



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

Wal-Mart Real Estate Business Trust,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 20-002388

Madison Township,
Respondent.

Presiding Judge
Victoria L. Enyart

ORDER DENYING RESPONDENT'S MOTION FOR DIRECTED VERDICT

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Wal-Mart Real Estate Business Trust, appeals ad valorem property tax assessments levied by Respondent, Madison Township, on parcel number MD0-114-2085-00 for the 2020 and 2021 tax years. A video hearing was held in this matter on July 5, 6, 7, 8, 11, and 12, 2022. Michael B. Shapiro and Daniel L. Stanley, Attorneys, appeared on behalf of Petitioner. Laura M. Hallahan and Seth A. O'Loughlin, Attorneys, appeared on behalf of Respondent. Petitioner's sole witness was Laurence G. Allen, MAI. Respondent's sole witness was John R. Widmer, Jr., MAI.

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 tax years at issue are as follows:

Parcel Number: MD0-114-2085-00

Year	TCV	SEV	TV
2020	\$5,035,000	\$2,517,500	\$2,517,500
2021	\$5,000,000	\$2,500,000	\$2,500,000

PETITIONER'S CONTENTIONS

Petitioner's contentions of TCV, SEV, and TV are as follows:

Parcel Number: MD0-114-2085-00

Year	TCV	SEV	TV
2020	\$4,800,000	\$2,400,000	\$2,400,000
2021	\$4,800,000 ¹	\$2,400,000	\$2,400,000

¹ During opening statements, Petitioner's representative stated that "Petitioner agrees with Respondent's appraiser that the subject property's true cash value did not change from 12/31/19 to 12/31/20." Transcript (Tr.) 1 at 6.

Petitioner contends that there is nothing new in this case. The testimony and evidence will be duplicative of many other big-box store appeals. The subject is not leased but owner-occupied and the existing use is retail. The sales comparison approach is considered by Petitioner to reflect the most appropriate approach to value. This is due to direct ties to the market. The information utilized is superior to the income approach. Petitioner states "Unleased big-box store properties are not typically purchased by investors to lease as properties in the marketplace."² The subject property's location in Madison Township, Lenawee County is considered inferior, based on population, median income and consumer spending, to the comparable rent and sales utilized by both appraisers.

The parties have few areas of major disagreement; however, the few areas the parties disagree on result in major differences. Thus, the concentration should be the proper method of valuing the fee simple interest in the subject's big-box property.

Petitioner will prove that Respondent's appraisal is legally erroneous because it fails to value the subject property as if it were vacant and available. Big-box stores are not built on a speculative basis, they are designed for specific retail business purpose to fit that specific retailer's business model and image. The market indicates that a buyer of a big-box store will reimage the store to meet its own layout, design, facade, flooring etcetera. The appraisal will conclude that the subject's value concluded to by Petitioner is appropriate as of December 31, 2019, and no change for December 31, 2020, tax years.

Petitioner states "The Court of Appeals has repeatedly held that an owner-occupied subject property's fee simple interest must be valued as if the property is vacant and available."³ Petitioner valued the subject as vacant and available. Respondent failed to value it as vacant and available.

PETITIONER'S ADMITTED EXHIBITS

- P-1 Petitioner's Appraisal by Lawrence G. Allen, MAI
- P-9 Co-Star information for 17580 Frazho Road - U-Haul Moving & Storage of Roseville

PETITIONER'S WITNESS

Mr. Allen holds an MBA degree from the University of Michigan and is a Member of the Appraisal Institute and Institute of Chartered Financial Analysts. He has been a real estate appraiser since 1973, has lectured on the valuation of real property and has published articles on the subject. The majority of Mr. Allen's appraisal work has related to commercial real property in Michigan. He estimated that he has appraised over 100 big-box stores in the last twelve years and testified fifteen times relating to them. Mr.

² Tr. 1 at 10.

³ Tr. 1 at 13.

Allen was determined to be an expert in valuation, based on his experience, education, training, skills, and knowledge.

Mr. Allen prepared an appraisal of the subject property as of December 31, 2019, for tax year 2020. The fee simple interest is the basis for his conclusion. Fee simple interest gives the buyer the right of immediate possession as well as ownership. The property is valued as if it is vacant and available for lease but is not leased. It was explained this is different from a leased fee interest where the value of the property is subject to an existing lease. The leased fee market is for investors purchasing an income stream versus an unleased property because the user must find a tenant, negotiate a lease, and hold the property until a renter is found. Then, after the property is leased at market rent, it is ready to be sold as an income property. An unleased big-box store may have issues with financing and covering any debt. The market is quite different for a leased store. It is larger than the fee simple interest big-box stores. Leased-fee stores are a national market for investors looking for a rate of return.

The subject property is owned and occupied by Wal-Mart. It is one of over 100 Wal-Mart stores in Michigan, most are considered superstores. There are approximately 400 major retailer big-box stores in Michigan. When questioned why the big-box market is different than the market for smaller stores, Mr. Allen testified that:

A: Yes, page 108 shows the results from the national study of big-box stores, and it shows -- if you look at the graph at the top it shows prices jumping up substantially in the 30 to 50,000 square foot category, and after that the prices generally leveled off. So there's a big difference, like, with the junior-box stores versus the big box stores.

Q: And why, if you know, does this difference in price exist?

A: Well, with the junior-box stores -- there's a lot more tenants available to lease them and there's a lot more users for small stores -- for smaller stores, and they're more adaptable and stronger -- stronger demand for the smaller stores.⁴

Mr. Allen explained that one of the major differences between the larger retailers is the depth of the big box stores - 300 feet versus the larger retailers at 150 feet of depth, with smaller retail being closer to 100 feet. If the depth does not have a reasonable use, then it is wasted space. It could be used for storage, or not used at all.

The subject is located in the Adrian Micropolitan Statistical Area (MSA) and the "population of the Adrian MSA is approximately 100,000,"⁵ which includes the entirety of Lenawee County. "The MSA has lower consumer spending than the State of Michigan and the United States."⁶ This market has not recovered from the 2007-2008 residential

⁴ Tr. 1 at 39.

⁵ Tr. 1 at 42.

⁶ Tr. 1 at 43.

market crash for the whole country and there has been “no increase in growth, no recovery back to the 2003-2004 years.”⁷ The housing permits are flat with no increase in growth. The subject is located on Highway 223 that runs east and west of the subject and M-52 is just west of the subject and it runs north and south. This neighborhood is the predominant retail area for Adrian County.

The Adrian Mall is near the subject. It is (and has been) distressed having lost its anchors. The area also contains Meijer, Lowe’s, and Kohl’s that are near the subject. The subject was constructed as a Wal-Mart, with an 80,000 square foot (sq ft) expansion in 2004, adding the grocery section. The result is that the older section may have some dropped ceiling unlike the typical open ceilings. The subject was determined to be in average condition. The roof and parking lot were older leading Mr. Allen to conclude to an overall effective age of 21 years. He noted that the subject only has four loading docks, which is less than the typical seven.

Big-box stores can be characterized by open floor plans with wide spaces that could be used by retailers. However, it is unlikely that another retailer would use the space without change that reflects their specific image and business model. Wal-Marts may have an automotive center with oil change pits, a bakery, and lighting for displays. They have back rooms, laminate flooring, and dropped ceiling, as well as their own facade. Big-box store owners build stores to maximize their sales and profits. This is different from a real estate venture that sells real estate development. It is typical for a buyer to make changes in an existing big-box store to meet the business model.

Mr. Allen’s area analysis begins with the population and area, and he describes it as small with slight growth, population with decline slightly through 2026 with a slight increase in households. The median household income is lower with a growth at a smaller rate than the rest of the state. Residential building permits have been consistent since 2009. The population in Madison Township is estimated at 8,621 persons, with a median household income of \$56,526, similar to Lenawee County and the state.

The subject neighborhood for the analysis is a one-half mile radius of the subject property. It includes the primary shopping in the county that was constructed near the Adrian Mall (which has two vacant anchors) located on the northeast corner of US-223 and SR-52 (Adrian Highway). The retail includes a strip center with Marshalls, Ulta, and Shoe Carnival. EastPointe Plaza also includes national retailers.

The site improvements for the subject includes approximately 379,000 sq ft of asphalt and parking stripes for approximately 1,011 vehicles, concrete car stops, curbing, approaches, sidewalks, pole lighting, and some landscaped roadway frontage. The physical age is estimated to be 10 years.

⁷ Tr. 1 at 43-44.

The building improvements include 201,888 sq ft, with 121,270 sq ft constructed in 1992 and an 80,618 sq ft addition built in 2004. The physical age was estimated at 21 years. The building is improved with poured concrete foundation, concrete block walls, a rubber membrane roof over a steel deck and frame with a 20 ft height. There are four dock level door and six overhead doors with three service drive-through bays.

Mr. Allen testified that the subject is considered a mega warehouse designed for a single user. Marshall Valuation Service (MVS) was utilized for the cost approach (Section 13, Class C) average cost. It is noted that the subject's size is larger than most big box stores. However, due to the addition, the configuration is irregular.

The retail industry is in transition with an oversupply of malls, department stores and big box stores with e-commerce growing. In the beginning of March 2016, Kohl's announced closings, as they are moving to smaller format stores. Between 2017 to March 2019, Sears, JC Penney, and Wal-Mart announced the closing of 154 stores, along with 63 Sam's Club locations, Target, Lowe's, and JC Penney's announced additional closings. This is the shift from in-store to on-line shopping. More retail stores are closing and scheduled for 2019 forward due to the expansion of e-commerce.

Mr. Allen's highest and best use as vacant is to hold for future build-to-suit retail development. The improvement is legally permitted, physically could be converted to a multi-user tenant albeit it is challenging, with the 300 ft depth. Zoning permits a wide variety of office, retail, and commercial uses. It is financially feasible to operate the subject property as improved or to convert to a multi-tenant retail facility.

Cost Approach

Mr. Allen explained that the cost approach is not relevant due to the age of the subject. This approach is not typical for an older big box store. Buyers and sellers do not generally use it in acquisitions. There is substantial depreciation, which makes the cost less reliable.

The cost approach begins with the value of the subject's 24.75 acres and the 201,888 sq ft building, as if vacant. Mr. Allen began with five sales of vacant property that ranged in value from \$13,394 to \$55,870.

Sale/Location	Acreage	Sale Date	Sale Price	\$/Acre
1 Dayton Twp	28.72	12/17	\$1,250,000	\$43,524
2 Colfax Twp	57.45	1/17	\$2,231,000	\$38,834
3 Whitehall	30.51	4/16	\$1,100,000	\$36,054
4 Fayette Twp	42.86	1/18	\$1,950,000	\$45,499
5 Madison Twp	7.07	8/14	\$395,000	\$55,870

The vacant land sales were adjusted as follows:

Location	Market	Size	Demographic	Arterial	Functional	Total ADJ
1 Dayton Twp	1.06	1.00	1.10	1.10	1.00	1.21
2 Colfax Twp	1.09	1.10	1.15	1.10	1.00	1.39
3 Whitehall	1.11	1.00	1.05	1.05	1.10	1.21
4 Fayette Twp	1.06	1.05	1.05	1.10	1.00	1.21
5 Madison Twp	1.17	0.90	1.00	1.00	1.00	0.90

All of the properties were adjusted for market conditions, sales 2, 4, and 5 were adjusted for size, sales 1-4 were adjusted for demographic and arterial attributes. Sale 3 was adjusted for functional utility as it was located behind a building. The average per acre value was \$56,116, square footage averaged to \$1.29. Soft costs of 5% were deducted and a leasing commission was allocated for the depreciated cost. Site improvements of an effective 10-year life and 15-year life were depreciated. Mr. Allen selected \$58,000 per acre resulting in a \$1,440,000 land value for the subject property.

Mr. Allen does not use MVS published depreciation tables as he does not find them a reliable indicator of depreciation. The type of properties utilized in their depreciation or where they are located are unknown. He remembers the same depreciation tables from before 1994. The extraction of obsolescence was explained as:

I took the estimated replacement cost less physical depreciation and then took the sale price less land value and indicated the residual value to the improvements. And the difference between the residual value of the improvements and physically depreciated costs would be the amount of the obsolescence. And I calculated that as a percentage of replacement cost new.⁸

MVS was utilized for the replacement cost utilizing the average cost, Class C Mega Warehouse Store retail section for the 201,888 sq ft floor area. The base cost was adjusted for HVAC premium, sprinklers, story height, perimeter, canopy, and a local multiplier and a current multiplier were applied.⁹ The base building calculations totaled \$12,046,657 x 1.170 x 0.780 = \$10,993,779. The canopy added \$201,250 totaling \$11,195,029. After applying the local multiplier of 1.060 and the current multiplier of 1.010, the building replacement cost new is \$11,985,398. Physical depreciation for the building was 60%, this resulted in \$7,632,526.

The site improvements include parking, landscaping, lighting, concrete paving, loading area, interior roadway, and fencing. They totaled \$3,702,250 x 1.06 (local multiplier) x 1.02 (current multiplier) = \$4,002,873. Soft costs and leasing added 25.04% equaling \$4,248,507. Physical depreciation was 66.7% totaling \$2,832,338.

⁸ Tr. 1 at 150.

⁹ P-1 at p 135.

Soft costs necessary to complete development was estimated at 5%, plus cost associated with leasing the subject property totaling \$981,113. Petitioner allocated the depreciable building at \$12,720,877 and site improvements at \$4,248,507. After physical depreciation, the total value was \$10,464,864.

Due to limited demand for larger commercial buildings, Mr. Allen determined that the subject has some economic loss. The subject is oversized and has specific features for its name brand but would not have value to another user. Big box stores are built to suit the specific user's needs that, due to the owner's specifications, produces a loss when sold to another user.

Mr. Allen has observed this over the years with big box stores with both rentals and resales of larger built to suit (BTS) properties. The marketing time is long, the marketplace has multiple examples of leased and sold properties that need modification for the buyer. Mr. Allen prepared a table that shows the difference in rents for both BTS and existing buildings. The BTS properties were built in 2004 (2), 2007, and 2018. The leases ranged from \$6.16 to \$10.75/ sq ft. The nine existing buildings ranged in age from 25-59 year¹⁰Lease 13 was not constructed until 2020.with leases ranging from \$3.06 to \$6.80. The disparity in rents did not consider larger sizes, land value, or decline of value due to economic conditions as of December 21, 2019. The average overall lease rate is \$5.50/sq ft.

The market extracted obsolescence utilized newer big box stores that were sold. Although they were sold at discounted prices because the buyers will do modifications to fit the company's business model. This is another indication of obsolescence.¹¹

Market Obsolescence	Lowe's	Home Depot	Wal-Mart	Wal-Mart	Target
State	WI	MI	MI	MI	TN
Sale Price	\$4,000,000	\$1,750,000	\$4,383,750	\$5,500,000	\$4,612,000
Year Built	2006	2006	2009	2009	2004
Sq Feet	139,571	103,540	186,763	186,763	124,287
Sale Date	12/13	1/14	7/16	7/16	6/14
Age	7	8	7	7	9
RCN ¹²	\$11,099,324	\$7,743,968	\$13,532,434	\$13,532,434	\$8,418,142
Physical Dep	-\$2,915,508	-\$2,341,165	-\$3,204,521	-\$3,204,521	-\$2,360,158
Dep Imp Value	\$8,183,816	\$5,402,803	\$10,327,912	\$10,327,912	\$6,057,984
Sale Price	\$4,000,000	\$1,750,000	\$4,383,750	\$5,500,000	\$4,612,000
Land Value	\$2,490,000	\$960,000	\$3,210,000	\$3,210,000	\$2,120,000
Residual to Imp	\$1,510,000	\$790,000	\$1,173,750	\$2,290,000	\$2,492,000
Est Obsolescence	\$6,673,816	\$4,612,803	\$9,154,162	\$8,037,912	\$3,565,984
Obsolescence/SF	\$47.82	\$44.55	\$49.01	\$43.04	\$28.69
Obsolescence %	60.1%	59.6%	67.6%	59.4%	42.4%

¹⁰ P-1 at p 113.

¹¹ P-1 at p 141.

¹² Replacement Cost New.

The table represents substantial obsolescence in newer big box retail stores. Obsolescence ranged from 42.4%-67.6%. This is below the subject's calculated obsolescence.

Mr. Allen presented five big box stores that were modified/reimaged after sale from a Bowen & Associates study.¹³ They were located in Dearborn, Michigan built in 1993, sold in 2006, \$52/sq ft; Nashville, Tennessee built in 2002, sold in 2010, \$45/ sq ft; Homewood, Illinois built in 1992, leased to Wal-Mart in 2013, \$84/sq ft; Brown Deer, Wisconsin built in 2006, sold in 2013, \$46/sq ft; and Chandler, Arizona built in 2004 and leased in 2013, \$30/sq ft. The average indicated range of the sales is a 58% adjustment for modification for the new buyer's use. Mr. Allen termed it substantial obsolescence from construction that is five to six years old. The average residual improvement value is \$11.41/sq ft. The five examples of obsolescence are:

		% RCN	% RCN + Land	\$ / SF
1	BTS v Market Leases	n/a	51%	n/a
2	Market Extraction/Sales	58%	48%	\$43.00
3	Subject Deficient Income	14%	13%	\$11.70
4	Construction Management Study	n/a	n/a	\$15-\$53
5	Cost Modification Examples (avg)	n/a	n/a	\$51.00

Mr. Allen concluded to \$11.50/sq ft for obsolescence resulting in \$2,321,712. The following is noted.

Mr. Allen cites the 15th Edition of the Appraisal of Real Estate, "cost approach procedure is the value of the fee simple interest in the property at stabilized occupancy and at market rent and terms.' Since we are valuing the property as if the property is unencumbered by a lease as of the date of value, the property is not stabilized at market occupancy. Therefore, a property rights adjustment needs to be made to the cost approach. The property rights adjustments are the same as were applied in the income approach and include deductions for leasing commissions and for lost rent (holding costs)."¹⁴

The cost conclusion as of December 31, 2019, is as follows:

COST APPROACH SUMMARY		
Depreciable Improvements		
Building Improvements	\$12,270,877	
Site Improvements	\$4,248,507	
Total Improvements Cost		\$16,969,384
Less Depreciation		
Incurable Physical		
Building Improvements	\$7,632,526	

¹³ P-1 at p 143 -144.

¹⁴ P-1 at 145.

Site Improvements	\$2,832,338	
Deferred Maintenance	\$0	
Obsolescence	\$2,321,712	
Total Depreciation		\$12,786,576
Depreciated Cost		\$4,182,808
Land Value		\$1,440,000
Property Rights Adjustment		
Leasing Commission		-\$181,699
Holding Costs		-\$771,301
Cost Approach Value		\$4,670,000

Income Approach

The income approach considered the cost to lease and lost rents while being leased. BTS leases were not considered arms-length because the leases are negotiated prior to construction, and not offered on the open market. The rent is based on the cost of construction and profit to the developer, versus normal market rent. Mr. Allen has a grid showing the differences between BTS vs existing big box stores.

The BTS properties average \$8.00/sq ft, the existing stores average \$4.00/sq ft. Big box stores are generally sold to users versus investors resulting in minimal leasing. This results in utilization of smaller, older buildings rented on an as is basis, with tenant improvements reducing the rates. Rent comps 7-13 were utilized and include the following.

		Location	Lease Date	SF	Year Blt	\$/SF Lease
	Subject	Madison Twp	N/A	201,888	1992,04	N/A
7	Hobby Lobby	Adrian	9/12	53,700	1971	\$3.25
8	Wal-Mart	Illinois	8/13	196,000	1992	\$3.06
9	At Home	Kalamazoo	11/13	84,000	1974	\$3.65
10	At Home	Ypsilanti	12/13	91,743	1960	\$3.60
11	At Home	Bloomfield Hills	9/16	120,650	1993	\$5.60
12	G4CE	Warren	11/17	101,773	1993	\$4.75
13	Floor & Decor	Shelby Twp	9/19	91,500	2000	\$6.25

The resulting market rent is \$3.00/sq ft. Expenses were adjusted 2.5% per year for market conditions, based on changes in asking rent.¹⁵ The adjustments also include arterial, demographic, submarket size, as well as age/condition. Vacancy and loss for the area is 5%, which equated to six months of uncollected rent for ten years. Mr. Allen states that due to the “subject’s size, design, and location, it takes longer to lease this type of property; but, after it is leased, it is typically leased with at least a 10-year

¹⁵ P-1 at 114. Mr. Allen’s appraisal states that “the market leases have been adjusted similar to the comparables utilized in the sales comparison approach.” P-1 at 115.

term.”¹⁶ The reimbursable operating expenses for the typical triple net lease include common area maintenance (CAM) (\$242,266), property taxes (\$130,000) and insurance (\$50,472). Mr. Allen’s unreimbursed operating expenses are management fee (3% of Effective Gross Income (EGI) at \$29,309), reserves for replacement (\$0.25/sq ft at \$50,472).

Gross rental income is \$605,644, CAM, Property Taxes, and Insurance were added for potential gross income totaling \$1,028,402; 5% vacancy and credit loss of \$51,420 was deducted equaling \$976,982 EGI. Expenses were deducted for CAM, Property Taxes, Insurance, Management Fee, and Reserves for Replacement totaling \$502,519 and resulting in Net Operating Income (NOI) \$474,462.

Mr. Allen analyzed capitalization rates from single-tenant retail buildings and center sales, band-of investment, and investor surveys for the rate to value the fee simple, not leased fee interest. The resulting overall capitalization rate is 8.5%, as of December 31, 2019.

Leasing commission was estimated at \$605,664 for the first five years for \$3,028,320 at 6% commission. The estimated nine-month period to find a tenant, negotiate lease, and have the tenant in place is the holding costs. The calculation adjusted one-year income into nine-months equaling \$771,301.

Mr. Allen’s final income approach conclusion for December 31, 2019, is:

Net Operating Income	\$474,462
Divided by Overall Rate	8.50%
Equals Capitalized NOI	\$5,581,911
Minus	
Leasing Commissions	-\$181,699
Holding Costs	-\$771,301
TCV	\$4,630,000

Sales Comparison Approach

The Sales Comparison Approach specifically omitted leased fee sales. Leased fee properties are purchased by investors, with above market BTS leases. The subject property is not leased and is appraised in fee simple. Petitioner utilized ten sales between December 2015 to June 2019. The sales ranged in square feet from 81,569 to 186,763, as compared to the subject’s 201,888 sq ft. The subject’s land is 24.75 acres, the comparables’ land sizes range from 7.49 acres to 22.92 acres. Sale prices per sq ft ranged from \$16.19 to \$39.30 before adjustments.¹⁷

¹⁶ P-1 at 117.

¹⁷ The Tribunal notes that the sales utilized are familiar and have been presented in previous appeals. Sales 1 and 7 were appealed to the Tribunal.

	Development	Location	Sale Date	Sq. Ft.	Year Blt	Land	LTB Ratio	Sale Price	SP/SF
	Subject	Madison Twp	N/A	201,888	1992,04	24.75	5.34	N/A	N/A
1	Big Kmart	Acme Twp	12/18	86,479	1988	11.00	5.54	\$1,400,000	\$16.19
2	Target	Muskegon	8/16	94,681	1995	7.49	3.45	\$2,100,000	\$22.18
3	Big Kmart	Blackman Twp	1/18	119,220	1993	13.56	4.95	\$2,840,000	\$23.82
4	Kmart	Byron Twp	6/19	115,440	1993	10.40	3.92	\$3,125,000	\$27.07
5	Super K	Southgate	7/16	174,758	1998	15.69	3.91	\$5,500,000	\$31.47
6	Big Kmart	Fenton	7/18	128,914	1995	14.36	4.85	\$3,000,000	\$23.27
7	Walmart Super Ctr	Hartland Twp	7/16	186,763	2009	22.92	5.35	\$4,175,000	\$22.35
8	Menards	Portage	3/18	81,569	1988	12.76	12.76	\$2,800,000	\$34.33
9	Super K	Detroit	12/15	142,508	2001	15.23	4.66	\$5,600,000	\$39.30
10	Kmart	Greenville	1/19	91,266	1992	12.07	5.76	\$1,500,000	\$16.44

Mr. Allen explained how each adjustment to the sale prices were made as compared to the subject property. The annual changes in the market were concluded at 3% per year from 2014-2019. Arterial adjustments considered traffic counts, streets/roadway access, and visibility. Sale 1, 2, 8 and 10 were adjusted 5%, Sale 3 and 6 were adjusted 10%; Sale 5 and 7 were adjusted -15%, Sale 9 was adjusted -10%, Sale 4 was not adjusted. Demographic attributes for 5-mile and 10-mile radius were considered. Sale 1 and 10 were 5%, Sale 3, 6, and 7 were -5%, Sale 2 and 8 were -10%, Sale 4 and 5 were -15% and Sale 9 was -20% adjustment. The subject property has a smaller market population than all but one within a ten-mile radius. As well as a lower median household. The sales were adjusted for the differences.

Mr. Allen explained the combined demographic and submarket adjustments. Sales 1, 5, 6, 8, and 9 are in superior surrounding retail markets and adjusted downward. Sale 2 was adjusted upward for its inferior market. The remainder of the comparables are similar and were not adjusted. Age and condition are adjusted 1% per year for the subject's 21-year effective age and the comparables. The resulting chart shows the adjustments.¹⁸

¹⁸ The Tribunal notes that the parties have Sale 5 in common.

	1	2	3	4	5	6	7	8	9	10
	Big Kmart	Target	Big Kmart	Kmart	Super K	Big Kmart	Walmart Super Ctr	Menards	Super K	Kmart
SP/SF	\$16.19	\$22.18	\$23.82	\$27.07	\$31.47	\$23.27	\$22.35	\$34.33	\$39.30	\$16.44
\$ Adj	-\$0.16	\$2.03	\$3.62	-\$2.43	-\$8.21	-\$2.63	-\$4.26	-\$2.77	-\$12.54	\$3.35
Adj SP/SF	\$16.03	\$24.21	\$27.44	\$24.64	\$23.26	\$20.64	\$18.09	\$31.56	\$26.76	\$19.78

Mr. Allen explained that Sales 1 and 10 were comparable in location; Sales 3, 4, 7, and 10 are most similar for surrounding retail submarket; Sales 2, 5, and 6 are closest to age; Sales 2, 3, 4, and 10 required the least amount of gross adjustments; Sale 1, 2, 4, and 8 had the least net adjustments; Sales 5, 7, and 9 are super stores. Nine additional sales were considered but were not utilized to derive value, however, they demonstrate an active market and range of sale prices per square foot. The following additional sales include:

	Development	Location	Sq. Ft.	Year Blt	Sale Date	Sale Price	SP/SF	User
1	Kmart	Escanaba	75,000	1976	9/18	\$1,000,000	\$13.33	U-Haul
2	Sam's Club	Lansing	136,818	1989	3/19	\$2,500,000	\$18.27	Retail
3	Lowe's	Berlin Twp	111,316	2005	5/13	\$2,700,000	\$24.26	Retail
4	Target	Georgetown Twp	104,113	1989	10/13	\$2,850,000	\$27.37	Retail
5	Shopco	Houghton	73,954	1993	9/19	\$2,175,000	\$29.41	Church
6	Kmart	Alpena	118,200	1989	3/15	\$2,360,000	\$19.97	Multi T
7	Kmart	Alma	83,250	1985	3/19	\$1,100,000	\$13.21	Multi T
8	Kmart	Gaylord	90,470	1981	8/14	\$1,000,000	\$11.05	Retail
9	Home Depot	Holland	103,540	2006	1/14	\$1,750,000	\$16.90	Multi T

These sales averaged \$19.31/sq ft. Mr. Allen also reviewed a 2017 national study on big box stores. It included 272 sales of big box stores over 90,000 sq ft that sold between January 2011 through December 2016. Fee simple sale prices ranged from \$7.92 to \$66.84/sq ft for 145 sales. The result was 57% sold for less than \$30/sq ft and 83% sold for less than \$40/sq ft.

Mr. Allen's conclusion of sales with the least adjustments averaged \$24.11/sq ft resulting in \$24.00/sq ft for the 201,888 sq ft subject rounded to \$4,850,000 as the sales comparison approach conclusion.

A lengthy cross-examination regarding highest and best use questioned if it is limited to single-user retail. Mr. Allen repeated that it is only limited to the buyer who would pay the highest price. Single-user or multi-tenant use was not considered because the actual use is determined after the purchase. Potential purchasers may have an intention for conversion, but it needs the combination of tenants to make it feasible. Leases would have to be in place for the majority of the property. They have to

speculate on costs, as the conversion costs are unknown. The purpose of the appraisal is to reflect the market value, not conversion costs after the sale.¹⁹

Mr. Allen's reconciliation finds that the cost approach indicates a large amount of depreciation, and that this approach is not utilized by buyers and sellers. The income approach was utilized in concluding the obsolescence and the cost approach is given the less consideration than the other approaches. The income approach utilized market lease rates for existing properties. The income approach for a fee simple valuation is less reliable than a sales comparison approach due to variables that were necessary i.e., market rent, vacancy, operating expenses, capitalization rates and stabilization costs. The sales comparison approach was concluded to provide a reliable value estimate. The fact that the subject property was owner-occupied and unleased as of the date of value gives the sales comparison approach the most weight.

The valuation conclusions as of December 31, 2019, are:

Sales Comparison Approach	\$4,850,000
Income Approach	\$4,630,000
Cost Approach	\$4,670,000

Upon cross examination, Mr. Allen testified that he did not value the subject property as of December 31, 2020, because he was not asked to value it. Respondent questioned if the use as single-user retail is financially feasible was based on the fact that it has been used for that purpose for over a decade.

A. Well, that's -- that's not necessarily true because we're -- we're talking about value-in-exchange and not -- not value-in-use. So, we're talking about the usual selling price of the property to another buyer.²⁰

Mr. Allen explained that the market would prefer a property that they could occupy where the current occupant has left the property so they can enjoy the full bundle of rights. The highest and best use is retail not exclusive to single-users or divided for multiple tenants. The market demand is about 50/50 owner users and developers. Owner users may find that the entire space is not necessary and may put a tenant in or make it multi-tenant.²¹

Mr. Allen was questioned on his sales. Sale 1 is a vacant Big Kmart in Acme that was purchased by Lormax Stern Acme LLC.²² Mr. Allen testified that he inspected this property several times. He was aware the property had not been occupied since its 2018 purchase and he is familiar with Lormax Stern. Respondent's Exhibit R-12 is the transcript of Mr. Stern's testimony regarding Petitioner's Sale 1. Mr. Stern testified "We

¹⁹ Tr. 2 at 281-282.

²⁰ Tr. 1 at 169.

²¹ See Tr. 1 at 173-174.

²² *Lormax Stern Acme LLC v Acme Township*, MTT Docket 20-002232.

didn't think that we could get retail there."²³ Mr. Allen testified that his report states on page 76 that the zoning was commercial and historically, the property was zoned for single-user commercial use.

Mr. Allen's Sale 2 was a former Target Store in Muskegon, was listed in 2008, and sold in 2016. Mr. Allen did not have knowledge of if it was renovated. It was purchased by an investor; however, it is unknown if any renovations or tenants were secured on the property.

When asked if Sale 3 was fee simple, Mr. Allen testified it was only a partial fee simple and leasehold purchase.

Q. So in the transaction what was acquired by the purchaser was the nonbuilding parcel, the building and the lease under which the building occupied the land owned by Jackson County Airport; correct?

A. Yes, the lease obligation.

Q. And by including this sale in your report, you believe that using the leased fee comparable to value the fee simple interest in the subject property is appropriate; correct?

A. It would -- it wasn't a leased fee comparable. They didn't purchase the leased fee; they purchased a fee simple interest in part of the property and a leasehold interest in another part of the property. They - - they never owned or purchased the leased fee interest.²⁴

Mr. Allen did not adjust Sale 3 for property rights in that section. It was adjusted for property rights conveyed in the write-up.

Farm & Fleet acquired the fee simple interest in the parcel owner by the grantor and the leasehold interest in the other parcel, which includes the building The original land lease expired in 2018 but contained 7 more extensions for 10 years each. In 2018, the annual rent payment for the land lease is \$24,300 per year. Capitalized at a rate of 8%, the estimated contributing value of the land lease portion of the site is approximately \$300,000.²⁵

Mr. Allen's utilization of the 8% capitalization rate was, in his opinion, appropriate.

Sale 4 was converted to self- storage which required the individual spaces to be built-out. Sale 5 was converted into a 140,000 sq ft Kroger Marketplace with the

²³ MTT Docket 20-002232, Tr. 1 at 25.

²⁴ Tr. 2 at 263-264.

²⁵ P-1 at p 80.

remaining 34,758 sq ft for lease. The Southgate property received a 15% upward adjustment for superior demographics and arterial characteristics. It received the same adjustment as Sale 7. Mr. Allen was questioned if he agreed that with a 15% arterial and 15% demographics and 5% retail submarket adjustment that the comparable is substantially different than the subject property. He agreed that the Detroit Metro market is superior with higher population density, better traffic, and they are superstores.

Mr. Allen was asked to confirm that Sale 7 sold with a deed restriction. The language explaining the deed restriction was not in the report, just a summary. He confirmed that the deed restriction does prevent some uses. He affirmed that he applied a 5% adjustment for property rights indicating it is inferior to the subject. He based the 5% adjustment on the Brett Harrington, CMI of the International Appraisal Company study and the Situs RERC study in his report.²⁶

Q. Okay. Then how did you determine that the specific deed restriction in place at this property justified a 5 percent adjustment based on the specific restrictions and duration of that deed restriction?

A. Well, there are two things, one, in verifying the same with the broker and the seller, the deed restriction wasn't put on the property until after the sale was negotiated. The broker felt that it didn't impact the purchase price because of that. Also, with the deed restriction the normal Wal-Mart restriction would restrict the buyer's use, and there was an exception to that. However, in spite of that I made a 5 percent upward adjustment to reflect the fact that there are some restrictions that could possibly affect the future sale of the property.

* * *

Q. Okay. So your verification said it didn't impact the price, . . . or at least your 5 percent is excessive, but you still used it in your report; correct?

A. Yes.²⁷

Mr. Allen testified that Sale 8 planned to expand at the time of sale, it was around a 27,400 sq ft addition. The new owner Blain's Farm & Fleet did not move in until the building was reimaged. Mr. Allen affirmed that Sale 9 was another big-box store sale to U-Haul in Detroit. The adjustment grid indicates that this comparable received the largest gross net adjustments for market conditions and overall characteristics. It was not the largest square footage but was in a superior submarket. Sale 10 identified potential tenants, the intention of the purchaser was to subdivide the property and bring specific tenants into the property. Mr. Allen testified that most purchases by developer/investors have a plan to put specific tenants in a property.

²⁶ P-1 at 96-97.

²⁷ Tr. 2 at 275-276.

No adjustments were made for differences in square footage. Respondent questioned if that indicates that it has no impact on the sale price. Mr. Allen responded "I believe square footage has a big impact on sale price. But I don't believe it has a big impact on sales over 80,000 square feet."²⁸

The lease comparables were questioned, as Leases 9 and 10 expired. Mr. Allen did not know if they vacated the space or continued. Lease 12 included six months of free rent. When questioned on the adjustment for age/condition, the response was the landlord has to make sure the roof, HVAC, and parking lot are good, as well as the condition has to be updated to function for the tenant. Adjustments were on a qualitative basis.²⁹

Rent comparables close to 200,000 sq ft were not found in Michigan. Lease 8, in Illinois (close to Chicago), was the closest at 196,000 sq ft . This indicated to Mr. Allen that a big part of the big-box market in general are investor/developer purchasers that divide the buildings into smaller spaces that are more marketable. The rental market for big-box stores is thin. The comparables were adjusted 57.46% to 97.20% (Hobby Lobby, closest to the subject, was the highest.)

Mr. Allen testified that he chose to include the cost approach utilizing the replacement cost new method from MVS as a Class C, Average Mega Warehouse. After costs, local and current multipliers with physical depreciation was calculated, then obsolescence. The adjustment for stabilization cost is the last step.

Q. Is it fair to say that generally speaking a rational market participant will not pay more to acquire a property and renovate a property than it would cost to acquire, demolish and rebuild the property in their specific -- or, to their specific requirements?

A. Generally that'd be true.³⁰

RESPONDENT'S CONTENTIONS

The property's TCV, SEV and TV, as confirmed by the Board of Review, is as follows:

Parcel Number: MD0-114-2085-00

Year	TCV	SEV	TV
2020	\$19,148,200	\$9,574,100	\$4,637,958
2021	\$18,752,600	\$9,376,300	\$4,702,889

Respondent's revised contentions of TCV, SEV and TV are as follows:

²⁸ Tr. 2 at 285.

²⁹ See Tr. 2 at 314.

³⁰ Tr. 2 at 390.

Parcel Number: MD0-114-2085-00

Year	TCV	SEV	TV
2020	\$9,340,000	\$4,670,000	\$4,637,958
2021	\$9,320,000	\$4,660,000	\$4,660,000

Respondent moved for a directed verdict pursuant to MCR 2.516 as to the 2021 tax year. Respondent alleges that Petitioner failed to value the subject property, as of December 31, 2020.³¹ The burden to show the 2021 assessed value and TV exceeds 50% of the property's TCV has been on Petitioner throughout the case. Petitioner has failed to do so. Petitioner chose to amend its petition to add 2021 tax year to this appeal and offered zero evidence to support the claim that the property was over assessed for tax year 2021.

The petitioner has “the burden of proof in establishing the true cash value of the property” under MCL 205.737(3). The Michigan Court of Appeals stated in *Alhi Dev Co v Orion Twp*,³² that the petitioner must prove, by the greater weight of evidence, that one or more of the assessments in question were too high based upon the Tax Tribunal's findings as to the true cash value.” The petitioner's burden “encompasses two separate concepts”: (1) the burden of persuasion; and (2) the burden of going forward with the evidence.³³ Although the Tribunal may not “automatically accept a respondent's assessment”³⁴ the Tribunal can, upon motion or its own initiative, enter a “directed verdict” or, more appropriately, an involuntary dismissal if the petitioner fails to meet the burden of going forward.³⁵

In determining whether to grant a motion for a directed verdict, a court must examine the evidence presented up to the time of the motion in the light most favorable to the nonmoving party, grant that party every reasonable inference, and resolve any conflict in the evidence in that party's favor to decide whether a question of fact existed. A directed verdict is appropriate only when no factual question exists on which reasonable jurors could differ.³⁶ Similarly in *Taylor v Kent Radiology, PC*,³⁷ the Michigan Court of Appeals cited *Sparks v Luplow*,³⁸ to hold “[i]f reasonable persons, after reviewing the evidence in the light most favorable to the nonmoving party, could honestly reach different conclusions about whether the nonmoving party established his or her claim, then the question is for the jury.”

In this case the Tribunal finds that at the time of the Motion, which was made at the end of Petitioner's case-in-chief, reasonable minds could differ regarding whether

³¹ Rule 2.516 Motion for Directed Verdict.

³² *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 768; 314 NW 2d 479 (1981) (emphasis added).

³³ *Jones & Laughlin*, 193 Mich App at 355.

³⁴ *Id.* at 355-356.

³⁵ See MCR 2.504(B)(2). See also *Jones & Laughlin*, 193 Mich App at 354-355 and *Great Lakes v City of Ecorse*, 227 Mich App 379, 408-410; 576 NW2d 667 (1998).

³⁶ *Keywell & Rosenfeld v Bithell*, 254 Mich App 300; 657 NW2d 759 (2002).

³⁷ *Taylor v Kent Radiology, PC*, 286 Mich App 490; 780 NW2d 900 (2009).

³⁸ *Sparks v Luplow*, 372 Mich 198; 125 NW2d 304 (1963)

the 2021 tax year's assessment was incorrect. Though Petitioner did not present a valuation disclosure regarding the 2021 tax year, Petitioner claims "it is undisputed there is essentially no change in value as of 12/31/20 for the 2021 tax year."³⁹ Though Petitioner did not create a separate valuation disclosure for the 2021 tax year, there is likely relevant information in Petitioner's submitted exhibits and from Petitioner's expert's testimony regarding the valuation for the 2021 tax year. The Tribunal's task is to determine the TCV based on the best evidence of the single user big box store. The subject property has its own specific features, location and market influences. The definition for TCV does not change for big-box stores. Additionally, the parties have substantial overlapping information in their reports, however, have substantially different conclusions. This affirmative evidence of value could support a finding that the property was over assessed and meets Petitioner's burden of going forward with the evidence. Thus, Respondent's Motion for Directed Verdict is not appropriate in this case and shall be denied.

In determining whether a petitioner meets the burden of going forward, the Tribunal "must consider the evidence in the light most favorable to the non-moving party [i.e., the petitioner], making all reasonable inferences in favor of the non-moving party."⁴⁰ Thus, the general rule in a valuation case is that, to meet the burden of going forward with the evidence, the petitioner must present evidence that, when viewed in a light most favorable to the petitioner, would permit the Tribunal to determine the property's TCV. Simply, before determining that petitioner has failed to meet the burden of going forward, the Tribunal must be satisfied after Petitioner has presented the evidence that, "on the facts and the law plaintiff has shown no right to relief."⁴¹ Further, involuntary dismissals⁴² "are appropriate only when no factual question exists upon which reasonable minds may differ."⁴³ Finally, "the weight given to the evidence is a matter within the . . . Tribunal's discretion" and "the weighing process involves a considerable amount of judgment and reasonable approximation."⁴⁴

RESPONDENT'S ADMITTED EXHIBITS

- R-1 Respondent's Appraisal by John R. Widmer, Jr., MAI
- R-2 Region 2 Planning Committee Document
- R-8 BSA Sheet, Offering Memorandum, and Warrant Deet for Sale 2
- R-11 Cohn Commercial units available for leasing
- R-12 Lormax Stern Acme LLC vs Acme Township, (Petitioner's Sale 1) Transcript 1, pages 20-26.

³⁹ Tr 1 at 19.

⁴⁰ Respondent in this case is the party entitled to a directed verdict under Tribunal rules. See *Meagher v Wayne State University*, 222 Mich App 700, 708; 565 NW2d 401 (1997) (emphasis added).

⁴¹ *Samuel D Begola Services, Inc v Wild Bro*, 210 Mich App 636, 639; 534 NW 2d 217 (1995).

⁴² Although *Meagher* involved a jury trial and an actual motion for directed verdict, a motion for directed verdict is "analogous" to a motion for involuntary dismissal in a bench trial. See *Armoudlian v Zadeh*, 116 Mich App 659, 671; 323 NW2d 502 (1982), and MCR 2.504(B)(2).

⁴³ *Meagher*, 222 Mich App at 708.

⁴⁴ *Comstock Village Ltd Dividend Housing Ass'n v Comstock Twp*, 168 Mich App 755, 760; 425 NW2d 702 (1988) (emphasis added).

R-13 Rent Roll for Fenton Shopping Center

RESPONDENT'S WITNESS

John R. Widmer, Jr., MAI, and Certified General Appraiser, is a shareholder in Frohm & Widmer, an appraisal company. He testified that he has held the MAI designation for approximately 30 years and does approximately 50-100 reports a year. Approximately half of the reports are for ad valorem tax appeals.

Mr. Widmer testified that he is familiar with big-box stores. In 2018, he did an appraisal of the Lowe's across the street from the subject and has appraised several Meijer stores. The Tribunal finds that based on his skills, knowledge, experience, education, and training; he is designated as an expert real estate appraiser.

Mr. Widmer testified that he prepared an appraisal of the fee simple interest of 1620 East US-223 in Madison Township (Wal-Mart) as of December 31, 2019, and December 31, 2020. Respondent's Wal-Mart appraisal (R-1) was admitted.

The subject's location with other big-box stores across US-223 includes Lowe's, built around 1995 with 104,000 sq ft, a Meijer west of Lowe's, built in 1981 and expanded around 2000, with approximately 180,000 sq ft, and a Kohl's, just east of the subject. There is a shared driveway with the subject that includes five tenants: Ulta Beauty, Marshalls, Shoe Carnival, Rue 21, and Maurice's.

Adrian Mall is west of Meijer; it was an enclosed mall as of December 31, 2019. It had issues with the roof as of December 31, 2020, and was condemned. The in-line stores closed. Dunham's and Hobby Lobby, at opposite ends of the mall, remain open. This indicates to Mr. Widmer that the market is vibrant. A ten-mile radius indicates that 142-143 commercial properties are within the area. The three-mile radius has 99 commercial properties with 70% of the properties are located within three miles of the subject property. The total percentage of land within Lenawee County devoted to commercial use is 1.7%, mainly in the Adrian area.

E-commerce trade just surpassed 10% of total retail sales in 2019. Mr. Widmer opined that brick-and-mortar stores are still required. Although the population and income are low, the market draws significantly from a larger area. This is a benefit for the subject property. The demand for retail space is stable with vacancy decreasing between 2019 to 2020.

Highest and best use as vacant was considered. The site has no physical restrictions, it is zoned for retail use, with retail surrounding the subject. The market has been stable with limited availability of inventory to accommodate a big-box store. New development on the site would be feasible. Highest and best use as improved considered the following; demolishing existing improvements and re-developing the site; convert, renovate or alter the existing improvements to enhance the current use or

change the use to a more productive use; and retain the existing improvements and continue the current use.

The existing use is providing a value contribution, and demolition would not be viable. The subject has been well maintained and would be functional for other retail uses. The highest and best use of the subject as improved is a single-user, big-box retail use.

Cost Approach

The steps to the cost approach include: 1) estimate site as if vacant and available, 2) estimate replacement cost new of building and site improvements, 3) estimate accrued depreciation, 4) deduct any accrued depreciation and add the site value to the total depreciated value of the building and improvements.

Mr. Widmer considered four vacant land sales to use in his cost approach. They are:

Vacant Land Sales				
Sale	Location	Acres	Date	SP/SF
1	Whitehall Twp, Muskegon	19.120	4/16	\$1.32
2	Fayette Twp, Hilldale	47.230	1/18	\$0.66
3	Midland, Midland	19.335	4/20	\$2.97
4	Madison Twp, Adrian	33.140	Listing	\$1.52

Sale 1 was adjusted for external influences (4%) and overall utility (-25%) which resulted in \$1.05/sq ft, -20.6% total adjustments. Sale 2 adjustments are expenditures after sale (44.4%), external influences (-6%), and parcel size (10%) equaling \$0.99/sq ft, 50.8% total adjustments. Sale 3 adjustments are external influences (-25%) equaling \$2.23/sq ft, -25% total adjustments. Sale 4 adjustments include conditions of sale (-30%) equaling \$1.07/sq ft, -30% total adjustments.

Land value ranged from \$.99 to \$2.23/sq ft, averaging \$1.30/sq ft. Sale 3 was considered an outlier. The subject's 1,241,460 sq ft (26.6 acres) was reconciled to \$1.02/sq ft or \$1,270,000 for both the 2020 and 2021 tax years.

Mr. Widmer utilized Mega Warehouse Store from MVS, with weighted 75% average to 25% good quality. Adjustments include the following: HVAC, floor area, height, wet sprinkler, lump sum costs, current cost multiplier, and local cost multiplier. Site improvements for development and indirect costs based on a review of costs for new developments equals 8% of total hard costs.

Cost Summary			
Avg Quality	\$49	75%	\$36.75
Good Quality	\$64	25%	\$16.00
Total RCN			\$52.75

HVAC			\$4.62
Total Unit Rate			\$57.37
Floor area Perimeter			1.00
Height/Story			1.00
Adjusted RCN			\$57.37
Sq Footage			201,381
Sub-total building RCN			\$11,553,228
Fire Suppression	\$2.17/sq ft		\$436,997
Greenhouse	\$9.62/sq ft		\$45,474
Interim Building RCN			\$12,035,698
Cost Modifier			1.02
Local Modifier			1.05
RCN Building			\$12,890,233

Site Improvements			
Site Prep	1,241,460	\$0.30/sq ft	\$372,438
Parking Lot	1,005 spaces	\$1,350/space	\$1,356,493
Concrete	6,500 sq ft	\$4.66/sq ft	\$30,290
Truckwell	8,600 sq ft	\$15.62/sq ft	\$134,296
Fence	155 sq ft	\$14.06/sq ft	\$2,179
Landscaping	Lump Sum		\$100,000
Total site improvement RCN			\$1,995,696
Cost Multiplier			0.97
Local Multiplier			1.05
Total Site RCN			\$2,032,617

Total Bldg RCN			\$12,890,233
Total Site RCN			\$2,032,617
Total Building and Site Improvement RCN			\$14,922,850
Soft Costs	8%		\$1,193,828
Total RCN Before Obsolescence			\$16,116,678

Mr. Widmer's 2021 total RCN before obsolescence is \$16,391,110. The next step is to estimate accrued depreciation from physical, functional, and external. The subject is in above-average condition. He utilized straight-line depreciation of 45.7% for the first year and 48.6% for tax year 2021. No functional obsolescence was applied because "the replacement cost is based upon a functional replacement property, and no modification is required."⁴⁵

External obsolescence is "a loss in value caused by negative externalities, i.e., factors outside a property."⁴⁶ (Emphasis omitted.) The Adrian Mall is close to the subject, has suffered losses, and was purchased in 2019; however, in June 2020 the mall was condemned. The area does include two other big-box stores, Meijer and Lowe's. However, the overall effective vacancy averaged 5% and 4.6%. Mr. Widmer

⁴⁵ R-1 at 72.

⁴⁶ *Id.* citing *Ibid*, p 632.

found no adverse influence in the cost approach. No curable physical obsolescence was found for either tax year. The following are the reconciliations.

Depreciation	Store	Site	Total
RCN	\$12,890,233	\$2,032,617	\$14,922,850
Soft Costs (8%)	\$1,031,219	\$169,609	\$1,193,828
	\$13,921,452	\$2,195,226	\$16,116,678
Depreciation	36.9%	70.0%	41.4%
	-\$5,131,049	-\$1,536,658	-\$6,667,708
RCN	\$8,790,402	\$658,568	\$9,448,970

RCN 12/31/2019	\$9,450,000	RCN 12/31/2020	\$9,110,000
Land Value	\$1,180,000	Land Value	\$1,180,000
True Cash Value	\$10,630,000	True Cash Value	\$10,290,000
Per Square Foot	\$52.79	Per Square Foot	\$51.10

Income Approach

Mr. Widmer applied direct capitalization in the income approach. Market leases were not found for properties over 200,000 sq ft. The following fourteen comparables were considered. Adjustments were made for location, size, age/condition, quality, and overall utility. The fourteen income comparables are:

Rent	Retailer	Location	Sq Feet	Term	LCD	Rent	EFF \$/SF
1	Rebounderz	Jenison	54,533	10.25	2/16	\$5.00	\$5.46
2	Kohl's	Holland	75,956	10	8/16	\$7.25	\$7.25
3	Family Farm	Flat Rock	40,000	10	10/16	\$3.50	\$3.91
4	Family Farm	Big Rapids	38,080	10	12/16	\$4.10	\$4.20
5	Fowling Whse	Cascade Twp	45,000	5.75	9/17	\$4.00	\$3.83
6	Hobby Lobby	Cadillac	50,323	15	2/18	\$7.70	\$6.20
7	Ashley	Westland	30,000	5	5/18	\$5.00	\$5.00
8	Burlington	Flint	42,980	10	5/18	\$10.75	\$6.60
9	Entertainment	Warren	101,773	5	6/18	\$4.75	\$3.67
10	Crunch Fitness	Farmington Hills	25,000	10	7/18	\$9.00	\$7.45
11	Grand Pt Marina	Sterling Heights	26,327	1	6/19	\$5.01	\$5.01
12	Floor & Décor	Shelby Twp	91,500	10	9/19	\$6.25	\$5.65
13	Furniture	Roseville	22,590	5	10/19	\$4.50	\$4.50
14	Ashley	Madison Hts	48,126	7	11/19	\$6.00	\$5.50

The properties were all triple net leases. Effective rent accounts for tenant improvements. Effective flat rent factored in free rent, rent steps, and tenant improvements. Mr. Widmer testified:

One example of that is rental 9, number 9, where the landlord provided the lease may have been negotiated in November, the landlord provided six months for buildout, so the tenant didn't start paying rent until June. I

would not have applied an adjustment for that for rent concessions. It's when there's not a stub added to it. Stub being -- could be a five-year lease with six months free. It would actually become a five and a half year lease if you -- ahead of time, allowing the tenant to do leasehold improvements. I would not adjust for that.

For tenant improvements when you know the amount, I just allocated on a straight-line basis what that is over the lease term. So if it's \$10 for a ten-year lease, I'm looking at that as a dollar a square foot adjustment from actual rent to effective rent.⁴⁷

The market condition adjustment was 3% per Anum. Real estate taxes typically modify the cap rate with a tax additor.

However, from a simple algebraic perspective, it is considered more fundamentally sound to apply iterations for the property tax expense based upon the true cash value conclusion for each retrospective date of valuation. Correspondingly, within the forthcoming net operating income tables, property taxes will be included, and will be the result of taking 50% of the true cash value conclusion times the noted millage rate, or \$46.5997 (TY-2020) and \$46.6974 (TY-2021). Use of a tax additor does not appropriately address the variation in NNN v. Gross leases, and the iterative process is deemed most reliable.⁴⁸

Insurance was \$0.30/sq ft, CAM \$1.75/sq ft, management fees 3% of EGI, owner's expenses \$0.20/sq ft, and replacement reserves \$0.25/sq ft. Mr. Widmer considered a survey of retail cap rates from December 2011 to December 2019, which averaged 7.9% between 2017 and 2019. 2018 cap rate was 7.3%. PwC Real Estate Investor Survey, for 2020 and 2021, and Realty Rates.com Investor Survey were also considered. The overall rates selected are 8.50% (2020) and 8.25% (2021). The final income approach calculations are:

REVENUE	201,381 sq ft	12/31/2019
Base Rent	\$/SF	
\$ Rent	\$4.85	\$976,698
RE Tax Recovery	\$1.03	\$206,528
Cam / Ins Recovery	\$2.05	\$412,831
<u>Potential Gross Income</u>	<u>\$7.93</u>	<u>\$1,596,056</u>
Frictional Vacancy	5.0%	-\$79,803
Interim EGI		\$1,516,254
Collection Loss	0.5%	-\$7,581
EGI	\$7.49	\$1,508,672
Operating Expenses		

⁴⁷ Tr. 4 at 605-606.

⁴⁸ R-1 at 92.

RE taxes	\$1.03	\$206,528
Insurance	\$0.30	\$60,414
CAM	\$1.75	\$352,417
Mgt Fee	3%	\$45,260
Owners Expense	\$0.20	\$40,276
Capital Reserve	\$1.25	\$50,345
Sub Total	\$3.75	\$755,240
NOI	\$3.74	\$753,432
OAR		8.50%
TCV	\$44.02	\$8,863,908

Sales Comparison Approach

Mr. Widmer selected the following sales:

	Development	Location	Sale Date	Sq. Ft.	Land	LTB Ratio	Sale Price	SP/SF
1	Sam's Club	Farmington Hills	4/16	106,167	9.770	4.01	\$4,550,000	\$42.86
2	K-Mart	Southgate	8/16	182,454	15.650	3.74	\$5,500,000	\$30.14
3	K-Mart	Clinton Twp	7/18	84,966	7.353	3.77	\$4,000,000	\$47.08
4	K-Mart	Roseville	1/19	167,589	16.800	4.37	\$5,750,000	\$34.31
5	Sam's Club	Port Huron Twp	12/19	137,720	12.040	3.81	\$4,750,000	\$34.49

Sales 1, 3 and 4 were sold as vacant buildings. Sale 3 was leased at the time of sale, although vacant. The \$418,033 interim rent was adjusted downward. The market increased 3% from 2016 to 2019. The calculations for adjustment lines are not quantified. They are in a separate excel spreadsheet, not in the report. The sales are adjusted as follows:

	Sam's Club	K-Mart	K-Mart	K-Mart	Sam's Club
Sale	1	2	3	4	5
SP/SF	\$42.86	\$30.14	\$47.08	\$34.31	\$34.49
Cond of Sale			-10.5%		
Market Cond	11.2%	10.2%	4.3%	3.0%	0.0%
Location	-22.5%	-8.0%	-22.0%	-19.0%	9.0%
Bldg Size	-5.0%	0.0%	-5.0%	0.0%	-2.5%
Age/Cond	6.0%	-0.8%	12.8%	-0.8%	3.0%
Quality	5.0%	5.0%	5.0%	5.0%	5.0%
Economic	25.0%	25.0%	25.0%	25.0%	0.0%

Total %	8.5%	21.3%	15.8%	10.3%	14.5%
Adj SP/SF	\$51.69	\$40.26	\$50.85	\$38.95	\$39.49

Mr. Widmer adjusted the comparables based upon a ranking system. “For example, when population, households and Median Household Income is measurabl[y] different than that of the subject, a sliding scale will be applied so to reflect the difference.”⁴⁹ The cost for smaller buildings is higher, MVS cost indices were reviewed relative to building size. “[S]maller buildings will receive a downward adjustment for building size.”⁵⁰ Age and condition were adjusted utilizing MVS curvilinear depreciation tables (0.75% per year). No modifications were made for building finishes. The subject’s auto center is additional utility and superior to each sale property.

For this analysis, the prior adjustment categories have accounted for all necessary economic components, with the exception of the vacancy status of Sale No. 1, No. 2, and No. 4, along with Sale No. 3, as it[s] short-term rental obligation was already accounted for as a condition of the sale agreement.⁵¹

The overall adjusted sale price ranges from \$38.95 to \$51.69/sq ft, and averages \$43.50/sq ft. Mr. Widmer reconciles to approximately \$42.50/sq ft, for a TCV of \$8,560,000 for tax years 2020 and 2021, based on the sales comparison approach.

Mr. Widmer testified that he appraised Petitioner’s Sale 1 for Lormax Stern in a pending tax appeal.⁵² The former K-Mart property was zoned corridor flex. The property was not able to be developed for storage which was the reuse intended by the purchaser. He disagreed with strong retail demand in the area, as suggested by Mr. Allen’s report and testimony. Tom’s Market, adjoining the property, was also closed and Meijer is a few miles east.

Petitioner’s Sale 6, a K-Mart in Fenton, has been considered by Mr. Widmer, in previous appraisals, however there were issues with the property. It included an outparcel and the purchaser had tenants interested. This was reflected from the short period of time from closing to when the first tenant moved in. When Mr. Widmer observed Sale 6 in 2019, the property was already subdivided with tenants occupying it. The property was still rented with occupants in 2020. Respondent’s Exhibit 13 is the rent roll for the property. It had three tenants in 2019 and three additional in 2020. The property was not vacant for the tax years at issue. As well as it was sold for multi-tenant development.

Mr. Widmer is also familiar with Petitioner’s Sale 7, Wal-Mart to Rural King in Hartland Township. He appraised it twice for tax appeals.⁵³ When the property was acquired from Wal-Mart, in 2016, the purchaser intended to create two condominium

⁴⁹ R-1 at 81.

⁵⁰ R-1 at 82.

⁵¹ R-1 at 81.

⁵² MTT Docket 20-002232.

⁵³ MTT Docket 17-002207 Hartland ABG LLC v Hartland Township.

units. Rural King utilized approximately 60% of the space and Noble Appliances purchased the remaining space from Hartland ABG, LLC. There was a deed restriction limiting uses (mainly groceries) in place during the purchase.

Mr. Allen's Sale 4 (Byron Township) and Sale 9 (Detroit) were acquired by U-Haul. Mr. Widmer, in previous reports, utilized Sale 9.

Mr. Widmer, on cross-examination, was asked to calculate the adjusted sale price for comparables 1-4 without the 25% adjustment for the property as vacant. The result per square foot is \$39.78, \$31.96, \$39.87, and \$30.12. Sale 5 was a leased fee transaction. The sales approach was dependent on the on-loss calculations found in the Income Approach.

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 conclusions and has rejected evidence contrary to those findings.

1. The subject property is located at 1620 East US-223, Madison Township, Lenawee County.
2. The subject property's parcel identification number is MD0-114-2085-00.
3. The subject building contains 201,888 sq ft.⁵⁴
4. The subject property has a total land area of 28.50 acres.
5. The occupant of the subject property should not influence the market value of the property.
6. The total population for Madison Township is 8,621 (in central Lenawee County).
7. The subject property is located in the Adrian, MI MSA.
8. The population in the Adrian MSA, in 2021, is 100,357.
9. The employment rates in the Adrian MSA increased 1.1% between 2014 and 2019.
10. The subject property is located on the south side of US-223 and east of M-52.
11. Both parties have furnished valuation disclosures in the form of appraisals.
12. Petitioner's appraisal was prepared by Laurence G. Allen, MAI.
13. Respondent's appraisal was prepared by John R. Widmer, Jr., MAI.
14. Mr. Allen's appraisal report includes the value for December 31, 2019.
15. Mr. Widmer's appraisal report includes values for December 31, 2019, and December 31, 2020.
16. Both parties developed the cost approach, sales comparison approach and the income approach.
17. Both parties appraised the subject property as a fee simple interest.
18. The subject property is zoned C2, General Highway Commercial District.

⁵⁴ Petitioner's square footage is 201,888, Respondent's is 201,381.

19. The subject property was BTS for Petitioner in 1992, (206,109 sq ft), with 2004 wrap around L-shaped addition. The property is owner-occupied.
20. Mr. Allen's highest and best use is as retail use for both owner/users and developers.
21. Mr. Widmer's highest and best use is a single user, big-box retail user.
22. Mr. Allen commenced with construction costs from MVS for Class C, average quality, Mega Warehouse Stores in the cost approach. He included costs associated with leasing the subject property.
23. Mr. Widmer's cost approach also commenced with construction costs from MVS for Class C, 75% average and 25% good quality, Mega Warehouse Stores.
24. Mr. Allen's RCN for Building, HVAC, Sprinklers is \$59.67, Mr. Widmer's RCN for the same is \$57.37.
25. Mr. Allen based his RCN on 201,888 sq ft, Mr. Widmer's sq ft is 201,381.
26. Mr. Allen's land value for 24.75 acres is \$58,000 an acre, \$1,435,500 total.
27. Mr. Widmer's land value for 28.5 acres is \$47,744 an acre, \$1,270,000 total.⁵⁵
28. Mr. Allen calculated physical depreciation based on age/life method for the building 60% and site improvements 66.7% separately.
29. Mr. Widmer weighed physical depreciation using physical life, effective age, straight line depreciation, and curvilinear depreciation which resulted in zero curable physical, for the building 36.9% and site improvements 70% for tax year 2020. The depreciation increased to 39.8% building and 74.5% for site improvements for tax year 2021.
30. Mr. Allen has observed obsolescence in Big-Box Stores in general having studied them for years. An analysis of BTS leases vs. re-leases, sales studies, NOI analysis, and history of several big box stores, and interviews with contractors that build them.
31. Mr. Widmer did not find functional obsolescence because the replacement cost new was based on a functional property. External obsolescence was discussed in the cost approach but was not quantified for external influences in the approaches. The subject's sub-market has operated at 95% for the past three years.
32. Mr. Allen's cost approach concludes to combined external and functional obsolescence utilizing several methods. Lease Comparable Summary based on thirteen sales in the Lease Comparable Summary. The market extraction of obsolescence from five sales indicates an average \$11.41 (42-67%) loss from the 7-9 year-old Big-Box Stores. Capitalized rent loss indicates 14% loss equaling \$8.50/sq ft. Construction Management Report for modification for new users of existing buildings estimates a range of \$15-\$53/sq ft.
33. Mr. Widmer's cost approach found no functional obsolescence because the replacement cost was based on a functioning replacement property. No external obsolescence was quantified in the cost approach.

⁵⁵ Mr. Widmer calculated on a square foot basis, which equals the \$1,270,000 value, divided by 43,560 to equal the dollar per acre.

34. Both parties included an income approach. Two of the comparables were the same.
35. Mr. Allen used six leased properties, one from September 2012, three from 2013, one from November 2017, and one from September 2019. The income/sq ft was \$3.00.
36. Mr. Widmer used fourteen leased properties. The leases ranged from February 2016 to November 2019. The income/sq ft was \$4.85 for both tax years.

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.⁵⁶

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.⁵⁷

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.⁵⁸

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”⁵⁹

“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.”⁶⁰ The Tribunal is not bound to accept either of the parties' theories of valuation.⁶¹ “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.”⁶² 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.”⁶³

⁵⁶ See MCL 211.27a.

⁵⁷ Const 1963, art 9, sec 3.

⁵⁸ MCL 211.27(1).

⁵⁹ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

⁶⁰ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

⁶¹ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

⁶² *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

⁶³ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

A proceeding before the Tax Tribunal is original, independent, and de novo.⁶⁴ The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”⁶⁵ “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”⁶⁶

“The petitioner has the burden of proof in establishing the true cash value of the property.”⁶⁷ “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.”⁶⁸ 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.”⁶⁹

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.⁷⁰ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”⁷¹ 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.⁷² Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.⁷³

The Tribunal must “apply its expertise to the facts of a case in order to determine the appropriate method of arriving at the true cash value of a property, utilizing an approach that provides the most accurate valuation under the circumstances.”⁷⁴

The Tribunal must determine *the usual selling price* of the building, improvements, and land, as a fee simple estate.⁷⁵ Sometimes described as an *absolute* property right, a fee simple estate is not, in fact, absolute because it is subject to the four powers of government (i.e., taxation, eminent domain, police power, and escheat).

⁶⁴ MCL 205.735a(2).

⁶⁵ *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

⁶⁶ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

⁶⁷ MCL 205.737(3).

⁶⁸ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

⁶⁹ MCL 205.737(3).

⁷⁰ *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).

⁷¹ *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

⁷² *Antisdale*, *supra* at 277.

⁷³ See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

⁷⁴ *Great Lakes*, 227 Mich App. At 389, 576 N.W. 2nd.⁷⁴

⁷⁵ MCL 211.27(1).

Nevertheless, an owner of a fee simple estate has broad rights; the complete bundle of rights includes, but is not limited to the following:⁷⁶

- The right to sell an interest
- The right to transfer an interest
- The right to occupy the property
- The right to mortgage an investment
- The right to give an interest away

[A]s a practical matter most appraisers refer to all fee interests in real property as fee simple, regardless of the encumbrances, unless one of the encumbrances is a lease. This practice does not imply that appraisers ignore encumbrances other than leases but rather that those factors are implicitly accounted for under the fee simple classification in common usage.⁷⁷

Both Petitioner and Respondent utilized the three approaches to value the subject property. The cost approach, the income approach, and the sales comparison approach. The cost approach is described as replacement cost new less depreciation and will be considered first. The land, as if vacant, is the first step. Several vacant land sales were utilized by both parties. This resulted in \$58,000 and \$48,000 an acre. The 201,000(+) sq ft improvement original building was 27 years old, and the addition is 15 years old. Both parties utilized MVS Average Cost, Class C, Mega Warehouse. The differences begin with Mr. Allen utilizing the cost for the total square footage resulting in \$59.67 sq ft and Mr. Widmer weighting 75% average cost and 25% good cost for \$57.37 sq ft. This was to recognize the original building 121,000 sq ft and the approximate addition of 81,000 sq ft around 2003-2004.

The external obsolescence and functional obsolescence were based on studies of the BTS market and the released market by Mr. Allen. The first study was the lease comparable summary with four BTS leases; three were 12-15 years ago and one had a 2018 lease. The majority of the releases were around 20+ years old with three that were much older. Mr. Allen 's big-box leases included BTS buildings that indicated \$8.74 sq ft. The selection was the Hobby Lobby in Adrian (2012 lease), Walmart in Illinois (2013 lease), two At Home stores in Kalamazoo and Ypsilanti (leases expired in 2018), G4CE in Warren (2017 lease) and Floor and Décor in Shelby Township (2019 lease). The Tribunal finds that the Adrian lease for Hobby Lobby is seven-years old. Wal-Mart in Illinois from 2013 is out of state without an analysis of what makes it applicable. The two 2013 At Home leases were for five years, therefore they expired in 2018. The most current three re-leases (that were not expired) were in 2016, 2017 and 2019 would be applicable for the subject property. They averaged \$5.38 sq ft rent before adjustments.

⁷⁶ As noted above, fee simple is defined as “absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power and escheat.” Appraisal Institute, *Appraisal of Real Estate* (Chicago: Appraisal Institute, 16th ed, 2020), at 60.

⁷⁷ *Appraisal of Real Estate supra*, at 60.

Mr. Allen adjusted 2.5% per year for market conditions, as of December 31, 2019. The adjustments reflected are the same as those applied in the sales comparison approach.

The second extraction utilized sales of 7–9 year old buildings that sold between 2013-2016. Mr. Allen estimated the replacement cost new of the land and buildings, deducted the site value from the sale price for a residual value to improvements. However, the following details and basis for the calculations are unknown: 1) The source for the replacement cost new for building/site is unknown, 2) the basis for the physical depreciation calculation, 3) the size and underlying basis for the land value was not provided, 4) Sale 7a and 7b are the same property and skews the average, 5) there are insufficient details as to the source for the information, and 6) how the out of state properties in Wisconsin and Tennessee compare to Michigan sales, i.e. property taxes, land value, statutes. This table provides insufficient information and leaves questions; it may give an indication that the market recognizes functional obsolescence. However, no weight is given to the out of state sales, as their property tax structure is unknown and unexplained. The remaining questions above were left unanswered therefore minimal consideration is given to this extraction.

Mr. Allen's use of the 2003 costs of modification of big-box stores for new users is of no assistance to this Tribunal. The information was from a dated report that does not assist the December 31, 2019 valuation date. It was estimated that the costs would be higher. The examples of cost modification only included one store in Michigan. It was reimaged in 2006, which is too removed from the tax dates at issue to utilize unadjusted. The remaining four examples were in Tennessee, Illinois, Wisconsin, and Arizona. The out-of-state examples are again, lacking complete information and took place from 2010 to 2013.

Regarding soft costs, Mr. Allen's citation of the *Appraisal of Real Estate* left out the second sentence "A property rights adjustment is necessary when property rights **other than fee simple** are being valued."⁷⁸ (Emphasis added.) This negates the \$181,699 leasing commission costs in the cost approach. This reduces the soft-cost calculation from \$981,113 to \$799,414. This also slightly reduces the physical depreciation to \$10,354,215 which results in \$4,740,000 for his cost approach.

Mr. Widmer's cost approach utilized 8% soft costs resulting in total building and site improvement of \$16,116,678. The entrepreneurial profit was not quantified. Incurable physical depreciation was 45.7% for the building, and 75% for the site improvements. The replacement cost was based on a functional property; therefore, no adjustment was made. Vacancy for December 31, 2019, in the area was 5% resulting in no external obsolescence. The only deduction from the cost new was the average between 45.7% straight-line depreciation and 28% curvilinear depreciation (MVS) or 36.9% for the building and 70% for the site improvements. This resulted in \$10,630,000 TCV via the cost approach, as of December 31, 2019.

⁷⁸ P-1 at 137 referencing *The Appraisal of Real Estate*, *supra*, at 569.

The cost new less depreciation is less reliable when the subject property is older. It “is particularly useful in valuing new or nearly new improvements and properties that are not frequently exchanged in the market.”⁷⁹ The Tribunal finds that the age of the subject makes it not as reliable for a cost approach.

The income approach was considered by both parties. The reliability of BTS leases, for example, occurring in 2004 are too far removed from the relevant Tax Day. However, the re-lease of a big-box store in 2017-2019, closer to the Tax Day at issue may be relevant for analysis.

Mr. Allen’s use of the August 2013 lease of an Illinois property, Lease No. 8, 2012 lease for Hobby Lobby, Lease No. 7, and the two 2013 leases of At Home properties, Lease No. 9 and Lease No. 10, are not considered appropriate. The four leases are six and seven years old, which is found to be too far removed from the first tax date at issue. In addition, the Illinois lease has no details on its tax structure or how it would influence the rent for the subject property. The At Home five-year leases, Lease No. 9 and Lease No.10, expired in 2018. The 2017 Lease No. 12 in Warren had six months of free rent that was not accounted or adjusted. The Shelby Township lease, Lease No. 13, in September 2019 is suspect, as the building was constructed in 2000, indicating the possibility of a BTS substantially newer than the subject property.

The Tribunal gives no weight or credibility to Mr. Allen’s income approach based upon the questionable leases selected.

Mr. Widmer selected 14 lease comparables. Petitioner’s lease 12 and 13 and Respondent’s lease 9 and 12 are the same properties. These two rent comparables were the largest square footage for Respondent. All of the leases were adjusted for rent step-up, free rent, and tenant improvements. The basis for the individual adjustments utilized by Mr. Widmer was not provided. The effective tax rate multiplier was not utilized. He used a property tax additor as explained as follows:

First category is real estate tax. And instead of applying a tax additor to account for tenant recovery of that tax, I simply do an iteration in the Excel model. So you take the value conclusion rounded, take the millage rate. That's your tax. So the tax illustrated in the table on a forthcoming page is an iteration based on the actual millage in 2020 and 2021.⁸⁰

The most weight was placed on Lease No. 12 because of its size. Mr. Widmer’s income properties did not have some of the details as Mr. Allen’s appraisal. Respondent’s Lease No. 12 is also Petitioner’s Lease No. 13.⁸¹ The lease was entered into September 2019, and year built was 2000. Again, this appears to be a new BTS lease. Which indicates to this Tribunal that it would not be comparable to the 20+ year old subject property, in age or an indication of rent.

⁷⁹ *Appraisal Institute*: The Appraisal of Real Estate (Chicago, Appraisal Institute, 15th ed, 2020), p. 36.

⁸⁰ Tr. 4 at 610.

⁸¹ P-1 at 113.

Mr. Widmer relied on Lease No.6 as adjusted (40%) downward for age/condition as it was a newer building to reflect newer space lease for versus older space. The Tribunal finds that there was insufficient evidence in the report that indicates the year built for any of the comparable properties, or if they were BTS or an existing building. Mr. Widmer's leases had insufficient detail for this Tribunal to accept his leases.

The Tribunal finds that the reliability of both parties' income approaches are severely lacking and in this final conclusion of value are given no weight.

Regarding the sales comparison approach, Petitioner utilized ten sales of big-box stores from December 2015 to June 2019. Sale 1 in Acme Township and Sale 7 in Hartland Township were appealed to this Tribunal.⁸² Sale 1 had an experienced buyer. Sale 7 had a deed restriction and was subdivided and sold a portion to a separate purchaser. Petitioner's Sale 5 and Respondent's Sale 2 are the same Southgate property.

Petitioner's Sale 1 in Acme Township was argued by Respondent's appraiser, Mr. Widmer, that the K-Mart building should be razed. This case has not been decided at the time of this opinion; therefore, Sale 1 is questionable as a comparable to the subject property and is not considered in this case.

Petitioner's ten comparable sales range in square footage from 81,569 to 186,763. Land sizes range from 7.49 to 22.92 acres. Population ranges from 17,493 to 293,793 for a five-mile range. Sale price per sq ft ranged from \$16.19 to \$39.30.

The sales were adjusted for differences in market conditions at the time of the sale to December 31, 2019. Arterial attributes, demographics, retail submarket, and age/condition adjustments resulted in eight out of the ten sales adjusted negatively.

The Tribunal, after considering Mr. Allen's ten sales, finds that Sale 2 (a former Target building) in Muskegon was on the market for nearly nine years. Sale 9 in Detroit, which sold in December 2015, is not meaningful, with the population in excess of 200,000 more than the subject, and double the traffic, is not considered. Petitioner's Sale 1, as discussed above, is not considered. The adjusted sale price per sq ft when bracketed from low too high for the seven sales range from \$18.09 to \$31.56.

Mr. Widmer's Sale 2 (Southgate) is the same as Mr. Allen's Sale 5. Mr. Widmer's adjusted sale price per sq ft was \$31.96, Mr. Allen's was \$23.24 per sq ft. Mr. Widmer's first four sales were adjusted +25%, because they were vacant and available.⁸³ The Court of Appeals has consistently ruled that the fee simple interest requires properties to be valued as if vacant and available.⁸⁴ Mr. Widmer's addition of 25% to Sales 1-4 is

⁸² This Tribunal is familiar with Sale 1 MTT Docket 20-002232 and Sale 7 MTT Docket 17-002207. Both were appealed at the Tribunal. The remainder of the sales have been submitted to the Tribunal in multiple cases as comparable properties and are a matter of public records.

⁸³ R-1 at p 83.

⁸⁴ See *Lowe's Home Ctrs. v. Marquette Twp.*, unpublished opinion per curiam of the Court of Appeals, issued April 22, 2014 (Docket Nos. 314111 and 314301), *Lowe's Home Ctrs., Inc. v.*

inappropriate as the sales were vacant and available. Upon testimony the sales were reduced resulting in the following:⁸⁵

Sale 1 was reduced from \$51.69 to \$39.78
Sale 2 was reduced from \$40.26 to \$31.96
Sale 3 was reduced from \$50.85 to \$39.87
Sale 4 was reduced from \$38.95 to \$30.12

Mr. Widmer's range of value for the five adjusted sales are \$30.12 to \$39.87.

The Tribunal finds that Petitioner's sales comparison approach's rate per sq ft ranges from \$16.19 to \$39.30 and Respondent's sales comparison approach ranges from \$30.12 to \$39.87, based on size, location, and age. The Tribunal finds that the sales comparison approach is the best method to determine the TCV of the subject property.

The Tribunal finds the fee simple TCV of the 20-year-old big-box store located in Madison Township is \$5,035,000, as of December 31, 2019, for tax year 2020. Petitioner also appealed the December 31, 2020, value for tax year 2021; however, presented only its evidence pertaining to the 2020 tax year. Respondent included tax year 2021 and the appraisal's conclusions of value indicates a slight decrease in the TCV between 2020 and 2021. The Tribunal finds that a slight decrease is appropriate for tax year 2021. Therefore, the 2021 tax year TCV is \$5,000,000.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the value of the subject property has declined. The subject property's TCV, SEV, and TV for the tax years at issue are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that Respondent's Motion for Directed Verdict is DENIED.

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

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and

Grandville, unpublished opinion per curiam of the Court of Appeals, issued December 30, 2014 (Docket No. 317986.), and *Menard Inc v City of Escanaba*, 315 Mich App 512; 891 NW2d 1 (2016).

⁸⁵ Tr. 5 at pp 793-795.

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%, (xi) after December 31, 2020, through June 30, 2022, at the rate of 4.25%, (xii) after June 30, 2022, through December 31, 2022, at the rate of 4.27%, and (xiii) after December 31, 2022, through June 30, 2023, at the rate of 5.65%.

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 Tribunal with the required filing fee within 21 days from the date of entry of the final decision. 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. You are required to serve a copy of the motion 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. Responses to motions

for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.

A claim of appeal must be filed with the Michigan Court of Appeals 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." You are required to file a copy of the claim of appeal with filing fee with the Tribunal in order to certify the record on appeal. The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.

By 

Entered: May 3, 2023

PROOF OF SERVICE

I certify that a copy of the foregoing was sent on the entry date indicated above to the parties or their attorneys or authorized representatives, if any, utilizing either the mailing or email addresses on file, as provide by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk