



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MARLON I. BROWN, DPA
ACTING DIRECTOR

RB Construction Company,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MTT Docket No. 22-001661

City of Mt Clemens,
Respondent.

Presiding Judge
Marcus L. Abood

ORDER DENYING RESPONDENT’S MOTION FOR INVOLUNTARY DISMISSAL

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, RB Construction Company, appeals ad valorem property tax assessments levied by Respondent, City of Mt. Clemens, against parcel number 05-11-14-106-036 for the 2022 and 2023 tax years. A hearing was held on this matter on January 29, 2024. Cindy Rhodes Victor and Steve McCollum, Attorneys, appeared on behalf of Petitioner. Laura M. Hallahan, Attorney, appeared on behalf of Respondent. Petitioner’s witness was Tony Zaya. Respondent’s witness was Darrin Kraatz.

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: 05-11-14-106-036

Year	TCV	SEV	TV
2022	\$2,987,000	\$1,493,500	\$953,636
2023	\$3,215,600	\$1,607,800	\$1,001,317

PETITIONER’S CONTENTIONS

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

Parcel Number: 05-11-14-106-036

Year	TCV	SEV	TV
2022	\$1,100,000	\$550,000	\$550,000
2023	\$1,100,000	\$550,000	\$550,000

Petitioner contends that the subject property is over-assessed.

Petitioner's appraiser inspected the subject property and researched the market area through various resources including CoStar, Loopnet, Current, as well as assessor's records.¹

The appraiser considered all three approaches to value but only developed the sales comparison and cost approaches to value.

Petitioner's appraiser formatted his report where the majority of the information is placed in the supplemental addendum.

Commercial reports a lot of them are more narrative than just the grid, but people really don't understand the full narrative so I kind of like mixing it where it's more English to people where they can see, you know, what we did or didn't and everything else goes into an addendum form.²

The appraiser's addendum includes a neighborhood marketability analysis. The appraiser asserts that Mt. Clemens is rated as a D-minus for "safety and stuff."

PETITIONER'S ADMITTED EXHIBITS

P-1: Corrected Appraisal Report prepared by Tony Zaya.

PETITIONER'S WITNESS

Petitioner's witness, Tony Zaya, is a Certified Residential Real Estate Appraiser in the state of Michigan. Based on his background, training, education, and experience, Mr. Zaya was admitted as an expert in commercial real estate appraisals for non-federally related mortgage transactions.

RESPONDENT'S CONTENTIONS

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

Parcel Number: 05-11-14-106-036

Year	TCV	SEV	TV
2022	\$2,987,000	\$1,493,500	\$953,636
2023	\$3,215,600	\$1,607,800	\$1,001,317

Respondent contends that the subject's office suites were finished in 2021 and placed on the tax roll for 2022.³

¹ Tr, 35.

² Tr, 37.

³ Tr, 110.

Respondent's assessor reviews property values and sales data in the subject jurisdiction. Property transfer affidavits, warranty deeds and data sources such as CoStar are reviewed and researched.

Respondent's assessor considered all three approaches to value but relied on the mass appraisal cost approach to value. The subject property is newer and determining a physical depreciation is reasonable. The subject office buildings did not demonstrate any external or functional obsolescence. In other words, the subject is typical for the market area.

In support of its cost approach, the assessor developed an economic conditions factor (ECF) study, and a land sales study. The ECF study was based on commercial properties even though some residential properties were identified in the valuation disclosure. The assessor's sales studies are labeled as residential sales studies but are comprised of commercial, 201 Class, properties.

RESPONDENT'S ADMITTED EXHIBITS

- R-1: Respondent's Valuation Disclosure - 2022 and 2023 Subject Property Record Cards (with land sales study, ECF study, and sales summaries).
- R-2: Petitioner's Appraisal Report with an effective date of July 14, 2023.
- R-3: Petitioner's Appraisal Report with an effective date of July 14, 2022.
- R-4: Court of Appeals Decision, Docket No. 305991.
- R-5: MCL 339.2601 Occupational Code excerpt.

RESPONDENT'S WITNESS

Respondent's witness, Darrin Kraatz, prepared a valuation disclosure for the subject property. He has been in the assessing field for almost 25 years and has been the assessor for Mount Clements for the past 5 years. He is certified as a Michigan Master Assessing Officer, formerly known as a Level 4 assessor. Based on his education, background, and experience, the Tribunal accepted Mr. Kraatz as an expert in mass appraisal assessment.

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 243 and 249 Cass Avenue, in the city of Mount Clemens and within Macomb County.
2. The subject property is comprised of 1.14 acres and is improved with two commercial buildings constructed in 2017.

3. Subject building 1 has 3,921 square feet. Subject building 2 has 9,852 square feet.
4. The subject property is zoned as Multi-Use - MU.
5. The subject property is an income producing property. In other words, the subject property is not owner-occupied.
6. The subject property did not have any additions, losses, or omitted property for 2022 and 2023.
7. The subject property's 2022 TV assessment only changed at the statutorily prescribed rate of inflation for 2023.
8. Petitioner's appraiser is licensed in the state of Michigan as a Certified Residential Real Estate Appraiser. Petitioner's appraiser is not a Certified General Real Estate Appraiser.
9. Petitioner's appraiser developed a bank lending formed appraisal report for the value of the subject property.⁴
10. Petitioner's "corrected appraisal report" Exhibit P-1, was filed with the Tribunal with proof of service on December 28, 2023. This valuation disclosure has an effective date of July 14, 2022. The appraiser's signature date is July 14, 2022.
11. Petitioner filed an appraisal report, Respondent's Exhibit R-2 with the Tribunal with proof of service on July 19, 2023. This valuation disclosure has an effective date of July 14, 2023. The appraiser's report date and signature date are as of July 19, 2023.
12. Respondent's Exhibit R-3, Petitioner's appraisal report, has an effective date, report date, and an appraiser's signature date of July 14, 2022.
13. Petitioner's appraiser did a "drive-by" of the subject property. In other words, Petitioner's appraiser did not inspect the subject's building interiors.
14. Petitioner's appraiser developed a sales comparison approach and cost approach to value.
15. Petitioner's appraisal report included the Uniform Appraisal Dataset (UAD) Addendum which is used in bank lending for residential properties.
16. Petitioner's banking formed appraisal report was published in 2001.
17. Petitioner's appraiser invoked the Departure Rule of the Uniform Standards of Professional Appraisal Practice (USPAP). This rule was retired in 2006 by The Appraisal Foundation.

⁴ The formed appraisal report is filled with preprinted "lender/client" identifiers. In other words, the formed report is filled with banking nomenclature. The UAD Addendum is directly focused on residential properties for lending purposes. The UAD form is not applicable to the valuation of the subject property. Likewise, integral sections of opinions, analysis, and conclusions are set off in a supplemental addendum which makes the report disjointed and difficult to read and understand. Disjointed sections within the supplemental addendum included redundant sections such as market data approach, sales comparison approach, direct sales comparison approach. As a formatting issue, the supplemental addendum includes important sections which belong in the main body of the appraisal report. An appraisal report that links each approach to value with explanatory narration aids a reader's understanding of the appraiser's opinions, analysis, and conclusions. The appraiser's devised format is not customary in valuation practice. The appraiser has invoked the Departure Rule within the formed report (Tr, 71, mislabeled by the court reporter as "purchase provision").

18. Petitioner's appraisal report narrative addendum included references to "home" on pages 47, 48, 51, and 52.⁵
19. Petitioner's appraiser was told not to develop an income approach to value.⁶
20. Petitioner's appraiser did not include a land valuation analysis in his appraisal report.⁷
21. In testimony, Petitioner's appraiser stated the subject's land value is \$150,000.⁸
22. Petitioner's appraiser did not provide any market support for his indication of a land value of \$150,000.
23. Petitioner's appraiser did not include a site improvements analysis in his appraisal report.⁹
24. Petitioner's appraiser denoted site improvements of \$20,000 in his cost analysis.
25. Petitioner's appraiser did not research sales for 2020 and 2021.¹⁰
26. Petitioner's appraiser had no market support for his determination of 3% for functional obsolescence and 23% for external obsolescence to the subject property.
27. Respondent submitted valuation evidence in the form of a mass appraisal cost approach prepared by Darrin Kraatz.
28. Respondent's assessor's mass appraisal cost approach included ECF studies, land sales studies, cost entries/calculations, and depreciation factors for the subject property.
29. Respondent's assessor determined the subject's site value at \$133,650.
30. Respondent's assessor determined the subject's site improvements value at \$22,949.
31. Each party determined the subject property's physical depreciation at 10%.

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.¹¹

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.¹²

⁵ Pet's Exh P-1.

⁶ Tr, 51.

⁷ Tr, 52.

⁸ Tr, 61-62.

⁹ Tr, 54.

¹⁰ Tr, 84-85.

¹¹ See MCL 211.27a.

¹² Const 1963, art 9, sec 3.

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.¹³

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”¹⁴

“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.”¹⁵ The Tribunal is not bound to accept either of the parties’ theories of valuation.¹⁶ “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.”¹⁷ 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.”¹⁸

A proceeding before the Tax Tribunal is original, independent, and de novo.¹⁹ The Tribunal’s factual findings must be supported “by competent, material, and substantial evidence.”²⁰ “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”²¹

“The petitioner has the burden of proof in establishing the true cash value of the property.”²² “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.”²³ 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.”²⁴

The three most common approaches to valuation are the capitalization of income approach, the sales comparison, or market, approach, and the cost-less-depreciation

¹³ MCL 211.27(1).

¹⁴ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

¹⁵ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

¹⁶ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

¹⁷ *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

¹⁸ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

¹⁹ MCL 205.735a(2).

²⁰ *Dow Chemical Co v Dep’t of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

²¹ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

²² MCL 205.737(3).

²³ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

²⁴ MCL 205.737(3).

approach.²⁵ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”²⁶ 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.²⁷ Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.²⁸

As a matter of fact, TV can only increase by a legislatively prescribed mathematical calculation. In other words, TV can only increase by the rate of an established Consumer Price Index or 5% per year, whichever is the lesser. In regard to the total assessment, TCV, SEV, assessed value (AV), and TV, a municipality or unit of government is required to send a notice of assessment to each property owner every year. The “Applicable Law” section of this Opinion gives adequate reference and a base of knowledge for all concerned parties as to a general framework of property assessments. Here, the subject’s 2022 and 2023 assessments remained capped. The subject did not incur any additions, losses, or omitted property to otherwise change the TV.

The determination of TCV is not a mathematically prescribed calculation. Petitioner’s reference to the 2018 assessment does not alleviate its burden to prove and support its contention of TCV for the subject property. As noted in the Findings of Fact, the subject property was completed construction for 2021. In other words, the subject was not put on the tax roll prior to 2022. A total property assessment resets (uncaps) once a property has been sold. Said differently, until the point of a property’s sale transaction, the TCV changes based on market sales data and TV changes as noted above.

DECEMBER 31, 2021, and DECEMBER 31, 2022 TAX DATES

At hearing, Respondent raised several issues dealing with Petitioner’s corrected valuation disclosure. Various iterations of Petitioner’s appraisal report, Exhibits P-1, R-2, and R-3 do not align with the tax days at issue. Petitioner’s counsel and appraiser claimed that the valuation disclosure was predicated on the December 31, 2021, and December 31, 2022 tax days. However, this claim is contradicted by the appraisal reports themselves. Petitioner has aligned the appraiser’s inspection date as the effective date. The appraisal reports all denote the effective dates as the appraiser’s inspection date. The appraiser’s explanations are not coherent or meaningful.²⁹

²⁵ *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).

²⁶ *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

²⁷ *Antisdale*, *supra* at 277.

²⁸ See *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

²⁹ Tr, 45-49.

In valuation practice, the effective date of the value opinion is not synonymous with the report date, signature date, or the inspection date.

The appraiser's value opinions and conclusions relate to a specific point in time. Given the client's needs and the nature of the assignment, the appraiser must identify the exact date that the value opinion would be in effect. The effective date of the opinion of value – sometimes called simply the date of value – can be a current date, a retrospective (historical) date, or a prospective (future) date. For a current appraisal, the effective date is often the date of inspection, if an inspection was included in the appraiser's scope of work.³⁰

Here, Petitioner's appraiser asserts the effective date for his report is the date he inspected the subject property. However, in the context of this tax appeal matter, the effective date is the relevant tax day, December 31.³¹ This is contrasted from the report date and signature date. As a further complexity, the effective date (tax day) creates a retrospective valuation. More specifically, an appraiser's retrospective opinion of value would include either *extraordinary assumptions*³² or *hypothetical conditions*.³³ The appraiser's inspection date was subsequent to the tax days at issue. The appraiser did not analyze the condition of the subject property given the lapse in time. The appraiser did not describe what sources were used to assume the condition of the property as of the relevant tax days. Likewise, the appraiser's "exterior" inspection of the property only further discredits Petitioner's claims. On this basis, Petitioner's claim that its appraisal report is tied to the December 31 tax day is without merit. The appraiser did not account for such items of distinction and has thus created a report that is not meaningful and is misleading.

The date of the value opinion (i.e., the effective date) should not be confused with the date of the appraisal report, which is the date the report is transmitted to the client. For most appraisal assignments, the effective date and the date of the appraisal report will differ. The effective date of the appraisal refers to the point in time as of which the analyses and conclusions are relevant, not the date on which the report is delivered to the client.³⁴

"Effective date," is prominently addressed in professional valuation standards.³⁵ Petitioner's alleged observance to the relevant December 31 tax days does not square

³⁰ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 15th ed, 2020), p 41.

³¹ See MCL 211.2(2), which states that "The taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day. . .".

³² Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 7th ed, 2022), p 68.

³³ *Id.*, 92.

³⁴ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 15th ed, 2020), p 41.

³⁵ The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice* (Washington DC, 2021-2022 Edition), pp 4, 11, 13, 17, 19, 21-23, 136, 251-254.

with these professional valuation standards. Likewise, Petitioner's attempts to offer iterations of an appraisal report under the guise of an errata is disingenuous.³⁶

Petitioner's appraiser's opinions, analysis, and conclusions changed beyond alleged errata or typos. The appraiser's previously submitted appraisal reports are not simply construed as draft reports. Respondent prepared its case-in-chief based on Petitioner's appraisal report submitted for the prehearing conference held on October 17, 2023. Determined efforts to change report dates, signature dates, and effective dates do not demonstrate the understanding that this tax appeal is predicated on the statutorily prescribed tax day. Petitioner's three appraisal reports are separate appraisal reports regardless of the identical indications of value. Petitioner's appraiser did not invoke the "incorporated by reference" option³⁷ for his separate appraisal reports. In other words, the "corrected" appraisal report submitted at hearing did not reference the previous appraisal reports.³⁸

HIGHEST AND BEST USE

Neither party raised any issue with respect to the highest and best of the subject property by way of the testimony and evidence provided. The Tribunal finds that there is no dispute that the subject's highest and best use is its continued use as commercial office building.

INCOME APPROACH

The subject property is an income producing commercial property. In other words, the property is not owner-occupied but has tenant leased spaces. As noted, neither party developed an income approach to value for the subject property. Petitioner's appraiser claimed that he was told not to develop this approach.³⁹ Petitioner's reasoning for not developing an income approach is in direct defiance of valuation practice and theory.⁴⁰ Rejecting or omitting an otherwise applicable approach to value

³⁶ Petitioner's various appraisal reports clouded the validity of Petitioner's TCV contentions. "***In developing a real property appraisal, an appraiser must: (b) not commit a substantial error of omission or commission that significantly affects an appraisal; and (c) not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the aggregate affects the credibility of those results.***" [emphasis added.] The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice* (Washington D.C.: 2020-2021 edition), p. 16. Attempts to offer such a revised report after the fact, in the midst of the hearing, is equally inappropriate.

³⁷ *Id.*, pp 73, 252.

³⁸ Petitioner's prior appraisal reports, Resp's Exh. R-2 and R-3 were cavalierly dismissed by Petitioner. In legalese, the term "credible" (defined as *worthy of belief* by Black's Law Dictionary) is parallel to the application found within valuation standards and ethics. Here, Petitioner's counsel and valuation expert have attempted to pass off a "corrected" report at hearing, and in an untimely fashion. This endeavor is not meaningful and is misleading.

³⁹ Tr, 50-51.

⁴⁰ An appraiser's decisions in a valuation assignment are predicated on his/her Scope of Work and assignment conditions. More specifically, an appraiser's decision to omit an otherwise valid approach to value is unacceptable. "An appraiser must not allow **assignment conditions** to limit the **scope of work**

based on the wishes of a client is unacceptable. An income producing commercial property would warrant an income analysis. Nonetheless, the Tribunal is unable to consider this approach to value without any income evidence from the parties.

SALES COMPARISON APPROACH

Petitioner's sales comparison approach is a general framework for a comparative analysis of the subject property. However, the comparative analysis contains inconsistencies and missteps. First, the comparative analysis was based on a combined gross building area (GBA) of 13,773 square feet. In fact, the subject property is comprised of two separate buildings. The sales grid represented the subject as one building. The adjustment grid did not denote the number of buildings for each comparable sale. Second, Petitioner's sales did not include customary write-ups for descriptive details. The adjustment grid alone is insufficient to understand the amenities, characteristics, and improvements for each sale. The appraiser's lack of details calls into question his due diligence in data verification. Third, the appraiser's reasoning for the application of certain adjustments while excluding others was confusing. As pointed out by Respondent, Petitioner's appraiser's statement, "Appraiser has not considered adjustment for the individual feature," does not make grammatical sense.⁴¹ In fact, the appraiser only applied adjustments for quality and condition. The lack of reasoning and logic for any and all other adjustments is not acceptable. Fourth, the appraiser did not have any market support for his quality and condition adjustments other than conclusory statements in testimony. Without specific narration aside from boilerplate language, the adjustments appear to be subjective, arbitrary and are without logic or reasoning. Fifth, the appraiser's net adjustments were miscalculated for sale 1.⁴² Placing blame on computer software is never an excuse for an appraiser's opinions, analysis, and conclusions. An appraiser is responsible for the contents of the report. Valuation software does not shield an appraiser from ethical and professional responsibilities. Sixth, the appraiser's adherence to the ANSI Standard (American National Standards Institute) is misplaced in the context of a commercial property.⁴³ In other words, the ANSI Standard is a voluntary standard applicable to the measurement of residential dwellings.⁴⁴ Petitioner's appraiser invoked the ANSI Standard through a Fannie Mae requirement for residential homes and gross living area (GLA).⁴⁵ Seventh, the appraiser testified that he physically inspected both buildings at

to such a degree that the **assignment results** are not **credible** in the context of the intended use. An appraiser must not allow the **intended use** of an assignment or a **client's objectives** to cause the **assignment results** to be **biased**." (Emphasis added.) The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice* (Washington DC, 2020-2021 Edition), p 14.

⁴¹ Tr, 68.

⁴² Tr, 69, 83.

⁴³ Tr, 38.

⁴⁴ While some states have formalized the adherence to the ANSI Standard for residential dwellings and licensed real estate appraisers, occupational licensing for appraisers in the state of Michigan has no such requirement. Petitioner's appraiser's lack of understanding for the measurement of commercial buildings and BOMA (Building Owners and Managers Association) standards is telling.

⁴⁵ Pet's Exh. P-1, 25.

the subject property.⁴⁶ However, the appraiser admitted that he only inspected the exterior of the subject buildings.⁴⁷ Again, an exterior inspection does not bolster the appraiser's quality and condition adjustments within his comparative analysis. Respondent's cross examination of Petitioner's appraiser opened a multitude of issues from the analysis.⁴⁸ The Tribunal is unpersuaded that Petitioner's appraiser gave clarity to this approach to value. For these reasons, Petitioner's sales comparison approach to value is given no weight or credibility in the Tribunal's independent determination of market value for the subject property.

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 depreciation of physical, functional, and external, and site improvements. The parties' cost approaches are a conventional framework for the cost analysis of the subject property. However, the parties' divergent paths to their respective conclusions were telling. As articulated below, the Tribunal considered each cost element to arrive at an independent determination of market value from the cost approach.

First, the land analysis and value are an important component to the overall cost approach. As a matter of fact, Petitioner's appraisal report did not include an indication of land value or any corresponding analysis. Petitioner's appraiser testified that he believed the subject land is worth \$150,000.⁴⁹ On the other hand, Respondent's indication of land value at \$133,650 was supported by a land sales study.⁵⁰ Petitioner's unsupported indication of land value is greater than Respondent's land value. Moreover, Petitioner did not refute or challenge Respondent's indication of land value. Respondent's detail and support in land sales and the assessor's testimony is the most reliable and credible evidence. Therefore, the Tribunal's independent determination of the subject's land is \$133,650.

Second, the parties calculated costs for the subject buildings. As noted, the subject property is comprised of two separate Class C buildings of 3,921 square feet and 9,852 square feet. Petitioner's appraiser devised a price per square foot (\$/SF) for a total GBA of 13,773 square feet. Petitioner's appraiser's cost analysis gave the impression

⁴⁶ Tr, 40.

⁴⁷ Tr, 72.

⁴⁸ An expert witness's credibility is based on the documentary and testimonial evidence. A valuation expert's appraisal report must be supported by opinions, analysis, and conclusions. An appraisal report does not presumably result in the same value regardless of the client/intended user. In other words, an appraiser's scope of work and assignment conditions relative to the client/intended user, taxing authority, attorney, or lending institution, may differ greatly. More specifically, an appraiser's appraisal report is predicated on his/her scope of work and the assignment conditions set forth by the client/intended user.

⁴⁹ Tr, 61-62.

⁵⁰ Resp's Exh. R-1.

that the subject property is constructed with just a single building. On the other hand, Respondent's assessor cost calculated each building separately. The assessor's cost entries and calculations are detailed and descriptive. The building materials were listed, and the property record cards included building dimensions and measurements. Therefore, Respondent's Marshall Valuation Service (MVS) cost entries and calculations for each building is the most reliable and credible evidence for the subject's RCN.

Third, the next component for the cost analysis is site improvements. Petitioner's appraisal report denoted \$20,000 as a contributory value for site improvements. Respondent's site improvements were denoted as \$22,949. Again, the assessor's cost entries and calculations are more detailed and descriptive than Petitioner's single cost entry without narrative elaboration. Therefore, Respondent's cost entry and calculations are the most reliable and credible evidence for the subject's site improvements in this independent cost analysis.

Fourth, physical depreciation was calculated by each party. Physical depreciation was broken down for building improvements as well as site improvements. Each party determined physical life in years and effective age in years for the subject's building improvements and site improvements. Each party applied an *age-life* methodology⁵¹ for a calculated percentage for straight-line physical depreciation. Both parties have relied on 10% physical depreciation for the subject property. This common physical depreciation is reasonable given the subject's age, condition, and quality of construction. Therefore, 10% physical depreciation is applicable in the cost analysis for the subject property.

Fifth, Petitioner's determination of functional obsolescence was devoid of any support or rationale. The interplay and overlap of the three approaches to value cannot be overstated in the context of obsolescence. The principle of *substitution*⁵² is at the heart of valuation practice and theory. Said differently, Petitioner's lack of an income approach and the development of a minimal sales comparison approach do not support the claim of functional obsolescence to the subject property. Other than conclusory percentages, Petitioner's appraiser did not provide any market support for functional obsolescence. For example, the subject's building GBA, floorplans, ingress/egress, common areas, mechanical systems, windows, ceilings, storage areas, number of suites, etc. were not analyzed or discussed. Petitioner provided no interior photographs of the subject buildings. Petitioner's reasoning for the subject's highest and best use conclusion, as improved, is for the continued use as commercial office buildings. The cost of the subject's improvements is greater than the determination of land value. Petitioner failed to present any features of functional obsolescence through any market data. For these reasons, Petitioner's conclusory percentage for functional obsolescence is given no weight or credibility in the independent determination of market value for the subject property.

⁵¹ Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 7th ed, 2022), p 56.

⁵² Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 15th ed, 2020), p 25, 528.

Lastly, in similar fashion, Petitioner's conclusion for a percentage of external obsolescence is not meaningful. The sole focus on the appraiser's neighborhood marketability, Mt. Clemens, rated as "a D-minus for safety and stuff," is nonsensical.⁵³ Moreover, Petitioner's appraiser admitted that the subject market conditions were not declining for the tax years at issue.⁵⁴ The appraiser provided no market evidence of external obsolescence to the subject property. For the reasons previously stated, Petitioner's conclusory percentage for external obsolescence is given no weight or credibility in the independent determination of market value for the subject property.

Repeatedly, Petitioner's appraisal report was based on the opinions, analyses, and conclusions of the appraiser. In this instance, the Tribunal cannot place reliance on conclusory statements based on an appraiser's testified "experience and expertise," which nebulously refers to data not included in an appraisal report or workfile. "Perfection is impossible to attain, and competence does not require perfection. However, an appraiser must not render appraisal services in a careless or negligent manner. This Standards Rule requires an appraiser to use due diligence and due care."⁵⁵ Petitioner's actions belie the importance of rendering a meaningful appraisal report.⁵⁶ An appraiser's conclusions do not necessarily come before the application of the market data.

In summary, Respondent's cost elements provided the most reliable and credible valuation evidence for the independent determination of market value for the subject property. Respondent's land value, MVS cost entries, site improvements, and physical depreciation were adequately supported. There is no evidence on the record that the subject suffered from external and functional obsolescence.

RESPONDENT'S MOTION FOR INVOLUNTARY DISMISSAL

At the conclusion of Petitioner's case-in-chief, Respondent made a motion for involuntary dismissal.⁵⁷ Respondent requested "judgment as a matter of law," challenging the legal sufficiency of the evidence presented.⁵⁸ Petitioner responded by asserting, with reference to MCL 2.112(c)2, that an assessor "may survey, exam, or review property at any time before or after the tax day."⁵⁹ Petitioner's counsel did a quick online search through the Consultant Group of Appraisers which defines "*effective*

⁵³ Tr, 38.

⁵⁴ Tr, 84-85.

⁵⁵ The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice* (Washington DC: 2020-2021 Edition), p 11.

⁵⁶ "In developing a real property appraisal, an appraiser must: (c) not render appraisal services in a careless or negligent manner, such as by making a series of errors that, although individually might not significantly affect the results of an appraisal, in the **aggregate affects the credibility of those results.** [emphasis added.] The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice* (2020-2021 Edition), p 16.

⁵⁷ Tr, 89-91.

⁵⁸ See TTR 215 and MCR 2.504b(2).

⁵⁹ Tr, 91.

date” of an appraisal as the appraiser’s inspection date of the property.⁶⁰ In that regard, the evidence submitted by both parties was, as discussed above, legally sufficient for purposes of rendering the instant decision. As a result, Respondent’s Motion must be denied.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner’s witness and evidence is not more persuasive than Respondent’s evidence. From the evidence, the subject’s age, condition, and quality warrant the application of the cost approach to 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 Respondent’s Motion for Involuntary Dismissal is DENIED.

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

⁶⁰ As previously discussed, there are distinct differences between an appraiser’s inspection date, report date, signature date, and effective date. Petitioner’s online reference does not supersede valuation practice, theory and professional standards.

December 31, 2018 through June 30, 2019, at the rate of 5.9%, (viii) after June 30, 2019 through December 31, 2019, at the rate of 6.39%, (ix) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, (x) after June 30 2020, through December 31, 2020, at the rate of 5.63%, (xi) after December 31, 2020, through June 30, 2022, at the rate of 4.25%, (xii) after June 30, 2022, through December 31, 2022, at the rate of 4.27%, (xiii) after December 31, 2022, through June 30, 2023, at the rate of 5.65%, (xiv) after June 30, 2023, through December 31, 2023, at the rate of 8.25%, (xv) after December 31, 2023, through June 30, 2024, at the rate of 9.30%, and (xvi) after June 30, 2024, through December 31, 2024, at the rate of 9.50%.

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

APPEAL RIGHTS

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

A motion for reconsideration must be filed with the Tribunal with the required filing fee within 21 days from the date of entry of the final decision. Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty or disabled veterans exemption and, if so, there is no filing fee. You are required to serve a copy of the motion on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion. Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.

Alternatively, you may file a claim of appeal with the Michigan Court of Appeals. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal of right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave." A copy of the claim of appeal must be filed with the Tribunal to certify the record on appeal. There is no certification fee.

By  _____

Entered: July 25, 2024
mla/jcr/kac

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