



STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

GRETCHEN WHITMER
GOVERNOR

ORLENE HAWKS
DIRECTOR

JP 4180 Plainfield LLC,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 18-001497

Plainfield Township,
Respondent.

Presiding Judge
Steven M. Bieda

FINAL OPINION AND JUDGMENT

The Tribunal issued a Proposed Opinion and Judgment (POJ) on April 20, 2020. The POJ states, in pertinent part, “[t]he parties have 20 days from date of entry of this POJ to notify the Tribunal in writing, by mail or by electronic filing, if available, if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions).”

Neither party has filed exceptions to the POJ.

The Administrative Law Judge (ALJ) considered the testimony and evidence submitted and made specific findings of fact and conclusions of law. The ALJ’s determination is supported by the testimony, evidence and applicable statutory and case law.

Given the above, the Tribunal adopts the POJ as the Tribunal’s final decision in this case.¹ The Tribunal also incorporates by reference the Findings of Fact and Conclusions of Law contained in the POJ in this Final Opinion and Judgment. As a result:

- a. The property’s true cash value (TCV), state equalized value (SEV), and taxable value (TV), as established by the Board of Review for the tax year at issue, are as follows:

Parcel Number: 41-10-33-278-015

Year	TCV	SEV	TV
2018	\$1,332,400	\$666,200	\$662,822
2019	\$1,311,400	\$655,700	\$655,700

- b. The property’s TCV, SEV, and TV, as determined by the Tribunal for the tax year at issue, are as follows:

¹ See MCL 205.726.

Parcel Number: 41-10-33-278-015

Year	TCV	SEV	TV
2018	\$1,088,200	\$544,100	\$544,100
2019	\$985,700	\$492,850	\$492,850

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year(s) at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as provided in this Final Opinion and Judgment within 20 days of entry of this Final Opinion and Judgment, subject to the processes of equalization.² To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (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 the last pending claim and closes this case.

APPEAL RIGHTS

² See MCL 205.755.

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

A motion for reconsideration must be filed with the Tribunal with the required filing fee within 21 days from the date of entry of the final decision.³ 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.⁴ You are required to serve a copy of the motion on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.⁵ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.⁶

A claim of appeal must be filed with the Michigan Court of Appeals with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."⁷ You are required to file a copy of the claim of appeal with filing fee with the Tribunal in order to certify the record on appeal.⁸ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.⁹

By  _____

Entered: July 8, 2020
ssm

³ See TTR 261 and 257.

⁴ See TTR 217 and 267.

⁵ See TTR 261 and 225.

⁶ See TTR 261 and 257.

⁷ See MCL 205.753 and MCR 7.204.

⁸ See TTR 213.

⁹ See TTR 217 and 267.



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MOAHR Docket No. 18-001497

Plainfield Township,
Respondent.

Presiding Judge
Peter M Kopke

PROPOSED OPINION AND JUDGMENT

INTRODUCTION

Petitioner filed this appeal disputing the property tax assessment levied by Respondent against Parcel No. 41-10-33-278-015 for the 2018 and 2019 tax years. Paul Bach, Agent, and Ralph Colasuonno, Esq. represented Petitioner and Eric E. Brandt, Esq. represented Respondent.

A hearing was commenced November 21, 2019 and continued November 22, 2019. Petitioner's witness was Kevin A. Kernan, Appraiser, and Respondent's witnesses were Jason Rosenzweig, Deputy Assessor, and Jeff M. Miller, Assessor.¹ Respondent also called Julian Monterosso, the majority and managing member of Petitioner, as a witness.²

Based on the evidence (i.e., testimony and admitted exhibits) and the case file,³ the Tribunal finds that true cash value ("TCV"), state equalized value ("SEV"), and

¹ Mr. Kernan prepared Petitioner's valuation disclosure and was offered and admitted without objection as an expert for purposes of testifying as to the value of the property. See November 21, 2019 Transcript ("TR") at 8-13. Mr. Rosenzweig assisted in the preparation of Respondent's valuation disclosure or assessment records and was offered and admitted with objection (i.e., "not signed" as required by the Tribunal's rules) as an expert for purposes of testifying as to the value of the property. See November 22, 2019 Transcript ("TR2") at 4-11 and 53. Although Mr. Miller assisted in the preparation of Respondent's assessment records, he was not offered for purposes of testifying as to the value of the property. Rather, he was offered and admitted without objection as an expert for purposes of testifying as to Petitioner's comparable sales. See TR2 at 75-80. See also TTR 255(2).

² See TR at 189-190 and 203.

³ Petitioner's valuation disclosure or appraisal (P-1) was offered for admission. See TR at 13-18. Respondent objected to its admission as the person who "did the vast majority of the work is not here to testify as to the appraisal" (i.e., Alex Arnold). See TR at 18-21 and 24. Respondent's objection was, however, overruled, as Mr. Arnold's work was done pursuant to Mr. Kernan's direction and review (i.e.,

taxable value (“TV”) of Parcel No. 41-10-33-278-015 for the 2018 and 2019 tax years are as follows:

Year	TCV	SEV	TV
2018	\$1,088,200	\$544,100	\$544,100
2019	\$985,700	\$492,850	\$492,850

FINDINGS OF FACT

The following facts were proven by a preponderance of the evidence (i.e., testimony and admitted exhibits) and concern only the evidence and inferences found to be significantly relevant to the legal issues involved:⁴

1. The subject property (i.e., Parcel No. 41-10-33-278-015) consists of land and improvements (i.e., building) located at 4180 Plainfield Avenue N.E., Grand Rapids, Michigan.⁵

“parameters,” etc.). See TR at 21-25 and 80-83. R-26.1 was offered for admission with objection (i.e. lack of foundation) and the exhibit was admitted. See TR at 159-164. R-28 was offered for admission with objection (i.e., lack of foundation) and the exhibit was admitted. See TR at 166-167. R-3 was offered for admission with objection (i.e. hearsay and relevance) and the exhibit was admitted. See also TR at 190-200. R-4 was offered for admission with objection (i.e. hearsay and relevance) and the exhibit was admitted. See TR at 201-206. R-2 was offered for admission with objection (i.e., unsigned and foundation or role) and the exhibit was admitted. See TR2 at 4-21. R-42-1 and R-42-2 were offered for admission with objection (i.e., unsigned and unsubstantiated) and the exhibit was admitted. See TR2 at 19-26 and 35. R-43 was offered for admission without objection and the exhibit was admitted. See TR2 at 26-30. R-44 was offered for admission without objection and the exhibit was admitted. See TR2 at 34-35. R-46 was offered for admission without objection and the exhibit was admitted. See TR2 at 35-38. R-29 was offered for admission with objection (i.e., hearsay) and that exhibit, although taken under advisement, was admitted. See TR2 at 38-43. **With respect to Petitioner’s multiple hearsay objections**, see MCL 205.746 (i.e., “[t]he tribunal may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs”), which is consistent with MCL 24.275. [Emphasis added.] See also *Vomvolakis v Dep’t of Treasury*, 145 Mich App 238, 246-47; 377 NW2d 309 (1985). R-30 was offered for admission with objection (i.e., hearsay) and that exhibit, although taken under advisement, was admitted. See TR2 at 43-46. R-31 was offered for admission with objection (i.e., hearsay) and that exhibit, although taken under advisement, was admitted. See TR2 at 46-49. R-47 was offered for admission without objection and the exhibit was admitted. See TR2 at 71-75. R-6.1 was offered for admission without objection and the exhibit was admitted. See TR2 at 81. R-41 was offered for admission with objection (i.e., hearsay) and that exhibit was, although taken under advisement, admitted. See TR2 at 81-84. R-33 was offered for admission with objection (i.e., hearsay) and that exhibit was, although taken under advisement, admitted. See TR2 at 84-86. R-9.10 and R-9.11 were offered for admission without objection and those exhibits were admitted. See TR2 at 98-99. R-11.1 through R-11.12 were offered for admission with objection (i.e., hearsay) and those exhibits were at not admitted. See TR2 at 99-110. R-48 was offered for admission with objection (i.e., hearsay) and that exhibit was, although taken under advisement, admitted. See TR2 at 115-120. R-14 was offered for admission without objection and that exhibit was admitted. See TR2 at 122-124. R-19 was offered for admission without objection and that exhibit was admitted. See TR2 at 135-136. R-49 was offered for admission with objection (i.e., hearsay) and that exhibit was, although taken under advisement, admitted. See TR2 at 142-143.

⁴ The Tribunal has not addressed every piece of evidence or every inference that might lead to conflicting conclusions and has rejected evidence contrary to these findings.

2. Petitioner is the owner of the property.⁶
3. The property is classified as 201-Commercial Improved, and zoned C-2.⁷
4. The subject building consists of 21,044 square feet and the building was originally constructed in 1971.⁸
5. The subject land area is 3.53 acres or 153,767 square feet.⁹
6. The property's assessed value ("AV") and taxable value ("TV") for the 2018 tax year were \$666,200 and \$662,800, respectively.¹⁰
7. The property's AV and TV for the 2019 tax year was \$655,700.¹¹
8. Petitioner contends that the property's TCV for the 2018 and 2019 tax years was, based on its sales comparison approach, \$840,000 and \$880,000, respectively.¹² Petitioner also contends that the property's TCV for the 2018 and 2019 tax years was, based on its income approach, \$850,000 and \$910,000, respectively.¹³
9. Respondent contends that the TCV for those tax years was, based on its cost approach, \$1,332,400 and \$1,311,400, respectively.¹⁴
10. The property's highest and best use for the tax year at issue was its continued use for commercial purposes and the applicable market area was for sales purposes increasing for the 2018 tax year and decreasing, albeit slightly, for the 2019 tax year.¹⁵ In that regard, the property was used as a Planet Fitness facility for those tax years.¹⁶

⁵ See the parties' accepted "Stipulated Statement of Facts" ("Stipulation"). See also TR at 5-6 and 14.

⁶ See Stipulation. Mr. Kernen also indicated that Petitioner purchased the property in 2014 for \$707,000 and that "[t]he buyer built it out for their Planet Fitness use after the transaction." See TR at 83-84, which provides, in pertinent part, "I think that there was a building permit that showed 250 or 350,000" and that "I don't know the dollar amount that was spent." See also TR at P-1: Assignment Overview – Ownership History at 5, which further provides, in pertinent part, "[t]he concluded market value in this report is similar to the subject's most recent sale price."

⁷ See Stipulation.

⁸ See Stipulation. See also P-1 and R-2.

⁹ See Stipulation. See also P-1 and R-2.

¹⁰ See Stipulation. See also R-2 and the September 10, 2019 Prehearing Conference Summary.

¹¹ See Stipulation. See also R-2 and the September 10, 2019 Prehearing Conference Summary.

¹² See Stipulation. See also P-1.

¹³ See Stipulation. See also P-1.

¹⁴ See Stipulation. See also R-2 and the September 10, 2019 Prehearing Conference Summary.

¹⁵ See P-1. As for market conditions, the sales market was, despite Mr. Kernen's testimony to the contrary, **increasing for the 2018 tax year but not the 2019 tax year**, as more fully discussed herein. [Emphasis added.] With respect to Mr. Kernen's testimony, see TR at 40-41 (i.e., "I conclude that the market is improving for the subject"), 57 (i.e., "I concluded the market was strengthening so my conclusion for tax year 2019 is slightly higher than my conclusion for tax year 2018 to reflect those improving market conditions"), 94, 115-116. In that regard, see P-1 Market Conditions at 40 (non-Bates stamped), which provides, in pertinent part:

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

ISSUES AND CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value.¹⁷ In that regard, the Michigan Legislature has, as directed by the Constitution, defined “true cash value” to mean:

. . . the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale.¹⁸

In its review of that definition, the Michigan Supreme Court has determined that “true cash value” is synonymous with “fair market value.”¹⁹

As for the Tribunal, the Tribunal must, under MCL 205.737(1), find a property’s true cash value in determining a lawful property assessment.²⁰ The Tribunal is not, however, bound to accept either of the parties’ theories of valuation.²¹ Rather, 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.²²

Further, a proceeding before the Tribunal is original, independent, and *de novo*²³ and the Tribunal's factual findings must be supported by competent, material, and

Although the underlying CoStar Sales Comparable Analytics data or historical trend sales information was **not** provided, a review of the P-1 Charts: Market Conditions – Comparable Improved Transactions at 41 (non-Bates stamped) **does not**, as further discussed herein, support Mr. Kernen’s conclusion that the sales market was increasing at a rate of 3.0% annually or, more importantly, for both tax years at issue. [Emphasis added.] Similarly, a review of the P-1 Charts: Market Conditions – Comparable Rentals at 48 and 49 **also does not**, as further discussed herein, support Mr. Kernen’s conclusion that rental market was increasing at a rate of 3.0% annually or, more importantly, for both tax years at issue. [Emphasis added.] See TR at 60-61 for Mr. Kernen’s testimony to the contrary (i.e., “[s]imilar to market conditions under a sales approach I concluded that rental rates were improving in the market, so I made the appropriate market conditions adjustment based on the difference between the lease date and the valuation date”).

¹⁶ See TR at 6 and 27.

¹⁷ See Const 1963, art 9, sec 3.

¹⁸ See MCL 211.27(1).

¹⁹ See *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

²⁰ See *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

²¹ See *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

²² See *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

²³ See MCL 205.735a(2).

substantial evidence.²⁴ In that regard, “substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”²⁵

Additionally, “the petitioner has the burden of proof in establishing the true cash value of the property.”²⁶ “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.”²⁷ 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.”²⁸

As recognized by the courts of Michigan, the three most common approaches to valuation are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach.²⁹ The market approach is, however, the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.³⁰ Nevertheless, the Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances.³¹ Regardless of the approach selected, the value determined must represent the usual price for which the subject property would sell.³²

The Tribunal is also required to consider the “highest and best use” of property in determining the property’s true cash value, as that concept is “fundamental” to such

²⁴ See *Antisdale*, *supra* at 277 and *Dow Chemical Co v Dep’t of Treasury*, 185 Mich App 458, 462-3; 462 NW2d 765 (1990).

²⁵ See *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-3; 483 NW2d 416 (1992).

²⁶ See MCL 205.737(3).

²⁷ See *Jones & Laughlin*, *supra* at 354-5.

²⁸ See MCL 205.737(3).

²⁹ See *Meadowlanes*, *supra* at 484-85; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), *aff’d* 380 Mich 390 (1968).

³⁰ See *Jones & Laughlin*, *supra* at 353 (citing *Antisdale*, *supra* at 276 n 1).

³¹ See *Jones & Laughlin*, *supra* at 353 (citing *Antisdale*, *supra* at 277 and *Teledyne Continental Motors v Muskegon Twp*, 163 Mich App 188, 193; 413 NW2d 700 (1987), *lv den* 429 Mich 889 (1987)).

³² See *Jones & Laughlin*, *supra* at 353 (citing *Meadowlanes*, *supra* at 485).

determinations, as “[i]t recognizes that the use to which a prospective buyer would put the property will influence the price which the buyer would be willing to pay....[further,] [I]and is appropriately valued ‘as if available for development to its highest and best use, that most likely legal use which will yield the highest present worth.’”³³ In that regard, “highest and best use” of property is shaped by the competitive forces within the market where the property is located, and it provides the support for a thorough investigation of the competitive position of the property “in the minds of market participants.”³⁴ Additionally, highest and best use analysis strongly influences the choice of comparable sales in the sales approach. Only properties with the same or similar highest and best uses are suitable for use as comparable sales.³⁵ “If the property being appraised is a single site, not a site whose use depends on assemblage with other sites, the highest and best use of the site alone is analyzed as it currently exists by itself. If the property being appraised consists of multiple sites as though sold in one transaction, the highest and best use analysis considers them as one large site.”³⁶

Finally, the Tribunal is also required to determine the subject property or properties’ taxable values for the tax years at issue.³⁷

Here, Petitioner claims that the assessments at issue are unlawful or excessive based on its “commercial real estate appraisal.”³⁸ Petitioner also claims that (i) “[t]his property is a small commercial property in terms of the general layout of the site and how that building sits on the site,” (ii) “[t]here’s a small two tenant strip center at the front portion of the site [that] doesn’t block the visibility of the property” (i.e., the property “sets back from Plainfield Avenue” and is on the “backside” of the site), (iii) “[i]t’s a zero lot line construction so there’s a building that it abuts that’s one the parcel next to it [which] is a single tenant Salvation Army,” (iv) “[t]he subject property is a single user Planet Fitness, so it’s a small gym [with] a little over 21,000 square feet,” (v) “[n]ot a lot of finishes when you get inside [n]ot a lot of partitioning [a]ny, I guess,

³³ See *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 633; 462 NW2d 325 (1990).

³⁴ See Appraisal Institute: *The Appraisal of Real Estate* (2013, 14th ed) at 331.

³⁵ See *The Appraisal of Real Estate*, *supra* at 345.

³⁶ See *The Appraisal of Real Estate*, *supra* at 334.

³⁷ See MCL 205.737(1). See also MCL 211.27a(2).

³⁸ See TR at 7. See also TR2 at 171-173. In contrast, see TR2 at 173-177.

partitioning off areas would be partial walls in a lot of sections around the perimeter where they have different stretching rooms and things like that” (i.e., “very simple”), (vi) “[p]robably the highest level of finish, which is still fairly minimal, would be along one side of the property where they have several different tanning rooms, small rooms where there’s either lay down or vertical tanning beds,” (vii) “there’s a locker room with showers and lockers, but it’s not a high end fitness center where there’s no pool, no basketball, racquetball or what have you [p]retty basic fitness center,” (viii) “it’s pretty simple [t]here’s not a lot of value there on a per square foot basis for a property like this because it’s just concrete block construction that could easily work as a small warehouse or commercial type of building so it opens up your pool of potential buyers for a property like this,” (ix) “[i]t’s a densely developed roadway, Plainfield Avenue . . . [with] a lot of commercial development along it” (i.e., “most of that development is older” and “this isn’t an area of new development or growth”), and (x) “[j]ust one of those older commercial corridors that you see in every major city [n]ot great, but not bad [s]ort of a B-type of location I guess in broker’s speak.”³⁹

Prior to addressing Petitioner’s claims, the first step in the valuation process requires the Tribunal to determine the property’s highest and best use. In that regard, Petitioner’s appraiser, Mr. Kernen, “concluded” that the property’s highest and best use “as if vacant” was “to hold for future commercial development” and “as if improved” was for “continued use of the existing improvements as a free-standing retail building” and provided an analysis, albeit brief analysis, in support of said conclusions.⁴⁰ As for Respondent, Respondent did not provide a “conclusion” or analysis of the property’s highest and best use “as if vacant” or “as if improved.” Nevertheless, the evidence provided by both parties supports Petitioner’s conclusion that the property’s highest and best use is its continued use for commercial purposes, as said use is legally permissible, physically possible, financially feasible, and maximally productive.⁴¹

³⁹ See TR at 26-31. In that regard, Mr. Kernen also indicated that “[t]here are some major national retailers nearby Lowes is across the street and just a little bit up the road there’s a Meijer pretty close by, but there’s also mixed in a lot of local businesses and small development.”

⁴⁰ See P-1 at 34-35 (non-Bates stamped). See also TR at 184-185.

⁴¹ See *The Appraisal of Real Estate*, *supra* at 335. See also TR at 31-32 and TR at 115-120.

With respect to Petitioner's claims, Petitioner submitted an appraisal (i.e., P-1) and provided testimony in support of that appraisal. Although Petitioner's appraiser, Mr. Kernan, considered all three recognized approaches to value, he relied on the sales comparison and income capitalization approaches and not the cost approach (i.e., "wasn't a meaningful approach") given the age of the property and the "high amount" of the subject building's physical depreciation that can be is, as correctly indicated by Mr. Kernan, difficult to estimate.⁴² As for his sales comparison approach, Mr. Kernan indicated that "it's an approach or method that typical investors are going to look at for a property like this" (i.e., "most reliance") and there "is enough meaningful data on recent transactions in the West Michigan market that I'm comfortable that this approach will result in a reliable indication of [value]."⁴³ Mr. Kernan did, however, testify that "typical investors" also look at "what the income producing potential of the property would be."⁴⁴ Said testimony is somewhat conflicting. Nevertheless, **"typical investors"** can include both local and national investors and such investors, although generally more reliant on information relating to a property's potential income stream, **will look at both approaches and determine which approach is more relevant based on the property's circumstances and the actual data available.** [Emphasis added.] More importantly, Mr. Kernan utilized the same eight sales for both tax years – one from 2014, two from 2015, one from 2016, one from 2017, and three from 2018.⁴⁵ After adjusting for "dissimilarities," Mr. Kernan determined a concluded value per square foot of \$40.00 for the 2018 tax year and \$42.00 for the 2019 tax year based upon adjusted sale prices per square foot ranging from \$34.25 to \$45.53 for the 2018 tax year and \$35.23 to \$46.91 for the 2019 tax year.⁴⁶ Of the sales, the 2014, 2015, and 2016 sales

⁴² See TR at 32-34. Although Mr. Kernan indicated that "a cost approach is very meaningful" for "special purpose property" (i.e., "an owner[-]occupied property where they built the property specifically for whatever their process is or the business is"), he also indicated that the property is **not** a "special purpose property" and that indication is supported by the evidence. [Emphasis added.]

⁴³ See TR at 35.

⁴⁴ See TR at 33.

⁴⁵ See P-1's Sales Comparison Approach at 38-44 (non-Bates stamped). See also TR at 35-39 and 55 (i.e., "I am comfortable and confident with these eight comparables that they're all meaningful comparables as it relates to the subject"). Further, see TR at 76-80, 121-147.

⁴⁶ See TR at 55-58, which provides, in pertinent part:

are too remote in time for consideration for both tax years and the 2017 sale is too remote in time for consideration for the 2019 tax year absent reliable adjustments for changing market conditions from the date of sale to the tax dates at issue (i.e., December 31, 2017 for the 2018 tax year and December 31, 2018 for the 2019 tax year).⁴⁷ Unfortunately, Mr. Kernén's 3.0% annual adjustment for changing market conditions was not properly supported. More specifically, Mr. Kernén's sales charts **clearly indicate a market decrease from December 31, 2013, to December 31, 2014 and from December 31, 2014, to December 31, 2015; a market increase from December 31, 2015, to December 31, 2016 and from December 31, 2016, to December 31, 2017; and finally a market decrease from December 31, 2017, to December 31, 2018**, which is consistent with the decrease in the property's economic condition factor ("ECF") from 0.825 for the 2018 tax year to 0.720 for the 2019 tax year even though Respondent's ECFs for those tax years are, as indicated herein, unsupported.⁴⁸ [Emphasis added.] As a result, Petitioner's Comparable Nos. 5, 6, 7, and 8 are unreliable indicators of value for the 2018 and 2019 tax years and Comparable

“. . . it's not formulaic, it's not a weighted average or any like that. It's you know, **what do I feel is the most reflective and reasonable value** for square foot of the subject.

Again, that's sort of how our realty market works. It's not a perfect market. It's not formulaic. **It's looking at the available data and concluding based on your experience what you feel is reasonable and reflective of the subject.**" [Emphasis added.]

See also TR at 87 and 147-150.

⁴⁷ See MCL 211.2(2).

⁴⁸ See P-1: Charts: Market Conditions – Comparable Improved Transactions at 41 (non-Bates stamped). See also P-1 Market Conditions at 40 (non-Bates stamped), which provides, in pertinent part:

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

Although the CoStar Sales Comparable Analytics data or historical trend sales information underlying those sales charts was **not** provided, said regression analysis does **not** support Mr. Kernén's conclusion of a 3.0% annual sales adjustment to reflect changing market conditions. [Emphasis added.]

No. 7 is an unreliable indicator of value for the 2019 tax year.⁴⁹ With respect to the 2017 sale (i.e., Comparable No. 4), that sale did take place in the West Michigan market. The sale did not, however, take place in the instant market or sub-market where the property is located and there is, unfortunately, insufficient information to justify the consideration of Mr. Kernen's purported comparable sales that occurred outside of the Kent County submarkets or the actual Grand Rapids market (i.e., Comparable Nos. 2, 4, 6, and 7).⁵⁰

⁴⁹ There are other issues with these comparable sales that render them unreliable indicators of value that are not specifically addressed in this POJ. See TR at 42-44 (Comparable No. 2), 45-47 (Comparable No. 4), 48-49 (Comparable No. 5), 49-51 (Comparable No. 6), 51-53 (Comparable No. 7), and 53-55 (Comparable No. 8). See also TR at 105-111, which provides, in pertinent part:

- Q. Your report says traffic count is an important factor, correct?
A. Yes. **That's one of the factors we look at.**
Q. And you did not include the traffic count? Is there a reason why you didn't include the traffic count in your report?
A. **It's in my work files and there's no specific reason why I didn't include it.**
Q. So[,] when you looked at comparables did you rely on traffic counts with comparables?
A. **I looked at traffic counts for comparables as well.**
Q. You said you looked at them. Did you rely on them?
A. **It's one of the factors that I considered.**
Q. A factor? What source did you use for your traffic source information?
A. **CoStar.**
Q. Did you find that to be reliable or not?
A. Yes.
Q. Do you ever use MDOT's traffic counts?
A. I have before. Didn't for this one. It's another source for sure.
Q. Did you find MDOT more reliable or less reliable?
A. I wouldn't find either to be more of less reliable.
Q. Do you know where CoStar does get their data?
A. **I don't recall what their source is.**

[Emphasis added.]

Further, see TR at 124-147 and TR2 at 95 -111 (Comparable No. 2), 121-125 (Comparable No. 4), 125-128 (Comparable No. 5), 128-133 (Comparable No. 6), 133-136 (Comparable No. 7), and 136-144 (Comparable No. 8). See also TR2 at 146-161.

⁵⁰ Although Mr. Kernen looked a broader "West Michigan" market for purposes of his sales comparables, **limited data was provided relative to said market.** [Emphasis added.] Rather, the substantial majority of Mr. Kernen's market information relates to the Grand Rapids MSA, Kent County or, more specifically, the **Kent County Submarkets**, and Plainfield Township [Emphasis added.] See P-1: Regional Overview at 9-13 (non-Bates stamped), which provides, pertinent part:

Grand Rapids Metropolitan Regional Analysis

The subject is located in the geographical region referred to as the Grand Rapids MSA in the Midwest region of the United States. The Grand Rapids MSA is the second most populated metropolitan area in Michigan. **The region is comprised of approximately four counties, including Barry County, Kent County, Montcalm County, and Ottawa**

County. The primary cultural and financial centers of the region are Grand Rapids, Muskegon, and Holland. The Grand Rapids MSA is the economic, population, and real estate center of the West Michigan region. The subject is located in Plainfield Township, which is in close proximity to the city of Grand Rapids, which is the second-largest city in Michigan and the county seat of Kent County. The following sections detail demographic, income, and employment information for the Grand Rapids MSA, Kent County, and Plainfield Township.

See also P-1: Market Overview at 21-24 (non-Bates stamped), which references some limited “West Michigan Market” data on 23 and provides, in pertinent part:

Metropolitan Grand Rapids Retail Market Analysis

Geographically, the **Metropolitan Grand Rapids Retail Market**, as designated by CoStar, **covers numerous counties in West Michigan**. Due to its size, **the market is often buoyed and dampened by specific counties and submarkets that are outperforming, or underperforming, relative to their peers**. Similarly, due to the market’s broad base, the subject’s market largely tracks the state of the national retail market, both of which have continued to improve throughout 2017 and 2018, stemming largely from retailers actively reshaping their business models in response to consumers’ shifting habits, desires, and necessities. This transition has led many major retailers to restructure away from traditional brick-and-mortar stores and refocus their capital into improved online platforms, mobile formats, and digital magazine and catalog publications. As such, the retail market, both nationally and locally, is constantly evolving and those retailers that are quick to adapt will be able to take advantage of the remaining opportunities in the Metropolitan Grand Rapids Retail Market.

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

Summary

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

[Emphasis added.]

Notwithstanding the above, Muskegon is **not** one of the “primary cultural and financial centers of the region” defined by the Grand Rapids MSA, as Muskegon is **not** located in Barry County, Kent County, Montcalm County, or Ottawa County. [Emphasis added.] Rather, Muskegon is located in Muskegon County, which is the location of Mr. Kernen’s Sales Comparable No. 2. In that regard, Mr. Kernen’s Sales Comparable Nos. 4, 6, and 7 are located in Van Buren County, Eaton County, and Kalamazoo County, respectively. Further, Mr. Kernen also testified, in response to a question regarding the required factors to be considered in appraising this type of property, that:

“The things you want to look at are **locational factors**, the market that it’s in, the specific submarket as well as the greater MSA or defined, you know, **type of property markets**. Sometimes it’s a little bit different.” [Emphasis added.]

See TR at 25-26. See also TR at 60, which provides, in pertinent part, “[a]ll of these are in the greater Grand Rapids area so I felt this was reflective of a lease income that the subject could generate.” See further TR at 87-92, which provides, in pertinent part:

- Q. So[,] when you talk about the Grand Rapids MSA you’re talking about Barry, Kent, Montcalm, and Ottawa?
- A. **Correct.**
- Q. The entire portion of those four counties?
- A. We say approximately so there might be small portions of them cut off but the majority of those four counties.
- Q. But there’s nothing outside of those four counties?
- A. **That’s in the data, no.**
- Q. Is Muskegon in one of those four counties
- A. No.
- Q. Thank you. So[,] then any comparable in Muskegon would be outside of your GR MSA?
- A. **Outside of the MSA defined in this region, correct. Not outside of the retail market that I define in my market analysis.**
- Q. Grand Rapids is the second most populated metropolitan area in Michigan, correct?
- A. **Correct.**
- Q. Having said that would you not think that there would be more sales . . . or income comps than the ones you have? In other words, you’ve gone out of the region for several of those, correct?
- A. **Outside of the defined MSA, yes, but not outside of the West Michigan retail market.**
- Q. So maybe you can explain the distinction. Why are you referring to these two different regional areas?
- A. There can be variations in how you define a market. Yeah, the regional demographic data that I discuss in the few pages we’ve been going over here are what we’re defining as the Grand Rapids MSA.
- Later I present a retail market analysis section and that includes a broader area, but I conclude that an investor in this property type is going to consider properties and look at properties beyond just this four[-]county area within Grand Rapids.**
- Q. So[,] you’re referring to like the comp of Grand Ledge, South Have, Kalamazoo, that’s your broader - -
- A. **That’s correct.**
- Q. Does your report - - you talk about the regional overview here of the smaller area, but you don’t include a regional overview of your bigger area for where these other comps are. Would that be somewhat relevant if you pull all this information about this area and yet you’re pulling comps from other areas? Why won’t you give us a discussion of those regional attributes?
- A. **I include real estate market statistics for that larger area in the market analysis section.**
- Q. Where is that, what page?
- A. It starts on page Bates stamp 27.
- Q. Can you point to where specifically you’re talk[ing] about these other areas outside of the Grand Rapids regional area?

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- A. **I don't list** - - I apologize, **I probably should have - - all of the counties, but the first chart on page 28 is the broader area** and then I narrow it down from there so the next page is Kent County specifically and then Kent County submarkets so it starts broad and narrows from there.
- Q. So[,] on page 28 Bates stamp the table there, the Grand Rapids retail market, what geographical area is that?
- A. It's broader and, again, **I apologize I didn't list the counties[,] so I don't have them memorized, all the counties that this covers**, but it is **broader** than that four[-]county area.
- Q. So[,] this is where, if anywhere, you would have described the difference between these areas, the Grand Rapids area compared to where the other comps are?
- A. **Not the difference but it's included in there so it's all once consolidated data set.**

[Emphasis added.]

The chart referred to the in above-noted testimony is located in P-1 at 21 (non-Bates stamped) and entitled "Grand Rapids Retail Market." The chart does **not**, although purportedly containing information on the "broader area," **breakdown or otherwise indicate** the various impacts of the counties or submarkets of the "broader" area **despite Mr. Kernen's admission** that "the [broader] market is often **buoyed and dampened by specific counties and submarkets** that are **outperforming**, or **underperforming**, relative to their peers." [Emphasis added.] See also TR at 92-95, which provides, in pertinent part:

- Q. This other property you talk - - in the first paragraph of **the neighborhood being the stability stage?**
- A. **Correct.**
- Q. Can you explain what that means?
- A. **It means it's not a growth market**, not one that's in revitalization or declining. It's a mature market and there's **not** a lot of active change going on in that neighborhood is a better way to say it.
- Q. Are there other stages, maybe you could briefly describe the stages that you would have in mind. If there is one stage what are the other stages?
- A. I mentioned them[,] but I wasn't too specific. Revitalization, growth, stability, and decline so it's basically the lifecycle of a market.
- Q. So[,] after stability comes?
- A. Typically decline and then revitalization and then growth.
- Q. **So[,] in your opinion the next step here is decline?**
- A. **Could be.** The markets change. It doesn't have to go - - I mean it could be in stability for a long time. There's no indication that decline for this neighborhood is coming soon. As I mentioned before it's a densely developed neighborhood and it's got a lot of commercial users in that market, but it's not significantly positive or negative in terms of attributes.

and P-1: Neighborhood Overview at 15-19 (non-Bates stamped), which further provides, in pertinent part:

Neighborhood Overview

The subject is located on the south side of Plainfield Avenue Northeast, east of Jupiter Avenue Northeast in the Northeast Grand Rapids submarket of the Grand Rapids MSA. The neighborhood boundaries are generally delineated by 3 Mile Road Northeast to the south, Colt Avenue Northeast to the north, US-131 to the west, and East Beltline Avenue Northeast to the east; the subject is located within the center of the neighborhood. The subject's neighborhood is determined **to be in the stability stage** of its life cycle

Conclusion

More specifically, the Tribunal is unable to determine, based on the evidence provided, whether the markets or submarkets for those comparable sales are “outperforming[] or underperforming” relative to the “stable” Kent County submarket in which the property is located. Fortunately, the two remaining comparable sales (i.e., Comparable No. 1 and 3) are, as revised, reliable indicators of value for both tax years.⁵¹ In that regard, Comparable No. 1 is described by Mr. Kernan as (i) “relatively similar sized” but “a little bit newer” building (i.e., “superior condition”) with “a lot of similarity in terms of physical features and uses features” and (ii) as having a “similar market” but “superior location” and “inferior land-to-building ratio.”⁵² As a result,⁵³ Mr. Kernan adjusted the sale price

The neighborhood’s population and number of households have increased over the past decade and are projected to continue this trend, increasing by more than 0.98% annually. However, while there are signs of commercial prosperity within the neighborhood, much of the inventory is dated and little development has been seen in recent years as it compares to other areas in the subject’s market. Furthermore, **key demographic indicators continue to lag behind national averages**. As a result, interest in the subject is anticipated to remain stable in the future.

[Emphasis added.]

Although Respondent disagrees with Mr. Kernan’s “stability stage” determination relative to the subject market (i.e., “[i]t’s growing”), Respondent did **not** provide any documentation or “research” in support of said disagreement. [Emphasis added.] See TR2 at 17-18. Respondent did, however, **correctly indicate** that use of comparables outside of the Grand Rapids market **should have been “extensively explained.”** [Emphasis added.] See TR2 at 144-145.

⁵¹ With respect to sales occurring after a tax date at issue, the Michigan Court of Appeals stated in See *Jones & Laughlin, supra* at 354 that “the lapse in time is important **only with respect to the weight** that should be given the evidence, **not** to the relevance of the evidence.” [Emphasis added.]

⁵² See P-1: Sales Comparison Approach at 41-42. (non-Bates stamped) See also TR at 39-40 and 127, which provides, in pertinent part:

- Q. . . . Include[s] various factors, frontage, corner, exposure, setback, traffic count, market area, and visibility
- A. . . . **These are some of the factors that are considered in location adjustments.**
- Q. Let’s say you made an adjustment of five or ten percent one way or the other for location, is there any analysis here, breakdown between frontage, corner exposure, setback, all these criteria you have listed here?
- A. **It’s not presented in this report, no.**
- Q. So how would the reader know what weight you put on each one of these?
- A. It’s not a weighted average calculation. **It’s a consideration of all [of] those factors and combining that with my professional judgment I conclude to what I feel is an appropriate percentage.**

[Emphasis added.]

per square foot of Comparable No. 1 for the 2018 and 2019 tax years by a negative 10% for location, a negative 10% for condition, and five percent for land-to-building ratio for a total adjustment of a negative 15%.⁵⁴ Respondent has, however, credibly indicated that the difference in location may not be as significant as indicated by Petitioner. In that regard, the evidence clearly indicates that traffic counts, although an important factor, are **not the sole factor** in determining location differences.⁵⁵ [Emphasis added.] Further, the building, although constructed more than 20 years after the construction of the subject (i.e., 1971 versus 1995), was not remodeled until 2018, **which would have been after the tax date at issue for that tax year and after the 2014 remodeling or renovation of the subject.**⁵⁶ [Emphasis added.] As such, the correct or revised total

⁵³ The reflected total adjustment excludes Mr. Kernen's market condition adjustment of -2.1% for the 2018 tax year and 0.9% for the 2019 tax year, as those adjustment are, as indicated above, not properly supported and unreliable.

⁵⁴ See TR at 40-42, which also provides, in pertinent part, relative to Comparable No. 1:

A. This property has a **superior location** to the subject and so I adjusted it down.

We consider several factors in location adjustments. Typically[,] we'll look at the nearby radius of the property, the subject, and the comparables for this type of property probably looking at, you know, a two[-]mile radius. We'll look at, you know, typical property values in that market.

We have a lot of analytical data available to us through our data sources so we can look at average sale prices, you can look at average rental rates, occupancy, cap rates within the area. **Traffic counts is a factor that you look at.** All of these come into play, you know, in location for each of these comparables, so this one I concluded had a superior location and made a **small** downward adjustment.

As I mentioned before, **it's a 1995 construction property so original construction about 20 years newer than the subject.** I adjusted down for condition.

Then the last adjustment I made for this one is a land to building ratio. The subject has a 7.31 to 1 land [to] building ratio, which is higher than this comparable[,] **so they have a little bit more land area in relation to the building size and the comparable.** That just allows more flexibility with the site and, therefore, I made a positive adjustment. Those are all the adjustments I made to that comparable sales price.

[Emphasis added.]

⁵⁵ See TR at 97 and 183 (i.e., traffic counts are "another data point to look at"). See also TR2 at 114 (i.e., "[i]t does have visibility, yes") and 167-168.

⁵⁶ See TR at 93-94 and 128, which provides, in pertinent part:

Q. When you're making that comparison[,] you're comparing the date of sale, correct, of the comp versus the tax day?

adjustments should be a zero percent and not a negative 15% for the 2018 tax year to reflect a revised location adjustment of negative five percent, as the location is, given its proximity to a major commercial corridor, still slightly superior, a revised condition adjustment of 0% reflecting the subject remodeling or renovation prior to the tax date for the 2018 tax year (i.e., December 31, 2017) and Comparable No. 1's remodeling or renovation after that tax date, and Mr. Kernen's 5.0% adjustment for land-to-building ratio adjustment resulting in an adjusted or, more appropriately, unadjusted sales price

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- A. Not for condition, no. **It's the age of the property, the condition it's in, my conclusion for the condition it's in, so you're looking at original construction, renovations, anything that comes up in the confirmation process about the condition, that's the factors that go into condition adjustment.**
- Q. I guess I'm confused. If there's improvements or remodeling, replacement at the subject property would that be taken into consideration in figuring valuation when you're preparing the comp versus the subject property?
- A. **Yes, you're considering all those factors for the comparable as well as the subject in comparing the two.**

[Emphasis added.]

Although cost and value are not synonymous, as cost relates to production and value relates to exchange, Petitioner spent between \$200,000 and \$350,000 in remodeling or renovating the subject building, which is inconsistent with Mr. Kernen's testimony regarding the subject's condition. In that regard, see TR at 112-114 (i.e., "[i]t's a 40[-]year structure," "[i]t's just been adequately maintained," and "[d]efault is average") and TR at 129-134. In that regard, see also 202-203, which provides, in contrast:

- Q. From the date of purchase [the] first valuation date is December 31, 2017. **As of that date did you keep it up in good condition?**
- A. **Yes.**
- Q. **Same through December 31, 2018?**
- A. **Yes.**
- Q. Have you had any large expenditures on the property that something broke down or anything like that?
- A. Not that I'm aware of.
- Q. When you say not that you're aware [of], to what extent are you involved in the operations of these individual facilities?
- A. I see all operational budgets. We take care of our maintenance. We contract it out but we're responsible for it.

[Emphasis added.]

As such, Petitioner's expenditure and continuing maintenance raises unanswered questions as to the amount of Mr. Kernen's condition adjustment (i.e., -10) for both tax years, particularly given Respondent's testimony relative to the remodeling or renovation of Comparable No. 1 after the tax date at issue for the 2018 tax year. [Emphasis added.] See TR2 at 69-71, 87-95, and 146 (i.e., "they came in and **made major revision** to the property, **improved it dramatically**"). [Emphasis added.]

per square foot for Comparable No. 1 of \$48.51 for the 2018 tax year.⁵⁷ With respect to the 2019 tax year, the correct or revised total adjustments should be a negative 10% and not a negative 15% to reflect a revised location adjustment indicated above (i.e., negative five percent), a negative 10.0% condition adjustment to reflect the “dramatic” improvement (i.e., remodeling or renovation) of Comparable No. 1 **prior** to the tax date at issue for the 2019 tax year (i.e., December 31, 2018), and Mr. Kernen’s 5% land-to-building ratio adjustment resulting in an adjusted sales price per square foot for Comparable No. 1 of \$43.61 for the 2019 tax year. [Emphasis added.] With respect to Comparable No. 3, that comparable is described by Mr. Kernen as (i) “a small commercial building” of “similar” size and condition and (ii) as having a “superior location” (i.e., “a major commercial corridor”) and inferior land-to-building ratio (i.e., “up slightly for the subject land to building ratio”).⁵⁸ As a result,⁵⁹ Mr. Kernen adjusted the sale price per square foot of Comparable No. 3 for both tax years by a negative 10% for location and five percent for land-to-building ratio for a total adjustment of a negative five percent.⁶⁰ The correct or revised total adjustment should be 10% and not a negative

⁵⁷ See P-1: Sales Comparison Approach at 42 and 44 (non-Bates stamped). Although **not** addressed above, one of the factors or adjustments that should have been more “extensively explained” by Mr. Kernen relates to the differences in the “quality of construction” of the subject and Comparable Nos. 1 and 3. See P-1: Sales Comparison Approach at 42. In that regard, the subject’s Class C quality of construction is generally better than Comparable No. 1’s Class S quality of construction Comparable No. 3’s Class C/S quality of construction. Nevertheless, **a review of the evidence, specifically the testimony by both parties, indicates that no adjustments for quality of construction were necessary for either comparable.** [Emphasis added.]

⁵⁸ See P-1: Sales Comparison Approach at 41-42 (non-Bates stamped). See also TR at 44-45, 116-117, 139 (i.e., the traffic count for Comparable No. 3 is significantly less than the traffic count for the subject, “[c]orrect”), and 183-184, which provides, in pertinent part:

- Q. Again, based on your experience you decide - - there’s no strict formula, you testified to that. You decide based on your experience in considering these factors what’s less important, what’s more important with respect to this uniquely defining characteristics, correct?
- A. Yes.

See also TR 2 at 111-120.

⁵⁹ Similar to the above, the reflected total adjustment excludes Mr. Kernen’s market condition adjustment of -1.1% for the 2018 tax year and 1.9% for the 2019 tax year, as those adjustments are unreliable.

⁶⁰ See P-1: Sales Comparison Approach at 42 and 44 (non-Bates stamped). See also TR2 at 111-120 (i.e., “it’s off the main corridor of 28th Street, which is considered to be the main corridor in that area as far as traffic count, high visibility, those type of things . . . [w]ell traveled,” “I’ve been in this building before . . . [i]t’s another one conditionalized . . . [i]t’s very inferior to the subject,” “[t]he big detriment to this building in my opinion is there is very little parking to this building,” “[t]he bones of the concrete

five percent to reflect the same revised location adjustment of negative five percent, a revised condition adjustment of five percent to reflect the remodeling or renovation of the subject, and a revised land-to-building ratio adjustment of 10% resulting in an adjusted sales price per square foot for Comparable No. 3 of \$53.31 for both tax years.⁶¹ As for the reconciliation or “weighing” of those sale prices per square foot for the tax years at issue, more weight should be given to the adjusted 2018 sales price for Comparable No. 3 in determining the property’s TCV for the 2018 tax year based on that sale date being closer to the tax date for the 2018 tax year than the sale date of Comparable No. 1. Similarly, more weight should be given to the adjusted sale price per square foot for Comparable No. 1 for the 2019 tax year in determining the property’s TCV for the 2019 tax year based on that sale date being closer to the tax date for the 2019 tax year than the sale date of Comparable No. 3. In that regard, such “weighing” addresses the market conditions applicable for each tax year and provides “concluded” sales prices per square foot of \$51.71 for the 2018 tax year and \$46.84 for the 2019 tax year, which is consistent with the decreasing market for that tax year.⁶² As for his income approach, Mr. Kernén indicated that:⁶³

construction itself I didn’t see anything wrong, majorly wrong, with that portion of it . . . [i]t was more the façade and the decorative portions I guess I would see from the outside of that building,” etc.) and 168-171.

⁶¹ See P-1: Sales Comparison Approach at 41-42 (non-Bates stamped). As for Mr. Kernén’s 5.0% land-to-building ratio, Comparable Nos. 1, 3, 7, and 8 were adjusted five percent for the differences in land-to-building ratio (i.e., 7.31 to 1 versus 3.33 to 1, 2.53 to 1, 4.27 to 1, and 15.96 to 1, respectively) while Comparable Nos. 2, 4, 5, and 6 were adjusted by 10% for the differences in those ratios (i.e., 7.31 to 1 versus 45.61 to 1, 3.06 to 1, 3.09 to 1, and 3.21 to 1, respectively). Notwithstanding the adjustments for Comparable Nos. 2 and 8, which were negative adjustments, it appears that Comparable Nos. 1 and 3 could have both been adjusted by 10% **or, at the very least, Comparable No. 3 should have been adjusted by 10%, as the difference between the land-to-building ratio for that comparable is greater than the differences for Comparable Nos. 4, 5, and 6.** In that regard, see also TR2 at 94 (i.e., “[t]his property when reviewing it doesn’t offer as much parking as the subject does”). [Emphasis added.]

⁶² Said weighing is in contrast to Mr. Kernén’s reliance on his unexplained “experience” in reconciling the “available data.” Said experience was, however, **reliant on his mistaken and unsupported conclusions** regarding market conditions and the broader West Michigan market. [Emphasis added.] See also TR at 57-58, 87, and 147-150.

⁶³ See P-1’s Income Approach at 46-59 (non-Bates stamped). See also TR at 58. Further, see P-1: Reconciliation of Values at 61 (non-Bates stamped) (i.e., [b]ased on the analysis presented in this report **with primary weight placed on the sales comparison approach**”). [Emphasis added.] See TR at 73-75, which provides, in pertinent part:

- Q. Now, as between the two approaches that you used did you place greater weight on any one of these two approaches?

“ . . . it’s another approach or method that market participants are going to look at for this type of property. **These types of properties are commonly leased** and have incom[e] producing potential so this approach is reflective of that type of use for the property in looking at market lease transactions and market data and concluding to a value based on the income producing potential of the property, **so I felt it was a good approach, an appropriate approach to apply this property.**” [Emphasis added.]

Mr. Kernan also indicated, with respect to his seven rental comparables, that:⁶⁴

“ . . . I have to go back to the pool and the types of comparables I looked at. For a commercial use and a property like the subject **a potential tenant is going to have the option of looking at both stand-alone buildings of similar size[,] or spaces within, you know, multi[-]tenant centers.** They’re looking for a **particular size** and, you know, **so I felt that either of those options are good reflections as to the income producing potential for a property like the subject.**” [Emphasis added.]

Like his Sales Comparison Approach, Mr. Kernan utilized the same seven leases for both tax years – four from 2016, two from 2017, and one from 2018. After adjusting for “dissimilarities,” Mr. Kernan determined a concluded rent per square foot of \$5.10 per square foot for the 2018 tax year and \$5.25 for the 2019 tax year based on adjusted rents per square foot ranging from \$4.36 to \$5.55 for the 2018 tax year and \$4.49 to \$5.71 for the 2019 tax year.⁶⁵ Of the leases, the 2016 leases and one of the 2017 leases (i.e., the January 2, 2017 lease) are too remote in time for consideration for both

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- A. Yes, **I placed greater weight on the sales comparison approach.**
Q. Can you tell the tribunal why you did that?
A. Yes. In looking at this property type and the availability of data and the number of sales transactions that occurred in the market **I felt most comfortable with the sales comparison approach** and I feel that for property similar to the subject that **market participants and investors are going to rely heavily on and that’s going to be the primary approach that they look at as well.** So[,] because of those factors I felt that the **income capitalization approach** while meaningful, **was a secondary support** to the sales comparable approach conclusions.

[Emphasis added.]

See also TR at 180-181.

⁶⁴ See P-1: Income Capitalization Approach at 47-51 (non-Bates stamped). See also TR at 59-60.

⁶⁵ See P-1: Income Capitalization Approach at 50-51 (non-Bates stamped). See also TR at 69-70.

tax years and remaining 2017 lease (i.e., the November 17, 2017 lease) and the 2018 lease (i.e., the January 25, 2018 lease) are too remote in time for consideration for the 2019 tax year absent reliable adjustments for changing market conditions from the date the leases were entered into and the tax dates at issue. Unfortunately, Mr. Kernen's 3.0% annual adjustment for changing market conditions is, like Mr. Kernen's 3.0% annual adjustment for his sales comparables, not properly supported, as his rental charts **clearly indicate a market increase from December 31, 2013, to December 31, 2014, from December 31, 2014, to December 31, 2015, and from December 31, 2015, to December 31, 2016; a market decrease from December 31, 2016, to December 31, 2017; and a market increase from December 31, 2017, to December 31, 2018.**⁶⁶ [Emphasis added.] As a result, Petitioner's Comparable Nos. 3, 4, 5, 6, and 7 are unreliable indicators of rental income for the 2018 and 2019 tax years and Comparable Nos. 1 and 2 are unreliable indicators of rental income for the 2019 tax year. Although Comparable Nos. 1 and 2 could be considered in determining the property's rental income for the 2018 tax year, there are unanswered questions relative to Mr. Kernen's adjustments to those comparable leases for location, condition, and quality of construction and, unlike Mr. Kernen's Sales Comparison Approach, insufficient information was provided to revise or otherwise add an adjustment for quality of construction to reflect the Class C quality of construction for the subject and the Class D quality of construction for Comparable No. 1.⁶⁷ Additionally, there are also

⁶⁶ See Mr. Kernen's Charts entitled "Market Conditions – Comparable Rentals" in P-1 at 48 and 49 (non-Bates stamped). See also TR at 126, which provides, in pertinent part:

- Q. So[,] the annual adjustments you make, market conditions I believe on your chart there?
A. Yes.
Q. Where did that number come from?
A. I concluded that the three percent, and it's just an estimate **based on the trend line** that is presented in those two charts on page 48 [and page 49].

[Emphasis added.]

⁶⁷ As for Mr. Kernen's other adjustments, the subject is, as indicted above, located in a stable market, while Comparable Nos. 1 and 2 are located in increasing markets with no proper explanation as to the variance between the two adjustments (i.e., 5.0% for Comparable No. 1 and -10.0% for Comparable No. 2). See TR at 96-97 and 105 (i.e., "[i]t's a decent retail location"). Further, the subject was built in 1971 and renovated or remodeled in 2014, as discussed above. On the other hand, Comparable No. 1 was built in 1985 and renovated in 2004 and Comparable No. 1 was built in 1993 with no renovation, which

unanswered questions with respect to Mr. Kernan's "market derived" capitalization rate, as Mr. Kernan relied on market information relative to sales not only outside of the actual market area (i.e., Kent County or the Kent County submarket), but also outside of his "broader" West Michigan market (i.e., Charlotte in Eaton County, Saint Johns in Clinton County, Webberville in Ingham County, Olivet in Eaton County, etc.) with no description of those sales other than the listed information or, more importantly, an explanation as to their relevance to the Kent County market or, more appropriately, Kent County submarket.⁶⁸ As a result, Mr. Kernan's income approach is an unreliable indicator of value.⁶⁹ Nevertheless, Petitioner's appraisal or, more specifically, Mr. Kernan's sales comparison approach is, as revised herein, a reliable indicator of value and, as a result, Petitioner has clearly met its burden of going forward.⁷⁰

raises unanswered questions to the -5.0% adjustment for Comparable No. 1 and -10.0% for Comparable No. 2). See P-1: Income Capitalization Approach at 49-51 (non-Bates stamped). See also TR at 61-62. With respect to the other comparable leases, see TR at 62-69.

⁶⁸ See the Chart entitled "Overall Capitalization Rates – Market Derived" in P-1 at 54 (non-Bates stamped). See also TR at 71 and 173-176, which provides, in pertinent part:

- Q. The first property listed is Grand Haven, Michigan?
A. Correct.
Q. So[,] where did you get these properties from? Why did you use these properties?
A. These would be properties that - - **I guess I can't say with 100% certainty**, but - - typically for expense comparables like this these are properties that my firm has appraised in the past where we have this information.
Q. **So[,] the only information we know about these properties here is what you have listed?** They're not mentioned elsewhere in your report?
A. **Correct.**

[Emphasis added.]

⁶⁹ Although there are also questions with respect to the reliability of Mr. Kernan's calculated "Net Operating Income," a review of that calculation is unnecessary, given the unreliability of his rental incomes and capitalization rates. See P-1: Income Capitalization Approach at 52-53. See also TR at 70-73, 94-102 (i.e., "[m]ore refined data," "I looked at that **narrow area** for all of my data," "I looked at data from a two mile radius around the subject and the comparables," "[n]ot in the report, no," "[t]hey're in my work file," etc.), and 150-173, which provides, in pertinent part:

- A. Similar to the sales approach, I looked at the level of adjustment. I looked at the adjusted rental rates for all the comparables **and concluded that I felt \$5.10 was the most reasonable conclusion of market rental rate for the property.** [Emphasis added.]

Further, see TR at 176-179.

⁷⁰ See MCL 205.737(3) (i.e., "[t]he petitioner has the burden of proof in establishing the true cash value of the property"). See also *Jones & Laughlin, supra* at 354, which provides, in pertinent part:

In that regard, Respondent submitted, among other things,⁷¹ the property's record cards for the 2018 and 2019 tax years and the property's valuation reports for the 2018 and 2019 tax years. Respondent did not, however, submit the land sales study underlying the adjusted square footage rate utilized to calculate the property's land value for either tax year.⁷² Respondent also failed to provide the economic condition factor or ECF analysis underlying the ECF utilized to adjusted the depreciated cost of the subject improvements to reflect their market value or testify that the ECF analysis utilized to determine the ECF for the 2019 tax year, if dependent on dated sales, was re-costed to ameliorate the impact of the new State Assessors Manual (i.e., revised in 2014 effective for the 2019 tax year).⁷³ Respondent further failed to testify or otherwise indicate the basis for the depreciation factors reflected on the record cards. As a result, the cost-less-depreciation approach reflected by the property's record cards and

The tribunal correctly noted that the burden of proof was on petitioner, MCL § 205.737(3); MSA § 7.650(37)(3). **This burden encompasses two separate concepts:** (1) the burden of persuasion, which does not shift during the course of the hearing, **and** (2) **the burden of going forward with the evidence, which may shift to the opposing party.** *Kar v Hogan*, 399 Mich 529, 539-40, 251 NW2d 77 (1976); *Holy Spirit Ass'n For the Unification of World Christianity v Dep't of Treasury*, 131 Mich App 743, 752; 347 NW2d 707 (1984). [Emphasis added.]

⁷¹ The property's building permit and mortgage deed were offered and, as indicated above, admitted into evidence (R-3 and R-4) in support of Respondent's contentions. See TR at 83-84. See also TR at 181-182 and 195-202.

⁷² Although the record cards indicate that "rates have been adjusted due to the large size of the parcel," Respondent failed to indicate the unadjusted rates, the adjustments made to those rates, and how those adjustments were determined. See also STC Commission Bulletin No. 16 of 2018, which provides, in pertinent part:

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

See also TR at 186-188.

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

valuation reports is an unreliable indicator or value.⁷⁴ Respondent did, however, also submit, as part of the property's assessment records, documents entitled "Income Capitalization Calculations" (R-2, R-42.1, and R-42.2) that indicate estimated TCVs of \$1,332,368 for the 2018 tax year and \$1,311,463 for the 2019 tax year under an income capitalization approach.⁷⁵ Although the documents or, more appropriately, calculations

⁷⁴ See TR2 at 12-13, which provides, in pertinent part:

- A. . . . so as part of the record card that was submitted there is the normal cost approach that you would find on record cards, **which does have land values and ECFs and, you know, we do have that as part of our record card.**

We're **not** hanging our hat on the cost approach so the, Judge, what you said yesterday about not having that [i.e., land sales study and ECF analysis], **we definitely aren't hanging our hat on the cost approach similar to the way the petitioner is not hanging their hat on the cost approach.** What we're hanging our hat on is the income approach and that was included as part of the re[cord] card.

[Emphasis added.]

See also TR2 at 53-54 (i.e., "[t]he cost analysis that I see in respondent's Exhibit Number 2 is **not** applicable for today's purposes, correct [c]orrect"). [Emphasis added.]

⁷⁵ The reduction in Respondent's proposed rental rate per square foot of \$7.50 for the 2018 tax year to \$7.00 for the 2019 tax year was the principle reason for the difference in TCV for those tax years. Said proposed reduction was, among other things, purportedly wrong, as indicated by Mr. Rosenzweig. See TR2 at 13-16 and 19-23, which provides, in pertinent part:

- A. If you look at what my original submission was[,] **I noticed that I had the wrong square footage in.** That is probably the biggest one. Based on looking at it I don't know if that was a typo or not[,] but our original had I believe 21,027. **I would revise that to 21,044.** 21,027 I originally had.

In reviewing some stuff[,] I believe I have the wrong rent for the 2018 year. I originally had \$7.50. I revised that to \$7 a square foot for both years. I had the wrong I believe [] operating expense in - - I'm trying to look here. **I had the wrong operating expense in 2019 and 2018.**

Essentially[,] I believe in one of the years I used a five percent operating expense and then the other year I used a ten percent. **Actually[,] the one that's ten percent is correct. They should both be ten percent operating expense.**

- Q. Okay. Just my purposes you've now said - - you said both total operating expenses are incorrect but now you're saying that one of them is correct, so which of the two of them is correct.
- A. **2018 I use ten percent.**
- Q. You used ten percent in 2018 - -
- A. And that was correct.
- Q. - - resulting in a total annual operating expense of 14,982?
- A. Yes, except that's wrong because I used the wrong rate of 7.50, so if you use the correct rate of \$7 at the correct square footage of 21.044 and then ten percent that operating expense would be 13,994, and I did print out revised statements for both years.

were corrected by Respondent, Respondent did not, unfortunately, provide its underlying “research” (i.e., data, etc.) in support of its calculations rendering its income approach an unreliable indicator of value.⁷⁶

-
- Q. **So[,] you’re saying the 13,994 should be the operating expense for both years?**
A. No. for 2018.
Q. What about 2019?
A. **Yes, I’m sorry for both years**
Q. Based on those corrections have you come up with a revised value for each year?
A. I have. **My revised value for 2018 would be \$1,244,549.**
Q. Repeat that, please.
A. \$1,244,549.
Q. That’s for ’18?
A. Yes.
Q. 1,244,549?
A. Yes.
Q. **What happened for ’19?**
A. **1,243,443.**
Q. 1,243,200 - -
A. - - 443.

[Emphasis added.]

Although purportedly wrong, said reduction was **consistent** with the Tribunal’s finding of an increasing market for rentals for the 2019 tax year and decreasing market for sales, **which highlights or otherwise exacerbates Respondent’s failure to provide the underlying documentation or market information supporting its original and revised “Income Capitalization Calculations” or, more specifically, the original and corrected components of those calculations.** [Emphasis added.]

⁷⁶ See TTR 237(1), which defines “valuation disclosure” to mean “documentary or other tangible evidence in a property tax contested case that a party relies upon in support of the party’s contention as to the true cash value of the subject property or any portion thereof and **contains the party’s value conclusions and data, valuation methodology, analysis, or reasoning.**” [Emphasis added.] More importantly, see also TR2 at 16-19, 26, and 54-61, which provides, in pertinent part:

- Q. All the stuff you just mentioned, I notice that you’re mentioning it, **but none of this is attached to your valuation disclosure; is that correct?**
A. **That is correct.**
Q. So[,] whether these figures are - - and on your corrected version here too, respondent’s R42, that would be the same answer, right? There is no - - I know you testified that you corrected the square footage figure, for example, to \$7.00 a square foot but I don’t see anything attached here as evidence of backup or anything that says what you just testified; is that right
Q. **Even on the corrected version you gave me today you would agree with me that there’s no back up or evidence or anything to substantiate, verify these numbers such that either me or the tribunal could make sure that these numbers are correct, right?**
A. **Only in our work file.**
Q. **But your work file is not attached to this, right?**
A. **It is not.**
Q. Again, I supposed you made mistakes in the original []valuation disclosure, right?
A. Yes.

Based on the above, the Tribunal concludes that Mr. Kernens's revised sales comparison approach is the only reliable indicator of value and provides "the most accurate valuation under the circumstances."⁷⁷ The Tribunal further concludes that the subject property's TCV and TV for the tax years at issue are as listed in the Introduction Section of this Proposed Opinion and Judgment (POJ).

PROPOSED JUDGMENT

This is a proposed decision and not a final decision.⁷⁸ As such, no action should be taken based on this decision.

After the expiration of the time period for the opposing party to file a response to the exceptions, the Tribunal will review the case file, including the POJ and all exceptions and responses, if any, and:

1. Issue a Final Opinion and Judgment (FOJ) adopting the POJ as the final decision.
2. Issue an FOJ modifying the POJ and adopting the Modified POJ as the final decision.
3. Issue an Order vacating the POJ and ordering a rehearing or such other action as is necessary and appropriate.

EXCEPTIONS

This POJ was prepared by the Michigan Administrative Hearings System. The parties have 20 days from date of entry of this POJ to notify the Tribunal **in writing, by mail or by electronic filing, if available**, if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions).

Exceptions are **limited** to the evidence submitted prior to or at the hearing and any matter addressed in the POJ. There is no fee for filing exceptions and the opposing

-
- Q. Okay. So how are we to know that there are no mistakes on this corrected version if there's nothing attached to verify. How am I supposed to know what - - how can I verify this \$7 per square foot for rental rate? You said you spoke to a lot of [] people and they told you things. You said you spoke to the equalization department and that they have studies, but I don't see any studies so how apart from your testimony are we supposed to verify that square footage rental rate?
- A. I have my testimony also. Do you want to ask to see my work material?

[Emphasis added.]

⁷⁷ See *Jones & Laughlin*, *supra* at p 353.


⁷⁸ See MCL 205.726.

party has 14 days from the date the exceptions were mailed to that party to file a written response to the exceptions.⁷⁹

Exceptions and responses filed by *e-mail or facsimile* will **not** be considered in the rendering of the Final Opinion and Judgment.

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

Entered: April 20, 2020
pmk

By 

⁷⁹ See MCL 205.762(2) and TTR 289(1) and (2).