Oakland-Summit Investments LLC,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 20-004545

Waterford Township,
Respondent.

Presiding Judge
Marcus L. Abood

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Oakland-Summit Investments LLC, appeals ad valorem property tax assessments levied by Respondent, Waterford Township, against Parcel No. W-13-24-451-015 for the 2020 tax year. Brian E. Etzel, Attorney, represented Petitioner, and Laura M. Hallahan and Seth A. O'Loughlin, Attorneys, represented Respondent.

A hearing on this matter was held on March 29, 30, 31 and April 1, 2022. Petitioner's witness was Daniel Tomlinson, real estate appraiser. Respondent's witness was Paula Moore, 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 2020 tax year is as follows:

Parcel No.	Year	TCV	SEV	TV
W-13-24-451-015	2020	$3,323,000	$1,661,500	$1,304,320

PETITIONER'S CONTENTIONS

Petitioner contends that the subject's location is a significant element in this tax appeal matter. Specifically, the subject is located next to the former Summit Place Mall. The demolished mall and open space have not had any viable activity. The closure and demolition of the mall devastated the area and retail demand.[1]

Petitioner's appraiser inspected the subject property and surrounding area on August 27, 2021, and September 1, 2021. Likewise, Petitioner's appraiser has a strong working knowledge of the subject neighborhood.[2]

Petitioner's appraiser reviewed the history of the subject property which included previous uses by big box retailers (Pace Warehouse and Sam's Club).[3] The subject was built in 1991 and after 28 years certain elements suffer from physical depreciation.[4]

Petitioner's appraiser outlined the demographics for the subject market within the township and county. Specifically, Petitioner contends Waterford Township grew at a much smaller rate than Oakland County from the 2010 census to the 2021 data. Overall, Waterford Township lags in growth compared to county and state averages.[5] Petitioner asserts that the subject is in the declining state of its *life cycle*[6] and is considered a blighted area.[7]

Petitioner's appraiser contends the subject suffers from functional obsolescence. Specifically, the truck wells, coolers, and high ceilings are of concern.[8] Petitioner's

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[1] Vol 1, 64-66.
[2] Vol 1, 54-55.
[3] Vol 1, 70-71 and 89.
[4] Vol 1, 79.
[5] Vol 1, 100-104.
[6] Appraisal Institute, The Appraisal of Real Estate (Chicago, 15 ed, 2020), 140-141.
[7] Vol 1, 107.
[8] Vol 1, 85-87.

appraiser does not view the subject as a big box retailer. "I would consider Tommy's of Detroit a tenant that needs storage for their boat - - - boat storage, their boat service operation and outdoor storage. They are not Walmart; they are not Kmart. They are a different segment in the retail industry."[9] The subject's truck wells were filled in; Petitioner's appraiser asserts that this is an example of curable obsolescence. On the other hand, the subject's high ceilings and freezer/coolers are examples of incurable functional obsolescence.[10] Simply, the subject's design as a big box building does not suit the needs of a boat retailer.

Petitioner's appraiser points out that the subject also suffers from external obsolescence as well. The location obsolescence impacts the subject in terms of the demolition of the Summit Place Mall. The economic obsolescence impacts the subject in the form of E-commerce. In other words, consumers continue to shop and purchase goods online. This has a negative impact on brick-and-mortar stores.[11] Petitioner's appraiser states, "So even though E-commerce is not a line item in the sales approach or the income approach, it's there. It's, as we say, the elephant in the room."[12] The external obsolescence (demolition of the Summit Place Mall) impacted the subject's lease rate as well as the 2017 purchase price.

The subject's Class C construction influences the analysis and adjustments in the sales comparison approach as well as the determination of capitalization rate in the income approach. The subject improvements appear to have a lower effective life.[13]

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[9] Vol 1, 83.
[10] Vol 1, 89-91.
[11] Vol 1, 92.
[12] Vol 1, 96.
[13] Vol 1, 117-118.

Petitioner's highest and best use analysis concludes that the subject is best suited as its continued retail use.

Petitioner considered all three approaches but only developed the income and sales comparison approaches to value. The subject building is over 10 years old, and Petitioner's appraiser does not believe the cost approach is relevant for analysis.[14] Determining depreciation for an older building is more difficult.

Petitioner's income approach analyzed leased properties to determine the value of the subject. This approach is relevant given the fact that the subject property is currently leased by Tommy's of Detroit. Petitioner's capitalization rate conclusion reflects the subject's risk relative to the demolished Summit Place Mall.[15] Petitioner's capitalization rate comparable sales are multi-tenant properties, but Petitioner believes there is little difference in capitalization rates because this is a fee simple valuation.[16] Further, Petitioner contends developers would prefer multi-tenants rather than a single tenant; greater risk is associated with a single tenant. Petitioner's appraiser abides by USPAP by protecting confidential information (i.e., expense comparables) in his report and workfile. Petitioner's vacancy rate analysis for the subject is based on the demolition of the Summit Place Mall. The vacancy rate for the Lakes area submarket covers a broader area including the Great Lakes Mall.[17] Petitioner analyzed "capture of demand" for the subject market area. This is different than buying power and total income is a parameter for total demand.[18]

[14] Vol 1, 129-130, Vol 2, 81.
[15] Vol 3, 75.
[16] Vol 3, 77-78.
[17] Vol 3, 87.
[18] Vol 3, 92-93.

Petitioner's comparative analysis developed sales of similar properties to support an indication of value for the subject property. Petitioner's demographics including traffic counts and household income in a 3-mile radius gives support for the location adjustments made to the comparable sales.

Petitioner's appraiser believes his appraisal report is sufficient for a reader to understand the impact of the subject's location to his conclusion of value. "Well, my table on page 70, and my narrative on page 69, I go back to my sales comparison approach. I also talk in my neighborhood and my market analysis the location of the subject and in my scope of work and even in my transmittal letter it indicated that the subject location was devastated. So, I believe that I was sufficient in advising the reader that location was a significant factor in coming to value of the subject."[19]

Through reconciliation most weight was given to the income approach because the rental data was stronger than the sales data. Petitioner contends the TCV of the subject property is $1,700,000.

Regarding Respondent's valuation evidence, Respondent's assessor is not licensed as a real estate appraiser in the state of Michigan. Respondent's valuation disclosure did not include a scope of work, a market description/analysis, or a highest and best use analysis for the subject property. Moreover, Respondent did not request financial information (i.e., lease, revenue/expense statements) for the subject property. Respondent's valuation disclosure did not include customary demographic information for the subject or comparable sales. Lastly, Respondent overlooks the functional and external obsolescence that impacts the value of the subject property.

[19] Vol 3, 35-36.

Respondent's cost approach is fundamentally flawed as it blends mass methodologies with singular costs for the subject. Likewise, the depreciation analysis does not make any sense. Reliance on Marshall Valuation Service while also relying on benchmarks for effective age and remaining economic life was confusing.

Respondent's sales comparison approach was based on subjective and arbitrary adjustments. Again, no demographic information was utilized to support Respondent's adjustments. Respondent's sale A is a car dealership and is not comparable to the subject property. Respondent's sale B (common sale used by Petitioner) was not adjusted for the additional parcels to the property. Respondent's sale C has a superior location to the subject's private road. Overall, Respondent's assessor has not properly analyzed or adjusted its comparable sales.

PETITIONER'S ADMITTED EXHIBITS

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

P-1: Appraisal Report prepared by Daniel Tomlinson.
P-2: Tomlinson's Workfile - pages 475-485, 589-791, 792-905.
P-6: Aerial Photograph of Summit Drive.
P-7: Aerial Photograph of Summit Drive.

PETITIONER'S WITNESS

Petitioner's witness was Daniel Tomlinson who is a real estate appraiser in the state of Michigan. He has been a licensed appraiser for 30 years. Through testimony, the witness's background, education, and experience was presented to the Tribunal. Based on this testimony, Mr. Tomlinson was acknowledged and admitted as an expert in real estate appraisal.

RESPONDENT'S CONTENTIONS

Respondent asserts that there is only 6% of vacant commercial land in the township. The former Summit Place Mall has 72 acres of vacant commercial land. Directly south of the subject property is the Joe Lunghamer Chevrolet dealership. Further, south of that is a commercial strip center. In other words, the surrounding area has continued commercial and retail activity.

Respondent relies on the township as an information source. Respondent also uses SEMCOG as an information source for data.[20] However, Respondent does not have subscriptions or access to such sources as CoStar or ESRI.

Respondent contends blight does not exist at the location of the former Summit Place Mall. Once the mall was demolished, blight ceased to exist. The utility company DTE has pulled permits to construct a building at a portion of the vacant property.

Respondent's assessor did not find any functional and external obsolescence for the subject property. To the contrary, Respondent believes the subject building works nicely for the current tenant. "The only thing is - - - I mean, they filled in the truck wells for what they needed it for, for what their use was for. On my inspection, they - - - it seems to work for them, what they have."[21] External obsolescence was not present for the subject property as of 2019 when the Summit Place Mall was demolished.[22]

Respondent considered all three approaches to value but only developed the cost and sales comparison approaches. The cost approach included the development of 3 vacant land sales. The cost analysis also included the calculation of depreciation

[20] Vol 4, 82-83.
[21] Vol 4, 45-46 and 102.
[22] Vol 4, 54.

based on effective age. Again, Respondent did not find any functional or external obsolescence at the subject property. Respondent analyzed the subject based on direct costs outside of a mass cost approach. In other words, an economic conditions factor (ECF) was not developed. The subject was costed on a singular basis outside of mass appraisal methodologies.[23] Depreciation was calculated on a straight-line basis.

Respondent was unable to develop an income approach to value due to the lack of revenue and expense information for the subject property. As stated by Respondent, "We use it if we need to for appeals, but in this case, I didn't feel I had enough documentation to make a good justification with income."[24]

Respondent's sales comparison approach was based on three comparable sales located in Oakland County. These sales were compared and contrasted to the subject property. Adjustments were made to the comparable sales which included a market condition (a.k.a., time) at 3% per annum.

Respondent reconciled the two approaches and gave weight to its sales comparison approach for the 2020 conclusion of value. Respondent contends the TCV of the subject property is $3,483,000 as of December 31, 2020.

Respondent contends Petitioner's appraisal report does not match up with Petitioner's appraiser's testimony. Petitioner's appraiser attempted to backfill his appraisal report with nonsensical testimony.[25] Tomlinson testified to all forms of obsolescence, but this was not articulated within his report.

[23] Vol 4, 32.
[24] Vol 4, 18-20.
[25] Vol 1, 56-57 and 93.

Regarding Petitioner's valuation evidence, Respondent argues that multi-tenant properties are not relevant to the true cash value of the subject property. The subject is occupied by a single tenant retailer.

Petitioner's income analysis should not be given any weight or credibility. Specifically, Petitioner's expense comparables were redacted for confidentiality reasons but none of the comparables were identified as single tenant properties. Likewise, Petitioner's capitalization comparable sales (to determine a capitalization rate) were all multi-tenant retail centers. Petitioner's rental rates and the conversion analysis from triple net to gross leases is not meaningful.

Petitioner's sales comparison approach included a sale with deed restrictions which was not properly analyzed by Petitioner's appraiser. Petitioner's sale 4 was a lease fee property at the time of sale. This property's land lease was not properly analyzed or adjusted by Petitioner's appraiser. Petitioner's appraiser analyzed sale 6 based on its list price in the adjustment grid. Confoundedly, sale 6 sold almost 12 months past the relevant tax day.

Respondent refutes Petitioner's claim that the demolished Summit Place Mall has caused blight to the immediate subject area. Again, various retailers, a car dealership, and county offices do not signify blight as portrayed by Petitioner.

The parties' common comparable sale located at 3541 Highland Road provides a reasonable basis of market value for the subject. The parties' minimal adjustments including market conditions and location are noteworthy.

RESPONDENT'S ADMITTED EXHIBITS

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

R-1: Respondent's Valuation Disclosure.
R-2: Aerial Photograph of Subject Property.
R-7: Aerial Photograph of the Subject Property in relation to Petitioner's Sale 6.

RESPONDENT'S WITNESS

Respondent's witness was Paula Moore who is a certified assessor in the state of Michigan. She is a Michigan Master Assessing Officer (formerly labeled as a Level 4). She presently is the chief assessor for Waterford Township. Prior to that, she was the deputy assessor for Waterford Township. Overall, Ms. Moore has been in the assessing field for 22 ½ years. Through testimony, the witness's background, education, and experience was presented to the Tribunal. Based on this testimony, Ms. Moore was acknowledged and admitted as an expert in mass appraisal assessing.

FINDINGS OF FACT

1. The subject property is located at 495 Summit Drive, in Waterford Township and within Oakland County.
2. The subject was originally constructed as a big box retail store.
3. The subject building is 110, 526 square feet and sits on 14.09 acres.
4. The subject property is zoned C-4, Extensive Business.
5. Petitioner purchased the subject property in on July 19, 2017, for $1,600,000.
6. The subject property was valued as fee simple and as value-in-exchange.[26]
7. The subject property is leased to Tommy's of Detroit.
8. Petitioner's tenant, Tommy's of Detroit, sells and displays recreational boats and boat accessories.
9. David Tisdale is the property manager of the subject property.
10. Petitioner owns properties along Mall Drive and Summit Drive.[27]

[26] The analysis of the subject's use relative to functional obsolescence is not to be misconstrued as value-in-use.
[27] Vol 1, 72.

11. The Summit Place Mall closed in 2009. The separate Sears building closed in 2014.
12. The Summit Place Mall was demolished in 2019.
13. DTE owns the former Sears property; DTE pulled a permit in 2019 to construct a 50,000 square foot building.[28]
14. Petitioner demographic analysis for Waterford Twp shows an increase in household income and population.
15. Petitioner's appraisal report (page 29) states that retail stores in Waterford Township are stable.[29]
16. Retail market rent in Waterford Township increased from 2015 to 2020. Retail vacancy declined for the same period.[30]
17. Petitioner's appraisal report did not include any aerial photographs depicting the subject's immediate market area. The report did not include any analysis on retail developments in the subject neighborhood.[31]
18. Immediately south of the subject property is a Chevrolet dealership.
19. At the intersection of Mall Drive East and Summit Drive is a retail strip center in a former big box store.
20. At the corner of 24 Mile Road and Vangard Drive is a retail building.
21. The former Summit Place Mall property is owned by Southfield-based real estate firm Ari-El Enterprises which intends to build a mixed-use business park on the 100 acre site called Oakland County Business Center.[32]
22. Summit North shopping center is located east of the subject property.
23. Summit Crossing shopping center is located south of the former Summit Place Mall.
24. The Oakland County administrative offices are located (north of the subject property) off of Elizabeth Lake Road.
25. From 2016 onward, market appreciation was tracked at 3% per year.[33]
26. Petitioner submitted a valuation disclosure in the form of a narrative appraisal report prepared by Daniel Tomlinson.
27. Petitioner's appraiser developed the income and sales comparison approaches to reconcile to a conclusion of market value for the subject property.
28. Petitioner's appraiser relied on the subject's traffic count which is based on 2015 statistics.[34]
29. Petitioner did not apply traffic counts for the subject as of December 31, 2019.
30. Petitioner's comparable size adjustments were not supported by any quantification.[35]

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[28] An investor/developer's actions to develop a vacant parcel of land also appears to be part of the "life cycle" as referenced by Petitioner's appraiser.
[29] Vol 2, 98.
[30] Vol 2, 99-101 and P-2, 545.
[31] Vol 2, 103.
[32] Vol 2, 107-108 and P-2, 481.
[33] P-1, 55; Vol 2, 113-114; Vol 3, 146.
[34] Vol 2, 119.
[35] Vol 2, 122.

31. Petitioner's sale 1 included deed restrictions which were not disclosed or analyzed in Petitioner's appraisal report.[36]
32. Tomlinson's workfile included the subject's income and expense history for 2019 and 2020. Mr. Tisdale manages the subject and other properties and combined all of the expenses for the properties on a single financial statement.[37]
33. Petitioner's capitalization comparable sales are all multi-tenant shopping centers.[38]
34. Petitioner's conclusion of market rent for the subject is greater than the subject's contract rent.
35. Petitioner did not analyze truck wells or truck bays within his sales or rental data for comparison to the subject's filled in truck wells.
36. Respondent submitted valuation evidence in the form of a valuation disclosure. Respondent's report is not an appraisal report.
37. Respondent's appraiser developed a mass appraisal cost approach and a sales comparison adjustment grid to a conclusion of market value for the subject property.
38. The subject's parking lot is utilized for boat storage in the off-season.[39]
39. The subject is not an institutional investment grade property.[40]
40. The parties have analyzed a common comparable sale located at 3541 Highland Road.
41. The parties' common comparable sale is comprised of 13 acres which includes 3 contiguous parcels of land. This comparable sale is developed with a 120,719 square foot building. This common comparable sale sold for $4,000,000 on January 8, 2018.[41] This common comparable sale's unadjusted price per square foot is $33.13 ($4,000,000 divided by 120,719 SF).
42. Petitioner's appraiser analyzed sale 3 (3541 Highland Road) by excluding 2 parcels from the original sale price of $4,000,000 to derive a sale price of $3,600,000 for just the building on one parcel of land.[42]
43. Respondent's sales comparison adjustment grid did not denote the total site size for sale B (3541 Highland Road).[43]
44. Lakes in Waterford Township include Lotus Lake, Maceday Lake, Williams Lake, Huntoon Lake, Woodhull Lake, Lake Oakland, Lake Angelus, Loon Lake, School House Lake, Silver Lake, Watkins Lake Scott Lake, Clam Lake, Crescent Lake, Pleasant Lake, Elizabeth Lake, Otter Lake, and Sylvan Lake.[44]

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[36] P-2, 593-594, 601 and Vol 2, 126-127.
[37] Vol 3, 52-54.
[38] Vol 3, 61.
[39] Vol 1, 116.
[40] Vol 3, 66.
[41] P-2, 677-688.
[42] Vol 2, 134-137.
[43] Respondent's inadvertent error did not change the fact that Respondent analyzed this common comparable sale by applying the total sale price of $4,000,000 divided by the building size of 120,719 SF. (Vol 4, 86-89).
[44] The issue of "buying power" means more than just the subject area including the demolished former Summit Place Mall. Petitioner's appraiser's analysis and appraisal report appears to overlook the subject

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 conclusions and has rejected evidence contrary to those findings.

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.[45]

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 TCV of such property; the proportion of TCV at which such property shall be uniformly assessed, which shall not exceed 50 percent.[46]

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.[47]

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value' . . . are synonymous."[48]

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as a destination retailer for consumers in Waterford Township. In the context of watercraft and boat sales, buying power extends beyond the subject's immediate area. (Vol 2, 115-118 and Vol 3, 111-112).

[45] See MCL 211.27a.
[46] Const 1963, art 9, sec 3.
[47] MCL 211.27(1).
[48] *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."[49] The Tribunal is not bound to accept either of the parties' theories of valuation.[50] "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."[51] 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."[52]

A proceeding before the Tax Tribunal is original, independent, and de novo.[53] The Tribunal's factual findings must be supported "by competent, material, and substantial evidence."[54] "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence."[55]

"The petitioner has the burden of proof in establishing the TCV of the property."[56] "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."[57] However, "[t]he assessing agency has the burden of proof in establishing the ratio of the average level of

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[49] *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).
[50] *Teledyne Continental Motors v Muskegon Twp,* 145 Mich App 749, 754; 378 NW2d 590 (1985).
[51] *Meadowlanes Ltd Dividend Housing Ass'n v Holland,* 437 Mich 473, 485; 473 NW2d 636 (1991).
[52] *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).
[53] MCL 205.735a(2).
[54] *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).
[55] *Jones & Laughlin Steel Corp, supra* at 352-353.
[56] MCL 205.737(3).
[57] *Jones & Laughlin Steel Corp, supra* at 354-355.

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."[58]

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.[59] "The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading."[60] 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.[61]
Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.[62]

MARKET DESCRIPTION & ANALYSIS

The parties' respective valuation disclosures include market descriptions. Petitioner presented a detailed market analysis including market demographics, influences, and considerations. Respondent's market information was presented in a summary format. The level of detail between the parties' market descriptions is different. Nonetheless, Petitioner's appraiser representations of the subject

[58] MCL 205.737(3).
[59] *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).
[60] *Jones & Laughlin Steel Corp, supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).
[61] *Antisdale, supra* at 277.
[62] See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

neighborhood were questioned by Respondent's counsel.[63] Specifically, Petitioner claims the subject area was devastated by the demolition of the Summit Place Mall. Further, that the subject is impacted by "blight."[64] There is no evidence on the record that there was decay or a failure to maintain public services or infrastructure. Likewise, there is no evidence of contamination, debris, or condemnation for governmental renewal projects. Yet, further, there are no abandoned buildings, no adverse land use mixes, or declining property values. On the other hand, Respondent argued that the immediate subject neighborhood includes several commercial businesses as well as retail shopping centers. Similarly, Oakland County administrative offices are proximate to the subject property and former mall site. Respondent's SEMCOG data for the township was not challenged or refuted by Petitioner. Lastly, the parties' experts concluded that the subject market showed an appreciation of 3% per year. Petitioner's characterization of a blighted and devastated area is neither persuasive nor credible. Petitioner's market description and analysis is not more persuasive than Respondent's summary presentation. Therefore, the subject market and neighborhood are not

[63] Tomlinson says the overall market is stable (macro-level) but also says the subject's location is a severe negative impact. (Vol 1, 111-112). Yet, he questions why the neighboring Chevrolet dealership still exists at the subject location.

[64] The nebulous claim of "blight" was presented in a conclusory fashion without specificity. As defined, blight is the "Decay in the economic and social condition of a property area caused by a **failure** to **maintain** the quality of real estate and **public services** in an area; characterized by deteriorating or **abandoned buildings**, inadequate or **missing** public or community **services**, vacant land with **debris**, and impacts from adverse environmental influences." Blighted area is defined as "An area or district affected by blight (e.g., an **adverse land use mix** that is severe enough to undermine marketability and cause a **decline in property values**); sometimes officially designated as blighted area for purposes of urban **renewal projects** or to qualify for other types of **governmental programs**." Blighted property is defined as "An individual property affected by blight; may be subject to **condemnation** by a governmental authority as part of an urban renewal project." [bold added.] Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago, 7th ed, 2022), p 18.

considered to be blighted. Moreover, as of the relevant tax day, the subject market has appreciated.[65]

COST APPROACH

The development of a cost analysis can be a useful approach in the determination of market value for a property. Valuation practice and theory is keen to point out that this approach is most applicable for new or newer improvements. As reasoned by Petitioner, this approach is not applicable due to the subject's age and the difficulty in determining depreciation. Likewise, investors do not rely on this approach for investment properties. However, Petitioner's claims of functional and external obsolescence were not actually applied through any methodologies.[66] More specifically, Petitioner's claims of obsolescence due to the subject's high ceilings and truck wells were not based on the subject market or the subject tenant's use. For example, the truck wells have been filled in according to Petitioner. However, Respondent's photographs of the subject building depict several doors for delivery and access with a boat and trailer parked at door 2 and boat hoists parked at doors 5,6, and 7.[67] This photographic evidence may call into question the difference between "truck wells" and "truck bays". Regardless, it appears that certain access and loading doors allow Petitioner's tenant to deliver boats into the building. Transporting a boat on a trailer would logically not occur through typical consumer retail entrances. Next, the subject's ceiling heights do not appear to impede or inhibit Petitioner's tenant from displaying recreational watercraft in the building. To the contrary, the taller ceiling heights give

[65] While the 2017 purchase date and purchase price of $1,600,000 for the subject property are remote to the relevant tax day, Petitioner's TCV of $1,700,000 further indicates market appreciation.
[66] P-1, 82-83.
[67] R-1, 9.

Tommy's of Detroit the ability to display larger boats and sailboats with tall masts. The Tribunal is not persuaded that big box retailers are the only users that benefit from taller ceiling heights.[68] Respondent developed a blended cost approach by utilizing mass appraisal methodologies and direct costs for the subject property. Petitioner refuted Respondent's blended cost approach for not including any functional or external depreciation to the subject property. Petitioner's reasons for omitting a cost analysis while debunking Respondent's cost approach is illogical. Said differently, conclusory statements for the proposition of specific obsolescence are not evidence of a market's reaction to the features of a particular property. Respondent's cost approach determined that the subject suffered from no obsolescence. Photographic evidence in this regard was equally persuasive. While the branding changed for the subject building, it appears that the high ceilings are equally suitable for tall shelving as well as tall boats. Such boating products would not be found in a traditional department store with lower ceilings or customer entrances. For these reasons, the subject property does not suffer from functional or external obsolescence.

INCOME APPROACH

The development of an income analysis can be a useful approach in the determination of market value for a property. In fact, the subject property is leased to Tommy's of Detroit, a boat retailer. Each party considered this approach to value, but Respondent did not develop this approach due to the lack of income information and

[68] Petitioner's appraiser concluded that the subject's highest and best use is as its continued use as retail. This infers that the alleged functional and external obsolescence is not as significant as described by Tomlinson in testimony.

data.[69] Petitioner's rental data indicated the existence of commercial rental space in the subject market. Petitioner's income approach is a conventional framework for an income analysis. However, the analysis has inconsistencies and deficiencies. The subject's 2018 rental was used as a rental comparable. While this is permissible in valuation practice, the focus on the subject as a primary comparable is dubious. Petitioner has adjusted the subject (as a rental comparable) for lease terms and market conditions. However, as questioned by Respondent, the adjustment for lease terms at .55/SF is not understandable. Under the subheading "Lease Terms" Petitioner's appraisal report states, "Lease rates include **identical different** expense reimbursement structures. Triple net leases are adjusted to gross net expense structure."[70] [bold added.] This apparent typographical error went unexplained by Petitioner's appraiser.[71] Three out of the five rentals are triple net leases, but Tomlinson testified that the most common lease is a gross lease.[72] Rentals 3, 4 and 5 are 2014 leases.[73] Petitioner's income narration merely identified lease adjustments but did not articulate the support for those adjustments. In testimony, Petitioner's appraiser adjusted his triple-net rent comps to the subject's gross lease at $1.11/SF (property

[69] While Petitioner casted dispersions on Respondent's valuation disclosure and the lack of a scope of work, highest and best use analysis, and an income approach, Respondent's valuation disclosure was not intended to be an appraisal report. Respondent's valuation disclosure does not alleviate Petitioner of presenting credible valuation evidence in support of market value for the subject property.
[70] P-1, 68.
[71] Petitioner's appraiser did testify to many typographical errors and mistakes within his report. See Vo1, 33, 37, 56, 100, 103; Vol 2, 6, 31, 54, 55, 63, 74, 133, 134, and 178. "In developing a real property appraisal, an appraiser must: (c) not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the ***aggregate affects the credibility of those results***. [bold and italics added.] The Appraisal Foundation, Uniform Standards of Professional Appraisal Practice (2020-2021 Edition), p 16.
[72] Vol 3, 21 and P-1, 71.
[73] Vol 3, 26.

taxes plus maint/repairs at .55/SF).[74] As an example cited by Respondent's counsel, rental 2 had taxes of .81/SF[75] as shown in Petitioner's workfile. Subtracting these taxes from the base adjustment of $1.11/SF leaves only .30/SF for alleged maintenance and repairs. Similarly, rental 3's property taxes of .23/SF[76] results in .88/SF for all other expenses for a rental that is smaller than the subject. Yet further, Petitioner's rental 4[77], as shown in the workfile, included no support for the rental rate[78] Rental 4 is 50,000 square feet smaller than the subject but lease term adjustment of $1.11/SF minus .81/SF results in the same .30/SF for all other expenses. Petitioner's lease term adjustments (as denoted and as testified) do not make sense and lack consistency. Petitioner's appraiser admitted that there was no support for the rental rate of $5.60/SF for Rental 2.[79] The appraiser did not know what reference was given to the denoted service charges of $3.19/SF for rental 3.[80] Equally problematic was that Tomlinson did not know the lease terms for triple net rentals 2, 3, and 4.[81] No discussion or analysis was to be found for rental concessions for the rental comparables in the appraisal report or workfile.[82] Next, Petitioner's location adjustments appear to be excessive. As pointed out by Respondent, the location adjustments were not based on consistent elements (i.e., "buckets") to understand the rental comparative analysis. Lastly, Petitioner's concluded market rent for the subject property was based on an average

[74] Vol 3, 12.
[75] P-2, 802.
[76] P-2, 820.
[77] P-2, 840.
[78] Vol 3, 21.
[79] Vol 3, 17.
[80] Vol 3, 19.
[81] Vol 3, 26-29.
[82] Vol 3, 30-31.

price per square foot. The reconciliation of comparable data entails more than a mathematical calculation. "The sales comparison approach is not formulaic. It does not lend itself to detailed mathematical precision. Rather, it is based on judgment and experience as much as quantitative analysis."[83]

The next element of Petitioner's income analysis was heavily questioned by Respondent. Petitioner's appraiser applied a vacancy rate of 8% rate (to the potential gross income) which is larger than the Lakes Retail Submarket rate of 5.7% vacancy rate. The reasoning and support for this deviation did not result in a cogent analysis from Petitioner's appraiser.[84]

Regarding the expense analysis, again, Petitioner's appraiser was given ample opportunity to explain his determinations. First, Petitioner utilized a 2013 publication from the Institute of Real Estate Management of the National Association of Realtors. The 2013 benchmark was presented to illustrate how expenses have changed going forward in time. Nonetheless, given the plethora of online information for shopping center income and expense data, such an outdated source is not convincing to Petitioner's income analysis. Second, Petitioner's 7 expense comparables (labeled A through G) were presented with only limited information.[85] Accepting an appraiser's responsibility for confidential information does not preclude the disclosure of innocuous information to help understand the expense analysis. Said differently, generic items would give the reader a general understanding of the underlying analysis without

[83] Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 15th ed, 2020), 368.
[84] Vol 3, 42-47 and P-1, 28-29.
[85] Expense comparable A is a free-standing retail property that Tomlinson appraised in 2011. Expense comparables B through G are multi-tenant buildings. Tomlinson's workfile and appraisal report did not contain any information about these expense comparable properties. (Vol 3, 48-50).

compromising confidentiality. For example, general location (SW Michigan, Mid-Michigan), single or multi-tenancy, building size, and building age would foster assurance for an "apples-to-apples" comparison. The expense data as presented is not meaningful to the overall income analysis. The expense comparable data and $/SF expenses were not reconciled in any fashion. Third, the appraiser's management expense between a single tenant and multi-tenants was based on his opinion and experience.[86] An appraiser's opinions and judgments are subsequent to the semblance of a data analysis and not necessarily beforehand. Similarly, the appraiser did not know the criteria for the realty rates for replacement reserves.[87] The compilation of replacement reserves for retail is .30/SF to .96/SF; Petitioner's appraiser states, "The subject property is in average condition with deferred maintenance and should have typical replacements during the holding period."[88] However, the appraiser concluded to the upper range of .95/SF for reserves. This determination is not meaningful in the absence of further narration. If a capitalization rate is based on the condition of a property (as well as an associated risk factor) as testified to by Tomlinson, then differences between the number of tenants is a compelling factor for analysis. Lastly, Petitioner's capitalization rate analysis included market derived rates (capitalization sales) all of which are multi-tenant shopping centers. Expense variations between single and multi-tenant spaces may exist and would prompt a greater level of articulation on the part of an appraiser. Lastly, Petitioner's 2019 and 2020 income and expense information (as received from the property manager Mr. Tisdale) was

[86] Vol 3, 50.
[87] Vol 3, 51-52.
[88] P-1, 77.

incomplete and/or inconsistent. As admitted by Petitioner's appraiser, the expense information was lumped together with other properties managed by Tisdale. Further, the expense information[89] (as shown in the appraiser's workfile) did not include information for utilities, janitorial, repairs, trash/rubbish, insurance, etc.[90] Petitioner's appraiser stated, "Yes, I would find that very unusual. Actually, it indicates the level of professionalism. Or lack thereof." Petitioner placed no reliance on this financial information for the subject's income analysis. Prudence involving financial information did not square with outlined deficiencies within the overall income analysis. For these reasons, Petitioner's income analysis[91] is given no weight or credibility in the independent determination of market value for the subject property.

SALES COMPARISON APPROACH

The parties' respective sales comparison approaches are conventional methodologies for the comparative analysis of the subject property.

Respondent's comparative analysis included 3 sales; two sales are located in Waterford Township and one sale is located in Oak Park. Sales A and C occurred in 2019; Sale B occurred in 2018. Sales A and C are smaller buildings compared to the subject. Sales A and B are similar to the subject in C-4, Extensive Business zoning. While all three sales were considered, greatest weight and credibility is given to sale B (3451 Highland Road) as will be explained below.

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[89] P-2, 879-880.
[90] Vol 3, 52-55.
[91] Petitioner's contract rent is $3.81/SF, and the subject (as a rent comparable) had an adjusted rent of $4.57/SF. Further, Petitioner's conclusion of market rent for the subject was $4.70/SF. While the overall income analysis was unpersuasive, these indications of rent demonstrate a viable appreciating for market rent aside from alleged functional/external obsolescence and blight from a demolished mall.

Petitioner's comparative analysis included 6 sales; two sales are located in Waterford Township. Sale 1 occurred in 2016, sale 2 occurred in 2017, sales 3, 4, and 5 occurred in 2018 and sale 6 occurred in 2019. Sale 6 is the smallest building and is given no weight in the analysis.[92] Sale 5 included expenditures immediately after the sale which involved the transition of the property to a multi-tenant use. Sale 5 is given no weight in the analysis.[93] Sale 4 is located in Blackman Township (Jackson area) and is the least similar to the subject in location. Further, this property sold with a ground lease. Sale 4 is given no weight in the analysis.[94] Sale 2 is the sale of the subject property which occurred in 2017. While using the subject as a comparable is permissible in valuation theory, the focus on the subject as a primary comparable is dubious in valuation practice. Nonetheless, the subject as a comparable sale demonstrated a simple sales trend (a.k.a., trend analysis)[95] for market appreciation. Sale 1 is the oldest sale and is the furthest removed from the December 31, 2019, tax day. While all six sales were considered, greatest weight and credibility is given to sale 3 (3451 Highland Road) as will be explained below.

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[92] Tomlinson's wife's cousin told Tomlinson about this sale. This property was purchased by Tomlinson's wife's nephew. This Toys R Us store actually faces inward (backside to Telegraph Rd) to Oakland Pointe Mall. This detail was not described or disclosed in Tomlinson's report. (Vol 2, 164) This sale was adjusted at 25% for superior location (on other side of Summit Place Mall) to the subject property.
[93] Tomlinson admitted that expenditures occurred immediately after the sale. Extensive cross examination of Tomlinson amply demonstrated that former big box stores can have viable uses after an initial build to suit agreement. In other words, the highest and best of a property may change after the sale date of a comparable sale. While comparisons are made as of the pivotal point of tax day (December 31), the analysis of a purchase price must reasonably take into account the elements of the transaction. An appraiser's due diligence should bring forth those items which impact a sale price. Indeed, a comparative analysis is the framework for comparisons and adjustments. Tomlinson's testimony, alleged knowledge of sale 5, and comparative analysis was disjointed. (Vol 2, 148-158)
[94] Vol 2, 142-147.
[95] Appraisal Institute, The Dictionary of Real Estate Appraisal (Chicago, 7th ed, 2022), p 194.

Within the combined sales data, the parties have analyzed the common comparable sale located at 3541 Highland Road which is similarly zoned C-4 as the subject. This sale is also relatively similar to the subject in site size. Appropriately, the parties' common comparable sale provides a reasonable basis for the independent determination of market value for the subject property. As noted in the Findings of Fact, this common sale included three parcels and sold for $4,000,000 (which was reflected within Respondent's sales comparison adjustment grid). Petitioner's alteration of the facts for this sale is not acceptable in valuation practice. There is no evidence on the record showing that this sale is not an arm's length sale in the market. The parties' respective write-ups for this common comparable sale did not denote any peculiarities, caveats, or provisos for the sale transaction. Petitioner did not give any justifiable reason for altering the land and improvements for this common comparable sale. The analysis must then acknowledge and include the land and improvements as transacted. A site adjustment to this comparable sale is unwarranted given the similarity to the subject's site and acreage. Next, as undisputed, the parties' have applied the same market conditions (a.k.a. time) adjustment of 3% to this 2018 sale. The remaining adjustment to this sale is the difference in location to the subject. Petitioner's location adjustment was 35%[96] and Respondent's location adjusted was 10%.[97] The parties' location adjustments signify that this common sale is in fact superior to the subject in location. A reasoned and reconciled location adjustment of 20% is bracketed by the parties' indications. This common comparable's sale price of $4,000,000 is divided by

[96] Vol 2, 137-142.
[97] Vol 4, 91-93.

its 120,719 SF which equates to $33.13/SF. This sale is then adjusted upward for appreciation of time at 3% and adjusted downward for a superior location at 20% ($33.13/SF minus net adjustments of $5.60/SF which equals $27.53/SF). Therefore, the independent determination of market value for the subject property is $3,323,000 (rounded).

Overall, Petitioner's valuation analysis did not persuasively portray or characterize the subject neighborhood and market. Petitioner's representation of the subject's functional utility did not signify obsolescence. With a reasoned application, the parties' common comparable sale provided the most reliable and credible valuation evidence for the independent determination of market value for the subject property.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the subject property was over-assessed for 2019. The subject property's TCV, SEV, and TV for the tax year(s) at issue are as stated in the Introduction section above.

JUDGMENT

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

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent

that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2013, through June 30, 2016, at the rate of 4.25%, (ii) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (iii) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (iv) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (v) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (vi) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (vii) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, (viii) after June 30, 2019 through December 31, 2019, at the rate of 6.39%, (ix) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, (x) after June 30 2020, through December 31, 2020, at the rate of 5.63%, and (xi) after December 31, 2020, through June 30,

2022, at the rate of 4.25%, and (xii) after June 30, 2022, through December 31, 2022, at the rate of 4.27%.

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.[98] 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.[99] 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.[100] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[101]

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[98] See TTR 261 and 257.
[99] See TTR 217 and 267.
[100] See TTR 261 and 225.
[101] See TTR 261 and 257.

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."[102] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[103] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[104]

By

Entered: June 30, 2022

[102] See MCL 205.753 and MCR 7.204.
[103] See TTR 213.
[104] See TTR 217 and 267.