



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

JP 2807 Lake Michigan Dr LLC,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 18-001496

City of Grand Rapids,
Respondent.

Presiding Judge
Steven M. Bieda

FINAL OPINION AND JUDGMENT

The Tribunal issued a Proposed Opinion and Judgment (POJ) on April 7, 2021. The POJ states, in pertinent part, “[t]he parties have 20 days from date of entry of this POJ to notify the Tribunal in writing, by mail or by electronic filing, if available, if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions).”

On April 15, 2021, Respondent filed exceptions to the POJ. In the exceptions, Respondent states that the POJ erred in giving no weight to Respondent’s sales comparison approach based upon its purported discrepancies in location, neighborhood, and construction/renovation dates because Petitioner’s comparable sales #1 and #3 feature similar distinguishable factors. Respondent contends that only one comparable sale is located in the City of Grand Rapids and that the Tribunal errs in assuming the City to be the location of Petitioner’s comparable sales. Respondent contends that its higher gross adjustments for its comparable sales are due to a 15% adjustment for layout, which Petitioner failed to include.

On April 28, 2021, Petitioner filed a response to the exceptions. In the response, Petitioner states that the ALJ correctly gave no weight to Respondent’s comparable sale #1 because it is 41 years newer, is half the size, and has half the land of the subject. Petitioner states that Respondent’s comparable sale #5 is also newer, smaller, and with less land. Petitioner contends that lower gross adjustments are a sign of better comparable sales. Petitioner contends that the map was properly disclosed by testimony.

The Tribunal has considered the exceptions, response, and the case file and finds that the Administrative Law Judge properly considered the testimony and evidence submitted in the rendering of the POJ. More specifically, Respondent’s contentions regarding the weighing of comparable sales are not sufficient to meet its burden to demonstrate that a new hearing is appropriate. The Tribunal shall give discretion to the

finder of fact in assigning weight to the evidence.¹ The Tribunal finds the analysis in the POJ to be both complex and nuanced, and Respondent's exceptions focus on a few selected characteristics common between its own expert's analysis and the analysis by Petitioner's expert, disregarding the discrepancies in date of sale, the disparate factors affecting a location adjustment, determining an effective age, and other considerations noted in the opinion. The juxtaposition of neighborhoods identified by Respondent, while referring to only Respondent's sales being located outside the city, contains no error or misstatement.² While acknowledging the imperfections in Petitioner's analysis, the POJ found that Petitioner's revised sales comparison approach was the best evidence of value on the record. Further, Respondent has failed to provide any evidence that the POJ relied upon the mis-reading of a map in Petitioner's valuation disclosure.

Given the above, Respondent has failed to show good cause to justify the modifying of the POJ or the granting of a rehearing.³ As such, the Tribunal adopts the POJ as the Tribunal's final decision in this case.⁴ 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: 41-13-21-376-022

Year	TCV	SEV	TV
2018	\$2,610,200	\$1,305,100	\$1,305,100
2019	\$3,100,400	\$1,550,200	\$1,336,422

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

Parcel Number: 41-13-21-376-022

Year	TCV	SEV	TV
2018	\$2,010,800	\$1,005,400	\$1,005,400
2019	\$2,011,500	\$1,005,750	\$1,005,750

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year(s) at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally provided in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization.⁵ To the extent that the final level of

¹ See *Great Lakes Div of Nat Steel Corp v City of Ecorse*, 227 Mich App 379; 576 NW2d 667 (1998).

² POJ at p 32.

³ See MCL 205.762.

⁴ See MCL 205.726.

⁵ See MCL 205.755.

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%, (ix) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (x) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, (xi) after June 30, 2019 through December 31, 2019, at the rate of 6.39%, (xii) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, (xiii) after June 30 2020, through December 31, 2020, at the rate of 5.63%, and (xiv) after December 31, 2020, through June 30, 2021, at the rate of 4.25%.

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 Tribunal with the required filing fee within 21 days from the date of entry of the final decision. Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee. You are required to serve a copy of the motion on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion. Responses to motions

for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.

A claim of appeal must be filed with the Michigan Court of Appeals 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." You are required to file a copy of the claim of appeal with filing fee with the Tribunal in order to certify the record on appeal. The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.

By

A handwritten signature in blue ink, appearing to read "John G. Birch", is written over a horizontal line.

Entered: May 21, 2021

bw



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STATE OF MICHIGAN
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MOAHR Docket No. 18-001496

City of Grand Rapids,
Respondent.

Presiding Judge
Peter M. Kopke

PROPOSED OPINION AND JUDGMENT

INTRODUCTION

Petitioner filed this appeal disputing the property tax assessment levied by Respondent against Parcel No. 41-13-21-376-022 for the 2018 and 2019 tax years.¹ Ralph Colasuonno, Esq. and Paul Bach, Agent represented Petitioner. Jason C. Grinnell, Esq. represented Respondent.

A hearing was commenced September 1, 2020 and continued September 2, 2020. Petitioner's witness was Kevin Kernen, MAI and Respondent's witnesses were John Ruud, Ryan Lake, MAI, and Julian Monterosso.²

¹ See No. 2 of the parties' August 31, 2020 Stipulated Statement of Facts ("Stipulation").

² The parties stipulated to the admission of Mr. Kernen and Mr. Lake as expert witnesses. See Nos. 9-14 of the Stipulation. See also the September 1, 2020, and September 2, 2020 Transcript ("TR") at 7-8. As for Mr. Ruud, he was offered as a witness even though he was not properly identified on Respondent's Prehearing Statement (i.e., "[a]dditional City auditing and/or appraising staff employed by the City of Grand Rapids"). In that regard, see TTR 237(3), which provides:

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. [Emphasis added.]

See also the November 15, 2018 Prehearing General Call and Order of Procedure and TR 152-153. Nevertheless, Petitioner did not object to the offering of Mr. Ruud as a witness until Respondent offered Exhibit No. 4 for admission. More specifically, Petitioner objected to the admission of Respondent's Exhibit No. 4, Mr. Ruud's use of undisclosed notes in testifying, and Mr. Ruud's offering as a witness. See TR at 153-162. Based upon the objection, Mr. Ruud's testimony was stricken, as no good cause was shown to justify his admission as a witness. See also TR at 162-163, which provides, in pertinent part:

Based on the evidence (i.e., testimony and admitted exhibits) and the case file,³ the Tribunal finds that property's true cash value ("TCV"), state equalized value ("SEV"), and taxable value ("TV") for the tax years at issue are as follows:

Parcel Number	Year	TCV	SEV	TV
41-13-21-376-022	2018	\$2,010,800	\$1,005,400	\$1,005,400
41-13-21-376-022	2019	\$2,011,500	\$1,005,750	\$1,005,750

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:⁴

1. The property consists of land and a building located at 2807 Lake Michigan Drive NW, Grand Rapids, Michigan.⁵
2. The property was previously occupied by a power sports dealership and was sold to Petitioner for \$1,825,000 on September 15, 2016, in an arms-length transaction.⁶

MR. COLASUONNO: Well, Your Honor, I'm going to object. I'm going to object to this witness based on my – **both those objections**, that he does not fall under – doesn't say past or present employees of the City of Grand Rapids. He's not a current employee. He has testified he's using written notes, which I don't have a copy of. I mean, obviously if I was in the courtroom, we would be able to see those notes.

MR. GRINNELL: Your Honor, I believe at the time the pre[hearing] statement was filed, he was an employee of the City of Grand Rapids. He can – Mr. Ruud can testify to that. I'm not sure whether he has notes in front of him or not, but –

JUDGE KOPKE: That's really not the issue. The issue is you're required to identify the witnesses that are going to be testifying. You can't list, you know, employees, you know, past or present employees. You're having to **identify the specific witnesses** that would be testifying. I did raise that, Mr. Colasuonno. You did not object, so I did not take any action at that point in time. The other problem I have is that whether or not, you know – I don't – I don't know what it is that is his estimate of costs. I mean, **I don't have any document in front of me indicating how he estimated the costs, and I don't have any explanation or testimony on his behalf that even demonstrates he has the expertise to express an opinion with respect to what the costs, you know, the estimated costs would be.** So I have a **number of problems** with this witness, and I'm actually going to **exclude** the witness, **and** have his testimony **stricken**.

[Emphasis added.]

³ Petitioner's Exhibit No. 1 and Respondent's Exhibit Nos. 1, 3, 4, 6, 7, 10, and 12 were admitted. See TR at 9-14, 116-120, 154-157, 164-166, 213-216, 310-313, 314-316, and 318-321. As for Respondent's Exhibit No. 5, that exhibit was offered, but not admitted. See TR at 325-331.

⁴ 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. See also the parties' Stipulation.

⁵ See No. 1 of the Stipulation.

⁶ See Nos. 3 and 4 of the Stipulation.

3. The building is a retail building that is classified as 201-Commercial-Improved and zoned as MCN-C, Commercial.⁷ It was constructed in 1956, 1969, 1971, 2001, and 2002 and renovated in 2017.⁸
4. The building is partially owner-occupied and partially leased.⁹
5. The building has a gross building area of 39,504 square feet with 38,640 square feet of net rentable space.¹⁰
6. The assessments at issue are:¹¹

Parcel Number	Year	TCV	AV	TV
41-13-21-376-022	2018	\$2,610,200	\$1,305,100	\$1,305,100
41-13-21-376-022	2019	\$3,100,400	\$1,550,200	\$1,336,422

7. Both appraisers have appraised the subject property using the sales and income approaches as a fee simple interest.¹²
8. The parties' contentions are, based on their respective appraisals, as follows:
 - a. Petitioner contends that the property's TCV for the 2018 tax year should be \$1,600,000 and for the 2019 tax year should be \$1,700,000 based on Mr. Kern's sale comparison approach.¹³ Petitioner contends that the property's TCV for both tax years should be \$1,900,000 based on Mr. Kern's income comparison approach.¹⁴ Based on a reconciliation of those approaches, Mr. Kern concluded to values of \$1,650,000 for the 2018 tax year and \$1,750,000 for the 2019 tax year.¹⁵
 - b. Respondent contends that the TCV for the 2018 tax year should be \$3,00,000 and for the 2019 tax year should be \$3,100,000 based on Mr.

⁷ See Nos. 6 and 7 of the Stipulation.

⁸ See No. 4 of the Stipulation. Although No. 4 of the Stipulation states that "[t]he building was **originally** constructed in 1956, 1969, 1971, 2001 [and] 2002," the building could not have been "originally constructed" in each of those years. Rather, the building was "originally constructed" in 1956 with additions being constructed in the other identified years with the completed constructed building renovated in 2017. See TR at 7-8, 25-28, and 169-172.

⁹ See No. 5 of the Stipulation.

¹⁰ See No. 8 of the Stipulation.

¹¹ See the September 12, 2019 Prehearing Summary.

¹² Neither Mr. Kern nor Mr. Lake prepared a cost approach, as Mr. Kern "determined that the cost approach was not the best approach to value given the age of the improvements, the amount of depreciation present, and the lack of reliance that users place on this approach for this property type," while Mr. Lake "determined that the cost approach was not applicable." See Nos. 15, 17, and 19 of the Stipulation. See also P-1, R-1, and TR at 35-36 and 174-175 (i.e., "because the underlying age of the building meant depreciation would be kind of guess work at best").

¹³ See Nos. 16 and 20 of the Stipulation. See also TR 59-62.

¹⁴ See Nos. 16 and 21 of the Stipulation. See also TR at 83-85.

¹⁵ See No. 16 of the Stipulation and P-1 at 62. See also TR at 36 (i.e., "a willing buyer or a willing seller, they're going to put most weight on what are other properties that are similar to this selling for"), 36-37 (i.e., "when you're looking at an income approach and some of the challenges, I mean, we have a building that's -- has 2900 square feet of lease space to unrelated parties out of 40,000 square feet. You know, **the large majority of it's an owner/user**, you know, so it's -- I feel like there's more -- **you just have a wider margin for error** using that income approach"), and 85-86. [Emphasis added.]

Lake's sales comparison approach.¹⁶ Respondent contends that the property's TCV for the 2018 tax year should be \$2,770,000 and for the 2019 tax year should be \$2,770,000 based on Mr. Lake's income comparison approach.¹⁷ Based on a reconciliation of those approaches, Mr. Lake concluded to values of \$2,800,000 for the 2019 tax year and \$2,900,000 for the 2020 tax year.¹⁸

9. Mr. Kernen concluded that the highest and best use is the property's continued use as a free-standing retail building.¹⁹ Mr. Lake concluded that the highest and best use is the property's continued use as a neighborhood shopping center.²⁰ Based on the evidence provided, the Tribunal concludes that the highest and best use is the property's continued use as a general-purpose commercial building.
10. The subject market appears to be stable, although increasing, for the tax years at issue.²¹

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.²² 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.²³

In its review of that definition, the Michigan Supreme Court has determined that "true cash value" is synonymous with "fair market value."²⁴

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.²⁵ The Tribunal is not, however, bound to accept either of the parties' theories of valuation.²⁶ Rather, the

¹⁶ See Nos. 18 and 22 of the Stipulation.

¹⁷ See Nos. 18 and 23 of the Stipulation.

¹⁸ See No. 18 of the Stipulation and R-1 at 44-45.

¹⁹ See No. 26 of the Stipulation.

²⁰ See No. 27 of the Stipulation.

²¹ See P-1 at 21-24 and R-1 at 14-20. See also R-1 at 96 (i.e., "market stabilization").

²² See Const 1963, art 9, sec 3.

²³ See MCL 211.27(1).

²⁴ See *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

²⁵ See *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

²⁶ See *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

Tribunal may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination.²⁷

Further, a proceeding before the Tribunal is original, independent, and de novo²⁸ and the Tribunal's factual findings must be supported by competent, material, and substantial evidence.²⁹ 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.”³⁰

Additionally, “the petitioner has the burden of proof in establishing the true cash value of the property.”³¹ “This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party.”³² However, “[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question.”³³

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.³⁴ The market approach is, however, the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.³⁵ 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

²⁷ See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

²⁸ See MCL 205.735a(2).

²⁹ See *Antisdale*, *supra* at 277 and *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-3; 462 NW2d 765 (1990).

³⁰ See *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-3; 483 NW2d 416 (1992).

³¹ See MCL 205.737(3).

³² See *Jones & Laughlin*, *supra* at 354-5.

³³ See MCL 205.737(3).

³⁴ 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).

³⁵ See *Jones & Laughlin*, *supra* at 353 (citing *Antisdale*, *supra* at 276 n 1).

accurate valuation under the circumstances.³⁶ Regardless of the approach selected, the value determined must represent the usual price for which the subject property would sell.³⁷

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 “[i]t 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,] [I]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.’”³⁸ 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.³⁹ 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. 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.⁴⁰

Finally, the Tribunal is also required to determine the subject property or properties’ taxable values for the tax years at issue.⁴¹

Here, Petitioner claims that:

This is a valuation appeal for the commercial property located at 2807 Lake Michigan Drive Northwest, Grand Rapids, Michigan 49504, Parcel No. 41-13-21-376-022 (the “Subject Property”). The tax years at issue in this appeal are 2018 and 2019. The Subject Property consists of a free[-]standing retail building in average condition originally constructed in 1956.

³⁶ See *Jones & Laughlin, 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)).

³⁷ See *Jones & Laughlin, supra* at 353 (citing *Meadowlanes, supra* at 485).

³⁸ See *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 633; 462 NW2d 325 (1990).

³⁹ See Appraisal Institute: *The Appraisal of Real Estate*, (15th ed, 2020) at 34 and 317-328.

⁴⁰ See *The Appraisal of Real Estate, supra* at 328-334.

⁴¹ See MCL 205.737(1). See also MCL 211.27a(2) and 211.34d.

As of December 31, 2017, the Subject Property was occupied by **one tenant**. **As of December 31, 2018**, the Subject Property was occupied by **two tenants**. **As of both valuation dates**, the **majority** of the Subject Property (representing approximately 70.4% of the Subject Property's occupancy) is a Planet Fitness gym facility. Quite simply, the Subject Property is over assessed for tax years 2018 and 2019 and the Respondent's valuation disclosures are excessive, not well supported, and do not reflect the True Cash Value of the Subject Property for those tax years. **The Subject Property is not located near the vast majority of retail properties in the area and is only of average location and average visibility**. The building located upon the Subject Property is irregular in shape with the Planet Fitness facility taking up the majority of the building. The gym portion of the building is typical of a Planet Fitness model and does not contain expensive fixtures and fancy amenities but consists mostly of a large open area for exercise and training equipment. **The lease for the Planet Fitness facility is not reflective of market rent because the lease is between related parties** (i.e.,] the land holding company and the operator of the business) who, in essence, are the same people. Further, said lease incorporates and references rent for a completely different and unrelated location from the Subject Property. Any costs incurred by Petitioner for the renovation of the Subject Property are very specific as to the tenant's business needs and, as such, these costs are not reflective of True Cash Value of the Subject Property. As of December 31, 2018, the Subject Property gained a new tenant which consists of a Physical Therapy business which uses only approximately 2900 square feet. The remaining 8776 square feet remains completely vacant as of each valuation date. **The larger portion of the remaining space is unfinished and presents significant problems with respect to being finished and leased given its awkward shape and less desirable position relative to the rest of the building**. The unfinished]vacant space, comprises approximately 16% of the building which is by no means insignificant. When viewed in light of all the relevant facts, Petitioner's proofs will show that the proper True Cash Value determination for the Subject Property, based on application of proper methodology, and supported by a valuation disclosure prepared by a professional appraiser based on his years of experience and knowledge, is no more than \$1,650,000 for tax year 2018 and no more than \$1,750,000 for tax year 2019.⁴²

[Emphasis added.]

Petitioner also claims that:

⁴² See Petitioner's August 31, 2020 Opening Statement. See also TR at 6.

1. This is a valuation appeal for the commercial property located at 2807 Lake Michigan Drive Northwest, Grand Rapids, Michigan 49504, Parcel No. 41-13-21-376-022 (the "Subject Property"). The tax years at issue in this appeal are 2018 and 2019. The hearing for this matter took place on September 1 and 2, 2020 (the "Hearing"). Prior to the Hearing, the parties stipulated to certain facts (Exhibit A). Based on the testimony and exhibits presented at the Hearing, Petitioner submits the following as its closing arguments.
2. Based on Petitioner's proofs, it is clear that the Subject Property is over assessed for tax years 2018 and 2019. Petitioner's expert, Mr. Kevin Kernen, testified that the Subject Property **consists of a free-standing retail building in average condition originally constructed in 1956**. As of December 31, 2017, the Subject Property was occupied by one company, the Petitioner. As of December 31, 2018, the Subject Property was occupied by only two tenants. As of both valuation dates, the majority of the Subject Property (representing approximately 70.4% of the Subject Property's occupancy) is a Planet Fitness gym facility. Mr. Kernen also testified that the Subject Property is **not** located near the vast majority of retail properties in the area and is only of average location and average visibility (although the entrance to Planet Fitness does not face the road). The building located upon the Subject Property is irregular in shape with the Planet Fitness facility taking up the majority of the building. The gym portion of the building is typical of a Planet Fitness model and does not contain expensive fixtures and fancy amenities but consists mostly of a large open area for exercise and training equipment. **The lease for the Planet Fitness facility is not reflective of market rent because the lease is between related parties** (i.e., the land holding company and the operator of the business) who, in essence, are the same people. As of December 31, 2018, the Subject Property gained a new tenant which consists of a Physical Therapy business which uses only approximately 2,900 square feet. **The remaining 8,776 square feet remains completely vacant as of each valuation date. The larger portion of the remaining space is unfinished and presents significant problems with respect to being finished and leased given its awkward shape and less desirable position relative to the rest of the building.** The unfinished[] vacant space, comprises approximately 16% of the building which is by no means insignificant.
3. Both Mr. Kernen and Petitioner's representative, Mr. Julian Monterosso, also testified that Petitioner **invested** in the Subject Property **to fit Petitioner's specific business needs** such that a large portion of said investment was specific to the Planet Fitness model and included a large open space for working out, locker rooms, tanning rooms and significant personal property in the form of fitness equipment which had to be purchased directly from the Planet Fitness franchisor and included in the mortgage. The original intent of the owner was to make the entire building a Planet Fitness franchise until they realized that the ceiling heights were merely 11 ft in some areas. **This reduced the Planet Fitness footprint and forced the Petitioner to find alternate use of these spaces.** Mr. Kernen also testified that any future use of the Subject Property as a shopping center would entail significant costs in demolishing portions of the interior which are currently

specific to a Planet Fitness. Further, any future use as a shopping center would have a significant visibility problem as the bulk of the length of the Subject Property is not visible from the road. Overall then, the Subject Property is **not** necessarily suited to a "neighborhood shopping center" as Respondent would like to characterize it.

4. As for the approaches used in Petitioner's valuation disclosure, Mr. Kernen used both the sales and income approaches. The cost approach was not used as, in Mr. Kernen's opinion, it would not yield a reliable indication of value based on, among other things, the age of the Subject Property and the fact that it was built with several additions. As between the sales and income approaches, the income approach is less determinative of market value because, as Mr. Kernen testified, the Subject Property has 2,900 square feet of leased space to unrelated parties out of a total approximate 40,000 square feet. The vast majority of the Subject Property is owner/user occupied with a lease which is not arms-length because it is between related parties. Therefore, **more weight was given to the sales approach as being more indicative of market value because investors will certainly look at what a willing buyer would pay to a willing seller for comparable properties**. For both approaches, Mr. Kernen chose comparables which most closely resembled the Subject Property. To do this, Mr. Kernen used some comparables which were outside the Grand Rapids Metro Statistical Area ("MSA") because, **as even admitted to by Respondent's own expert**, when the Grand Rapids MSA does not yield enough true comparables, it is completely appropriate to consider comparables outside this area which are similar in terms of use and physical features of the Subject Property. A comparable's location outside the Grand Rapids MSA will **not** diminish its usefulness or value as a comparable **as long as** appropriate adjustments are made, which was done correctly by Mr. Kernen.
5. With respect to the fluctuating sales and lease prices shown in Petitioner's valuation disclosure, Mr. Kernen testified that it is completely appropriate to glean a trend in light of such fluctuations and to apply such trend across such fluctuating prices to determine appropriate values. While it is also possible to "mimic" the "ups and downs" on a weekly, monthly or annual basis, it is equally appropriate to apply market trend across such fluctuating amounts. With this in mind, Mr. Kernen testified that he chose the best available comparables for both the sales and income approaches which were used in his appraisal. After the appropriate adjustments were made, Mr. Kernen **concluded to a very tight range** in both adjusted sales and lease prices. Such a tight range is important, as Mr. Kernen testified, because as opposed to a wide range, it provides assurance that the most appropriate comparables were chosen, thus narrowing down the price per range and yielding the most appropriate value per square foot.
6. After reconciling his final determinations of value under both approaches, Mr. Kernen ultimately concluded to a True Cash Value for the Subject Property of no more than \$1,650,000 for tax year 2018 and no more than \$1,750,000 for tax year 2019. When viewed in light of the relevant facts, these conclusions of value are supported by good comparables and by application of proper appraisal

methodology. The assessments for the Subject Property should be adjusted accordingly.

7. Respondent's proofs were more notable for what they did **not** show, rather than what they attempted to show. Essentially, Respondent's valuation disclosure turned out to be an **unsupported** report **created** by Respondent's own employee **for the benefit and use of his own employer**. As an employee of the City of Grand Rapids who receives a salary, benefits, and direction straight from the Respondent, **it is incredulous to claim**, as Respondent's expert claimed, that he was **not** biased toward one party or the other. Nevertheless, Respondent's expert provided a report which conveniently **exaggerated** many of the Subject Property's characteristics and used comparables which, upon cross exam, were shown **not** to be true comparables at all. In fact, much of Respondent's expert testimony was **not** credible.
8. For example, Respondent's expert claimed that the Subject Property was currently a "neighborhood shopping center" yet he admitted on cross exam that neither the Planet Fitness nor the Athletico tenant in the Subject Property were in fact selling any particular product. **Such claims are completely inconsistent**. Next, despite the fact that the Subject Property is approximately 39,500 square feet, Respondent's expert's sales comparables, with the exception of one comparable, **were all much smaller than the Subject Property**. In fact, two of Respondent's sales comparables were less than 7500 square feet. These are simply **not** good comparables because their relatively smaller size would attract **a completely different buyer pool** than that for the Subject Property. In fact, at one point, Respondent's expert admitted he wished he had "better comparables." Further, Respondent's sales comparables numbers 1, 4 and 5 are all located in close proximity to regional malls whereas the Subject Property is **not**. Despite this, Respondent's in[-]house Appraiser **inexplicably** labeled such comparables as inferior to the Subject Property's location. Again, such testimony is simply **not** credible. Even more perplexing is Respondent's expert's inclusion of sales comparable Number 2 which is less than 7500 square feet, sold for over \$200 per square foot and is a 2008 building (and 52 years newer than the Subject Property). In addition, this comparable has a residential unit on its top floor. This is **not** even remotely comparable to the Subject Property, yet Respondent's expert somehow believed it was necessary to include. Continuing on, Respondent's expert then **incredulously** based his market adjustment, **not** on a healthy amount of good data but, rather, **on only his 5 comparables**. Such an incredibly small data set is simply **not** enough to make a valid market adjustment. Respondent's expert was also **not** forthright with respect to certain claims such as traffic count. For example, in his report, in relation to his comparable Number 5, he states that traffic count along Rivertown Parkway is only 10,837. Yet, on cross exam he admits that Rivertown Parkway is a boulevard with two-way traffic. Thus, in reality, the traffic count along that boulevard for comparable Number 5 is over 21,000. Such information and testimony **is simply not accurate and is misleading**. All of these misleading and improper comparables led Respondent's expert to conclude to a very high

range of prices per square foot which, he himself admitted on cross exam, is **not** consistent with the goal of appraisal process. **A wide range of prices tends to show, as Respondent's expert admitted, that the adjustment process is not as refined as it should be.** Indeed, Respondent's expert relied on comparables which he had to ultimately adjust by 30%, 45%, and 50%. **These are simply not proper comparables.** Ultimately, a wide range of prices per square foot which allows one to simply pick something on the high end of a very big scale is just **not** credible.

9. Not surprisingly, Respondent's expert's income approach report also fell far short of proper appraisal methodology. Again, as with his sales approach, Respondent's expert relied on comparable properties **which were located in or adjacent to regional shopping malls. He used brand new 2019 buildings as compared the 1956 Subject Property.** With the exception of one comparable, the remainder of his income comparables were less than 5,000 square feet as compared to the Subject Property at almost 40,000 square feet. He could **not** explain to this Tribunal how he could extrapolate or get from a 828 square foot comparable to even just the 27,000 square feet being used by Planet Fitness out of the almost 40,000 square feet in the Subject Property. Based on all of this unreliable data, Respondent's expert's report then contains an unadjusted summary of only certain leases and **not** all the leases he offered which resulted, once again, in a **self-serving very broad range** of lease prices. Ultimately, Respondent's expert **admitted** on cross exam that his own income approach was lacking in detail to allow anyone to determine how he even gets to his conclusion of market rents. **Moreover, his own report defines the Grand Rapids area to include many counties from which Petitioner's expert took comparables.** Despite this, he attacked Petitioner's expert for using such comparables, but then **contradicts himself by admitting** that he too went outside the Grand Rapids MSA for certain comparables because sometimes that is appropriate to do. All of this shows inconsistency and a willingness to say whatever is necessary to back his conclusion.
10. Overall, Respondent's expert's report is unsupported, unreliable, and contains many flaws. Further, Respondent's expert's testimony was inconsistent and lacked credibility. He himself admitted he wished he had better comparables and that, in areas, his own report should have been more refined. Such a report should **not** be relied upon to determine an accurate True Cash Value for the Subject Property. Rather, this Tribunal should look to Petitioner's valuation disclosure which is **not** a self-serving report compiled by an employee for his direct employer but, rather is a well-supported and well-reasoned analysis by an expert appraiser with many years of experience and knowledge.⁴³

[Emphasis added.]

As for Respondent, Respondent claims that:

⁴³ See Petitioner's October 19, 2020 Closing Statement.

This is a property tax appeal involving a neighborhood shopping center located in the southwest quadrant of Kent County in the City of Grand Rapids. The subject property is located at 2807 Lake Michigan Drive, NW and lies within the geographical region known as the Grand Rapids metropolitan area. The Grand Rapids metropolitan area includes Allegan, Kent, Ottawa and Muskegon counties. The subject property was purchased by JP 2807 Lake Michigan Drive, LLC on September 15, 2016 for \$1,825,000 in an arm's-length transaction. **The new owners renovated the subject property from a power sports dealership into a multi-tenant retail building in 2017.** Building permits associated with the subject property totaled \$1,525,000. The instant appeal involves both 2018 and 2019 tax years. Respondent will demonstrate that Petitioner's appraisal, completed by Mr. Kernen, omits very fundamental and essential elements which are necessary to create a reliable estimate of the true cash value for the subject property. Additionally, Petitioner's appraisal is based on erroneous assumptions, omitted analysis, and unsupported conclusions of value. Ultimately, Petitioner's attempt to use comparables located outside the geographical Grand Rapids metropolitan area and comparables that do **not** have the **same or similar** highest and best use as the subject property must fail. Moreover, Mr. Kernen's income approach should not be considered because Mr. Kernen relied heavily on information **outside** of the actual market area which is unsupported in his appraisal and therefore unreliable. Most importantly, it's hard to believe Mr. Kernen's theory, that the subject property, in an increasing market, would be worth less than the purchase price after substantial investment and renovation. Respondent will show at trial that its appraisal, completed by Mr. Lake, is substantially more compelling and supported by the data available in the specific market area where the subject property is located.⁴⁴

[Emphasis added.]

Respondent also claims that:

1. This is a property tax appeal involving a neighborhood shopping center located at 2807 Lake Michigan Drive, NW in the southwest quadrant of Kent County in the City of Grand Rapids. As set forth in the stipulated facts, Petitioner purchased the subject property on September 15, 2016 for \$1,825,000 in an arm's-length transaction. In 2017, the new owners renovated the subject property from a power-sports dealership into a multi-tenant retail building. **Building permits associated with the renovation totaled \$1,525,000.** The instant appeal involves both the 2018 and 2019 tax years. The Tribunal held a hearing on September 1

⁴⁴ See Respondent's August 31, 2020 Opening Statement. See also TR at 6.

and 2, 2020 (the Hearing), wherein the proofs offered supported Respondent's valuations of \$2.8M for tax year 2018 and \$2.9M for tax year 2019.

2. At the hearing, Petitioner's proofs showed that its valuation disclosure amounted to an unrealistic scenario that the Tribunal should not consider credible. Petitioner would have the Tribunal believe that after purchasing the subject property for \$1,825,000 on the open market in September 2016, then investing over \$1,500,000 in the subject property to remodel and renovate it into a multi-tenant retail facility, (Tr, 21), that it is worth less than what it was purchased for. **This could be the case in a declining market.** However, Petitioner's Appraisal Report identifies the Grand Rapids commercial real estate market to be **healthy and increasing** in value (Petitioner's Report at 1, 21). Indeed, at the hearing, Petitioner's expert Kevin A. Kernan, MAI, agreed that he characterized Grand Rapids as an increasing market with sales increasing (Tr, 116). Moreover, Petitioner was able to secure federally-backed mortgages of over \$4.3M in 2016 on this property, but would like the Tribunal to believe the fair market value is \$1.6M as of December 31, 2017, a little over a year after the purchase and mortgage dates. Either the lending institution was misled as to the value of this property in a fraudulent government-backed mortgage, or this Tribunal is being misled by the Petitioner as to the true cash value (TCV) of this property. Based on reasonable and relevant market data presented by Respondent, it is clearly the latter. The valuation disclosures show that Petitioner's valuation is flawed. **Both** Petitioner's and Respondent's disclosures show the Grand Rapids commercial real estate market as **increasing** in value (Petitioner's Report at pp 21-24; Respondent's Report at 14-20), including increasing rental rates, decreasing vacancy, and low unemployment rates. Moreover, Petitioner's sales-comparison approach contains several critical weaknesses. In the sales comparison approach, Mr. Kernan relied upon sales comparables that had different Highest and Best Use than the subject property. Most of the comparables are sales of properties with buildings at the end of their economic lifecycle, and each of them had significant use changes after the sale, or significant modifications after the sale. In fact, six of the comparables are listed as "former" in their description, indicating the buildings were at the end of their economic life. In contrast, the subject property is not at the end of its economic lifecycle. **Petitioner's substantial investment has repurposed the building into a multi-tenant retail building**, which is synonymous with a "Neighborhood Shopping Center." These sales would be more comparable to the subject property before the property owner's conversion, but not as of the valuation date. In addition, Petitioner's sales Comparables 2, 4, 6 and 7 come from outside the Grand Rapids market area, some far outside the Grand Rapids market. Specifically, these comparables were located in Muskegon, South Haven, Grand Ledge, and Kalamazoo respectively.

Petitioner did **not** offer any evidence to show that these markets were comparable, superior, or inferior to the Grand Rapids market. In fact, when questioned about the Muskegon market, Mr. Kernen admitted that he did **not** analyze the Muskegon market (Tr, 107-108). This undermines Petitioner's sales comparables approach. Mr. Kernen's appraisal detailed a strong Grand Rapids market that is increasing in value, but Mr. Kernen did **not** include any information on the strength of the Kalamazoo, Grand Ledge, South Haven or Muskegon markets. **There was no information regarding how these markets are comparable to the vibrant Grand Rapids market.** A closer review illustrates further weaknesses in Petitioner's sales comparables. For example, Comparable 1 sold on September 7, 2018, after tax day December 31, 2017, and has a 4 different Highest and Best Use as a "former furniture outlet." Outlet stores are typically located in inferior retail areas, and, true to form, Comparable 1 suffers from a lower traffic count as compared to the subject property. Respondent's expert, Ryan Lake, MAI, who has 20 years' experience and has appraised thousands of commercial properties in West Michigan, explained that it was a critical mistake to characterize Comparable 1 as a "superior location" in relation to the subject property (See Tr, 197). Petitioner offered **no** justification to support this characterization. Importantly, as Mr. Lake explained, Comparable 1 is **not** located on busy 28th Street, but rather it is located on 29th Street where traffic is substantially reduced (See Tr, 197). With respect to Petitioner's Comparable 2, evidence including Mr. Lake's expert testimony established that Comparable 2 is **nothing like** the subject property. Like Comparable 1, Comparable 2 suffers from an **inferior** traffic count as compared to the subject-property. Moreover, Comparable 2 is located in Muskegon and **not** Grand Rapids. Perhaps because he is less familiar with the Grand Rapids market, Mr. Kernen mistakenly looked to Muskegon for a comparable. Mr. Lake explained that there was **no** need for Mr. Kernen to look to Muskegon to find comparables for the subject property when there are comparables in the Grand Rapids market (Tr, 200). As noted, Petitioner failed to produce any evidence to support that Muskegon features the same strengths as Grand Rapids. In addition, Mr. Lake explained that his research revealed that, after the sale, Comparable 2 was split off and sold for industrial use (Tr, 199-200). Furthermore, Comparable 2 is located in an industrial park that has "never really taken off," and the "health club" portion was vacant at the time of valuation (Tr, 199-200). In fact, the "health club" portion of Comparable 2 was never anything more than an empty space with "some mats on the floor" for gymnastics jumping (Tr, 199-200). In short, as Mr. Lake explained, Comparable 2 is **not** at all comparable to the subject property and should not be considered (Tr, 200). Petitioner's Comparables 3 and 4 are also of low comparative value. Comparable 3 has a **different Highest and Best Use** as a "Former Furniture Outfitters," it was **not** a multi-tenant retail

facility at the time of the sale, **and** the property suffers from an inferior traffic count as compared to the subject property. Furthermore, there is limited site access and limited parking for the property. Comparable 4 also has a **different Highest and Best Use** as a “Former Save-A-Lot” grocery store, it has an inferior traffic count, and it is located in South Haven, well outside Grand Rapids. With respect to sales Comparable 5, while the property had a Highest and Best Use akin to the subject property at the time of sale, there is **no** justification to designate this a “superior location.” The property suffers from an inferior traffic count as compared to the subject property, **and** there is no direct vehicular access from 28th Street. Instead, customers must access the property via a side street. Furthermore, the property was remodeled and converted into a self[-]storage facility. Now, the property is 85% self-storage and 15% retail. This is a good indication that the property is **not** a superior retail location. Petitioner’s Comparable 6 also offers little comparative value in that it has a **different Highest and Best Use** as a “Former Family Fare,” it has an inferior traffic count, and, post-sale, the purchaser invested a significant amount to remodel and convert the property into a multi-tenant retail facility. Moreover, Comparable 6 is located in Grand Ledge, a market far-removed from the Grand Rapids MSA. As an expert appraiser with extensive experience in West Michigan, Mr. Lake testified that he would never go this far outside Grand Rapids to find a comparable sale (Tr, 205-206). Petitioner’s Comparable 7 also has a **different Highest and Best Use** as a “Former Grocery Store,” it suffers from an inferior traffic count, and it is located in Kalamazoo, outside the Grand Rapids market. In addition, there is significant post-sale remodeling necessary to convert the property into a multi-tenant retail facility. It does **not** provide the Tribunal with a reliable comparable to the subject-property. Finally, Petitioner’s Comparable 8 also has a **different Highest and Best Use** as a “Fitness Center,” and, as Mr. Lake testified, it is **not** at all comparable to the subject-property, a multitenant free-standing retail building (Tr, 206). In sum, Petitioner’s sales comparison approach fails to utilize comparable sales of similar Highest and Best Use as multi-tenant retail facilities, but instead uses sales of single-user properties that are at the end of their economic lifecycles. Moreover, Petitioner’s appraiser Mr. Kernen did **not** inspect the sales comparables, and by failing to do so, he failed to observe the significant improvements made to every property after the date of sale. In addition to a flawed sales approach, Petitioner’s income-approach lacks credibility. Mr. Lake’s testimony showed that Mr. Kernen’s income approach relied on rent comparables that are **in substantially inferior locations** as compared to the subject property (See Tr, 207-214). Moreover, **none of the rent comparables are located in Grand Rapids**, and two of the rent comparables are **not** even located in Kent County. Mr. Kernen’s income approach not only included inferior rent locations, but it also **completely ignored** the rent that the subject property is able to

receive on the open market (\$15 per square foot annual). Although the owner of the subject property has an interest in one of the subject property's tenants, Planet Fitness, the existence of a lease in place allows the property owner to sell the property and retain the leasehold interest belonging to the business entity. The lease in place should not be completely ignored and is based on market interactions. In his report, Mr. Kernan details average commercial rents from 2013 to 2018 in the Grand Rapids market (Petitioner's Report at 21). The subject property's actual rents are within this range and represent market rent. Respondent's valuation disclosure represents rents that are more in line with commercial rents in the Grand Rapids market. In short, Petitioner's income approach to valuation understates potential gross income for the property.

3. Respondent's proofs established that the subject property under appeal **is located on a major thoroughfare** (Lake Michigan Drive, also known as M-45) between the City of Grand Rapids and outer suburbs of Grand Rapids **and enjoys a high traffic count as well as good visibility in a strong retail market**. Respondent's proofs established that the subject property is a multi-tenant retail facility, also known as a Neighborhood Shopping Center, located in the western portion of Grand Rapids. Specifically, as Mr. Lake explained at the hearing, under the Appraisal Institute's Property Use Classification System (PUCS), the subject-property meets the definition of a "Neighborhood Shopping Center" (See Tr, 225-227). This definition does not limit Neighborhood Shopping Centers to strictly retailers of goods as opposed to services and instead includes properties with a large tenant and several smaller tenants (See e.g., Tr, 225-227). Respondent presented the expert testimony of Mr. Lake, who, unlike Mr. Kernan, has 20 years' experience appraising commercial properties with 90-percent of his work completed in West Michigan. Mr. Lake prepared an appraisal report in which he used the sales and income approaches. Unlike Petitioner's report, many features of Mr. Lake's report make it a more accurate reflection of the subject property's true cash value. Specifically, Mr. Lake's comparable sales are the **same Highest and Best Use as the subject property**: multi-tenant retail buildings. In addition, all comparable sales have been researched, verified, and reviewed onsite by Mr. Lake, as opposed to an associate. Moreover, contrary to Mr. Kernan's report, Mr. Lake's comparable sales are **within the Grand Rapids market – the same market area as the subject property**. Mr. Lake also quantified his location adjustments in that he utilized traffic count as the defining quantitative way to evaluation location. **This exemplifies how Mr. Lake's reasoning was grounded in specific characteristics that were quantified in his report. In contrast, Mr. Kernan failed to provide any specifics and did not quantify the logic underlying his location adjustments**. Mr. Lake also recognized the functional obsolescence of the layout of the subject property. Mr. Lake **accounted for this obsolescence** in his sales comparison approach and

his income approach **through an adjustment, reduced rent, and vacancy allowance**. He recognized that the property had a **higher-than-market vacancy** because of the layout. Furthermore, unlike Mr. Kernan, Mr. Lake performed a separate analysis for both the 2018 and 2019 tax years and he incorporated a new comparable for the 2019 tax year. Mr. Lake ultimately concluded to a True Cash Value of \$2,800,000 for tax year 2018, and \$2,900,000 for tax year 2019. These are within reasonable expectation of market investors. Here, the subject property was purchased on the open market in September 2016 for \$1,825,000. Subsequently, Petitioner invested over \$1,500,000 in renovating the subject property. **Market investors typically do not purchase property for \$1.825M, invest over \$1.5M in the property, and then turn around and sell the property for \$1.6M in a robust and healthy real estate market.** That is nonsensical. Mr. Lake's conclusions are reasonable with the market in Grand Rapids, the mortgage appraisal, and the bank's expectations. Finally, there is **not** even a scintilla of evidence to support Petitioner's unfounded attack on Mr. Lake's credibility because of an alleged bias. Perhaps because Petitioner cannot rationalize the weaknesses and flaws of its own valuation report, Petitioner instead makes baseless attacks on Mr. Lake's credibility. While Petitioner attempts to portray Mr. Lake as biased because he is employed by the City of Grand Rapids, there is **no** evidence to support that his conclusions and analysis were impacted by bias. Mr. Lake, a professional appraiser with 20 years' experience, adopted and applied appropriate appraisal methodology in accordance with the Uniform Standards of Professional Appraisal Practice (USPAP). The City Assessor does **not** pressure Mr. Lake to reach a predetermined outcome, and Mr. Lake does **not** provide initial drafts to the Assessor for her input (See Tr, 277). **Neither Mr. Lake's job nor his salary are dependent on reaching a predetermined number.** In accord with professional standards, Mr. Lake's conclusions are independent of any influence from the City. Instead, Mr. Lake works to create a credible report and a credible valuation based on professional standards (See Tr, 277). Moreover, the use of a familiar appraiser is **not** uncommon in the industry as it provides confidence to clients that the valuation work will be conducted in accord with the correct standards. For example, Mr. Kernan has repeatedly worked with Petitioner's Representative Paul Bach on tax appeals including a recent appeal in Plainfield Township. Indeed, while Petitioner alleged bias on the part of Mr. Lake, if anyone had motive for bias it is Petitioner's expert, Mr. Kernan. Mr. Kernan and Mr. Bach were employed by Petitioner and Petitioner is the party that stands to benefit from a reduced tax bill based on a lower valuation.⁴⁵

[Emphasis added.]

⁴⁵ See Respondent's October 23, 2020 Closing Statement.

Prior to addressing the parties' claims, the first step in the valuation process requires the Tribunal to determine the property's highest and best use.⁴⁶ In that regard, Mr. Kernen concluded that the property's highest and best use is its continued use as a free-standing retail building. While Mr. Lake concluded that the property's highest and best use is its continued use as a neighborhood shopping center. Although Mr. Lake's conclusion was based on the Appraisal Institute's Property Use Classification System (PUCS), the PUCS definition for a neighborhood or community shopping center is inconsistent with the actual use of the property.⁴⁷ Rather, said use supports the PUCS definition for a general purpose.⁴⁸ Nevertheless, the evidence provided by both parties supports a conclusion that the property's highest and best use is its continued use for

⁴⁶ "Whenever a market value opinion is developed, highest and best use analysis is necessary." See Appraisal Institute: *The Appraisal of Real Estate*, (15th ed, 2014) at 34.

⁴⁷ See TR at 173-174 (i.e., "definitely a multi-tenant income producing type property").

⁴⁸ PUCS (2018 Version 1.0) describes "general purpose" at 12 as:

A generic building suitable for use by a myriad of retailers and service providers. A large portion of the space is free from permanent partitions so its wide open. The unobstructed floor plan facilitates the easy and inexpensive conversion from one use to another.

In that regard, see the PUCS "shopping center" descriptions for "neighborhood center" and "community shopping center," respectively, at 30:

1. These type centers also focus on conveniences but typically contain 30,000 to 150,000 sq.[]ft. of gross leasable area (GLA) on 4 to 10 acres. A supermarket is often the principal anchor with all anchors occupying 30% to 50% of the entire property. Its primary trade area (the area from which 60% to 80% of its sales originate) typically extends up to 1.5 miles with drive times being less than 5 minutes.
2. This type of center offers general merchandise, grocery, and conveniences in 100,000 to 300,000 sq.[]ft. of gross leasing area (GLA) on 10 to 30 acres. Often two or more anchors (like discount department, supermarket, drug, home improvement, large specialty discount) occupy 40% to 60% of the entire center. Its primary trade area (the area from which 60% to 80% of its sales originate) typically extends outwardly as much as 6-miles.

Finally, see TR at 19, which provides, in pertinent part:

A: . . . I think a difference in how I'm looking at this property, and how the Respondent's appraiser is looking that this property. And not in terms of, you know, what's physically standing there. I mean, I think there's an agreement there, **but just the interpretation of how an investor and how does the market see this property and its use.** [Emphasis added.]

See also TR at 92-91.

commercial purposes as a general-purpose retail building, as said use is legally permissible, physically possible, financially feasible, and maximally productive.⁴⁹

With respect to Petitioner's claims, Petitioner submitted an appraisal (i.e., P-1) and provided testimony in support of that appraisal.⁵⁰ Although Petitioner's appraiser, Mr. Kernen, considered all three recognized approaches to value, he relied on the sales comparison and income capitalization approaches and not the cost approach (i.e., "not the best approach") "given the age of the improvements, the amount of depreciation present, and the lack of reliance that users place on this approach for this property type."⁵¹ As for his sales comparison approach, Mr. Kernen indicated that "investors, when they're looking a property like this, and looking at, you know a willing buyer or a willing seller, they're going to put the most weight on what other properties that are similar to this [are] selling for" (i.e., "most weight").⁵² Mr. Kernen did, however, also testify that "when you are looking at an income approach and some of the challenges, I mean, we have a building that's – has 2900 square feet of lease space to unrelated parties out of 40,000 square feet" so that "the large majority of it's owner/user, you know, so it's – I feel like there's more – you just have a wider margin of error using that income approach" (i.e., "significantly more . . . comfortable with the sales comparison approach").⁵³ Said testimony is consistent, as "**typical investors**" can include both local and national investors and such investors, although generally more reliant on information relating to a property's potential income stream, will look at both approaches and determine which approach is more relevant **based on the property's circumstances and the actual data available**. In that regard, Mr. Kernen utilized the same eight sales for both tax years – one from 2014, two from 2015, one from 2016, one from 2017, and three from 2018.⁵⁴ After adjusting for differences, Mr. Kernen

⁴⁹ See *The Appraisal of Real Estate*, *supra* at 34-35, 305-315, and 317-318. See also TR at 28-31, 33-34, 173-174, and 224-227.

⁵⁰ The appraisal is essentially the same appraisal prepared by Mr. Kernen and submitted in MOAHR Docket No. 18-001497. See TR at 89-90. See also TR at 15-17 regarding errors to the appraisal.

⁵¹ See TR at 35-36.

⁵² See TR at 36.

⁵³ See TR at 36-37.

⁵⁴ See P-1's Sales Comparison Approach at 37-45. See also TR at 37-62, which provides, in pertinent part, at 59:

determined a concluded value per square foot of \$40.00 for the 2018 tax year and \$42.00 for the 2019 tax year based upon adjusted sale prices per square foot ranging from \$32.69 to \$45.53 for the 2018 tax year and \$33.63 to \$46.91 for the 2019 tax year. Of the sales, the 2014, 2015, and 2016 sales are too remote in time for consideration for both tax years and the 2017 sale is too remote in time for consideration for the 2019 tax year absent reliable adjustments for changing market conditions from the date of sale to the tax dates at issue (i.e., December 31, 2017 for the 2018 tax year and December 31, 2018 for the 2019 tax year).⁵⁵ Unfortunately, Mr. Kernen's 3.0% annual adjustment for changing market conditions was not properly supported. More specifically, Mr. Kernen's sales charts **clearly indicate a market decrease from December 31, 2013, to December 31, 2014 and from December 31, 2014, to December 31, 2015; a market increase from December 31, 2015, to December 31, 2016 and from December 31, 2016, to December 31, 2017; and finally a market decrease from December 31, 2017, to December 31, 2018**, with no explanation as to how the 3.0% annual adjustment was determined.⁵⁶ As a result, Petitioner's Comparable Nos. 5, 6, 7,

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- A: . . . I didn't just select these eight and run with them. There was a bigger pool that these came from.
- Q: Okay, And in your opinion, these are the best in your professional opinion and experience, these eight, as compared to all the sales comparables that were available to you?
- A: Correct.

⁵⁵ See MCL 211.2(2).

⁵⁶ See P-1: Charts: Market Conditions – Comparable Improved Transactions at 41. See also P-1 Market Conditions at 47, which provides, in pertinent part:

Based on the following regression analysis presenting trends in sale prices for retail properties in the subject's market, a market conditions adjustment of 3.0% annually is applied to the improved sales. This adjustment is applied to the time period between the date of the transaction for the comparable sale and the valuation date for the subject. The chart below displays historical trends in sale prices for comparable retail properties in the subject's market obtained through CoStar Analytics. [Emphasis added.]

Although the CoStar Sales Comparable Analytics data or historical trend sales information underlying those sales charts was **not** provided, said regression analysis does **not** support Mr. Kernen's conclusion of a 3.0% annual sales adjustment to reflect changing market conditions absent a detailed explanation, which was not provided. More specifically, Mr. Kernen did **not** explain how he "gleaned" his 3.0% adjustment from the fluctuating trend of sale prices. See also TR at 39-42, 58, 61 (i.e., "concluded appreciating market conditions"), and 144-145. In that regard, said conclusion is also inconsistent with Respondent's evidence reflecting a stable but increasing market for the tax years at issue.

and 8 are unreliable indicators of value for the 2018 and 2019 tax years and Comparable No. 4 is an unreliable indicator of value for the 2019 tax year.⁵⁷ With respect to the 2017 sale (i.e., Comparable No. 4), that sale did take place in the West Michigan market. The sale did not, however, take place in the instant market or sub-market where the property is located and there is, unfortunately, insufficient information to justify the consideration of Mr. Kernén's purported comparable sales that occurred outside of the Kent County submarkets or the actual Grand Rapids market (i.e., Comparable Nos. 2, 4, 6, and 7), as the Tribunal is unable to determine, based on the evidence provided, whether the markets or submarkets for those comparable sales are "outperforming[] or underperforming" relative to the "stable," but increasing Kent County submarket in which the property is located.⁵⁸ Fortunately, the two remaining comparable

⁵⁷ There are other issues with these comparable sales that render them unreliable indicators of value that are not specifically addressed in this POJ. See TR at 45-47, 107-109, and 198-201 (Comparable No. 2), 49-52, 110-112, and 202-203 (Comparable No. 4), 52-53, 112-113, 203-204 (Comparable No. 5), 53-55, 113-114, and 204-205 (Comparable No. 6), 55-56, 114, and 205-206 (Comparable No. 7), and 56-58, 114-115, and 206-207 (Comparable No. 8). See also TR at 38 (i.e., "it's certainly something you want to consider, and you need to make, you know, locational adjustments").

⁵⁸ Although Mr. Kernén looked for a broader "West Michigan" market for purposes of his sales comparables, **limited data was provided relative to said market**. Rather, the **substantial majority** of Mr. Kernén's market information relates to the Grand Rapids MSA, Kent County or, more specifically, and the Kent County Submarkets. See P-1: Regional Overview at 9-13, which provides, pertinent part:

Grand Rapids Metropolitan Regional Analysis

The subject is located in the geographical region referred to as the Grand Rapids MSA in the Midwest region of the United States. The Grand Rapids MSA is the second most populated metropolitan area in Michigan. **The region is comprised of approximately four counties, including Barry County, Kent County, Montcalm County, and Ottawa County.** The primary cultural and financial centers of the region are Grand Rapids, Muskegon, and Holland. The Grand Rapids MSA is the economic, population, and real estate center of the West Michigan region. The subject is located in the city of Grand Rapids, which is the second-largest city in Michigan and the county seat of Kent County. The following sections detail demographic, income, and employment information for the Grand Rapids MSA, Kent County, and Grand Rapids.

See also P-1: Market Overview at 21-24, which references some limited "West Michigan Market" data on 23 and provides, in pertinent part:

Metropolitan Grand Rapids Retail Market Analysis

Geographically, the **Metropolitan Grand Rapids Retail Market**, as designated by CoStar, **covers numerous counties in West Michigan**. Due to its size, **the market is often buoyed and dampened by specific counties and submarkets that are outperforming, or underperforming, relative to their peers**. Similarly, due to the market's broad base, the subject's market largely tracks the state of the national retail

market, both of which have continued to improve throughout 2017 and 2018, stemming largely from retailers actively reshaping their business models in response to consumers' shifting habits, desires, and necessities. This transition has led many major retailers to restructure away from traditional brick-and-mortar stores and refocus their capital into improved online platforms, mobile formats, and digital magazine and catalog publications. As such, the retail market, both nationally and locally, is constantly evolving and those retailers that are quick to adapt will be able to take advantage of the remaining opportunities in the Metropolitan Grand Rapids Retail Market.

It is important to note that the data presented below **includes all types of retail properties in the subject's market, submarket cluster, and submarket**, including free-standing retail, shopping centers, regional malls, among others. **The data also includes properties that are of considerably higher quality and class.** Rental rates between the property types and classes **vary widely**, but in order to provide a meaningful number of results, all data points have been considered

Summary

In general, the Metropolitan Grand Rapids Retail Market experienced progress through the fourth quarter of 2018, **but increases have been measured**, showing **no** indication of robust growth within the region. **The areas throughout the Kent County Submarket Cluster have been stable** with consistent delivery of new rentable square feet, low unemployment, and an increase in market rental rates for properties comparable to the subject. In addition, new construction within the Kent County Submarkets has persisted and rental rates remain stable; however, vacancy rates in many areas have increased offsetting these positive factors.

[Emphasis added.]

Notwithstanding the above, Muskegon is **not** one of the "primary cultural and financial centers of the region" defined by the Grand Rapids MSA, as Muskegon is **not** located in Barry County, Kent County, Montcalm County, or Ottawa County. Rather, Muskegon is located in Muskegon County, which is the location of Mr. Kern's Sales Comparable No. 2. See TR at 107-108 (i.e., "I believe Muskegon might have its own defined MSA"). In that regard, Mr. Kern's Sales Comparable Nos. 4, 6, and 7 are located in Van Buren County, Eaton County, and Kalamazoo County, respectively. Further, Mr. Kern also testified, in response to a question regarding the required "types of factors" to be considered in appraising this type of property, that:

A: I mean, you're looking at, you know, national market influences that could impact a property that you're valuing. You know, examples could be - - you know, **it doesn't impact this valuation**, but what's going on now in the world. That certainly is impacting properties, you know, at the local level. We drive from here into a narrower and narrower focus, so you start looking at, you know, **impacts from the geographic as well as impacts from the market area for the property**, [which may] or may **not** be same.
[Emphasis added.]

See TR at 17-22 and 38-39, which also provides, in pertinent part:

Q: Does the comparable lie outside of a certain geographic area, or in this case, if a comparable lies outside the Grand Rapids metro statistical area -- I think that's referred to as the Grand Rapids MSA -- does that limit that comparable's use or reduce it[]s value or reliability as a comparable, in your opinion?

A: No. I mean, **it's certainly something you want to consider, and you need to make, you know, locational adjustments.** It doesn't mean that it's a red line for that

comparable. Now, if you're -- if I'm appraising your house, I certainly -- and if we're in Grand Rapids, I wouldn't go outside the Grand Rapids area. I'd try to stay in your neighborhood. So it's, you know, **sort of the breadth of where you pull your data from**, is dependent on the type of property that you're dealing with. And so in this case, I was comfortable, as you can see from the location of these, you know, going outside of the immediate Grand Rapids area, because **I found comparables that were similar in the potential use of the property and, you know, physical features.**

[Emphasis added.]

Although there is, as indicated by Mr. Kernen, **no** "red line" preventing the use of comparables outside of the instant market area, the "breadth" of data or market information necessary to verify the selection of those properties as comparables and the adjustments made to reflect the differences between the subject and such comparables was **not** provided to the Tribunal. See TR at 100-101, which provides, in pertinent part:

Q: You personally inspected the market area. Where was the market area at you inspected?

A: Yeah, I mean, that should probably say neighborhood to be more accurate. So, you know, I definitely didn't drive around entire west Michigan for this one appraisal. But in terms of doing this inspection, I, you know, inspected the subject property as well as the surrounding areas.

Q: What do you mean by surrounding areas?

A: Just the surrounding streets, so I drove the surrounding streets to get a feel for, you know, development in the area.

See also TR at 101-102, 253-254 (i.e., "special use properties"), 286-288, and 147-148, which provides, in pertinent part:

Q: And you didn't include a market analysis of those separate counties in this report?

A: I don't have demographic information here, market data, yeah, as compared to or included within this.

Q: Isn't that important?

A: I looked at specific information to each of those comparables and their surrounding locations, so I looked at the important information as it relates to those properties.

Finally, see P-1: Neighborhood Overview at 15-19, which further provides, in pertinent part:

Neighborhood Overview

The subject is located at the northwest corner of Lake Michigan Drive Northwest and Collindale Avenue Northwest in the West Grand Rapids/Walker submarket of the Grand Rapids MSA. The neighborhood boundaries are generally delineated by Lake Michigan Drive Northwest to the south, I-96 to the north, US-131 to the east, and Wilson Avenue Northwest to the west; the subject resides in the center of the neighborhood, along its southern border. **The subject's neighborhood is determined to be in the stability stage of its life cycle .**

Conclusion

The neighborhood's population and number of households have **increased** over the past decade and are projected to continue this trend, **increasing by more than 0.86% annually.** However, while there are signs of commercial prosperity within the neighborhood, this prosperity is most heavily focused in areas removed from the

sales (i.e., Comparable No. 1 and 3) are, as revised, reliable indicators of value for both tax years.⁵⁹ In that regard, Comparable No. 1 is described by Mr. Kernen as (i) “relatively similar sized” but “superior in terms of condition” and (ii) as having a “similar market” but “superior location” and “inferior land-to-building ratio.”⁶⁰ As a result, Mr. Kernen adjusted the sale price per square foot of Comparable No. 1 for the 2018 and 2019 tax years by a negative 5% for location, a negative 5% for condition, and a positive 5% for land-to-building ratio for a total adjustment of a negative 5%. Respondent has, however, credibly indicated that the difference in location may not be as significant as indicated by Petitioner. More specifically, the evidence clearly indicates that traffic counts, although an important factor, is **not the sole factor** in determining location differences.⁶¹ Further, the building, although constructed more than 30 years

subject’s immediate location and **key demographic indicators continue to lag behind national averages**. As a result, interest in the subject is anticipated to remain **stable** in the future.

[Emphasis added.]

⁵⁹ With respect to sales occurring after a tax date at issue, the Michigan Court of Appeals stated in *Jones & Laughlin, supra* at 354 that “the lapse in time is important **only with respect to the weight** that should be given the evidence, **not** to the relevance of the evidence.” [Emphasis added.]

⁶⁰ See P-1: Sales Comparison Approach at 38-45. See also TR at 42-45, which provides, in pertinent part, relative to Comparable No. 1:

A. . . . I adjusted this one for location, as I mentioned, the dense commercial development around it, the proximity to the Woodland Mall as well as the other major shopping center, all the development that is spurred around that. And then I adjusted it for its condition, and then lastly for land to building ratio. The subject’s, as I mentioned before, has a little bit of an awkward shape. But in terms of land to building ratio, is fairly high. I’m probably giving it the benefit of the doubt a little bit there, but I wanted to make an adjustment to reflect the additional land of the subject.

See also TR at 21-22, which provides, in pertinent part:

A. . . . certainly Lake Michigan Drive has a heavy traffic count, and - - but a lot of that is the traffic going to other destinations and passing by this location. **This is not a destination area by any means from a commercial standpoint.** [Emphasis added.]

Finally, see TR at 103-107 and 196-198.

⁶¹ See TR at 49 (i.e., “I looked at specific factors in terms of, you know, sales prices, average sales prices in the immediate area, average rental rates in the immediate area, the amount of development in the immediate area, and **certainly look at traffic counts as a factor as well**”). See also TR at 105-107, which provides, in pertinent part:

Q: Would you agree that traffic counts are important to retail?

after the construction of the subject (i.e., 1956 versus 1995),⁶² was **not** remodeled until 2018, **which would have been after the tax date at issue for that tax year and after the 2017 renovation of the subject.**⁶³ As such, the correct or revised total adjustments should be a positive 5% and not a negative 5% based on Petitioner's adjustment for land-to-building ratio for each tax year, as the location adjustment should be 0% and not a negative 5% as its location is, despite its proximity to a major commercial corridor, only slightly superior and offset by the subject's traffic count and the condition adjustment should be adjusted from a positive 5% and not a negative 5% to reflect the subject renovation prior to the tax date for the 2018 tax year (i.e., December 31, 2017) and Comparable No. 1's renovation after that tax date, resulting in an adjusted sales price per square foot for Comparable No. 1 of \$50.94 for the 2018 and 2019 tax year.⁶⁴ With respect to Comparable No. 3, that comparable is described by Mr. Kernen as (i) a

A: Depending on the retail use. **It is certainly a factor that is considered.** And depending on the specific user, **it can have more or less importance.** But yes. **It's a data point that we look at and value in retail property or commercial property.**

[Emphasis added.]

Finally, see TR at 139-144 (i.e., "one additional data point") and 147, which provides, in pertinent part:

Q: And in your opinion, for a Planet Fitness location, wouldn't the traffic count be very important?

A: As I've mentioned, **it's certainly a consideration**, but, you know, I wouldn't expect it to be the only consideration.

[Emphasis added.]

⁶² The year 1973 represents the **purported** weight average of the building's year built, which is interesting as effective age is affected by a property's condition and the instant property was, as indicated above, renovated in 2017.

⁶³ Petitioner's renovation expenditures and continuing maintenance also raise unanswered questions relative to the amount of Mr. Kernen's condition adjustment for both tax years. See TR at 25-28 and 44-45 (i.e., "the condition adjustment, while minor, you know, some would argue that it should be a little bit less than what I did" and "[y]ou know, I wouldn't feel strongly that they were wrong, but it's not a significantly differing amount").

⁶⁴ Although **not** addressed above, one of the factors or adjustments that should have been more "extensively explained" by Mr. Kernen relates to the differences in the "quality of construction" of the subject and Comparable Nos. 1 and 3 despite his **admitted failure** to inspect the comparables. See TR at 89. See also P-1: Sales Comparison Approach at 38. In that regard, the subject's Class C quality of construction is generally better than Comparable No. 1's Class S quality of construction and Comparable No. 3's Class C/S quality of construction. **Nevertheless, a review of the evidence, specifically the testimony by both parties, indicates that no adjustments for quality of construction were necessary for either comparable.**

“smaller” building that is “inferior in condition” and (ii) as having a “superior location to the subject” with an inferior land-to-building ratio.⁶⁵ As a result, Mr. Kernen adjusted the sale price per square foot of Comparable No. 3 for both tax years by a negative 10% for location, a negative 5% for building size, a positive 5% for condition, and a positive 5% for land-to-building ratio for a total adjustment of a negative five percent. The correct or revised total adjustment should be a positive 5% and not a negative 5% to reflect the same revised location adjustment of 0% and a continuation of the negative 5% for building size, the positive 5% for condition to reflect the renovation of the subject, and the positive 5% for land-to-building ratio resulting in an adjusted sales price per square foot for Comparable No. 3 of \$50.88 for both tax years. As for the reconciliation or “weighing” of those sale prices per square foot for the tax years at issue, more weight should be given to the adjusted 2018 sales price for Comparable No. 3 in determining the property’s TCV for the 2018 tax year based on that sale date being closer to the tax date for the 2018 tax year than the sale date of Comparable No. 1. Similarly, more weight should be given to the adjusted sale price per square foot for Comparable No. 1 for the 2019 tax year in determining the property’s TCV for the 2019 tax year based on that sale date being closer to the tax date for the 2019 tax year than the sale date of Comparable No. 3. In that regard, such “weighing” addresses the market conditions applicable for each tax year and provides “concluded” sales prices per square foot of \$50.90 for the 2018 tax year and \$50.92 for the 2019 tax year, which is consistent with the stable, but increasing market for that tax year.⁶⁶ As for his income approach, Mr. Kernen indicated that:

⁶⁵ See P-1: Sales Comparison Approach at 40-42. See also TR at 47-48, 109-110, and 201-202. Finally, the reflected total adjustment also excludes Mr. Kernen’s market condition adjustment of a negative 1.1% for the 2018 tax year and a positive 1.9% for the 2019 tax year, as those adjustments are, as indicated above, unreliable.

⁶⁶ Although cost and value are **not** synonymous and some of the renovation costs may be attributable to fitness equipment, Petitioner’s 2016 purchase price, albeit unverified, coupled with Petitioner’s renovations **suggest or otherwise support an increase in the property’s TCV and not the decrease or decreases suggested by Mr. Kernen**, particularly given the stable, but increasing, market. See *The Appraisal of Real Estate, supra* at 21-22. See also TR at 26-28, 93-94, 97 (i.e., “[a]nd my conclusion was it did not **materially** impact the value of it, so no,” “many of those were business level expenses, and many of those were in part due to converting a recreational vehicle dealership into the current use,” “it didn’t **measurably** enhance the value of the property,” “I understand things that were completed and a general description,” and “**I can’t say that I had a line by line itemized list, no**”). [Emphasis added.]

“ . . . You know, when you’re looking at an income approach and some of the challenges, I mean, we have building that’s - - has 2900 square feet of lease space to unrelated parties out of 40,000 square feet. You know, the large majority of it’s an owner/user, you know, so it’s - - I feel like there’s more - - **you just have a wider margin for error using that approach.** I mean, it’s certainly an approach that I did and felt like it gave me an indication. I just was **significantly more or more comfortable** with the sale comparison approach.”⁶⁷ [Emphasis added.]

Mr. Kernen also indicated, with respect to his seven rental comparables, that:

“ . . . I mean, similar to what we talked about in the sale[s] comparison approach, you start with a broad pool of data, and then you narrow it down from there to select, you know, whatever the number of comparables you utilize. You’ll see anywhere from four to eight or ten on the high end I attempted to look at what I felt were the most comparable properties and comparable leases to what, you know, would go into the subject and require the lowest level of adjustments for dissimilarities.”⁶⁸ [Emphasis added.]

Like his Sales Comparison Approach, Mr. Kernen utilized the same seven leases for both tax years – four from 2016, two from 2017, and one from 2018. After adjusting for

Finally, see TR at 115-116, 136-139, 148-150, 150-151 (i.e., “some of the amounts that are referenced in some of these renovation estimates include equipment associated with the fitness center”), 170-172 (i.e., “it’s a piece of information”), 215-216, 227-230, 245-250, 309-327, and 333-352.

⁶⁷ See P-1’s Income Approach at 47-60. See also TR at 36-37, 116-136, and 207-215, which provides, in pertinent part:

Q: Okay. Did you do a site visit to any of these lease comparables or rent comparables?

A: I don’t believe I did do a personal inspection of any of these. Similar to the sales comparables that we discussed, I was able to view aerial imagery. Google has exceptional pictures and dates, so you can get a good understanding of the property, and **then obviously CoStar provided some photographs as well.**

[Emphasis added.]

Further, see P-1: Reconciliation of Values at 62 (i.e., “with **primary weight** placed on the sales comparison approach”). [Emphasis added.]

⁶⁸ See TR at 62-85, which provides, in pertinent part:

A: . . . You know, we’re looking at income approach. We’re considering the income produced potential, and you have a property that’s 70 percent owner-occupied, that has 16 percent space that’s, you know, best case scenario, storage space, and then you have one small arm’s length transaction -- or sorry -- arm’s length lease tenant in the building. **So certainly there’s a lot of risk factors, you know.** [Emphasis added.]

“dissimilarities,” Mr. Kernen determined a concluded rent per square foot of \$5.50 per square foot for the 2018 tax year and \$5.65 for the 2019 tax year based on adjusted rents per square foot ranging from \$4.36 to \$5.62 for the 2018 tax year and \$4.49 to \$5.78 for the 2019 tax year. Of the leases, the 2016 leases and one of the 2017 leases (i.e., the January 2, 2017 lease) are too remote in time for consideration for both tax years and the remaining 2017 lease (i.e., the November 27, 2017 lease) and the 2018 lease (i.e., the January 25, 2018 lease) are too remote in time for consideration for the 2019 tax year absent reliable adjustments for changing market conditions from the date the leases were entered into and the tax dates at issue. Unfortunately, Mr. Kernen’s 3.0% annual market adjustment for rental comparables is, like Mr. Kernen’s 3.0% annual adjustment for his sales comparables, not properly supported, as his rental charts **clearly indicate a market increase from December 31, 2013, to December 31, 2014, from December 31, 2014, to December 31, 2015, and from December 31, 2015, to December 31, 2016; a market decrease from December 31, 2016, to December 31, 2017; and a market increase from December 31, 2017, to December 31, 2018.** As a result, Petitioner’s Comparable Nos. 3, 4, 5, 6, and 7 are unreliable indicators of rental income for the 2018 and 2019 tax years and Comparable Nos. 1 and 2 are unreliable indicators of rental income for the 2019 tax year. Although Comparable Nos. 1 and 2 could be considered in determining the property’s rental income for the 2018 tax year, there are unanswered questions relative to Mr. Kernen’s adjustments to those comparable leases for location, condition, and quality of construction and, unlike Mr. Kernen’s Sales Comparison Approach, insufficient information was provided to revise or otherwise adjust for quality of construction to reflect the Class C quality of construction for the subject and the Class D quality of construction for Comparable No. 1. Additionally, there are also unanswered questions with respect to Mr. Kernen’s “market derived” capitalization rate, as Mr. Kernen relied on market information relative to sales not only outside of the actual market area (i.e., Kent County or the Kent County submarket), but also outside of his “broader” West Michigan market (i.e., Charlotte in Eaton County, Saint Johns in Clinton County, Webberville in Ingham County, Olivet in Eaton County, etc.) with no description of those sales other than the listed information

or, more importantly, an explanation as to their relevance to the Kent County market or Kent County submarkets.⁶⁹ As such, Mr. Kernen's income approach is an unreliable indicator of value.⁷⁰ Nevertheless, Petitioner's appraisal or, more specifically, Mr. Kernen's sales comparison approach is, as revised herein, a reliable indicator of value and, as a result, Petitioner has clearly met its burden of going forward.⁷¹

In that regard, Respondent did submit, among other things, the property's record card for the 2019 tax year. Respondent did not, however, submit the property's record card for the 2018 tax year, the land sales study underlying square foot rate(s) utilized to calculate the property's land value for either tax year, or the economic condition factor or ECF analysis underlying the ECF(s) utilized to adjust the depreciated cost of the subject improvements to reflect their market value for either tax year.⁷² Respondent also failed to testify in support of the cost approach reflected by the record card, the square foot rates, or ECFs, particularly with respect to whether or not the ECF analyses, if dependent on dated sales, were re-costed to ameliorate the impact of the new State

⁶⁹ See the Chart entitled "Overall Capitalization Rates – Market Derived" in P-1 at 55.

⁷⁰ Although there are also questions with respect to the reliability of Mr. Kernen's calculated "Net Operating Income," a review of that calculation is unnecessary, given the unreliability of his rental incomes and capitalization rates.

⁷¹ See MCL 205.737(3) (i.e., "[t]he petitioner has the burden of proof in establishing the true cash value of the property"). See also *Jones & Laughlin*, *supra* at 354, which provides, in pertinent part:

The tribunal correctly noted that the burden of proof was on petitioner, MCL § 205.737(3); MSA § 7.650(37)(3). **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.** *Kar v Hogan*, 399 Mich 529, 539-40, 251 NW2d 77 (1976); *Holy Spirit Ass'n For the Unification of World Christianity v Dep't of Treasury*, 131 Mich App 743, 752; 347 NW2d 707 (1984). [Emphasis added.]

⁷² See also STC Commission Bulletin No. 16 of 2018, which provides, in pertinent part:

Please be advised that the above sale study dates [i.e., April 1, 2016 through March 31, 2018 and October 1, 2017 through September 30, 2018] are **not** the same as the valuation date used in appeals **before the Michigan Tax Tribunal**. Evidence presented in a Tax Tribunal appeal **should reflect the value of the property as of tax day** (December 31). This means that sales occurring after March 31, 2018 and September 30, 2018 should still be considered and included when submitting evidence in a Tax Tribunal appeal **involving the 2019 tax year**.

[Emphasis added.]

Assessors Manual (i.e., revised in 2014 effective for the 2019 tax year).⁷³ Respondent further failed to testify or otherwise indicate the basis for the depreciation factors reflected on the record cards. As such, the cost-less-depreciation approach reflected by the property's record card is incomplete and an unreliable indicator or value.

Respondent did, however, submit an appraisal (i.e., R-1) and provide testimony in support of that appraisal.⁷⁴ Although Respondent's appraiser, Mr. Lake, also considered all three recognized approaches to value, he, like Mr. Kernan, relied on the sales comparison and income capitalization approaches and not the cost approach. As for his sales comparison approach, Mr. Lake utilized, for the most part, the same five sales for both tax years – two from 2015, two from 2016, and one from 2017 for the 2018 tax year and one from 2015, two from 2016, one from 2017, and one from 2018 for the 2019 tax year.⁷⁵ After adjusting for differences other than changing market conditions, Mr. Lake determined a concluded value per square foot of \$75.94 for the 2018 tax year and \$78.74 for the 2019 tax year based upon the same adjusted sale prices per square foot ranging from \$45.74 to \$132.23 for both tax years.⁷⁶ Of the sales, the 2015 and 2016 sales are, despite Respondent's purported "market stabilization for these types of properties," too remote in time for consideration for both tax years. In that regard, the evidence provided by both parties is contradictory and not properly supported by the appropriate paired sales analysis. Nevertheless, Mr. Kernan's appraisal does provide

⁷³ In that regard, the use of the new cost manual has resulted in a substantial increase in the cost of improvements, as it "captures new value" given the increase in construction costs from the effective date of the old cost manual (i.e., prior to 2004) to the effective date of the new cost manual. More specifically, the use of dated sales costed under the old manual and utilized to support an ECF applied to the depreciated costs of improvements costed under the new Manual could artificially inflate or deflate said depreciated costs resulting in an unreliable indicator of the improvement's market value.

⁷⁴ R-1 is comprised of two appraisals – one for the 2018 tax year and one for the 2019 tax year. See also TR at 166-167 regarding one of the errors in Respondent's appraisal (R-1).

⁷⁵ See R-1's Sales Comparison Approach at 32-36 and 93-97. The difference between the 2018 and 2019 sales approaches relates to Comparable No. 5, as the 2018 approach utilized a May 4, 2015 sale located in the Grandville on Rivertown Parkway, SW, while the 2019 approach utilized an October 23, 2018 sale located in Kentwood on 28th Street, SE. See also TR at 165 (i.e., "[s]o the way I look at a valuation, is I want to know what is going on with the property"), 180-181, 218-223, and 231-239 (i.e., "I wish I had better comparables, but these are acceptable comparables, and they're given the appropriate weight in the end for reconciliation" and "[w]hat I really would love to have had is several comps like ones which was were recent, number 5, which was larger, but I did not have that available in the market research I did").

⁷⁶ See R-1 at 36 and 97. See also TR at 181.

some modicum of evidence indicating that the consideration of Mr. Lake's 2015 and 2016 sales required an adjustment for changing market conditions.⁷⁷ As a result, Respondent's Comparable Nos. 2, 3, 4, and 5 for the 2018 analysis are unreliable indicators of value for the 2018 tax year and Comparable Nos. 2, 3, and 4 are unreliable indicators of value for the 2019 tax year.⁷⁸ With respect to the two remaining comparable sales (i.e., Comparable No. 1 for both the 2018 and 2019 analysis and Comparable No. 5 for the 2019 analysis), Comparable No. 1 is described by Mr. Lake as (i) "inferior" for location given the subject's greater traffic count, (ii) "smaller" in size, (iii) "similar" in land-to-building ratio, (iv) "superior" in age/condition, and (v) "superior" in terms of layout.⁷⁹ As such, Mr. Lake adjusted the sale price per square foot of Comparable No. 1 for the 2018 and 2019 tax years by a positive 5% for location, a negative 20% for building size, a negative 5% for age/condition, and a negative 15% for layout for a total adjustment of a negative 35%.⁸⁰ Notwithstanding the adjustment of that comparable, there are outstanding and unanswered questions with respect to the amount of the location adjustment, as traffic counts are not, despite Respondent's insistence that it is the "primary driver," the sole factor in determining location adjustments, and the amount of the age/condition adjustment, as the effective age of a

⁷⁷ See TR at 239-240 and 245, which provides, in pertinent part:

- Q: You say for market conditions, comparables numbers 1 through 5 sold from 2015 to 2017, based on the comparable data, there appears to be a market stabilization in those years. Comparable data? You're basing this market adjustment or market condition adjustment on a data set of only five comparables?
- A: I felt that was appropriate that **given I didn't have more data to create a market condition analysis, I should make no adjustment.**
- Q: Okay. So the answer is yes, that you -- yes or no that your market condition adjustment is based on -- only five comparables?
- A: I considered that, among other factors, but the numbers are compelling to me.
- Q: Is five enough to draw -- really, is five enough to draw any conclusion from?
- A: Yes.

[Emphasis added.]

⁷⁸ See also TR at 243-244 and 254-256.

⁷⁹ See R-1 at 35-36 and 95-97. See also TR at 167-170, 175-177 (i.e., "I reviewed their traffic counts, because I think that is a primary driver for a location adjustment . . . [even though] I am aware that there are other items that you look for"), and 240-243.

⁸⁰ See R-1 at 34-36 and 95-97.

property is dependent on its condition.⁸¹ More specifically, the subject property is located approximately northwest of downtown Grand Rapids in a commercial/residential area, was renovated in 2017, and is indicated as being in average condition.

Comparable No. 1 is located southeast of downtown Grand Rapids in a commercial area near the Grand Rapids Airport, was constructed in 1997 with no indication of any remodeling or renovation, and is also indicated as being in average condition.⁸² As a result, Comparable No. 1 is an unreliable indicator of value for both tax years. With respect to Comparable No. 5, that comparable is described by Mr. Lake as (i) having “a similar traffic count to the subject” and being “located in a heavy commercial district near to two regional malls” and, as such, is “considered superior to the subject” in terms of location, (ii) “similar” in building size, (iii) “similar” in land-to-building ratio, “(iv) “similar” in age/condition, and (v) “superior” in terms of layout for the 2019 tax year.⁸³ As such, Mr. Lake adjusted Comparable No. 5 by a negative 15% for location and a negative 15% for layout for a total adjustment of a negative 30% for the 2019 tax year.⁸⁴ Although the total amount of the adjustments for this comparable is less than the total amount of the adjustment for Comparable No. 1 for both tax years, the amount is still significant and raises unanswered questions as to whether that property is truly comparable to the subject given its location in another taxing jurisdiction within a heavy

⁸¹ See TR at 240-243.

⁸² See TR at 167-168, which provides, in pertinent part:

The subject property is located on a major thoroughfare that stretches from the Grand Rapids area out to Allendale, and then ultimately to the shoreline. The immediate neighborhood is a small cluster, **small commercial cluster**, so in the northwest corner is our property, which used to be a sports dealership, Shawmut Hills. Across the street is a Family Fare, and that’s been there for several years, recently was renovated, and then they put a gas station out in front. Across the street from that’s a bank, and then on the opposite corner is a small market of some sort. It’s a small commercial building. **Outside of that is a lot of retirement community and apartments and single-family homes . . .** . . [Emphasis added.]

See also TR at 20 (i.e., “[i]t’s certainly a more heavily developed residential area than commercial or industrial base,”), 21 (i.e., “more heavily developed from the residential standpoint”), and 173 (i.e., “the surrounding neighborhood is low vacancy, well-appreciated neighborhood in the west Michigan and Grand Rapids area [e]ssentially works as a feeder”).

⁸³ See TR at 179-180 (i.e., “Comparable 1 is given primary emphasis [and] Comparable 5 is given primary emphasis”).

⁸⁴ See R-1 at 95-97.

commercial/industrial area southeast of the downtown area unlike the subject's commercial/residential area northwest of the downtown area. As such, Respondent's sales approach is an unreliable indicator of value. As for his income approach, Mr. Lake indicates that "[t]he first step in the Income Approach is to review the actual leases or rent rolls," which is, in the instant case, problematic, as the majority of the property is occupied by the owner/user (i.e., a lease between related parties or, as indicated by Respondent, "a non-arm's length lease between the owner and themselves").⁸⁵ With respect to the remainder of the property, there are several small spaces in the building that are in various stages of finish (i.e., a rented finished space of 2,833 square feet, a "[v]acant white box finished space" of 2,810 square feet, and a "[v]acant unfinished space" of 6,288 square feet) with only one of the spaces (i.e., the 2,833 square foot space) actually rented beginning January 1, 2018.⁸⁶ As for the actual approach, Mr. Lake utilized 11 commercial lease comparables for each tax year – two from 2014, three from 2015, three from 2016, and three from 2017 for the 2018 tax year with one 2016 and one 2017 comparable located in the City of Grand Rapids, and one from 2014, three from 2015, and three from 2016, three from 2017, and one from 2018 for the 2019 tax year with one 2016 and one 2017 comparable located in the City of Grand Rapids (i.e., the same two comparables).⁸⁷ Instead of adjusting the comparables for "dissimilarities" of differences or, more appropriately, indicating the adjustments of those comparables, Mr. Lake derived an "Overall Market Rent Estimate" for each tax year of \$7.99 or \$8.00 per square foot based on unexplained weighted market rents, despite changing market conditions and the likely significant impact of the building's layout (i.e., "big negative," "troublesome," etc.) on the visibility afforded to the smaller rental spaces (i.e., poor visibility).⁸⁸ Additionally, there are also unanswered questions with respect to

⁸⁵ See TR at 31-34, 182-184, and 256-257 (i.e., "[i]t may indicate what market rent could be, but it's not a real true representation, so you kind of take that out of the equation").

⁸⁶ See R-1 at 22-31, 37-38 and 98-99 and TR at 23-24 and 170.

⁸⁷ See R-1 at 36-44 and 97-105.

⁸⁸ See TR at 168-169, which provides, in pertinent part:

- A: The big positive of the subject property is its frontage along Lake Michigan Drive. That is a significant driver for why people would want to be at this location. 42,000 cars – actually I don't know the - - let me - - instead of just making the number from memory, let me get

Mr. Lake's reliance on market extracted rates from both strip malls only and use the of Muskegon rates given Respondent's objection, albeit rightly so, to Mr. Kernen's reliance on Muskegon sales information in the preparation of his appraisal. As a result, Mr. Lake's income approach is also an unreliable indicator of value.⁸⁹

Based on the above, the Tribunal concludes that Mr. Kernen's revised sales comparison approach is the only reliable indicator of value and provides "the most accurate valuation under the circumstances."⁹⁰ The Tribunal further concludes that the subject property's TCV 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.⁹¹ As such, no action should be taken based on this decision.

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.

the exact number. 40,312 cars per day on this street is not insignificant. It is a major reason why you would want to be on this road. So that's the big positive. **Here's the big negative. The layout of the building is troublesome**, and I think as you've heard before, **this L shape creates a zone in the back part of the property that isn't ideal**, and then there's another section of the property which is unfinished, and that is not ideal. So when encountering this valuation assignment, **I have to consider the fact that we have a property with what I considered a really good location, but a problematic layout and some issues going on with how are we going to finish out this back space**, or what are we going to -- how is somebody going to deal with that back space, because it's not in a position to generate any type of revenue, and really is just kind of storage at that point. So that's the big item going on with this property in terms of positives and negatives. [Emphasis added.]

See also 181 (i.e., "this property has a lot of problems") and 227-230.

⁸⁹ See TR at 182-194 ("I gave the same weight to both approaches"). See also 261-274 (i.e., "lacking in data," "needed better explanation," "done more work to make it clear," etc.).

⁹⁰ See *Jones & Laughlin*, *supra* at p 353.

⁹¹ See MCL 205.726.

3. Issue an Order vacating the POJ and ordering a rehearing or such other action as is necessary and appropriate.

EXCEPTIONS

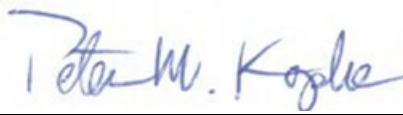
This POJ was prepared by the Michigan Office of Administrative Hearings and Rules. The parties have 20 days from the below "Date Entered by Tribunal" to notify the Tribunal and the opposing party in writing, by mail or by electronic filing, if they do not agree with the POJ and to state in writing why 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.

The opposing party has 14 days from the date the exceptions were mailed to that party to file a written response to the exceptions.⁹²

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

Exceptions and responses filed by *facsimile* will not be considered.

Entered: April 7, 2021
pmk

By 

⁹² See MCL 205.762(2) and TTR 289(1) and (2).