Meijer Inc,
Petitioner,

v

City of Flat Rock,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 16-001205

Presiding Judge
Victoria L. Enyart

## FINAL OPINION AND JUDGMENT

### INTRODUCTION

Petitioner, Meijer, Inc., appeals ad valorem property tax assessments levied by Respondent, City of Flat Rock, against parcel number 58-090-99-0014-702 for the 2016 and 2017 tax years. A hearing was held February 12-15, 2019, and October 23-24, 2019. Michael B. Shapiro and Daniel L. Stanley of Honigman Miller Schwartz and Cohn, LLP represented Petitioner. Laura M. Hallahan and Seth A. O'Loughlin of Hallahan & Associates, P.C. represented Respondent. Petitioner's sole witness was Laurence G. Allen, MAI. Respondent's sole witness was John R. Widmer, Jr., MAI.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash value (TCV), state equalized value (SEV), and taxable value (TV) of the subject property for the 2016 and 2017 tax year are as follows[1]:

**Parcel Number:** 58-090-99-0014-702

| Year | TCV | SEV | TV |
|---|---|---|---|
| 2016 | $10,250,000 | $5,125,000 | $5,125,000 |
| 2017 | $16,250,000 | $8,125,000 | $8,125,000 |

[1] The Tribunal notes that the hearing was bifurcated, Judge David Marmon heard the first four days, the hearing was adjourned until October 23, 2019. Judge Marmon left the Tribunal June 2019.

The values on the assessment roll are as follows:

**Parcel Number:** 58-090-99-0014-702

| Year | TCV | SEV | TV |
|---|---|---|---|
| 2016 | $7,670,000 | $3,835,000 | $3,835,000 |
| 2017 | $9,323,600 | $4,661,800 | $4,661,800 |

## PETITIONER'S CONTENTIONS[2]

Petitioner states freestanding big-box stores are always built for a specific user and are never built on a speculative basis. They are never built to thereafter be sold or leased in the market. The reason freestanding big-box stores are not built on a speculative basis to be thereafter sold or leased is that no profit could reasonably be expected from the construction and subsequent sale or lease upon completion of that construction. Like all freestanding big, big-box stores, the subject improvements were designed and constructed for specific retailer's retail business purposes and to fit that specific retailer's business model and image. Big-box stores are as the name applies, simply big-box stores, pursuable for use by multiple retailers.

However, the market tells us, a buyer with a fee simple interest of a big-box store is going to re-image the property. Each big-box store retailer has its own business image, a desired store layout and design, facade, flooring, lighting, location, restrooms, et cetera. Each big-box store retailer wants the store to fit its business model and that -- not that of another retailer's image. The logical, reasonable expectation is fee simple interest of the subject property, if it were sold, although suitable for retail use by many different users, some changes would be made to fit the buyer's image. That loss in

[2] Petitioner's opening statement.

value of the sold store property and difference in value between an unleased big-box store and one that is leased, even at market rent, are due to multiple factors. The loss of difference in value factors include: The difficulty in obtaining financing for the acquisition of a store that is not leased and not occupied, as well as the multiple risks associated with finding a tenant, a holding period, and delays the cost to re-image the property.

This is why the value of big-box stores are adversely impacted by obsolescence even as of the date the store building construction is completed. Because such obsolescence exists in the market, that loss in value must be reflected as a matter of law and the concluded true cash value, even on day one, and even in good economic times, and even for properties in good locations -- which we don't have here.

That obsolescence also creates one of the difficult, if not impossible, challenges of performing an independent cost approach and not relying on other approaches to value of an existing big-box store real property because the difficulty is in identifying that loss of value independent of other approaches to value.

Petitioner contends that based on an appraisal prepared by Laurence G. Allen, MAI, the subject property is assessed in excess of 50% of its true cash value for the tax years at issue.

PETITIONER'S ADMITTED EXHIBITS

P-1: Appraisal report
P-2: Colliers Brochure for Vacant Land
P-5: Cost to Modify
P-6: Flat Rock Plaza Lease Brochure

PETITIONER'S WITNESSES

<u>John R. Widmer, Jr. MAI</u>

Petitioner called Respondent's appraiser, John R. Widmer, Jr. MAI, as an adverse witness.

Mr. Widmer testified that there was an error on page 37 of his appraisal report in the market area analysis. Specifically, in his demographic table for household income.

Mr. Widmer was questioned on the following areas at issue:

1. The true cash value of the fee simple interest in the subject property is at issue.
2. Mr. Widmer valued the subject property in the sales comparison approach as if it were occupied but not leased.
3. The value indicated by his sales approach would have been lower if the property had been valued based upon it being available for immediate occupancy due to the risk associated with having to get an occupant into the building.
4. In the income approach, Mr. Widmer valued the subject property as if it were subject to a lease in place, and he similarly agreed that the indicated value would have been less if the property were valued as if it were available for a lease.
5. Each of the comparables in the sales and income analyses that were vacant or not leased when sold were adjusted upwards 25% for occupancy.
6. The subject property was not occupied as of December 31, 2015.
7. Defining big box stores as 80,000 square feet (SF) and above was reasonable.
8. Out of his eight fee simple comparable sales, only three had gross building areas of more than 67,000 SF, which are the same three comparables used by Mr. Allen. The remaining comparables range from 41,000 to 66,000 SF.
9. Mr. Widmer agreed that if the market value of property is affected by obsolescence, then each of the valuation techniques used to conclude to an indicated value should

also reflect that obsolescence either directly or indirectly, and if that obsolescence is not directly or indirectly accounted for in a particular valuation method, then the valuation method has been improperly prepared.

10. He also agreed that if there is no physical depreciation, then any depreciation that exists must be attributable to obsolescence.

11. Mr. Widmer's cost approach does not account for any depreciation; it therefore reflects the upper limit of value for the subject property.

12. The upper limit of value exceeds his value conclusion by approximately $2,440,000.

13. The difference between his true cash value and the combination of replacement cost and land value equals depreciation.

Laurence G. Allen, MAI

Petitioner presented testimony from its appraiser, Laurence G. Allen, MAI. Mr. Allen prepared an appraisal of the subject property for December 31, 2016, indicating a true cash value of $6,200,000.

Mr. Allen has appraised approximately 200 big box stores for property owners, local units of government, and the Michigan Department of Treasury over the last ten years. Based on his experience and training, the Tribunal accepted Mr. Allen as an expert appraiser.

Mr. Allen's appraisal values the fee simple interest in the subject property as of December 31, 2016. The valuation is based on the subject's status as an existing facility that would be available for sale or lease in the open market, as opposed to the built-to-suit market, which involves yet-to-be constructed facilities that are built to the specification of the prospective buyer or tenant and have sales prices and rents based on the cost of construction. The appraisal sets forth a sales comparison, income, and cost approach for the big box store and supporting land and a cost approach for the convenience store/gas station. The sales comparison and income approaches were considered in valuing the convenience store but not utilized because most sales of convenience stores/gas stations are sales of going concern and include the business and the personal property and those that are not generally for change of use (repurposing for another commercial use). The income approach was not used because convenience stores/gas stations are not typically leased and there is not a lot of lease information available. The contributory value of the convenience store and its supporting land was added to the sales comparison and income approaches.

The appraisal begins with describing the general area dynamics and concluded that the new Meijer property was not the only interested commercial development. Although the subject property is the only commercial property located on Vreeland Road, it is in close proximity (0.3 miles) with access to the main commercial district on Telegraph Road. The median income is similar to Wayne County, with consumer spending 11% less and median housing costs also less.

Newer construction in the last few years include "O'Reilly Auto Parts, Metro Shores Credit Union (now Public Service CU), Auto Zone, and Family Dollar. Additionally, in late 2016, there was a new lease for 40,000 SF to Family Farm & Home in the former Kmart on Telegraph, south of Vreeland, which remained mostly vacant for more than a decade."[3] The subject has below-average visibility for a commercial property and is in a mixed-use neighborhood.

[3] P-1 at 35.

The appraisal described Functional Utility as:

> The layout and functional utility of the building is considered to be best suited to a single occupant/user due to the size, depth (most is +350') and interior layout of the building although most users would modify and customize the building for their own needs. While it is not designed for multi-tenants, a multi-tenant conversion would be possible. The design of the property in many ways is more similar to a warehouse than a retail store. The ceiling heights, the location of the truck doors, and the large open spaces are characteristics of an industrial warehouse. The design and construction, however, is similar to the design and construction of many "big box" stores today. The size of the store is approximately 50 percent larger than most "big box" stores.[4]

SALES COMPARISON APPROACH

Mr. Allen's sales comparison analysis for the subject big box store examines seven sales of big box properties in the Midwest.[5]

| Sale No. | Location | Sale Date | Sale Price | Sq Ft | Unadj SP/SF | Year Blt | Age Diff | ADJ SP |
|---|---|---|---|---|---|---|---|---|
| P-1 | Hartland | Jul-16 | $4,175,000 | 186,763 | $22.35 | 2009 | 7 | $4,026,610 |
| P-2 | Southgate | Jul-16 | $5,500,000 | 174,578 | $31.50 | 1998 | 18 | $5,598,716 |
| P-3 | Detroit | Dec-15 | $5,600,000 | 142,508 | $39.30 | 2001 | 15 | $5,325,524 |
| P-4 | Farmington H | Apr-16 | $4,550,000 | 103,298 | $44.05 | 1989 | 27 | $4,258,977 |
| P-5 | Portage, IN | Dec-11 | $7,175,000 | 192,814 | $37.21 | 1993 | 23 | $9,627,203 |
| P-6 | Waterford T | Jan-18 | $4,000,000 | 119,396 | $33.50 | 1973 | 43 | $4,386,609 |
| P-7 | Brown Deer WI | Dec-13 | $4,000,000 | 139,571 | $28.66 | 2006 | 10 | $4,403,465 |

Petitioner's Comparable 2 is also Respondent's Comparable 7, Comparable 3 is Respondent's Comparable 4, and Comparable 4 is Respondent's Comparable 6.

None of the comparables selected were leased at the time of sale. When question on leased fee sales, Mr. Allen responded:

> They sell for a higher price because they sell in a different market with different potential buyers. They are sold to passive investors, generally, as opposed to a

[4] P-1 at 41.

[5] Mr. Allen also reviewed and considered a national study on big box stores, as well as five additional sales and two listings that were not used directly to derive the indicated value, but to demonstrate an active marketplace and the range in sale prices and offering prices for fee simple interest in properties like the subject.

> fee simple sale will sell to, to a user or, or will sell to a developer who plans on reconfiguring the store and finding tenants and leasing the store.[6]

He also responded to questioning on build-to-suit leases/sales, explaining that their rents are higher. Although no leased fee sales were utilized, Mr. Allen explained:

> It would be a problem determining a proper adjustment for the fact that it was leased at the time of sale which, when a property is leased and then sold, the price is no longer determined by, by the real estate principally, it's determined by who the tenant is, what the credit of that tenant is, how long the lease is. So, so it's being sold to an investor who's essentially buying the lease.[7]

The comparables were adjusted for property rights transferred, financing terms, conditions of sale, market conditions, arterial attributes, demographic attributes, and age/condition. Comparable 3 had HVAC damage prior to sale and the estimated $500,000 cost to repair was added to the unadjusted sale price. Comparable 1 sold with a covenant deed restricting some future retail use of the property but based on discussions with the participants of the sale, including the listing brokers and the grantor, Mr. Allen concluded that the purchase price was not affected by the restriction. He explained:

> The property was marketed by Walmart without a deed restriction and Walmart was not able to achieve their asking price for the property which was approximately $29 per square foot. The best offer they were able to obtain was from Rural King for $22 a square foot. And they put a deed restriction on the property after the price was agreed to but they put an exception in the deed restriction for Rural King and Rural King's affiliates.[8]

Additional conversations with brokers and buyers and sellers of big box stores and paired sales analyses also supported a general finding that deed restrictions do not

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[6] Tr. Vol. 2-A at 338.
[7] Tr. Vol. 2-A at 339.
[8] Tr. Vol. 2-A at 341.

affect the price or marketability of these types of properties because they are agreed to after the sale price has been established.

Market condition factors for the comparables ranged between 0.97% and 1.14%. All comparables were deemed superior to the subject with respect to arterial attributes (access, visibility, and traffic counts), and all but Comparables 1 and 5 were concluded to be superior with respect to demographic attributes (population, households, median household income). The comparables were adjusted 1% per year for age/condition differences from the subject as of their dates of sale.

Mr. Allen considered and relied on all comparables in concluding a price of $35 SF for the subject's big box store, plus, $750,000 for the convenience store for a total true cash value of $6,300,000 for the subject property based on the Sales Comparison Approach.

INCOME APPROACH

Mr. Allen's income approach is based on a direct capitalization methodology. To determine rental rates, he examined the leases of eight big box properties. A summary of the Build-to-suit properties NNN follows:

| Rental | Tenant | Location | Date | Sq Feet | Lease Rate | Term | TI | Adj $/SF | Yr Blt |
|---|---|---|---|---|---|---|---|---|---|
| P-1 | Kohls | Green Oak | Aug-04 | 88,408 | $9.55 | 20 | | $9.55 | 2004 |
| P-2 | Sams | Utica | Nov-04 | 164,076 | $8.50 | 20 | | $8.50 | 2004 |
| P-3 | Kohls | Ft Gratiot | Oct-07 | 88,408 | $6.16 | 20 | | $6.16 | 2007 |

The existing building triple net leases are:

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| P-4 | Mervyns | Portage | Aug-06 | 81,072 | $6.80 | 10 | $25 | $4.30 | 2006 R |
| P-5 | Apex Cart | Madison Hts. | Jul-07 | 114,532 | $6.00 | 10 | | $6.00 | 1986 |
| P-6 | At Home | Kalamazoo | Nov-13 | 84,000 | $3.65 | 5 | $4 | $2.85 | 1974 |
| P-7 | At Home | Ypsilanti | Dec-13 | 91,743 | $3.60 | 5 | | $3.60 | 1960 |

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| P-8 | At Home | Bloomfield Hills | Sep-16 | 120,650 | $5.60 | 10 | | $5.60 | 1993 |

A lease offering of a Former Kmart in Flat Rock on Telegraph Road was also considered due to its proximity to the subject property. This property had 47,543 SF of space available with an asking price of $6.00/SF NNN. Several older leases were considered because the availability of leases of big box stores is limited. Lease renewals were excluded from the analysis because they are not offered and negotiated in an open market and do not meet the definition of market rent.

Because the data demonstrated a premium commanded by build-to-suit leases over leases of existing buildings, only the leases of existing buildings were relied on in the market rent determination. Of these, Comparables 6, 7, and 8, which were the largest and most recent leases, along with an offering for the Kmart property in Flat Rock, were deemed to be most relevant. Mr. Allen's rent calculation:

| | Subject | 1 | 2 | 3 | 4 |
|---|---|---|---|---|---|
| Tenant | Meijer | At Home | At Home | At Home | Former Kmart |
| City | Flat Rock | Kalamazoo | Ypsilanti | Bloomfield Hills | Flat Rock |
| Lease Date | | Nov-13 | Dec-13 | Sep-16 | Offering |
| Building Size | 157,352 | 84,000 | 91,743 | 120,650 | 47,543 |
| Year Built | 2016 | 1974 | 1960 | 1993 | 1978 |
| Lease Rate | | $2.85 | $3.60 | $5.60 | $6.00 |
| Market Conditions | | 10.52% | 10.52% | 4.79% | 0.00% |
| Adjustments | | | | | |
| Size | | 100% | 100% | 100% | 85% |
| Arterial | | 95% | 95% | 90% | 95% |
| Demographic | | 95% | 95% | 95% | 100% |
| Age/Condition | | 125% | 125% | 110% | 110% |
| Total Adjustments | | 112.81% | 112.81% | 94.05% | 88.83% |
| Rent/SF | | $3.55 | $4.49 | $5.52 | $4.80 |
| | | | | | |
| Traffic | 21,035 | 22,207 | 38,000 | 72,100 | 19,900 |
| Population 5 Mile | 82,048 | 143,886 | 182,472 | 157,701 | 81,835 |
| Income | $65,868 | $42,807 | $50,392 | $60,766 | $65,788 |

As with the comparable sales, the lease comparables were adjusted for the various elements of comparison.

After adjustments, Mr. Allen concluded to a market rent of $4.50 SF for the subject big box store,[9] which resulted in rental income of $708,084 for the subject property.

The subject's reimbursable operating expenses were management fees at 3% of EGI and reserves for replacement at $0.25/SF in the amount of $471,366 were added to the rental income for a gross income of $1,179,450. Based on a review of retail vacancy levels for the subject area, Mr. Allen concluded to a 10% vacancy and credit loss factor, application of which resulted in an effective gross income of $1,061,505. Operating expenses of $542,549 were then deducted, resulting in a net operating income of $518,956.

A capitalization rate of 9.5% was utilized after considering market comparables, band of investment techniques, and investment surveys. After capitalization, leasing commissions of $212,425 were deducted and the $750,000 contributory value of the convenience store added, for an indicated value of $6,000,000 for the subject property based on the income approach.

COST APPROACH

The first step is to determine the value of land as if vacant. Mr. Allen examined four sales and an offering to determine the subject's land value. A summary of the sales is as follows:

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[9] The subject's projected rent at $4.50 per square foot was also utilized in calculating obsolescence at P-1 page 114.

| Comparable | Subject | 1 | 2 | 3 | 4 |
|---|---|---|---|---|---|
| Location | Flat Rock | Taylor, MI | Maumee, OH | Perrysburg, OH | Flat Rock |
| Land Size (Acres) | 25.38 | 76.00 | 10.00 | 28.25 | 13.46 |
| Sale Date | | Jun-15 | May-16 | Aug-14 | Offering |
| Sale Price | | $12,500,000 | $2,475,000 | $4,690,000 | $2,000,000 |
| Sale Price Per Acre | | $164,474 | $247,500 | $166,018 | $148,588 |

As with the sale and lease comparables, the land sales were adjusted for various elements of comparison, including functional utility. In that regard, all comparables received negative adjustments to account for the subject's 6.5 acres of retention ponds. All sales were considered and relied on, but most weight was given to Comparable 4 in concluding to a land value of $110,000 per acre for a total indicated value of $2,790,000. $2,660,000 of the land value was allocated to the subject big box store and $130,000 was allocated to the convenience store.

Mr. Allen's replacement cost of the subject improvements utilized the cost schedules provided by the Marshall Valuation Service (MVS) for an Average Cost, Class C megawarehouse store and a Good Cost, Class C convenience store.

MVS Average Cost, Class C Mega Warehouse Store as of December 31, 2016

| | | |
|---|---|---|
| Total Building Floor/SF | 157,352 | |
| HVAC Premium/SF | $8.12 | |
| Sprinkler/SF | $2.15 | |
| Building Cost/SF | $46.39 | |
| Total Building Cost/SF | $56.66 | |
| Base Building cost | $8,915,564 | |
| Story Height Adj | 1.213 | |
| Perimeter Adj | 0.785 | |
| Adjusted Base Building Cost | | $8,489,445 |
| Canopy SF | 3,600 | |
| Cost per SF | $24.50 | |
| Base Building Cost | | $88,200 |

| | | |
|---|---|---|
| | | |
| Total Base Costs | | $8,577,645 |
| x Local Multiplier | | 1.12 |
| x Current Multiplier | | 0.99 |
| Building Replacement Cost Estimate | | $9,510,893 |
| Time Adj to Date of Value | | 100.00% |
| Replacement Cost Estimate | | $9,510,893 |

Application of local and current multipliers resulting in a value of $9,510,893 for the big box store. A separate calculation of $492,984 for the convenience store. Site improvements were calculated at $2,162,340 and soft costs (construction management fee) were calculated at $608,310. Construction costs were allocated resulting in $9,986,437 for the big box store, $517,633 for the convenience store, and $2,270,457 for site improvements, resulting in a total improvement value of $12,774,527.

Depreciation is a loss in value from all causes and is a result of three factors: 1) physical deterioration, 2) functional obsolescence, or 3) external obsolescence. Mr. Allen calculates physical depreciation first. The subject property was 0.5 years old as of December 31, 2016. MVS estimates that a mega warehouse has a useful life of 35 years, a convenience store is 40 years, and site improvements are 15 years. The calculation for physical depreciation as of December 31, 2016:

| Physical Depreciation | 12/31/2016 TCV | | Depreciation |
|---|---|---|---|
| Mega Warehouse | $9,986, 437 | | |
| Age | | 0.5 | |
| Useful Life | | 35 | |
| X Depreciation | | 1.40% | $142,663 |

| | | | |
|---|---|---|---|
| Convenience Store | $517,633 | | |
| Age | | 0.5 | |
| Useful Life | | 40 | |
| X Depreciation | | 1.30% | $6,470 |

| | | | |
|---|---|---|---|
| Site Improvements | $2,270,457 | | |
| Age | | 0.5 | |
| Useful Life | | 15 | |
| X Depreciation | | 3.30% | $75,682 |
| Total Physical Depreciation | | | $224,816 |

Functional obsolescence is defined by any loss in value that results from an inherent deficiency caused by physical factors i.e., poor design, layout, or improper orientation of the building site. Mr. Allen states the subject is oversized for what is generally required in the market and has a façade and other features, including interior layout and design that is specific to a Meijer business but would not have value to other users.

> Unlike many other commercial properties, free standing “big box” stores like the subject are not constructed for the purpose of selling or leasing the subject in the marketplace. “This is because no prudent person would expect to realize a positive return on such an investment. In addition, one constructing a free standing “big box” store similar to the subject may expect to incur a profit on the operation of the store but would expect a loss upon the sale of the real estate. This phenomenon is not unique to “big box” stores, as it can be observed under other situations, such as a purchase of a new car or a new tailored suit…Furthermore, to the extent that any features particular to Meijer’s, a buyer must either incur modification costs or utilize features different than those desired. This loss is reflected in market rentals and sales. Also, the larger size of the subject amplifies the problem and results in further loss in value from cost new.[10]

Economic obsolescence is defined as the loss in value from factors external to the property. Mr. Allen opined that market demand for large commercial buildings like the subject is very limited. However, based on experience and the use of several methodologies and examples that have been studied for years. The following methodologies were utilized; build-to-suit leases vs re-releases, sales studies, NOI

[10] P-1 at 108,109.

analysis, an analysis of the history of “big box” stores, and interviews with general contractors that have performed renovations.

The following eight leased properties exceed 80,000 SF[11]:

| Rental | Tenant | Location | Date | Sq Feet | Lease Rate | Term | Adj $/SF | Diff in Age |
|---|---|---|---|---|---|---|---|---|
| | BTS | | | | | | | |
| 1 | Kohls | Green Oak | Aug-04 | 88,408 | $9.55 | 20 | $9.55 | 12 |
| 2 | Sam’s | Utica | Nov-04 | 164,076 | $8.50 | 20 | $8.50 | 12 |
| 3 | Kohls | Ft Gratiot | Oct-07 | 88,408 | $6.16 | 20 | $6.16 | 9 |
| | Existing | | | | | | | |
| 4 | Mervyns | Portage | Aug-06 | 81,072 | $6.80 | 10 | $4.30 | Unk |
| 5 | Apex Cart | Madison Hts | Jul-07 | 114,532 | $6.00 | 10 | $6.00 | 30 |
| 6 | At Home | Kalamazoo | Nov-13 | 84,000 | $3.65 | 5 | $2.85 | 42 |
| 7 | At Home | Ypsilanti | Dec-13 | 91,743 | $3.60 | 5 | $3.60 | 56 |
| 8 | At Home | Bloomfield Hills | Sep-16 | 120,650 | $5.60 | 10 | $5.60 | 23 |

The combined average rents for BTS ($8.07) and existing ($4.47) is $5.82 rent per square foot. This indicates a large disparity between the BTS and the existing rental rates. Mr. Allen notes that land is included. The difference would be much larger without the land.

Twenty mid-sized “big box” stores that range in size from 45,000 to 79,999 square feet averaged $10.76 for BTS and $4.43 per SF for existing buildings with an average overall lease rate of $6.02.  Mr. Allen did not use these examples to determine market value but to visually show the decline in value after the BTS is sold or leased to the next user.

The older indication of functional obsolescence is the use of the BTS Source Clubs that were constructed by Meijer to compete with Sam’s Club.  However, it was not

[11] Leases 4 and 6 had tenant improvements of $25 and $4 respectively. Differences in age between the subject and the comparables age.

a successful venture. Shortly after they were constructed, they were on the market. Albeit old information, it is used as another indication of how the BTS declines in value when put on the market for any user to purchase.

| Location | Kentwood | Wyoming | Okemos | Westland | Taylor |
|---|---|---|---|---|---|
| Buyer | Home Depot | Target | Home Depot | Lowe's | Horizon |
| Sale Price | $9,360,000 | $4,850,000 | $6,300,000 | $5,500,000 | $5,500,000 |
| Sale Date | Nov-94 | Mar-96 | Dec-97 | Sep-99 | Jan-00 |
| Land Cost | $6,000,000 | $2,580,271 | $3,184,304 | $1,843,456 | $2,012,114 |
| Depreciated | $3,360,000 | $2,269,729 | $3,115,696 | $3,656,544 | $3,487,886 |
| Improvement Cost | $3,915,369 | $5,168,557 | $5,617,745 | $6,320,386 | $6,476,672 |
| % Depreciation | 14% | 56% | 45% | 42% | 46% |

The history of the Source Club sales and some recently constructed "big box" store where the fee simple was sold include the following:

| Location | Holland | Illinois | Milwaukee | Hartland |
|---|---|---|---|---|
| Seller | Home Depot | Lowe's | Lowe's | Walmart |
| Age of Store | 6 years | 6 years | Unknown | 7 years |
| Sale Price | $1,750,000 | $4,000,000 | $4,900,000 | $4,175,000 |
| Sale Date | Jan-14 | Jan-12 | Dec-11 | Jul-16 |
| Land Purchase | 2006 | 2006 | 2003 | 2008 |
| Land Cost | $3,300,000 | $4,000,000 | $4,100,000 | $4,950,000 |

The secondary user purchases the property for close to the original acquisition price of the vacant land. "These examples indicate a substantial amount of obsolescence adversely affecting the market value of big box buildings, even those newly constructed ones."[12]

The capitalization of income loss was utilized to determine the subject's obsolescence.

| | | |
|---|---|---|
| Total Improvement Cost | $12,143,371 | |

[12] P-1 at 114.

| | | |
|---|---|---|
| Less Physical Depreciation | -$214,561 | |
| Plus Land Value | $2,660,000 | |
| Total Improvement Cost | $14,588,810 | |
| OAR | 9.50% | $1,385,937 |
| Required NOI for Feasibility | | |
| Estimated Land Value | $2,660,000 | |
| Land Cap Rate | 8.50% | |
| NOI Attributable to Land | | $226,100 |
| | | $1,612,037 |
| Projected Subject NOI | $518,956 | |
| Less NOI Land | $226,100 | |
| NOI att to Improvements | | $292,856 |
| Deficient Income from Imp | | $866,981 |
| Imp Cap Rate | | 9.69% |
| Estimated Obsolescence | | $8,942,613 |
| | | |

The indication of obsolescence for the new construction is 74% of the improvement cost new and 60% of the total improvement cost (with land).

Mr. Allen was not able to quantify obsolescence for the convenience store improvements due to the lack of fee simple sales and leases of similar properties. While obsolescence likely exists, Mr. Allen concluded that the inability to quantify it would not have a significant impact on his value indication because of the relatively small contributing value attributable to this portion of the property and the fact that value indications are rounded to the nearest $100,000. Addition of the estimated $2,790,000 land value to the depreciated cost resulted in a total true cash value indication of $9,167,429.

> Q. And you agree with me the fact that the property would sit on the market for years if offered for sale or lease indicates there’s little to no demand for the subject property as it is currently constructed; correct?
> A. No, no there’s—there’s demand for it. It typically takes more than a year to sell, but there’s—there’s a lot of demand for big-box stores, or a lot of potential users of big-box stores, anyway.

> Q. Okay. Well looking at page 109, is it your testimony you say large stores such as the subject have little demand in the leasing market. Is it your testimony now that there's a lot of demand except, they'll just take a year or two to sell?
> A. Well, there's a lot less demand in the leasing market, especially for this size of store. It's - - there are a lot more buyers of this size store than there are people wanting to lease this size store.
> Q. And even if it was purchased or leased, there would have to be costs incurred –cost incurred to the property before the subsequent user uses the property; correct?
> A. They wouldn't have to be. A user could use it just like it is. It's perfectly usable for retail use.[13]

When questioned on a secondary user, Mr. Allen responded, "The second user wouldn't- - wouldn't need to convert or change or renovate the property. If- - if they chose to because they – their business plan wants, like, a different façade, they would change that. They wouldn't have to. …the façade, interior layout and design is specific to Meijer."[14]

Other items that a buyer may not need or want include a drive-through pharmacy, garden center, truck doors, and the amount of parking. A new buyer may not need coolers, or a grocery operation, specific lighting, floor coverings in different areas, open ceilings, back room and a convenience store and gas station. The 157,352 SF may be more or less than a buyer may want or need.

During cross examination, Mr. Allen explained the differences in MVS costs for Class C megawarehouse and average class C warehouse discount store. "Warehouse discount stores are of warehouse construction with minimal interior partitioning. Membership stores typically fall in this category."[15]

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[13] Tr. Vol. 2-B at 528-529.
[14] Tr. Vol. 3 at 553-554.
[15] Tr. Vol. 3 at 639.

Mr. Allen, in response to Respondent request for the difference in costs between the megawarehouse and the warehouse discount store:

> If you compare average Class C mega warehouse and average Class C warehouse discount store, the difference in the descriptions is in the exterior walls heading, where the mega warehouse has open steel or wood frame block or tilt-up, good roof, web joists. Whereas the warehouse discount has average block or tilt-up, open pipe or wood columns, some trim.[16]

Mr. Allen was questioned on the method of adjusting comparable properties. He explained that the age-condition adjustment in the sales approach the adjustment was 1% per year. The rental comparables were less because the tenant is not purchasing the building, in addition the landlord is responsible for providing adequate parking, roof and HVAC, not the tenant. It was not done consistently. The age and condition of the rental properties were combined. Mr. Allen testified that he did not break out the two aspects of that total.[17] It is not explained in the appraisal. The lease comparables were adjusted differently. Respondent noted that Mr. Allen does not have any personal knowledge when or if any upgrades took place or when the tenants occupied the properties. The adjustment was entirely subjective. The comps were not adjusted for size. The closest in size is rent comparable 3 which is 14% smaller than the subject. Again, it was Petitioner's subjective decision.

Two out of three of the foundations for capitalization rates were from investor surveys complied by surveying brokers, investors, and appraisers. The surveys for vacancy rates include CoStar Down River, CoStar Metro Detroit, CBRE Southeast Wayne County and CBRE Metro Detroit. They include all retail, including big boxes,

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[16] Tr. Vol. 3 at 642-643.
[17] Tr. Vol. 4 at 782.

with the majority of the retail smaller than the big boxes. Mr. Allen explained his use of a 9-9.5% vacancy rate.

> A couple things. One, the location of the subject property, which does not have good traffic or good visibility, which makes it harder to lease. And second, as of the date of value the subject property had no tenant, so it would take time to find a tenant so -- and build out the space and put a tenant in. So there -- there would be a higher vacancy because you're starting off without a tenant. And third, big-box stores in general take longer to lease and have longer vacancy periods when they are vacant than normal-size retail properties.
> Q. Okay. But the location of the property would also be taken into account in your base rental rate conclusion because you considered arterial and demographics within that determination; correct?
> A. Yes, those were considered in determining the rent, but it would, in my opinion, take longer to lease the subject property because of its location and during vacancy periods would generally be longer.[18]

Mr. Allen was questioned on the market derived capitalization rates.[19] Three out of seven comparables are located in Michigan. They were to demonstrate capitalization rates for properties with short-term remaining leases. The three Michigan properties considered were:

| Location | Port Huron | Berlin Twp | Madison Heights |
|---|---|---|---|
| Tenant | Kmart | Kmart | Sam's Club |
| SF Building | 193,500 | 91,266 | 111,190 |
| Rent Commence | Nov-93 | Sep-92 | Jun-87 |
| Lease Expiration | Nov-18 | Aug-17 | May-07 |
| Annual Rent | $1,227,239 | $539,645 | $1,245,328 |
| Rent/SF | $6.34 | $5.91 | $11.20 |
| Sale Date | Feb-13 | Aug-15 | Feb-05 |
| Sale Price | $9,796,179 | $1,875,000 | $7,250,000 |
| Remaining Months | 69 | 24 | 27 |
| OAR | 12.53% | 28.78% | 17.18% |

[18] Tr. Vol. 4 at 783.
[19] P-1 at 95.

Mr. Allen stated:

> The above overall rates reflect leases in place for the remaining term including the above market rents. They demonstrate the fact that with respect to leased fee interest in big box stores the shorter the remaining lease the higher the capitalization rate is. The capitalization rates are higher because the rates reflect the shorter remaining term of guaranteed rent and possible loss of the income from the big box tenant in place at the end of the lease, as well as the cost and risk of finding a new tenant and receiving a similar rent. In many ways, these are closer to fee simple capitalization rates, than the leased fee rates discussed above, because there are only short remaining terms on the leases. The above transactions are included here to illustrate the significant impact on the capitalization rate if no long-term lease is in place.[20]

> Q. And what those reflect are the sale prices paid for properties with tenants at what you believe are short-term remaining leases in place; correct.
> A. Yes.

RECONCILIATION

After consideration of all pertinent data and information, Mr. Allen concluded to a true cash value of $6,200,000 for the subject property. Most weight was given to the sales comparison approach, with secondary consideration given to the income approach. The sales comparison approach was concluded to be the primary indicator of value because it directly affects what other users, investors are paying for similar stores in the market, particularly superstores, mega warehouse stores.

The income approach was deemed less reliable because the rent comparables were not as comparable to the subject as the sales comparables. The rents also do not reflect a downward adjustment for the unknown allowance for tenant improvements and likely overstate the value because of that. Additionally, concluding to a fee simple cap rate is a challenge because there are not direct sources for that rate.

[20] P-1 at 95.

The cost approach was not considered reliable and was not relied on in the final value estimate due to the significant obsolescence impacting the value of the primary building improvements. This approach is also not one that is utilized by buyers and sellers in the marketplace for big box properties.

RESPONDENT'S CONTENTIONS[21]

Respondent contends that the subject property was partially completed as of December 31, 2015, and completed and occupied in 2016. Petitioner has abandoned any claim to tax year 2016, as no valuation evidence was submitted. Petitioner has not met its burden of proof for tax year 2016. Mr. Allen confirmed that no valuation evidence was submitted for 2016 tax year.

The appraisal from Mr. Allen indicates the 2017 tax year value is $6.2 million, Respondent's valuation witness, Mr. Widmer, values the subject property at $9.2 million. The difference is Respondent valued the property at issue, Petitioner valued a hypothetical property artificially and incorrectly filled with assumptions and incorrect data that results in a deflated value. The testimony in Petitioner's case shows Mr. Allen's assumptions and conclusions at the highest and best use begin the foundational errors. He assigned hypotheticals and arbitrary determinations that resulted in a conclusion that has no relation to the actual true cash value of the subject property.

Respondent's valuation expert, Mr. Widmer, will show how he considered the existing property as of each tax date at issue. He will testify as to information regarding the market where subject exists when reaching a highest and best conclusion. Mr.

[21] Respondent's contentions are from the opening statement.

Widmer's testimony and evidence will show that Respondent's conclusion of value as of December 31, 2016, for tax year 2017 is correct.

RESPONDENT'S ADMITTED EXHIBITS

R-1: Appraisal
R-2: MDEQ Plans and Permits for subject property
R-4: Marshall Valuation Pages (December 2016)
R-5: Marshall Valuation Pages (February 2016)
R-8: Correction to R-1 p. 37
R-9: Duke Broker's Flat Rock Plaza for Lease Brochure (2010)[22]
R-10: Deed for Walmart to ABG (Hartland Rural King).

RESPONDENT'S WITNESSES

John R. Widmer, Jr., MAI.

Respondent presented testimony from its appraiser, John R. Widmer, Jr., MAI. Mr. Widmer is a certified general appraiser with 30 years of appraisal experience. He has prepared numerous appraisals for property tax purposes over the years, including appraisals of single-user freestanding big-box stores. Based on his experience and training, the Tribunal accepted Mr. Widmer as an expert appraiser.

Mr. Widmer's appraisal values the fee simple interest in the subject property as of December 31, 2016, and December 31, 2017. For purposes of the valuation, Mr. Widmer concluded that the highest and best use of the subject property is a continued single-user big-box retail use. The appraisal sets forth a sales comparison, income, and cost approach.

Mr. Widmer begins with an analysis of the market area. This resulted in determining that market area is underserved "in terms of inventory its undersupplied for

[22] The Tribunal has considered this exhibit (R-9) and finds that although page 4 is disregarded the document is admitted.

the population."[23] When vacancy for the area was investigated one property, Flat Rock Plaza located within a mile of the subject property, was originally developed in the mid-'70s to late '70s as a Kmart, and at that time there was a Kroger store and a Perry Drug store. After Kmart closed in 2006, and it basically became 100 percent vacant. Its 79,000 square feet is over 50% of the vacancy within a three-mile radius. Mr. Widmer removed the property from his vacancy estimate to analyze it. He gave the following explanation:

> A. I am going to remove it for an analysis of property-specific influences. So, I think it's important to remove it, analyze it to show that effective influence on the market.
> Q. Can you explain why?
> A. When you have a property that is not competitive, again, we have a brand-new property as of the valuation date. When you're looking at what may be a substitute property at that time, it has no relevance to show a 38-year-old, 40-year-old building in terms of who may go in and lease that space.[24]

SALES COMPARISON APPROACH

Mr. Widmer's sales comparison analysis examines the following eight sales. A summary of the sales follows:

| Sale No. | City | Sale Date | Sale Price | Sq Ft | Unadj. SP/SF | Year Blt. | Age Diff | ADJ SP/SF |
|---|---|---|---|---|---|---|---|---|
| R-1 | Macomb Twp. | Jul-14 | $2,150,000 | 56,766 | $37.87 | 1999 | 17 | $58.33 |
| R-2 | Commerce Twp. | Sep-14 | $2,500,000 | 66,154 | $37.79 | 1998 | 28 | $58.96 |
| R-3 | Northville Twp | Jun-15 | $1,950,000 | 47,374 | $41.16 | 1995 | 13 | $53.61 |
| R-4 | Detroit | Dec-15 | $5,100,000 | 143,941 | $35.43 | 2001 | 15 | $63.14 |
| R-5 | Roseville | Jan-16 | $4,750,000 | 109,600 | $43.34 | 1994 | 14 | $64.73 |
| R-6 | Farmington Hills | Apr-16 | $4,550,000 | 106,167 | $42.86 | 1989 | 27 | $67.32 |

[23] Tr. Vol. 5 at 1000.
[24] Tr. Vol. 5 at 1005.

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| R-7 | Southgate | Aug-16 | $5,500,000 | 182,454 | $30.14 | 1998 | 18 | $57.84 |
| R-8 | West Bloomfield Twp. | May-17 | $2,700,000 | 41,338 | $65.32 | 1976 | 40 | $90.47 |

The comparables were adjusted for the same elements of comparison, including property rights conveyed. The adjustments are as follows.

| Sale No. | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|---|
| SP/SF | $37.87 | $37.79 | $41.16 | $35.43 | $43.34 | $42.86 | $30.14 | $65.32 |
| Expenditures after Sale | | | | $3.30 | | | | |
| Market | $2.75 | $2.55 | $1.85 | $1.16 | $1.31 | $0.86 | $0.30 | -$0.65 |
| Location | -$2.03 | -$1.61 | -$0.22 | $2.59 | $0.49 | -$2.19 | $1.07 | -$6.14 |
| Size | -$1.62 | -$1.41 | -$2.15 | $0.00 | -$0.49 | -$0.44 | $0.30 | -$3.88 |
| Age/Cond | $6.91 | $7.26 | $9.03 | $5.98 | $10.78 | $11.80 | $5.48 | $13.58 |
| Quality | $0.70 | $0.81 | $0.43 | $1.20 | $1.47 | $0.00 | $9.44 | $2.59 |
| Economic | $13.65 | $13.58 | $3.50 | $13.47 | $3.50 | $14.42 | $11.11 | $19.66 |
| Total Adj | $20.36 | $21.18 | $12.44 | $24.40 | $17.06 | $24.45 | $27.70 | $25.16 |
| Adj SP/SF | $58.33 | $58.96 | $53.61 | $63.14 | $64.73 | $67.32 | $57.84 | $90.47 |
| % Adjustments | 1.54 | 1.56 | 1.30 | 1.78 | 1.49 | 1.57 | 1.92 | 1.39 |

Comparable 4 was adjusted upward for expenditures after sale because it was reported that the roof and roof-top HVAC units required repairs as a result of deferred maintenance. Market conditions adjustments were 3% per annum.

Economic includes all the attributes of a property that directly affects its income or value from a user's perspective. "In this instance the economic adjustment will be applied to reflect the vacant status of Sales 1, 2, 4, 6, 7, and 8."[25] Comparable 5 was adjusted upward 10% for this factor because it was the sale of a property that was leased to JCPenney. The lease was effective September 2004 and the initial lease rate and changes over the lease term were not known. Mr. Widmer considered it likely that

[25] R-1 at 81.

the rental rate as of the date of sale was below market due to the number of leasehold improvements required. The property had formerly been a home improvement chain and JCPenney re-merchandised the building at their cost, thus reducing the rental rate in comparison to a finished store. Regarding use of this comparable despite it being leased, Mr. Widmer explained: "It's occupied. To me, from the standpoint of looking at whether or not there's positive or negative leasehold being above or below market rent, if you can quantify that and adjust for it it's a legitimate—it's okay to use."[26]

In addition to the adjustments an economic adjustment of $3.50 SF to reflect the value contribution from the fuel center only. The calculation is:

| | |
|---|---|
| Fuel Center Building | $317,900 |
| Fuel Center Canopy | 191,961 |
| Total RCN for Fuel Center | $509,861 |
| Soft Costs 8% | 40,789 |
| Total RCN for Fuel Center | $550,649 |
| % Good (Curvilinear) | 100% |
| Value Contribution to Fuel Center | $550,649 |
| rounded to: | $550,000 |
| $/SF GBA: | $3.50 |

After adjustments, Mr. Widmer concluded to a true cash value of $9,830,000 for the 2016 tax year and $10,125,000 for the 2017 tax year via the Sales Comparison Approach.

INCOME APPROACH

[26] Tr. Vol. 5 at 1096-1097.

Mr. Widmer's income approach is based on a direct capitalization methodology. To determine appropriate rental rates, he examined the leases of five properties. A summary of the properties is as follows:

| No. | Retailer | Location | GLA | Term | LCD | Rent $/SF | EFF. $/SF |
|---|---|---|---|---|---|---|---|
| 1 | Planet Fitness | Grand Rapids | 38,459 | 10 years | Nov-14 | $6.01 | $5.40 |
| 2 | TJ Maxx | Flint Twp. | 25,000 | 10 Years | Feb-15 | $6.50 | $6.50 |
| 3 | Family Home & Farm | Flat Rock | 40,000 | 10 Years | Oct-16 | $3.50 | $3.91 |
| 4 | Entertainment Center | Warren | 101,773 | 5 years | June-18 | $4.75 | $3.67 |
| 5 | Crunch Fitness | Farmington Hills | 25,000 | 10 Years | Jul-18 | $9.00 | $7.45 |

The initial rents were adjusted for rent steps over the term of the lease, free rent, and tenant improvements provided by the landlord to arrive at the effective rental rates. The comparables were adjusted for market conditions, location, size, age/condition, quality, and overall utility.[27] Location adjustments were applied differently in the income approach than in the sales comparison approach. As explained by Mr. Widmer:

> When you look at some of the components for a lease comp as opposed to a sale, corner influence might -- brokerage reports deals show that corner influence might be an extra quarter per square foot. The fact that you have higher traffic counts or the road is better it might be 50 cents per square foot. Instead of taking percentages on some of the location parameters, there's going to be a dollar per square foot amount, which is going to reflect a different percentage that was applied in the sales comparison approach. That's only to reflect known characteristics for some of those items. Freeway influence might be 50 cents per square foot as opposed to a fixed percentage applied in the sales comparison. So I'm taking what the rent premium, the rent differential would be or rent addition

[27] Rent comparable 5 is also Sales Comparable 6.

> as opposed to saying it's 10 percent of $4 a foot. I'm taking $4 a foot plus 50 cents to make it 4.50. So the percentages are not going to add up.[28]

The adjustments are:

| | R-1 | R-2 | R-3 | R-4 | R-5 |
|---|---|---|---|---|---|
| Rent | $5.40 | $6.50 | $3.91 | $3.67 | $7.45 |
| Market Cond. | 2.7% | 2.1% | -1.9% | -6.0% | -6.3% |
| Location | -16.4% | 2.5% | 0.5% | -13.5% | -17.5% |
| Size | -6.5% | -9.0% | -6.0% | -1.6% | -9.0% |
| Age/Cond | 36.0% | 31.0% | 38.0% | 51.0% | 14.0% |
| Quality | 25.0% | 0.0% | 25.0% | 35.0% | 25.0% |
| Utility | 1.0% | 1.0% | -1.0% | 0.0% | -2.0% |
| Total % | 41.8% | 27.6% | 54.6% | 64.9% | 4.2% |
| Adj $/SF | $7.75 | $8.35 | $6.00 | $5.90 | $7.75 |

When asked why he adjusted the comparables in this manner, Mr. Widmer stated:

> Because it's a quantifiable difference for some components on the lease side. You can look at -- you can look at side-by-side lease deals, end caps usually -- they might get a little more in rent. Your visibility, you're going to pay maybe a dollar more per foot, as an example, so those are items that you want to put actually in as opposed to a sale of a larger building where we're using basically a more generic as opposed to specific adjustment.[29]

The age/condition adjustments also differed from the sales comparison approach. Mr. Widmer explained,

> Because you're effectively adjusting it to the space that was there at the time when the deal was done. It doesn't reflect the same property in its deteriorated state when it sold, nor does it include the economic adjustment applied to the sales comparison approach."[30]

In concluding to market rental rates for the subject property, greatest weight was given to Comparable 3 based on proximity, with secondary weight placed on the

[28] Tr. Vol. 5 at 1114.
[29] Tr. Vol. 5 at 1115.
[30] Tr. Vol. 5 at 1125.

remaining comparables. Comparable 4 was considered a proper comparable notwithstanding that it required substantial adjustments upwards of 71% because it is an indication of what is achievable for a larger space. After adjustments, Mr. Widmer concluded to a market rent of $6.75/SF for the 2016 tax year. For the 2017 tax year, Mr. Widmer concluded to a market rent of $6.95 SF after application of a 3% adjustment for change in market conditions.

A capitalization rate of 8.25% was derived from market comparables, band of investment techniques, and investment surveys for both tax years. The reconciliation for tax year 2016 follows:

| | | | |
|---|---|---|---|
| Revenue | 157,352 | SF | |
| Base Rent | $5.75 | $1,062,126 | |
| RE Tax | $2.54 | $399,356 | |
| CAM & INS | $1.75 | $275,366 | |
| Potential Gross Income | $11.04 | | $1,736,848 |
| Vacancy | 5.0% | -$86,636 | |
| Credit | 0.05% | -$8,251 | |
| Effective Gross Income | | | $1,641,961 |
| Operating Expenses | | | |
| RE Taxes | $2.54 | $399,356 | |
| Insurance | $0.25 | $39,338 | |
| CAM | $1.50 | $236,028 | |
| Management Fee (EGI) | $2.50 | $41,049 | |
| Owner's Expenses | $0.15 | $23,603 | |
| Capital Reserve | $0.23 | $36,191 | |
| Subtotal | $4.93 | | $775,565 |
| Net Operating Income | $5.51 | | $866,396 |
| Overall Rate | 8.25% | | |
| | | $66.74 | $10,501,770 |
| Fuel Center | | | $550,000 |
| True Cash Value | $70.24 | | $11,051,770 |

Reimbursable operating expenses in the amount of $674,722 for the 2016 tax year and $692,265 for the 2017 tax year were added to the rental income for potential gross income of $1,736,848 for the 2016 tax year and $1,785,861 for the 2017 tax year.[31] Based on a review of vacancy levels for the subject area, Mr. Widmer concluded vacancy and credit loss factor, resulting in an effective gross income of $1,641,961 for the 2016 tax year and $1,688,780 for the 2017 tax year. Mr. Widmer calculated a frictional vacancy rate instead of measuring overall vacancy because "it gives you an indication based on a single-tenant property . . . . You know how long on average spaces are available. You know how long on average they take to lease up, and we have tenant retention calculations that will give you a good long-term stabilized projection to use."[32] Operating expenses of $775,565 for the 2016 tax year and $794,865 for the 2017 tax year were deducted, resulting in a net operating income of $866,396 for the 2016 tax year and $893,440 for the 2017 tax year.[33] The contributory value of the convenience store was estimated at $550,000 for the 2016 tax year and $515,000 for the 2017 tax year and added to the interim true cash value, for an indicated value of $11,050,000 for the 2016 tax year and $11,345,000 for the 2017 tax year.

COST APPROACH

Mr. Widmer examined eight sales to determine the subject's land value. A summary of the sales is as follows:

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[31] Common area maintenance ("CAM") and insurance recovery were estimated at $1.75/SF for the 2016 tax year and $1.79/SF for the 2017 tax year and property taxes at $2.54/SF for the 2016 tax year and $2.61/SF for the 2017 tax year.
[32] Tr. Vol. 5 at 1128.
[33] Property taxes were estimated at $2.54/SF for the 2016 tax year and $2.61/SF for the 2017 tax year, insurance at $0.25/SF for the 2016 tax year and $0.26/SF for the 2017 tax year, CAM at $1.50/SF for the 2016 tax year and $1.54/SF for the 2017 tax year, management fees at 2.5% of EGI for both tax years, owner's expense at $0.15/SF for both tax years and capital reserves at $0.23/SF for both tax years.

| Sale | Location | Acres | Dates | Price | Price/SF |
|---|---|---|---|---|---|
| 1 | Northville Twp. | 7.507 | 8/18/14 | $1,600,000 | $4.89 |
| 2 | Roseville | 9.140 | 1/29/15 | $3,350,000 | $8.41 |
| 3 | Warren | 4.541 | 2/24/15 | $1,600,000 | $8.09 |
| 4 | Taylor | 76.350 | 5/15/15 | $11,500,000 | $3.46 |
| 5 | Plymouth Twp. | 4.960 | 5/28/15 | $1,635,000 | $7.57 |
| 6 | Van Buren Twp. | 23.963 | 7/28/15 | $3,550,000 | $3.40 |
| 7 | Royal Oak | 13.890 | 8/4/15 | $5,450,000 | $9.01 |
| 8 | Chesterfield Twp. | 11.066 | 10/28/16 | $3,044,250 | $6.32 |

The transactional adjustments include property rights, financing terms, condition of sale, expenditures after purchase, and market conditions. Next the cumulative adjustments were made for location, physical and economic characteristics, use, and non-realty components.

Sales 1, 6, and 7 were adjusted for expenditures after sale because they required demolition of existing improvements. Sales 1-7 were adjusted upward for market conditions; Sale 8 was a downward adjustment. External influences negatively affected all but Sale 4, which was positive. Size was a large negative adjustment for Sales 1, 2, 3, 4, and 7. Comparable 5 received an upward adjustment for utility to address the shared condominium ownership, and Comparable 6 was also adjusted upward to account for its irregular configuration and reduced utility at the west portion of the site.

Sale 4 was adjusted 25% and Sale 5 was adjusted 5%, both upward. Sales 5 and 6 were upward adjustments for overall utility. The following depicts the total percentage adjustment:

| Sale No. | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 |
|---|---|---|---|---|---|---|---|---|
| Total Adjustment | -44.4% | -46.1% | -47.2% | 23.7% | -29.9% | 19.0% | -52.4% | -43.9% |

Although Comparable 3 was sold by a local unit of government, there was no indication that this was not a market sale. Further, while this property is too small to accommodate a big box store, it was deemed a proper comparable because it provides a measure of what commercial land is selling for in the market. Comparable 5 is also just under five acres but is part of a larger retailer commercial condominium as a pad site. Mr. Widmer considered this property capable of accommodating roughly 45,000 SF and determined an effective site area of approximately 5 acres. Comparable 6 is located in the Belleville Road overlay district, which imposes different development standards, but was improved with a big box store after purchase. Consequently, Mr. Widmer determined that the overlay restrictions did not impact use of the land sale for big box purposes. Comparable 7 was a two-part acquisition, with the smaller interior portion of the site being sold by Our Credit Union, and the larger portion sold by the Archdiocese of Detroit. The sale was nevertheless deemed an arm's length transaction, and there were no influences requiring a conditions-of-sale adjustment.

In addition to the six comparable sales, Mr. Widmer also considered the August 2013 sale of the subject property for $1,500,000 in conjunction with the work that had to be performed to cure floodplain-related issues prior to commencement of construction.

After the adjustments, Mr. Widmer added a 3% market conditions adjustment for December 31, 2016. The resulting land value is $3,530,000 ($4.00/SF) as of December 31, 2015, and $3,640,000 ($4.12/SF) for December 31, 2016.

The next step in the cost approach are the improvements, utilizing Marshall Valuation Service, May 2014, cost schedule for a Warehouse Discount Store with low to average quality and class C construction. The December 2016 manual was utilized for the 2017 tax year.

| | | | |
|---|---|---|---|
| SF | 157,352 | $44.13 | Warehouse/ Low/Avg |
| | $4.92 | HVAC | Warehouse Avg |
| | $2.30 | Sprinkler | |
| | $44.13 | Building Cost/SF | |
| | $51.35 | Total Building Cost/SF | |
| | $8,080,025 | | |
| | 1.17 | Story Height Adj | |
| | 0.787 | Perimeter Adj | |
| | $7,440,006 | Adjusted Base Building Cost | |
| | $47.29 | Adjusted Base Building Cost | |
| | | | |
| | $19,388 | Greenhouse | 2016sf |
| | $14,481 | G Canopy | 8103sf |
| | $297,267 | Fuel Center | 115.94sf $25.74 sf |
| | $179,561 | Canopy | 4600sf $39.04 sf |
| | $254,100 | Building Canopy | 6600sf $38.50sf |
| | $8,234,617 | Sub Total | |
| | 1.090 | x Local Multiplier | |
| | 0.099 | x current cost multiplier | |
| | $8,885,975 | RCN Building | $56.54 |
| | | | |
| | $2,907,090 | Site Improvements | |
| | $943,445 | 8% Soft costs | |
| | $12,736,511 | Total Building Site $80.94 SF | |
| | $3,640,000 | Land Value | |
| | $16,376,511 | | |

Low and average-quality costs were weighted equally in the blended cost base. An HVAC modifier was applied to the base building costs, and adjustments were made for story height and perimeter, resulting in base costs of $6,974,191 for the 2016 tax year and $7,106,764 for the 2017 tax year. Lump-sum costs for fire suppression, greenhouse, garden canopy, building canopy, fuel center C-store, and fuel center canopy were added.[34] Local and current multipliers were applied, site improvements and improvements were $2,907,090 and $2,907,090 respectfully. Soft costs (8% of the hard costs) were calculated, which resulted in a total improvement value of $12,656,751 for the 2016 tax year and $12,736,511 for the 2017 tax year.[35] The last step is adding the land value results in a total true cash value indication of $16,185,000 for the 2016 tax year and $16,375,000 for the 2017 tax year.[36]

Mr. Widmer did not calculate depreciation for either of the tax years at issue because the improvements were newly constructed, and buildings depreciate less at the onset of their physical life. Obsolescence was likewise not calculated because the replacement cost is based on a functional replacement property. He explained, "You're replacing the utility of a market type property, which you have the shell, you have none of the additional construction components that might be included within a custom build-to-suit freestanding property."[37] Further, the subject's competitive sub-market has a -5% vacancy level, and there were no alternative locations to accommodate a big box store like the subject. Thus, there appeared to be no adverse influence from a market perspective. In further explanation, Mr. Widmer stated:

> Essentially when you're looking at a market that may or may not be impacted by external factors, principle of substitution is there should be the ability for any user to acquire or develop a substitute property. If there are no substitute properties then that's telling you there is no alternative but possibly to build.
>
> ***
>
> Again, external obsolescence is to a class of properties. If you -- if you are oversupplied with high vacancy there very well could be an external

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[34] The convenience store has a total cost of $467,762.
[35] Soft costs include real estate taxes on the vacant land, loan origination or financing fees, and other components excluded in the RCN calculations.
[36] $3,530,000 and $3,640,000.
[37] Tr. Vol 5 at 1064

> influence. If you're undersupplied with virtually no vacancy there's no external obsolescence affiliated with market conditions.[38]

RECONCILIATION

After consideration of all pertinent data and information, Mr. Widmer concluded to a TCV of:

| 12/31/2015 (Weighted) | | | |
|---|---|---|---|
| Cost Approach | $16,185,000 | 55.0% | $8,900,000 |
| Sales Comparison Approach | $9,830,000 | 10.0% | $980,000 |
| Income Approach | $11,050,000 | 35.0% | $3,870,000 |
| | | | $13,750,000 |
| | | | 50% |
| | | | $7,240,000 |

| 12/31/2016 (Weighted) | | | |
|---|---|---|---|
| Cost Approach | $16,375,000 | 55.0% | $9,010,000 |
| Sales Comparison Approach | $10,125,000 | 10.0% | $1,010,000 |
| Income Approach | $11,345,000 | 35.0% | $3,970,000 |
| | | | $13,990,000 |

Respondent concluded to a TCV of $7,420,000 for the 2015 tax year (the subject property was estimated at 50% complete.) and $13,990,000 for the 2016 tax year. The cost approach was weighted at 55% for both years because the subject property is newly constructed. Further, when pursuing the opportunity to open new stores, retailers must consider the ultimate cost of underlying land and all development costs when determining whether a new project is financially feasible. As this factor considers what alternatives are available, the application of a cost approach is considered a direct

[38] Tr. Vol 5 at 1067.

replication of market behavior. Mr. Widmer explained that "it goes 100% to the principle of substitution. If there is no substitute property within the desired market, there's no alternative."[39] The income approach was also considered relevant and was weighted at 35% in the final value conclusion. The sales comparison approach was considered less meaningful and weighted at only 10% because sales of new stores, outside of leased fee transactions, was limited. The partially complete status of the property for the 2016 tax year was accounted for by taxing half of the indicated improvement replacement cost of $12,656,751, rounding to $6,330,000, and deducting that from the indicated conclusion of value for that year. Mr. Widmer testified that the error contained on page 37 of his appraisal report relating to the subtotal of households by household incomes did not have any impact on his ultimate conclusions of value or the analysis performed within the appraisal.

## FINDINGS OF FACT

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

1. The subject property is located at 26100 Vreeland Road, Flat Rock, Wayne County, Michigan.
2. The subject property was incomplete new construction as of December 31, 2015.
3. The subject retail store opened August 2016.
4. The subject property is a 6-month-old big box store as of December 31, 2016.
5. The subject property is a one-story, build-to-suit, owner-occupied big box store, owned by Meijer, Inc.
6. The subject property also contains a 2,574-square-foot convenience store and fuel station.

[39] Tr. Vol. 5 at 1142.

7. The subject property is a 157,352-square-foot building on an irregular shaped 25.007 acres.
8. Petitioner did not submit any valuation evidence for the subject property for December 31, 2015.
9. Petitioner's cost approach relies on MVS, Class C, Average, Good Quality, Megawarehouse category ($56.66 per square foot).
10. Respondent's cost approach relies on MVS, Class C, Average Quality, and Class C Low Quality weighted 50/50 Warehouse Discount Store ($45.16 per square foot).
11. Petitioner's total improvements cost (including fuel center) after depreciation is $9,167,429 as of December 31, 2016.
12. Respondent's total improvement cost (including fuel center) after depreciation is $12,736,511 as of December 31, 2016.
13. Petitioner's Land Value as of December 31, 2016, is $2,790,000.
14. Respondent's Land Value as of December 31, 2016, is $3,640,000.
15. Petitioner's depreciation is $9,167,429 with $8,942,613 obsolescence.
16. Respondent allocates zero depreciation with no obsolescence as of December 31, 2015, and December 31, 2016.
17. Petitioner considered the Cost Approach but gave it no weight.
18. Respondent gave the Cost Approach 55% weight due to its new construction
19. Both parties prepared an Income Approach as of December 31, 2016.
20. Petitioner's rental income was $4.50 SF with 10% vacancy and credit, a resulting net operating income of $518,956, and an overall rate of 9.50%.
21. Respondent's rental income was $6.75 SF with 5.5% vacancy and credit, a resulting net operating income of $866,396, and an overall rate of 8.25%.
22. Both parties prepared a Sales Comparison Approach as of December 31, 2016.
23. The parties have three sales in common.
    a. Petitioner's Sale 2 and Respondent's Sale 7, 16705 Fort Street, Southgate.
    b. Petitioner's Sale 3 and Respondent's Sale 4, 19990 Telegraph Road, Detroit.
    c. Petitioner's Sale 4 and Respondent's Sale 6, 24800 Haggerty Road, Farmington Hills.

## CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its TCV.[40] Specifically:

> The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes

[40] See MCL 211.27a.

> levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not exceed 50 percent.[41]

The Michigan Legislature has defined TCV to mean:

> The usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale.[42]

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value' . . . are synonymous."[43]

"By provisions of [MCL] 205.737(1) . . . , the Legislature requires the Tax Tribunal to make a finding of true cash value in arriving at its determination of a lawful property assessment."[44] The Tribunal is not bound to accept either of the parties' theories of valuation.[45] "It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case."[46] In that regard, the Tribunal "may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination."[47]

A proceeding before the Tax Tribunal is original, independent, and de novo.[48] The Tribunal's factual findings must be supported "by competent, material, and

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[41] Const 1963, art 9, sec 3.
[42] MCL 211.27(1).
[43] *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).
[44] *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).
[45] *Teledyne Continental Motors v Muskegon Twp,* 145 Mich App 749, 754; 378 NW2d 590 (1985).
[46] *Meadowlanes Ltd Dividend Housing Ass'n v Holland,* 437 Mich 473, 485; 473 NW2d 636 (1991).
[47] *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).
[48] MCL 205.735a(2).

substantial evidence."[49] "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence."[50]

"The petitioner has the burden of proof in establishing the true cash value of the property."[51] "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."[52] 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."[53]

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.[54] "The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading."[55] The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the TCV of the property, utilizing an approach that provides the most accurate valuation under the circumstances.[56] Regardless of the

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[49] *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).
[50] *Jones & Laughlin Steel Corp, supra* at 352-353.
[51] MCL 205.737(3).
[52] *Jones & Laughlin Steel Corp, supra* at 354-355.
[53] MCL 205.737(3).
[54] *Meadowlanes, supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968).
[55] *Jones & Laughlin Steel Corp, supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).
[56] *Antisdale, supra* at 277.

valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.[57]

The highest and best use is also fundamental to the sales comparison approach.

> Analyzing the subject properties highest and best use and market area helps appraisers identify and analyze the competitive supply and demand factors that influence value in the market. In addition, an adequately supported determination of the subject's highest and best use provides the basis for the research and analysis of comparable sales answering questions such as:
>
> Which comparable properties match the highest and best use of the subject property?
> Do the improvements contribute value to the comparable property?
> Is the comparable property as improved an interim or transitional use?
> How much time must pass before development is feasible on the unimproved subject and comparable properties?[58]

With respect to the sales comparison approach:

> In the sales comparison approach, an opinion of market value is developed by comparing properties similar to the subject property that have recently sold, are listed for sale or under contract (i.e., for which purchase offers and a deposit have been recently submitted). A major premise of the sales comparison approach is that an opinion of value is that an opinion of the market of a property can be supported by studying the market's reaction to comparable and competitive properties….Appraisers examine market evidence using paired data analysis, trend analysis, statistics, and other techniques to identify which elements of comparison within the date set of comparable sales are responsible for value differences.[59]

This Tribunal will concentrate on the three common sales used by the parties.[60]

| Sales in Common | | | | Unadj . | Adjusted | Adj. | Percent of | Age |
|---|---|---|---|---|---|---|---|---|
| Sale | Sale Date | Sale Price | Sq Ft | SP/SF | Sale Price | SP/SF | Adjust | Diff |
| P-2 | Jul-16 | $5,500,000 | 174,578 | $31.50 | $5,598,716 | $32.07 | 102% | 18 yrs |
| R-7 | Aug-16 | $5,500,000 | 182,454 | $30.14 | $10,553,139 | $57.84 | 191% | |

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57 See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).
58 Appraisal Institute, at 379-380, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013)
59 Ibid at 377-378.
60 The Tribunal will use tax year 2017 (as of December 31, 2016) for the common sales.

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| P-3 | Dec-15 | $5,600,000 | 142,508 | $39.30 | $5,325,524 | $37.37 | 95% | 15 yrs |
| R-4 | Dec-15 | $5,100,000 | 143,941 | $35.43 | $9,088,435 | $63.14 | 178% | |
| P-4 | Apr-16 | $4,550,000 | 103,298 | $44.05 | $4,258,977 | $41.23 | 94% | 27 yrs |
| R-6 | Apr-16 | $4,550,000 | 106,167 | $42.86 | $7,147,162 | $67.32 | 157% | |

Mr. Allen notes, "[o]ur adjustment process and the actual adjustments were developed based on the appraiser's review of numerous market area transactions, the appraiser's experience in the market and checked with a statistical analysis."[61] (Emphasis added.) Petitioner does not have a grid that indicates how the individual sales were adjusted but generally averaged the results of the adjusted sale price of the comparables, which was $36 SF, and selects $35 SF as the conclusion.

Petitioner's Sale 2 and Respondent's Sale 7 was a former Super Kmart. It was built in 1998, making it 18 years older than the subject property. Petitioner noted that it was marketed for lease without a published asking rent after the store closed in 2014. It was purchased for conversion to a Kroger Marketplace, with 140,000 of the 174,758 SF utilized by Kroger and the remaining 34,758 SF marketed for lease.

Respondent indicates the SF is 182,454, based on public records. The report states that 32,000 SF is offered for $10 per SF and $18 per SF NNN. "In this instance, the economic adjustment will be applied to reflect the vacant status…"[62] This resulted in 191% adjustment, with the resulting adjusted sale price at $57.84 SF.

Petitioner's Sale 3 and Respondent's Sale 4 also a former Super KMart located in Detroit on Telegraph Road. It is 15 years older than the subject property. Petitioner utilized 142,508 SF at $39.30 SF. Respondent used 143,941 SF. It was purchased by U-Haul to use as a showroom for equipment, truck, and trailer rentals. It was also built

[61] P-1 at 83.
[62] R-1 at 81.

out for 1,200 climate-controlled, mini-storage rooms. Petitioner adjusted up for $500,000, pursuant to the broker's estimate, for deferred maintenance due to damage to the rooftop HVAC units and PVC system on the roof as a result of vandalism. Respondent's 178% cumulative adjustments adjusts the sale price from $35.43 SF to $63.14 SF.

Petitioner's Sale 4 and Respondent's Sale 6 is a former Sam's Club located on Haggerty in Farmington Hills. It is 27 years older than the subject property and was vacant for 10 years. Petitioner's square footage is 103,298, for a $44.05 SF sale price, adjusted downward 6% for $41.23 SF. Respondent again has a slightly different square footage of 106,167, resulting in $42.86 SF. It was purchased for conversion to a Harley Davidson dealership with 45,000 SF for lease at an asking rent of $12 SF. Respondent adjusted the property 157% from $42.86 SF to $67.32.

The Appraisal of Real Estate reminds appraisers that differences in the property rights appraised between the comparable properties and the subject property should consider if the comparable sales include a transfer of a leased fee interest. If the data is not properly analyzed, it may result in a skewed value for the fee simple estate of the subject property.[63]

The comparable properties utilized by both parties are substantially older, not in the same new construction condition, all require renovation, and two out of three were divided for lease. The Tribunal finds that the sales are not good substitutes for the four-month-old subject property. The Tribunal notes that Petitioner indicates that the developers will re-configure the properties to meet its specific retail image and business

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[63] *The Appraisal of Real Estate, supra* at 505-507.

plan. However, the age and condition of the common sales appear to require substantial renovations, in addition to reconfiguration and basic renovation. This does not mean the sale properties are deficient. The subject if sold would have some reconfigurations for its own branding. Mr. Allen states, "[f]or an adjustment for expenditures after sale to be needed the remodeling and renovations need to be items that both the buyer and seller recognize need to be immediately done."[64] The subject is an owner-occupied property, built for its specific requirements. The sales are simply not reflective of the newly constructed subject property.

The Tribunal finds that, based upon the facts above, the parties' Sales Comparison Approaches were considered; however, no weight is given to either parties Sales Comparison Approach. The comparable properties were not a substitute for the subject's condition, quality, or age.

The Income Capitalization Approach operates as follows:

> …an appraiser analyzes a property's capacity to generate future benefits and capitalizes the income into an indication of present value. The principal of anticipation is fundamental to this approach. Techniques and procedures from this approach are also used to analyze comparable sales data in the sales comparison approach and measure obsolescence in the cost approach.[65]

Petitioner acknowledges that the subject property is not leased and contends that the existing leases are the best ones available. "When there is a lease, it is generally a financing transaction with a build-to-suit when built. When an existing store is put on the market it is often offered or lease or sale, but will generally sell before it is leased. As a result, there is a shortage of lease comparables for big box stores."[66] Petitioner

[64] P-1 at 74.
[65] Appraisal Institute, at 439, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013)
[66] P-1 at 89.

examines build-to-suit and existing building leases. Because the subject is an existing building, the existing building leases at the lower rates were selected. Three comparables and one listing were utilized. The At Home in Bloomfield Hills was the only comparable over 100,000 SF at $5.52 SF after adjustments. The Former Kmart in Flat Rock is within a mile of the subject property, and it had an offer of $6 SF for 47,543 SF. Petitioner used $4.50 SF for the base rent. CAM, insurance, and property taxes were included in reimbursement income and then taken out in the expense section to result in net operating income of $518,956 capitalized at 9.50%. The result is $5,462,693. Leasing commission of 6% of the gross income for five years, equaling $212,425, is deducted. The last step is the addition of the fuel station and supporting land at $750,000 to result in the $6,000,000 value as of December 31, 2016.

Respondent utilized five rent comparables. Four of the five are 25,000 to 40,000 SF. One lease is 101,773 SF; however, its lease date is June 2018, 1.5 years after the December 31, 2016, tax date. One lease for the Harley-Davidson property in Farmington Hills is a Crunch Fitness, also leased July 2018. It was not known or knowable on December 31, 2016. The initial rents were adjusted for rent steps over the term, free rent, and tenant improvements provided for an effective rent. The average rent was $5.39 SF, with $4.72 SF as the average effective rent. The individual effective rents per SF were $5.40, $6.50, $3.91, $3.67, and $7.50. Utilizing the effective rent, Respondent then adjusted the five comparables for market conditions, negative adjustments for location, negative adjustments for size, age/condition, quality, and overall utility. The resulting prices per SF were $7.75, $8.35, $6.00, $5.90, and $7.75.

Respondent's lease comparable 3, Family Home & Farm, located in Flat Rock, leased in October 2016 for $3.50 SF for 40,000 SF and was adjusted to $6.00. This is the only property within the general area of the subject. However, its size is too small to be competitive with the larger income properties. Rents after adjustments resulted in $6.95 SF market rent. Respondent's reconciliation included property tax, CAM, and insurance recovery for potential gross revenue of $1,785,861, a 5.5% vacancy and credit adjustment for $10.73 SF effective gross income (EGI). Operating expenses include property taxes, insurance, CAM, management fee, owner's expense, and capital reserve totaling $5.05 SF deducted from the EGI, resulting in $5.68 per SF net operating income, capitalized at 8.5% equaling $68.82 SF, or $10,829,579, plus the $515,000 fuel center for $11,345,000 value for Respondent's Income Approach as of December 31, 2016.

Both parties acknowledge that the 157,342 SF subject property is not leased and is build-to-suit property. The Tribunal notes each party only had one comparable more than 100,000 SF. Petitioner explained that the existing retail buildings for lease are older and smaller than the subject, resulting in higher rents. It is noted that Petitioner utilized the lower rents for the existing building, in lieu of the build-to-suit rents.

Petitioner's West Bloomfield comparable sale, a 120,650-square-foot At Home, is simply not in the same market area as the subject property. Respondent's comparable sale of a 101,773-square-foot Universal Center in Warren at $4.75 SF is not appropriate because it is not a big box store. The sale took place in June 2018, and it is unclear that the Entertainment Center is considered a big box.

Petitioner was questioned in reference to the basis for some of the adjustments.

> Q. Was that -- was the determination to not make an adjustment as to the differential between the size of comparable 3 and comparable 1 a decision based on a paired sale or a paired lease analysis?
> A. No.
> Q. So it was your subjective belief; is that correct?
> A. Yes.
> Q. Okay. Did you consult any data when forming that subjective belief or was it merely based on your experience as an appraiser in the market?
> A. It was based on my experience looking at sale prices for different size big-box stores and leases for different size big-box stores.[67]

Petitioner described capitalized rent loss method as found in *The Appraisal of Real Estate*, 14th Edition (starting on page 616). That text recommends calculating obsolescence by estimating the income loss that is caused by the obsolescence. This method was also taught in the Advanced Sales Comparison and Cost Approaches class by the Appraisal Institute. To calculate this loss, the income necessary to support the value of the property without obsolescence is estimated. The economic rent from the income approach is subtracted. The difference is the rent loss due to obsolescence, which is then capitalized into a determination of total obsolescence.[68]

Petitioner was questioned regarding this approach.

> Q. Why would a big-box owner build property that has a market value less than its cost immediately upon completion of construction?
> A. They will do that because they're building the store to maximize their business, their sales, and profits. They're not building the store as a real estate vehicle to resell at a profit.[69]

And in reference to functional obsolescence in new construction:

> Q. What is functional obsolescence?
> A. That's a loss in value due to factors or characteristics within the boundaries of the property.

[67] Tr. Vol. 3 at 753-754.
[68] P-1 at 113.
[69] Tr. Vol. 2-B at 421.

Q. Does functional obsolescence exist in big-box stores immediately when the construction is completed?
A. Yes, generally.
Q. And why is that so?
A. For several reasons that buyers aren't paying full replacement cost for big-box stores. And one reason that most buyers anticipate having to make some changes to the store to make it fit their particular business model and they might need less space, less square footage, or more square footage. They might want a different facade or different layout or different loading, and so they're not going to pay the full replacement cost.[70]

Respondent was questioned on fee-simple and adjustments to the comparables, all of which were adjusted for being vacant while the subject being occupied.

Q. If you had valued the subject property based upon it not being occupied, but available for immediate occupancy in your sales comparison approach, the value would have been lower, correct?
A. Yes.
Q. Okay. And why should a valuation of a subject property based upon it being available for occupancy be lower than what you concluded?
A. The property is occupied as of a retrospective date of value. There is no risk associated with someone acquiring that property that's vacant and absorbing the risk of getting an occupant into the building….
Q. Well, what is the status of this occupant of the property that I'm buying in fee simple interest?
A. The status of the property at any valuation date, if it's owner-occupied, it's still a fee simple acquisition. That owner-occupant, when you compare it to a building that's vacant, is a different occupancy scenario. It doesn't matter that it's necessarily fee simple subject to being available. The building was not vacant and available. The building was occupied. Compared to buildings that were vacant, they achieve less in terms of acquisition price.
Q. And in your income approach, you did not value the subject property as if it were vacant and available for sale, is that correct?
A. Yes.[71]

[70] Tr. Vol. 2-B at 419,420.
[71] Tr. Vol. 1-A at 106-108.

The Tribunal finds that, in this specific instance, the income approach is not reliable. Petitioner testified that some adjustments were based on experience and knowledge. Respondent's adjustments were generic explanations. The leases are older properties substantially smaller than the subject. Flat Rock Plaza was one of the comparable leases considered by both Petitioner and Respondent, due to its close proximity (one mile) to the subject property. However, they could not agree on the square footage nor the asking rent. Petitioner indicates that the 47,543 SF space asking rent is $6 SF. Respondent indicates that Family Farm and Fleet lease for 40,000 SF commenced October 2016 for $3.50 SF.

Respondent again testified that the adjustments considered that the comparables were vacant and adjusted upward as the subject property is occupied.

The testimony, exhibits, and adjustments were varied, the income properties utilized by the parties are not comparable. Per testimony, these properties were older, smaller properties that, after adjustments (which this Tribunal finds questionable), are not an indication of the true cash value of the 4-month old, 157,342 SF subject property. No credibility is given to either party's income approach. The subject property is not an income-producing property.

The cost approach is:

> [a] set of procedures through which a value indication is derived for the fee simple estate by estimating the current cost to construct a reproduction of (or replacement for) the existing structure, including an entrepreneurial incentive or profit; deducting depreciation from the total cost; and adding the estimated land value. Adjustments may then be made to the indicated fee simple value of the subject property to reflect the value of the property interest being appraised.[72]

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[72] Appraisal Institute, at 562, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013)

> The cost approach is most applicable in valuing new or proposed construction when the improvements represent the highest and best use of the land as though vacant, and the land value is well supported.[73]

The initial step (after highest and best use) is to determine the value of the subject's 25.38 acres.

Petitioner utilized three commercial sales, one in Michigan, two in Ohio, and one offering in Flat Rock. Sale 1 was 76 acres that was utilized for Gibraltar Trade Center, $1 million for demolition of the 320,000 SF building, and clearing of the site in a good location. The two Ohio sales were not considered by this Tribunal due the location in another state. Sale 4 was a Flat Rock offering at $3.41 SF for 14.36 acres.

Respondent listed eight land sales ranging from 4.5 to 76 acres within Michigan with unadjusted sales price from $3.40 to $9.01 per acre.

Petitioner's Sale 1 and Respondent's Sale 4 is the only sale in common albeit the largest acreage. After application of the parties' adjustments for the common sale the results are $3,505,917 and $3,640,000. Both parties concluded to a 25% land to building ratio. The Tribunal finds the Land Value is **$**4,000,000**.**

Petitioner utilized Average Class C Mega Warehouse Store from MVS, at $56.66 per square foot (including HVAC and sprinklers). The story height and perimeter adjustments were added, canopy area costs totaled $8,577,645, and local area and current multipliers were applied for a replacement cost new of $9,510,893. The convenience store resulted in an additional $492,984, site improvements totaled $2,163,340, and a 5% construction management fee was allocated. The final

[73] Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013) at 562.

depreciable basis resulted in $9,986,437 store value, $517,633 C-Store value, and site improvement value of $2,270,457, resulting in a total of $12,774,527.

Petitioner utilized an age-life depreciation of the estimated age at 0.5 years. The store has a life of 35 years for a 1.4% depreciation rate, or -$142,663. The C-store has a life of 40 years, depreciating at 1.3% and resulting in a deduction of -$6,740, and site improvements have a 15 year life, resulting in a depreciation deduction of -$75,682. The total physical depreciation is $224,816.

> The subject property is oversized for what is generally required in the market and has a facade and other features, including interior layout and design, that is specific to a Meijer's business but would not have value to other users."[74]

Respondent began by using 50% of MVS Warehouse Discount Stores and 50% MVS Discount Stores for a blended rate of $43.29, site improvements, and then combined the building, site improvements, soft costs, and land value for a TCV of $16,375,000, or $104.07 SF. Physical depreciation was considered; however, the subject property was four-months old and considered to have been just completed and in a new condition. Therefore, Respondent did not apply any physical depreciation. Functional obsolescence compares the existing improvements with the ideal improvement, with the replacement cost based upon a functional replacement property. The subject is build-to-suit, and no modification was made.

External obsolescence is "a loss in value, caused by negative externalities, i.e., factors outside a property."[75] Respondent earlier found that the "sub-vacancy" was -5%.

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[74] P-1 at 108.
[75] Appraisal Institute, at 632, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013).

Other than the Kmart property, no other alternative locations would accommodate a big-box store like the subject.

Respondent narrows the significant development of new construction from southeast Michigan to the Flat Rock Plaza, where the vacant Kmart property was available. Petitioner chose to develop a new store as opposed to modifying an existing property on Telegraph Road. “While there may be evidence of an adverse impact for older inventory across southeast Michigan, this is no adverse influence for newer stores in the region.”[76]

Petitioner’s extraction of obsolescence utilized the Source Clubs (an unsuccessful venture of Petitioners constructed in the ‘90s). Some of the properties were never occupied when they were sold. This method utilizes the difference between the cost to construct and the resale price to indicate substantial functional obsolescence albeit from 20 years ago. However, the remainder of the comparables utilized by Petitioner were older (not newly constructed), nor were they build-to-suit properties. Petitioner’s comparables above 80,000 square feet were older construction (1960-1993), and older buildings that were released at $4.50 per square foot. These are not comparable with the new, build-to-suit, 157,352 SF owner-occupied subject property. Petitioner’s cost approach utilized leases to indicate a loss or obsolescence for the building of $8,942,613, or 74% of Petitioner’s cost new of the building.[77] Regardless of how you shake it, bake it, twirl it around, it just does not rise to this Tribunal’s belief that

[76] R-1 at 72.
[77] P-1 at 114.

the newly completed subject property would lose 74% of its cost new before the property was a year old.

It is not unusual for fungible items such as cars or clothing to lose value once they are sold. However, it takes new construction some time to age, lose value, and require renovation, as seen in Petitioner's comparable properties. However, the subject property was built-to-suit, was four months old, and has not aged to the extent that Petitioner has estimated. The underlying data utilized from the income approach was based upon properties that ranged up to 60 years old. It is inconceivable that the subject property would be constructed and lose 74% of the cost of construction when it was four months old.[78]

Respondent went 180 degrees in the other direction, indicating an increase in value with zero depreciation. Respondent's conclusion of value gave 55% of the weight in the $16,375,000 conclusion of value to the cost approach. However, both the income and sales approaches utilized by Respondent were adjusted for the vacant comparables. Zero physical depreciation was determined with no functional or external obsolescence.

Petitioner testified that Petitioner did not reveal the cost of construction. This Tribunal finds that assertion to be quite unusual. The cost new of the construction should have been submitted to compare the actual costs with the replacement cost new of the parties.

Respondent did not find any obsolescence.

The Tribunal has considered both parties' cost approaches:[79]

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[78] The store opened August 2016; the parties rounded to six-months old.
[79] P-1 at 115 and R-1 at 73.

| | Petitioner | Respondent |
|---|---|---|
| Total Cost New | $12,774,527 | $12,736,511 |
| Depreciation | $224,816 | $0 |
| Obsolescence | $8,942,613 | $0 |
| Land Value | $2,790,000 | $3,640,000 |
| Total Cost New | $6,397,098 | $12,736,511 |

However, the Tribunal found Petitioner's obsolescence was not appropriate because it was based upon comparables that were not appropriately comparable to the subject property. The subject property's value without obsolescence is:

| | Petitioner | Respondent |
|---|---|---|
| Total Cost New | $12,774,527 | $12,736,511 |
| Depreciation | $224,816 | $224,147 |
| Obsolescence | $0 | $0 |
| Land Value | $2,790,000 | $3,640,000 |
| Total Cost New | $15,339,711 | $16,152,364 |
| Land /Building Ratio | 22% | 28% |

The parties' conclusions via the cost approach are much closer together when using the same percentage of physical depreciation and excluding Petitioner's obsolescence.

| | |
|---|---|
| Total Cost New | $12,500,000 |
| Land Value | $4,000,000 |
| Total Cost New | $16,250,000 |

The foregoing results in a true cash value as of December 31, 2016, of $16,250,000.

The same percentage was utilized to determine the subject's 50% completion estimate The True Cash Value as of December 31, 2015 is:

| | |
|---|---|
| Total Cost New | $12,500,000 |
| 50% Finished | $6,250,000 |
| Land Value | $4,000,000 |

| | |
|---|---|
| Total Cost New | $10,250,000 |
| Land /Building Ratio | 25% |

The Tribunal notes that the "new" addition results in the TV the same as the SEV.

Petitioner's opening statement ended with "We respectfully submit, as of 12-31-16, subject property's fee simple interest true cash value is $6,200,000; as of 12-31-15, the subject property's fee simple interest true cash value, based on its incomplete construction, was $4,500,000."[80]

However, it is simply insufficient for Petitioner to announce the December 31, 2015, TCV, for which it had no valuation disclosure or documentation. Petitioner has the burden of proof and fails to submit one scintilla of evidence for the 2016 tax year.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the cost approach for the newly constructed subject property was the best approach to determine the true cash value of the subject property. The subject property's TCV, SEV, and TV for the tax year at issue are as stated in the Introduction section above.

## JUDGMENT

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

[80] Tr. Vol. 1-A at 18.

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

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2013, through June 30, 2016, at the rate of 4.25%, (ii) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (iii) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (iv) after June 30, 2017, through December 31, 2017, at the rate of

4.70%, (v) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (vi) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (vii) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, (viii) after June 30, 2019 through December 31, 2019, at the rate of 6.39%, (ix) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, (x) after June 30 2020, through December 31, 2020, at the rate of 5.63%, (xi) after December 31, 2020, through December 31, 2021, at the rate of 4.25%.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

## APPEAL RIGHTS

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

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.[81] Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is $50.00 in the Entire Tribunal and $25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.[82] A copy of the motion must be served on the opposing party by mail or personal service or

[81] See TTR 261 and 257.
[82] See TTR 217 and 267.

by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.[83] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[84]

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."[85] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[86] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[87]

By Victoria L. Enyart

Entered: September 30, 2021

[83] See TTR 261 and 225.
[84] See TTR 261 and 257.
[85] See MCL 205.753 and MCR 7.204.
[86] See TTR 213.
[87] See TTR 217 and 267.