Menard Inc,
Petitioner,

v

Orion Township,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 20-003697

Presiding Judge
Victoria L. Enyart

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Menard, Inc., appeals ad valorem property tax assessments levied by Respondent, Orion Township, against parcel number O-09-32-400-093 for the 2020 and 2021 tax years. A hearing was held in this matter on August 22, 23, and 24, 2022. Steven P. Schneider and Daniel L Stanley, Attorneys, and John B. Maurice, Ryan, LLC appeared on behalf of Petitioner. Daniel J. Kelly, Attorney, appeared on behalf of Respondent. Petitioner's witness was Laurence G. Allen, MAI. Respondent's 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 are as follows:

Parcel Number: O-09-32-400-093

Year	TCV	SEV	TV
2020	$10,800,000	$5,400,000	$5,400,000
2021	$10,400,000	$5,200,000	$5,200,000

PETITIONER'S CONTENTIONS

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

Parcel Number: O-09-32-400-093

Year	TCV	SEV	TV
2020	$8,800,000	$4,400,000	$4,400,000
2021	$8,800,000	$4,400,000	$4,400,000

Petitioner contends that Mr. Allen has more general knowledge and experience with big-box stores (including two that were designed, owned, and operated by Menard) than any appraiser in Michigan. Petitioner stated that if he didn't learn the lesson from the first Menard case where they did too fast of a job the first day—the first trial, trying the case in only one day, and ending up getting a remand because the record wasn't adequate, he did not have the luxury of focusing only on things in contention. Petitioner will make sure that the record is complete. Respondent's appraiser, Mr. Widmer is also familiar with big-box appraisals.

Petitioner will focus on the two major differences between the appraisals. P-8 is a summary of the values. Mr. Widmer's reconciled market value is below the TCV of the assessment. There is no doubt that the subject property is overvalued.

Petitioner states that the conclusion is $8.8 million TCV for both years. Mr. Allen calculated obsolescence and determined that the subject suffers higher obsolescence than Meijer-Flatrock [1], because of the difference in physical characteristics, higher ceilings, the mezzanine, and more square footage. Menards stores are larger, with special windows. The subject's 42,000 square foot (sf) mezzanine is larger than the Menards in Escanaba that has a mezzanine of 10,000 sf. Lowe's and Home Depot are not expanding or building more stores, and there is less demand by retailers.

PETITIONER'S ADMITTED EXHIBITS

P-1 Petitioner's Valuation Disclosure
P-5 Floorplan of Menards Prototype R5EM
P-6 Menard Orion 2018-Current Mezzanine Area
P-7 Allen Appraisal p. 109 with rent rate typographical error corrected
P-8 Comparisons of Values and Value Indications
P-9 Revised Widmer Sales Adjustment Grid

PETITIONER'S WITNESS

Mr. Allen has appraised more than a hundred big-box stores including Wal-Mart, Target, Lowe's, Meijer, Home Depot, Menards, and Kmart stores. He defines 80,000 square feet of retail and larger as a big-box store. He has also worked for the State Tax Commission and several local units of government. Most appraisals were done for the taxpayer. This also includes locating sites for new stores.

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.

[1] Meijer, Inc. v City of Flatrock, MTT Docket 16-001205

Lawrence G. Allen, MAI, based on his experience, education, training, skills, and knowledge was determined to be an expert in valuation. Mr. Allen testified that Mark Wiley assisted him with research and drafting of the report, as he has done for most of the reports. However, Mr. Allen is solely responsible for the opinion, adjustments, and conclusions in the appraisal of the subject property.

The fee simple value of the subject property is appraised. It is unencumbered by leases and the buyer has the right to use it, lease it, or do nothing with a property. A leased fee interest is the value of a property subject to an existing lease contract. Mr. Allen determined the TCV of the subject's fee simple interest as of tax dates 2020 and 2021.

The subject, Menards, is located in a major metropolitan market as compared to the Menards located in Escanaba, MI which is in a smaller market. There are less users and buyers in big-box stores versus smaller stores. The subject property is not leased; however, an income approach was included to compare with the cost and market approaches.

The subject property is located just above Auburn Hills, north of I-75, which runs on the south edge of the neighborhood. On the south side of I-75 is Great Lakes Crossing, in the City of Pontiac. Costco, Target, and Meijer are across the street from the subject, and they have direct visibility from I-75, while the subject does not.

Approximately two acres of the subject is considered excess, and that portion of the parcel is currently for sale. Mr. Allen describes the subject as a Class C, average cost, warehouse discount store based on Marshall Valuation Service's (MVS) classification. The subject building is described as:

> As you mentioned, the building has – has a lot of different parts. I have the main floor as 172,267 square feet. That's – that's the area that's heated and cooled and enclosed. The building also has mezzanine area of about 42,763 sqaure feet, which is also heated and cooled. Because it's above the main floor and it's accessed by an elevator and there's, I believe, three stairways providing access to that mezzanine.
>
> And then also there's canopy areas which are unheated and open space, and there's also the lumber building, which is a wood building that's used – that's not heated and not cooled and is open and it's used to store lumber and has access to lumber. There's also a little gatehouse building that's very small, and the building was built in 2018. It's got tilt-up exterior walls. It's got very high – very high ceiling heights, approximately 30 feet for – it's very high for a big-box store, which enables the mezzanine to be – to be put up there.
>
> There are three – three loading docks in the – in the store, which is not very many for its size. Like, a Wal-Mart store or a Meijer store will have at least seven loading docks. The – the building is – the whole building has open

> ceilings. There's no finished office areas, training rooms, break rooms. They're all open space…It's got a lot of windows along a portion of one side of the building to show off their lighting fixture department.[2]

Mr. Allen testified that the subject was constructed to conform to Menard's business model as of 2019. However, it is an open floor plan that could be used by other retailers. One of the issues is store size, 216,030 sf, is larger than needed, as a potential buyer would not use all of the store, which is the biggest challenge in selling the subject property. In addition, the 330-foot depth makes it difficult to divide the store. The 42,000 sf mezzanine is not a highly sought after feature unless it is for an office or training center. The subject only has three loading docks which is difficult for multiple users. The typical big-box store has 20-foot ceilings and the subject's 30-foot ceilings cost more to heat and cool.

Mr. Allen testified that since 2016 generally more big-box stores were closing than opening. Certain big-box stores were expanding, but more were closing than were expanding. After 2017, the closures outnumbered the openings. The closings included Wal-Mart, Target, Lowe's, JC Penney; 2018 closures include Kmart and Sam's Clubs. E-commerce accelerated in 2020, there was about a 25% increase with Covid in 2020.

When questioned on what motivates retailers to build big-box stores, Mr. Allen testified "Big box retailers build—build their stores to maximize their sales and their profits from their retail business operation."[3] They do not finance with typical mortgages. Corporate credit lines are utilized to build new stores. The are built-to-suit for the individual business model, the colors, style, and signage that makes the business recognizable.

There is a difference between the subject property and how a Lowe's or Home Depot might utilize the subject property. They would not require the 30-foot height and the front facade would not have light fixtures. The contractor's entrance has a separate canopy for loading lumber outside. Restrooms are in the front while others are in the back. The mezzanine is gone and administrative offices, break room and enclosed training rooms would be added. The other two stores would not require the large square footage and would likely divide the store and add overhead doors for contractors to load lumber etcetera. In summary, they would not pay replacement cost because they do not need the square footage or ceiling heights.

Sales Comparison Approach

Mr. Allen explained that the sales comparison approach is the most applicable. It reflects the market and the price paid by buyers of big-box stores. "And what other retailers or what other big-box stores are being sold for and how they're being sold and the type of buyers provides insight into the market and provides direct evidence of – of pricing as well as different characteristics that buyers are looking at and putting value

[2] Tr. 1 at p 52-53.
[3] Tr. 1 at 67.

upon."[4] Each of the eight sales were single occupant and reflective of the fee simple interest.

No leased fee sales were used in the sales approach. The leased fee sale is not based on the characteristics of the property. The primary motivation for a purchaser is the amount of rent, the length of the lease and the credit of the tenant. These are not characteristics of the real estate, but the combination of the lease and real estate. An investor is buying the income stream and basing the price on how risky the income stream is and how long it is going to last.

Eight sales were unleased at the time of sale, and reflect a single-occupant retail store, which is reflective of the market value of the fee simple interest. The following eight sales were utilized.

	Subject	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5	Sale 6	Sale 7	Sale 8
Name	Menards	Super K	Super K	Sam's Club	Menards	Kmart	Big Kmart	Walmart	Lowes
Location	Orion Twp	Southgate	Detroit	Farmington Hills	Portage	Waterford Twp	Fenton	Hartland Twp	Flint
Sale Date		7/16	12/15	4/16	3/18	1/18	7/18	7/16	10/20
SF	216,030	174,578	142,508	103,298	81,569	119,396	128,914	186,763	134,037
Year Blt	2018	1998	2001	1989	1988	1973	1995	2009	2000
SP		$5,500,000	$5,600,000	$4,550,000	$2,800,000	$4,000,000	$3,000,000	$4,175,000	$3,075,000
SP/SF		$31.47	$39.30	$44.05	$34.33	$33.50	$23.27	$22.35	$22.94

The sales ranged from $22 to $44/sf before adjustments.

When questioned on the individual sales Mr. Allen testified regarding each one.

Sale 1 is similar in size and sold to Kroger. He opined that groceries are still purchased in stores unlike soft goods and clothing, which can be purchased on-line.

Sale 2 is similar grocery/non-grocery with high traffic. Amerco is U-Haul and was bought for packing materials and rental of trucks and mini storage. Amerco was very active in the market purchasing lots of big-box stores.

Sale 3 was a Sam's Club with high ceilings, sold for $44/sf in an extremely high traffic area. The buyer used half the space and leased out the remainder.

Sale 4 was a former but smaller Menards at 81,000 sf. Farm and Fleet purchased this and added a 27,000-sf addition.

Sale 5 is a former Kmart in Waterford; it is not too far from Orion Township. It was also sold to U-Haul and is considered retail use. The property is marketed to retail users to rent trucks or climate-control storage space.

[4] Tr. 1 at 72.

Sale 6 was a Big K in Fenton that sold to a development company. It is 20 years newer than Sale 5 but sold for $10/sf less.

Sale 7 was a Super Wal-Mart. It is 186,000 sf and was fairly new when it sold. Unlike Menards, it was 40-50% groceries so plumbing, electrical for coolers and freezers would not be necessary in Menards. The buyer could not use all of the retail space and divided off and sold 78,000 sf. This sale also had a deed restriction placed on the property after it sold.

Sale 8 is a former Lowe's located in the main retail corridor of Flint. It was 10 years old when it sold. The buyer uses it for warehouse and distribution. Mr. Allen explained that he spoke with the Lowe's real estate people in North Carolina. They explained how the deed restriction works.

> So the real estate department gets a buyer, they agree to a price, they take it to their -- their board. They put on a deed restriction. If it -- if the buyer objects they make exceptions and change the deed restrictions so it doesn't affect the price. And they've never had a situation where they've had to reduce the price as a result of the deed restriction. It was put on after the purchase was agreed upon. And the reason for that is if it does they'll modify it. . . . [T]hey'll customize the deed restriction so it doesn't affect the sale price.[5]

Mr. Allen did not adjust Sale 8 because buyers will adapt to their specific business model. He did make adjustments that were not based on reimaging.

The subject is not on a high traffic street; there is an ALDI in front of the property, and the site slopes. These factors make the subject less visible, and, therefore, inferior to some of the sales. The sales were adjusted for access, visibility, and traffic. Mr. Allen explained the characteristics considered for adjustments in the comparables and the subject property.

The five-mile radius is considered the most relevant indicator of the market. Spending power is the households and spending. The subject property is in an average area.

The demographics adjustment used Sale 1 as an example. It was adjusted for superior demographics. The higher population and significantly higher spending power indicated a downward adjustment. Multiple sources were used to determine the market conditions adjustment for the sale price to reflect the valuation date. Age and condition adjustments were based on the sale price per sf of building which includes land. Location for a big-box store is an important factor, as the purchasers will modify or reconfigure the property after purchase.

---

[5] Tr. 1 at pp 81-82.

Mr. Allen included a list of additional big-box sales within Michigan from May 2013 to January 2021. They were not adjusted but have an average sale price per sf of $23.62.

A 2017 national study by Brent Harrington included big-box sales over 90,000 sf that sold between January 2011 and December 2016. The 145 fee simple transactions range from $7.92/sf to $66.84/sf, 57% sold for less than $30/sf, and 83% were less than $40/sf.

Several studies were considered but not used directly. They include the following:

Situs RERC is a real estate research corporation, and based on national data for big-box and junior big-box stores 30,000 sf and larger from 2010 to 2018 studying fee simple and leased fee sales that indicate the average leased fee sale is $128.54/sf versus fee simple at $46.65/sf. Then based on population indicates the average sale price per sf was $36.17 (with a median household income of $53,469). The third chart was based on fee simple buildings over 130,000 sf with an average of $26.84/sf. The fourth chart was year-built category with an average selling price of $41.51/sf.
The 2021 sales analysis did not adjust for market conditions as they remained the same. However, age/condition adjustments increased resulting in a slight decline in value.

Mr. Allen's Sales Comparison Approach concluded to $8,560,00 ($49.40/sf) for December 31, 2019, and December 31, 2020.[6]

Income Approach

The methodology used for the income approach begins with estimating market rent, vacancy and credit loss, minus operating expenses, market capitalization rate and determining stabilization costs. Although the market rent does not equate to fee simple value because it indicates the potential if a tenant is found, a lease negotiated and a tenant in place. One type of lease is a build-to-suit for buildings not yet in existence but to be constructed to the tenant's specification. Mr. Allen states that this is a type of financing for the occupant. They also are not offered for lease on the open market. They do not meet the definition of market rent since they are not offered for lease in the competitive and open market.

Other big-box stores would not pay the same rent per sf for a new Menards, because the building would not meet other big-box stores specifications. The differences would be functional utility, size, loading docks, ceiling heights, lighting and plumbing requirement would be different. If they bought Menards, it would have to be modified to fit their business model.

Mr. Allen presented build-to-suit and re-leases (after tenant improvements). The build-to-suit leases were close to double the re-lease sf value. The unadjusted re-leases

[6]Mr. Allen did not include the 42,763 square foot mezzanine.

ranged from $3.06 to $6.80 per sf. The leases were adjusted for market conditions, arterial, demographic, submarket, size, and age/condition. The adjusted range was $3.18 to $5.10. Mezzanine space was concluded to be 60% of the rent. This resulted in $5.00 per sf for the main floor (173,267 sf) and $3.00 per sf for the mezzanine area (42,763 sf) for both tax years at issue. The rents were triple net as the tenant pays for the operating costs of the building, as well as common area to maintain the parking lot, exterior of the property, landscaping snow removal, insurance, and reimbursement for property taxes. The tenant pays the majority of the expenses for the property.

The following leased properties were utilized:

		Location	Date	SF	Year Built	$/SF
Lease No.	Subject	Orion Twp		201,888	2018	
7	Wal-Mart	Illinois	8/13	196,000	1992	$3.06
8	At Home	Kalamazoo	11/13	84,000	1974	$2.85
9	At Home	Ypsilanti	12/13	91,743	1960	$3.60
10	At Home	Bloomfield	9/16	120,650	1993	$5.60
11	G4CE	Warren	11/17	101,773	1993	$4.75
12	Floor & Décor	Shelby	09/19	91,500	2000	$5.79

Reimbursement income includes Common Area Maintenance, Property Taxes, and Insurance; non-reimbursable income is Management Fee and Reserves for Replacement.

The Costar vacancy rates were considered for retail properties in the metro Detroit area, Mr. Allen concluded to a 5% vacancy and credit loss. This does not consider the cost of achieving occupancy. RealtyRates.com, PWC Investor Survey, Boulder Group and CBRE were also considered. Rates were extracted from sales of big-box stores with short term remaining leases. He opined that the capitalization rates are higher for the shorter remaining term of the big-box stores at the end of their leases, plus the cost of finding a new tenant. The fees are closer to fee simple capitalization rates than the leased fee rates because of the short remaining terms of the existing lease. Real Estate Research Corporation, as part of a big-box study, indicates cap rates by investment grade. Mr. Allen concluded to an 8% capitalization rate for both tax years.

The next step was to calculate the holding costs during the lease-up. The indirect costs include leasing commission, market cost and occupancy. The leasing commission was determined to be a one-time cost, paid at the time of leasing. This resulted in the following calculation via the income approach.

Income		
Sq Feet	173,267	

Rate	$4.75	
Income		$823,018
Mz Size	42,763	
Rent/SF	$2.75	
Total SF	**216,030**	
Income		$121,875
Total Income		**$944,893**
Reimbursable Income		
CAM PSF	$1.20	$259,236
Property Taxes		$213,000
Insurance PSF	$0.25	$54,008
Annual		$526,244
PGI		**$1,471,136**
Vacancy & Credit	5.00%	($73,557)
Effective Gross Income		$1,397,579
Expenses		
CAM PSF	$1.20	$259,236
Property Taxes		$213,000
Insurance PSF	$0.25	$54,008
Mgt Fees	3%	$41,927
Reserves PSF	$0.20	$43,206
Total Expenses		$611,377
Net Operating Income		$786,203
Overall Rate	8%	$9,827,538
Annual Base Income		$994,624
COMMISSION	5 Years	($4,973,120)
Leasing Commission	6%	($298,387)
Holding Costs		
Annual Base Income		$994,624
Annual Reimb. Income		$550,000
Total		$1,544,868
Months Lease-up		9
Holding Costs		$1,158,651
Conclusion		
NOI		$830,146
OAR		8%
NOI Capitalized		$10,376,824
Excess Land		600,000

Minus Leasing		($298,387)
Minus Holding		$1,158,651
TCV		**$9,520,000**

Mr. Allen was questioned on the five techniques utilized to quantify obsolescence in big-box stores. The difference between build-to-suit rates versus leases of existing buildings. The existing buildings lease for substantially less. Sales of recently built big-box stores include sales ranging from 7-9 years old. Obsolescence was extracted from the sales. Capitalized rent loss considers the rent necessary to support new construction and compared with market rent to extract the obsolescence. He had engineers who make modifications of big-box stores for another retail use. They went through the Meijer and Target store down the road from the subject and did a report indicating the different items and costs to modify a big-box store for a different retailer. The last step is looking at sales and the cost after acquisition. In summary, he gave the income shortfall technique the most weight.

Cost Approach

Mr. Allen utilized MVS Average Cost, Class C Warehouse Discount Store. The main floor and the mezzanine were calculated separately for both tax years at issue. "The cost of the ancillary buildings has not been added to the replacement cost since these are minor buildings that do not add value to the overall property. Further, if the cost for these buildings were included, the replacement cost would be removed through the obsolescence calculation."[7]

The 173,267 sq ft main floor area ($12,296,975) and the 42,763 sq ft mezzanine ($1,732,329) were costed separately, then the elevator ($55,250) and canopy ($1,445,837) were added. The 1.110 local multiplier and 1.010 current multiplier were applied, this resulted in the $17,411,121 building replacement cost, a 96.87%-time adjustment resulted in the replacement cost new (RCN) of $16,866,031, as of December 31, 2019. Site improvements of $3,740,404 bring the total improvement cost to $20,606,435. Soft costs to complete development of the subject site based on MVS is 5% costs adding $1,030,322 and $298,387 for leasing commission to the costs. The improvements were allocated 81.85% to building ($1,087,527) and 18.15% ($241,182) for site. The basis for depreciation: $17,953,558 building and $3,981,586 for site improvements.

Physical depreciation was calculated on an age/life basis. The subject was one and two years old with an estimated life of 30 years for the building and 15 years for the site improvements. Mr. Allen's December 31, 2019, physical depreciation is:

$17,953,558 x 3.3% = $598,452
$ 3,981,586 x 6.7% = $265,439

[7] P-1 at p 124.

Mr. Allen discussed external obsolescence concluding that market demand for large commercial buildings is limited in the subject market and surrounding area. The subject is oversized for the market. Its facade and interior layout are specific to a Menards business; however, has no value to other users. Big-box stores are constructed for a specific user not for the purpose of reselling or leasing. It suffers a reduction in value when sold. A buyer would incur modification costs to fit a different business model. Based on experience, and reviews of transactions, Mr. Allen concludes there is obsolescence with large retail stores in general.

Several methodologies include an analysis of build-to-suit leases vs re-leases, sales studies, NOI analysis, history of big-box stores with general contractors that are familiar with the renovations.

The first method utilized the same twelve leases utilized in the income approach indicating that there is a significant discount, which is inflated due to the large differences in age. Mr. Allen opines that the large disparity in rental rate is an indication of the obsolescence, not considering the subject's larger size or decline in economic conditions.

The second utilized stores that were less than 10 years old, sold with a discount partially due to modifications that reflect a company's business image and operating procedures. The build-to-suit basis meets the specifications and business model of a specific retailer.

Market Obsolescence	Lowes	Home Depot	Wal-Mart	Wal-Mart	Target
	WI	MI	MI	MI	TN
Sale Price	$4,000,000	$1,750,000	$4,383,000	$5,500,000	$4,612,000
Year Built	2006	2006	2009	2009	2004
SF	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	$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
SP	$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%

The table indicates substantial obsolescence for the 7–9-year-old big-box retail stores. The obsolescence averages $43/sf.

The third option is capitalized rent loss. The income necessary to support the value of the property without obsolescence is estimated. The economic rent is subtracted from the required rent based on the cost of land and improvements. It is capitalized into a determination of total obsolescence. “This method was also taught in the Advanced Sales Comparison and Cost Approaches class by the Appraisal Institute.”[8]

Rent Loss

Improvement Cost	$ 21,935,144	
Depreciation	$ (863,891)	
Land Value	$ 5,100,000	
Total	$ 26,171,253	
OAR Tax Loaded	8.00%	
NOI Feasibility		$2,093,700
Subject NOI		$830,146
Deficient Income		$1,263,554
OCR		8.00%
Obsolescence		$15,794,429

This is not applicable to the land. This indicates a 72% reduction for the improvements or $73/sf as of December 31, 2019, and $72/sf as of December 31, 2020.

Mr. Allen also discussed a 2003 interview as well as a report by Richard L. Bowen and Associates, Inc. They specialize in the modification of big-box stores for new users. Utilizing a Meijer and Target store as examples show a range of $15/sf to $53/sf, dependent on the specialized facades and finishes required. The cost would be higher for the years at issue. Each user has its own storefront, interior layout, lighting, plumbing, and store layout.

Reimaging of five big-box stores included store facades, redesigned entryways, new flooring, buildout, restrooms, offices, stock rooms, lighting moving interior walls. They were located as follows. Dearborn, Michigan built in 1993, sold in 2006, $52/sq ft, $10 million (Super K to Super Walmart); Nashville, Tennessee built in 2002, sold in 2010, $45/sq ft (Home Depot to Walmart); Homewood, Illinois built in 1992, (Super K to Walmart) leased to Walmart in 2013, $84/sq ft; Brown Deer, Wisconsin built in 2006, sold in 2013, $46/sq ft (Lowe’s-Walmart); and Chandler, Arizona built in 2004 and leased in 2013, $30/sq ft (Great Outdoors-Walmart). 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.

Obsolescence Summary

		% RCN	% RCN + Land	$ / SF

[8] P-1 at p. 131.

1	BTS v Market Leases	n/a	54%	n/a
2	Market Extraction/Sales (avg)	58%	48%	$43
3	Subject Deficient Income	72%	58%	$73
4	Construction Management Study	n/a	n/a	$15-$53
5	Cost Modification Examples (avg)	n/a	n/a	$51

The capitalized rent loss for both years at issue at $73 and $72/sf are above the range because of the age of the building. "As a building get older the effective age/economic life method incorporates a certain degree of obsolescence within the calculations."[9]

The value for the cost approach as of December 31, 2019, and December 31, 2020 is:

12/31/2019			12/31/2020	
Building Improvements	$17,953,558		$18,525,903	
Site Improvements	$3,981,586		$4,108,516	
Total Costs		$21,935,144		$22,634,418
Incurable Physical				
Building Improvements	$598,452		$1,235,060	
Site Improvements	$265,439		$547,802	
Deferred Maintenance	$0		$0	
Obsolescence	$15,770,190		$15,554,160	
Total Depreciation		$16,634,081		$17,337,022
Depreciated Cost		$5,301,063		$5,297,396
Land Value		$5,700,000		$5,700,000
Leasing Commission		($298,387)		($298,387)
Holding Costs		($1,158,651)		($1,158,651)
Value		$9,540,000		$9,540,000

Mr. Allen concluded to $9,540,000 for both tax years for the cost approach.[10] The final reconciliation based upon the three approaches was $8,800,000 for both December 31, 2019, and December 31, 2020.

The cost approach produces a value indication of the fee simple interest of a property at market rent and stabilized occupancy.[11]

Mr. Allen states, "Since, we are valuing the property's fee simple interest i.e., as if the subject is unencumbered by a lease as of the date of value, the property is not

[9] P-1 at p. 135.
[10] P-1 at p. 135.
[11] Appraisal of Real Estate 14th Edition at p. 638.

stabilized at market occupancy."[12] The cost associated with securing a tenant which includes the leasing commission. The total was allocated between the building and site improvements before obsolescence.

Mr. Allen testified, "I'd rely more on the cost approach and new construction when there's very little depreciation or obsolescence."[13] However, the sale approach was given the most weight and the cost approach very little weight. After considering various indicators of obsolescence, he concluded to income based on the numbers utilized in his income approach.

Mr. Allen explained the differences that result in more obsolescence in the 2020-2021 value of this Menards than in the 2016-2017 Meijer Flat Rock report. Menards ceiling height is higher than most big-boxes and is approximately a 38% increase in cost. Mezzanines are typical for Menards, and the subject's is larger than most of the other stores. However, mezzanines do not fit most retailers' requirements. The loading docks and windows create a loss in value for a buyer, for the modification. E-commerce has gotten stronger which has resulted in retailers looking for a small footprint. "So they're even – even Macy's is going with smaller stores and Meijer is looking at smaller stores, Wal-Mart is experimenting with smaller stores. Kohl's is – is taking – taking a lot of their stores and just dividing one-third of the store off and putting a gym there or putting an ALDI's there, because there just isn't as much need, especially for soft goods retailers."[14]

Some big-box stores are no longer expanding and are closing stores. The demand changed the market since COVID. There is less demand for these larger stores.

RESPONDENT'S CONTENTIONS

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

Parcel Number: O-09-32-400-093

Year	TCV	SEV	TV
2020	$15,026,340	$7,513,170	$6,501,290
2021	$16,034,840	$8,017,420	$6,592,300

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

Parcel Number: O-09-32-400-093

Year	TCV	SEV	TV
2020	$14,200,000	$7,100,000	$6,501,290
2021	$14,300,000	$7,150,000	$6,592,300

---

12 P-1 at p. 127.
13 Tr. 2 at p. 172, referencing P-1 at p. 137.
14 Tr. 1 at 162.

Respondent agrees that the parties' sales and income approaches are very close. Mr. Widmer will focus on the differences between the appraisals. The cost approach will have more discussion and will focus on obsolescence.

The first witness was the Township supervisor, Mr. Barnett, to discuss demographics and Orion Township market.

RESPONDENT'S ADMITTED EXHIBITS

R-1 Respondent's Valuation Disclosure

RESPONDENT'S WITNESSES

Christopher Todd Barnett is the elected full-time supervisor of the Charter Township of Orion. He was elected in 2012, 2016, and 2020. He runs the day-to-day business and chairs the legislative body, the board of trustees. In addition, he is the chair of the Southeast Michigan Council of Government (SEMCOG). It represents the seven counties that make up southeast Michigan, federal and state dollars come through the organization. SEMCOG also looks at demographics. He also serves on two national boards.

Mr. Barnett testified that he was involved with Menards with conversations with Mr. Tom O'Neill from their real estate department. His involvement includes groundbreaking, construction process, ribbon cutting, and assisting them. The Menards is located on Brown Road in a Corridor Improvement Authority (CIA) which is a tax capture tool.[15] He explained that the catalyst was to attract investment and development. The road that serviced Brown Road is the border to Auburn Hills which was heavily developed on the southside. The north side was only a two-lane road. The CIA was created for the tax capture to generate revenue so the road could be widened to five-lanes. It was part of the agreement with Menard before they would purchase the property.

A traffic signal was installed to assist with the entrance to Costco (on the south side of the road) and Menards on the north side. The township's cost was $5,127,754. The tax capture started in 2016 and ends in 2036.

Mr. Barnett addressed the visibility from I-75. Menard specifically selected the site because there are no buildings to block their signs. Menards is on the north side of Costco's parking lot. Orion Township is in the top three for permit activity in Oakland County. Mr. Barnett disagrees with Mr. Allen's conclusions that the access, visibility and traffic to Menards is below average.

[15] PA 57 of 2018 Recodified Tax Increment Financing Act, Part 6 Corridor Improvement Authorities.

Upon cross-examination, Mr. Barnett agreed if traveling south bound on I-75 the subject property is blocked by the Costco building. The south side of Brown Road is a Sam's Club, Meijer, and Costco; however, they are located in Auburn Hills.

John R. Widmer, Jr., MAI, and Certified General Appraiser, and shareholder in Frohm & Widmer, an appraisal company. He graduated from Eastern Michigan University and began classes with the Appraisal Institute to achieve the MAI designation, as well as the Michigan Certified Appraiser License. He has held the MAI designation for approximately 30 years, does approximately 50-100 reports a year. Approximately half of the reports are for ad valorem tax appeals. Mr. Widmer, based on his experience, education, training, skills, and knowledge was determined to be an expert in valuation.

The Menard property was inspected December 2021. The exterior, interior, and site were observed. Throughout the report the main floor area is discussed with a size of 158,400 square feet. The accessory structures on the west side of the subject include the garden center, pick-up storage building on the north (rear of building) as well as the three-sided lumber storage. It has approximately 28 acres.

Mr. Widmer observed some topographical challenges on the west boundary, he excluded that and reconciled to 19 acres, excluding the out lot. The difference in the appraisal's square footage could be attributed to the 40,000 sq ft mezzanine that is not included his enclosed building area.

When questioned on the market and demographics his conclusion is that it is a dynamic retail location. The vacancy is below 3%. The subject is visible from I-75. He walked out to Brown Road to take photos. The area has minimal space available. The submarket is a four-million square feet. The fourth quarter ending in 2019 indicates 127,000 sq ft available and it declined to 96,449 sq ft at the end of 2020.

The following five sales were utilized by Mr. Widmer.

		Sale 1	Sale 2	Sale 3	Sale 4	Sale 5
Name	Menards	Sam's	Super K	Kmart	Kmart	Sam's Club
Location	Orion	Farmington	Southgate	Clinton Twp	Roseville	Port Huron
Sale Date		4/16	6/16	7/18	01/19	12/19
SF	158,400	103,298	182,454	84,966	167,589	137,720
Year Blt	2018	1989	1998	1989	1988	1993
SP		$4,550,000	$5,500,000	$4,00,000	$5,750,000	$4,750,000
SP/SF		$42.86	$30.14	$47.08	$34.31	$34.49

The sales were adjusted for property rights conveyed. Sales 1, 2, and 4 were fee simple. Sale 3 sold with twelve months remaining on the lease term (the space was vacated). The interim rent to purchaser was $418,033, a downward adjustment was made. Sale 5 was a leased-fee estate, no adjustment was made as the lease and investment characteristics were market.

Mr. Widmer's Sale 1 (Sam's Club in Farmington Hills) is Mr. Allen's Sale 3. The difference is Mr. Widmer's location adjustment applies a minus 21% adjustment, Mr. Allen applied a minus 20% adjustment. He interpreted the location at Haggerty north of Grand River as inferior to the subject's location sandwiched between two major highway interchanges. The property was closed and vacant for years. Mr. Widmer opined that it goes to lesser quality location and building; therefore, an economic adjustment factor was applied.

Sale 2 (Kmart in Southgate) is Mr. Allen's Sale 1. This was acquired by Kroger for their new Marketplace. Southgate is a more developed area with more retail that is spread out through the area. The economic adjustment was related to submarket performance, the vacancy is more than double the subject's submarket and average rents are just under double, which is significantly higher than the subject. Mr. Widmer's location adjustment was minus .5%. Kroger purchased the property and did not need all of the square footage and offered the remainder for lease. It is an older building in a far inferior location to the subject.

The remainder of the sales were not in common with Petitioner. Sale 3, a former Kmart in Clinton was adjusted for higher population growth but in an underperforming market. The adjusted sales are:

	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5
Name	Sam's Club	Super Kmart	Kmart	Kmart	Sam's Club
Location	Farmington	Southgate	Clinton Twp	Roseville	Port Huron
SP/SF	$42.66	$30.14	$47.08	$34.31	$34.49
Cond of Sale	0%	0%	-10.5%	0%	0%
Market Condition	10.2%	9.3%	3.9%	2.7%	0%
Location	-21.0%	-5.0%	-9.5%	-7.0%	21.5%
Size	-5.0%	0%	-5.0%	0%	-2.5%
Age/Condition	21.8%	15.0%	28.5%	7.1%	18.8%
Quality/Utility	14.0%	14.0%	14.0%	14.0%	14.0%
Economic	29.2%	31.0%	29.5%	30.6%	5.8%
SEQ/SF	$47.24	$32.92	$43.80	$35.25	$34.49
Total Adjustment	39.0%	59.5%	57.5%	44.8%	57.5%
$/SF	$65.64	$52.57	$69.01	$51.02	$54.33

There was a revision to correct the economic adjustment from 30% to 25% and corrects excess land addition to 30%. Mr. Widmer concluded to $9,270,000 ($58.52/sf) as of December 31, 2019, and $9,500,000 ($59.97/sf) as of December 31, 2020.

Income Approach

Mr. Widmer completed an income approach and also recognized that the subject property was not leased; however, fourteen leases were reviewed. The effective rent was adjusted upward for market conditions and downward for size for the comparables. The following are rent comparables.

	Store	Location	SF	Term	Date	$/SF	Eff $/sf
Subject	Big-Box	Orion Twp	201,888				
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	Fam Farm	Flat Rock	40,000	10	10/16	$3.50	$3.91
4	Fam Farm	Big Rapids	38,080	10	12/16	$4.10	$4.20
5	Bowling	Cascade	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 Fit	Farmington	25,000	10	7/18	$9.00	$7.45
11	Marina	St Heights	26,327	1	6/19	$5.01	$5.01
12	Floor Décor	Shelby	91,500	10	9/19	$6.25	$5.65
13	Furniture	Roseville	22,590	5	10/19	$4.50	$4.50
14	Ashley	Madison H	48,126	7	11/19	$6.00	$5.50

Mr. Widmer notes that in Michigan there are more big-box stores that remain open than those that are closing. Mr. Widmer adjusted for location, market conditions, store size (all were smaller), then age/condition, quality, and overall utility. This resulted in a range of $3.50/sf. “The newest, largest deal was the Floor & Decor in Shelby Township, which was adjusted to $5.25 per square foot.” [16] He concluded to $4.90 per square foot for the main floor. The accessory improvements add $0.90 per square foot. Which increased the base rent to $5.90 per square foot. This does not include the mezzanine.

The expenses per sf are Insurance $0.30, CAM $1.75, Management 3% of Effective Gross Income, Owner’s Expenses $0.20, and Capital Reserves $0.25.

Mr. Widmer considered the following in determining an overall capitalization rate. Market Extraction between 2017 and 2019 averaged 7.9% and 2018 averaged 7.3%. Some transactions represented leased fee acquisitions. An upward adjustment for risk premium where a market-oriented tenant and lease deal is assumed. PwC Real Estate Investor Survey was considered. RealtyRates.com Investor Survey, the average of Secondary Market Average and Non-Institutional, was also considered. The result was 8.25% for 2020 and 8.00% for 2021.

[16] Tr. 2 at 298

The property tax is generally excluded with a modified capitalization rate. However, Mr. Widmer applies iterations based on his TCV conclusion.

Income Approach		
Square Feet	158,400	
Base Rent	$5.80	$918,700
Property Tax	$1.53	$242,054
Cam/Ins	$2.05	$324,720
Potential Gross	$9.38	$1,485,494
Frictional Vacancy	5%	-$74,275
Collection Loss	0.50%	-$7,056
Effective Gross Income	$8.86	$1,404,163
Expenses		
Property Taxes	$1.53	$242,054
Insurance	$0.30	$47,520
CAM	$1.75	$277,200
Mgt Fee	3%	$42,125
Owner Exp	$0.20	$31,680
Capital Reserve	$0.25	$39,600
Sub total	$4.29	$680,179
NOI	$4.57	$723,984
OAR	8.25%	
TCV	$55.40	$8,775,568
Out Parcel		$315,000
Total TCV	$57.45	$9,090,568

Mr. Widmer's TCV for December 31, 2019, is $9,100,000 and December 31, 2020, is $9,600,000.

> Real estate taxes represent a result from which this appraisal is trying to answer, namely true cash value. Within the appraisal of property for ad valorem purposes, it is generally appropriate to exclude the expense in total, and simply modify the cap rate with a tax capitalization additor.[17]

Mr. Widmer applied iterations for the property tax expense based upon the TCV conclusions for each retrospective date of valuation.

[17] R-1 at 114.

Cost Approach

Mr. Widmer testified that his initial approach was the cost approach. It establishes the replacement cost of building and site improvements, depreciation and includes functional and external obsolescence based on the principal of substitution. The subject property is new and is in a dynamic location. The subject is 158,400 sf, 21,600 sf garden center, 13,740 sq ft covered 3-sided lumber storage building, at the rear of the site. The land is 28.74 acres with 1.99-acre site of excess land being marketed for sale.

Four vacant land sales were utilized. Sale 1 is 16.574 acres, sold in December 2017 across I-75 from the subject to the southeast $5.54/sf. Sale 2 is 11.26 acres, sold in February 2019, at Eureka and I-75 at $12/sf. Sale 3 is 9.469 acres, sold in July 2019, southwest corner of Meadowbrook and Grand River Avenue in Novi at $6.30/sf. Sale 4 is 11.410 acres in St. Clair Shores. It was a former Kmart store acquired at $20.52/sf in June 2020. Sale 4 was acquired with the intention of demolishing the improvements.

Adjustments were made for market conditions, location, physical characteristics (parcel size), 2.75% annum. Mr. Widmer did consider Menard's acquisition and reconciled to value. However, he did not apply a value to the west boundary that rises to the Pulte development, he valued 814,000 sf and about 19 acres. Menard's acquisition of the site required significant costs to balance the extreme topography.

Land was reconciled to $6/sf or $4,880,000 for tax year 2020 and $6.15/sf at $5,010,000 for tax year 2021.

Replacement cost new, the cost of an improvement using modern materials and current standards, design and layout was utilized to cost the building and improvements. MVS was used. Warehouse Discount Store, Class C was the source of the rates. Mr. Widmer testified that he considered average to good quality. He weighed the average quality rate at 75% and the good quality rate at 25%. This resulted in $60.04/sf. After the base cost rates, $4.62/sf adjustment for HVAC modifier. The floor area and height per story were a neutral 1.00 factor. The $64.66 multiplied by 158,400 equals the base cost of $10,241,352[18]. The sprinkler, lump sum costs for fire suppression, storage, lumber storage, and garden center were calculated, and then application of current and local modifiers were applied. The resulting building cost was $12,626,346.
Site improvements include the site preparation, parking lot, concrete flatwork, truckwell and landscaping totaling an additional $1,002,376 after multipliers. The estimated soft cost (5%) of $681,436 completed the RCN of $14,310,158 December 31, 2019, and $14,594,387 for December 31, 2020.

Mr. Widmer considered two forms of physical depreciation. The subject property was a year old for the first tax year; the method is dividing 1 (effective age) by 35 (physical life) for a .9 percent straight-line depreciation. The second is the MVS curvilinear, which shows a building depreciating less in the initial years than the straight-line depreciation.

[18] R-1 at p. 90. The actual result is $10,242,144.

Curvilinear was 1%. The building was depreciated 1.9%. The site improvements physical life was 20 years which resulted in 5% straight-line and 3% curvilinear. The only difference for tax year 2021 was the addition of an additional year.

Functional obsolescence required no modification as the replacement cost was based on a functional replacement property. "As of the two retrospective dates of valuation, the market was stable and provide no adverse influence from external factors. Therefore, there is no external obsolescence indicated."[19]

Mr. Widmer testified that the subject property is a dynamic retail location, it offers accessibility, visibility, and submarket characteristics with a less than 3% long-term vacancy. The location has five big-box stores as well as junior big-box stores in the immediate area.

E-commerce was discussed; however, it was Mr. Widmer's opinion that while it represents 10.7% of the total, it does not indicate that brick and mortar is dead. Which is one of the components why external obsolescence does not exist in the subject property. He opined that there would be less e-commerce at home improvement stores as for general merchandise stores.

Mr. Widmer was questioned on Mr. Allen's findings to obsolescence that was curable.

> Curable from the perspective that a lumber building could easily be demolished. That's how you cure that. But you're going to incur costs for that as opposed to leaving it. Intent alluded to some buyers using it, some buyer's demolishing it. Actually, I don't think I heard that any buyer has used the lumber building. They either demolished it or left it vacant.[20]

Physical depreciation was divided into A building and B site improvements. Tax year 2020 follows.

Incurable Depreciation	A	B
Physical Life	35-years	20-years
Effective Age	1-year	1-year
Straight Line Depreciation	2.9%	5.0%
Curvilinear Depreciation	1.0%	3.0%
Total	3.9%	8.0%

The reconciliation of the cost approach for December 31, 2019, is as follows:

[19] R-1 at p. 93.
[20] Tr. 2 at 326-327.

RCN 2020 Tax Year	Warehouse Discount Store	Site Improvements	Total
RCN	$12,626,346	$1,002,376	$13,628,722
Allocated Soft Costs	$631,317	$50,119	$681,436
Total RCN	$13,257,663	$1,052,495	$14,310,158
Depreciation %	1.9%	4.0%	2.1%
Depreciation $	-$255,684	-$42,100	-$297,783
Total Depreciated Value	$13,001,980	$1,010,395	$14,012,375
Depreciated Improvement Value			$14,010,000
Plus Land Value Site			$4,880,000
Plus Outparcel			$315,000
Total TCV			$19,205,000
TCV per sf			$121.24

Mr. Widmer calculated the 2021 tax year in the same manner and the result was rounded to $19,000,000 ($119.95/sf).

The cost approach was independent of the sales and income approach. There are virtually no buildings for any retailer that would like to locate in the market the only alternative is to construct a new property. This indicates that the cost approach is very relevant. It was testified that the cost of construction for the subject property was $19 million excluding land.

Four of the five sales utilized were closed, however, in the subject's neighborhood not one big-box store has closed. In Mr. Widmer's opinion, he finds the sales approach is a less reliable approach with data that is not reflective of the subject's market.

The income approach is also close in conclusion to Mr. Allen's; however, while it is an independent approach, it compares the newly constructed subject property with much older big-box stores. The income comparables are smaller, second and third generation, not new properties. Mr. Widmer includes the income approach as an independent value measure but does not find it reliable.

The reconciliation weighted the cost approach 50% with the sales and income approaches weighted 25% each. This resulted in the TCV of the subject property as of December 31, 2019, at $14,200,000 and as of December 31, 2020, at $14,300,000.

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 465 Brown Road, Orion Township.
2. The subject property's parcel identification number is O-09-32-400-093.
3. The subject property is within the Brown Road Innovation Zone.
4. The subject property was built-to-suit for Petitioner in 2018.
5. Respondent states the subject property was built in 2017-2018.
6. The subject property is owner-occupied.
7. Mr. Allen contends for Petitioner that the subject building contains 173,267 sf plus 42,763 sf of mezzanine.
8. Mr. Widmer contends for Respondent that the subject building is 158,400 sf with no additional cost for mezzanine.
9. The Tribunal finds that the subject property has 216,030 sf.
10. The subject property has a total land area of 19 acres.
11. The parties agreed that approximately two acres is excess land.
12. The occupant of subject property should not influence the market value of the property.
13. The subject property is not an income-producing property; thus, the income approach is not given weight in this final conclusion.
14. The subject property is located in the Detroit-Warren-Dearborn Metropolitan Statical Area (MSA), including Lapeer, Livingston, Macomb, Oakland, St. Clair, and Wayne Counties.
15. The population based on SEMCOG and US Census Bureau for 2020 is 35,330.
16. The subject property is located on the north side of Brown Road, east of Baldwin Road.
17. The subject site is northeast of I-75 close to exit 84 at the Baldwin Road Exit.
18. The subject is located near other big-box stores, such as Costco, Target, and Meijer (across the street, which is Pontiac).
19. The Orion Township unemployment levels averaged 3.6% in 2016-2019 and due to the Covid-19 spike to 23.6% (April 2020) and in October 2021 it was 3.4%.
20. Both parties have furnished valuation disclosures in the form of appraisal reports. Petitioner's appraisal was prepared by Laurence G. Allen, MAI of ALLEN & ASSOCIATES APPRAISAL GROUP, INC. Respondent's appraisal was prepared by John R. Widmer, Jr., MAI of FROHM & WIDMER, INC.
21. Both appraisal reports contain values for December 31, 2019, for tax year 2020 and December 31, 2020, for tax year 2021.
22. Mr. Allen did not specifically state a conclusion for the highest and best use but alluded to the big-box use.
23. Mr. Widmer found that a retail use is the highest and best use.
24. Mr. Allen found the sales comparison approach provided a reliable value estimate, the income approach provided a less reliable indicator of value than the sales, and "the cost approach is not considered reliable, and therefore, has not been relied upon in this reconciliation."
25. Mr. Widmer disagrees and gives 50% weight to the cost approach for the newly constructed subject property, with sales and income approach at 25% weight each.
26. Both parties have appraised the subject property's fee simple interest.

27. Mr. Allen's cost approach commenced with the determination for land value, then with construction costs from MVS for Average Class C Warehouse Discount Stores (MVS December 2020).
28. Mr. Widmer's cost approach also determined land value and construction costs from MVS 75% Average Class C Warehouse Discount Stores and 25% Good Quality Class C Warehouse Discount Stores.
29. Mr. Allen's cost also included the 42,763 sf Mezzanine, elevator, canopy area, and a story height multiplier (1.383) for the building.
30. Mr. Widmer did not include costs for the Mezzanine, elevator, and did not adjust for the story height.
31. Neither party added value for the 3-sided lumber storage building.
32. The parties' land values were very close.
33. Mr. Allen's incurable physical depreciation for tax year 2020 was $863,891, tax year 2021 was $1,782,862.
34. Mr. Widmer's incurable physical depreciation for tax year 2020 was $297,783, tax year 2021 was $612,800.
35. Mr. Allen's cost approach utilized a Capitalized Rent Loss to determine an obsolescence of $15,770,190 for tax year 2020 and $15,554,160 for tax year 2021.
36. Mr. Widmer found no functional or external obsolescence for the subject property.
37. The Tribunal finds that the cost approach for new construction would be reflective of the subject's value. However, in the conclusions the Tribunal finds that the depreciation analysis was extreme from Petitioner and lacking in Respondent's report.
38. The Tribunal reluctantly, (due to the age of the two sales in common (21 and 30 years old)) utilizes the following sales:
    a. Mr. Allen's Sale 1 and Mr. Widmer's Sale 2, a former Super K at 16705 Fort Street, in Southgate.
    b. Mr. Allen's Sale 3 and Mr. Widmer's Sale ,1 a former Sam's Club at 24800 Haggerty, in Farmington Hills.

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.[21]

> 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

[21] See MCL 211.27a.

> cash value at which such property shall be uniformly assessed, which shall not exceed 50 percent.[22]

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.[23]

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value' . . . are synonymous."[24]

"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."[25] The Tribunal is not bound to accept either of the parties' theories of valuation.[26] "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."[27] 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."[28]

A proceeding before the Tax Tribunal is original, independent, and de novo.[29] The Tribunal's factual findings must be supported "by competent, material, and substantial evidence."[30] "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence."[31]
"The petitioner has the burden of proof in establishing the true cash value of the property."[32] "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."[33] 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."[34]

---

[22] Const 1963, art 9, sec 3.
[23] MCL 211.27(1).
[24] *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).
[25] *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).
[26] *Teledyne Continental Motors v Muskegon Twp,* 145 Mich App 749, 754; 378 NW2d 590 (1985).
[27] *Meadowlanes Ltd Dividend Housing Ass'n v Holland,* 437 Mich 473, 485; 473 NW2d 636 (1991).
[28] *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).
[29] MCL 205.735a(2).
[30] *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).
[31] *Jones & Laughlin Steel Corp, supra* at 352-353.
[32] MCL 205.737(3).
[33] *Jones & Laughlin Steel Corp, supra* at 354-355.
[34] MCL 205.737(3).

The three most common approaches to valuation are the capitalization of income approach, the sales comparison, or market approach, and the cost-less-depreciation approach.[35] "The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading."[36] 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.[37] Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.[38]

The Tribunal must determine *the usual selling price* of the building, improvements and land as a fee simple estate.[39] When the fee simple estate is transferred, the buyer can occupy the property, mortgage the property, lease the entire property to one tenant, modify it to lease to multiple tenants, tear it down, tear part of it down, give it away, or whatever else it can legally do ("subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power and escheat.")[40] If a property is sold with a long term lease in place, the buyer does not have the full bundle of rights and in fact, has a ready income stream and a building at the end of the lease, which is not the same as buying a property with no lease in place. It's just a matter of common sense. The Tribunal is not tasked with determining the value of Menards, or its value-in-use. It is imperative that value to the owner not be substituted for TCV (i.e. usual selling price or fair market value).

Both appraisers considered all three approaches to value and formed independent opinions of value. The subject property is a one-and two-year-old built-to-suit property located in Orion Township. It is located in an area with other big-box stores across the street, in Pontiac. I-75 North is clearly visible for the Pontiac properties abutting I-75. The subject property may have some visibility to I-75 through Aldi's parking lot. The subject property is an owner-occupied commercial property with fee simple rights.[41] The subject is not encumbered by a lease. The subject was not available for lease.

---

[35] *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).
[36] *Jones & Laughlin Steel Corp, supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).
[37] *Antisdale, supra* at 277.
[38] See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).
[39] MCL 211.27(1).
As frequently 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, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2014), at 5.

[40] *The Appraisal of Real Estate*, supra at 5.
[41] "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, *The Appraisal of Real Estate* (Chicago, 15th ed, 2020), p 60-61.

The subject property was constructed and occupied by the property owner; it was not vacant nor dark as of the tax dates at issue. For any property to have a sales transaction, it must be vacant and available for the purchaser to possess a property. Big-box properties generally profit from product sales, not real estate sales profit.

The parties also considered an income approach to assist in determining the TCV of the subject property. Mr. Allen discussed the differences between build-to-suit and existing buildings for rent. What he did not discuss is the subject property is a build-to-suit for Petitioner. Although it is not and has not been leased.

Mr. Allen's income approach utilized many of the same rental properties utilized in previous reports.[42] The Tribunal finds that Lease 4 (built-to-suit) was built and leased in 2018 at $10.75/sf. The following leases were expired; Lease 5 and Lease 6 both expired in 2016. Leases 8 and 9 both expired in 2018. The as of date at issue is December 31, 2019, and December 31, 2020.

Petitioner's Lease 7 (1992 Construction) is in Illinois with no details on its tax structure or how it may influence the rent. Leases 10 and 11 were both constructed in 1993 or 25-26 years older than the subject property. The remaining Lease 12 is suspect as the property is leased in 2019 and was constructed in 2000. No details were found on the lease. This indicates that the property may have been a build-to-suit. [43]

The leases selected by Mr. Allen for the one and two-year-old subject property were 26 to 55 years old at the time of the re-lease. Again, the Floor and Décor Lease 12 was leased in 2019, however, it was not built until 2020, indicating to this Tribunal that it may have been a build-to-suit lease. The Wal-Mart in Illinois lease is not considered as it is in another state that may not have the same taxing statutes. Leases 8 and 9 for At Home were expired in 2018 and are not considered for the December 31, 2019, or December 31, 2020, tax years at issue. The subject property was constructed in 2018 as a build-to-suit property for Menards to meet their specifications. The most recent comparable is the At Home in Wixom built-to-suit leased in 2018 for $10.75/sf and was not utilized by Mr. Allen in his analysis. The Tribunal finds Petitioner's rent comparables are lacking in comparability, not close to the subject's age, and insufficient detail. Therefore, no weight or credibility is given to Petitioner's income approach which utilized substantially older rental properties, one out-of-state, and several with expired leases.

Mr. Widmer's fourteen leases only contained two that were close to 100,000 sf. The remainder of the leases were about 55,000 sf or smaller. Generally, the smaller the square footage, the higher the rent. All fourteen leases were utilized, adjusted, and resulted in an unadjusted range of $3.50 to $10.75/sf with an average of $5.30-$5.92/sf. 11 out of 14 sales are less than 50% of the subject's sf utilized by Mr. Widmer. The Entertainment Center leased in Warren on a five-year term at $4.75/sf, in 2018; however, Petitioner states it is a 2017 lease. This Tribunal cannot reconcile the lease

[42] MTT Docket 20-002388 Wal-Mart Real Estate Business Trust v Madison Township.
[43] The Tribunal notes that Mr. Widmer also used the same lease comparable.

years. Respondent's leases are too small to accurately reflect the rent for the one- and two-year-old 100,000+ subject property. The buildings are at minimum 58,400 sf smaller than the subject.[44]Therefore, the Tribunal finds Mr. Widmer's income approach is not of assistance in determining the TCV of the subject property; therefore, no weight is given.

The Tribunal notes that the subject property is a build-to-suit property as testified to by the parties, that is one and two-year-old new construction. The income approach as utilized by both parties is not accepted as an indication of the subject property's value as of the tax dates at issue due to the disproportion of the lease comparables to the subject property.

The parties cost approach begins with the determination of the value for the subject's 19 acres of land. The resulting land value is $5.7 million for Petitioner for both years and $4,880,000 and $5,010,000 for Respondent. The Tribunal finds that $5 million is an appropriate value for the subject's land.

The parties took slightly different methods of the initial building cost. Petitioner's RCN utilizes 173,267 sf building plus 42,763 sf mezzanine totaling 216,030 sf. "All data is based on our visual inspections, assessment records and review of the building/site plans that were provided to the appraiser or were available on the municipal assessing website."[45]

Respondent utilized the property records and included the sketches for 158,400 sf building, 21,600 sf garden center, 13,740 sf storage, 3,780 sf of loading dock, and 52,200 sf lumber storage building. Respondent did not include the mezzanine in the square footage and did not cost it out. However, it is part of the subject property, attached (akin to a second story), and adds value to the subject property. Mr. Widmer included the sketch from the property record. Mr. Widmer split the cost approach 75% average quality and 25% good quality from 2018 MVS. Mr. Allen utilized MVS December 2020 for both tax years at issue. Mr. Allen's 173,267 sf includes the 13,740 sf of what Respondent considered storage. Respondent also did not utilize a floor area perimeter multiplier or a height per story multiplier.

Neither party provided all of the data required for the cost approach. The Tribunal finds that the subject has 173,267 sf of building plus the 42,763-sf mezzanine equaling 216,030 sf. The Tribunal notes that the mezzanine adds additional square footage to the subject property. Mr. Allen's calculation for elevator, canopy with local and current multipliers are included.

Mr. Widmer did not add the 42,763-sf mezzanine, story height, perimeter adjustment, or elevators. After adjustments, before land value is added the cost new less physical depreciation is $19,000,000. In addition, Mr. Widmer does not discuss or deduct any other obsolescence.

[44] Utilizing Respondent's 158,400 sf.
[45] P-1 at 31.

Mr. Allen deducts leasing commissions in the final cost approach. The Tribunal finds that the property would not include a deduction for leasing commissions in the cost approach.

Functional obsolescence was based on Mr. Allen's experience with a review of market transactions utilizing multiple analysis. The Lease Comparable Summary was first, the leases were all discussed in the sales comparison approach and found to be outdated, not comparable or not constructed at the time of the appraisal. Minimal weight is given to Petitioner's lease comparable summary.

Mr. Allen's obsolescence extraction of sales of four big-box stores was next. Two of the four sales are in other states, without any details on the sales, condition, or extenuating circumstances of the 7–9-year-old properties that sold 4-7 years prior to the tax date at issue. The Tribunal finds that Example 1 and 4, the out-of-state sales lacked in detail, as well as the basis for property tax, or any additional details. The out of state sales were of no assistance to the Tribunal. Examples 2 and 3 were in-state sales, however they also lacked details on the actual properties. The basis for the estimated RCN and land value were not given.

However, Example 3, Super Walmart in Hartland Township was the subject of a Tribunal Appeal.[46] Mr. Allen did not outline all the facts. The property did sell from Wal-Mart to Bedford ABG, LLC for $4,175,000, with 186,763 sf. However, Bedford ABG, LLC, in 2016, transferred the subject property to Hartland ABG, LLC which are related entities. Close to the July 1, 2016, sale, the building was split into two spaces (respectively 107,963 and 78,800 sf). The vacant 78,800 sf was listed for sale in the second quarter of 2017 and sold April 25, 2018, for $2,600,000 ($32.99/sf). The use of part of this sale without all the underlying facts is misleading.

Mr. Allen's Extraction of Obsolescence from sales is considered but given no weight in determining depreciation for the 1–2-year-old subject property.

The Capitalized Income Loss Method due to obsolescence was taught in a class by the Appraisal Institute, however, as alluded to in the report, Mr. Allen did not take the class. This calculation is not explained very well. And makes less sense as the subject property is not leased, the numbers utilized in the calculation are extracted from the cost approach, utilizing the cost and capitalizing for required NOI "for feasibility". The income approach utilizing net operating income based on income producing property resulted in estimates of $9,520,000 TCV. This method of determining that the one-year-old subject property has obsolescence of 72% or $73/sf simply makes zero sense. The Tribunal questions what the basis for the class was. This does not appear to be written by Mr. Allen. The subject property's cost to construct based on testimony was estimated at $19 million.

[46] MTT Docket No. 17-002207, in front of this Tribunal Member.

Petitioner's development of the cost approach and parallel rationale lack persuasion. The relevance for a cost analysis to a newer building is noteworthy in this instance. However, Petitioner's application and reasoning are unsound. Petitioner's nuanced methodology for functional obsolescence was obtained from an advanced Appraisal Institute course many years ago.[47] This acknowledgement was not accompanied by a specific date/time, course title, and course location. More problematic is that Petitioner's appraiser did not attend this advanced class. Rather, Mr. Allen's associate Mike Wiley attended the class. As Mike Wiley was only identified as a contributor to Allen's appraisal report in the signed certification, Mr. Allen (as the signing author to the report), takes full responsibility for the opinions, analysis, and conclusions. The appraisal report carries insufficient explanation and detail for this methodology.

Mr. Allen's disconnect to this creative obsolescence methodology is discrediting. The capitalized income loss method was applied to an owner-occupied big-box store under fee simple for the definition of market value. The Tribunal gives no weight or credibility to Petitioner's capitalized income loss method for the independent determination of market value for the subject property.

The Construction Management Report is based on a 2003 report that indicated $15-$53/ sf for alterations made by a retainer to make the store functional for a new user. The Tribunal agrees that a new user would make modifications for storefront, interior layout, lighting, and perhaps plumbing and loading. Each retailer has its own specific store layout *after the sale*. However, the 2003 report is outdated, and the report was not submitted nor testified to. This is considered; however, the report is 16 years old without an update, therefore is not appropriate for the subject property.

Similar information for the cost modifications examples was utilized. However, the only Michigan store is a 2006 modification of a Super K store to a Wal-Mart Superstore, again after the sale. This is also too outdated to be of more assistance other than general historical information. The other four examples are out-of-state examples that again do not contain sufficient data to assist in determining the commonality with Michigan property statutes. Minimal weight is given to historical information and basic information in Nashville, Illinois, Wisconsin and Chandler, Arizona.

Mr. Allen's last attempt in explaining, the value of the subject as if it is unencumbered by a lease as of the date of value, the property is "not stabilized at market occupancy." The subject property was 100% occupied as of the tax dates at issue. However, the property is valued as if "vacant and available" regardless of the actual owner and irrespective that it is occupied.

Mr. Widmer's cost approach did not include all of the costs, for the subject, and assigned 25% of the costs as good construction with no value assigned for the mezzanine. After corrections, the value increased slightly. However, in excess of $100/sf is substantially higher than the other approaches, Mr. Widmer assigned 50%

[47] Tr. 2 at 248.

value to the cost and 25% to the income and sales approaches. The resulting value is $14,200,000 or $89.65/sf for Tax Year 2020 and $14,280,000 or $90.15/sf for Tax Year 2021.

Mr. Widmer considered all three approaches, however, stated that:

> [W]hen there is a limited availability of improved properties to buy or rent, the only substitute property becomes a newly constructed property. This is essentially the case with the subject, wherein Menard, Inc., acquired the subject site in an arm's length market transaction, and constructed a free-standing retail store, as opposed to finding an alternative, improved property, for a proposed retil use. This concept also speaks to the viability of the location, which is a dynamic retail corridor. Establishing True Cash Value for the subject property placing most weight upon older big-box comparables, with inferior locations, is simply illogical.[48]

The Tribunal agrees with Mr. Widmer's statement. The cost approach for the new construction is generally considered the best indication of the TCV of the subject property's one and two-year-old building. However, it was lacking in appropriate deductions for depreciation, or discussion on functional or economic obsolescence. Respondent failed to cost the entire building, apparently relying on the property record sketch. However, the Tribunal finds that the cost approach was lacking in appropriate deductions for depreciation, functional obsolescence, comparability, quality, and age etcetera, and therefore is not as reflective for the newer construction subject property.

The Tribunal finds that it cannot assume or ascertain evidence that the older, stale data, (previously utilized by Mr. Allen in appraising a 20-year-old big-box store), is supported in the current market or utilizing out-of-state comparables that are lacking in sufficient details that may have been of assistance. The parties' burden of proof is not the Tribunal's to take on without proper supporting evidence. The parties' income approaches (as stated earlier) are found to be of minimal assistance in determining the TCV of the 216,030 sf subject property.

Both Mr. Allen and Mr. Widmer prepared the appraisals that met USPAP requirements. Both appraisers are familiar with big-box stores and have prepared appraisals for the Tribunal. Petitioner's appraisal indicates a lower value with no change in value for 2021. Respondent's appraiser also indicates a lower value with a slight increase for tax year 2021. The parties' respective comparative analysis included a total of thirteen adjusted comparable sales in southeast Michigan. The parties have two sales in common located at 16705 Fort Street in Southgate, (a former Kmart) and 24800 Haggerty Road in Farmington Hills (a former Sam's Club). The Tribunal will concentrate on the two common comparables sales and adjustments by both parties. Both sales are older properties, the parties made adjustments for differences, in age and condition, location and amenities.

---

[48] R-1 at p. 6

The 16705 Fort St., Southgate was a former Kmart. It was purchased by Kroger, who did not require all the square footage and leased out a portion. The Super K located in Southgate is Mr. Allen's Sale 1 and Mr. Widmer's Sale 2 some of the differences include:

Mr. Allen adjusted for market conditions 1.07, location and visibility -5%, Arterial -10%, for demographics -5% age and condition 1.17. Resulting in $33.40/sf.

Mr. Widmer adjusted the property 9.3% for market conditions, -.5% for location, 15% age and condition, quality 14%, and 31% economic. Resulting in $52.27/sf.

Appraiser	Allen	Widmer
SF	174,758	185,454
SP/SF	$31.47	$32.95
Mkt Cond	7%	9.30%
Location	-15%	-.5%
Age/Cond	16%	15%
Adj SP	$33.40	$52.57

The parties' characteristics vary slightly but have similar adjustments. Both parties have adjusted this common sale upward for market conditions. As well as adjusting downward (negative adjustment) for the sale's superior location. After transactional or sequential adjustments, the parties' adjusted price per square foot are similar. Petitioner's adjusted $/sf after transactional adjustments is $33.68 sf for this common comparable. Respondent's adjusted $/sf after transactional adjustments is $32.95 sf for this sale. After characteristics adjustments, the parties' price per sf varies. Petitioner's $33.40/sf to Respondent's $52.57/sf.

The parties' analytical measures (i.e., demographic and economic) are meaningful for this common sale. The Tribunal can reconcile the differences and concludes to $45/SF for this common comparable sale.

The second common sale is 24800 Haggerty, a former Sam's Club in Farmington Hills. It sold April 2016. This is Mr. Allen's Sale 3, and Mr. Widmer's Sale 1.

Mr. Allen's adjustments are market conditions 1.11, arterial 20%, demographics -10%, submarket -20%, age/condition 1.26, totaling 0.726%, -$8.56 in adjustments for $35.48/sf.

Mr. Widmer adjusts 10.2% for market conditions, -21% for location, -5% for size, 21.8% for age/condition, building quality/utility 14%, and economic 29.2%. Totaling 39% in adjustments at $47.24/sf.

The appraisers did not quite agree on the gross building area. However, they were close in the market condition adjustment, as well as the superior location.

Appraiser	Allen	Widmer
SF	103,298	106,107
SP/SF	$39.30	$42.86
Mkt Cond	11%	10.20%
Location	10%	-21%
Age/Cond	26%	21.8%
Adj SP	$35.20	$65.64

The parties' characteristics vary slightly but have similar adjustments. The sale was adjusted upward for market conditions, and a negative adjustment for the sale's superior location. After transactional or sequential adjustments, the parties adjusted per sf value is close. Petitioner's transactional adjustment is $48.89/sf for this common sale. Respondent's transactional adjustment is $47.24/sf. After the characteristic's adjustments, the parties vary from Petitioner's $35.20/sf to Respondent's $65.64/sf. Nevertheless, the parties' analytical measures (i.e., demographic and economic) is meaningful to this common comparable sale.

The Tribunal is able to reconcile the parties' differences and concludes to $55/sf for this common comparable.

Mr. Allen's inclusion of the mezzanine's 42,763 sf was separate from the main building (173,267 sf plus the 13,740-sf storage building) but was considered for total 216,030 sf. Respondent's 158,400 sf is the same as the Township's property record card. The Tribunal notes that the mezzanine and the storage building were not included on the property record or Mr. Widmer's appraisal as square footage.[49] The Tribunal finds that the subject property is 216,030 sf including the mezzanine.

Petitioner's value conclusion was $8,560,000 for both years. Respondent's conclusion of the sales comparison approach was $9,270,000 and $9,500,000.

The sales comparison approach was considered most applicable by Mr. Allen. Mr. Widmer weighed the approaches and gave it 25% weight.

The subject property is one and two years old as of the tax dates at issue. The cost new less depreciation should be the most applicable, however, the Tribunal finds that neither party provided sufficient evidence that their cost approaches are evidence of the market

[49] Petitioner's Exhibit 9 (revised) indicates that without Mr. Widmer's economic adjustment (but including the $1.99 for the out lot) results in adjusted values of $44.33 for Super K Southgate and $53.83 for Sam's Club Farmington Hills.

value of the subject property. Therefore, the Tribunal considers but gives no weight to the cost approach and income approaches.

The Tribunal finds the parties' analysis of the two common comparable sales provides a meaningful reasoned and reconciled indication of value for the subject property based on the sales comparison approach. The final reconciliation from the common sales results in $10,800,000 for tax year 2020. Respondent applied a +2.75% market adjustment to its 2020 rate per sf to determine the 2021 rate per sf. However, Petitioner's appraiser determined that the economic trends between late 2014 and the end of 2020 indicate declines and this "trend is indicative of values of 'big box' stores." [50]Additionally, the "decline in prices in 2020 was in response to the Covid-19 pandemic and its effect on retailers and real estate investments."[51] (The Tribunal finds that these factors likely indicate an additional decline between 2020 and 2021 as the subject property is a big-box store that was reasonably assumed to be affected by the pandemic-related effects on retail, commercial properties. As such, the Tribunal finds that since the subject property was two years old in year two, a slight decrease in value is appropriate. There was no evidence presented that indicates that the subject's value increased in year two, given the unique market conditions present between 2020 and 2021. The Tribunal finds the TCV for tax year 2021 is $10,400,000.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the subject property is assessed in excess of the market value. 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 the property's SEV and TV for the tax year(s) at issue are MODIFIED as set forth in the Introduction section of this Final Opinion and Judgment.

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

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

---

[50] P-1 st p. 86.
[51] P-1 at p. 87.

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%, (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%.

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 Victoria L. Enyart

Entered: August 15, 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