



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

MARLON I. BROWN, DPA
DIRECTOR

Carlyle Property Holdings LLC,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MTT Docket No. 22-001204

Clinton Township,
Respondent.

Presiding Judge
Marcus L. Abood

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Carlyle Property Holdings LLC, appeals ad valorem property tax assessments levied by Respondent, Clinton Township, against parcel number 11-23-476-011 for the 2022 tax year. A hearing was held on this matter on May 29-30, 2024. Jason Conti, Attorney, appeared on behalf of Petitioner. Seth A. O’Loughlin, Attorney, appeared on behalf of Respondent. Petitioner’s witnesses were Michael Collins and Jason Curis. Respondent’s witness was John Widmer Jr.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash value (TCV), state equalized value (SEV), and taxable value (TV) of the subject property are as follows:

Parcel Number: 11-23-476-011

Year	TCV	SEV	TV
2022	\$1,600,000	\$800,000	\$619,800

PETITIONER’S CONTENTIONS

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

Parcel Number: 11-23-476-011

Year	TCV	SEV	TV
2022	\$975,000	\$487,500	\$487,500

Petitioner contends that the subject property is over-assessed.

Petitioner contends that the subject has increased vacancy compared to other neighborhood strip centers.

Petitioner's appraiser analyzed sources including Loopnet, CoStar, Multiple Listing Service (MLS), and Southeast Michigan Council of Governments (SEMCOG). Comparisons were made between Clinton Township and Macomb County for population, unemployment, household income, number of households, etc.

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

Petitioner's appraiser applied a sales comparison adjustment for occupancy stating, "[w]ell, a typical purchaser is going to be much more desirous of a fully-occupied property as opposed to one that's like the subject, you know, nearly half vacant."¹

Petitioner's income approach was based on a direct income capitalization and not on a yield capitalization (discounted cash flow). Rental comparisons were made separately for typical size units and larger size units.² Revenues, vacancies, expenses, and capitalization rates were researched and analyzed for the income analysis of the subject property.

Petitioner contends that the subject property is not an institutional investor grade property. Investor surveys lean more heavily towards less risky, credit worthy institutional properties. Petitioner's appraiser analyzed the band of investment and market sales extracted methodologies for a concluded capitalization rate for the subject property.

Petitioner's appraiser reviewed market data for his income and sales analysis and adjustments. "It's based on sales and leases I've reviewed over the years. It's not really something that easily generates itself into a workfile, a spreadsheet. It's based on knowledge and experience."³

Petitioner's owner contends that the subject property was an arm's length sale transaction. Petitioner's owner was not related to the seller of the subject property.⁴

Petitioner refutes Respondent's hypothetical income pro forma using the subject's contract rents.⁵ Petitioner contends that the subject's contract rents are above market and the subject's higher vacancies are unsustainable.

¹ Tr, Vol 1, 41.

² Tr, Vol 1, 59.

³ Tr, Vol 1 178.

⁴ Tr, Vol 2, 419-421.

⁵ Tr, Vol 1, 213.

PETITIONER'S ADMITTED EXHIBITS

- P-1: Appraisal Report prepared by Michael Collins.
- P-2: Subject Property Purchase Agreement.
- P-3: Subject Property Settlement Statements.
- P-4: CoStar Printout for 33401-33495 Harper Avenue.
- P-5: CoStar Printout for 40700-40820 Garfield Road.
- P-6: CoStar Printout for 24000-24060 Harper Avenue.
- P-7: CoStar Printout for 15311-15361 17 Mile Road.
- P-8: First Amendment to Lease Agreement.
- P-9: Stonegate Commons Lease Agreement.

PETITIONER'S WITNESSES

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

Petitioner's second witness, Jason M. Curis, purchased the subject property in March 2022.⁶ Mr. Curis has been involved in commercial real estate for 25 years. He owns and manages commercial and industrial properties throughout Michigan. He was presented as a rebuttal witness.

RESPONDENT'S CONTENTIONS

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

Parcel Number: 11-23-476-011

Year	TCV	SEV	TV
2022	\$1,830,000	\$915,000	\$619,800

⁶ This rebuttal witness did not rebut Respondent's case in chief evidence other than to argue that the subject purchase sale transaction was arm's length. Allowing the rebuttal testimony did however demonstrate Mr. Curis' level of market sophistication. Specifically, Petitioner's negotiations for the purchase price included the consideration of the Family Dollar lease. (Tr, Vol 2, 424). Whether or not the subject's purchase price and transaction was arm's length is not necessarily pivotal to this case. What had impact was Petitioner's owner's savvy ability to negotiate the purchase of a property which included a creditworthy tenant. On the other hand, Petitioner's owner lacked credibility in his testimony. The owner testified that the property was listed through Landmark Commercial Real Estate. (Tr, Vol 2, 416). Yet, Petitioner argued that it had no market listing documentation for the last 5 years for the subject and that Petitioner was not an owner as of December 31, 2021. There is every inference that Petitioner's owner was aware of the subject property prior to December 31, 2021. The purchase agreement (Petitioner's Exhibit P-2) is dated February 4, 2022. Even without documentary evidence of listing memorandum, there is equal inference that the subject was exposed to the market if Petitioner's claims are true that multiple buyers were interested in the subject property.

Respondent's appraiser asserts that the population and number of households in Clinton Township has increased from 2010 to 2020. Further, demographic information for housing permits since 2017 is significant. The demographic information is a positive sign relative to the existence of the subject improvements.⁷

Respondent's appraiser's data sources included assessing records, ownership documents, SEMCOG, BS&A records, CoStar, Marshall Valuation Service (MVS), Price Waterhouse Coopers (PwC), and RealtyRates.

Respondent's appraiser analyzed market demographics including the older age segments. Analysis was also applied in 1-mile, 3-mile, and 5-mile radii. Respondent's appraiser purposely reviewed market data on a macro and micro basis through the radius distances.⁸

Respondent's appraiser reviewed several competitors in the market to surmise comparability to the subject property. His judgments are based on market data, websites and reviews.

Respondent's appraiser analyzed the subject's existing tenants and their average occupancy of 10 years. Likewise, the appraiser analyzed the subject's vacancies applied to rents from competing neighborhood retail shopping centers. The appraiser communicated with commercial brokers about market rents on a gross and triple net basis.⁹

Respondent's appraiser considered all three approaches to value but relied on the income approach to value. The cost approach was not developed because of the age of the subject building. Further, market participants would not rely on the cost approach in the purchase of the subject property. The sales comparison approach was only developed as a check of reasonableness to the income approach. Respondent relies primarily on the income approach to value to properly determine the market value for the subject real property.

Respondent's appraiser analyzed four sales for his comparative analysis. Comparable adjustments (for example, market conditions and location) were data driven. Specific demographics are noted within each comparable sale write-up for an objective analysis.¹⁰

Respondent's appraiser reviews CoStar data but notes that the information is not always correct. Respondent refutes Petitioner's rebuttal evidence because it was not recognizable as CoStar format reports and appeared to have modifications. Moreover, Petitioner's rebuttal evidence was merely printed off days before this hearing. In other

⁷ Tr, Vol 2, 242-243.

⁸ Tr, Vol 2, 409.

⁹ Tr, Vol 2, 276-277.

¹⁰ Tr, Vol 2, 252-254.

words, there is a disconnect between the date of valuation and the date of Petitioner's rebuttal evidence.¹¹

Further, Respondent refutes the testimony of Petitioner's owner as a rebuttal witness. Respondent argues that such testimony regarding the alleged arm's length nature of the subject property should have been handled during Petitioner's case in chief. Petitioner's owner's testimony did not amount to any specific rebuttal.¹²

RESPONDENT'S ADMITTED EXHIBITS

- R-1: Appraisal Report prepared by John Widmer Jr.
- R-2: Petitioner's appraiser's workfile.
- R-4: Petitioner's Responses and Objections to Respondent's First Interrogatories (Pages 6-7).
- R-6: Petitioner's Sale 5 (24000 Harper Avenue).
- R-7: Hypothetical Pro Forma Income Approach.

RESPONDENT'S WITNESS

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

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 37531-37605 Harper Avenue, Clinton Township and within Macomb County.
2. Macomb County is located in southeast Michigan.
3. The subject property is commonly referred to as Stonegate Commons.
4. The subject property is comprised of 3.5 acres and is improved with a neighborhood retail shopping center constructed in 1989.
5. The subject property is zoned B-1, Neighborhood Business District.
6. Petitioner purchased the subject property on March 29, 2022 for \$1,150,000.
7. Petitioner's purchase agreement is dated February 4, 2022.¹³

¹¹ Tr, Vol 2, 366, 369, 374-375, 378, and 408.

¹² Tr, Vol 2, 422-423.

¹³ Pet's Exh P-2. The owner testified that the property was listed through Landmark Commercial Real Estate. (Tr, Vol 2, 416) However, on cross examination, Petitioner's owner admitted that there were no commercial listing agreements for the subject property. (Tr, Vol 2, 436-437 and Resp Exh R-4)

8. The subject building has eleven tenant units.
9. The subject's vacant units were listed or offered for lease through commercial listings.
10. The subject property is an income producing property. In other words, the subject property is not owner-occupied.
11. As of December 31, 2021, the subject property's occupancy included Family Dollar.
12. The subject property's 2021 TV assessment only changed at the statutorily prescribed rate of inflation for 2022.
13. Petitioner submitted a valuation disclosure in the form of an appraisal report prepared by Michael Collins.
14. Petitioner's appraiser considered all three approaches to value but only developed the sales comparison and income approaches to value.
15. Petitioner's sales comparison approach included five comparable sales. All five sales were adjusted downward to the subject. No sales were adjusted upward to the subject.
16. Petitioner's appraiser did not denote the specific zoning for each comparable sale.
17. Petitioner's income approach included five rental comparable properties for typical sized units in the market. Petitioner's appraiser deemed rental 1's offered rate of \$12.40/SF was also the actual lease rate.¹⁴ Rental 2 was leased after December 31, 2021, was listed on the market for 5 years and was shell space.¹⁵ Rental 3 was a September 2020 lease which occurred in the middle of the COVID pandemic.¹⁶ Rental 4 occurred in April 2022 after the December 31, 2021 tax day.¹⁷
18. For typical size rental units, Petitioner's appraiser concluded to \$7.50/SF which is approximately \$5.00/SF less than the actual contract rents for the subject units.¹⁸
19. The subject's larger rental unit (Family Dollar) leased for \$7.53/SF as of December 31, 2021.
20. Petitioner's appraiser analyzed three rental comparable units for larger sized units.
21. Respondent submitted valuation evidence in the form of an appraisal report prepared by John Widmer Jr.
22. Respondent's appraiser considered all three approaches to value but only developed the sales and income approaches to value.
23. Respondent's sales comparison approach included four comparable sales. All four sales were adjusted downward to the subject. No sales were adjusted upward to the subject.
24. Respondent's appraiser developed an income approach which included twelve rental properties in southeast Michigan.

¹⁴ Tr, Vol 1, 157.

¹⁵ Tr, Vol 1, 162-163.

¹⁶ Tr, Vol 1, 164.

¹⁷ Tr, Vol 1, 167.

¹⁸ Tr, Vol 1, 173.

25. Respondent's income analysis included fourteen Dollar Store/Family Dollar lease properties.
26. Respondent's income analysis included reimbursable triple net (NNN) operating expenses for the subject property.
27. As of December 31, 2021, the subject property had five tenants in place. River Crest Restaurant has been a tenant for 18 years; Advanced America for 19 years; Magic Nails for 3 years; Smokers Only for 8 years; and Family Dollar for 15 years.¹⁹
28. The parties' appraisers utilized CoStar data and SEMCOG data.

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.²⁰

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.²¹

The Michigan Legislature has defined TCV to mean:

The usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale.²²

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value' . . . are synonymous."²³

"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."²⁴ The Tribunal is not bound to accept either of the parties' theories of valuation.²⁵ "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

¹⁹ Tr, Vol 2, 266-267.

²⁰ See MCL 211.27a.

²¹ Const 1963, art 9, sec 3.

²² MCL 211.27(1).

²³ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

²⁴ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

²⁵ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

case.”²⁶ 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.”²⁷

A proceeding before the Tax Tribunal is original, independent, and de novo.²⁸ The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”²⁹ “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”³⁰

“The petitioner has the burden of proof in establishing the true cash value of the property.”³¹ “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.”³² 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.”³³

The three most common approaches to valuation are the capitalization of income approach, the sales comparison, or market, approach, and the cost-less-depreciation approach.³⁴ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”³⁵ 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.³⁶ Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.³⁷

SUBJECT MARKET DESCRIPTION AND ANALYSIS

The parties’ appraisers described and analyzed the subject market through various demographics. The acknowledgment of the subject within the southeast market is relevant in this instance. The influence of data within Clinton Township, Macomb

²⁶ *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

²⁷ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

²⁸ MCL 205.735a(2).

²⁹ *Dow Chemical Co v Dep’t of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

³⁰ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

³¹ MCL 205.737(3).

³² *Jones & Laughlin Steel Corp*, *supra* at 354-355.

³³ MCL 205.737(3).

³⁴ *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).

³⁵ *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

³⁶ *Antisdale*, *supra* at 277.

³⁷ See *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

County as well as southeast Michigan is prevalent. Said differently, the analysis of rents, vacancies, and commercial uses etc. are not reasonably confined to the subject's municipal boundaries. Respondent's appraiser's macro analysis through SEMCOG and CoStar was tailored to his radius analysis (1-mile, 3-mile, and 5-mile) with demographic data.

Respondent's data analysis is consistent with its market analysis (and vacancy analysis). Respondent's appraiser demonstrated a strong analysis of the subject market area and demographics. Therefore, Respondent's neighborhood description and market analysis are given weight and credibility in the Tribunal's determination of market value for the subject property.

HIGHEST AND BEST USE

The subject property was originally developed as a neighborhood retail strip center. The parties' appraisers have concluded to a similar highest and best use for the subject. The Tribunal finds that there is no dispute that the subject's highest and best use is its continued use as a neighborhood retail strip shopping center.

Closely related to the subject's highest and best use, reference is made to the parties' market description and analysis. Common to each analysis is the market data relied upon by the parties. Existing retail strip centers are located in the subject's neighborhood as well as in southeast Michigan.

In valuation theory, the comparables' highest and best uses are expected to mirror a subject property. However, in valuation practice, the subject and comparable sales may have different uses. Realistically, the use of a comparable may change subsequent to the sale of that property. A comparative analysis looks at the use of each comparable sale in line-item fashion (for example, zoning) which allows for various acceptable uses. The purpose of a comparative analysis is to thresh out the sale property as a comparable sale. A comparable sale may have a different use but have the same zoning as the subject property. Consequently, the highest and best use for the subject property is different than the "use" for a comparable property at the time of sale. Comparing and contrasting sales to the subject property is the expectation in a comparative analysis. Again, a benchmark for a variety of legal, physical, and financial uses may be achieved within certain zoning ordinances. Said differently, an appraiser's due diligence research in the "normal course of business" may not necessarily encompass a separate highest and best use analysis for each comparable sale. The rigid perception that the subject and comparable sales must have the same highest and best use is not practical or reasonable. In general, the Tribunal does not accept the premise that sales only become comparable sales when they have the same exact highest and best use as the subject property.

COST APPROACH

Generally, a cost approach is most applicable for new or newer properties. As reasoned, a newly constructed property would have minimal depreciation. On the other hand, a cost analysis is more problematic for older properties in quantifying all forms of depreciation. The elements for a cost analysis include the determination of land value, the replacement cost new (RCN) for building improvements, a calculation of depreciation of physical, functional, and external, and site improvements. As noted, neither party developed the cost approach to value. Therefore, there is no basis for the Tribunal to have considered this approach to value for the subject property.

SALES COMPARISON APPROACH

As noted, each party's appraiser developed a sales comparison approach to value. This approach was used as a check on reasonableness to each appraiser's income approach to value. The strengths and weaknesses from each appraiser's comparative analysis are discussed below.

Petitioner's sales comparison adjustment grid is a conventional framework for a comparative analysis. Petitioner's appraiser analyzed five sales for comparison to the subject. All of the sales are located in southeast Michigan. Sale 5 sold in 2019; sales 2 and 4 sold in 2020; sale 1 sold in 2021; and sale 3 sold in 2022. However, the analysis has inconsistencies and missteps. First, sales 1 and 2 are adjoining buildings. The properties are separately and legally parceled, but each property is not a standalone building like the subject. The appraiser failed to narrate this commonality and any potential impact on their respective sale prices. Second, Sale 3 is an older building with 4 tenants (as depicted in the appraiser's photograph). Petitioner's appraiser analyzed the comparable sales based on building size and percentage of occupancy but without reference to the number of units. Each sale's number of units is relevant for comparison to the subject's units. Third, the subject and sales locations were denoted as "main road." However, sales 1, 2, 3, and 5 were adjusted downward by 5%. These "more intensive areas" were not supported by any demographics or specific locational attributes. Fourth, the combined adjustments for "age/condition" were confusing. Comparable ages were analyzed on the basis of effective age. However, there were no adjustments to sales 1, 3, and 4 (with "average" conditions) compared to the subject's "average to fair" condition. Alleged offsets between effective age and condition clearly warrant separate line-item entries and analysis by the appraiser. Fifth, per CoStar, sale 4 was an auction sale. Further, sale 4 appears to be an outlier (\$13.12/SF) to the comparable dataset. Sixth, sale 5 is an older sale occurring in 2019 and has 6 tenants. This sale was adjusted for market conditions (time), but the appraiser admitted that the adjustment was not based on any quantitative benchmarks on an annual basis. Seventh, the subject and comparable sales' line-item entry "design" were denoted as "Commercial." The lack of specific zoning for the subject and sales is unpersuasive. An appraiser's due diligence in the verification of zoning is an indication of highest and best use considerations. Eighth, as challenged by Respondent's counsel, Petitioner's appraiser's sales comparison adjustments lacked market support. Petitioner's appraiser

relied on his experience and judgment aside from market support not found in the appraisal report or workfile. Lastly, the appraiser gave equal weight to the sales and concluded to a median for the value of the subject property. “The sales comparison approach is not formulaic. It does not lend itself to detailed mathematical precision.”³⁸ The reconciliation of sales is an appraiser’s opportunity to fill gaps and articulate differences which could not be applied to the comparable sales by quantitative or qualitative means.

An appraisal report is based on the opinions, analyses, and conclusions from the appraiser. In this instance, the Tribunal cannot place reliance on conclusory statements based on an appraiser’s testified “experience and judgment” which nebulously refers to data not included in an appraisal report or workfile. “Perfection is impossible to attain, and competence does not require perfection. However, an appraiser must not render appraisal services in a careless or negligent manner. This Standards Rule requires an appraiser to use due diligence and due care.”³⁹ Petitioner’s actions belie the importance of rendering a meaningful appraisal report. An appraiser’s opinions, analysis and conclusions do not come before the market data is developed. For these reasons, Petitioner’s comparative analysis is given no weight or credibility in the Tribunal’s independent determination of market value for the subject property.

Respondent’s sales comparison adjustment grid is also a conventional framework for a comparative analysis.⁴⁰ Respondent’s appraiser analyzed four sales for comparison to the subject. All of the sales are located in southeast Michigan. Respondent’s analysis of neighborhood retail strip centers included occupancy and demographics which were applied to comparable adjustments. Respondent’s appraiser explained the difficulties in relying on wide unit pricing from the sales data. Nonetheless, the sales data provided evidence for market activity and competition of neighborhood retail strip centers. Respondent’s market sales are relevant and are given consideration in the Tribunal’s independent determination of market value for the subject property.

Respondent’s sales 1, 2, and 3 occurred in 2021; sale 4 occurred in 2019. Sales 1, 3, and 4 are relatively similar to the subject’s building area. All four sales were adjusted upward for market conditions (time) but adjusted downward for superior locations to the subject. Likewise, all four sales were adjusted downward to the subject for superior economic conditions. As testified by Respondent’s appraiser, the line-item entry for economic adjustments included many considerations. Petitioner questioned Respondent’s appraiser for the reasonableness of so many consideration elements

³⁸ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 15th ed, 2020), p 368.

³⁹ The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice* (Washington DC: 2020-2021 Edition), p 11.

⁴⁰ As a format issue, Respondent’s presentation and illustration for its sales comparison adjustment grid is not understandable or readable. First, the adjustment grid does not include the subject property’s line-item entries. The purpose of the comparative grid is to show the subject and comparable sales side by side. Second, the comparable sales are only identified by number; the comparable sales are not identified by their address or location. The purpose of the comparative adjustment grid analysis is to illustrate and allow the reader to easily understand side by side comparisons for the identified subject and comparable properties.

lumped into a single adjustment.⁴¹ Similarly, Petitioner's counsel cross examined Respondent's appraiser for mixing approaches to value.⁴² In other words, Petitioner refuted Respondent's appraiser's application of economic elements which were utilized to formulate a sales comparison adjustment. Valuation practice and theory are quite keen in acknowledging the interplay, overlap, and coherence of all three approaches to value. The sales comparison, cost, and income approaches are linked by the principle of **substitution**.⁴³ In this context, Respondent's appraiser researched and analyzed the sales of neighborhood retail strip centers for comparison to the subject. The permissibility of such an analysis is noteworthy even though the economic line-item entry perhaps lumped too many elements into a single adjustment. Nonetheless, Respondent's comparable sale write-ups, demographics analysis, and sales comparison adjustment grid carry greater detail than Petitioner's comparative analysis. Petitioner's sales comparison approach is not more persuasive than Respondent's detailed sales analysis.

Overall, Respondent's four sales are adjusted downward to the subject property. Respondent's appraiser failed to explain the lack of bracketing with any sales adjusting upward to the subject. As reasoned and reconciled, Respondent's sales 1, 2, and 3 sold in 2021 and are located in Clinton Township. Sales 1, 3, and 4 are the most similar to the subject in building size. Given the superior locations and economic attributes of each comparable sale, the indication of market value rests at the low end of the adjusted range of Respondent's sales. Therefore, the Tribunal's independent indication of market value from Respondent's adjusted sales is \$48/SF (34,524 SF x \$48 = \$1,657,152 or \$1,657,000 rounded).

INCOME APPROACH

The subject property is an income producing commercial property. In other words, the property is not owner-occupied but has tenant leased space. As noted, each party developed an income approach to value. The subject property has existing tenant leases. Existing neighborhood retail strip centers in southeast Michigan were researched, reviewed, and analyzed. As articulated below, the Tribunal considered each income element to arrive at an independent determination of market value from the income approach.

Rental Rate Analysis

First, the parties' respective rent rate analyses were reasonably presented. Each appraiser reviewed rental data in a comparative analysis. Petitioner reviewed the subject rent roll as of November 30, 2022. Respondent reviewed the subject rent roll as of February 10, 2022. Common to each party's rent analysis were rental units located within Clinton Township on Harper Avenue. Petitioner's appraiser analyzed five rental

⁴¹ Tr, Vol 2, 316.

⁴² Tr, Vol 2, 326.

⁴³ Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 15th ed, 2020), p 25.

properties for typical size units and three larger size units to derive base rental rates. Likewise, Respondent's appraiser analyzed 12 rental units to derive base rental rates for the subject property. However, the parties' base rent analysis took divergent paths.

Petitioner's bifurcated data analysis for typical size units and the subject's larger size unit (Family Dollar) is reasonable. However, the comparative analysis for the rental data was heavily questioned by Respondent. Similar to Petitioner's sales comparative analysis, his comparable rental adjustments lacked clarity and logic. The subject and rental locations were all denoted as "main road." However, rentals 4, 6, and 7 were adjusted downward by 5%, 5%, and 10% respectively. These "more developed areas" were not supported by any demographics or specific locational attributes. Next, combined adjustments for "age/condition" were confusing. Comparable ages were analyzed on the basis of effective age. Rentals 2 and 3 were denoted as "average" to the subject's "average to fair" condition and were adjusted downward by 7%. However, rental 6 with an "average" condition was unadjusted to the subject. Alleged offsets between effective age and condition clearly warrant separate line-item entries, analysis, and explanatory narrative by the appraiser. Moreover, these adjustments were based on the appraiser's judgment and experience and not supported by any data.

Petitioner's appraiser made no market conditions adjustments for his rental comparables. There was no apparent analysis between the subject and comparable rentals based on lease terms, lease dates, or original lease dates. The subject tenants have renewal options that would warrant analysis by the appraiser. Petitioner's contention that the subject's originated lease dates are old is without merit. Lease tenants may not look too far into the future, but the tenants' lease options allowed them to renegotiate a new lease or vacate. Respondent analyzed the leases going forward in time relative to the tax day. Analyzing the actual contract lease rates to the market is customary and permissible in valuation practice.

Petitioner's appraiser was not inclined to review or give consideration to the subject's six vacant units which happened to be listed/offered for rent. Instead, the appraiser relied on market rents for his analysis. The appraiser's workfile denoted the asking rents for the subject's vacant spaces but the appraiser did not disclose or analyze this in his report.⁴⁴

Petitioner's appraiser acknowledged the market differences between gross and NNN leases. However, Petitioner's appraiser derived a base rental rate for the subject by suggesting that the subject's actual rents were too high for the market. Petitioner's appraiser analyzed the subject rent roll but was uncertain about the durations of the subject's tenants.⁴⁵ He relied on Costar information for his sales and rental data without directly speaking to the commercial brokers or market participants. The Tribunal is not persuaded that Petitioner's appraiser made customary efforts to verify information collected from an initial data source. Valuation practice is more than a one-step

⁴⁴ Tr, Vol 1, 153-154.

⁴⁵ Tr, Vol 1, 145.

process in gathering market data. For example, Petitioner's appraiser relied on CoStar reporting for rental 1's asking rent of \$12.40 and assumed that this was the contract rent.⁴⁶

On the other hand, Respondent's appraiser analyzed rental data for the subject's occupied and vacant units (with operating recovery income). Respondent's base rental analysis went further by reviewing similar NNN leases of other Family Dollar stores in Michigan. Yet further, Respondent's appraiser also analyzed differences between gross leases and NNN leases. Overall, Respondent's base rental analysis is more detailed by applying the subject's rents to the market. As stated by Respondent's appraiser,

You measure - - you review what's in place, what a hypothetical buyer is looking at, then you contrast it with what's happening in the market, then you make a final determination what you're going to apply. So you're considering it, you're relying upon it, you may not conclude to it in totality.⁴⁷

While the subject's occupancy is only 5 out of 11 units, the duration of the existing tenants is persuasive. In other words, the longstanding tenants are an indication that their renewal option leases are competitive to other neighborhood retail strip centers. Respondent's appraiser reviewed and analyzed the subject leases (and lease rate options) to the market going forward to December 31, 2021. This due diligence withstood opposing counsel's persistent cross examination. The lease options are customarily reviewed in valuation practice.⁴⁸ Again, the subject's actual lease rates were applied to the subject market and market lease rates.

Respondent's appraiser confirmed and verified initial data and information with a phone call, email, or documentation supplied by the broker.⁴⁹

Respondent's appraiser's adjustments (both rental and sales) were grouped in various ways but the explanation for the qualitative analysis and factors for each adjustment was persuasive. Valuation practice and theory points to more practical separate adjustments instead of multiple adjustments grouped under a single line-item entry. However, the appraiser's analytical process demonstrated that some adjustments are not reasonably quantified. Respondent's appraiser convincingly explained his qualitative process behind each line-item adjustment entry.⁵⁰

In summary, the parties have utilized common comparable rental properties. Petitioner's abbreviated analysis is not more persuasive than Respondent's detailed analysis of rental comparables, subject occupancy/vacancy, subject actual/market rents, gross/NNN lease terms, and quantitative/qualitative adjustments. Therefore,

⁴⁶ Tr, Vol 1, 156-157.

⁴⁷ Tr, Vol 2, 266.

⁴⁸ The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice* (Washington DC, 2024 ed), p 19, lines 540-541.

⁴⁹ Tr, Vol 2, 273.

⁵⁰ Tr, Vol 2, 384-387.

Respondent's indication of market rents for the subject is the most reliable and credible valuation evidence for the income analysis.

Potential Gross Income

Second, the subject's potential gross income (PGI) is calculated by applying the market supported base rental rate to the subject's units. Petitioner's PGI is \$251,196 and Respondent's PGI is \$417,627. Based on Respondent's overall rental income analysis, the Tribunal's independent determination of PGI is \$400,000 for the subject.

Vacancy and Credit Loss

Third, the next element in the income analysis is vacancy and credit loss. Petitioner's vacancy element is 18% and Respondent's vacancy entry is 9.5%. Overall, Respondent's appraiser analyzed SEMCOG data more thoroughly than Petitioner's appraiser.

Petitioner's appraiser analyzed demographic information for Macomb County and Clinton Township. His analysis was based on *frictional vacancy*⁵¹ but lacked clarity and market support. Petitioner's initial vacancy determination was based on a formula of current vacancy (10.5 months) divided by occupancy (60 months) resulting in a 17.5% vacancy. Respondent questioned Petitioner's appraiser on the source for this formula.⁵² Petitioner's appraiser stated, "[d]iscussions with local area brokers and leasing agents indicate that most space is leased within nine (9) to twelve (12) months of becoming available."⁵³ He assumed no lease renewals over a 60-month period (without documentary support) but in fact, the subject's tenants did have lease renewals.⁵⁴ Next, the appraiser analyzed CoStar data which indicated a vacancy rate of 7.9% but deemed this information to be weighted heavily towards investment grade properties. Reference was made to the subject's actual vacancy of 47% and the appraiser settled on a 15% vacancy rate for the subject.⁵⁵ Petitioner's determination of a 15% vacancy and 3% credit loss was not a cogent reconciliation from the various indicators. The lack of clarity from the appraisal report and the appraiser's testimony was not persuasive.

On the other hand, Respondent's appraiser applied SEMCOG and CoStar data for his determinations. He also analyzed vacancy on the basis of frictional vacancy. His frictional vacancy analysis was reasonably explained by applying 1 year, 3 year, and 5 year periods along with the same increments for mile radius data.⁵⁶ The level of detail and analysis included the subject's rent rolls with an application to the subject market. In other words, the appraiser's market analysis and description were tied specifically to

⁵¹ Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 7th ed, 2022), p 79.

⁵² Based on a 50% lease renewal, Petitioner's appraiser testified that the calculation would result in a 11.67 vacancy rate for the subject. (Tr, Vol 1, 181)

⁵³ Pet's Exh P-1, p 73.

⁵⁴ Tr, Vol 1, 179-180.

⁵⁵ Tr, Vol 1, 182.

⁵⁶ Tr, Vol 2, 284-286.

his vacancy and credit loss analysis. Therefore, Respondent's market demographics, explanatory narrative, and vacancy analysis are the most reliable and credible evidence for the Tribunal's determination of market vacancy and credit loss of 9.5% for the subject.

Effective Gross Income

Fourth, effective gross income (EGI) was determined by taking the PGI of \$400,000 and deducting the vacancy and credit loss of \$38,000 ($\$400,000 \times 9.5\%$). The resulting EGI is \$362,000 which is bracketed by Petitioner's EGI of \$205,169 and Respondent's EGI of \$378,307.

Operating Expenses

Fifth, operating expenses were analyzed and determined by each party's appraiser. Expense analysis included property taxes, insurance, common area and maintenance (CAM), management, administrative and reserves.

Petitioner's appraiser applied the subject's profit and loss (P & L) statement for 2022. Respondent's appraiser analyzed the subject's financial information from 2019 to 2021.

Petitioner's operating expenses were denoted at \$60,169 and Respondent's operating expenses were denoted at \$149,362. The key difference in the appraisers' expenses was that Petitioner's appraiser applied the aforementioned vacancy and credit loss of 18% to real estate, insurance, and CAM expenses. The Tribunal is not persuaded that an 18% deduction is applicable to arrive at the subject's EGI as well as the subject's net operating income (NOI). In the absence of specific testimony or an explanatory narrative, the 18% deduction for the operating expenses is double counting (also known as double dipping) and is omitted from the income analysis.

Petitioner's revised operating expenses are \$111,170 (Insurance – \$10,366, CAM - \$51,831, Maintenance & Reserves - \$34,554, and Management & Legal - \$14,419) and as noted, Respondent's operating expenses remain at \$149,362. Therefore, consideration and weight is given to the parties' respective indications of operating expenses, which bracket the Tribunal's independent determination for this element at \$130,000.

Net Operating Income

Sixth, the next income element is the calculation of the NOI. As previously and independently determined, the operating expenses of \$130,000 are deducted from the EGI of \$362,000. The resulting NOI is \$232,000.

Capitalization Rate

Seventh, as articulated by the appraisers, a capitalization rate analysis parallels the level of risk associated with the subject property. Petitioner's capitalization analysis included 1) the band of investment technique and 2) abstracted rates from market sales. Petitioner concluded to a loaded capitalization rate of 11.03%.

Respondent's capitalization analysis included 1) a PwC Survey for market extracted rates, 2) RealtyRates National Investor Survey, and 3) RealtyRates.com Market Survey (regional data). Respondent's indication of an overall capitalization rate is 8.5%.

Respondent's appraiser's capitalization rate analysis encompassed several sources which included macro data. On cross examination, Respondent's appraiser was unable to pinpoint specific criteria and results from the data. Nonetheless, the appraiser considered and explained the data for institutional and non-institutional grade properties with a 124-basis point risk premium.⁵⁷

Respondent's appraiser's consideration, analysis, and reconciliation of capitalization rate surveys was reasonable and logical. The issue of "right and wrong" results from such surveys and analysis was mischaracterized by opposing counsel.⁵⁸ An appraiser's reconciliation from various data sources takes into account the reliability of the data and not necessarily the alleged inaccuracy of the data. Petitioner's line of questioning was disingenuous, given the fact that Petitioner's appraiser analyzed similar data sources.⁵⁹

Each appraiser's capitalization methods were considered. Again, as analyzed by both appraisers, the capitalization rate took into account the level of risk associated with the subject property. In general, all types of commercial retail properties were included in the various surveys and were unavoidable in the appraisers' analysis. Overall, the parties' due diligence in the capitalization rate analysis is given weight. Moreover, the range brackets the Tribunal's independent capitalization rate at 10%.

In succession, the NOI indication of \$232,000 is divided by the capitalization rate of 10% which results in an independent value determination of \$2,320,000 from the parties' income elements for the subject property.

As noted, the parties' appraisers made adjustments for the non-stabilized occupancy (rent loss) of the subject property. The deduction entries are relatively different. Petitioner's non-stabilized occupancy deduction was \$345,000 utilizing a 2-year cash flow analysis. Respondent's appraiser developed an analysis for a 2-year absorption rate to account for the subject's vacant spaces, tenant improvements (Tis), lease terms,

⁵⁷ Tr, Vol 2, 355.

⁵⁸ Tr, Vol 2, 356-357.

⁵⁹ Petitioner failed to offer Respondent's appraisal workfile as part of its zealous cross examination of Respondent's appraiser.

leasing commissions, and entrepreneurial reward.⁶⁰ Respondent's analysis of the subject's vacancies for a non-stabilized occupancy adjustment was \$860,000. Once again, given Petitioner's duplicative 18% vacancy deductions, greater weight is given to Respondent's separate detailed analysis of non-stabilized occupancy deductions. Therefore, non-stabilized occupancy deductions of \$800,000 are deducted from the Tribunal's independent income determination of \$2,320,000. The resulting income indication of value for the subject is \$1,520,000.

FINAL RECONCILIATION OF APPROACHES TO VALUE

The income analysis considered the subject's contract rent in the context of southeast Michigan data. Likewise, the parties' respective sales comparison analysis considered the sales of neighborhood retail strip centers in the subject market area. There is no evidence on the record of external or functional obsolescence to impact the subject's TCv. Again, the parties' rental and sales data proved the existence of commercial strip centers in the subject market area. The Tribunal's independent determination of market value from the parties' income data and analysis is \$1,520,000. The Tribunal also considered the parties' respective comparative analysis. As previously stated, Petitioner's sales comparison approach was given no weight or credibility. Respondent's comparable sales, analysis, and adjustments were more detailed and persuasive. The Tribunal's independent determination of market value from Respondent's sales data and analysis is \$1,657,000. Based on the overall data and the attributes of the subject and subject market area, the Tribunal's independent determination of market value for the subject property is \$1,600,000 as of December 31, 2021 for the 2022 tax year.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner's witnesses and evidence were not more persuasive than Respondent's valuation evidence and cogent analysis. As previously stated, a report must carry support and persuasion beyond conclusory statements. An expert's testimony and documentary evidence must be weighed to determine credibility and reliability. The parties' overall valuation evidence warranted the application of the income and sales comparison approaches to value. The subject property's TCv, SEv, and TV for the tax year at issue are as stated in the Introduction section above.

JUDGMENT

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

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be

⁶⁰ Petitioner's challenges to Respondent's appraiser's analysis of \$35/SF for Tis is without merit. Respondent's appraiser persuasively testified to the difference between buildouts versus white box spaces. (Tr, Vol 2, 314)

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: March 27, 2025

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