

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

Reem Properties, LLC,
Petitioner,

v

MTT Docket No. 16-001827

City of Sterling Heights,
Respondent.

Tribunal Judge Presiding
Preeti Gadola

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Reem Properties LLC, appeals the ad valorem property tax assessment levied by Respondent, City of Sterling Heights, against Parcel No. 50-10-29-478-023-000 for the 2016 tax year. Marianna Wess, Attorney, represented Petitioner, and Linda McGrail Belau, Attorney, represented Respondent.

A hearing on this matter was held on April 11, 2018. Petitioner's witnesses were Tarek Baydoun, Attorney and Real Estate Agent, and Oussama Hamade, Petitioner's owner and landlord. Respondent's sole witness was Dwayne McLachlan, Assessor, City of Sterling Heights.

The subject property consists of two commercial buildings with tenants including auto repair facilities and an oil change service. There is also a gas station on the property, which is not under appeal in this matter.¹

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 tax year are as follows:

Parcel No.	Year	TCV	SEV	TV
50-10-29-478-023-000	2016	\$1,192,500	\$596,250	\$531,127

PETITIONER'S CONTENTIONS

Petitioner contends, for many years, its tenants have operated car repair facilities, licensed by Respondent on the property. Petitioner contends, in that regard, that its tenants

¹ Transcript ("Tr.") at 14.

consistently parked cars outside of the facility, overnight, for repair. Petitioner claims some of the parked automobiles are plated and tagged while others are not, as they are stored for used-car dealerships awaiting repair by Petitioner's tenants, before their eventual resale.²

Petitioner alleges that the property is subject to a special approval land use ("SALU") under which it understood it was operating properly. In 2015, however, Petitioner was cited for an overabundance of vehicles on the property and was required to tow many of them off the property, in conjunction with Respondent. Petitioner contends, in other litigation in which Respondent sought to revoke the SALU, Respondent was ordered by the Circuit Court to enforce its actual terms, which did not allow for the over 150 cars³ parked on the subject property awaiting repair. As such, Petitioner contends its tenants have lost a great deal of business, and as a result, the property suffers from economic obsolescence. Petitioner alleges that Respondent, in its calculation of true cash value under the cost approach, failed to apply an economic obsolescence percentage deduction to the property which would reflect its lower value due to the loss in revenue of the repair facilities. Petitioner alleges its tenants are not paying their rent or common area maintenance charges due to their loss of income. Petitioner further contends the lessees refuse to vacate the property, even though Petitioner commenced eviction proceedings to salvage the value of the property, by ridding it of "illegal" uses.

Petitioner presented sales comparables, but the sales were not adjusted to make them consistent with the characteristics of the subject property, as the parameters regarding similarity were already put forth in the search criteria. Petitioner also plugged its actual income and expenses into Respondent's income approach technique to conclude that the property is over assessed.

PETITIONER'S ADMITTED EXHIBITS

P-1: Petitioner's Valuation Disclosure

P-2: Respondent's Valuation Disclosure

P-3: Petitioner's 2014 Tax Returns

P-4: Petitioner's 2015 Tax Returns

P-5: Petitioner's 2016 Tax Returns

² Tr. at 47, 110.

³ Tr. at 40.

P-6: Petitioner's Income Approach to Value Worksheet

P-7: Petitioner's Commercial Leases

P-8: SALU (1989)

P-9: Application for Variance to Zoning

P-0: Circuit Court Case 14-4741- CE documents and Petitioner's correspondence regarding violations by tenant (enforcement of zoning and use restrictions)

P-1: Documents showing that other similar properties in the area were granted similar variances

P-2: Federal Case No. 15-11973 documents

P-3: Relevant Case Law: Meijer Inc. v City of Midland, 240 Mich App 1 (2000)

P-4: Relevant Case Law: Fulgencio v. Township of Mundy, Unpublished, May 11, 2010

P-5: Relevant Case Law: Menard, Inc. v City of Escanaba, 315 Mich App 512 (2016)

PETITIONER'S WITNESSES

Mr. Tarek Baydoun

Mr. Baydoun is an attorney of record in this matter, however, he is also a real estate agent and prepared Petitioner's valuation disclosure. Mr. Baydoun's colleague wished to call him as a witness and the Tribunal determined it would allow the testimony, as Petitioner's only other witness was the owner and landlord of the property, Mr. Hamade, who spoke little English, had health issues preventing travel, and appeared by telephone.

Mr. Baydoun testified regarding the SALU and contends that its enforcement, after many years of operation of the auto repair facilities on the real property,⁴ decreased the value of the property due to the loss in business of its tenants. Mr. Baydoun also testified that Petitioner applied for a zoning variance, to allow the continuation of the operation of the businesses as they are, however, the variance was denied, adding to the devaluation of the property.⁵

⁴ Tr. at 50.

⁵ Mr. Baydoun also contends, Petitioner filed a case in the United States District Court, Eastern District of Michigan, Southern Division, alleging due process and takings claims, among others, against Respondent related to Respondent's attempt to revoke the SALU, loss of revenue, and closure of the businesses for a half day while automobiles were being towed. Mr. Baydoun contends the Federal Court case was dismissed without prejudice as it was determined the case was not yet ripe. Tr. at 38-39. The Order Dismissing Action, however, indicates, only,

Mr. Baydoun prepared a market approach to value the property, however, he also testified, “I understand that normally the best valuation method would have been, we like to say, a comparable sales or market approach.” “I know that that doesn’t work every time; and, in this case particularly, I knew it didn’t.”⁶ Mr. Baydoun testified that he utilized the market approach to demonstrate what similar properties are selling for that do not have the issues facing the subject property and the analysis demonstrated with regard to the subject property, “if it’s not worthless, could be at some point.”⁷ Mr. Baydoun compared the subject property to properties of similar size, but not for the same use.⁸

Mr. Baydoun determined the best method to determine the true cash value of the property for the 2016 tax year was a combination of the cost approach with a deduction for economic obsolescence and the income approach utilizing actual income and expenses. He also contends the market approach should be considered for the limited reasons stated above.⁹

With regard to Respondent’s market approach to value, Mr. Baydoun testified that its comparable one, Van Dyke Auto Plaza located at 37502 Van Dyke in Sterling Heights was the best comparable to the subject property because of its proximity and similarities in year built, land usage and zoning. Mr. Baydoun contends Respondent’s adjusted sale price for the property is \$50.40 per square foot, while the subject property is assessed at \$71.62 per square foot for the 2016 tax year without the application of economic obsolescence in either scenario. Mr. Baydoun testified that Respondent’s comparable one demonstrates that the subject property is over assessed.¹⁰

On cross examination, Mr. Baydoun testified that all the lessees of the property remain in business and that Petitioner’s tax returns for 2015 and 2016, show an increase in income between

“This action is designated as **CLOSED** on the Court’s docket.” See R-7. The Tribunal references the Federal Court action as it was discussed by the parties at the hearing of this matter, but the “Tax Tribunal does not have jurisdiction over constitutional questions” See *Effie Ellen Mulcrone and Mary Theresa Mulcrone Trust v City of St. Ignace*, unpublished opinion per curiam of the Court of Appeals, issued October 24, 2017 (Docket No. 336773), quoting, *Spranger v City of Warren*, 308 Mich App 477, 484; 865 NW2d 52 (2014) and *WPWAcquisition Co v City of Troy (On Remand)*, 254 Mich App 6, 8; 656 NW2d 881 (2002).

⁶ Tr. at 16.

⁷ Tr. at 44.

⁸ Tr. at 79-80.

⁹ Tr. at 77.

¹⁰ Tr. at 83.

those two years.¹¹ Mr. Baydoun testified, however, for the 2016 tax year, Petitioner's accountant failed to include some expenses, which were not provided to Respondent or the Tribunal.¹²

Mr. Baydoun prepared an income approach to value by plugging actual income and expenses into Respondent's income approach calculations. He subtracted interest and depreciation as expenses and did not re-add property taxes in the end before dividing by the capitalization rate.¹³ With regard to his market approach to value, Mr. Baydoun retrieved his sales comparables from Realcomp, but did not verify them in any other manner.¹⁴ Mr. Baydoun determined any inaccuracies in Realcomp information would be due to Respondent who inputted the information into the service.¹⁵

As a rebuttal witness, Mr. Baydoun testified that a tenant-in-place would increase the value of a property and Respondent did not take that fact into account in his approaches to value. He also testified that zoning was changed from B-3 to C-3, and as such, the property is taxed at a higher rate, for heavy auto repair, however, with the enforcement of the SALU, heavy repair is no longer available. Mr. Baydoun testified, "[t]hat not being explained leads me to believe that there was a change in the taxation to a heavier use. At the same time, they were moving to revoke that heavier use. But I can't prove that."¹⁶

Oussama Hamade

Mr. Hamade testified he is the owner of Reem Properties and the landlord of the auto repair facilities and oil change business. He testified that he's owned the subject buildings for 13 to 14 years and confirmed the issues regarding the SALU and the fact that a large volume of cars cannot be parked outside of the facilities, despite his ownership of the "five acres" of property upon which the improvements are located. He testified that he has five rental units and that only three of the five are occupied. He testified that the existing tenants won't pay their rent or common area maintenance, due to their loss of business. He contends that he's listed Petitioner's

¹¹ Tr. at 111.

¹² *Id.*

¹³ Tr. at 114-115.

¹⁴ Tr. at 115-116.

¹⁵ Tr. at 120.

¹⁶ Tr. at 187.

loss of income on its tax return as well as an expense for parking lot repair.¹⁷ Cross-examination of Mr. Hamade was declined by Respondent.

RESPONDENT'S CONTENTIONS

Respondent contends that it properly assessed the subject property, under the cost approach, and it does not suffer from economic obsolescence. Respondent contends the property had debris and excess, untagged, junk, cars,¹⁸ and as such, Petitioner was required to remove automobiles from the property because under the SALU, Petitioner is allowed to store seven cars per bay,¹⁹ overnight, and not the approximately 150 cars that were parked on the property. Respondent contends that abating the junk car nuisance actually increased the value of the property and that per Petitioner's tax returns, its income increased from 2015 to 2016.

Respondent's valuation witness also prepared market and income approaches to value which he claims support Respondent's contention of the true cash value of the property. Respondent alleges that Mr. Baydoun's valuation methodology under the income approach was incorrectly prepared and his market comparables were not truly comparable to the subject property. Further, Mr. Baydoun is not an expert in the valuation of real property, such as Respondent's witness.

RESPONDENT'S ADMITTED EXHIBITS

R-2: Respondent's Valuation Disclosure

R-6: Opinion and Order dated 9/29/2015 in Case No. 14-4741-CE (in relation to the subject property)

R-7: Order Granting Summary Judgment and Order Dismissing Action in Federal Case No 15-11973

R-8: Income Comparison Chart

¹⁷ Tr. 140-142, 145.

¹⁸ See P-10, Exhibits B, C, D, E.

¹⁹ Tr. at 46, 110. The subject property has 17 bays. See P-9 at 16.

RESPONDENT'S WITNESS

Dwayne McLachlan

Mr. McLachlan, deemed an expert in assessing by the Tribunal, is the assessor for the City of Sterling Heights and prepared the assessment roll including the subject property for the 2016 tax year. In his valuation disclosure for the Tribunal, Mr. McLachlan prepared three approaches to value the subject property including the cost-less-depreciation, market and income approaches.

Under the cost approach, Mr. McLachlan's estimate of land value was \$382,200. To that the land improvements were added, including asphalt paving, retaining wall, floodlights and light poles, for a total land improvement value of \$169,447, after depreciation. The auto repair building components were added, which comprise 20,150 square feet, and the county multiplier applied for a final square foot replacement cost of \$91.03. As such, the base cost of the improvement is \$1,834,191 before depreciation of 40%. Also included in value are underground storage tanks for gasoline and the square footage of the oil change facility which includes a basement area where the employees walk under vehicles to work on them.²⁰ An economic condition factor was applied of .80 for commercial garages, "which balanced the depreciated cost with actual market activity."²¹

Mr. McLachlan testified that the property does not suffer from economic obsolescence, which is, "a loss in value by a force typically outside the property,"²² as it is not the only business subject to the SALU, and any car towing was a result of code violations, which would apply to any property in the City and does not decrease the value of the property. He testified, "You're expected to maintain your property. You can't accumulate junk or debris." "If you accumulate junk or debris on your property, if you don't maintain your property, you're going to have a visit from the code enforcement people. But that doesn't create economic obsolescence."²³ He further testified that the SALU is a specialized zoning that increases the

²⁰ Tr. at 153-157.

²¹ Tr. at 157.

²² Tr. at 173-174.

²³ Tr. at 174.

value of a property and that zoning is, “just an enforcement of expectation of normal property maintenance.” “Nothing more.”²⁴

Under the market approach to value, Mr. McLachlan chose sales based on date of sale, age of facility and physical size of the building. He attempted to find only sales in the City of Sterling Heights but had to expand his search into Clinton Township which is just adjacent. Adjustments were made for the factors above and also for land to building ratio. After adjustments, Mr. McLachlan’s dollar per square foot range of value was from \$53-\$73 per square foot, which he determined supported his cost approach to value of \$71.62 per square foot.²⁵

Under the income approach to value, Mr. McLachlan’s rental estimate was \$8.50 per square foot, triple net, which indicates that the tenant would pay the operating expenses, leaving the landlord responsible for management and reserves. He applied that rate to the facility square footage of 22,500, applied \$18,000 or 9.4% in vacancy and credit loss, and insurance and reserves were assumed to be an expense of the landlord. An overall capitalization rate was developed under the band of investment approach which supported direct capitalization, of 9%. Mr. McLachlan’s conclusion of value under the income approach was \$71.11 per square foot.²⁶ When inquired by the Tribunal if Mr. McLachlan utilized rental comparables in completing his income approach to value, he answered that he did not, but utilized, “general observations of the marketplace.”²⁷

Mr. McLachlan also prepared an income approach utilizing actual numbers retrieved from Petitioner’s 2015 and 2016 income tax returns and noted that depreciation and interest are not expenses but included in the capitalization rate. With those expenses removed, and a tax loaded capitalization rate applied, a value conclusion of \$1,980,187 was calculated for 2015 and for 2016, \$2,194,213.²⁸

With regard to Mr. Baydoun’s market approach to value, Mr. McLachlan testified that only one comparable was retail in nature and of a similar size. The other comparables were office buildings, office condominiums, a restaurant and an industrial warehouse, which are not

²⁴ Tr. at 176.

²⁵ Tr. at 157-158, R-2.

²⁶ Tr. at 158-160, R-2.

²⁷ Tr. at 182.

²⁸ Tr. at 162-163, R-8.

similar to an auto or retail strip mall such as the subject property. Mr. McLachlan also noted that there were large errors with regard to the square footage of the comparables and noted that he knows of no assessors in the greater southeast Michigan area that report to Realcomp, the source of Petitioner's comparables.²⁹

With regard to Petitioner's comparables three, four and five, their improvements are reported to have 11,705 square feet, when in actuality, they consist of 7,262 square feet, each. The properties are in the same office condominium complex and are not comparable to the subject property. Petitioner's comparables eight and nine are also office condominiums of 5,494 square feet, not 23,537 as listed by Petitioner. Comparable eleven is Danny's Tavern, a restaurant, which is actually a two-story building and not comparable to an auto mall, and comparable eighteen is an industrial warehouse. Mr. McLachlan testified that he utilized his own records at the assessor's office to put forth the correct characteristics of the comparables, and those records are verified and refined.³⁰ For his sales comparables in Clinton Township, Mr. McLachlan obtained his data from Costar, "a comparable real estate data service."³¹ He also confirmed that the sales price of the properties do not include business value.³²

On cross-examination, Mr. McLachlan testified that a tenant-in-place does not affect the value of property and it is taken into consideration under vacancy and credit loss in the income approach. In the market approach, tenants are considered transitory and not included in value and further, any comparable properties would also have vacancies.³³

FINDINGS OF FACT

1. The subject property is owned by Petitioner and is leased to auto repair facilities and an oil change center.
2. The property consists of two buildings with a combined, 22,500 square feet, situated on 3.51 acres.
3. The property is located in an area with a Special Approval Land Use.

²⁹ Tr. at 186-187.

³⁰ Tr. at 168-170.

³¹ Tr. at 180.

³² *Id.*

³³ Tr. at 181.

4. Under the SALU, seven automobiles per bay are permitted for overnight storage/parking and there are seventeen bays. Petitioner stored/parked over 150 cars on the real property. Petitioner also had junk, untagged cars and debris on the property.
5. In 2015, Petitioner was cited for code violations and required to tow, in conjunction with Respondent, the majority of the parked/stored vehicles from the real property.
6. Petitioner alleges its tenants lost business due to the enforcement of the SALU. Petitioner contends the property suffers from economic obsolescence.
7. Petitioner prepared market and income approaches to value the subject property. Under the market approach, Petitioner presented unadjusted sales comparables, some with incorrect square footage. Under the income approach, Petitioner plugged in its actual income and expenses into Respondent's income approach calculations. Petitioner subtracted interest and depreciation as expenses. Petitioner did not calculate a tax loaded capitalization rate.
8. Respondent prepared cost, income and market approaches to value. Respondent did not apply economic obsolescence under its cost approach. Respondent did not utilize rental comparables in its income approach. In its market approach, Respondent presented the Tribunal with four sales in Sterling Heights and four sales in Clinton Township, adjusted to be consistent with the characteristics of the subject property.

CONCLUSIONS OF LAW

Motion to Dismiss

At the conclusion of Petitioner's proofs, Respondent orally requested that the Tribunal dismiss Petitioner's appeal as it had not met its burden of proof. The Tribunal indicated it would consider Respondent's oral motion upon rendering its Final Opinion and Judgment. The Tribunal finds, in a matter before it, "[t]he petitioner has the burden of proof in establishing the true cash value of the property."³⁴ "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."³⁵ The Tribunal finds that Petitioner

³⁴ MCL 205.737(3).

³⁵ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 354-355; 483 NW2d 416 (1992)

presented enough evidence in its case-in-chief, including its admitted exhibits, to meet the burden of going forward with the evidence. As such, the Tribunal denies Respondent's Motion to Dismiss the subject appeal.

Assessment and Valuation

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.³⁶

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. . . .³⁷

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.³⁸

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value' . . . are synonymous."³⁹

"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."⁴⁰ The Tribunal is not bound to accept either of the parties' theories of valuation.⁴¹ "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."⁴² 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."⁴³

³⁶ See MCL 211.27a.

³⁷ Const 1963, art 9, sec 3.

³⁸ MCL 211.27(1).

³⁹ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

⁴⁰ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

⁴¹ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

⁴² *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

⁴³ *Jones & Laughlin Steel Corp*, 193 Mich App at 356.

A proceeding before the Tax Tribunal is original, independent, and de novo.⁴⁴ The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”⁴⁵ “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”⁴⁶

“The petitioner has the burden of proof in establishing the true cash value of the property.”⁴⁷ 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.”⁴⁸

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.⁴⁹ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”⁵⁰ 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.⁵¹

Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.⁵² The Tribunal finds the best approach to value the subject property is the market approach.

Economic Obsolescence

As noted above, the subject property consists of various auto repair facilities. Petitioner alleges its tenants are losing business because Respondent was ordered by the Circuit Court to enforce the SALU which allows for overnight storage of only seven cars per bay, when it was

⁴⁴ MCL 205.735a(2).

⁴⁵ *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

⁴⁶ *Jones & Laughlin Steel Corp*, 193 Mich App at 352-353.

⁴⁷ MCL 205.737(3).

⁴⁸ MCL 205.737(3).

⁴⁹ *Meadowlanes*, 437 Mich 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).

⁵⁰ *Jones & Laughlin Steel Corp*, 193 Mich App at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

⁵¹ *Antisdale*, 420 Mich at 277.

⁵² See *Meadowlanes*, 437 Mich at 485.

storing over 150 cars, overnight for many years, without protest. Petitioner alleges the loss of business by its tenants has affected the income it receives thereby reducing the value of the property due to economic obsolescence. Petitioner alleges the property may become worthless.

Respondent contends enforcement of the SALU does not cause economic obsolescence because Petitioner is not allowed to store hundreds of junk cars on the subject property for extended periods of time. Respondent contends this is a code violation, and any business owner that accumulates debris on its property, will be subject to code enforcement. Further, Respondent alleges economic obsolescence is related to external factors that affect the property, not simply an internal situation, which when remedied, increases the value of the property. Economic obsolescence is defined as follows:

[O]bsolescence that results from **external factors** (as location) that render a property obsolete, no longer competitive, unattractive to purchasers or investors, or of decreasing usefulness.
. claimed that the appraisal failed to account for *economic obsolescence* resulting from an adjacent waste facility.⁵³

In *The Dictionary of Real Estate Appraisal*, external obsolescence is defined as follows: “A type of depreciation; a diminution in value caused by negative external influences and generally incurable on the part of the owner, landlord or tenant. The external influence may be either temporary or permanent.”⁵⁴ The Tribunal finds generally, examples of external obsolescence include situations such as excess supply, environmental hazards, and local traffic pattern changes, but not the enforcement of an already in-place SALU. Further, even if the property suffers from economic obsolescence, no factual development of the amount of such obsolescence was provided. The Tribunal cannot simply pull a number out of the air, and Mr. McLachlan, the only valuation expert qualified by the Tribunal, testified that enforcement of the SALU is not economic obsolescence. Petitioner has the burden of proof in this matter, and it has not met that burden with regard to economic obsolescence.

⁵³Bold emphasis added, <https://www.merriam-webster.com/dictionary/obsolescence#legalDictionary>, (accessed June 27, 2018).

⁵⁴ Appraisal Institute, *The Dictionary of Real Estate Appraisal*, (Chicago: Appraisal Institute, 6th ed, 2015), p. 83.

Valuation Methodology

As noted above, the Tribunal is charged with determining the true cash value of the property and it finds the market approach to be the best technique to utilize in determining value. The cost approach was presented by the parties, but the approach is most effective in valuing new properties. The effective age of the subject property improvements is 25 years and physical depreciation of 40% was applied.⁵⁵ Further, no land study was presented to support Respondent's determination of site value, and as such, the Tribunal finds the cost approach is not the best approach to utilize in determining the true cash value of the subject property for the 2016 tax year. *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.⁵⁶

With regard to the income approach to value, Mr. McLachlan testified that he considered general market conditions when preparing his income approach, but no specific rental comparables were utilized and no detailed, written foundation or explanation of his calculations was provided. Petitioner simply plugged its actual income and expenses into Respondent's calculations but utilized an improper technique by subtracting interest and depreciation as expenses, when expenses are limited to current operating costs. Further, Petitioner failed to apply a real estate tax factor to the overall capitalization rate.⁵⁷ In fact, when Mr. McLachlan properly applied Petitioner's actual income and expenses listed on its tax return, the value of the property was determined to be higher than what is currently on the tax roll. For the reasons stated above, the Tribunal finds that the income approach as presented, is not the best method to utilize in determining the true cash value of the subject property for the 2016 tax year.

⁵⁵ See R-2.

⁵⁶ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2014), p 566.

⁵⁷ "The stabilized net income derived from the operation of the property in question cannot be estimated because one major expense of owning property is real estate taxes, and these taxes cannot be known so long as the assessed value of the property is being contested. Consequently, the appraiser must estimate the net income of the property before the payment of real estate taxes and then add the real estate tax factor to the overall capitalization rate to arrive at the indicated value of the property by the income capitalization approach." Appraisal Institute, *Real Estate Valuation in Litigation* (Chicago: Appraisal Institute, 2nd ed, 1995), pp 520-521.

Mr. Baydoun, Petitioner's valuation witness, testified that his market approach to value was inferior and the Tribunal agrees. His comparables were not truly comparable to the subject property auto mall, but included properties such as office buildings, office condominiums, an industrial warehouse, and a two-story restaurant. Further, Mr. McLachlan testified that Petitioner put forth the incorrect square footage of many of his comparables, which he verified through assessor records which include actual measurements and sketches. Petitioner, on the other hand, pulled his comparables from Realcomp, to which he alleged the local assessor inputs property characteristics such as square footage, but Mr. McLachlan testified that assessors do not input information into Realcomp. Further, Realcomp puts forth the following disclaimer on its comparable print-outs, "The data is deemed reliable, but not guaranteed. The accuracy of the data contained herein can be independently verified by the recipient with the applicable county or municipality."⁵⁸ Mr. Baydoun testified, however, that he did not verify his Realcomp data with another source.⁵⁹ Finally, Mr. Baydoun simply presented comparable sales printouts, but did not adjust his comparables to be consistent with the characteristics of the subject property. Proper application of the sales comparison approach, however, involves "comparing similar properties that have recently sold . . . identifying appropriate units of comparison and making adjustments to the sale prices . . . of the comparable properties based on relevant, market-derived elements of comparison."⁶⁰

Mr. McLachlan presented the Tribunal with a market approach to value which included four sales in the City of Sterling Heights and four sales in Clinton Township, that were adjusted to be consistent with the characteristics of the subject property. He adjusted the comparables for market conditions, age/condition, size, and land to building ratio, which the Tribunal finds to be appropriate. It is essential to note, however, that Mr. McLachlan's concluded unit price for the properties located in Sterling Heights is \$53 per square foot and his concluded unit price for the properties located in Clinton Township, is \$73 per square foot. Further, the Sterling Heights sales include comparable one, an automotive repair facility such as the subject property, located at 37502 Van Dyke, which Mr. Baydoun and Mr. McLachlan both found to be a good comparable to the property. The Tribunal finds the four sales in Sterling Heights, where the

⁵⁸See P-1.

⁵⁹Tr. at 117.

⁶⁰*The Appraisal of Real Estate*, at 377.

subject property is located, are the best evidence of value and put forth a significantly lower adjusted dollar value per square foot. The Tribunal finds the concluded unit price of those comparables best represent the true cash value of the property for the 2016 tax year. As such, the Tribunal finds the true cash value of the property for the 2016 tax year to be \$1,192,500.⁶¹

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the subject property was over assessed in the 2016 tax year. The subject property's TCV, SEV, and TV for the tax year at issue are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that Respondent's Motion to Dismiss is DENIED.

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

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

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after

⁶¹ 22,500 square feet x \$53 per square foot.

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 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.⁶² 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.⁶³ 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.⁶⁴ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.⁶⁵

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

⁶² See TTR 261 and 257.

⁶³ See TTR 217 and 267.

⁶⁴ See TTR 261 and 225.

⁶⁵ See TTR 261 and 257.

than 21 days after the entry of the final decision, it is an “appeal by leave.”⁶⁶ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.⁶⁷ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.⁶⁸

Entered: July 3, 2018

By Preeti P. Gadola

⁶⁶ See MCL 205.753 and MCR 7.204.

⁶⁷ See TTR 213.

⁶⁸ See TTR 217 and 267.