



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

ORLENE HAWKS  
DIRECTOR

Walmart Real Estate Business Trust,  
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 16-003180-R

Lansing Township,  
Respondent.

Presiding Judge  
Marcus L. Abood

### SUPPLEMENTAL FINAL OPINION AND JUDGMENT

#### PROCEDURAL HISTORY

The hearing in this matter was commenced on March 4-6, 2019 and a Final Opinion and Judgment was rendered on July 11, 2019. Subsequently, Respondent filed a Motion for Reconsideration on August 1, 2019.

Respondent's motion asserted that Petitioner's appraisal report did not analyze the subject's lease or the Declaration of Easements, Conditions and Restrictions ("Declaration").

Petitioner's appraiser did not properly account for the subject's restrictive covenants related to the property and amounted to critical flaws in Petitioner's contentions of TCV.

On August 15, 2019, the Tribunal issued an order compelling response by Petitioner regarding the subject Walmart's lease and Declaration.

On September 5, 2019, Petitioner filed a response to the motion. In its response, Petitioner contends Respondent's claims are baseless either through ground lease provisions regarding income or provisions regarding restrictions on use. Further,

Respondent's claims of use restrictions on the subject property due to lease provisions are baseless. Lastly, Respondent's motion fails to meet the standard for motions for reconsideration.

Respondent demonstrated a palpable error by which the Tribunal and the parties were misled in the rendering of the original FOJ, and the Motion for Reconsideration was granted (given the *Menard's* decision<sup>1</sup> and Respondent's oblique reference to restrictions) so as to provide the parties with the opportunity to address that issue. Nevertheless, Respondent was clearly aware of the issue prior to the original hearing and failed to submit the subject lease, the Declaration, or restrictions themselves for consideration.

On October 11, 2019, the Tribunal ordered a limited evidentiary hearing to determine the relevance and impact of the subject Walmart ground lease, the Sam's Club ground lease and the Declaration on the subject's true cash value.<sup>2</sup>

A limited evidentiary hearing on this matter was held on December 12, 2019.<sup>3</sup> Petitioner, Walmart Real Estate Business Trust, appealed ad valorem property tax assessment levied by Respondent, Lansing Township, against Parcel Nos. 33-21-01-02-100-040 and 33-21-01-02-100-806 for the 2016 and 2017 tax years. Michael B. Shapiro and Daniel L. Stanley, Attorneys, represented Petitioner. Michael D. Gresens, Attorney, represented Respondent. For the supplemental evidentiary hearing, Petitioner's witness was Laurence G. Allen. Respondent's witness was Daniel F. Essa.

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<sup>1</sup> *Menard v City of Escanaba* 315 Mich App 512, 532 (2016).

<sup>2</sup> The focus of the evidentiary hearing is the subject's restrictive covenants and not alleged deed restrictions for comparative market data.

<sup>3</sup> This evidentiary hearing is a continuation of the 3-day hearing held in March 2019. As such, the transcript identification for this evidentiary hearing is labeled as Day 4.

### PETITIONER'S CONTENTIONS

Restrictions within the subject lease do not increase value but can decrease the value of the property. Petitioner's appraiser performed due diligence by quantifying the value impact of restrictions to the subject property through various means.<sup>4</sup> Again, Petitioner contends the subject comprises both land and improvements as a total economic unit. The usual selling price equates to the true cash value for the existing use as its highest and best use. Consistent with Michigan law, the property, as a whole unit, was valued based on a logical application of data.

Petitioner's appraiser researched and analyzed deed restrictions in terms of estimating and quantifying obsolescence. Petitioner's appraiser reviewed and researched the market through various local and national brokers as well as a RERC survey to determine the negative impact on value.

Petitioner asserts Section 4 within the Declaration document prohibits a building of more than 50,000 square feet but the document creates an exception to Walmart. Section 3 (as a comprehensive list) restricts any other stores or uses. Petitioner contends the purchaser of a land lease and improvements (as an economic unit) would void the lease by merger.

### RESPONDENT'S CONTENTIONS

Respondent contends Petitioner's appraisal report is legally flawed and deficient. The appraisal report makes no mention of the subject's long-term ground lease and its impact on the true cash value of the subject property. Moreover, Petitioner's appraisal

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<sup>4</sup> Tr, Day 4, pp 115-125.

report does not account for the Declaration and restrictive covenants for properties to operate within the Eastwood Towne Centre.

Petitioner should have acknowledged and analyzed deed restrictions for the subject property similar to the reasoning held by the Court of Appeals in *Menard* decision.

Respondent's appraiser contends that the declarations are controlling over the subject lease.<sup>5</sup>

#### FINDINGS OF FACT<sup>6</sup>

1. The subject property is located at 3225 Towne Centre Boulevard, located in Lansing Township and within Ingham County.
2. The subject property is classified as Commercial and is zoned as PD, Planned Development.
3. The subject property comprises 22.47 acres and is improved with a big box store having approximately 151,000 square feet of gross building area.
4. As of December 31, 2016, and December 31, 2017, the subject property was improved as a commercial retail store.
5. Petitioner owns the improvements and leases the land in which the improvements are located. The ground lease was initiated in 2002 for a 20-year term with subsequent 5-year renewal options.
6. The subject property fronts Towne Centre Boulevard. The subject does not front Lake Lansing Road. The subject property is not visible from US-127.
7. Petitioner is the taxpayer for both the land and improvements. In other words, Walmart pays property taxes for both parcel numbers under appeal.
8. The highest and best of the subject "as vacant" is for retail development and "as improved" is for its retail building use.
9. Petitioner submitted a valuation disclosure in the form of a narrative appraisal report prepared by Laurence Allen.
10. Petitioner's appraiser has appraised over 200 big-box stores including Cabela's, Bass Pro Shops, Meijer, Target, Kmart, Lowe's, Kohl's, Home Depot, Menard's, and Walmart.<sup>7</sup>
11. Petitioner considered and developed all three approaches to value but places most weight on the sales comparison approach.

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<sup>5</sup> Tr, Day 4, p 143.

<sup>6</sup> The initial Findings of Fact are numbered 1-28. The supplemental Findings of Fact for the evidentiary hearing are numbered in continuation with the initial hearing held in March 2019.

<sup>7</sup> Tr, Day 1, 178-179.

12. Petitioner's sales comparison approach did not utilize any deed restricted sales.<sup>8</sup>
13. Petitioner's appraiser considered and analyzed build-to-suit leases as part of his sales comparison approach.<sup>9</sup>
14. Petitioner's appraiser included an analysis of ground leases.<sup>10</sup>
15. Petitioner's appraiser has appraised big-box stores with ground leases at Home Depot in Midland, Michigan, Lowe's in Rochester, Michigan, and Target in Bloomington, Indiana.<sup>11</sup>
16. Respondent submitted a valuation disclosure in the form of two narrative appraisal reports prepared by Daniel Essa.
17. Respondent's appraisal reports do not include a specific "market" analysis entry in the table of contents.<sup>12</sup>
18. Respondent's data does not include any customary descriptive write-ups or actual lease documents.
19. Respondent's appraisal report considered all three approaches to value. The cost approach was developed for the subject improvements. The income approach was developed for the land (based on a ground lease). In other words, Respondent's appraiser did not value the land and building together as a whole economic unit.<sup>13</sup>
20. Respondent's appraisal reports did not include any hypothetical conditions or extraordinary assumptions for its retrospective valuation date.<sup>14</sup>
21. In testimony, Respondent's appraiser admits that the subject improvements are tied to the land via the land lease. In other words, the land and improvements together comprise the total property under appeal.<sup>15</sup>
22. In testimony, Respondent's appraiser acknowledges that the subject land lease has restrictions as well as exceptions to restrictions.<sup>16</sup> Further, the restrictions and exceptions were noted in Respondent's Exhibit 3.<sup>17</sup>
23. Respondent's appraiser did not read the land leases and terms for his comparable land sales.<sup>18</sup>

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<sup>8</sup> Tr, Day 1, 229.

<sup>9</sup> Tr, Day 1, 264.

<sup>10</sup> Tr, Day 2, 322, 379. Petitioner's appraisal report omits an acknowledging statement about the subject's ground lease. However, the report includes an analysis of build-to-suit leases as well as ground leases. It is apparent that Petitioner's appraiser was cognizant of the subject ground lease in his determination of a highest and best use analysis. (Tr, Day 2, 369-370)

<sup>11</sup> Tr, Day 2, 317.

<sup>12</sup> In testimony, Respondent's appraiser claims the "area and neighborhood analysis" does include a market description. The section contains Ingham County demographics but oddly does not coincide with Respondent's market inferred Walmart lease data and land value extractions.

<sup>13</sup> Tr, Day 1, 74.

<sup>14</sup> In testimony, Respondent's appraiser confuses the definition of hypothetical conditions with extraordinary assumptions. (Tr, Day 1, 28, 37)

<sup>15</sup> Tr, Day 1, 40, 42.

<sup>16</sup> Tr, Day 2, 399.

<sup>17</sup> Tr, Day 2, 401-403.

<sup>18</sup> Tr, Day 2, 473.

24. Respondent's appraiser admitted to knowing just the sale price and lease rate for his Walmart data.<sup>19</sup>
25. Respondent's Walmart lease data are build-to-suit leases.
26. Big-box stores are not built for profit after acquisition because retailers build stores to maximize retail sales and not to realize a market profit from the land and improvements.
27. Both parties' appraisers agree that big-box stores are built to maximize retail sales.<sup>20</sup>
28. The valuation of the subject property is through *value in exchange*<sup>21</sup> and market *value*<sup>22</sup> as opposed to *value in use*.<sup>23</sup>

### FINDINGS OF FACT FROM EVIDENTIARY HEARING

1. The parties stipulated to the admission of the Declaration of Easements, Conditions, and Restrictions (Petitioner's Exhibit P-5), the Wal-Mart Ground Lease (Petitioner's Exhibit P-9) and the Sam's Club Ground Lease (Petitioner's Exhibit P-10). These documents are the specific purpose for the supplemental evidentiary hearing.
2. True Cash Value for the subject is not affected by the owner/user of the property.<sup>24</sup>
3. Petitioner valued the subject property as a total economic unit (land and building together).
4. Respondent valued the subject land separately from the subject building.
5. Respondent's appraiser did not quantify the potential impact of deed restrictions to the subject's true cash value.<sup>25</sup>
6. Wal-Mart Real Estate Business Trust is a business entity.
7. Respondent's appraiser admitted that the restrictions apply to the subject property and not the entire Eastwood Towne Centre development.<sup>26</sup>
8. Respondent's appraiser admitted that the 42 restrictions (contained within the declaration agreement) do negatively impact the usual selling price of the subject property.<sup>27</sup>

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<sup>19</sup> Tr, Day 2, 476. Further, Respondent's appraiser was evasive in answering questions regarding his lease data which appears to be build-to-suit leases. (Tr, Day 2, 474-477)

<sup>20</sup> Tr, Day 1, 46, 211, 219, and Day 2, 298.

<sup>21</sup> Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 6<sup>th</sup> ed, 2015), p 245.

<sup>22</sup> *Id*, p 141.

<sup>23</sup> *Id*, p 245. Respondent's analysis of primarily Walmart properties and leases around the country implies an analysis on the basis of value in use. Petitioner did not value the subject property on the basis of value in use. (Tr, Day 2, 339).

<sup>24</sup> Tr, Day 4, pp 13-14, 84.

<sup>25</sup> Tr, Day 4, pp 21, 41, 45, 46 and 51.

<sup>26</sup> Tr, Day 4, p 37.

<sup>27</sup> Tr, Day 4, p 38. On the other hand, Respondent's appraiser testified that deed restrictions can help TCV while also testifying that certain restrictions decrease TCV (Tr, Day 4, pp 40-41).

9. The restrictions (Exhibit E) only apply to the subject property if Walmart, Sam's Club and Lowe's are not present.<sup>28</sup>
10. Restrictions (Sections 2 and 3, Declaration) only apply to the property when Sam's Club and/or Walmart exists at the site.<sup>29</sup>
11. The restrictions denoted in the subject lease repeat the same restrictions found in the Declaration document.<sup>30</sup>
12. The true cash value is for the subject property and not the Walmart entity. The subject lease focuses on the user Walmart and not the property.<sup>31</sup>
13. Petitioner's appraiser quantified the value impact of restrictions to the subject property.<sup>32</sup>

### CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value.<sup>33</sup>

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not . . . exceed 50 percent. . . .<sup>34</sup>

The Michigan Legislature has defined "true cash value" to mean:

The usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale.<sup>35</sup>

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<sup>28</sup> Tr, Day 4, p 47.

<sup>29</sup> Tr, Day 4, p 53.

<sup>30</sup> Tr, Day 4, p 65.

<sup>31</sup> Tr, Day 4, pp 80-81.

<sup>32</sup> Tr, Day 4, p 115.

<sup>33</sup> See MCL 211.27a.

<sup>34</sup> Const 1963, art 9, sec 3.

<sup>35</sup> MCL 211.27(1).

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”<sup>36</sup>

“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.”<sup>37</sup> The Tribunal is not bound to accept either of the parties' theories of valuation.<sup>38</sup> “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.”<sup>39</sup> 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.”<sup>40</sup>

A proceeding before the Tax Tribunal is original, independent, and de novo.<sup>41</sup> The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”<sup>42</sup> “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”<sup>43</sup>

“The petitioner has the burden of proof in establishing the true cash value of the property.”<sup>44</sup> “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

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<sup>36</sup> *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

<sup>37</sup> *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

<sup>38</sup> *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

<sup>39</sup> *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

<sup>40</sup> *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

<sup>41</sup> MCL 205.735a(2).

<sup>42</sup> *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

<sup>43</sup> *Jones & Laughlin Steel Corp*, *supra* at 352-353.

<sup>44</sup> MCL 205.737(3).



going forward with the evidence, which may shift to the opposing party.”<sup>45</sup> 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.”<sup>46</sup>

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.<sup>47</sup> “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”<sup>48</sup> The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances.<sup>49</sup> Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.<sup>50</sup>

### **1) FEE SIMPLE**

The independent determination of market value for the subject property is as a whole economic unit. The subject property is valued as a whole property and not valued in piecemeal fashion. Moreover, the sum of the parts is not the motivation to

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<sup>45</sup> *Jones & Laughlin Steel Corp*, *supra* at 354-355.

<sup>46</sup> MCL 205.737(3).

<sup>47</sup> *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).

<sup>48</sup> *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

<sup>49</sup> *Antisdale*, *supra* at 277.

<sup>50</sup> See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

market participants (i.e. investors). A fee simple estate is defined as “Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power and escheat.”<sup>51</sup> The full bundle of rights (in fee simple) for the subject as an economic unit is done so without encumbrances. Nonetheless, the subject’s land lease was reviewed and considered by Petitioner. Petitioner’s appraiser’s testimony for the impact and quantification of the subject’s restrictive covenants is persuasive. Further, this testimony is supported by Petitioner’s appraisal report (which included three approaches to value, rental/sales data, lease data and sale/leaseback data). A land lease exists at the subject property, but this lease does not capture market rents for a total economic unit. In other words, a leased fee (which does not include the subject’s improvements) is not germane to a fee simple property for the land and improvements together. Leased fee interest is defined as “The ownership interest held by the lessor, which includes the right to receive the contract rent specified in the lease plus the reversionary right when the lease expires.”<sup>52</sup> The subject’s lease is not applicable to the true cash value because the lease was not proven to be supported by the relevant market. The usual selling price contemplates market rent and not contract rent. As noted in the initial hearing phase, Respondent’s sales/leases are all Walmart properties around the country. Respondent’s sales/leases are not the market because Walmart is not exclusively the subject market.<sup>53</sup> Walmart sales/leases, including the Declaration,

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<sup>51</sup> Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago, 6<sup>th</sup> ed, 2015), p 90.

<sup>52</sup> *Id.*, p 128.

<sup>53</sup> As previously stated by Petitioner’s appraiser, “the leased fee sales of big-box stores are typically sold subject to build-to-suit leases that are generally above market.” (Tr, Day 1, p 228) In other words, the subject lease is not market supported. (Tr, Day 2, p 374) In this context, Petitioner’s appraiser initially

are specific to the subject Walmart. Walmart sales/leases were deemed not be commensurate with the Lansing (or Michigan) market. Walmart restrictions are not tailored to the Lansing market but tailored to the Walmart entity. The Walmart restrictions were not quantified by Respondent's appraiser but done so by Petitioner's appraiser. Walmart restrictions do not impact the TCV of the subject property. Therefore, the subject's ground lease and declaration documents are given no weight or credibility in the independent determination of market value for the fee simple subject property as a whole economic unit.

## **2) HIGHEST AND BEST USE**

Regarding highest and best use, this concept is an integral part of valuation practice and theory. This concept (in analysis) begins early in the appraisal process. Said differently, the concept does not begin at the point of the formulated approaches to value. Highest and best use is not the final determinant in valuation practice and theory. Rather this concept is an important step leading up to the three approaches to value. Highest and best use is the underlying driver that manifests an appraiser's market analysis and the market data which results in the relevant approaches to value. Highest and best use is not the focal point for a comparative analysis. Again, Respondent's appraiser admitted that the land and building go together as a whole economic unit.<sup>54</sup>

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distinguished between a build-to-suit lease market versus market rent for the subject (land and building) as an economic unit. (Tr, Day 1, pp 258-260) Build-to-suit leases are artificially inflated and are not market driven.

<sup>54</sup> Tr, Day 1, 70, 72, 94-95, 99, 103, 104.

Analyzing a subject property's highest and best use is different than determining a buyer's use at the point of sale. Rather, when the sale price is based on market value, the buyer will use the property in accordance with its legal zoning. A sale within a comparative analysis is not dismissed because it is deemed not to have the same highest and best use as the subject property. Characteristics and amenities for each sale are analyzed and adjusted to the subject property. Among the various points of comparison include the zoning for each property. This point is raised because the highest and best use of the subject was persuasively determined by Petitioner at the initial hearing.

The user of a property is not relevant to the true cash value for that property. The concept of highest and best use involves the permissible uses of a property and is not to be misconstrued as to the user of a property. The conventional analysis of a subject property "as vacant" and "as improved" does not hinge on a property's separate land and improvements as applied by Respondent. Allegations that Petitioner's certain rental and sales data has different uses (which do not comport with the subject's deed restrictions) is without logic or merit. The issue in this evidentiary hearing is the impact of lease and declaration documents to the subject's true cash value.

Overall, the subject's restrictive covenants are counter to the highest and best use of the subject property. The concept focuses on the land and improvements together. The restrictive covenants focus on the land lease and to the user. In this regard, Petitioner's application of specific caselaw is relevant and persuasive. Highest and best use "recognizes that the use to which a prospective buyer would put the

property will influence the price which the buyer would be willing to pay.”<sup>55</sup> Moreover, there is legal precedent that the subject’s highest and best use is as an integrated whole and valued as one economic unit.<sup>56</sup>

Valuation practice and theory points to the adjustments to the comparable rental and sales data (in a comparative analysis). The analysis of a subject property occurs within the storybook flow chart of conventional components.<sup>57</sup> In other words, a subject property is not adjusted to the market data. For example, a subject property is analyzed in terms of highest and best use to determine the most optimal development of the property, as vacant and as improved. This fundamental exercise may show the subject’s full breadth of development under its specific zoning. Again, highest and best use of the subject property is not analyzed singularly at the point of the comparison adjustment grid. Said differently, comparable sale properties may have differing uses to a subject but are acceptable (and having potentially overlapping) zoning categories. Comparable data is not weighed against a subject property based on highest and best use. Rather, the finer points (line-item entries) are articulated and adjusted to the comparable sales. Comparable data may have different uses than the subject, but such uses may be permissible under similar zoning codes. Moreover, a comparative analysis tests the applicability of a property on the broad concept of highest and best use. Further analysis may determine the overlap of different zones as well as competing zones from municipalities. Therefore, the subject’s ground lease and declaration

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<sup>55</sup> *Edward Rose Building Co v Independence Twp*, 436 Mich 620, 633; 462 NW2d 325 (1990).

<sup>56</sup> *Great Lakes Div of Nat Steel Corp v City of Ecorse*, 227 Mich App 379, 408; 576 NW2d 667, 680-81 (1998)

<sup>57</sup> Appraisal Institute, *The Appraisal of Real Estate* (Chicago, 14 ed, 2013), p 37.

documents are given no weight or credibility in the independent determination of market value for the highest and best use of the fee simple subject property as a whole economic unit.

### **3) DEED RESTRICTIONS**

Regarding the subject's lease and declaration, these documents are specific to the subject entity. These documents are not specific to market data. The deed restrictions were not proven to be typical for the subject market (i.e. Lansing/Michigan). In other words, the restrictions were not found to be commensurate with the definition of market value.<sup>58</sup> Moreover, such restrictive covenants are not logical in the context of the subject property as a whole economic unit. True cash value was based on fee simple without deed restrictions in place. The deed restrictions were tailored to Walmart's needs and not to the market.<sup>59</sup>

Once again, Respondent relied on leases and deed restrictions from its Walmart data taken from around the country. These Walmart leases and deed restrictions were not specifically applied to the subject market. Moreover, Respondent's appraiser did not review or analyze these Walmart leases around the country. The Tribunal is unable to presume or ascertain the applicability of such leases.<sup>60</sup> In this regard, the subject's deed restrictions are akin to special concessions which are framed outside of the definition of market value. Respondent failed to demonstrate that the subject lease and

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<sup>58</sup> Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 6<sup>th</sup> ed, 2015) p 141.

<sup>59</sup> Tr, Day 4, p 17.

<sup>60</sup> Respondent's testimony agreeing and disagreeing with exceptions to Walmart and Sam's Club was neither convincing nor credible. The Tribunal can only surmise that other Walmart leases and restrictions from around the country are favorable to each particular Walmart store and disfavored to the exclusion of any other competing user.

declaration are relevant to any other property other than Walmart properties. The exclusivity of such a lease and declaration without an application to the market is not persuasive. Further, the Eastwood Towne Centre is neither presumed to be the exclusive market as the declaration document again allows for the existence of Walmart and Sam's Club without competition from any other retailer or department store within the development.

Arguments over statutory construction of certain parts of the lease are applicable to the extent that the subject lease and declaration focus on the user of the property. Further, the amendments to the lease appear to waive the extensive restrictions. Moreover, the exceptions appear to have a similar negating element to the restrictions. A buyer would be subject to all of the prohibitions and restricted uses outlined in Sections 2, 3 and 4 of the Declaration. However, this fact does not infer greater value to the subject property. Rather, limitations to a new owner would have the opposite effect. The testimony of Respondent's witness did not solidify the subject's restrictive covenants in light of the exception to the existing subject improvements. Once again, Respondent's appraiser admitted that the expiration of the land lease would take away Walmart's right to use the building.<sup>61</sup> This is a further admission that the land and building are used together and create a total economic unit for a highest and best use valuation. Petitioner's appraiser's testimony reaffirmed this point.

Respondent's contentions over deed restrictions are misapplied as the instant case is distinguishable from the Menards property in Escanaba.<sup>62</sup> That property was

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<sup>61</sup> Tr, Day 1, 59.

<sup>62</sup> *Supra*

not under a lease at the time of the relevant tax dates whereas the subject property in this appeal included a land lease. Further, the issue in the *Menards* case revolved around deed restrictions to comparable sales data. The present case involves deed restrictions to the subject Walmart property (as a whole economic unit). A further distinction from the instant case is that the *Menards* property was identified, appealed, and valued as land and building together as a total economic unit. Once again, the Walmart subject property is parceled separately as land and building improvements. Nonetheless, the subject property is not perceived incrementally by the market. In other words, the subject market views the subject property in its entirety as land and building together for the optimal market value. This limited supplemental evidentiary hearing was held to determine the effect of the particular deed restrictions on the conclusion of market value for the subject property as a whole economic unit (land and building). Deed restrictions were personalized to the Walmart store. The extensive testimony over noted restrictions only served to acknowledge that an exception is invoked for the subject property as a Walmart store. Moreover, these self-induced restrictions were not applied to the relevant market other than by parallel reference to other Walmart stores around the country. Deed restrictions with corresponding exceptions are self-serving accommodations to the particular Walmart store. Deed restrictions with exceptions favor Walmart while enhancing a lease and/or sale price that is not commensurate with a specifically defined or described market.

Yet in the initial hearing phase, Respondent contended that this case is distinguishable from other big-box store appeals because it involves a ground lease.



Respondent admitted that the subject's ground lease is very favorable to Walmart.<sup>63</sup>

Respondent's reason for valuing the land separately from the building is due to the land lease.<sup>64</sup> The Tribunal is unable to ascertain Respondent's contentions between the initial hearing and this supplemental evidentiary hearing. The advantageous subject lease and declaration to the subject entity do not have relevance to the subject real property as of the tax days at issue. Therefore, the subject's ground lease and declaration documents are given no weight or credibility in the independent determination of market value for the fee simple subject property as a whole economic unit.

#### **4) ANALYSIS AND TESTIMONY**

Regarding Petitioner's analysis and testimony, Petitioner contends that the lease and declarations only negatively impact value of the property based on market data.<sup>65</sup> As noted several times, Respondent only compared the subject's restrictive covenants to other Walmart stores around the country. From logical inference, the subject's deed restrictions were developed to serve only the interests of the user of the property. In other words, the lease and declaration focus on a value-in-use and not on value-in-exchange. This tax appeal does not ascribe value to the owner or the concept of value-in-use.

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<sup>63</sup> Tr, Day 2, 409.

<sup>64</sup> Tr, Day 1, 116.

<sup>65</sup> Petitioner gave extensive explanation and market support (including market property comparisons) for each approach to value. Petitioner went further in describing additional cited sales and referenced a big-box sales study. The extent and level of Petitioner's research and data analysis is logical and reasonable and is given weight and consideration in the independent determination of market value for the subject property.

Petitioner's appraiser's analysis and testimony regarding the deed restrictions is consistent with the conclusion of TCV for the subject property. The deed restrictions were developed to favor Walmart as a business entity and not to impact the value of the property.<sup>66</sup> Further, Petitioner's appraiser analyzed the deed restrictions in compliance with professional standards.<sup>67</sup> On the other hand, Respondent's appraiser admitted that no quantification was rendered for its data because it comprises all Walmart leases. Respondent's appraiser's reason for not quantifying the impact of restrictions is without merit. Because all of Respondent's data was Walmart leases only furthers Petitioner's contention that such leases are exclusive instruments for Walmart's benefit.<sup>68</sup> Petitioner's testimony for the quantification of restrictive covenants to the subject property is more persuasive than Respondent's reason for not having any quantifications from its Walmart data.

As previously noted at numerous points, Respondent's focus on the subject's ground lease should not be analyzed as a dividing rod. As in the initial phase of this hearing, Respondent's testimony in the supplemental evidentiary phase did not clarify Respondent's contention for the impact of restrictive covenants to the subject land, improvements, or as a whole economic unit.<sup>69</sup>

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<sup>66</sup> Respondent's income approach predication on a ground lease involved analysis of Walmart stores around the country. Walmart extractions from around the country as support for the subject's lease without any other market support. Again, the exclusivity of the subject land lease with comparison to other Walmart data and extractions infers that this is the market for analysis.

<sup>67</sup> The Appraisal Foundation, *The Uniform Standards of Professional Appraisal Practice* (Washington DC, 2018-2019 Edition), p 16.

<sup>68</sup> Tr, Day 4, p 96.

<sup>69</sup> Parsing the valuation of land from the improvements solely based on a ground lease left many loose ends. The implication that the land and improvements are viewed separately by the market is not prudent, when in fact, one cannot function without the other as of each tax day. Quite to the contrary, the land lease acts as a binder to a complete utilization of the subject property under appeal as of tax day. The market does not perceive the subject in piecemeal fashion for the purpose of a highest and best use

The potential buyer of the property is purchasing the subject as a whole economic unit. There is no evidence showing that the market will acknowledge the subject in fragmentation. As contended by Petitioner, an eventual purchase transaction negates the land lease to the property. In other words, the subject lease does not extend beyond the parameters of the eventual buyer of the total economic unit.

As previously discussed, the issue of deed restrictions to a subject property is not necessarily the equivalent of deed restrictions from market data. In application, deed restrictions to the subject property are analyzed at the point of highest and best use. On the other hand, reviewing deed restrictions for sales or rental data occurs at the point of date of sale in a comparative analysis.

Petitioner's appraiser considered and analyzed deed restrictions to the subject property and the Eastwood development. On the other hand, Respondent's appraiser did not convey a professionally compliant report by separately analyzing and valuing two separate parts not in harmony with the relevant market. Respondent's reliance on the subject's restrictive covenants overlooks the actions of buyers and sellers in the subject market. Respondent failed to show the Tribunal how the subject's ground lease should take precedence over the subject property as a whole economic unit in the essence of market value. The focus on the subject's land lease and declaration misdirects and places a wedge between the subject's building and the subject's land. This tax appeal matter must stay focused on the subject's building and land together because this is how market participants contemplate and perceive the property. Market

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analysis. Simply, the two components are intertwined and debunk the premise that the sum of the parts is greater than the whole in this instance.

participants and investors do not readily have use of the subject's land separate from the building. Respondent's contention for the prominence of the subject ground lease and declaration documents do not shed persuasive light to the market value of the subject property. The true cash value of the subject does not result in the aggregate of a separate land value and a separate building value.<sup>70</sup> The influence and connection of the land lease does not separate the land from the improvements. Weight and credibility are given to Petitioner's cogent evidence which properly supports the subject's land and improvements as a whole economic unit under the definition of market value. In totality, Respondent's evidence is not more persuasive than Petitioner's development and analysis of the subject property as a whole economic unit in relation to the ground leases and declaration documentation. Therefore, Respondent's testimonial and documentary evidence for the subject's ground lease and declaration documents is given no weight or credibility in the independent determination of market value for the fee simple subject property as a whole economic unit.

## JUDGMENT

IT IS ORDERED that the property's state equalized and taxable values for the tax year(s) at issue are MODIFIED as set forth in the Introduction section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this

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<sup>70</sup> The Tribunal is unable to fathom the rationale for Respondent's land value of \$12,870,000 and a building value of \$7,476,000 which results in an astounding total value of \$20,346,000. Respondent did not present any valuation evidence in support of this substantial true cash value determination.

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 as required by the Consent Judgment within 28 days of the entry of the Consent Judgment. If a refund is warranted, it shall, unless otherwise indicated, include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also, unless otherwise indicated, 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, unless otherwise indicated, 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 Consent Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (ix) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (x) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, (xi) after June 30, 2019 through December 31, 2019, at the rate of 6.39%, (xii) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, and (xiii) after June 30 2020, through December 31, 2020, at the rate of 5.63%.

This Supplemental Limited Evidentiary Hearing and 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.<sup>71</sup> 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.<sup>72</sup> A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.<sup>73</sup> Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.<sup>74</sup> 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."<sup>75</sup> A copy of the claim must be filed with the Tribunal with the filing fee required for

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<sup>71</sup> See TTR 261 and 257.

<sup>72</sup> See TTR 217 and 267.

<sup>73</sup> See TTR 261 and 225.

<sup>74</sup> See TTR 261 and 257.

<sup>75</sup> See MCL 205.753 and MCR 7.204.

certification of the record on appeal.<sup>76</sup> The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.<sup>77</sup>

By 

Entered: July 30, 2020

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<sup>76</sup> See TTR 213.

<sup>77</sup> See TTR 217 and 267.