



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

MVP GR Real Estate LLC
/Sportsplex MB LLC,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 20-003642

City of Kentwood,
Respondent.

Presiding Judge
Marcus L. Abood

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, MVP GR Real Estate LLC/Sportsplex MB LLC, appeals ad valorem property tax assessments levied by Respondent, City of Kentwood, against parcel numbers 41-18-01-351-004 and 41-18-01-351-005 for the 2020 and 2021 tax years. A hearing was held in this matter on February 13, 14, 15, 16, and 17, 2023. Laura M. Hallahan and Seth A. O'Loughlin, Attorneys, appeared on behalf of Petitioner. Christine E. Blum and Andrew J. Gordon, Attorneys, appeared on behalf of Respondent. Petitioner's witness was Gerald T. Heaton. Respondent's witness was Jumana Judeh.

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 are as follows:

Parcel Number: 41-18-01-351-004 (fitness center)

Year	TCV	SEV	TV
2020	\$5,600,000	\$2,800,000	\$2,800,000
2021	\$4,925,000	\$2,462,500	\$2,462,500

Parcel Number: 41-18-01-351-005 (office building)

Year	TCV	SEV	TV
2020	\$3,000,000	\$1,500,000	\$1,500,000
2021	\$2,900,000	\$1,450,000	\$1,450,000

PETITIONER'S CONTENTIONS

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

Parcel Number: 41-18-01-351-004 (fitness center)

Year	TCV	SEV	TV
2020	\$5,430,000	\$2,715,000	\$2,715,000
2021	\$4,755,000	\$2,377,500	\$2,377,500

Parcel Number: 41-18-01-351-005 (office building)

Year	TCV	SEV	TV
2020	\$3,000,000	\$1,500,000	\$1,500,000
2021	\$2,870,000	\$1,435,000	\$1,435,000

Petitioner asserts that the subject's separate improved parcels must be valued separately. The parcels could be sold separately and have two distinct highest and best uses.¹

Petitioner contends the Covid pandemic impacted the subject properties 2021 TCV. There was great uncertainty as of December 31, 2020, for investors, consumers, and property owners.²

Competition from low-cost, high-volume fitness centers (i.e., Planet Fitness) as well as in-home fitness equipment have impacted the subject's memberships.³ Further, public fitness facilities (i.e., YMCA) in the Grand Rapids market offer a variety of amenities similar to the subject.⁴

Petitioner's appraiser relied on International Health, Racquet & Sportsclub Association (IHRSA) and Industry Insights as a data source for his analysis.

Petitioner's appraiser considered all three approaches to value for the fitness center and the office building. The cost approach was not developed due to the age of the subject improvements and the difficulty in determining all forms of depreciation (physical, functional, and external). The sales comparison and income approaches to value were developed for each property.

For the fitness center, Petitioner developed the sales comparison approach by analyzing four comparable sales. The analysis included comparable sales adjustments to account for differences to the subject property. Overall, there is a lack of sales similar to the subject in this market. Nonetheless, Petitioner relied on this approach as

¹ Vol 1, 23.

² Vol 1, 32-33.

³ Vol 1, 24.

⁴ Vol 1, 164.

a test of reasonableness to the income approach. Likewise, Petitioner also developed four comparable sales for the analysis of the office building.

Petitioner's 2020 value indication from the sales comparison approach was \$5,830,000 for the fitness center. For the subsequent tax year, Petitioner's appraiser analyzed the subject's value loss due to the Covid pandemic for an estimate of \$675,000. This amount is deducted from the 2020 value to conclude to a value of \$5,155,000 for 2021.

In like fashion, Petitioner's developed a sales comparison approach for the subject office building at \$3,030,000. For the subsequent tax year, Petitioner's appraiser analyzed the value loss of \$130,000 due to the COVID pandemic. This amount was deducted from the 2020 value to conclude to a TCV of \$2,900,000 for 2021.

Petitioner developed an income approach to value the subject fitness center. Specifically, a direct capitalization methodology was applied to the subject. Petitioner's appraiser reasoned that the subject is an income producing property which would warrant an income analysis. Further, Petitioner's appraiser reviewed the subject's actual financial data from 2017 through 2019. Through the data source IHRSA, Petitioner was able to analyze revenue and expense information for health club operators and professionals from 2014 through 2018.

Petitioner analyzed the subject's membership dues and non-dues revenue to determine a market supported revenue. Petitioner contends that the subject's 2019 membership was 6,884 and dropped to 5,272 in 2020.⁵ This decrease is understated given the number of frozen (inactive) memberships. For fitness clubs over 60,000 square feet, the reasonable range is 4,500 to 12,000 members. The subject's membership numbers are within the stated range but below the median of 7,881.

Membership data was reviewed to derive an income rate for the subject property. Further, expense data was reviewed to derive relevant market expenses for the subject property. From a net operating income (NOI), Petitioner then derived a capitalization rate from relevant capitalization methodologies (band of investment, capitalization comparable sales, and survey rates). Petitioner's appraiser reasoned that the subject's reduced expenses (along with reduced revenues) does not overlook or lessen the overall fixed expenses inherent with the fitness facility. Moreover, the increased risk due to the uncertainty of the COVID pandemic would necessitate a higher capitalization rate in the income analysis.⁶ From the *going concern value*⁷ of \$6,200,000, the deduction of furniture, fixtures, and equipment (FF&E) was made to arrive at the 2020 TCV of \$5,430,000. The impact of the Covid pandemic resulted in a loss and a 2021 TCV of \$4,755,000 for the subject property.

⁵ Vol 1, 60-61.

⁶ Vol 1, 96-98.

⁷ Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 7th ed, 2022) p. 83.

Petitioner's appraiser performed a similar income analysis for the subject's office building by utilizing market rent. Through the various income components and methodologies, Petitioner concluded to a TCV of \$2,990,000 for 2020 and \$2,860,000 for 2021.

The subject property is competently managed; Petitioner has seven clubs in Michigan and three clubs in Florida.

Petitioner's appraiser contends that there is no relevance to his previous subject appraisal reports rendered for banking purposes. Those bank appraisal reports were performed under different assignment conditions, scopes of work, and property tax inclusion.⁸

PETITIONER'S ADMITTED EXHIBITS

- P-1: Petitioner's appraisal report (health club) prepared by G. Tobin Heaton.
- P-2: Petitioner's appraisal report (office building) prepared by G. Tobin Heaton.
- P-3: Aerial Photograph – Subject Property.
- P-6: Holland MVP Appraisal Report prepared by Jumana Judeh.
- P-7: Crahen MVP Appraisal Report prepared by Jumana Judeh.
- P-9: Marshall Valuation Service (MVS) Cost Page from Jumana Judeh Workfile.
- P-10: MVS Cost Page from Jumana Judeh Workfile.
- P-11: MVS Cost Page from Jumana Judeh Workfile.
- P-13: MVS Cost Page from Jumana Judeh Workfile.
- P-14: MVS Cost Page from Jumana Judeh Workfile.
- P-15: MVS Cost Page from Jumana Judeh Workfile.
- P-17: MVS Cost Page from Jumana Judeh Workfile.
- P-18: MVS Cost Page from Jumana Judeh Workfile.
- P-19: 880 East 16th St., Holland (Respondent's sale 1).

PETITIONER'S WITNESS

Petitioner's witness, G. Tobin Heaton, prepared an appraisal report for the subject property. He is primarily a commercial appraiser with 24 years of valuation experience and specializes in commercial properties. He is licensed in the state of Michigan as a Certified General Real Estate Appraiser. Based on his education and experience, the Tribunal accepted Mr. Heaton as an expert real estate appraiser.

RESPONDENT'S CONTENTIONS

The property's TCV, SEV and TV, as confirmed by the Board of Review (BOR), are as follows:

⁸ Vol 1, 150-151.

Parcel Number: 41-18-01-351-004 (fitness center)

Year	TCV	SEV	TV
2020	\$10,771,000	\$5,355,500	\$4,729,808
2021	\$10,061,400	\$5,030,700	\$4,796,025

Parcel Number: 41-18-01-351-005 (office building)

Year	TCV	SEV	TV
2020	\$4,151,000	\$2,075,500	\$1,860,064
2021	\$4,630,400	\$2,315,200	\$1,866,104

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

Parcel Number: 41-18-01-351-004 (fitness center)

Year	TCV	SEV	TV
2020	\$9,500,000	\$4,750,000	\$4,729,808
2021	\$9,500,000	\$4,750,000	\$4,750,000

Parcel Number: 41-18-01-351-005 (office building)

Year	TCV	SEV	TV
2020	\$3,730,000	\$1,865,000	\$1,860,064
2021	\$3,730,000	\$1,865,000	\$1,865,000

Respondent contends that the subject is unique and was originally built as a special use property.

Respondent's appraiser analyzed the subject neighborhood in relation to the four *lifecycles*.⁹ The Grand Rapids market was researched. Respondent contends there is no indication that there is any kind of negative impact in the market to the subject. Specifically, the COVID pandemic had little effect on the Grand Rapids market.¹⁰ Given the subject building's larger size, the property is an institutional grade in a national market.

Respondent's conclusion of highest and best use for the subject parcel 41-18-01-351-004 is as continued existing use as a full-service health and fitness club. Likewise, the highest and best use for the subject parcel 41-18-01-351-005 is as continued existing use as an office building.

Respondent's appraiser considered all three approaches to value for the subject's fitness center. However, the sales comparison approach was not developed because of the lack of comparable sales to the subject property. Moreover, the income approach was not developed because Respondent's appraiser, Ms. Judeh, only had limited financial information for the subject fitness building. An income approach on a going-concern value was not practical especially based on her peers. The cost approach was developed for the fitness club. Further, Respondent separately costed the fitness

⁹ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 15th ed, 2020), 140-141.

¹⁰ Vol 3, 451-452.

building, the tennis building, and the restroom/concessions building by utilizing the MVS. Within the cost analysis, Respondent believes Michigan is a moderate climate.¹¹

Respondent's appraiser contends that appraisers are judged heavily by their peers in valuation practice. Specifically, Respondent's appraiser believes that her peers have always taken the position that the cost approach is the best indicator of value when it comes to special use properties where there is a lack of data.¹²

Respondent considered all three approaches to value for the subject's office building. Respondent's appraiser developed an income and sales comparison approach for the office building property.

Regarding a comparative market analysis, Respondent utilized six sales to compare and contrast to the subject. Adjustments were applied to the sales which resulted in an adjusted sales price of \$3,661,000 for 2020 and 2021.

Respondent's income approach relied on four rental properties to derive a rental rate per square feet. With conventional income elements and analysis, Respondent's TCV conclusions for 2020 and 2021 were \$3,862,000.

The appraiser inspected the office building but did not get the impression that there were formal tenant spaces or that there were formal tenants in the building. It was only at the point of this hearing that Respondent's appraiser found out that the subject's office building had two tenants.¹³

Regarding Petitioner's evidence, Respondent argues that Petitioner's data source IHRSa includes nationwide data and not specifically for Michigan.

RESPONDENT'S ADMITTED EXHIBITS

- R-3: Macatawa Bank Appraisal Report (office building).
- R-4: Macatawa Bank Appraisal Report (fitness building).
- R-5: Respondent's Valuation Disclosure (pp. 1-150).
- R-14: Property Transfer Affidavit for 655 Kenmore Avenue SW.
- R-15: Warranty Deed for 655 Kenmore Avenue SW.
- R-16: Mortgage for 655 Kenmore Avenue SW.

RESPONDENT'S WITNESS

Petitioner's witness, Jumana Judeh, MAI, prepared an appraisal report for the subject property. She is primarily a commercial appraiser with 28 years of valuation experience, specializing in all types of commercial producing properties. She is

¹¹ Vol 4, 719.

¹² Vol 3, 466.

¹³ Vol 3, 506-507.

licensed in the state of Michigan and is designated through the Appraisal Institute. Based on her education and experience, the Tribunal accepted Ms. Judeh as an expert real estate appraiser.

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 properties are Parcel No. 41-18-01-351-004 located at 4035 Burton Street SE improved with a fitness center and Parcel No. 41-18-01-351-05 located at 4085 Burton Street SE, improved with an office building.
2. The subject properties are located in the City of Kentwood and within Kent County.
3. The fitness center property is comprised of 9.26 acres and is improved with a detached concessions/restroom/pool building, a 2-story clubhouse (with mezzanine, basketball courts, locker rooms, indoor pool) connecting to a 1-story building that has tennis courts. The main structure was constructed in 2004.
4. The subject fitness center was constructed as a special use property.
5. The subject office property is comprised of 1.36 acres and is improved with a gross building area of 33,284 square foot office building constructed in 2005.
6. The subject office property has a man-made pond.
7. The subject properties are zoned C-PUD, Commercial Planned Unit Development District.
8. Petitioner has seven MVP fitness clubs in Michigan and three fitness clubs in Florida.¹⁴
9. The parties have valued the subject properties as fee simple under the definition of *market value*¹⁵.
10. The highest and best use of the subject property fitness property is as a health club facility.
11. The highest and best of the subject office property is as a commercial office building.
12. Petitioner submitted valuation evidence in the form of an appraisal report which included the sales comparison and income approaches to value for the fitness center and the office building.
13. Petitioner's appraiser previously appraised the Crahen, Rockford, Metro Club, Jenison, and Holland MVP fitness clubs located in the greater Grand Rapids market area.¹⁶

¹⁴ Michigan locations include Rockford, Kentwood, and multiple Grand Rapids facilities.

¹⁵ Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 7th ed, 2022), p 118.

¹⁶ Vol 1, 167 and 169 and P-1, 8.

14. Respondent submitted valuation evidence in the form of an appraisal report which included a cost approach for the fitness center.¹⁷ Respondent developed a sales comparison and income approach for the office building property.
15. Respondent's appraiser has appraised five athletic clubs and reviewed twenty athletic clubs nationwide.¹⁸
16. Respondent's appraiser appraised the MVP Holland fitness club.¹⁹ Respondent's appraiser developed a limited income approach for that subject property.
17. Respondent's appraiser appraised the MVP Crahen fitness club.²⁰ Respondent's appraiser did not develop an income approach for that subject fitness property.
18. Respondent's appraiser's workfile included income and expense documents for the subject office building.²¹
19. Access to the subject office property is through the subject's adjoining fitness property. In other words, the office building property does not have a curb cut to Burton Street.²²
20. The subject's office building has limited parking and is a form of functional obsolescence.²³
21. Respondent's appraiser identified the subject fitness center as Class C good in her appraisal report. However, she costed the fitness center as Class C average from the Marshall Valuation Service (MVS).²⁴
22. Respondent's appraiser developed the cost approach to value by dividing the subject property into three distinct areas with different base costs.²⁵
23. Respondent's appraiser did not inspect the interior of the detached restroom/concessions building.²⁶
24. Respondent's appraiser applied the same total economic life, remaining economic life, effective age, and percentage of physical depreciation to the nine different site improvements.²⁷
25. Respondent's appraiser analyzed vacant land sales as part of her cost approach for the fitness center.
26. Respondent's appraiser applied an economic characteristic (a.k.a., location) adjustment to her comparable land sales.²⁸
27. Respondent's appraiser admitted that she was only made aware that there were two tenant leases for the subject's office building after the completion of her appraisal report.²⁹

¹⁷ Respondent's appraiser did not develop separate cost analysis for each year under appeal.

¹⁸ Vol 3, 504.

¹⁹ Vol 3, 559-560.

²⁰ Vol 4, 626.

²¹ Vol 4, 780.

²² Vol 4, 785.

²³ Vol 4, 783.

²⁴ Vol 4, 647-648.

²⁵ Vol 3, 469.

²⁶ Vol 4, 676.

²⁷ R-5, 75.

²⁸ Vol 3, 523.

²⁹ Vol 4, 774-775 and R-5, 23.

28. In testimony, Respondent's appraiser admitted that her workfile contained 2019 and 2020 financial information for the subject fitness center.³⁰
29. Each party's appraiser cited to IHRSA information, survey, and data etc. as a credible source.³¹
30. For the years under appeal, the subject properties were competently managed.³²
31. Each party's appraiser analyzed the impact of Covid-19 on the subject's market value as of December 31, 2020.
32. For the years under appeal, the subject fitness center suffered revenue losses due to memberships.³³
33. Respondent's appraiser agreed that the subject fitness club generates revenue from memberships.³⁴
34. From the parties' respective comparative sales analysis for the office building, the parties have utilized two common comparable sales located at 4079 Park East Court SE (Kentwood) and 655 Kenmoor Avenue SE (Grand Rapids Township).

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.³⁵

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.³⁶

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.³⁷

³⁰ Vol 4, 614, 617-619 and R-5.

³¹ Vol 1, 58-59 and Vol 5, 882.

³² Vol 1, 68-69.

³³ Vol 1, 33.

³⁴ Vol 4, 612-613.

³⁵ See MCL 211.27a.

³⁶ Const 1963, art 9, sec 3.

³⁷ MCL 211.27(1).

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”³⁸

“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.”³⁹ The Tribunal is not bound to accept either of the parties’ theories of valuation.⁴⁰ “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.”⁴¹ 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.”⁴²

A proceeding before the Tax Tribunal is original, independent, and de novo.⁴³ The Tribunal’s factual findings must be supported “by competent, material, and substantial evidence.”⁴⁴ “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”⁴⁵

“The petitioner has the burden of proof in establishing the true cash value of the property.”⁴⁶ “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.”⁴⁷ 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.”⁴⁸

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.⁴⁹ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”⁵⁰ 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

³⁸ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

³⁹ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

⁴⁰ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

⁴¹ *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

⁴² *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

⁴³ MCL 205.735a(2).

⁴⁴ *Dow Chemical Co v Dep’t of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

⁴⁵ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

⁴⁶ MCL 205.737(3).

⁴⁷ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

⁴⁸ MCL 205.737(3).

⁴⁹ *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).

⁵⁰ *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

provides the most accurate valuation under the circumstances.⁵¹ Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.⁵²

MARKET ANALYSIS AND DESCRIPTION

Each party's appraiser developed a market description and analysis for the subject property. On the one hand, Petitioner's appraiser used a radius circle for a demographic analysis including population, household income, and unemployment statistics. More specifically, this analysis included Kent County showing greater population and household income than the City of Kentwood. Heaton utilized sources including Easy Analytic Software, Inc. (EASI) Demographics, Kent County, and IHRSA. Similarly, Respondent's appraiser gave focus to the City of Kent as well as Kent County for her demographic analysis. Judeh relied on sources including *Site to do Business*, the U.S. Census Bureau and Allegan County.

Both appraisers' market analysis and descriptions are consistent. Given the multiple MVP fitness clubs in West Michigan, the market appears to encompass Allegan, Ottawa and Kent counties. In general, a market description and analysis must include meaningful explanation to lead intended users through an appraisal report.

The parties' appraisal reports touched on Metropolitan Statistical Areas (MSA) for the Wyoming and Grand Rapids areas. Again, equally telling is the acknowledgment of Petitioner's multiple full-service fitness clubs in West Michigan. The fact that Petitioner has multiple facilities is an indication that such fitness clubs are not a rarity in West Michigan. While the city of Kentwood has noteworthy demographics, the subject market area transcends this municipality. Said differently, Petitioner's various fitness club locations focus on a large portion of West Michigan. Moreover, the inference that club membership would offer access to all the MVP fitness clubs is reasonably assumed. It is undisputed that a variety of fitness clubs and gyms exist in West Michigan. Therefore, the subject's market is West Michigan.

FITNESS BUILDING

SALES COMPARISON APPROACH

As noted, Respondent's appraiser elected not to develop a sales comparison approach for the subject fitness building due to the lack of sales data at the local, state, and national levels. The Tribunal does not accept this premise given the number of full-service fitness clubs owned by Petitioner as well as the acknowledged existence of limited-service fitness clubs and gyms in the State of Michigan. A comparative analysis is not necessarily and automatically discarded due to a lack of current sales. Said differently, the presence of fitness gyms and clubs carries a common denominator with

⁵¹ *Antisdale, supra* at 277.

⁵² See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

the subject property; such properties are utilized for physical and social interaction. Respondent's appraiser further testified that undertaking a comparative analysis for the subject would be unbeneficial as sale transactions of fitness centers are based on going-concern values. As emphasized, valuation tax appeal matters only involve the value of the real estate.

Petitioner's comparable sales were built and designed as health clubs. A property's previous fitness use is a reasonable element of an arm's length transaction that turns a sale into a viable comparable sale for analysis in valuation practice and theory. However, Petitioner's comparable sales are predicated on *value-in-exchange*⁵³ and not on *use value*⁵⁴ (a.k.a., value-in-use). The comparables' previous uses is not the point but rather that they were built as health clubs. This is market evidence of buildings similar to the subject. Simply, market data does exist for a comparative analysis to the subject. Therefore, the Tribunal does not accept Respondent's reasons for omitting a sales comparison approach in this tax appeal matter.

In valuation theory, the comparables' highest and best uses are expected to mirror a subject property. However, in valuation practice, the subject and comparable sales may have different uses. Realistically, the use of a comparable may change subsequent to the sale of that property. A comparative analysis looks at the use of each comparable sale in line-item fashion (i.e., zoning) which allows for various acceptable uses. The purpose of a comparative analysis is to thresh out the sale property as a comparable sale. For example, a comparable sale may have a different use but have the same zoning as the subject property. Consequently, the highest and best use for a subject property may be different than the "use" for a comparable property at the time of sale.

Comparing and contrasting comparable sales to the subject property is the expectation in a comparative analysis. Again, a benchmark for a variety of legally permissible, physically possible, and financially feasible uses may be achieved within certain zoning ordinances. Said differently, an appraiser's due diligence research in the "normal course of business" may not necessarily encompass a separate highest and best use analysis for each comparable sale. The rigid perception that the subject and comparable sales must have the same highest and best use is not practical or reasonable. The Tribunal does not accept the premise that sales only become comparable sales when they have the same exact use as the subject property.

Respondent's concerns over "vacant and available" commercial properties relative to an income analysis is misplaced. As noted, Respondent's appraiser also appraised the Holland MVP fitness club. Testimony and recall between the two properties and the appraiser's position on "vacant and available" was not consistent or clear.⁵⁵ Again, as of the relevant tax days, the subject was neither vacant nor dark but rather was occupied and lit. Respondent's concerns over "dark" comparable sales are misplaced

⁵³ Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 7th ed, 2022), p 200.

⁵⁴ *Id.*, pp 199 and 201.

⁵⁵ Vol 4, 587-590, 600, and 606.

in this tax appeal matter. Specifically, the search for relevant comparable sales is based on arm's length sales under the definition of market value. The connotation that "vacant and available" for a sale or lease as a detriment is equally misplaced. For a property to have a successful sales transaction, the property must be vacant and available for the purchaser to possess the property. Judeh's testimony in this regard is confusing. A commercial property owner does not necessarily continue occupancy while waiting for the property to sell. Rather, the retailer moves on to a bigger and better store, a better location, or ceases operations in a given market area.

Petitioner's appraiser's sales comparison approach is a conventional framework for a comparative analysis to derive an indication of value for the subject fitness center.⁵⁶ However, this comparative analysis has limitations. First, the abbreviated list of line-item entries is insufficient to illustrate characteristics and amenities for the subject. An adjustment grid should help a reader understand what the line-item is relative to the adjustment. In other words, line-item entries and corresponding adjustments should be side-by-side in a comparative grid analysis. Explanatory narration set off in other parts of the appraisal report do not readily give meaning to Petitioner's adjustment grid. Second, combined age and condition adjustments in the adjustment grid are not consistent with the appraiser's separate entries for these items in the comparable sale write-ups. The subject's chronological age (YB: 2004) relative to sale 1 (YB: 2002) and sale 2 (YB: 2005) does not appear to warrant an age adjustment. As the appraiser did not view the interior of the comparable sales, a condition adjustment appears equally unwarranted without additional narration from the appraiser. Likewise, sale 4 (YB: 1971) with remodeling in 1997 would compel separate grid entries for age and condition. Third, the lack of additional line-items is not persuasive to the overall analysis. For example, the grid omitted an entry for zoning. Given the building sizes and varied amenities, greater details and line-items for analysis would be reasonably expected. For these reasons, the adjustments, the adjusted prices per square feet, and the indication of market value are given no weight or credibility in the independent determination of market value for the subject property.

Nonetheless, Petitioner's unadjusted comparable sales were considered because the sales data is market evidence of fitness clubs relevant for analysis. While the quantitative adjustments are omitted, they illustrate differences between the comparable sales and the subject property which can be analyzed qualitatively. All four sales are fitness facilities having a common element of comparison to the subject property. All four sales have smaller gross building areas which are superior to the subject. On the other hand, all four sales are inferior to the subject in fitness amenities. Sales 1 and 4 are superior to the subject in land to building ratios. Sales 1 and 4 are relatively similar to the subject in location though. Sale 2 is located in another state. Sale 4 is similar to

⁵⁶ However, Heaton's sales and rental comparison adjustment grids are deficient in format disallowing a reader to follow line-item entries, descriptive items, and corresponding adjustments. Moreover, the adjustment grid included the comparable sales but excludes a descriptive column for the subject property. A reader and intended user of this appraisal report would reasonably expect to see side-by-side columns for the subject and comparable sales with descriptive line-item entries. Consistent formatting allows for a meaningful analysis on the part of an appraiser.

the subject in acreage. Sales 1 and 2 occurred relatively close to the December 31, 2019 tax day. Therefore, a reasoned and reconciled determination gives consideration to all four unadjusted sales. However, all four sales are inferior to the subject in amenities, quality/appeal, and age/condition placing the \$/SF at the upper range of the unadjusted sale prices (\$65/SF x 91,117 square feet = \$5,922,605, rounded to \$5,922,600). With a rational and cogent analysis, the sales comparison approach is a legitimate check of reasonableness to other approaches to value for the subject fitness building.

COST APPROACH

Generally, a cost approach is most applicable to new or newer properties. As reasoned, a newly constructed property would have minimal depreciation. On the other hand, a cost analysis is more problematic for older properties in quantifying all forms of depreciation. The elements for a cost analysis include the determination of land value, the replacement cost new (RCN) for building improvements, a calculation of depreciation (physical, functional, and external), and site improvements. Petitioner's appraiser did not develop a cost analysis for the subject's fitness building. Conversely, Respondent developed a cost approach which is a conventional framework for the cost analysis of the subject property. However, Respondent's application and reasoning for a cost approach is contradictory and unpersuasive.

Land Sales

Respondent's write-ups for the land sale comparables are deficient. First, the broad label of "commercial" was ascribed to the zoning for each land sale. The lack of discerning zoning classifications between different municipalities does not bolster Respondent's land comparative analysis. The land write-up remarks describe various proposed development including office, retail, medical and senior care facilities. Such broad "commercial" zoning indicates permissible uses including special use properties. Likewise, the broad label "commercial" is not meaningful given the vast and varied types of commercial properties. Second, the appraiser denoted a specific line-item entry for "highest and best use" and that the subject and comparable land sales are all "commercial." The appraiser's limited narrative for the "highest and best" adjustment was merely an acknowledgement to the four tests of analysis. Said differently, the presumption of acceptable commercial use was not supported by any analysis. Third, the write-ups included a "verification" of sources for each land sale. The appraiser is remiss in not distinguishing between a primary source and a verification source. Fundamentally, the two types of sources are not synonymous and should not be treated as such. To do so is not meaningful in demonstrating due diligence, reliability, and credibility in an appraiser's search efforts. Fourth, Respondent's lack of support for the location adjustments was pointed out by Petitioner.⁵⁷ Location adjustments based solely on knowledge and experience does not square with valuation analysis. Fifth, Respondent's appraiser just analyzed the subject's road frontage on Burton Street (435 feet) without any additional analysis for the frontage on Paris Street. The analysis of a

⁵⁷ Vol 4, 748-749.

total site including all characteristics is crucial in valuation practice. Appraisers interpret data, they do not determine the data. Market participants and market activity determine the benefit and validity of additional road frontage. Sixth, Respondent's reconciliation of the adjusted vacant sales is not meaningful. Respondent's appraiser devised an average from the adjusted prices per square feet to arrive at an indication of value. Reconciliation of data is more than a 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."⁵⁸ Logic and reasoning helps to compare and contrast sales to the subject property. Lastly, the Tribunal is not persuaded that market participants prefer the identification of a parcel of land on price per square feet basis when commercial properties are typically listed, exposed, and marketed as acreage for sale. For these reasons, Respondent's land sales comparative analysis is given no weight or credibility in the independent determination of market value for the subject property.

Chronological/Effective Ages

Respondent's claim that the effective age determinations included design/functional utility was baffling. Petitioner questioned Respondent's effective age for the fitness building given the subject did not have any building permits subsequent to the 2004 construction date. Respondent's appraiser testified to an effective age with the assumption that renovations must have occurred to the property.⁵⁹ A conclusory assumption without evidence or analysis is not meaningful to Respondent's income approach.

Base MVS Costs

As challenged by Petitioner's counsel, Judeh utilized the same base cost for the Holland and Kentwood fitness buildings at \$106/SF. Further, the same height multiplier, same mezzanine cost of \$37.75/SF, same suppression base cost, same elevator base cost, same total economic life, same tennis base cost of \$60/SF, and same base cost of restroom/concessions building at \$168/SF.⁶⁰ As an example, confusion over base costs (i.e., swimming pools) between the Holland MVP and the subject were not meaningful relative to the concept of "*economies of scale*"⁶¹.⁶² The appearance and pattern of cut/paste for a cost analysis between the Holland MVP (YB: 1976) with 121,090 square feet versus the subject fitness building (YB: 2004) with 91,117 square feet is striking. These concerns were extended with confusion over the base costs for the tennis area and the total fitness building area. Likewise, there was a lack of clarity for C and S Class construction, interior/exterior walls, tennis barns/clubs, and overlapping walls as noted indicators by Respondent's appraiser.⁶³ While alleged to be mere coincidence, the same base cost of \$3.41 was applied to sprinklers for the restroom/concessions

⁵⁸ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 15th ed, 2020), p 368.

⁵⁹ Vol 4, 708-711.

⁶⁰ Vol 4, 593-596.

⁶¹ Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 7th ed, 2022), p 60.

⁶² Vol 4, 725-727.

⁶³ Vol 4, 659-664.

building and the fitness building construction.⁶⁴ Yet further, Respondent's appraiser admitted that her various denoted cost multipliers were slightly off from the MVS multipliers.⁶⁵ In this regard, Respondent's appraiser's understanding of MVS multiplier updates was not convincing.⁶⁶ These inconsistencies were coupled with the fact that Respondent's appraiser did not inspect the interior of the detached concessions/restrooms building.

Depreciation

Respondent's appraiser utilized an *age/life method*⁶⁷ for depreciation on a straight-line basis which was claimed to only account for physical depreciation. In fact, this method accounts for a lump sum depreciation. In other words, this method does not single out or isolate just physical depreciation from functional and external obsolescence. Respondent's appraiser testified that the other forms of depreciation do not exist at the subject property. However, Judeh admitted that there are other fitness facilities in the subject's market area similar to the subject. The acknowledgement that there are other fitness properties inferior to the subject in size and amenities (as an over-improvement or super-adequacy) infers that the subject may suffer from functional obsolescence at least on a qualitative basis. While the subject size and amenities (in aggregate) may be superior to smaller fitness clubs, the fact remains that smaller fitness gyms nonetheless compete with the subject's fitness amenities. Smaller fitness clubs (having fewer amenities) appear to compete with the subject for memberships. As previously noted, the existence of competing fitness clubs in West Michigan proves a common denominator for analysis.

Respondent's assertion for no obsolescence was not supported by any market standards research. In other words, Judeh did not research the market for fitness club amenities to prove the subject's functional obsolescence. Again, conclusory statements contending that the subject does not suffer from any functional obsolescence is not meaningful to Respondent's cost analysis. Respondent appraiser's admission that the subject fitness center is larger than typical in the marketplace does not square with the thought of no functional obsolescence because the subject offers a wide range of amenities.

Site Improvements

Respondent's appraiser's testimony regarding site improvements and their respective effective ages was confusing. Similar to the effective ages for the subject buildings, Respondent's site improvements analysis and determinations are not cogent. The actual age and effective age of each site improvement was challenged by Petitioner's counsel. Installation dates for each site improvement was questioned. Further, the application of MVS base costs assigned by Respondent's appraiser was questioned as well. Overall, the testimony was not meaningful to the overall cost analysis.⁶⁸ Other

⁶⁴ Vol 4, 716.

⁶⁵ Vol 4, 687-688.

⁶⁶ Vol 4, 690-691.

⁶⁷ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 15th ed, 2020), 572.

⁶⁸ Vol 4, 735-736.

than decades of experience with construction costs, Respondent's appraiser had no support for her site improvements costs.⁶⁹

Petitioner questioned Respondent's appraiser regarding the development of the cost approach for the fitness building but not for the office building. Both buildings were constructed relatively at the same time. Specifically, issues of depreciation and land sales data were discussed for the fitness building and the office building.⁷⁰ The Tribunal is not convinced that the cost development for an elaborate special use fitness center is easier than the cost approach for a 2-story office building.

Petitioner questioned Respondent's cost approach indication of value for the fitness building. Respondent's conclusion of value at \$9,500,000 with a loaded capitalization rate of 10.87 implied an NOI of \$760,000. Yet, to Respondent's appraiser's knowledge, she was not aware that the subject had produced that level of NOI. Petitioner agreed that if the subject produced an NOI of \$445,745 as of December 31, 2019, the resulting value would be \$4,100,000. Respondent's appraiser admitted that she did not perform a check of reasonableness from either the sales or income approaches for her cost approach value of the subject fitness center.⁷¹

In summary, Respondent's cost elements including land valuation, effective/actual ages, building/site costs, all forms of depreciation, cost calculations, and multiplier costs are not meaningful and are misleading. As a noted fact, the subject was constructed in 2004. The application of a cost approach for an older building with altered and misapplied base costs and multipliers is unpersuasive. For these reasons, Respondent's cost approach is given no weight or credibility in the independent determination of market value for the subject fitness building.

INCOME APPROACH

An income approach was considered by each party for the subject's fitness building. Respondent agrees that a general income analysis is based on revenue, expenses, cap rates, and value. However, Respondent's appraiser made a conscious decision to not develop an income approach for the fitness building due to the lack of subject financial information as well as the nature of a going-concern value. The Tribunal does not accept this premise given the circumstances surrounding the subject's financial information.

First, Respondent contended that the subject's membership income would result in a going-concern value. The value of the subject building and improvements has no relationship to the memberships. To the contrary, the point of having a subject's financial information means an appraiser is going to perform due diligence in carrying out the research and analysis. Applying the subject's income data in commensurate

⁶⁹ Vol 4, 721-722.

⁷⁰ Vol 4, 767-768.

⁷¹ Vol 4, 762-764.

fashion to the market is commonplace in valuation practice. The Tribunal is not persuaded that Respondent's appraiser genuinely attempted to follow through with the subject's financial (membership) information to the market. The Tribunal fails to see what prevented Respondent from reviewing full-service fitness clubs in West Michigan to derive general revenue for membership dues (as posted on public websites). Respondent's reliance on "peers" actions overlooks what Petitioner's appraiser did with the subject's financial information. Arriving at stated conclusions was quite telling as Respondent's workfile included the financial statements for an income analysis. However, Respondent's appraiser claimed that market income data was difficult to obtain as fitness club owners (and most commercial property owners) are reluctant to share such information. Yet, Petitioner's many MVP fitness clubs in Michigan would appear to be a starting point for market information. Respondent's appraiser admitted to having appraised many fitness clubs over her extensive valuation career. Extolling an appraiser's experience and knowledge does not give credence to the indication of value when the report does not display any support other than the appraiser's knowledge, judgment, and experience. A report must carry support and persuasion beyond conclusory statements. An expert's testimony and documentary evidence must be weighed to determine credibility and reliability.

Second, Judeh's testimony regarding the relevance of an income approach for any income producing property was confusing and not credible. Practically speaking, there is a value from potential gross income attributable to the real estate. In other words, a real estate value is reasonably attainable by discounting the intangibles (i.e., FF&E, goodwill, name brand etc.) from the going-concern value. As noted, examples of going concern commercial properties include golf courses and hotels to derive a value for the real property.

Repeatedly, an appraisal report is based on the opinions, analyses, and conclusions of the appraiser. In this instance, the Tribunal cannot place reliance on conclusory statements based on an appraiser's testified "experience and expertise" which nebulously refers to data not included in an appraisal report or workfile. "Perfection is impossible to attain, and competence does not require perfection. However, an appraiser must not render appraisal services in a careless or negligent manner. This Standards Rule requires an appraiser to use due diligence and due care."⁷² Petitioner's actions belie the importance of rendering a meaningful appraisal report.⁷³ An appraiser's opinions, analysis and conclusions do not come before the market data is developed.

⁷² The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice* (Washington DC: 2020-2021 Edition), p 11.

⁷³ Respondent's appraiser's admitted typos, uncertainties, assistant's mistakes/errors/inputs, and rounding inputs resulted in a cumulative credibility issue. (Vol 3, 442, 469, 474, 550, 552, 556, 558, 621, 647-648, 688, 694, 700-701, 705, 721, 723, 731-733; Vol 5, 827-830, 854-855, 862, 864, and 874). "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.

Third, Respondent's appraiser's reliance and reference to "her peers" and what they are doing is not meaningful.⁷⁴ Continuous references to "peers" took focus away from the reliance and understanding of a "scope of work." The Tribunal is unable to assume that Respondent has an understanding of the "scope of work acceptability" element.⁷⁵ Each valuation assignment is predicated and driven by a scope of work. What each "peer" decides to undertake in each valuation assignment is based on the specific "scope of work." As each appraisal assignment (and assignment conditions⁷⁶) are different, so will an appraiser's scope of work. An appraiser does not exclusively fall back on the actions of his/her peers.

The independent determination of market value for the subject property is as an owner-occupied commercial property with fee simple property rights. The subject fitness building is not encumbered by a lease. As of December 31, 2019, and December 31, 2020, the subject property was not available for lease; the subject property was owner-occupied.⁷⁷ The parties' valuation disclosures acknowledge the subject in terms of fee simple property rights. A fee simple estate 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."⁷⁸ The full bundle of rights (in fee simple) for the subject as an economic unit is done so without encumbrances. Nonetheless, Respondent believes that a real property value cannot be determined from the going-concern value of the subject property. Again, the rationale for Respondent's position is not persuasive. Leased fee interest is defined as "[t]he ownership interest held by the lessor, which includes the right to receive the contract rent specified in the lease plus the reversionary right when the lease expires."⁷⁹ Therefore, the Tribunal does not accept Respondent's omission of the income approach for the subject's fitness center.

Petitioner developed the direct capitalization income approach for the subject property. As the subject property is a special use property (as acknowledged by both parties), Petitioner's appraiser developed potential gross income (PGI) on the basis of membership revenue. The subject property's income was not based on market rents. Petitioner's method to devise PGI is akin to an income analysis for a bowling center, golf course or gas station.⁸⁰ As an example, rounds of golf are calculated to determine a market supported revenue. Here, Petitioner applied the subject's membership dues as income to market membership data through IHRSA. As noted, both parties' appraisers acknowledged IHRSA as a source of data and information. The subject's membership rate of \$95/month is within the market range. Therefore, Petitioner's application of IHRSA as a market data source is credible.

⁷⁴ Vol 3, 458-459, 466-467, 500, 505; Vol 4, 747, 807, 890.

⁷⁵ The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice* (Washington D.C., 2020-2021 ed), 13-14

⁷⁶ *Id.*, p 3.

⁷⁷ The analysis of subject as leased at market rents is in the context of an income analysis.

⁷⁸ Appraisal Institute, *The Appraisal of Real Estate* (Chicago, 15th ed, 2020), p 60-61.

⁷⁹ *Id.*, 61-63.

⁸⁰ Vol 1, 55.

Petitioner reviewed and analyzed the subject's membership dues and non-dues for an overall revenue. Petitioner's ability to apply the subject's 2017-2019 financial information is meaningful and persuasive. Petitioner applied the subject's financial information to the IHRSA market data. More specifically, the IHRSA data source focused on health and fitness club memberships. In essence, Petitioner was able to develop an income analysis without hesitation.⁸¹ Petitioner's analysis of the subject's revenues was supported by credible market evidence.

Next, Petitioner's analysis and presentation of operating expenses for the subject property from IHRSA is equally compelling. Again, the historical analysis from 2017-2019 was proximate to the subject's first year under appeal which was before the noted pandemic. Expenses were explained and supported resulting in an effective gross income (EGI) and expenses for the subject. The capitalization rate analysis included the band of investment, an investment survey and capitalization comparable sales' methodologies to arrive at a concluded overall capitalization rate. Petitioner cannot be faulted for considering and applying three methods for a capitalization rate analysis. Respondent's arguments are not convincing in this regard. Petitioner's appraiser customarily developed a capitalization rate from a Realtyrates survey, a comparative analysis from capitalization rate sales and a band of investment. On the other hand, Respondent's reluctance to develop the income approach due to going-concern issues is again nonsensical. In the absence of local income data, Petitioner utilized IHRSA data. Respondent's general refutation does not discredit Petitioner's analysis. Acknowledging IHRSA data while omitting an income approach does not bolster Respondent's analysis or conclusion of value.

The extent and level of Petitioner's income approach is logical and reasonable and is given weight and consideration in the independent determination of market value for the subject property. Petitioner's determination of a going-concern value of \$6,200,000 was taken a step further. Petitioner properly identified the value of furniture, fixtures, and equipment (FF&E) which was not disputed by Respondent. The FF&E deduction of \$770,000 resulted in an indication of 2020 TCV from the income approach at \$5,430,000.

OFFICE BUILDING

SALES COMPARISON APPROACH

As noted, each party developed a sales comparison approach for the subject office building. Petitioner analyzed six comparable sales; Respondent analyzed four comparable sales.

⁸¹ The parties acknowledged the difficulties in obtaining financial information from competing fitness clubs and gyms. This did not prevent Petitioner from securing reputable information from the data source IHRSA. Moreover, Respondent did not refute this data source for fitness clubs.

The Tribunal considered the parties' comparable sales. Within the combined dataset, the parties have utilized two common comparable sales located at 655 Kenmoor Avenue SE, in Grand Rapids Township and 4079 Park East SE, in Kentwood.

The common comparable sale located at Kenmoor Avenue is medical offices. The expense and maintenance of medical offices appears to be more extensive than general office spaces. As challenged by Respondent's counsel, there is alleged discrepancies in the Kenmoor property's sale price between Petitioner's data source and the property transfer affidavit (PTA). Petitioner analyzed this sale based on a sale price of \$4,347,000 and Respondent analyzed this sale based on the sale price of \$6,160,000. Likewise, Petitioner's appraiser denoted 40,357 square feet for this building and Respondent denoted 41,778 square feet. Given the varied analysis between the parties, no weight or credibility is given to this common comparable sale.

The second common comparable sale located at Park East SE in Kentwood is a general office building constructed in 2000. This office building is a reasonable comparison to the subject office building. The property sold in September 2019 for \$1,800,000. Both appraisers adjusted this sale downward for a superior land to building ratio compared to the subject. On the other hand, the appraisers have analyzed different gross building area for this common sale. Petitioner utilized 16,582 square feet which excluded 2,240 square feet of unfinished mechanical/storage space on the lower level. Respondent denoted 18,952 square feet for the building without any narrative or descriptive information regarding surplus utility space. The Tribunal places greater reliability and credibility on Petitioner's analysis in this regard. While there are differences in adjustments, each appraiser has adjusted the Park East property downward. Petitioner's adjusted \$/SF is \$91.18/SF, and Respondent's adjusted \$/SF is \$94.05/SF for this common comparable sale located at Park East SE. Respondent's appraiser admitted that there was no support for her quantitative building size or land size adjustments in her appraisal report or workfile.⁸² Therefore, Petitioner's write-up and overall analysis is given greater weight and credibility for the independent sales comparison indication of market value for the subject property at \$92/SF (33,284 SF x \$91 = \$3,028,844, rounded to \$3,029,000).

INCOME APPROACH

Respectively, each party considered the subject office building as a viable income producing property. Nonetheless, a property that is owner-occupied would not necessarily or automatically be precluded from an income analysis in valuation practice and theory. As a noted finding of fact, the subject building does have tenants. However, each appraiser developed a different rental analysis for the subject.

⁸² Vol 4, 808. Respondent's appraiser valued the subject properties separately but considered that the contiguous properties operate as one. The office building leans on the fitness building property for parking. Further, Respondent contends that the man-made pond at the office building has contributory value even if the pond changes the land-to-building ratio. (Vol 4, 814-815).

Within the appraisers' income analyses, each element was compared and contrasted. First, each appraiser applied a different subject building size. Petitioner utilized the subject's net rentable area of 28,313 square feet (excluding common areas and unfinished basement). Respondent utilized the subject's gross building area of 33,284 square feet. This divergence is due to the fact that Petitioner has analyzed the subject building based on tenants and tenant suites. Respondent assumed no tenants or tenant suites.

Second, Respondent's rental comparable properties included medical offices (rentals 1 and 2). Further, rental 4 is a mixed-use building including apartments and offices. However, Respondent's appraiser was uncertain about the office spaces in this building. Equally problematic, rental 4 did not have any on-site parking and Respondent's appraiser admitted that she would have revised her adjustment for this fact within the rental comparison adjustment grid.⁸³

Third, the appraisers' PGI, vacancy/credit loss, and EGI are relatively similar. On the other hand, the parties' operating expenses are vastly different. Petitioner's expenses are \$154,660 which account for tenancy. Respondent's expenses are \$33,299 and again, are based on no tenants or suites. Respondent's appraiser's impression that the subject office building was completely owner occupied does not square with the signage on the building.⁸⁴ Her assumptions and actions belie the responsibility and due diligence to research the characteristics, attributes, and occupancy of an office building such as the subject.

Fourth, Petitioner questioned Respondent's appraiser regarding the analysis of expenses to an income property where there is less than 100% occupancy. In other words, in a triple net (NNN) analysis, a landlord would still be shouldered with ongoing expenses to a property.⁸⁵ Petitioner contends Respondent has failed to properly account for expenses, lease commissions, and tenant improvements within the income pro forma analysis.

Fifth, the parties' resulting NOIs are also different. Petitioner's NOI is \$325,101 and Respondent's NOI is \$419,655. As reasoned, the parties' expenses and NOIs vary as a result of tenancy and suites.

Sixth, the parties' concluded capitalization rates are astoundingly the same at 10.87%. Overall, Petitioner's detail, descriptions and analysis for the income elements is meaningful and persuasive. Moreover, the analysis is based on the subject as a multi-tenant office building and not as a single-tenant space.

Respondent's lack of due diligence and disregard for the subject's tenancy resulted in a misleading income analysis. For these reasons, Respondent's income approach is given no weight or credibility in the independent determination of market value for the

⁸³ Vol 5, 860.

⁸⁴ Vol 5, 845-846.

⁸⁵ Vol 5, 876.

subject property. Petitioner's income approach is given weight and credibility for the 2020 tax year in the independent determination of market value for the subject office building. In totality, Petitioner has met its burden in this tax appeal matter.

2020 and 2021 TRUE CASH VALUES

Fitness Building

As previously discussed, Respondent's cost analysis is given no weight and credibility for the subject's fitness building for the 2020 TCV. Correspondingly, Respondent's fallback analysis for a 2021 TCV must also fail. First, Respondent's identical value conclusions for 2020 and 2021 at \$9,500,000 contradict Respondent's acknowledgment of the effect of the pandemic. Respondent's appraiser contends that the COVID-19 pandemic has certainly had an impact on the subject property for the second valuation year. On the other hand, Respondent's appraisal report stated that there is no definitive market evidence of the effects of the Covid-19 virus on the subject property and market area. Judeh asserts that the revenue loss from the subject's going concern had nothing to do with the real estate. Yet, Respondent had the subject's 2019 and 2020 financial data indicating revenue losses. Again, Respondent's appraiser admitted that the subject's revenue loss was attributable to the pandemic. To the contrary of Respondent's contentions, the real estate encompasses all of those improvements and fixture amenities that would attract and satisfy memberships and guests. The Tribunal is not persuaded by Respondent's illogical beliefs and evasions. Surely, a commercial going concern and revenue is not strictly based on the intangibles (i.e., name brand, etc.). Therefore, Respondent's 2021 contention of TCV for the subject fitness building is not given any weight or consideration in the independent determination of market value for the subject fitness building.

As independently determined from Petitioner's comparative analysis for the fitness building, the indication of value for 2020 is \$5,922,600. The independent determination from Petitioner's income analysis is \$5,430,000 for 2020. A reasoned and reconciled overall conclusion of value for 2020 is attainable from these indications. To recap, the sales comparison approach included sales of fitness properties which were analyzed on the sales prices of the real estate. The income approach included the subject's financial information which was then applied to IHRSA market data. Therefore, weight and credibility are placed on both indications of value which bracket the independent determination of market value for the subject property as of December 31, 2019, at \$5,600,000.

Once again, Petitioner relied on IHRSA data showing market changes in memberships as of December 31, 2020. The analysis of membership losses was straightforward and persuasive. Absent local data from either party's appraiser, IHRSA data is the most reliable and credible valuation evidence for the impact of COVID. Therefore, Petitioner's concluded net revenue loss of \$675,000 is deducted from the 2020 TCV of \$5,600,000 resulting in an indication of \$4,925,000 for December 31, 2020.

Office Building

As previously discussed, Respondent's income analysis is given no weight and credibility for the subject's office building for the 2020 TCV. Correspondingly, Respondent's fallback analysis for a 2021 TCV must also fail. First, Respondent's identical value conclusions for 2020 and 2021 at \$3,862,000 contradict Respondent's acknowledgment of the effect of the pandemic. Respondent's appraiser contends that the COVID-19 pandemic has certainly had an impact on the subject property for the second valuation year. On the other hand, Respondent's appraisal report stated that there is no definitive market evidence of the effects of the Covid-19 virus on the subject property and market area. As previously discussed, Petitioner analyzed the subject office building with acknowledged tenants in place. Respondent simply analyzed the subject office building as one continuous space without regards to factual tenants. The Tribunal is not persuaded by Respondent's illogical beliefs and evasions. Respondent's 2021 TCV contention is given no weight or credibility in the independent determination of market value for the subject office building.

Regarding the 2021 TCV for the subject's office building, Petitioner's IHRSA market data and capitalization analysis (for a reasoned market risk increase due to COVID) are the most reliable and credible evidence. More specifically, Petitioner's reconciled income and sales comparison approaches demonstrate and support a market change in value for December 31, 2020 (2021 tax year).

As independently determined from the parties' comparative analysis (from the common comparable sale) for the office building, the indication of value is \$3,029,000 for 2020. The independent determination from Petitioner's income analysis is \$2,990,000 for 2020. A reasoned and reconciled overall conclusion of value for 2020 is attainable from these indications. To recap, the comparative analysis was based on the parties' common comparable sale located in Kentwood. The income approach included the subject's financial information which was then applied to IHRSA market data. Therefore, weight and credibility are placed on both indications of value which bracket the independent determination of market value for the subject property as of December 31, 2019, at \$3,000,000.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Respondent's valuation evidence is not more persuasive than Petitioner's testimonial and documentary evidence.⁸⁶ Petitioner's comparative and income data was logical and reasonable. Respondent's cost approach (fitness building) and income/sales analysis (office building) lacked cohesion, clarity, and substance. The subject property's TCV, SEV, and TV for the tax year at issue are as stated in the Introduction section above.

⁸⁶ Contrary to Respondent counsel's belief that data must come from the subject and not the market, Petitioner in fact analyzed the subject's data with relevant market data. Said differently, Petitioner's appraiser applied the subject's data to the market. Valuation practice and theory are keen to acknowledge the application of a subject property to the relevant market.

JUDGMENT

IT IS ORDERED that the property's SEV and TV for the tax year(s) at issue are 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 as required by the Consent Judgment within 28 days of the entry of the Consent Judgment. If a refund is warranted, it shall, unless otherwise indicated, include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also, unless otherwise indicated, 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, unless otherwise indicated, 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 Consent 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%, (xiii) after December 31, 2022, through June 30, 2023, at the rate of 5.65%, and (xiv) after June 30, 2023, through December 31, 2023, at the rate of 8.25%.


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

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A motion for reconsideration must be filed with the 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: June 9, 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