

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

Iris LLC,
Petitioner,

v

MTT Docket No. 16-003127

City of Royal Oak,
Respondent.

Tribunal Judge Presiding
Preeti Gadola

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Iris LLC, appeals the ad valorem property tax assessments levied by Respondent, City of Royal Oak, against Parcel No. 72-25-14-101-040 for tax years 2016 and 2017. Myles Hoffert, Attorney, represented Petitioner, and Seth O’Loughlin, Attorney, represented Respondent. A hearing on this matter was held on November 28, 2017. Respondent’s sole witness was John Widmer, Appraiser. Petitioner called Daniel Tomlinson, Appraiser, as a rebuttal witness.

The subject property consists of an automobile dealership, Matthews – Hargreaves Chevrolet. Its building improvement, built in 1989, consists of an automobile showroom, service bay check-in, service bays and collision shop. The property also includes a used car modular office, site improvements and other improvements including a canopy and storage mezzanine.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash values (“TCV”), state equalized values (“SEV”), and taxable values (“TV”) of the subject property for the 2016 and 2017 tax years are as follows:

Parcel No.	Year	TCV	SEV	TV
72-25-14-101-040	2016	\$4,400,000	\$2,200,000	\$1,973,650
72-25-14-101-040	2017	\$4,700,000	\$2,350,000	\$1,981,412

RESPONDENT’S CONTENTIONS

The property’s TCV, SEV, and TV as established by the Board of Review for the tax years at issue are as follows:

Parcel Number: 75-25-14-101-040

Year	TCV	AV	TV
2016	\$3,969,580	\$1,984,790	\$1,973,650
2017	\$4,076,220	\$2,038,110	\$1,981,412

Respondent's revised contentions of value:

Parcel Number: 75-25-14-101-040

Year	TCV	AV	TV
2016	\$4,900,000	\$2,450,000	\$1,973,650
2017	\$5,000,000	\$2,500,000	\$1,981,412

Respondent contends that the subject property is under assessed for the tax years in question.

RESPONDENT'S ADMITTED EXHIBITS

R-1 Appraisal prepared by John Widmer, MAI

RESPONDENT'S WITNESS

John Widmer

Mr. Widmer prepared an appraisal of the subject property using the sales approach to value supported by the cost-less-depreciation approach. Mr. Widmer considered the income approach as the owner of the property does occupy the property under a lease, however, the original lease executed on March 1, 1990, and amendments executed March 1, 2001, February 1, 2005 and September 11, 2012, were between related parties.¹ As such, Mr. Widmer found the lease was not at arm's length and determined the income approach was not the best approach to utilize in determining the true cash value of the property.

Mr. Widmer concluded the property's highest and best use, as vacant, to be commercial development and as improved, its current use as an auto dealership property. He determined highest and best use by considering if the reasonably probable use was physically possible, legally permissible and financially feasible.²

¹ R-1 at 11.

² R-1 at 62-63.

Sales Comparison Approach to Value

For the 2016 tax year, Mr. Widmer put forth four comparable auto dealership sales adjusted to be consistent with the characteristics of the subject property. All of Mr. Widmer's sales comparables for both tax years were personally inspected. Comparable/sale one is a former Ford dealership located in Bloomfield Township, purchased by Erhard BMW. Its improvement consists of 47,589 square feet, situated on 8.08 acres of land, and sold August 14, 2014 for \$3,700,000. The purchaser filed for rezoning of a 2.25 acre rear segment of the property from industrial to commercial to accommodate a building expansion. Mr. Widmer noted the comparable had been vacant for several years and there were significant repairs needed.³ The comparable was adjusted for expenditures after the sale, market conditions, at 5% per annum, due to its August 14, 2014 sales date,⁴ location, land to building ratio, and age/condition. Mr. Widmer's determination of final adjusted dollar per square foot is \$110.17.⁵

Comparable/sale two is Telegraph Chrysler Jeep located on Telegraph Road in the City of Taylor. The main property consists of three buildings with a total square footage of, plus or minus, 65,472. There is a fourth building with square footage of approximately 4,462, for a total of 69,934 square feet of improvements, which sit on 13.47 acres of land. The property sold October 7, 2014 for \$5,700,000 and was adjusted for market conditions, location, land to building ratio, building size, and for age/condition. Its adjusted dollar per square foot conclusion is \$109.84.⁶

Comparable/sale three is Genthe Honda, located in Southgate, and consists of three building improvements with gross building area of 37,101 square feet, situated on 5.22 acres of land. The property was purchased by its tenant on November 26, 2014 and the parties reported the \$2,825,000 sale price did reflect market value. Further, there was \$287,000 spent to cure deferred maintenance. The comparable was adjusted for expenditures after the sale (HVAC and

³ Tr. at 44.

⁴ MCL 211.2(2) states: The taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day, any provisions in the charter of any city or village to the contrary notwithstanding.

⁵ R-1 at 70, 118, Tr. at 43-45.

⁶ See R-1 at 70, 120. Tr. at 46-48.

roof repair), market conditions, location, land to building ratio, and age/condition for a final adjusted dollar per square foot of \$117.41.⁷

The fourth comparable is actually sale number five, the former Tamaroff Dodge in Southfield. It sold on December 4, 2015 for \$3,500,000 and was acquired to be utilized by a nearby Chrysler Dealership for its Southfield Chrysler Certified Pre-owned Supercenter. The improvements consist of 28,546 square feet on 4.2 acres of land. The sale was adjusted for location, land to building ratio, building size, and age/condition for a final adjusted dollar per square foot of \$115.93.⁸

The four adjusted comparables put forth unit pricing from \$110 to \$117 per square foot with an average of \$113 per square foot. Mr. Widmer placed the most emphasis on sales one and five and his conclusion of the true cash value of the subject property for the 2016 tax year, is \$4,900,000 (\$112.31 per square foot).⁹

For the 2017 tax year, Mr. Widmer utilized sale five, Tamaroff Dodge, as his first comparable, but adjusted it for market conditions given the relevant tax date of December 31, 2016. He adjusted for market conditions, at 5% per tax year, concluding in an adjusted value per square foot of \$121.72.¹⁰

Mr. Widmer's comparable two/sale six, is the former LaFontaine Nissan in Highland Township. The property was sold on February 22, 2016 to Anthony Serra, who opened a dealership maintaining the Nissan brand. The property sold for \$2,200,000, has 24,491 square feet of gross building area, and is situated on 4.88 acres. It was adjusted for market conditions, location, land to building ratio, building size, and age/condition, for an adjusted value conclusion of \$110.07 per square foot.¹¹

Comparable three/sale seven was formerly General RV and located in Wixom. At the time of sale, the purchaser intended to open a new automobile dealership on the site. It sold for \$3,506,666 on July 28, 2016, consists of 35,461 square feet of improvement, situated on 9.44

⁷ See R-1 at 70, 122, Tr. at 48-51.

⁸ See R-1 at 70, 126, Tr. at 52-54.

⁹ See R-1 at 70, Tr. at 54-55.

¹⁰ See R-1 at 71, Tr. at 55-57.

¹¹ See R-1 at 71, 128, Tr. at 57-59.

acres. It was adjusted for market conditions, location, land to building ratio, and age/condition. Its adjusted dollar per square foot value conclusion is \$115.78.¹²

Mr. Widmer's last comparable for the 2017 tax year is comparable four/sale eight, the former Causely Mazda/Hyundai located in Macomb Township. The purchaser planned to open a Toyota branded dealership in December 2016 or January 2017. The property consists of improvements of 29,413 square feet of gross building area situated on 4.61 acres and sold on October 18, 2016 for \$3,300,000. The comparable was adjusted for market conditions, location, land to building ratio, building size, and age/condition. Its adjusted dollar per square foot conclusion is \$107.54.¹³

The adjusted unit pricing of the comparables ranged from \$108 to \$122 per square foot for an average unit price of \$114 per square foot. Placing the most weight on sales five and eight, the concluded true cash value for the subject property for the 2017 tax year is \$5,000,000 (\$114.60 per square foot).¹⁴

Cost Approach to Value

Mr. Widmer testified that he utilized the cost approach as a supporting indicator of the market value of the property for both tax years in question. Mr. Widmer established the underlying land value by finding comparable sales and adjusting them to be consistent with the characteristics of the subject property, by establishing the replacement cost new for building and site improvements through Marshall Valuation Service, by calculating soft costs, and finally subtracting any depreciation.

Mr. Widmer determined land value for the subject property utilizing the sales comparison approach. He first searched for sales within one mile of the subject property and found one sale, the sale of the Kroger Marketplace property across the street from the subject. The additional three sales were in the Cities of Warren and Troy.

For tax year 2016, sales comparable one, Kroger Marketplace, consists of 13.89 acres and sold on August 5, 2015 for \$5,450,000. Kroger purchased the site within view of the subject property to develop a prototype Kroger plus store with fuel center. At the time of sale the

¹² See R-1 at 71, 130. Tr. at 59-60.

¹³ See R-1 at 71, 132. Tr. at 60-62.

¹⁴ See R-1 at 71, Tr. at 63.

property consisted of one-family and multi-family zoning. Prior to closing, however, the purchaser submitted a site plan and rezoning request to permit the larger scale retail development proposed, which was approved on December 9, 2014. The property improvements, at the time of sale, were St. Dennis Church and School and a credit union branch, however, the building improvements were demolished so expenditures after the sale were applied. Mr. Widmer adjusted the comparable for market conditions at 5% per year, external influences predominantly for better traffic count; parcel size, expenditures after the sale, and overall utility (because the parcel is larger than the subject and can be utilized for multiple purposes), concluding in a dollar per square foot value of \$7.95.¹⁵

Sales comparable two, is located at 29900 Van Dyke Avenue, and is a former balcony-front motel, which was demolished by the City of Warren and then sold to a buyer who intended to build a Cadillac dealership, which it did. It consists of 4.54 acres and sold for \$1,600,000 on February 24, 2015. It was adjusted for market conditions for the date of sale as compared to the subject valuation date, overall utility due to the lack of usability of a rear extension, and adjusted for its industrial zoning which would require special land use approval for commercial retail development. Its adjusted value conclusion per square foot is \$8.00.¹⁶

Sales comparable three was formerly a Jumbo Buffet restaurant in the City of Troy, consists of 2.5 acres and sold on July 15, 2014 for \$750,000. The purchaser planned to build a hotel on the property, but has not yet done so, however, the purchaser did just complete the construction of two hotels on Big Beaver Road. The sale was adjusted for market conditions, external influences, use/zoning and overall utility and its adjusted dollar per square foot value is \$7.19.¹⁷

Sales comparable four, located on Stephenson Highway in Warren, consists of 4.54 acres and sold for \$1,250,000 on June 26, 2013. It was adjusted for expenditures after the sale as an office building located on the property was demolished by the purchaser to make way for the development of two hotels. It was also adjusted for market conditions due to its 2013 sale date, external influences, use/zoning, and overall utility. The final adjusted value conclusion per

¹⁵ See R-1 at 76, 138, Tr. at 67-70.

¹⁶ See R-1 at 76, 140, Tr. at 70-72.

¹⁷ See R-1 at 76, 142, Tr. at 72-73.

square foot is \$7.61.¹⁸ Mr. Widmer's reconciled value per square foot, considering all four land comparables, is \$7.95. As such his conclusion of total site value is \$1,820,000.¹⁹

For the 2017 tax year, Mr. Widmer utilized the same four sales comparables, with a market conditions adjustment of 5% per year for a reconciled value of \$8.34 per square foot and a total site value of \$1,910,000. Mr. Widmer testified he mostly relied on sale number one, for both tax years, due to its extreme proximity to the subject property. He noted it is unusual to find such a good land comparable.²⁰

Subsequent to determining land value, Mr. Widmer calculated the replacement cost of the structures utilizing the professional publication, Marshall Valuation Service ("Marshall").²¹ The property is an automobile dealership, and cost new was calculated using Marshall numbers for both complete auto dealership and a combination of showroom and service repair garage, with the concluded emphasis on the combination value. Mr. Widmer's ultimate replacement cost calculation for 2016 is \$69.91 per square foot or \$3,050,000. Mr. Widmer next multiplied that number by the local cost multiplier of 1.12, and added the replacement cost for the storage mezzanine and canopy for total improvement replacement cost new of \$3,616,322. Afterward, the total improvement replacement cost new was added to site improvement replacement cost new for asphalt paving, site preparation, chain link fencing, parking lot lighting, and landscaping, and multiplied by the local cost multiplier for total site improvement replacement cost new of \$494,879. This number was added to \$3,616,322 to calculate building and site improvement replacement cost new of \$4,111,201. Indirect/soft costs for real estate taxes and financing fees of \$95,268 were added for a total building, site improvement, and soft costs, of \$4,206,469.²²

¹⁸ See R-1 at 76, 144, Tr. at 73-75.

¹⁹ See R-1 at 76-77, Tr. at 75-76.

²⁰ See R-1 at 77-78, Tr. at 76-77.

²¹ "Many cost-estimating services publish data for estimating the current cost of improvements. The most recognized services in the United States include the following: Marshall & Swift/Boeckh." Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), p 576.

The Appraisal of Real Estate is the appraisal profession's, "flagship text, reflects this recommitment to the essential principles of appraisal and the sound applications of recognized valuation methodology." Further, "both appraisers and users of their services can be assured that this volume builds on time-tested foundational knowledge and contains the most up-to-date information and learning on valuation available anywhere." *Appraisal of Real Estate*, Forward, written by Richard L. Borges II, MAI, SRA, 2013 President, Appraisal Institute. Mr. Widmer and many appraisers quote extensively from the *Appraisal of Real Estate* in their appraisals. See R-1 at 11, 25, 62, 64, 66, 67, 78, 80, 81.

²² See R-1 at 82, Tr. at 77-87.

Depreciation of \$1,080,316 was subtracted from \$4,206,469, for a total depreciated value of improvements of \$3,126,152. This number was added to 2016 vacant site value, of \$1,820,000, for a true cash value under the cost approach of \$4,950,000. Depreciation²³ was extracted from Marshall under the curvilinear method, “which is based on the philosophy that buildings depreciated at a lower pace during their infancy or during their early years.”²⁴

For the 2017 tax year, Mr. Widmer adjusted the cost multipliers twelve months forward from the previously used 2016 numbers, and the total building improvement replacement cost new was calculated to be \$3,649,225. Building plus site improvements were calculated to be \$4,134,767, soft costs \$98,466, depreciation \$1,125,503, plus site value of \$1,910,000, resulted in a conclusion of true cash value for the subject property for the 2017 tax year of \$5,020,000.²⁵

After considering all three approaches to value, but relying on the sales approach, with support by the cost approach, Mr. Widmer’s conclusion of the market value for the property was \$4,900,000 as of December 31, 2015 and \$5,000,000 as of December 31, 2016.²⁶

Additional Testimony

On direct and cross-examination, Mr. Widmer was questioned about the condition of the property parking lot and he testified there were some repairs in the past, but pursuant to his inspection he determined it was in good condition with some small alligator cracking that would not rise to the level of deferred maintenance.²⁷

Mr. Widmer confirmed the subject property is zoned industrial, and during cross-examination was questioned about the requirement for special land use permits to build commercial property in the area and whether adjustments should be made to his market comparables for zoning? Mr. Widmer testified, he considered potential special use permits in his

²³ *The Appraisal of Real Estate* describes the depreciation deduction as such: “The market recognizes the occurrence of losses in the value of improvements due to the effects of age, wear and tear, and other causes, and the appraiser interprets how the market perceives the collective effect of all forms of depreciation.” *The Appraisal of Real Estate*, p 576.

²⁴ Tr. at 89-90.

²⁵ R-1 at 83, Tr. at 92-95.

²⁶ Tr. at 94-95.

²⁷ Tr. at 30, 106.

adjustments²⁸ and also noted, there are commercial uses allowed in the industrial zoning.²⁹ He testified, that in proximity to the subject property, “[i]t’s evident when you drive that corner of Campbell and Twelve Mile there are commercial and office uses in that area. Therefore, when I consider this industrial zoning, I consider it that is capable of accommodating a commercial use like the subject.”³⁰

Also on cross examination, Mr. Widmer was questioned as to whether he was aware of water retention issues in general and he replied in the affirmative, though he was unaware of any water retention issues related to the subject property.³¹ Finally, on cross examination, Mr. Widmer was questioned about the modular, used car office and whether he valued it as real or personal property, Petitioner’s counsel represented that the modular structure had wheels, and should be valued as personal property. Mr. Widmer testified he valued the used car office as real property, but considering it only has 800 square feet, he determined it would make little difference with regard to his conclusions of value, if the property was valued as personal property.³²

PETITIONER’S CONTENTIONS

Petitioner contends that the subject property is assessed in excess of 50% of its true cash value. Petitioner’s contentions of TCV, SEV, and TV are as follows:

Parcel Number:

Year	TCV	SEV	TV
2014	\$3,000,000	\$1,500,000	\$1,500,000
2015	\$3,000,000	\$1,500,000	\$1,500,000

PETITIONER’S ADMITTED EXHIBITS

Rebuttal Exhibit 1: Addendum B: City of Royal Oak Water Detention Ordinance

²⁸ See land comparables two, three and four. 2016 sales comparable one.

²⁹ Tr. at 116-117.

³⁰ *Id.*

³¹ Tr. at 119.

³² Tr. at 123.

PETITIONER'S WITNESS

Daniel Tomlinson, Rebuttal Witness

Petitioner attempted to put forth value testimony by calling Mr. Tomlinson, as a rebuttal witness and having him testify as to issues with the property that would lessen its true cash value, however, pursuant to TTR 255(2),

Without leave of the tribunal, a witness may not testify as to the value of property without submission of a valuation disclosure signed by that witness and containing that witness' value conclusions and the basis for those conclusions. This requirement does not preclude an expert witness from rebutting another party's valuation evidence. The expert witness may not, however, testify as to the value of the property at issue unless the expert witness submitted a valuation disclosure signed by that expert witness.

FINDINGS OF FACT

1. The subject property building improvement, built in 1989, consists of 43,629 square feet and sits on approximately 5.25 acres.
2. The subject property is Matthews-Hargreaves Chevrolet, an automobile dealership. It is located at 2000 East Twelve Mile Road in the City of Royal Oak. Its building improvements consist of an automobile showroom, service bay check-in, service bays and collision shop. The property also includes a used car modular office and other improvements consisting of a canopy and storage mezzanine.
3. The property has site improvements including chain link fencing, paving, parking lot lighting, and landscaping.
4. Mr. Widmer testified there were some parking lot repairs in the past, but pursuant to his inspection he determined the lot was in good condition with some small alligator cracking.
5. The subject property is zoned industrial, which includes commercial uses. Mr. Widmer testified, when appropriate, he considered potential special use permits in his comparable property adjustments.
6. Mr. Widmer prepared cost-less-depreciation, sales and income approaches to value the subject property.

7. Mr. Widmer considered, but rejected the income approach, and concluded to value based on his sales approach, supported by his cost approach.
8. Mr. Widmer determined the highest and best use of the property, as vacant, to be commercial development and as improved, its current use as an auto dealership property.
9. In his sales approach to value, Mr. Widmer considered four sales of automobile dealerships. For the 2016 tax year the sales were, comparable/sale one, the former Maxey Ford, comparable/sale two, Telegraph Chrysler Jeep, comparable/sale three, Genthe Honda and comparable four/sale five, the former Tamaroff Dodge.
10. For the 2017 tax year, the sales considered were comparable one/sale five the former Tamaroff Dodge, comparable two/sale six, the former LaFontaine Nissan, comparable three/sale seven, the former General RV and comparable four/sale eight, the former Causeley Mazda/Hyundai.
11. For the 2016 and 2017 tax years, the various sales were adjusted for market conditions, location, land to building ratio, building size, age/condition, and expenditures after the sale, as appropriate.
12. 2016 comparable one was adjusted by 32.2% for expenditures after the sale and 10% for location. Comparable two was adjusted by 20% for location, comparable three was adjusted by 20% for location and comparable four was adjusted by 10% for location.
13. For the 2017 tax years, comparable one was adjusted by (10%) for location, comparable two was adjusted by 25% for location, comparable three was adjusted by 25% for location, and comparable four was adjusted by 5% for location.
14. 2017 comparable four/sale eight was adjusted by .3% for land to building ratio and sold in October 2016 for \$3,300,000 and in October 2014 for \$3,025,000.
15. Mr. Widmer prepared a cost approach to value which included four land sales adjusted to be consistent with the subject property. The same sales were utilized for tax years 2016 and 2017, but were adjusted by 5% per annum, for market conditions.
16. Mr. Widmer calculated replacement cost new of building and site improvements by utilizing Marshall Valuation Service.
17. Mr. Widmer calculated depreciation pursuant to the curvilinear method, of \$1,080,316 for the 2016 tax year and \$1,125,503 for the 2017 tax year.

18. With regard to the income approach, Mr. Widmer determined the subject property lease was between related parties.

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.³³

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. . . .³⁴

The Michigan Legislature has 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.³⁵

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”³⁶

“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.”³⁷ The Tribunal is not bound to accept either of the parties' theories of valuation.³⁸

“It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case.”³⁹ 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.”⁴⁰

³³ See MCL 211.27a.

³⁴ Const 1963, art 9, sec 3.

³⁵ MCL 211.27(1).

³⁶ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

³⁷ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

³⁸ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

³⁹ *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

⁴⁰ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

A proceeding before the Tax Tribunal is original, independent, and de novo.⁴¹ The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”⁴² “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”⁴³

“The petitioner has the burden of proof in establishing the true cash value of the property.”⁴⁴ “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.”⁴⁵ 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.”⁴⁶

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.⁴⁷ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”⁴⁸ 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.⁴⁹

Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.⁵⁰

Mr. Widmer is an appraiser with the MAI designation and as such, he is a Member of the Appraisal Institute, “the preeminent appraisal group in the world.”⁵¹ He prepared an appraisal of

⁴¹ MCL 205.735a(2).

⁴² *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

⁴³ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

⁴⁴ MCL 205.737(3).

⁴⁵ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

⁴⁶ MCL 205.737(3).

⁴⁷ *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).

⁴⁸ *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

⁴⁹ *Antisdale*, *supra* at 277.

⁵⁰ See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

⁵¹ Tr. at 15.

the subject property for the 2016 and 2017 tax years and was designated an expert in the appraisal of auto dealerships by the Tribunal. Mr. Widmer appraised the fee simple estate in accordance with USPAP, the Uniform Standards of Professional Appraisal Practice.

Mr. Widmer inspected the property on August 1, 2017. He testified the property is operated as Matthews-Hargreaves Chevrolet, consists of 43,629 square feet and sits on, plus or minus, 5.25 acres. Mr. Widmer testified there was a portion of the property of approximately 70 feet deep by 255 feet in width that was omitted from the City of Royal Oak records, but was included in his value estimation as of December 31, 2015 and December 31, 2016.⁵²

Highest and Best Use

Whenever a market value opinion is developed, highest and best use analysis is necessary. Through highest and best use analysis, the appraiser interprets the market forces that affect the subject property and identifies the use or uses on which the final opinion of value is based.⁵³

Highest and Best use must conclude to the reasonably probable and legal use of vacant land or an improved property that produces the most benefits and highest land value at any given time.

Mr. Widmer performed a market overview which concluded that market conditions have been improving. He determined the subject property is located in a strong commercial market and as such, the highest and best use as vacant is “commercial investment, with commercial development on the site forecasted within a likely 12 to 24 - month time frame.”⁵⁴

Mr. Widmer’s conclusion of highest and best use as improved considered three alternatives, “demolish the existing improvements and re-develop the site,” “[c]onvert, renovate, or alter the existing improvements to enhance the current use or change the use of the property to a more productive use,” or, “[r]etain the existing improvements and continue the current use.”⁵⁵ Mr. Widmer concluded “[t]he existing use was approved by the community and is consistent with community zoning, and is complimentary with adjacent uses.”⁵⁶ As such, he determined the highest and best use of the property as improved is its current use as an automobile

⁵² Tr. at 26-27.

⁵³ *The Appraisal of Real Estate*, p 42.

⁵⁴ R-1 at 62.

⁵⁵ R-1 at 63.

⁵⁶ *Id.*

dealership. The Tribunal finds Mr. Widmer's analysis persuasive and finds that his conclusions of highest and best use are appropriate and as such, are adopted by the Tribunal.

Valuation Techniques - Income Approach to Value

Mr. Widmer considered all three approaches to value, the cost-less-depreciation, market, and income approaches, concluding that the sales approach was the appropriate method of valuation, supported by the cost approach. Mr. Widmer rejected the income approach, because "more times than not the lease is structured as a financing vehicle and more times than not it is not arm's length and not applicable. . . ." ⁵⁷ The Tribunal finds Mr. Widmer's lack of reliance on the income approach to be appropriate. The subject property is not a typical income-producing property for the owner, its lease is executed between related parties, and as such the Tribunal opines its contract rent is not at market rates, which is one consideration pursuant to the income approach. As such, the Tribunal finds the income approach is not the best approach to utilize in determining the true cash value of the property for the 2016 and 2017 tax years.

Sales Comparison Approach to Value

The Tribunal finds the sales comparison approach to value to be the appropriate technique to utilize in determining the true cash value of the subject property for the 2016 and 2017 tax years.

The sales comparison approach to value is:

[t]he process of deriving a value indication for the subject property by comparing similar properties that have recently sold with the property being appraised, identifying appropriate units of comparison, and making adjustments to the sale prices . . . of the comparable properties based on relevant, market-derived elements of comparison. ⁵⁸

The Tribunal finds the Mr. Widmer appropriately searched for sales "comparable" to the subject property and, for the most part, properly adjusted the comparable properties to be consistent with the characteristics of the subject property. The Tribunal does find, however, that it is not persuaded by Mr. Widmer's adjustment for location. Mr. Widmer testified the property is

⁵⁷ Tr. at 19-20.

⁵⁸ *The Appraisal of Real Estate*, p 377.

situated in a dynamic location with good traffic counts and close to I-75.⁵⁹ Kroger purchased the site directly across the street to develop a prototype Kroger plus store with fuel center. Further, two outlots were purchased by Versa Development to construct small retail centers.⁶⁰ The Tribunal is persuaded by Mr. Widmer's testimony that the subject property is located in a desirable area in the City of Royal Oak.

Upon close examination of Mr. Widmer's comparable adjustments, however, the Tribunal notes that he adjusted 2016 comparable one, the former Maxey Ford, by 10% for location, equating to a \$10.98 per square foot, positive adjustment to the comparable, or \$522,527.⁶¹ Comparable two, Telegraph Chrysler Jeep is adjusted by 20%, or \$17.25 per square foot for a total, positive adjustment of \$1,206,362. Comparable three, Genthe Honda, is also adjusted by 20%, or \$17.68 per square foot, for a total positive adjustment of \$655,946. 2016 comparable four, sale number five, the former Tamaroff Dodge, is adjusted by -10% or (\$12.26) per square foot, for a total negative adjustment of (\$349,974).

For the 2017 tax year, Mr. Widmer utilized sale number five, with a -10% location adjustment. Comparable two/sale six, the former LaFontaine Nissan, was adjusted by 25% for location, or \$23.39 per square foot, for a total positive adjustment of \$572,844. Comparable three/sale seven, the former General R.V., was adjusted by 25% or \$25.24 per square foot for a total positive adjustment was \$895,036. Finally, 2017 Comparable four/sale eight, the former Causely Mazda/Hyundai, was adjusted by only 5% for location, or \$5.66 per square foot, for a total adjustment of \$166,478, which the Tribunal finds reasonable. With regard to the other comparable sales, the Tribunal finds the location adjustments are so high that they suggest the comparable properties are not truly comparable to the subject. Further 2016 comparable/sale one has an additional 32.2%, positive adjustment for expenditures after the sale. This equates to \$25.00 per square foot or \$1,189,725 in addition to the 10%, positive, \$522,527, adjustment for location. Comparable/sale one sold for \$3,700,000 on August 14, 2014 and was adjusted for location and expenditures after the sale by \$1,712,252, almost half of its sale price.⁶² In *the Appraisal of Real Estate*, it states, "[a]n adjustment for location within a market area may be

⁵⁹ Tr. at 31.

⁶⁰ *Id.*

⁶¹ 47,589 gross building area x \$10.98. See R-1 at 70, 118.

⁶² The Tribunal notes Mr. Widmer netted his adjustments to determine total cumulative adjustments, so for comparable one, it appears that adjustments were only .5%, however the gross adjustments were 58.4%.

required when the locational characteristics of a comparable property are different from those of the subject property. *Excessive locational differences may disqualify a property from use as a comparable sale.*” [Emphasis added]⁶³

The Tribunal finds 2017 comparable four/sale eight is the best comparable to the subject property. Comparable four/sale eight has only a five percent location adjustment indicating to the Tribunal that it is most similar to the dynamic Royal Oak location, due to demographics traffic counts and accessibility.⁶⁴ As such, the Tribunal finds the true cash value of the subject property for the 2017 tax year is best reflected by the adjusted sale price of comparable eight, determined by Mr. Widmer, of \$107.54. Multiplying \$107.54 x the square footage of the property, results in a true cash value of \$4,691,863, rounded to \$4,700,000. For the 2016 tax year, the Tribunal again finds comparable four/sale eight to be the best comparable because of its appropriate location adjustment. The comparable sold in October 2016, as such it requires a market conditions adjustment to reflect its value as of December 31, 2015. Mr. Widmer persuasively testified that he adjusted for market conditions at 5% per annum, which equates to .42% per month. Comparable eight sold 22 months after tax day⁶⁵ and as such, a negative adjustment of 9.24% (\$10.37 per square foot)⁶⁶ must be applied. The adjusted dollar per square foot of comparable eight for the 2016 tax year is \$101.83.⁶⁷ The dollar value per square foot determination is multiplied by the square footage of the property of 43,629 for a true cash value of \$4,442,741, or \$4,400,000 rounded, for the 2016 tax year.⁶⁸ With regard to the value of the modular used-car office, the Tribunal finds its market value is insignificant and doesn't affect its conclusion of true cash value.

⁶³*The Appraisal of Real Estate*, p 427.

⁶⁴ Tr. at 61.

⁶⁵ While the Tribunal notes the comparable sold 22 months after the tax day, it still finds with the proper adjustment, it best reflects the true cash value of the subject property for the 2016 tax year. It should also be noted that the property previously sold in October 2014 for \$3,025,000 or \$102.85 per square foot. R-1 at 132. The comparable also has the lowest land to building ratio adjustment, which Mr. Widmer testified puts forth “the utility of the subject property as an automobile dealership . . .” Tr. at 51.

⁶⁶ .0924 x \$112.2 sale price per square foot.

⁶⁷ \$112.2 sale price per square foot, minus \$10.37.

⁶⁸ *The Appraisal of Real Estate* states, “A point estimate should be rounded to reflect the degree of precision the appraiser can associate with the particular opinion of value. Often the manner in which the figure is rounded is a matter of convention – e.g., to two or three significant digits. For example, if the final value estimate is a six digit number, the figure will likely be rounded to the nearest ten thousand or hundred thousand dollars. If it is a seven digit number, it will likely be rounded to the nearest hundred thousand dollars.” *The Appraisal of Real Estate*, p 647. Here, the Tribunal has rounded its conclusion to the nearest hundred thousand.

Cost Approach to Value

The Tribunal finds the cost approach is not the most appropriate technique to utilize in determining the true cash value of the property. The Tribunal finds Mr. Widmer properly determined the replacement cost new of the property and is persuaded by his conclusion of land value, however, the Tribunal finds Mr. Widmer's calculation of depreciation to be suspect. The subject property is an older property, originally built in 1989, "with an actual age or being 26 to 27-years."⁶⁹ With older properties depreciation is hard to calculate, "[t]he difficulty in estimating depreciation in older properties may diminish the reliability of the cost approach in valuing those properties."⁷⁰ Mr. Widmer adjusted the subject property replacement cost new by depreciation of \$1,080,316 for 2016 and \$1,125,503 for 2017, which are very significant numbers. *The Appraisal of Real Estate* states,

Because cost and market value are usually more closely related when properties are new, the cost approach is important in estimating the market value of new or relatively new construction. The approach is especially persuasive when land value is well supported and the improvements are new *or suffer only minor depreciation* [Emphasis added].⁷¹

The Tribunal finds the subject property does not "suffer only minor depreciation," and as such, finds the cost approach to value less reliable than the sales approach.⁷²

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the income approach is not the appropriate valuation technique to utilize with regard to the subject property, further, it finds the cost approach to be less reliable than the sales approach. 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.⁷³ The Tribunal has considered all three approaches to value, and independently concludes to the true cash value of the subject property under the sales approach, for the 2016 and 2017 tax years. The subject

⁶⁹ R-1 at 21.

⁷⁰ *The Appraisal of Real Estate*, p 578.

⁷¹ *The Appraisal of Real Estate*, p 566.

⁷² There was some controversy at the hearing of this matter relating to the replacement cost of landscaping along the Twelve-mile road frontage, and whether it was installed by the City of Royal Oak or was Petitioner's responsibility. See Tr. at 114-116. The Tribunal was not persuaded by the testimony, and in any event, did not rely on the cost approach to value.

⁷³ *Antisdale, supra* at 277.

property's TCV, SEV, and TV for the tax years at issue are as stated in the Introduction section above.

PRECLUSION OF PETITIONER'S VALUATION DISCLOSURE AND PREHEARING STATEMENT FROM EVIDENCE

A prehearing conference in this matter occurred on October 13, 2017. On October 17, 2017, the Tribunal entered its Summary of Prehearing Conference and Scheduling Order in which it precluded Petitioner from submitting a valuation disclosure in this matter and precluded it from calling witnesses. The Tribunal did not hold Petitioner in default, but allowed it to participate in the hearing with opening and closing statements, cross-examination of Petitioner's witnesses and rebuttal.

On November 21, 2017, the day before the Thanksgiving holiday, Petitioner filed an interlocutory appeal with the Michigan Court of Appeals ("COA") requesting that the hearing of this matter, scheduled for November 28, 2017, be stayed and presumably, to order the Tribunal to allow Petitioner to call witnesses and submit its valuation disclosure. On November 27, 2017, the COA denied Petitioner's application for leave and the hearing occurred on the scheduled date.

On December 16, 2016, the Tribunal issued a Notice of Prehearing General Call and Order of Procedure informing the parties of the August 4, 2017, due date of valuation disclosures and prehearing statements.⁷⁴ On that date, *eight months* after notice of the valuation disclosure and prehearing statement due dates, the parties filed a motion to extend due dates for 30 days until September 5, 2017, with no reason cited for the extension. Out of courtesy to the parties, the Tribunal granted the motion. That Order specifically states "[n]o further extensions shall be given without a showing of good cause by the parties."⁷⁵ Without any notice or request to extend, Petitioner failed to meet this already extended deadline. Respondent filed its valuation disclosure and prehearing statement in a timely manner, however, Petitioner filed its valuation disclosure, consisting of two appraisals, and its prehearing statement on September 14, 2017.

⁷⁴ Prehearing statements contain the parties' final witness lists, pursuant to TTR 237, which states, "[a] party shall submit to the tribunal and the other party or parties a prehearing statement, as required by R 792.10247. The prehearing statement shall provide the other party or parties and the tribunal with the name and address of any person who may testify and with a general summary of the subject area of the testimony. A person who is not disclosed as a witness shall not be permitted to give testimony, unless, for good cause shown, the tribunal permits the testimony to be taken.

⁷⁵ August 7, 2017 Order at 1.

Upon a review of Petitioner's offered appraisals, the Tribunal noted they were signed on May 9 and 11, 2017, almost three months before the August 4, 2017 valuation disclosure due date, however, an extension was requested until September 5, 2017. *Further, neither author of the appraisals was included on Petitioner's witness list*, leaving the Tribunal to question the necessity of the valuation disclosures admittance into evidence, the necessity of their authors' testimony, and the necessity for due date extension. It is not clear how Petitioner intended to introduce the valuation evidence at hearing without its valuation experts as witnesses. As noted above, pursuant to the Tribunal's rules, no witnesses may be called if they are not included on a party's final witness list. Further, as noted above, pursuant to TTR Rule 255(2), "[w]ithout leave of the tribunal, a witness may not testify as to the value of property without submission of a valuation disclosure signed by that witness and containing that witness' value conclusions and the basis for those conclusions."

On October 26, 2017, Petitioner filed a motion requesting that the Tribunal reconsider the Summary of Prehearing Conference and Scheduling Order because its valuation disclosure and prehearing statement were nine days late, counsel had health issues, and Petitioner was involved in "sensitive negotiations" which precluded it from filing its valuation disclosures in a timely manner. The Tribunal denied the motion finding Petitioner's actions "willful," pursuant to *In Grimm v Dep't of Treasury*,⁷⁶ The Tribunal found the delay to be willful because it was a deliberate delay based upon the negotiations and desire to keep the valuation information private. Further, the Tribunal found that the information could be timely filed under seal with a motion requesting that the valuation not be made public until the negotiations were finalized. However, this was not done and the Tribunal was not even notified, until the Motion for Reconsideration, of any such negotiations. Petitioner also references counsel's health issues which in part, justified the granting of the original extension. However, counsel has other attorney, employees and again stipulated to the deadline of September 5, 2017. Further, counsel participated in a five-day trial October 31, November 1-3 and November 6, 2017⁷⁷, in the Tribunal's Lansing offices. Overall, the Tribunal found that the delay was deliberate based upon the negotiations mentioned above and was not due to counsel's health. Again, counsel had eight months to arrange for the

⁷⁶ See *Grimm v Dep't of Treasury*, 291 Mich App 140; 810 NW2d 65 (2010).

⁷⁷MTT Docket No. 15-001366

preparation of a valuation disclosure in this matter, but failed to timely file it, deliberately ignoring the Tribunal's extended due date. As such, the Tribunal properly, and within its authority, precluded the valuation disclosure and prehearing statement, including final witness list, from evidence.

JUDGMENT

IT IS ORDERED that the property's state equalized values for the tax years at issue are MODIFIED, however, the taxable values are AFFIRMED, as set forth in the Introduction section of this Final Opinion and Judgment.

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

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 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 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 required filing fee within 21 days from the date of entry of the final decision.⁷⁸ 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.⁷⁹ 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.⁸⁰ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.⁸¹

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."⁸² A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.⁸³

⁷⁸ See TTR 261 and 257.

⁷⁹ See TTR 217 and 267.

⁸⁰ See TTR 261 and 225.

⁸¹ See TTR 261 and 257.

⁸² See MCL 205.753 and MCR 7.204.

⁸³ See TTR 213.

The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.⁸⁴

By Preeti Gadola

Entered: February 23, 2018

⁸⁴ See TTR 217 and 267.