either market data or data derived from the actual sale of the comparable property itself is troublesome. Unless the same maintenance items were needed at each of the comparable properties, which the Tribunal finds highly unlikely, the specific market value of the repairs may not be the same for the subject property. Therefore, the Tribunal finds that the large "deferred maintenance" adjustments that Mr. Treadwell made to his comparable sales, based on the actual costs in the future of repairs made at the subject property, have not been calculated using a reliable methodology for determining the amount of such an adjustment. While the Tribunal agrees that an adjustment for condition of the comparable sales to make them more like the subject may be appropriate due to the condition of the building in this case, the Tribunal does not concur with the amounts used by Mr. Treadwell to adjust his comparable sales for "deferred maintenance."

While Mr. Treadwell presented a separate set of comparable sales for each floor of the building in his appraisal, he ultimately based his value conclusion on the two-story comparable sales. The Tribunal concurs with this approach. Three properties were used

[57] P-1 at 111.

as two-story comparable sales, numbers one, six and seven. In addition to the adjustment for "deferred maintenance" discussed above, adjustments for parking were made to sales six and seven due to the location of the subject property parking parcel in relation to the parking for the comparable sales. He did not adjust comparable one because its parking had issues, as does the subject. When explaining his parking adjustment amounts, he testified the amounts were based on his experience and opinion and no market data was used.

> A. The parking adjustment is a percentage of the purchase price as based on experience and review of other sales and the pattern we see.
> Q. Do you have any of those other sales or any other market-based data in your report or in your work file?
> A. No, I do not.
> Q. So it's your opinion?
> A. Yes.[58]

Adjustments for interior finish were made to sales one and seven. In his appraisal, Mr. Treadwell states:

> Building comparable 1 and 7 were fully finished as office space compared to the subject property's mostly unfinished first floor space. The $2.00 per square foot downward adjustments to these two comparables considers that their first floor space did require some remodeling at the time of the sales.[59]

The Tribunal does not understand the basis for both a "deferred maintenance" or condition adjustment plus an interior finish adjustment. Mr. Treadwell did not explain, either in his appraisal or via testimony, how he determined the amount used for the interior finish adjustment.

[58] Tr. at 154.
[59] P-1 at 111.

Comparable sale six was adjusted for location because it was in Detroit and comparable seven was adjusted for market conditions as a 2017 sale. While these appear to be appropriate adjustment categories, Mr. Treadwell provided no basis for how he came to the specific amounts used for these adjustments.

As presented, the two-story comparable sales on which Mr. Treadwell based his sales approach conclusion had gross adjustments ranging from 60% to 97%. This would indicate that they are not similar to the subject property. The Tribunal cannot determine if these were the best comparable sales available in the market. Comparable sale six with 97% gross adjustment is given no weight by the Tribunal. Comparable one had an actual sale price of $12.30 per square foot and had the lowest gross adjustment at 60% but was less than half the size of the subject property. Comparable seven had an actual sale price of $13.81 per square foot and had gross adjustments of 70% but was the closest in size to the subject as any of the three two-story comparable sales.

Turning to Mr. Treadwell's income approach, he also deducted $225,395, the total spent by Petitioner to address deferred maintenance after purchase, from the value estimate that was produced in his direct capitalization income approach before concluding a final value produced by his income approach as illustrated in his appraisal on page 128. Because the expenditures were made during 2019, the year after purchase and subsequent to the valuation date, the Tribunal finds that deducting them is in effect advancing the conclusion of value beyond the valuation date of December 31, 2018, in this case. Therefore, the Tribunal finds that the $225,395 deduction made to arrive at a value conclusion in Petitioner's income approach was inappropriate and should not be a part of the calculation. The goal of the income approach is not to

determine the gross potential rent of the property in average condition. Petitioner was required to develop a contention of gross potential rent based upon market leases. The appropriate method for adjusting for the varying conditions of the comparable sales as compared to the subject property is through the condition adjustment to the gross rent multipliers, which Petitioner attempted to utilize but apparently adjusted in the wrong direction based upon his characterization of the subject condition as of tax day. Without such deduction, the value contention would be $334,267 if all other calculations (as corrected during testimony) used by Mr. Treadwell remained.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein that in the final reconciliation of value, the Tribunal gives most weight to comparable sale one and less to comparable sale seven with consideration for the condition of these comparable sales but not using the entire amount of the deferred maintenance adjustment made by Mr. Treadwell. Also minimal weight is given to the income approach without the application of the future maintenance expenses used by Petitioner's appraiser. Therefore, the Tribunal finds that the TCV of the subject property is $275,000. This amount is apportioned between the two parcels with 90% of the value assigned to the improved parcel number, 79-015-01-0171-300, and 10% to the parking lot parcel, number 79-015-01-0115-000. Therefore, the respective TCVs are $247,500 and $27,500. The resulting SEVs are 50% of these amounts or $123,750 and $13,750, respectively.

Regarding the TV for the 2019 tax year, the subject property transferred ownership in 2018. Upon a transfer of ownership, the property's TV for the calendar

year following transfer is reset to match the property's SEV for that year.[60] Therefore, the Tribunal finds that the 2019 TVs of the two parcels making up the subject property are set equal to their SEVs.

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

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty

[60] See MCL 211.27a(3).

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%, (xi) after June 30, 2019 through December 31, 2019, at the rate of 6.39%, (xii) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, (xiii) after June 30 2020, through December 31, 2020, at the rate of 5.63%, and (xiv) after December 31, 2020, through June 30, 2021, at the rate of 4.25%.

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.[61] 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.[62] 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.[63] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[64]

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."[65] A copy of the claim must be filed with the Tribunal with the filing fee required for

[61] See TTR 261 and 257.
[62] See TTR 217 and 267.
[63] See TTR 261 and 225.
[64] See TTR 261 and 257.
[65] See MCL 205.753 and MCR 7.204.

certification of the record on appeal.[66] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[67]

By ______________________

Entered: January 27, 2021

[66] See TTR 213.
[67] See TTR 217 and 267.