Greenfield 8 Mile Plaza,
Petitioner,

v

City of Southfield,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 20-004507

Presiding Judge
Patricia L. Halm

FINAL OPINION AND JUDGMENT

The Tribunal issued a Proposed Opinion and Judgment (POJ) on March 16, 2023. The POJ states, in pertinent part, "[t]he parties have 20 days from the below "Date Entered by Tribunal" to notify the Tribunal and the opposing party in writing, by mail or by electronic filing, if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions)."

Neither party has filed exceptions to the POJ.

The Administrative Law Judge (ALJ) considered the testimony and evidence submitted and made specific findings of fact and conclusions of law. The ALJ's determination is supported by the testimony, evidence, and applicable statutory and case law.

Given the above, the Tribunal adopts the POJ as the Tribunal's final decision in this case.[1] The Tribunal also incorporates by reference the Findings of Fact and Conclusions of Law contained in the POJ in this Final Opinion and Judgment. As a result:

a. The property's true cash value (TCV), state equalized value (SEV), and taxable value (TV), as established by the Board of Review for the tax year at issue, are as follows:

Parcel Number: 76-24-36-452-005

Year	TCV	SEV	TV
2020	$3,979,520	$1,989,760	$1,710,740

b. The property's TCV, SEV, and TV, as determined by the Tribunal for the tax year at issue, are as follows:

[1] See MCL 205.726.

Parcel Number: 76-24-36-452-005

Year	TCV	SEV	TV
2020	$4,523,300	$2,261,650	$1,710,740

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year(s) at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as provided in this Final Opinion and Judgment within 20 days of entry of this Final Opinion and Judgment, subject to the processes of equalization.[2] To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2013, through June 30, 2016, at the rate of 4.25%, (ii) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (iii) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (iv) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (v) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (vi) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (vii) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, (viii) after June 30, 2019 through December 31, 2019, at the rate of 6.39%, (ix) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, (x) after June 30 2020, through December 31, 2020, at the rate of 5.63%, (xi) after December 31, 2020, through June 30, 2022, at the rate of 4.25%, (xii) after June 30, 2022, through December 31, 2022, at the rate of 4.27%, and (xiii) after December 31, 2022, through June 30, 2023, at the rate of 5.65%.

This Final Opinion and Judgment resolves the last pending claim 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.

[2] See MCL 205.755.

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 Patricia L. Haem

Entered: April 24, 2023
jkk

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

Greenfield 8 Mile Plaza,
Petitioner,

v

City of Southfield,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 20-004507

Presiding Judge
Peter M. Kopke

ORDER DENYING RESPONDENT'S MOTION IN *LIMINE*

PROPOSED OPINION AND JUDGMENT

ORDER DENYING RESPONDENT'S REQUEST FOR COSTS AND ATTORNEY FEES

INTRODUCTION

Petitioner filed this appeal disputing the property tax assessment against Parcel No. 76-24-36-452-005 for the 2020 tax year. A video hearing was commenced on May 24, 2022, and continued on May 25, 26, and 27, 2022. Brian Etzel, Esq. appeared on behalf of Petitioner. Petitioner's witness was Daniel J. Tomlinson, Appraiser.[1] Laura M. Hallahan, Esq. and Seth A. O'Loughlin, Esq. appeared on behalf of Respondent. Respondent's witness was Justin E. Prybylski, Assessor.[2]

Based on the evidence (i.e., testimony and admitted exhibits) and the case file,[3] the Tribunal finds that property's true cash value (TCV), state equalized value (SEV), and taxable value (TV) for the tax year at issue are as follows

[1] Mr. Tomlinson was offered and admitted without objection as an expert witness for appraisal and valuation purposes. See the May 24, 2022 Transcript (TR1) at 18-26.

[2] Mr. Prybylski was offered and admitted as an expert witness for assessment and valuation purposes with objection. See the May 26, 2022 Transcript (TR3) at 154-168. See also TR3 at 167-168. As for Mr. Etzel's objection, see also the unpublished opinion *per curiam* issued by the Michigan Court of Appeals in *Greenfield - 8 Mile Plaza v City of Southfield* on December 12, 2019 (Docket No. 346183), which provides that:

> . . . .[P]etitioner argues that the [T]ribunal erroneously qualified Thurston "as an expert in appraisal (but not valuation)." The record does not support this argument. At the hearing below, [P]etitioner conceded that Thurston was qualified to testify as an expert with regard to assessing property[] but argued that he was not qualified to testify regarding the valuation of property. **The [T]ribunal qualified Thurston as** "an expert in assessing and valuation" **and** "[n]ot in appraisal." **Petitioner's argument on this point is without merit**. [Emphasis added.]

[3] Petitioner's Exhibit Nos. P-1, P-7, P-24 (Pages 161-357 of R-7), and P-25 (Pages 361-470 of R-7) were offered and admitted without objection. See TR1 at 26-31 and 78-85; the May 25, 2022 Transcript (TR2) at 3-10 and 15-31.

Parcel Number: 76-24-36-452-005

Year	TCV	SEV	TV
2020	$4,523,300	$2,261,650	$1,710,740

PETITIONER'S CONTENTIONS

Petitioner's contentions of TCV, SEV, and TV are as follows:[4]

Petitioner's Exhibit No. P-6, P-13, P-23, and P-26 were offered for admission with objection and admitted. See TR1 at 48-52; TR3 at 109-111; the May 27, 2022 Transcript (TR4) at 54-63; and TR4 at 114-122..

Petitioner's Exhibit No. P-8 was not admitted, as that exhibit or, more specifically, the zoning ordinance portion of the exhibit is dated May 30, 2019, and is contained in P-1 and, as such, is already part of the record. See Petitioner's Exhibit H in P-1. As for the portion of P-8 containing Mr. Tomlinson's October 21, 2021 notes regarding his discussion with Sarah K. Mulally, Assistant Planner, City of Southfield Planning Department, relative to the property's current zoning (i.e., B-3) and whether the subject could be rezoned for industrial purposes, said notes are, as indicated by Mr. Tomlinson's testimony, irrelevant as the property was zoned B-3 as of the relevant tax date (i.e., December 31, 2019). Further, the "notes" also indicate that the zoning had not been changed as of October 21, 2021. See TR1 at 103-113. See also MCL 211.2(2).

Respondent's Exhibit Nos. R-4, R-8 (the "tables" entitled "SALES COMP" and "RENTAL COMP" only), R-7, R-2, R-3, and R-1 were offered and admitted without objection. See TR2 at 119-127 and TR 3 at 6-22, 35-36, 74-75, 77-80, 80-83, and 168-169.

R-5 was offered in part (i.e., Mr. Tomlinson's cross-examination only in MOAHR Docket No. 20-004545) with objection. R-5 did, however, constitute the entire transcript of the hearing in that case and R-5 was, based on the objection, admitted in its entirety. See TR2 at 197-203.

[4] Petitioner claims that the property's TCV is $2,800,000 as of December 31, 2019, based on both Mr. Tomlinson's sales and income approaches. See Mr. Tomlinson's October 21, 2021 cover letter, and P-1 at 2, 41-60, and 61-81. Mr. Tomlinson did **not** perform a cost approach. See P-1 at 82-85. As for the reconciliation of those approaches, see P-1 at 84-85, which provides that:

1. "Since the Subject Property is an **income-producing property**, the **Sales Comparison Approach** is **not** the primary approach used by market participants to value property. However, it does provide **secondary suppor**t to the conclusion of value reached in the Income Approach. Accordingly, the Sales Comparison Approach is given secondary weight in the final estimate of value." [Emphasis added.]
2. ". . . typical buyers of retail buildings such as the Subject Property are most concerned with the **income-producing potential** of the properties and value the investments accordingly. Based on these factors, the **Income Capitalization Approach** is given the **greatest weight** in the final estimate of value"). [Emphasis added.]
3. "For the **Cost Approach** to provide a meaningful reflection of Market Value, **non-cost related factors** such as prospective purchasers and/or investor motivations, local economic conditions, and the effects of supply and demand relationships in the market **must be considered**. This methodology is **generally reliable for** newer properties, special purpose properties, and properties that do not typically sell in arm's-length transactions. **This approach was not applied**." [Emphasis added.]

As for Mr. Tomlinson's claim that the property is an income-producing property, said claim is **misleading**, **as the property was**, as indicated herein, **owner occupied and not leased as of the tax date at issue**. See also P-1 at 1 and R-1 at 7.

Parcel Number: 76-24-36-452-005

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

In support of its Petition, Petitioner contends that:

1. Since acquiring the property, the petitioner has been operating the store as Universal Wholesale which consists of **a retail showroom and storage warehouse that sells inventory to other retailers**, primarily Dollar Stores.[5] The store consists of 127,650 square feet of gross building area and sits on 8.67 acres.[6] [Emphasis added.]
2. **This property is a second-generation big box store** . . . . And what I mean by that is, it was built to suit the original owner and occupant which was Home Depot.[7] And now it is being used by a business for which the building was never intended . . . . Meaning it was built to cater to Home Depot's business model at the time . . . . And it works . . . well for the person who originally uses the suit. Not so well for a subsequent user unless that subsequent user happens to have the same exact contours as the original user.[8] [Emphasis added.]
3. **The other interesting component of big box stores is that they are considered a dying breed**. In large part because of the impact of e-commerce . . . . And so big box stores in general suffer from this form of external obsolescence. And in this instance, **there's not only external obsolescence, there's also functional obsolescence because it was built to suit Home Depot**.[9]
4. So given the new challenges of valuing second generation hand-me-down big box stores, **it is critical that in valuing the subject that the [T]ribunal compare this property with sales of other big box retail stores that are similarly situated** . . . . And that really is the benchmark and as I'll discuss later, that was really an important component in terms of the sales comparables that Mr. Tomlinson selected for his analysis.[10]
5. **The other important element of this valuation equation is the location of the subject property**. It is located on the north side of 8 Mile Road in the very southern portion of Southfield . . . . And so . . .

[5] See TR1 at 7. See also P-1 at 1, 31, and 37-38 and R-1 at 6, 18, and 34.
[6] See TR1 at 7. See also P-1 at 1 and 31 and R-1 at 6 and 18.
[7] See TR1 at 6-7, which provides that: "[i]t was **originally built for Home Depot back in 1996** and it was used for the next four or five years as a Home Depot until Home Depot decided to close the store and then sold the property to its current owner, Greenfield 8 Mile Plaza back in 2000." [Emphasis added.] See also R-1 at 6 and 19, which provides that: "[t]he property locate at 16400 W 8 Mile Road was constructed in 1996 and was renovated by the building owner/tenant in 2016" and P-1 at 31.
[8] See TR1 at 7-8.
[9] See TR1 at 8. See also TR1 at 61-64.
[10] See TR1 at 8-9.

Detroit and Southfield make up the immediate trade area and market and community.[11] [Emphasis added.]

6. **It is adjacent to the former Northland Mall site**. Northland Mall has been closed since 2015. So as of the date of value, December 31 . . . 2019, that property had been purchased by the city of Southfield and it was completely shuttered. No activity whatsoever. **It was effectively a retail wasteland**. And . . . **it's really exhibiting characteristics of blight**. And those . . . are words from the public domain in terms of people that have reported on this site and what's happening with this site. **It's a devastated area and very little activity in terms of new construction and the immediate surrounding area is characterized by vacancies**. Whether it's office vacancies, residential vacancies, and the type of retail that is in the vicinity is not at all what I would describe as high-quality retail. It's more of the one-off mom and pop variety and you don't see any high-end or certainly any brand name retailers as, again -- really that whole Northland Mall and the surrounding annex -- retail annexes were just -- there was a mass exodus from there. And that's what we were stuck with as of the date of valuation.[12] [Emphasis added.]
7. Mr. Tomlinson has utilized two different approaches to value . . . . his first approach was the sales comparison approach where he found the sales of standalone big box stores, or similar structure, **and came up with an average unit price** . . . [and] then made appropriate adjustments to come up with **an adjusted sale per square foot average**. He then used an income capitalization approach where he compiled rental data for similar properties **and came up with a square foot average rental rate**. He then subtracted expenses and applied a cap rate and concluded a true cash value. Using both approaches, he came up with **the same conclusion of true cash value** and that is $2,800,000. And he gave slightly more weight to the income approach, but really that at the end of the day is immaterial because regardless of which approach he used, it reaches the same result in terms of a valuation conclusion.[13]
8. Mr. Prybylski, is the city assessor for Southfield and he is **certified in mass appraisal techniques**, and . . . not surprisingly, **the city's**

---

[11] See TR1 at 9. Petitioner's claim that Detroit and Southfield "make up the immediate trade area and market and community" does, however, raise questions as to the regional or market area described in P-1 and the sales comparables selected by Mr. Tomlinson, as none of these comparables would be impacted by the "immediate trade area and market and community. See P-1 at 17-20, 43-55, and 58-59 and Mr. Tomlinson's testimony at TR1 at 123-124 and 130 (i.e., "what you do is you start looking for sales as close to the subject as possible . . . . because they would reflect the market conditions in the immediate area"). Further, those same comparables were utilized in MOAHR Docket No. 20-004545 by Mr. Tomlinson for purposes of valuing a property in Waterford Township.

[12] See TR 1 at 9-10.

[13] See TR1 at 11.

valuation disclosure is replete with mass appraisal approaches especially the cost approach.[14]

9. There is no doubt there was an opinion by the [T]ribunal on this very same piece of property with a valuation date of December 31, 2019. That opinion was issued in latter part of 2018 by Judge Gadola. And we're not running away from that decision. In fact, we're embracing that decision and that decision no doubt guided some of the decisions that Mr. Tomlinson made in terms of the comparables he selected and especially in terms of the highest and best uses he came up with. So any notion that this is somehow a do-over or a repeat of the issues that were litigated in 2018 of the subject property is a non-starter.[15]
10. **Appraisers should be mindful of opinions**, especially when we're talking about opinions of the same piece of property. **We do believe there should be continuity in [T]ribunal decisions**, and although each case is tried de novo . . . I think the rulings in the prior case with respect to the types of comparables that have the most weight and highest and best use **are salient here** and that is what has guided Mr. Tomlinson in both his highest and best use and . . . certainly in terms of his selection of his comparables.[16] And that is in stark contrast to the respondent's appraiser who has used a series of comparables that have completely different uses than the subject and that are zoned completely different than the subject and that have different highest and best uses than the subject. So whereas Mr. Tomlinson has tried to assiduously adhere to these key findings by . . . the [T]ribunal in the prior appeal, interestingly, the respondent's appraiser has deviated from some of those key findings, which is sort of the irony here.[17]

Petitioner also contends that:

1. As I said in opening, Southfield did not make enough of this appeal to defend it with an appraisal or a certified appraiser. As a result, we found out today, **we received a deeply flawed** []**valuation disclosure by an assessor who was not independent**, **and who was not qualified to appraise commercial properties of this nature**. And he submitted a report that is interspersed with mass appraisal techniques, a report that is missing key explanations, that is missing key support, and it's based on the flawed assumption that the subject property could

[14] See TR1 at 11-12.
[15] See TR1 at 12-13.
[16] As provided in an unpublished opinion *per curiam* issued by the Michigan Court of Appeals in *Gatt v Marion Township* on February 11, 2014 (Docket No. 313656), "the finality of a Tribunal decision must be respected in a subsequent proceeding before the Tribunal." See also the unpublished opinion *per curiam* issued by the Court of Appeals in *Gatt v Marion Township* on December 8, 2015 (Docket No. 323473).
[17] See TR1 at 14-15.

accommodate an industrial-type use when it cannot.[18] [Emphasis added.]

2. Whether the Tribunal is looking at a[] []valuation disclosure or an appraisal by a certified appraiser, **the evidence should be judged according to the same standards in terms of credibility**. Simply because Mr. Tomlinson is a member of USPAP and has certain requirements under USPAP does **not** mean that his evidence should be viewed under a different lens than a city assessor. And that's what you ultimately have to compare, not just the conclusions, but the methodology and the detail that went into arriving at those conclusions. And I mean, the detail, not just what's included in the report, not just what's described in the report and the appendix, but also what's in the work file to show exactly the work that was done. Also, the testimony about what the appraiser or the author of the valuation disclosure actually did to verify things that are key components in the report.[19] [Emphasis added.]
3. Mr. Prybylski . . . on the other hand, is not required to compile or retain a work file, but that doesn't mean he should be given a free pass and leave key support out of his report or key explanations or key things to substantiate certain adjustments he made, especially when the entire basis for many of his adjustment categories was this notion of paired sales . . . . [and] [t]he only paired sale analysis we know that he used to support his adjustments was a deeply flawed one. **He used paired sales of industrial properties to derive the market conditions that would apply to a retail warehouse**.[20] [Emphasis added.]
4. **We have to weigh one report versus the other**, and you have to weigh whether the conclusions in that report, including the adjustments, including the selection of comparables, makes sense, they're substantiated, and they're supported, and you just don't have that for so many things in Mr. Prybylski's file. He said, again, a number of times, it's not in my report, but I'm familiar with the information, I'm familiar with the area.[21] [Emphasis added.]
5. Let's look at a few things Mr. Prybylski didn't do. He didn't call any of the market participants to the transactions, not because -- simply because he didn't try. Not because he couldn't get the information; he didn't try. He didn't visit the interior of many of the properties, especially the one that he ended up placing the most weight on, **the sales comparable he placed the most weight on**. **He didn't even go in the inside of the facility**. **And that's especially problematic when there appears to have been a major, major, major**

[18] See TR4 at 153.
[19] See TR4 at 153-154.
[20] See TR4 at 154-156.
[21] See TR4 at 156.

improvement in renovation to that property at the turn of the century that certainly would impact its effective life. But again, his effective age was taken from primarily assessment files. There wasn't any -- and his review of a Google image, a satellite image. I don't know how you can estimate effective age from a Google satellite.[22] [Emphasis added.]

6. Mr. Tomlinson's work file is well over 600 pages. As he testified, he visited each comparable. He inspected the inside, I believe, all of the comparables. He spoke with many of the market participants to get information about the circumstances of the sale. We don't have any of that from Mr. Prybylski. Are there instances where Mr. Tomlinson could have explained things better? Of course. Are there instances where he could have provided more data? Of course. Other instances where he relied upon his common, everyday experience, his accumulated knowledge over the years, his observations from going in and around the area of the subject? Sure. Does that make it -- **as an appraiser, are you required to put every kernel of input into your conclusions**? Can it be distilled into something that through a document, a table or data or some sentence in a report? Not always, not always. **Appraisers are allowed to bring their common, everyday experience and their observations and commonsense into their work, and this is no different**. The fact of the matter is, the Northland Center closed in 2015, and nothing has happened to . . . that center from 2015 to 2019, other than . . . some of the demolition had started.[23] [Emphasis added.]
7. Now, it doesn't take a lot of common sense to figure out when you get rid of 1.4 million square foot of shopping, it makes . . . that trade area pretty undesirable, especially for someone that wants to put a business -- a retail business in a big box store . . . . The functional obsolescence talked about that . . . [and] **you can't ignore the challenges that big box retailers face, whether it's the trend -- buyer trends to ecommerce, whether it's the disappearing malls that typically big boxes used to aggregate around, we simply can't ignore the importance of external obsolescence**.[24] [Emphasis added.]
8. **You also can't ignore the fact that** . . . **this property is a subject of a deed restriction**. It is encumbered. I understand it's a difficult thing to quantify . . . . which is why Mr. Tomlinson didn't attempt to . . . quantify it. However, at least he recognized it, and any buyer would

[22] See TR4 at 156-157.
[23] See TR4 at 157-158. See also TR4 at 165-166. In that regard, the purported "blight" would have impacted the property's value for the 2017 tax year, **which was the tax year at issue in MOAHR Docket No. 17-001491**. More importantly, the instant market was, as admitted by both parties, "appreciating" or increasing for the tax years under consideration (i.e., 2017 through the tax year at issue or 2020), which indicates that the impact of the "blight" was minimal at best.
[24] See TR4 at 158. See also TR3 at 83 (i.e., "I did **not** quantify the obsolescence"). [Emphasis added.]

recognize it, because that's going to place a limitation on what you can do with that property. And . . . Mr. Prybylski did not even acknowledge it in his report . . . a true encumbrance on this property that the marketplace just can't ignore, whether or not it can be distilled into a value.[25] [Emphasis added.]

9. Mr. Prybylski first testified that he reviewed the 2017 opinion before he did his valuation disclosure and said he considered that in his highest and best use. **Then he corrected himself and said he did not review the opinion until after he completed his report**. He then went on to acknowledge that had he reviewed that opinion, it would have been back to a selection of comparables in this valuation disclosure. And surely, **that's because the majority of his comparables do not share a legally permissible use with the subject or do not share zoning with the subject** . . . . The problem for Mr. Prybylski is that he's essentially discredited all of his . . . sales comparables.[26] [Emphasis added.]
10. At the end of the day . . . Mr. Prybylski said that he didn't put any weight on five of the six comparables, zero weight. He only put weight on sale comparable number 2. And the biggest adjustment he made to sale comparable number 2 was effective age condition. But when I asked Mr. Prybylski if he pulled the property cards to see if there were any major renovations or improvements in the long life of this . . . 61-year-old building, he said he didn't look beyond five years. If he had looked beyond five years, he would have seen that there was major improvements that were made in 2002 time frame, right at the turn of the century, and if he had found that, he admitted that that may have impacted the adjustment he made.[27]
11. **The biggest criticism** . . . of Mr. Tomlinson appears to be that on three of his comparables he didn't make location adjustments . . . **specifically 3, 4, and 5**. If you look at those comparables, the only argument you would make is he should have made a negative adjustment to . . . 3, 4, and 5 to account that they were in a much better location than the subject. So if there's any fault . . . he didn't adjust those comparables downward.[28] [Emphasis added.]
12. Certainly, I think an income approach is relevant. You can argue whether that should have [the] most weight or not, but it's certainly salient because . . . there is a market for buyers of big box retailers to purchase them **for investment purposes**, whether they subdivide them to allow multitenant use, whether they lease them out to a single user, as was the case in Tommy's there is a market for it, and Mr.

[25] See TR4 at 158-159.
[26] See TR4 at 159-163. See also TR4 at 166.
[27] See TR4 163-164.
[28] See TR4 at 167.

> Prybylski basically says there is no such market and there's no data, so I can't do an income approach. Well, he also admitted he never even looked for data, when he could have easily made a search on CoStar to see what rental leases or rental properties are recorded. He didn't even try to find it. So his decision not to do an income approach is completely discredited because he didn't try.[29] [Emphasis added.]

13. The record speaks for itself with respect to what Mr. Prybylski considered in selecting his comparables and what he didn't know with respect to the sales comparables and what he didn't provide with respect to the basis for the various adjustments he made. That record is unmistakable, and I don't think that the City's defense of its assessment was credible. It wasn't in good faith. It was not a good faith effort to defend this appraisal. Maybe it's because Mr. Prybylski didn't think this was a complicated appraisal issue, and that sort of speaks volumes right there[] [be]cause the appraisal real estate is complicated. There are a lot of moving parts that go into it, a lot of judgments you have to make.[30]
14. So I think as a whole, it's important again to remember that you have to adjust all of your sales comparables by over 30 percent. That is a red flag and should raise a lot of issues because of the credibility of his report. If you're going to make those kinds of . . . sweeping gross adjustments, you better be able to explain the . . . gross adjustments at those levels. And several of his adjustment categories just do not pass muster, and they shouldn't pass muster.[31]
15. The only thing frivolous in this case is you have an appraiser who's not qualified to appraise individual pieces of property, who admits that he gave no weight to five of his six comparables, admits that he didn't read the 2017 decision, admits that if he had read the decision . . . it would have changed all of his comparable selections . . . . Your Honor. That is frivolous.[32]

RESPONDENT'S CONTENTIONS

The property's TCV, assessed value (AV), and TV as established by Respondent's Board of Review (BOR) for the tax year at issue are:[33]

---

[29] See TR4 at 167-168.
[30] See TR4 at 168-169.
[31] See TR4 at 170-171. **Contrary to Petitioner's contentions**, the adjustment of a comparable by over 30% does **not** mean that the comparable should be excluded from consideration. **Rather**, net adjustments of over 15% or gross adjustments over 25%, which is the generally accepted range of adjustments for comparable properties (i.e., 15% to 25%), **simply require an explanation justifying the utilization of those comparables** (i.e., limited sales, etc.).
[32] See TR4 at 178-181.
[33] See the pleadings, the parties' respective October 21, 2021 prehearing statements, the January 31, 2022 Prehearing Conference Summary, P-1 at 32, and R-1 at 5-6.

Parcel Number: 76-24-36-452-005

Year	TCV	AV	TV
2020	$3,979,520	$1,989,760	$1,710,740

Respondent's revised contentions of TCV, AV and TV are: [34]

Parcel Number: 76-24-36-452-005

Year	TCV	AV	TV
2020	$4,102,000	$2,051,000	$1,710,740

In support of their Answer, Respondent contends that:

1. The sole issue in this case is the true cash value of the real property located at 16400 West Eight Mile Road in Southfield, Michigan, as of December 31st, 2019. The same property was before the Tribunal relative to the 2017 tax year and the Tribunal found that the true cash value of the subject property as of December 31st, 2016, was $4-and-a-half million . . . . [and] we are here today arguing over the same valuation three years later -- that being the same property, the same location, the same access

[34] Respondent claims that the property's TCV is $3,979,515 as of December 31, 2019, based on Mr. Prybylski's cost approach and $4,102,000 based on his sales comparison approach. See R-1 at 61-65 and 66-85. Mr. Prybylski did not prepare an income approach. See R-1 at 86-87. As for his reconciliation of those two approaches, see R-1 at 87-88, which provides that:

1. "The **Cost Approach** was originally utilized to value the subject property and estimate the true cash value for the subject, as of 12/31/19. This value estimate was the basis for the subject's 2020 true cash value, as on the original assessment roll. **While this approach presents an issue in its sole use for estimation of market value for a subject property**, **due to the nature of estimating an accurate amount of depreciation**. **The subject building is not a significantly old building that would require an atypical amount of adjustment for depreciation**. The original true cash value for the subject property, via the cost approach, was determined to be reliable and the sales and income approaches **were considered to determine whether the value would be supported or invalidated by the market**." [Emphasis added.]
2. "The **Income Approach** was not developed for estimation of true cash value for the subject property. **This property type is typically owner occupied and not leased for an income stream**. Therefore, it is difficult to find an appropriate amount of reliable data to develop this approach to any degree of certainty. **Since the appropriate amount and type of data could not be used for valuation of the subject building using the income approach**, it was **not** developed for valuation of the subject property, as of December 31, 2019." [Emphasis added.]
3. "The **Market Approach** is typically the most reliable method for estimation of true cash value for a subject property when an adequate amount of sales available. **Respondent determined an adequate amount of sales were available and these sales were identified and adjusted appropriately**. After application of this approach, Respondent determined that the value indication estimated through development of the market approach was supportive of the indication of true cash value for the subject property from the cost approach." [Emphasis added.]
4. "After application of the three approaches to value, Respondent determined that the 2020 true cash value, as of December 31, 2019, is **best supported by the market approach** . . . ." [Emphasis added.]

roads, the same city, the same appraiser for the taxpayer, and the same deed restriction.[35]

2. Petitioner has already put it in its case-in-chief and believes that[] three years later, after the Tribunal's independent and affirmed on appeal conclusion of value . . . **the property is worth $1.7 million less**, **notwithstanding that the appraiser has testified that the market has appreciated since then** . . . .[36] [Emphasis added.]
3. In its case in-chief, you will hear from the city assessor, who will be offered as an expert witness. Just as in the prior appeal, Respondent's assessor prepared its valuation disclosure, not an appraisal subject to USPAP, but valuation evidence. Respondent's expert will testify to his valuation evidence, his knowledge of the property, the area it is located in, and the market influences on the property. He will also testify to his conclusion of the true cash value of the subject property as of December 31st, 2019.[37] [Emphasis added.]
4. Yes, this property is a big box store. **Yes, it was encumbered by the same deed restriction on December 31st, 2016, and 2019**. However**, the latter issue was already addressed by the Tribunal in the prior iteration of this case and affirmed on appeal** . . . . [and] the deed restriction[] does not make this case novel or complicated. [38] [Emphasis added.]

Respondent also contends that:

1. In short, **when Petitioner's errors are corrected**, the parties are essentially in agreement that the property is not over assessed. **They agree that the property, in fact, is underassessed**.[39] [Emphasis added.]
2. To begin with, and as acknowledged by the Tribunal . . . we must give deference to the 2017 decision in this case that set the true cash value of the subject[] property at four and a half million. At the time of that decision, the same deed restriction at issue in this case was in place. The exact same building was on the subject property. Indeed, **the only thing that has changed since the valuation of December 31st, 2016, was the market has improved**. That is not my conclusion. **That is the conclusion of both Petitioner's and Respondent's experts**. We have to look no further than Mr. Tomlinson's report to see that he believes a positive 12 percent market adjustment would be appropriate indicating a

[35] See TR3 at 150-151.
[36] See TR3 at 151-152.
[37] See TR3 at 152-153.
[38] See TR3 at 153.
[39] See TR4 at 171-172.

value of the subject of over five million dollars true cash value.[40] [Emphasis added.]

3. Turning to Mr. Tomlinson's report . . . . [i]**t was clearly derived almost entirely from his report of the Tommy's property in Waterford**. The sales comps are the same, the income comps are the same, the expense conclusions are almost identical, and the cap rate is literally the same. Petitioner will deny that this was a case of copy and paste, but the facts speak for themselves . . . .[41]
4. **Realizing that the appraisals are essentially the same**, Petitioner spent its case in chief attempting to distance itself from the issues raised in the Waterford trial. **In regards to its sales comps**, Tomlinson said that despite **not** making the adjustments, **that now at hearing adjustments should have been made**.[42] Mr. Tomlinson said that despite only identifying two factors in his location adjustment **that he actually considered three**. **And** oh, conveniently, **that third bucket of other**, **the most important factor**, **was not even identified, nor did he have any information regarding that factor or even that this other factor was considered in his analysis, referenced in his appraisal, or his work file**.

   These **unstated and unidentified** factors were being used at hearing to **retroactively modify** the appraisal report to deal with issues in Petitioner's case that have failed to identify or address at the time of the appraisal. This is not to say anything about the identification of deferred maintenance and obsolescence but a failure to quantify it.

   As Your Honor made quite clear in questioning, **if an appraiser notices something** . . . with regard to a comparable that the market would identify as **creating a difference of value**, **an adjustment must be made**. If there is **no** adjustment made, the only logical conclusion is that one is **not** necessary. If you adjust Petitioner's sale comp three to use the actual $4,000,000 sale price and all of Tomlinson's adjustments that sale has an indicated per-square-foot value of $35 a square foot. If you take that comparable and the other two comparables, 4 and 5, that received no adjustment other than market conditions, the average indicated per-square-foot value of $28 indicates a true cash value of $3,571,680. **Using the most comparable sales**, **based on Tomlinson's own adjustment**, **supports the values on their own**.

---

[40] See TR4 at 172. See also P-1 at 29-30, 57 (i.e., "property values in the Subject Property's market have experienced appreciation in recent years"), the sales comparison grid at 58, and Mr. Tomlinson's testimony at TR1 at 167-169 and TR2 at 56 and 182. Finally, see R-1 at 74-75 (i.e., "[t]hese percentages are all reflective of an increasing market"), the sales comparison grids at 78, and Mr. Prybylski's testimony at TR3 at 186, 189, and 192 and at TR4 at 64-68 and 136-137.

[41] See TR3 at 172-173.

[42] See TR3 at 26-30. See also TR2 at 153-155 and 170-178.

Indeed, **if we look at the only sales that the parties have in common**, the sale of the former Kmart on 354 [Highland Road] in Waterford, **Petitioner's corrected per-square-foot value is $35 a square foot**. Respondent's adjusted sale price is $36, which is essentially the same. **Taking Petitioner's** . . . [corrected] **35 square foot value for that comparable[] indicates a true cash value for the property of $4,464,600**. Using a comparable that both parties share, both parties' experts believed was relevant enough to include it in their respective appraisals or valuation disclosure, and received a minimal amount of adjustments is not only logical, it is support[ed] by the record.[43] [Emphasis added.]

5. Mr. Tomlinson . . . also performed an income approach to value the property in his report. That valuation approach should be given zero weight. First, **it was essentially the same as the Waterford report, meaning it was not tailored to the property at issue in this case**. Second, **he had no actual expense information from the subject**, **so we have no idea if his conclusions are even reasonable**. Third, **despite actually appraising Tommy's property, he uses the wrong lease rate in his report**. Not only did he use the wrong lease rate; he stated the rate in his report in this case was actually correct and then only changed his mind when he was proven wrong.

   If Mr. Tomlinson cannot even get a lease right for a property he actually had the lease for, **how can we trust that he got the lease rate right for his other comparables when there is zero support for those rates in his work file**? If you correct Mr. Tomlinson's rent one to the actual rate, the average indicator rental rate is $6.60 rounded. If you then use the replacement reserves called for in the actual RealtyRates survey for a typical property of $.62 and apply every single expense Mr. Tomlinson used in his cap rate, the indicated value is $3,625,078. And while Petitioner's counsel may argue that using the average of the adjusted rents is not appropriate, if literally any combination of rental comps other than the lowest two are used, the values on the rolls [are] supported.[44] [Emphasis added.]
6. Mr. Tomlinson's report is unreliable. **He cites blight with no evidence**. **He says the retail market was devastated, but he has increasing market adjustments year over year**. He doesn't even know what retail, big box stores were located around the subject. He didn't even know Southfield's boundaries. He didn't even know what those were. He stated those wrong. **His report is riddled with error, and he uses his experience when market data was available but is not included in his**

[43] See TR4 at 173-175.
[44] See TR4 175-176.

> **appraisal report**. And that market data contradicts his experience and his judgment, and he doesn't include that market data in his report or his work file because he knows it contradicts it. He simply comes up with conclusions regarding the property's values, the adjustments he makes, and whatnot that's unsupportable.
>
> In contrast, Respondent's expert report is reliable and credible. No, it's not an appraisal report. No, Respondent's expert is not an MAI, but he doesn't need to be. The report is credible, it's accurate, it's reliable, and proves an accurate indication of true cash value that Petitioner's own report supports when the errors are corrected in Mr. Tomlinson's report. **That Respondent and Petitioner have an overlapping comparable only supports their shared conclusion**. I could go into more detail, but the record makes my point for me.[45] [Emphasis added.]

7. Respondent believes that this case is frivolous, devoid of merit, and has been prosecuted in bad faith . . . . [and] Respondent, recognizing that Petitioner couldn't meet its burden of proof, reached out twice during this hearing requesting that Petitioner withdraw and dismiss its appeal without Respondent requesting costs and attorney fees. Petitioner refused . . . . [and] [w]e believe . . . that . . . Petitioner[] moved forward in bad faith, **and Respondent requests costs and attorney fees in having to defend this appeal**.[46] [Emphasis added.]

PROCEDURAL MATTER

On May 17, 2022, the Tribunal entered an Order holding Respondent's April 12, 2022 Motion in *Limine* in abeyance as premature inasmuch as Petitioner had "not yet offered either Mr. Tomlinson or his appraisal for admission."[47] In that regard, Mr. Tomlinson

---

[45] See TR4 at 176-177.
[46] See TR4 at 177-178.
[47] See TR at 6-15. See also TR at 15-18, which provides that:

> THE COURT: Before I ask respondent whether they want to make their opening statement, I mean, you're telling me that Mr. Tomlinson looked at the opinion that was not only issued by Judge Gadola, but also by the Court of Appeals, and yet, I have language in his appraisal – I'll just read it. We consider this negative factor a regressive factor in our analysis. The factor being referred to is the deed restriction. So why is it that since Judge Gadola found that the deed restriction was -- would not significantly impact the value of the property, why am I now reading this in his valuation disclosure? I mean, as we both know, **this is the subject of the motion in limine filed by respondent**. So what market evidence exists that would otherwise justify his consideration of this negative or regressive factor?
> MR. ETZEL: Well, first of all, **he considered it**. **He didn't quantify it in any stretch**, he did consider it. **And certainly any buyer would consider it**. But the reason being why you should -- in terms of why it's perhaps more germane in this case than the prior one is the fact that **we have a different highest and best use**. Previously, when his highest and best use was as industrial. Obviously, its restrictions -- the covenant deed restrictions

> which precluded certain types of retail activity would not, you know, really come into play. But here, certainly because he's using a different highest and best use and the -- and not only that, all of his comparables are retail in nature and are being used as big boxes. Certainly, that impacts the potential pool of buyers that would buy his property if, in fact, you can't use it to sell -- to carry on certain types of hardware activities -- hardware retail activities. So it's -- you know, it's there. We can't ignore that it exists because it's right in the deed restriction. And so the point is simply, **that any prospective buyer would have to consider it**. We don't give it -- and I'll let Mr. Tomlinson speak to this. We don't quantify or give it a, you know, any account -- **we don't account for it in terms of weight** and say, okay, this is -- this is -- this would result in a discount or an adjustment. We don't do anything like that. **We're simply pointing out that a typical buyer of this type of property would have to consider it**. That's it. And I don't even think that the prior decision -- I mean, I think the court acknowledged that it exists. No one is saying it doesn't exist.
> THE COURT: Then why do we have two witnesses listed to testify about it?
> MR. ETZEL: Well, I'm not -- my only witness who is going to testify about it is Mr. Tomlinson. I can tell you that right now.
> THE COURT: Okay. Then I'm going to stay . . . my ruling on that motion until I hear what Mr. Tomlinson has to say and depending upon what he has to say -- I mean, you're telling me it wasn't quantified. So I'm interested to know why it was even considered. I mean, obviously, I have to consider the deed restriction just as Judge Gadola had to consider the deed restriction. And I'm not saying it shouldn't be considered or the buyer would not be aware of it. But why is he telling me in his appraisal that it is such a negative factor or regressive factor that it must be considered in the context of valuing the property. That's what I'm interested in hearing. But I will allow him to go ahead and testify as to this and make a decision as to whether that testimony should be stricken. All right?
> MR. ETZEL: Fair enough. Thank you. [Emphasis added.]

See also TR1 at 42-44 and 61-62 and *Greenfield*, *supra*, which provides that:

> Petitioner also argues that the tribunal made various errors of law. First, [P]etitioner argues that the [T]ribunal erred by ignoring the impact of the deed restriction on the property's value. Petitioner correctly points out that, in *Menard*, 315 Mich App at 523-526, this Court held that a deed restriction is a factor to be considered in determining the true cash value of property under a sales-comparison analysis. **In this case**, however, the [T]ribunal did **not** ignore the deed restriction that affected the subject property. Rather, **it specifically addressed the restriction, as well as this Court's decision in Menard, but found that the restriction** "**had an insignificant effect on value**." Because the [T]ribunal was aware of and expressly considered the deed restriction, the [T]ribunal did **not** commit an error of law with regard to the effect of the restriction. The more pertinent inquiry is whether the Tribunal's finding that the deed restriction "had an insignificant effect on value" is supported by competent, material, and substantial evidence on the whole record.
>
> Petitioner impliedly takes the position that, under *Menard*, the value of the property was required to be lowered because of the existence of the deed restriction. **This is an incorrect reading of *Menard***, which only holds that parties and the [T]ribunal **must consider** the impact of deed restrictions in determining the value of property. That is what occurred here. The [T]ribunal considered the impact of the deed restriction[] but concluded that it was insignificant to the property's value. **This finding is supported by Thurston's testimony that the restriction was "very narrow" because it only prevented the property from being used as a home improvement or hardware store, it did not otherwise make the property unsuitable for retail purposes, and**

indicated that the deed restriction was considered but not "quantified." More importantly, neither party provided any evidence to "quantify" the current value impact of the deed restriction, if any, or otherwise indicate that the Tribunal's prior holding in MOAHR Docket No. 17-001491 that the property's deed restriction would not significantly impact the value of the property is erroneous given the instant market.[48] As such, Respondent has not shown good cause to justify the granting of the Motion.

IT IS ORDERED that Respondent's Motion in *Limine* is DENIED.

FINDINGS OF FACT

The following facts were proven by a preponderance of the evidence (i.e., testimony and admitted exhibits) and concern only the evidence and inferences found to be significantly relevant to the legal issues involved:

1. The subject property (i.e., Parcel No. 76-24-36-452-005) consists of land and improvements located at 16400 West 8 Mile Road, Southfield, MI in Oakland County.[49]
2. The property is a free-standing building owned and occupied by Petitioner.[50] Further, there was no transfer of the property's ownership during the 2019 tax year.[51]
3. The property is classified as commercial real and has a deed restriction excluding certain retail uses of the property (i.e., hardware). The property is also zoned as B-3, General Business Zoning District.[52]

> **there were still retail users or commercial property users that would find this building to have utility**. In Thurston's opinion, this was a **common type** of restriction, which was "[n]ot very restrictive at all."
>
> As for considering comparable properties that did not contain deed restrictions, that proved to be difficult for both parties. Few, if any, of the comparable properties had such restrictions. Thurston testified, however, that properties like the subject property that formerly contained "big box" stores **were able to be used for** other businesses that would not run afoul of the deed restrictions. The [T]ribunal found that the deed restriction had an insignificant effect on the property's value. **Given Thurston's testimony**, **this finding is supported by competent, material, and substantial evidence on the whole record**. [Emphasis added.]

[48] Although at least one of the comparables offered by the parties had a deed restriction, that property was not, **given the use of a common comparable without a deed restriction**, considered in the rendering of this decision. See TR1 at 151-154; TR2 at 179-181; TR3 at 82-83; and TR4 at 27-30.
[49] See P-1 at 1 and 3 and R-1 at 6-7 and 18.
[50] See P-1 at 1 and 3. As for Mr. Prybylski, he states in R-1 at 19 that the building is "Tenant Occupied." Said statement is not supported by Mr. Prybylski's statement at 7, which provides that "[t]he building is owner-occupied and not leased to tenants." Testimony by both Mr. Tomlinson and Mr. Prybylski does, however, support a finding that the property was owner-occupied and not leased as of the tax date at issue. See also TR1 at 7, 35, and 40 and TR2 at 15 and 103.
[51] See P-1 at 3 and R-1 at 7 and 19. See also Exhibit E of P-1.
[52] See P-1 at 1 and 33 and R-1 at 6 and 20-32.

4. The subject land area consists of approximately 8.67 acres or 377,665 square feet.[53] As for the subject building, the building is an owner-occupied freestanding retail building consisting of 127,560 square feet and used by Petitioner as a Universal Wholesale, which sells inventory to other retailers (i.e., Dollar Stores).[54] The store consists of a retail showroom and storage warehouse.[55]
5. The property's highest and best use for the tax year at issue is its continued use for commercial purposes as a free-standing retail building.[56]
6. The Tribunal rendered a decision in MOAHR Docket No. 17-001491 on October 9, 2018, establishing the subject property's TCV, SEV, and TV for the 2017 tax year as $4,500,000, $2,250,000, and $1,649,430. The October 9, 2018 Final Opinion and Judgment ("FOJ") was appealed to the Michigan Court of Appeals and the Court of Appeals issued a decision on December 12, 2019, affirming the values established in the FOJ. The Court of Appeals decision was not appealed to the Michigan Supreme Court.
7. The instant market was increasing for the tax year at issue.[57]

---

[53] See P-1 at 1 and 31 and R-1 at 6 and 18.

[54] Although P-1 at 1 and 31 and the appraisal authored by Mr. Tomlinson that was offered and admitted in MOAHR 17-001491 for the same subject property indicate that the property "contains a warehouse building totaling 125,806 SF of gross building area," Mr. Tomlinson's cover letter and sales comparison grid in P-1 at 58 indicates "Building Size (SF of GBA)" of 127,560, which is supported by Mr. Tomlinson's testimony at TR1 at 98-99, which provides:

> Q: Can you describe the improvements on the property?
> A: Yes. It's one building. Gross building area is 125,000 -- excuse me -- that is incorrect here. I have 125,806. **It should be 127,560** . . . .
> Q: And what did you do to verify that is the correct size of the building?
> A: I referred to the assessment card and I did a -- I did measure the entire building, but I measured the south side and the west side and the measurements that are -- it was a building sketch associated with the assessment card and they tend to be accurate. **So I made the determination that 127,560 is the correct gross building area**.
> Q: Can you go back to describing the improvements on the -- the subject's improvements on the site? On the front of page 31.
> A: Yes, yes, yes. I'm on page 31. **So the building area**, the warehouses and the office area **is 127,560**. [Emphasis added.]

See also TR2 at 37, 74, and 78; TR3 at 27, 29, 59, and 171; TR4 at 23; and R-1 at 6, 18, and 78.

[55] See the cover letter for P-1; P-1 at 1, 7-8, 31; and R-1 at 6-7, and 18.

[56] See TR1 at 6 (i.e., "a freestanding big box store").

[57] See P-1 at 57 and 58 and TR1 at 123-124, 167-169, which provides that:

> Q: . . . Can you explain to me the formula you used to come up with these various adjustments . . . accounting for market conditions?
> A: Yes . . . . properties -- especially in this case, **retail properties have** [been] **appreciating**. **I concluded that a 3 percent annual appreciation factor would be appropriate**. I've looked at resales of properties. I've looked at Costar reports. **I did not do any conclusive study on my conclusion**. **I just felt that a 3 percent per annum was reasonable and would reflect market** . . . .
> Q: . . . how [did] you came up with 3 percent . . . .
> A: **It's not from an appraisal authority**. **In my constant professional service here I'd look at sales, I'd look at resales, I look at -- I do a lot of review work**. So I review

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.[58] In that regard, the Michigan Legislature has defined "true cash value" to mean:

> . . . the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale.[59]

In its review of that definition, the Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and "fair market value' . . . are synonymous."[60]

As for the Tribunal, the Tribunal is required "to make a finding of true cash value in arriving at its determination of a lawful property.[61] The Tribunal is not, however, bound

---

> appraisals and look at what appreciation or no appreciation they're using. I also looked at assessing cards because the true cash value should reflect market and so from one year to the next could indicate market appreciation if the property has stayed the same. **So it's from a variety of sources**. **Never did a formal study to say hey**, **this is what I did, here are my calculations, I came out with 3 percent**. **But the way that I appraise**, especially from 2016 through 2019, which was a period of recovery from the Great Recession, **3 percent a year appeared to be very reasonable and supported**.
> Q: And so you used that 3 percent per year approach or formula in other appraisal reports?
> A: Yeah, depending on the property type and market, yes. [Emphasis added.]

See also TR2 at 62 and 115-116. As for Respondent, see R-1 at 74-75 and 78 and TR3 at 186-187, which provides that:

> A: Market conditions accounts for changes in the market.
> Q: And . . . what method did you use for determining the market conditions adjustment?
> A: **I used a resale analysis from three properties**.
> Q: Is that similar to a paired sale analysis?
> A: A resale analysis is . . . similar to a paired sale analysis. A resale analysis is taking a property that has sold twice within a time period and looking at the change over that time period per month . . . .
> Q: And what do those sales indicate regarding the change in the market?
> A: **I concluded that there was a change in the market of a half a percent per month, or 6 percent a year**.
> Q: Based on that data, what was your conclusion regarding the indicated market change?
> A: **That the market was increasing in value**. [Emphasis added.]

See also TR3 at 196-198 and TR4 at 64-68 (i.e., "the current use was similar enough" and "I looked at Google Street Views of the properties in 10 different years and the assessor record cards"). Further, see TR4 at 103-105, 136-137, 143-144, and 146-151.

[58] See Const 1963, art 9, sec 3.

[59] See MCL 211.27(1).

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

to accept either of the parties' theories of valuation.[62] Rather, it is the Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case."[63] Further, 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.[64]

A proceeding before the Tribunal is original, independent, and de novo and the Tribunal's factual findings must be supported by competent, material, and substantial evidence.[65] In that regard, "substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence."[66]

Additionally, "the petitioner has the burden of proof in establishing the true cash value of the property."[67] "This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party."[68] However, "[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question."[69]

As recognized by Michigan courts, the three most common approaches to valuation are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach.[70] The market approach is, however, the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.[71] Nevertheless, the Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the TCV of the property, utilizing an approach that provides the most accurate valuation under the circumstances.[72] Regardless of the approach selected, the value determined must represent the usual price for which the subject property would sell.[73]

---

[61] See MCL 205.737(1). See also *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).
[62] See *Teledyne Continental Motors v Muskegon Twp,* 145 Mich App 749, 754; 378 NW2d 590 (1985).
[63] See *Meadowlanes Ltd Dividend Housing Ass'n v Holland,* 437 Mich 473, 485; 473 NW2d 636 (1991).
[64] See *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).
[65] See MCL 205.735a(2). See also *Antisdale*, *supra* at 277 and *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).
[66] See *Jones & Laughlin*, *supra* at 352-353.
[67] See MCL 205.737(3).
[68] See *Jones & Laughlin*, *supra* at 354-355.
[69] See MCL 205.737(3).
[70] See *Meadowlanes*, *supra* at 484-485 and *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), *aff'd* 380 Mich 390 (1968).
[71] See *Jones & Laughlin*, *supra* at 353 (citing *Antisdale*, *supra* at 276 n 1).
[72] See *Jones & Laughlin*, *supra* at 353 (citing *Antisdale*, *supra* at 277 and *Teledyne Continental Motors v Muskegon Twp*, 163 Mich App 188, 193; 413 NW2d 700 (1987), *lv den* 429 Mich 889 (1987)).
[73] See *Jones & Laughlin*, *supra* at 353 (citing *Meadowlanes*, *supra* at 485).

The Tribunal is also required to consider the "highest and best use" of property in determining the property's TCV, as that concept is "fundamental" to such determinations, as "[i]t recognizes that the use to which a prospective buyer would put the property will influence the price which the buyer would be willing to pay….[further,] [l]and is appropriately valued 'as if available for development to its highest and best use, that most likely legal use which will yield the highest present worth.'"[74] In that regard, "highest and best use" of property is shaped by the competitive forces within the market where the property is located, and it provides the support for a thorough investigation of the competitive position of the property "in the minds of market participants."[75] Additionally, highest and best use analysis strongly influences the choice of comparable sales in the sales approach. Only properties with the same or similar highest and best uses are suitable for use as comparable sales.[76]

Finally, the Tribunal is further required to determine the subject property or properties' TV for the tax years at issue.[77]

Prior to addressing the parties' claims, the first step in the valuation process requires the Tribunal to determine the property's highest and best use. In that regard, Petitioner's appraiser, Mr. Tomlinson, concluded that the property's highest and best use "as vacant" is "[h]old for future development" and "as improved" is "[c]ontinued use of the existing improvements as a retail, warehouse development (i.e., big box), acknowledging the restrictive covenants."[78] Mr. Tomlinson also provided an analysis in support of said conclusions.[79] As for Respondent, Mr. Prybylski concluded that the property's highest and best use "as vacant" is "[b]uild to suit Commercial – Retail" and "as improved" is "[c]ontinued as Commercial Retail."[80] Mr. Prybylski also provided an

---

[74] See *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 633; 462 NW2d 325 (1990).
[75] See Appraisal Institute: *The Appraisal of Real Estate* (2013, 14th ed) at 331.
[76] See *The Appraisal of Real Estate*, *supra* at 345.
[77] See MCL 205.737(1). See also MCL 211.27a(2).
[78] See P-1 at 2
[79] "Whenever a market value opinion is developed, highest and best use analysis is necessary." See Appraisal Institute: *The Appraisal of Real Estate*, (15th ed, 2020) at 34. In that regard, see P-1 at 36-38. Of particular note is Mr. Tomlinson's statement at 37 that:

> We acknowledge the restricted use covenant encumbrances. **These encumbrances severely** [] **dim**[in]**ish**[es] the retail use of the Subject **and** consequently **reduces the potential retail users**. **The resulting market effect is a lower demand** for the site [and] for the improvements. [Emphasis added.]

Said statement would appear to run counter to the Tribunal's decision in the prior case (i.e., MOAHR Docket No. 17-001491) that the deed restrictions "had an insignificant effect on value" and Mr. Tomlinson's testimony as to the "quantifying" of the deed restrictions, as a "severe" diminishing of retail use and resulting "lower demand" for property would have a significant effect on value that should have been quantified. However, **no evidence was**, as indicated above, **presented by either party to** "**quantify**" **the value impact**, if any, **of that deed restriction relative to the market at issue in this case**.
[80] See R-1 at 6.

analysis in support of said conclusions.[81] Although Mr. Prybylski's analysis modifies his above-noted conclusion, the evidence provided supports his original conclusion that the highest and best use for the free-standing retail building at issue is its continued use for commercial/retail purposes, as said use is legally permissible, physically possible, financially feasible, and maximally productive.[82]

With respect to the parties' claims, Petitioner submitted an appraisal (i.e., P-1) and Respondent submitted a valuation disclosure (i.e., R-1) and parties' valuation expert provided testimony in support of their valuation evidence. Although both experts considered all three recognized approaches to value, Mr. Tomlinson did not perform a cost approach. Rather, he performed sales comparison and income capitalization approaches only with more weight given to his income capitalization approach because "the property is an income producing property."

---

[81] See R-4 at 34 (i.e., "the highest and best use of the property as both vacant and improved is continued use as a Retail Store – Warehouse Showroom").

[82] See *The Appraisal of Real Estate*, *supra* at 33-35 and 317-318. Further, the Michigan Court of Appeals stated in *Menard, Inc v City of Escanaba*, 315 Mich App 512; 891 NW2d 1 (2016) at 524-526 that:

> . . . in assessing TCV, the property "must be assessed at its highest and best use," Huron Ridge, 275 Mich App at 33; 737 NW2d 187, which, in this case, is as an **owner-occupied freestanding retail building**. Deed restrictions that limit the ability of prospective buyers to use the comparable properties for the subject property's HBU necessarily limit, if not eliminate, the willingness of those buyers to purchase the restricted property. **Those who would be interested in buying the property with restrictions would need to make modifications to convert the building from retail to something else**, like industrial use. Given the need to convert, the buyers would necessarily pay a lower price. [Emphasis added.]

The Court of Appeals also stated in their unpublished opinion *per curiam* issued in *Menard, Inc v City of Escanaba* on February 10, 2022 (Docket No. 354900) that:

> This Court ordered that the [**T]ribunal consider** the effect of the deed restrictions on remand, **and not to use** comparable sales **if it was not able to reliably adjust the comparable properties**. *Id.*
>
> Following remand, the [T]ribunal opined that the weight of the evidence suggested that deed restrictions had a neutral market value, and that a market analysis provided following remand showed that deed-restricted properties sold for 12% more than unrestricted properties. However, the [T]ribunal ultimately determined that "reliable data to adjust the value of the comparables if sold for the subject property's [highest and best use] was not provided."
>
> The [T]ribunal complied with this Court's instruction by accepting additional evidence regarding the effect of deed restrictions on comparable sales**.** It ultimately determined that it could not reliably adjust the value of comparable sales, which was an outcome this Court specifically contemplated. Additionally, **because the [T]ribunal did not rely on deed-restricted comparable sales**, **any error in its findings did not affect the outcome of this case**. [Emphasis added.]

As for Mr. Tomlinson's conclusions that (i) the instant market was "blighted" or a "retail wasteland" and (2) "the property is an income producing property," the instant market was admittedly increasing from 2017 (i.e., the tax year at issue in MOAHR Docket No. 17-001491) to the tax date at issue in this case (i.e., December 31, 2019). No market evidence, reliable or otherwise, was offered to establish the value impact of any such blight in an admittedly "appreciating" or increasing market.[83] Further, the property was, as of the relevant tax date, owner-occupied and not leased. As such, it was not an income producing property.

Notwithstanding the above, the automatic exclusion of an income approach would not be appropriate if there is reliable market data to support such an approach. Unfortunately, the instant data is less reliable than the parties' sales information "due to the variables necessary to estimate market rent, vacancy, operating expenses, capitalization rates, and stabilization costs." In that regard, it is also the Tribunal's experience in cases involving the valuation of "big box stores" that such properties are not typically purchased for investment purposes.[84] As such, Mr. Tomlinson's income approach is, given his estimated data and the averaging of that data, an unreliable indicator of value.[85]
With respect to Mr. Tomlinson's failure to perform a cost approach, said failure was appropriate based on the difficulty in estimating the necessary and likely large amount of depreciation and obsolescence, both functional and economic, which is why such cases are generally resolved under a sales comparison approach and not an income or cost approach.[86] Mr. Prybylski, on the other hand, performed a cost approach and supported the performing of that approach by indicating that "[t]he subject building is not a significantly old building that would require an atypical amount of adjustment for depreciation." The building is, however, a second-generation big box store and old enough to require the calculation of depreciation based on the building's age and condition and obsolescence, both functional and economic, based on building's configuration and current market trends (i.e., e-commerce). In that regard, Mr. Prybylski addressed the building's depreciation but admittedly did not quantify the obsolescence, which renders his cost approach an unreliable indicator of value.[87]

---

[83] See MCL 211.2(2).
[84] Although "big box stores" have been purchased and subdivided for multi-tenant use, **no reliable evidence was offered**, other than Mr. Tomlinson's testimony, **to establish the existence of any active "investment" market for the purchase of big box stores**. Rather, big box stores are more typically sold and used by the purchaser as an owner-occupant.
[85] "Averaging" is problematic, as an average or mean is a measure of central tendency (mean, median, and mode) that is dependent on sampling methodology and sampling size and a limited sampling size, **as in the instant case**, can skew the mean, median, and mode rendering that measure an unreliable indicator of value.
[86] The e-commerce issue has been raised in a number of big box store cases and no one has been able to effectively quantify its value impact and said quantification would be necessary for the determination of the value of such properties under a cost approach.
[87] Although Mr. Prybylski initially indicated that the performance of his sales comparison approach was done to support his cost approach, he ultimately and correctly determined that his estimate of the property's TCV was "best supported by his market approach."

As for the parties' sales comparison approaches, the Tribunal finds that the parties' sales comparison approaches are, despite problems with both approaches (i.e., lack of necessary data, etc.), the most appropriate approach to value the property at issue. The information provided by Mr. Tomlinson and Mr. Prybylski in those approaches is, for lack of a better term, superior to the information provided in either Mr. Tomlinson's income approach or Mr. Prybylski's cost approach given its direct ties to the marketplace. More specifically, Mr. Tomlinson utilized the same or, essentially the same, sales comparison approach offered and admitted in MOAHR Docket No. 20-004545, which was found to be an unreliable indicator of value given, among other things, Mr. Tomlinson's reliance on his professional judgment without disclosing the underlying market data supporting that professional judgment or, more appropriately, his interpretation of that undisclosed market data. Although Mr. Tomlinson's experience may bolster his credibility, the Tribunal has no ability to verify or otherwise determine whether his professional judgment or "expert opinion" is grounded in fact without the submission of the underlying data supporting, for example, his suggested market condition adjustment in this case of three percent per year based on a recovery from the "Great Rescission," which ended, for the most part, in 2012.[88] The Tribunal also has the same problem with Mr. Prybylski's valuation disclosure and his reliance on his professional judgment without disclosing the market data in support of that professional judgment or "expert opinion." Nevertheless, the use of the common comparable, despite issues relating to the current use of that property, allows the Tribunal to work with the sets of data provided by both Mr. Tomlinson and Mr. Prybylski in properly adjusting that comparable to reflect the differences between the subject and the common comparable. In that regard, Mr. Etzel criticized Mr. Prybylski for his use of properties zoned industrial and not commercial in his "trend analysis" to determine his market condition adjustment of six percent per year, Mr. Prybylski at least provided data in support of his opinion relative to that adjustment. Further, the use of properties zoned industrial does not automatically preclude their consideration, despite Judge Gadola's prior determination regarding highest and best use, if the properties are being similarly used given the overlapping of zoning designations and permitted uses under such designations. In that regard, Mr. Prybylski testified that the properties were being similarly used and that testimony was not rebutted by Petitioner. Additionally, Pair No. 1 of Mr. Prybylski's three "resales" appears to be the most reliable given the location of the sale in the City of Southfield, the sale dates of the sales of that property, and Mr. Prybylski's testimony regarding his review of that property regarding changes to the property that may have impacted the subsequent sale price. As such, the proper adjustment is six percent per year and not three percent per year resulting in a market condition adjustment of 0.5% per month.

---

[88] See MRE 702, which provides that: "[i]f the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) **the testimony is based on sufficient facts or data**, (2) the testimony is the product of reliable principles and methods, **and** (3) **the witness has applied the principles and methods reliably to the facts of the case**." [Emphasis added.]

With respect to the comparables utilized by Mr. Tomlinson and Mr. Prybylski, they do have a common comparable (i.e., Comparable No. 3 in both Mr. Tomlinson's appraisal and Mr. Prybylski's valuation disclosure) located next to a closed mall like the subject property and the use of that comparable resolves many of the concerns raised by both parties relative to the reliability of the valuation evidence, both testimony and documentation, provided by Mr. Tomlinson and Mr. Prybylski. In that regard:

1. Mr. Tomlinson allocated $400,000 of the $4,000,000 purchase price for that comparable to "outparcels" included in the purchase that he felt could be utilized for other purposes (i.e., restaurant, etc.). Mr. Tomlinson did not, however, provide any testimony or, more importantly, data to support that allocation as to the purported "contributing value" of those "outparcels" and, as such, the total purchase price needs to be utilized in determining the price per square foot for Comparable No. 3.[89]
2. Mr. Prybylski utilized 114,227 square feet for determining his price per square foot of Comparable No. 3. While, Mr. Tomlinson utilized 120,719 square feet, as indicated in both his admitted appraisal in the instant case and his admitted appraisal in MOAHR Docket No. 20-004545. Mr. Tomlinson also testified that he checked his comparables' assessment records and commercial listings and spoke with the parties involving in the sales of the comparables. Further, the Assessor for Waterford Township, which is the Township in which Comparable No. 3 is located, also utilized 120,719 square feet in the sales grid contained in her admitted valuation disclosure in MOAHR Docket No. 20-004545 even though there were certain references to 114,227 square feet in her written materials. As a result, the square footage of Comparable No. 3's building is, given the evidence provided, 120,719.
3. Based on the total purchase price of Comparable No. 3 of $4,000,000 and the building's square footage for that comparable of 120,719, the revised price per square foot is $33.13 versus $29.82 and $35.02.
4. As for the adjustments to Comparable No. 3:

---

[89] See TR1 at 143-145 and 148, which provides, in pertinent part, that:

> A: This is a Kmart store located in Waterford Township . . . . It was built in 1978, it's older, **which is an issue with this comp**, but because of its size and, you know, it was a big box, I utilized it anyway. The other couple concerns I had on this was it was transferred into a mini storage. The zoning here is C-4 under Waterford Township and like the B3 zoning in Southfield, it doesn't allow mini storage use or industrial use so I'm -- looking at this now, I question how that happened in that respect. **The other aspect here**, too**, is the original price was $4 million, but that included three parcels of which two are outparcels**. The outparcels are in the north of the main building and it borders Highland Road. There's an immediate curb cut. **So I think the outparcels were separated there for potential**, you know, **outlet development like a restaurant or coffee shop or something of that nature which typically happens when you have a major retail property**. You'd like to be able to sell the outlet parcels because there's a lot of people coming into the area, and you can draw demand for those outlet parcels. **But I took the contributing value of those outlet parcels from the sales price and that's how I came from 3.6**. [Emphasis added.]

a. Mr. Tomlinson adjusted Comparable No. 3 for market conditions only. He did, however, testify that additional adjustments should have been made to Comparable No. 3 (i.e., location based on higher traffic counts, etc.).[90]
b. Mr. Prybylski adjusted Comparable No. 3 for market conditions as well as location, land to building ratio, effective age/observed condition, and building size. Mr. Prybylski's adjustments for location, land to building ratio, and effective age/observed condition did, however, result in a total adjustment of zero percent for those differences.
c. Although the Tribunal has in other "big box" cases heard testimony that adjustments for "building size" are unnecessary if the size of subject and comparables are at least 80,000 square feet, no such testimony was, presented in this case. This is, for lack of a better term, problematic given the inverse relationship of commercial square footage (i.e., the smaller the square footage, the greater the price per square foot versus the larger the square footage, the lesser the price per square foot). In that regard, Mr. Tomlinson adjusted his Comparable Nos. 1 and 6 by a negative five percent and five percent, respectively, for differences of 65,650 and 59,203 but did not adjust Comparable Nos. 2, 3, 4, and 5 for differences in building size ranging from 1,354 square feet to 16,994. Mr. Prybylski, on the other hand, adjusted each of his comparables for differences in building size. With respect to those adjustments, Mr. Prybylski adjusted the 4,960 square foot difference reflected by his Comparable No. 2 by a negative three percent and the 13,333 square foot difference reflected by his Comparable No. 3 by a negative adjustment of eight percent. The square footage difference for his Comparable No. 3 is, however, 6,981 and not 13,333 given revision of Mr. Prybylski's estimated square footage for that comparable from 144,227 to 120,719. Nevertheless, Mr. Prybylski's original adjustments for those two comparables bracket the actual square foot difference between the subject property and Comparable No. 3 and support an adjustment of a negative four percent to account for the revised difference.

5. Based on the price per square foot of $33.13 and the market condition adjustment of 0.5% per month for 23 months (i.e., January 11, 2018, to December 31, 2019), the "Adjusted Price Subtotal" or the "Interim Adjusted Price per SF" is $36.94 versus $31.61 and $39.05. Adjusting that adjusted price per square foot by a negative four percent to reflect the difference in building size results in a "Final" or "Total" Adjusted Price per SF of $35.46.

Given the above, the Tribunal concludes that the multiplication of the Tribunal's final adjusted price per square foot for the parties' Comparable No. 3 by the Tribunal's finding as to the building's square footage for that comparable is the only reliable indicator of value offered by either party and provides "the most accurate valuation

[90] See TR2 at 153-155 and 170-178

under the circumstances."[91] As a result, the Tribunal also concludes that the subject property's TCV and TV for the tax year at issue is as listed in the Introduction Section of this Proposed Opinion and Judgment (POJ).

Finally, the Tribunal finds that Petitioner's actions in the filing and prosecution of this appeal, although questionable based on the evidence provided by Petitioner, do not, with respect to Respondent's request for costs and attorney fees, appear to have been frivolous or imposed for any improper purpose.[92] In that regard, Petitioner's contention that Respondent's use of their Assessor as their valuation expert and his preparation of a valuation disclosure is somehow frivolous is also erroneous.

IT IS FURTHER ORDERED that Respondent's Request for Costs and Attorney Fees is DENIED.

PROPOSED JUDGMENT

This is a proposed decision and not a final decision.[93] As such, no action should be taken based on this decision. After the expiration of the time period for the opposing party to file a response to the exceptions, the Tribunal will review the case file, including the POJ and all exceptions and responses, if any, and:

---

[91] See *Jones & Laughlin*, *supra* at p 353. Although the Tribunal typically reviews each parties' evidence separately so as to determine whether Petitioner has met its burden of persuasion before reviewing Respondent's evidence, the determination that the common comparable would facilitate a resolution of the case meant that Petitioner had clearly met its burden even though Petitioner was requesting a substantial reduction in the assessment previously established by the Tribunal for the 2017 tax year despite a clearly increasing market. See MCL 205.737(3) (i.e., "[t]he petitioner has the burden of proof in establishing the true cash value of the property"). See also *Jones & Laughlin*, *supra* at 352-353 (i.e., "competent, material, and substantial evidence") and 354, which provides, in pertinent part:

> The [T]ribunal correctly noted that the burden of proof was on petitioner, MCL § 205.737(3); MSA § 7.650(37)(3). **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**. *Kar v Hogan,* 399 Mich 529, 539-40, 251 NW2d 77 (1976); *Holy Spirit Ass'n For the Unification of World Christianity v Dep't of Treasury,* 131 Mich App 743, 752; 347 NW2d 707 (1984). [Emphasis added.]

Although not intended, the property's revised assessment is **consistent** with the Tribunal previous determination given the parties' evidence establishing an appreciating or increasing market for the tax year at issue.

[92] See TTR 209(1) (i.e., "[t]he granting of costs and attorney fees are within the discretion of the Tribunal." That rule is, however, silent as to the standards that are to be applied in making such determinations and the Tribunal, in exercising such discretion, generally looks to whether a claim or defense was frivolous or imposed for any improper purpose, as indicated above. See also TTR 215, MCL 24.323, MCR 2.114, and *Aberdeen of Brighton, LLC v City of Brighton*, unpublished opinion *per curiam* issued by the Court of Appeals on October 16, 2012 (Docket No. 301826).

[93] See MCL 205.726.

1. Issue a Final Opinion and Judgment (FOJ) adopting the POJ as the final decision.
2. Issue an FOJ modifying the POJ and adopting the Modified POJ as the final decision.
3. Issue an Order vacating the POJ and ordering a rehearing or such other action as is necessary and appropriate.

EXCEPTIONS

This POJ was prepared by the Michigan Office of Administrative Hearings and Rules. The parties have 20 days from the below "Date Entered by Tribunal" to notify the Tribunal and the opposing party in writing, by mail or by electronic filing, if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions). Exceptions are limited to the evidence submitted prior to or at the hearing and any matter addressed in the POJ. There is no fee for filing exceptions.

The opposing party has 14 days from the date the exceptions were mailed to that party to file a written response to the exceptions.[94]

A copy of a party's written exceptions or response must be sent by mail or electronic service, if agreed upon by the parties, to the opposing party and proof must be submitted to the Tribunal that the exceptions or response were served on the opposing party. Exceptions and responses filed by *facsimile* will not be considered.

Entered: March 16, 2023 By Peter M. Koglie
pmk

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

[94] See MCL 205.762(2) and TTR 289(1) and (2).