



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

MARLON I. BROWN, DPA
DIRECTOR

DEV 5309 Gull Road LLC,
Petitioner,

MICHIGAN TAX TRIBUNAL

MTT Docket No. 22-000477

v

Case Type: Valuation

Township of Comstock,
Respondent.

Presiding Judges
Marcus L. Abood
Joshua M. Wease

FINAL OPINION AND JUDGMENT

Petitioner, DEV 5309 Gull Road LLC, appeals ad valorem property tax assessments levied by Respondent, Township of Comstock, against parcel number 07-06-312-261 and 07-06-330-072 for the 2022 tax year. A hearing was held in this matter on June 26, 2023. Robert W. O'Brien, Attorney, appeared on behalf of Petitioner. Robert E. Thall, Attorney, appeared on behalf of Respondent.

Just after the trial, the parties submitted a stipulation for parcel number 07-06-312-261. A separate consent judgment was entered on July 31, 2023.

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: 07-06-330-072

Year	TCV	SEV	TV
2022	\$4,443,420	\$2,221,710	\$2,221,710

PETITIONER'S CONTENTIONS

Petitioner contends that the subject is unique and was originally built as a special use property, but more specifically, Petitioner characterizes the property as an industrial flex building with a car wash and an attached mini lube.

Petitioner's contentions of TCV, SEV, and TV:

Parcel Number: 07-06-330-072

Year	TCV	SEV	TV
2022	\$1,590,000	\$795,000	\$795,000

Petitioner Witness Haji Tehrani, Owner

Haji Tehrani is the owner of the subject property and provided testimony about the car wash industry and particular details about construction and use of the subject property. Mr. Tehrani is the founder of Drive & Shine, which he started 27 years ago.¹ Mr. Tehrani has an MBA and a Master's degree in mechanical engineering from Rensselaer Polytechnic Institute.² He is the past chairman of the board of the International Car Wash Association.³ He was also on its board for six years and was the organization's treasurer before becoming the chairman.⁴ He testified that he has been involved with the car wash industry for twenty-seven years.⁵

Mr. Tehrani owns sixteen Drive & Shines with four of them located in Michigan.⁶ Beyond the subject property, the other three stores are in Niles, Kalamazoo Township, and Portage.⁷ He built the first one in Michigan in 2018.⁸ He further testified that all his stores have the exact same design and layout except for Portage, which did not have enough room for oil service bays.⁹

Petitioner Witness Dave Waszak, Appraiser

Dave Waszak prepared the valuation disclosure for the subject property. He is primarily a commercial appraiser with 42 years of experience, specializing in all types of commercial producing properties.¹⁰ He is licensed in Indiana and Michigan.¹¹ Further, he is designated an MAI by the Appraisal Institute.¹² Based on his background, education, and experience, the Tribunal accepted Mr. Waszak as an expert in real estate appraisal, without objection.¹³ Through Mr. Waszak's testimony, the following exhibit was admitted without objection:

¹ Tr. at 107.

² Tr. at 108.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Tr. at 109.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Tr. at 22-23.

¹¹ Tr. at 24.

¹² Tr. at 23.

¹³ Tr. at 25.

P-1 Appraisal Report prepared by Dave Waszak, MAI, dated July 19, 2022, with effective date of December 31, 2021.¹⁴

Mr. Waszak testified about his appraisal report, which relied predominantly on the sales comparison approach. He characterized the subject as an industrial flex building with an attached car wash and mini lube business. Further, he looked at the building as separate units divided by their function. Last, he asserted that the property is unique and should be considered in separate parts rather than a whole.¹⁵

In summary, Petitioner's representative argues that Respondent's assessor did not properly inspect the property and failed to determine if there was obsolescence and designate certain portions of the building based on the services that they provide.¹⁶ Petitioner's representative further asserts that Mr. Waszak's comparables determination of physical obsolescence, and the "fact that it's generally undisputed" that 4,500 square feet (SF) are not completed or generating income, should be considered by the assessor.¹⁷

RESPONDENT'S CONTENTIONS

The property's assessment of TCV, SEV and TV, are as follows:

Parcel Number: 07-06-330-072

Year	TCV	SEV	TV
2022	\$5,127,200	\$2,563,600	\$2,563,600

Respondent Witness Kevin Harris, Assessor

Kevin Harris, assessor for Comstock Township, testified on behalf of Respondent. Mr. Harris is a Michigan Advanced Assessing Officer since 2010.¹⁸ He has been employed by the township since April 2021.¹⁹ Mr. Harris testified that he has a bachelor's degree in business administration from Ferris State University.²⁰ Mr. Harris further testified that he has been an assessor since 2010.²¹ He is currently a contract assessor for ten townships and a deputy assessor for one township.²² Based on his background, experience, and education, the Tribunal accepted Mr. Harris as an expert in mass appraisal assessment, without objection.²³ Through Mr. Harris' testimony, the Respondent offered the following exhibits that were admitted without objection:

¹⁴ Tr. at 27:9-15.

¹⁵ Tr. at 180.

¹⁶ Tr. at 178.

¹⁷ Tr. at 179.

¹⁸ Tr. at 139.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Tr. at 140.

²² Tr. at 144.

²³ Tr. at 147.

R-1 Respondent's valuation disclosure²⁴

R-2 Building permit and supporting documentation for the subject property.²⁵

Respondent's representative argues that Petitioner has not met their burden of proof. Pursuant to the Appraisal of Real Estate, the most relevant approach for a new building is the cost approach.²⁶ Further, Respondent's representative argues that "special use property" should be valued as it is used.²⁷ Although there may not be many properties like the subject, Petitioner's representative argues that there is plenty of value in a "one stop" car wash, vacuum center, detailing, and lube center.²⁸ Respondent's representative argues that this special purpose property has value to the market and some buyers would want to "make the same gains" as Petitioner's owner has made from bringing this concept to the U.S. market.²⁹

Respondent's representative further argues that Petitioner's comparables involved many different industrial properties that would not be allowed in city center commercial areas such as where the subject property is located.³⁰ In addition, Respondent's representative argues that it is unreasonable to "devalue" the property by 67% on "day one" based on reclassifying the property as flex industrial.³¹ The Petitioner's appraiser testified that he did not even know if flex industrial is an allowed use in the subject property's zoning district.³²

Respondent's representative observes that the construction cost was \$4.3 million.³³ While there may be some functional obsolescence, Petitioner's own appraiser admitted his calculations were incorrect.³⁴ Respondent's representative points out there is a contradiction between Petitioner's appraiser, who testified that he would never use income data to value such a property, and Mr. Tehrani's testimony that he would never buy a property without reviewing a property's income information.

²⁴ Tr. at 148.

²⁵ Tr. at 160.

²⁶ Tr. at 180.

²⁷ *Id.*

²⁸ Tr. at 180-181.

²⁹ Tr. at 181-182.

³⁰ Tr. at 182.

³¹ Tr. at 181.

³² *Id.*

³³ Tr. at 182.

³⁴ Tr. at 182-183.

FINDINGS OF FACT

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

1. The subject property is located at 5321 Gull Road, in Kalamazoo County.³⁵
2. The subject is classified as "201" commercial improved.³⁶
3. The average level of assessment in effect for the property's classification is 50%.
4. Haji Tehrani is the founder of Drive and Shine.³⁷
5. Petitioner's owner owns and operates sixteen Drive & Shines nationwide.³⁸
6. Mr. Tehrani discovered the idea of constructing buildings with "multi-profit centers" during a trip to Germany.³⁹
7. The subject is one of four Drive and Shine stores Petitioner's owner has built in the Kalamazoo area since 2018.⁴⁰

Building Construction:

8. The subject was designed by Haji Tehrani.⁴¹
9. A building permit was issued on March 15, 2021, to Petitioner with a stated cost to construct of \$4.3 million.⁴²
10. Mr. Tehrani spent close \$5 million to construct the subject property, which is the typical cost to build his stores.⁴³
11. The subject was built in 2021.⁴⁴
12. Seven of Petitioner's owner's car washes, including all four in Michigan, are built using the same design, layout, and building specifications.⁴⁵ The store in Portage, Michigan, is an exception because it did not have enough space for oil service bays.⁴⁶ All seven buildings include a detailing area.⁴⁷
13. Petitioner received a certificate of occupancy for the subject property on December 30, 2021.⁴⁸
14. The subject was open for business in September 2021.⁴⁹

³⁵ Petition.

³⁶ Tr. at 156.

³⁷ Tr. at 107.

³⁸ Tr. at 109.

³⁹ Tr. at 111.

⁴⁰ Tr. at 109.

⁴¹ Tr. at 110-111.

⁴² Exhibit R-2, at 9.

⁴³ Tr. at 115.

⁴⁴ Tr. at 156-157.

⁴⁵ Tr. at 109 and 125.

⁴⁶ Tr. at 110.

⁴⁷ Tr. at 125.

⁴⁸ Exhibit R-2, at 1; Tr. 161.

⁴⁹ Tr. at 127.

Building Location & Zoning:

15. The subject's location is desirable for a car wash.⁵⁰
16. A factor in Mr. Tehrani's site selection is a preference for a pad site, with proximity to a major grocery store like a Meijer because customers shop for groceries on a weekly basis.⁵¹
17. Effective location of a car wash business depends on a number of factors, which include traffic count, ingress and egress, visibility, number of competitors, and density of other retail businesses.⁵²
18. Car washes are not traditionally a destination, rather customers visit in conjunction with other errands like shopping.⁵³
19. Petitioner's owner tries to locate his stores within three to five miles of each other.⁵⁴
20. The subject is within the five-mile radius of other Drive and Shine stores,⁵⁵
21. The subject is approximately a quarter to a half a mile from a Meijer store.⁵⁶
22. The location of the subject is zoned Comstock Center District (CC).⁵⁷

Building Description & Use:

23. The subject is owner occupied.
24. No part of the subject property is used as industrial flex space.
25. The subject has a gross building area of 23,470 SF divided into sections:
 - a. The car wash tunnel is 6,000 SF based on 150-foot length and 40-foot width.⁵⁸
 - b. The size of oil service area is 1,160 SF.⁵⁹ and has three bays.⁶⁰
 - c. The size of the self-serve car vacuum area is 11,330 SF.⁶¹
 - d. The size of the auto detailing area is 4,500 SF with 150-foot length and 30-foot width.⁶² This portion of the building was not completed as of December 31, 2021.⁶³
 - e. The size of the mechanical room is 480 SF.⁶⁴

⁵⁰ Tr. at 114.

⁵¹ Tr. at 112.

⁵² Tr. at 129-130, see also Tr. at 111-112.

⁵³ Tr. at 129-130.

⁵⁴ Tr. at 111-112.

⁵⁵ Tr. at 114.

⁵⁶ Tr. at 115.

⁵⁷ Exhibit P-1, at 4; Tr. at 35 and 70-71.

⁵⁸ Tr. at 117.

⁵⁹ Exhibit P-1, at 4.

⁶⁰ Tr. at 118.

⁶¹ Exhibit P-1 at 21; Petitioner counts the area of the self-service vacuum area and detailing areas together. Subtracting the established 4,500 SF detailing area yields a self-service vacuum area of 11,330 that was not controverted by either party.

⁶² Tr. at 122.

⁶³ Tr. at 16-18 and 122.

⁶⁴ Tr. 153-154.

26. Only one of Petitioner's seven stores is providing auto detailing services.⁶⁵

Valuation Evidence:

27. Petitioner submitted valuation evidence in the form of an appraisal report prepared by Dave Waszak, MAI, dated July 19, 2022, with effective date of December 31, 2021.⁶⁶

- a. Mr. Waszak valued the subject as industrial flex with an attached mini-lube and car wash tunnel.⁶⁷
- b. Mr. Waszak concluded to a value of \$1,590,000 under the sales comparison approach.⁶⁸
- c. Mr. Waszak concluded to a value of \$1,220,000 under the income approach.⁶⁹
- d. Mr. Waszak calculated the TCV of the subject at \$1,665,000 based on the replacement cost approach, which includes the site value of \$378,972.⁷⁰
- e. Mr. Waszak gave the cost and income approaches little weight in his final reconciliation of value and concluded to a TCV of \$1,590,000 for tax year 2022.⁷¹

28. Respondent's valuation disclosure is based on the mass appraisal cost-less depreciation approach, which included:⁷²

- a. Property Record Card for the subject property dated January 17, 2023.
- b. Valuation Report for the subject property dated January 17, 2023.
- c. Used the Gull Road Economic Condition Factor (ECF), the ECF was calculated as 1.515.⁷³
- d. Comstock Township Land Analysis – 20104, which indicated a value of \$108,900 per acre.
- e. Respondent's assessor valued the subject as an integrated car wash and lube center.⁷⁴
- f. Respondent's assessor valued the fixtures, including the vacuums and mechanical room at \$191,015.
- g. Respondent concluded to a TCV of \$5,127,200, which includes the site value of \$378,972, for the subject for tax year 2022.⁷⁵

⁶⁵ Tr. at 125.

⁶⁶ Exhibit P-1.

⁶⁷ Exhibit P-1, at 4.

⁶⁸ Exhibit P-1, at 115.

⁶⁹ Exhibit P-1, at 142.

⁷⁰ Exhibit P-1, at 72.

⁷¹ Exhibit P-1, at 144.

⁷² Exhibits R-1.

⁷³ Tr. at 155; Exhibit R-1, at 5 and 11.

⁷⁴ Tr. at 150.

⁷⁵ Exhibit R-1, at 4.

Site:

29. The subject property's site is comprised of 3.48 acres.⁷⁶
30. Respondent's assessor concluded to a TCV for the site at \$378,972 based on a rate of \$108,900 per acre.⁷⁷
31. Petitioner's appraiser agreed with Respondent's assessor's valuation of the land at a rate of \$108,900 per acre.⁷⁸

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.⁷⁹

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.⁸⁰

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.⁸¹

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value' . . . are synonymous."⁸²

"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."⁸³ The Tribunal is not bound to accept either of the parties' theories of valuation.⁸⁴ "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."⁸⁵ In that regard, the Tribunal "may accept one theory and reject the other, it

⁷⁶ Exhibit P-1, at 4.

⁷⁷ Exhibit R-1, at 4.

⁷⁸ Exhibit P-1, at 60.

⁷⁹ See MCL 211.27a.

⁸⁰ Const 1963, art 9, sec 3.

⁸¹ MCL 211.27(1).

⁸² *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

⁸³ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

⁸⁴ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

⁸⁵ *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

may reject both theories, or it may utilize a combination of both in arriving at its determination.”⁸⁶

A proceeding before the Tax Tribunal is original, independent, and de novo.⁸⁷ The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”⁸⁸ “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”⁸⁹

“The petitioner has the burden of proof in establishing the true cash value of the property.”⁹⁰ “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.”⁹¹ 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.”⁹²

While property tax appeals are usually premised on a conflict between a Petitioner and an assessor, this case offers an additional and unusual conflict between a Petitioner’s owner, who is a very knowledgeable market participant, and his own appraiser.

Further, both parties based their valuations on incorrect measurements of the gross area of the building and its partitioned areas. Petitioner’s appraiser calculated the gross area of the building as 24,490 SF, which uses 7,500 SF area of the car wash tunnel rather than the correct measurement of 6,000 SF, corrected by Mr. Tehrani’s testimony.⁹³ Further, Petitioner’s appraiser makes no mention of a 480 SF mechanical room accounted for by Respondent. Whereas Respondent’s assessor calculated the gross area of the building at 26,851 SF,⁹⁴ which includes the oil service area erroneously at 2,164 SF rather than the correct area of 1,160 SF. A review of the building permit included three different gross building measurements ranging between

⁸⁶ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

⁸⁷ MCL 205.735a(2).

⁸⁸ *Dow Chemical Co v Dep’t of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

⁸⁹ *Jones & Laughlin*, 193 Mich App at 352-353.

⁹⁰ MCL 205.737(3).

⁹¹ *Jones & Laughlin*, 193 Mich App at 354-355.

⁹² MCL 205.737(3).

⁹³ Exhibit P-1, at 4; Tr. at 34.

⁹⁴ Tr. at 169.

24,736 SF and 25,880 SF.⁹⁵ The gross building area of 23,470 is calculated based on corroborated or uncontroverted measurements of the building sections:⁹⁶

Car wash tunnel	6,000 SF
Oil service area	1,160 SF
Self-serve vacuum area	11,330 SF
Detailing area	4,500 SF
Mechanical room	480 SF

Area and Neighborhood Analysis

Mr. Waszak concludes in his report that the highest and best use as vacant would be a stand-alone building or small retail strip because “such ventures have met wide and reasonable acceptance *within the subject’s neighborhood.*”⁹⁷ However, Mr. Waszak’s appraisal report contained the following statements for this area analysis, “[t]he area analysis is contained in the appraisal file.” The only other statement he made about his neighborhood analysis was, “[t]he neighborhood analysis is contained in the appraisal file.” Mr. Waszak provided little testimony or supporting data regarding the area and neighborhood beyond the belief it was an “apparently growing neighborhood.”⁹⁸ His work file was not submitted as evidence.

In contrast to Mr. Waszak’s conclusory statements, Mr. Tehrani provided credible evidence and testimony that neighborhood and location are critical factors to his business and the subject property. He thoroughly considers specific factors in a location, such as area and neighborhood, for his stores.⁹⁹ Mr. Tehrani considered factors such as demographics within a three to five mile radius, number of rooftops, competition density, retail density, amount of traffic, and ease of ingress and egress are key.¹⁰⁰ Likewise, he considered how close his stores are to each other. Three to five miles from each other is optimal so that the strategic and convenient distance will encourage customers to become members and improve return visits¹⁰¹ as people do not want to drive more than that distance to wash their car.¹⁰² The three-to-five-mile metric is also an industry standard, not just for his business model.¹⁰³ The subject is within five miles of another Shine and Drive location.¹⁰⁴

⁹⁵ The building permit also included a 1,740 SF basement. However, there is no evidence or testimony by any party or witness that the basement was constructed. See Exhibit R-2, at 9, 11, and 21.

⁹⁶ Findings No. 25a-e.

⁹⁷ Exhibit P-1 at 56 (emphasis added).

⁹⁸ Tr. at 33; 77; and 78.

⁹⁹ Tr. at 111-112.

¹⁰⁰ *Id.*

¹⁰¹ Findings No. 19.

¹⁰² Tr. at 111-112.

¹⁰³ Tr. at 112.

¹⁰⁴ Findings No. 20.

For site selection, Mr. Tehrani testified that locations near grocery stores are an important consideration.

We care about grocers. Grocers are by far the best because everybody goes there once a week to buy groceries. You don't go to a Menard's once a week to buy something. Plus, sometimes you go with a truck full of junk. You can't wash the car with, like – you know, with all that stuff in the back of it. So that's not a driver of car wash business.¹⁰⁵

Another factor in Mr. Tehrani's site selection is a preference for a pad site, as in proximity to a major retail store like a Meijer because "...it's given that the customers are going to come once a week to go grocery shopping and you're right there. It's a big difference between that and being across the street from Meijer."¹⁰⁶ The subject location is approximately a quarter to a half a mile from a Meijer.¹⁰⁷ In between the subject and the nearest Meijer, there are two other car washes and two oil service businesses.¹⁰⁸ He testified that the Menard's across the street along with other chains like Lowe's or Home Depot do not generate car wash business like being close to a grocery store.¹⁰⁹ He explained that customers do not go to a Menard's reliably and people who go there with things in the back of their trucks will not then go get a car wash.¹¹⁰ He later testified that density of retail is an important factor because people will get a car wash while they are shopping rather than an independent trip.¹¹¹

The Tribunal cannot rely on Mr. Waszak's conclusory statements that refer to data that is excluded from his appraisal report. His lack of analysis is not meaningful and is misleading. "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."¹¹² The exclusion of an area and neighborhood analysis from an appraisal report is unreasonable and not credible. Mr. Waszak's testimony and appraisal report are undermined by Mr. Tehrani's credible and persuasive testimony that the area and location are important considerations for the subject property. Therefore, Mr. Waszak's neighborhood analysis is given no weight or credibility in the independent determination of market value for the subject property.

Mr. Tehrani's testimony regarding area and neighborhood factors was meaningful and logical. Mr. Tehrani's years of experience in the car wash industry, the careful site selection process which spanned two years, and his conclusion that this site

¹⁰⁵ Tr. at 114-115.

¹⁰⁶ Tr. at 112.

¹⁰⁷ Findings No. 21.

¹⁰⁸ Tr. at 115.

¹⁰⁹ Tr. at 114.

¹¹⁰ *Id.*

¹¹¹ Tr. at 129-130.

¹¹² The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice* (Chicago: 2020-2021 Edition), p 11.

was desirable to build the subject is noteworthy.¹¹³ The Tribunal finds that the subject is ideally located in a commercial zoned retail area for a car wash and auto services business, which contributes to the property's value.

Building Construction

Petitioner's owner constructed a building that he describes as having "multi-profit centers."¹¹⁴ He identified the major parts of the building as: (1) car wash tunnel; (2) lube service; (3) self-service vacuum; and (4) detailing. The subject is one of four locations in the Kalamazoo area since 2018.¹¹⁵ Mr. Tehrani testified that he designed the building himself.¹¹⁶ In further testimony, he has used the same design for his Michigan stores.¹¹⁷ No one else in the car wash market builds car washes like the subject property.¹¹⁸

Although it was larger than necessary, he paid approximately \$1.8 million for the raw land.¹¹⁹ He started building immediately because he had been looking for almost two years for a site.¹²⁰ A building permit was acquired that estimated the building cost to be \$4.3 million.¹²¹ Mr. Tehrani testified that construction costs were nearly \$5 million, which is consistent with the building costs of his other locations.¹²² He did not provide any documentary evidence to support his building costs, however, it is given some weight since it is a statement against interest. He testified that he has replicated the footprint in seven of his stores.¹²³ He testified that, "...it's more economical to build it and never use it than it is to come back and add. It's more complicated to come back and add it later on."¹²⁴ Mr. Tehrani also asserts that he had overbuilt the property compared to other car washes.¹²⁵

As stated by Petitioner's owner, the subject significantly differs from a typical car wash facility. A typical car wash is a standalone with 10-15 vacuums outside.¹²⁶ A car wash generally averages 60 to 100 feet in length¹²⁷ and ranges in area from 1,800 SF to 3,000 SF.¹²⁸ By comparison, the subject's car wash area is 40 feet by 150 feet, 6,000 SF total.¹²⁹ As for blowers, the typical car wash would have five to six blowers with 10

¹¹³ Findings No. 15.

¹¹⁴ Tr. at 111.

¹¹⁵ Findings No. 7.

¹¹⁶ Findings No. 8.

¹¹⁷ Findings No. 12.

¹¹⁸ Tr. at 124.

¹¹⁹ Tr. at 113-114.

¹²⁰ Tr. at 114.

¹²¹ Findings No. 9.

¹²² Findings No. 10.

¹²³ Tr. at 125.

¹²⁴ *Id.*

¹²⁵ Tr. at 125-127.

¹²⁶ Tr. at 116.

¹²⁷ *Id.*

¹²⁸ Tr. at 117.

¹²⁹ *Id.*

horsepower each.¹³⁰ The subject has 17 blowers that are 15 horsepower each.¹³¹ Mr. Tehrani also testified that he has built redundancy to limit down time by having two sets of wrap, two sets of top washes, and two sets of “practically everything throughout the tunnel and we believe we get a better quality wash.”¹³²

Petitioner’s operation also devotes a section of the building car detailing.¹³³ It is a place to offer detailing of cars like “Ziebart.”¹³⁴ This section is 30 feet wide by 150 feet long room, 4,500 SF.¹³⁵ However, this portion of the building was not completed by tax day.¹³⁶ Of the seven buildings constructed by Petitioner’s owner, all had the same design, and included the detailing area.¹³⁷ However, only one of the locations is providing detailing services.¹³⁸

Mr. Tehrani then testified about the part of the building with the self-service vacuums. He believed that these were not income generating like the other parts of the building.¹³⁹ He clarified that very few customers come to just use the vacuums, which Petitioner charges \$20.¹⁴⁰ However, vacuuming is included in the service charge if a customer purchases a car wash.¹⁴¹ The self-service vacuum area also provides free towels, a mat machine that will shake out customer’s mats, and an air tool that blows air that customers can use to blow dust and dirt from under their seats.¹⁴² He testified how the indoor vacuums fit in his business model, “We’re unique. We’re the only chain that does it and in my belief – I saw it in Germany – it creates a differentiation. Nobody else believes it. No other chain does it. But that’s the logic for, you know, for me.”¹⁴³

HIGHEST AND BEST USE

A property’s highest and best use is fundamental to the determination of TCV.¹⁴⁴ “Highest and best use” means “the most profitable and advantageous use the owner may make of the property even if the property is presently used for a different purpose or is vacant, so long as there is a market demand for such use.”¹⁴⁵ A highest and best use determination “requires simply that the use be legally permissible, financially

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² Tr. at 118.

¹³³ Tr. at 119.

¹³⁴ *Id.*

¹³⁵ Findings No. 25d.

¹³⁶ *Id.*

¹³⁷ Findings No. 12.

¹³⁸ Findings No. 26.

¹³⁹ Tr. at 123-124.

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² Tr. at 124.

¹⁴³ *Id.*

¹⁴⁴ See *Detroit/Wayne Co. Stadium Auth v Drinkwater, Taylor & Merrill, Inc*, 267 Mich App 625, 633; 705 NW2d 549 (2005).

¹⁴⁵ *Id.* at 633, 705 NW2d 549 (citation omitted).

feasible, maximally productive, and physically possible.”¹⁴⁶ “[I]t is the duty of the Tribunal to hypothesize the highest probable price at which a sale would take place.”¹⁴⁷ “[E]xisting use may be indicative of the use to which a potential buyer would put the property and is, therefore, relevant to the fair market value of the property.”¹⁴⁸

Mr. Waszak characterizes the subject as an “industrial flex” building with an attached car wash and mini-oil lube.¹⁴⁹ The spaces that Mr. Waszak considered industrial flex are the rooms devoted to self-service vacuums and detailing.

The subject is a[n]... industrial flex building with an automatic car wash tunnel attached and a mini-lube building attached. Typically such buildings are constructed for owner occupants for individual business operations. Although assessed nearly totally as a car wash facility, in reality, only 25% of the subject (30% when considering material storage) is capable of housing an operational car wash. The remaining area, with the exception of a small garage area (mini-lube), is typical in construction to an industrial flex type building. *Such flex buildings do not typical employ window walls and brick façade in construction detail and these embellishments are considered super [] adequate to the subject’s viability.* The overall building design conforms with a pre-engineered industrial flex improvement *made immediately obsolete by virtual (sic) of its window walls and brick aesthetic.*¹⁵⁰

He states that the section “conforms with a pre-engineered industrial flex improvement” design but then observed that the walls of windows, nearly floor to ceiling, that make up three of the four walls in that part of the building and brick are “immediately obsolete” because such flex buildings “do not typically employ window walls and brick façade.” Building photographs included in his appraisal report show that the entire building has a brick façade and that only the portion of the vacuum room has the walls of windows. With the discounting of the walls, windows, and rows of attached vacuums, the only thing left that might be identified as “industrial flex” is the roof. Further, minimizing major structural walls of glass and brick as “embellishments” is inaccurate to the point of disingenuous. It is apparent that the subject does not conform to pre-engineered industrial flex design or construction.

Mr. Waszak then referred to these “non-conforming features” as super adequate.¹⁵¹ Super adequacy is defined as “a component or system in the property that

¹⁴⁶ *Detroit v Detroit Plaza Ltd Partnership*, 273 Mich App 260, 285; 730 NW2d 523 (2006).

¹⁴⁷ *Safran Printing Co v Detroit*, 88 Mich App 376, 382; 276 NW2d 602 (1979).

¹⁴⁸ *Id.*

¹⁴⁹ Exhibit P-1, at 22.

¹⁵⁰ *Id.* (emphasis added).

¹⁵¹ *Id.*

exceeds market requirements and does not contribute to value an amount equal to its cost.”¹⁵² Mr. Waszak concluded, without any supporting data, that:

While the current user may anticipate benefit to the subject’s design, configuration and building style, the marketplace as a whole is very unlikely to share enthusiasm for the super [] adequacies displayed by the subject’s improvements.¹⁵³

Mr. Waszak did not provide any evidence to support his conclusion that the window walls and brick façade were super adequate for the subject’s current use for auto service and cleaning. His conclusory statement required an unsupported assumption that a typical buyer in the market would reject its current use, remove the vacuums and windows, build walls to replace the walls of glass windows, and then use it for industrial flex space. Mr. Waszak blames super adequacy as a form of functional obsolescence. Petitioner’s appraiser’s mischaracterization of the space and its highest and best use was not logical.

Petitioner’s appraiser explained why he characterized the improvements as a “single special purpose generic use building.”¹⁵⁴ The “generic” was in reference to the part of the building he has identified as industrial flex.¹⁵⁵ His testimony assumes that the market would reject the subject’s intended construction and use as an indoor vacuum and detail room. He assumes even further that the current use would only appeal to purchasers, “if they had a business plan that included such use and an advertising policy that mirrored Drive & Shine...”¹⁵⁶ Last, he argued that an owner’s business plan and operation is “not germane to alternative uses.”¹⁵⁷ To this point, Mr. Tehrani testified that:

- Q. Has the design of the building become kind of a marketing type strategy for you?
- A. Absolutely. It’s like a -- it’s like a billboard for us. I mean, you know, we build them all looking the same kind of like what McDonalds does with their arch to – to basically make it so that it’s -- it looks like a Drive and Shine.¹⁵⁸

However, Petitioner’s owner only has four locations in Michigan and there is no evidence that his business has reached a level of market recognition that his design of the building would equate to that of a McDonald’s. It is a business that has multiple drive through bays for auto services. Further, there is no evidence that it has any level of design, layout, or features, that are so specific to Drive and Shine beyond size and an

¹⁵² Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 11th ed), p 387.

¹⁵³ Exhibit P-1, at 22 (emphases excluded).

¹⁵⁴ Tr. at 75.

¹⁵⁵ *Id.*

¹⁵⁶ Tr. at 76.

¹⁵⁷ *Id.*

¹⁵⁸ Tr. at 111.

indoor facility for vacuuming that it would create brand recognition. Nor is there any evidence on the record that the market would reject the building's design/construction or otherwise diminish its value.

Petitioner's appraiser's industrial flex theory was debunked when he was unable to confirm that industrial flex property is legally permissible in CC zoning.¹⁵⁹ Legally permissible is a critical requirement for finding a property's highest and best use.¹⁶⁰ His report states, "[t]he subject is considered legal in its *current use* as an industrial flex building with attached automotive-related sections."¹⁶¹ This statement is misleading because it contains his incorrect conclusion that the property is currently used as an industrial flex building. When asked about the zoning issue during the trial, Mr. Waszak could only repeat the inapplicable and irrelevant idea that a commercial property can be placed in areas zoned industrial.¹⁶² Mr. Tehrani's envisioned synergy in combining complimentary automotive services under one roof undermines Mr. Waszak's testimony and analysis.

Petitioner's appraiser failed to persuade the Tribunal that any part of the subject property is industrial flex space in use or design, and failed to see that this building is a sum of its parts. Once again, Mr. Tehrani saw the value in creating a building with multiple profit centers located in other markets. Petitioner's appraiser failed to persuade the Tribunal that an industrial flex theory is even legally feasible in CC zoning. Therefore, the Tribunal finds that industrial flex space is not the highest and best use of the subject property.

Based on the evidence presented, the subject's highest and best use is as its current use. First, there is considerable evidence that the subject's current use is legally permissible in the CC. Second, Mr. Tehrani has proven, through his construction of this fourth store in the area at a cost of nearly \$5 million, that the subject's current use is financially feasible. Third, neither party has provided any persuasive evidence that a different use would be more productive. Fourth, the current use is physically possible since the subject has been built and is currently operating. Under the four tests, the Tribunal finds that the highest and best use of the subject property is continued use as commercial automotive services.

VALUATION

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.¹⁶³ "The market approach is the only valuation method that directly reflects

¹⁵⁹ Tr. at 71-72.

¹⁶⁰ *Detroit v Detroit Plaza Ltd Partnership*, 273 Mich App at 285.

¹⁶¹ Exhibit P-1, at 57 (emphasis added).

¹⁶² Tr. at 71-72.

¹⁶³ *Meadowlanes*, 437 Mich 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).

the balance of supply and demand for property in marketplace trading.”¹⁶⁴ 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.¹⁶⁵ Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.¹⁶⁶

A. Income Approach

“The income capitalization approach to value consists of methods, techniques, and mathematical procedures that an appraiser uses to analyze a property’s capacity to generate benefits . . . and convert these benefits into an indication of present value.”¹⁶⁷ Respondent’s assessor did not apply the income approach. While the subject is an owner-occupied commercial operation, there is no evidence on the record showing that the subject is not viable as an income producing property.

Again, Petitioner’s owner and his appraiser completely disagree on the relevance of the income approach. The appraiser concluded to a value of \$1,220,000 under the income approach but gave it very little weight based on the belief that “very, very weak method of valuing a car wash.”¹⁶⁸ In stark contrast, Mr. Tehrani credibly and persuasively testified:

I would never buy a wash unless the guy opened his books and told me – showed me exactly and it’s got to be something that’s reliable, not just something that he handled. So, I want to see their financials for the last three years and I want to see their volume, you know, for the last three years.¹⁶⁹

Mr. Tehrani also testified that the sale of a car wash would depend on location,¹⁷⁰ the volume of cars being washed,¹⁷¹ and the positive cash revenue.¹⁷²

As noted, the subject is not zoned as industrial flex. However, Petitioner’s appraiser only analyzed rental data for industrial flex properties. The appraisal report provided minimal information for each of the comparables beyond building address, size, lease date, lease rate, and comparable photographs. The description of the comparable sales did not amount to customary write-ups developed in valuation practice. Lastly, Mr. Waszak was unable to confirm that the four comparable properties

¹⁶⁴ *Jones & Laughlin Steel Corp*, 193 Mich App at 353 citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1.

¹⁶⁵ *Antisdale*, *supra* at 277.

¹⁶⁶ See *Meadowlanes*, 437 Mich at 473.

¹⁶⁷ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 15th ed), p 413.

¹⁶⁸ Tr. at 102.

¹⁶⁹ Tr. at 132.

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² *Id.*; Tr. at 132-133.

could legally be in the CC.¹⁷³ While considered, all four sales are given no weight or credibility.

Overall, the Tribunal finds the income approach is not a relevant indicator of value for the subject for the tax year in issue. As testified by the owner, the location is suitable for a brand-new building in an “untested part of town.”¹⁷⁴ In addition, the subject is some distance from a grocery store and is in proximity to competing car washes and oil lube stores. As a new property, only time will tell how these factors influence the income potential of the subject, but there is no evidence for the year at issue.

B. Sales Comparison Approach

“In the sales comparison approach, an opinion of market value is developed by comparing properties similar to the subject property that have recently sold, are listed for sale, or are under contract.”¹⁷⁵ Further, “[a] major premise of the sales comparison approach is that an opinion of market value of a property can be supported by studying the market’s reaction to comparable and competitive properties.”¹⁷⁶ Petitioner’s appraisal relies, heavily, if not solely, on the sales comparison approach. However, none of the appraiser’s comparables contained integrated car service properties that were anything close to the subject property. Respondent, on the other hand, did not apply the sales comparison approach.

Mr. Waszak treated each section of the building as a separate business and valued only the car wash portion of the building. Mr. Waszak used stand-alone car wash tunnels that were free standing businesses, as comparables, which he asserted was a valid approach for valuing the car wash tunnel portion of the building. However, Mr. Waszak intentionally excluded stand-alone oil service businesses as comparables, reaching the opposite conclusion.¹⁷⁷ Mr. Waszak’s distinguishment between stand-alone car washes and stand-alone oil-change businesses is nonsensical.

Car Wash Tunnel

Petitioner’s appraiser selected five sales that had sale dates ranging from July 2015 through December 2019 based on incorrect data regarding the subject. The appraisal report stated that the automatic car wash tunnel is 7,500 SF¹⁷⁸ However, Petitioner’s owner credibly testified the tunnel is 150-foot long by 40-foot wide, yielding an “exact” area of 6,000 SF.¹⁷⁹

¹⁷³ Tr. at 72-74.

¹⁷⁴ Tr. at 72 and 124.

¹⁷⁵ *Appraisal of Real Estate (15th ed)*, p 351.

¹⁷⁶ *Id.*

¹⁷⁷ Tr. at 100:17-101:3.

¹⁷⁸ Exhibit P-1, at 21.

¹⁷⁹ Tr. at 117:9-13.

Petitioner's sales are too far removed from the tax day at issue to be relevant. Further, the appraiser provided no support for the age adjustments of 1%-6% for sales as much as seven years old. Sale 2 required a total gross adjustment of 141%, which would infer a lack of comparability to the subject property. Likewise, sale 3 had 91% gross adjustments. Sale 4 had adjustments of 77%. Sales 1 and 5 had adjustments of 31% and 46% respectively. Overall, the size, design, quality, and age of the sales bear no relevance to the subject for a comparative analysis. The sales are given no weight or credibility on this basis.

Self-Service Vacuums and Detailing Areas

For the vacuum stations and the unfinished detailing area, Mr. Waszak selected sales of freestanding flex buildings that included a medical supply building and a light industrial warehouse. In the context of permissible zoning, the subject space being valued is not any form of warehouse or industrial flex. These sales and the corresponding analyses are given no weight.

Lube Center

For the oil lube area, Petitioner's appraiser concluded that it had a "contributory value" of \$161,000 without explanation or market support.¹⁸⁰ The appraiser's discretion in data selection is internally inconsistent. The market contains numerous examples of free-standing car wash and oil-change shops, yet the appraiser's use free standing comparables for the car wash tunnel but not the lube service area, is incomprehensible.

In summary, Mr. Waszak mischaracterizes parts of the subject property as industrial flex. Petitioner's appraiser was unable to explain whether industrial flex property could legally be in the subject's Commercial Center zoning. This is a flaw since most of Petitioner's appraisal analysis is based on the premise of the property containing a considerable amount of industrial flex space. Therefore, Petitioner's sales comparison approach is given no weight. There is a lack of market data like the unique features of the subject and the innovative design of the property. With that said, the Tribunal finds that the sales comparison approach is a weak approach for the subject property for the year in issue.

C. 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."¹⁸¹ 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"¹⁸²

¹⁸⁰ Exhibit P-1, at 115.

¹⁸¹ *Appraisal of Real Estate (15th ed)*, p 36.

¹⁸² *Id.* at 530.

Generally, the cost approach is “especially persuasive when land value is well supported and the improvements are new or suffer only minor depreciation, and therefore, approximate the ideal improvement that is the highest and best use of the land as vacant.”¹⁸³ As reasoned, a newly constructed property would have minimal depreciation. The elements for a cost analysis include the determination of land value, the replacement cost new (RCN) for building improvements, a calculation of depreciation, physical, functional, and external, and site improvements. Given that the subject property was built in 2021 and received its certificate of occupancy one day before tax day for the subject tax year, the cost approach is the strongest indicator of value.

1. Mr. Tehrani’s Construction Costs

Testimony and evidence has demonstrated that the actual cost to build the subject was between \$4.3 million and \$5 million.¹⁸⁴ This is relevant because the value of the property as of December 31, 2021 – one day after its construction was deemed “complete” with the issuance of the certificate of occupancy – is at issue.¹⁸⁵ He further testified that this cost was consistent with the other car washes he has built in Michigan.¹⁸⁶ Mr. Tehrani believes that the cost to build a typical car wash facility is under \$2 million.¹⁸⁷ However, this amount is not relevant given that Mr. Tehrani did not build a typical car wash.

Mr. Tehrani also testified that he “over built” the property and that the construction costs were excessive.¹⁸⁸ He described the list of construction materials and designs that he claimed were expensive and excessive.¹⁸⁹ The explanation for doing this is telling, “It’s crazy to over – overspent and over design, but then the way I look at it is it’s going to be there for 50 years...”¹⁹⁰ On the other hand, Petitioner’s owner stated that he believes that he provides a better quality car wash and allows him to charge a higher fee for that service.¹⁹¹ Petitioner’s owner has intentionally built this property and replicated the design and construction for seven stores. The construction of the subject was part of the owner’s mission and plan. In other words, the subject was not constructed in a speculative fashion. Petitioner’s owner had logical and market-based reasons for this design, construction, and quality that will last decades and delivers a superior service.

Last, the over-improvement theory may have had merit if the subject was just conventional car wash. However, Mr. Tehrani’s testimony is clear that was not his intention. For instance, he testified that a typical car wash would only have a tunnel of

¹⁸³ *Id.*

¹⁸⁴ Findings No. 9 and 10.

¹⁸⁵ Findings No. 13.

¹⁸⁶ Findings No. 10.

¹⁸⁷ Tr. at 115.

¹⁸⁸ Tr. at 125-127.

¹⁸⁹ *Id.*

¹⁹⁰ Tr. at 126.

¹⁹¹ Tr. at 137.

100 feet rather than the subject's 150 feet.¹⁹² Further, the subject facility has superior equipment with built-redundancies, and vacuums inside.¹⁹³ Therefore, Petitioner's construction costs are relevant for the type of building he intended to build.

2. Mr. Waszak's Cost Approach

Petitioner's appraiser's cost approach is a general framework for a cost analysis. However, there are inconsistencies in his cost analysis. First, the cost entries for the subject were based on an erroneous mischaracterization as "industrial flex." Second, his cost calculations were based on incorrect measurements of the spaces. Third, the claim and calculations for functional obsolescence was mathematically incorrect and internally inconsistent.

The car wash tunnel was costed as Average Class S with a classification of Automatic Car Wash.¹⁹⁴ The refined square foot cost was \$124.95. Again, Mr. Waszak's appraisal report stated that the automatic car wash tunnel is 7,500 SF, 20% larger,¹⁹⁵ however, the area of the tunnel is 6,000 SF. The corrected total area would have an indicated value of \$749,760, rather than his indicated value of \$937,125. Deducting 4% depreciation, would then have yielded an indicated value of \$719,769.60.

Next, Mr. Waszak costed the oil service section as a Low Class C property with a classification of "mini-lube."¹⁹⁶ However, the subject has three oil service bays but characterized as "mini" bays without explanation. His refined cost per SF was \$136.79.¹⁹⁷ The total area is 1,160 SF, resulting in a cost indication of \$158,681.09.¹⁹⁸ Mr. Waszak did not explain how he arrived at his price per SF rate. Accounting for 3% physical depreciation, he arrived at a cost indication of \$153,391.63 for the oil change building section.

The portion of the building designated for detailing and vacuum stations was costed as Low Class S and classification industrial flex.¹⁹⁹ The refined price per SF was \$35.34. The total area is 15,830 SF, resulting in an indicated cost of \$559,479.69. His conclusion of value for this portion of the building after 3% depreciation was \$543,493.89.²⁰⁰ Mr. Tehrani qualified that the interior detailing space is present in all seven of his locations but is only operational in one of his stores.²⁰¹ Mr. Tehrani stated that "it's more economical to build it and never use it than it is to come back and add."²⁰² The appraisal report photographs depicted this area as general storage. The

¹⁹² Tr. at 116-117.

¹⁹³ Tr. at 117-118.

¹⁹⁴ Exhibit P-1, at 64.

¹⁹⁵ *Id.*

¹⁹⁶ Exhibit P-1, at 63.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ Exhibit P-1, at 62.

²⁰⁰ Exhibit P-1, at 68.

²⁰¹ Tr. 125.

²⁰² *Id.*

construction of seven other car wash facilities demonstrates that the detailing and vacuum areas are a functional part of the owner's business plan. Nonetheless, the area provides storage for chemicals, cleaning agents, and etcetera for the rest of the building's functions.

Regarding the cost calculation for depreciation, the appraiser's determinations are problematic. The car wash tunnel was depreciated at 4% based on one year of age with a 25-year life expectancy, resulting in \$37,485. The lube area was depreciated at 3% based on one year of age with a 30-year life expectancy resulting in \$5,289.37. The vacuum and detailing areas were depreciated at 3% based on one year of age with a 35-year life expectancy resulting in \$15,985.11. The age-life methodology of age divided by life equals the percentage depreciation. Said differently, the appraiser's denoted depreciations do not square with the proper mathematical calculations.

Last, Mr. Waszak attempted to deduct 25% functional obsolescence,²⁰³ but admitted upon discovery in cross-examination that the \$425,000 functional obsolescence was mathematically incorrect.²⁰⁴ At hearing, he testified that he intended to apply a 25% functional obsolescence on the portion of the building that he considered industrial flex.²⁰⁵ Nonetheless, Mr. Waszak testified that this correction would not change his final reconciliation of value because he gave the cost approach little weight.²⁰⁶

In summary, Mr. Waszak's cost approach is based on an unsupported assumption and characterization that part of the subject building is industrial flex. As he admitted at trial, if incorrect, would negate his cost approach.²⁰⁷ His errors in building measurements as well as mathematical errors only became apparent during the hearing. Therefore, Petitioner's cost approach is unreliable and is given no weight or credibility.

3. Respondent's Cost Approach

Respondent's cost approach is also conventional framework for the cost analysis of the subject property, which includes the building and fixtures. Mr. Harris referenced the subject's property record card.²⁰⁸ He stated that the 2022 TCV, AV, and SEV were based on calculations made by the BS&A Software, which in turn are based on the state assessor's manual. He then testified that there are specific occupancy rates depending on the type of building. In this case, he considered the subject property to be an integrated car wash and lube center.²⁰⁹

²⁰³ Exhibit P-1, at 72.

²⁰⁴ Tr. at 91-92.

²⁰⁵ *Id.*

²⁰⁶ Tr. 104-105.

²⁰⁷ Tr. at 86-87.

²⁰⁸ Tr. at 148-149; Exhibit R-1 at 4-5.

²⁰⁹ Tr. at 150.

Respondent's assessor then testified about the building permit, which was admitted without objection.²¹⁰ The permit stated a total cost of \$4.3 million.²¹¹ He testified that the building is classified as commercial improved.²¹² Building blueprints were attached to the building permit; however, the assessor spot checked measurements of the building.²¹³ He further testified that the building department then issued the certificate of occupancy on December 30, 2021.²¹⁴ To the best of his knowledge, the building was complete at that time.²¹⁵ On the other hand, Mr. Tehrani testified that the area was not complete as of tax day, but gave no details on what was left to complete the space. Based on his calculations under the cost less depreciation approach, Mr. Harris testified that he concluded to TV and AV of \$2,563,600 for December 31, 2021.²¹⁶

Respondent's assessor described how the cost estimates were calculated for the improvements. First, he explained that he used the occupancy rate for "garages, service station with bays" which were at a rate of \$125.65 per SF.²¹⁷ He then described the cost entries for vacuums, car wash bay, and canopies, all of which had different rates.²¹⁸ Mr. Harris further detailed that there was 480 SF for the mechanical area.²¹⁹ The remaining portion of the building at 24,687 SF included the 29 vacuums which were costed as fixtures.²²⁰

The only persuasive error that Petitioner found with Respondent's property record card was the measurement of the oil service area. Respondent's assessor further testified that he "spot checked" some of the measurements of the building when he was there in February 2022.²²¹ The assessor asserted that the lube service area of 2,164 SF denoted on the property record card was costed at \$271,117 after the deduction 3% depreciation.²²² However, the size of oil service area is actually only 1,160 SF.²²³ Therefore, at a corrected cost of \$129.16 per SF, the service lube area has an indicated cost of \$145,330.

As for the detailing area, the Tribunal finds that it should be costed at the same rates as the rest of the building. There is no evidence on the record proving that this area should be costed differently. The detailing area is currently used for storage based

²¹⁰ Exhibit R-2; Tr. at 160.

²¹¹ Findings No. 9.

²¹² Tr. at 156.

²¹³ Tr. at 161.

²¹⁴ Findings No. 13.

²¹⁵ Tr. at 161.

²¹⁶ Tr. at 157; Exhibit R-1, at 4.

²¹⁷ Tr. at 153.

²¹⁸ *Id.*

²¹⁹ Findings No. 25e.

²²⁰ *Id.*

²²¹ Tr. at 169-170.

²²² *Id.*

²²³ Findings No. 25b.

on Petitioner's appraisal report.²²⁴ While the owner alleges the area is not currently complete, there is no evidence to confirm that it is incomplete. Again, Petitioner's owner has one store that offers detailing, and it appears that Petitioner has reserved this space to provide a service as the market demands it. Petitioner's cost calculation for this space is far less persuasive than Respondent's cost calculation for this space at a rate of \$107.32 per SF.

Respondent's assessor admitted that he did not inspect the property for purposes of determining functional obsolescence and did not calculate any obsolescence for the building.²²⁵ However, Petitioner has failed to persuasively demonstrate that the building suffers from any functional or economic obsolescence. Petitioner's owner's other car washes throughout the state disprove the claim of functional obsolescence to the subject property. Therefore, the Tribunal finds that there is no evidence that the subject suffers from any functional or economic obsolescence for the tax year at issue.

With respect to physical depreciation, Petitioner applied between 3% and 4% for the various sections of the building. Respondent applied depreciation rates between 2% and 3% for various sections.²²⁶ The Tribunal finds that Respondent's depreciation rate of 3% for the oil service area and 2% depreciation rate is appropriate given that the building is less than a year old and Respondent's calculations are far more reliable and persuasive than Petitioner's calculations.

Further, the rest of the building area beyond the oil service area is not 24,687 SF, but rather 22,310 SF.²²⁷ Therefore, the Tribunal finds that the value of the remaining SF at a rate of \$107.32 per SF and accounting for 2% depreciation indicates a value \$2,346,423. This added to the oil service area and the values for the fixtures and mechanical room of \$191,015²²⁸ results in a corrected TCV of \$2,682,804 before applying an ECF.

Next, the assessor described the ECF data and calculations, which resulted in an ECF of 1.515.²²⁹ According to the Assessor's Manual:

An ECF is developed by analyzing verified property true cash value level sale prices. The portion of each sale price attributed to the building(s) only on the parcel is compared to the value on the record card of the same building(s). The ECF represents the relationship between the appraised value of the building and calculated using the Assessors Manual and its respective building value (i.e., the sale value of that building). When the

²²⁴ Exhibit P-1, at 38.

²²⁵ Tr. at 166-168.

²²⁶ Exhibit R-1, at 4.

²²⁷ Findings No. 25.

²²⁸ Findings No. 28f.

²²⁹ Findings No. 28c.

building value is added to the value of the land and the land improvements, an indication of true cash value is developed for assessment purposes.²³⁰

The Tribunal finds that Respondent's use of the Gull Road ECF was properly correctly calculated. In fact, Petitioner's representative failed to raise any challenge to the ECF of 1.515. Applying this ECF to the correct TCV of \$2,682,804 indicates a value for the subject building of \$4,064,448.

Site Valuation

"In the cost approach, the estimated market value of the land or site as though vacant is added to the depreciated cost of the improvements."²³¹ The assessor stated how the land value was determined and calculated. Petitioner's owner's purchase price of \$1,643,454 for the land, was comprised of three contiguous parcels.²³² The parcels were then reconfigured. Respondent's TCV for the land under the cost approach is \$378,972, which reflects a rate of \$108,900 per acre.²³³ Petitioner's appraiser agreed with Respondent's assessment of the land at \$108,900 per acre.²³⁴ While the parties agree on the land valuation, it was not reduced to a stipulation of fact. The Tribunal has reviewed Respondent's valuation data for the land analysis and valuation and finds that it is the most reliable and credible site valuation evidence.

RECONCILIATION OF VALUE

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner has met its burden of production but has failed to meet its burden of persuasion. Petitioner's representative's assertions of industrial flex and functional obsolescence were unsupported and unpersuasive to the value of the subject property. Petitioner's evidence is not more persuasive than Respondent's evidence. The Tribunal finds that the TCV of the subject's improvements under the cost less depreciation approach is \$4,064,448, which added to the TCV of the site of \$378,972, results in a TCV of \$4,443,420 for the 2022 tax year.

JUDGMENT

IT IS ORDERED that the property's SEV and TV for the tax year(s) at issue are AFFIRMED/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

²³⁰ State Tax Commission. *Michigan Assessors Manual*, Vol. III, at 40 (February 2018).

²³¹ *Appraisal of Real Estate (15th ed)*, at 533.

²³² Tr. at 152.

²³³ Findings No. 28d and 32.

²³⁴ Findings No. 33.

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 exemption and, if so, there is no filing fee. You are required to serve a copy of the motion on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion. Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.

A claim of appeal must be filed with the Michigan Court of Appeals with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave." You are required to file a copy of the claim of appeal with filing fee with the Tribunal in order to certify the record on appeal. The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.

By 

By 

Entered: July 23, 2024
Jmw

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