STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

Acqua Properties, LLC,
Petitioner,

v MTT Docket No. 16-002873

Dundee Township,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

FINAL OPINION AND JUDGMENT

The Tribunal issued a Proposed Opinion and Judgment ("POJ") on April 3, 2017. The POJ states, in pertinent part, "[t]he parties have 20 days from date of entry of this POJ to notify the Tribunal **in writing, by mail or by electronic filing, if available,** if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions)."

On April 23, 2018, Petitioner filed exceptions to the POJ. In the exceptions, Petitioner states that the Administrative Law Judge ("ALJ") erroneously concluded that the taxable value ("TV") of the subject parcel uncapped in 2016 as a result of the 2016 sale because MCL 211.27a(3) provides that the TV of a parcel uncaps the year after a sale. The ALJ also erred when he did not give weight to the sale of the subject property because the sale was an arms-length transaction and there was no evidence of unusual or atypical seller motivations.

On May 7, 2018, Respondent filed a response to the exceptions. In the response, Respondent states that it objects to Petitioner's second exception because relying on the sale of the subject parcel is contrary to the principle set forth in MCL 211.27.

The Tribunal has considered the exceptions, response, and the case file and finds that the ALJ erred in the rendering of the POJ. More specifically, the ALJ concluded the 2016 TCV was $281,000 and explained that the state equalized value ("SEV") of $140,500 was less than the 2016 calculated capped value, and thus $140,500 was the 2016 TV. However, multiplying the 2015 TV of $128,721, as shown on the property record card, by the 2016 inflation rate multiplier of 1.003 yields a capped 2016 TV of $129,107. $129,107 is the correct 2016 TV for the parcel because it is the lesser of the SEV and the capped TV.[1]

With respect to the weight given the subject parcel's 2016 sale, the ALJ properly considered the testimony and evidence submitted. More specifically, the ALJ considered that Petitioner was unaware of the seller's motivations, which casts doubt on the reliability of the purchase price as

[1] See MCL 211.27a(2)(a), (b).

an indicator of the "usual selling price"[2] of the parcel. Moreover, the purchase price of a property is not conclusive evidence of value under the sales comparison approach.[3]

Given the above, Petitioner has shown good cause to justify the modifying of the POJ.[4] As such, the Tribunal modifies the POJ as indicated herein and adopts the modified POJ as the Tribunal's final decision in this case.[5] The Tribunal also incorporates by reference the Findings of Fact and Conclusions of Law contained in the POJ as modified herein in this Final Opinion and Judgment. As a result:

a. The property's TCV, SEV, and TV, as established by the Board of Review for the tax year(s) at issue, are as follows:

Parcel Number: 58-42-040-711-43

Year	TCV	SEV	TV
2016	$260,000	$130,000	$129,107
2017	$313,100	$156,550	$156,550

b. The property's final TCV, SEV, and TV, for the tax year(s) at issue, are as follows:

Parcel Number: 58-42-040-711-43

Year	TCV	SEV	TV
2016	$281,000	$140,500	$129,107
2017	$286,620	$143,310	$143,310

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year(s) at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally provided in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization.[6] 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

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[2] MCL 211.27(1)
[3] See Appraisal Institute, *The Appraisal of Real Estate*, 14th ed (Chicago: Appraisal Institute, 2013), pp 45, 377-395; *Antisdale v Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); MCL 211.27(6).
[4] See MCL 205.762.
[5] See MCL 205.726.
[6] See MCL 205.755.

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, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, and (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%.

This Final Opinion and Judgment resolves the last pending claim 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 required filing fee within 21 days from the date of entry of the final decision.[7] 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 exemption and, if so, there is no filing fee.[8] A copy of the motion must be served 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.[9] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[10]

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."[11] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on

[7] See TTR 261 and 257.
[8] See TTR 217 and 267.
[9] See TTR 261 and 225.
[10] See TTR 261 and 257.
[11] See MCL 205.753 and MCR 7.204.

appeal.[12] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[13]

By Steven H. Lasher

Entered: May 16, 2018
wmm

[12] See TTR 213.
[13] See TTR 217 and 267.

STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

Acqua Properties, LLC,
Petitioner,

v

MTT Docket No. 16-002873

Dundee Township,
Respondent.

Administrative Law Judge Presiding
Peter M. Kopke

PROPOSED OPINION AND JUDGMENT

INTRODUCTION

Petitioner filed this appeal disputing the property tax assessment levied by Respondent against Parcel No. 58-42-040-711-43 for the 2016 and 2017 tax years. Christopher P. Wylie, CPA, represented Petitioner and Robert Brazeau, Assessor, represented Respondent.

A hearing was held on December 12, 2017. Petitioner's witness was Mr. Wylie and Respondent's witness was Mr. Brazeau.

Based on the evidence (i.e., testimony and admitted exhibits) and the case file, the Tribunal finds that subject property's true cash value ("TCV"), state equalized value ("SEV"), and taxable value ("TV") are as follows:

Parcel Number: 58-42-040-711-43

Year	TCV	SEV	TV
2016	$281,000	$140,500	$140,500
2017	$286,620	$143,310	$143,310

FINDINGS OF FACT

The following facts were proven by a preponderance of the evidence (i.e., testimony and admitted exhibits) and concern only the evidence and inferences found to be significantly relevant to the legal issues involved:[1]

1. The subject property is vacant land consisting of 5.896 acres and was purchased by Petitioner on March 8, 2016, for $180,000.
2. The property was listed for sale approximately four years prior to being sold to Petitioner.
3. Petitioner was not aware of the seller's motivation in selling the property to Petitioner.

[1] The Tribunal has not addressed every piece of evidence or every inference that might lead to conflicting conclusions and has rejected evidence contrary to these findings.

4. Cabela's is a regional draw and creates its own economic neighborhood. Further, Petitioner's Comparable No. 2 and Respondent's 16490 Cabela Boulevard comparable ("Comparable No. 1") are located within Cabela's sphere of influence or economic neighborhood.
5. The market is an increasing market and the market change from the 2016 tax year to the 2017 tax year was 2%.
6. Although the property was farmed prior to its purchase, it was purchased for commercial development and said development is consistent with the property's highest and best use.
7. The property's access can be developed so that the property can be accessed from two fronts.

ISSUES AND 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 true cash value.[2] In that regard, the Michigan Legislature has, as directed by the Constitution, defined "true cash value" 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.[3]

In its review of that definition, the Michigan Supreme Court has determined that "true cash value" is synonymous with "fair market value."[4]

As for the Tribunal, the Tribunal must, under MCL 205.737(1), find a property's true cash value in determining a lawful property assessment.[5] The Tribunal is not, however, bound to accept either of the parties' theories of valuation.[6] Rather, 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.[7]

Further, a proceeding before the Tribunal is original, independent, and de novo[8] and the Tribunal's factual findings must be supported by competent, material, and substantial evidence.[9]

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[2] See Const 1963, art 9, sec 3.
[3] See MCL 211.27(1).
[4] See *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).
[5] See *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).
[6] See *Teledyne Continental Motors v Muskegon Twp,* 145 Mich App 749, 754; 378 NW2d 590 (1985).
[7] See *Meadowlanes Ltd Dividend Housing Ass'n v Holland,* 437 Mich 473, 485; 473 NW2d 636 (1991).
[8] See MCL 205.735a(2).

In that regard, "substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence."[10]

Additionally, "the petitioner has the burden of proof in establishing the true cash value of the property."[11] "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."[12] 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."[13]

As recognized by the courts of Michigan, 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.[14] The market approach is, however, the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.[15] Nevertheless, 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 true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances.[16] Regardless of the approach selected, the value determined must represent the usual price for which the subject property would sell.[17]

The Tribunal is also required to consider the "highest and best use" of property in determining the property's true cash value, as that concept is fundamental to such determinations, as "it recognizes that the use to which a prospective buyer would put the property will influence the price which the buyer would be willing to pay. Further, land is appropriately valued 'as if available for development to its highest and best use, that most likely

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[9] See *Antisdale v Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984) and *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-3; 462 NW2d 765 (1990).
[10] See *Jones & Laughlin Steel Corp*, *supra* at 352-3.
[11] See MCL 205.737(3).
[12] See *Jones & Laughlin Steel Corp*, *supra* at 354-5.
[13] See MCL 205.737(3).
[14] See *Meadowlanes*, *supra* at 484-85; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), *aff'd* 380 Mich 390 (1968).
[15] See *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale*, *supra* at 276 n 1).
[16] See *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale*, *supra* at 277 and *Teledyne Continental Motors v Muskegon Twp*, 163 Mich App 188, 193; 413 NW2d 700 (1987), *lv den* 429 Mich 889 (1987)).
[17] See *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Meadowlanes*, *supra* at 485).

legal use which will yield the highest present worth."[18] In that regard, "highest and best use" of property is shaped by the competitive forces within the market where the property is located, and it provides the support for a thorough investigation of the competitive position of the property "in the minds of market participants."[19] Additionally, highest and best use analysis strongly influences the choice of comparable sales in the sales approach. Only properties with the same or similar highest and best uses are suitable for use as comparable sales.[20] "If the property being appraised is a single site, not a site whose use depends on assemblage with other sites, the highest and best use of the site alone is analyzed as it currently exists by itself. If the property being appraised consists of multiple sites as though sold in one transaction, the highest and best use analysis considers them as one large site."[21]

Finally, the Tribunal is also required to determine the subject property or properties' taxable values for the tax years at issue.[22]

Here, Petitioner claims that the property's TCV should be based on its sales approach,[23] which includes the "sale of the subject" and the "sale[s] of comparable properties in the immediate vicinity."[24] The inclusion of the subject as a comparable property for purposes of determining the range of adjusted values within which the subject's valuation may fall is, however, inconsistent with the performance of a sales approach.[25] Petitioner further exacerbates said inclusion by placing the greatest weight on the subject's sale (i.e., 65%) in determining the property's estimated TCV.[26] Although Petitioner justifies said inclusion and weight by indicating

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[18] See *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 633; 462 NW2d 325 (1990).
[19] See *The Appraisal of Real Estate*, Appraisal Institute, 2013, 14th ed at 331.
[20] See *The Appraisal of Real Estate*, *supra* at 345.
[21] See *The Appraisal of Real Estate*, *supra* at 334.
[22] See MCL 205.737(1). See also MCL 211.27a(2).
[23] Petitioner's sales approach consisted of a summary of data that was not attached to the summary or otherwise provided to either the Tribunal or Respondent. See Transcript ("Tr.") 13-5 and 21-4. The summary was prepared by Mr. Wylie based on materials "compiled" by both Mr. Wylie and Michael Soave. See Tr. 10. The summary was also signed by both Mr. Wylie and Mr. Soave. See Tr. 10 and P-1 at 19. Mr. Wylie is a Michigan CPA and Mr. Soave is a home builder, real estate investor, and property developer who "operates" a number of entities, including Petitioner. See P-1 at 19. See also Tr. 9. Neither Mr. Wylie nor Mr. Soave are appraisers. See Tr. 10. Further, both Mr. Wylie and Mr. Soave benefit from a reduction on the property's TV based on their summary sales approach. See Tr. 11-2.
[24] See Tr. 7. Contrary to Petitioner's testimony, the sales of comparable properties were not all in the immediate vicinity of the subject property, as indicated herein.
[25] See *The Appraisal of Real Estate*, *supra* at 45, 377-95. Respondent also improperly included the subject property as a comparable property in its sales approach. See Tr. 111-2.
[26] See Tr. 29-30.

that Petitioner's purchase price is a reliable indicator of value (i.e., "a very good measure of the value itself"), MCL 211.27(6) provides, in pertinent part, that "the purchase price paid in a transfer of property is **not** the presumptive true cash value of the property transferred."[27] [Emphasis added.] Further, the Michigan Supreme Court has also stated, in pertinent part:[28]

> The rule in Michigan, as in many other states, is that the selling price of a particular piece of property is **not** conclusive as evidence of the value of that piece of property. . . . The Legislature has commanded that property be assessed as its "usual selling price." The **most obvious deficiency** in using the sales price of a piece of property as conclusive evidence of its value is that the ultimate sale price of the property, as a result of many factors, personal to the parties or otherwise, might **not** be its "usual" price. The **market approach** to value has the capacity to cure this deficiency **because evidence of the sales prices of a number of comparable properties**, if sufficiently similar, supports the conclusion **that factors extrinsic to the properties have not entered into the value placed on the properties by the parties**. Nevertheless, if it can be shown that the sale price each of the comparable properties has been determined **by a flawed method** the result of the market approach to valuation **will also be flawed**. [Emphasis added.]

As such, a purchase price can be considered and relied upon, if it is properly supported. However, said support is, as indicated above, dependent on an analysis of "a number of comparable properties," which does not include a comparison of the subject with itself (i.e., a "flawed" approach).[29] Nevertheless, the first step in the comparison process requires a determination of the property's highest and best use. In that regard, Petitioner's sales approach indicates, in summary fashion, that "the long term highest and best use of the subject property is not the current agricultural use . . . . [instead,] [t]he long term highest and best use **is for development in a manner consistent with zoning and the current master plan**."[30] Petitioner also testified that "[t]he property was purchased not for the farming income **because the farming income would not support** that . . . . [b]ut rather, for the potential for further development."[31] Petitioner further testified that the property was "right on the edge of the

[27] See Tr. 30-2 and 33-4.
[28] See *Antisdale*, *supra* at 278-9.
[29] See Tr. 44-5 (i.e., "somewhat more enthusiastic buyer"). See also Tr. 51-4. Respondent also improperly included the subject property as a comparable. See R-1 at 5 and Tr. 111-112.
[30] See P-1 (Petitioner's Valuation Disclosure) at 9.
[31] See Tr. 21 and Petitioner's Valuation Disclosure (P1) at 9. Petitioner's specific intent was to develop the property for commercial purposes. See also Tr. 50.

commercial property zoning" and that the property's "asking price" indicates that the property was "being offered with an implicit opinion, that it's highest and best use is not for . . . strictly for farming but . . . for speculative investment."[32] Although Petitioner may not have performed the recognized tests for determining a property's highest and best use, its suggested use was supported by Respondent's testimony and documentation.[33] More specifically, Respondent utilized the recognized tests in determining that the property's highest and best use was for commercial development or, more specifically, "for a restaurant or other commercial venture that would benefit from the two street frontages."[34] As a result, the property's highest and best use is for commercial purposes, as said use is legally permissible, physically possible, and financially feasible and, given its location, maximally productive.

With respect to the valuation of the property, the property was purchased on March 2, 2016, for $180,000 "after several months of negotiation."[35] The property consists of 5.896 acres that is, as indicated above, on the "edge" of zoning for commercial property.[36] Although the property was being farmed, it was not purchased for farming purposes. Rather, the property was, as also indicated above, purchased for commercial development after being marketed by Cabela's for well over three years (i.e., "45 months and 18 days").[37] As such, the sale appears to have been an arms-length transaction that had reasonable market exposure (i.e., subject to normal market pressures). Nevertheless, Petitioner was unaware of the seller's motivation in selling the property, which further supports a review of the sales prices of a number of sufficient similar comparable properties to ensure that factors extrinsic to the property have not entered into the

[32] See Tr. 27-8. See also P-1 at 12.
[33] See *The Appraisal of Real Estate*, *supra* at 335.
[34] See R-1 (Respondent's Valuation Disclosure) at 2-4. See Tr. 103-4.
[35] See Tr. 18. See also R-3.
[36] See Tr. 19-21 and P-1 at 15. See also Tr. 47-8.
[37] See P-1 at 15. See also Tr. 22-8 and 32-4. Although Petitioner indicates that the asking or listing price of the subject or a close substitute (i.e., the property across the street from the subject) should be considered "a ceiling on value," listings are not generally considered reliable indicators of value as they reflect a seller's "expectation" and Petitioner had no knowledge as to the motivations underlying the subject sale or any of the other discussed sales. See the Appraisal Institutes' *The Appraisal of Real Estate* (14th ed) at 118. See also Tr. 25, 28, 29, and 44-8. Nevertheless, Petitioner's testimony with respect to the difference in asking prices between the properties in the subject location (i.e., the subject and the property across the street from the subject) and inside "Cabela's park" does provide additional support for the location adjustment to Respondent's comparables discussed herein. See Tr. 25-8.

value that would otherwise be placed on the property by that purchase price.[38] In that regard, both parties submitted sales comparison approaches.[39]

Petitioner's approach, excluding the subject property, considered four (4) comparables. One of the comparables (i.e., Comparable No. 2)[40] was, like the subject, located in the Village and impacted by the Cabela's "sphere" of influence.[41] Comparable No. 2 sold on September 1, 2016 and consists of more acreage than the subject (i.e., 5.896 versus 8.43),[42] but within the acreage range generally utilized for determining acreage rates applicable to the subject property.[43] Of the other three comparables, one was located in the Township (i.e., Comparable No. 3) and possibly subject to Cabela's sphere of influence, while the other two are located east of US 23 in the City (i.e., Comparable Nos. 4 and 5) and are not, as indicated above, subject to the Cabela's sphere of influence. Further, Comparable Nos. 4 and 5 also do not have the subject's same highest and best use, as Comparable No. 4 is used for residential purposes, while Comparable No. 5 is used for industrial purposes.[44] With respect to Comparable No. 3, said property sold on March 3, 2015, with a remediation issue to be borne by the buyer. Although

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[38] Petitioner was also not aware of the seller's motivations for its comparable. Petitioner did not, however, indicate that the seller's "fiduciary" duties in the sale of Comparable Nos. 2 and 3 would have required the seller "to get the highest potential price." See Tr. 54-5

[39] The property is vacant land and, as such, not amenable to a cost approach, which values improvements only. Further, no income approach was provided or applicable, as the property, although generating income from farming, was not purchased for farming purposes, as indicated above. See also Tr. 71 (i.e., no sales study for the rate reflected by the property's record card).

[40] Petitioner's valuation disclosure indicates that Comparable No. 1 was exposed to the market for 1,165 days. See P-1 at 15. Petitioner's testimony did, however, indicate that the actual length of market exposure was 165 days. See Tr. 54.

[41] Although Petitioner indicated that Cabela's benefits Dundee as a whole, it is clear from the evidence that Cabela's has its "own little economic neighborhood" both inside and outside of Cabela's parkway. See Tr. 27, 49-51 and 59-60. See also Tr. 81-2, 86, 95-102 (i.e., "regional draw," "hottest development sites in southeast Michigan," etc.) and 107-9.

[42] See P-1 at 15 and Tr. 34-5 and 46-8.

[43] Acreage studies generally group acreages from 0 to 5, more than 5 to 10, etc., as smaller parcels generally sell, as correctly indicated by Petitioner, for more money on a per acreage basis than larger parcels. See Tr. 41.

[44] See P-1 at 15. Further, Comparable No. 4 is a two parcel with total acreage of 21.42 that purchased by entity owned by Mr. Soave. See P-1 at 15 and Tr. 39-41. As for Cabela's impact on that property, Petitioner stated, in pertinent part, "we believe that properties in different fringe areas right outside of - - of single-family residential properties and on roads that are well-traveled that there's a range of prices that these properties go for" and "[t]he location is more remote from Cabela's, and the - - kind of the value created by that amenity to the market." See Tr. 41. With respect to Comparable No. 5, that property has a total acreage of 10.60. More importantly, Petitioner stated that the comparable is, in pertinent part, "actually industrial zoned, so we hesitated to put it into the mix because it's the only one that's not either commercial or easily convertible to commercial zoning." See Tr. 42. Petitioner also stated, in pertinent part, that the property "is a little more remote from the Cabela's property and so we felt that the subject was superior and did a 15 percent adjustment." See Tr. 43. See also Tr. 56.

Petitioner discussed the basis of its adjustment for market conditions,[45] Petitioner did not discuss or provide documentation as to the specific market basis of each adjustment. Rather, Petitioner merely indicated the percentages applied to account for the purported differences between the subject and the comparables, which included a direct cost reduction for Comparable No. 3's purported, yet undocumented, remediation even though cost and value are not generally synonymous.[46] As a result, the Tribunal is unable to determine from Petitioner's testimony and admitted documentation, specifically P-1, whether the adjusted sales prices of Petitioner's comparables, with the exception of Comparable No. 2, have been determined by a "flawed method," which, unfortunately, renders Petitioner's sales approach an unreliable indicator of value. With respect to Comparable No. 2, that property is located on the west side of US 23 within the Cabela's sphere of influence. The sale also occurred close to the relevant tax date for the 2017 tax year and the amount of its acreage is, as indicated above, within the same group of acreage as the subject for purposes of determining an acreage rate for such parcels. As for the tax rate adjustment, such adjustments are generally considered in the preparation of an income approach and not a sales approach.

Respondent's approach,[47] excluding the subject property, considered two (2) comparables - Comparable No. 1 and 102 Cabela Boulevard ("Comparable No. 2") that are in the Cabela's sphere of influence.[48] Comparable No. 1 sold on September 28, 2016 and consisted of 254,390 square feet or 5.83999082 acres. Comparable No. 2 sold on June 16, 2016 and

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[45]Petitioner made percentage adjustments to account for differences with no testimony or documentation explaining the basis of the adjustments other than its adjustment for the increasing market condition, which was based on "a combination of CPI and national GDP" (i.e., gross domestic product), rather than a study on changes in the specific market, particularly in light of the purported dramatic affect that Cabela's has had on that market or, at least, on the market impacted by the Cabela's sphere of influence. See Tr. 33 and 35. See also Tr. 43 and 57-8. Nevertheless, Respondent agreed that two percent was appropriate to reflect the increase in market conditions from the tax date at issue for the 2016 tax year (i.e., December 31, 2015) to the tax date at issue for the 2017 tax year (i.e., December 31, 2016). See Tr. 77-9. See also MCL 211.2(2).

[46] See P-1 at 16. See also Tr. 36-8. Further, the amount of net and gross adjustments proposed by Petitioner for Comparable Nos. 3, 4, and 5 (i.e., 20.66% to 26.66%, 23.39% to 26.31%, and 18.69% to 21.31%, respectively) exceed the normally acceptable range for comparable properties (i.e., 15% to 25%) indicating that the properties are not "sufficiently similar" and requiring additional explanation as to the selection of those properties, which was not provided.

[47] Respondent's approach constitutes a listing only with no adjustments. See R-1 at 5 and Tr. 70 and 76. See also Tr. 73-4. Respondent did, however, credibly testify as to the application of an adjustment of 10% to reflect the difference in location or, as stated by Petitioner, the amenity impact of Cabela's, as that comparable is located closer to Cabela's than the subject. See Tr. 105-6.

[48] See Tr. 74-5.

consisted of 81,457 square feet or 1.8699954 acres. Of the two sales, Comparable No. 1 sold closer to the relevant tax date at issue for the 2017 tax year and the amount of acreage is, unlike Comparable No. 2, consistent with the acreage range for the subject and Petitioner's Comparable No. 2.[49] As for the "corner" location of Comparable No. 1, Respondent credibly testified that the corner location maybe superior for purposes of a car dealership, but not a restaurant, as contemplated for the subject property given its two access points.[50]

Given the above, the combination of the parties' comparables, specifically Petitioner's Comparable No. 2 and Respondent's Comparable No. 1, provide "the most accurate valuation under the circumstances."[51] More specifically, adjusting the acreage rate for Respondent's Comparable No. 1 by 10% to reflect its superior location and giving more weight to the acreage rate of Petitioner's Comparable No. 2 given its location south of M-50, like the subject, and close proximity to the subject supports an adjusted acreage rate of $48,612 for the 2017 tax year and a TCV of $286,620, which supports a TCV when adjusted by 2% for the change in market conditions from the 2016 tax year to the 2017 tax year of $281,100. As for the taxable values, the property's SEV of $140,500 is less than the calculated capped value for the 2016 tax year, while the property's sale in 2016 uncaps the taxable value to the level of the property's new 2017 SEV of $143,310.[52]

Finally, Petitioner also claims that the "very large jump" in the property's assessment from the 2016 to 2017 tax year raises a "potential" issue relative to whether or not Respondent violated the "following sales prohibition" of the Michigan State Tax Commission (the "STC").[53] Although "the practice of ignoring the assessments of properties which have not recently sold while making significant changes to the assessments of properties have not recently sold" is, as indicated by the STC, "both unconstitutional and illegal,"[54] no evidence, other than Petitioner's

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[49] See Tr. 77. See also Tr. 83-4 (i.e., Respondent also had no knowledge as to Cabela's motivation with respect to the sale of the subject and Respondent's Comparable Nos. 1 and 2).
[50] See Tr. 85-8. See also Tr. 90-3 and 109-111.
[51] See *Jones & Laughlin*, *supra* at p 353.
[52] See MCL 211.27a(2)(a) and (3).
[53] See Tr. 17-9. See also Tr. 18.
[54] See Michigan State Tax Commission ("STC") Bulletin No. 19 of 1997.

"bare" unsupported assertion, has been submitted to support said claim or otherwise establish that Respondent was engaged in any such practice.[55]

Based on the above, the Tribunal concludes that the subject properties' TCV, SEV, and TV for the tax years at issue are as listed in the Introduction Section of this Proposed Opinion and Judgment (POJ).

PROPOSED JUDGMENT

This is a proposed decision and **not** a final decision.[56] As such, no action should be taken based on this proposed decision **until** a final decision is issued by the Tribunal. After the expiration of the time period for the opposing party to file a response to the exceptions, the Tribunal will review the case file, including the POJ and all exceptions and responses, if any, and:

1. Issue a Final Opinion and Judgment (FOJ) adopting the POJ as the final decision.
2. Issue an FOJ modifying the POJ and adopting the Modified POJ as the final decision.
3. Issue an Order vacating the POJ and ordering a rehearing or such other action as is necessary and appropriate.

EXCEPTIONS

This POJ was prepared by the Michigan Administrative Hearings System. The parties have 20 days from date of entry of this POJ to notify the Tribunal **in writing, by mail or by electronic filing, if available,** if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions). Exceptions are **limited** to the evidence submitted prior to or at the hearing and any matter addressed in the POJ. There is **no** fee for filing exceptions and the opposing party has 14 days from the date the exceptions were mailed to that party to file a written response to the exceptions.[57]

Exceptions and responses filed by *e-mail or facsimile* will **not** be considered in the rendering of the Final Opinion and Judgment.

A copy of a party's written exceptions or response **must** be sent to the opposing party **by mail or email, if** email service is agreed upon by the parties**, and** proof **must** be submitted to the Tribunal demonstrating that the exceptions or response were served on the opposing party.

Entered: April 3, 2018 By Peter M. Kopke
pmk

[55] Petitioner would be required to submit similar evidence demonstrating said purported practice "in the taxing district." See *Brittany Park Apartments v Harrison Twp*, 104 Mich App 81, 88; 304 NW2d 488 (1981).
[56] See MCL 205.726.
[57] See MCL 205.726 and TTR 289(1) and (2).