



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

Walmart Real Estate Business Trust,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 16-003180

Lansing Township,
Respondent.

Presiding Judge
Marcus L. Abood

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Walmart Real Estate Business Trust, appeals ad valorem property tax assessment levied by Respondent, Lansing Township, against Parcel Nos. 33-21-01-02-100-040 and 33-21-01-02-100-806 for the 2016 and 2017 tax years.¹ Michael B. Shapiro and Daniel L. Stanley, Attorneys, represented Petitioner. Michael D. Gresens, and Philip G. Clark, Attorneys, represented Respondent.

A hearing on this matter was held on March 4-6, 2019. Petitioner's witness was Laurence G. Allen. Respondent's witness was Daniel F. Essa.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash values ("TCV"), state equalized values ("SEV"), and taxable values ("TV") of the subject property are as follows:

¹ Respondent raised the issue of Petitioner's Motion to Amend 2017 before commencement of the hearing as a "housekeeping" matter and claims parcel number 33-21-01-02-100-040 was not properly identified and included in Petitioner's Motion or Amended Motion. Petitioner's Motion to Amend (dated May 24, 2017) was granted by order on November 16, 2017. In fact, this parcel number was not properly included in the motion. Therefore, the Tribunal has no authority over parcel number 33-21-01-02-100-040 for the 2017 tax year.

Parcel Number	Year	TCV	SEV	TV
33-21-01-02-100-040	2016	\$3,930,000	\$1,965,000	\$1,965,000
33-21-01-02-100-806	2016	\$2,742,000	\$1,371,000	\$1,371,000
33-21-01-02-100-806	2017	\$2,742,000	\$1,371,000	\$1,371,000

PETITIONER'S CONTENTIONS

Petitioner contends the subject comprises both land and improvements as a total economic unit. The usual selling price equates to the true cash value for the existing use as its highest and best use. Consistent with Michigan law, the property, as a whole, was valued based on a logical application of data. Further, Walmart did not develop the subject property to sell for profit.² Rather, the subject property was developed to maximize retail sales. The property was developed for the retailer's specific business model and image. Because a big box store is built to a retailer's needs, functional obsolescence has an impact on the value of such a building. Petitioner contends the subject's land and building are greater than the land in terms of value because of the existing lease.³ Moreover, there is legal precedent that the subject's highest and best is as an integrated whole and valued as one economic unit.⁴

Petitioner refutes Respondent's exclusive reliance on and analysis of the subject land lease. Bondable leases and the credit worthiness of a big box tenant creates an inflated lease rate and value.⁵ Moreover, there is a much larger market for leased fee

² Tr, Day 2, 296.

³ Tr, Day 1, 189-192.

⁴ *Great Lakes Div of Nat Steel Corp v City of Ecorse*, 227 Mich App 379, 408; 576 NW2d 667, 680-81 (1998) Respondent's reference to MTT Docket No. 17-002394 (5720 Samrick Ave SE LLC v Plainfield Township) for the premise that the income approach was given credit for the independent determination of TCV overlooks a significant key point. The valuation of the self-storage property was made for the land and improvements as a whole economic unit. This unpublished decision is not on point with Respondent's assertion of separate valuations for land and improvements.

⁵ Tr, Day 1, 196-197, Day 2, 424-426.

properties because it's an institutional market for investors but a very thin market for actual users.⁶ As stated by Petitioner's appraiser, "the leased fee sales of big-box stores are typically sold subject to build-to-suit leases that are generally above market."⁷ In other words, the subject lease is not market supported.⁸ Further, Respondent's alleged check on reasonableness for its land lease comparables is just a re-check of data on a circular basis.⁹

Petitioner's appraiser considered and developed all three approaches to value. However, the sales comparison approach is the most applicable methodology for fee simple properties in this tax appeal appraisal assignment. Petitioner described, analyzed and adjusted its comparable sales data. Differences and similarities were properly articulated based on relevant demographics. Petitioner's analysis also included excess land for implementation to the overall market value conclusion.

Regarding its development of an income approach, Petitioner's appraiser distinguishes between a build-to-suit lease market versus market rent for the subject (land and building) as an economic unit.¹⁰ Build-to-suit leases are artificially inflated and are not market driven. On the other hand, data of existing buildings which have been exposed to the market is relevant for a supportable analysis. Nonetheless, the income approach is difficult because of the lack of lease data and deriving a capitalization rate for a fee simple value.¹¹

⁶ Tr, Day 1, 199-200.

⁷ Tr, Day 1, 228.

⁸ Tr, Day 2, 374.

⁹ Tr, Day 2, 482-484.

¹⁰ Tr, Day 1, 258-260.

¹¹ Tr, Day 1, 224-225.

Petitioner's cost approach analyzed the replacement costs of the subject improvements and then applied necessary depreciation. Petitioner asserts the depreciation is difficult to quantify but reflects the interdependence with the income approach to value. Lastly, a market derived land value was added to arrive at an indication of value. Overall, this approach is not used by buyers and sellers in the valuation of a big-box store.¹²

Petitioner's reconciliation of the approaches to value puts most weight on the sales comparison approach. Petitioner argues it is not appropriate to reconcile to a value merely to reflect a direction in value. "Well, the indicated value is not as important as the approach that best reflects the market and best reflects the usual selling price and is the most reliable of the approaches."¹³

PETITIONER'S ADMITTED EXHIBITS

In support of its value contentions, Petitioner offered the following exhibits, which were admitted into evidence:

P-1: Appraisal Report prepared by Laurence G. Allen.

PETITIONER'S WITNESS

Petitioner's witness, Laurence G. Allen, MAI, prepared an appraisal report for the subject property. He is primarily a commercial appraiser with 45 years of real estate and valuation experience. He is licensed in the state of Michigan and designated through the Appraisal Institute. Based on his background, education and experience, the Tribunal accepted Mr. Allen as an expert real estate appraiser.

¹² Tr, Day 1, 225-226.

¹³ Tr, Day 1, 222.

RESPONDENT'S CONTENTIONS

Respondent contends this case is distinguishable from other big-box store appeals because it involves a ground lease. The Eastwood Towne Centre has a relationship with the subject property and impacts overall sales data. The subject's ground lease is very favorable to Walmart.¹⁴ Respondent's reason for valuing the land separately from the building is due to the land lease.¹⁵

Respondent considered all three approaches to value but only developed the cost approach for the improvements and an income approach for the land. Regarding a sales comparison approach, Respondent's appraiser deems leased land would not be valued via this approach.¹⁶

Walmart is a credit-rated tenant with minimal risk to the property. Respondent analyzed Walmart income and leases around the country.¹⁷ The conclusion of market rent is the subject's contract rent of \$650,000 per year.¹⁸ Respondent determined there was zero vacancy and credit loss and the effective gross income remained at \$650,000 per year. A management fee of 1% was taken out due to the relative ease in managing the property. The net operating income of \$643,500 was then divided by a 5% capitalization rate. Respondent asserts the support for the capitalization rate comes from Walmart store leases. Respondent did a further test of reasonableness for the analysis of net operating income per acre. Respondent's conclusion of value via the

¹⁴ Tr, Day 2, 409.

¹⁵ Tr, Day 1, 116.

¹⁶ Tr, Day 1, 124-126.

¹⁷ Tr, Day 2, 412, 421.

¹⁸ Tr, Day 2, 422.

income approach for the subject land for 2016 is \$12,870,000 and for 2017 is \$13,547,000.

Regarding the cost approach, Respondent used Marshall Valuation Service (MVS) to calculate the costs for an average quality Class C discount construction building. Relevant multipliers were applied, as well as, 7% for entrepreneurial incentive. Next, a straight-line life depreciation was derived from the subject building's effective age divided by the remaining economic life. The building depreciation was calculated at 31.43% and site improvement depreciation was calculated at 45%. The total depreciation of \$3,308,582 was deducted from the cost figures. Respondent's internal review of functional obsolescence determined that none existed at the subject property for the tax years under appeal. Respondent's conclusions of value via the cost approach for the subject building is \$7,476,000 for 2016 and \$7,221,000 for 2017.

RESPONDENT'S ADMITTED EXHIBITS

In support of its value contentions, Respondent offered the following exhibits, which were admitted into evidence:

- R-1: Valuation Disclosure prepared by Daniel F. Essa.
- R-2: Valuation Disclosure prepared by Daniel F. Essa.
- R-3: Declaration of Easements, Conditions and Restrictions.

RESPONDENT'S WITNESS

Respondent presented testimony from Daniel Essa who is a Certified General Real Estate Appraiser in the State of Michigan and is designated through the Appraisal Institute. He has been an appraiser since 1982 and most of his clientele is bank/lending work. He last appraised the subject property in 2016 for Chemical Bank for lending

purposes. Based on his education, background and experience, the Tribunal accepted Mr. Essa as an expert in real estate appraisal.

FINDINGS OF FACT

1. The subject property is located at 3225 Towne Centre Boulevard, located in Lansing Township and within Ingham County.
2. The subject property is classified as Commercial and is zoned as PD, Planned Development.
3. The subject property comprises 22.47 acres and is improved with a big box store having approximately 151,000 square feet of gross building area.
4. As of December 31, 2016, and December 31, 2017, the subject property was improved as a commercial retail store.
5. Petitioner owns the improvements and leases the land in which the improvements are located. The ground lease was initiated in 2002 for a 20-year term with subsequent 5-year renewal options.
6. The subject property fronts Towne Centre Boulevard. The subject does not front Lake Lansing Road. The subject property is not visible from US-127.
7. Petitioner is the taxpayer for both the land and improvements. In other words, Walmart pays property taxes for both parcel numbers under appeal.
8. The highest and best of the subject “as vacant” is for retail development and “as improved” is for its retail building use.
9. Petitioner submitted a valuation disclosure in the form of a narrative appraisal report prepared by Laurence Allen.
10. Petitioner’s appraiser has appraised over 200 big-box stores including Cabela’s, Bass Pro Shops, Meijer, Target, Kmart, Lowe’s, Kohl’s, Home Depot, Menard’s and Walmart.¹⁹
11. Petitioner considered and developed all three approaches to value but places most weight on the sales comparison approach.
12. Petitioner’s sales comparison approach did not utilize any deed restricted sales.²⁰
13. Petitioner’s appraiser considered and analyzed build-to-suit leases as part of his sales comparison approach.²¹
14. Petitioner’s appraiser included an analysis of ground leases.²²
15. Petitioner’s appraiser has appraised big-box stores with ground leases at Home Depot in Midland, Michigan, Lowe’s in Rochester, Michigan, and Target in Bloomington, Indiana.²³

¹⁹ Tr, Day 1, 178-179.

²⁰ Tr, Day 1, 229.

²¹ Tr, Day 1, 264.

²² Tr, Day 2, 322, 379. Petitioner’s appraisal report omits an acknowledging statement about the subject’s ground lease. However, the report includes an analysis of build-to-suit leases as well as ground leases. It is apparent that Petitioner’s appraiser was cognizant of the subject ground lease in his determination of a highest and best use analysis. (Tr, Day 2, 369-370)

²³ Tr, Day 2, 317.

16. Respondent submitted a valuation disclosure in the form of two narrative appraisal reports prepared by Daniel Essa.
17. Respondent's appraisal reports do not include a specific "market" analysis entry in the table of contents.²⁴
18. Respondent's data does not include any customary descriptive write-ups or actual lease documents.
19. Respondent's appraisal report considered all three approaches to value. The cost approach was developed for the subject improvements. The income approach was developed for the land (based on a ground lease). In other words, Respondent's appraiser did not value the land and building together as a whole economic unit.²⁵
20. Respondent's appraisal reports did not include any hypothetical conditions or extraordinary assumptions for its retrospective valuation date.²⁶
21. In testimony, Respondent's appraiser admits that the subject improvements are tied to the land via the land lease. In other words, the land and improvements together comprise the total property under appeal.²⁷
22. In testimony, Respondent's appraiser acknowledges that the subject land lease has restrictions as well as exceptions to restrictions.²⁸ Further, the restrictions and exceptions were noted in Respondent's Exhibit 3.²⁹
23. Respondent's appraiser did not read the land leases and terms for his comparable land sales.³⁰
24. Respondent's appraiser admitted to knowing just the sale price and lease rate for his Walmart data.³¹
25. Respondent's Walmart lease data are build-to-suit leases.
26. Big-box stores are not built for profit after acquisition because retailers build stores to maximize retail sales and not to realize a market profit from the land and improvements.
27. Both parties' appraisers agree that big-box stores are built to maximize retail sales.³²

²⁴ In testimony, Respondent's appraiser claims the "area and neighborhood analysis" does include a market description. The section contains Ingham County demographics but oddly does not coincide with Respondent's market inferred Walmart lease data and land value extractions.

²⁵ Tr, Day 1, 74.

²⁶ In testimony, Respondent's appraiser confuses the definition of hypothetical conditions with extraordinary assumptions. (Tr, Day 1, 28, 37)

²⁷ Tr, Day 1, 40, 42.

²⁸ Tr, Day 2, 399.

²⁹ Tr, Day 2, 401-403.

³⁰ Tr, Day 2, 473.

³¹ Tr, Day 2, 476. Further, Respondent's appraiser was evasive in answering questions regarding his lease data which appears to be build-to-suit leases. (Tr, Day 2, 474-477)

³² Tr, Day 1, 46, 211, 219, and Day 2, 298.

28. The valuation of the subject property is through *value in exchange*³³ and market *value*³⁴ as opposed to *value in use*.³⁵

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.³⁶

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not . . . exceed 50 percent. . . .³⁷

The Michigan Legislature has defined “true cash value” to mean:

The usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale.³⁸

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”³⁹

“By provisions of [MCL] 205.737(1) . . . , the Legislature requires the Tax Tribunal to make a finding of true cash value in arriving at its determination of a lawful property

³³ Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 6th ed, 2015), p 245.

³⁴ *Id.*, p 141.

³⁵ *Id.*, p 245. Respondent’s analysis of primarily Walmart properties and leases around the country implies an analysis on the basis of value in use. Petitioner did not value the subject property on the basis of value in use. (Tr, Day 2, 339).

³⁶ See MCL 211.27a.

³⁷ Const 1963, art 9, sec 3.

³⁸ MCL 211.27(1).

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

assessment.”⁴⁰ The Tribunal is not bound to accept either of the parties' theories of valuation.⁴¹ “It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case.”⁴² In that regard, the Tribunal “may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination.”⁴³

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

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

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

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

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

⁴³ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

⁴⁴ MCL 205.735a(2).

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

⁴⁶ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

⁴⁷ MCL 205.737(3).

⁴⁸ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

equalization factor that was uniformly applied in the assessment district for the year in question.”⁴⁹

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.⁵⁰ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”⁵¹ The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances.⁵² Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.⁵³

Regarding a highest and best use analysis, Respondent’s appraiser conflated the valuation of 2 separate parcels based on two separate analyses. In contorted fashion, a conventional highest and best use analysis was bifurcated for the land “as vacant” and the building “as improved”. Then in contradictory fashion, Respondent’s appraiser states, “We don’t care if it’s vacant or not. What we focused on was the income stream that the land was producing.”⁵⁴ The contemplation of this conventional analysis must take into account what exists at the property as of tax day. This focal point (the effective date of the appraisal) incorporates conditions or assumptions conspicuously

⁴⁹ MCL 205.737(3).

⁵⁰ *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).

⁵¹ *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

⁵² *Antisdale*, *supra* at 277.

⁵³ See *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

⁵⁴ Tr, Day 1, 67.

displayed in an appraisal report so a reader will understand the appraiser's underlying analysis. The full bundle of rights in fee simple is the guidepost for this tax appeal matter and not a splintered leased fee interest which did not adequately reflect the actions of buyers and sellers for the whole subject property. True cash value is synonymous with *market value* but is distinguished from salvage value⁵⁵ or insurable value⁵⁶ which deal solely with improvements to a property. The very foundation and logic of market value does not invoke separate analysis for land and improvements. Confoundedly, Respondent's appraiser admits that highest and best use analysis is based on the highest appraised value.⁵⁷ Petitioner's highest and best use analysis is developed with consideration to the land and improvements together. Therefore, Respondent's disjointed highest and best use analyses are given no weight or credibility in the determination of market value for the subject property.

The parties' respective development of the cost approach was calculated from Marshall Valuation Service (MVS) and each was presented in a conventional fashion. However, the cost analyses take different paths to an indication of value. Specifically, Petitioner's appraiser renders a cost analysis by first researching land sales. Respondent's appraiser's cost analysis only develops cost calculations for the improvements without regard to the land. In other words, Respondent's cost analysis bypasses the relationship between the improvements and the land. Yet, its cost calculations incorporate subject building and site improvements, thus acknowledging that there is a relationship between the land and the building. Creating separate values

⁵⁵ Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 6th ed, 2015), p 207.

⁵⁶ *Id.*, 119.

⁵⁷ Tr, Day 1, 130-132. Gravitating to the highest appraised value is not a reflection of an impartial, objective and unbiased acumen in promoting public trust in valuation practice.

for the land and improvements without an analysis to their inter-relationship is not commonplace in valuation practice and theory. Next, Respondent's reliance on replacement costs⁵⁸ does not justify the omission of functional and external obsolescence to the subject property. Equally unconvincingly is Respondent's appraiser's explanation for zero functional obsolescence based on his feelings.⁵⁹ Functional and external obsolescence certainly would not be found by Respondent's appraiser because the property was not analyzed and valued as a whole economic unit.⁶⁰ The principle that replacement costs are reproduction costs less depreciation was referenced by Respondent's appraiser.⁶¹ However, this testimony does not coincide with *The Appraisal of Real Estate* (Chicago: 14th ed, 2013) at page 570 from the Appraisal Institute and was subsequently recanted by Respondent's appraiser.⁶² Further, Petitioner's refutation of Respondent's position on replacement costs is the very essence of unacceptance by an appraiser's peers in valuation practice.⁶³ Therefore, Respondent's fragmented cost approach is given no weight or credibility in the determination of market value for the subject property.

Petitioner's cost approach analyzed the site in relationship to the improvements. This also included the development of excess land which resulted in a contributory value. The land sales are located in the state of Michigan and two sales are located within the Lansing MSA. Petitioner's cost analysis and calculations are more detailed;

⁵⁸ Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 6 ed, 2015), p 197.

⁵⁹ Tr, Day 1, 164, 167.

⁶⁰ Tr, Day 2, 157.

⁶¹ Tr, Day 2, 159-162.

⁶² Tr, Day 2, 497.

⁶³ Tr, Day 2, 301. See "Scope of Work Acceptability" The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice* (Washington D.C., 2018-2019 Edition), p 13.

building materials, components and relevant multipliers were developed. Moreover, Petitioner presented 20 lease comparables of retail stores throughout Michigan to analyze obsolescence. Next, Petitioner analyzed obsolescence reflected in former Source Club stores in Michigan. The cost analysis of the subject property was applied to the market and does not contemplate the build-to-suit construction by Walmart (which is deemed not be market based). The market-based replacement cost analysis of a big-box store included a construction management fee. Simply, in this real estate market, the construction of real property is not undertaken for free.⁶⁴ Lastly, Petitioner extracted obsolescence from six sales of big-box stores in Michigan. The extent and level of Petitioner's cost approach is logical and reasonable and is given weight and consideration in the independent determination of market value for the subject property.

Respondent's income approach predication on a ground lease involved analysis of Walmart stores around the country. None of Respondent's Walmart lease data, abstracted site data, or sales capitalization data included any write-ups or market descriptive analysis. The limited presentation of data infers that Walmart data is the exclusive subject market. Secondly, the lease comparables did not include adjustments for differences in property rights. The inference that fee simple and leased fee interests are equal in this valuation assignment is not persuasive. Likewise, the Walmart data did not include adjustments for market conditions or demographics for leases going back to 1992. More specifically, Respondent's land lease rental rates⁶⁵ did not include the actual lease for each property. The Tribunal is unable to ascertain market conditions or

⁶⁴ Just as lease-up costs and commissions (a commercial broker's incentive) are acknowledged in the income approach, market consistency holds true for entrepreneurial incentives in the cost approach.

⁶⁵ Respondent's Exhibit R-1, 28.

demographics, for example for Austin, Texas, without customary descriptive information from the appraiser. It is insufficient to just use Walmart extractions from around the country as support for the subject's lease without any other market support.

Again, the exclusivity of the subject land lease with comparison to other Walmart data and extractions infers that this is the market for analysis. Respondent's reliance on subject's ground lease which is less than other Walmart leases around the country is unpersuasive as the subject market is not limited to just Walmart stores. The worthiness of a credit tenant is acknowledged in the band of investment capitalization methodology but Respondent's data was not consistently and properly applied through its other approaches to value.⁶⁶ Essa admits to knowing just the sale price and lease rate for his lease comparable data.⁶⁷ This does not signify due diligent research and analysis on the part of the appraiser. Respondent's "test of reasonableness" appears to have backed into its land value from Walmart build-to-suit leases. In testimony, Respondent's appraiser claims to have valued the land and building together to derive a market rent, but this analysis was not to be found in the appraiser's report. Such analysis would be important enough for placement in the actual appraisal report and not vaguely referenced in a workfile.⁶⁸ Moreover, Petitioner's extensive examination and hypothetical examples resulted in an array of answers by Respondent's appraiser.⁶⁹ Yet further, after contradictory and evasive testimony, Respondent's appraiser admitted that the land and building go together as a whole economic unit.⁷⁰ The evasive nature

⁶⁶ Tr, Day 1, 111-113.

⁶⁷ Tr, Day 2, 476.

⁶⁸ Tr, Day 1, 85-86, 125.

⁶⁹ Tr, Day 1, 170-173.

⁷⁰ Tr, Day 1, 70, 72, 94-95, 99, 103, 104.

of Respondent's appraiser's testimony does not bolster the methodologies employed to appraise the land separately from the improvements.⁷¹ Therefore, Respondent's fragmented income approach is given no weight or credibility in the determination of market value for the subject property.

On the other hand, Petitioner's income approach was based on market rent for the subject's land and improvements. Eight lease comparable big-box properties were analyzed to distinguish between existing leases and build-to-suit leases. Next, Petitioner analyzed four existing leases as well as reimbursement income to derive a supported potential gross income. Vacancy and credit loss deductions were applied to arrive at an effective gross income. In similar fashion, expenses were explained and supported with market sources. Lastly, the capitalization rate analysis included the band of investment, investment surveys and capitalization comparable sales' methodologies to arrive at a concluded overall capitalization rate. The extent and level of Petitioner's income approach is logical and reasonable and is given weight and consideration in the independent determination of market value for the subject property.

Regarding a sales comparison approach to value, Respondent did not develop this approach. Respondent's testimony to a comparative analysis as a check of reasonableness was only said to be located in Respondent's workfile. Petitioner's comparative analysis started with six big-box properties in the state of Michigan (three

⁷¹ Presumably, Respondent's appraiser, with the working knowledge of the ground lease, would know that Walmart built the improvements for its own retail branding and not for Target. (Tr, Day 1, 44, 46) Extolling the virtues of the Eastwood Towne Center did not answer questions specifically to a CBRE report referenced within Respondent's appraisal report. (Tr, Day 1, 47-48) Testifying that the subject building is personal property but then saying it is real property is baffling. (Tr, Day 1, 53-54, 114) In addition, testimony over actual traffic counts and their relevance was confusing and lacked credibility. (Tr, Day 2, 445-453)

on the west side and three on the east side of the state).⁷² A descriptive analysis included customary write-ups for each property. Extensive explanation and market support (including market property comparisons) was given for each adjustment. An adjustment grid for the six comparable sales was illustrated to arrive at an indication of market value. However, Petitioner went further in describing additional cited sales and referenced a big-box sales study. Lastly, Petitioner accounted for the contributory value of the excess land to the subject property. The extent and level of Petitioner's sales' comparison approach is logical and reasonable and is given weight and consideration in the independent determination of market value for the subject property.

Respondent's focus on the subject's ground lease should not be analyzed as a dividing rod.⁷³ In other words, the separate analysis of land and improvements carried marginal persuasion as discrepancies between testimonial and documentary evidence was elicited from Respondent's expert witness. Parsing the valuation of land from the improvements solely based on a ground lease left many loose ends. The implication that the land and improvements are viewed separately by the market is not prudent, when in fact, one cannot function without the other as of each tax day. Quite to the contrary, the land lease acts as a binder to a complete utilization of the subject property under appeal as of tax day. The market does not perceive the subject in piecemeal fashion for the purpose of a highest and best use analysis. For example, an investor

⁷² References to other big-box stores and an overall threshold price per square foot from other MTT decisions is not relevant; there is no benchmark or ceiling for a \$/SF when each market is analyzed on its own merits.

⁷³ Respondent's appraiser's overriding exclusive reliance on the land lease appears to be advocating a position and is devoid of an impartial, objective and unbiased analysis. (Tr, Day 1, 105 and Tr, Day 2, 387, 389, 392, 462) Overall, adversely and evasively answering questions while promoting the virtues of the Eastwood Towne Centre was telling. The witness strained the proceeding to the point of discreditation of his testimony.

could not overcome one component (the land) to find financial satisfaction from the other component (the building). Simply, the two components are intertwined and debunk the premise that the sum of the parts is greater than the whole in this instance.⁷⁴

Respondent's adherence to the separately numbered parcels as well as the land lease is in contradiction to the market. The land lease and market data are taken in the context of market influences and participants and are not merely dictated by parcel code demarcation. On the other hand, Respondent's appraiser admits that the expiration of the land lease would take away Walmart's right to use the building.⁷⁵ This is a further admission that the land and building are used together and create a total economic unit for a highest and best use valuation. Again, Petitioner's appraiser's testimony reaffirms this point. "Because there's little or no market for the improvements without the land and there's little or no market for the land with existing improvements on it that aren't owned."⁷⁶ The influence and connection of the land lease does not separate the land from the improvements. Petitioner's cogent evidence properly supports the subject's land and improvements as a whole economic unit under the definition of market value.

Petitioner's development of its three approaches to value provides the most reliable and credible evidence for reconciliation to an independent determination of market value for the subject property. Specifically, the analysis of each approach (in practice) strengthened the approaches inter-relationship (in theory) to the concept of *substitution*.⁷⁷ The sales comparison approach provided sufficient data and analysis.

⁷⁴ While Respondent's counsel questioned Essa regarding the land lease, the document was curiously never offered as evidence by Respondent. Given the importance of such a ground lease to Respondent's case-in-chief, the document was not important enough to introduce into evidence.

⁷⁵ Tr, Day 1, 59.

⁷⁶ Tr, Day 1, 189 and Tr, Day 2, 337-338.

⁷⁷ Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 6th ed, 2015), p 225.

Market participants rely on the sale of other like properties. Next, the cost approach developed land sales, replacement costs and depreciation through existing leased properties as well as build-to-suit leased properties. The cost approach's relationship to the other approaches cannot be underestimated. Market participants' decision-making processes whether to renovate an existing big-box or construct a new store is manifested through the cost approach in terms of depreciation. Moreover, the cost approach highlights the very reason a big-box store is built to enhance retail sales and not to capture real property value. Lastly, the income approach examined the subject property in the context of existing leased properties in Michigan. However, as noted, Petitioner placed no reliance on this income data because build-to-suit leases are not market supported. Petitioner's due diligence to demonstrate market data through each approach is significant. A percentage weight is assigned to reflect each approach's analytical strength and market reliance as opposed to a straight average from three value indications. Therefore, a reasoned and reconciled determination of market value places 45% weight on the sales approach ($\$6,420,000 \times 45\% = \$2,889,000$), 45% weight on the cost approach ($\$6,930,000 \times 45\% = \$3,118,500$) and 10% weight on the income approach ($\$6,640,000 \times 10\% = \$664,000$) for a market value conclusion of $\$6,672,000$ (rounded). In turn, the allocation places $\$3,930,000$ on the land (33-21-01-02-100-040) which is taken from Petitioner's cost approach analysis and market supported land valuation. The remaining difference is allocated and attributed to the building improvements (33-21-01-02-100-806) at $\$2,742,000$.

In totality, Respondent's evidence is not more persuasive than Petitioner's development and analysis of the subject property as a whole economic unit.

Petitioner's citation to *Great Lakes Div of Nat Steel Corp v City of Ecorse*, 227 Mich App 379, 408; 576 NW2d 667, 680-81 (1998) is applicable and relevant to this tax appeal matter and is consistent with professional valuation standards.

Standard Rule 1-4(e) When analyzing the assemblage of the various estates or component parts of a property, an appraiser must analyze the effect on value, if any, of the assemblage. An appraiser must refrain from valuing the whole solely by adding together the individual values of the various estates or component parts.⁷⁸

Valuation practice and theory does not subscribe to the notion that parts/pieces should be appraised separately then aggregated for a total determination of value. Rather, two harmonious parts recognized by the market as the full vestige of land and improvements is valued in this tax appeal context. The market decides the fate of a property not the valuation expert. The promulgation of the General Property Tax Act sets the threshold at the "usual selling price" for real property tax appeals without regard to a piecemeal valuation. As further reference to the *undivided fee rule*,

"The unit rule requires valuing property as a whole rather than by the sum of the values of the various interests into which it may have been carved, such as lessor and lessee, life tenant and remainderman, etc. This is an application of the principle that it is the property, not the various titles, which is being taken. Because the various estates in the property must be disregarded in the valuation process, they must also be discarded in estimating the property's highest and best use."⁷⁹

The *unit value* is defined as "The market value of the whole reduced to a value per unit of measurement."⁸⁰ In similar fashion, other valuation assignments acknowledge this concept. This definition coincides with the definition of *unit rule*:

⁷⁸ The Appraisal Foundation *Uniform Standards of Professional Appraisal Practice* (Washington D.C., 2018-2019 Edition), p 18.

⁷⁹ Appraisal Institute, *Real Estate Valuation in Litigation* (Chicago, 1995), pp 127-128 with additional reference to **multiple estates** at pp 53-54.

⁸⁰ Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 6th ed, 2015), p 240.

In condemnation appraisal, a valuation rule with two aspects, the first dealing with ownership interests and the second dealing with physical components. The first aspect of the rule, also referred to as the undivided fee rule, requires that property be valued as a whole rather than by the sum of the values of the various interests into which it may have been carved (such as lessor and lessee, life tenant and remainderman, and mortgagor and mortgagee, etc.). This is an application of the principle that it is the property, not the interests, that is being acquired. The second aspect of the rule is that different physical elements or components of a tract of land (such as the value of timber and the value of minerals on the same land) are not to be separately valued and added together.⁸¹

Lastly, the definition of *undivided fee rule* further solidifies the valuation of the whole economic unit:

In condemnation appraisal, a rule that states that the property is to be valued as if the title were held by a single entity, even if the real property is divided into more than one estate owned by more than one individual or entity.⁸²

The noted valuation treatises give support and validation for the usual selling price for the subject as an economic whole under market value and value in exchange.

JUDGMENT

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

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

⁸¹ *Id.*, p 239.

⁸² *Id.*, p 238.

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 as required by the Consent Judgment within 28 days of the entry of the Consent Judgment. If a refund is warranted, it shall, unless otherwise indicated, include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also, unless otherwise indicated, 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, unless otherwise indicated, 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 Consent 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%, and (xi) after June 30, 2019 through December 31, 2019, at the rate of 6.39%.

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.⁸³ 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.⁸⁴ 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.⁸⁵ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.⁸⁶ A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."⁸⁷ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.⁸⁸ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.⁸⁹

By 

Entered: July 11, 2019

⁸³ See TTR 261 and 257.

⁸⁴ See TTR 217 and 267.

⁸⁵ See TTR 261 and 225.

⁸⁶ See TTR 261 and 257.

⁸⁷ See MCL 205.753 and MCR 7.204.

⁸⁸ See TTR 213.

⁸⁹ See TTR 217 and 267.