

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

Huntington National Bank,
Petitioner,

v

MTT Docket No. 15-003412

Allendale Township,
Respondent.

Tribunal Judge Presiding
Steven H Lasher

FINAL OPINION AND JUDGMENT

The Tribunal issued a Proposed Opinion and Judgment (“POJ”) on May 25, 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:

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: 70-09-23-300-096

Year	TCV	SEV	TV
2015	\$845,000	\$422,500	\$402,197
2016	\$848,400	\$424,200	\$403,400

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

Parcel Number: 70-09-23-300-096

Year	TCV	SEV	TV
2015	\$683,012	\$341,506	\$341,506
2016	\$754,490	\$377,245	\$342,530

¹ See MCL 205.726.

IT IS SO ORDERED.

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

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

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 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

² See MCL 205.755.

³ See TTR 261 and 257.

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 Steven H. Lasher

Entered: June 30, 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

Huntington National Bank,
Petitioner,

v

MTT Docket No. 15-003412

Allendale Charter Township,
Respondent.

Administrative Law Judge Presiding
Peter M. Kopke

PROPOSED OPINION AND JUDGMENT

INTRODUCTION

Petitioner appealed the ad valorem property tax assessments levied by Respondent against Parcel No. 70-09-23-300-096 for the 2015 and 2016 tax years. William E. Delzer, Attorney, represented Petitioner and Bradley J. Fisher, Attorney, represented Respondent.

A hearing on this matter was held on March 28, 2017. Petitioner's witness was Laurence G. Allen, MAI, Allen & Associates Group, Inc. Respondent's witness was David VanderHeide, Respondent's Assessor and Certified General Appraiser.

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: 70-09-23-300-096

Year	TCV	AV	TV
2015	\$845,000	\$422,500	\$402,197
2016	\$848,400	\$424,200	\$403,400

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: 70-09-23-300-096

Year	TCV	SEV	TV
2015	\$683,012	\$341,506	\$341,506
2016	\$754,490	\$377,245	\$342,530

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 that (i) the subject property "is located on the west side of the state in Allendale Township,"¹ (ii) "both appraisers used the same two approaches to value . . . [and] the values they came up with are different, and I think the motivation is why they vary greatly,"² (iii) Petitioner's appraisal "is a careful and fundamentally accurate appraisal . . . with the comparables . . . [that] reflect the subject property even if those comparables were not found in western Michigan,"³ (iv) Petitioner's appraiser "was able to keep adjustments reduced and reflect buildings that were either bank branches after the sale or a full examination of the sales which include deed restrictions were established,"⁴ (v) Petitioner's appraiser "developed a group of properties with land sales and then looked at the replacement cost to reconcile an overall cost approach to value,"⁵ (vi) "[i]n looking at replacement cost . . . [Petitioner's appraiser] recognized and utilized depreciation as a part of his value,"⁶ (vii) Respondent's appraiser "wears two hat to the hearing today . . . [as] he is both the assessor of record for Allendale Township and a hired third-party appraiser for Allendale Township . . . [and] [w]hat . . . [the Tribunal] will hear today is a situation of an appraiser, knowing the value which has been placed on the tax roll by the municipality, and in an attempt to change those values both in his role as the assessor but also as the appraiser,"⁷ (viii) "[y]ou'll see an overall increase in the commercial rate in Allendale Township by the assessing department . . . [and, yet] similar properties actually see a decrease . . . [meaning that] [u]niformity and fairness are not well represented,"⁸ (ix) "[y]ou will see an appraisal that stresses so hard to use local comparables that the adjustments made here are much higher than usually found in comps and appraisals,"⁹ (x) "[y]ou will see a cost approach that does not figure in depreciation and values for the second year under consideration which are just fallen into instead of proven and calculated,"¹⁰ (xi) the differences between the appraisals relate

¹ See Transcript ("TR") at p 4.

² See TR at p 4. See also TR at p 149.

³ See TR at pp 4-5.

⁴ See TR at p 5.

⁵ See TR at p 5.

⁶ See TR at p 5.

⁷ See TR at p 5.

⁸ See TR at pp 5-6.

⁹ See TR at p 6.

¹⁰ See TR at p 6.

to differences in adjustments and the location of the comparable properties,¹¹ (xii) “Mr. Allen would say there is no issue with . . . [location] as long as you properly adjust based on finding what he believes are the proper, correct and best comparables to the subject property,”¹² (xiii) “Mr. VanderHeide didn’t consider, or we don’t know if he considered any properties outside of the general area because he based it simply on location . . . [and] that he bases his appraisal largely on his assessment mind and looks at the different properties and different areas that he’s familiar with and did not go outside,”¹³ (xiv) “there was a lack of adjustments made in . . . [Mr. VanderHeide’s] appraisal . . . [as] [h]is testimony stated that it was all based on professional opinion, it was not based on anything extracted or derived from the market,”¹⁴ and (xv) the Tribunal should “look at what the appraisal method is and make a decision not based . . . just on location, but based on what the proper comparables for the subject property are for both the cost approach and the sales comparison approach and make . . . [its] decision.”¹⁵

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

Parcel Number: 70-09-23-300-096

Year	TCV	SEV	TV
2015	\$540,000	\$270,000	\$270,000
2016	\$570,000	\$285,000	\$270,810

PETITIONER’S ADMITTED EXHIBITS¹⁶

P-1 Valuation Disclosure prepared by Laurence G. Allen dated November 3, 2016.

PETITIONER’S WITNESSES

Laurence G. Allen

Laurence G. Allen was Petitioner’s first and only witness. He was admitted as Petitioner’s valuation expert¹⁷ and testified, on direct examination, that (i) Allendale Township is

¹¹ See TR at p 149-50.

¹² See TR at p 149.

¹³ See TR at pp 149-50.

¹⁴ See TR at p 150.

¹⁵ See TR at p 150.

¹⁶ The parties stipulated to the admission of the offered exhibits. See TR at pp 3-4. See also the parties Exhibit Lists. In that regard, Petitioner’s P-2 is Respondent’s exhibits.

¹⁷ The parties stipulated to the admission of the offered witnesses (i.e., Mr. Allen and Mr. VanderHeide) as expert witnesses. See TR at pp 3-4. See also TR at p 10.

“a small community between Grand Rapids and Lake Michigan” that is “located on M-45, which is Lake Michigan Drive . . . [a]nd M-45 runs between Grand Rapids all the way to Lake Michigan,”¹⁸ (ii) the property “is an out lot for mixed use development” with “1.5 acres” that is “located on . . . a boulevard street . . . in . . . a main merchant strip in Allendale Township . . . [with] good frontage . . . next to other agreed-to uses such as an animal hospital, restaurant, insurance office . . . [a]cross the street is mostly vacant land . . . [a]nd there is a church and other retail on the street,”¹⁹ (iii) the subject site is zoned as a “PUD” and a bank branch is a permitted use within a PUD,²⁰ (iv) the subject site includes “about 28 parking spaces, and there’s a drive-through with four drive-through lanes” and the subject building “was built in 1993,” has an effective age of “approximately 21, 22 years” with a square footage of “3,971 square feet,”²¹ (v) “the building’s well-maintained, and its layout is typical of a bank branch with main entries, side offices, bank teller counter, restroom,”²² (vi) with respect to highest and best use, the property “[i]f it were vacant . . . [would] most likely . . . be developed with a build to suit, retail or retail office type use, or a particular user, that use would be feasible and permissible and physically possible . . . [and] [a]s improved it could be used for a number of uses; office use or branch bank use, and I concluded that it would be sold as branch bank or a similar type use,”²³ (vii) he “applied the sale comparison and the cost approach . . . [with] the sale comparison . . . considered to be the best approach for the valuation of this property,”²⁴ (viii) he considered “37 [sales]” and the “averaging” of those sales “resulted in an average size of 3,726 [square feet] and an average sales price of \$407,206,”²⁵ (ix) he looked “for sales of bank branches sold between 2013 and 2016 that were 2,000 square feet to 6,000 square feet in size . . . a number of those sales had deed restrictions . . . [and] I did not utilize the sales with deed restrictions,” rather he “came up with a list without the restrictions of 16 sales . . . [from] all over the state from Holland to Sterling Heights,”²⁶ (x) he “tried to come up with some sales that were newer

¹⁸ See TR at p 11.

¹⁹ See TR at p 12.

²⁰ See TR at pp 12-3.

²¹ See TR at pp 13-15.

²² See TR at p 15.

²³ See TR at p 15.

²⁴ See TR at p 16. See also TR at p 36.

²⁵ See TR at p 17.

²⁶ See TR at pp 17-8.

properties . . . that were purchased for a bank branch or similar type use . . . [and] [o]f the sale . . . [he] selected five sales . . . two of the sales were in western Michigan and three of those sales were in eastern Michigan,”²⁷ (xi) “there’s been an acceleration in decline or in the selling of bank branches more people do internet banking and mobile banking . . . [so] there’s less need for bank branches . . . [a]nd there’s been a significant increase in bank branch closures,”²⁸ (xii) he “parsed” his original list of 37 comparable properties to 16 comparable properties and those 16 had an average sales price of “\$448,000” and an average square footage of “3,645 square feet,”²⁹ (xiii) he did not confirm all 16 sales, rather he “selected five to use as comparables which were confirmed or attempted to be confirmed,”³⁰ (xiv) he “tried to compare economic locations,”³¹ (xv) “[t]he average price on western Michigan sales was 444,000, the average size was 3308 square feet . . . [a]nd this was similar to the general sample, except that there’s one sale that really distorts the western Michigan sales, and that’s the sale of the West Michigan Commerce Bank in Holland which sold for 1,150,000 . . . [a]nd that sale is about four standard deviations above the average sale for a bank branch, so on this basis there’s less than a 1 percent chance that our property could sell for that . . . [w]ithout that sale the average of the west Michigan properties is about 303,000, and the average size is about 3265,”³² (xvi) his inclusion of the other West Michigan sales would have resulted in a lower conclusion of value,³³ (xvii) he took the sales price of the “five sales sites selected” and “broke it down into a price per square foot building, including land . . . [a]nd the price per square foot ranged from 180 to 161, excluding the Holland branch, which was \$327 a square foot,”³⁴ (xviii) “Comparable 1 was a bank branch in Troy, Michigan located on Long Lake Road in an intense office area . . . about 4600 square feet . . . [that] sold for approximately \$108 a square foot . . . [and] was newer than

²⁷ See TR at p 18.

²⁸ See TR at p 18.

²⁹ See TR at p 19.

³⁰ See TR at p 19.

³¹ See TR at p 20. Mr. Allen also testified that there were three “Western Michigan” sales that he did not consider because the unadjusted sale prices for the Zeeland and Three Rivers sales “were below the normal range of prices . . . [he] was finding for bank branches” and the Kalamazoo sale “was below the average range of the probable price that the subject would sell for.”

³² See TR at pp 20-1. Although Mr. Allen testified that “there’s less than a 1 percent chance that our property could sell for” for what the West Michigan Commerce Bank in Holland sold for, Mr. Allen included that sale and gave consideration, albeit limited consideration, to that sale (i.e., Petitioner’s Comparable No. 3).

³³ See TR at pp 24-5.

³⁴ See TR at p 26.

the subject, a very nice looking bank branch with a lot of architectural style,”³⁵ (xix) “Sale Number 2 was located in Sterling Heights . . . [and] [i]t’s also newer than the subject building, 2005, and located on Nine Mile just off Dequindre . . . [that] was about 3500 square feet and sold for \$161 a square foot . . . [with] a six-month deed restriction, but . . . was purchased by a bank . . . [which] didn’t decrease the price because the bank felt it would take six months to get it up and running anyway, so they weren’t concerned about that,”³⁶ (xx) “[t]he third sale is . . . the Lake Michigan Credit Union branch that was sold to West Michigan Commercial Bank for \$327 a square foot . . . [a]nd this is also a much newer branch, built in 2006 . . . located in the main retail area of Holland, which is around Westshore Mall, and the intense retail development there includes just about every major mass known retailer in that particular area of Holland . . . [s]o, it’s a desirable location,”³⁷ (xxi) “Sale 4 is located on around Thirteen Mile and Ryan Road in Warren, which is a busy commercial area . . . [that] was built in 1995 and sold for about \$118 a square foot,”³⁸ (xxii) “Number 5 is in western Michigan . . . in Kentwood . . . at the corner of Patterson and 44, and Patterson is a mainly commercial artery that’s a boulevard in the area . . . [a]nd that particular corner is right at the entry to Grand Rapids Airport . . . [that] was built in 2002 . . . [with] about 4100 square feet and sold for 525,000 or \$128 per square foot,”³⁹ (xxiii) “[t]here were a number of adjustments made, including market conditions . . . [e]ven though the bank market was declining the real estate market area was improving, the retail market was improving . . . [t]here were upward adjustments made for marketing conditions . . . [and] [t]here were adjustments made for size and for physical location and for age and condition for the demographics of the location that they were located in,”⁴⁰ (xxiv) he “used the same comparables” for the “next tax year . . . [and] the adjustments were the same except for market conditions . . . [because] the real estate market for retail properties was improving between 12-31-14 and 12-31-15, and an upward adjustment was made for market conditions,”⁴¹ (xxv) he “used three sales comparables” that he “confirmed” to determine a “concluded” land value of

³⁵ See TR at p 26.

³⁶ See TR at pp 26-7.

³⁷ See TR at p 27. Mr. Allen also testified on that he had “no idea why they paid so much for that . . . [m]aybe they were able to acquire some business from the former bank, but I can’t explain the price on that sale.”

³⁸ See TR at p 27.

³⁹ See TR at pp 27-8.

⁴⁰ See TR at p 28.

⁴¹ See TR at p 29.

“\$4 a square foot” for use in his cost approach – “one was in Zeeland, one was in Holland Township, and one was in Fruitport Township” (i.e., “locations as close as . . . [he] could find” because he “could not find recent sales in Allendale”),⁴² (xxvi) he “used Marshall Valuation Service” to determine the subject building’s replacement cost based on the “Class C” classification for bank branches . . . because it’s masonry construction, and average . . . [that is] typical of a bank branch with some architectural features but basically a rectangular box,”⁴³ (xxvii) he determined “that there was an external obsolescence of 50 percent” because “retail banking is declining as a lot of retail is” . . . [as] [t]here’s movement to internet banking,”⁴⁴ (xxviii) he “quantified this obsolescence by subtracting from the sales that . . . [he] used . . . [by taking] the replacement cost of the comparable sales less physical depreciation and dividing that deficit by the physical replacement cost that indicates obsolescence, and that worked out to 50 percent,”⁴⁵ (xxix) “for the other depreciation calculations . . . [he] used age life and took the effective age and the normal life for the site improvements and the building improvements [which] are market derived but not directly from the market [as] the normal life expectancy for a branch bank and for other types of property is presented in a Marshall . . . [Valuation] Manual based on their mortality studies of buildings around the country,”⁴⁶ and (xxx) “[t]he income approach was not applied because there’s a lack of leasing of bank branches [g]enerally they are sold, they’re sold to users and not as much to investors, so there’s not a lot of leasing [t]he leasing that is around is usually build to suit lease when it’s initially constructed, which is more a financing mechanism, or sometimes there’s land leases involved, but there’s very little leasing activity, so . . . [he] didn’t apply that approach.”⁴⁷

On cross-examination, Mr. Allen testified that (i) the subject property’s “economic region” includes Allegan, Barry, Ionia, Kent, Newaygo, Ottawa, and Muskegon counties and would exclude the cities of Kalamazoo, Three Rivers, and Lansing and his sales comparison

⁴² See TR at p 31.

⁴³ See TR at p 32. Mr. Allen also testified that the subject building is a “basic building” with “a residential heating and cooling system with a gas furnace . . . [and] a condenser for the air conditioning” (i.e., “average quality package AC”) and that the “design and appearance of the building” justifies the use of the “average versus . . . higher classifications.”

⁴⁴ See TR at pp 33-4.

⁴⁵ See TR at p 34.

⁴⁶ See TR at p 34.

⁴⁷ See TR at pp 35-6.

approach utilizes only two properties from that economic region,⁴⁸ (ii) if he “averaged” his adjusted square foot rates for the two comparable properties from the economic region (i.e., Comparable Nos. 3 and 5) his numbers would change,⁴⁹ and (iii) only two comparable properties of the six comparable properties used to calculate market derived obsolescence were from the economic region.⁵⁰

On re-direct examination, Mr. Allen testified that he “selected the best comparables . . . and . . . [adjusted those comparable properties] for difference in economic locations by making adjustments, demographic adjustments and specific location adjustments.”⁵¹

There was no re-cross examination.⁵²

Finally, in response to questioning from the Tribunal, Mr. Allen testified that (i) he included the Holland sale (i.e., the West Michigan Commerce Bank) as a comparable property because he “wanted to include west Michigan sales” so as to “recognize that it’s there and it occurred in the market” even though he “didn’t give it significant weight,”⁵³ (ii) the Holland sale “didn’t have much bearing, but that doesn’t mean that it had no bearing,”⁵⁴ (iii) his sales adjustments were percentage adjustments,⁵⁵ (iv) “for the market conditions adjustment . . . [he] did an extensive market analysis on retail and looked at the trends in rents and occupancy for the retail market, and that was basically a market analysis,”⁵⁶ (v) “[f]or the other adjustments such as location, demographics, age and condition . . . [he] rated the subject property and the comparable properties on a seven point weighting from excellent, very good, average, below average, fair . . . each of the comparables was ranked as well as the subject . . . then sales were analyzed to determine the appropriate weighting for that particular attribute, and it was done mathematically . . . [a]nd then . . . [he] used . . . [his] judgment,”⁵⁷ (vi) the market conditions adjustment “was

⁴⁸ See TR at p 43.

⁴⁹ See TR at pp 44-6.

⁵⁰ See TR at p 46.

⁵¹ See TR at pp 47-9.

⁵² See TR at p 49.

⁵³ See TR at pp 21-4. Mr. Allen also testified that he “could have included” the other West Michigan sales “for 275,000 and not give them not much weight either, but . . . [he] felt he needed to include the high sale.” Mr. Allen further testified that he included “the high sale” even though the other sales were substantially closer to the mean or average sale price because he didn’t want to appear to be ignoring that high sale or ignoring West Michigan sales.

⁵⁴ See TR at pp 25-6.

⁵⁵ See TR at p 37.

⁵⁶ See TR at p 37.

⁵⁷ See TR at pp 37-8.

not based on sales,” rather he “did an analysis of market factors affecting the retail market, including change in rental rates, changes in occupancy . . . changes in capitalization rates,”⁵⁸ (vii) the market condition adjustment was based on the “combined counties” and not the specific location of the subject and the comparable properties,⁵⁹ (viii) his estimation as to bank branch closures was “based on a national view and a state-wide view,”⁶⁰ (ix) he “took out the land value” when calculating total depreciation,⁶¹ and (x) his calculation “would indicate depreciation at time of sale.”⁶²

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 contends⁶³ that (i) “the Township’s appraisal reflects a policy that’s more applicable to a good decision . . . [as Respondent’s appraiser] purposefully selected comps that were not only within the area defined by . . . Mr. Allen’s appraisal, but also within that corridor between 96, 196 and the lake shore, which is about as reasonable a market base as you can identify . . . [which] is better than going outside the scope of the entire census designated area,”⁶⁴ (ii) “we have a good set of comps, both vacant land, seven of them, and then sales comps, with the exception of Greenville, which is still within the area defined by Mr. Allen, but the bulk of them . . . are actually in Ottawa County along with Allendale Township,”⁶⁵ (iii) the comps “are not adjusted for time or market, but . . . [Respondent thinks] the consensus is that if they were they were the result of higher values . . . [s]o, if we have sale dates that predate the effective dates of the tax dates those numbers would go up, and as a result, as . . . [Mr. VanderHeide] testified, we have a situation where his values are more conservative,”⁶⁶ (iv) “[w]ith regard to the cost approach, again . . . [Respondent would] emphasize that we have local sales comps for the land . . . [and]

⁵⁸ See TR at p 38.

⁵⁹ See TR at p 39.

⁶⁰ See TR at pp 39-40.

⁶¹ See TR at pp 40-6.

⁶² See TR at pp 41-2.

⁶³ The Tribunal erred by not having Respondent make an opening statement at the start of its proofs. Petitioner did not, however, object and the pleadings and Respondent’s valuation disclosure were, in conjunction with its closing statements, sufficient to provide the required “road map” to place Petitioner on notice as to the prosecution of Respondent’s case.

⁶⁴ See TR at p 150.

⁶⁵ See TR at p 151.

⁶⁶ See TR at p 151.

[a]s far as the cost for the structure, itself . . . [Respondent is] concerned by . . . [Mr. Allen's] heavy-handed depreciation . . . [y]ou've got basically a straight line depreciation that doesn't account for the actual condition of the building . . . [and] you really have to go with the observed depreciation, as Mr. VanderHeide testified . . . [as] [t]he banks don't let the places waste away . . . [t]hey keep them up . . . [a]nd that's evident in this particular property . . . [a]nd absent any real evidence of economic obsolescence, other than just saying you have to apply something, as Mr. Allen said . . . [Respondent doesn't] think you can use their method of depreciation to get to a real value of that,"⁶⁷ and (v) "with those things in mind, we request that you either affirm or increase the assessed value of the property as reflected in . . . [Respondent's] appraisal."⁶⁸

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

Parcel Number: 70-09-23-300-096

Year	TCV	SEV	TV
2015	\$1,015,000	\$507,500	\$402,197
2016	\$1,015,000	\$507,500	\$403,400

RESPONDENT'S ADMITTED EXHIBITS⁶⁹

- R-1 Valuation Disclosure prepared by David VanderHeide dated November 1, 2016.
- R-3 Allendale Township Equalization Report 4023.
- R-4 Ottawa County Building Permits Reports, 2010-2016.
- R-5 ESRI demographic report for area surrounding 3290 96th Avenue, Zeeland Township, Michigan.
- R-6 ESRI demographic report for area surrounding 31130 Ryan Road, Warren, Michigan.
- R-7 ESRI demographic report for area surrounding 2032 19 Mile Road, Sterling Heights, Michigan.
- R-8 ESRI demographic report for area surrounding 734 W. Long Lake Road, Troy, Michigan.
- R-9 ESRI demographic report for area surrounding 3140 W. Shore Drive, Holland Township, Michigan.
- R-10 Documents associated with the transfer of 4765 44th Street SE, Grand Rapids, Michigan, including Covenant Deed, Property Transfer Affidavit, Assessing Records, Site Map, and correspondence from assessor.

⁶⁷ See TR at pp 151-2.

⁶⁸ See TR at p 152.

⁶⁹ The parties stipulated to the admission of the offered exhibits. See TR at pp 3-4. See also the parties Exhibit Lists. In that regard, Respondent's R-2 is Petitioner's P-1.

RESPONDENT'S WITNESSES

David VanderHeide

David VanderHeide was Respondent's first and only witness. He was admitted as Respondent's valuation expert⁷⁰ and testified that (i) he "failed to depreciate the site improvements [under his cost approach] . . . [a]nd that would decrease . . . [his] value of the cost approach by about 20,000 . . . and . . . [he] could round that either way to one million one ten or to one fifteen,"⁷¹ (ii) he does "not have the proofs . . . [to show that Allendale Township is the fastest growing township in Ottawa County and that Ottawa County is the fastest growing county in Michigan] but it was in the Grand Rapids Press over a year ago . . . and it showed . . . on a percentage basis . . . [that] Ottawa County and Allendale were the fastest growing county and township in the state,"⁷² (iii) "[t]he [property's] utilities are everything; curb and gutter, street lights, sewer, water, phone, cable, fiber . . . [and the building is] a Class C average [construction] by Marshall Swift . . . [that was built in 1993] [a]s far as . . . [he] can tell,"⁷³ (iv) the traffic patterns and access to the property are "[e]xtremely good . . . [i]t's a boulevard . . . [i]f you are coming from the east it's a right turn into it . . . [f]rom the west you have the Michigan turn, and you have a Michigan turn every 800 feet or so during that two and-a-half mile stretch,"⁷⁴ (v) "[h]ighest best use as vacant . . . fast food or branch bank . . . [a]s improved it's branch bank,"⁷⁵ (vi) he considered the cost and sales approaches, but not the income approach because "[m]ost banks are owner occupied . . . [and] there is a definite industry-wide need for presence or position, and they do not want to lease for a number of reasons and they do not want other banks to take over their motif,"⁷⁶ (vii) for his cost approach, he considered "seven" vacant land sales from "2009 through 2015 . . . to show a progression, that there is a definite number of bank sales . . . [a]nd of those seven sales five of them were land sales prior to the construction of new bank facilities, and two of them were local, one was next door to the

⁷⁰ The parties stipulated to the admission of the offered witnesses (i.e., Mr. Allen and Mr. VanderHeide) as expert witnesses. See TR at pp 3-4.

⁷¹ See TR at p 52.

⁷² See TR at p 52-3. Mr. VanderHeide also testified that Respondent's Exhibit Nos. 3 and 4 demonstrate that "Allendale is growing extremely quickly and fast."

⁷³ See TR at pp 53-4.

⁷⁴ See TR at p 54.

⁷⁵ See TR at p 54.

⁷⁶ See TR at pp 54-5.

subject property, not quite as well situated on the property, but not bad, either, and the other one was another local fast food store,”⁷⁷ (viii) although he “decided” not to adjust his land sales for time or market conditions, as “you need a lot of data and compared sales, and you just don’t have all that, and it’s not necessarily the same for vacant as for improved property,” he did adjust those sales for “exposure” and “size,”⁷⁸ (ix) his adjustments are not market derived, but based on his professional judgment (i.e., “it comes from 37, 38 years of looking at data”),⁷⁹ (x) his vacant land sales “are more current and they point to better values . . . [a]nd the only reason . . . [he] went as low as . . . [he] did on the net result was the fact that . . . [he] was dealing with a property that sold within a couple hundred yards of the subject property and . . . [he] couldn’t ignore it, but . . . [he] didn’t know that that was really the market,”⁸⁰ (xi) he developed his improvement cost from “Marshall Valuation Service” and he figured his depreciation “[f]rom basically . . . observed condition . . . [b]eing an appraiser for 37, 38 years observed condition is the quick method . . . [a]nd the older a piece of property becomes the more likely that it has renovation . . . [a]nd although I don’t have a whole lot of knowledge about it . . . [he] think[s] that the property certainly has been updated and renovated since its sale, since its construction in 1993,”⁸¹ (xii) “the banking industry is all about presence, about perception and about presentation . . . [a]nd they keep their properties, just about every one of them, if they can afford it at all, keep them at top notch condition . . . [o]bviously as a property ages there are certain things that can’t be kept totally looking like new, but most of them look like new well or very well 30, 40 years into their life cycle, and they have been renovated probably three or four times by the time they get to be 40 years old,”⁸² (xiii) he considered “five” sales in his sales approach,⁸³ (xiv) Respondent’s Comparable No. 3 was included for “sandwiching” purposes,⁸⁴ (xv) he did not adjust his sales comparable properties for time of sale (i.e., “year to year”)

⁷⁷ See TR at pp 55-6. Mr. VanderHeide also testified that the land sales were “located in the triangle between Lake Michigan, I-96 and 196.”

⁷⁸ See TR at pp 56-63.

⁷⁹ See TR at pp 59-60.

⁸⁰ See TR at p 63.

⁸¹ See TR at p 64.

⁸² See TR at pp 64-5. Mr. VanderHeide also testified that the property has not depreciated as much as Mr. Allen would have you believe (i.e., “[a]bsolutely not”).

⁸³ See TR at p 68.

⁸⁴ See TR at pp 68-9. Mr. VanderHeide also testified that Comparable No. 3 was included “Greenville is also a[n] area that’s growing . . . [i]t’s quite comparable in many ways to Allendale.”

because “[t]here’s not enough paired sales of the branch banks in particular to make that, to make . . . a quantified statement,”⁸⁵ (xvi) Respondent’s Comparable Number 1 “is located on the east side of US-31 [in] a retail area [with] access [and] a higher land to building ratio . . . that was adjusted for,”⁸⁶ (xvii) Comparable No. 1 was also adjusted for “effective age . . . [as] it was newer square footage of building, as the building increases in size the cost per square foot generally goes down a bit for everything being equal . . . [and] building quality . . . [as he] though this building was better than the subject building,”⁸⁷ (xviii) he didn’t “know as much about” the sale of Comparable No. 2 and decided that he “wasn’t really going to use this in . . . [his] final analysis” because it involved “some kind of a lease fee,”⁸⁸ (xix) Comparable No. 3 “was a small bank on the outskirts of Greenville” that sold for use as a dental office,⁸⁹ (xx) Comparable No. 4 is “located on Robbins Road just . . . to the east of [US-31] in Grand Haven . . . [a]nd it was a credit union at one point and was bought by another bank basically they kept the same footprint, but they totally renovated the property so that it’s unrecognizable as [to] what it was at the time of sale,” (xxi) he “made no adjustments [to Comparable No. 4] for sale price or for fee simple [and] it’s in a similar location [with a] land to building ratio . . . [that] was actually quite close,” but he did make an adjustment for age (i.e., “[a] small one”) and building size,⁹⁰ (xxii) Comparable No. 5 was sold for use as “a dental office” and “adjusted for that change in use” and age (i.e., “quite a bit older”),⁹¹ (xxiii) Comparable No. 5 was also adjusted for location (i.e., a “bedroom community [with] a higher number of households within a five-mile radius of the property”), land to building ratio (i.e., “a very small piece of property . . . [which he] think[s] . . . [is] one of the reasons the bank decided to let it go because it was probably a little bit too small to be effectively enlarged for bank purposes”), square footage

⁸⁵ See TR at p 59.

⁸⁶ See TR at pp 70-1. Respondent’s Comparable No. 1 is the same property as Petitioner’s Comparable No. 3 and was a bank to bank sale.

⁸⁷ See TR at p 70.

⁸⁸ See TR at pp 71-3. Although Mr. VanderHeide originally indicated that the sale was a bank to bank sale, he later indicated that the property was sold for use as a staffing agency.

⁸⁹ See TR at pp 73-5.

⁹⁰ See TR at pp 77-9. Mr. VanderHeide also testified that the property “was an older property of 1976” that he “assumed . . . was still in what I will call pristine condition for its age because that’s what the industry required really good cosmetic condition.”

⁹¹ See TR at p 78.

(i.e., the “square foot of the building is quite a bit smaller”),⁹² (xxiv) the same comparable properties were used for the subsequent tax year without adjustment for time or market conditions,⁹³ (xxv) the sale of Comparable Nos. 1 and 4 were “clean” sales between banks and “hit the benchmark for coming at it from two different angles, older and newer”, while the sale of Comparable No. 2 “was clouded in too many ways to really rely on it” and, as for the other sales, they were used “to show what would happen with a change in use,”⁹⁴ (xxvi) in reconciling his sales and cost approaches, he “[l]eaned very hard on the market valuation,”⁹⁵ (xxvii) as for Mr. Allen’s cost approach, the zoning for his vacant land sale No. 1 changed from industrial to commercial “at the time of sale,” vacant land sale No. 2 is “considerably larger than the subject” and it’s “east side” location “is not as valuable at all as the west side that’s got highway exposure,” he “doesn’t know a lot about” vacant land sale No. 3, and “[n]one of . . . [the vacant land sales] have been vetted, or not many of them have been vetted, and he’s coming up with averages [which is] a no-no in the appraisal world,”⁹⁶ (xxviii) as for Mr. Allen’s obsolescence, “he’s painted the picture that all banks have a 30 to 50 percent obsolescence along with the physical percent bad [a]nd if that were the case there would be no new construction of [bank branches] [a]nd . . . I just explained that we’ve had five new banks after the sales that were listed in my appraisal,”⁹⁷ (xxix) as for Mr. Allen’s Kentwood sales comparable, he “investigated the fact that it was not sold to a bank, it was sold for other use, and the principal reason for it is because of traffic flow” (i.e., ingress and egress) and the sale needs to be adjusted “upward” for its change in use and traffic flow, which is why he didn’t use that sale as a comparable property,⁹⁸ and (xxx) his appraisal should be given more weight than Mr. Allen’s appraisal because he used “west Michigan comps” and saw “no great distress or obsolescence other than properties that have changed use for one reason or another, and there’s always a cause.”⁹⁹

⁹² See TTR at pp 78-9.

⁹³ See TR at p 79.

⁹⁴ See TR at pp 79-80.

⁹⁵ See TR at pp 80-1.

⁹⁶ See TR at pp 81-3.

⁹⁷ See TR at p 83.

⁹⁸ See TR at pp 83-5.

⁹⁹ See TR at pp 85-6.

On cross-examination, Mr. VanderHeide testified that (i) he did not know if the subject building was built in 1992 or 1993,¹⁰⁰ (ii) he became Respondent's assessor on April 1, 2015, but did not certify the assessment roll "for this particular property" until 2016,¹⁰¹ (iii) he doesn't "see any conflict . . . in being both the appraiser of the property as well as . . . the third party appraiser" (i.e., "[a]bsolutely not"),¹⁰² (iv) he inspected and took pictures of the property for purposes of this appraisal and not assessment purposes,¹⁰³ (v) he used all four criteria when he did his highest and best use "evaluation" (i.e., "I tried to, yes"),¹⁰⁴ (vi) he provided a value in his highest and best use evaluation "[j]ust to let you know where I was going" even though the providing of a value is "not typical,"¹⁰⁵ (vii) depreciation in a cost approach "is a loss in value for any and all causes,"¹⁰⁶ (viii) the cost approach is "a recapitulation of the cost new, RCN, and then from the market or from observed condition you assign depreciation, and then you subtract depreciation from the cost of the building, and then you add your land value, and you come up with, or site values, site improvements and land value, and come up with a value for the total property,"¹⁰⁷ (ix) "there's insufficient sales of commercial strip, commercial and bank type properties . . . [but] that does not mean that the market isn't improving . . . [t]he market is west Michigan, and it's going, it is going – if you want to talk to anybody around you know that the market is improving, but there's insufficient sales to really make time adjustments,"¹⁰⁸ (x) "[e]xposure differences were expressly tied to traffic volumes,"¹⁰⁹ (xi) he came up with seven vacant land comparables having "probably started with double that" and dismissed certain ones

¹⁰⁰ See TR at p 90.

¹⁰¹ See TR at pp 91-2.

¹⁰² See TR at p 92-102. Although Mr. VanderHeide testified that there was no conflict, Mr. Delzer attempted to demonstrate that Mr. VanderHeide had a conflict (i.e., prejudiced against Petitioner) and had created a uniformity issue for a tax year not under appeal (i.e., the 2017 tax year) by increasing the property's assessment for that tax year based on the appraisal submitted in this case even though other bank branch properties were assessed under a mass appraisal approach and did not go up as much. Respondent objected to the line of questioning and that objection was upheld.

¹⁰³ See TR at p 102.

¹⁰⁴ See TR at p 104. Mr. VanderHeide did, however, also testify that he is "not real strong" on maximum productivity criteria, because he doesn't "get into a lot of projections of a lot of different uses."

¹⁰⁵ See TR at p 105.

¹⁰⁶ See TR at p 106.

¹⁰⁷ See TR at p 108.

¹⁰⁸ See TR at pp 109-10. Mr. VanderHeide also testified that the two sales he listed "were the only two clean sales that . . . [he knew] of there." Mr. VanderHeide further testified that "in general the market values of all the studies, equalization studies and so on, are showing increases."

¹⁰⁹ See TR at pp 111-2.

because he “wanted to find as close to the same zoning and close to the same use,”¹¹⁰ (xii) he utilized land sales from 2009 and 2011 and “didn’t” adjust those sales for time of sale,¹¹¹ (xiii) “[t]here’s a three one-hundredths of an acre difference” in the corrected calculation of the square footage of the land size for his Comparable No. 3 and that corrected calculation would “not” adjust his final land value for that comparable “overall” and the date of that sale was December 5, 2014, and not January 1, 2015,¹¹² (xiv) the date of sale for Comparable No. 4 was April 8, 2015, and not December 5, 2014,¹¹³ (xv) “based on his experience,” he considers commercial land sales as long as the adjustments don’t “go much over 50 percent,”¹¹⁴ (xvi) local is . . . [his] overwhelming basis for picking comparables . . . “[f]or land value, yes,”¹¹⁵ (xvii) he had “seven land sales comparables and used two of those comparables to determine the value of the land” (i.e., “not an average”),¹¹⁶ (xviii) he used “Marshall Valuation Service” to value the building with depreciation “based on . . . observed condition . . . it was simply an estimated valuation based on . . . [his] experience,”¹¹⁷ (xix) with respect to Mr. Allen’s economic obsolescence, “[y]ou have to get that information from the market, but if you treat all sales as one, even if they have a different highest and best use you’re going to come up with a totally different answer, totally skewed answer if you treat all sales if they’re all the [same] highest and best use when they’re not,”¹¹⁸ (xx) “there are no sales in west Michigan that . . . [he knows] of that demonstrate obsolescence from bank to bank,”¹¹⁹ (xxi) the effective age of the subject is “eleven” based on “observed condition,”¹²⁰ (xxii) he does not believe that any of his sales comparables “had deed liabilities,”¹²¹ (xxiii) his adjustments to his sales comparables were based on his professional

¹¹⁰ See TR at p 112.

¹¹¹ See TR at pp 112-4. Mr. VanderHeide also testified that “the biggest thing is . . . [he has] more of them . . . [he has] a continual flow . . . at least a couple in ’14 and ’15 . . . [s]o . . . [he has] more of the right type of properties.” Mr. VanderHeide further testified that the 2009 sale was “appropriate because it’s from the same market” and that it was used because it was “an indicator of what was in 2009” and “anybody that has any economic sense can know what happened in the market between 2009 – 2009 was a low point.”

¹¹² See TR at pp 114-5.

¹¹³ See TR at pp 115-6.

¹¹⁴ See TR at p 119.

¹¹⁵ See TR at pp 120-1.

¹¹⁶ See TR at p 121.

¹¹⁷ See TR at p 122-3. See also TR at pp 138-9.

¹¹⁸ See TR at pp 123-5.

¹¹⁹ See TR at pp 126-7.

¹²⁰ See TR at pp 128-9.

¹²¹ See TR at p 131.

opinion and not market derived except in his “own head,”¹²² (xxiv) to properly adjust comparables, the comparables have “to be in the middle somewhere” (i.e., “sandwich the value”),¹²³ (xxv) he gave the most weight to his sales approach.¹²⁴

On re-direct examination, Mr. VanderHeide testified that (i) he would chose an Allendale Township . . . [sale] from four years ago over a Troy sale from two weeks ago (i.e., “[a]bsolutely”),¹²⁵ (ii) “[f]or all properties that were sold prior to date of valuation they would receive a plus adjustment because the general market was deemed to be going up or improving,”¹²⁶ and (iii) the net result of his decision not to adjust for time or market is that his values are “[c]onservative or low.”¹²⁷

On re-cross examination, Mr. VanderHeide testified that “the most important consideration in value is location, location, location . . . therefore, I’m going to see if I can find out, find a sufficient enough information locally . . . [and] I will spread an ever-increasing net to find enough information if I can’t find it within the unit.”¹²⁸

There was no further re-direct examination.¹²⁹

Finally, in response to questioning from the Tribunal, Mr. VanderHeide testified that (i) the Allendale market has increased since 2008 and was a growing market for the tax years at issue,¹³⁰ (ii) with respect to obsolescence, “you have to go backwards into highest and best use analysis . . . [y]ou have to pick properties that were sold for a highest and best use as banks in order to come up with a value for banks . . . [a]nytime you violate that first party you are going to get a distorted calculation of obsolescence . . . [s]o . . . [he] would maintain that although the market, the resale market for bank to bank is limited or a much smaller part than the whole situation, most of these banks are being sold, are sold for some other type of operation or purpose or to an investor, purely to an investor that’s willing to take it over and try to make an office or something out of it . . . [a]s a consequence you can’t mix these sales with truly bank to

¹²² See TR at pp 131-3. See also TR at p 138 and pp 140-1.

¹²³ See TR at pp 139-40.

¹²⁴ See TR at pp 142-4.

¹²⁵ See TR at p 145.

¹²⁶ See TR at p 145.

¹²⁷ See TR at p 145.

¹²⁸ See TR at p 148.

¹²⁹ See TR at p 148.

¹³⁰ See TR at pp 56-9.

bank sales . . . [b]ank to bank sales stand on their own . . . [a]nd just because one bank sold for a different purpose and has 30 or 40 or 50 percent obsolescence doesn't mean that the ongoing banks all should be reduced by 30 or 40 or 50 percent obsolescence because they're not all slated for redevelopment . . . [t]raffic patterns change . . . [f]or whatever reason a bank that sold for a good price at one point may sell for less, but it's probably because there is a reason; it no longer was the most advantageous spot for the bank, they did their marketing study and decided to change . . . [a]nd so, you have to look at obsolescence and it does not just hit everybody equally,"¹³¹ (iii) Comparable No. 4 sold on June 11, 2010, and not January 29, 2009, as indicated by the property's warranty deed,¹³² (iv) he annually conducts vacant land sales studies (i.e., "simple ones, yes") and he relies on those studies to derive land values for his mass appraisal approach if there are sufficient land sales within the Township (i.e., "[c]orrect"),¹³³ and (v) if there are not sufficient sales, he reviews the County Equalization land sale study to "find out what . . . [he thinks] is the most important and probably acquiesce to whatever the County mandates as far as level of assessment."¹³⁴

FINDINGS OF FACT

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

1. The subject property is a branch bank of 3,971 square feet on approximately 1.5 acres located in Allendale Township in Ottawa County on the west side of Michigan ("Western Michigan").
2. Respondent is a small, growing community with a real estate market that was improving for the tax years at issue.
3. The subject building was built in 1993 and is "well-maintained" with a "layout that is typical" for branch banks and the subject site is zoned as a planned unit development ("PUD") and a bank branch is a permitted use within the PUD.
4. Both appraisers agreed that the subject property's highest and best use as improved is as a branch bank or similar use.
5. Both appraisers utilized sales and cost approaches only and relied on their sales approaches in estimating the subject property's true cash value.
6. Although Petitioner's appraiser considered his Sale Comparable No. 3 an outlier, he did adjust that comparable and utilize it in determining the subject property's estimated true cash value for the tax years at issue.
7. Petitioner's appraiser utilized two Western Michigan sales, including Comparable No. 3, and three Eastern Michigan sales (i.e., Oakland County) in estimating the subject

¹³¹ See TR at pp 66-8.

¹³² See TR at pp 75-7.

¹³³ See TR at p 147.

¹³⁴ See TR at p 147.

property's true cash value under his sales comparison approach. Although Petitioner's appraiser indicated that, for purposes of his sales comparables, he compared economic locations, Petitioner's appraiser included in his appraisal an analysis of the demographics impacting his Western Michigan sales, but not his Eastern Michigan sales. Respondent did, however, include as part of its exhibits, statistics relative to the "economic locations" of Petitioner's Eastern Michigan sales.

8. Petitioner's appraiser testified that the closures of bank branches are increasing. He also testified that his closure estimate was based on national and state-wide information and not local information.
9. Respondent's appraiser did not utilize market information to determine his sales adjustments. Rather, he utilized his professional judgment only.
10. Petitioner's Sales Comparable No. 3 was a common sale adjusted and utilized by both appraisers in estimating the true cash value of the subject property for the tax years at issue. Petitioner's Sales Comparable No. 5 sold closest to the relevant tax date for the 2015 tax year and required the least adjustments.

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.¹³⁵ 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.¹³⁶

In its review of that definition, the Michigan Supreme Court has determined that "true cash value" is synonymous with "fair market value."¹³⁷

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.¹³⁸ The Tribunal is not, however, bound to accept either of the parties' theories of valuation.¹³⁹ 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.¹⁴⁰

¹³⁵ See Const 1963, art 9, sec 3.

¹³⁶ See MCL 211.27(1).

¹³⁷ See *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

¹³⁸ See *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

¹³⁹ See *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

¹⁴⁰ See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

Further, a proceeding before the Tribunal is original, independent, and de novo¹⁴¹ and the Tribunal's factual findings must be supported by competent, material, and substantial evidence.¹⁴² 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.”¹⁴³

Additionally, “the petitioner has the burden of proof in establishing the true cash value of the property.”¹⁴⁴ “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.”¹⁴⁵ 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.”¹⁴⁶

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.¹⁴⁷ The market approach is, however, the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.¹⁴⁸ 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.¹⁴⁹ Regardless of the approach selected, the value determined must represent the usual price for which the subject property would sell.¹⁵⁰

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

¹⁴¹ See MCL 205.735a(2).

¹⁴² 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).

¹⁴³ See *Jones & Laughlin Steel Corp*, *supra* at 352-3.

¹⁴⁴ See MCL 205.737(3).

¹⁴⁵ See *Jones & Laughlin Steel Corp*, *supra* at 354-5.

¹⁴⁶ See MCL 205.737(3).

¹⁴⁷ 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).

¹⁴⁸ See *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale*, *supra* at 276 n 1).

¹⁴⁹ 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)).

¹⁵⁰ See *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Meadowlanes*, *supra* at 485).

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 legal use which will yield the highest present worth.’”¹⁵¹ 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.”¹⁵² 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.¹⁵³ “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.”¹⁵⁴

Finally, the Tribunal is also required to determine the subject property or properties’ taxable values for the tax years at issue.¹⁵⁵

Here, the subject property is a well-maintained and typical branch bank located in a small, but growing, community with an improving real estate market in a growing county on the west side of Michigan. Although testimony was provided indicating the purported increasing closure of bank branches and the lack of bank sales to perform a paired analysis to determine proper adjustments, the parties were able to identify approximately 40 branch bank sales statewide with twelve such sales on the west side of the Michigan and nine within the “Combined Metropolitan Statistical Area” defined by Petitioner’s appraiser as including the subject property. Of those nine sales, seven sales were identified as being sold without a deed restriction or a restriction that would not otherwise impact the value of the property sold. Petitioner’s appraiser considered and utilized two of the seven sales (i.e., the Holland sale and the Grand Rapids or, more specifically, Kentwood sale) in estimating the subject property’s true cash value under his sales comparison approach, while Respondent’s appraiser considered and

¹⁵¹ See *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 633; 462 NW2d 325 (1990).

¹⁵² See *The Appraisal of Real Estate*, Appraisal Institute, 2013, 14th ed at p 331.

¹⁵³ See *The Appraisal of Real Estate*, *supra* at p 345.

¹⁵⁴ See *The Appraisal of Real Estate*, *supra* at p 334.

¹⁵⁵ See MCL 205.737(1). See also MCL 211.27a(2).

utilized five of those sales with the Holland sale (i.e., Petitioner's Comparable No. 3 and Respondent's Comparable No. 3) being a common sale considered and utilized by both appraisers. Of the comparables selected by the appraisers, four of Petitioner's five comparables indicate continued use as a bank branch after sale, while two of Respondent's five comparables indicate continued use as a bank branch after sale. In that regard, both appraisers indicated that the subject property's highest and best use as improved as a "bank branch or similar type use," which would include retail use as permitted under the current zoning as a planned unit development and reflected by their selection of comparables. Said indication is supported by the appraisals and the testimony provided and constitutes the highest and best use of the property at issue.

As for the adjustments to the parties' respective sales comparison approaches, both appraisers indicated that their adjustments were based on their professional opinion. However, Petitioner's appraiser, unlike Respondent's appraiser, testified or, more appropriately, explained the rudimentary market analysis underlying his professional opinion relative to his market condition and other adjustments. In that regard, Petitioner's appraiser conducted a "retail" study of rents and vacancies to determine his market condition adjustment and performed a seven-point rating of the subject and comparable properties based on the differences between the properties and said "performance," although qualitative and not quantitative, does reflect the value impact of the differences, notwithstanding the appraiser's failure to provide any narrative as to any expenditures after sale. In that regard, Respondent's appraiser indicated that he made no market condition adjustments so as to keep it "simple" and that his failure to make a required adjustment resulted in a conservative or low estimated value. Although the Tribunal appreciates the appraiser's efforts to keep it simple, the failure to make adjustments for market conditions in an increasing market, particularly with respect to older sales, renders Respondent's purportedly conservatively-valued comparables unreliable indicators of the property's true cash value as of the relevant tax dates at issue. This is particularly true given Respondent's admitted failure to make market-based adjustments for other differences (i.e., size, etc.).

With respect to Petitioner's sales comparables, Comparable Nos. 3 and 5 are both Western Michigan sales. Further, Comparable No. 3 is common sale considered by both appraisers in preparing their estimate of the subject property's true cash value for the tax years at

issue, while Comparable No. 5 sold closest to the relevant tax dates at issue and required the least amount of adjustments for the 2015 tax year. As for the contention by Petitioner's appraiser relative to the status of Comparable No. 3 as an outlier within the "comparable set" presented in his appraisal, said sale was adjusted and utilized in determining the subject property's estimated true cash value.¹⁵⁶ In that regard, Petitioner's Comparable No. 1 would also appear to be an outlier within the "comparable set" presented in Petitioner's appraisal and yet was, after adjustment, given greater consideration by Petitioner's appraiser than Comparable No. 3. Comparable No. 1 is, however, an "Eastern Michigan" sale and the "Eastern Michigan" sales (i.e., Comparable No. 1, 2, and 4) were purportedly analyzed based on a combined county demographic with no narrative or explanation as to said combined demographics, which renders the resulting adjustments suspect or, more specifically, unsupported, particularly in light of the combined demographics provided for the growing Allendale community and increasing market in that community.¹⁵⁷

As for the appraisers' cost approaches, neither party relied on their respective cost approach, which is justified as neither approach is a reliable indicator of value. In that regard, Respondent's land sales were, unlike Petitioner's land sales, not adjusted for time of sale (i.e., market condition adjustment) and were adjusted for other differences (i.e., "exposure" and "size") based on the appraiser's professional judgment with no market support. With respect to the building's replacement costs new, both values were approximately the same with the difference being attributable to unsupported multipliers and improperly supported depreciation or obsolescence. Although Respondent's appraiser indicated repeatedly that his depreciation was based on the property's observed condition, said condition was never quantified except in his adjustment grid, and he failed to address obsolescence except to testify that bank to bank sales would indicate no obsolescence even though the highest and best use of the property may be some other permitted retail use, which would support his inclusion of sales comparables with a changed use. With respect to Petitioner's appraiser, his combined calculation of functional and external obsolescence was inaccurate and not properly explained or supported. More specifically,

¹⁵⁶ See P-1 at pp 64-6.

¹⁵⁷ Despite the failure by Petitioner's appraiser to provide the analysis in support of the combined county demographics utilized to adjust Petitioner's East Michigan comparable properties, the Tribunal is aware that Troy, Sterling Heights, and Warren represent different markets given the population and income in those cities, as reflected in Petitioner's appraisal, and the education levels not reflected.

Petitioner's appraiser, contrary to his testimony, improperly included land value in his calculation of total depreciation and then divided that total depreciation (with included land value) by the depreciated cost of the improvements to determine an inflated, combined indicated obsolescence (i.e., see the calculation for Comparable No. 1 on page 83 of Petitioner's appraisal – replacement cost new (\$1,290,000) minus sale price (\$500,000) equals total depreciation (\$790,000), which was then divided by depreciated cost of improvements (\$990,000) to determine an indicated obsolescence (79.79% or, as rounded by Petitioner's appraiser, 80%). In that regard, Petitioner's appraiser did not properly explain or, more appropriately, support his incurable physical depreciation, which he based on effective age and economic life even though effective age is impacted by renovation or repair and the property was, as he testified, well-maintained with a typical layout. Petitioner's appraiser also did not properly support his depreciated cost of improvements, as the various charts, grids or calculations do not indicate how those numbers were derived.

Finally, neither appraiser conducted an income approach, which leaves, despite objections to the contrary by both appraisers (i.e., "outlier" and "change in use and traffic flow"), Petitioner's Comparable Nos. 3 and 5 as the most reliable indicators of value. More specifically, Comparable Nos. 3 and 5, as adjusted by Petitioner's appraiser and with greatest weight being given to Comparable No. 5 given its time of sale and degree of adjustment, provide "the most accurate valuation under the circumstances of this case" for the tax years at issue.¹⁵⁸

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:¹⁵⁹

1. Issue a Final Opinion and Judgment (FOJ) adopting the POJ as the final decision.

¹⁵⁸ See *Jones & Laughlin*, *supra* at p 353.

¹⁵⁹ See MCL 205.726.

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.¹⁶⁰

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. Kopke

Entered: May 25, 2017
pmk

¹⁶⁰ See MCL 205.726 and TTR 289(1) and (2).