



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. 19-001078

City of Bad Axe,
Respondent.

Presiding Judge
Marcus L. Abood

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Walmart Real Estate Business Trust, appeals ad valorem property tax assessment levied by Respondent, City of Bad Axe, against Parcel No. 3251-724-002-91 for the 2019 tax year. Michael B. Shapiro and Daniel L. Stanley, Attorneys, represented Petitioner. Michael Gildner, Attorney, represented Respondent.

A hearing on this matter was held on June 7-9 and 11, 2021. Petitioner’s witness was Laurence G. Allen. Respondent’s witness was William Miller.

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 are as follows:

Parcel Number	Year	TCV	SEV	TV
3251-724-002-91	2019	\$4,270,000	\$2,135,000	\$2,135,000

PETITIONER’S CONTENTIONS

Petitioner contends the usual selling price equates to the TCV for the subject’s existing use as its highest and best use. Consistent with Michigan law, the property was valued based on a logical application of data. Further, Walmart did not develop the

subject property to sell for profit. Rather, the subject property was developed to maximize retail sales. Freestanding big box stores are not built on a speculative basis to later be sold for profit. The retailer's loss in value (after initial construction) is attributable to the property's functional obsolescence. The property was developed for the retailer's specific business model and image. Because a big box store is built to a retailer's needs, functional obsolescence has an impact on the value of such a building.

Petitioner contends the subject's demographics point to lower demand and lower prospects for retail in the subject market. More specifically, Huron County has experienced a decline in population (from 2010-2020), a decline in employment (from 2013-2018), a decline in tourism as a part of gross domestic product (from 2015 to 2018). Similarly, the City of Bad Axe (population of 3,000) has experienced declines with 15% of the population below the poverty line. Retail is over-built with significant vacancies.¹ Allen states:

The market is a lot larger for leased big-box stores because the market for those stores is passive investors who are -- are looking for a real estate investment, and those investors could be anywhere around the country. And there's a lot more investors than there are users of the stores.²

Petitioner contended the leased fee sales of big-box stores are typically sold subject to build-to-suit leases that are generally above market. Petitioner researched and analyzed two national surveys (Harrington Study and the Real Estate Research Corporation (RERC) Survey) as support for the market differences between leased fee

¹ Vol 2, 304-310.

² Vol 2, 304.

and fee simple big box stores. Petitioner's appraiser continually researches and analyzes existing lease data for existing big box stores as well as built-to-suit leases.³

Petitioner's appraiser considered and developed all three approaches to value. However, the sales comparison approach is the most applicable methodology for fee simple properties in this tax appeal appraisal assignment. Petitioner described, analyzed, and adjusted its comparable sales data. Differences and similarities were properly articulated based on relevant demographics. Petitioner's analysis also included excess land for implementation to the overall market value conclusion.

Regarding its development of an income approach, Petitioner's appraiser distinguishes between a build-to-suit lease market versus market rent for the subject (land and building) as an economic unit. Build-to-suit leases are artificially inflated and are not market driven. These leases reflect the retailer's specifications for design and branding. Further, these lease properties are not built or exposed to the market. On the other hand, data of existing buildings which have been exposed to the market is relevant for a supportable analysis. While no size adjustments were applied to the sale prices, adjustments were necessary for lease prices by size.⁴ Nonetheless, the income approach is difficult because of the lack of lease data and deriving a capitalization rate for a fee simple value. On the other hand, the information for a leased fee property is known to analyze a capitalization rate.⁵ The higher the risk, the higher the capitalization rate. There is less risk with a tenant in place. Creditworthiness and lease term are also considerations in the capitalization rate analysis.

³ Vol 2, 377-378.

⁴ Vol 2, 386. Petitioner points to differences between rental data and sales data. Typically, a tenant's occupancy at a building is not as long as an owner's occupancy to a building.

⁵ Vol 2, 391-392.

Petitioner's cost approach analyzed the replacement costs of the subject improvements and then applied necessary depreciation. Petitioner asserts the depreciation is difficult to quantify but reflects the interdependence with the income approach to value. Lastly, a market derived land value was added to arrive at an indication of value. Overall, this approach is not used by buyers and sellers in the valuation of a big-box store.

Petitioner's reconciliation of the approaches to value puts most weight on the sales comparison approach. The other approaches to value demonstrate their inter-relationship to the comparative analysis. Moreover, the other approaches provide support for the final conclusion of value.

Regarding Respondent's conclusion of value, Petitioner refutes Respondent's methodologies. More specifically, Respondent's disregard for the premise of fee simple (and its current definition) resulted in the use of leased fee properties. Further, Respondent's comparative analysis applied erroneous adjustments and relied on irrelevant information. Respondent's appraiser valued the subject based on hypothetical and non-existent lease. His rents are based on higher built-to-suit leases for investment properties around the country. While admitting to the subject's inferior location, Respondent's appraiser made no adjustments to his comparable sales or rental data. Respondent has rendered a conclusion for the subject's value-in-use and not as value-in-exchange.

PETITIONER'S ADMITTED EXHIBITS

In support of its value contentions, Petitioner offered the following exhibits, which were admitted into evidence:

- P-1: Appraisal Report prepared by Laurence G. Allen.
- P-3: Kalamazoo, Michigan Appraisal Report prepared by William Miller.
- P-5: Kenosha, Wisconsin Appraisal Report prepared by William Miller.
- P-6: West Allis, Wisconsin Appraisal Report prepared by William Miller.
- P-7: Madison, Wisconsin Appraisal Report prepared by William Miller.

PETITIONER'S WITNESS

Petitioner's witness, Laurence G. Allen, MAI, prepared an appraisal report for the subject property. He is primarily a commercial appraiser with 45 years of real estate and valuation experience. He is licensed in the state of Michigan and designated through the Appraisal Institute. Based on his background, education and experience, the Tribunal accepted Mr. Allen as an expert real estate appraiser.

RESPONDENT'S CONTENTIONS

Respondent contends the subject's highest and best use drives the value and not the physical characteristics. More specifically, leased fee comparable sales must be included in the analysis because lease rents reflect the value of a property in the market. Respondent's extensive market analysis of retail stores included Walmart foot traffic for stores in Bad Axe, Sandusky, and Caro.⁶

Respondent considered and developed all three approaches to value. The extensive analysis focused on the inter-relationship of approaches, methodologies, and market data.

⁶ Vol 3, 499-500.

Regarding income analysis, Respondent reviewed separate rental data for the subject's grocery component and for the merchandise component. The income approach is based on a hypothetical, non-existent lease on a stabilized basis.⁷

Regarding the cost approach, cost calculations are allocated between the grocery and merchandise portions of the store.⁸ Respondent's appraiser developed replacement costs for the subject as well as analyzed similarly costed big box stores in Michigan and Wisconsin. All forms of depreciation were analyzed and considered; Respondent determined that the subject does not suffer from any external or functional obsolescence.

Regarding the sales comparison approach, Respondent contends there are no differences between leased fee and fee simple comparables; adjustments for such differences were not warranted. Likewise, no adjustments were made for conditions of sale or market conditions.

In final reconciliation, Respondent places majority weight on the sales comparison approach with supporting weight from the other approaches to value.

RESPONDENT'S ADMITTED EXHIBITS

In support of its value contentions, Respondent offered the following exhibits, which were admitted into evidence:

R-1: Valuation Disclosure prepared by William Miller.

⁷ Vol 4, 660.

⁸ Vol 3, 520 and 533.

RESPONDENT'S WITNESS

Respondent presented testimony from William Miller who is a Certified General Real Estate Appraiser in the state of Michigan. Based on his background and experience, the Tribunal accepted Mr. Miller as an expert in real estate appraisal.

FINDINGS OF FACT

1. The subject property is located at 901 North Van Dyke Road, located in the City of Bad Axe and within Huron County.
2. The subject property is classified as Commercial and is zoned as B-2, General Business District.
3. Huron County has a population of 33,000; the population decreased from 2010 to 2020.
4. Bad Axe market area has a declining population, household income, spending income, and traffic counts.⁹
5. The subject property is comprised of 30.98 acres and is improved with a big box store having approximately 184,435 square feet of gross building area.
6. As of December 31, 2018, the subject property was improved as a commercial retail store.
7. A former Walmart store located on Van Dyke Road (across the street from the subject) sold in 2005. The building was redeveloped with a Dollar Store, Ashley Home Store and a Dunham's Sporting Goods store.¹⁰
8. Petitioner owns the land and improvements to the subject property.
9. Petitioner is the owner-occupant of the subject big box store. The subject property is not leased.
10. The subject property's grocery and merchandise uses are integrated within a single building.
11. The subject was constructed as a build-to-suit property. The subject was built to the specific design specifications of Walmart.
12. E-commerce sales compete with "brick and mortar" stores retail sales.
13. The highest and best of the subject "as vacant" is for retail development and "as improved" is for its current retail building use.
14. Petitioner submitted a valuation disclosure in the form of a narrative appraisal report prepared by Laurence Allen.
15. Petitioner's appraiser has appraised big-box stores including Cabela's, Bass Pro Shops, Meijer, Target, Kmart, Lowe's, Kohl's, Home Depot, Menard's, and Walmart.

⁹ Respondent's appraiser admitted land values in Bad Axe are lower than land values in other metropolitan areas. (Vol 4, 679.). Respondent's appraiser admitted that stores in Bad Axe and in other neighboring areas are outliers and tend to have lower rents. (Vol 4, 680.). Respondent's appraiser admitted that declines in population, household income, consumer spending, and low traffic counts in Bad Axe have contributed to less commercial activity in Bad Axe. (Vol 4, 683.).

¹⁰ Vol 2, 310, 319.

16. Petitioner considered and developed all three approaches to value but placed most weight on the sales comparison approach.
17. Petitioner's sales comparison approach included 9 sales and 1 offering for sale.
18. Petitioner's sales comparison approach included one deed restricted property (sale 7a).¹¹ Further, sale 3 was encumbered by a land lease.
19. Petitioner's appraiser considered and analyzed build-to-suit leases as part of his sales comparison approach.
20. Petitioner's appraiser analyzed the Harrington Study which included the leased fee and fee simple sales of big box stores in the United States.
21. Petitioner's appraiser reviewed a RERC study of big box stores from 2010 to 2018.
22. The subject's refrigeration, cold storage equipment and walk-in freezers were reported as personal property and originally costed \$450,000.¹²
23. Respondent submitted a valuation disclosure in the form of a narrative appraisal report prepared by William Miller.
24. Respondent considered and developed all three approaches to value.
25. Respondent's appraisal report did not include any hypothetical conditions or extraordinary assumptions for its retrospective valuation date.
26. Respondent's income approach reflects the valuation of the subject property based on a hypothetical, non-existent lease on a stabilized basis.¹³ Respondent's appraisal report did not include a *hypothetical condition*¹⁴ for its comparative analysis.
27. All of Respondent's income analysis lease data is located outside of the state of Michigan. Respondent's lease data are build-to-suit leases.
28. Respondent's sales comparison approach did not include any fee simple properties.
29. Respondent's sales comparison approach did not include any adjustments for building size.¹⁵
30. Respondent's sale 8 included a deed restriction for which Respondent's appraiser did not adjust.¹⁶ This property was part of a portfolio sale that included four other properties.¹⁷
31. Respondent's comparable sale 8 (former Sam's Club, Madison WI) was appraised by Respondent's appraiser.¹⁸ This fact was not disclosed in Respondent's appraisal report for the subject property.

¹¹ Petitioner's appraiser analyzed sale 7 and applied an upward adjustment to this sale. Overall, this deed restricted sale did not impact Petitioner's indication of value from the sales comparison approach. In other words, with or without this sale, the comparative analysis indication of value would remain the same.

¹² Vol 3, 409.

¹³ Vol 4, 660.

¹⁴ See Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 6th ed, 2015) p 113. Also see The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice* (Washington DC, 2020-2021 ed), pp 4, 17.

¹⁵ Vol 2, 196-197.

¹⁶ Vol 2, 230.

¹⁷ Vol 2, 330-331.

¹⁸ Vol 2, 237.

32. Respondent's sale 8 had an adjusted value of \$115.12/SF. Miller's appraisal report for this property 10 months earlier (as of December 31, 2017) was \$25/SF in value.
33. The subject was not built for profit after acquisition because Walmart built the subject to maximize retail sales and not to realize a market profit from the sale of the land and improvements.
34. Both parties' appraisers agree that big-box stores are built to maximize retail sales.
35. Meijer opened a new store located at 100 Pigeon Road, Bad Axe, Michigan in 2020.¹⁹
36. The test of whether obsolescence must be deducted in the cost approach is the analysis of rents and sales.²⁰
37. In comparative analysis, the proper way to determine the age of a comparable sale is the age of the property as of the date of sale and not as of the effective date of valuation.²¹
38. The valuation of the subject property is through *value in exchange* and market value as opposed to *value in use*.²²
39. The valuation of the subject property is as *fee simple*²³ as opposed to *leased fee*²⁴.

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.²⁵

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 TCV of such

¹⁹ Vol 3, 457.

²⁰ Vol 1, 138-139. Also See Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 15th ed, 2020), pp 583-591.

²¹ Vol 1, 167.

²² Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 6th ed, 2015), p 245.

²³ *Id* at 90.

²⁴ See "leased fee interest." *Id* at 128.

²⁵ See MCL 211.27a.

property; the proportion of TCV at which such property shall be uniformly assessed, which shall not . . . exceed 50 percent. . . .²⁶

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.²⁷

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”²⁸

“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.”²⁹ The Tribunal is not bound to accept either of the parties' theories of valuation.³⁰ “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.”³¹ 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.”³²

A proceeding before the Tax Tribunal is original, independent, and de novo.³³

The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”³⁴ “Substantial evidence must be more than a scintilla of

²⁶ Const 1963, art 9, sec 3.

²⁷ MCL 211.27(1).

²⁸ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

²⁹ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

³⁰ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

³¹ *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

³² *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

³³ MCL 205.735a(2).

³⁴ *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

evidence, although it may be substantially less than a preponderance of the evidence.”³⁵

“The petitioner has the burden of proof in establishing the true cash value of the property.”³⁶ “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.”³⁷ However, “[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to TCVs in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question.”³⁸

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.³⁹ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”⁴⁰ 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.⁴¹ Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.⁴²

³⁵ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

³⁶ MCL 205.737(3).

³⁷ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

³⁸ MCL 205.737(3).

³⁹ *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).

⁴⁰ *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

⁴¹ *Antisdale*, *supra* at 277.

⁴² See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

As noted in the Finding of Facts, each party's appraiser considered, analyzed and developed all three approaches to value.⁴³ This due diligence illustrated distinctly divergent paths to the market value for the subject property. The quality and quantity of data, in light of valuation practice and theory, was analyzed in a variety of ways. Rationale, support and justification for various methodologies was advanced by each appraiser.

The contemplation of a conventional analysis must take into account what exists at the property as of tax day. This focal point (the effective date of the appraisal) incorporates conditions or assumptions conspicuously displayed in an appraisal report so a reader will understand the appraiser's underlying analysis. The full bundle of rights in fee simple is the guidepost for this tax appeal matter and not as a leased fee interest which does not adequately reflect the actions of buyers and sellers for the subject property. The very foundation and logic of market value does not invoke a blend of fee simple and leased fee property rights in this tax appeal matter.

The independent determination of market value for the subject property is as an owner-occupied commercial property with fee simple property rights. The subject is not encumbered by a lease. As of December 31, 2018, the subject property was not available for lease; the subject property was owner-occupied.⁴⁴ The parties' valuation disclosures acknowledge the subject in terms of fee simple property rights. 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,

⁴³ Respondent's appraiser's incorrect interpretation and citation of caselaw was pointed out by Petitioner's counsel. Vol 1, 71-77.

⁴⁴ The analysis of subject as leased at market rents is in the context of an income analysis.

eminent domain, police power and escheat.”⁴⁵ The full bundle of rights (in fee simple) for the subject as an economic unit is done so without encumbrances. Nonetheless, Respondent goes one step further by hypothesizing a lease to the subject property. The rationale for utilizing a *hypothetical condition*⁴⁶ was not disclosed in any manner within Respondent’s appraisal report. The proposition of a hypothetical lease for a fee simple property with disregard to the definition of fee simple as well as professional valuation standards is unacceptable and disingenuous. 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.”⁴⁷ The subject’s fee simple property rights in the context of market value does not contemplate the non-existent lease as prescribed by Respondent’s appraiser. Likewise, the usual selling price considers market rent and not contract rent within an income analysis. Respondent’s imposition of leased fee sales to show the marketability and appeal of occupied stores over “vacant and dark” stores is misplaced. Respondent’s statement that an “empty store” has less value than a property that is “full” is without substance or meaning.⁴⁸ This conclusory statement was not supported by any market evidence by Respondent.

Again, as of the relevant tax day, the subject was neither vacant nor dark but rather was occupied and lit. The connotation that “vacant and available” for sale or lease is a detriment is equally misplaced. For a property to have a sales transaction, the property must be vacant and available for the purchaser to possess the property. A

⁴⁵ Appraisal Institute, *The Appraisal of Real Estate* (Chicago, 15th ed, 2020), p 60-61.

⁴⁶ *Id* at 44.

⁴⁷ *Id* at 61-63.

⁴⁸ Vol 1, 93.

big box retailer does not maintain occupancy until the property sells. Rather, the retailer moves on to a bigger and better store or ceases operations in a given market area. These actions prove that a retailer does not endlessly occupy the building to enhance the real estate profit or value. To the contrary, the retailer's mission is profit from product sales and not necessarily real estate profit. As a proximate example, there is no evidence on the record showing the former Walmart store across from the subject property sold for an intended profit. This former big box store transitioned to a 2nd generation multi-tenant property. Through testimony, both parties' appraisers acknowledged the transformation of this property. The vacancy and availability of this neighboring property was not called into question by either party.

Respondent's income analysis data is located outside of the state of Michigan.⁴⁹ Perplexing are the creative liberties taken for such a specifically defined term as "fee simple" outside of valuation practice and theory as well as Michigan statutory and case law.⁵⁰ Fee simple in the context of an owner-occupied commercial property is not the equivalent of a leased fee property which has an income stream. Moreover, ascribing a definition for fee simple which predates 1984 is equally unpersuasive.⁵¹ Respondent's appraisal report selectively cites different editions of *The Appraisal of Real Estate* (Appraisal Institute) while rationalizing an outdated definition of fee simple. Lastly, Respondent's admission to the valuation of three other former big box stores as fee simple, vacant and available under market value is significant. Respondent's appraiser

⁴⁹ Leased fee sales of big-box stores are typically sold subject to build-to-suit leases that are generally above market rent. In other words, the subject non-existent lease is not market supported. In this context, Petitioner's appraiser distinguished between a build-to-suit lease market versus market rent for the subject property. Build-to-suit leases are artificially inflated and are not market driven.

⁵⁰ Vol 1, 97-115 and Vol 4, 633-647.

⁵¹ Vol 3, 588.

failed to distinguish those appraisal reports from the valuation of the subject property.⁵²

Therefore, Respondent's definition of fee simple and invocation of a non-existent lease to the subject as a fee simple property is given no weight or credibility in the independent determination of market value for the subject property.

Again, Petitioner submitted valuation evidence in the form of a narrative appraisal report prepared by Laurence Allen. The initial sections of the report provide a logical and reasonable path for an indication of market value. First, the description of the subject market area is based on demographic data specific to Huron County and the City of Bad Axe.⁵³ Population, number of households, household income, and residential building permits were laid out in an informative fashion. Next, the subject site description reviewed ingress/egress, parking, visibility, and excess acreage. Moreover, Petitioner considered potential effects from market competitors as well as e-commerce sales. The subject site was analyzed in the context of the City of Bad Axe as well as Huron County. Overall, Petitioner's research and analysis of the subject's market, neighborhood and site is persuasive.⁵⁴ Therefore, Petitioner's market analysis and description for the subject property is given weight and credibility in the independent determination of market value for the subject property.

⁵² Vol 2, 237-238. Either Respondent's appraiser is unfamiliar with the General Property Tax Act and the "usual selling price" for a fee simple property or Respondent's appraiser has purposely skirted around current valuation treatises.

⁵³ The Tribunal took judicial notice that M-25 goes from the Midland-Bay City area of I-75 all the way around the thumb area of the state down to I-94. Respondent's testimony about linkages around and near Bad Axe was confusing.

⁵⁴ Respondent did not challenge or refute Petitioner's market analysis and description for the subject property. Respondent's reliance on "Wikipedia" as an information source for Huron County and the thumb area of Michigan is unpersuasive compared to Petitioner's named sources including the U.S. Census Bureau, ESRI Business Analyst, Site to Do Business, Bureau of Economic Analysis, Bureau of Labor & Statistics, and the Michigan Labor Information Department.

Next, Petitioner's analysis of highest and best use "as vacant" and "as improved" applied the four tests of physically possible, legally permissible, financially feasible, and maximally profitable. These tests were analyzed to the subject and the specific market area. Petitioner's conclusion for the subject as a fee simple, value-in-exchange, commercial retail property which is supported by the market description as well as the four tests.⁵⁵ Therefore, Petitioner's highest and best use analysis is given weight and credibility in the determination of market value for the subject property.

Petitioner's development of its three approaches to value provides the most reliable and credible evidence for reconciliation to an independent determination of market value for the subject property. Allen's vast valuation experience is manifested by his data and analysis within the state of Michigan. Specifically, the analysis of each approach (in practice) strengthened the approaches inter-relationship (in theory) to the concept of *substitution*.⁵⁶ The sales comparison approach provided sufficient data and analysis. Market participants rely on the sale of other like properties. Next, the cost approach developed land sales, replacement costs and depreciation through existing leased properties as well as build-to-suit leased properties. The cost approach's relationship to the other approaches cannot be understated. Market participants' decision-making processes regarding whether to renovate an existing big-box or construct a new store is demonstrated through the cost approach in terms of

⁵⁵ The highest and best use of a subject property is distinguishable from the use of a comparable property. A comparative analysis looks at the use of a comparable sale in line-item fashion (i.e. zoning) which allows for various acceptable uses. "**Highest & best use**" for the subject property is different than the "**use**" for a comparable property at the time of sale. Said differently, an appraiser's due diligence research in the "normal course of business" does not necessarily encompass a separate highest and best use analysis for each comparable sale.

⁵⁶ Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 6th ed, 2015), p 225.

depreciation. Moreover, the cost approach highlights the very reason a big-box store is built to enhance retail sales and not to capture real property value. Lastly, the income approach examined the subject property in the context of existing leased properties in Michigan. However, as noted, Petitioner placed no reliance on this income data because build-to-suit leases are not market supported. Petitioner's due diligence to demonstrate market data through each approach is convincing.

COST APPROACH

Regarding the cost approach, the parties' appraisers' initial analyses for land value resulted in common comparable sales located at 2755 West Holten-Whitehall Road (Walmart store) and 100 Pigeon Road (Meijer store). Petitioner's adjusted prices per square feet were \$.086 and \$.095, respectively. Respondent's adjusted prices per square feet were \$.088 and \$.090, respectively. While these common land sales resulted in a relatively close indication of value, underlying aspects provide a telling picture. First, Respondent's overall analysis differentiated between a comparable site's total acreage and its usable acreage for the Pigeon Road property. This property was an assemblage of 3 parcels which were purchased for a total acreage. Said differently, the purchaser purchased a total acreage and not just usable acreage. Second, Respondent's conclusion to an average price per square feet of \$.090 for usable area does not reflect the total area or acreage. As an example, a market participant's purchase of 100 acres is the focal point even though the purchaser's intent is to develop only 75 acres. On the other hand, Petitioner's cogent analysis for total acreage and square feet also included the contributory value of the subject's excess acreage. Third, Petitioner's land comparable sale write-ups have a greater level of detail including

demographics (population, households, median income, traffic count) for a comparative analysis. Therefore, Petitioner's land comparison valuation is given weight and credibility for the independent determination of market value for the subject property.

Next, the appraisers utilized Marshall Valuation Service (MVS) to derive the replacement cost new for the subject building and site improvements. However, the appraisers' contrasting methodologies for this part of the income analysis is noteworthy. First, Respondent developed bifurcated replacement costs for the subject's general merchandise and grocery store components. Through extensive cross examination, Petitioner challenged Respondent's appraiser over such a methodology. The subject's retail activities are housed within four walls; Respondent's cost calculations in essence only devised three walls for each retail component. No explanation was given for a common wall between these retail components. Moreover, Respondent's appraiser admitted that his cost analysis for the subject is based on three walls instead of four walls for bifurcated costs.⁵⁷ This inconsistent cost analysis is unpersuasive. Defining two separate retail areas for the premise of differentiating costs is not reasonable in this context. Second, Petitioner used the replacement cost for a Class C mega warehouse store as of December 31, 2018. Respondent developed and analyzed construction costs from two comparable properties located in Oshtemo Township, Michigan and Greenfield, Wisconsin. The Oshtemo property has a gross building area of 149,342 square feet and the Greenfield has 151,402 square feet. These cost construction comparables ". . . were adjusted for market conditions (time) to establish a benchmark

⁵⁷ Vol 4, 648.

cost as of the valuation date.”⁵⁸ These cost construction comparables are relatively similar to the subject in size to warrant the cost replacement as a mega-warehouse. Respondent’s treatment of delineated costs between the grocery and merchandise components for the subject is inconsistent with these cost comparable properties. Third, Respondent’s separate costed areas only included singular costs for such items as HVAC and restrooms. These singular cost items pertain to the entirety of the subject store and not just to either the grocery or merchandise component. Further, Respondent’s inclusion of refrigeration and coolers as real property in the cost analysis was refuted by Petitioner. These items were clearly established as personal property and were not included in Petitioner’s cost analysis. Inconsistent treatment of such items is not persuasive to Respondent’s cost analysis. Fourth, Miller’s own acknowledgement and example of a large custom-built home constructed to the specific tastes of the owner would result in functional obsolescence.⁵⁹ Respondent’s conclusion of no functional obsolescence to the subject appears to contradict Respondent’s sales comparison adjustment of 5% for the subject’s façade. Each big box retailer’s color scheme, brand and floorplan is distinctive. The willingness to spend millions of dollars for a specific image speaks to the drive to sell products. A retailer’s cost to construct a physical image does not translate to the retailer’s need to gain a profit from the eventual sale of the real estate. For these reasons, Respondent’s cost analysis is given no weight or credibility in the independent determination of market value for the subject property.

⁵⁸ Resp’s Ex R-1, 99 and 102.

⁵⁹ Vol 4, 666.

Petitioner's cost approach analyzed the site in relation to the improvements. This also included the development of excess land which resulted in a contributory value. The land sales are located in the state of Michigan. Petitioner's cost analysis and calculations are more detailed; building materials, components and relevant multipliers were developed. Said differently, Petitioner costed the subject's total building without bifurcating two retail areas. Moreover, Petitioner presented 12 lease comparables of retail stores throughout Michigan to analyze obsolescence. Data in the state of Michigan is more persuasive than leased fee data all over the country. Next, Petitioner analyzed four Michigan sales and one Tennessee sale for the extraction of obsolescence from big box stores. Cost modifications included a construction management report as well as cost modification examples. Consistent with the income approach, Petitioner derived a property rights adjustment for the analysis of the subject as if unencumbered by a lease. If a property is built exclusively for the needs and wants of that person or entity, without regard to the market, then the property is not subsequently sold with the expectation of profit. Petitioner has emphatically contended that it builds a big box store for its branding and imaging without regards to building costs. Petitioner also argues that a given building may no longer suit its needs and Petitioner then moves on to another larger built to suit store or leaves a market location entirely. For example, there is no allusion that a new \$15 million-dollar big box store is subsequently offered for its original building and land costs. Said differently, cost does not equal value in this context. The extent and level of Petitioner's cost approach is logical and reasonable and is given weight and consideration in the independent determination of market value for the subject property.

INCOME APPROACH

As noted, each appraiser developed and communicated an income approach to value. The parties' respective income analyses consider the subject's viability for tenant occupancy. As previously noted, the subject property is owner-occupied, but this fact does not automatically preclude the development of this approach to value in valuation practice and theory. Similar to the cost approach, each appraiser has taken dissimilar paths in an income analysis. First, Respondent's position on the definition of fee simple with a comingled aspect of a non-existent lease without any *hypothetical conditions or extraordinary assumptions*⁶⁰ is nonsensical. Respondent's appraiser agreed that the subject property was valued to a non-existent lease and not as vacant and available.⁶¹ On cross-examination, Respondent's appraiser admitted that he did not value the subject property as being unleased, vacant and available as of the assessment date.⁶² Historical built-to-suit leased fee data is different than current leased data of existing buildings as of December 31, 2018. Second, Respondent's appraiser divided his rent analysis into a general merchandise store and a general merchandise store. In essence, rent was developed as two separate buildings or what appears to be akin to a multi-tenant use. This separation defies the physical nature of the building. Said differently, the building is not formally sectioned off for two separate tenants or spaces.

⁶⁰ Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 6th ed, 2015), pp 83-84 and 113. In fact, Respondent's appraisal report did not include any hypothetical conditions or extraordinary assumptions. For example, the appraisal report date is October 21, 2020, and the effective date was based on a retrospective value as of December 31, 2018. Miller made no conditions or assumptions for the subject property between these two dates. Moreover, Miller developed a "non-existent lease" for the subject property without any such qualifiers. These omissions are inconsistent with the authors' disclosure and certification for an alleged compliant appraisal report.

⁶¹ Vol 1, 96.

⁶² Vol 1, 100, 104.

Again, the subject is a fee simple, owner-occupied commercial building without a lease. Respondent's division of tenant spaces that do not exist within the subject walls would warrant a hypothetical condition or extraordinary assumption. Third, as noted by Petitioner, all of Respondent's rental data is located outside of the state of Michigan. None of this data carried any demographic analysis or comparison to the subject's market. As previously stated, corporate built-to-suit leases are not the same as current market leases. Moreover, Respondent's lease data all over the country is not the described market for the subject property. Elaborate tiered data, feasibility and equilibrium rental rates for bifurcated store uses, while disproving functional and external obsolescence to the subject property, ignored fundamental aspects in valuation practice. For example, the feasibility rent (RCN for new building) at \$9.16/SF and the subject market rent (based on leased Walmarts) at \$6.42/SF both included the subject's personal property coolers and refrigerators. Fourth, Respondent's weighting of this income analysis which gave support to the sales comparison approach is illogical. As will be discussed, Respondent's comparative analysis was based on built to suit leased fee sales in other markets. Further, Respondent's location adjustments were derived from mass appraisal land assessment values. Respondent's purported analysis of interrelated approaches to value fail in this regard. On one hand Respondent states a built to suit transaction is based on supply and demand reflecting market conditions for an existing property. However, in a previous tax appeal case, Miller stated just the opposite.⁶³ Miller stated, "A built-to-suit rent is not based on the supply and demand reflecting market conditions for existing already built property but rather the developer

⁶³ Vol 2, 253-254.

and lessor's cost-plus expected profit to build a building for the eventual tenant's needs" in the *Menards* decision.⁶⁴ Simply, rent negotiated for a built to suit building (yet to be constructed) is different than market rents negotiated for an existing building (at that time of market conditions, supply/demand). For these reasons, Respondent's income analysis is given no weight or credibility in the independent determination of market value for the subject property.

Petitioner's income approach was based on market rent (in the state of Michigan) for the subject's land and improvements. Twelve comparable big-box properties were analyzed to distinguish between build-to-suit leases and existing buildings. Next, Petitioner analyzed five existing leases to derive a supported potential gross income. Vacancy and credit loss deductions were applied to arrive at an effective gross income. In similar fashion, expenses were explained and supported with market sources which then resulted in a net operating income. Lastly, the capitalization rate analysis included the band of investment, investment surveys and capitalization comparable sales' methodologies to arrive at a concluded overall capitalization rate. The extent and level of Petitioner's income approach is logical and reasonable and is given weight and consideration in the independent determination of market value for the subject property.

SALES COMPARISON APPROACH

Respondent's sales comparison approach is a conventional format for a comparative analysis. Similar to Respondent's other approaches to value, this approach also has numerous inconsistencies and misapplications.⁶⁵ First, the majority

⁶⁴ Vol 2, 259.

⁶⁵ The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice* (Washington D.C., 2020-2021 edition), p 11. "Perfection is impossible to attain, and competence does not require perfection.

of the comparable sales are leased fee in nature. Seven out of eight sales were transacted on the basis of a lease in place to each property. However, Miller admitted that there are unleased big box stores that have sold in the marketplace.⁶⁶ He further admitted that the majority of big box stores are owner-occupied and not leased.⁶⁷ The lack of cogent explanation as well as the disregard between leased fee and fee simple sales does not lend credibility to the comparative analysis. Respondent did not make any adjustments for the difference in property rights between fee simple and leased fee.

Second, Respondent's application of gross leasable area for a comparable over its gross building area is quite confounding. As questioned, challenged and refuted by Petitioner, a comparable sale encompasses its total gross building area in a sales transaction.⁶⁸ Simply, a purchaser is not exclusively buying the defined leasable area in terms of an executed lease. A total property comprising the entire gross building area, site improvements and land are purchased based on the negotiated sales price. Altering or modifying a comparable sale's building area (i.e., sales 1, 2, 5 and 7) and then comparing it to a contrived gross leasable area for the subject is unacceptable. Respondent's analysis of leasable area instead of a gross building area appears to be misplaced for a sales comparison approach and is perhaps better suited for an income analysis.⁶⁹

However, an appraiser must not render appraisal services in a careless or negligent manner. The [Competence] Rule requires an appraiser to use due diligence and due care."

⁶⁶ Vol 1, 36.

⁶⁷ Vol 4, 674.

⁶⁸ Vol 1, 157-164.

⁶⁹ Respondent's robust creativity for the inclusion of gross leasable area, capitalization rates, projected NOI, and remaining lease terms for a comparative analysis of leased fee properties is not meaningful and is quite misleading. The subject property is a fee simple, owner-occupied commercial building as of December 31, 2018.

Third, Respondent's age/condition adjustments were derived from the MVS depreciation tables. This fact was questioned by Petitioner's counsel with Respondent appraiser's admission that such depreciation tables have not been updated over a length of time. Petitioner's appraiser placed no reliance on these tables in its determination of the subject's depreciation. Also notable was Respondent's admission that a comparable sale's age is as of the date of valuation and not as of the date of its sales transaction. The Tribunal is unable to assume or ascertain Respondent's age/condition adjustment while not knowing what the condition was for each comparable sale. Age adjustments potentially infer that properties depreciate at the same constant rate over time (without regard to renovations or remodeling). On the other hand, age adjustments would typically be analyzed in a separate line-item entry. Respondent's confluence of a comparable sale's age and condition did not foster an understanding of the underlying analysis for each comparable property.

Fourth, Respondent's location adjustments are based on the land value assessment for each comparable sale.⁷⁰ Respondent did not give any rationale for the integration of a mass appraisal assessment methodology to a singular property.⁷¹ Said differently, mass appraisal methodologies are not the equivalent of valuation techniques for a singular property. For example, land value assessments entail underlying economic condition factor (ECF) sales studies as well as land sales studies in the state of Michigan. The Tribunal will not attempt to presume how assessments are derived for those comparable sales in other states. Reliance on land value assessments without

⁷⁰ Vol 2, 218-226.

⁷¹ Miller's alleged knowledge of assessment regulations was challenged by Petitioner. Vol 4, 697-699.

the taxing authority's underlying data or demographic data for each comparable sale is unacceptable. To further exasperate this location analysis, Respondent's location adjustments infer that sale 5 (East Grand River Avenue, Howell, MI) is superior to sale 2 (28th Street, Grand Rapids, MI).⁷² In repeated testimony, Respondent relied on comparable sale land assessment differences for the location adjustments.⁷³ Respondent's defense for these adjustments is that the comparable sales are being compared to the subject.⁷⁴ However, Respondent's appraiser agreed that two identical properties similar in all regards (except that one has a successful business and one does not) would have the same real estate values.⁷⁵ Valuation practice and theory is keen to recognize that comparisons take place between a subject and comparables as well as the comparables themselves. Respondent's appraiser aptly cited "ranking analysis" within his own appraisal report and thus proves that comparisons do take place between comparable sales.⁷⁶ This citation contradicts Respondent's statement about the difference between the Grand River Avenue, Howell location and the 28th Street, Grand Rapids location.

Fifth, Respondent's adjustments for "investment characteristics" appear to be misplaced within the sales comparison approach and could be more applicable to an income analysis.⁷⁷ Again, the context of a fee simple full bundle of rights for the subject property is market value and not investment value. Respondent presented these adjustments without the benefit of illustrative calculations. Testimony based on a

⁷² Vol 2, 213.

⁷³ Vol 4, 653.

⁷⁴ Vol 2, 216.

⁷⁵ Vol 1, 29.

⁷⁶ Resp Exh R-1, 81-82.

⁷⁷ Vol 2, 201-205.

capitalization rate analysis at 100% resulting in a zero adjustment is confusing.

Respondent combines “property and investment characteristics” into one line-item entry.

These types of characteristics do not appear to be synonymous or parallel. Property characteristics are typically physical characteristics. On the other hand, investment characteristics are construed as elements dealing with a leased fee property.

Conflating income elements in a sales comparative analysis is misleading.

Sixth, Respondent’s lone fee simple sale (sale 8 – 7050 Watts Road) was revealed to have certain complexities. This sale was found to have been part of a portfolio sale which included four other properties. Respondent’s appraiser utilized this sale in his Madison, Wisconsin appraisal.⁷⁸ In testimony, Respondent’s appraiser explained his reason for different prices per square feet for sale 8 between his Madison appraisal of \$25/SF versus his comparison use as Sale 8 with an adjusted \$115/SF. Respondent’s reasoning as to different intended uses is nonsensical when Respondent’s appraiser admitted that the sales comparison approaches would otherwise have been “very similar, perhaps identical”.⁷⁹ An appraiser’s scope of work should clearly change from one assignment to the next depending on intended use and intended users. However, modifying, altering, or omitting the factual elements of sales data between appraisal reports is not credible. Respondent’s Madison appraisal denoted the property’s gross building area as 118,394 square feet. However, Respondent denoted the Madison property’s gross building area as 106,848 square feet as a comparable to the subject property. This comparable included expenditures

⁷⁸ Pet Exh P-7.

⁷⁹ Vol 2, 245.

immediately after sale but its gross building area decreased from 118,394 SF to 106,848 SF. Respondent's appraiser goes so far as to admit that he observed a decline in the development of big box stores throughout the country through his appraisal reports for Kenosha, West Allis and Madison appraisal reports.⁸⁰ Such an acknowledgement was not found in Respondent's subject appraisal report.

Seventh, Respondent's appraiser admitted that his sale 2 has 41 acres and not 15 acres; this sale was adjusted downward to the subject's 30 acres. Miller acknowledged that this adjustment was in error.⁸¹ This admitted error is compounded by Respondent's varied size adjustments especially for comparable sales with the same acreage. For example, compared to the subject's 30 acres, sales 1, 4 and 6 each have 19 acres. The respective sales' downward adjustments were 20%, 5% and 15% as a "location" adjustment. Such variations would appear to be subjective in nature especially given the lack of cogent explanatory narration. The consistency of adjustments and corresponding narration is a fundamental responsibility in valuation practice. For these reasons, Respondent's comparable sales, adjusted sale prices and indication of value are given no weight or credibility in the independent determination of market value for the subject property.⁸²

Petitioner's comparative analysis started with ten big-box properties with 9 sales and one offering. One sale is located in Wisconsin and 8 sales are located in the state of Michigan. A descriptive analysis included customary write-ups for each property. Extensive explanation and market support (including market property comparisons) was

⁸⁰ Vol 2, 246-247 and Pet's Exh P-5, P-6, P-7.

⁸¹ Vol 4, 681-682.

⁸² Curiously, Respondent did not show any market evidence of a fee simple big box store in support of its TCV contention of \$15,660,000.

given for each adjustment.⁸³ An adjustment grid for the nine comparable sales and one listing was illustrated to arrive at an indication of market value. Property rights for each property was fee simple, but sale 3 was conveyed with a leased fee interest. However, Petitioner went further in describing 13 additional cited sales and referenced a big-box sales study. As previously noted, Miller's direct comparative analysis of leased fee sales is not persuasive or prudent. Allen's use of leased fee sales compared and contrasted to fee simple sales is more relevant and probing. Leased fee sales are relevant to this tax appeal matter but not in the manner in which Respondent arrived at a conclusion of value.

The extent and level of Petitioner's sales comparison approach is logical and reasonable. Sales 1, 3 and 6 are the most recent sales as of the relevant tax day. Sales 5, 7a and 7b are the most similar to the subject in gross building area. Sales 7a and 7b are also the most similar to the subject in acreage. While sale 9 is an outlier, this sale is relatively similar to the subject in population and traffic count. Sale 2 is an older sale located in Wisconsin but demonstrates the purchase of a former big box store by another big box retailer.⁸⁴ With the exception of sale 9, all of the sales are adjusted downward to the subject. Therefore, a reasoned and reconciled determination places weight at the upper range of the adjusted sale prices at \$22/SF (\$4,057,570 rounded to

⁸³ Specific analysis included market conditions, arterial attributes, demographic attributes, and submarket adjustments. Traffic count comparisons appear to be more persuasive and logical. On the other hand, Respondent's efforts to analyze "foot traffic" into Walmart stores in Bad Axe, Caro and Sandusky for retail sales merely proved the point that a big box store is constructed to enhance sales and not capture property value. Likewise, Respondent's appraiser's lengthy testimony about market share between Meijer, Walmart and Kroger stores conveyed the same point. Vol 1, 48-54. Regardless of what a retailer sells (diamonds, fertilizer, games), Respondent admitted that the value of the real property is not affected. Given Respondent's extensive focus on market share and retail sales, Miller did not recall if he referenced e-commerce competitors within his appraisal report. Vol 1, 129.

⁸⁴ Vol 3, 471.

\$4,060,000). Petitioner's acknowledgment and analysis for the contributory value of \$210,000 for the subject's excess land results in an overall market value of \$4,270,000 for the subject property.

In totality, Respondent's evidence is not more persuasive than Petitioner's development and analysis of the subject property. Innovation in valuation methodology at the expense of fundamental valuation processes is unacceptable. Said differently, a leased fee sale is not the equivalent of a fee simple sale especially given current established valuation publications and treatises. Respondent's focus on a non-existent lease for the subject does not override or negate the fundamental element of fee simple and market value.⁸⁵ Esoteric, philosophical musings detracted from the fact that the fee simple, owner-occupied commercial subject property is premised on value-in-exchange and not as value-in use.⁸⁶ Respondent's "broad flexibilities" in forging methodologies and an application between fee simple, leased fee and market value do not rise to the level of "significant responsibility" in this tax appeal manner.⁸⁷ In this regard, Respondent's actions are not a measure of credibility and reliability for its valuation disclosure (identified as an appraisal report). More specifically, Respondent's cost data, sales data and rental data for a non-existent lease for the subject's fee simple property rights do not meet "the expectations of parties" or "appraiser's peer's actions" in deriving

⁸⁵ Respondent's appraiser's overriding exclusive reliance on a non-existent lease appears to be advocating a position and is devoid of an impartial, objective and unbiased analysis. Overall, adversely and evasively answering questions while promoting the leased fee properties was telling. The witness strained the proceeding to the point of discreditation of his testimony.

⁸⁶ Vol 1, 45, 138-139, 147; Vol 3, 494, 514, 588; Vol 4, 658. Respondent's appraiser's pontifications and non-responsive answers were disruptive to the flow of the hearing and resulted in numerous reminders by the Tribunal.

⁸⁷ The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice* (Washington D.C., 2020-2021 edition), p 13. "Appraisers have broad flexibility and significant responsibility in determining the appropriate scope for an appraisal report or appraisal review assignment."

a conclusion of market value in this tax appeal matter.⁸⁸ Respondent's explanation for intended users of an appraisal report is without merit. Professional standards do not direct or mandate who the client or intended user is for a report. That responsibility falls to the appraiser and his/her scope of work.⁸⁹ Equally unpersuasive is Respondent's appraiser's explanation for his work routine. Miller admitted that most of his work is done at his desk.⁹⁰ Respondent's appraiser and appraisal report do not foster a sense of credibility and market knowledge (a.k.a. geographical competence) in the state of Michigan.⁹¹

JUDGMENT

IT IS ORDERED that the property's SEV and TV 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 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.

⁸⁸ *Id* at 14. "The scope of work is acceptable when it meets or exceeds: 1) the expectations of parties who are regularly intended users for similar assignments and 2) what appraiser's peers' actions would be in performing the same or similar assignment."

⁸⁹ Vol 3, 496.

⁹⁰ Vol 1, 23.

⁹¹ Miller's state of Michigan license #1201076041, as shown on his appraisal report's letter of transmittal, and appraiser's qualifications were issued on February 9, 2018. While the Tribunal is neither an enforcement agency nor a peer review organization, the appraisal report is not meaningful and is misleading to the point that it would walk itself to the Board of Real Estate Appraisers for the state of Michigan and the peer review committee for the Appraisal Institute.

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.⁹² 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.⁹³ 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.⁹⁴ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.⁹⁵ 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."⁹⁶ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.⁹⁷ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.⁹⁸

By 

Entered: September 27, 2021

⁹² See TTR 261 and 257.

⁹³ See TTR 217 and 267.

⁹⁴ See TTR 261 and 225.

⁹⁵ See TTR 261 and 257.

⁹⁶ See MCL 205.753 and MCR 7.204.

⁹⁷ See TTR 213.

⁹⁸ See TTR 217 and 267.