



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

ORLENE HAWKS  
DIRECTOR

Diamond Investment Group LLC,  
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket Nos.19-000916  
& 19-000917

Hartland Township,  
Respondent.

Presiding Judge  
Preeti P Gadola

## FINAL OPINION AND JUDGMENT

### INTRODUCTION

Petitioner, Diamond Investment Group LLC, appeals ad valorem property tax assessments levied by Respondent, Hartland Township, against parcel numbers 4708-22-300-013 and 4708-22-300-043 for the 2019 tax year. Scott H. Brock, Attorney, represented Petitioner, and Michael D. Homier, Attorney, represented Respondent.

A hearing on this matter was held on August 12, 2020. Petitioner's witnesses were Mark Schaffer, Member, Diamond Investment Group LLC and David Bur, Appraiser. Respondent's sole witness was James Heaslip, Assessor. The properties under appeal are vacant, commercial parcels of land.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash value (TCV), state equalized value (SEV), and taxable value (TV) of the subject properties for the 2019 tax year are as follows:

**Parcel Number: 4708-22-300-013**

Year	TCV	SEV	TV
2019	\$260,000	\$130,000	\$130,000

**Parcel Number: 4708-22-300-043**

Year	TCV	SEV	TV
2019	\$350,000	\$175,000	\$175,000

### PETITIONER'S CONTENTIONS

Petitioner contends that the subject properties are vacant, heavily wooded, commercial lands with no active use. Petitioner contends that it purchased both properties for \$110,000 in August 2018, and its appraiser concluded in value of \$120,000 as of December 31, 2018. Petitioner alleges the properties are located off a private road and traffic is minimal; therefore, the comparables chosen by Respondent in its sales comparison approach to value, are not truly comparable to the subject properties. As a result, the subject properties are overvalued pursuant to both the mass appraisal cost-less-depreciation approach and sales approach to value.

### PETITIONER'S ADMITTED EXHIBITS

P-1 Valuation Disclosure prepared by David Bur, parcel no. 4708-22-300-013

P-2 Valuation Disclosure prepared by David Bur, parcel no. 4708-22-300-043

### PETITIONER'S WITNESSES

Mark Schaffer

Mr. Schaffer testified that he is the sole, 20-year owner of Petitioner, Diamond Investment Group LLC, which is the owner of the two properties under appeal in this matter. He is also the owner of an ice-skating rink adjacent, to the north, of the subject

properties. Mr. Schaffer testified that the properties are located on Arena Drive just north of M-59 in Hartland Township. He testified that the only traffic, consisting of 20-100 cars depending on the day, on Arena Drive is to approach his ice rink.

Mr. Schaffer testified that Arena Drive separates the two parcels under contention into an approximately three acre (parcel ending in 013) and approximately four acre (parcel ending in 043) parcel. He testified that approximately sixteen years ago, he purchased the rear six acres of a twenty acre parcel, for about \$100,000 per acre, and constructed the ice rink.<sup>1</sup> There was interest by a high school figure skating coach for a cross-fit facility at the subject properties, so he investigated purchasing some additional land. Mr. Schaffer testified he attempted to purchase approximately 20,000 square feet of the three acre parcel, for \$30,000, to build a stand-alone cross-fit facility, however the seller, Mrs. Meyer, declined because she wished to sell the entire three-acre parcel.<sup>2</sup> With regard to constructing the stand-alone building on three acres, some additional, unanticipated expenses were discovered to connect to city water and sewer, so Mr. Schaffer dropped the idea.

About three months later, an addition to the ice rink was contemplated because Cleary University in Howell expressed interest in starting a hockey program. This project was more affordable, but additional parking was required, and as such, there was renewed interest in the three acres. At this time, the seller of the property only wished to sell both parcels of land, and not just the three-acre parcel, and as such, both parcels were purchased for \$110,000. In 2019, a parking lot was constructed on one-

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<sup>1</sup> Transcript (Tr.) at 23.

<sup>2</sup> Tr. at 36.

and-a-half acres of the three-acre parcel. The other half of the three acre parcel is untouched, as is the four acre parcel. Mr. Schaffer testified there were negotiations back and forth between Mrs. Meyer and himself and he did not feel that she was under any duress to sell.<sup>3</sup> The property sat vacant for the 15-16 years, Mr. Schaffer recollects that it was at one time for sale at \$100,000 an acre, the property changed realtors a couple of times, however, he didn't know who the realtors were and he did not know if any offers to purchase were made.<sup>4</sup>

Mr. Schaffer testified that he also considered expanding into the four acre parcel to build a gymnastics area or possible townhomes. In fact, he approached the Township about the townhomes idea, but eventually determined he did not have the budget to consider construction.<sup>5</sup>

During cross-examination, Mr. Schaffer was questioned about the one-acre parcel that lies across Arena drive which is currently listed for sale. He testified he is not interested in the property, there are issues with a retention pond, and he was unaware it is listed for \$245,000.<sup>6</sup>

#### David Bur

Mr. Bur testified that he is a certified general appraiser in the state of Michigan and was qualified an expert in appraisal by the Tribunal.<sup>7</sup> Mr. Bur prepared appraisal reports for the subject properties concluding in their value as of December 31, 2018. He testified the parcel ending in 013 (parcel 013) consists of 2.98 acres and the parcel

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<sup>3</sup> Tr. at 20.

<sup>4</sup> Tr. at 26.

<sup>5</sup> Tr. at 31,33.

<sup>6</sup> Tr. at 33-34.

<sup>7</sup> Tr. at 44-45.

ending in 043 (parcel 043) consists of 4.06 acres. They both have exposure to Arena Drive, only, and are located in GC zoning, an “all commercial district.” He testified, “[t]here are probably 20 principal permitted uses and another 20 special land uses.”<sup>8</sup> Mr. Bur testified the properties’ highest and best use is “one that is commercial use.”<sup>9</sup> However, he qualified his conclusion to, “limited to a commercial use that does not require traffic volume or exposure to a major road.”<sup>10</sup> He testified that the subjects’ average 100-200 cars in traffic volume per day.<sup>11</sup> Mr. Bur testified that nearby Highland Road (M-59) has an average traffic load of 35,000 cars per day, and that there are many vacant sites on M-59 that would be available for purchase.<sup>12</sup> He testified, “the buyer looking for a commercial site would be much more interested in a property on Highland Road that has high traffic volume than they would for the subject property that has very limited traffic volume”<sup>13</sup> Mr. Bur testified that traffic count was the most important factor in choosing comparables for his appraisals.<sup>14</sup>

Mr. Bur testified that just to the north of the subject properties is an ice rink, to the south, commercial office properties, a senior living facility under construction to the east, and to the west, vacant land. “But generally surrounding the subject property is a variety of commercial uses along major roads including M-59, and residential and rural agricultural properties outside of those areas.”<sup>15</sup>

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<sup>8</sup> Tr. at 84.

<sup>9</sup> Tr. at 48.

<sup>10</sup> Tr. at 49

<sup>11</sup> Tr. at 50.

<sup>12</sup> Mr. Bur testified, that the properties are about an eighth of a mile from M-59. See Tr. at 119.

<sup>13</sup> Tr. at 51.

<sup>14</sup> Tr. at 52.

<sup>15</sup> Tr. at 55.

Mr. Bur testified that both properties were purchased on August 7, 2018 for \$110,000 or \$15,625 per acre. He testified he spoke to the owner of the property, Mr. Schaffer and from what he learned, it is his opinion that the sale was at arm's length.<sup>16</sup> During cross examination, Mr. Bur confirmed, however, that he only spoke to the buyer, not the seller.<sup>17</sup>

Mr. Bur was questioned about the real estate market in Michigan and described the great recession commencing in 2008, when, "[p]roperty values across the board dropped significantly, up to 50 to 70 percent for some property types. Starting in probably 2010, to 2011, [ ] property values general stabilized, and they've been increasing, most years or stable some years since that point in time."<sup>18</sup>

In his appraisal, Mr. Bur utilized the sales approach to value and chose six comparable sales. He had to expand his search outside of Hartland Township because "the two subject properties are very unique in that they are zoned commercial but located on a road with no exposure and limited traffic volume."<sup>19</sup> Two of his comparables, three and six, are located in Hartland Twp, but they are situated on M-59.

In his conclusion of value, Mr. Bur put the majority of weight on comparables one and five as they have the most similar characteristics to the subject property. However, he did put weight on the additional comparables, just less, and he utilized the same six comparables to value both properties.<sup>20</sup> He also noted he has write-ups of all his comparables in his appraisal, because they show "the detailed information on the

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<sup>16</sup> Tr. at 53.

<sup>17</sup> Tr. at 76-78.

<sup>18</sup> Tr. at 54-55.

<sup>19</sup> Tr. at 59.

<sup>20</sup> Tr. at 60-61.

sale so that a reader of the report can understand all of the important details behind each of the comparable sales.”<sup>21</sup> He testified, that the assessor, Respondent’s valuation expert, did not include a write-up of his comparable one, and Mr. Bur could not confirm its sale, even though he searched CoStar and BS&A.<sup>22</sup>

Mr. Bur concluded in his appraisal, that the values of parcels 013 and 043 are \$50,000 and \$80,000. However, he noted there is a typo in the 043 appraisal that suggested the parcel consists of 4.60 acres, when it actually consists of 4.06 acres. By correcting the acreage of parcel 043, he determined its value to be \$70,000.<sup>23</sup>

With regard to Respondent’s appraisal, Mr. Bur testified that pursuant to USPAP, one has to report any sale of the properties within a three year period. The assessor reported the subjects’ sale, but gave no sale price and no analysis of the sale.<sup>24</sup> Further, Respondent put the most weight on comparable one, which is an “error of omission under USPAP.”<sup>25</sup> Mr. Bur testified that USPAP applies to “[a]ny appraiser who’s licensed in the state of Michigan.”<sup>26</sup> Mr. Bur’s opinion is that the assessor submitted an appraisal report, not a valuation disclosure.<sup>27</sup>

During cross-examination, but not on direct, Mr. Bur was questioned specifically about his individual comparables. He testified he drove by all the comparables, and took notes on them.<sup>28</sup> Mr. Bur’s comparable one, which he relied heavily on, is located

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<sup>21</sup> Tr. at 58.

<sup>22</sup> Tr. at 64.

<sup>23</sup> Tr. at 62.

<sup>24</sup> USPAP is an acronym for, Uniform Standards of Professional Appraisal Practice which applies to all licensed appraisers in the state of Michigan. See Tr. at 67.

<sup>25</sup> Tr. at 64-65.

<sup>26</sup> Tr. at 67.

<sup>27</sup> Tr. at 68.

<sup>28</sup> Tr. at 75.

at 4091 North State Road in Richfield Township. It consists of 4.89 acres and sold on 10/15/18 for \$46,500. Mr. Bur agreed, however, that in his write-up for comparable one, there is no verification source listed, nor for any of his comparables. Mr. Bur testified that the verification sources were located in his work file and that on page 40 of his appraisals, he wrote that he verified all the comparables.<sup>29</sup>

In the write-up comments for comparable one, it is written, “the site was sold at auction.”<sup>30</sup> Mr. Bur testified that he spoke with the auction company and it convinced him “that they had the property listed for a long enough time and had a significant number of buyers there that the property was, in my opinion and their opinion, [a] market price sale, not impacted by the auction.”<sup>31</sup> Mr. Bur was questioned if he knew the property was adjacent to a Dollar General? He was also questioned, “[d]id you know . . . the assessor for Richfield Twp does not consider this to be an arm’s length transaction?” He replied in the negative and testified that he did not speak to the Richfield Township Assessor.<sup>32</sup>

Mr. Bur’s comparable two is located at 7775 Highland Road in White Lake Township. It consists of 6.66 acres and sold on October 18, 2018 for \$306,500. From the write-up comments, there were two small commercial buildings situated on the property, it is set back from Highland Road, behind an Auto Zone store, and is accessed via a road easement. Further, the property is zoned for residential use,<sup>33</sup> but Mr. Bur

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<sup>29</sup> Tr. at 78-79.

<sup>30</sup> Tr. at 80.

<sup>31</sup> Tr. at 80.

<sup>32</sup> Tr. at 81-82.

<sup>33</sup> Tr. at 96.

testified that commercial use is permitted due to its use being “grandfathered” into the zoning restrictions.

Mr. Bur’s comparable three is located on Highland Road in Hartland Township. It consists of 40.43 acres and sold for \$1,502,000 on September 20, 2018. The property is zoned CA, conservation agricultural, it is not commercial and is being farmed. Mr. Bur’s comparable four is located at 8432 White Lake Road in Springfield Township. It consists of 18 acres and sold for \$200,000 on April 13, 2018. It is zoned M-1, light industrial and was a quarry. It appears from Google photos viewed at the hearing that there are concrete tubes on the property that might require clean-up before development.

Mr. Bur’s comparable five is located at the southeast corner of Tooley and Popple Roads, in Howell Township. It consists of 7.03 acres and sold for \$190,000 on June 4, 2018. It is located across Tooley Road from the Livingston County airport and is surrounded by rural residential and agricultural uses. It is allegedly one block off of M-59 but that block is about a quarter-mile. It is also not zoned general commercial, but RSC, regional service which Mr. Bur testified “[i]t has a similar zoning to it. Similar commercial zoning.”<sup>34</sup>

Mr. Bur’s final comparable, number six, consists of 20.54 acres and is the site next door to the subject property to the west, located at 11579 Highland Road. The property sold for \$1,200,000 on January 22, 2018 and a senior living center is under construction. Part of the property has the same zoning as the subject property,<sup>35</sup> and

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<sup>34</sup> Tr. at 117.

<sup>35</sup> Mr. Bur believes the back two-thirds of the property is zoned CA. Tr. at 121-122.

two small buildings were demolished at minimal cost. Mr. Bur was questioned whether larger properties sell for less per acre than smaller properties, he answered, "I adjust for that."<sup>36</sup> With regard to the 043 parcel appraisal, Mr. Bur testified his adjustments were similar, other than for acreage, given parcel 043 is larger than 013.

Mr. Bur was questioned as to whether he was aware of the listing of the property across Arena drive, right behind the existing professional center for \$245,000?<sup>37</sup> He answered that he might have reviewed the listing, but he did not recall. Further, he testified that listings represent the top end of value.

#### RESPONDENT'S CONTENTIONS

Respondent contends that its comparables are a more accurate reflection of the true cash value of the subject properties than Petitioner's. For example, two of Mr. Bur's comparables consist of 20 and 40 acres, while the subject properties are three and four acres. His comparable one was an auction sale, and three out of six were located in completely different zoning than the subject. He also failed to consider the listing of the property across the street from the subject, which is located in the same zoning, general commercial, as the subject.

Respondent contends that its assessor, Mr. Heaslip, prepared valuation disclosures relative to the subject properties with sales comparables similar in size, which had identical or substantially identical zoning and were similarly situated as the subject property.

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<sup>36</sup> Tr. at 122.

<sup>37</sup> Tr. at 95.

## RESPONDENT'S ADMITTED EXHIBITS

R-1 Valuation Disclosure prepared by James Heaslip, parcel no. 4708-22-300-013

R-2 Valuation Disclosure prepared by James Heaslip, parcel no. 4708-22-300-043

## RESPONDENT'S WITNESS

### James Heaslip

Mr. Heaslip is the assessor for Hartland Township and was qualified as an expert in assessing by the Tribunal.<sup>38</sup> He prepared two valuation disclosures relative to the properties, one for the property ending in 013 and the second for the property ending in 043. The two valuation disclosures introduced the same comparables, other than an additional comparable included in the parcel 043 valuation disclosure.

In order to prepare the subject valuation disclosures, Mr. Heaslip considered his internal data, contacted other assessors in the area, and reached out to county relations departments. He also contacted area appraisers and commercial brokers "to draw as much information as I can about what's going on in the market"<sup>39</sup> He testified over the past five years the commercial market in Hartland Township has been moderately increasing, at about 3% per year, up until the current year, with the pandemic going on.<sup>40</sup>

Mr. Heaslip testified that the subject properties are located about two-thirds of a mile east of the M-59, US-23, interchange. There is a Meijer Shopping Center, Walmart, various retail, office, and medical properties surrounding the subjects. The subject

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<sup>38</sup> Tr. at 144.

<sup>39</sup> Tr. at 147.

<sup>40</sup> Tr. at 147.

properties are zoned general commercial which includes a wide range of commercial uses.<sup>41</sup> He testified that Mr. Schaffer came to Hartland Township with a concept plan for residential condominiums to be constructed on the 043 parcel. Mr. Heaslip testified multi-family housing is not permitted under the current zoning. But it could under the Township's future land use map.<sup>42</sup>

With regard to highest and best use, Mr. Bur did consider the subject properties' location on a service street off the main commercial artery. He testified, "[s]omebody who needed window dressing, needed that visual factor, I would concur with Mr. Bur, they would probably not develop here. But it doesn't mean it's not a viable piece of property, because there's a lot of businesses that don't need that window dressing."<sup>43</sup> Mr. Heaslip was questioned whether the motivation of buyers of three and four acre parcels are the same as those looking for 20 and 40 acre parcels? He replied, "[n]ot at all."<sup>44</sup> Mr. Heaslip agreed that when choosing comparables in conjunction with highest and best use, he considered the permitted uses of the property, like zoning and permitted uses by special permit. Mr. Heaslip did not consider any comparable properties over ten acres, because the motivation of that buyer would be different. He chose his comparables by three main factors: size, location, and similar zoning, which is similar use.<sup>45</sup>

In Mr. Heaslip's valuation disclosure for the 013 parcel, he chose four sales comparables. He testified that he physically drove by each property and researched

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<sup>41</sup> Tr. at 150-152.

<sup>42</sup> Tr. at 154-155.

<sup>43</sup> Tr. at 157.

<sup>44</sup> Tr. at 158.

<sup>45</sup> Tr. at 159, 168.

them by aerial view.<sup>46</sup> Comparable one is located on Dexter Pinckney Road, a side artery road in Putnam Township. It consists of 2.82 acres and sold on June 22, 2018 for \$300,000. Mr. Heaslip testified,

I obtained this sale through as the assessor, I get a list of all the sales in the entire country from equalization, approximately every other month. My job is to weed all the sales not only from my Township, but every other sale that can help me do my job in evaluating property. This sale was selected from this list.

[He] spoke to the assessor, Amy Bassie, and confirmed the factual information on the sale. And she told me that Ron Kirk who had it listed for some time prior might be a contact for me. I reached out to Ron Kirk. It's a commercial broker in the region. He sells a lot of different property. He told me at that point in time he did not have the property listed. He had it listing prior to CoStar. But he was involved in the sale because a very common practice that once a listing expires . . . the brokers leave their sign up there for as long as they possibly can. That way if somebody becomes interested in the property, they call that number and it can be a lead for that broker. He was able to confirm the sale for me.<sup>47</sup>

Mr. Bur testified he couldn't find this sale on BS&A, an assessor software company that offers online informational access about properties. "and [to access BS&A] you can go right in through the Township's website free of charge."<sup>48</sup> Mr. Heaslip testified the property is on BS&A for Putnam Township.<sup>49</sup>

Mr. Heaslip made adjustments to comparable one for market conditions, at 3% per year (1/4% per month), and location, because the subject location is inferior due to traffic count and visibility. He testified,

The final adjustment was for utility hook up. Our site has to put a sewer lead all the way down to M-59 from our property. That's going to be a direct cost to our subject. I had to take that into account. Because this

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<sup>46</sup> Tr. at 164.

<sup>47</sup> Tr. at 161-162.

<sup>48</sup> Tr. at 162.

<sup>49</sup> Tr. at 162.

property was right on the road. It had access to it directly. We had to add cost for development.<sup>50</sup>

Comparable one is zoned general commercial, like the subject. As a result, it has similar types of uses.

Mr. Heaslip's comparable two, is on Goble Drive, west of US 23, north of Winans Lake Road in Green Oak Township. He testified, "[i]t is a secondary arterial off road off of, it's, near the corner of Winans Lake and Rickert Road which are secondary roads . . . ." <sup>51</sup> "And it serves other commercial buildings, developments, referred to as the Legacy Center. It has a lot to do with sports training. There's a dome there."<sup>52</sup>

Comparable two is zoned "planned development which is a type of commercial zoning in this area. It's a little more flexible than our general commercial zoning."<sup>53</sup> The property consists of 5.5 acres and sold for \$550,000 on July 18, 2017. Adjustments were made to comparable two for its slightly larger size, market conditions, location because the property is a little more visible and has more traffic, and utility hook up.<sup>54</sup>

Mr. Heaslip's comparable three is located on Ricket Road, specifically the northwest corner of Ricket and Oak Ridge Roads in Brighton. It consists of 3.74 acres and sold on March 2, 2017 for \$381,000. The property is zoned OS, or office service, commercial retail.<sup>55</sup> Mr. Heaslip made adjustments for market conditions, for the comparable's superior location, as it has more traffic, and for utility hook up.<sup>56</sup>

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<sup>50</sup> Tr. at 167.

<sup>51</sup> Tr. at 163.

<sup>52</sup> Tr. at 163.

<sup>53</sup> Tr. at 164.

<sup>54</sup> Tr. at 167-168.

<sup>55</sup> Tr. at 164-165.

<sup>56</sup> Tr. at 168.

Mr. Heaslip's comparable four is located on the northeast corner of Milford Road and M-59. It consists of 2.60 acres and sold on November 29, 2017 for \$340,000. It is located in IV zoning, which is "a general type of zoning that also allowed some type of industrial, like industrial research with a commercial, I think I referred to it as a showroom. You could have like industrial storage or a warehouse in the [back] with a showroom, commercial retail in the front."<sup>57</sup> Adjustments were made to comparable four for market conditions, utility hook up and location. Mr. Heaslip testified, "Milford Road does carry a little more traffic than obviously Arena Drive. But based on its size and general location, it was still considered a very good comparable."<sup>58</sup>

Mr. Heaslip's reconciliation considered a tight range of \$1.89-\$2.29 per square foot, which suggests comparables are truly comparable to the subject properties and that his analysis is accurate.<sup>59</sup> He determined his sales numbers one and two were the most similar to the subject.<sup>60</sup> His conclusion of value was \$2.00 per square foot or \$260,000.<sup>61</sup>

With regard to the 043 parcel, Mr. Heaslip added a fifth comparable, located at the east side of Old US-23, south of Spencer. It consists of 5.13 acres and sold on March 12, 2019 for \$675,526. Though the property technically sold after tax day, there was a signed purchase agreement in October 2018, and as such, Mr. Heaslip felt it was an appropriate comparable. It is also zoned commercial retail which is similar to the subject zoning. It was adjusted for location, size, utility hook up, and 1% for

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<sup>57</sup> Tr. at 165.

<sup>58</sup> Tr. at 165.

<sup>59</sup> Tr. at 171.

<sup>60</sup> Tr. at 171.

<sup>61</sup> See R-1 at 032.

expenditures after the sale for the demolition of a small building. The true cash value of the 043 parcel was also determined to be \$2.00 per square foot or \$350,000, rounded.<sup>62</sup>

Mr. Heaslip was questioned about the listing for the one acre parcel across Arena Drive from the 043 parcel. He agreed that the asking price is consistent with his comparables, including adjustments and conclusion of value per acre.<sup>63</sup> He also answered in the affirmative that Mr. Schaffer testified he purchased the ice rink property for \$100,000 per acre.<sup>64</sup>

With regard to Mr. Bur's comparables, Mr. Heaslip contacted the assessor and discussed the auction sale of comparable one, located at 4091 N State Road. He learned, "the grantor, Davis, BTS Retail, they were the purchaser and developers of The Dollar Store. They were required to purchase 6.1 acres in nine of 16 for their development at 90,000 and chose to dispose of the balance because it was not part of their development."<sup>65</sup> They utilized 1.27 acres and sold off the balance by auction for whatever price because they did not need it for their development. The assessor felt it was an invalid sale due to the auction-type sale and the seller simply disposing of the property.<sup>66</sup>

Mr. Heaslip testified that Mr. Bur's comparable two, located at 7775 Highland Road, is not comparable to the subject property because it's a back lot and accessed off a dirt road easement. Further, the property is zoned for residential use and there is a pole barn and house on the property.<sup>67</sup>

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<sup>62</sup> Tr. 178-179. See R-2 at 032.

<sup>63</sup> Tr. at 170.

<sup>64</sup> Tr. at 170.

<sup>65</sup> Tr. at 173.

<sup>66</sup> Tr. at 173.

<sup>67</sup> Tr. at 174.

Mr. Heaslip testified that he would never consider Mr. Bur's comparable three, located on Highland Road, because the property is located in CA, conservation, agricultural, zoning, which is a residential zoning for 2-acre minimum lots. Further, it consists of 40 acres and "[a]nyone looking to build and purchase a three-acre parcel, we'll call it a four-acre parcel would [not] consider this residential piece of property for their commercial development."<sup>68</sup>

With regard to Mr. Bur's comparable four, located at 8432 White Lake Road, Mr. Heaslip testified, the property is zoned M-1, light industrial and the subject property is commercially zoned. He testified, a buyer looking to develop some type of industrial building would be interested in this property, not a buyer for the subject general commercial zoned property. Further, the property consists of 18 acres and as noted above, Mr. Heaslip, "stopped looking for comparables that were over 10 acres because of the motivation of the buyer. You can develop it completely different. Much . . . easier to develop compare[d] to a three or four-acre parcel. So the size has a direct effect on value."<sup>69</sup>

With regard to Mr. Bur's comparable five located on Tooley Road, Mr. Heaslip noted that commercial property surrounds the subject properties. However, comparable five is a lot more rural, "and residential on all three sides of an airport across the street from it."<sup>70</sup> He testified, "I don't feel there was motivation for a buyer to purchase this property when they were looking at something like ours."<sup>71</sup>

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<sup>68</sup> Tr. at 175.

<sup>69</sup> Tr. at 176.

<sup>70</sup> Tr. at 176-177.

<sup>71</sup> Tr. at 176-177.

Mr. Bur's comparable six is the senior living center, Belle Vita, in Hartland Township, under construction right next to the subject property. It is a large development on 20 acres and Mr. Heaslip testified that the motivation of the buyer would be completely different from the motivation of the buyer of the subject properties. "You could not fit the development that's going on there on our subject parcel."<sup>72</sup>

During cross examination, the BS&A page for the ice rink parcel was displayed. Mr. Heaslip noted that the parcel consists of 8.06 acres and sold in 2003 for \$420,000 or \$1.1962 per square foot.<sup>73</sup> Mr. Heaslip testified, however, that on December 31, 2018, \$2.00 per square foot was an accurate valuation for the subject properties.

Mr. Heaslip testified during his direct testimony, that the motivation of the buyer in purchasing a property is important to explore. He was questioned during cross-examination, whether he know the motivation of Petitioner in purchasing the subject properties? He testified,

Mr. Schaffer and I have had discussions over many years. And I know that he's always been interested in these properties. He contacted me numerous times. He had questions about them. They were just general in a sense. But I could tell that he always had an eye on these parcels.<sup>74</sup>

Mr. Heaslip further testified,

Just before the sale he called me up and asked me what's going on with the piece of property. Mrs. Meyer[ ] is reaching out to me and asking me do I want to buy them for something that's very low. He didn't disclose the - - he was concerned that there was something about these properties based on what she was allowing him to purchase them for.<sup>75</sup>

Mr. Heaslip testified that later, he spoke with the seller, Mrs. Meyer. He testified,

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<sup>72</sup> Tr. at 177.

<sup>73</sup> Tr. at 181-183.

<sup>74</sup> Tr. at 185-186.

<sup>75</sup> Tr. 189-190, R-1 at 007.

“[s]he said it was - - I’ll use a distress sale. She was tired of arguing in the family. The different pieces of property they were going to get when she passed. Therefore, she decided to sell the piece of property and give them the money and they can split it.”<sup>76</sup>

With regard to his comparables, Mr. Heaslip concurred that his comparables one, three and four have more traffic than the subject. He found, however, that comparable two is very comparable to the subject in terms of traffic.<sup>77</sup> With regard to the listed property across Arena Drive, Mr. Heaslip was questioned whether the property had dual access from Arena Drive and M-59? He answered that the property had access to M-59 through a dentist’s parking lot, and the dual access might make it more valuable.<sup>78</sup> He also agreed that “listings typically indicate the higher end of the market.”<sup>79</sup>

#### FINDINGS OF FACT

The Tribunal’s Findings of Fact concern only evidence and inferences found to be significantly relevant to the legal issues involved; the Tribunal has not addressed every piece of evidence or every inference that might lead to conflicting conclusion and has rejected evidence contrary to those findings.

1. The subject properties are vacant parcels of land.
2. Parcel No. 4708-22-300-013 consists of 2.98 acres and Parcel No. 4708-22-300-043 consists of 4.06 acres.
3. The parcels are located in General Commercial zoning.
4. The parcels are located adjacent to, and split by, Arena Drive.

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<sup>76</sup> Tr. at 190.

<sup>77</sup> Tr. 199-200.

<sup>78</sup> Tr. at 209.

<sup>79</sup> Tr. at 210.

5. Adjacent to the north of the properties is an ice rink owned the Member/Owner of Petitioner, Diamond Investment Group LLC.
6. The parcels are about 1/8 mile from M-59.
7. Petitioner purchased the subject properties for \$110,000 in August 2018.
8. Both parties presented the Tribunal with valuation disclosures which concluded in each valuation expert's determination of the fair market value of the subject properties for the 2019 tax year.
9. Petitioner presented the Tribunal with appraisals that introduced six sales comparables adjusted to be consistent with the characteristics of the subject property.
10. Respondent presented the Tribunal with valuation disclosures that introduced five sales comparables adjusted to be consistent with the characteristics of the subject property.

#### 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 TCV.<sup>80</sup>

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not exceed 50 percent.<sup>81</sup>

The Michigan Legislature has defined TCV to mean:

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<sup>80</sup> See MCL 211.27a.

<sup>81</sup> Const 1963, art 9, sec 3.

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.<sup>82</sup>

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”<sup>83</sup>

“By provisions of [MCL] 205.737(1) . . . , the Legislature requires the Tax Tribunal to make a finding of true cash value in arriving at its determination of a lawful property assessment.”<sup>84</sup> The Tribunal is not bound to accept either of the parties' theories of valuation.<sup>85</sup> “It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case.”<sup>86</sup> In that regard, the Tribunal “may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination.”<sup>87</sup>

A proceeding before the Tax Tribunal is original, independent, and de novo.<sup>88</sup> The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”<sup>89</sup> “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”<sup>90</sup>

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<sup>82</sup> MCL 211.27(1).

<sup>83</sup> *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

<sup>84</sup> *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

<sup>85</sup> *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

<sup>86</sup> *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

<sup>87</sup> *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

<sup>88</sup> MCL 205.735a(2).

<sup>89</sup> *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

<sup>90</sup> *Jones & Laughlin Steel Corp*, *supra* at 352-353.

“The petitioner has the burden of proof in establishing the true cash value of the property.”<sup>91</sup> “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.”<sup>92</sup> 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.”<sup>93</sup>

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.<sup>94</sup> “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”<sup>95</sup> 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 TCV of the property, utilizing an approach that provides the most accurate valuation under the circumstances.<sup>96</sup> Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.<sup>97</sup> The Tribunal finds in this matter, the sales

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<sup>91</sup> MCL 205.737(3).

<sup>92</sup> *Jones & Laughlin Steel Corp*, *supra* at 354-355.

<sup>93</sup> MCL 205.737(3).

<sup>94</sup> *Meadowlanes*, *supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), *aff'd* 380 Mich 390 (1968).

<sup>95</sup> *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

<sup>96</sup> *Antisdale*, *supra* at 277.

<sup>97</sup> See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

comparison approach to value is the proper technique to utilize in determining the true cash value of the subject properties for the 2019 tax year.

The subject properties consist of vacant land, adjacent and south of an ice skating rink. From the testimony presented, it appears Petitioner purchased the properties to, in part, expand the ice rink operation, which Petitioner's sole Member and owner, Mr. Schaffer, also holds. He testified he expanded the rink to accommodate the Cleary University Hockey Program and built additional parking on half of the 013 parcel.<sup>98</sup> He considered putting in a cross-fit facility at the request of a high school figure skating coach.<sup>99</sup> He considered building a gymnastics area on the 043 parcel, and even contemplated building townhomes on that parcel.<sup>100</sup> Mr. Schaffer met with the Township about the townhome idea, but once he researched the cost of connecting to water and sewer, he discarded the idea.<sup>101</sup> In any event, it cannot be said that there is little use for the subject properties as they are located in general commercial zoning which both valuation experts testified allows for a multitude of uses.<sup>102</sup> In fact, it appears Mr. Schaffer was interested in purchasing the properties for some time as Mr.

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<sup>98</sup> Tr. at 18.

<sup>99</sup> Tr. at 16.

<sup>100</sup> Tr. at 31.

<sup>101</sup> Tr. at 32.

<sup>102</sup> Tr. at 84, 152. Mr. Heaslip wrote in his valuation disclosures:

The legal uses of the site as allowed under the zoning, General Commercial (GC) are:

Retail store, wholesale clubs, professional and medical offices or clinics, financial institutions, food and beverage establishments, adult/child day care, public buildings, post offices, community centers, business and private schools, churches, banquet halls, health/fitness centers, funeral homes, theaters, concert halls, veterinary offices.

Uses permitted by special approval include: Auto service station, repair, sales and auto wash, billiard halls, utility facilities, garden centers, equipment leasing, motel/hotel, recreation, TV/radio towers, restaurants, and brew pubs. See R-1, R-2 at 28.

Heaslip testified he contacted him about the properties, several times, over the years.<sup>103</sup> Further, he contacted Mr. Heaslip to question the low offering price, just before the sale occurred.<sup>104</sup> Both valuation experts found the highest and best use of the property to be for commercial use, though Mr. Bur qualified his conclusion to commercial use “that does not require traffic volume or exposure to a major road.”<sup>105</sup> The Tribunal agrees that the highest and best use of the property is for commercial use.

Though the highest and best use of the properties is for commercial use, both valuation experts also agree that the properties are not in an ideal location. They are separated by Arena Drive and Mr. Schaffer testified that traffic volume consists of 20-100 cars per day, and Mr. Bur testified that traffic volume consists of 100-200 vehicles per day. Both valuation experts agree that the properties are not located on a main road, but Mr. Heaslip testified there are multiple uses for the properties, despite their location, and they are surrounded by Meijer, Walmart, and various other retail, office, and medical properties. Further, the properties are one block from M-59, a highway with 35,000 cars per day in traffic volume and two-thirds of a mile east of the M-59, US-23 interchange.<sup>106</sup>

In order to conclude in the true cash value of the properties, both parties presented valuation disclosures in support of their contentions of value, pursuant to the sale comparison approach. Proper application of the sales comparison approach involves “comparing similar properties that have recently sold . . . identifying appropriate units of comparison, and making adjustments to the sale prices . . . of the comparable

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<sup>103</sup> Tr. at 185-186.

<sup>104</sup> Tr. at 189.

<sup>105</sup> Tr. at 49, See R-1, R-2 at 29, P-1, P-2 at 37.

<sup>106</sup> Tr. at 51, 150-151.

properties based on relevant, market-derived elements of comparison.”<sup>107</sup> Petitioner’s appraiser, Mr. Bur, introduced six comparable sales, utilized for both properties, and Respondent’s valuation expert, Mr. Heaslip presented four sales comparable to parcel 013 and five sales comparable to parcel 043. All the sales were adjusted to be consistent with the characteristics of the subject properties.<sup>108</sup>

After careful consideration, the Tribunal is not persuaded by Mr. Bur’s sales comparables. His comparables three, four and six consist of 40, 18 and 20 acres, respectively. The Tribunal agrees with Mr. Heaslip, that the purchaser of a three or four acre parcel like the subject properties, would not be interested in purchasing such large parcels for their anticipated commercial use. Further, comparable three is zoned CA, conservation agricultural, which is no way similar to the subject general commercial zoning. Comparable four is zoned M-1 light industrial, was a quarry, and potentially in need of clean-up of concrete tubes before development, and comparable six is the site right next door to the subject properties, which will accommodate a senior living facility on 20 acres, a project that would never fit on three or four acres.

Mr. Bur’s comparable two, is situated behind an Auto Zone store, is accessed via a dirt road easement, and is zoned for residential use. In fact, there are a house and pole barn situated on it. Mr. Bur’s comparable five is located across from the Livingston County Airport, is more rural, and surrounded by residential properties. It is not zoned

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<sup>107</sup> Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14<sup>th</sup> ed, 2013), p 377.

<sup>108</sup> Mr. Bur testified that Mr. Heaslip, an assessor, violated USPAP, in his “appraisal report,” however, USPAP may not apply to a valuation expert who is not an appraiser and who completed a valuation disclosure, not an appraisal report. Further, the Tribunal is not the body that makes and enforces USPAP requirements.

general commercial, though Mr. Bur testified its RSC, regional service, zoning, is similar to commercial zoning.<sup>109</sup>

Finally, Mr. Bur's comparable one, on which he relied heavily,<sup>110</sup> was an auction sale. Mr. Bur testified that he was convinced by speaking to the auction company, that the sale was at market, but Mr. Heaslip testified he spoke to the Richfield Township Assessor who considered it an invalid sale. The Richfield assessor indicated the property was excess land from the purchase of a bigger parcel by the developers of the Dollar Store. The store was constructed, the excess land was unneeded, so it was sold at auction for any price obtainable.<sup>111</sup> The Tribunal finds it is unable to *definitively* resolve the conflicting testimony, but notes pursuant to MCL 211.27(1),

“true cash value” means 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.<sup>112</sup>

As a result, the Tribunal finds Petitioner's comparable one is not the best comparable to utilize in determining the fair market value of the subject properties. It should also be noted that Mr. Bur's comparables two, three and six had gross adjustments of 40%-45%, 70% and 60%, further suggesting that the comparables are not truly comparable to the subject properties.<sup>113</sup> Finally, Petitioner testified that the sale price of the properties was \$110,000, in part reflecting its true cash value. However by law, even for

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<sup>109</sup> Tr. at 117.

<sup>110</sup> Tr. at 78.

<sup>111</sup> Tr. at 173.

<sup>112</sup> Emphasis added.

<sup>113</sup> See P-1, P-2 at 49.

an arms-length transaction, “the purchase price paid in a transfer of real property is not the presumptive true cash value.”<sup>114</sup>

Mr. Heaslip provided the Tribunal with four sales comparable to the 013 parcel and the same four sales with one addition, comparable to the 043 parcel. His sales are similar in size to the subject properties: 2.82 acres, 5.5 acres, 3.74 acres, 2.6 acres, and 5.13 acres. His sales are in the same or substantially similar zoning: general commercial, planned development (a type of commercial zoning), office service commercial retail, IV zoning (commercial with industrial), and B-3 (commercial retail). None of the comparables were above 5.5 acres, and none were located in completely different zoning, such as conservation agricultural or residential zoning, as were Mr. Bur’s comparables. Appropriate adjustments were made to the comparables, for their higher traffic volume, market conditions, size, location, and utility hook up. None of the comparables were exactly the same as the subjects, which is acceptable, because no two properties are exactly alike. As such, under the sales approach to value, adjustments are made to make the comparables consistent with the characteristics of the subject property.

Mr. Heaslip placed the most weight on his comparable one, which Mr. Bur testified he was unable to verify though he searched CoStar and BS&A. Mr. Heaslip testified, however, that the comparable is available on BS&A for Putnam Township, where it is located. The property sold closest to tax day<sup>115</sup>, it is located in general commercial zoning and its size is very similar to the subject properties. Further, Mr.

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<sup>114</sup> MCL 211.27(6).

<sup>115</sup> MCL 211.2(2) states: “The taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day, any provisions in the charter of any city or village to the contrary notwithstanding.”

Heaslip's overall range of adjusted dollar per square foot of his comparables was tight, suggesting his comparables are truly comparable to the subject property and consistently adjusted. The Tribunal is therefore persuaded by Mr. Heaslip's sales comparison approach to value, that for the 2019 tax year, the true cash value of parcel 013 is \$260,000 and the true cash value of parcel 043 is \$350,000.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the subject properties are accurately valued pursuant to Mr. Heaslip's market approach. The subject property's TCV, SEV, and TV for the tax year at issue are as stated in the Introduction section above.

#### JUDGMENT

IT IS ORDERED that the property's SEV and TV for the tax year at issue are MODIFIED<sup>116</sup> as set forth in the Introduction section of this Final Opinion and Judgment.

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

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<sup>116</sup> The Tribunal's determinations of fair market value are lower than the value of the properties currently on the tax roll for the 2019 tax year.

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%, and (xiii) after June 30 2020, through December 31, 2020, at the rate of 5.63%.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

### APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.<sup>117</sup> 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.<sup>118</sup>

A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.<sup>119</sup> Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.<sup>120</sup>

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is

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<sup>117</sup> See TTR 261 and 257.

<sup>118</sup> See TTR 217 and 267.

<sup>119</sup> See TTR 261 and 225.

<sup>120</sup> See TTR 261 and 257.

filed more than 21 days after the entry of the final decision, it is an “appeal by leave.”<sup>121</sup>

A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.<sup>122</sup> The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.<sup>123</sup>

By Preeti Madole

Entered: October 22, 2020

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<sup>121</sup> See MCL 205.753 and MCR 7.204.

<sup>122</sup> See TTR 213.

<sup>123</sup> See TTR 217 and 267.