



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

Centerpoint Owner, LLC,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 18-002499

City of Grand Rapids,
Respondent.

Presiding Judge
Victoria L Enyart

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Centerpoint Owner, LLC, , appeals ad valorem property tax assessments levied by Respondent, City of Grand Rapids, for the 2018 tax year. David Hugin, and Michelle M Silvey of Ryan, LLC represented Petitioner and Ryan Shannon, of Dickinson Wright PLLC represented Respondent. Petitioner’s sole witness was Marc G. Nassif, MAI, Leed AP, MRICS. Respondent’s sole witness was Brandon L. Ellis, MAI. A hearing on this matter was held on November 12 and 13, 2019.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash value (TCV), state equalized value (SEV), and taxable value (TV) of the subject property for the 2018 tax year are as follows:

<u>Parcel Number</u>	<u>TCV</u>	<u>AV/SEV</u>	<u>TV</u>
41-18-11-376-029	\$4,000,000	\$2,000,000	\$1,883,234
41-18-11-376-037	\$600,000	\$968,400	\$919,200
41-18-11-376-038	\$55,214,900	\$27,607,450	\$25,028,744
41-18-11-376-039	\$1,250,000	\$625,000	\$385,086
41-18-11-376-040	\$1,115,000	\$753,600	\$715,306
41-18-11-376-041	\$1,220,000	\$610,000	\$521,400
41-18-11-451-002	\$3,700,000	\$1,850,000	\$1,738,558
41-18-11-452-017	\$100	\$33,800	\$33,800
Total	\$67,100,000	\$34,448,250	\$31,225,328

The subject property had some new construction which accounts for the slight increase in taxable value.

PETITIONER'S CONTENTIONS

Petitioner contends that the subject property is assessed in excess of 50% of its true cash value for the tax year at issue.

Petitioner's contentions of TCV, SEV, and TV, as established by its valuation disclosure, is \$47,500,000.¹

PETITIONER'S ADMITTED EXHIBITS

P-1: Appraisal prepared by Marc Nassif

PETITIONER'S WITNESS

Petitioner presented testimony from its Certified General Appraiser, Marc G Nassif, MAI, LEED AP, MRICS. Based on his experience and training, the Tribunal accepted Mr. Nassif as an expert in the valuation of real property. Mr. Nassif prepared an appraisal of the fee simple interest of the subject property as of December 31, 2017.

Mr. Nassif determined that the cost approach was not applicable due depreciation being unreliable, and investors tend to not rely on the cost approach when purchasing property. The sales comparison approach and income capitalization approaches were employed and relied upon.

The sales comparison approach was considered reliable to determine the true cash value of the subject property. Petitioner's appraiser utilized the following four sales that have unadjusted prices ranging between \$79.43/SF and \$123.48/SF:

	Subject	P-1	P-2	P-3	P-4
Address	28th St SE	Clinton Valley	Lakeshore	Felch Street	Maple Hill
City	Grand Rapids	Sterling Hts	Norton Shores	Holland	Kalamazoo
Sale Price		\$23,500,000	\$27,750,000	\$20,510,000	\$32,833,000
Sale Date		17-Aug	16-Jun	16-Apr	16-Oct
SF	583,622	205,435	349,371	166,100	283,551

¹ Petitioner's final appraisal did not prepare a per parcel allocation. It is noted however, that a draft did include the allocation.

SP/SF		\$114.39	\$79.43	\$123.48	\$115.79
Year Blt	1967	1979	1996	1999	1971
Occupancy	84%	91%	96%	100%	100%
NOI/SF		\$11.15	\$6.35	\$9.32	\$9.52
OAR		9.75%	8.00%	7.55%	8.23%

Petitioner adjusted Sale 1 downward for its superior location, smaller size and superior occupancy. Sale 2 was adjusted downward for smaller size and superior occupancy, and upward for inferior location and effective age. Sale 3 was adjusted downward for smaller size and superior occupancy. Sale 4 was adjusted downward for smaller size, superior land to building ratio, and superior occupancy, and upward for the inferior location. Petitioner’s adjustments ranged from 1% to 35%, adjusted prices ranged from \$78.63 to \$81.05 SF. The conclusion was \$86.02 per square foot or \$46,700,000, true cash value as of December 31, 2017 via the Sales Comparison Approach.

Mr. Nassif presented the income capitalization approach which converts the projected income into a present value using a direct capitalization. Economic gross income conclusion for the tenancy type².

The Anchor Stores are:

Tenant Name	Sq. Feet	Tenancy
Nordstrom Rack	36,000	Anchor
Planet Fitness	38,459	Anchor
TJ Maxx	52,000	Anchor
Toys R Us	43,000	Anchor
Tuesday Morning	43,000	Anchor

The following comparables were considered for the subject’s Anchor Stores:

Lease	1	2	3	4	5	6
City	Essexville	W River	Holland	Wyoming	Cadillac	Lansing
Tenant	Kroger	Office Max	Lowe's	Planet Fitness	Hobby Lobby	TJ Maxx
SF	64,562	21,430	131,644	28,000	25,910	4,283
Date	11/14	5/15	5/17	5/17	1/13	1/15
Months Term	12	72	120	120	120	180

² P-1 at p. 39 lists the rent roll with tenancy type.

\$/ Sq Ft.	\$6.33	\$9.00	\$6.71	\$5.18	\$7.70	\$9.25
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The leases were all triple net and averaged \$7.36 per square foot (PSF), the subject's average was \$7.57 PSF. \$7.50 was the conclusion for the anchor stores.

The Junior Anchors include the following:

Tenant Name	Sq. Feet	Tenancy
Chuck E Cheeses	12,000	Jr Anchor
Cost Plus World Market	18,661	Jr Anchor
DSW Shoe store	18,000	Jr Anchor
Dunham's	28,235	Jr Anchor
Golf Galaxy	20,330	Jr Anchor
Jo-Ann	36,000	Jr Anchor
Old Navy	15,313	Jr Anchor
Spring Loaded	29,500	Jr Anchor
Ulta	11,047	Jr Anchor

The market leases for the Junior Anchor Stores are:

Lease	1	2	3	4	5
City	Oakland	Taylor	Lansing	Howell	Hall Rd.
Tenant	Michael's	Lumber Liquidators	JoAnn	PetSmart	15457 Hall Rd
SF	21,677	9,600	30,077	20,394	25,910
Date	10/14	8/14	6/14	9/16	1/13
Months Term	120	88	60	120	120
\$/ Sq Ft.	\$12.00	\$12.25	\$13.00	\$10.49	\$14.50

Rent for the subject is \$13.13, the average market was utilized at \$12.00 PSF for the Junior Anchor Stores.

Inline stores above 1,500 square feet are:

Tenant Name	Sq Feet	Tenancy
USPS	1,525	Inline
Motherhood	1,800	Inline
Vacant	2,200	Inline
Vitamin Shoppe	3,000	Inline
Christopher & Banks	3,665	Inline
Idea I Image	3,744	Inline
Kim's Laundromat	4,000	Inline
Lou Brown Cards	4,460	Inline

Mich Con	5,040	Inline
Maurice's	5,128	Inline
Lane Bryan	5,616	Inline
Mattress firm	6,740	Inline
Men's Wearhouse	7,500	Inline
Dress Barn	7,800	Inline
Five Below	7,800	Inline
Secretary of State	8,287	Inline
David's Bridal	10,000	Inline
Orbitz Room	19,949	Inline
Vacant	48,276	Inline

Market rent for the Inline Stores above 1,500 square feet are:

Lease	1	2	3	4	5	6
City	Grand Rapids	Grand Rapids	Grand Rapids	Kentwood	Gaslight	Paris Ave
Tenant	Enterprise	Liberty Tax	Shoe Carnival	Wok Box	Local	Local
SF	8,536	1,700	1,300	1,450	1,137	1,240
Date	8/14	1/14	10/17	10/16	5/17	4/16
Months Term	180	60	120	Unk	Unk	36
\$/ Sq. Ft.	\$17.00	\$17.13	\$22.00	\$23.50	\$21.00	\$15.00

The range of rents are from \$15.00 to \$23.50, the subject's 172,428 square feet averages \$19.70 PSF. The conclusion is \$20.00 PSF market rent.

The following are the Inline stores less than 1,500 square feet:

Tenant Name	Sq Feet	Tenancy
Two Men & a Truck	688	Inline
U Break I fix	1,030	Inline
Macy Nails	1,212	Inline
Lutheran Home Care	1,400	Inline

No comparables were listed for the 6,530 square feet of inline space less than 1,500 square feet. The average market rent ranged from \$15.00 to \$22.00 PSF. The subject rents for \$24.25 PSF, Mr. Nassif concluded to \$22.00 PSF market rent.

The subject has four restaurant spaces located on outlots. They are:

Tenant Name	Sq Feet	Tenancy
Five Guys	2,600	Restaurant
Krispy Kreme	4,504	Restaurant
Potbelly	2,000	Restaurant
Salad Works	2,165	Restaurant
Chic Fil A	4,850	Restaurant

Chick-Fil-A has a ground lease which was not considered because the fee simple interest is being appraised, but the nearly finished vertical improvements were included.

The following leases were considered:

Lease	1	2	3	4	5
City	Waterford	Ann Arbor	Ann Arbor	Howell	Kentwood
Tenant	Family Diner	Texas Roadhouse	Local	Panera	Qdoba
SF	3,220	7,163	3,000	4,283	3,000
Date	9/16	5/15	2/15	1/15	8/15
Months Term	60	180	60	180	120
\$/ Sq Ft.	\$17.00	\$19.54	\$30.00	\$31.00	\$46.00

The subject's average rent is \$30.72 (excluding Chick-Fil-A), market was determined to be \$30.00 PSF.

No rent was assigned to the vacant 36,000 square feet of "big box" area. Mr. Nassif considered the big box space of 36,000 square feet not leasable. The current Owner has budgeted \$1,000,000 to deliver the space as a white box.

Mr. Nassif, after determining rent per tenancy concluded to the following tenancy type:

Tenancy Type		Sq. Feet	Rent per Sq. Ft	Annual Rent
Anchor	35,000 sf	169,459	\$ 7.50	\$1,270,943
Jr Anchor	10,000-35,000	183,086	\$ 12.00	\$2,197,032
In-line	1,500+	172,428	\$ 20.00	\$3,448,560
In-line	1,500-	6,350	\$ 22.00	\$143,660
Vacant Big Box		36,000	\$ -	\$0

Restaurant		16,119	\$ 30.00	\$483,570
Total Square Feet		583,622		\$7,543,765

Additional income included actual billboard and ATM income. The subject's income basis is triple net, the landlord recovers taxes, insurance, and common area maintenance ("CAM"). \$18,081 in percentage rent is from TJ Maxx. Century Driving School is miscellaneous income.

The market stabilized occupancy is 95% to 97%. The subject property has an actual 84% vacancy. Mr. Nassif determined stabilized vacancy of 90%.³

Subject expenses (per square foot) were compared with four expense comparables to result in the following:

Expense Item	Comps Average	2017	Appraiser
Insurance	\$0.22	\$0.18	\$0.22
Utilities	\$1.53	\$1.88	\$1.90
CAM	\$2.12	\$1.86	\$1.90
Administrative	\$0.63	\$0.53	\$0.55
Management	\$0.95	\$0.52	\$0.64
Total Operating	\$4.91	\$4.99	\$5.31

Mr. Nassif's summary of the income and expenses is predicated on the preceding analysis.

Potential Gross Income	\$8,869,247
Vacancy & Credit Loss 16%	\$1,419,079
Effective Gross Income	\$7,450,168
Expenses	
Insurance	\$128,397
Utilities	\$1,108,882
Cam	\$1,108,882
Administrative	\$320,992
Reserves	\$372,508

³ 36,000 sq. ft of space was determined to be obsolete however, it was excluded from the 90%. In the final analysis 15% was utilized.

Total Expenses (42.8%)	\$1,459,906
Net Operating Income ("NOI")	\$3,185,566
Per Square Foot	\$7.31

The next step in the income approach is to consider capitalization rates.

Petitioner considered rates extracted from the four sales previously considered which resulted in a range from 7.55% to 9.75%. Investor Surveys were 6.73%, 6.60% and 10.05%. The Band of Investment was also calculated resulting in 8.03%. He concluded to 8.50%

The primary weight was the market extracted 8.50% plus the effective tax rate for a tax loaded Overall Rate (OAR) of 8.88229131%. The \$4,264,601 net operating income is divided by the OAR resulting in \$48,000,000 or \$82.85 per square foot value via the Income Approach.

Mr. Nassif reconciled the sales comparison approach \$46,700,000, \$80.02 square foot, and the income approach at \$47,900,000, \$82.07 square foot. The sales comparison approach was difficult due to the quality of tenant, location and overall quality and condition of the properties. The inability to account accurately for the differences in properties reduced his reliance on the sales comparison approach, as it was developed as support for the income approach.

Investors rely on the income approach in making purchasing decisions. Good quality data was available for rent and capitalization rates. The subject has long-term lease agreements. Mr. Nassif utilized the income approach as the most credible indication of the price an investor would pay for the subject. It was not the sole approach in the final opinion of value. \$47,500,000 for Petitioner as of December 31, 2017.

Upon cross-examination, when questioned about the subject's 2014 sale of \$68,000,000, and why it was not mentioned in the report, Mr. Nassif noted that it was three years prior to tax date, and it was not required by USPAP.

Respondent questioned Mr. Nassif on his "draft" of the appraisal that was in his work file.⁴ The draft report is R-18 Mr. Nassif did not know which draft was presented

⁴ R-18, Tr 1 at p 70.

was, but appeared to be most of an entire appraisal. The draft contained the following were notable changes from the draft to the report filed with the Tribunal.⁵

The overall capitalization rate was 8% in the draft, 7.5%⁶ in the filed copy and changed to 8.5%. From the draft report to the filed copy Mr. Nassif agreed that his market rent and cap rate changed in favor of a lower value.⁷ In addition, the draft report concluded to 10% vacancy, the filed report also indicates the same on page 42. However, it changes to 15% (P-1 at p 46) thereafter without any explanation.

Mr. Nassif did not include any of the pre-leases for Chick-fil-A or Sierra Trading Post anchor. He agreed that an investor would consider the pre-leases. A person in the office confirmed the sales he used. The sales were not inspected or driven by prior to utilizing them. All the sales were deemed to be superior to the subject property and were adjusted downward.

The subject property was not measured, the square footages were taken from the leases. Mr. Nassif was not aware that Jo-Ann Fabrics was 6,500 square feet larger than the lease. He was aware that Lease 1 was a Kroger Store that occupied the property prior to the 2014 lease. Lease 4 is Lowes with 131,644 square feet. Respondent was questioned on the Lowes's Lease:

Q. Is there a single unit at the subject that's even half that size. A. No.

R-18 the "draft" report included higher concluded rates for the majority of the space.

Mr. Nassif's most egregious error, however, was the missing utility reimbursement.⁸

Q. You don't have 1.1 million dollars in utility recoveries reflected in your potential gross income, do you?

A. No, I do not.

⁵ The appraisal is dated June 18, 2019, with a time stamp of 6/18/2019 12:06:36 AM.

⁶ P-1 at p 48, 8.5% in first paragraph, 7.5% in second paragraph.

⁷ Tr at 82.

⁸ Tr. at p 105 (P-1 at p 44 and p 46)

An error in millage rate amended the value conclusion to \$47,500,000.

Upon redirect Mr. Nassif was asked what the potential gross income was originally. (\$8,869,247) and the change if the utilities were added in, which resulted in \$9,978,129. The next step would deduct vacancy and credit at 15%, which results in a final net operating income of \$5,196,062. Petitioner then rested.

RESPONDENT'S CONTENTIONS

Respondent contends that the subject property is assessed at less than 50% of its true cash value.

The property's TCV, SEV, and TV as established by the Board of Review for the tax years at issue are as follows:

Parcel Number	2018 Roll TCV	2018 Roll AV/SEV	2018 Roll TV
41-18-11-376-029	\$3,689,000	\$1,844,500	\$1,844,500
41-18-11-376-037	\$1,936,800	\$968,400	\$919,200
41-18-11-376-038	\$52,852,200	\$26,426,100	\$25,028,744
41-18-11-376-039	\$1,119,400	\$559,700	\$385,086
41-18-11-376-040	\$1,507,200	\$753,600	\$715,306
41-18-11-376-041	\$1,042,800	\$521,400	\$521,400
41-18-11-451-002	\$3,405,600	\$1,702,800	\$1,702,800
41-18-11-452-017	\$67,600	\$33,800	\$33,800
Total	\$65,620,600	\$32,810,300	\$31,150,836

Respondent's revised contentions of TCV, SEV, and TV, based on its valuation disclosure, are as follows:

Parcel Number	TCV	AV/SEV	TV
41-18-11-376-029	\$4,000,000	\$2,000,000	\$1,883,234
41-18-11-376-037	\$600,000	\$968,400	\$919,200
41-18-11-376-038	\$55,214,900	\$27,607,450	\$25,028,744
41-18-11-376-039	\$1,250,000	\$625,000	\$385,086
41-18-11-376-040	\$1,115,000	\$753,600	\$715,306
41-18-11-376-041	\$1,220,000	\$610,000	\$521,400
41-18-11-451-002	\$3,700,000	\$1,850,000	\$1,738,558

41-18-11-452-017	\$100	\$33,800	\$33,800
Total	\$67,100,000	\$34,448,250	\$31,225,328

RESPONDENT'S ADMITTED EXHIBITS

R-1 Appraisal prepared by Bradon L Ellis, MAI and Michael E Ellis, MAI
R-3 Property Record for Parcel 41-18-11-376-029
R-4 Property Record for Parcel 41-18-11-376-037
R-5 Property Record for Parcel 41-18-11-376-038
R-6 Property Record for Parcel 41-18-11-376-039
R-7 Property Record for Parcel 41-18-11-376-040
R-8 Property Record for Parcel 41-18-11-376-041
R-9 Property Record for Parcel 41-18-11-451-002
R-10 Property Record for Parcel 41-18-11-452-017
R-18 Rebuttal Petitioner's Draft Appraisal
R-27 Rebuttal Using Petitioner's Pro Forma Correcting to Stabilized Vacancy, Correcting Recoveries and Correcting Cap Rate.

RESPONDENT'S WITNESS

Respondent presented testimony from Brandon Ellis, MAI. Based on his experience and training, the Tribunal accepted Mr. Ellis as an expert in the valuation of real property. He prepared and communicated an appraisal of the subject property's fee simple interest. Mr. Ellis made an extraordinary assumption the standalone restaurant building, and site improvements subsequently occupied by Chick-fil-A was 50% completed and that the construction of the 20,000 SF leased to Sierra Trading Post was also 50% occupied, as of tax day.

The fee simple ownership interest subject to current occupancy at market rent with the exception of Toys R US which was subject to a late 1970's lease.

The ownership, occupancy and sales history of the subject was discussed. The current owner acquired the subject property June 2014 for \$68,000,000. The subject's conversion from enclosed to a power center was fairly complete. The 11,480 sf freestanding multiple-tenant retail strip was partially constructed, with some leases. As of the valuation date, the subject was listed by Colliers International, including three anchor units, three inline units, and Roadfront inline units. The parcel with the older retail and concert venue was listed in 2018 for \$1,300,000. Krispy Kreme's parcel with 2016 lease extension to 2017 sold July 2018, for \$1,600,000.

The appraisal includes a sales comparison and income approach for the tax years at issue. The cost approach was considered but not utilized due to the high levels of external obsolescence present in the market and the typical purchaser would not rely upon this technique in decision making. The historical land sales were reviewed to test whether the improvements contribute value in excess of the underlying land, the improvements did exceed the value of the land.

Mr. Ellis describes the subject property as a retail power center with outlots converted from an enclosed regional mall. Some portions of the improvements remain enclosed. This includes an actively used hallway between the front of the center and the unit occupied by Nordstrom, and a section between the units occupied by Airtime and Old Navy.⁹The two spaces that are vacant and functionally obsolete include the 22,500 space between Airtime and Old Navy and 7,808 square feet located behind Airtime. Excluding those two the subject contains 553,315 square feet of gross leasable area.

The analysis of highest and best use in the land as if vacant was “Retail development consistent with those uses permitted by the applicable zoning application.”¹⁰ As improved,” The existing improvements contributed value beyond that of the vacant land.” The existing use of the subject is consistent with the conclusion of highest and best use which is concluded to be as a retail power center.

The income approach was considered as the subject is an income producing property, therefore the income approach follows. The subject’s income approach was broken down into the individual category’s; Anchor Stores, Exterior Inline Units, Interior Inline Units, Roadfront Inline Units, Older Retail, and Standalone Restaurants. Market rent was research for each category and compared with recent activity at the subject.

The Anchor Stores are:

Anchor	SF
Home Goods	52,000
Dunham’s	28,235
Nordstrom R	36,000
Sierra Trading	20,000
DSW	18,000

⁹ R-1 at p 69.

¹⁰ R-1 at p 117-119.

Cost Plus	18,661
Old Navy	15,313
Jo-Ann's	38,500
Golf Galaxy	20,330
Spring Loaded III	29,500
Planet Fitness	38,459
IC ¹¹	22,500
Toys R Us	43,000
Total	380,498

The current rent ranges from \$5.48 to \$15.00 per square foot. The average is \$11.05, five leases (24,229 sf) were new or amended renewals were \$11.80 for the weighted average. This took into account the size of the unit. The Toys R Us has an original 1979 with options to January 2029 and was appraised separately.

The typical appraisal of a retail property like the subject requires that a leased fee valuation be provided. "Because the function of the appraisal is to estimate market value for ad valorem tax purposes, the valuation utilized requires that the economic (market) rent be utilized instead of contract rentals for all but the Toys-R-Us unit in this instance. Use of economic (market) rent instead of contract rents reflects a Jurisdictional Exception under USPAP that is necessary to comply with Michigan law."¹²

Five comparable Anchor Leases were considered.

Lease	1	2	3	4	5
City	Grand Rapids	Kentwood	Kentwood	Cascade	Georgetown
Tenant	TJ Maxx	Pet Smart	Ashley Furniture	Fowling Whse.	Rebounderz
SF	22,950	26,000	30,000	45,000	54,000
Date	1/19	6/18	2/18	6/17	2/16
Term	10 yrs	10 yrs	10 yrs	69 mo.	120
\$/ Sq. Ft.	\$10.95	\$14.50	\$11.00	\$3.70	\$5.00

¹¹ This unit is determined to be functionally obsolete (and vacant) with no market rent assigned.

¹² R-1 at p 122.

The individual properties were discussed and graphed including a qualitative analysis. The resulted in an estimate of \$11.00 per sf for anchor stores. (Excluding Toys-R-Us.)

Exterior Inline included former enclosed mall and stand alone retail. The largest unit includes what was previously 9,922 sf of dead space.

The Exterior Inline space follows:

Exterior Inline	
Vacant 50	4,407
Dress Barn 80	7,800
Ulta 100	11,047
Five Below 110	7,800
Maurice's	5,128
David's Bridal 190	10,000
Macy Nails 200	1,212
Cards 00	5,400
CJ Banks 310	3,665
Vacant 330	3,000
Ideal Image 340	3,744
Tuesday Morning 350	18,098
Lane Bryant 360	5,616
Chuck E Cheeze380	1,200
Vacant 401	7,808
Total	95,925

The subject property's \$15.75 sf triple net leases are considered and compared with twelve comparable properties (Comps 6-17):

Comp #	City	Size	Date	Tenant	Terms	Rate
6	Grand Rapids	2,000	Listing		3-5 yrs	\$12.50
7	Grand Rapids	2,750	Listing		5-10 yrs	\$15.00
8	Grand Rapids	1,056	Listing		5-10 yrs	\$22.00
9	Grand Rapids	10,080	8/19	Ulta	10 years	\$23.00
10	Grand Rapids	8,500	8/19	Five Below	10 years	\$17.50

11	Grand Rapids	12,500	8/19	Old Navy	10 years	\$21.00
12	Grand Rapids	3,500	8/19	Bath & Body	10 years	\$27.00
13	Grand Rapids	3,200	7/18	Orange Therapy	11.5 yrs	\$24.88
14	Grand Rapids	5,000	7/18	Woodhouse Spa	10 years	\$25.90
15	Grand Rapids	3,340	6/18	eurocore	10 years	\$28.50
16	Grand Rapids	7,000	6/18	Chow Hound	10 years	\$20.00
17	Grand Rapids	2,167	3/14	Lole	5 years	\$18.00

The individual properties were discussed and graphed with qualitative analysis. The resulted in an estimate of \$15.45 per sf NNN for the subject's exterior Inline stores.

The Interior Inline Units were considered, the following summary reflects the remaining enclosed portions of the subject property:

Interior Inline	
Vacant 220	
MI Sec of State 210	8,207
USPS 410	1,525
Two Men & Truck 430	400
Total	1,525

The subject property's \$15.00 sf leases are considered and compared with twelve comparable properties (Comps 18-29):

Comp #	City	Size	Date	Tenant	Terms	Rate
18	Wyoming	1271	4/15	Designer	39 mo.	\$11.02
19	Wyoming	1258	6/15	Simply Delicious	MTM	\$6.20
20	Wyoming	9161	8/16	Janee's	15 mo.	\$3.93
21	Wyoming	1020	12/16	Nails 2000	2 years	\$13.82
22	Wyoming	1020	1/17	European Perfumes	1 year	\$7.55
23	Wyoming	760	3/17	Ald	3 years	\$25.26
24	Wyoming	9161	9/17	Janeen's	5 years	\$3.27
25	Wyoming	1020	1/18	European Perfumes	MTM	\$8.24

26	Wyoming	6970	5/18	Janeen's	MTM	\$2.07
27	Wyoming	5320	5/18	USPS	5 years	\$11.84
28	Wyoming	1271	7/18	Designer	MTM	\$13.22
29	Wyoming	825	9/18	Benj Popcorn	5 years	\$14.55

The only NNN lease is Comparable #23, the remaining are Gross Leases. The leases confirm that the subject's \$15.00 gross rents are market.

Roadfront Inline units includes three multi-tenant retail strip buildings fronting along 28th Street SE. They are located on three separate parcel numbers. Plans are submitted for an additional multi-tenant building. The units are below:

Roadfront Inline	
Men's Warehouse	7,500
Vitamin Shoppe	3,000
Motherhood	1,800
Mattress Firm	6,740
Five Guys	2,600
Potbelly	2,000
Lutheran Home Care	1,400
UBreakiFix	1,030
Red Wing Shoes	1,200
T-Mobile	2,400
Mod Pizza	2,349
European Wax	1,400
Total	33,419

The unit's average rental is \$35.00 sf NNN. The following leases were considered to determine that the subject's \$35.00 sf NNN is market.

Comp #	City	Size	Date	Tenant	Terms	Rate
30	Grand Rapids	2720	1/17	ATI Physical Therapy	10 years	\$34.25
31	Grand Rapids	1800	10/16	Freshii	10 years	\$32.00
32	Grand Rapids	4000	9/16	Art Van Pure Sleep	10 years	\$30.00
33	Grand Rapids	1440	9/16	GNC	5 years	\$30.00
34	Grand Rapids	1200	7/16	Lady Jane's	10 years	\$30.00

35	Grand Rapids	3200	6/16	PNC Bank	15 years	\$44.53
36	Grand Rapids	2400	6/16	Potbelly's	10 years	\$40.00
37	Grand Rapids	2500	6/16	Pieology Pizza	10 years	\$35.00
38	Grand Rapids	1600	6/16	Menchie's	10 years	\$35.00
39	Grand Rapids	2748	6/16	Rx Optical	10 years	\$35.00

Older Retail Units include the following:

Older Retail	
Orbit Room 10	19,949
Lou Brown Cards 60	4,460
Vacant 70	9,000
Mi Con Gas 90	5,040
Kims Launt 460	4,000
Total	42,499

The mean average of the Older Retail was \$8.05 sf gross, the weighted average which considers unit size was \$6.28 sf. The rent is concluded at \$4.50 sf. This is lower than the averages due to the concert venue is a large unit with low market rent.

The Standalone Restaurants are:

Stand Alone Restaurants	
Krispy Kreme 20	4,504
Chick-fil-A ¹³	4,850
Total	9,354

Four Restaurant Leases were available to determine market rent they are:

Comp #	City	Size	Date	Tenant	Terms	Rate
40	Cascade Twp.	6166	Listing			\$25.00
41	Grand Rapids	5600	Listing			\$30.00
42	Grand Rapids	6775	2/16	Bravo Cucina	10 years	\$35.80
43	Walker	2265	7/8	Qdoba	5 years	\$35.03

Based on the comparables Respondent concluded to market rent for Krispy Kreme is \$22.50 sf with Chick-fil-A at \$35.00 sf. Chick-fil-A was approximately 50%

¹³ This is a ground lease.

complete with a remaining cost to complete at 50% estimated at \$780,000 which was deducted for tax parcel 41-18-11-376-039¹⁴

Mr. Ellis prepared a chart with parcel numbers and identifying the type of unit, square feet base market rent and Potential Base Income. Parcels 41-18-11-367-037 and 41-18-11-376-040 are in a separate analysis. The vacancies were stabilized by unit type which resulted in the overall vacancy. The total gross living area utilized is 498,174 square feet, potential base income is \$6,598,666 with 12.1% vacancy for an effective gross income of \$6,135,724.

Historical expenses were considered, and some adjustments made for brokerage commissions and tenant allowances, which are not generally found above the NOI line, and were excluded. Expenses are on a cash basis.

The 3.72 acre on the south side of Lake Eastbrook Boulevard SE (41-18-11-376-037) contains a 1967 retail building and concert venue in fair condition. However, yearend 2018 the City's Fire Department denied occupancy for the concert venue. Although, after tax date, a portion of the retail and concert venue was listed for \$1,300,000, and indicates the uses permitted include office, retail medical or hospital. Mr. Ellis determined that the highest and best use is for redevelopment.

Eight sales were considered, and adjusted for market conditions, location and functionability. The adjusted sale price per square foot ranged from \$3.80 to \$6.47.

A 4.49 acre located on the north side of 28th Street SE (41-18-11-376-040) contains the Toys R US on tax day. It contained a 1979 lease, the existing contract rent as of the date is used to value the leased space. The original lease rate and terms of reimbursement have not changed. Mr. Ellis appraised the parcel using contract rent until the current lease expires, which includes a terminal land value.

This parcel was approved for a 9,450 square foot strip center in 2018. Eight vacant land sales were utilized. The adjusted rates ranged from \$9.91 to \$13.60 per square foot. Two comparables were considered to result in \$11.25 per square foot for \$2,220,325 value. This was utilized in the Discount Cash Flow based upon 12 years.

¹⁴ R-1 at p 171.

The net present value and reversion of land (minus demolition) was rounded to \$1,115,000.

The last parcel valued separately is 41-18-11-45017. It is 0.10 acres, approximately 10 feet by 475 feet. It is separate from the rest of the center and includes utility pedestals, and a sign. The parcel is given a nominal value of \$100; it does not generate income with a limited use due to its size.

The result of the additional items as of tax date are:

Complete Anchor	-\$934,027
Complete Restaurant	-\$780,000
41-18-11-376-037	\$600,000
41-18-11-376-040	\$1,115,000
41-18-11-452-017	\$100
Total	\$1,073

Income and expenses were considered from 2012 through 2018. The statements are separated for CAM, taxes and electricity. Reimbursement income is based on 553,315 square feet, excluding the two functionally obsolete properties.

The utility is purchased by Petitioner in bulk at a primary rate and resells to the tenants at a secondary rate. The recovery is 105% of the utility expense. Income includes the base rent for the units, reimbursable CAM and insurance, and electric and miscellaneous income.

Vacancy and credit loss is calculated and deducted to result in the Effective Gross Income (EGI). Expenses were deducted to result in the following Net Operating Income:¹⁵

Parcels 41-18-11-376-029, -038, -039, -041, & 0451-002	
Income; Base Rent	\$6,599,666
Reimbursable Cam & Insurance	\$1,023,872
Reimbursable Taxes,	\$0
Reimbursable Electric	\$933,393
Other Income	\$128,000
Potential Gross Income	\$8,683,930

¹⁵ Parcels 41-19-11-376-037, -040, and 452-017 were individually calculated.

Vacancy & Credit Loss Base Rent	\$528,928
Vacancy & Credit Loss CAM & Insurance	\$70,572
Effective Gross Income	\$8,084,429
Expenses	
Taxes	\$0
Management Fees	\$282,955
Operating Expenses	\$1,052,699
Electric Tenant	\$888,945
Non-Recoverable Expenses	\$187,146
Reserves for Replacement	\$138,323
Total Expenses	\$2,550,069
Net Operating Income	\$5,534,361

Capitalization rates utilizing extraction from sales, PwC Investor Survey and PwC National Power Center. An overall rate range was 7.75% to 8.25%. The effective tax rate was split into percentages for reimbursed (6.89%) and non-reimbursed (2.74%). The range is 8.015 to 8.51% resulting in a true cash value for this portion of the subject of \$65,033,618 to \$69,093,145.

Four parcels were not included in the above value. Sierra Trading Post was not completed as of tax day. The total cost was estimated at \$1,88,053, 50% was completed for tax day with the remaining cost \$934,027. This is parcel 41-18-11-376-038.

Chick-fil-A was also not complete. A December 27th photo indicated that the structure was up but not completed an extraordinary assumption was made that the restaurant and site improvements remaining costs of \$1,560,000 were 50% complete (\$780,000) on tax day for parcel 41-18-11-376-039.

Parcel 41-18-11-376-037 was stickered by the Fire Department denying occupancy for the concert venue. There were four tenants in building with short term leases. That portion of the property was listed for sale asking \$1,300,000. Mr. Ellis considered the market rent, stabilized occupancy, expenses and land value and concluded that the older building and concert venue's highest and best use is redevelopment for the 3.72 acre parcel. Five vacant land sales were utilized minus demolition resulted in the value of \$600,000 for the land for this parcel only.

Parcel 41-18-11-376-040 4.49 standalone anchor was leased to Toys-R-Us as of December 31, 2017. Mr. Ellis determined that it fell under CAF, as the lease was entered into May 14, 1979, the original lease rate and terms of reimbursement remained unchanged. This parcel was valued utilizing a discounted cash flow analysis utilizing the contract rent until January 31, 2019. The termination of the lease also includes a terminal land value, based on land sales. The subject is the location of a proposed new 9,450 square foot retail strip center.

The result of the eight land sales is a value of \$11.25 per square foot for the 4.49 acres or \$2,200,325. Mr. Ellis explains in detail how the results indicate a net present value of \$1,115,000.

Mr. Ellis concludes to a final true cash value of the entire subject property via the Income Approach of \$67,100,000.

The Sales Comparison Approach was utilized with the exception of the following three parcels which have separate valuations in the income approach that were carried forward. The parcels are 41-18-11-376-036, -040-452-017. The parcels utilized contain 467,866 square feet.

Nine sales of large retail centers were found including the sale of subject property (which was Sale 1 and excluded 5,000 square foot anchor, and Chick-Filet-A was not constructed.)¹⁶

Sales	Date	Sale Price	SP/SF	NOI	Cap Rate	SF	Location
Sale 1	6/14	\$68,000,000	\$123.22	\$5,149,809	7.57%	551,840	Grand Rapids
Sale 2	9/14	\$50,833,200	\$129.60	\$3,755,654	7.39%	279,632	Troy
Sale 3	9/14	\$32,832,983	\$115.79	\$2,700,715	8.23%	206,903	Oshtemo Twp
Sale 4	5/15	\$7,200,000	\$118.27	\$641,759	8.91%	60,876	Grandville
Sale 5	4/16	\$20,510,000	\$124.92		7.56%	164,181	Holland
Sale 6	9/16	\$19,800,000	\$144.11	\$1,432,142	7.23%	137,391	Livonia
Sale 7	8/17	\$26,000,000	\$134.40	\$2,187,645	8.41%	193,446	Canton Twp
Sale 8	12/17	\$62,000,000	\$229.50	\$5,300,732	8.55%	270,151	Allen Park

¹⁶ Sale Price per Square Foot (SP/SF), Net Operating Income (NOI), Square Feet (SF).

Sale 9	12/18	\$23,000,000	\$99.78	\$2,207,385	9.00%	230,506	Wyoming
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Mr. Ellis conducted an analysis of sale prices for institutional shopping centers. The nine sales utilized with an additional 7 were sampled, the result was adjustments made in either direction was not necessary.

Location adjustments were rent based. If the subject units were higher rent than the comparable a downward adjustment was made, and the opposite if the subject generates lower rents than the comparables were adjusted upward.

Sale 4 and 9 were adjusted upward for Quality, Comparable 8 was adjusted downward. Comparables for Toys-R -Us and the older retail building were adjusted for the lower income base.

The subject's 2014 sale, and Sale 7 were adjusted downward for the excess land. Also considered were age/condition, occupancy (93.1% average) Sale 9 required an adjustment for its leases with short terms. The value ranged from \$121.53 square foot to \$148.29 per square foot for the majority of the property (467,866 square feet).

Sierra cost to build out, Chick-fil-A, and allocation to parcels 41-18-11-376—037, -040, -452-017, they were previously estimated to total \$1, 073. The indicated value via the sales comparison approach as of December 31, 2017 is \$64,000,000.

Mr. Ellis reconciled the values and gave most weight to the income approach resulting in the True Cash Value of \$67,100,000 as of December 31, 2017.

Mr. Ellis was asked to review Mr. Nassif's appraisal, there were three major items that he explained that should be reconsidered.

The occupancy was 84.4% as Mr. Nassif did not include the pre-leased and under construction Chick-Fil-A or the new Sierra Trading Post was also pre-leased and under construction. In addition, all the inline space was put together, the road front inline units generate \$35-\$40 per square foot to the concert venue that generates about \$3.00 per square foot. The square footage of some of his sales are incorrect. The adjustments derived for occupancy for example in Sale 1 is the difference between its 91% and subject is 84.4% and taking the percentage difference between the sale and

the subject's 84.4%. it is improper to do a point by point adjustment which appears too large.¹⁷ Mr. Ellis went through all of Respondent's sales with similar observations.

Mr. Nassif's income approach only utilized 2017 accrual information. The work file only contains the 2017 accrual statement for the subject property. Mr. Ellis explained that the use of multiple years assists in finding a pattern,

Mr. Nassif did not disclose the new construction anchor unit for Sierra Trading Post, excluding 5,689 square feet. He used an occupancy factor of 84.4% as the preleased new units were not included. Mr. Nassif's occupancy would increase to 87.8%.

Mr. Ellis created a spreadsheet that recreates Mr. Nassif's pro forma, (\$48,102,404 TCV) he made three adjustments.¹⁸

The stabilized occupancy corrected from 15% to 10%¹⁹. The vacancy declined to \$886,925 increasing the net operating income.

Mr. Nassif's recoveries did not include \$1,158,881 for utilities this also increased net operating income.

The last correction is correcting the tax cap factor for the correct millage rate. Mr. Nassif's overall rate was 8.88% with correction this results in 8.76%.

The result of the cumulative correction to Petitioner's appraisal is a TCV of \$64,649,135.

FINDINGS OF FACT

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

1. The subject property is located at 3445, 3561,3665, 3689, and 3725 28th Street SE; and 2700 and 2750 East Beltline Avenue SE; 3538 Lake Eastbrook Boulevard SE, Grand Rapids, Kent County, Michigan.

¹⁷ The Tribunal is not going to repeat all the errors found. They are found at TR 2 beginning on p 238-268.

¹⁸ R-27.

¹⁹ P-1 at p 41.

2. The subject property has 63.64 acres of land and is improved with a retail power center.
3. The subject building was originally constructed in 1967 with 2012 conversion from an enclosed mall to a retail power center. and has 583,623 square feet.
4. The subject property has eight separate parcel identification numbers that make up the retail power center with 583,623 square feet as follows: All parcel numbers start with 41-18-11-

Parcel Id.	Sq Feet	Acre	Age	Improvement	Address
376-029	11,345	2.09	2014	Freestanding Strip Center	3561 28th St SE
376-037	42,499	3.72	1967	Freestanding Multi w Concert Venue	3538 Lake Eastbrook Blvd
376-038	466,975	50.7 1	1967-2012	Former Enclosed Mall Primary	3665 28th St SE
376-039	4,850	1.08	2017	Chick-fil-A	2750 E Beltline Ave SE
376-040	43,000	4.49	1972	Freestanding Toys-R-U's	3445 28th St SE
376-041	4,504	1.03	2002	Krispy Kreme Donuts	2700 E Beltline Ave SE
451-002	10,500	0.42	2012	Freestanding Multi-Tenant	3689 28th St SE
452-017		0.10		Vacant 0.10 acre	3725 28th St SE

5. The subject property was converted in 2012 from an enclosed regional mall to a retail power center.
6. The highest and best use of the subject property is the continued uses as a retail power center.
7. Petitioner's appraiser prepared an appraisal report. Petitioner's appraisal utilizes a sales comparison and an income analysis for the tax year at issue
8. Petitioner's appraiser adjusted each comparable sale for differences in location, size occupancy and location.
9. Petitioner's appraiser utilized four sales which resulted in \$80.00 per square foot.
10. Petitioner also utilized an income approach dividing the subject property into the following six categories: Anchor 169,459 sf, Junior Anchor 183,086 sf, In-line below 1,500 sf 172,428 sf, In-line above 1,500 sf 6,530 sf, Vacant Big Box 36,000 sf, and Restaurant 16,169 sf.
11. Petitioner admitted that over a million dollars in revenue was not included in the income approach.

12. Respondent's appraiser also prepared an appraisal report. Respondent's appraisal utilizes both the sales comparison and income approach for the tax year at issue. The cost approach was considered but not utilized.
13. Respondent's appraiser in the income approach grouped the comparables by the following categories Anchor Unit 380,498 sf, Exterior Inline 106,725 sf, Interior Inline 12,812 sf, Roadfront Inline 31,785 sf, Older Retail 42,449 sf and Stand Alone Restaurants 9,354 sf, to consider market rent.
14. Respondent determined if the subject's rent was at market rent for each group of tenancy.
15. Based on the indicated net operating income and capitalization rate, Respondent's appraiser concluded to a true cash value of \$67,000,000.
16. Respondent also prepared a sales comparison approach which utilized nine large retail centers.
17. The sales comparison approach was not utilized for parcel numbers 41-18-11-376-376-037, 41-18-376-040, and 41-18-11-452-017 as separate valuations were done in the income approach with the conclusions carried forward.
18. Respondent's appraiser considered each comparable sale for interest conveyed, financing, conditions of sale, location, quality, inline and anchor space, excess/surplus land, age/condition, and occupancy.
19. Respondent's value via the sales comparison approach is \$64,000,000.
20. Respondent's appraiser reconciled the values indicated by his two approaches and, concluded to a true cash value of \$67,100,000.

CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its TCV:

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.²⁰

The Michigan Legislature has defined TCV 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.²¹

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”²²

“By provisions of [MCL] 205.737(1) . . . , the Legislature requires the Tax Tribunal to make a finding of true cash value in arriving at its determination of a lawful property assessment.”²³ The Tribunal is not bound to accept either of the parties' theories of valuation.²⁴ 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.”²⁵

A proceeding before the Tax Tribunal is original, independent, and de novo.²⁶ The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”²⁷ “Substantial evidence must be more than a scintilla of

²⁰ Const 1963, art 9, sec 3. See also MCL 211.27a.

²¹ MCL 211.27(1).

²² *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

²³ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

²⁴ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

²⁵ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

²⁶ MCL 205.735a(2).

²⁷ *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

evidence, although it may be substantially less than a preponderance of the evidence.”²⁸

“The petitioner has the burden of proof in establishing the true cash value of the property.”²⁹ “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.”³⁰ 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.”³¹

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.³² “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”³³ The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the TCV of the property, utilizing an approach that provides the most accurate valuation under the circumstances.³⁴ Regardless of the

²⁸ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

²⁹ MCL 205.737(3).

³⁰ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

³¹ MCL 205.737(3).

³² *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).

³³ *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

³⁴ *Antisdale*, *supra* at 277.

valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.³⁵

Here, the parties' valuation experts were charged with developing and communicating appraisals of the subject property to assist the Tribunal in making an independent determination of its true cash value for the tax year at issue. Both appraisers developed the sales comparison approach and the income approach.

Petitioner states that the subject property demelled due to the "Amazon Effect" "...in fact we expect the evidence to show that as to the subject tenants, that year over year all of their revenues are declining."³⁶ . Although adjustments were made, revenues were declining. The seller of the property claimed \$5.1 million income, however, the NOI in the trailing 12 months was \$4.1 million. Petitioner states that the NOI has decreased by 20% in 2017. However, Mr. Nassif only had income information for 2017. Therefore, it is unclear to this Tribunal how Petitioner would back up the statement. In addition, the appraisal had errors in the income approach that increased the NOI to \$5,665,725.³⁷ Petitioner then rested.

Mr. Nassif inspected the subject property June 14th and signed the report June 18th. Staff at BBG prepped the comparables that were used in the appraisal. Mr. Nassif testified that he did not inspect the comparable properties.

Petitioner's sales approach utilized four sales of properties however, three out of the four sales were less than half the size of the subject property. One sale took place in

³⁵ See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

³⁶ Tr 1 at 9.

³⁷ Tr 1 at 111.

2014 and one in 2017, and two in 2016 were considered by Mr. Nassif.³⁸ Sale 2 at 349,371 square feet is the closest to the subject in size. Adjustments for location, size, occupancy and effective age were considered. The gross adjustments were 31% to 40%, with net at 1% to 35% which resulted in sale prices per square foot of \$78.93 to \$81.06 per square foot. The Tribunal notes that Sale 2 at \$79.43 is the only unadjusted sale price under \$115 per square foot. Mr. Nassif concluded to \$80.00 per square foot. However, three were substantially smaller than the subject.

The Tribunal finds that Mr. Nassif's use of a 2014 sale, but lack of reference to the subject's June 2014th sale price of \$68,000,00 appears to be unscrupulous

Respondent selected nine sales, including the subject for the sales comparison approach. While he also utilizes sales that were under 300,000 square feet, the square footage utilized for the comparison was 467,866 sf. The remaining square footage was appraised separately. Adjustments were made for differences in size, location, rent, quality, age, condition, and occupancy. The sales ranged from \$121.53 to \$148.29, resulting in \$64,000,000 true cash value. The sales comparison approach was considered, but not relied upon.

The parties have two sales in common, Petitioner's Sale 3 and Respondent's Sale 5, Felch Street Shopping Center and Petitioner's Sale 4 and Respondent's Sale 3, Maple Hill Pavilion. They have a small difference in square footage and sale price per square foot of \$123.48 and \$124.92. The differences end there, Petitioner adjusts - 20% for the smaller size, and -15% for better occupancy resulting in 35% gross adjustments

³⁸ The Tribunal notes that the subject property sold June 2014, but Mr. Nassif testified that it was too old for USPAP to require it.

for \$80.26 per square foot. Respondent makes no size adjustments but adjusts for percentage of anchor stores, 5%, age/condition 5% and functional utility -2% this results in 12% gross adjustments at \$134.97 per square foot.

Maple Hill Pavilion Petitioner adjusted 5% for location, -15% for smaller size, land to building ratio -5%, and -15% for occupancy, to result in 40% gross adjustments to result in \$81.05 per square foot. Respondent adjusted for anchor percentage 2%, age/condition 5% and -2% for occupancy for 9% in gross adjustments resulting in \$121.53 per square foot. The Tribunal finds that the lower gross adjustments in Respondent's sales for the two common properties is more reasonable and results in adjusted sale prices that are more acceptable than Petitioner's 35% and 40% adjustments for properties that he was not familiar with.

The sales comparison approach was part of Petitioner's final value consideration, and used in Respondent's report as a checks and balance to the income approach.

Petitioner's income approach placed the subject into six-categories of tenancy types. Respondent divided the property into seven categories plus four separate parcels that were appraised individually. They both have the same total square footage. Mr. Nassif did not place any value on the pre-leased Chick-A-Filet or Sierra Trading Post. However, he testified that an investor would take the leases into consideration. He did not separate the inline rents between interior, exterior or road front. However, Mr. Ellis did and the difference for road front units is \$35.00 versus the interior/exterior units at \$15.00 and \$15.45 per square foot. There were differences between the parties in the rent for anchor units at \$7.50 and \$11.00 per square foot. The parties disagreed

on anchor and junior anchor stores as Respondent did not have a junior anchor store tenancy.

The Tribunal will go through the lease comparables for Anchors, to assist the reader's understanding as the remainder of the tenancy's were utilized in the same manner. Mr. Nassif's Comparable 2, 4, and 5 are too small, they are more reflective of the size of his Jr. Anchors. Lease 3 is the Lowe's which is more than double the size of any of the stores in the subject property. In addition, the leases from 2013, 2014, and 2015 are too stale to be reflective of market rent as of December 31, 2017.

Petitioner's rent comparables were overall three to four years from December 31, 2017, the remainder were too small for the tenancy category, or just plain not comparable i.e. Lowe's Holland at 131,644 square feet more than double the size of any of the anchor stores. The Tribunal is quite familiar with big box stores, which makes Lowe's as a rental comp questionable. The leased big box stores are generally built-to-suit, however no details on any of the leases were presented in the appraisal. The remainder of Petitioner's lease comparables have similar issues.

Although, the appraisal clearly states that vacancy was 10%, in the proforma income statement, however Mr. Nassif utilized 15%.³⁹ The tax adjusted capitalization rate was incorrect, it left out the winter millage rate. The recovery category from Petitioner's 2017 statement was \$2,899,233 or \$4.97 PSF. Mr. Nassif used \$1,237,279 or \$2.12 PSF.

Respondent's income approach was in substantially greater depth than Petitioner's. The subject tenancy as well as new and old leases for the individual units

³⁹ P-1 at p 42 and p 46.

were all discussed, when the lease was executed, where it is located within the shopping center, square footage, and details on the specificity of each tenancy. Mr. Ellis was also familiar with the 43 rent comparables which contained similar detailed information as the subject property. The rent comparables were compared with the subject's rent to determine market rent.

While Petitioner's report listed the subject properties rent roll (5 point font) it included the actual rent and market rent for each tenant by alphabetical order. The comparable properties were separated by tenancy on a grid with only the property name, tenant, square footage, lease date, term in months and the amount of the lease, with zero discussion on the comparables selected. Some information was corrected upon cross-examination.

Petitioner's appraisal has 5 exterior photographs and one interior of a vacant space. Respondent's report contains 64 photographs of the subject's interior and exterior dated May 2019 and May 2014 (from a previous report).

Utilizing Petitioner's Pro Forma as the basis for Respondent's Exhibit R-27 as well as testimony of three changes that affect Petitioner's value based on the income approach. It includes three columns with the following corrections.⁴⁰ Beginning with Petitioner's Pro Forma the first correction is the 10% vacancy and credit that appears in the report, (Petitioner however utilized 15%⁴¹) results in a NOI of \$4,685,891 capitalized into an indicated value of \$52,755,428. The second column corrects the recoveries from \$1,237,279 to \$2,396,160 resulting in NOI of \$5,665,725 resulting in an indicated value

⁴⁰ P-1 at p 46.

⁴¹ The difference from what Petitioner stated in the report of 10% and actually utilized 15% was not reconciled by Petitioner.

of \$63,786,755. The last column corrects the capitalization rate to include the winter millage, resulting in an 8.76% tax cap rate, 10% vacancy, and corrected recoveries equals NOI of \$5,665,725, and a true cash value of \$64,649,135.

The relevance of a valuation approach is directly related to property type:

All three approaches are applicable to many appraisal problems, but one of more of the approaches may have greater significance in a given assignment. For example, the sales comparison approach is usually emphasized in the valuation of single-unit residential properties. However, this approach may not be applicable to specialized properties such as garbage disposal plants because the comparable data may not be available. The income capitalization approach is used to value most income-producing properties, but it can be particularly unreliable in the market for commercial or industrial property where owner-occupants outbid investors. The income capitalization approach is not typically applied in valuing homes. The cost approach may be more applicable to new and special-purpose properties and less applicable in valuing properties with older improvements that suffer from substantial depreciation, which can be difficult to estimate.⁴²

The subject property is a power retail center and as such the retail spaces pay rent. Therefore, both appraisers appropriately place weight upon an income approach “any property that has the potential to generate income can be valued using the income capitalization approach.”⁴³

The Tribunal finds that the sales comparison approach was considered, however the greater weight goes to the income approach which is an appropriate approach for the income producing power retail center. The Tribunal further finds that Respondent’s appraisal and analysis is more reliable than Petitioners, which lacked credibility for the reasons enumerated above and based upon Respondent’s rebuttal documents.

⁴² Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), p 45 (emphasis added).

⁴³ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), p 441.

Respondent's appraisal went into substantial detail about the subject property as well as the comparables utilized. Petitioner's report has minimal detail in all of its sections, both the sales and income information were scant and lacked specificity. Petitioner's colleagues in the office selected the comparable information. Petitioner did not inspect any of the comparable property and from photos it is questionable as to the inspection of the interior of the subject property. It did not assist this Tribunal in finding Petitioner's appraisal credible.

Petitioner fails in proving that the subject property is over assessed as of December 31, 2018. The Tribunal finds that Respondent's appraisal was detailed and well documented. The analysis of the three major issues in the income approach (which did not include the other issues and mistakes) with Petitioner's appraisal made the report itself not credible. Petitioner's appraisal is given no weight and credibility.

JUDGMENT

IT IS ORDERED that the property's SEV and TV for the tax year(s) at issue are AFFIRMED as set forth in the Introduction section of this Final Opinion and Judgment.

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

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after 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%, and (xii) after December 31, 2019, through June 30, 2020, at the rate of 6.40%.

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.⁴⁴ 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.⁴⁵ 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.⁴⁶ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.⁴⁷

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."⁴⁸

⁴⁴ See TTR 261 and 257.

⁴⁵ See TTR 217 and 267.

⁴⁶ See TTR 261 and 225.

⁴⁷ See TTR 261 and 257.

⁴⁸ See MCL 205.753 and MCR 7.204.

A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.⁴⁹ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.⁵⁰

By Victoria H. Emjart

Entered: June 1, 2020

⁴⁹ See TTR 213.

⁵⁰ See TTR 217 and 267.