



STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

GRETCHEN WHITMER  
GOVERNOR

MARLON I. BROWN, DPA  
DIRECTOR

Eastpointe Storage Center LLC,  
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MTT Docket No. 20-003731

City of Eastpointe,  
Respondent.

Presiding Judge  
Jason C. Grinnell

**FINAL OPINION AND JUDGMENT**

INTRODUCTION

Petitioner, Eastpointe Storage Center LLC, appeals ad valorem property tax assessments levied by Respondent, City of Eastpointe, against parcel number 02-14-30-279-002 for the 2020 and 2021 tax years. A hearing was held in this matter on January 24, 2023. Roger L. Myers, attorney, appeared on behalf of Petitioner. Laura M. Hallahan and Seth A. O’Loughlin, attorneys, appeared on behalf of Respondent. Petitioner’s witnesses were Gerald T. Clark and Brandon Ellis. Respondent’s witness was John Widmer.

Based on the evidence, testimony, case file, and for the reasons outlined below, 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: 02-14-30-279-002**

Year	TCV	SEV	TV
2020	\$5,674,700	\$2,837,350	\$2,837,350
2021	\$5,770,000	\$2,885,000	\$2,877,072 <sup>1</sup>

PETITIONER’S CONTENTIONS

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

**Parcel Number: 02-14-30-279-002**

Year	TCV	SEV	TV
2020	\$3,925,000	\$1,962,500	\$1,962,500
2021	\$4,325,000	\$2,162,500	\$1,989,975

Petitioner contends that the subject property is assessed in excess of 50% of its TCV.

<sup>1</sup> The 2021 TV was calculated by multiplying the 2020 TV of \$2,837,350 by the 2021 inflation rate multiplier of 1.014. See [Bulletin 16 of 2020 - Inflation Rate Multiplier for 2021.pdf](#).

## PETITIONER'S ADMITTED EXHIBITS

P-1: Appraisal  
P-2: Purchase Agreement for Subject Property  
P-5: Temporary Certificate of Occupancy for 1<sup>st</sup> Floor Plan  
P-8: Extra Space Management Property Management Agreement  
P-9: Eastpointe Unit Mix Report December 2019  
P-14: Eastpointe Unit Mix Report December 2020  
P-15: Eastpointe Rent Roll 12/31/20  
P-17: Eastpointe Income Statement 12/30/20  
P-22: Eastpointe Floor Plans  
P-23: Eastpointe Approved Site Plan  
P-25-R: Widmer Work File (pages 71-75)

## PETITIONER'S WITNESSES

Gerald T. Clark<sup>2</sup>

At trial, Gerald Clark, the sole owner of Eastpointe Storage Center, LLC, testified concerning the purchase of the subject property and his background in the self-storage industry. Mr. Clark testified that the subject property was a former car dealership which he purchased in 2015 or 2016 for approximately \$840,000. After purchasing the property, Mr. Clark was approved to build 150,000 square feet of self-storage. Mr. Clark initially constructed only 100,000 square feet consisting of a three-story, climate controlled, drive-through self-storage facility. The newly constructed building also contains a vacant retail space which is available to rent. A certificate of temporary occupancy was issued by the City of Eastpointe for the first floor on December 9, 2019. The second and third floor occupancy permits were delayed until September 2, 2020, due to delays in the installation of elevators caused by the COVID-19 pandemic.

Mr. Clark testified that self-storage units on the first-floor command a 20 to 30 percent higher monthly rate than second floor units. Additionally, drive-through facilities and the location of the unit in relation to a door, loading dock, and elevator are important factors for setting rates. Petitioner has a contract with Extra Space Storage (Extra Storage) to manage the facility. Extra Storage is responsible for the day-to-day operation and maintenance of the facility, marketing, rental of units, and the preparation of various financial reports.

Under cross-examination by Respondent's attorney, Mr. O'Loughlin, Mr. Clark admitted that he would not have constructed a new self-storage facility unless he believed the operating revenue would exceed the cost to construct the building. Further, Mr. Clark testified that he hired Extra Storage because he believes they are experts in self-storage and the management and pricing of self-storage rental units.

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<sup>2</sup> See Transcript from January 24, 2023 hearing, pages 10 through 80 for direct examination by Mr. Myers, and pages 85 through 96 for cross-examination by Mr. O'Loughlin.

Brandon Ellis<sup>3</sup>

Mr. Ellis is a certified general real estate appraiser with a MAI designation from the Appraisal Institute. Mr. Ellis co-owns Value Trends with his father, Michael Ellis.

Under voir dire examination by Mr. O'Loughlin, Mr. Ellis admitted that he had never appraised a self-storage facility prior to this case and has been admitted as an expert before the Tribunal three times. Mr. Ellis was admitted by the Tribunal as an expert in real estate appraisal, over Mr. O'Loughlin's objection.

Mr. Ellis testified that he completed a fee simple appraisal of the subject property for tax years 2020 and 2021. Mr. Ellis personally inspected the property on June 24, 2021. Mr. Ellis considered all three approaches in his analysis. As of the 2020 tax day, the storage facility had just opened and was barely occupied. Mr. Ellis described the location of the subject property off Gratiot Avenue, a major commercial corridor in Macomb County, mainly comprised of other commercial and office spaces. Further, the subject property consists of 2.33 acres, with 313 feet on Gratiot Avenue and 481 feet on Stephens Drive, with a total of 722 storage units that vary in size. Mr. Ellis testified that the storage facility includes 2,160 square feet of unoccupied retail space noted that Petitioner sells storage boxes and rents moving trucks from the subject property.

Mr. Ellis testified the highest and best use of the property as vacant was for general commercial development and as improved was continued use as a self-storage facility. Mr. Ellis completed an income approach using the direct capitalization method. Mr. Ellis testified that he used economic market rents rather than contract rents. Mr. Ellis admitted that rental rates vary and many discounts or concessions are offered, resulting in a lower effective rental rate of approximately 20 percent. Using the in-store quoted rental rates, Mr. Ellis calculated an average per square foot rental rate of \$1.75. Mr. Ellis analyzed the rental rates for identical sized units of the ground floor compared to the second and third floor units and determined the first-floor units commanded a premium between 28 to 46 percent more. Mr. Ellis calculated a stabilized per square foot rental rate of \$1.05. Multiplying the stabilized rental rate of \$1.05 per square foot by the net rentable area attributed to the storage units of 69,184 square feet, Mr. Ellis concluded a gross annual potential market rent of \$871,718. After deducting various expenses and operating costs, Mr. Ellis concluded a total net operating income of \$529,828 for tax year 2020 and \$525,078 for tax year 2021. Mr. Ellis calculated the rent loss for tax year 2020 at \$962,049 and for tax year 2021 at \$422,457. The final valuation conclusion for Mr. Ellis' income approach was \$3,925,000 for tax year 2020 and \$4,325,000 for tax year 2021.

For the sales comparison approach, Mr. Ellis mainly relied on three sales. After making adjustments to each sales comparable, Mr. Ellis concluded a value of \$2,625,000 for tax

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<sup>3</sup> See Transcript from January 24, 2023 hearing, pages 101 through 208 for direct examination by Mr. Myers, and pages 208 through 267 for cross-examination by Mr. O'Loughlin. See Transcript from January 25, 2023 hearing, pages 3 through 171 for continued cross-examination, pages 171 through 197 for re-direct, and pages 197 through 199 for recross-examination.

year 2020 and \$3,175,000 for tax year 2021. Mr. Ellis testified that he did not rely on his sales comparison approach.

For the cost approach, Mr. Ellis valued the land using market sales and added the actual cost to construct the self-storage facility, less depreciation. Mr. Ellis concluded a land value of \$200,000. Mr. Ellis used the actual cost to build the self-storage facility from his client to arrive at a total cost of \$4,258,782. Because the facility was only .9 percent occupied as of the 2020 tax day and only 31.1 percent occupied as of the 2021 tax day, Mr. Ellis calculated the entrepreneurial profit incentive at \$122,117 for 2020 and \$377,593 for 2021. Mr. Ellis also depreciated the facility by \$130,000 for tax year 2021. Mr. Ellis concluded a total cost of \$4,806,777 for tax year 2020 and a total cost of \$4,931,949 for tax year 2021.

Mr. Ellis concluded the best indicator of value for the subject property was the income approach and concluded a TCV of \$3,925,000 for tax year 2020 and a TCV of \$4,325,000 for tax year 2021.

Under cross-examination by Mr. O'Loughlin, Mr. Ellis was presented with BS&A records for the property located at 17580 Frazho, a former K-Mart, that was purchased by U-Haul and used by Mr. Ellis as a sales comparable.

During cross-examination, Mr. Ellis admitted that all of his sales comparables were leased fee and he did not make any adjustments to his comparables for occupancy. Mr. O'Loughlin also questioned Mr. Ellis about his sales comparable 2, located at 34333 Michigan Avenue, which Mr. Ellis listed in his appraisal sold for \$2,000,000. Mr. O'Loughlin also questioned Mr. Ellis concerning the sale of the property located at 21500 Gratiot Avenue, which Mr. Ellis stated sold for \$2,500,000. However, Mr. O'Loughlin presented un rebutted evidence that 21500 Gratiot Avenue sold for \$6,783,000.

Mr. Ellis admitted that the cost approach is a relatively good method of valuing newer properties and was considered. However, Mr. Ellis admitted the support for his adjustments were not contained in the actual appraisal, but were kept in his file, which was not admitted as an exhibit. Mr. Ellis also admitted that the cost approach is not based on what a property owner actually paid to construct the property, but that it is based on what the market cost of constructing the property as of the dates of value would be. Further, Mr. Ellis admitted that he did not consider or use the Marshall Valuation Manual (Marshall Valuation) to determine whether or not the owner's costs were reflective of the market. Under further cross-examination, Mr. Ellis admitted that he erred in calculating the cost approach at \$4,806,777 and the true cost should be \$5,000,000 rounded for tax year 2020 and \$5,275,000 rounded for tax year 2021. Based on the adjusted numbers, Mr. Ellis agreed the cost per square foot was approximately \$45. Moreover, Mr. Ellis admitted that the base cost using Marshall Valuation was for high-rise mini warehouses class S, good, class D, good, and class C, good, were all higher than the base cost he used for his cost analysis.

Under further cross-examination, Mr. Ellis testified that he used the in-place rents of the subject property as of May 2021 at a 90% occupancy rate to conclude a based rental rate of \$1.05 per square foot. Mr. Ellis admitted that he did not receive a rent roll that showed a breakdown of what each individual unit was leased for and did not know what discounts were being provided. Further, the \$1.05 per square foot included a discount of somewhere between 40% and 50%. Mr. Ellis admitted he was not exactly sure when the second certificate of occupancy for the second and third floors of the facility was issued. Mr. Ellis also admitted that the actual rent charged for the second floor of facility was more than \$1 per square foot and was higher than the .79 cents per square foot he used for tax year 2021.

In closing, Mr. Ellis admitted that after adjusting his cost approach, the cost approach was substantially higher than his sales comparison and income approaches, meaning there would be no justification to construct the subject property as of the tax dates at issue in this case.

### RESPONDENT'S CONTENTIONS

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

**Parcel Number:** 02-14-30-279-002

Year	TCV	SEV	TV
2020	\$7,087,400	\$3,543,700	\$3,543,700
2021	\$7,388,400	\$3,694,200	\$3,593,311

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

**Parcel Number:** 02-14-30-279-002

Year	TCV	SEV	TV
2020	\$6,325,000	\$3,162,500	\$3,162,500
2021	\$6,975,000	\$3,487,500	\$3,206,775

Respondent contends that the subject property is assessed in excess of 50% of its TCV, but not to the extent Petitioner contends.

### RESPONDENT'S ADMITTED EXHIBITS

R-1: Appraisal

R-3-R Property Details-17580 Frazho (Former Kmart)

R-4-R: Property Details-34333 Michigan Avenue (Storage Sense) (Sale 1)

R-5-R: Property Details-21500 Gratiot Avenue (E-Z Self Storage) (Sale 2)

R-6-R: Ellis MVS Tables (December 2018)

## RESPONDENT'S WITNESS

### John Widmer<sup>4</sup>

At hearing, Respondent's appraiser, John Widmer, that he is a certified real estate appraiser with an MAI designation, and estimates he prepares 85 to 100 appraisals per year. Mr. Widmer was admitted as an expert by the Tribunal over 10 times in the course of the last two years and has completed more than 10 appraisals involving self-storage facilities. Mr. Widmer was admitted as an expert, without objection, in the field of commercial real estate appraisal.

Mr. Widmer prepared a fee simple interest appraisal of the subject property using all three approaches to value, giving most weight to his cost and income approaches. Mr. Widmer concluded the highest and best use of the subject property as vacant was retail commercial development and as improved, continued use as a self-storage facility.

Mr. Widmer's sales comparison approach consisted of three sales. Sale one was constructed in 2005 as a three-story climate controlled self-storage facility with 92,610 square feet, which sold for \$2,500,000 in October 2017 or \$26.99 per square foot. Sale two is also a three-story facility constructed in 2005, with 97,300 square feet, drive-up availability, that sold in April 2019 for \$9,078,000 or \$93.29 per square foot. Sale three consists of five separate, one-story buildings with a mix of self-storage and warehouse space, constructed in 1988, that sold in April 2019 for \$2,900,000 or \$58.84 per square foot. After adjusting each sale, Mr. Widmer concluded a range per square foot between \$33 and \$110. Given the disparity, Mr. Widmer concluded the sales approach was not the most reliable indicator of value in this case.

Next, Mr. Widmer completed a cost approach. Mr. Widmer utilized four land sales, one of which was the subject property. Mr. Widmer adjusted each land comparable sale upward by 3.5% per year based on market evidence and made other relevant adjustments to conclude a range between \$5.40 and \$9.90 per square foot. Mr. Widmer gave most weight to land sale one, the subject property, and land sale two, concluding a price per square foot for the land of \$9.75 or \$990,000 for tax year 2020. Mr. Widmer adjusted upward 3.5% to conclude a price per square foot of \$10.05 or \$1,020,000 for tax year 2021.

Next, Mr. Widmer used Marshall Swift to calculate the replacement cost of the building. Mr. Widmer calculated the replacement cost selecting high-rise mini warehouses, class C, at a cost of \$49.75 per square foot. After adding the HVAC modifier, fire suppression costs, and local cost multipliers of .97 for tax year 2020 and 1.11 for tax year 2021, Mr. Widmer concluded a replacement cost new of \$5,983,678 for the building. Mr. Widmer

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<sup>4</sup> See Transcript from January 25, 2023 hearing, pages 203 through 252 for direct examination by Ms. Hallahan. See Transcript for January 26, 2023, pages 3 through 90 for continued direct examination and pages 90 through 186 for cross examination by Mr. Meyers. See Transcript from January 27, 2023 hearing, pages 3 through 34 for continued cross-examination, pages 34 through 42 for redirect examination, pages 42 through 44 for recross examination, and page 45 for further redirect examination.

noted the difference between Petitioner's cost approach and his was approximately 50%. Mr. Widmer ultimately relied on the actual construction costs Petitioner paid to construct the building of \$4,010,000 plus the land value of \$990,000 for a total replace cost new of \$5,000,000 for tax year 2020. For tax year 2021, Mr. Widmer applied a 3% cost increase, depreciated the building by 1.75% or \$72,282, and added the land value of \$1,020,000 to conclude a total value of \$5,080,000.

Lastly, Mr. Widmer completed an income approach using the direct capitalization method. For the income approach, Mr. Widmer considered both the in-place rents and market rents. Mr. Widmer calculated the gross building area of the subject property at 105,354 square feet using the revised assessment drawings. Mr. Widmer describes the structure with the exception of the retail and accessory office space, as a mix of 15 different unit types, built out of steel storage containers with roll-up doors. The subject property's rental rate per square foot was \$1.54 while the market comparables were \$1.47 per square foot. Mr. Widmer considered both and concluded the per square foot market rental rate for the subject property was \$1.50. Mr. Widmer estimated a market rental rate per square foot of \$15.50 for the 2,500 square foot retail space at the subject property. Next, Mr. Widmer utilized a 90% stabilization occupancy rate and a 3.85% rent reduction for rental specials/discounts for the self-storage portion of the building. Mr. Widmer concluded a gross leasing area for the self-storage portion of the building at 70,150 square feet and a stabilized gross leasing area of 68,857 square feet. Comparing local vacancy rates for the retail portion of the building, Mr. Widmer estimated a 5% vacancy rate. Mr. Widmer went on to explain how he estimated the expenses for the subject property at \$312,416 for tax year 2020 and \$318,646 for tax year 2021, both of which were in-line with Petitioner's estimated expenses. Mr. Widmer used a 8.25% cap rate for tax year 2020. Later in the hearing, Mr. Widmer admitted that he made an error on page 96 of his appraisal, stating the stabilized gross rental area of 68,857 square feet, should really be 63,135, less the 1,796 square feet already occupied equals 61,339 square feet.<sup>5</sup> Using the corrected numbers, Mr. Widmer's average net present value changes from \$1,070,000 rounded, to \$1,050,000 rounded for tax year 2020 and from \$790,000 rounded to \$770,000 rounded for tax year 2021. Mr. Widmer testified the overall change would increase his value conclusion for both tax years by \$20,000.

Next, Mr. Widmer considered the value of the presently vacant portion of the subject property which is referenced as phase two of Petitioner's development project. Mr. Widmer described surplus land as land that goes along with the larger parcel and its highest and best use determination. Specifically, in this case, Mr. Widmer contends the surplus land has value since it contributes to the potential expansion of the newly constructed storage facility. Mr. Widmer testified that he determined the surplus land was 31,000 square feet. After applying a 50% discount to the original \$9.75 per square foot land value, Mr. Widmer concluded a value for the surplus land of \$150,000 for tax year 2020 and \$160,000 for tax year 2021.

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<sup>5</sup> 70,150 square feet at 90% stabilized occupancy is 63,135 square feet, less 1,795 square feet that is already occupied is 61,339 square feet

For his income approach, Mr. Widmer concluded a rounded TCV of \$6,325,000 for the 2020 tax year and a rounded TCV of \$6,975,000 for the 2021 tax year.

After analyzing all three approaches, Mr. Widmer found only the income approach reliable to conclude a TCV of \$6,325,000 for tax year 2020 and a TCV of \$6,975,000 for tax year 2021.

Under cross-examination by Mr. Myers, Mr. Widmer admitted that his appraisal did not include any information regarding the comparable properties he used to calculate his achievable market rent. Regarding the sale of the subject property in 2016, Mr. Widmer testified that he believed the existing improvements, consisting of a former auto dealership, did not contribute to the utility or value of the property at the time of purchase, and therefore he considered the sale of the subject property as a vacant land sale. Under cross-examination concerning market rent rates, Mr. Widmer testified that actual rental rates for self-storage facilities are highly protected. In this case, Mr. Widmer compared other quotes from self-storage facilities in the area with the quotes for the subject property to estimate what is achievable for the subject property. Mr. Widmer also admitted that quoted rates change frequently and often depend on the facts and circumstances of the particular storage facility. Further, Mr. Widmer confirmed that the comparable market rents he used were from his review of internet pricing for each property, some of which included specials and others that did not.

#### FINDINGS OF FACT

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

1. The subject property is located at 24200 Gratiot Avenue in Macomb County.
2. Petitioner purchased the subject property for \$840,000 on September 22, 2016. At the time of purchase, there was an existing building formerly used as an auto dealership, which was later demolished.
3. Respondent assessed the subject property a TCV of \$7,087,400 and TV of \$3,543,700 for tax year 2020 and a TCV of \$7,388,400 and TV of \$3,593,311 for tax year 2021.
4. The subject property is approximately 2.3 acres in size. The site is irregular in shape, with 313 feet of frontage along Gratiot Avenue, 481 feet of frontage along Stephens Drive, and 220 feet of frontage along Melrose Avenue.
5. The subject property is improved with a climate-controlled, three-story self-storage facility with 105,354 SF gross building area (GBA).
6. The gross leasable area (GLA) of the subject building is 72,650 SF. The GLA for the self-storage is 70,150 SF, consisting of 711 rental units, and the GLA for the retail space is 2,500 SF.
7. The highest and best use of the subject property as improved is a self-storage facility.

8. The subject retail space was unfinished for both of the tax years at issue.
9. The actual cost to construct the subject improvements was approximately \$4,010,000.
10. Mr. Widmer used the Marshall-Swift Valuation Manual (MSV) as a test against Petitioner's actual cost to construct the building.
11. The cost to demolish the prior improvements on the subject property was \$58,663.
12. As of the 2020 tax day, only 2.6% of self-storage facility portion of the building was leased.
13. The subject property sells moving boxes and rents moving trucks.
14. Petitioner's appraiser, Brandon Ellis, had not appraised a self-storage facility prior to appraising the subject property.
15. Mr. Widmer did not include the data for any of the comparable properties he used to calculate his achievable market rent.
16. The site plans for the subject property and the subject property's rent rolls are inconsistent as to the size and total number of storage units.
17. Self-storage facility rates fluctuate based on supply and demand, advertised discounts, and facts of the specific facility.
18. Using MSV, Mr. Widmer concluded a replacement cost for the subject's building of \$5,983,678.
19. Mr. Widmer reconciled his cost approach using the MSV with Petitioner's actual costs, to conclude a TCV for the self-storage facility of \$5,000,000 for the 2020 tax year.
20. Mr. Ellis did not provide evidence to support the rental comparables he used in his appraisal.
21. Mr. Widmer could not identify the documents he used to calculate the street rate he used in his income analysis.
22. Mr. Widmer made an upward market adjustment rate of 3% from tax year 2020 to 2021.
23. Mr. Ellis utilized a cost multiplier of 1.032 to adjust costs from tax year 2020 to 2021.
24. The subject property's historical expenses and income were not established as of the tax days at issue given the subject property was newly constructed.
25. The income approach is speculative and not reliable, given the lack of historical income and expense data for the subject property and the lack of comparable properties similar to the subject property.
26. The sales comparison approach is not reliable in this case, because there were no recent sales of similarly built properties as the subject.

## CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its TCV.<sup>6</sup> TCV is defined as “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.”<sup>7</sup> The Michigan Supreme Court has held that “[t]he concepts of [TCV] and ‘fair market value’ . . . are synonymous.”<sup>8</sup>

The Tribunal is charged with finding a property’s TCV to determine its lawful assessment.<sup>9</sup> Determination of the lawful assessment will, in turn, facilitate calculation of the property’s TV as provided by MCL 211.27a. A proceeding before the Tax Tribunal is original, independent, and de novo.<sup>10</sup>

The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”<sup>11</sup> “Competent evidence” has been defined as “that which the very nature of the thing to be proven requires . . . .”<sup>12</sup> “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”<sup>13</sup>

Petitioner “has the burden of proof in establishing the [TCV] of the property.”<sup>14</sup> “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.”<sup>15</sup> 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.”<sup>16</sup>

TCV is traditionally determined using one of three widely accepted appraisal methods: cost, income, and market.<sup>17</sup> “Variations of these approaches and entirely new methods may be useful if found to be accurate and reasonably related to the fair-market value of

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<sup>6</sup> See Const 1963, art 9, sec 3 and MCL 211.27a.

<sup>7</sup> MCL 211.27(1).

<sup>8</sup> *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

<sup>9</sup> *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

<sup>10</sup> MCL 205.735a(2).

<sup>11</sup> *Dow Chemical Co v Dep’t of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

<sup>12</sup> *Goff v Bil-Mar Foods, Inc (After Remand)*, 454 Mich 507, 514 n 5; 563 NW2d 214 (1997), overruled on other grounds in *Mudel v Great Atl & Pac Tea Co*, 462 Mich 691; 614 NW2d 607 (2000), quoting Black’s Law Dictionary (6th ed). See also *Moore v Prestige Painting*, 277 Mich App 437; 745 NW2d 816 (2007).

<sup>13</sup> *Jones & Laughlin Steel Corp*, *supra* at 352-353.

<sup>14</sup> MCL 205.737(3).

<sup>15</sup> *Jones & Laughlin*, 193 Mich App at 354–55; 483 NW2d 416, 420 (1992).

<sup>16</sup> MCL 205.737(3).

<sup>17</sup> *Meadowlanes Ltd Dividend Housing Ass’n v City of Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

the subject property.”<sup>18</sup> “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”<sup>19</sup>

The Tribunal is not bound to accept either of the parties' theories of valuation.<sup>20</sup> It 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.<sup>21</sup> 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.”<sup>22</sup> Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.<sup>23</sup>

### Highest and Best Use

A valuation analysis typically begins with determining the subject property's highest and best use, which is the “reasonably probable use of property that results in the highest value.”<sup>24</sup> In this case, both experts concluded the highest and best use as improved was consistent with the existing use, as a self-storage facility. The Tribunal agrees that the highest and best use as of the subject property as improved, is a self-storage facility.

### Sales Comparison Approach

The sales comparison approach, or market approach, assumes, among other things, “that the value of property tends to be set by the cost of acquiring a substitute or alternative property of similar utility and desirability within a reasonable amount of time.”<sup>25</sup> Application of the sales comparison approach requires analysis of recent sales of other similar properties to determine the comparability of those properties to the subject property, and the adjustment of their sale prices as necessary for such features as physical characteristics, size, location, and condition to make those properties comparable to the subject property.<sup>26</sup>

As noted by the Michigan Court of Appeals, “because MCL 211.27(1) requires that TCV be based upon the ‘the usual selling price . . . at the time of assessment,’ the interest to be valued [is] the fee simple interest, which is the value of the property when sold unencumbered, as opposed to the leased fee interest, which is the value of the property

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<sup>18</sup> *Id.*

<sup>19</sup> *Jones & Laughlin Steel Corp, supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

<sup>20</sup> *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

<sup>21</sup> *Antisdale, supra* at 277.

<sup>22</sup> *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

<sup>23</sup> See *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

<sup>24</sup> Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 15<sup>th</sup> ed, 2020, at 306).

<sup>25</sup> *Id.* at 352.

<sup>26</sup> *Id.* at 353, 362-365.

sold with a lease in place.”<sup>27</sup> The Court further noted that “because a sale of the fee simple interest in a property means the property is sold without a lease in place, it is also sold without a tenant in place—i.e., unoccupied.”<sup>28</sup>

Although Mr. Ellis testified that he valued the fee simple interest, his appraisal indicates that he valued the “[f]ee [s]imple ownership interest taking into account current occupancy at market rent, which in this instance is the same as a [l]eased [f]ee ownership *taking into account current occupancy* at market rent . . . .”<sup>29</sup> [Emphasis added.] The appraisal further states, “as a point of clarification,” that “the subject has been appraised on a fee simple basis to reflect market rents *taking into account existing occupancy* as of the dates of valuation.”<sup>30</sup> [Emphasis added.]

At hearing, Respondent’s counsel correctly noted that if the property is considered subject to existing leases, it cannot be leased or occupied, which is in direct opposition to the definition of fee simple, “i.e., absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.”<sup>31</sup> The complete bundle of rights attributed to a fee simple estate include the right to sell, transfer, lease, mortgage, and give away an interest, as well as the right to occupy the property.<sup>32</sup> Moreover, by definition, “a fee simple estate includes the full ‘bundle of rights’ with *no exceptions* other than the four specified governmental powers.”<sup>33</sup> [Emphasis added.]

Given the above, the Tribunal finds that Mr. Ellis valued the leased fee interest and not the fee simple interest in the subject property, and despite his attempts to render the terms synonymous, they are in fact fundamentally different.

Although both appraisers considered and submitted a sales comparison approach in their respective appraisals, both appraisers agreed it was difficult to find a truly comparable sale of a newly constructed self-storage facility in the general vicinity of where the subject is located. Simply put, the use of sales involving older properties to value the subject that was brand new as of the first tax date is not a valid methodology. Moreover, neither appraiser gave any weight to their respective sales comparison approach. In this case, the Tribunal acknowledges, as did the parties, that good sales comparables were difficult to find given the subject property was newly constructed and the minimal number of comparable sales in the area for the tax years at issue. Due to

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<sup>27</sup> *Lowe’s Home Centers, Inc. v. Twp. of Marquette*, No. 314111, 2014 WL 1616411, at \*10 (Mich. Ct. App. Apr. 22, 2014) (footnotes omitted). See also *Menard, Inc. v. City of Escanaba*, No. 354900, 2022 WL 413892, at \*1 (Mich. Ct. App. Feb. 10, 2022)

<sup>28</sup> *Lowe’s Home Centers, Inc. v. Twp. of Marquette*, No. 314111, 2014 WL 1616411, at \*10 (Mich. Ct. App. Apr. 22, 2014). See also *Menard, Inc. v. City of Escanaba*, No. 354900, 2022 WL 413892, at \*1 (Mich. Ct. App. Feb. 10, 2022)

<sup>29</sup> Petitioner’s appraisal, page 9.

<sup>30</sup> *Id.*

<sup>31</sup> *Appraisal of Real Estate*, page 60.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

the scarcity of comparable sales, the Tribunal finds that the sales comparison approach is not well supported in this case and is given no consideration.

### Cost Approach

The cost approach begins with the “reproduction or replacement cost of the improvements [on the land] developed by comparison with the cost of new improvements, based on current prices of labor and materials for construction of similar improvements.”<sup>34</sup> The cost approach “is particularly useful in valuing new or nearly new improvements and properties that are not frequently exchanged in the market.” Further, it is more useful when “a lack of market activity limits the usefulness of the sales comparison approach” and it is “especially persuasive when land value is well supported, and the improvements are new or suffer only minor depreciation . . . .”

In this case, both appraisers utilized the cost approach and agreed that the cost approach is most relevant to new properties. Moreover, both appraisers agree that the valuation of the property assumes a rational market participant and that under the principal of substitution, a rational market participant would not pay more to purchase or lease a property than the cost to construct a property that provides the same utility.

The subject property sold in September 2016 for \$840,000. At the time it was improved with buildings used for a former car dealership. Those buildings were demolished because, as testified to by Petitioner’s owner Gerald Clark, the best use of the property was for redevelopment. Meaning that the value of the land as vacant exceeded the acquisition price plus the cost of demolition. First, the appraisers set out to calculate the subject property’s land value. Mr. Ellis concluded to a land value of \$200,000 as of each tax date and Mr. Widmer concluded to a land value of \$990,000 and \$1,020,000 and separately accounted for the value of the excess land at the back of the property. This was something Mr. Ellis did not account for or even consider. The difference between the land values lies in the sales utilized by the appraisers. While there is one sale in common, that sale is an outlier as evidenced by the sale of the subject itself and the other comparables actually considered.

### Land Value

For the land value, Mr. Ellis concluded a TCV of \$200,000 for both tax years, while Mr. Widmer estimated the TCV of the land to be \$990,000 for tax year 2020 and \$1,020,000 for tax year 2021.

#### a. Petitioner’s Land Value

Mr. Ellis’ analysis contains a number of significant defects and deficiencies, including reliance on several comparables (comparables 1, 3, and 4) that are all less than an acre in size. Mr. Ellis acknowledged at the hearing that those three properties could not hold

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<sup>34</sup> *Id.*

the subject improvements,<sup>35</sup> and it is unknown whether they were adjusted for the difference in size because his appraisal fails to identify not only which comparables received adjustments, but also the percentage or dollar amount of the adjustments that were made.<sup>36</sup> Mr. Ellis' appraisal also fails to identify the adjusted sale price of each comparable—only a range is provided, and the indicated range of values actually increased after adjustments.<sup>37</sup> This increase in range suggests an error in either the selection of the comparables, the adjustments that were made, or both. Given that the Tribunal is unable to review and determine the appropriateness of Mr. Ellis' adjustments, or lack thereof, it cannot conclude that the adjusted sales prices are accurate or that they provide reliable indications of value.

Mr. Ellis' land comparable 1 sold in May 2012, and is seven and eight years removed from the valuation dates relevant to this appeal.<sup>38</sup> His appraisal acknowledges that this property sold during a period with a highly inactive market and depressed values, yet no adjustments were made for changes in market conditions.<sup>39</sup> The appraisal states that “[w]hile the regional market has improved, there does not appear to have been a notable change in land values in the subject’s location. Because the land sales did not evidence a change in land values over the period they transpired, no adjustments have been made.”<sup>40</sup> Even ignoring the limited data selection upon which this determination was made, the unadjusted sales prices of the comparables seem to contradict it, because with the exception of comparable 4, which was on the market for nine years prior to sale, they reflect a general upward trend in values, particularly when the principle of diminishing returns (i.e., the theory that smaller parcels sell for a higher price per unit) is considered.<sup>41</sup> Moreover, Mr. Widmer concluded that a market adjustment of 3.5% per annum was warranted based on a sampling of all recorded retail properties under 10,000 SF in the Detroit sub-market between 2010 and 2019.<sup>42</sup> Given this, and the fact that comparable 5, which sold in March 2018, is the most recent sale included in the analysis, the Tribunal finds that Mr. Ellis' failure to adjust for this element of comparison further discredits his land value conclusion.

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<sup>35</sup> TR, Vol 2, p. 28.

<sup>36</sup> The appraisal indicates that comparables 2 and 3 were adjusted upward for functional utility but doesn't specify the amount of the adjustments.

<sup>37</sup> The sales have unadjusted prices ranging between \$1.50/SF and \$3.21/SF, and adjusted prices ranging between \$1.27/SF to \$3.21/SF.

<sup>38</sup> This comparable was also marketed as four individual parcels prior to sale, and Mr. Ellis testified that he didn't know whether the property had been split prior to sale. TR, Vol 2, p. 26.

<sup>39</sup> P-1, Petitioner's appraisal, p. 117.

<sup>40</sup> *Id.*

<sup>41</sup> “The law of diminishing returns holds that increments in the agents of production added to a parcel of property produce greater net income up to a certain point. At this point—the point of decreasing or diminishing returns—any additional expenditures will not produce a return commensurate with the additional investment. When the point of decreasing returns is reached, further increments in the agents of production will cause productivity to decline proportionally.” Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 15<sup>th</sup> ed. 2020) p. 26. The Tribunal is unable to determine whether the adjusted prices reflect the same upward trend since individual adjustments and prices were not identified in the appraisal.

<sup>42</sup> R-1, p. 63-64.

Also problematic is the fact that Mr. Ellis' comparables 3 and 5 are both zoned and improved for use as parking lots. Given that these properties have a different highest and best use than the subject, their comparability is questionable, particularly in the absence of appropriate adjustments. Although Mr. Widmer also used Petitioner's comparable 5 in his analysis, he applied a 37% adjustment for expenditures after sale for the cost of clearing the existing 13,000 SF building slab and 29,000 SF parking lot from the site.<sup>43</sup> Mr. Ellis could not recall what specific adjustments were made to this comparable, but his appraisal indicates that the comparables were only adjusted for location, site size, and functional utility. Given the above, it is obvious that Mr. Ellis did not account for this factor in his analysis of comparables 3 and 5.

Finally, Mr. Ellis did not give any weight to the sale of the subject property, which Petitioner purchased for \$840,000 in September 2016. He testified that he did not rely on the sale because Petitioner intended to use the improvements (a former car dealership) that were on the property at the time of purchase, so Petitioner hadn't acquired it as "vacant" land.<sup>44</sup> Mr. Ellis agreed, however, that a rational market participant would only demolish existing improvements if the value of the vacant land exceeded the value of the land with the existing improvements on them to that purchaser.<sup>45</sup> He also agreed that if his conclusion of value under the cost approach is correct, when Petitioner purchased the property for \$840,000, the land was only worth \$200,000, which would make the improvements worth \$640,000, more than three times the land.<sup>46</sup> Mr. Ellis' comparable 2, which was also improved at the time of sale, further contradicts his omission of the subject sale in the analysis, given that the purchaser of that property similarly failed to demolish the improvements until two years after the date of purchase.

#### b. Respondent's Land Value

Mr. Widmer testified that the sale of the subject was properly considered a land sale, with no value being attributed to the improvements, because the improvements were ultimately demolished:

Because the purchaser ultimately demolished the buildings and redeveloped the site. And that's based upon judgment that I make when looking at -- I think this is on my -- in my testimony previously, most acquisitions for new development are improved site -- improved sites. There's no alternative vacant land available. And I look at that as the

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<sup>43</sup> "For Sale No. 3, the previous improvements at the site were destroyed by a fire, and vertical improvements were demolished. However, the building slab and asphalt parking remained as of the date of sale. As such, a cost to clear the site and ready for development has been estimated using Marshall Valuation Service (MVS) as a guide. The building slab is estimated to contain ±13,000 square feet, and will be cleared at an average MVS unit rate of ±\$5.71 per square foot. The asphalt parking is estimated to comprise a total of ± 29,000 square feet, and will be cleared at an average MVS unit rate of ±\$0.65 per square foot." R-1, p. 62.

<sup>44</sup> TR, Vol. 2, p. 22.

<sup>45</sup> TR, Vol. 2, p. 24.

<sup>46</sup> TR, Vol. 2, p. 32.

acquisition of land with buildings that offer very limited utility as they exist. And to me it's the highest and best use situation for that parcel.<sup>47</sup>

Mr. Widmer testified that the purchaser's actual intent at the time of sale is irrelevant:

The judgment that I make is from reviewing a number of vacant land sales wherein someone may – the purchaser may have envisioned utilizing some of the structure or a new structure. And more times than not, even though they may have envisioned that, the improvements do not contribute utility and do not contribute value. So I deemed that it's appropriate to look at that as a vacant land sale.<sup>48</sup>

He further explained:

We have to look at these deals. Because like I said before, there's more acquisitions of sites where improvements were demolished. You would need to see exactly how – whether it's going to be a foundation and exterior wall, how that's adaptable for the highest and best use of the property. And it wasn't adaptable in my opinion because they weren't maintained. So it doesn't have any bearing on my conclusion or my judgment. And I have not seen how they were going to make it adaptable for self-storage.<sup>49</sup>

Based on Mr. Widmer's testimony and the record evidence, the Tribunal finds that Mr. Widmer's land analysis is more reliable and provides the best evidence of the value for the land in this case. Mr. Widmer ultimately concluded to a land value of \$9.75/SF for the 2020 tax year and \$10.05/SF for the 2021 tax year based on the four included comparables, including the sale of the subject. After adjusting for differences between the properties, the comparables had values ranging between \$5.40/SF and \$9.90/SF. Mr. Widmer concluded that comparable 3, which had gross adjustments in the amount of 68.5%, was an outlier. Mr. Widmer determined comparable 3 was representative of a "floor" for achievable land pricing for commercial property in Macomb County. Moreover, Mr. Widmer found that the best indication of unit pricing was represented by the sale of the subject, corroborated by the next best comparable, comparable 2. The Tribunal finds that Mr. Widmer's weighting is appropriate and supports the indicated value conclusion based on the market evidence.

### c. Improvement Cost

Both appraisers used the cost approach in this case, and after correcting various errors in Mr. Ellis' analysis,<sup>50</sup> the resulting values are identical for tax year 2020, with both

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<sup>47</sup> TR, Vol 3, p. 115-116.

<sup>48</sup> TR, Vol 3, p. 116-117. See also TR, Vol 3, p. 122 ("As to the highest and best [use] conclusion I developed, yes, it's irrelevant.")

<sup>49</sup> TR, Vol 3, p. 121-122.

<sup>50</sup> See TR, Vol 2, p. 61-65. Mr. Ellis' original value indications under the cost approach were \$4,800,000 for tax year 2020 and \$4,925,000 for tax year 2021.

appraisers concluding to a TCV of \$5,000,000 for that year. For tax year 2021, the indicated values are also fairly close in range, with Mr. Ellis concluding to a corrected TCV of \$5,275,000, and Mr. Widmer concluding to a TCV of \$5,080,000. As outlined above, the major difference in the parties' respective TCV lies in the land value, considering both appraisers relied on the actual costs incurred by Petitioner to construct the subject improvements. However, there are slight variations in their respective cost calculations since the appraisers agree that the actual base cost of construction was \$4,068,782, inclusive of the \$58,663 cost to demolish the old improvements.

The cost approach is most applicable to newly constructed properties like the subject:

Because cost and market value are usually more closely related when improvements are new, the cost approach is more important in estimating the market value of new or relatively new construction. The approach is especially persuasive when land value is well supported and the improvements are new or suffer only minor depreciation and, therefore, approximate the ideal improvement that is the highest and best use of the land as though vacant.<sup>51</sup>

Both appraisers ultimately relied on actual construction costs in calculating the cost of the subject improvements. Mr. Widmer also prepared a cost analysis using MVS but he did not give the MVS valuation any weight in his final reconciliation of value. Instead, he found that the actual cost of construction was more applicable, notwithstanding the 37% variance between the actual costs and Mr. Widmer's MVS calculations.<sup>52</sup> The Tribunal agrees.

Although Respondent's counsel suggested that reliance on actual costs is inappropriate, the opinion of its own appraiser establishes otherwise. Upon inquiry as to the reliability of the cost approach, and whether the differential between actual and MVS cost influenced his decision regarding this approach, Mr. Widmer testified as follows:

The actual cost was measurably lower than the Marshall Valuation cost. But what you look at with that compared to an income approach value and the risk perceived based on that investment, you have a 27 percent -- using actual costs, there's a 27 percent overage factor or profit factor as of 12-31-19. There's a 37 percent profit factor as of 12-31-20. So essentially you look at that and that does support feasibility based on actual costs. And even when you consider a cost using market -- or Marshall Valuation as a guide, there's still going to be sufficient profit compared to the income approach in that consideration. So yes, I did consider the fact. I used actual costs. I also considered the fact that the cost may elevate for some components which would still maintain feasibility. The difference between the income value and the cost value.<sup>53</sup>

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<sup>51</sup> *The Appraisal of Real Estate*, p. 530.

<sup>52</sup> Respondent's appraisal, R-1, p. 69.

<sup>53</sup> TR, Vol 3, p. 77-79.

Similarly, Respondent's counsel took issue with the change orders listed in Petitioner's sworn construction statements, but Respondent's expert did not. Mr. Widmer testified that the cost differential indicated by MVS for HVAC compared to that identified in the sworn statement indicates that it may be less than market, but only as a specific line item.<sup>54</sup> Further, while Mr. Widmer acknowledged having little detail as to what was included in the listed change orders, which collectively amounted to approximately \$400,000, he found the subject's actual costs to be reliable and the best evidence of costs, as did Mr. Ellis.

As for the effective cost of construction, Mr. Widmer deducted demolition costs from Petitioner's actual costs, and he did not estimate any indirect costs or entrepreneurial incentive.<sup>55</sup> Mr. Ellis, on the other hand, did not deduct demolition costs, and he included both indirect costs and entrepreneurial incentive in his cost calculations. Mr. Ellis also included an additional \$190,000, which he attributed to environmental issues that were not included in the sworn construction statements.<sup>56</sup> This brought the total base cost of construction to \$4,258,782.

The Tribunal finds that including the demolition and environmental costs in the cost calculation is appropriate because they are part of the base cost of constructing the subject improvements. Mr. Widmer did not identify any basis, reasonable or otherwise, for his exclusion of demolition costs. The Tribunal also finds that inclusion of entrepreneurial incentive is appropriate, as "no prudent real estate developer will undertake to construct and market a property without anticipating a profit in addition to the return of the equity investment."<sup>57</sup>

However, the Tribunal is not persuaded by Mr. Ellis' incentive calculations. While "the construction cost of components or of an entire building normally includes the direct costs of labor and materials as well as indirect costs such as administrative fees, professional fees, and financing costs,"<sup>58</sup> the Tribunal is not persuaded that additional consideration for indirect costs is warranted in this case given that said costs would be included in the actual costs being utilized.

With respect to entrepreneurial incentive, Mr. Ellis factored the existence of a newly constructed U-Haul facility in Roseville into his calculations, noting that there was no knowledge of this competing facility when development of the subject was planned and initiated. These types of considerations are not warranted because entrepreneurial incentive "is a forecast of the amount the developer expects to receive."<sup>59</sup> Notably, "[t]his

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<sup>54</sup> TR, Vol 3, p. 15.

<sup>55</sup> Mr. Widmer did include indirect costs in his MVS cost analysis.

<sup>56</sup> Respondent's appraisal, R-1, p. 123.

<sup>57</sup> *The Appraisal of Real Estate*, p.19. See Also TR, Vol 2, p. 168 ("I think it's something you have to account for if – if that's what's occurring in the market." *Id.*)

<sup>58</sup> *The Appraisal of Real Estate*, p. 21. See also p. 29, which states: "In the cost approach, value is indicated by the current cost of reproducing or replacing the improvements (including indirect costs and entrepreneurial incentive), less depreciation, plus land value."

<sup>59</sup> *The Appraisal of Real Estate*, p. 19.

forecast is developed *before* construction is complete.”<sup>60</sup> Entrepreneurial profit, on the other hand, “is the *actual* amount received after the property is complete.”<sup>61</sup> Consequently, Mr. Ellis’ calculations reflect entrepreneurial *profit* rather than entrepreneurial *incentive*. Mr. Ellis also reduced the amount applied for tax year 2020 from 7.5% to 2.5% relying on the fact that the subject only had a partial occupancy permit as of the relevant valuation date, and occupancy was limited at that time. Again, the Tribunal finds that this consideration is not warranted. Giving appropriate weight and consideration to Mr. Ellis’ analysis in light of the foregoing, the Tribunal finds that an entrepreneurial incentive estimate of 10% for both tax years is more appropriate and is supported by the market evidence.

The next item of contention is the appraisers’ cost calculations related to inflation for tax year 2021. Mr. Widmer utilized an inflation adjustment of 103%, while Mr. Ellis utilized a cost multiplier of 1.032. In the end, the calculations result in similar values, but given Mr. Widmer did not provide any explanation as to the basis of his inflation adjustment, the Tribunal finds that use of Mr. Ellis’ cost multiplier is more appropriate. Mr. Ellis’ appraisal notes in that regard that “a current cost multiplier is used to bring the estimated costs up to the date of valuation. Because costs change over time due to inflation, changes in supply/demand, etc., they must be adjusted to reflect the appropriate cost as of the dates of valuation.”<sup>62</sup> Mr. Ellis further explained:

The costs from which this cost estimate was derived are dated November 2019 and occurred in 2018 and 2019. Because the costs occurred so close to the earlier date of valuation, a cost multiplier of 1.000 has been applied in this instance. For the December 31, 2020 date of valuation Value Trends used Marshall Valuation, which indicates a cost increase of 3.2% between December 2019 and December 2020. Therefore, the cost multiplier used for the December 31, 2020 date of valuation is 1.032.<sup>63</sup>

Lastly, with respect to depreciation, the appraisers agreed that no adjustment was warranted for tax year 2020 because the subject improvements were new as of the relevant valuation date. For 2021, however, Mr. Ellis calculated depreciation using a straight-line basis and 40-year life expectancy, which equates to a 2.5% adjustment. Mr. Widmer also used a 40-year life expectancy but weighted straight-line of 2.5% and curvilinear of 1% depreciation equally at 50% each, which resulted in an overall adjustment of 1.75%. He explained:

I looked at what a straight line depreciation would be and curvilinear. Curvilinear is also a Marshall valuation item that considers the fact that buildings depreciate less at the onset and more as the building ages. So, I used both straight line and curvilinear and determined total depreciation to be 1.75 percent or \$72,282 for tax year 2021.<sup>64</sup>

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<sup>60</sup> *Id.* [Emphasis added.]

<sup>61</sup> *Id.* [Emphasis added.]

<sup>62</sup> Petitioner’s appraisal, P-1, p. 123.

<sup>63</sup> Petitioner’s appraisal, P-1, p. 123.

<sup>64</sup> TR, Vol 3, p. 16.

Given the newer age of the subject improvements, the Tribunal finds that Mr. Widmer's inclusion of curvilinear depreciation is appropriate.<sup>65</sup> Further, the Tribunal finds Mr. Widmer's equal weighting of the depreciation factors is reasonable.

### Income Approach

The income approach projects the future cashflow a property will generate at its highest and best use. As Respondent's counsel correctly pointed out at hearing, the income approach assumes that an investor would pay no more than the present value of a property's anticipated future income. Under the income approach, a suitable discount rate is used to reduce to a present value the anticipated income stream of an income-producing property. The procedure to calculate income is as follows: (1) estimate potential gross income; (2) subtract anticipated vacancy and collection losses to derive effective gross income; (3) subtract total operating expenses to derive net operating income; and (4) "[a]pply one or more of the direct or yield capitalization techniques to this data to generate an estimate of value . . . ."<sup>66</sup>

Mr. Ellis' income approach concluded to values of \$3,925,000 for 2020, and \$4,325,000 for 2021. Mr. Widmer's income approach concluded to values of \$6,325,000 for 2020, and \$6,975,000 for 2021. In many aspects, the income approach performed by Mr. Widmer and Mr. Ellis are similar. Their expenses are essentially identical. The parties also have a similar conclusion of rent for the retail space when Mr. Widmer's gross rent is converted to triple net or Mr. Ellis' rent from triple net to gross. Although Mr. Ellis used a lower capitalization rate than Mr. Widmer did, all things being equal, the result would be a higher value. They do, however, vary in several areas: some large and some small.

Starting with the latter category, Mr. Ellis concluded that the retail space at the subject property had 2,160 SF while Mr. Widmer concluded 2,500 SF. Mr. Widmer's number came from the actual building plans and the marketing documents for the space. Mr. Ellis could not identify where or how he calculated the retail space square footage.

Both appraisers agree that the correct market rent is the rent the subject property would command as of each tax date if occupied at market occupancy—90%. However, the main area of disagreement between the appraisers involves the base rental rate for the self-storage facility rental space. Mr. Ellis used \$1.05/SF while Mr. Widmer used \$1.50/SF, a significant difference of .45 cents per square foot.

Unfortunately, Mr. Ellis' alleged market rent is based on a series of erroneous assumptions. First, his rent is based on what was actually occurring at the property in May 2021. However, it is undisputed that the self-storage facility was not stabilized in

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<sup>65</sup> See *Menard, Inc v City of Escanaba*, (Final Opinion and Judgment issued May 29, 2020, Docket No. 14-001918) aff'd *Menard, Inc v City of Escanaba*, unpublished per curiam opinion of the Court of Appeals, issued February 10, 2022 (Docket No. 354900).

<sup>66</sup> *Appraisal of Real Estate*, page 432.

May 2021, or for that matter, any date Mr. Ellis considered or had data for. At hearing, Mr. Ellis testified that he did not have the rent rolls as of either date of value. Although it is unclear to the Tribunal why Mr. Ellis did not have the subject's rent rolls, it establishes that Mr. Ellis had no idea what the rental units at the subject were renting for as of the relevant tax dates. Further, Mr. Ellis did not know what the street rate for each unit was, meaning he had no way of determining what the market rent for the individual rental unit types were. The only financials Mr. Ellis had was the total rental revenue and space leased. Using July 2021 internet and in-store rates, comparing those rents to a combined rental amount as of May 2021, and extrapolating to market rent when the property was not stabilized as of either date is neither logical nor reliable. Accordingly, the Tribunal finds Petitioner's income approach not credible or reliable.

Mr. Widmer first calculated the subject property's potential gross income by evaluating the subject property's street rents provided in Petitioner's rent roll. With this information, Mr. Widmer then looked at several other comparable storage facilities' asking rents and concluded a rental range per square foot between \$1.47 and \$1.54. Mr. Widmer concluded an overall achievable rent for the subject property for the 2020 tax year of \$1.50/SF. Mr. Widmer applied a 10% vacancy and collection loss and estimated expenses of \$312,416. Altogether, Mr. Widmer concluded a net operating income of \$910,316 for tax year 2020 and after dividing the net operating income by the capitalization rate of 12.43%, concluded a stabilized TCV of \$7,324,568. To the stabilized TCV, Mr. Widmer added \$150,000 for the excess land, and applied non-stabilized negative adjustments to the retail space of \$80,000 and the self-storage facility of \$1,070,000, concluding a reconciled TCV of \$6,324,568 for tax year 2020.

The Tribunal notes that in most cases, the basis of an income approach is the market conditions of where the subject property is located, the historical income trend of the subject property, and comparable data. Further, the income approach relies heavily on accurate income and expenses data, which the Tribunal finds is lacking in this case. In this case, the self-storage facility portion of the building had just recently opened and financial data is extremely limited. Additionally, the retail portion of the subject property remained vacant and the historical income for both the retail and self-storage facility has not had time to develop for meaningful consideration. Likewise, there is a lack of information regarding the historical operating expenses associated with the subject property, because again, the subject property just recently opened as of the tax dates at issue.

Moreover, Mr. Widmer testified at hearing that seasonality influences the rental of storage units, the storage rental industry fluctuates based on supply and demand, and concessions vary at each self-storage facility. In this case, neither appraiser was able to provide evidence of a newly built storage facility with similar attributes as the subject property. Considering the lack of historical income and expenses data for the subject property combined with the lack of similar self-storage facilities for the Tribunal to even use as a comparison, the Tribunal finds Respondent's income approach not reliable or supported by the record evidence in this case.

In the end, Mr. Ellis concluded values using the income approach of \$3,925,000 for tax year 2020 and \$4,325,000 for tax year 2021. Under cross-examination, Mr. Ellis admitted to various errors in his cost approach, resulting in revised values of \$5,000,000 for the 2020 tax year and \$5,275,000 for tax year 2021. Petitioner’s own expert concluded that the potential income from the subject property would be approximately \$1,000,000 less than the cost to acquire and construct the self-storage facility. At hearing, even Mr. Ellis admitted that his cost approach was substantially higher than his sales comparison and income approach, meaning there would be no justification to construct the subject property as of the tax dates at issue in this case. For all of the reasons outlined above, the Tribunal finds Petitioner’s income approach not credible or reliable.

Reconciliation of Value

It is of particular importance that “when a lack of market activity limits the usefulness of the sales comparison approach and when the property to be appraised . . . is not amenable to valuation by the income capitalization approach.”<sup>67</sup> Although the subject is an income-producing property, and therefore generally amenable to the income capitalization approach, the Tribunal, for the reasons stated above, is unable to rely on this approach or give it any weight in the final value determination. Further, both appraisers in this case determined that the sales comparison approach is not a reliable indicator of value, and the Tribunal agrees. Accordingly, the Tribunal finds that the cost approach provides the best evidence of the subject’s TCV or “usual selling price” within the meaning of MCL 211.27 for the tax years at issue.<sup>68</sup>

Given the above, the Tribunal finds that the subject property has a rounded TCV of **\$5,674,700** for tax year 2020 and **\$5,770,000** for tax year 2021, as set forth in the following summary:

	<b>Tax year 2020</b>	<b>Tax Year 2021</b>
Direct Costs	\$4,258,782	\$4,258,782
Indirect Costs	N/A	N/A
Cost Multiplier	N/A	1.032
<b>Total Direct &amp; Indirect Costs</b>	<b>\$4,258,782</b>	<b>\$4,395,063</b>
Entrepreneurial Incentive (10%)	\$425,878	\$439,506
<b>Total Cost of Construction</b>	<b>\$4,684,660</b>	<b>\$4,834,569</b>
Depreciation (%)	N/A	1.75%
Depreciation (\$)	N/A	\$84,604
<b>Depreciated Cost of Construction</b>	<b>\$4,684,660</b>	<b>\$4,749,965</b>
Land Value	\$990,000	\$1,020,000
<b>TCV (rounded)</b>	<b>\$5,674,700</b>	<b>\$5,770,000</b>

JUDGMENT

<sup>67</sup> *The Appraisal of Real Estate*, p. 530.

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

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

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2013, through June 30, 2016, at the rate of 4.25%, (ii) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (iii) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (iv) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (v) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (vi) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (vii) after December 31, 2018, through June 30, 2019, at the rate of 5.9%, (viii) after June 30, 2019, through December 31, 2019, at the rate of 6.39%, (ix) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, (x) after June 30 2020, through December 31, 2020, at the rate of 5.63%, (xi) after December 31, 2020, through June 30, 2022, at the rate of 4.25%, (xii) after June 30, 2022, through December 31, 2022, at the rate of 4.27%, (xiii) after December 31, 2022, through June 30, 2023, at the rate of 5.65%, (xiv) after June 30, 2023, through December 31, 2023, at the rate of 8.25%, (xv) after December 31, 2023, through June 30, 2024, at the rate of 9.30%, (xvi) after June 30, 2024, through December 31, 2024, at the rate of 9.50%, and (xvii) after December 31, 2024, through June 30, 2025, at the rate of 9.47%.

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

### APPEAL RIGHTS

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

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

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

By 

Entered: September 30, 2025  
ejg/jcg

### PROOF OF SERVICE

I certify that a copy of the foregoing was sent on the entry date indicated above to the parties or their attorneys or authorized representatives, if any, utilizing either the mailing or email addresses on file, as provided by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk