STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

CML Saline LLC,
Petitioner,

v

MTT Docket No. 15-002836

City of Saline,
Respondent.

Tribunal Judge Presiding
Steven H Lasher

FINAL OPINION AND JUDGMENT

The Tribunal issued a Corrected Proposed Opinion and Judgment ("POJ") on March 10, 2017. 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 TCV, SEV, and TV, as established by the Board of Review for the tax year(s) at issue, are as follows:

Parcel Number: 18-18-02-401-004

Year	TCV	SEV	TV
2015	$2,326,400	$1,163,200	$1,141,467
2016	$2,364,000	$1,182,000	$1,144,891

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

[1] See MCL 205.726.

Parcel Number: 18-18-02-401-004

Year	TCV	SEV	TV
2015	$2,287,170	$1,143,585	$1,141,467
2016	$2,356,650	$1,178,325	$1,144,891

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%, and (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%.

This Final Opinion and Judgment resolves the last pending claim and closes this case.

APPEAL RIGHTS

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

A Motion for reconsideration must be filed with the 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

[2] See MCL 205.755.
[3] See TTR 261 and 257.

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] 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.[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 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] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of 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: APR 10 2017
ejg

[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.

STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

CML Saline LLC,
Petitioner,

v

MTT Docket No. 15-002836

City of Saline,
Respondent.

Administrative Law Judge Presiding
Peter M. Kopke

CORRECTED PROPOSED OPINION AND JUDGMENT

INTRODUCTION

Petitioner appealed the ad valorem property tax assessments levied by Respondent against Parcel No. 18-18-02-401-004 for the 2015 and 2016 tax years. Patric A. Parker, Attorney, represented Petitioner and Ryan M. Shannon, Attorney, represented Respondent.

A hearing on this matter was held on November 9, 2016, and November 10, 2016. Petitioner's witness was David K. Rexroth, MAI, Cook, Pray, Rexroth & Associates. Respondent's witnesses were David M. Heinowski, MAI, Heinowski Appraisal and Consulting, LLC and Catherine Scull, Saline City Assessor.

As established by Respondent's March Board, the true cash value ("TCV"), assessed value ("AV"), and taxable value ("TV") of the subject properties are as follows:

Parcel Number: 18-18-02-401-004

Year	TCV	AV	TV
2015	$2,326,400	$1,163,200	$1,141,467
2016	$2,364,000	$1,182,000	$1,144,891

Based on the evidence (i.e., testimony and admitted exhibits), the case file and applicable law, the Tribunal finds that TCV, state equalized value ("SEV"), and TV of the subject property is as follows:

Parcel Number: 18-18-02-401-004

Year	TCV	SEV	TV
2015	$2,287,170	$1,143,585	$1,141,467
2016	$2,356,650	$1,178,325	$1,144,891

PETITIONER'S CONTENTIONS

Petitioner contends that the evidence presented in this case supports a determination that the subject property's AV for the tax years at issue is in excess of 50% of its TCV. Specifically, Petitioner contends[1] that (i) "the assessed valuation is excessive and that the true cash value of the property is less than as reflected by the assessed value," (ii) "[w]e will have some interesting testimony regarding the challenges of appraising automobile dealership real estate, but I think at the close of the testimony you will see that the values reflected by the comparable sales from Mr. Rexroth will convince the Tribunal that it's been overassessed," (iii) Petitioner's "concerns . . . beyond" Mr. Heinowski's admitted errors, as they also disagree with his selection of comparables, (iv) Mr. Heinowski indicated that Comparable No. 3 "doesn't involve his calculation anymore" and that Comparable No. 1 "is confusing, problematic," (v) Mr. Rexroth has testified that he would not have "chosen" Comparable Nos. 4 and 5 as "they're not clean sales," (vi) "[t]he overriding differences . . . [between] the two appraisals is that the comps selected by the Respondent are urban or high class suburban comps . . . [that] are in entirely different types of neighborhoods . . . entirely different types of dealerships . . . . [and] not in the same type of market," (vii) "[t]he subject property is in a small town . . . [and it's] visibility is impaired by corn at certain times of the year," (viii) "[t]he subject site . . . is a small and significantly more difficult site to work with and less valuable to the car sale business than the other sites we had," (ix) the property's access or, more appropriately, lack of access impacts its value, (x) there are no dealerships or significant demand generators near the subject property, (xi) many of the comps used by Respondent have more exposure to traffic than the subject property, and (xii) the subject property has size and frontage issues for display purposes that make it less valuable.

As determined by Petitioner's valuation expert, the subject properties' TCV and TV for the tax years at issue should be as follows:

Parcel Number: 18-18-02-401-004

Year	TCV	AV	TV
2015	$1,550,000	$775,000	$775,000
2016	$1,670,000	$835,000	$835,000

[1] See Transcript ("TR") at pp 5-6 and pp 328-32.

PETITIONER'S ADMITTED EXHIBITS

P-1 Valuation Disclosure prepared by David K. Rexroth dated July 14, 2016.[2]

PETITIONER'S WITNESSES

David K. Rexroth

David K. Rexroth was Petitioner's first and only witness. He was admitted as Petitioner's valuation expert[3] and testified, on direct examination, that (i) the "challenge" in valuing an automotive dealership is "allocating a value to the real estate,"[4] (ii) he inspected the property and obtained the property's assessment records,[5] (iii) he relied on "historical information" from previous appraisals and sales information from CoStar, multiple listing sources, public records, and contacts with assessors and other appraisers "that we [felt was] reasonable in comparison to our subject,"[6] (iv) the property is located at 900 West Michigan (US 12) on the west side of the City on about 4.3 acres of net land with "access points" off "arterial roads" and not the major thoroughfare (i.e., US 12),[7] (v) the subject building was built in 2005 and contains 24,551 square feet,[8] (vi) the subject land is zoned as a general business district and the property is used as a Chrysler Dodge Jeep Ram facility,[9] (vii) the property's "lack of access" from a "major thoroughfare" and "limited frontage" on that major thoroughfare (i.e., 258 feet) affects its true cash value,[10] (viii) there is a "significant retention pond" on the property (i.e., "to the right of the building") that cannot be used for sale, display, or service of vehicles making the land "insufficient" in size for an automotive dealership (i.e., the sale of vehicles),[11] (ix) he used a sales comparison approach only because an income approach was, in his view, irrelevant (i.e., "[p]roperties of this type are rarely leased nor are investors typically purchasing property based

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[2] See TR at p 42.
[3] See TR at p 16. See also TR at pp 9-12 relative to his qualifications.
[4] Mr. Rexoth also testified that he does "not do business valuation," or, more specifically, does "not do fixtures, furnishings and equipment, goodwill." See TR at p 13.
[5] See TR at p 14.
[6] See TR at p 14. See also TR at pp 106-28, pp 130-1, and pp 133-5.
[7] See TR at p 15. Mr. Rexroth did, however, also indicate that there is a stop light at the corner of Michigan and Austin Road and that there is another access point on Austin Drive.
[8] See TR at p 15.
[9] See TR at p 15.
[10] See TR at pp 16-7. With respect to frontage, Mr. Rexroth indicated that the limited frontage impacts Petitioner's ability to display vehicles for sale along that
[11] See TR at p 18. Although Mr. Rexroth indicated that the property was insufficient in size, he also indicated that Petitioner is leasing other land, "a couple of miles away," as an auxiliary parking lot for the storage of vehicles. See also TR at pp 251-2.

upon rent that could be obtained from the real estate"), and because of the "difficulty" in determining comparable land sales and "accurately [identifying] and [measuring] depreciation, specifically functional and economic obsolescence" for use in a cost approach,[12] (x) he found 72 comparable "automotive-related" sales through a computer search utilizing a geographic and bracketing perspective based the subject property's "parameters" (i.e., location, building size, age, etc.),[13] (xi) his "unit of comparison" is a sales price per square foot that was adjusted for differences between the subject and the comparable sales (i.e., location, sale date, land area, building area, land-to-building ratio, year built, condition, construction, whether there were any financing terms associated with the sale, etc.) through the use of a "percentage adjustment" because such adjustments are "clearly reflective" of the value impact of the differences,[14] (xii) he made a negative 20% adjustment to his Comparable No. 1 to reflect both location as well as access and visibility, (i.e., "in my view the comparable was 20 percent superior so we made an adjustment downward of 20 percent"),[15] (xiii) his adjustments for land-to-building ratios related to the amount of land available to display vehicles, as "vehicle display is critical with dealerships" or, in the instant case, Petitioner's "lack of . . . ability to fully utilize the 187,744 square feet of land area that they have,"[16] (xiv) Comparable No. 1 received a "downward adjustment" for building size and layout because "[w]e find buildings that are larger in size . . . usually cost a little bit less to build on a per square foot basis . . . [and have] a . . . more limited marketability . . . [as] the sale price tends to go down as the building size increases,"[17] (xv) his adjustment for age, condition and construction was determined based on "year built" and "improvements that may have been made to the facility over that time frame" as "newer buildings obviously are valued higher,"[18] (xvi) Comparable No. 2 is "probably not a good sale from the standpoint that it was an REO" (i.e., "typically REOs will sell for less" and "[i]n my

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[12] See TR at pp 19-20.
[13] See TR at pp 20-2. See also TR at p 24 and pp 135-141. Mr. Rexroth indicated that he did his "search" after his assignment and yet utilized comparable properties from previous searches that may have been based on parameters other than the parameters he utilized for the search at issue.
[14] See TR at pp 22-4. See also TR at pp 27-8.
[15] See TR at pp 25-6 (i.e., location – traffic flow, lack of surrounding dealerships; visibility – exposure, elevation changes; access – no entry point from major thoroughfare). See also TR at p 15 (i.e., topography).
[16] See TR at 26-7.
[17] See TR at p 27.
[18] See TR at p 28.

view . . . it required a 50 percent upward adjustment"),[19] (xvii) Comparable No. 3 was purchased by a church,[20] (xviii) Comparable No. 4 was located in a small community with a heavy amount of vehicular traffic,[21] (xix) his inclusion of Comparable No. 5 was for bracketing purposes as the building was larger than the subject building,[22] (xx) the sales of Comparable Nos. 4 and 5 "occurred in 2013" and, as such, required "a 5 percent upward adjustment" for market conditions as values "in [his] view . . . have been gradually appreciating,"[23] (xxi) Comparable No. 6 was a Buick-Pontiac dealership that was "subsequently converted" into a Harley-Davison motorcycle dealership,[24] (xxii) Comparable No. 7 "was purchased by the Girl Scouts for the use of offices and related activities in the Girl Scout organization,"[25] (xxiii) the average of the adjusted sale price per square foot was $60.68 with the median, "as represented by Sale Number 1" at $61.26,[26] (xxiv) Comparable Nos. 2 and 4 should, "in my view . . . be given most weight and those two average $63.31," which he "correlated to $63 per square foot of building area for subject,"[27] (xxv) Comparable Nos. 8, 9, and 10 sold in 2015 and are "more reflective of values that might apply in the year 2015,"[28] (xxvi) Comparable No. 8 was a Saturn dealership that was on the market for about a year and "was sold to [be a] used car facility,"[29] (xxvii) Comparable No. 9 was also a Saturn dealership that was sold to a Volvo dealer and "is a great sale in that it was a car facility . . . [that] was purchased for continued use as a car facility,"[30] (xxviii) Comparable No. 10 was a Lincoln-Mercury dealership that was sold to a landscaping business "for use in their business,"[31] (xxix) for their use as comparable properties for the 2016 tax year, he adjusted Comparable Nos. 1, 2, and 3 five percent (5%) for market conditions, and

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[19] See TR at pp 28-31.
[20] See TR at 31-2.
[21] See TR at pp 32-4.
[22] See TR at p 34-5.
[23] See TR at p 34.
[24] See TR at pp 35-6.
[25] See TR at pp 36-7.
[26] See TR at pp 38.
[27] See TR at pp 38. Mr. Rexroth did, however, also indicate that "Sale 4 probably is the best indicator" and that "in [his] view those two [i.e., Comparable Nos. 2 and 4], **in addition to** the average, the midpoint, and the median, $63 was the arrived at price." [Emphasis added.]
[28] See TR at p 39.
[29] See TR at p 39.
[30] See TR at p 40.
[31] See TR at p 40-1.

Comparable No. 4 ten percent (10%),[32] (xxx) "[i]n our view from the average midpoint [i.e., $72.67] and median and those comparables . . . that we considered to be the most relevant, we determined[,] in our opinion[,] a value of $68 per square foot as of December 31, 2015,"[33] (xxxi) in response to a question regarding whether records prepared by him regarding previously-used sales are "still good information," he indicated "they can be" and that he "look[s] back on earlier appraisal assignments . . . to consider [whether those] sales that . . . [he had] used earlier . . . have some comparability to my subject,"[34] (xxxii) in response to a question regarding the impact of internet sales, he indicated that "location is still critical" as "dealerships are not only selling cars, they're selling service . . . . [and if] you have a facility that's difficult to get to, does not have the exposure, the physical access, for a mere oil change you don't want to be going out into some other location to take care of that,"[35] (xxxiii) he further indicated with respect to internet sales that "it's true, as far as shopping for a car, there very well may be that opportunity to go to a particular location . . . . [b]ut I will also add, and this has not been brought up, dealers continue to like to be associated near other dealers . . . . [and there] are no dealerships in . . . [the subject property's] geographic location until you go to the east side of Saline where you find the Chevy and the Ford,"[36] and (xxxiv) he indicated, in response to a question regarding "visits" to his comparable properties, that it is not "necessary" to physically visit a comparable property to use that comparable.[37]

On cross-examination, Mr. Rexroth testified that (i) Comparable No. 1 sold on June 28, 2013, for $1,000,000 and June 30, 2014, for $1,300,000,[38] (ii) his use of "historical information" includes automotive dealerships and "[b]ecause of the number, the volume of dealerships that we do, we use comparables interchangeably" and he does not "make it a matter of practice to change the comp once it's written up,"[39] (iii) he is "of the opinion that a reasonable market exposure time to achieve . . . [his] indicated True Cash Value estimate could range from 12 to 24 months .

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[32] See TR at p 41.
[33] See TR at p 42.
[34] See TR at pp 113-4.
[35] See TR at p 131.
[36] See TR at pp 131-2.
[37] See TR at p 132.
[38] See TR at p 56-8.
[39] See TR at p 63. See also TR at pp 55-6, pp 68-9, and pp 72-3.

. . based upon [his] research and analysis of the market throughout this area,"[40] (iv) his research and analysis was limited to his ten comparables and his "collection of other dealerships that we have done, some of which have sold, some of which have not sold,"[41] (v) his determination of the property's highest and best use was based on the compiled data contained in his work file and experience,[42] (vi) his work file does not contain his land sales information, market data from Multiple Listing Services, or notes relative to personal contacts, rather he relied on CoStar and "other appraisals that we've done and so what you have in my work file is what I have used in my appraisal,"[43] (vii) he identified the 72 comparables through a CoStar search, but did not include the search or the records of all of the 72 comparables in his work file, rather he only included the records that had "relevance to the subject property" based on his "professional opinion,"[44] (viii) he did not research as to whether any of his comparable properties had off-site inventory locations as he relied solely on land-building ratios,[45] (ix) the size of the building could depend on the dealership's brand,[46] (x) "the "remarketing" of a property "has relevance if it has resold,"[47] (xi) his 50% adjustment for the REO sale was based on his "opinion" and not on "any kind of analysis or market study" of that comparable,[48] (xii) the comparable property sold to the church contained two viable buildings – one of which is being used for a church and the other "has some activity there," but he is not aware of what activity,[49] (xiii) his work file did not contain information on population and traffic count for the Owosso comparable property,[50] (xiv) he does not "study" internet sales or, more appropriately, the impact of internet sales relative to customer traffic at dealerships, as "[w]ith any commercial property, visibility/frontage is critical

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[40] See TR at p 78. In response to a question regarding the "area," Mr. Rexroth stated "[t]he area or property type, maybe it should have been said, would be dealerships and predominantly primarily southeast Michigan."
[41] See TR at p 79. Mr. Rexroth did, however, confirm that his research and analysis relative to the additional dealership were not in his work file.
[42] See TR at p 79-80.
[43] See TR at pp 80-2. Mr. Rexroth further stated that "[t]here's nothing more other than my accumulation of information over the years." See also TR at pp 97-8.
[44] See TR at p 82-4. See also TR at pp 128-9.
[45] See TR at p 86.
[46] See TR at p 87.
[47] See TR at p 88.
[48] See TR at p 89. See also TR at p 211 (i.e., "it's an REO sale or a bank-owned sale which is usually [not] considered to be an arm's length transaction because the bank has different motivations than a normal buyer or seller").
[49] See TR at p 90.
[50] See TR at p 91. Mr. Rexroth also indicated that he did not have population or traffic counts for any of his comparable properties in his work file. See TR at p 96.

and important,[51] (xv) his work file included a Memorandum of Land Contract for one of his comparables, but he did not know the terms of the Land Contract,[52] (xvi) although he didn't verify the CoStar information, he likes to have a second source,[53] (xvii) he went beyond his search parameters based on information from other sources, but has no notes in his work files regarding those sources or the information provided by those sources,[54] (xviii) he did not know whether the successor trustee had a motive to "unload" Comparable No. 8,[55] (xix) although he indicated that Comparable No. 9 was one of the sales that should be given the most weight in determining the property's TCV for the 2016 tax year, his work file does not include information regarding that comparable property (i.e., incomplete work file),[56] (xx) even though he only "visited" Comparable Nos. 2, 3, 4, 6, and 7, "visiting these comps in my opinion is very critical to as close to the date of sale as possible because obviously there can be material differences,"[57] (xxi) he is not aware of whether the noted repairs for Comparable No. 6 were made,[58] (xxi) he indicated that rebranding causes obsolescence, but did not do any "study" regarding rebranding even though he utilized several Saturn dealerships and those dealerships have smaller showrooms, as that issue was "beyond the scope of [his] assignment in valuing real estate,"[59] (xxii) in response to a question regarding his selection of comparable properties (i.e., "the winnowing process"), he agreed that highest and best use was an important factor and indicated that Comparable No. 4 was the only comparable that was an "OEM" dealership after sale,[60] (xxiii) he did not review Mr. Heinowski's work file or talk with the seller of Comparable Nos. 4 and 5 regarding the marketing of either property,[61] (xxiv) Mr. Heinowski's market condition adjustments were not, based on his "identified appreciation of 3 percent per year," consistent,[62]

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[51] See TR at 92-3. Mr. Rexroth did, however, indicate that he didn't know whether "visibility/frontage" are less important than it used to be given the advent of the internet and internet sales (i.e., online review of dealership cars).
[52] See TR at 93-5.
[53] See TR at 95.
[54] See TR at pp 97-8.
[55] See TR at p 98.
[56] See TR at p 99-100.
[57] See TR at p 100.
[58] See TR at pp 101-2.
[59] See TR at pp 104-6.
[60] See TR at pp 141-4.
[61] See TR at p 322.
[62] See TR at pp 322-5.

and (xxv) there were also consistency issues with respect to his size adjustments.[63]

On rebuttal, Mr. Rexroth testified that (i) he has reviewed Respondent's appraisal and observed "errors or inconsistencies or faulty analysis,"[64] (ii) "I believe Mr. Heinowski has indicated a few of the errors that have been made as it relates to the land area, net and gross areas . . . . the land-to-building ratio differences of opinion as it relates to those errors and I believe Mr. Heinowski has adequately addressed those issues,"[65] (iii) Comparable No. 1 was, in his personal opinion, purchased with the intent that it would be a temporary facility to be torn down and a new facility built,[66] (iv) "[t]he difficulty I have with Comparable Number 2 is that it did occur after the two dates of valuation" and "I believe it's unfair to try to use a sale that is after the date of valuation because there again we're trying to say that sale was reflective of value that existed on the date of valuation, whether it be 26 days, whether it be a year and a half . . . . [and] to use a sale after that date is somewhat presumptive,"[67] (v) Mr. Rexroth did, however, admit that there is nothing in appraisal practice that would preclude the consideration of such sales if properly adjusted,[68] (vi) Comparable No. 2 is not a comparable property, as it is located "in a more built-up neighborhood and is in my opinion a superior location," and his adjustment for location is too "light" and for market conditions is "too heavy,"[69] (vii) "it is very difficult to take a sale of one dealer to another dealer [i.e., Comparable No. 4] if the same brand is involved in that transaction," as such sales are, based on his professional opinion, a "package" deal including both business and real estate,[70] (viii) Comparable No. 5 is a "similar situation" to Comparable No. 4 and he would not have picked either property as a comparable,[71] (ix) with respect to Mr. Heinowski's market condition adjustment, an "upward adjustment" should have been made to Comparable No. 1, the adjustment for Comparable No. 2 "should have been a little lighter," and

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[63] See TR at pp 325-7.
[64] See TR at p 298.
[65] See TR at p 298.
[66] See TR at pp 298-300.
[67] See TR at p 300.
[68] See TR at p 300-1. See also *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 353-54; 483 NW2d 416 (1992).
[69] See TR at pp 301-4.
[70] See TR at pp 304-6. In that regard, Mr. Rexroth also indicated that he had "not seen a closing statement for the Telegraph transfer of ownership for the entire package."
[71] See TR at pp 306-8.

the adjustments for Comparable Nos. 3 and 5 "should have been a higher upward adjustment,"[72] (x) Mr. Heinowski's location adjustment is "inconsistent" with his 10% "arbitrary" adjustment in his cost approach for external obsolescence,[73] (xi) Mr. Heinowski only made one adjustment for accessibility and "the subject is not readily accessible,"[74] (xii) he could not find listings for Mr. Heinowski's comparables and is "concerned" as to whether these properties "were not offered on the open market for sale," particularly with respect to Comparable No. 4,[75] (xiii) Mr. Heinowski's use of listings that were "arbitrarily" adjusted 20% to support his opinion of value constitutes a "weakness,"[76] (xiv) "it's not been his experience to see exposure time stretched out three and a half to four years" and there is no "support" in Mr. Heinowski's appraisal for his "extended" exposure time, which raises a question as to whether his number is "inflated,"[77] (xv) in his view, his comparables that sold for a converted use were "appropriate," as the "seller had the opportunity to sell them" and that the buyer "using them for a different highest and best use . . . does not necessarily change the highest and best use of that property,"[78] and (xvi) the "35 percent differentiation between . . . [Mr. Heinowski's] cost approach and [his] sales approach brings to mind some areas of analysis that was not properly identified."[79]

Finally, in response to questioning from the Tribunal, Mr. Rexroth testified that (i) his land-to-building ratio for the subject property was determined based on net acreage, but that he was not aware of whether his land-to-building ratios for his comparable properties were based on net or gross acreage and (ii) his percentage adjustments were not based on any market analysis, rather those adjustments were based on his professional opinion.[80]

RESPONDENT'S CONTENTIONS

Respondent contends that the evidence presented in this case supports a determination that the subject property is under-assessed for the tax years at issue. Specifically, Respondent contends[81] that (i) Petitioner's appraisal "is fundamentally flawed" as "[i]t relies on a sales

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[72] See TR at pp 308-9.
[73] See TR at p 309.
[74] See TR at p 309.
[75] See TR at pp 309-11.
[76] See TR at pp 311-2.
[77] See TR at pp 312-7.
[78] See TR at pp 317-20.
[79] See TR at pp 320-1.
[80] See TR at pp 102-3.
[81] See TR at pp 7-8, p 146, and pp 332-7.

approach that uses comparables that are too different from the subject to provide a valid conclusion to value," (ii) "Respondent's appraiser, Mr. Heinowski, will show that the true cash value of the subject property is in excess of the roll value for both tax years at issue," (iii) the case should be dismissed as Petitioner "has not met their burden of carrying forward the case," (iv) the Tribunal rejected in MTT Docket No. 455503 the use of sales of dealerships that had been converted to industrial uses or other retail sales indicating that "[o]nly properties with the same or similar highest and bests uses are suitable for use as comparable sales," (v) the Tribunal also recognized that dealerships often off-site locations for vehicle inventory storage, which is, as indicated by Mr. Heinowski's testimony, a common industry practice, (vi) "Petitioners have built their case around a set of comparables that are not in fact comparables at all," (viii) "Petitioner's Comps 3, 6, 7, and 10 all suffer from the conversion to another use after sale . . . . Comps 1, 5, 6 and 7 are significantly older than the subject evidence . . . . Comps 2 and 10 were bank sales . . . . Comp 5 was an unspecified land contract where Mr. Rexroth knew nothing about the terms and could not explain whether it included financing . . . . Comps 2, 3, 8 and 9 . . . were former Saturn dealerships . . . . [and] those have showrooms that are generally too small to meet the needs of OEMS and thus are not attractive to persons who might be looking to put that property to a continued highest and best use as a new OEM dealership . . . . Comps 1 and 5 had multiple tenants at those spaces . . . . [a]nd finally, Comps 4 and 8 in Owosso and Kalamazoo are in entirely different markets than the subject," (ix) Mr. Rexroth's work file is "missing evidence" and "information," (x) "Mr. Heinowski's presentation is the only reasonable one presented here," (xi) Mr. Heinowship "did a search and review for . . . [his] inconsistencies and called them out to the Tribunal . . . . [which] should buttress his credibility," (xii) "Mr. Heinowski correctly prepared a cost approach for the subject, which is as he testified a special use property . . . . [and that] buttresses his conclusion and he triple confirmed his conclusions by looking at recent listings in the area," (xiii) "Petitioner . . . bought this property for 3.7 million dollars in 2007 from another auto dealership . . . . [and] that was a pure real estate sale . . . . [as it] included no business enterprise, goodwill or personal property value," (xiv) "[t]his dealership is like those being constructed nearby . . . . and the fact that it has off-site inventory makes it really no different from many other dealerships in this region," and (xv) "Mr. Heinowski concluded to a very conservative true cash value for both years at issue of 2.5 million."

As determined by Respondent's valuation expert, the subject properties' TCV and TV for the tax years at issue should be as follows:

Parcel Number: 18-18-02-401-004

Year	TCV	AV	TV
2015	$2,500,000	$1,250,000	$1,141,467
2016	$2,500,000	$1,250,000	$1,144,891

RESPONDENT'S ADMITTED EXHIBITS

R-1 Valuation Disclosure prepared by David M. Heinowski dated July 18, 2016.[82]
R-2 City of Saline Assessor File (including Record Card).[83]
R-4 Appraisal Institute's *The Appraisal Journal* (Volume LXXXIII Number 3, Summer 2015), "An Introduction to Automobile Dealerships."[84]
R-5 Appraisal Institute's *A Guide to Appraising* by Bradley R. Carter, MAI, Chapter 3 – "Site and Location Analysis."[85]
R-6 Property Detail, 7885 W. Grand River Ave., pp 1-8.[86]
R-7 Property Detail, 12000 Telegraph Rd., p 2.[87]
R-18 Ann Arbor Auto Mall Aerial Photograph.[88]
R-19 Dealership Site Area Summary.[89]
R-20 Rexroth Work File.[90]

RESPONDENT'S WITNESSES

David M. Heinowski

David M. Heinowski was Respondent's first witness. He was admitted as Respondent's valuation expert[91] and testified that (i) he not only "toured" the subject property, he is also "familiar" with the property,[92] (ii) unlike his appraisal in the *Dunning Motors* case, his appraisal in this case is a "USPAP-sanctioned appraisal,"[93] (iii) "[t]he subject property is a masonry constructed building that is . . . 24,551 square feet in size on [4.56] net acres of land,"[94] (iv) net

[82] See TR at p 150.
[83] See TR at pp 278-80.
[84] See TR at p 163.
[85] See TR at p 158.
[86] See TR at pp 284-6.
[87] See TR at p 286.
[88] See TR at pp 273-4.
[89] See TR at pp 274-5.
[90] See TR at p 71.
[91] See TR at p 149. See also 147-9 regarding his qualifications.
[92] See TR at p 150 and p 152.
[93] See TR at p 151. See also MTT Docket No. 14-004710 (*Dunning Motors, ACD Investments, LLC v Scio Twp*).
[94] See TR at p 153.

acres versus gross acres was used in establishing the property's estimated value "[b]ecause not all lots go to the center line of the road" like the subject property and you "should use the same method [i.e., net versus gross] throughout the report on all comps,[95] (v) coming from the east "there's visibility as you're coming up the hill . . . [and] you can see the cars displayed and . . . the side of the building," but "coming from the west going east you're coming down an elongated hill where you can see the whole building for probably a quarter to a half a mile away . . . . [depending] on the height of the corn in the field across Austin Road from it . . . . [b]ut you can see the building and it also has the advantage of having a street light at the corner of Austin and Michigan because at that point it brings traffic to a stop so that you can see facility and see what vehicles they have on display," (i.e., "[t]he auto light is an enhancement to a property located at a corner"),[96] (vi) "[o]n Austin the traffic count is about 3300 vehicles per day; on Michigan Avenue it comes out to be about 11,900 a day to 20,800 a day," which is in excess of the minimum count of 10,000 recommended by the Appraisal Institute,[97] (vii) the property's land-to-building ratio "is a little bit less than what we're noticing in the market" (i.e., "slightly below average"),[98] (viii) the "overall condition" of the property was "a little less than average because they were refreshing the property in a couple places such as the lounge area where you waited for your vehicle so they were trying to update the property,"[99] (ix) the property's highest and best use "would be for an automobile dealership,"[100] (x) automobile dealerships are special use properties because "they're good for basically the use in which they're designed for, they are usually custom built or built to suit facilities . . . . [a]nd if there is a secondary market, as we've seen with some of the comparables given so far, there is a great deal of functional depreciation that comes about for a sale of a dealership to a nondealership type property,"[101] (xi) he considers dealerships to be a "destination" stop "because they usually sell one commodity, that people will go to that shop or seek out that shop either from seeing local advertisements in the paper or

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[95] See TR at p 153-4.
[96] See TR at pp 154-6.
[97] See TR at p 155-8.
[98] See TR at p 159.
[99] See TR at p 160.
[100] See TR at p 161. Although Mr. Rexroth did not specifically testify as to the property's highest and best use, the line of questioning and responses on p 141 would support the conclusion in his appraisal report regarding the continued use of the property as an automobile dealership.
[101] See TR at pp 161-2.

nowadays on the Internet or that they are after a certain type of vehicle . . . . [a]nd since the vehicle is usually one of the largest expenses a household will make, people tend to make it a destination to go look for a car before they purchase and they're not sold on every street corner,"[102] (xii) in his opinion, people are willing to travel "five to 15 miles at max" to an automobile dealership,"[103] (xiii) the desirable general features for an automobile or OEM dealership are location, size, and a good service department and "with location you want visibility . . . [and] accessibility" and the subject property has those features,[104] (xiv) he "didn't think it was unreasonable to use the cost approach," the subject property "is approximately 10-11 years old compared from the date of construction to the date of appraisal" and "we are now seeing the construction of more and more auto dealerships in the area of the subject, such as those on Jackson Road," and such properties are special use properties (i.e., "built to suit"), which negates functional problems "because if they build it to fit their needs then it won't have a functional problem, the functional problem would come on a secondary user,"[105] (xv) "the tightness of . . . [his land] sales gave credence to the indicated market value of the land" of $1,300,000,[106] (xvi) the property's estimated true cash value under the cost approach (i.e., depreciated total cost of all improvements plus land value) was $3,293,971.65, "which we rounded to the nearest whole integer to be a value indication of $3,300,000" for the 2015 tax year and $3,323,257.20 that "was rounded to the nearest whole integer of $3,300,000" for the 2016 tax year,[107] (xvii) the property sold in 2007 for $3.7 million and that sale is "in line" with his estimated true cash value for the 2015 and 2016 tax years "based on depreciation,"[108] (xviii) "the biggest difficulty [in preparing his sales approach] was trying to find sales in the same general geographic area or the same market area as the subject property,"[109] (xix) he found five

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[102] See TR at pp 164-5.
[103] See TR at p 164.
[104] See TR at p 165.
[105] See TR at pp 166-8. See also TR at pp 200-2 (i.e., "[t]he subject is relatively new, the forms of depreciation can be readily derived from the marketplace," "the cost approach could have been a good supportive approach rather than relying on only a singular approach to value," etc.).
[106] See TR at 168-71.
[107] See TR at pp 171-9. Mr. Heinowski calculated "an average of depreciation level of 1.65 percent per annum for physical and functional depreciation" based upon his sales, excluding Comparable No. 1 as a "statistical outlier" and then added "10 percent economic obsolescence for the location of the subject being on the west side of City of Saline and away from the other car dealerships." See TR at pp 176-7.
[108] See TR at p 178.
[109] See TR at p 179.

sales that he "felt were good sales," but excluded Comparable No. 3 after "learning" that it "had no exposure time,"[110] (xx) Comparable No. 1 was "good sale" even though the building was torn down "about a year after it was sold" because "it was sold as an auto dealership and was used as an auto dealership for a reasonable period of time after sale,"[111] (xxi) "some [of his sales adjustments] were done on professional opinion . . . . [however, most] were done on statistical analysis . . . . to make sure that we get as close to the central line of tendency as we can which is the pure market value,"[112] (xxii) his land adjustments were based on net acreage,[113] (xxiii) he placed the "most emphasis" on his Comparable Nos. 2, 4, and 5 with a "final rate" of $101.83 "per square foot" and a "final value" of $2,500,000, for the 2016 tax year that was reduced "by 3 percent which is what we were given for market conditions" to $2,425,000 for the 2015 tax year,[114] (xxiv) in reconciling his cost and sales approaches, his cost approach was less reliable than his sales approach (i.e., "too many moving parts"),[115] (xxv) he does not agree with Mr. Rexroth's consideration of sales "in western and northwestern Michigan," as "economics of land and buildings and labor are closer related to the subject the closer you can get it, of course, so that your labor costs are going to be the same for your comps than they are for the subject property with land prices or building prices . . . . [a]nd there has been no proof to show that the economics for some of the outlying areas such as Midland . . . Shiawassee, Grand Rapids, et cetera are anything to akin to those found in Saline,"[116] (xxvi) Mr. Rexroth's highest and best use "as a Chrysler Jeep Dodge Ram dealer" is "limited too much and finding comps would be extremely hard and in fact as I believe he earlier testified we had one comp that was close to

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[110] See TR at pp 179-80. Comparable No. 5 "was approved for use in the *Dunning's* matter." See TR at p 186.
[111] See TR at pp 180-1.
[112] See TR at p 189.
[113] See TR at pp 179-91.
[114] See TR at 192-5. Mr. Heinowski indicated that the Comparable No. 1 sale was "confusing" and that he utilized listings to "bolster the approach" that he adjusted 20 percent based on a "couple [of] different methods" including "market support." Mr. Heinowski also indicated that "[t]he valuation conclusion did not change with or without the listings, but there's more indications or markers in the market that showed that the valuation conclusion was at market levels. See also TR at p 195 and pp 186-7. Further, Mr. Heinowski also rounded his estimate of true cash value for the 2015 tax year "to the nearest whole integer" from $2,425,000 to $2.5 million. See TR at p 196. See also TR at pp 235-7 and pp 245-6. Said rounding was, however, unnecessary, and clearly excessive, as the estimate should have been rounded, if appropriate, to $2,400,000 and not $2,500,000, which is also excessive.
[115] See TR at pp 196-7. Mr. Heinowski also indicated that the use of sales from another area (i.e., outside of the southeast Michigan area) was not necessary, particularly given the difficulty in proving "the economics affecting land and building or land and improvements in another area were the same as that of the subject . . . a long-drawn-out process." See also TR at pp 246-7.
[116] See TR at p 203.

it,"[117] (xxvii) Mr. Rexroth's Comparable No. 1 is "much older than the subject property . . . [with] an older style of construction so it hasn't been updated to OEM newer requirements which means it's going to need some rebranding," the traffic count is "actually worse than the traffic count at the subject," and "[t]he subject's population is about two and a half times that of the Monroe property,"[118] (xxviii) a seller of a Saturn dealership with a smaller showroom [would] have difficulty marketing it to someone who wanted to put it to an OEM use . . . . "because a great deal of alterations would have to be done" and he did not see an adjustment for it,[119] (xxix) Mr. Rexroth's Comparable No. 3 should not have been included as the sale represent a change in the highest and best use of the property from automobile dealership to church (i.e., "violates the highest and best use . . . of what the sale should be"),[120] (xxx) Mr. Rexroth's Comparable No. 4 is in a "remote market" and should receive a positive, rather than negative location adjustment, Comparable No. 5's building "was built in 1967, not 1986 as stated in the appraisal" and "was transferred via land contract but no specifics as to the terms of the contract or leases were given," Comparable No. 8 is in "a different economic market" and is a "questionable sale," and Comparable 9 is "again an old Saturn building,[121] (xxxi) R-5 does not "state any one of these factors is dispositive,"[122] (xxxii) he has not seen "anything that really changed [to the property] from the dates that they purchased the property and today,"[123] (xxxiii) Comparable Nos. 4 and 5 were also used in the *Dunning*'s case and the Tribunal rejected a downward adjustment to Comparable No. 5 because the property was not in a sales cluster,[124] (xxxiv) "the formula for land-to-building is . . . land total size given to building total size . . . [and] does not say adjusted land-to-building,"[125] and (xxxv) he is not aware that he and Mr. Rexroth look at adjusted land-to-building ratios.[126]

On cross-examination, Mr. Heinowski testified that (i) Mr. Rexroth's net acreage figure was correct, as the property's net acreage is 4.31 and not 4.56 as indicated in his appraisal and, as

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[117] See TR at p 204.
[118] See TR at pp 204-10.
[119] See TR at p 212.
[120] See TR at p 212-3. See also TR at pp 215-6 and p 218.
[121] See TR at pp 213-9.
[122] See TR at p 250.
[123] See TR at p 251.
[124] See TR at pp 254-6.
[125] See TR at pp 256-7.
[126] See TR at pp 257.

such, his land-to-building ratio should be reduced because there is less land, but he has not calculated that reduction,[127] (ii) the 4.31 net acres is net of the road right-of-way, but not net of the retention pond, which he doesn't "believe" should be taken out,[128] (iii) "coming eastbound on Michigan Avenue or US-12 . . . . [y]ou can see . . . [the building] as you crest the hill, then when the corn is at full height it obscures the building quite a bit and then you see it again at the stop sign,"[129] (iv) he does not agree that the subject site "is a rural site or one which is certainly not within a city or urban area or nearing suburb," as the building is "only partially obscured during certain times of the year from one direction only," (v) it is, however, "a different type of facility" because its next door neighbor is a corn field and not a "commercial building on Telegraph Road,"[130] (vi) he disagrees with Petitioner's assertion that there are no "demand generators" near the subject property,[131] (vii) the subject property is not located within a "cluster of dealerships" and "if it was with the other two dealerships on Michigan Avenue the price may be higher than what is indicated in my appraisal . . . . but I did not do that analysis so I cannot say one way or the other,"[132] (viii) the value may be "potentially" higher based on increased visibility, traffic count, and activity around the dealership, but no analysis was done based on such an increase,[133] (ix) the subject property's frontage is "below the average,"[134] (x) it's fair to say that "there are a number of items that a dealership does . . . that can't be served by just going online and looking for a model and then driving in one time and buying that model,"[135] (xi) it is correct to say that "the land for . . . [a] dealership is worth less in a small town,"[136] (xii) Comparable No. 2 is still a good comparable even though it sold after December 31, 2014, and December 31, 2015, "[a]s long as I give a proper adjustment to the date of sale,"[137] (xiii) "in talking to the assessor [regarding the sale of Comparable No. 4] he had talked to the owner and they said that there was

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[127] See TR at pp 224-5.
[128] See TR at pp 225-6.
[129] See TR at pp 226-7. See also TR at p 232.
[130] See TR at p 227.
[131] See TR at pp 228-9.
[132] See TR at pp 229-30.
[133] See TR at p 231.
[134] See TR at p 233.
[135] See TR at pp 234-5.
[136] See TR at p 235.
[137] See TR at pp 237-8. See also TR at p 252.

no non-realty items involved in the sale,"[138] (xiv) "all that sold [relative to Comparable No. 5] was the bricks and mortar to the real estate . . . . [as the] new owner had his own franchise to bring in so there was no indication of the franchise blue sky or any other non-realty items being bought in consideration in this sale,"[139] (xv) his 20% adjustment for listing was based upon his "personal experience,"[140] (xvi) he believes that his "reasonable exposure time of 36 to 42 months" is "a reasonable exposure time . . . . [f]or different forms of commercial property" and that a shorter exposure time "wouldn't . . . decrease . . . [his] opinion of value for the property,"[141] (xvii) although he "didn't have any actual evidence that . . . [Comparable No. 8] was sold otherwise than in the ordinary course of business just because it happened to be the name of a trust," he indicated that the sale should not have been used "given the distance from the subject more than anything else and being a different real market, there could have been better comps than this one used,"[142] (xviii) he agreed that "another property that doesn't have to detain its storm water on its own site has more usable . . . advantaged land for their operations than the subject property" and indicated that "the detention pond still has value,"[143] and (xix) a sale of the real estate and a sale of the business "would be two transactions subject to different taxes on each," but that the package price can be allocated between real estate and other business assets.[144]

Catherine Scull

Catherine Scull was Respondent's second and last witness. She was admitted as Respondent's expert in assessing[145] and testified that (i) she assesses the 60-70 commercial parcels in the City, which includes one automotive dealership (i.e., the subject property),[146] (ii) she has visited the subject property multiple times,[147] (iii) the City "has been listed in CNN

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[138] See TR at pp 238-40. See also TR at pp 252-3.
[139] See TR at pp 240-3. See also TR at pp 253-4.
[140] See TR at pp 244-6.
[141] See TR at pp 247-8.
[142] See TR at pp 248-50.
[143] See TR at pp 258-60.
[144] See TR at pp 260-5. In that regard, Petitioner's attorney interjected, during his questioning of Mr. Heinowski, his experience in selling and purchasing automobile dealerships (i.e., 70 or more) in the framing of his question relative two of Respondent's comparable properties and the possible transfer of real estate and business assets in those sales, although not objected to, is problematic.
[145] See TR a p 270. See also TR at pp 266-9 regarding her qualifications and limitation on her admission.
[146] See TR at p 268.
[147] See TR at p 269.

Money Magazine three times for being one of the best small cities in the country,"[148] (iv) the subject property is not surrounded by farm property (i.e., "only farm property to the west as you are heading out of the city), rather "the three sides surrounding the subject are some upper end subdivisions, churches, a strip mall, apartment complexes, condominiums,"[149] (v) "[t]here is an auto dealership begin constructed on Jackson Road about seven miles north of the City in Scio Township . . . . [and there] are other dealerships in that same vicinity that were built about the same time as the subject,"[150] (vi) she is not aware of whether the listed acreage of the "other dealerships" is gross or net,[151] (vii) in explaining her cost approach, she indicated that "[w]e . . . start with a land value for the subject, and based on my inspection add site improvements, the square footage of the building, I look at the overall construction of the building, determined a class of construction, it was determined to be a Class C average," "[a]ny additional item that should be assessed to the property, if there would be any would be added there as well," "I would then subtract for any accumulated depreciation based on the effective age of the property," and "we would modify that depreciated cost estimate using the cost figures with a county multiplier which would adjust the figures to the cost figures to Washtenaw County and we also add an ECF factor which is based on our two years sales study each year to then add that final building value to the site improvements and the land value to come up with a total true cash value of the property,"[152] (viii) she is not aware of any errors or deficiencies in the admitted record card,[153] (ix) the property transfer affidavit for 7885 W. Grand River Avenue indicates a purchase price of $3,500,000 and does not report any value that is not connected with the real estate,[154] (x) the property transfer affidavit for 1200 Telegraph Road indicates a purchase price of $5,700,000 and does not report any value that is not connected with the real estate,[155] (xi) she visited Petitioner's Comparable Nos. 1, 5, and 7,[156] (xii) "[t]he general area of Sale 1 seemed a little depressed compared to the area of Saline . . . . a little distressed and not built up,"[157] (xiii) Sale 5 (i.e.,

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[148] See TR at pp 270-1.
[149] See TR at p 272. See also TR at pp 279-80.
[150] See TR at p 272-4.
[151] See TR at pp 275-7. See also Exhibit R-19.
[152] See TR at p 281.
[153] See TR at p 281.
[154] See TR at p 285-6.
[155] See TR at p 286.
[156] See TR at pp 287.
[157] See TR at p 287-90.

Comparable No. 5) "is in a rather industrial area" and "is very close to being - - having the next intersection is the City of Detroit so it seemed like a run-down area, not typical of the actual City of Dearborn,"[158] (xiv) Comparable No. 7 "is located in Ypsilanti Township which is the most proximate of the comps to the subject" and "I'm fairly familiar with Ypsilanti . . . . [as] I used to live there, used to work there," (xv) the location of Comparable No. 7 "doesn't enjoy much traffic," "[t]he businesses that were placed there were struggling," "[t]here was another dealership that was located next door to this dealership and it is currently being used as a church," and "Comp Number 7 is used as the Girl Scout office and roller derby rink,"[159] and (xvi) she drove by Comparable No. 8, "observed" that the building "was substantially smaller," and has no "knowledge of that general area."[160]

On cross-examination, Ms. Schull testified that (i) her "dealership list" is, at least with respect to branding, an "abbreviated list" that may be incomplete.[161]

FINDINGS OF FACT

The following facts were proven by a preponderance of the evidence:

1. The subject property is an automotive dealership that consists of a building improvement of 24,551 square feet on 4.31 net acres located on West Michigan Avenue or US-12.
2. There is no access into the dealership from US-12. There is, however, access into the dealership from Austin Road and Austin Drive. There is also a stop light at the corner of West Michigan Avenue and Austin Road to facilitate access from Austin Road.
3. The dealership operates under a franchise agreement that impacts the layout, materials, and finish of the dealership (i.e., the brand).
4. The different brands have different requirements and, as such, the varying required improvements are not interchangeable and, as a result, may require the rebranding of a dealership that is sold for continued use as a dealership.
5. The highest and best use of the subject property is its continued use as an automotive dealership.
6. The subject property has less net acreage than other dealerships and a retention pond that affects its ability to display vehicles. Petitioner does, however, store vehicles at another site in close proximity to the property.
7. The subject property is not a "special use property," even though "built to suit," as the properties are not "rarely bought and sold."
8. The "built to suit" nature of the dealerships or branding does result in functional obsolescence given requirements of rebranding upon sale for use as a dealership of a different brand.

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[158] See TR at pp 290-1.
[159] See TR at pp 291-2.
[160] See TR at p 292.
[161] See TR at pp 294-7. See also Exhibit R-19.

9. The sale of a dealership for use as a dealership of the same brand may not require rebranding. Such sales may, however, involve franchise issues that are generally the subject of confidentiality agreements.
10. Both the City of Chelsea and the City of Saline are located in close proximity to the City of Ann Arbor and serve as feeder communities to that City. They are both small communities with the respective dealerships being located on secondary highways running through the cities without "demand generators" being physically or immediately adjacent to those dealerships. A major highway (i.e., I-94) is, unlike the subject property, located in close proximity to the Chelsea property.

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.[162] 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.[163]

In its review of that definition, the Michigan Supreme Court has determined that "true cash value" is synonymous with "fair market value."[164]

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.[165] The Tribunal is not, however, bound to accept either of the parties' theories of valuation.[166] 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.[167]

Further, a proceeding before the Tribunal is original, independent, and de novo[168] and the Tribunal's factual findings must be supported by competent, material, and substantial

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[162] See Const 1963, art 9, sec 3.
[163] See MCL 211.27(1).
[164] See *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).
[165] See *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).
[166] See *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).
[167] See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).
[168] See MCL 205.735a(2).

evidence.[169] 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."[170]

Additionally, "the petitioner has the burden of proof in establishing the true cash value of the property."[171] "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."[172] 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."[173]

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.[174] The market approach is, however, the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.[175] 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.[176] Regardless of the approach selected, the value determined must represent the usual price for which the subject property would sell.[177]

The Tribunal is also required to consider the "highest and best use" of property in determining the property's true cash value, as that concept is fundamental to such determinations, as "it 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, land is appropriately valued 'as if available for development to its highest and best use, that most likely

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[169] See *Antisdale v Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984) and *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-3; 462 NW2d 765 (1990).
[170] See *Jones & Laughlin Steel Corp, supra* at 352-3.
[171] See MCL 205.737(3).
[172] See *Jones & Laughlin Steel Corp, supra* at 354-5.
[173] See MCL 205.737(3).
[174] 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).
[175] See *Jones & Laughlin Steel Corp, supra* at 353 (citing *Antisdale, supra* at 276 n 1).
[176] See *Jones & Laughlin Steel Corp, 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)).
[177] See *Jones & Laughlin Steel Corp, supra* at 353 (citing *Meadowlanes, supra* at 485).

legal use which will yield the highest present worth."[178] 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."[179] 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.[180] "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."[181]

Finally, the Tribunal is also required to determine the subject property or properties' taxable values for the tax years at issue.[182]

Here, the subject property is an automobile dealership with a franchise agreement and automotive companies have specific requirements as to the layout, materials, and finish of dealerships selling their brand. Further, a portion of the resultant improvements are not, as indicated by the parties, interchangeable among the different brands, which impacts sales of dealerships to purchasers selling the same or a different brand. Nevertheless, the Tribunal's responsibility in this case is to determine the true cash and taxable values of the subject real estate without valuing the business.

Fortunately, that responsibility is facilitated by the parties' agreement, after appropriately applying the recognized four tests to the property as vacant and improved,[183] that the highest and best use of the property "would be for its continued use as an automotive dealership."[184] Petitioner does, however, also indicate that the subject's highest and best use is as an automotive dealership "for the sale of new and pre-owned vehicles" and that "[t]he highest and best use, as improved, for anything other than specifically a Chrysler Dodge Jeep Ram Dealership for and on behalf of LaFontaine does affect market value." Said limitations would, however, unnecessarily

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[178] See *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 633; 462 NW2d 325 (1990).
[179] See *The Appraisal of Real Estate*, Appraisal Institute, 2013, 14th ed at p 331.
[180] See *The Appraisal of Real Estate*, *supra* at p 345.
[181] See *The Appraisal of Real Estate*, *supra* at p 334.
[182] See MCL 205.737(1). See also MCL 211.27a(2).
[183] See *The Appraisal of Real Estate*, *supra* at p 335.
[184] See P-1 at pp 37-42 and R-1 at pp 30-6.

narrow the potential market for the property.[185] In that regard, the Marshall Valuation Service makes no distinction between for dealerships that sell new vehicles, pre-owned vehicles, or new and pre-owned vehicles. Rather, the Service provides a cost category for "complete" automotive dealership based on the level of the dealership's "quality." With respect to the second limitation, that limitation would render the property a special use property and the evidence presented demonstrates that there are sufficient "market participants" for automotive dealerships of different brands, which is inconsistent with said limitation or, more specifically, a highest and best use limited to the specific brand of property at issue.[186] Thus, the highest and best use of the property is its continued use as an automotive dealership. That highest and best use does, however, impact Petitioner's selection of comparable properties, specifically, Comparable Nos. 3, 6, 7, and 10, as those properties were, notwithstanding permissible zoning, sold for a different use rendering those sales without adjustment or, more appropriately, narrative relative to adjustments for such differences unreliable indicators of value.

As for the valuation of the property, neither party prepared an income approach.[187] Both parties did, however, submit sales approaches with Respondent, but not Petitioner, also submitting a cost approach.[188] Nevertheless, Respondent, in its reconciliation,[189] indicated its "emphasis" on its sales approach even though its cost approach was a "pertinent" and "valid

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[185] See the Final Opinion issued by the Tribunal in *Dunning Motors v Scio Twp* on July 1, 2106 (MTT Docket No. 14-004710) at p 27.

[186] As indicated by Judge Marmon in *Dunnings Motors* "[a] special use property does not fit into Michigan's definition of true cash value which is the real estate's usual selling price, as sales of special property are unusual and generally do not sell for that purpose . . . . [and that] definition does not explicitly recognize special use as an exception to the requirement of usual selling price, or per *CAF Investment Co, supra* [at p 450], synonymous with market value." See MCL 211.27.

[187] See P-1 at p 56 and R-1 at p 38 and pp 63-4.

[188] See P-1 at pp 43-5. Respondent also submitted the property's record card and Respondent's assessor testified in support of that record card. Although Respondent's assessor testified that she was not aware of any errors or deficiencies relative to the record, she did not, however, testified in support of the combined depreciation factor utilized to adjust the cost of the improvements or submit the land sales study supporting the rates used in determining the property's land value or the ECF (i.e., "economic condition factor") study used in adjusting the depreciated cost of the improvements to further reflect the market value of the property. Thus, the record card was an incomplete valuation of the property.

[189] Mr. Heinowski testified as to the many corrected and uncorrected errors in his appraisal and indicated that it is difficult to proofread your own work. However, a proofreader would have been beneficial as Mr. Heinowski's reconciliation also indicates that "[t]wo of the three traditional approaches to value have been utilized in this appraisal: the income approach and the sales comparison approach." Said statement is, however, incorrect, as Mr. Heinowski relied on a cost and sales approach and not an income approach (i.e., "[t]he income capitalization approach to value was considered to not be a relevant method, due to the subject property being constructed as an auto dealership and is often sold by the operators to investors or is part of a franchise agreement").

indicator of value" that resulted in estimated true cash values substantially in excess of the values proposed by its sales approach.[190] However, that approach will, given its lack emphasis and singular submission, be reviewed first to determine its reliability.

As indicated by Judge Marmon in *Dunning Motors*, "[t]he first step in the cost approach is to '[e]stimate the value of the site as vacant and available to be developed to its highest and best use.'"[191] In that regard, Mr. Heinowski for Respondent used five vacant land sales.[192] Of those sales, two of the sales occurred in 2012, one in 2013, and two in 2014. Although both parties testified about an "appreciating market" (i.e., 5% for Petitioner and 3% for Respondent with Respondent's being more likely given its market basis), the sales in 2012 and 2013 were not adjusted for changing market conditions and are too remote in time to be considered without an adjustment or, at the very least, an explanation that is not, unfortunately, provided as to why no adjustment was necessary. With respect to the remaining sales, the March 19, 2014 sale has approximately the same square footage as the subject, while the December 23, 2014 sale, which is the sale closest to the beginning tax date at issue (December 31, 2014),[193] has less than one-half of the square footage of the subject. Mr. Heinowski did, however, adjust the December 23, 2014 sale for the difference in size and adjust both sales for location and accessibility. Unfortunately, Mr. Heinowski did not provide any narrative or, more appropriately, data and analysis in support of those adjustments and the adjustments appear on their face to be arbitrary and subjective.[194] Additionally, a review of the property's record card indicates various other

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[190] See R-1 at p 37 and pp 63-4.

[191] See *The Appraisal of Real Estate, supra* at p 568.

[192] Although Mr. Heinowski indicates that "[t]he land sales were first studied to determine the appropriate unit of relationship pertaining to price," the sales should have been studied to determine whether the sales were arms-length transactions subject to normal market pressures and without restriction. See R-1 at p 52. In that regard, no testimony or narrative was provided verifying the nature of the sales. As for the listing, the listing was adjusted 20% based on Mr. Heinowski's professional experience and that experience was admittedly dated. As such, the adjustment was not based on current market conditions and, as such, his listings for both cost and sales purposes are unreliable indicators of value.

[193] See MCL 211.2(2).

[194] The use of percentage adjustments was appropriate given the variance between the sale prices and the corresponding acreages. Nevertheless, Respondent's location adjustments ranged from 5.00% to -15.00% with no narrative or explanation other than to indicate that "[c]omparable property sales 1, 3, 4 and 5 were adjusted downward [i.e., -8.00, -5.00%, -15.00%, and -8.00%] for their superior locations, while comparable sale 2 was considered inferior to the subject and an adjustment upward was required [i.e., 5.00%]. In a similar vein, Respondent's "size" locations ranged from -10.00% to -20.00% without narrative and explanation as to why comparable sales 1 and 5 received the same -10.00% adjustment even though the difference in square footages between those sale square footages and the subject are 123,711 and 104,109, respectively, and why comparable sale 2 was adjusted -20.00% and comparable sale 3 was adjusted -15.00% when the square footage differences are

adjustments (i.e., "corner influence" and "size" presumably excessive size) and said adjustments were also not addressed by Mr. Heinowski.[195]

With respect to the value of the improvements, Mr. Heinowski utilized the cost figures from the Marshall Valuation Service to determine a replacement, rather than reproduction, cost to value the improvements based upon his determination that the improvements "match most closely that of a Class C class of construction type."[196] Although Mr. Heinowski indicated that the use of replacement costs "does eliminate some fundamental design deficiencies, and excesses," Mr. Heinowski also testified as to the "built to suit" nature of the improvements and that said nature made this and other dealerships "special use properties." Even though Mr. Heinowski's assertion that the subject is a special use property is, as indicated above, incorrect, the evidence regarding the branding requirements or "built to suit" nature of the property indicates that the property suffers from "superadequacy" or, more specifically, functional obsolescence that needed to be addressed through further narrative or adjustment and wasn't.[197]

Given the above, neither Respondent's land nor improvement values are properly supported or, more specifically, reliable indicators of value and, as such, the Tribunal declines to rely upon Respondent's cost approach in determining the property's true cash and taxable values for the tax years at issue.

As indicated above, both parties submitted a sales approach. In that regard, Mr. Rexroth for Petitioner presented the adjusted sales of ten comparable properties utilizing different

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156,285 and 158,994, which would seem to support either the same adjustment, as indicated above, or a greater adjustment for comparable sale 3 than comparable sale 2. Finally, Respondent's "accessibility" adjustment ranged from -5.00% to -10.00% with no narrative or explanation other than to indicate "[o]nly comparable 3 was similar to the subject and not adjusted . . . . [a]s all of the other comparables had influences making them superior to the subject."

[195] Although the parties' testimony addressed the impact of the subject's retention pond, Mr. Heinowski's land sales study did not address or otherwise adjust the various sales to reflect that impact. More specifically, Mr. Heinowski indicated that the retention pond should not be taken out in determining the subject's net acreage. However, the retention pond is not, as recognized by both parties, useable for dealership purposes and, as such, issues relating to the value of that retention pond as surplus or excess acreage should have been addressed in the context of that study and were not.

[196] See R-1 at pp 55-7.

[197] See R-1 at p 59. Although Mr. Heinowski indicates that "functional obsolescence plays little to no role" given the fact that "[t]he built to suit property is designed to fulfill the needs of the owner/user," both parties testified relative to the sale of Saturn dealerships and the rebranding required based on the smaller showrooms for such dealerships. See also Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013) at p 564. As a side note, the failure to address the property's functional obsolescence is the likely reason for the substantial difference between Respondent's estimated true cash values under its cost and sales approaches given the impact of branding or, more appropriately, rebranding, as indicated above.

combinations of those ten sales to establish its estimated true cash values for each tax years at issue, while Mr. Heinowski for Respondent presented the adjusted sales of five comparable properties to establish its estimated true cash values for the tax years at issue. Although the Tribunal recognizes the difficulty in appraising such properties under a sales approach, the party's respective sales approaches are, for the most part, unsupported and completely inadequate. More specifically, Petitioner's Comparable No. 1 was an older property in a market that is "depressed" or "distressed" in comparison to the subject market,[198] Comparable No. 2 was the result of a bank sale,[199] Comparable Nos. 3, 6, 7, and 10 were converted to a different use upon sale,[200] Comparable Nos. 4 and 8 were sales in "entirely" different markets,[201] Comparable No. 5 was a land contract sale in a "run down area" that was not properly investigated (i.e., no terms were known),[202] and Comparable No. 9 is also an older property in a different market.[203] Similarly, Respondent's Comparable No. 2 was in a different market, Comparable No. 3 had limited market exposure and was not relied on by Respondent,[204] and Comparable Nos. 4 and 5 involved franchise issues recognized by both Mr. Rexroth and Mr. Heinowski requiring more investigation than actually performed.[205] Said issues place emphasis on the adjustments utilized

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[198] Ms. Schull's testimony relative to the condition of the market in comparison to the subject market was credible and indicated a need for further narrative or adjustment. Additionally, the property originally sold in 2013 for $1,000,000 and then in 2014 for $1,300,000 with no narrative relative to original or resale of the property.

[199] Mr. Rexroth initially indicated that Comparable No. 2 was "probably not a good sale from the standpoint that it was an REO" and required a 50% adjustment. Mr. Rexroth then indicated that Comparable No. 2 was one of the two comparables that should be given the most weight. There was, however, no narrative indicating that the sale had been verified and was the result of an arms-length transaction subject to normal market pressures. See MCL 211.27(6) and *Antisdale*, supra at pp 278-9.

[200] The sale of property for a different highest and best use is, as indicated above, unreliable indicators of value, as said sales are an indication of the market value of the property for that different highest and best use.

[201] Comparable No. 4 is located in Owosso in Shiawassee County (i.e., the mid-Michigan area) and is purportedly a small community with a heavy amount of traffic. Mr. Rexroth did not, however, know the population of Owosso or the vehicle count and his work file did not contain that information. Further, Comparable No. 8 is located in Kent County on the opposite side of the State from the subject and was a sale from a Trust with no narrative indicating whether the sale was an arms-length transaction subject to normal market pressures, as indicated above.

[202] Although Comparable No. 5 was included for "bracketing purposes" only, Mr. Rexroth should have, given his lack of contract terms, further investigated the sale and provided narrative indicating whether the sale was an arms-length transaction subject to normal market pressures, as also indicated above.

[203] Petitioner's Comparable No. 9 is near Respondent's Comparable No. 2 and in similar markets. In that regard, Mr. Rexroth has indicated that Comparable No. 2 is in a superior location with a built-up neighborhood.

[204] Mr. Heinowski "excluded" this sale from consideration based on its limited market exposure.

[205] Although those comparables may have been "used" in the Dunning Motors case, such sales do, in fact, generally involve franchise issues that are often subject to confidentiality agreements. As a result, Mr. Heinowski's minimal and, for the most part, third-hand investigation of those sales is deemed insufficient to justify their use in this case, particularly given the similarity of the markets for Comparable No. 1 and the subject and the different markets for Comparable Nos. 4 and 5 and the subject property.

to reconcile the value impact of the differences between those properties and the subject property. In that regard, Mr. Heinowski did say the magic words or, more appropriately, indicated that his adjustments were market-based. He did not, however, provide any data or analysis demonstrating the purported market or how those adjustments were actually derived.[206] His testimony was, however, far better than Mr. Rexroth's testimony relative to his adjustments being based solely on his "professional opinion," particularly given the admitted lack of necessary information in his work file relative to the preparation of his appraisal that raises questions as to that preparation and whether the work file was created before or after that preparation.[207]

Nevertheless, the Tribunal is "under a duty to apply its expertise to the facts of a case to determine the appropriate method of arriving at the true cash value of property, utilizing an approach that provides the most accurate valuation under the circumstances."[208] In that regard, Respondent's Comparable No. 1 is, despite its purported "confusing" or "problematic nature," a "good sale" and the only reliable indicator of value provided by either party. As for Petitioner's "opinion" relative to the intent behind the purchase of that property, said opinion is subjective and not supported by the evidence. More specifically, the property continued its operations as an automotive dealership for a year after sale and prior to demolition and rebuilding for use as an automotive dealership and no testimony or documentation was provided relative to any expenditures after sale that would support said opinion. Further, both cities (i.e., Saline and

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[206] Although Mr. Heinowski indicated that his adjustments were "market based," he also stated that "some" were based on his "professional opinion." He also stated that "[m]ost were done on statistical analysis . . . . to make sure that we get as close to the central line of tendency as we can which is the pure market value." The central line of tendency (i.e., the mean) does not, however, represent "pure market value." Rather, the mean or average is a measure of central tendency. Although said measures are, unfortunately, often relied upon, as in the instant case, to determine a property's estimated true cash value, a mean can be affected by extreme scores or values in either direction (i.e., positively or negatively or, more appropriately, higher or lower) and, as such, the standard of deviation or variance of the sales study is required to determine whether the mean is, in fact, the best representation of the average or, if appropriate, the reconciled market value of the property.

[207] Although Mr. Rexroth testified that he relied on "historical information" from previous appraisals and sales information from a variety of sources (i.e., CoStar, multiple listing sources, public records, and contacts with assessors and other appraisers), said testimony was contradicted by later testimony given in response to questions regarding the lack of information in his work file. In that regard, he testified that he only relied on CoStar and other appraisals his company has previously prepared and also testified that he went beyond his search parameters based on information from other sources not identified in his work file. Mr. Rexroth also contradicted himself relative to the need to visit or inspect properties (i.e., "critical" versus "not necessary"), which raises additional questions with respect to his use of prior write-ups with no change or re-inspection of those "historic" comparables.

[208] See *Jones & Laughlin, supra* at p 353.

Chelsea) are relatively small, but recognized, cities that serve as feeder communities for the City of Ann Arbor with demand generators not immediately present, but within close proximity, albeit closer for the Chelsea property than the subject property.[209] With respect to the adjustments to that property, Mr. Heinowski's testimony relative to the market-based nature of the adjustments, although not supported, was sufficiently credible to support the adjustments made to that sale with the exception of the adjustments reflected on his grid for market conditions and accessability (and/or visibility), as the adjustments or lack thereof are inconsistent with his testimony regarding market appreciation of three percent per year and the parties' collective evidence relative to the accessibility (and/or visibility) of the subject property.[210] A recalculation of final adjusted sale prices per square foot to reflect the appropriate market appreciation for a sale occurring on April 15, 2015,[211] relative to the tax dates for the tax years at issue (i.e., December 31, 2014, for the 2015 tax year and December 31, 2015, for the 2016 tax year)[212] and the inclusion of a 10% adjustment for accessability (and/or visibility) similar to the adjustment made by Mr. Heinowski to his Comparable No. 2, which is similarly situated relative to Comparable No. 1 (i.e., close to a major highway and not limited to access based solely on a stop light) supports a revision, albeit minor revision, to the assessments at issue.[213]

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[209] Both dealerships are located on "rural" highways (i.e., M-52 and US-12). Further, there is another automotive dealership a half-mile away on the other side of I-94 from the Chelsea property and other dealerships in the "same vicinity" as the subject approximately 7 to 8 miles away.

[210] Although the location adjustment of 10% is questionable given the similarity of the markets, an increase in the adjustment for land to building ratio is also justified based on Mr. Heinowski's admitted error on cross-examination and failure to correct that error. In that regard, a review of his adjustments for location and land to building ratios would indicate that the 10% location adjustment is sufficient to address both the proximity of I-94 and the difference between the land to building ratios of the properties.

[211] Mr. Heinowski's write up indicates April 15, 2015, while his grid indicates March 23, 2015. The public records for the City of Chelsea do, however, confirm April 15, 2015, as the sale date for that property.

[212] See MCL 211.2(2).

[213] Although Petitioner indicates that the subject property's lack of access/visibility and limited display capabilities are a major impact on the property's value, the property does nave access from two different roads and a stop light on the third road prompting access to the property. As for visibility, the property is visible from both directions on US-12, except during a limited time during the summer months when the corn is as high as an elephant's eye impacting, albeit slightly, in only one direction. Finally, the property does have limited frontage and is impacted by the retention pond. Petitioner does, however, have alternative parking that was not admittedly investigated or addressed by Petitioner, just as Petitioner did not investigate or address the impact of internet display based on the perceived need that potential buyers also visit dealerships based on the dealership's service capabilities, which is a non-display issue.

Based on the above, the Tribunal concludes that the subject properties' TCV, SEV, 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. As such, no action should be taken based on this proposed decision until a final decision is issued by the Tribunal.

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:[214]

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 party has 14 days from the date the exceptions were mailed to that party to file a written response to the exceptions.[215]

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.

By Peter M. Koehler

Entered: MAR 10 2017
pmk

[214] See MCL 205.726.
[215] See MCL 205.726 and TTR 289(1) and (2).