Laurence & Dorothy Jones,
Petitioners,

v

Frankenlust Township,
Respondent.

MICHIGAN TAX TRIBUNAL

MAHS Docket No. 16-002476

Presiding Judge
David B. Marmon

FINAL OPINION AND JUDGMENT

The Tribunal issued a Proposed Opinion and Judgment ("POJ") on August 21, 2018. 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)."

Neither party has filed exceptions to the POJ.

The Administrative Law Judge ("ALJ") considered the testimony and evidence submitted and made specific findings of fact and conclusions of law. The ALJ's determination is supported by the testimony, evidence and applicable statutory and case law.

Given the above, the Tribunal adopts the POJ as the Tribunal's final decision in this case.[1] The Tribunal also incorporates by reference the Findings of Fact and Conclusions of Law contained in the POJ 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 at issue, are as follows:

Parcel Number: 09-030-001-300-050-02

Year	TCV	SEV	TV
2016	$558,600	$279,300	$279,300

b. The property's TCV, SEV, and TV, as determined by the Tribunal for the tax year at issue, are as follows:

[1] See MCL 205.726.

Parcel Number: 09-030-001-300-050-02

Year	TCV	SEV	TV
2016	$335,000	$167,500	$167,500

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 provided in this Final Opinion and Judgment within 20 days of entry of this Final Opinion and Judgment, subject to the processes of equalization.[2] 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, 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%, (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, and (ix) after June 30, 2018, through December 31, 2018, at the rate of 5.41%.

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

[2] See MCL 205.755.

from the date of entry of the final decision.[3] 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.[4] 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.[5] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[6]

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."[7] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[8] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[9]

By David B. Marmon

Entered: September 20, 2018
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[3] See TTR 261 and 257.
[4] See TTR 217 and 267.
[5] See TTR 261 and 225.
[6] See TTR 261 and 257.
[7] See MCL 205.753 and MCR 7.204.
[8] See TTR 213.
[9] See TTR 217 and 267.

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

Laurence D. & Dorothy L. Jones,
Petitioner,

v

MTT Docket No. 16-002476

Frankenlust 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. 09-030-001-300-050-02 for the 2016 tax year. Donovan J. Visser, Esq., represented Petitioner and Paul W. Arnold, Assessor, represented Respondent.

A hearing was held on May 1, 2018. Petitioner's witness was Robert Lentz, MAI.[1]

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: 09-030-001-300-050-02

Year	TCV	SEV	TV
2016	$335,000	$167,500	$167,500

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:[2]

[1] Mr. Lentz was admitted as an expert witness. See Transcript ("TR") at 7. As for Respondent, it failed to file its valuation disclosure and prehearing statement, as required by the May 16, 2017 Prehearing General Call and Order of Procedure. See also TTR 237(2) and (3). Given said failure, the Tribunal commenced the March 5, 2018 Prehearing Conference as a show cause hearing to provide Respondent with an opportunity to explain or otherwise justify said failure. Respondent's assessor did, however, fail to show good cause (i.e., negotiated a settlement with a non-party) and the Tribunal entered an Order on March 5, 2018, precluding Respondent from offering a valuation disclosure for admission or witnesses to testify. See MCL 205.732(c).

[2] 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.

1. The subject property is located at 6304 Westside Saginaw Road, Bay City, MI in Bay County.[3]
2. The property consists of an irregular shaped parcel of 1.39 acres with 135.09 feet of frontage on Westside Saginaw Road and 55 feet of frontage on 3 Mile Road.[4] The property also consists of improvements including a 3,656 square foot "limited purpose" building utilized as a fast food/quick service restaurant with a drive-thru (i.e., Burger King), a parking lot, sidewalks, and landscaping with green spaces.[5] Further, the property can be accessed (i.e., "easy on/off access") from I-75.[6]
3. The property was purchased by Petitioner on August 1, 2013, for $672,800 and leased for the tax year at issue.[7]
4. The property's highest and best use is its continued use as a commercial fast food/quick service restaurant.[8]
5. The designated local market area consists of Bay County, while the designated regional market area consists of Flint, Saginaw, and Bay City.[9]

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.[10] 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.[11]

In its review of that definition, the Michigan Supreme Court has determined that "true cash value" is synonymous with "fair market value."[12]

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.[13] The Tribunal is not, however, bound

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[3] See P-1 at 6.
[4] See P-1 at 6-7, 18, and 20. See also TR at 8-9.
[5] See P-1 at 6-7 and 18. See also TR at 4, 8-9, and 15-7.
[6] See P-1 at 32 and TR at 15-8 (i.e., "highway commercial"). See also P-1 at 21 and 32 (i.e., "[t]he site is visible from I-75 and . . . **this site offers easy on/off access to passer's-thru on their way from Northern Michigan to the SE Michigan area**"). [Emphasis added.]
[7] See TR at 33 and 53-4. See also TR at 58 (i.e., "[t]here was a transfer of the property in 2013 - - wherein Mr. Jones purchased the property subject to the lease").
[8] See P-1 at 7 and 30-2. See also TR at 17-21.
[9] See TR at 13-4 (i.e., "Bay County is pretty representative of the region, the larger region"). See also P-1 at 15-7.
[10] See Const 1963, art 9, sec 3.
[11] See MCL 211.27(1).
[12] See *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

to accept either of the parties' theories of valuation.[14] 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.[15]

Further, a proceeding before the Tribunal is original, independent, and de novo[16] and the Tribunal's factual findings must be supported by competent, material, and substantial evidence.[17] 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."[18]

Additionally, "the petitioner has the burden of proof in establishing the true cash value of the property."[19] "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."[20] 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."[21]

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.[22] The market approach is, however, the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.[23] 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.[24] Regardless of the

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[13] See *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).
[14] See *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).
[15] See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).
[16] See MCL 205.735a(2).
[17] 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).
[18] See *Jones & Laughlin Steel Corp*, *supra* at 352-3.
[19] See MCL 205.737(3).
[20] See *Jones & Laughlin Steel Corp*, *supra* at 354-5.
[21] See MCL 205.737(3).
[22] 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).
[23] See *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale*, *supra* at 276 n 1).
[24] 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)).

approach selected, the value determined must represent the usual price for which the subject property would sell.[25]

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,] [l]and is appropriately valued 'as if available for development to its highest and best use, that most likely legal use which will yield the highest present worth.'"[26] 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."[27] 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.[28] "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."[29]

Finally, the Tribunal is also required to determine the subject property or properties' taxable values for the tax years at issue.[30]

Here, Petitioner claims that the property's TCV should be based on the reconciliation of its sales and income approaches.[31] In that regard, Petitioner gives equal weight

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[25] See *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Meadowlanes*, *supra* at 485).
[26] See *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 633; 462 NW2d 325 (1990).
[27] See *The Appraisal of Real Estate*, Appraisal Institute, 2013, 14th ed at 331.
[28] See *The Appraisal of Real Estate*, *supra* at 345.
[29] See *The Appraisal of Real Estate*, *supra* at 334.
[30] See MCL 205.737(1). See also MCL 211.27a(2).
[31] "The cost approach was not applied because the age of the improvements makes the depreciation difficult to accurately measure." See P-1 at 11. See also TR at 7-8, 9-12, and 52-3. Further, the property was leased to a "Burger King franchisee" for the tax year at issue and yet valued based on the hypothetical condition that "the subject property [was] not encumbered by lease as of the date of value" (i.e., December 31, 2015). See MCL 211.2(2). See P-1 at 11 and 8 (i.e., "[g]ood title, free of liens, encumbrances and special assessments is assumed") See also TR at 33, 53-4 (i.e., "I didn't inquire to the terms of the lease because they're not relevant to the assignment"), and 57-8. In that regard, Petitioner's appraiser testified as follows:

to both approaches, divides the values indicated by each approach (i.e., $274,000 and $335,00) and then adds those equally divided values (i.e., $137,000 and $167,500) to derive their final opinion of value (i.e., $305,000).[32]

Notwithstanding the issues raised by the purported reconciliation,[33] the first step in the process is, as indicated above, a determination of the property's highest and best use and the only evidence provided to assist it that determination was the testimony of Petitioner's appraiser and his appraisal.[34] In that regard, Petitioner's appraiser identified the property's highest and best use as vacant and improved after analyzing the four criteria applied in making such determinations.[35] The "as vacant" analysis does, however, indicate that the proposed use for commercial development "may not be financially feasible at this time," as said development is dependent on the improvement of market conditions (i.e. "when the market is ready for that lot to be improved").[36] Although the "as vacant" analysis is necessary, the focus of the analysis is to determine alternative uses for the property, if any, while the focus of the "as improved" analysis is on whether the improvements should be retained, modified, or demolished.[37] In that regard, the "as improved" analysis supports, despite any potential need for renovation or "rebranding," the continued use of the property as a fast food/quick service restaurant, as said use is, as

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> In a **leased fee valuation** these - - **the current tenant and the lease encumbrance would be considered**, which have different metrics and risk factors at play. In a fee simple valuation the property would be - - the applicable rent stream would be market rents from other commercial properties, usually local tenants, local market participants, and so you would - - **it would be unencumbered and you would be dealing with a different potential tenant pool**. [Emphasis added.]

See TR at 12. See also *The Appraisal of Real Estate, supra* at 72 and 505 (i.e., "[t]he market value of a leasehold interest depends on how contract rent compares to market rent").

[32] The addition of the equally divided values resulted in $304,500 that was rounded to $305,000. See P-1 at 60. See also TR 52.

[33] The appraisal's explanation of the approaches and their application to the subject is, among other things, insufficient to "lead . . . logically" to the appraiser's final opinion of value, particularly in light of the problems with Petitioner's sales approach, as indicated herein. See *The Appraisal of Real Estate, supra* at 646-47 and 668-69.

[34] P-1 was the only exhibit offered and admitted by either party. See TR at 55. The property's record card was, however, admitted as a public record and not for valuation purposes based on its inclusion with the answer and P-1. See TR 93-4.

[35] See *The Appraisal of Real Estate, supra* at 331-58.

[36] See TR at 18-9.

[37] See *The Appraisal of Real Estate, supra* at 336-37.

supported by the evidence, legally permissible, physically possible, financially feasible, and, given its location (i.e., "highway commercial"),[38] maximally productive.[39]

As for Petitioner's sales approach, said approach is an unreliable indicator of value. More specifically, Petitioner utilizes four comparable properties – two sales and two listings.[40] Of the two sales – one occurred in 2013 (i.e., Comparable No. 1) and one occurred in 2012 (i.e., Comparable No. 4).[41] Both sales also occurred in markets other than the local and regional market areas identified by Petitioner - Comparable No. 1 in Albion, MI in Calhoun County, which is generally considered as being located in the south-central region of the Lower Peninsula, and Comparable No. 4 in Smiths Creek, MI in St. Clair County, which is generally considered as being located in the east-central region or "Thumb" area of the Lower Peninsula.[42] Further, the sale of Comparable No. 4 was the result of an auction sale held by a non-governmental agency or person (i.e., Palmetto Auction Service) and not a private sale.[43] Although Petitioner's appraiser testified that he verified the sales with MLS information and by speaking with the broker for the sale of Comparable No. 1 and the auction service for the sale of Comparable No. 4,[44] the sales are too remote in time to be relevant absent support for either an adjustment or lack of an adjustment for time of sale to reflect changes in market conditions, if any, from the date of sale to the relevant tax date at issue (i.e., December 31, 2015),[45] particularly in light of the economic downturn that began in 2008 and dramatically affected the value of properties throughout the State and the varying statewide degrees of recovery from 2008 to present day.[46] Unfortunately, neither the testimony provided nor the documentation admitted

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[38] See TR at 18. See TR at 72-4.
[39] See TR at 17-21.
[40] See P-1 at 35-40. See also TR at 24-8.
[41] See TR at 59 and 69.
[42] Although arguments have, in the past, been made that Bay City should be considered in conjunction with the Thumb Area, both Comparable Nos. 2 and 4 are located in the southern end of the Thumb area and more likely impact the Port Huron market than the Bay City market. See TR at 69.
[43] See TR at 28.
[44] See TR at 24-5 and 27-8.
[45] See MCL 211.2(2).
[46] See TR at 71-2 (i.e., property values were impacted by a recession [in] 2012 – "I think that's fair, yes; yup" and "[**t**]**he market conditions have improved 2012 to 2015**, I would say that's fair"). [Emphasis added.] See also TR 96 relative to the contrary summary of said testimony by Petitioner's attorney (i.e., "[t]he market hasn't changed or not changed in material fashion"). Additionally, the adjustments actually made by Petitioner's appraiser were both quantitative and qualitative in nature. See P-1 at 41-3. See also TR at 28, which provides:

was sufficient to justify the lack of adjustments for time of sale and location or establish that auction sales are a "common method of acquisition" in Smiths Creek or, more appropriately, Kimball Township for fast food/quick service restaurants.[47] As such, the sales are unreliable indicators of value.[48]

With respect to Petitioner's use of listings in their (i.e., Comparable Nos. 2 and 3), listings, although "useful indicators" of anticipated value and market activity,[49] are not generally considered reliable indicators of value. Further, Petitioner's appraisal indicates that a 10% deduction was applied to the list prices per square foot "for likely sale price negotiation."[50] Comparable No. 2 is also listed for sale in a market other than the local and regional market areas identified by Petitioner – Marysville, MI in St. Clair County, which is, as indicated above, generally considered as being located in the east-central region or "Thumb" area of the Lower Peninsula.[51] No testimony or documentation was, however, provided to support for said

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> Oftentimes there's more differences than there's data to support quantitative adjustments, so we make quantitative adjustments where we feel the data is sufficient to do so, such as the case with the comps two and three where we make a sale price negotiation adjustment of 10 percent.

No such data was, however, provided by the appraiser or the appraisal. See TR at 31-2, which provides:

> So in the qualitative analysis **we used a series of pluses, minuses and equals to denote inferiorities, superiorities and similarities**. And so we don't have a quantitative metric to say that, you know, a plus is, you know, a certain number of dollars per square feet or something like that. But generally speaking, **we look at the balance of the pluses, minuses, and equals** . . . . [Emphasis added.]

A review of the appraisal's "pluses, minuses and equals" does, unfortunately, indicate inconsistent assignments or, more specifically, differences that require more explanation to justify the assignments than the explanations provided by either the appraiser or the appraisal. See P-1 at 41-3 and 67 (i.e., "because the market date is insufficient to do so"). See also *The Appraisal of Real Estate*, *supra* at 386-92.

[47] Smiths Creek is located in Kimball Township. Additionally, the testimony and documentation also failed to establish that the auction sale was somehow an open market transaction (i.e., arm's length and subject to normal market pressures). See also TR at 70-1.

[48] It is unfortunate that Comparable No. 4 is, as indicated above, an unreliable indicator, as that property was a former Burger King in a "highway commercial" area (i.e., easy on/off from I-69). See P-1 at 40. See also TR at 27 (i.e., "[i]t's situated on the west of Wadhams Road, visible from I-69, which passes by closely) and 30-1 (i.e., "considered quite similar with visibility from an interstate on a commercial thoroughfare").

[49] See *The Appraisal of Real Estate*, *supra* at 118-120.

[50] See P-1 at 38 and 39. See also TR at 25 (i.e., "might see a 10 percent reduction for negotiations") and 26 (i.e., "would probably bring that down roughly 10 percent").

[51] See TR at 25-7. See also TR at 60-1 (i.e., no immediate exit ramp to Comparable No. 2 – "[t]hat's correct"). Although Comparable No. 3 is located in Bay City, it is located in a non-highway commercial area. See P-1 at 36 and TR at 64 (i.e., "not directly . . . a mile and a half, maybe two miles"). See also TR at 26, which provides:

deduction or otherwise explain that no "factors extrinsic" to the property entered into the value placed on the listed properties by their respective sellers and brokers.[52]

Notwithstanding the above, Petitioner's income approach provides "the most accurate valuation under the circumstances" (i.e., no evidence provided or otherwise admitted based on Respondent's default).[53] More specifically, Petitioner's appraiser utilized five "lease" comparables that were adjusted to determine a lease price per square foot.[54] Although Petitioner's appraiser testified regarding the use of "similar lease transactions in the local market," only Comparable Nos. 1 and 5 were from the Bay City/Bay County market and the transactions that occurred closest to the relevant tax date at issue (i.e., 2015).[55] Further, Comparable No. 1 is located in a retail strip center across from the Bay City Mall in the market's prime retail corridor and, as such, is not necessarily similar to the subject.[56] With respect to Comparable No. 5, that comparable is a free-standing building, like the subject. It is not, however, located in a similar highway commercial area and the "lease transaction" consists of a current listing that was reduced by 10% for negotiation purposes with no support provided for the 10% adjustment. Nevertheless, the lease price per square foot determined by Petitioner's appraiser is bracketed by the adjusted lease rate for Comparable No. 1 and the adjusted and unadjusted lease rates for Comparable No. 5 (i.e., $7.62 and $8.46) and supported by those rates with more weight being given to Comparable No. 1 than Comparable No. 5, as Petitioner's appraiser also failed to properly adjust for the difference between Comparable No. 5's

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> It's situated on a roughly 1.1-acre parcel, kind of behind other commercial properties. It's **not** directly on the commercial thoroughfare, **so there's a little bit of visibility issues there**. [Emphasis added.]

[52] See *Antisdale, supra* at 278-9 (citations omitted). See also MCL 211.27(6) (i.e., "the purchase price paid in a transfer of property is not the presumptive true cash value of the property transferred"). Further, no location adjustment was made to Comparable No. 2 and no evidence was provided to support the lack of an adjustment.
[53] See *Jones & Laughlin, supra* at p 353.
[54] See P-1 at 44-52. See also TR at 34-42.
[55] Comparable No. 2 is located Midland, MI, while Comparable Nos. 3 and 4 are located in Saginaw, MI. Although all three comparables are located in the identified regional market, they are not, as indicated above, in the local market (i.e., Bay City or, for that matter, Bay County). Further, Comparable Nos. 2 and 3 are not free-standing buildings. Rather, both are located in retail strip centers. Additionally, Comparable No.3 is not a fast-food/quick service restaurant. It is instead a dance studio (i.e., Danceworks). All three comparables are also 2013 lease transactions.
[56] Comparable No. 1 is not a free-standing building or located in a highway commercial area. Rather, it is located, according to the testimony of Petitioner's appraiser, a more desirable commercial area (i.e., in the shadow of the Mall).

"secondary" location and the subject's "secondary/X way location." As for the remainder of Petitioner's income approach, the testimony of Petitioner's appraiser was sufficiently credible and the approach sufficiently reliable, at least under the circumstances, to explain or, more specifically, justify the calculation of the property's market-based net operating income utilizing Comparable Nos. 1 and 5 and applied capitalization rate to support the value determined under that approach.[57]

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.[58] 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.[59]

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

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[57] See P-1 at 53-8. See also TR at 42-52.
[58] See MCL 205.726.
[59] See MCL 205.726 and TTR 289(1) and (2).

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.

By Peter M. Kogler

Entered: August 21, 2018
pmk