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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
ACTING DIRECTOR

D & L Management LLC,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 21-001628

Riverside Township,
Respondent.

Presiding Judge
Marcus L. Abood

ORDER DENYING RESPONDENT'S MOTION IN LIMINE

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, D & L Management LLC, appeals ad valorem property tax assessments levied by Respondent, Riverside Township, against parcel number 014-030-001-85 for the 2021 tax year. A hearing was held in this matter on April 10 and 11, 2023. Jason Conti, Attorney, and Scott Aston appeared on behalf of Petitioner. Patrick A. Cherry, and Cynthia Wotila, Attorneys, appeared on behalf of Respondent. Petitioner's witnesses were Andrew Sill, and David Rozeveld. Respondent's witnesses were Don Ellens and Bradley Conkey.

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: 014-030-001-85

Year	TCV	SEV	TV
2021	\$2,000,000	\$1,000,000	\$1,000,000

PETITIONER'S CONTENTIONS

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

Parcel Number: 014-030-001-85

Year	TCV	SEV	TV
2021	\$1,600,000	\$800,000	\$800,000

Petitioner contends that the subject's main building (28,892 square feet) is not a showroom. The building does not have modern glass walls, customer lounges and service check in areas found in an automobile dealership.¹

Petitioner's appraiser contends that the subject's highest and best use (as improved) is for its current use as a farm implements and equipment dealership. This is not to be confused with an automobile dealership though.²

Petitioner's appraiser considered all three approaches to value for this appraisal assignment. The income approach was not developed because the subject is owner-occupied; the subject is not an income producing property. There are no investors for this type of property in this rural setting.

Petitioner's appraiser developed the sales comparison approach which included four comparable sales. Petitioner's appraiser is familiar with the Bader and Sons portfolio sale (Bader sale) which included ten properties. This portfolio sale was not utilized because allocating a value to each of the ten properties from an overall purchase price is not reasonable. The portfolio sale for ten properties would include real property, personal property and business intangibles.³ The allocated purchase price for each property is not supported by market data.

Petitioner's appraiser developed the cost approach to value which included land sales, replacement cost new (RCN) and physical depreciation for the subject building. A cost work-up was performed for each of the sales used in Petitioner's comparative analysis to derive external and functional obsolescence for the subject property. Regarding market evidence and obsolescence, Petitioner's appraiser asserts, "Actions of market participants. I didn't find any evidence of a similar building with a similar location to the subject that has sold recently anywhere near what it would cost to replace that building."⁴

Petitioner contends that the subject is not a dealership and was costed as an industrial building in Marshall Valuation Service (MVS). Petitioner's appraiser used his best judgment based on the subject's construction and building use.

Petitioner's appraiser valued the subject as "vacant and available" to the market and not as value-in-use to a particular user of the property.

PETITIONER'S ADMITTED EXHIBITS

- P-1: Appraisal Report prepared by Andrew Sill (with corrected Pages 39, 60, and 63 for appraisal report.
- P-2: Andrew Sill's Workfile.

¹ Vol 1, 34.

² Vol 1, 41-42.

³ Vol 1, 45.

⁴ Vol 1, 120.

- P-3: John Deere – Hutson article dated June 25, 2021, Consent Judgment for Michigan Tax Tribunal (MTT) Docket No. 20-003411, Bader and Sons Appraisal Report (excerpts) prepared by James Hartman, Bader and Sons Appraisal Report (excerpts) prepared by Daniel Essa.
- P-4: Michigan Department of Transportation (MDOT) Traffic Counts for Petitioner’s Comparable Sales.
- P-6: All About Ann Arbor article dated August 31, 2021, “Owner of Dunning Toyota, Subaru sells after 51 years in Ann Arbor”, (Respondent’s Sale 2).
- P-7: BS&A Information for Respondent’s Sale 2.
- P-8: Tri-County Citizen article dated August 1, 2020, “LaClair Sales set to become Garber of Chesaning.” (Respondent’s Sale 3).
- P-9: Local News article dated August 4, 2020, “Garber Automotive Acquires LeClair Chevrolet Buick in Chesaning.” (Respondent’s Sale 3).
- P-10: Aerial Photograph of Respondent’s Sale 3.
- P-11: Untitled article, “DeNooyer Family Car Dealership Comes to Vicksburg.” (Respondent’s Sale 6).
- P-12: MVS Life Expectancy Guidelines.

PETITIONER’S WITNESSES

Petitioner’s first witness, Andrew Sill, MAI, prepared an appraisal report for the subject property. He is primarily a commercial appraiser with 17 years of valuation experience, specializing in all types of commercial producing properties. He is licensed in the state of Michigan and is designated through the Appraisal Institute. Based on his background, education, and experience, the Tribunal accepted Mr. Sill as an expert real estate appraiser.

Petitioner’s second witness, Don Ellens, is a member of D & L Management LLC. He has known the township assessor, David Rozeveld, for 40 years. Mr. Ellens purchased the subject vacant parcel in 2014 with the intention of building a farm equipment dealership. Construction of the subject property was completed in 2016. In addition to equipment sales, Petitioner services tractors, tillage equipment, hay and forage equipment, compact tractors, skid loaders, manure spreaders, etc.⁵

RESPONDENT’S CONTENTIONS

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

Parcel Number:	014-030-001-85		
Year	TCV	SEV	TV
2021	\$2,735,400	\$1,367,700	\$1,335,587

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

⁵ Vol 1, 177.

Parcel Number: 014-030-001-85

Year	TCV	SEV	TV
2021	\$2,600,000	\$1,300,000	\$1,300,000

Respondent contends that the MVS cost manual does not have a cost category for farm implement sales and services. Respondent's assessor utilized the cost category for an automobile showroom to cost the subject building.⁶ The assessor took into account the subject building construction as well as the property's highest and best use to apply the cost manual.

Respondent's appraiser researched the subject market area for existing farm equipment dealers including Hutson, Ina Store, Lutke, Family Farm & Home, and Rothig Forest Products.⁷

Respondent's appraiser contends that the Bader and Sons sale was an arm's length sale acceptable as a comparable sale for analysis. This sale was part of a larger portfolio sale of multiple properties. Nonetheless, this specific sale was verified by Respondent's appraiser.⁸

RESPONDENT'S ADMITTED EXHIBITS

- R-1: David Rozeveld – Assessor Certifications.
- R-2: 2016 Subject Property Record Card.
- R-3: 2017 Subject Property Record Card.
- R-6: 2020 Subject Property Record Card.
- R-17: Appraisal Report prepared by Bradley Conkey.
- R-22: Rebuttal Exhibit – Bader and Sons Appraisal Report.

RESPONDENT'S WITNESSES

Respondent's first witness, David Rozeveld, is the assessor for Riverside Township. He developed the mass appraisal cost approach for the subject property as reflected on the 2021 subject property record card. He is a certified assessor through the State Tax Commission (STC) which allows him to sign the roll for Riverside Township.

Respondent's second witness, Bradley Conkey, prepared an appraisal report for the subject property. He has real estate and valuation experience going back to 1991. He is licensed as a Certified General Real Estate Appraiser in the state of Michigan. Based on his background, education, and experience, the Tribunal accepted Mr. Conkey as an expert real estate appraiser.

⁶ Vol 1, 144.

⁷ Vol 2, 295.

⁸ Vol 1, 238-239.

FINDINGS OF FACT

1. The subject property is located at 5297 West Stoney Corners Road, in Riverside Township and within Missaukee County.
2. The subject property is located east and outside of the city of McBain.
3. The city of McBain has a population of less than 1,000 people.
4. The city of McBain is the eighth smallest city in the State of Michigan.⁹
5. The subject is comprised of 20 acres and is improved with a 28,892 square foot main building and a 11,250 square foot pole building. The subject's main building has 11,592 square feet for an office break room, sales area and parts storage area. The remainder of the main building (17,300 square feet) is used for inventory and service with a 4,650 square foot mezzanine and an overhead crane.
6. The subject property is not formally zoned by the township or county.
7. The subject property is classified as 201 Commercial-Improved. The subject property is not classified as Industrial.
8. The subject building has an entryway which includes a showroom to display equipment.¹⁰
9. The subject building does not have a glass showroom.
10. Petitioner is an authorized dealer for New Holland farming equipment.¹¹
11. Petitioner submitted valuation evidence in the form of an appraisal report prepared by Andrew Sill.
12. Petitioner's appraiser considered all three approaches to value but only developed the sales comparison and cost approaches.
13. Petitioner's appraiser developed a sales comparison approach to value by analyzing four comparable sales.
14. Petitioner's sales comparison approach included write-ups and photographs for each comparable sale. Photographs included interior photographs for each comparable sale.
15. Petitioner's appraiser developed a RCN for each comparable sale to derive functional and external obsolescence for the subject property.
16. From the costed comparable sales, Petitioner's appraiser did not distinguish between functional and external obsolescence for the depreciation applied to the subject property.¹²
17. Petitioner's appraisal report did not include any MVS excerpts for effective age, remaining economic life or depreciation.
18. Petitioner's appraisal report did not include an addendum.
19. The calculation (ratio) from the age/life method for depreciation is age (actual or effective) divided by estimated economic life equals the depreciation percentage.¹³

⁹ Vol 1, 30.

¹⁰ Vol 1, 179.

¹¹ Vol 1, 181-182.

¹² Vol 1, 85.

¹³ Vol 1, 140. See Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 2020, 15 ed) pp 571-574.

20. Respondent submitted valuation evidence in the form of an appraisal report prepared by Bradley Conkey.
21. Respondent's appraiser considered all three approaches to value but only developed the sales comparison and cost approaches.
22. Respondent's appraiser developed a sales comparison approach to value by analyzing six comparable sales.
23. Respondent's sales comparison approach did not include interior photographs for its comparable sales.
24. Respondent's appraiser developed a cost analysis for the subject as a service/repair garage for the subject property.
25. Respondent's appraiser costed the subject as Class S, average construction with a 40-year life expectancy. The MVS cost manual denoted the life expectancy for this class of construction as 30 years.¹⁴
26. Respondent's appraiser derived a comparative analysis for the subject property utilizing automobile dealership comparable sales.
27. Respondent's appraiser did not consider or apply traffic counts for his comparable sales for his "access/exposure" line-item adjustments.¹⁵
28. Respondent's assessor determined that the subject property had 10% physical depreciation, 0% functional obsolescence, and 0% external obsolescence for the 2021 assessment.
29. From the MVS cost manual, the construction costs for an automobile dealership are different than a service/repair/equipment garage.¹⁶
30. The property located at 4363 South Morey Road (Bader and Sons, John Deere dealership) in Reeder Township is approximately six or seven miles from the subject property. This property is similar to the subject in design, layout, and buildings.¹⁷ Both properties operate as farm implement sales and service companies.
31. The Bader and Sons property sold as part of a portfolio sale which included nine other properties.¹⁸ In other words, the Bader property did not sell as a singular property.
32. Existing farm equipment dealers included Hutson Inc., Ina Store Inc., Lutke Equipment, Lark Lawn & Garden, Inc., Family Farm & Home, and Rothig Forest Products in the subject market area.

¹⁴ Vol 2, 419-422. Respondent's appraiser did not use the same classification for the subject property from the costing as the depreciation.

¹⁵ Vol 2, 405.

¹⁶ Vol 2, 298.

¹⁷ Vol 1, 90-91, 237; Vol 2, 261.

¹⁸ Petitioner's Exhibit P-3 is the appraisal report for the Bader property. While admitted into evidence, this valuation evidence was not authenticated by the authors of the report. Said differently, there was no expert testimony for the opinions, analysis, and conclusions from the Bader property appraisal report. Therefore, while considered, the value of the Bader property via an allocated purchase price or from an appraisal report, was given no weight or credibility in the independent determination of market value for the subject property.

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.¹⁹

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not exceed 50 percent.²⁰

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.²¹

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”²²

“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.”²³ The Tribunal is not bound to accept either of the parties’ theories of valuation.²⁴ “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.”²⁵ 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.”²⁶

A proceeding before the Tax Tribunal is original, independent, and de novo.²⁷ The Tribunal’s factual findings must be supported “by competent, material, and substantial evidence.”²⁸ “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”²⁹

¹⁹ See MCL 211.27a.

²⁰ Const 1963, art 9, sec 3.

²¹ MCL 211.27(1).

²² *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

²³ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

²⁴ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

²⁵ *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

²⁶ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

²⁷ MCL 205.735a(2).

²⁸ *Dow Chemical Co v Dep’t of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

²⁹ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

“The petitioner has the burden of proof in establishing the true cash value of the property.”³⁰ “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.”³¹ 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.”³²

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.³³ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”³⁴ 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.³⁵ Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.³⁶

COST APPROACH

Generally, a cost approach is most applicable for new or newer properties. As reasoned, a newly constructed property would have minimal depreciation. On the other hand, a cost analysis is more problematic for older properties in quantifying all forms of depreciation. The elements for a cost analysis include the determination of land value, the RCN for building improvements, a calculation of depreciation (physical, functional, and external), and site improvements. The subject is relatively newer construction (year built 2016) under 10 years old; therefore, the development of a cost analysis is warranted in this instance. The parties’ respective cost approaches are conventional frameworks for the cost analysis of the subject property. However, a specific cost element and component varied between the parties cost analysis.

Each party’s appraiser initially developed a land valuation for the subject property. Petitioner analyzed three land sales and Respondent analyzed four land sales. However, there was a difference in form and substance between each land valuation. Petitioner’s appraiser presented three multiple listing service (MLS) summaries for the

³⁰ MCL 205.737(3).

³¹ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

³² MCL 205.737(3).

³³ *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).

³⁴ *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

³⁵ *Antisdale*, *supra* at 277.

³⁶ See *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

land sales. The sales were not analyzed in an adjustment grid format. From the limited narrative, Petitioner's appraiser deemed adjustments to be unnecessary to the land sales. Petitioner's land sale 101 is zoned commercial and is located in Benzie County. Sale 102 is zoned agricultural and is located in Gratiot County. Sale 103 is zoned agricultural and is located in Ionia County. The lack of explanatory narration to compare and contrast each land sale to the subject is not meaningful. Reliance on MLS information without verification and articulation from the appraiser is not acceptable. Therefore, Petitioner's land valuation for the subject property is given no weight or credibility in the market value for the subject's land component in the cost analysis.

On the other hand, Respondent's land analysis was a conventional framework for a comparative analysis. Respondent's four land sales were presented in a sales comparison adjustment grid along with write-ups for each land sale. Adjustment factors were considered, and specific adjustments were applied for differences to the land sales. All four sales are located in Missaukee County. Sale 1 occurred in 2022, sale 2 occurred in 2021, sale 3 occurred in 2020, and sale 4 occurred in 2019. The land sales are bracketed to the subject. In other words, two sales were adjusted downward, and two sales were adjusted upward to the subject. For these reasons, Respondent's land sales and comparative analysis are the most reliable and credible land valuation evidence for an independent market value of \$64,000.

Next, the parties' cost calculations were based on different MVS cost sections. Petitioner relied on the MVS section for average/good quality Class S constructed pre-engineered steel light manufacturing buildings. Respondent relied on the MVS section for a service repair garage for the subject's main building and the secondary building costed as an equipment shed. Petitioner's RCN determination was \$3,241,326 and Respondent's RCN determination was \$3,019,960. Neither party's appraiser elected to cost the subject as an automobile dealership within MVS. While the cost sections (and labels) vary, the RCN difference of 7% indicate a relatively close cost range. Said differently, the subject has construction components (and utility) common to both MVS cost labels. Therefore, a reasoned and reconciled RCN is bracketed by the parties' RCN determinations at \$3,100,000.

The next cost element under consideration is the parties' determination of physical depreciation. While both parties relied on an age/life methodology³⁷ for physical depreciation, their respective calculations veered in divergent paths. Specifically, Petitioner's physical depreciation from the age/life calculation appears to be miscalculated. Petitioner's appraiser denoted 4% physical depreciation for the subject building in his cost approach. The age/life ratio calculation for depreciation is age divided by life as a pseudo equation. Petitioner's appraiser agreed that age divided by economic life equals a percentage depreciation and is a calculation.³⁸ However, Petitioner's appraisal report denoted conflicting calculations.³⁹ His physical age is 6

³⁷ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 15th ed, 2020), 572.

³⁸ Vol 1, 140.

³⁹ Pet's Exh P-1, 39.

years and estimated physical life is 35 years (6 divided by 35 equals 17%). Further, his effective age is 3 years and remaining economic life is 32 years (3 divided by 32 equals 9%). Petitioner's notations and calculations do not square with its determination of 4% physical depreciation. Similarly, Respondent's determination of 12% depreciation appears to be miscalculated. Respondent's appraiser denoted the subject's effective age as 3 years and an economic life of 20 years (3 divided by 20 equals 15%).⁴⁰ As a starting point, the Tribunal places reliance on the parties' common indication of an effective age of 3 years for the subject. Respondent's appraiser was heavily challenged by Petitioner on his determination of a 20-year economic life for the subject. Petitioner questioned the deviation of 20 years from the MVS noted 30-year life.⁴¹ The Tribunal places reliance on Respondent's economic life of 32 years for the subject building (with consideration to the building quality and materials). Therefore, a reasoned and reconciled independent determination of physical depreciation for the subject is 10% (3 years divided by 30 economic life equals .10 or 10%).

The other elements of depreciation are external and functional impairment which were considered by the parties' appraisers. Petitioner argued that the subject suffered from both external and functional obsolescence. In contrary fashion, Respondent argued that the subject property did not suffer from external and functional obsolescence. As discussed below, the logic and rationale for the subject's external and functional obsolescence is without merit.

Petitioner's application of *market extraction*⁴² is a conventional method for determining depreciation. However, specific components of the methodology were confusing. The appraiser utilized his sales from the sales comparison approach for the cost analysis and obsolescence. Specifically, a MVS cost was derived for each comparable sale's improvements. Physical depreciation was then subtracted to arrive at the contributory value of each comparable's improvements (at time of sale). In turn, the land value was subtracted from each comparable's sale price. The difference between the depreciated cost of comparable improvements and the contributory value of the improvements (from the sale price) resulted in obsolescence charged to the improvements. This charged obsolescence was then divided by the total RCN of comparable improvements to arrive at a percentage of obsolescence. While the method is sound, the Tribunal questions certain entries within Petitioner's methodology.

First, Petitioner's appraiser's age/life calculations for each of his comparable sales does not make sense. For example, sale 201 has an effective age of 15 years and an estimated life of 30 years. The corresponding depreciation is denoted as 35%. However, 15 years divided by 30 years equals 50%. Similarly, Petitioner's sales 202, 203, and 204 also appear to be miscalculated.⁴³ The calculated age/life depreciation

⁴⁰ Resp's Exh R-17, 44.

⁴¹ Pet's Exh P-12.

⁴² Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 15 ed, 2020), 568.

⁴³ Age/life notations for sales 202, 203, and 204 are $10/35 = 15\%$, $7/35 = 10\%$, and $5/35 = 35\%$ respectively. In fact, the calculated depreciations are 28.5%, 20%, and 14%, respectively.

ratios were unexplained and whether additional elements were factored into this analysis.

Second, the land value for each extracted comparable sale was unexplained. Sale 201 is located in Muskegon County; Sales 202 and 204 are located in Otsego County; and Sale 203 is located in Manistee County. The presumption that each property's land value (after extracting the costed improvements from the overall sales price) is unpersuasive without a reference to market data. Said differently, the extracted land values vary greatly. The location of land (i.e., proximity to freeways, airports, industrial parks) in conjunction with zoning classifications would warrant additional analysis. The estimated land value for each comparable sale (in that given market area) was not supported by any market data.

Petitioner's sales 201 and 202 sold for more than their listing prices. Within each MLS write-up, Petitioner's appraiser stated, "The high rate of obsolescence in the market made paying more than market value a reasonable alternative to constructing new." It appears that market participants would prefer to pay more for an existing property rather than construct a building of similar utility. In this context, market participants actions are not an indication of obsolescence. Petitioner's appraiser failed to demonstrate functional obsolescence within each comparable sale's market. As reasoned in the reconciliation section of this opinion, the MVS cost calculations for a similarly constructed building of functional utility is at an upper range of indicated value.

Third, the obsolescence charged to the improvements for each comparable sale did not differentiate between external and functional obsolescence. As admitted by Petitioner's appraiser, "I measured obsolescence from all forms. And I did not break it down between the different forms or for each item."⁴⁴ The reliance on mathematics alone to determine obsolescence is not convincing. Merely making mathematical calculations to determine all forms of obsolescence without distinguishing each form belies the need of gathering all relevant details to comparable sales data (whether they are used for a comparative analysis or a cost analysis). Similarly, Petitioner's appraiser did not distinguish between curable and incurable forms of obsolescence.⁴⁵

The *age/life method* is based on a straight-line depreciation and was claimed to only account for physical depreciation. This form of depreciation assumes that every building depreciates at the same constant rate over time regardless of changes (i.e., renovations and remodeling). In fact, this method accounts for a lump sum depreciation. In other words, this method does not single out or isolate just physical depreciation from functional and external obsolescence. Petitioner's appraiser's separate determination for the other forms of depreciation appears to be contradictory. Petitioner's physical depreciation calculation appears to overlap (a.k.a., double count, double dip) the functional and external obsolescence. The lack of articulation in delineating the methods and forms of depreciation is not meaningful. Yet again,

⁴⁴ Vol 1, 107.

⁴⁵ Vol 1, 90.

Petitioner's appraiser stated, "I did not investigate the obsolescence to determine what forms or what items were contributing to that, that calculation."⁴⁶ The Tribunal is unable to assume or ascertain the validity of Petitioner's physical and functional depreciation calculations. For these reasons, Petitioner's comparable sale age/life method of depreciation is given no weight or credibility in Petitioner's cost analysis.

Fourth, Petitioner's appraiser failed to demonstrate external obsolescence (economic and location) to the subject property.⁴⁷ There is no evidence on the record that the city of McBain or Missaukee County has issues of heavy traffic, a landfill or other undesirable land uses outside of the subject property. The fact that the subject is not formally zoned does not appear to be a problem. The subject market area is rural in nature; a farming equipment and service dealership is viable and logical.

External Obsolescence usually has a market wide effect and influences a whole class of properties, rather than just a single property. However, external obsolescence may affect only one property when its cause is location – e.g., proximity to negative environmental factors or the absence of zoning and land use controls. In fact, the causes of external obsolescence can be broadly characterized as either economic obsolescence or locational obsolescence. Most properties experience economic obsolescence from time to time as a result of the natural expansion and contraction of the real estate market. In contrast, locational obsolescence is caused by proximity to some detrimental influence on a value such as heavy traffic, a landfill, or other undesirable land uses outside of the property being appraised. For both economic and locational obsolescence, the value influencing factor is outside the property and outside the control of the property owner and occupant.⁴⁸

Petitioner has been in the area since 1954 and appears to have built customer and client relationships to construct such a farming equipment dealership. Given that the surrounding area is rural farming in nature, the subject hardly seems to be out of place. The subject owner's intention to construct an addition to the property also does not square with the notion of obsolescence. Petitioner has found more advantage than disadvantage in the development of the subject site.

Fifth, the existence of the Bader and Sons farm equipment/sales/service dealership (Bader property) is relevant to this tax appeal matter. While the parties raised numerous issues regarding the sale transaction for the Bader property, the fact remains that this property demonstrates a like product in the subject market. Petitioner's appraiser admitted that the Bader property is located down the road (6 or 7 miles) from the subject. The Bader property is similar to the subject in location, style, construction, year built, building size, showroom, and design.⁴⁹ This acknowledgement undermines

⁴⁶ Vol 1, 109.

⁴⁷ Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 7th ed, 2022) p 68.

⁴⁸ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 15th ed, 2020), pp 591-593.

⁴⁹ Vol 1, 90-91.

the claim of functional and external obsolescence to the subject property. The Bader property was discussed extensively between the parties. The validity of the sale with an appraisal report (and excerpts), email correspondence (with proposed stipulations), and allocations from the portfolio sale were not meaningful to the valuation of the subject property. These issues only clouded the validity of this property as a comparable sale to the subject. On the other hand, the Bader property is integral to the subject in terms of obsolescence. The parties do not dispute the comparability of the Bader property to the subject.

Overall, Petitioner's assertion for functional and external obsolescence was not supported by any market standards research. Conclusory statements contending that the subject suffers from functional obsolescence is not meaningful to Petitioner's cost analysis. The subject's relatively newer construction does not suggest functional obsolescence when compared to the Bader property. Likewise, Petitioner's conclusion of highest and best use as an existing farm equipment sales and service dealership does not square with the asserted obsolescence to the subject property.⁵⁰

Petitioner's cost extraction method to determine functional and external obsolescence is not meaningful and is misleading. Therefore, Petitioner's determination of functional and external obsolescence is given no weight or credibility in the cost analysis for the subject property.

In summary, the independent determinations of land value (\$64,000), RCN (\$3,000,000), and physical depreciation (10% of RCN equals \$300,000) results in an indication \$2,764,000 market value from the cost approach.

SALES COMPARISON APPROACH

As noted, each party's appraiser developed a sales comparison approach to value. On the one hand, Petitioner researched and analyzed sales of industrial type buildings in rural locations. On the other hand, Respondent's appraiser fashioned a comparative analysis based on dealerships. Once again, the appraisers' divergence in their comparative analyses is telling.

The lack of formal zoning for the subject property resulted in differing positions between the parties' appraisers. However, each party's label designation (as industrial or dealership) did not deter the parties' appraisers from concluding that the subject's highest and best use is as an existing commercial farm equipment dealership.

Respondent's sales comparison approach is a conventional framework for a comparative analysis of the subject property. The focal point of automobile dealerships for comparison is unconvincing though.

⁵⁰ Petitioner's appraiser concluded that the subject's highest and best use is as its continued use as an existing farming equipment sales and service dealership. This infers that the alleged functional and external obsolescence is not as significant as described by Sill in testimony.

First, Respondent's noted adjustment factors⁵¹ set "in sequence" do not parallel the actual line-item entries in the adjustment grid. Respondent's appraiser stated that this factor encompasses excess land, non-realty components, and expenditures by buyer at the time of purchase. However, he decided that no adjustments for effective sale price were needed for any of the comparable sales. The assumption that each comparable sale price was devoid of going concern business value does not support Respondent's comparative analysis. When questioned by Petitioner, Conkey's answers regarding allocated purchase prices (between the real property and business value) were less than cogent.⁵²

Second, the adjustment grid did not include a line-item entry for quality of construction. Petitioner's counsel cross-examined Respondent's appraiser heavily on automobile dealership showrooms and quality of construction. Respondent's appraiser claimed that such differences were housed under the line-item entry "age/condition."⁵³ Abbreviating or lumping pertinent characteristics and amenities is not reasonable or acceptable in valuation practice. Deciding which line-item entries and characteristics to illustrate would warrant a level of narration and articulation on the part of the appraiser. In this regard, Conkey claimed that his age/condition adjustments were based on judgment and experience.⁵⁴ A building's age (actual or effective), a building's condition, and a building's quality of construction would be separate entries for a reasonable and understandable analysis. Respondent's appraiser's lack of effort in analyzing the comparable sales' features, amenities and characteristics is not convincing.

Third, Respondent made no attempt to analyze the subject's mezzanine as compared to the comparable sales.⁵⁵ Respondent's appraiser did not believe this amenity was worthy of analysis. Again, the suggestion of arbitrary decisions aside from the actions of market participants does not make sense. Respondent's appraisal report and customary write-ups for each comparable sale failed to provide such salient features.

Fourth, there was no analysis of the subject's ancillary 75' x 150' pole barn structure. This amenity was identified in the appraisal report's "Improvements Description and Analysis" but was not identified in Respondent's comparative analysis. Sale 1 (Bader and Sons sale) had a pole barn structure, but the other sales did not have such an amenity. Again, Respondent's failure to articulate otherwise relevant amenities for analysis is not persuasive. The appraiser's discretion in hiding or omitting specific line-items for analysis of certain amenities is not meaningful to the comparative process.

Fifth, the comparative analysis did not include differences for showrooms and office spaces. On cross examination, Respondent's appraiser failed to give persuasive testimony regarding extensive glass showrooms for automobile dealerships versus

⁵¹ Resp's Exh R-17, 49.

⁵² Vol 2, 337, 339, 340, 369, and 398-400.

⁵³ Vol 2, 347.

⁵⁴ Vol 2, 347.

⁵⁵ Vol 2, 390-391.

farming equipment dealerships. The Tribunal is not convinced that a farm equipment dealership (without elaborate showroom windows) is the equivalent of an automobile dealership. With repeated reference, sale 1 (Bader property) gives credence as a qualitative comparison which is the most similar to the subject in building characteristics. Sales 2, 3, 5, and 6 are automobile dealerships with conspicuous glass showrooms. Sale 4 is a former grocery store. Comparing and contrasting characteristics, amenities, and features is a fundamental concept in a comparative analysis.

Sixth, Respondent's appraiser's reliance on aerial photographs to discern a comparable property's demographics is not meaningful. Observing a general difference between a small town and a large town with no other analytics is not acceptable due diligence.⁵⁶ Repeatedly, an appraisal report is based on the opinions, analyses, and conclusions from the appraiser. In this instance, the Tribunal cannot place reliance on conclusory statements based on an appraiser's testified "experience and expertise" which nebulously refers to data not included in an appraisal report or workfile. "Perfection is impossible to attain, and competence does not require perfection. However, an appraiser must not render appraisal services in a careless or negligent manner. This Standards Rule requires an appraiser to use due diligence and due care."⁵⁷ Respondent's actions belie the importance of rendering a meaningful appraisal report. An appraiser's opinions, analysis and conclusions do not come before the market data is developed.

Seventh, Respondent's sales 2, 3, and 5 had "periodic" renovations and sale 6 was renovated in 1994. Such general entries would necessitate further detail from an appraiser. Respondent's appraiser did not include interior photographs for each comparable sale. Renovations are an important consideration which parallel a building's age, condition, and quality.

Lastly, Respondent's appraiser's proclivity to use automobile dealerships as comparisons to the subject appear to be off base. Conkey admitted that he has utilized automobile dealership sales for non-automobile dealership properties in banking/lending valuation assignments.⁵⁸ However, Respondent's appraiser also admitted that this is his first appraisal assignment of a farm equipment sales and services dealership. Creative liberties in analyzing a farm equipment dealership to automobile dealership is unpersuasive. As previously noted, Respondent's appraiser costed the subject as a service repair garage and not as an automobile dealership. The testimony in this regard was not meaningful.⁵⁹ Respondent's cost analysis and RCN do not parallel Respondent's comparative sales analysis.

⁵⁶ Vol 2, 405 and 410.

⁵⁷ The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice* (Washington DC: 2020-2021 Edition), p 11.

⁵⁸ Vol 2, 379-380.

⁵⁹ Vol 2, 300.

Efforts to characterize the subject's farming equipment dealership as an automobile dealership is without merit. Ample testimony distinguished between farming equipment and automobiles. Farming equipment displayed in a showroom that does not have large windows is not the equivalent of an automobile dealership showroom that displays large automobiles through large windows (which invites the public and passersby). Simply, farming equipment is not the same as automobiles. There is no evidence on the record showing engineered pole barn structures are fashioned in the same elaborate construction as an automobile dealership.⁶⁰ For these reasons, Respondent's sales comparison approach is given no weight or credibility in the independent determination of market value for the subject property.

The independent determination of market value for the subject property is as an owner-occupied commercial property with fee simple property rights. The subject is not tenant-occupied. The parties' valuation disclosures acknowledge the subject in terms of fee simple property rights. A fee simple estate is defined as "Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power and escheat."⁶¹ The full bundle of rights (in fee simple) for the subject as an economic unit is done so without encumbrances. Nonetheless, Respondent was unable to delineate the going concern values from his automobile dealership comparable sales. Further, Respondent's sale 4 (grocery store) was a leased fee sales transaction. Leased fee interest is defined as "[t]he ownership interest held by the lessor, which includes the right to receive the contract rent specified in the lease plus the reversionary right when the lease expires."⁶² The subject's property rights as fee simple are not a deterrence to a meaningful comparative sales analysis.

Petitioner's sales comparison approach to value is also a conventional means for the valuation of the subject property. All four sales are located in rural locations similar to the subject. All four sales demonstrate functional utility similar to the subject property. All four sales are similar to the subject in the lack of water/sewer public utilities. Sales 1 and 3 occurred in 2020 and are the closest to the December 31, 2020 tax day. All four sales have office space similar to the subject but sale 4 is the closest in office square footage. Sales 1, 3, and 4 are similar to the subject in gross building area (GBA). Sales 2, 3, and 4 are similar to the subject in building condition. Sales 3 and 4 are similar to the subject in quality of construction. As noted in the Findings of Fact, Petitioner's comparative analysis included interior photographs and MLS write-ups for each comparable sale. The comparable interior photographs indicate similar quality of construction as the subject property. These interior photographs are more persuasive than Respondent's lack of any comparable sale interior photographs. Lastly,

⁶⁰ The label of "dealership" as a common denominator is misleading in this instance. Not all dealerships are the same; the physical make-up of a dealership relative to its products and services is relevant. Moreover, this finer point is not to be misconstrued as value-in-use but rather the value-in-exchange for that property. For example, a million-dollar mansion will not be compared to a bungalow style dwelling just because both properties are labeled as "single-family residences."

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

⁶² *Id.*, 61-63.

Petitioner's four sales are all adjusted upward to the subject. No sales were adjusted downward to bracket the subject. Nonetheless, Petitioner's comparable sales represent the most reliable and credible valuation evidence for a comparative analysis. For these reasons, the independent indication from Petitioner's comparative sales analysis is \$1,500,000.

RECONCILIATION

The independent reconciliation from the value indications is commonplace in valuation practice and theory. Reconciliation is the opportunity to further articulate reasoning from qualitative and quantitative methods.

The final value opinion is not the average of the different value indications derived. No mechanical formula is used to select one indication of value over the others. The strengths and weaknesses of each of the approaches used, and the quantity and quality of the data analyzed, must be considered and addressed. . .⁶³

As determined from the parties' cost analysis, the indication of market value for the subject property is \$2,764,000. The cost analysis comprised common elements from both parties' appraisers. The cost element that was considered but not included in the cost analysis was functional and external obsolescence. Once again, the subject market included various farm equipment dealerships as competitors to the subject property. Moreover, among those farm equipment dealerships is the Bader property. To be clear, the Bader property is not a relevant sale or comparable sale to the subject but is a comparable property. As a comparable property to the subject property, it dispels the notion of obsolescence. The concept of *substitution*⁶⁴ stands for the premise that someone would pay no more for a property than what it would cost to build that property. Therefore, the indication of value from the cost approach represents the upper range of value for the subject property.

As independently determined from Petitioner's comparative sales analysis, the indication of market value for the subject property is \$1,500,000. This indication of value centered on rural commercial properties similar to the subject in design, construction and use. Petitioner's comparative analysis is persuasive; Respondent's comparative analysis is less meaningful. Petitioner's comparable sale photographic evidence illustrated construction similarities to the subject property. Petitioner's comparable sales were inferior to the subject in most amenities and characteristics though. Again, all of the comparable sales were adjusted upward to the subject. Overall, the independent determination from Petitioner's sales represents a lower range of market value for the subject property.

⁶³ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 15th ed, 2020), pp 599-600.

⁶⁴ Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 7th ed, 2022), p 184.

Therefore, a reasoned and reconciled determination gives equal weight (and brackets the subject) from the cost approach (upper range) and the sales comparison approach (lower range) in the final market value conclusion at \$2,000,000.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner's comparative sales analysis and the appraisers' cost components provide the most reliable and credible valuation evidence. In totality, the market valuation evidence does not support the claim of functional and external obsolescence to the subject property. The subject property's TCV, SEV, and TV for the tax year at issue are as stated in the Introduction section above.

MOTION IN LIMINE

On April 5, 2023, Respondent filed a Motion in Limine regarding Petitioner's Exhibit P-3. In pertinent part, Respondent contends that Petitioner's exhibit was filed on March 28, 2023; such evidence was submitted beyond the discovery close date of January 6, 2023. Further, this evidence included excerpted appraisal reports without the named authors (within Petitioner's prehearing statement and witness list).

At hearing, Respondent further raised the objection to Petitioner's offered Exhibit P-3 based on hearsay information and relevance. As noted, Petitioner's offered Exhibit P-3 was admitted into evidence.⁶⁵ The Tribunal took this evidence under advisement (in the weight and credibility) in the Final Opinion and Judgment. Therefore, Respondent's motion is denied.

JUDGMENT

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

IT IS FURTHER ORDERED that the property's SEV and TV for the tax year 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

⁶⁵ Vol 1, 51.

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%, (xiii) after December 31, 2022, through June 30, 2023, at the rate of 5.65%, and (xiv) after June 30, 2023, through December 31, 2023, at the rate of 8.25%.

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

APPEAL RIGHTS

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

A motion for reconsideration must be filed with the Tribunal with the required filing fee within 21 days from the date of entry of the final decision. Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty or disabled veterans 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.

Alternatively, you may file a claim of appeal with the Michigan Court of Appeals. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal of right." If

the claim is filed more than 21 days after the entry of the final decision, it is an “appeal by leave.” A copy of the claim of appeal must be filed with the Tribunal to certify the record on appeal. There is no certification fee.

By  _____

Entered: November 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