



STATE OF MICHIGAN

GRETCHEN WHITMER
GOVERNOR

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

MARLON I. BROWN, DPA
DIRECTOR

Rockefeller Properties LLC,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MTT Docket No. 20-003717

City of Highland Park,
Respondent.

Presiding Judge
Patricia L. Halm

ORDER DENYING PETITIONER'S REQUEST FOR COSTS AND FEES

ORDER DENYING RESPONDENT'S REQUEST FOR COSTS AND FEES

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Rockefeller Properties LLC, appeals ad valorem property tax assessments levied by Respondent, City of Highland Park, against Parcel No. 82-43-013-09-0022-000 for the 2020 and 2021 tax years. A hearing was conducted in this matter December 14, 2022, through December 16, 2022. Jason Conti, Attorney, appeared on behalf of Petitioner. Seth O'Loughlin, Attorney, appeared on behalf of Respondent.

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: 82-43-013-09-0022-000

Year	TCV	SEV	TV
2020	\$547,800	\$273,900	\$134,368
2021	\$548,600	\$274,300	\$136,249

PETITIONER'S CONTENTIONS

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

Parcel Number: 82-43-013-09-0022-000

Year	TCV	SEV	TV
2020	\$200,000	\$100,000	\$100,000
2021	\$125,000	\$ 62,500	\$ 62,500

Petitioner contends that the subject property is over assessed. The subject property is a neighborhood shopping center located at 12300 to 12370 Woodward Avenue, Highland Park, Michigan. The property contains with one large building that is subdivided into five retail stores.

Petitioner explained that the COVID pandemic began during 2020, the first tax year at issue. Petitioner contends that the pandemic significantly impacted local retailers. To survive, retail tenants demanded rent concessions and in some cases stopped paying their rent. Landlords were often forced to decide whether to evict tenants or grant concessions they might not have agreed to otherwise. Further complicating the matter was the fact that courts were not evicting tenants for nonpayment. This was the situation Petitioner found itself in for the 2021 tax year, with Petitioner ultimately being forced to give significant rent concessions. In spite of this, Respondent refused to reduce the subject property's assessment.

PETITIONER'S ADMITTED EXHIBITS

- P-1 Appraisal of the subject property by Michael Collins.
- P-13 Documents re 15920 Fenkell Street.
- P-14 Documents re 17310-17346 Harper Avenue.
- P-15 Documents re 13237 Dexter Avenue.

PETITIONER'S WITNESSES

Petitioner's first witness was Michael Collins, Jr. Mr. Collins is the president of the Collins Appraisal Group and is also an appraiser at that business. Mr. Collins has been an appraiser since 1999 and is licensed in Michigan as a Certified Real Estate Appraiser. Mr. Collins testified that he was a member of the Appraisal Institute and a member of the American Society of Appraisers.¹ Mr. Collins further testified that he has appraised at least 100 commercial properties like the subject property during the last five years. Mr. Collins was admitted as an expert in appraising and valuing real property, including neighborhood shopping centers.

The subject property is located at 12300-12370 Woodward Avenue (M-1), in Highland Park, Michigan, at the corner of Woodward Avenue and Rhode Island Street. According to Mr. Collins, this is not a desirable market area; it is an economically depressed area with a declining population, low household growth and low neighborhood income. In short, the area in which the subject property is located is in a declining stage.

The subject property contains 32,000 square feet (SF) and is rectangular in shape. The site is improved with a Class C neighborhood shopping center that is estimated to have been built in 2000 and is in overall average condition. The property also contains approximately 40 parking spaces. The building is one-story with 13,600

¹ P-1 at 109 indicates that Mr. Collins is past member of both the Appraisal Institute and the American Society of Appraisers.

SF of gross building area (GBA) and 13,441 SF of net rentable area, otherwise known as gross leasable area (GLA). The build contains five rental units, occupied during the tax years at issue by (1) a restaurant - Asian Corned Beef, (2) a hair salon – Keyair Nico Salon, (3) a beauty supply business – MAXX Beauty Supply, (4) a business called “The Tax Experts,” and (4) the City of Highland Park School District. As of the 2020 and 2021 tax days,² the subject property was fully occupied. However, for the 2021 tax year, Petitioner did not receive rent each month from all tenants. As described in the appraisal, “as of December 3, 2020, only one (1) of the tenants was paying the agreed upon rent, with the other four (4) tenants unable to be evicted.”³

In determining the subject property’s highest and best use, Mr. Collins first considered the property as if it were vacant or undeveloped. Mr. Collins concluded that as vacant, the subject property’s highest and best use would be to hold it for future development. Mr. Collins then considered the property’s highest and best use as improved. As improved, Mr. Collins opined that the subject property’s highest and best use was its continued use as a neighborhood shopping center.⁴

According to Mr. Collins, the COVID-19 pandemic significantly impacted properties’ sales prices, rental rates, vacancy rates, and collection losses. In terms of the subject property, some of the tenants were not open during this period, while others were not able to operate at full capacity. As a result, four of the five tenants were not able to pay the agreed-upon rent. Some tenants paid half to less than half of the rent, while others paid no rent.

In valuing the subject property, Mr. Collins testified that he appraised the subject property’s fee simple interest, subject to market rents. Mr. Collins considered the cost approach, the sales comparison approach (sales approach), and the income capitalization approach (income approach). Values were developed for the subject property under the sales approach and the income approach but not the cost approach due to the property’s age and depreciation and obsolescence. Mr. Collins gave the most weight to the income approach because the property is a multi-tenant, income-producing property that attracts investors interested in earning income.

2020 Tax Year

Sales Approach⁵

Mr. Collins considered the following four properties in his sales approach:

² MCL 211.2(2) provides that “[t]he 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”

³ P-1 at 6.

⁴ *Id.* at 47.

⁵ Analysis for the 2020 tax year begins at P-1 at 56.

- Sale #1.⁶

This property is located at 15920-15926 Fenkell Street, Detroit, Michigan. This property contains 0.15 acres of land and is improved with a 3,906 SF, 4-unit retail-commercial building and on-site parking. The building was constructed in 1928, with periodic renovations. The property sold on a leased fee basis on May 30, 2018, for \$50,000, resulting in a price per SF of \$12.80. Mr. Collins adjusted the sales price for the differences in SF between the subject property and Sale #1's building. Mr. Collins explained that a downward adjustment was appropriate because smaller buildings tend to sell for more per SF.⁷ Mr. Collins also adjusted for condition and land/building ratio, resulting in a net -2% adjustment. The final adjusted sales price was \$12.54 per SF.

- Sale #2.⁸

This property is located at 17300-17346 Harper Avenue, Detroit, Michigan, and is known as Harper Center.⁹ This property contains 0.38 acres of land and is improved with a 13,644 SF neighborhood shopping center and on-site parking. The building contains multiple rental units; however, the appraisal does not indicate the number of units, and Mr. Collins testified that he did not know the precise number of rental units in this property.¹⁰ This building was constructed in 1969, with periodic renovations. This property sold on a leased fee basis on June 6, 2018, for \$105,000, resulting in a price per SF of \$7.70. Mr. Collins adjusted the sales price for differences in condition and land/building ratio, resulting in a net +10% adjustment. The final adjusted sales price was \$8.47 per SF.

- Sale #3.¹¹

This property is located at 13237 Dexter Avenue, Detroit, Michigan. This property contains 0.09 acres of land and is improved with a 4,050 SF retail-commercial building. There is no onsite parking. The building contains one rental unit.¹² This building was constructed in 1949, with periodic renovations. This property sold on a fee simple basis on February 8, 2018, for \$25,000, resulting in a price per SF of \$6.17. Mr. Collins adjusted the sales price for differences in building size, condition, land/building ratio - to account for the lack of parking,¹³ and location, resulting in a net +12% adjustment. The final adjusted sales price was \$6.91 per SF.

⁶ P-1 at 51.

⁷ Transcript (T)1 at 45.

⁸ P-1 at 52.

⁹ P-14.

¹⁰ T1 at 120. It is noted that R-14 states that there are 11 units, while it appears from P-14 that there are at least 9 units.

¹¹ P-1 at 53.

¹² T1 at 126.

¹³ *Id.* at 47.

- Sale #4.¹⁴

This property is located at 16361 Harper Avenue, Detroit, Michigan. This property contains 0.37 acres of land and is improved with an 8,400 SF retail-commercial building with on-site parking. The appraisal does not indicate the number of rental units; however, Mr. Collins testified that this building is a single-tenant building.¹⁵ This building was constructed in 1952, with periodic renovations. The property was sold on a fee simple basis on June 12, 2019, for \$60,000, resulting in a price per SF of \$7.14. Mr. Collins adjusted the sales price for differences in condition, resulting in a net +15% adjustment. The final adjusted sales price was \$8.21 per SF.

Mr. Collins explained that he used SF as the unit of comparison because this is what most buyers consider when they purchase this type of property.¹⁶ Mr. Collins further explained that the market was relatively stable between the time the comparable properties sold and the date of valuation, so no time adjustment was required.¹⁷ As adjusted, the sales price per SF ranged from \$6.91 to \$12.54. Ultimately, Mr. Collins gave each sale “similar weight,”¹⁸ and determined that a \$9.00 per SF price best reflected the subject property’s TCV. Utilizing GBA of 13,600 SF, the subject property’s 2020 TCV under the sales approach was \$122,400.

Income Approach¹⁹

Mr. Collins’ first step in his income approach was to determine market rent. Mr. Collins explained that he utilized “gross rent” in this analysis because this is what the market indicated, and this is what was occurring at the subject property. “Gross rent” means that the tenant pays the lease amount, and the landlord is responsible for paying property taxes, insurance, and common area maintenance (CAM).²⁰ The tenant is responsible for paying its own heat and electric expenses²¹ and for insurance related to its business.²² However, Mr. Collins indicated that water is not included in gross rent as “[w]ater is usually one bill the landlord picks up.”²³

Once market rent is determined, potential gross income (PGI)²⁴ is determined by multiplying the market rent by the SF. In this approach, Mr. Collins utilized the GLA of 13,441 SF and not the GBA of 13,600. From this, deductions are made for vacancy/credit loss, also known as collection loss, resulting in effective gross income

¹⁴ P-1 at 54.

¹⁵ T1 at 139.

¹⁶ *Id.* at 45.

¹⁷ *Id.* at 46.

¹⁸ *Id.* at 48.

¹⁹ 2020 Income Approach analysis begins on P-1 at 63.

²⁰ P-1 at 51.

²¹ *Id.* at 178.

²² *Id.* at 180.

²³ *Id.* at 194.

²⁴ The Appraisal Institute defines “potential gross income” as “the total potential income attributable to the real property at full occupancy before vacancy and operating expenses are deducted.” Appraisal Institute: *The Appraisal of Real Estate* (Chicago, Appraisal Institute, 15th ed, 2020), at 424.

(EGI).²⁵ Expenses, including costs for insurance, CAM, maintenance and reserves, management and legal, were then deducted from the EGI, resulting in net operating income (NOI). An appropriate capitalization (cap) rate is then applied, resulting in a value for the subject property.

To arrive at an appropriate market rent, Mr. Collins considered the following four rental properties:

- Rental #1:²⁶

This property is located at 16594, 16800-16862 Schaefer Highway, Detroit, Michigan. This is a 38,883 SF neighborhood shopping center, constructed in 1997, with on-site parking. The average rental rate was \$8.08 per SF. Mr. Collins made no adjustments to this comparable.

- Rental #2:²⁷

This property is located at 15050-15100 Gratiot Avenue, Detroit, Michigan. This is a 13,504 SF neighborhood shopping center, constructed in 2003, with on-site parking. In August 2021, 3,575 SF was leased at \$8.38 per SF, gross. Mr. Collins adjusted the price per SF for condition, resulting in an adjusted price per SF of \$7.97.

- Rental #3:²⁸

This property is located at 13323 Livernois Avenue, Detroit, Michigan. This is a 5,027 SF neighborhood shopping center, constructed in 2004, with on-site parking. In December 2018, 1,251 SF was leased at \$5.76 per SF, gross. Mr. Collins adjusted the price per SF for condition, resulting in an adjusted price per SF of \$5.47.

- Rental #4:²⁹

This property is located at 12430-12450 Morang Drive, Detroit, Michigan. This is an 8,569 SF neighborhood shopping center, constructed in 1950, with on-site parking. In August 2019, 962 SF was leased as \$7.95 per SF, gross. Mr. Collins made no adjustments to this comparable.

As adjusted, the lease price per SF ranged from \$5.47 to \$8.08. Ultimately, Mr. Collins gave each lease similar weight and determined that a price per SF of \$7.95 best reflected the subject property's 2020 market rent. Mr. Collins acknowledged that the

²⁵ "Effective gross income," or EGI, is defined as "the anticipated rental income and other income from the real property adjusted for vacancy and collection losses. This adjustment covers losses expected to be incurred due to unoccupied space, turnover, and nonpayment of rent by tenants." *The Appraisal of Real Estate* at 424.

²⁶ P-1 at 64.

²⁷ *Id.* at 65.

²⁸ *Id.* at 66.

²⁹ *Id.* at 67.

market lease rate was below the subject property's contract rents.³⁰ To determine PGI, Mr. Collins multiplied the market rent by the rentable SF of 13,441, for a total of \$106,856.³¹

Mr. Collins then deducted an amount for vacancy and collection loss. In determining this deduction, Mr. Collins stated that in this area, leases for property similar to that of the subject property are generally written for terms of 3 to 5 years, and properties are leased within 12 months. Mr. Collins concluded to a 25% vacancy and collection loss, or \$26,714, which when deducted from the PGI, resulted in an EGI of \$80,142. Mr. Collins also considered data from CoStar Real Estate Information Services (CoStar) which indicated a vacancy rate of 2.8%. However, Mr. Collins disagreed with this data, stating that, among other things, this report does not "accurately reflect the conditions for small, local market properties lacking national appeal."³²

Mr. Collins' next step was to deduct expenses from EGI. These expenses included:³³

1. Insurance: Petitioner reported paying \$0.27 per SF for insurance; however, Mr. Collins determined that similar properties in the area paid between \$0.25 and \$0.50. Therefore, he settled on a rate of \$0.40 per SF, or \$5,440 total.
2. CAM: Mr. Collins concluded to an amount of \$1.50 per SF, or \$20,400 total.
3. Maintenance and Reserves: Mr. Collins estimated these costs to be \$10 per SF of GBA, for a total \$13,600.
4. Management and Legal: Mr. Collins indicated that typical management fees are between 5% and 8% of the gross lease amount. Ultimately, Mr. Collins concluded to a 7% fee, or \$5,610.

With these deductions, the subject property's 2020 NOI was \$35,092.

Finally, Mr. Collins determined a cap rate utilizing both the Band-of-Investment Technique, which reflects the current economic climate, and the Market Extraction Technique, which reflects actual historical returns on similar investments.³⁴ Under the Band-of-Investment Technique, Mr. Collins concluded to a cap rate of 11.38%. Under the Market Extraction Technique, the cap rates varied from 9.57% to 13.89%. After considering both techniques, he arrived at a cap rate of 11.38%³⁵. Next, Mr. Collins

³⁰ T1 at 55.

³¹ *Id.* at 56.

³² P-1 at 73.

³³ *Id.* at 74.

³⁴ *Id.* at 79.

³⁵ *Id.*

concluded to a tax rate of 4.65%, resulting in a loaded cap rate of 16.03%.³⁶ With this, the subject property's 2020 value under the income approach equaled \$218,000.

2021 Tax Year

Sales Approach

For the 2021 tax year, Mr. Collins considered the same property sales utilized in his 2020 tax year sales approach. However, Mr. Collins adjusted these sales by -10% for date of sale to account for factors related to the COVID-19 pandemic.³⁷

- Sale #1.³⁸

This property sold on May 8, 2018, for \$50,000, resulting in a price per SF of \$12.80. Mr. Collins adjusted the sales price by -10% for date of sale, resulting in an interim adjusted price per SF of \$11.52. Mr. Collins made further adjustments for differences in building size, condition, and land/building ratio, resulting in a net -2% adjustment. The final adjusted sales price was \$11.29 per SF.

- Sale #2:

This property sold on June 6, 2018, for \$105,000, resulting in a price per SF of \$7.70. Mr. Collins adjusted the sales price by -10% for date of sale, resulting in an interim adjusted price per SF of \$6.93. Mr. Collins made further adjustments for differences in condition and land/building ratio, resulting in a net +10% adjustment. The final adjusted sales price was \$7.62 per SF.

- Sale #3:

This property sold on February 8, 2018, for \$25,000, resulting in a price per SF of \$6.17. Mr. Collins adjusted the sales price by -10% for date of sale, resulting in an interim adjusted price per SF of \$5.55. Mr. Collins made further adjustments for differences in building size, condition, land/building ratio, and location, resulting in a net +12% adjustment. The final adjusted sales price was \$6.22 per SF.

- Sale #4:

The property was sold on June 12, 2019, for \$60,000, resulting in a price per SF of \$7.14. Mr. Collins adjusted the sales price by -10% for date of sale, resulting in an interim adjusted price per SF of \$6.43. Mr. Collins made a further adjustment for differences in condition, resulting in a net +15% adjustment. The final adjusted sales price was \$7.39 per SF.

³⁶ *Id.* at 80.

³⁷ T1 at 49.

³⁸ See information reported for the 2020 tax year for specific property descriptions. Sales analysis for the 2021 tax year begins at P-1 at 60.

As adjusted, the sales price per SF ranged from \$6.22 to \$11.29. Ultimately, Mr. Collins' opinion was that a \$8.00 per SF price best reflected the subject property's TCV, resulting in a 2021 TCV of \$108,000.

Income Approach

Mr. Collins utilized the same rental comparables for the 2021 tax year as he did for the 2020 tax year. After adjusting for the impact of COVID-19, Mr. Collins determined that a \$7.50 per SF price best reflected the subject property's 2021 market rent,³⁹ for a total PGI of \$100,808. Mr. Collins then concluded to a 35% vacancy and collection loss, which, due to the pandemic, was 10% greater than the 2020 vacancy and collection loss. After deducting the vacancy and collection loss, the resulting EGI was \$65,526.

As with his analysis for the 2020 tax year, Mr. Collins deducted expenses from the EGI to arrive at the NOI. These expenses were:

1. Insurance:	\$ 5,440
2. CAM:	\$20,400
3. Maintenance & Reserves:	\$13,600
4. Management & Legal:	\$ 4,587
Total:	\$44,027

With this, the 2021 NOI was \$21,499.

For 2021, Mr. Collins again concluded to a cap rate of 11.38%. However, the tax cap rate was reduced to 4.45%, resulting in a loaded cap rate of 15.83%.⁴⁰ Application of the loaded cap rate to the \$21,499 NOI resulted in a 2021 value under the income approach of \$135,000.⁴¹

Reconciliation:

In reconciling the values under the sales approach and the income approach, Mr. Collins testified that he gave the most weight to the income approach. As a result, Mr. Collins concluded to a 2020 TCV for the subject property of \$200,000. For the 2021 tax year, the subject property had lower rents and a higher vacancy and collection loss due to the pandemic, resulting in a 2021 TCV of \$125,000.

Cross Examination:

On cross-examination, Mr. Collins testified that the subject property did not suffer from deferred maintenance and that there was no functional obsolescence.⁴² However,

³⁹ P-1 at 72.

⁴⁰ *Id.* at 80.

⁴¹ *Id.* at 81.

⁴² T1 at 74-75.

the subject property suffers from economic obsolescence because “it's quite evident when looking at the highest and best use analysis that if you were to recreate the property you wouldn't achieve sales or rents to support new construction. So that effectively is economic obsolescence. That's its definition.”⁴³ However, Mr. Collins admitted that if the property did not generate enough revenue to make operation of the existing improvements viable, the property's highest and best use would be different.

Mr. Collins' premise that smaller spaces typically sell for more per SF than larger spaces was called into question. Specifically, Sale #2 contained the largest number of SF, yet it sold for more per SF than Sale #3, which was a third of the size of Sale #2. The same is true for Sale #4. However, Mr. Collins defended this premise, arguing that it was based on his observation of market data.

When questioned about Sale #1, Mr. Collins acknowledged that the sale might have been a fee simple sale and not a leased fee sale. When questioned as to whether Sale #1's 2018 sale was a bank sale, Mr. Collins testified that he still considered this to be a valid sale because it was on the market for almost 400 days.⁴⁴ On redirect, Mr. Collins testified that he did not believe the sale was a bank sale.⁴⁵

Mr. Collins was asked a series of questions about the subject property's location compared to that of Sale #1. Sale #1 is located on Fenkell Street, a two-lane street, while the subject property is located on Woodward Avenue, a four- or six-lane street. In spite of this, Mr. Collins testified that the locations were effectively similar. Mr. Collins was asked similar questions about the location of Sales #2 and #4, both of which are located on Harper. Mr. Collins testified that while Harper is a two-lane street, he did not adjust for location. As for Sale #3, this property is located on Dexter, which is a four-lane street. Because it “appeared that most market participants would find [this location] slightly less desirable”⁴⁶ than the subject property, Mr. Collins applied a +10% adjustment.

Mr. Collins admitted that much of the information contained within his appraisal report is not located in his work file. Instead, the work file references work files compiled in support of previous appraisals. Mr. Collins also admitted that some of the information contained within his appraisal report is contradicted by information in CoStar reports. For example, Mr. Collins reported that Sale #3 sold in 2018 for approximately \$25,000, while CoStar reported that it sold for \$125,000. According to CoStar, the property sold in 2016 for \$25,000.

Mr. Collins was questioned about the equal weight he gave each sale in his sales approach. Mr. Collins testified that even though two of the four sales were single tenant buildings, he did not think it was particularly appropriate to give them a different weight than the multi-tenant properties.

⁴³ *Id.* at 75.

⁴⁴ *Id.* at 115.

⁴⁵ T2 at 289.

⁴⁶ T1 at 111.

When questioned about the subject property's rent rolls,⁴⁷ Mr. Collins admitted that the referenced leases for three of the four tenants were not in existence as of either tax day. According to Mr. Collins, the dates listed were actually the dates of the lease amendments.

Finally, Mr. Collins was questioned about the ownership of the subject property. Mr. Collins explained that Jason M. Curis has an ownership stake in the subject property and that he also owns and operates JMC Management (JMC). Mr. Collins acknowledged that the lease information included in his income approach was obtained from someone who worked for JMC,⁴⁸ and that the rental units included in this approach had similar ownership as the subject property.⁴⁹

Petitioner's final witness was Christina Rice. Ms. Rice is employed by JMC. Ms. Rice testified that JMC manages the subject property. According to Ms. Rice, The Tax Experts were tenants at the subject property as of each tax day at issue. When questioned as to why Respondent was not provided with a copy of the lease for The Tax Experts, Ms. Rice testified that she was the person responsible for compiling documents in response to Respondent's discovery requests, and that she was unaware that the lease had not been submitted with the other four leases. She admitted that this was her error; however, it was unintentional.

Ms. Rice further testified that she was not the person who prepared the rent rolls utilized by both parties; this would have been Mr. Curis' responsibility. As a result, while Ms. Rice was able to confirm that the subject property's tenants were given rent concessions in 2020 due to the pandemic, she was unable to confirm whether the "actual rent paid" listed on the rent rolls was for one month or the entire year.⁵⁰ Ms. Rice suggested that the difference between the rental income listed on the profit and loss (P&L) statements⁵¹ and the rent listed on the rent rolls may be due in part to tenant payments for water charges and late fees. According to Ms. Rice, Petitioner pays the water charges, and the tenants reimburse Petitioner. However, the leases do not specify this arrangement.⁵² Ms. Rice testified that the subject property's tenants pay gross rent and are not charged for CAM.⁵³ Ms. Rice explained that the "CAM-Repairs and Maintenance" listed as income on the P&L statements represents repairs that Petitioner would make to unit at the request of a tenant, such as a furnace repair, for which the tenant would reimburse Petitioner.

⁴⁷ P-1 at 101.

⁴⁸ T1 at 170.

⁴⁹ *Id.* at 172.

⁵⁰ T3 at 617.

⁵¹ For example, see R-1 at 109-111.

⁵² T3 at 622.

⁵³ *Id.* at 623.

RESPONDENT'S CONTENTIONS

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

Parcel Number: 82-43-013-09-0022-000

Year	TCV	SEV	TV
2020	\$560,600	\$280,300	\$134,368
2021	\$535,000	\$267,500	\$136,249

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

Parcel Number: 82-43-013-09-0022-000

Year	TCV	SEV	TV
2020	\$590,000	\$295,000	\$134,368
2021	\$615,000	\$307,500	\$136,249

Respondent disagrees with Petitioner's value contentions and asserts that the subject property is actually under-assessed. According to Respondent, there is no evidence that the COVID-19 pandemic negatively impacted the market values of properties such as the subject property.

RESPONDENT'S ADMITTED EXHIBITS

- R-1 Appraisal of the subject property by John R. Widmer, Jr.
- R-2 Lease Agreement for 12360-70 Woodward Avenue.
- R-3 Amendment to Lease Agreement for 12360-70 Woodward Avenue.
- R-4 Lease Agreement for 12330-40 Woodward Avenue.
- R-5 Amendment to Lease Agreement for 12330-40 Woodward Avenue.
- R-6 Lease Agreement for 12320 Woodward Avenue.
- R-7 Lease Renewal for 12320 Woodward Avenue.
- R-8 Lease Agreement for 12300 Woodward Avenue.
- R-9 Petitioner's answers to discovery requests.
- R-12 MLS listing for 15920-15926 Fenkell Street.
- R-13 CoStar report for 15920-15926 Fenkell Street.
- R-14 CoStar report for 17300-17346 Harper Avenue.
- R-15 BS&A report for 13237 Dexter.
- R-16 Warranty Deed for 13237 Dexter.
- R-17 CoStar report for 16361-16373 Harper Avenue.
- R-18 CoStar report for 13323 Livernois Avenue.
- R-19 CoStar report for 12430-12450 Morang Drive.

RESPONDENT'S WITNESS

John R. Widmer, Jr., testified on behalf of Respondent. Mr. Widmer has been employed by Frohm & Widmer Inc. as an appraiser for 32 years. Mr. Widmer is a real

estate appraiser, holding a Michigan certified general license. Mr. Widmer also holds the MAI designation from the Appraisal Institute and has held this designation for over 30 years. Mr. Widmer testified that he has appraised dozens of multi-user commercial properties during the previous five years. Mr. Widmer was admitted as an expert in the area of real estate appraisal.

Mr. Widmer described the subject property as being a nice neighborhood, in-line retail center, located on a primary road with significant traffic volume. The building is single-story, modern construction, with good appeal. The building contains five units. Mr. Widmer inspected the subject property on March 14, 2022, and found no deferred maintenance.⁵⁴ Mr. Widmer testified that the area immediately surrounding the subject property is not a high-income area. However, given that it is located on a primary road, demographics for a broader area must be considered.

Mr. Widmer considered the subject property's highest and best use both as vacant and as improved and determined that its highest and best use is its continued use as an in-line neighborhood retail center. In arriving at the subject property's TCV, Mr. Widmer considered the cost approach, the sales approach, and the income approach. However, only the sales approach and the income approach were developed. As it pertains to the sales approach, Mr. Widmer noted that "there is a limited sampling of ideally similar property sales. As such, this approach has been applied simply to illustrate investment motivations for smaller retail properties."⁵⁵

2020 Tax Year

Sales Approach⁵⁶

Mr. Widmer considered four sales of neighborhood in-line centers. The number of units available at each of these properties was not provided; however, Mr. Widmer explained that he did not include sales of single-tenant buildings because this type of building would not be an apples-to-apples comparison with the subject property.

Mr. Widmer described the process by which he adjusted the sales prices of these four properties, starting with "transactional" adjustments. In order, transactional adjustments include property rights conveyed, financing, conditions of sale, expenditures after sale, and market conditions.⁵⁷ Mr. Widmer testified that it was not necessary to adjust for property rights conveyed in this case because all four properties were leased fee transactions, meaning they were all acquired subject to leases. As Mr. Widmer explained, when TCV is established, it is on a fee simple basis. However:

⁵⁴ However, on cross-examination, Mr. Widmer testified that he did not inspect the property's interior. T3 at 579.

⁵⁵ R-1 at 55.

⁵⁶ *Id.* at 47.

⁵⁷ T2 at 361.

When you have leased fee transactions they can become numerically equivalent to a fee, if, in fact, it's determined that there's no positive or negative leasehold, which means that there are above-market rents or below-market rents. When you equate each of the leased fee transactions numerically to the fee simple like the subject there's no need for that adjustment.⁵⁸

In this case, no adjustments for positive or negative leaseholds were required. Similarly, it was not necessary to adjust for financing terms, conditions of sale, or expenditures after sale. However, adjustments for changes in market conditions were warranted. In that regard, Mr. Widmer considered Detroit submarket data compiled by CoStar for the period 2017 through 2021. From this data, Mr. Widmer concluded that a market adjustment of +4% per annum was justified.⁵⁹ After application of these transactional adjustments, an interim adjusted SF price for each property was determined.

Next, Mr. Widmer applied “cumulative” adjustments for location and physical characteristics. Physical characteristic adjustments included adjustments for building size, age/condition, and quality/utility, economic characteristics, use/zoning, and non-realty factors. The cumulative adjustments were deducted from the interim adjusted SF price to arrive at a final adjusted SF price.

- Sale #1.⁶⁰

This property is located at 13323 Livernois Avenue, Detroit, Michigan, and is known as the Davison Livernois Plaza. This property contains 11,674 SF of land and is improved with 5,075 SF of GLA. The building was constructed in 2004 and has on-site parking. The property sold on a leased fee basis on June 21, 2017, for \$130,000, resulting in a price per SF of \$25.62. After application of the transactional and cumulative adjustments, the final adjusted price per SF was \$25.53.

- Sale #2.⁶¹

This property is located at 5115 E. 9 Mile Road, Warren, Michigan, and is known as the 9 Mile Plaza. This property contains 42,123 SF of land and is improved with 10,925 SF of GLA. The building was constructed in 1992 and has on-site parking. The property sold on a leased fee basis on March 29, 2018, for \$255,000, resulting in a price per SF of \$23.34. After application of the transactional and cumulative adjustments, the final adjusted price per SF was \$26.11.

⁵⁸ *Id.* at 362.

⁵⁹ *Id.* at 365.

⁶⁰ R-1 at 48, 55, 106.

⁶¹ *Id.*

- Sale #3.⁶²

This property is located at 14919-15003 E. 9 Mile Road, Eastpointe, Michigan, and is known as the Eastpointe Plaza. This property contains 104,544 SF of land and is improved with 19,250 SF of GLA. The building was constructed in 1988 and has on-site parking. The property sold on a leased fee basis on August 20, 2019, for \$1,700,000, resulting in a price per SF of \$88.31. After application of the transactional and cumulative adjustments, the final adjusted price per SF was \$83.33.

- Sale #4.⁶³

This property is located at 16800-16830 Schaefer Highway, Detroit, Michigan, is known as the Mercury Plaza. This property contains 89,342 SF of land and is improved with 38,883 SF of GLA. The building was constructed in 1997 and has on-site parking. The property sold on a leased fee basis on March 10, 2021, for \$2,200,000, resulting in a price per SF of \$56.58. After application of the transactional and cumulative adjustments, the final adjusted price per SF was \$52.00.

Given Sale #3's final adjusted price per SF, Mr. Widmer considered this sale to be outlier. Given this, Mr. Widmer only utilized the other three sales, whose price per SF ranged between \$35.00 and \$45.00. Ultimately, Mr. Widmer concluded to a 2020 TCV under the sales approach of \$540,000.

Income Approach

According to Mr. Widmer, the subject property is an income-producing property and as such, the income approach is not only applicable, it is also the most reliable and credible approach and the one used by market participants. In this approach, Mr. Widmer considered the subject property's leases in place and the corresponding lease amendments. According to these documents, the same tenants occupied the units on each of the tax days at issue. However, Mr. Widmer testified that during discovery Petitioner produced leases for only four of the five units and, as a result, he assumed that the fifth unit was vacant.⁶⁴ This resulted in an occupancy rate of $\pm 90.1\%$.

After reviewing the leases, Mr. Widmer concluded that the units were "leased on a modified gross basis⁶⁵ which required the tenant to pay a pro-rata share of common area maintenance (CAM)."⁶⁶ However, because the P&L statements "did not differentiate between base rent and other reimbursements,"⁶⁷ it was necessary to adjust the reported base rent to reflect the addition of CAM charges. Mr. Widmer estimated total CAM expense at \$2 per SF, of which the tenants were expected to pay 78%, or

⁶² *Id.*

⁶³ *Id.*

⁶⁴ T2 at 393. The lease for the unit leased by The Tax Experts was not provided to Mr. Widmer.

⁶⁵ While not definitive, *The Appraisal of Real Estate* defines "modified gross lease" as a lease wherein the tenant and landlord share expenses." *Id.* at 418.

⁶⁶ R-1 at 61.

⁶⁷ *Id.* at 62.

\$1.57 per SF.⁶⁸ Mr. Widmer reviewed the in-place rent for each unit and, assuming that the fifth unit was vacant,⁶⁹ determined that the 2020 weighted average base rent was \$9.57 per SF. The tenants' share of CAM was added to this, resulting in a final modified gross rent plus CAM of ±\$11.17 per SF. With this, the subject property's 2020 PGI equaled \$150,157.⁷⁰

Mr. Widmer also surveyed rental activity for 13 similar shopping centers. Because some of these properties were leased on a triple net basis (NNN), Mr. Widmer adjusted the rental rates to reflect a modified gross basis. With this adjustment, Mr. Widmer concluded to a weighted average adjusted rental rate of ±\$15.01 per SF. Mr. Widmer testified that four of the 13 properties included in this shopping center survey are owned and offered for lease by Petitioner. After adjusting for potential discounts for asking rent, Mr. Widmer concluded to a weighted average rental rate for these four properties of ±\$12.95 per SF on a modified gross basis.⁷¹

Mr. Widmer next addressed vacancy and collection loss. In calculating the vacancy rate, he developed a "frictional vacancy," which is defined "as the amount of vacant space needed in a market for orderly operation. It allows for move-ins and move-outs."⁷² Frictional vacancy accounts for a tenant that may renew its lease, the possibility that not all spaces will be vacant at once, and that a space may not be vacant for 12 months. Frictional vacancy was analyzed on a 3-year and a 5-year lease basis. For leases 3 years in length, the frictional vacancy was 11.8%. For a 5-year lease, the frictional vacancy was 4.8%.⁷³

Mr. Widmer also reviewed data published by CoStar relative to retail vacancies within a 3-mile radius of the subject property, including data specific to shopping centers. After "melding" the frictional and market vacancies, he concluded to a vacancy rate of 7.5% per year, which equated to a deduction of \$11,262.⁷⁴ Mr. Widmer testified that as of the 2020 tax day, he had not seen a 25% vacancy rate in shopping centers in Highland Park or Detroit.⁷⁵

Finally, Mr. Widmer concluded to a 1% collection loss. For the 2020 tax year, this equated to a deduction of \$1,389. With this, the 2020 EGI was \$137,506.⁷⁶

Mr. Widmer next determined operating expenses, consisting of real estate taxes, insurance, CAM, management fees, owner's expenses, and capital reserve. In this

⁶⁸ T2 at 406.

⁶⁹ According to R-1 at 61, this unit was subsequently leased in May 2021. Based on rent roll information, the lease was for a 3-year term, with the base rent being ±\$13.47 per SF on an effective gross basis.

⁷⁰ CAM includes water, sewer, electric, landscaping, snow removal, and repairs. T2 at 443.

⁷¹ R-1 at 62.

⁷² T2 at 409.

⁷³ R-1 at 63.

⁷⁴ *Id.* at 72.

⁷⁵ T2 at 419.

⁷⁶ R-1 at 72.

regard, Mr. Widmer considered both the subject property's reported historical expenses and market expenses.⁷⁷

1. Real estate taxes: Mr. Widmer explained that he did not include this expense at this point in his analysis, accounting for it instead through an additor to the cap rate.
2. Insurance: Mr. Widmer considered the subject property's actual insurance expense and concluded to a stabilized expense of \$0.40 per SF, or \$5,376.
3. CAM: The subject property's 2020 CAM was reported at ± 2.09 per SF, while the 2021 CAM was reported at $\pm \$2.80$, averaging $\pm \$2.44$. Mr. Widmer opined that these rates were high considering that the subject property was in good condition. Therefore, relying on market data, he concluded to a stabilized 2020 CAM of \$2.00 per SF, or \$26,882.
4. Management fee: The subject property reported a management fee of 14.5% to 15% of total income. Mr. Widmer considered this fee excessive when compared to market oriented management fees. Mr. Widmer reported that owners of larger portfolios charge 5%, therefore a management fee of 3.5% of EGI would be appropriate for the subject property. For 2020, this fee equated to \$4,813.
5. Owner's expense: In 2019, the owner's expense was \$0.06 per SF. This increased to \$0.32 per SF in 2020, with the average of the two years being \$0.19 per SF. Mr. Widmer concluded to \$0.20 per SF, for a total deduction of \$2,688.
6. Capital reserves: Mr. Widmer consulted PriceWaterhouseCooper (PwC) and RealtyRates for data on capital reserves, also known as replacement reserves. Based on this data, Mr. Widmer reconciled the capital reserve expense at \$0.45 per SF for both tax years, for a total deduction of \$6,048.

After applying these deductions, the 2020 NOI was \$6.82 per SF, or \$91,699.⁷⁸

Next, Mr. Widmer developed a cap rate.⁷⁹ First, cap rates were extracted from a sample of 21 shopping center sales for the period January 2018 through December 2020. These rates ranged from 5.5% to 19.6%, with an average of $\pm 9.6\%$. The data indicated that since the beginning of 2019, cap rates for the Southeast Michigan retail market were trending downward. Excluding the high and low extreme rates, the average cap rate for the period 2019 to 2020 was $\pm 8.5\%$.

Mr. Widmer next considered data published by PwC for strip shopping centers, defined as "[a]n open row of stores either with or without anchor stores that offer convenience (neighborhood centers) and general merchandise (community centers)."⁸⁰

⁷⁷ *Id.* at 66.

⁷⁸ *Id.* at 72.

⁷⁹ *Id.*

⁸⁰ *Id.* at 68.

A second survey, published by RealtyRates, was also considered. Ultimately, Mr. Widmer concluded to a cap rate of 10.0%. The tax additor, equal to 4.69%, was added, resulting in a loaded cap rate of 14.69%. Application of the loaded cap rate resulted in a stabilized 2020 TCV of \$624,161, or \$46.44 per SF.⁸¹

Mr. Widmer's final step in the income approach was to address the non-stabilized occupancy status of the subject property. This was reflected in the appraisal as "lease-up adjustment for vacancy."⁸² Mr. Widmer began by establishing the subject property's value on tax day as if it were operating at a stabilized occupancy level. Next, rental opportunity loss, ordinary expense carry, tenant improvements at \$10 per SF, and leasing commissions at 6% of aggregate rental income over the term of the lease were estimated. These expenses were adjusted by a factor of 15% to reflect entrepreneurial profit. For the 2020 tax year, the lease-up adjustment for vacancy was -\$32,000. With this, Mr. Widmer reconciled 2020 TCV at \$590,000, rounded.⁸³

When questioned whether he would change his analysis had he been provided the lease for the unit occupied by The Tax Experts, Mr. Widmer testified that two changes would have been necessary. First, the rent would have been increased and second, the lease-up adjustment would have been reduced. These changes would have resulted in an increase to his value conclusions.

Reconciliation

In reconciling the values under the sales approach and the income approach, Mr. Widmer reiterated that he gave no weight to the sales approach. Instead, he relied solely on the income approach because that is the approach the market would rely on. Given this, Mr. Widmer concluded to a 2020 TCV of \$590,000.

2021 Tax Year

Sales Approach

Mr. Widmer testified that he looked at market data to analyze the impact of the COVID-19 pandemic on the real estate market. Specifically, he considered the trend in vacancies and rents. According to the data, there were not many sectors in Michigan that declined in terms of unit pricing. Vacancies in some markets increased during the first and second quarters of 2020 but then recovered. According to CoStar, in 2019 there were 39 sales of multiple-tenant shopping centers in the Detroit sub-market, and 40 sales in 2020. The average price per SF increased from 2018 to 2019 by 21.1% and by 17.5% from 2019 to 2020.⁸⁴ Given this data, Mr. Widmer concluded that the market value for multi-tenant shopping centers in the Detroit submarket increased from 2019 to 2020.

⁸¹ *Id.* at 72.

⁸² *Id.* at 71.

⁸³ *Id.* at 72.

⁸⁴ *Id.* at 52.

For the 2021 tax year, Mr. Widmer utilized the same sales utilized in his 2020 sales approach and, with the exception of market conditions, made no changes to the adjustments. As for market conditions, Mr. Widmer determined that a +4% per annum adjustment was required, resulting in a range in price per SF of \$36.50 to \$46.40. Ultimately, Mr. Widmer concluded to a 2021 TCV under the sales approach of \$560,000.

Income Approach

Utilizing the same methodology as he did for the 2020 tax year, Mr. Widmer concluded that the weighted average base rent increased to \$9.81.⁸⁵ The tenants' share of CAM, calculated at \$1.61 per SF, was added to this, resulting in a final modified gross rent + CAM of ±\$11.41. With this, the 2021 PGI equaled \$153,373.⁸⁶

The vacancy rate remained at 7.5%, resulting in a deduction of \$11,503. When asked whether COVID-19 caused an increase in vacancies from the 2020 tax day to the 2021 tax day, Mr. Widmer testified that it did not.⁸⁷ The collection loss remained at 1%, resulting in a deduction of \$1,419. With this, the 2021 EGI was \$140,452.⁸⁸

As with the 2020 tax year, Mr. Widmer deducted operating expenses from EGI to arrive at NOI. Specifically:

1. Insurance: increased to \$0.41 per SF.	\$ 5,511
2. CAM: increased to \$2.05 per SF.	\$27,554
3. Management fee: remained at 3.5%.	\$ 4,916
4. Owner's Expense: increased to \$0.21 per SF.	\$ 2,755
5. Capital Reserve: remained at \$0.45 per SF.	\$ 6,048
Total:	\$46,785

After applying these deductions, the 2021 NOI was \$6.97 per SF, or \$93,667. The cap rate remained unchanged at 10%; however, the tax additor increased to 4.49%,⁸⁹ resulting in a loaded cap rate of 14.49%. Application of the loaded cap rate to NOI resulting in a stabilized 2021 TCV of \$646,395. The lease-up adjustment for vacancy was increased to -\$33,000, resulting in a reconciled 2021 TCV of \$615,000, rounded.⁹⁰

Reconciliation

For the reasons previously outlined, Mr. Widmer gave no weight to the sales approach. Relying solely on the income approach, Mr. Widmer concluded to a 2021 TCV of \$615,000.

⁸⁵ *Id.* at 60.

⁸⁶ *Id.* at 73.

⁸⁷ T2 at 419.

⁸⁸ R-1 at 73.

⁸⁹ T2 at 421.

⁹⁰ R-1 at 73.

Cross-Examination

On cross-examination, Mr. Widmer was asked a series of questions related to why he believed the tenants paid a portion of the CAM expenses. Mr. Widmer was also questioned about CoStar information included in his appraisal. Mr. Widmer admitted much of this information was incorrect, including the square footage and tenant names. When questioned about the 13 retail units that he surveyed for market rents, Mr. Widmer admitted that while Petitioner owns four of these properties, he did not contact Petitioner to confirm the reported information. Mr. Widmer also clarified that of the 13 units surveyed, only two of the units represented consummated leases while the remaining 11 units represented listings.⁹¹ When questioned about the surveys that he used to develop his cap rate, Mr. Widmer admitted that some of the surveys do not include the Detroit market.⁹²

FINDINGS OF FACT

These Findings of Fact concern only evidence and inferences found to be significantly relevant to the legal issues involved.

1. The subject property's Parcel No. is 82-43-013-09-0022-000.
2. The subject property is located at 12300-12370 Woodward Avenue (M-1), Highland Park, Michigan, in Wayne County.
3. The subject property is classified as commercial.
4. The subject property is a neighborhood strip shopping center, containing one, one-story retail commercial building with five separate rental units.
5. The year the building was constructed is unknown. Petitioner contends it was built around 2000,⁹³ while Respondent surmises it was built in the 1998 to 1999 time frame.⁹⁴
6. The building's GBA is 13,600 SF, with GLA of 13,441 SF.
7. The subject property contains approximately 40 parking spaces.
8. The subject property is an income producing property and is not owner-occupied.
9. As of the 2020 and 2021 tax days, the subject property was occupied by Asian Corned Beef, Keyair Nico Salon, MAXX Beauty Supply, The Tax Experts, and the Highland Park Public School District.

CONCLUSIONS OF LAW

A proceeding before the Tax Tribunal is original, independent, and de novo.⁹⁵ The Tribunal's factual findings must be supported "by competent, material, and substantial evidence."⁹⁶ "Substantial evidence must be more than a scintilla of

⁹¹ T3 at 511.

⁹² *Id.* at 558 - 561.

⁹³ P-1 at 6.

⁹⁴ R-1 at 1.

⁹⁵ MCL 205.735a(2).

⁹⁶ *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

evidence, although it may be substantially less than a preponderance of the evidence.”⁹⁷

“The petitioner has the burden of proof in establishing the true cash value of the property.”⁹⁸ “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.”⁹⁹ 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.”¹⁰⁰

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.¹⁰¹

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.¹⁰²

The Michigan Legislature 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.¹⁰³

The Michigan Supreme Court determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”¹⁰⁴ “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.”¹⁰⁵ In developing an opinion of true cash value, an analysis of highest and best use is required.

Through highest and best use analysis, an appraiser interprets the market forces that affect the subject property and identifies the use or uses on

⁹⁷ *Jones & Laughlin, supra* at 352-353.

⁹⁸ MCL 205.737(3).

⁹⁹ *Jones & Laughlin, supra* at 354-355.

¹⁰⁰ MCL 205.737(3).

¹⁰¹ See MCL 211.27a.

¹⁰² Const 1963, art 9, sec 3.

¹⁰³ MCL 211.27(1).

¹⁰⁴ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

¹⁰⁵ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

which the final opinion of value is based. . . If highest and best use is not adequately addressed, appraisers may inappropriately analyze the property being appraised.¹⁰⁶

Highest and best use is defined as “[t]he reasonably probable use of property that results in the highest use.”¹⁰⁷

To be *reasonably probable*, traditionally a use must meet certain conditions:

- The use must be *physically possible* (or it is reasonably probable to render it so).
- The use must be *legally permissible* (or it is reasonably probable to render it so).
- The use must be *financially feasible*.

Uses that meet the three criteria of reasonably probable uses are tested for economic productivity, and the reasonably probable use with the highest value is the highest and best use.¹⁰⁸

A fundamental concept of highest and best use is the idea that highest and best use is viewed from two perspectives:

- The use of the real estate based on the presumption that the parcel of land is vacant or can be made vacant by demolishing any improvements (i.e., as vacant or as if vacant)
- The use that should be made of the real estate as it exists (i.e., as currently improved or as if improved as proposed).¹⁰⁹

In this case, both appraisers analyzed the subject property both as vacant and improved. Both appraisers determined that the highest and best use of the subject property was its continued use as neighborhood shopping center. The Tribunal agrees with this conclusion.

In their appraisals, each appraiser provided demographic information used to formulate their opinions of value. Having reviewed this data, the Tribunal questions the population data submitted by Mr. Collins. Specifically, while the subject property is located within the City of Highland Park, Mr. Collins cites population data from Highland Township, which is located within Oakland County.¹¹⁰

In determining TCV, the three most common approaches are the capitalization of income approach, the sales comparison, or market, approach, and the cost-less-

¹⁰⁶ *The Appraisal of Real Estate* at 34.

¹⁰⁷ *Id.* at 305.

¹⁰⁸ *Id.* (emphasis in original.)

¹⁰⁹ *Id.* at 307.

¹¹⁰ P-1 at 32.

depreciation approach.¹¹¹ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”¹¹² 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.¹¹³ Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.¹¹⁴

The Tribunal is not bound to accept either of the parties' theories of valuation.¹¹⁵ “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.”¹¹⁶ 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.”¹¹⁷

Cost Approach

The cost approach “is particularly useful in valuing new or nearly new improvements and properties that are not frequently exchanged in the market.”¹¹⁸ Further, it is more useful when “a lack of market activity limits the usefulness of the sales comparison approach” and it is “especially persuasive when land value is well supported and the improvements are new or suffer only minor depreciation”¹¹⁹

In this case, while both parties considered the cost approach, neither party developed a value using this approach.

Sales Comparison Approach

“The sales comparison approach is most useful when a number of similar properties have recently been sold or are currently for sale in the subject property's market.”¹²⁰ Both Mr. Collins and Mr. Widmer developed values for the 2020 and 2021 tax years using the sales approach. However, as discussed, Mr. Collins gave the most weight to the income approach, while Mr. Widmer gave no weight to the sales approach.

Mr. Collins considered the sale of four properties in his sales comparison approach. Of these, Sales #1 and 2 were multiple-tenant buildings; Sales #3 and 4

¹¹¹ *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).

¹¹² *Jones & Laughlin*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

¹¹³ *Antisdale*, *supra* at 277.

¹¹⁴ See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

¹¹⁵ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

¹¹⁶ *Meadowlanes* at 485.

¹¹⁷ *Jones & Laughlin* at 356.

¹¹⁸ *The Appraisal of Real Estate* at 36.

¹¹⁹ *Id.* at 530.

¹²⁰ *Id.* at 36.

were single-tenant buildings. According to Mr. Collins, including single-tenant buildings in the analysis was proper because these buildings offer “retail commercial space with similar utility.”¹²¹ However, this premise runs afoul of Mr. Collins conclusion of the highest and best use for the subject property.

The conclusions of market analysis and highest and best use analysis are fundamental to the sales comparison approach. Analyzing the subject property’s highest and best use and market area helps appraisers identify and analyze the competitive supply and demand factors that influence the value in the market. In addition, an adequately supported determination of the subject property’s highest and best use provides the basis for the research and analysis of comparable sales, answering questions such as

- Which comparable properties have the most similar highest and best use to the subject property.

- Who is the likely user of the comparable property?¹²²

As discussed, Mr. Collins determined that the subject property’s highest and best use was as a neighborhood shopping center. “Neighborhood shopping center” is defined as “a local shopping center typically anchored by a supermarket, pharmacy, or both. A neighborhood shopping center offers consumable goods and personal services, and it usually serves a trade area within three miles of its location.”¹²³ Thus, it is not possible for a single-tenant retail building to have a similar highest and best use to the subject property, and the likely users of Sales #3 and #4, e.g., one tenant, would not be the same as those of the subject property, e.g., multiple tenants. For these reasons, Sales #3 and #4 are not comparable sales and are given no weight.

Turning to Sale #2, the parties offered competing evidence, presumably from CoStar, for this property.¹²⁴ When asked whether the information from P-14 was from CoStar, Mr. Collins testified that “[y]es, it’s the same property.”¹²⁵ However, upon further review, P-14 does not indicate that this document was generated by CoStar. In fact, the section titled “Income & Expenses” cites to CoStar Research as the source. Further, the information on P-14 differs from that of R-14, which is clearly designated a CoStar document.¹²⁶ While Mr. Collins stated that he obtained P-14 through Costar,¹²⁷ it appears that even though this document contains some data from the CoStar report, it may, in fact, be authored by a listing agent as it states: “Please Do Not approach owner or Employees. Call Listing agent for showing or Questions.” Below that sentence is a section titled “Sale Contacts” information not contained on the CoStar report.

¹²¹ T2 at 272.

¹²² *The Appraisal of Real Estate* at 353.

¹²³ The Appraisal Institute, *The Dictionary of Real Estate Appraisal* (7th ed).

¹²⁴ See P-14 and R-14.

¹²⁵ T2 at 292.

¹²⁶ For example, P-14 contains a section titled “Sale Notes”, which is not found on R-14.

¹²⁷ T2 at 299.

Mr. Collins was questioned at length about the difference in the \$2,300,000 sales price listed in R-14 and at the top of first page of P-14, and the \$105,000 sales price listed in the Realcomp Online pages contained within P-14. It appears as though the \$2,300,000 price may represent a going concern value as it states on P-14 that there is a liquor business for sale. However, the differences in prices were not explained to the Tribunal's satisfaction. In addition, given the \$105,000 sales price, Mr. Collins concluded to a sales price of \$7.70 per SF, while both R-14 and the purported CoStar pages of P-14 list the sales price of \$168.57 per SF. Compounding the confusion is the fact that a mortgage was issued on the date of sale for \$250,000, while the sale price was listed as \$105,000. Given these issues, the data extracted from this sale is not reliable. Therefore, this sale is given no weight.

Turning to the remaining sale, Sale #1, located at 15920-15926 Fenkell Street, the building is about 30% the size of the subject property's building and approximately 72 years older. When questioned about his statement that the property had been remodeled, Mr. Collins was unable to point to documentary evidence to back that up, relying instead on his observation of the property.¹²⁸ Mr. Collins was asked about property's MLS listing and the statement that "[t]his building is ready for the right buyer to come and bring it back to life!! It will be a great cash flowing investment once restored to its former glory."¹²⁹ In response, Mr. Collins testified that he believed his +5 adjustment for condition was appropriate.¹³⁰ While Mr. Collins stated that the sale was a leased fee sale, he admitted during cross-examination that it was possible that all four units were vacant at the time of sale, meaning that the sale could be characterized as being a fee simple sale.¹³¹ Finally, Mr. Collins was asked to compare Fenkell Street with Woodward Avenue. Mr. Collins described Fenkell Street as being a main thoroughfare, much like Woodward Avenue, despite the fact that Fenkell Street is a two-lane road and Woodward is a four- to six-lane road. For these reasons, Mr. Collins' Sale # 1 is given minimal weight for both tax years. For the 2020 tax year, Mr. Collins concluded to a final adjusted price per SF for Sale #1 of \$12.54. At 13,600 SF, this equates to a value of \$170,544.

For the 2021 tax year, it was Mr. Collins' opinion that the COVID-19 pandemic negatively impacted property values. After reviewing the market, including instances where tenants either went out of business or failed to pay their rent, Mr. Collins applied a -10% market adjustment, resulting in a 2021 price per SF of \$11.29 for Sale #1,¹³² which equates to a value of \$153,544. However, other than general descriptions of what occurred as a result of COVID-19, Mr. Collins did not provide any data or market studies that reflected what, if any, the pandemic may have had on property values as of the 2021 tax day, being December 31, 2020.¹³³ Given this, the -10% market adjustment is found not credible or reliable. Without this adjustment, there is no difference between

¹²⁸ For example, R-12.

¹²⁹ R-12 at 2.

¹³⁰ T1 at 99-100.

¹³¹ *Id.* at 95-97.

¹³² P-1 at 60.

¹³³ An exact date as to when the COVID-19 pandemic began in Michigan is unavailable; however, the parties did not dispute that it first impacted Michigan in March 2020. See R-1 at 36-37.

the 2020 and 2021 sales analysis. Therefore, the 2021 value for Sale #1 is also \$170,544.

In discussing the sales comparison approach, Mr. Widmer stated that “there is a limited sampling of ideally similar property sales.”¹³⁴ Although he developed a value using this approach, this was one reason why he gave the approach no weight. Like Mr. Collins, Mr. Widmer’s sales approach included the sales of four properties. Ultimately, Mr. Widmer excluded Sale #3 as it was an outlier. With this, he concluded to a 2020 price per SF of \$35.00 to \$45.00, with an average of \$40.00 per SF. Mr. Widmer utilized GLA in this calculation, compared to Mr. Collins’ use of GBA, and arrived at a final value of \$540,000.

Mr. Widmer also considered what, if any, impact COVID-19 had on property values. Mr. Widmer admitted that:

Analyzing market data in such markets [as during the pandemic] can be difficult. The COVID-19 pandemic threat may be impacting market conditions. However, in most markets it is not yet clear to what extent, if any, market conditions are affected. Related, complicating factors include fluctuations in the stock market and changes in mortgage interest rates. Market analysis includes observing market reactions. This analysis becomes more complicated when market participants themselves are facing uncertainty.¹³⁵

Ultimately, after analyzing various studies, including the average sales price per SF for multi-tenant shopping centers in the Detroit submarket, Mr. Widmer concluded that market values increased from 2019 to 2020.¹³⁶ As a result, Mr. Widmer applied a 4% market adjustment, concluding to a 2021 price per SF of \$36.50 to \$46.40, with a final value of \$560,000. While it is unclear what, if any, impact COVID-19 had on property values as of December 31, 2021, the evidence relied upon by Mr. Widmer indicates that property values were not negatively impacted as of December 31, 2020, nine months after the start of the pandemic.

With this, the Tribunal is left to consider one property utilized by Mr. Collins, that being Sale #1, and three sales utilized by Mr. Widmer, those being Sales #1, #2, and #4. In that regard, Mr. Collins’ Sale #1’s building is 3,906 SF, while Mr. Widmer’s sales are 5,075, 10,925, and 38,883 SF, respectively. Given that the subject property is 13,600 SF in size, Sale #4 is three times the size of the subject property. Moreover, while Mr. Widmer considered Sale #3 to be an outlier, the same could be said of Sale #4 as its price per SF is more than double that of Sales #1 and #2. Finally, Sale #4 sold approximately 15 months after the first tax day at issue. To account for this, Mr. Widmer applied a -4.8% market condition adjustment in the 2020 tax year.¹³⁷ However,

¹³⁴ R-1 at 55.

¹³⁵ *Id.* at 32.

¹³⁶ T2 at 379.

¹³⁷ R-1 at 55.

Mr. Widmer applied a +4% market condition adjustment to his conclusions for 2020 to arrive at a value for 2021. These conclusions included consideration of Sale #4. Given this, it appears that Sale #4's adjustments for 2021 are compound. For these reasons, the Tribunal finds that Mr. Widmer's Sale #4 shall be given no weight.

Finally, both Mr. Collins' and Mr. Widmer's Sales #1 are less than half the size of the subject property. Mr. Collins Sale #1 was built in 1928, while the subject property was built around 2000. Mr. Widmer's Sale #1 was built in 2004, while Sale #2 was built in 1992. Given this, Mr. Widmer's Sales #1 and #2 are considered to be most comparable to the subject property. Of these two sales, Sale #2 sold closest to the 2020 tax day. Therefore, the Tribunal finds that Sale #2 best represents the subject property's 2020 value. Utilizing GLA,¹³⁸ at \$23.34 per SF the subject property's 2020 TCv is \$313,713, or \$313,700 rounded. For the 2021 tax year, this value is increased by 4%, as supported by Mr. Widmer's data, for a 2021 TCv of \$326,248, or \$326,200 rounded.

Income Approach

"In the income capitalization approach, the present value of the anticipated future benefits of property ownership is measured . . . There are two methods of income capitalization: (1) direct capitalization and (2) yield capitalization. In direct capitalization, the relationship between one year's income and value is reflected in either a capitalization rate or an income multiplier."¹³⁹ In this case, both appraisers developed a value for the subject property using the income approach and the direct capitalization approach. Mr. Collins gave the most weight to the income approach, while Mr. Widmer relied entirely upon this approach. As with the sales approach, the appraisers' income approach raised questions and concerns.

First, both appraisers considered the rent rolls which, according to Ms. Rice, were developed by Mr. Curis. Mr. Curis has an ownership interest in the subject property and owns and operates JMC, the subject property's management company. However, Mr. Curis did not testify. Instead, Ms. Rice, an employee of JMC, testified. Because Ms. Rice did not prepare the rent rolls, she was unable to answer many of the questions posed to her. Ms. Rice explained that some of the discrepancies, such as why the rent roll states that it was "As of 12/31/19," while three of the four "Lease Start" dates began in 2021, may have been due to software updates. Importantly, Ms. Rice could not say whether the total rent listed for 2020 was for one month or the entire year.

Other issues arose when Mr. Collins and Ms. Rice were asked to explain the differences between the rent charges on the rent rolls, and the rent listed in the leases. For example, R-4 lists the rent for 2018 and 2019 at \$2,500 per month, and \$3,250 per month for 2020. Yet, neither rent roll reflects either of these rental amounts. While not

¹³⁸ Mr. Widmer utilized GLA in this calculation, while Mr. Collins used GBA. Because both appraisers utilized GLA in their income approaches, for consistency purposes GLA will also be used in the sales comparison approach.

¹³⁹ *The Appraisal of Real Estate* at 36.

discussed, there is a discrepancy between the rent rolls utilized by the parties. Petitioner's 12/31/20 rent roll indicates that the tenant in 12320 is "not paying Due to Covid-19 & Cannot be Evicted,"¹⁴⁰ while Respondent's 12/31/20 rent roll indicates that the tenant is "paying as agreed," with no rent is listed in the "ACTUAL Paid Rent" column.¹⁴¹

However, the biggest issue involved CAM expenses. In its responses to Respondent's discovery requests, Petitioner failed to provide the leases for one of the tenants, The Tax Experts. Because Respondent did not receive a copy of this lease, Mr. Widmer assumed the unit was vacant and structured his income approach on that premise. This involved, in part, a review of the P&L statements and a determination that it was necessary to include additional revenue for "CAM recovery." As a result, much time was spent during the hearing in an attempt to determine which expenses were paid by Petitioner and which were paid by the tenants. Ms. Rice testified that for both tax years at issue, the tenants paid gross rent. However, a review of the leases indicates that the tenants pay all utility charges.¹⁴² Ms. Rice then testified that pursuant to the leases, the tenants are responsible for water charges.¹⁴³ Ms. Rice was adamant that CAM expenses were not billed to the tenants.¹⁴⁴

As Respondent's counsel argued during closing arguments, its case was negatively impacted because it did not receive copies of the leases for all tenants at the subject property. When questioned, Mr. Widmer testified that his analysis may have been different if he had known that the unit was not vacant.¹⁴⁵ While Mr. Widmer did not testify as to what would have been different, Respondent's counsel suggested that if Mr. Widmer did not change the base rent, "the only change that would be made would be the removal of the vacancy lease-up analysis, which would increase [the] value. . ."¹⁴⁶

Given the discrepancies and the unresolved questions, the Tribunal finds that the rent rolls are not entirely credible. This is particularly true for the 2021 tax year as it is not clear whether the tenant in 12320 paid the rent as agreed, or whether it failed to pay any rent for the entire year. Finally, given Ms. Rice's testimony that the tenants were not responsible for CAM expenses, there is no support for Mr. Widmer's revenue addition for CAM recovery.

Potential Gross Income

In determining PGI, both parties considered the contract rents but utilized market rents to determine an applicable rental rate. "Market rent" is defined as "the rental income a property would have commanded had it been exposed to the market prior to

¹⁴⁰ P-1 at 102.

¹⁴¹ R-1 at 108.

¹⁴² See R-2, R-4, R-6, and R-8.

¹⁴³ T3 at 622.

¹⁴⁴ *Id.* at 594-595.

¹⁴⁵ *Id.* at 539.

¹⁴⁶ *Id.* at 646.

the date of appraisal. It is indicated by the current rents that are either paid or asked for comparable space with the same treatment of expenses as of the date of value.”¹⁴⁷ “Contract rent” is defined as “the actual rental income specified in a lease. It is the rent agreed on by the landlord and the tenant and may be higher than, less than, or equal to market rent.”¹⁴⁸

Mr. Collins concluded to a market rent of \$7.95 per SF for the 2020 tax year,¹⁴⁹ and \$7.50 per SF for the 2021 tax year. While recognizing the unreliability of the rent rolls, it is noted that Mr. Collins’ \$7.95 market rent is less than the average \$10.25 per SF charged to the tenants at the subject property. In selecting the properties to include in his market rent analysis, Mr. Collins “made a diligent and thorough check of the market for consummated and asking rental rates of properties considered similar to the subject.”¹⁵⁰ However, in spite of this, Mr. Collins included only properties with ownership similar to the subject property.¹⁵¹ Given this, it is difficult not to conclude that the “market” considered by Mr. Collins was not that of an applicable Detroit sub-market, but a market of properties owned by Mr. Curis.

Mr. Widmer, on the other hand, considered leases from 13 rental units in the competitive sub-market, including four properties owned by Petitioner. According to Mr. Widmer, after adjusting for potential discounts for asking rent, the weighted average rental rate of these four properties is ±\$12.95 per SF on a modified gross rent basis, or \$2.77 per SF more than the subject property, and \$5.00 per SF more than Mr. Collins market rent. However, in his appraisal, Mr. Widmer stated that “[b]ased on the in-place base rent and market rental data, the subject’s lease rates are considered to be market supported, although at the low-end of the market range given the subject’s age and condition.”¹⁵² Mr. Widmer then concluded to a 2020 modified gross rent of ±\$9.60, not including CAM revenue, and \$9.80 for 2021. Again, it is noted that these amounts are less than the subject property’s average rent of \$10.25 per SF.

Having reviewed both appraiser’s revenue analysis, the Tribunal finds Mr. Collins’ “market” analysis less credible than that of Mr. Widmer’s. Given Mr. Widmer’s conclusion that the subject property’s lease rates are supported by the market and considering that the information provided on the rent rolls is questionable, the Tribunal finds that the most reliable rent information can be deduced from the subject property’s 2020 P&L statement. Pursuant to this statement, the subject property receives 100% of its income from rent. For the 2020 tax year, total income, or PGI, was \$137,846.07.¹⁵³ At 13,441 SF, the base rent is \$10.25.

¹⁴⁷ *The Appraisal of Real Estate* at 420.

¹⁴⁸ *Id.* at 421.

¹⁴⁹ T1 at 55-56.

¹⁵⁰ P-1 at 63.

¹⁵¹ T1 at 169-170.

¹⁵² R-1 at 63.

¹⁵³ *Id.* at 109. Recognizing that the rent rolls are questionable, it is noted that the total rent (presumably monthly) equals \$11,400, resulting in an annual rent of \$136,800, slightly less than that reported on the 2020 P&L statement.

As for the 2021 tax year, the subject property's 2021 P&L statement is problematic as rental income was reduced in 2021 to \$78,515.50¹⁵⁴ due to the pandemic and nonpayment of rent.¹⁵⁵ In other words, the subject property was not stabilized as of December 31, 2020. Because there is no evidence that the rent charged to the subject property's tenants changed from December 31, 2019, to December 31, 2020, the Tribunal finds that PGI remains the same at \$10.25 per SF for 2021. The impact of the pandemic, if any, will be accounted for under vacancy and collection loss.

Vacancy and Collection Loss

Vacancy and collection loss is an allowance for reductions in potential gross income attributable to vacancies, tenant turnover, and nonpayment of rent or other income over the projection period. This line item considers two components:

- Physical vacancy as a loss in income.
- Collection loss due to default by tenants.¹⁵⁶

“Some vacancy is usually forecast for most centers, even if none is currently being experienced, because it is expected that some vacancy and collection loss will occur over a projected ownership period.”¹⁵⁷ In this case, there were no vacancies at the subject property during the tax years at issue.¹⁵⁸ However, Petitioner reported collection loss for the 2021 tax year due to tenants defaulting on their rent.

In concluding to a vacancy and collection loss, Mr. Collins “considered average vacancies as a function of the typical occupancy length and lease-up time.”¹⁵⁹ He arrived at a 2020 vacancy and collection loss of 25% after studying vacancy rates for similar properties and referring to unnamed published studies of average vacancy rates. According to Mr. Collins, leases for properties similar to the subject property are generally written for three to five-year terms. After discussions with brokers and leasing agents, Mr. Collins determined that most space is leased within a 12-month period. Given this information, Mr. Collins concluded to an average lease period of four years, or 48 months. Assuming a 12-month vacancy and a 48-month occupancy, Mr. Collins concluded to a 25% vacancy rate.

Mr. Collins also reviewed vacancy rates published by CoStar but determined the 2.8% vacancy rate unreliable as CoStar reports “often do [not] accurately reflect the

¹⁵⁴ *Id.* at 110.

¹⁵⁵ The 2021 rent roll lists actual rent paid as \$5,100, resulting in an annual rent of \$61,200, approximately \$17,500 less than the income listed on the 2021 P&L statement.

¹⁵⁶ *The Appraisal of Real Estate* at 448.

¹⁵⁷ The Appraisal Institute, *Shopping Center Appraisal and Analysis*, at 217.

¹⁵⁸ Mr. Widmer testified that he reviewed CoStar five-year historical data for the subject property, and it appeared that the subject property did not have a vacancy during that time. See T2 at 419.

¹⁵⁹ P-1 at 72.

conditions of small, local market properties lacking national appeal.”¹⁶⁰ In addition, Mr. Collins drove the local neighborhood and based on his observations, determined that the vacancy rate was higher than that listed by CoStar. Mr. Collins also cited the inability to evict delinquent tenants during the pandemic, evidenced by four of the five tenants at the subject property. However, the Tribunal questions the impact of this inability and whether Petitioner ever intended to evict any of its tenants for nonpayment, given that one of the subject property’s leases was renewed on January 1, 2021, another was renewed on May 1, 2021, and another was offered for renewal when the lease expired on April 30, 2021.¹⁶¹

Regardless, the Tribunal finds Mr. Collins’ vacancy and collection loss is not supported by market data. Moreover, his formula is flawed in that it assumes there will always be a vacancy, and that the vacancy will last 12 months. Mr. Collins’ formula also fails to account for lease renewals. Finally, Mr. Collins reported a combined vacancy rate and the collection loss. However, Mr. Collins reported a 2020 25% vacancy rate¹⁶² and a combined vacancy and credit/collection loss of 25%, making it appear as though the credit/collection loss was 0%. The same is true for the 2021 tax year, albeit the amount increased to 35%.

On the other hand, Mr. Widmer developed separate vacancy and collection loss percentages. For his vacancy rate, Mr. Widmer “melded” market data published by CoStar¹⁶³ and an analysis of frictional vacancy. Ultimately, Mr. Widmer concluded that the information contained within his appraisal supported a conclusion that there was no impact on vacancy due to the pandemic,¹⁶⁴ and arrived at a vacancy rate of 7.5% for both tax years. The Tribunal finds that Mr. Widmer’s analysis is supported by market data and that his conclusions of vacancy are credible and reliable.

As for the collection loss, Mr. Widmer stated that “[f]or this property, there is a reduced level of credit risk with regards to market oriented tenancy, and a collection loss/slow payment factor can be reasonably estimated at 1.0%.”¹⁶⁵ Mr. Widmer applied the 1% collection loss to both tax years. However, Mr. Widmer provided no market data to support that figure. Unfortunately, as discussed, Mr. Collins did not provide a credit/collection loss separate from his vacancy loss. While both parties have indicated that a deduction for collection loss is appropriate, there is no evidence that Mr. Widmer’s collection loss was representative of what occurred in the market. Given this, the Tribunal finds that while it is appropriate to deduct for collection loss, the only figure provided is that of Mr. Widmer. Therefore, a 1% collection loss will be applied.

¹⁶⁰ *Id.* at 73.

¹⁶¹ See R-3, R-5, and R-7.

¹⁶² P-1 at 73.

¹⁶³ R-1 at 39-43.

¹⁶⁴ T2 at 419.

¹⁶⁵ R-1 at 63-64.

Operating Expenses

For the 2020 tax year, Petitioner concluded to operating expenses equaling \$44,027, while Respondent concluded to expenses of \$45,808.¹⁶⁶ For the 2021 tax year, Petitioner's expenses totaled \$45,050, while Respondent's expenses totaled \$46,785.¹⁶⁷ While some of the parties' expenses were the same or nearly the same, such as insurance, other expenses, such as CAM and management fee, varied significantly. After a review of the appraisals and the appraisers' testimony regarding the expenses, the Tribunal finds that Respondent's conclusions in this regard are more credible and reliable. Therefore, the Tribunal adopts Respondent's expenses for both tax years.

NOI

For the 2020 tax year, the NOI was \$80,252 (\$126,060 - \$45,808).

For the 2021 tax year, the NOI was \$79,275 (\$126,060 - \$46,785).

Capitalization Rate

In developing their cap rates, both appraisers utilized the Band-of-Investment Technique and the Market Extraction Technique. According to Mr. Collins, "[t]he subject is a somewhat risky investment. Because of changes in the market, competition, and other factors, income from a rental property is considered to be somewhat unstable."¹⁶⁸ In his Band-of-Investment analysis, Mr. Collins referred to rates for various investments and made generalized statements as to where he obtained data for this analysis. Using this technique, Mr. Collins concluded to a cap rate of 11.38%. Under the Market Extraction Technique, Mr. Collins considered the sale of six properties, with cap rates varying from 9.57% to 13.89%. After considering both techniques, he arrived at a cap rate of 11.38% for both tax years.¹⁶⁹

According to Mr. Widmer, "[t]he most widely accepted and perhaps most reliable method for deriving an overall rate is the market extraction process."¹⁷⁰ Using this process, Mr. Widmer extracted cap rates from a sample of shopping center sales for the period January 2018 through December 2020, resulting in cap rates from $\pm 5.5\%$ to $\pm 19.6\%$. After excluding the low and high extremes, the average cap rate was $\pm 8.5\%$. Sales of 21 properties that sold in 2020 were sampled, resulting in an average cap rate of $\pm 9.0\%$. Mr. Widmer also utilized the Band of Investment Technique, relying on data published by PwC and RealtyRates.¹⁷¹ Ultimately, Mr. Widmer concluded to a 10% cap rate for both years.¹⁷²

¹⁶⁶ *Id.* at 72.

¹⁶⁷ *Id.* at 73.

¹⁶⁸ P-1 at 78.

¹⁶⁹ *Id.* at 79.

¹⁷⁰ R-1 at 67.

¹⁷¹ T3 at 558-564.

¹⁷² R-1 at 70.

Having reviewed the data and analysis presented in the appraisals, and the appraiser's testimony, the Tribunal finds that much of Mr. Collins' analysis was not supported by market data. For example, Mr. Collins stated:

A recent survey of commercial lenders by the Appraiser, indicates that this grade of property can generally be financed with a 15 year amortization at, say, a 4.75% interest rate. Since most loan officers would finance up to 75% of the property's value, a mortgage constant of .0933 applies to 75% of the financing of this type of project.¹⁷³

Contrasting these blanket statements with the information supplied by Mr. Widmer, the Tribunal finds Mr. Widmer's information and analysis more specific and thorough, and, therefore, more credible. Given this, the Tribunal adopts Mr. Widmer's 10% cap rate for both the 2020 and the 2021 tax year.

Turning to the tax cap rate, the appraisers' cap rates differed slightly. According to Mr. Collins, the 2020 millage rate was 92.9015, resulting in a tax cap rate of 4.65%. According to Mr. Widmer, the 2020 millage rate was 93.8298, resulting in a tax cap rate of 4.69%. For the 2021 tax year, Mr. Collins reported the millage rate at 88.9250, resulting in a tax cap rate of 4.45% while Mr. Widmer reported the millage rate at 89.8137, resulting in a tax cap was 4.49%.¹⁷⁴ Unfortunately, the differences in these rates were not discussed at hearing and, as a result, the Tribunal is unable to determine which rate is correct based on the record. To resolve this issue, the Tribunal takes judicial notice of the Michigan Department of Treasury's publication of total millage rates.¹⁷⁵ Pursuant to this publication, the City of Highland Park's total 2020 millage for NonHomestead property was 92.9015; for 2021, the total millage rate was 88.9250. Thus, pursuant to this report, the millage rates listed by Mr. Collins were correct. Therefore, Mr. Collins' tax cap rates will be utilized. Given this, the 2020 overall cap rate is 14.65%, and the 2021 rate is 14.45%.

Finally, as discussed, the subject property did not experience any vacancies during the tax years at issue. However, because he did not receive the lease for The Tax Experts, Mr. Widmer assumed that one of the units was vacant. As a result, Mr. Widmer made a below the line adjustment for what he believed was the subject property's non-stabilized occupancy status. Mr. Widmer testified that had he known this unit was occupied, he would not have made this adjustment, referred to as the "Lease-up adjustment for vacancy."¹⁷⁶ The Tribunal agrees; therefore, this adjustment will not be utilized.

¹⁷³ P-1 at 76.

¹⁷⁴ *Id.* at 80 and R-1 at 66.

¹⁷⁵ Michigan Department of Treasury: [TOTAL RATES - report](#)

¹⁷⁶ T3 at 535 and R-1 at 70-73.

2020 Summary:

Revenue:

Base rent (modified gross)	\$10.25 per SF	
SF	13,441 SF	
PGI		\$137,770
Vacancy	7.5%	\$ 10,333
Collection Loss	1.0%	\$ 1,377
EGI		\$126,060
Operating Expenses:		\$ 45,808
NOI		\$ 80,252
Overall Cap Rate	14.65%	
TCV		\$547,795, or \$547,800 rounded

2021 Summary:

Revenue:

Base rent (modified gross)	\$10.25 per SF	
SF	13,441 SF	
PGI		\$137,770
Vacancy	7.5%	\$ 10,333
Collection Loss	1.0%	\$ 1,377
EGI		\$126,060
Operating Expenses:		\$ 46,785
NOI		\$ 79,275
Overall Cap Rate	14.45%	
TCV		\$548,615, or \$548,600 rounded

Reconciliation of Value

As indicated above, the Tribunal's independent determination of the subject property's TCV under the sales comparison approach was \$313,700 for 2020 and \$326,200 for 2021. Under the income approach, the Tribunal's determination of TCV was \$547,800 for 2020 and \$548,600 for 2021.

In reconciling these values, it is noted that Mr. Collins utilized the sales comparison approach and the income approach, while giving the most weight to the income approach. Mr. Widmer also utilized both approaches but gave no weight to the sales approach. The Tribunal also notes that Mr. Widmer referenced the difficulties in performing a sales comparison approach due to the lack of quality comparable sales. While Mr. Collins expressed confidence in his sales comparison approach, the only sale ultimately considered by the Tribunal was over 75 years older than the subject property and about one-third the size.

Therefore, in reconciling the conclusions of value under the sales approach and the income approach, the Tribunal finds that the preferred method of valuation in this

case is the income approach as the subject property is an income producing property. For these reasons cited throughout this decision, the Tribunal finds that the sales approach is not reliable and as such, will be given no weight in concluding to the subject property's TCV. As a result, based upon the Findings of Fact and the Conclusions of Law set forth herein, the Tribunal finds that the subject property's 2020 TCV is \$547,800, and that its 2021 TCV is \$548,600.

Finally, at the close of the hearing both parties requested an award of costs and attorney fees.¹⁷⁷ Pursuant to Tax Tribunal Rule (TTR) 217, the Tribunal "may, upon motion or its own initiative, award costs in a contested case"¹⁷⁸ The Michigan Court Rules and Administrative Procedures Act provide the Tribunal with some criteria in determining whether an award of costs is appropriate, but the Court of Appeals has held that costs are entirely within the Tribunal's discretion, and it is not limited to circumstances where the requesting party shows good cause or the action or defense was frivolous.¹⁷⁹ The Tribunal is nevertheless generally hesitant to award costs, and usually reserves such action for cases in which frivolity or other good cause exists.

In this case, Petitioner failed to articulate a reason why an award of costs and attorney fees would be appropriate. Therefore, Petitioner's request for costs and fees is denied. As for Respondent, Mr. O'Laughlin requested costs and attorney fees as a result of Petitioner's failure to provide complete responses to Respondent's discovery requests. Specifically, Petitioner failed to provide Respondent with leases for all five units, which impacted Mr. Widmer's ability to appraise the subject property. When questioned, Ms. Rice testified that she did not realize that Respondent had not provided the lease for The Tax Experts until the date of the hearing. Ms. Rice acknowledged that this was a mistake on her part; however, it was not intentional. The Tribunal finds Ms. Rice's testimony credible. While Respondent's frustration in this regard is understandable, the Tribunal is not persuaded that what occurred is anything other than an oversight. As such, and in the absence of a showing of other good cause, the Tribunal is not satisfied that Respondent's request for costs and attorney fees is warranted.

JUDGMENT

IT IS ORDERED that Petitioner's Request for Costs and Fees is DENIED.

IT IS FURTHER ORDERED that Respondent's Request for Costs and Fees is DENIED.

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

¹⁷⁷ The Tribunal notes that the hearing was held prior to the issuance of Tribunal Newsletter 2024-4, which states that a motion for costs and fees must be in writing.

¹⁷⁸ TTR 217.

¹⁷⁹ See *Aberdeen of Brighton, LLC v Brighton*, unpublished per curiam opinion of the Court of Appeals, issued October 16, 2012 (Docket No. 301826), which noted that "The term 'may' is permissive and is indicative of discretion." *Id.* citing *In re Forfeiture of Bail Bond*, 276 Mich App 482, 492 (2007).

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, 2018, through June 30, 2019, at the rate of 5.9%, (ii) after June 30, 2019, through December 31, 2019, at the rate of 6.39%, (iii) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, (iv) after June 30, 2020, through December 31, 2020, at the rate of 5.63%, (v) after December 31, 2020, through June 30, 2022, at the rate of 4.25%, (vi) after June 30, 2022, through December 31, 2022, at the rate of 4.27%, (vii) after December 31, 2022, through June 30, 2023, at the rate of 5.65%, (viii) after June 30, 2023, through December 31, 2023, at the rate of 8.25%, (ix) after December 31, 2023, through June 30, 2024, at the rate of 9.30%, (x) after June 30, 2024, through December 31, 2024, at the rate of 9.50%, (xi) after December 31, 2024, through June 30, 2025, at the rate of 9.47%, and (xii) after June 30, 2025, through December 31, 2025, at the rate of 8.66%.

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 Patricia L. Haem

Entered: May 21, 2025
plh

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