



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

MARLON I. BROWN, DPA
DIRECTOR

Lormax Stern Acme LLC,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MTT Docket No. 20-002232

Acme Township,
Respondent.

Presiding Judge
Jason C. Grinnell¹

FINAL OPINION AND JUDGMENT

INTRODUCTION

This case involves Petitioner, Lormax Stern Acme LLC's (Lormax) challenge to Respondent, Acme Township's assessment of Lormax's improved commercial property for tax years 2020 and 2021.

This case was tried before the Tribunal on March 15, 2022 through March 17, 2022. The Tribunal has considered all of the testimony, the exhibits admitted into evidence, and the arguments by respective counsel. Furthermore, the Tribunal has weighed the evidence, judged the credibility of the witnesses, and applied the burden of proof, by a preponderance of the evidence, upon Lormax to make an independent determination of the true cash value (TCV) of the subject property for tax years 2020 and 2021.

Pursuant to R 792.10133, after hearing, the Tribunal must issue a final decision in writing. Additionally, "[a] written final decision shall include separate sections entitled "findings of fact" and "conclusions of law." Findings of fact "shall include a concise statement of the underlying supporting facts" that are "based exclusively on the evidence."² Accordingly, the Tribunal has not addressed every piece of evidence or every inference that might lead to a conflicting conclusion and has rejected evidence contrary to its findings. Furthermore, "[e]ach conclusion of law shall be supported by authority or reasoned opinion."³ Accordingly, the Tribunal will begin by outlining the background of the case, finding of facts, followed by conclusions of law, and ultimately render judgment.

The Tribunal, having heard and considered the evidence adduced at hearing, the arguments of counsel, the case file, and for the reasons stated more fully below, the Tribunal finds that a reduction of the subject property's 2020 and 2021 TCV is

¹ Former Tribunal Judge Christine Schauer presided at trial but has since retired.

² See also MCR 2.517(A).

³ *Id.*

warranted. The Tribunal finds that the TCV, state equalized value (SEV), and taxable value (TV) are as follows:

Parcel Number: 2801-234-036-00

Year	TCV	SEV	TV
2020	\$917,500	\$458,750	\$458,750
2021	\$917,500	\$458,750	\$458,750

BACKGROUND

As of the relevant valuation dates, Lormax was the owner of the property located at 6455 US-31 North, Acme Township, Grand Traverse County, Michigan (the subject property). The subject property is identified as parcel number 2801-234-036-00. Lormax purchased the subject property on December 8, 2018, for \$1,400,000. In 2019, Lormax and Acme Township stipulated to a TCV of \$1,400,000 and an assessed value (AV) of \$700,000.

As of the valuation dates at issue, the subject property was improved as a masonry one-story, freestanding big-box store. The subject property was originally constructed in 1989 for use by Kmart but had been vacant since 2017. The subject property contains one building with a gross building area of 86,479 square feet which sits on the rear of the parcel.

The subject property is located off of US 31-North and contains approximately 460 feet of frontage along US-31 and a depth of approximately 1,200 feet. The subject property is serviced by public utilities, including municipal sewer and water, natural gas, electric, and telephone. The property shares an access drive with the neighboring property. The neighboring property, a former Tom's Grocery Store, went out of business in 2019 and has sat vacant since. Across the street from the subject property is Grand Traverse Resort and Spa.

As of the valuation dates at issue, the subject property was situated in Acme Township's US-31 and M-72 Business District, specifically in the Corridor Flexible Zoning District (CF district). The CF district is intended to provide for a flexible mixture of retail, office, commercial, residential, and institutional uses within walkable and connected neighborhoods.⁴ The objective is to create an environment where residents can live, work and shop for day-to-day amenities in the same area. The distinguishing characteristics of the CF district are retail, workplace and civic activities mixed with attached housing types such as townhouses and apartments all developed at a community scale. Permitted uses include professional offices, medical/dental offices, medical urgent care facilities, mixed use with residential above the 1st floor, residential uses with live/work units, multiple family housing, general retail less than 10,000 square feet, restaurants and coffee shops with no drive-thru or drive-in facilities, micro-

⁴ See Petitioner's Exhibit 4, Acme Township Zoning Ordinance.

breweries, small distilleries, small wineries, movie theaters, banks and financial without drive-thru facilities, grocery stores over 10,000 square feet, and hotels with greater than 120 rooms. Special use permits (SUP) must be obtained for certain uses in the CF district including general retail larger than 10,000 square feet, general retail serving alcoholic beverages, general retail with on-site production of items sold in or out of store locations, general retail with operating hours between 10 p.m. and 7 a.m., restaurants, café, coffee shops, or bars with outdoor service, shopping centers, and hotels with conference and convention facilities. Section 9.21 of Acme Township's Zoning Ordinance requires a SUP for a mixed use planned unit development (PUD).⁵ The mixed use PUD permits the Township flexibility in the regulation of land development and to encourage innovation and variety in land use and design of projects of sufficient size to be considered self-contained, to the extent the projects are separated so as to not impact adversely on other land uses in the immediate vicinity, are not an integral part of other already developed or committed land uses, are directly accessible from major thoroughfares, and will not have any adverse economic, social, or environmental impact on surrounding land uses.⁶ The PUD option is intended to allow, with Township approval, private or public development which is consistent with the goals and objectives of the Township Master Plan and Future Land Use Map. Use of the mixed-use PUD option will allow flexibility in the control of land development by encouraging innovation through an overall, comprehensive development plan to provide variety in design and layout; to achieve economy and efficiency in the use of land, natural resources, energy and in the provision of public services and utilities; to encourage useful open spaces suited to the needs of the parcel in question; to provide proper housing including workforce housing; and to provide employment, service and shopping opportunities suited to the needs of the residents of the Township.⁷ Acme Township's zoning ordinance requires an applicant submit a completed application for a SUP, along with a site plan and a statement with supporting evidence and information required by Section 8.2.3d.⁸ Section 9.1.2 provides that the application and site plan shall be reviewed by Acme Township's Planning Commission for recommendation on whether to approve, approve with conditions, or deny the SUP and is subject to final approval by Acme Township's board.⁹

Section 9.1.2(g) provides that no application for a SUP which has been denied wholly or in part by the Township Board shall be resubmitted until the expiration of one year or more from the date of such denial, except of the grounds of newly discovered evidence or proof of changed conditions.¹⁰

Section 19.7, requires a PUD application submission and review procedure with four primary steps: 1) pre-application submission and review, 2) submission of planned

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

development plan and application materials, 3) preliminary review and approval of the planned development, and 4) final review and approval of the planned development.¹¹ In 2019, Lormax submitted a completed application and site plan to the Acme Township Planning Commission seeking approval for a PUD. Lormax’s intent was to remodel and repurpose the former Kmart building into an indoor self-storage facility, pursue a townhome development on the north end of the property, convert the remaining space into mixed uses, such as retail, restaurants, cafes, offices, daycares, banks, etc., and would also include a park with a bike path.¹²

On September 23, 2019, the Acme Township Planning Commission preliminarily approved Lormax’s PUD.¹³ However, Lormax later withdrew its application.¹⁴

In 2021, after the relevant tax dates at issue in this case, Lormax submitted a second application, which the Acme Township Board recommended be denied based on the Commission’s findings that the proposed PUD did not meet the requirements of the Acme Township Zoning Ordinance for a PUD. As a result, in May 2021, Mr. Stern e-mailed Lindsey Wolf, to formally withdraw Lormax’s application.¹⁵

At hearing, Lormax offered testimony from Daniel Stern. Mr. Stern is part owner of Lormax and Mid-America Real Estate. Acme Township offered testimony from Dawn Kuhns. Ms. Kuhns is Acme Township’s assessor. Lormax and Acme Township offered testimony from Lindsey Wolf. Ms. Wolf is employed with Acme Township as its planning and zoning administrator. In addition, Lormax and Acme Township each offered testimony from Michigan certified general appraisers John R. Widmer, Jr. and Garry D. Zachritz, who were both accepted by the court, as experts in the field of real property valuation. Both experts prepared an appraisal report containing data and photographs of the subject property and expressing opinions of value as of the December 31, 2019, and December 31, 2020 valuation dates.

PETITIONER’S CONTENTIONS

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

Parcel Number: 2801-234-036-00

Year	TCV	SEV	TV
2020	\$775,000	\$387,500	\$387,500
2021	\$775,000	\$387,500	\$387,500

¹¹ *Id.*

¹² See Respondent’s Exhibit 9, Lormax Stern’s PUD pre-application.

¹³ See Respondent’s Exhibit 9, Acme Township Planning Commission Special Meeting from September 23, 2019.

¹⁴ See Respondent’s Exhibit 10, Acme Township Planning Commission Special Meeting from July 13, 2020.

¹⁵ See Transcript 2, page 245.

PETITIONER'S ADMITTED EXHIBITS

P-1	Petitioner's valuation disclosure.
P-4	Acme Township's Zoning Ordinance.
Petitioner's Rebuttal Exhibit 1	News-Review article titled <i>Construction begins for Great Lakes Energy headquarters expansion in Boyne City</i> (regarding Respondent's comparable 2).
Petitioner's Rebuttal Exhibit 2	Google Maps aerial view of Respondent's comparable 3.
Petitioner's Rebuttal Exhibit 3	Listing for Respondent's comparable 3.
Petitioner's Rebuttal Exhibit 4	Google Maps aerial view of Respondent's comparable 4.
Petitioner's Rebuttal Exhibit 5	Google Maps aerial view of Respondent's comparable 5.
Petitioner's Rebuttal Exhibit 6	Google Maps aerial view of subject property.
Petitioner's Rebuttal Exhibit 7	Listing for Respondent's comparable 5.

PETITIONER'S WITNESSES

Daniel Stern¹⁶

At trial, testimony was elicited from one of Lormax's principals, Daniel Stern. Mr. Stern testified that Lormax has been in existence for 30 years and specializes in redevelopment of old malls and vacant buildings. Mr. Stern also testified that Lormax has ownership interests in a lot of dark stores or big-box stores. Mr. Stern testified that he was aware of a prior proposed development of the subject property which fell through, and knew the building was available. At the time Petitioner purchased the subject property, Mr. Stern believed reactivating the building for other uses was viable. Mr. Stern testified that when Lormax buys something vacant they never have one specific plan and consider alternative uses in analyzing a purchase. Prior to purchasing the subject property, Lormax considered the lack of population, lack of traffic, the subject area's household income, and concluded that retail use was not likely. Lormax purchased the subject property with the possibility for boat storage, corporate headquarters, a self-storage facility, a fulfillment center, or a combination of possibilities. Mr. Stern testified that Lormax intended to put the property to use that was different from its prior use as a single-retail tenant and the price Lormax paid for the property

¹⁶ See Transcript Volume 1, from March 15, 2022 hearing, pages 20-66.

was based on the proposed conversion to a different use. Mr. Stern testified that Lormax submitted a PUD to develop the front for small tenant retail, workforce housing, and that Lormax had a proposed buyer for the storage building in place. Prior to the PUD submission, Lormax discussed the various visions for the subject property with then Acme Township employee, Shawn Winter. Mr. Stern believed that Acme Township wanted to activate the building rather than have it sit vacant. The proposed buyer for the storage dropped out a few months into the process because it was too burdensome. Lormax continued the process for approval of conversion of the subject property to self-storage but learned the planning commission was dead set against it.

Since purchase, the subject property has been listed for lease or sale, with no interest in either. There has been no interest in the subject property under the current CF zoning either. There are people that were interested, but the use would be conditioned upon either a rezoning or PUD. At minimum, a SUP would be required to occupy any portion of the subject property.

Mr. Stern further testified that it has been unusually difficult to find a tenant because of the relatively small amount of uses the CF zoning allows. Further, the CF zoning requirements a SUP permit for anyone to occupy more than 10,000 SF. Additionally, the property located next door to the subject property, a former Tom's Grocery, also went out of business and is sitting vacant. Mr. Stern contends that Petitioner overpaid for the property, albeit knowing it had potential and permitted uses, but those uses were prohibited by Respondent, and Petitioner has incurred carrying costs as a result. In 2020, Petitioner applied for a PUD to allow for self-storage. Further, Mr. Stern acknowledges that the value of the subject property would increase upon approval of a PUD.

Lindsey Wolf¹⁷

Ms. Wolf testified that she is Acme Township's planning and zoning administrator, a position she has held for approximately three years. Ms. Wolf confirmed the subject property is located in the CF district. Ms. Wolf testified that the intent of the CF district is to provide a flexible mixture of retail, office, commercial, residential, and institutional uses within walkable and connected neighborhoods. During Ms. Wolf's tenure with Acme Township there have been a total of four SUP applications submitted to the planning commission, three of which were approved by Acme Township's Board, with one still pending. Additionally, during Ms. Wolf's tenure with Acme Township there have been two PUD applications, one of which was approved by Acme Township's Planning Commission and the other approved without Acme Township's approval because it involved only a minor amendment.

In August 2019, Lormax initially applied for a mixed-use PUD to convert the subject property into self-storage and retail, with the potential to construct new buildings on the existing parking lot, along with a public park, pedestrian walkways, office and/or other

¹⁷ See Transcript Volume 1, from March 15, 2022 hearing, pages 67-88.

township uses, a potential daycare, and retail businesses with the opportunity for residential townhomes on the northern portion of the property. The CF district allowed everything but the self-storage. Ms. Wolf testified that there was opposition to Lormax's PUD from multiple residents at the public hearing and Ms. Wolf noted that a PUD cannot be used to skirt the zoning requirements.

On July 13, 2020, the Acme Township Planning Commission was scheduled to hold an initial public hearing on Lormax's PUD application. The public hearing was never held because the Planning Commission received notice from Petitioner that it may want to withdraw their PUD application. In May 2021, Mr. Stern e-mailed Ms. Wolf requesting to withdraw Petitioner's PUD application.

Ms. Wolf testified that in 2021, after the relevant tax dates at issue in this case, she received a call from TentCraft, who was looking to potentially repurpose the Kmart building. TentCraft intended to repurpose the building mix of pickle ball courts, a health facility, office space, self-storage, and light manufacturing, but nothing ever became of the inquiry. Most recently, Strathmore Real Estate Company had inquired about potential reuse of the building. Further, in March 2022, Strathmore submitted a proposed PUD involving the subject property and the neighboring, former Tom's Market.

John R. Widmer, Jr.¹⁸

Mr. Widmer is certified by the State of Michigan as a general appraiser with an MAI designation and 32 years of experience. At hearing, Mr. Widmer was qualified as an expert in real property appraisal without objection.

At hearing, Mr. Widmer testified that he has appraised approximately 25-30 freestanding big box stores in the last 10 years. Mr. Widmer testified that the subject property is 13.146 acres in size of which four and a half acres are unusable wetlands. Mr. Widmer testified that he visited the exterior of the subject property for approximately 5-10 minutes and found the rear portion of the property sloped down from the grade of the parking lot. Mr. Widmer used Pictometry with an overlay of the actual subject boundaries to calculate the unusable acreage. Mr. Widmer testified that most of the big-box stores he has appraised have uses. In this case, the building is a vacant shell building and in below average condition. Mr. Widmer determined that continued use as retail was not practical given the demographics, traffic counts, and various other factors. Mr. Widmer further discussed the physically possible, legally permissible uses for the existing structure and concluded that the current zoning made it difficult to determine whether any use could be adapted. Accordingly, Mr. Widmer concluded that the only remaining option was to demolish the improvements to ready the site for redevelopment at an unknown time. Mr. Widmer described other similar retail properties in the area and noted a new Meijer located only a few miles away from the subject property. Mr.

¹⁸ See Transcript Volume 1, from March 15, 2022 hearing, pages 89-206, Transcript Volume 2, from March 16, 2022 hearing, pages 213-223, and Transcript Volume 3, from March 17, 2022 hearing, pages 439-453.

Widmer noted that the new Meijer was built along M-72, which is the main throughway into Traverse City. Mr. Widmer also noted the 2019 closure of Tom's Market which is located next door to the subject, and reiterates his conclusion that retail use is not sustainable at the subject property. Mr. Widmer further testified that the main commercial corridor in Traverse City is located on South Airport Road. Mr. Widmer described the retail clustering of retail properties in that area and noted that the subject property is about a half-an-hour drive away. Mr. Widmer detailed his appraisal of other similar Kmart stores and explained that many of the big-box stores are divided into junior-big box stores, but in this case, concludes that the retail demographics of the area do not support dividing the subject property into junior-big box stores. Mr. Widmer testified that he spoke with various individuals in the area, all of which concluded that the subject property was not adaptable for retail use and that the few that were interested never came to fruition because of the township's restrictive zoning.

Regarding modification of the subject property, Mr. Widmer testified that the subject property could be adaptable for various components, specifically self-storage. Mr. Widmer acknowledged a developer must consider the zoning of a specific property to determine whether a potential use is legally permissible, and if not, the possibility of it happening in the future. Mr. Widmer testified that the highest and best use of a property must be legally permissible, allowable, and permitted by matter of right. Mr. Widmer determined the subject property is located in the CF district and based on his review of the ordinance, generally described the subject's current zoning as mixed use. Under the current CF zoning, Mr. Widmer concluded most uses would require a SUP, to which there is no guarantee one would be granted. Mr. Widmer further testified that he could not assume that a zoning variance or SUP would be granted but could consider the possibility and probability of one being granted. Mr. Widmer testified that Petitioner initially acquired the subject property to convert the building into self-storage. Mr. Widmer acknowledged Petitioner's proposed redevelopment was to adapt the property into self-storage, multi-family housing, and retail out lot type buildings. Based on his analysis, Mr. Widmer concludes that there is nothing you could adapt the subject property for under the current zoning. Mr. Widmer admitted that he is not a zoning expert and did not talk with anyone at the township about what would be allowed under the current CF zoning. Accordingly, Mr. Widmer concludes as improved, the improvements should be demolished to ready for future development and as vacant, speculative investment with no anticipated timeline for new development. Mr. Widmer testified that he considers Lormax Stern as the preeminent retail development and brokerage firm in the State of Michigan and notes that even Lormax could not get the property leased. Mr. Widmer acknowledged that as of December 31, 2019 and December 31, 2020, Petitioner had not applied for a PUD and the property was in the same condition as when Petitioner purchased it.

Mr. Widmer developed a sales comparison approach, finding that the cost approach and income approach were not relevant. Mr. Widmer explained the process of searching for comparables, starting with properties a mile away and then expanding as necessary until a sufficient comparable is found. Mr. Widmer utilized four sales comparables which he adjusted for property rights conveyed, financing, conditions of

sale, expenditures after sale, and market conditions.¹⁹ Further, in his appraisal, Mr. Widmer determined the subject property had a usable area of 8.55 acres, after deducting the 4.5 acres of wetlands.²⁰

Sales comparable 1 is approximately three miles away from the subject property, south of M-72, irregular in shape, with 11.3 acres. Mr. Widmer testified that sales comparable 1 was purchased in October 2020 for \$95,000. Further, the property is located in more of an industrial area, and zoned B4. A 3% negative market adjustment was applied because the sale occurred after the relevant tax day, concluding a land value of \$.19 cents per square foot.

Sales comparable 2 is also zoned B4 and adjoins a site that has an existing Tractor Supply. Sales comparable 2 is on the north side of M-72, approximately three miles away from the subject property, and approximately three acres in size. Mr. Widmer testified that this property sold in October 2020 for \$1,100,000. Mr. Widmer applied a 50% downward adjustment for the medical marijuana type acquisition and because the property is smaller in size, concluding a land value of \$3.70 per square foot.

Sales comparable 3 is located approximately five miles away from the subject property in Whitewater Township. Mr. Widmer admittedly testified that the sale “is not a very good sale” but decided to include it anyway. Sales comparable 3 is 34 acres in size with and is zoned A1. Mr. Widmer adjusted upward for use zoning and for the larger size of the parcel, concluding a land value of \$.20 cents per SF.

Sales comparable 4 is approximately five miles away from the subject property and a short distance away from Cherry Capital Airport. Sales comparable 4 was a former Chemical Bank, just under seven acres in size, which sold for \$200,000 or \$.67 cents per square foot, in February 2018. Mr. Widmer testified that he applied an upward adjustment for location and a downward adjustment for parcel size, concluding a land value of \$.71 cents per SF.

After eliminating sales comparable 2, Mr. Widmer concluded a \$.33 cents price per square foot. Ultimately Mr. Widmer decided not to use any of the sales comparables and relied on the sale of the subject property instead.

Mr. Widmer testified that Petitioner’s purchase of the subject property for \$1,400,000 was predicated on a belief that approval would be granted for alternate use. Accordingly, Mr. Widmer determined that the raw sale price of the subject property could not be used to determine value. Instead, Mr. Widmer applied a 10% negative adjustment for the fact that the building could not be adapted and thus, Petitioner would have paid less, and a 3% upward adjustment for market conditions. Based on his determination of highest and best use as vacant, Mr. Widmer used the Marshall

¹⁹ Although Mr. Widmer described the sales as “Improved Sales” in page 41 of his appraisal, the Tribunal confirmed all of the sales used by Mr. Widmer were vacant as of the valuation dates at issue in this case.

²⁰ See page 45 of Petitioner’s valuation disclosure.

Valuation Service and the cost to demo a similar size Kmart store in Livonia, to arrive at an adjusted per SF cost of \$5.42 square foot to demolish the building. After deducting the cost to demolish the building, Mr. Widmer concluded a TCV of \$775,000 for both tax years at issue.

RESPONDENT'S CONTENTIONS

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

Parcel Number: 2801-234-036-00

2020	\$1,406,800	\$703,400	\$703,400
2021	\$1,414,200	\$707,100	\$707,100

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

Parcel Number: 2801-234-036-00

Year	TCV	SEV	TV
2020	\$1,900,000	\$950,000	\$950,000
2021	\$1,900,000	\$950,000	\$950,000

RESPONDENT'S ADMITTED EXHIBITS

- R-4 June 15, 2021 GD Zachritz Appraisal
- R-5 2021 Property Record Card
- R-6 Acme Township Zoning Ordinance Section 6.6
- R-9 September 23, 2019 Acme Township Planning Commission Meeting Minutes
- R-10 July 13, 2020 Acme Township Planning Commission Meeting Minutes

RESPONDENT'S WITNESSES

Garry D. Zachritz²¹

Mr. Zachritz is certified by the State of Michigan as a commercial appraiser since 1977. At hearing, Mr. Zachritz was qualified as an expert in real property appraisal after voir dire by Petitioner's counsel. Mr. Zachritz primarily works in the northwest Michigan market and has previously completed appraisals in Grand Traverse County and Acme Township. Mr. Zachritz testified that he has not previously appraised any other freestanding big-box stores.

²¹ See Transcript Volume 2, from March 16, 2022 hearing, pages 248-415.

Mr. Zachritz testified that the subject property was originally listed for \$2,500,000 and sold for \$1,400,000. Mr. Zachritz determined the size of the subject parcel was 11 plus or minus acres, with 86,479 square feet, based on public record and the marketing package. Mr. Zachritz inspected the interior and exterior of the subject property and found the building in above-average condition. Based on his 40-years of appraisal experience, Mr. Zachritz described the economic viability of the subject neighborhood as average and agreed that the new 24/7 hour Meijer and other developments along M-72 hurt the subject property. Mr. Zachritz noted that visitors staying at the neighboring Grand Traverse Resort and Spa would drive past the former Tom's Grocery and Kmart to get to their destination. Mr. Zachritz contends, based on his knowledge and experience, that the subject property is interconnected with the neighboring areas, is not stand-alone as Petitioner's expert suggests, and is a viable corridor with a ton of traffic.

Concerning highest and best use, Mr. Zachritz testified about several other Kmart properties were sold and converted into other uses and not demolished, specifically one in Ludington and one in Grayling. Mr. Zachritz relied on his land sales, with no adjustments, to conclude the value of the subject land was \$1,300,000. Mr. Zachritz further found that all of his sales comparables were repurposed, suggesting the buildings are more valuable than the land, and concluded the highest and best use, as improved, was speculative with some sort of reuse or interim use. Mr. Zachritz theorized that the current zoning allows a variety of different uses for the building and predicated his opinion on the comparables he used.

Mr. Zachritz testified that he considered all three approaches to value the subject property and concluded that the sales comparison approach was the only basis that a purchaser of the subject property would consider. Mr. Zachritz completed a sales comparison approach consisting of four sales, one of which was the subject, and one listing. According to Mr. Zachritz, the most appropriate unit of comparison for the subject property was the sale price per building square foot.

The first sale used by Mr. Zachritz was the subject property. Mr. Zachritz testified that he spoke with the listing agent who informed him the original listing price for the subject property was \$2,500,000, which was later reduced to \$2,200,000, and Petitioner's offer of \$1,400,000 was accepted. Mr. Zachritz contends that the lowered sale price of the subject property reflects that the seller was motivated and wanted to close the deal before the end of the year. It was Mr. Zachritz's opinion that the seller sold the property to "clear its books," so he applied a 20% upward adjustment as a result.

Sales comparable 2 is located in Boyne City and is smaller in size than the subject. Mr. Zachritz testified that this property was a vacant supermarket that was listed for sale at \$1,200,000 and sold for \$900,000. Mr. Zachritz spoke with the broker who informed him the buyer was going to convert the building into office space. Further, Mr. Zachritz testified that Boyne City's population is smaller than the subject's community but did not feel an adjustment for the difference in population or location was necessary. Mr. Zachritz testified that this property is smaller than the subject property and therefore he made an adjustment to reflect the difference in size.

Mr. Zachritz testified that sales comparable 3 is also smaller in size than the subject, is located in Big Rapids, and had been redeveloped. Mr. Zachritz testified that the population of Big Rapids is approximately 10,000 versus Traverse City proper of 15,000 but did not feel an adjustment was necessary. Mr. Zachritz further testified that this sale was smaller than the subject property and therefore the only adjustment he made was for size.

Sales comparable 4 is located in Kalamazoo and sold in 2015. Mr. Zachritz testified that this property was a single-use building that was repartitioned into smaller spaces. Mr. Zachritz applied a mild market adjustment for this sale because the sale occurred in 2015.

Mr. Zachritz also included a current listing located in Grand Traverse County, which he described as a distressed shopping center that started to go bad when the Grand Traverse Mall was constructed. Further, a former Kmart store was part of the shopping distressed shopping center.

Mr. Zachritz concluded based on his sales comparison approach a TCV of \$21.94 per square foot, resulting in a rounded TCV of \$1,900,000.

Under cross-examination, Mr. Zachritz conceded that he did not measure the subject property to determine the useable acreage but relied on the record card and listing agent to conclude that the subject consists of 11 acres. Mr. Zachritz admitted to low lying, below grade acreage behind the subject property but did not address the issue of useability in his appraisal. During cross, Mr. Zachritz admitted that under the current zoning ordinance the subject building could not be repurposed into a single-tenant user, without a SUP, because the CF zoning does not allow the use of any building over 10,000 square feet without a SUP. Mr. Zachritz further testified that the CF zoning allows for a variety of different uses, but the CF zoning is not the most liberal. Further, Mr. Zachritz agreed that retail use of the subject property was not supported. Under cross-examination, Mr. Zachritz also admitted that he made no adjustments to his sales comparables, instead, Mr. Zachritz testified, "I use that data in my body of knowledge to opine a value."

During cross, Mr. Zachritz testified concerning two land sales he referenced in his appraisal, one for \$2.14 per square foot and the other for \$1.59 per square foot.²² Averaging the two sales resulted in a price per square foot of \$1.86 or \$895,000 for the land value. Although Mr. Zachritz conceded the \$3.35 price per square foot was an error and should be reduced to \$1.59 per square foot, he testified that his final opinion of value of \$1,300,000 for the underlying land was still a valid conclusion, albeit the \$1,300,000 million is outside the parameter of the two sales he actually used and relied on.

²² At hearing, Mr. Zachritz conceded that the \$3.35 per square foot listed in page 20 of his appraisal was incorrect, and should be \$1.59 per square foot.

Dawn Kuhns²³

Ms. Kuhns has been Acme Township's assessor since 1993. Ms. Kuhns testified regarding the 2021 property record card, Respondent's admitted exhibit five (5), which include the values for the 2020 tax year. She testified that the 2020 AV is \$703,400, making the TCV \$1,406,800. She further testified that she came up with the 2020 AV based on a stipulation from a 2019 case before the Tribunal from when the Petitioner had purchased the property. The township adjusted the value of the land to have a rural land value with some commercial and it resulted in about a .5% increase in the assessment from 2019 to 2020. Regarding the 2021 assessment, Ms. Kuhns stated that there was a slight adjustment in the land value and buildings and clarified that there was not much change in the market in the township at that time.

On cross examination, Ms. Kuhns testified she valued the subject property using the mass appraisal cost approach which does not look at the subject property individually. Ms. Kuhns further stated that the cost approach is more relevant for newer properties and because it is difficult to estimate depreciation of older improvements. Regarding the economic condition factor (ECF), Ms. Kuhns stated the State Tax Commission requires assessors to calculate an ECF yearly. However, Ms. Kuhns admitted that Respondent's exhibit five (5), the property record card, does not specify or provide information about how the ECF was calculated or information relating to the land sales study. Further, Ms. Kuhns did not have information regarding the land sales study and was not able to testify about the study. Regarding the acreage of the property, Ms. Kuhns testified that she did not see or use a survey to determine the size of the subject property but did use the GIA system, which she claimed is "rather accurate." Further, Ms. Kuhns stated that she valued the subject property as a Class C property because it is a concrete block, open box building with minimal windows, and carried forward depreciation adjustments based on a physical inspection made in prior years.

FINDINGS OF FACT

The Tribunal's Findings of Fact concern only evidence and inferences found to be significantly relevant to the legal issues involved; the Tribunal has not addressed every piece of evidence or every inference that might lead to a conflicting conclusion and has rejected evidence contrary to those findings.

1. The tax years at issue in this case are 2020 and 2021.
2. The subject property is located at 6455 US Highway 31 North, Acme Township, Grand Traverse County, Michigan 49637 with parcel identification number 2801-234-036-00.
3. The subject property is a former Kmart store that was vacant as of the tax days at issue in this case.
4. The subject property is a free-standing big-box store, constructed in 1989, and 86,479 square feet in size.

²³ See Transcript Volume 3, from March 16, 2022 hearing, pages 422-438.

5. The subject property was originally listed for sale for at \$2,500,000 and was later reduced to \$2,200,000.
6. Petitioner purchased the subject property in 2018 for \$1,400,000.
7. For tax year 2019, the parties stipulated to a TCV of \$1,400,000.
8. The property record card lists the land size as 11 acres.
9. Lormax Stern's marketing listing describes the subject parcel as 11 acres in size.
10. The gross usable area of the subject property is 11 acres or 479,160 square feet in size.
11. The rear portion of the property as of the tax dates at issue contained unusable wetlands.
12. The subject property is located off of highway US-31, near Grand Traverse Resort, and contains approximately 460 feet of frontage along US-31 and a depth of approximately 1,200 feet.
13. The subject property is serviced by public utilities, including municipal sewer and water, natural gas, electric, and telephone.
14. The subject property shares an access drive with the neighboring property. The neighboring property, a former Tom's Grocery Store, went out of business in 2019 and was vacant during the tax years at issue.
15. The subject property is zoned CF.
16. CF zoning requires a SUP for anyone to occupy more than 10,000 square feet.
17. During the tax years at issue, the subject property was listed for sale and available to lease.
18. Petitioner's expert did not inspect the interior of the subject property.
19. Respondent's expert conducted an interior inspection of the subject property and determined the building was in good condition.
20. Petitioner is in the business of acquiring, developing, building, and managing properties and has re-purposed many single-tenant big box stores.
21. The Acme Township Board has the authority to approve and deny PUD and SUP.
22. Petitioner's expert, Mr. Widmer, prepared a written appraisal report valuing the subject property at \$775,000 for both tax years at issue.
23. Mr. Widmer valued the subject property under the sales comparison approach.
24. Mr. Widmer relied solely on the subject property's purchase price with adjustments in arriving at his value conclusion.
25. Mr. Widmer concluded the highest and best of the property as improved, as of the assessment dates at issue in this case was to demolish the improvements and hold for a mixed-use type development.
26. Mr. Widmer concluded the highest and best of the property as vacant, as of the assessment dates at issue in this case was speculative investment, with no anticipated timeline for new development of the site.
27. Respondent's expert, Mr. Zachritz, prepared a written appraisal report valuing the subject property at \$1,900,000 for the 2020 tax year.
28. Mr. Zachritz concluded the highest and best of the property as improved for the 2020 tax year was speculation for reuse or redevelopment.
29. Mr. Zachritz concluded the highest and best of the property as vacant for the 2020 tax year was speculation.

30. Mr. Zachritz did not prepare an appraisal report for the subject property for the 2021 tax year.
31. Mr. Zachritz valued the subject property under the sales comparison approach.
32. Mr. Zachritz did not make any adjustments to his vacant land sales.
33. The cost approach and income approach are not reliable in this case to value the subject property.
34. The highest and best use of the property as vacant as of the assessment dates at issue in this case is speculative for future development.
35. The highest and best use of the property as improved as of the assessment dates at issue is to demolish the existing improvements and hold for future development.

CONCLUSIONS OF LAW

Highest and Best Use

To properly determine the TCV of the subject property for the tax years at issue, the Tribunal finds that it must first determine the appropriate “highest and best use” of the subject property, then determine the going-concern value for the subject property given its highest and best use, and finally, determine the value of the subject real property by reducing the going-concern value by the value of any personal or intangible property.²⁴

One of the most significant issues in this case is the highest and best use of the subject property since the Tribunal is required to make a determination of a subject property's highest and best use.²⁵ A property's highest and best use is the “reasonably probable use of property that results in the highest value.”²⁶ To be reasonably probable, a use must be physically possible, legally permissible, and financially feasible.²⁷ Uses that satisfy these three criteria are then tested “for economic *productivity*, and the reasonably probable use with the highest value is the highest and best use.”²⁸

The highest and best use analysis examines two perspectives. First, the use of real estate based on the presumption that the parcel of land is vacant or could be made vacant and second, the use that should be made of the real estate as it exists for the tax years at issue. The as vacant analysis focuses on alternative uses of the land, with appraisers analyzing each reasonably probable use to determine whether, when, and how a vacant property should be developed.²⁹ The as-improved analysis considers whether the existing improvements should be retained, modified, or demolished.³⁰

²⁴ “Going-concern value includes the incremental value associated with the business concern, which is distinct from the value of the tangible real property and personal property.” Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 15th ed, 2020, at 666-667).

²⁵ *Detroit Lions, Inc. v. Dearborn*, 302 Mich App 676, 697, 840 NW2d 168 (2013).

²⁶ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 15th ed, 2020, at 305).

²⁷ *Id.* at 305.

²⁸ *Id.* at 305.

²⁹ *Id.* at 307.

³⁰ *Id.* at 307-308.

One of the key determinations the Tribunal must make is whether the appraisers' conclusions as to the highest and best use are legally permissible. "Generally, factors such as private restrictions, *zoning*, building codes, and environmental regulations, may preclude many potential land uses. To analyze legal permissibility, an appraiser determines which uses are permitted by *current zoning*, which uses could be permitted if a zoning change were reasonably probable, and which uses are precluded by private restrictions on the site."³¹ With regard to the probability of a zoning change, *The Appraisal of Real Estate* states:

"[i]n investigating the reasonable probability of a zoning change, an appraiser considers zoning trends and the history of rezoning requests in the market area as well as documents such as the community's comprehensive plan (or master plan). Appraisers can usually eliminate the following from consideration as potential highest and best uses: uses for which zoning changes have been requested but denied in the past, such as an in industrial use in an area where several industrial zoning changes have been turned down in the past two years."³² Additionally, decisions on zoning ordinances are made by elected officials, and the processes are often heavily contested, costly, and time consuming. The outcomes are not known until official actions are taken.³³

In this case, Acme Township's planning and zoning administrator testified concerning the CF district which provides for a flexible mixture of retail, office, commercial, residential, and institutional uses within walkable and connected neighborhoods. Ms. Wolf testified that since her time with Acme, the township has never denied a SUP and that an SUP would be required if Petitioner intended to reuse the existing building.

Looking at the subject property's retail metrics both experts agree that the subject property does not qualify as a potential retail location because there is no demand for retail use at the subject property. To further complicate matters, the CF district restrictions make it difficult to determine whether any use could be adapted to make the building useable again. At hearing, Lormax's principal, Mr. Stern, testified that there is minimal, if any, interest from retailers in the subject property due to the restrictive zoning. Although multiple vacant Kmart stores have been converted to self-storage facilities, in this case, self-storage is not permissible within the CF district.

Ultimately the zoning ordinance determines what is legally permissible or not. The Tribunal finds there is no demand for retail use at the subject property based on the evidence presented and testimony at hearing. Further, neither party can assume that a zoning variance, PUD, or SUP would be granted because it is uncertain. However, the parties can consider the possibility of securing a zoning variance, PUD, or SUP, and weigh the probability of it. Petitioner contends that it purchased the subject property

³¹ *Id.* at 308.

³² *Id.* at 309.

³³ *Id.* at 309.

intending to convert the property to an entirely different use. At hearing, Mr. Stern testified that Lormax purchased the property with the intent to transform the property into self-storage. At hearing, Mr. Stern provided testimony that there had been no prospective buyer or developer who wanted to develop the property under the current CF district zoning. Moreover, the few that did inquire wanted a contingency upon either a rezoning or PUD and ended up walking away given the lengthy process involved in securing such from Acme Township. Further, Mr. Widmer contends that the poor location and zoning negatively influence Petitioner's ability to use the property. In his appraisal, Mr. Weidmer concluded that the cumulative impact of the property's age, location, and zoning, combine to make the existing improvements worthless, resulting in a highest and best use of vacant land. Accordingly, Mr. Weidmer concluded that the highest and best use as vacant would be speculative and the highest and best use as improved would be to demolish the existing improvements and either market the site as vacant or ready the site for future development in accordance with the current zoning requirements.

The question posed by the evidence is not whether the property will be redeveloped but when and how. Both experts failed to perform a full analysis of highest and best use of the property for the redevelopment uses permitted in the CF district. Further, without a market study the Tribunal is unable to conclude what will be developed on the site or the timing of the project. Based on the evidence presented at hearing, the Tribunal finds the highest and best use for both years under appeal is to hold the property until it reaches its redevelopment potential as the maximally productive use of the land after demolition of the improvements.

Valuation

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.

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.

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.

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

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

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

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

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

Cost Approach

The cost approach “is particularly useful in valuing new or nearly new improvements and properties that are not frequently exchanged in the market.” Further, it is more useful when “a lack of market activity limits the usefulness of the sales comparison approach” and it is “especially persuasive when land value is well supported, and the improvements are new or suffer only minor depreciation” Neither party’s appraiser relied on the cost approach to value the property. The Tribunal does not find this approach reliable in valuing the property.

Income Approach

“In the income capitalization approach, the present value of the anticipated future benefits of property ownership is measured. . . . In direct capitalization, the relationship between one year’s income and value is reflected in either a capitalization rate or an income multiplier.” Neither party’s appraiser relied on the income approach to value the property. The Tribunal does not find this approach reliable in valuing the property.

Sales Comparison Approach

“The sales comparison approach is most useful when a number of similar properties have recently been sold or are currently for sale in the subject property’s market.” The relevant method advanced by the parties in this case was the sales-comparison or market approach. “The sales-comparison approach indicates true cash value by analyzing recent sales of similar properties, comparing them with the subject property, and adjusting the sales price of the comparable properties to reflect differences between the two properties.”³⁴ Based on the testimony and evidence presented in this matter, the Tribunal agrees that the appropriate method of determining the TCV of the subject property for the tax years at issue is the sales comparison approach.

Determining the TCV of a parcel of property is “not an exact science”; it involves examining and weighing the values provided by both parties with the goal of reaching a “well-supported conclusion that reflects the study of all factors that influence market value” of the property.³⁵ Further, the Tribunal is not required by any law “to quantify every possible factor affecting value.”³⁶ The sales comparison method involves researching, analyzing, and adjusting sales of similar vacant parcels to render a value conclusion. The market extraction method involves estimating the depreciated cost of a property’s improvements from the property’s total sale price to arrive at a land value.

Although both experts utilized the sales comparison approach, the experts disagreed on what unit of comparison should be used to determine the subject property’s TCV. Mr. Zachritz concluded that the most appropriate unit of comparison was the sale price per building square foot. Conversely, Mr. Widmer concluded that the most appropriate unit of comparison was the sale price per square foot of land area less the costs to demolish the existing building. Although the price per building square foot and price per square foot of land area are both acceptable units of comparison, the Tribunal has already determined that the highest and best use of the subject property was to demolish the building, to ready the site for future development, which thereby renders Mr. Zachritz’s sales comparison analysis of improved sales unreliable and not credible in this case.

Petitioner’s expert, Mr. Widmer, identified four comparable vacant land sales that sold between February 2018 and October 2020. Two of the sales were located in Acme Township, one sale was in Whitewater Township, and one sale in East Bay Township.

³⁴ *Meadowlanes Ltd Dividend Housing Ass’n v City of Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

³⁵ *Great Lakes Div. of Nat’l Steel Corp.*, 227 Mich App at 398-399; 576 NW2d 667.

³⁶ *Id.*

The unadjusted sales prices for the four parcels ranged from \$95,000 to \$1,100,000 and ranged in size from 2.80 acres to 33.91 acres. The unadjusted sales prices of the four sales ranged from \$.16 cents to \$9.02 per square foot of land area. After applying adjustments for conditions of sale, market conditions, and parcel size, Mr. Widmer arrived at an adjusted price range from \$.19 cents to \$3.70 per square foot of land area. Ultimately, Mr. Widmer concluded that the large range in value per square foot of land area was not reliable, and concluded the sale of the subject property was the best available evidence of value.

Using the subject's sale price of \$1,400,000, Mr. Widmer calculated the unadjusted price per square foot of land area at \$2.44 per square foot. Mr. Widmer arrived at the \$2.44 per square foot by converting 13.15 acres into a price per square foot to arrive at a total price per square foot for the subject parcel of \$572,814.³⁷ Mr. Widmer then divided the \$1,400,000 sale price by the total square footage of the parcel to arrive at his unadjusted value per square foot of \$2.44.

In addition, Mr. Widmer made adjustments to the unadjusted price for market conditions and conditions of sale. Mr. Widmer applied a 3.2% upward adjustment for market conditions and a 10% negative adjustment for conditions of sale. The Tribunal finds based on the market evidence submitted in Mr. Widmer's appraisal that his 3.2% adjustment for market conditions is reasonable and supported by the evidence. In his appraisal Mr. Widmer opined that had Petitioner known that its proposed re-purposing of the building into self-storage would not be approved the deal would not have closed and accordingly the \$1,400,000 Petitioner paid to purchase the property was inflated. However, at trial, Lormax's principal, Mr. Stern, testified that Lormax never has one specific plan and considers alternative uses in analyzing a purchase. Further, the Tribunal finds that Lormax is a sophisticated buyer and developer of properties similar to that as the subject and likely would have done some sort of investigation into what the specific zoning allowed and did not allow prior to Lormax purchasing the property. Additionally, the evidence provided that the subject was originally listed for sale at \$2,500,000 and Petitioner purchased the property for \$1,400,000, which is \$1,100,000 less. Lastly, and most importantly, Mr. Widmer did not offer any market data or analysis to support his 10% negative adjustment. Accordingly, the Tribunal finds that Mr. Widmer failed to provide any market data, support, or analysis for his negative 10% adjustment for conditions of sale and therefore Mr. Widmer's negative 10% adjustment is not supported.

Next, the Tribunal finds it necessary to address Mr. Widmer's use of 13.15 acres to calculate the underlying price per square foot. On page 4 of Mr. Widmer's appraisal he concludes the property is approximately 13.146 acres. However, on page 45 of his appraisal, Mr. Widmer determined "[t]he subject does include 4.5 acres of unusable land area at the rear of the site. Instead of adjusting for this factor, *only a usable land area of 8.55 acres will be valued herein.*" As outlined above, Mr. Widmer used 13.15 acres to calculate the price per square foot of the land. At trial, the property record card was

³⁷ One acre of land is equal to 43,560 square feet.

admitted into evidence showing the size of the parcel is 11 acres.³⁸ Further, Mr. Widmer's appraisal was admitted into evidence at trial and included Lormax Stern's listing summary of the property, specifically advertised the subject's land acreage as 11 acres in size with a land square footage of 479,160.³⁹ Based on the evidence submitted at trial the Tribunal concludes that the subject parcel consists of 11 acres or 479,160 square feet of usable land. Given the Tribunal's findings, the Tribunal finds it necessary to recalculate Mr. Widmer's land value using 11 acres instead of 13.15 acres, which results in an increased unadjusted price per square foot to the land value from \$2.44 to \$2.92. After including Mr. Widmer's 3.2% market adjustment, the Tribunal finds the adjusted price per square foot for the subject land is \$3.00, resulting in a rounded land value of \$1,437,500.

Lastly, Mr. Widmer, in his appraisal, used the Marshall Valuation Service to estimate the cost to demolish the vacant building at \$6.70 per square foot after applying the local cost multiplier and the 2019 cost of \$5.42 per square foot to demolish a similar Kmart in Livonia. After averaging the two estimated demolition costs the Tribunal concludes a demolition cost of \$520,000. After deducting the demolition cost from the Tribunal's adjusted land value, the Tribunal arrives at a TCV for the subject property of \$917,500.

As discussed previously, the Tribunal excluded Mr. Zachritz's sales comparison approach of improved properties, however, the Tribunal will consider Mr. Zachritz's two vacant land sales. Both of Mr. Zachritz's vacant land sales occurred in Grand Traverse County, which is the same County in which the subject property is located. The unadjusted sales prices for the two parcels were \$2,189,600 and \$951,000 with a total acreage of 23.5 acres and 13.70 acres, respectively. The unadjusted sales prices of the two sales were \$2.14 per square foot and \$1.59 per square foot.⁴⁰ Unfortunately, Mr. Zachritz made no adjustments to account for differences between the two sales and the subject property. Taking the average of the two sales results in a price per square foot of \$1.87. Remarkably, using Mr. Zachritz's unadjusted average price per square foot results in a land value of approximately \$896,000, which is very much in line with what the Tribunal determined after adjusting Petitioner's subject land value. Although Mr. Zachritz admitted that he had made an error in his appraisal when calculating the vacant land value,⁴¹ he testified at hearing that he still stood by the \$1,300,000 value he concluded in his appraisal, albeit incorrectly using the \$3.35 per square foot, because it was justified based on his knowledge and experience. The Tribunal finds that Mr. Zachritz's argument that the underlying land value should be valued at \$1,300,000 lacks credibility and is not supported by any evidence whatsoever. Further, the Tribunal finds that the two vacant land sales, although unadjusted, provide further support of the Tribunal's adjustment of Petitioner's land value and the overall finding of the TCV of the subject property.

³⁸ See Respondent's Exhibit 5, 2021 Property Record Card.

³⁹ See Petitioner's Exhibit 1, Mr. Widmer's appraisal at page 67.

⁴⁰ At hearing, Mr. Zachritz admitted he erred in calculating the cost per square foot at \$3.35.

⁴¹ See Respondent's Exhibit 1, Mr. Zachritz's appraisal at page 20. The correct value per square foot was \$1.59, not \$3.35 per square foot as indicated in his appraisal.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that a reduction of the subject property's 2020 and 2021 TCV is warranted. The subject property's TCV, SEV, and TV for the tax year at issue are as stated in the Introduction section above.

JUDGMENT

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

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and 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%, (xiii) after December 31, 2022, through June 30, 2023, at the rate of 5.65%, (xiv) after June 30, 2023, through December 31, 2023, at the rate of 8.25%, (xv) after December 31, 2023, through June 30, 2024, at the rate of 9.30%, and (xvi) after June 30, 2024, through December 31, 2024, at the rate of 9.50%

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: July 2, 2024
jcg

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