



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MARLON I. BROWN, DPA
DIRECTOR

Oakland-Summit Investments LLC,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MTT Docket No. 22-001150

Waterford Township,
Respondent.

Presiding Judge
Marcus L. Abood

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Oakland-Summit Investments LLC, appeals ad valorem property tax assessments levied by Respondent, Waterford Township, against parcel number W-13-24-451-015 for the 2022 tax year. A hearing was held on this matter on February 6, 7, 8, and 9, 2024. Brian E. Etzel, Attorney, appeared on behalf of Petitioner. Laura M. Hallahan, and Seth A. O’Loughlin, Attorneys, appeared on behalf of Respondent. Petitioner’s witnesses were Brandon Ellis and David Tisdale. Respondent’s witness was John Widmer Jr.

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: W-13-24-451-015

| Year | TCV | SEV | TV |
|------|-------------|-------------|-------------|
| 2022 | \$3,000,000 | \$1,500,000 | \$1,366,220 |

PETITIONER’S CONTENTIONS

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

Parcel Number: W-13-24-451-015

| Year | TCV | SEV | TV |
|------|-------------|-----------|-----------|
| 2022 | \$1,750,000 | \$875,000 | \$875,000 |

Petitioner contends that the subject property is over-assessed. The subject property is impacted by the neighboring demolished mall property, poor visibility/exposure from major roadways, and the access/condition of roads.

Petitioner's appraiser asserts that Petitioner wanted to make improvements to the building to enhance the business. Specifically, Petitioner wanted to construct a firewall between boat repair and boat sales in the building but deemed the cost estimate was too great. The tenant, Tommy's Detroit, had intentions of moving to a new location near the Great Lakes Crossing Mall in Auburn Hills.¹

Petitioner contends that it has no use for the building's former truck wells and coolers. These items impact the marketability of the property and prompted Tommy's Detroit to get cost estimates for changes to the building.²

Petitioner's management company spends \$40,000 to \$50,000 in maintenance and repairs to the roadways around the former Summit Place Mall. The roads are described as having "chuckholes" which need to be repaired.³

Petitioner's appraiser analyzed demographics from sources including the U.S. Census Bureau, the Detroit Combined Statistical Area (CSA), and the Southeast Michigan Council of Governments (SEMCOG). Comparisons were made between Waterford Township and Oakland County for population, unemployment, household income, number of households, etc.⁴

Again, the location at the former Summit Place Mall along with poor visibility and roadway access impact the subject's market value.⁵ The closure and demolition of the mall impacted institutional grade tenants in the immediate area.⁶

Petitioner's appraisal report and appraiser's workfile include numerous photographs of the subject neighborhood and streets around the demolished Summit Place Mall.⁷

Petitioner's appraiser calculated 30.5% vacancy for the four commercial developments located within the subject neighborhood.⁸

The appraiser considered all three approaches to value but only developed the sales comparison and income approaches to value. The cost approach was not developed due to the difficulty in quantifying functional and external obsolescence. Moreover, investors do not rely on this approach in their decision-making processes.⁹

Petitioner's appraiser reviewed the subject's rental history as part of the overall income analysis. However, the appraiser is only valuing the real estate and not the going

¹ Tr, Vol 1, 42-44.

² Tr, Vol 1, 57-58.

³ Tr, Vol 1, 76-77.

⁴ Tr, Vol 1, 64-67.

⁵ Tr, Vol 1, 71.

⁶ Tr, Vol 1, 95-96.

⁷ Pet's Exh P-5, pp 10-23 and 39.

⁸ Tr, Vol 1, 116.

⁹ Tr, Vol 1, 131.

concern (Tommy's Detroit). Rental data was researched and analyzed to the subject property. Five rental properties were analyzed in the subject's neighborhood. Two other rental properties outside of the subject neighborhood were also analyzed. Adjustments for location, access, and visibility were supported by the market sales including the Birchwood Mall.¹⁰

Petitioner's appraiser contends that rental data with lease rate escalations by itself is not an indication of appreciating market conditions. Market conditions were reviewed through big box store sales, the study of leased fee properties, and abstracted capitalization comparable sales data.¹¹

Petitioner's appraiser is confident in his determination of market rent for the subject property. Petitioner refutes Respondent's hypothetical for a different rent for the subject property. Petitioner contends that consideration must be given to the five months of free rent (in exchange for tenant improvements) for the subject's market rent determination.¹²

Petitioner's appraiser developed a sales comparison approach to value by analyzing six sales which included the subject's sale in 2017.

PETITIONER'S ADMITTED EXHIBITS

- P-1: Appraisal Report prepared by Brandon Ellis.
- P-4: Tommy's Detroit Lease.
- P-5: Area Photographs, pages 10-23 and 39.
- P-10: Ellis Workfile, pages 82-84.
- P-12: Ellis Workfile, page 38.
- P-14: Ellis Workfile, 200-220 Telegraph Road (Comparable Sale 5).
- P-15: Ellis Workfile, 2000 Ten Mile Road (Comparable Sale 3).
- P-23: Aerial Photograph (North View from Elizabeth Lake Road).
- P-24: Aerial Photograph (CNS Healthcare Building and Lot).
- P-25: Aerial Photograph (CNS Healthcare Building and Lot Expanded View).
- P-26: Aerial Photograph (Summit Drive South View).
- P-27: Aerial Photograph (Expansive East View).
- P-32: Aerial Video of the Subject Neighborhood.
- P-33: Aerial Video of the Subject Neighborhood.
- P-40: Widmer Workfile, page 181, (Comparable Sale 1).
- P-42: Widmer Workfile, pages 217-220, (Comparable Sale 4).

¹⁰ Tr, Vol 1, 172.

¹¹ Tr, Vol 3, 119-120.

¹² Tr, Vol 3, 145-146.

PETITIONER'S WITNESSES

Petitioner's first witness, Brandon Ellis, is a Certified General Real Estate Appraiser in the state of Michigan. He is designated through the Appraisal Institute. He has been a real estate appraiser for 25 years. Based on his background, training, education, and experience, Mr. Ellis was admitted as an expert in the valuation of real estate.

Petitioner's second witness, David Tisdale, certified property manager (CPM), is the leasing manager for the subject property including commercial retail properties in the Summit West and Summit North sections. He has been managing commercial properties since 1970. His company manages over 1 million square feet in commercial office and retail space in southeast Michigan.

RESPONDENT'S CONTENTIONS

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

Parcel Number: W-13-24-451-015

| Year | TCV | SEV | TV |
|------|-------------|-------------|-------------|
| 2022 | \$3,560,000 | \$1,780,000 | \$1,366,220 |

Respondent's appraiser asserts that a freestanding property and a multi-tenant property do not experience the same influences in rent and value.¹³

Respondent's appraiser analyzed and described the subject market area and neighborhood. This includes distinctions made between an impulse location and a destination location. The subject property is deemed a destination location. Consumers intend to travel to the subject as opposed to a consumer that impulsively stops for convenience at a 7-Eleven or McDonalds.¹⁴ The subject property is well situated near the Telegraph Road commercial corridor as well as Elizabeth Lake Road.

Overall, the subject's location, visibility, and access are not negative issues as alleged by Petitioner.

Respondent's appraiser researched CoStar analytics as well as Oakland County for commercial sales data.

Respondent's appraiser considered all three approaches to value but relied on the income and sales comparison approaches to value. The cost approach was not developed because of the age of the subject building. Further, market participants would not rely on a cost approach in the purchase of the subject property. Nonetheless, Respondent's appraiser analyzed land sales to determine that the improvements

¹³ Tr, Vol 3, 194.

¹⁴ Tr, Vol 3, 206-208.

support his highest and best use conclusion for the subject property as a retail warehouse.

Respondent refutes Petitioner's analysis of the comparable sale located at 2101 South Telegraph Road.¹⁵ Respondent's appraiser spoke directly with the chief counsel (Jason Horton) and the principal (Daniel Stern) of Lormax Stern who purchased the property. Specifically, the purchaser negotiated a lower lease rate in exchange for transitioning the property at a cost of one and half million dollars. Respondent's appraiser has reviewed thousands of leases and spoke with brokers, landlords and tenants regarding negotiated leases with concessions.¹⁶

Likewise, Respondent's appraiser is very familiar with the property located at 29150 Seven Mile Road which was utilized by Petitioner's appraiser as a comparable sale. This is the former Toys R Us property. Respondent's appraiser reviewed and considered this property for his comparative analysis. However, many questions were left unanswered, and Respondent's appraiser was not confident in the use of this sale in his appraisal of the subject property.

Respondent refutes Petitioner's reliance on multi-tenant spaces located at Summit West and Summit North. These leased spaces are not comparable to the subject's freestanding building with larger space and ceiling height.

Lastly, Respondent questions Petitioner's previous contention of value (MTT Docket No. 20-004545) of \$1,700,000 which is substantially similar to Petitioner's current contention of \$1,750,000. With the submitted evidence of the prior final opinion and judgment, Respondent further questions Petitioner's analysis of market depreciation.

RESPONDENT'S ADMITTED EXHIBITS

- R-1: Appraisal Report prepared by John Widmer Jr.
- R-2: Petitioner's Post Valuation Discovery Answers.
- R-5: Waterford Township Planning Commission Minutes dated January 28, 2020.
- R-6: Waterford Township Planning Commission Minutes dated May 28, 2020.
- R-8: Oakland County Business Center Site Plan.
- R-9: Page 85 of Petitioner's Exhibit P-10.
- R-10: Ellis Workfile Excel Spreadsheet (rebuttal).
- R-11: Quitclaim Deed for Petitioner's Sale 3 (rebuttal).

¹⁵ Respondent asserts that res judicata and collateral estoppel apply in this case given Petitioner's use of previously discredited comparable sales data. Specifically, Respondent contends that comparable sales utilized in the previous appeal (MTT Docket No. 20-004545) were discredited by the Tribunal. Having done so, Respondent contends that the Tribunal should not give any weight or credibility to those sales used by Petitioner in the present case. There is a distinct difference between the two cases though. The characteristics and facts for those comparable sales have remained the same. However, the analysis of those comparable sales to the subject property have changed. Said differently, Petitioner's two separate appeals engaged different appraisers each providing different analyses and indications of value.

¹⁶ Tr, Vol 4, 46-47.

- R-12: MTT Final Opinion and Judgment, Docket No. 20-004545 (rebuttal).
R-13: Petitioner's Rental 6, Property Record Card for 2101 S. Telegraph Rd. (rebuttal).
R-14: Petitioner's Rental 3, BS&A Record Card for 28600 Dequindre (rebuttal).

RESPONDENT'S WITNESS

Respondent's witness, John Widmer Jr., prepared a valuation disclosure for the subject property. He is a Certified General Real Estate Appraiser licensed in the state of Michigan and designated through the Appraisal Institute. Based on his education, background, and experience, the Tribunal accepted Mr. Widmer as an expert in real estate appraisal.

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 495 Summit Drive, in Waterford Township and within Oakland County.
2. Oakland County is located in southeast Michigan.
3. The subject property is comprised of 14.09 acres and is improved with a commercial building constructed in 1991.
4. The subject building contains 110,526 square feet of gross building area (GBA).¹⁷
5. The subject property is zoned C-4, Extensive Business.
6. Directly south of the subject property is the automotive dealership Lunghamer Chevrolet.¹⁸
7. The site of the former Summit Place Mall has been redeveloped with a DTE Center.¹⁹
8. Summit West and Summit North tenants and occupants include an urgent care facility, an oil change business, a charter school (grades K through 12), a Dollar General store, Community Network Services (CNS) methadone clinic, Oakland County schools (adjunct space), and Elite Sports (sports training for girls).
9. The subject property is an income producing property. In other words, the subject property is not owner-occupied.
10. Petitioner leases the subject property to Tommy's Detroit, a boat retailer and dealership.

¹⁷ Both appraisers claimed to have relied on assessing records for the subject's GBA. Petitioner's appraisal report included a general illustrative building sketch. On the other hand, Respondent's appraisal report included a more detailed illustration of the subject's dimensions. Further, Respondent's appraiser ". . . did some mathematical checks and relied upon the numbers shown within assessment records." Tr, Vol 3, p 191.

¹⁸ This automotive dealership is a "destination" location similar to the subject property as a boat dealership.

¹⁹ Tr, Vol 3, 198, and Petitioner's Exhibits P-5, P-6, and P-8.

11. The Tommy's Detroit lease included five months of free rent. In exchange, Tommy's Detroit paid for tenant improvements to the building.²⁰
12. The subject lease commenced on April 1, 2018, and ends on August 31, 2023.
13. The subject lease gave the tenant five months of free rent, then the first 2 years lease rate set at \$3.25/SF and the final three years set at a lease rate of \$4.75/SF.
14. The tenant is responsible for common area and maintenance (CAM) of \$1,500 per month.
15. The subject property did not have any additions, losses, or omitted property for 2022.
16. The subject property's 2021 TV assessment only changed at the statutorily prescribed rate of inflation for 2022.
17. Petitioner submitted a valuation disclosure in the form of an appraisal report prepared by Brandon Ellis.
18. Petitioner's appraiser analyzed the subject market in terms of Oakland County and Waterford Township. Petitioner's appraiser defined the subject neighborhood in terms of specific properties surrounding the former Summit Place Mall.
19. Petitioner's appraiser considered all three approaches to value but only developed the sales and income approaches to value.
20. Petitioner's appraiser developed a sales comparison approach by analyzing six comparable sales. All six sales were adjusted downward to the subject.
21. Petitioner's appraiser averaged the subject's lease rates (including five months free rent and CAM expense) over the total lease term to derive a lease rate of \$3.99/SF.²¹
22. Petitioner's appraiser developed 20 big box store sales for the analysis of market conditions.²²
23. Petitioner's appraiser developed 25 retail shopping center sales for the analysis market conditions through capitalization rates.²³
24. Petitioner's income approach included seven rental comparable properties.
25. Petitioner's appraiser utilized the subject property as a rental comparable. Aside from this rental comparable, rental properties 2, 3, 4, and 5 are not freestanding properties.²⁴
26. Petitioner's rental 2 and 3 are located in Summit North. Rentals 4 and 5 are located in Summit West. These rentals are all managed by David Tisdale.
27. Petitioner's appraiser did not review or request lease information for his rental properties 2, 3, 4, and 5.²⁵
28. Petitioner's appraiser did not request comparable rent roll information from David Tisdale to perform a historical rent analysis.²⁶

²⁰ Tr, Vol 2, 79-80.

²¹ Tr, Vol 1, 41.

²² Tr, Vol 2, 121; Resp's Exh R-10; and Pet's Exh P-1, page 130-131.

²³ Tr, Vol 2, 131-133.

²⁴ Tr, Vol 2, 198.

²⁵ Tr, Vol 2, 208.

²⁶ Tr, Vol 2, 222-223.

29. Petitioner's appraiser determined that the subject's five months of free rent equated to \$148,715 (overall rent of \$356,915 divided by 12 months equals \$29,743 per month).²⁷
30. Petitioner's appraiser did not apply any market condition (time) adjustments to rentals 1, 2, 3, 4, and 5. The rentals lease dates range from 2016 to 2022.²⁸
31. Petitioner's appraiser did not have any empirical evidence to support his conclusion that the subject's neighborhood rents were declining.²⁹
32. Petitioner's sale 5 (200-220 N. Telegraph Road) does not have signage or frontage on Telegraph Road or Elizabeth Lake Road.³⁰
33. Petitioner's appraiser did not develop a cost approach as support and analysis for alleged functional and external obsolescence.³¹
34. Respondent submitted valuation evidence in the form of an appraisal report prepared by John Widmer Jr.
35. Respondent's appraiser considered all three approaches to value but only developed the sales and income approaches to value.
36. Respondent's appraiser analyzed the subject market area in terms of Oakland County, Waterford Township, and radius circles (1-mile, 3-mile, and 5-mile).
37. Respondent's appraiser developed a highest and best use analysis which included four land sales.
38. Respondent's appraiser developed four sales for its sales comparison approach to value. All four sales were adjusted downward to the subject.
39. Respondent's sales 2 and 3 are C-4, commercial zoned and are located in Waterford Township.
40. Respondent's appraiser developed an income approach which included five rental properties in southeast Michigan.
41. Respondent's appraiser utilized industrial zoned properties for his rental rate analysis.³²
42. The parties' appraisers utilized a common comparable rental property located at 28600 Dequindre Road, Warren, Michigan.

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.³³

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

²⁷ Tr, Vol 2, 193.

²⁸ The rental lease date range includes the 2020 Covid pandemic.

²⁹ Tr, Vol 2, 224-225.

³⁰ Tr, Vol 3, 33.

³¹ Tr, Vol 3, 117.

³² Tr, Vol 4, 190-191.

³³ See MCL 211.27a.

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.³⁴

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.³⁵

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”³⁶

“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.”³⁷ The Tribunal is not bound to accept either of the parties' theories of valuation.³⁸ “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.”³⁹ 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.”⁴⁰

A proceeding before the Tax Tribunal is original, independent, and de novo.⁴¹ The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”⁴² “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”⁴³

“The petitioner has the burden of proof in establishing the true cash value of the property.”⁴⁴ “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.”⁴⁵ 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

³⁴ Const 1963, art 9, sec 3.

³⁵ MCL 211.27(1).

³⁶ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

³⁷ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

³⁸ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

³⁹ *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

⁴⁰ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

⁴¹ MCL 205.735a(2).

⁴² *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

⁴³ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

⁴⁴ MCL 205.737(3).

⁴⁵ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

equalization factor that was uniformly applied in the assessment district for the year in question.”⁴⁶

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.⁴⁷ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”⁴⁸ 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.⁴⁹ Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.⁵⁰

SUBJECT MARKET DESCRIPTION AND ANALYSIS

The parties’ appraisers described and analyzed the subject market through various demographics. Waterford Township and Oakland County were reviewed in terms of population, household income, and employment. However, the parties’ focus on the subject’s neighborhood description and analysis took different paths. Petitioner’s appraiser focused on the immediate properties surrounding the former Summit Place Mall. Petitioner’s appraiser defined a very tight neighborhood parameter including the subject property. As noted, development surrounding the former Summit Place Mall site is varied. Petitioner’s appraiser selectively took five buildings to derive a base rent for the subject while excluding such other buildings. Petitioner’s devised neighborhood is not persuasive to the Tribunal. The variety of tenants at Summit West, Summit North, and Summit South dispel the notion of an inactive commercial market. While none are big box anchor tenants, the multi-tenancy along with a private school (CNS) is an indication of market activity.

The acknowledgment of the subject within the southeast market is relevant in this instance. The influences of Oakland County as well as Waterford Township should not be discounted. Said differently, the analysis of rents, vacancies, and commercial uses etc. are not reasonably confined to just five buildings in the subject’s immediate neighborhood. Respondent’s appraiser’s macro analysis through CoStar was tailored to his radius analysis (1-mile, 3-mile, and 5-mile) with demographic data as well. As will be discussed further in this opinion, Respondent’s data analysis is consistent with its market analysis. Respondent’s appraiser demonstrated a strong analysis of the subject neighborhood and its transition.⁵¹ Therefore, Respondent’s neighborhood description

⁴⁶ MCL 205.737(3).

⁴⁷ *Meadowlanes*, *supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), *aff’d* 380 Mich 390 (1968).

⁴⁸ *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

⁴⁹ *Antisdale*, *supra* at 277.

⁵⁰ See *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

⁵¹ Tr, Vol 4, 55.

and market analysis are given weight and credibility in the Tribunal's determination of market value for the subject property.

HIGHEST AND BEST USE

The subject property was originally developed as a big box commercial retail store. Next generation uses of the subject property changed with market demand. Notably, the close and demolition of the former Summit Place Mall impacted the subject neighborhood. However, a variety of businesses continue to operate around the former mall site. The parties made much to do over the labels of retail, warehouse, and manufacturing uses. Aside from the creativity of labeling, the parties' appraisers have concluded to a similar highest and best use for the subject.⁵² The Tribunal finds that there is no dispute that the subject's highest and best use is its continued use as a commercial retail building.

Petitioner's concerns over Respondent's label of the subject property as retail warehouse is without merit. The subject structure remains in the form of a big box building. The subject is now a 3rd generation use property. The original structure is substantially unchanged other than filled in bay doors and former refrigeration coolers. The fact remains that the subject has been used throughout as a single user or single tenant. The focus is on the use of the building (and permissible uses) and not necessarily the user of the building. Petitioner's lines of questioning only muddied the waters for the subject's highest and best use analysis.⁵³ The Tribunal is otherwise able to focus on the parties' relevant market data and valuation evidence.

Closely related to the subject's highest and best use, reference is made to the parties' market description and analysis. Common to each analysis is the market data relied upon by the parties. Sales of commercial buildings and rentals of tenant spaces are applicable. As will also be discussed below, the parties' data presentations took divergent paths. Petitioner relied primarily on the subject's immediate neighborhood for rental data. On the other hand, Respondent's macro analysis (through CoStar) included all types of commercial properties over 5,000 square feet including multi-tenant data in southeast Michigan. Multi-tenant data is unavoidable because the data is rightfully relevant to the market in terms of occupancy and vacancy rates. Both parties have included multi-tenant data in their respective analysis.

COST APPROACH

Generally, a cost approach is most applicable for new or newer properties. As reasoned, a newly constructed property would have minimal depreciation. On the other hand, a cost analysis is more problematic for older properties in quantifying all forms of depreciation. The elements for a cost analysis include the determination of land value, the replacement cost new (RCN) for building improvements, a calculation of

⁵² Resp Exh R-1, p 68 and Pet Exh P-1, p 68.

⁵³ Tr, Vol 4, 88-95.

depreciation of physical, functional, and external, and site improvements. As noted, neither party developed the cost approach to value.⁵⁴ Therefore, there is no basis for the Tribunal to have considered this approach to value for the subject property.

INCOME APPROACH

The subject property is an income producing commercial property. In other words, the property is not owner-occupied but has tenant leased space. As noted, each party developed an income approach to value. However, the parties' divergent paths for their respective conclusions were telling. As articulated below, the Tribunal considered each income element to arrive at an independent determination of market value from the income approach.

The subject property is a non-institutional grade commercial property with an existing lease. The subject is a single tenant occupied building. Petitioner secured a tenant lease by offering 5 months of free rent in return for the tenant's own improvements. While the lease terms transpired prior to the December 31, 2021 tax day, the income analysis must give consideration to the subject's contract rent. Review and consideration were also given to multi-tenant leases surrounding the former Summit Place Mall. Likewise, existing commercial uses and occupancies were acknowledged within the immediate subject neighborhood. Lastly, commercial market data was reviewed in southeast Michigan. Key to this analysis is the parties' differences between a *gross lease*⁵⁵ and a triple net lease (NNN)⁵⁶.

First, the parties' respective rent rate analyses were reasonably presented. Each appraiser applied rental data in a comparative analysis. Petitioner's appraiser developed a rental rate analysis from seven rental properties. Rental 1 is the subject itself. Rentals 2, 3, 4, and 5 are multi-tenant leases located within the subject neighborhood. Rentals 6 and 7 are standalone buildings (single tenants) located in competing market areas. However, Petitioner's use of the subject as a rental comparable did not have any adjustments based on tenant improvements (TI's), CAM, or as a straight rent.⁵⁷ As of December 31, 2021, Tommy's lease rate (based on a straight lease rate plus CAM) would have been \$4.91/SF.⁵⁸ The subject's contract rents were set as of 2018 and included five months of free rent in exchange for the tenant's renovations. It appears that the subject changes necessitated *transactional adjustments*⁵⁹ and *property adjustments*⁶⁰ from 2018 to the December 31, 2022 date of

⁵⁴ However, Respondent's appraiser developed a land value comparative analysis within his highest and best use analysis. This level of due diligence is persuasive to Respondent's overall opinions, analysis and conclusions.

⁵⁵ Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 7th ed, 2022), p 86.

⁵⁶ *Id*, p 131.

⁵⁷ Petitioner's appraiser failed to discuss or analyze the relevance of *expenditures immediately after sale* (Appraisal Institute, *The Appraisal of Real Estate*, Chicago: 15th ed, 2020, pp 385-386) relative to tenant improvements.

⁵⁸ Tr, Vol 2, 220-221 and Vol 3, 60-61.

⁵⁹ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 15th ed, 2020), p 278.

⁶⁰ *Id*, p 390,

value. Such changes to the subject property would prompt analysis from Petitioner's appraiser. The subject as a comparable sale is more than just a placeholder within Petitioner's sales comparison adjustment grid. Petitioner has either overlooked or mischaracterized the subject between the two dates for transactional adjustments. Petitioner did not want to rely on the subject's contract rents yet used the subject's rents (as a comparable) for market rents in the comparative analysis.⁶¹ In essence, Petitioner's rental comparative analysis denoted the subject's actual rents in comparison to the subject's (as a comparable) actual rents.

In theory, the use of a subject as a comparable rental or sale is permissible. In practice, the subject's use as a comparable is cautionary. Said differently, the subject is not necessarily placed as a primary comparable but placed secondarily to other data. A subject as a comparable without application (adjustments) is not meaningful to a comparative analysis. Comparable properties are compared and contrasted to a subject property. The presence of a subject in a comparative adjustment grid without adjustments is not persuasive. Petitioner's rentals 2, 3, 4, and 5 are multi-tenant spaces and were refuted by Respondent. Again, multi-tenant leases are different than single tenant leases. Therefore, Petitioner's rental data was considered but greater reliance is placed on rentals 6 and 7 (as single tenants, NNN leases, and standalone buildings).

Respondent's appraiser's consideration of the subject's five months of free rent in his overall income analysis was convincing.⁶² This analysis was more persuasive than Petitioner's appraiser's general thought of each party's lease motivations. Said differently, Petitioner didn't rely on the subject's contract rent but in a roundabout way used the subject's rents as a comparable to other properties. Moreover, computing five months of free rent as an average overlooked the subject's tenant improvements which garnered free rent to Tommy's. As a matter of fact, Tommy's received five months of free rent because it made renovations (tear out walls, filled in truck wells).⁶³ Petitioner's appraiser stated, "This additional amount that the tenant spent, that's from their side, that has nothing to do with what the value of the property is to the owner. The owner was able to get what they were able to get, which is the lease in place."⁶⁴ Petitioner's cavalier treatment of the negotiated changes made to the property is not acceptable. Moreover, the value of the property culminated in more than just the lease rate. The lease terms, conditions, and concessions are all integral to the actual lease rate. The value of the lease and lease components ultimately results in the value of the property. Petitioner's appraiser took a simple average from each year's rental rate to arrive at \$3.83/SF. Respondent contended that Petitioner's simple rent average is not an acceptable appraisal analysis. On the other hand, Respondent calculated an overall rental rate with a present value which included the five months of free rent to arrive at \$4.15/SF.

⁶¹ Tr, Vol 3, 61-62.

⁶² Tr, Vol 4, 21-22.

⁶³ Tr, Vol 2, 192-193. Former refrigerated coolers are now being used as storage and indicate the leased space is optimally utilized by the tenant.

⁶⁴ Tr, Vol 3, 157-158.

Again, Petitioner used the straight lease rate for each of rental comparables (including the Tommy's storage lease comparable) which increased over time. Further, Petitioner's appraisal report (at page 93) stated that there has been a market increase in asking and actual rents. Petitioner's rental 4 (Tommy's storage space lease) increased by 7% over a three-year period and supports Petitioner's appraiser's own statement.⁶⁵

Petitioner's rental comparables are located in the immediate subject market area. However, the rentals are multi-tenant and are not single users. These rentals demonstrate a similar location to the subject. However, the reference to other buildings and users dispelled the notion of alleged negativity (such as visibility, access, and roads) by Petitioner. While Respondent's rental properties are all zoned industrial and are not readily comparative to the subject's commercial zoning, the rental comparisons represent single users in standalone buildings located in southeast Michigan. However, Respondent also reviewed and cited three retail store leases.⁶⁶ The overall analysis of comparable rentals was considered. A going concern value is not germane here. Likewise, a concern and line of questioning about Petitioner's rental 2 (homeless shelter) was not relevant.⁶⁷ This rental has the same zoning as the subject property.

Consequently, consideration is given to Petitioner's multi-tenant rents and consideration is given to Respondent's single tenant users. Again, Respondent's appraiser rendered a stronger analysis of the subject's tenant concessions (free rent in exchange for TI's). Lastly, the parties' common comparable rental property located at 28600 Dequindre Road, Warren, Michigan lends support to the conclusion of market rent for the subject property.

Petitioner's rental rate for the subject is based on a gross lease at \$4/SF and Respondent's rental rate is based on a NNN lease of \$5.22/SF.⁶⁸ Once again, Respondent considered the subject's TI's and free rent with application to the market. Respondent's overall rental rate analysis (including CAM) for the subject is more persuasive than Petitioner's rental analysis. Therefore, greater reliability and credibility is placed on Respondent's rental analysis for the independent determination of subject's base rent at \$5/SF.

Second, the subject's potential gross income (PGI) is calculated by applying the market supported base rental rate of \$5/SF multiplied by the subject's gross building area (GBA) of 110,526 SF which equals \$552,630.

Third, the next element in the income analysis is vacancy and credit loss. Petitioner's appraiser relied on a Colliers International report for vacancy and credit loss taken from

⁶⁵ Tr, Vol 2, 217-218.

⁶⁶ Resp Exh R-1, p 83.

⁶⁷ Tr, Vol 1, 143.

⁶⁸ Respondent's appraiser's base rate was \$3.75/SF plus recovery for real estate tax (\$0.87/SF) and CAM/insurance (\$0.60/SF) resulting in \$5.22/SF.

April 2023 data and not as of the relevant tax date.⁶⁹ Further, Petitioner's appraiser was questioned whether he properly determine the vacancy for all properties within his defined "subject neighborhood". Such properties as the automobile dealership and charter school were not included in Petitioner's market analysis. Petitioner's appraiser's own vacancy survey was 26.6% but his market vacancy and credit loss were at 16%. Petitioner's appraiser stated, "I felt I was being conservative by going in between here."⁷⁰ This thought of positioning and gesturing lends itself to subjectivity.

On the other hand, Respondent's appraiser analyzed a *frictional vacancy*⁷¹ and credit loss for the subject property at 8.5%. Respondent contends that there is a difference between multi-tenant leases versus single-tenant leases. The Tribunal agrees that there is a difference between such leases. However, Respondent's vacancy analysis did not cite any market data to support ". . . market-oriented leasing parameters such as renewable energy probability, time to re-lease, and ultimately the total lease term for the market space."⁷²

Neither party's vacancy and credit loss analysis is persuasively conclusive. Parallel to the subject's market rent, consideration is given to Petitioner's neighborhood vacancy data and consideration is given to Respondent's southeast Michigan vacancy data. Overall, Respondent's analysis of the subject market is stronger. With a reasoned reflection, the parties' indications bracket the Tribunal's independent determination of vacancy and credit loss at 12% for the subject's income approach.

Fourth, effective gross income (EGI) was determined by taking the PGI of \$552,630 and multiplying the vacancy and credit loss of 12%. The resulting EGI is \$486,315 (\$552,630 reduced by \$66,315).

Fifth, operating expenses were analyzed and determined by each party's appraiser. Expense entries included property taxes, insurance, CAM, management, administrative, and reserves.⁷³ Petitioner illustrated comparables for each expense category. However, the majority of the comparable expense data was multi-tenant in nature. Again, as refuted by Respondent, expenses for multi-tenants are different than expenses for single tenants. On the basis of a gross lease, Petitioner calculated expenses of \$118,509 excluding property taxes.

Respondent's expense analysis reviewed the subject's actual 2020-2022 financial information. Respondent's appraiser addressed the variation of a NNN lease versus a gross lease in the consideration of property taxes. The non-recoverable expenses and the subject's five months of free rent were persuasively and logically analyzed by Respondent's appraiser. However, no expense comparables were cited due to

⁶⁹ Tr, Vol 3, 73.

⁷⁰ Tr, Vol 3, 75-80.

⁷¹ Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 7th ed, 2022), p 79.

⁷² Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 15th ed, 2020), pp 448-449.

⁷³ The major difference in the parties' operating expenses is attributed to the property taxes and administrative fees. Otherwise, the remaining expense entries are relatively similar.

confidentiality issues.⁷⁴ Respondent's appraiser determined overall expenses of \$224,877.

Overall, Petitioner's expense comparables are not more persuasive than Respondent's unidentified expense data. Petitioner's appraiser testified to having reviewed the subject's financial statements. However, Petitioner's lack of specific appraisal report analysis of the subject's financials (revenue and expenses) as a starting point is not convincing. Again, Respondent's expense analysis started with the subject's financial history (as illustrated in Respondent's appraisal report). Therefore, greater weight and credibility is given to Respondent's operating expenses. The parties' operating expenses bracket the Tribunal's independent determination for this element at \$200,000.

Sixth, the next income element is the calculation of the net operating income (NOI). As previously and independently determined, the operating expenses of \$200,000 are deducted from the EGI of \$486,315. The resulting NOI is \$286,315.

Seventh, as articulated by the appraisers, a capitalization rate analysis parallels the level of risk associated with the subject property. Petitioner's capitalization analysis included 1) eight capitalization rate comparables in Michigan, 2) a discussion with an owner of several major shopping centers in southeast Michigan, and 3) a review of RealtyRates surveys. Petitioner concluded to a base capitalization rate of 12% and an overall "loaded" capitalization rate of 14.69%.

Respondent's capitalization analysis started with the market extracted capitalization rates from commercial property sales in southeast Michigan from 2017 to 2021. The sales were illustrated in a graph depicting a scatter diagram.⁷⁵ Next, Respondent analyzed published surveys⁷⁶ while distinguishing between retail property categories on an institutional grade and non-institutional grade basis. Respondent's PricewaterhouseCoopers (PwC) Investor Survey analysis included the publisher's premise, retail property categories, and quarterly timeframes for institutional and non-institutional grade rates. Respondent's indication of an overall capitalization rate is 8.5%.

Each appraiser's capitalization methods were considered. Each party's broad spectrum of institutional and non-institutional grade properties was questioned by the opposing party. Further, differences between single tenant and multi-tenant commercial properties were challenged. Yet further, issues over capitulation rates from the entire state of Michigan versus southeast Michigan were challenged.

⁷⁴ The Tribunal accepts the obligations an appraiser faces with confidentiality issues in obtaining market data. However, an appraiser is not precluded from generically disclosing market information. For example, Respondent's appraiser may have disclosed the general location, GBA, and single/multi-tenant units without compromising his client confidentiality. It behooves the appraiser to convey his opinions, analysis, and conclusions in a credible (defined as worthy of belief) manner.

⁷⁵ As challenged by Petitioner, Respondent's graph did not illustrate specific retail shopping center sales.

⁷⁶ Surveys were taken from PricewaterhouseCoopers (PwC), RealtyRates, and The Boulder Group.

Again, as analyzed by both appraisers, the capitalization rate took into account the level of risk associated with the subject property. The subject property is a non-institutional grade commercial property with an existing lease. The subject's lease is for a single tenant which offered five months of free rent in return for the tenant's own improvements is significant. While the lease terms transpired prior to the December 31, 2021 tax day, the income analysis must give consideration to the capitalization rate. Once again, these elements influence the capitalization rate applied in this income approach. Key to this analysis is the parties' differences between a gross lease and a NNN lease. Petitioner's capitalization rate of 14.69% is predicated on a gross lease based on multi-tenants in the subject neighborhood.⁷⁷ Respondent's capitalization rate of 8.5% (based on a NNN lease) considered ". . . the variation in NNN v. Gross leases, and the iteration process and is deemed most reliable."⁷⁸

In general, multi-tenant commercial properties are unavoidable from the appraisers' analysis of capitalization rate surveys. With purposefully repeated reference, distinctions were raised between 1) multi-tenant and single-tenant properties, 2) gross leases and NNN leases, and 3) proximate properties surrounding the former Summit Place Mall and southeast Michigan properties. Overall, Respondent's due diligence in the income analysis carries greater logic. The parties' capitalization rates bracket a supported conclusion. Therefore, a reasoned and reconciled determination places more weight on Respondent's capitalization rate (including the relevant tax percentage) at 10%.

In succession, the NOI indication of \$286,315 is divided by the capitalization rate of 10% which results in an independent determination of \$2,863,150 (\$2,860,000 rounded) from the parties' income elements for the subject property.

SALES COMPARISON APPROACH

Each party developed a sales comparison approach to value. The comparable sales data was considered from each party's comparative analysis. Once again, the parties' divergent paths to their respective conclusions were telling. As explained below, the Tribunal considered the parties' comparative analysis to arrive at an independent determination of market value from the datasets.

In valuation theory, the comparables' highest and best uses are expected to mirror a subject property. However, in valuation practice, the subject and comparable sales may have different uses. Realistically, the use of a comparable may change subsequent to the sale of that property. A comparative analysis looks at the use of each comparable sale in line-item fashion (i.e., zoning) which allows for various acceptable uses. The purpose of a comparative analysis is to thresh out the sale property as a comparable sale. For example, a comparable sale may have a different use but have the same zoning at the subject property. Consequently, the highest and best use for the subject

⁷⁷ Pet Exh P-1, 72.

⁷⁸ Resp Exh R-1, 86.

property is different than the “use” for a comparable property at the time of sale. Comparing and contrasting comparable sales to the subject property is the expectation in a comparative analysis. Again, a benchmark for a variety of legally, physically, and financially acceptable uses may be achieved within certain zoning ordinances. Said differently, an appraiser’s due diligence research in the “normal course of business” may not necessarily encompass a separate highest and best use analysis for each comparable sale. The rigid perception that the subject and comparable sales must have the same highest and best use is not practical or reasonable. The Tribunal does not accept the premise that sales only become comparable sales when they have the same highest and best use as the subject property.

Petitioner’s Comparative Analysis

Petitioner’s analysis is a conventional framework for market comparisons to the subject property. Petitioner’s appraiser analyzed six sales in an adjustment grid format. However, certain methodologies and analysis lacked clarity.

First, Petitioner cited 20 big box store sales and 25 retail shopping center sales in the form of graphs to support a market conditions analysis. As challenged by Respondent, 25 multi-tenant shopping center sales (with reference to a capitalization rate analysis) were not necessarily comparable or supportive of the market conditions for the subject property. Multi-tenant shopping centers are not directly comparable to single occupant (standalone) buildings. Further, the 20 big box stores’ sales data largely came from other appraisers. Petitioner’s appraiser was questioned over his efforts to verify each sale. Interestingly, some of Petitioner’s sales were obtained from Respondent’s appraiser. The responsibility to verify market data cannot be understated.

Second, Petitioner’s appraiser did not rely on demographics analysis between his comparables and the subject. He reasoned that demographics alone do not address the issues in the subject neighborhood.⁷⁹ Demographics such as households, household income, and traffic counts would add credence to an appraiser’s comparative adjustments. Alleged issues within the subject neighborhood are not necessarily analyzed without the comparison of demographic elements. Sales data inside and outside of a narrowly defined neighborhood would compel demographic analysis.

Third, Petitioner’s appraiser’s access adjustment for roads does not square with the subject property manager’s estimate of road repairs. Specifically, the appraiser’s 5% adjustment goes far beyond Tisdale’s estimated \$40,000 to \$50,000 per year for road repair. As pointed out by Respondent, Petitioner’s sale 2 price per square foot of \$31.48/SF multiplied by 5% equals \$1.57/SF which is then multiplied by the sale’s \$120,719 GBA equals \$190,000.⁸⁰ Petitioner’s appraiser’s 5% access adjustment for roads far exceeds the general estimate for road repairs. Petitioner’s appraiser failed to

⁷⁹ Tr, Vol 2, 20-21.

⁸⁰ Tr, Vol 2, 141-142.

demonstrate that the road conditions surrounding the former mall are distinguishable (for example, through photographic evidence) from the comparable sales' roads.

Fourth, adjustments for deed restrictions were not cogent. Petitioner's appraiser made a 5% adjustment to his sale 6 for a noted deed restriction. The appraiser admitted that he did not do any analysis for this adjustment.⁸¹ The appraiser later learned that this deed restriction had no impact on value. Consistent, properly reasoned, and supported comparable adjustments are always an appraiser's main objective. Arbitrary and second-guessed adjustments are unacceptable.

Fifth, as pointed out by Respondent, Petitioner's comparable sales 2 and 3 carried the same identical adjustments except for the excess land adjustment. Nonetheless, Petitioner's appraiser was confident in his land adjustments without having undertaken any land sales studies. Petitioner's appraiser stated, "Yeah. I really - - it really isn't necessary in this case. It's - - these are relatively minor adjustments."⁸² Respondent's cross examination pointed out an array of adjustment calculations, yet Petitioner's appraiser was unable to explain the differences. Further, relying on land assessments for excess/surplus land adjustments (while asserting that the subject is over-assessed) does not make sense.⁸³ Regardless of the size of an adjustment, it is incumbent upon the appraiser to explain the application, relevance, and support for those adjustments no matter how big or small they might be.

Sixth, Petitioner's appraiser utilized sale 1 (the subject property) and sale 5 to drill down adjustments for visibility and location. As challenged by Respondent, sale 5 (located in the Oakland Pointe Shopping Center) does not have visibility or signage on Telegraph Road or Elizabeth Lake Road. In other words, sale 5's building faces inward to its parking lot. Petitioner's appraiser has failed to persuasively demonstrate how the subject (as sale 1) is dissimilar to sale 5 in terms of visibility/exposure.

Seventh, as previously discussed, Petitioner's use of the subject as a comparable sale in this context is without merit. The subject's market conditions changed from its purchase date in 2017 to the December 31, 2021 tax day. Again, the subject as a comparable with only a market conditions adjustment is not meaningful to a comparative analysis. Comparable properties are compared and contrasted to a subject property. The presence of a subject in a comparative adjustment grid without adjustments is not persuasive. Further, all of Petitioner's sales were adjusted downward to the subject. In other words, none of the sales were adjusted upward to the subject. Petitioner's appraiser failed to explain the lack sales adjusted upward which would bracket the subject's indication of value.

Eighth, Petitioner's appraiser relied on extensive "*matched pairs*" for exposure, location, visibility and access to the comparable sales.⁸⁴ However, Respondent challenged and

⁸¹ Tr, Vol 2, 157-158.

⁸² Tr, Vol 3, 26.

⁸³ *Id.*, 21-26.

⁸⁴ Tr, Vol 2, 11 and Pet Exh P-1, 34.

refuted the methodology employed by Petitioner. Multi-level matched pairs are acknowledged in valuation theory.⁸⁵ An appraiser works through a series of paired adjustments to then derive primary adjustments between comparable sales. In real world applications, the process is very elongated and requires an appraiser to know the comparable data as thoroughly as possible. "Paired data analysis should be developed with extreme care to ensure that the properties are truly comparable and that other differences do not exist."⁸⁶ In this case, the Tribunal is not convinced that Petitioner's appraiser was successful in this matched pairs endeavor.

Special care must be taken when relying on pairs of adjusted prices because the difference measured may not represent the actual difference in value attributable to the characteristic being studied. The difference may include other aspects of the property, not the one characteristic being studied. Prue pairings may be analyzed first. For example, data on a sale and resale of the same property may be compared to derive a market conditions adjustment. Pairings of adjusted sales should only be used as an analytical tool when truly pure pairings are unavailable. When more than one element of comparison is involved, additional pairings can be studied to isolate and extract the differing elements of comparison. However, in these cases care must be exercised to ensure that the process accurately reflects differences considered by market participants.⁸⁷

For these reasons, Petitioner's methodologies and sales comparison quantitative adjustments are given no weight or credibility in the Tribunal's independent determination of market value from the sales comparison approach to value.

Respondent's Comparative Analysis

Respondent's sales comparison adjustment grid is also a conventional framework for a comparative analysis.⁸⁸ Respondent's appraiser analyzed six sales in an adjustment grid format. However, Respondent's appraiser's comparative analysis has shortcomings as well.

⁸⁵ "Although paired data analysis of sales or rents is a theoretical sound method, it may be impractical and could produce unreliable results when only a narrow sampling of sufficiently similar properties is available. This is particular true for commercial and industrial properties and properties that do not sell or lease frequently in a market. A lack of data can make quantifying the adjustments attributable to all of the variables a difficult process. An adjustment derived from a single pair of sales is not necessarily indicative, just as a single sale does not necessarily reflect market value." Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 15th ed, 2020), pp 372-373.

⁸⁶ *Id.*, p 372.

⁸⁷ *Id.*, p 373.

⁸⁸ As a format issue, Respondent's presentation and illustration for its sales comparison adjustment grid is not understandable or readable. First, the adjustment grid does not include the subject property's line-item entries. The purpose of the comparative grid is to show the subject and comparable sales side by side. Second, the comparable sales are only identified by number; the comparable sales are not identified by their address or location. The purpose of the comparative adjustment grid analysis is to illustrate and allow the reader to easily understand side by side comparisons for the identified subject and comparable properties.

First, Respondent's comparable sale write-ups are incomplete. Specifically, sales 2 and 3 are similarly zoned (C-4) properties to the subject property. However, Respondent's write-ups for sales 1 and 4 did not denote their zoning. Sources noted within the write-ups include public records implying that Respondent's appraiser had the ability to obtain this relevant information. Incomplete information does not bolster a comparative analysis in this regard.

Second, Respondent's comparable line-item entries are abbreviated. In other words, "cumulative adjustments" included seven entries. Three entries (land to building ratio, use-zoning, and non-realty) carried no adjustments to the comparable sales. As questioned by Petitioner, the line-item entries and adjustments were lumped together. Respondent's appraiser admitted that more explanation was needed in terms of proximity to the demolished mall or proximity to a main thoroughfare.⁸⁹

Third, Respondent's explanatory narrative for the line-item "economic characteristics"⁹⁰ included a vast array of considerations for this adjustment. The Tribunal is not persuaded that all of Respondent's income considerations identified under this line-item explanation are logically placed within a sales comparative grid and outside of Respondent's income approach.

Fourth, all of Respondent's sales were adjusted downward to the subject. In other words, none of the sales were adjusted upward to the subject. Respondent's appraiser failed to explain the lack sales adjusted upward which would bracket the subject's indication of value.

For these reasons, Respondent's sales comparison quantitative adjustments are given no weight or credibility in the Tribunal's independent determination of market value from the sales comparison approach to value.

Reconciled Comparative Analysis

In summary, the appraisers' comparable sales provide reliable and credible valuation evidence. While the appraisers' quantitative adjustments are omitted, the adjustments illustrate differences in which the sales can be analyzed qualitatively. Again, Petitioner's six sales and Respondent's 4 sales were considered.

Petitioner's six sales are former big box retail stores. All six sales have similar commercial zoning. As previously discussed, Sale 1 (the subject's 2017 sale) is given no weight or credibility. Sales 2 and 5 are the most similar to the subject in location. Sale 2 is located in Waterford Township. Sales 5 and 6 are 2020 sales (with no market conditions adjustments) relatively close to the December 31, 2021 tax day. Sales 2, 3, and 6 are the most similar to the subject in GBA. Sales 2, 3, and 6 are also similar to the subject in acreage. Sales 4 and 5 are the least similar to the subject in GBA.

⁸⁹ Tr, Vol 4, 156.

⁹⁰ Resp Exh R-1, 75.

Therefore, sales 2, 3, and 6 (unadjusted \$/SF at \$33.13, \$29.02, and \$22.94) are given weight.

Respondent's four sales are retail warehouse buildings. Sale 1 is a 2020 sale. Sales 2, 3, and 4 are 2022 sales. Sale 2 is a former big box store. Sale 3 is a former lumber retailer with a smaller GBA. Sales 2 and 3 are similar to the subject in commercial (C-4) zoning. Sales 1, 2 and 4 are similar to the subject in GBA. Sales 1 and 4 are similar to the subject in acreage. However, uncertainty arose over sale 1's zoning.⁹¹ Likewise, Respondent's appraiser was uncertain about sale 4's zoning. Sales 3 and 4 have larger \$/SF and are considered outliers to the overall data. Sales 1 and 4 are given no weight in the overall comparative analysis. Therefore, Respondent's sale 2 (unadjusted \$/SF at \$34.28) is given weight.

The parties' comparable sales are qualitatively reasoned and reconciled. Respondent's sales 2, 3, 6 and Petitioner's sale 2 are all former big box stores. These sales are all similarly zoned commercial properties as the subject. The sales are bracketed to the subject in GBA and acreage; Petitioner's sales are superior, and Respondent's sale is smaller in GBA and acreage to the subject. Petitioner's sale 2 and Respondent's sale 2 are located in Waterford Township. As reasoned and reconciled, the independent determination of market value is bracketed by the remaining sales data at \$30/SF (110,526 x \$30/SF = \$3,315,780).

FINAL RECONCILIATION OF APPROACHES TO VALUE

The income analysis considered the subject's contract rent (including the free rent and improvements made by the tenant) in the context of southeast Michigan data and not exclusively from data surrounding the former Summit Place Mall. Likewise, the sales comparison analysis considered the subject's 3rd generation use. The variety of ongoing businesses surrounding the former Summit Place Mall disproves the claims of poor market activity due to the roads, the access, and the visibility. Moreover, there is no evidence on the record of external or functional obsolescence. The parties' rental and sales data proved the existence of former big box stores which were redeveloped into next generation uses. The Tribunal's independent determination of market value from the parties' income data and analysis is \$2,860,000. The Tribunal's determination of market value from the parties' sales data and analysis is \$3,315,780. Based on the overall data and the attributes of the subject and subject market area, equal weight is placed on both approaches to value at \$3,000,000.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner's expert witness and evidence is not more persuasive than Respondent's valuation evidence and cogent analysis. The parties' overall valuation evidence warranted the application of the income and sales comparison approaches to

⁹¹ Respondent's appraiser described sale 1 as warehouse/office spaces but without denoting or disclosing the property's zoning. (Tr, Vol 4, p 147). The former owner appeared to be involved in some type of toy plastics manufacturing.

value. 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 year(s) at issue are MODIFIED as set forth in the Introduction section of this Final Opinion and Judgment.

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

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty 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: December 30, 2024

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 provided by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk