

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

Consumers Energy Company,  
Petitioner,

v

MTT Docket No. 15-001725

Port Sheldon Township,  
Respondent.

Tribunal Judge Presiding  
Steven H Lasher

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Consumers Energy Company, appeals ad valorem property tax assessments levied by Respondent, Port Sheldon Township, against Parcel No. 70-11-09-400-002 for the 2015 tax year. Steven P. Schneider, Attorney, represented Petitioner, and Bradley J. Fisher, Attorney, represented Respondent.

A hearing on this matter was held on February 8, 2017. Petitioner's sole witness was Lawrence G. Allen, MAI, Michigan Certified General Real Estate Appraiser. Respondent's sole witness was David M. Heinowski, MAI, Michigan Certified General Real Estate Appraiser.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash values ("TCV"), state equalized values ("SEV"), and taxable values ("TV") of the subject property for the 2015 tax year are as follows:

Parcel No.	Year	TCV	SEV	TV
70-11-09-400-002	2015	\$3,620,000	\$1,810,000	\$1,810,000

PETITIONER'S CONTENTIONS

Petitioner contends that the evidence presented in this case supports a determination that the true cash value of the subject property on the assessment rolls is overstated, that Respondent's contention of true cash value as evidenced by its appraisal would increase that overstatement of value and, therefore, the true cash value of the subject property for the tax year at issue should be substantially reduced. Specifically, Petitioner contends that: (i) the subject property is a collection of buildings, including four main buildings, located on a 153 acre parcel,

nine acres of which are not usable, to the north of the Port Sheldon JH Campbell coal-fired generating plant, (ii) the main buildings include a training facility, a distribution building, a major projects and construction building, and a maintenance building, which total 84,620 square feet, (iii) in addition to the four main buildings, there are several ancillary buildings, totaling 31,408 square feet, (iv) Mr. Allen applies all three approaches to value the subject main buildings, with no weight given to the cost less depreciation approach, and equal weight given to the sales comparison and income approaches, (v) the cost approach is applied to value the ancillary buildings, (vi) the sales comparison approach is applied to value the subject excess land, (vii) of the 153 total acres comprising the subject property, nine acres are subject to easements and 106 acres are determined to be “excess land,” (viii) Mr. Allen valued the land as industrial while Respondent’s appraiser valued the subject land as agricultural, which resulted in a much lower value for the subject land using Respondent’s valuation approach, (ix) Respondent’s appraiser failed to apply either the sales comparison approach or the income approach in determining the TCV of the subject property, (x) Respondent’s appraiser relied solely on the cost less depreciation approach, but failed to take into consideration any functional obsolescence or economic obsolescence, even though the number of buildings and inefficiencies of those buildings suggest that some functional or economic obsolescence adjustments are appropriate, (xi) Respondent’s appraiser erroneously determined the TCV of the training center to be \$4.95 million, although market information suggests a much lower TCV, and (xii) the true cash value of the subject property, based on Petitioner’s revised appraisal, is \$3.62 million for 2015.

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

**Parcel Number:** 70-11-09-400-002

Year	TCV	SEV	TV
2014	\$3,620,000	\$1,810,000	\$1,810,000

#### PETITIONER’S ADMITTED EXHIBITS

- P-1 Appraisal report prepared by Allen & Associates Appraisal, dated September 30, 2016.
- P-2 Revisions to appraisal report prepared by Allen & Associates Appraisal, dated January 24, 2017.
- P-3 Google Earth aerial photograph with identification of subject buildings.

- P-4 Google Earth aerial photograph of area surrounding subject property.
- P-5 Training Center Floor Plan.
- P-6 Water and Heat Summary for Ancillary Buildings.
- P-7 Broker Listing Information for Petitioner's sales comparables No. 1, 2, 4 and 5.
- P-8 Broker Listing Information and Photographs of Petitioner's rental comparables.
- P-9 Appraisal of subject property prepared by David Heinowski for Respondent.
- P-10 Comparison of Appraisals, building identification, size and depreciated cost.
- P-11 Excerpts from Dictionary of Real Estate, 5<sup>th</sup> and 6<sup>th</sup> editions.
- P-12 Petitioner's appraiser's revisions to Respondent's appraiser's cost calculations.

### PETITIONER'S WITNESSES

#### Lawrence G. Allen

Lawrence Allen, MAI, Michigan Certified Real Estate Appraiser, was admitted as Petitioner's valuation expert in this matter. Mr. Allen testified that: (i) he has previously valued numerous industrial properties in Western Michigan, (ii) the subject property is a collection of buildings located adjacent to a Consumers Energy coal-fired generation facility, many of which were constructed in 1977, (iii) the subject property is located on a 153 acre parcel, of which approximately nine acres is right-of-way, and approximately 106 acres are excess,<sup>1</sup> (iv) he determined the TCV of the subject property by determining separate values for (a) the main buildings, including the training center, distribution center, maintenance and major projects building, which he concludes are the most functional and desirable buildings, (b) ancillary buildings, including warehouses, guard house, salt storage building, and fabrication building, and (c) excess land, (v) the cost approach was not a reliable approach to value the main buildings, given the substantial functional and economic obsolescence associated with these buildings, (vi) both the sales comparison approach and the income approach were relevant and reliable methods to determine the value of the main buildings, (vii) the sales comparison approach was used to value the excess land, (viii) the cost less depreciation approach was used to value the ancillary buildings, (ix) the highest and best use of the subject property, as improved, is industrial, (x) Respondent's appraiser's valuation of each building separately using the cost less depreciation

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<sup>1</sup> Mr. Allen defines "excess land" as "land that can be sold and not affect the functional utility of the improvements of the main parcel." Transcript, p. 39.

approach does not account for the detrimental functionality of several buildings as opposed to a single building, (xi) he could not verify Respondent's appraiser's determination that the Marshall Valuation Service base square foot cost for a shell office building was \$171.43, which resulted in Respondent's appraiser determining a TCV for the training center of \$4.95 million, and (xii) he determined the base square foot cost for a shell office building to be \$108.80 using Marshall Valuation Service, and determined the base square foot cost for a shell engineering building to be \$102.68 using Marshall Valuation Service, resulting in depreciated costs of \$3.69 million and \$3.06 million for an office building and engineering building, respectively, before adjusting for any functional or economic obsolescence.

### RESPONDENT'S CONTENTIONS

Respondent contends that the true cash, assessed, and taxable values initially determined by Respondent for the 2015 tax year at issue should be increased, based on the submitted appraisal. Specifically, Respondent contends that: (i) the cost less depreciation approach to value is the appropriate method to be used in determining the TCV of the subject property, especially in view of the recent construction of the training center, and (ii) Petitioner's sales comparison and income approaches are flawed because Petitioner's appraiser (a) failed to limit his market analysis to the immediate area, (b) utilized comparable land sales much smaller in size than the subject property, (c) overstated the vacancy rate in applying the income approach, (d) used a capitalization rate higher than any of the published rates because of a perceived "risk" that is not supported, and (e) undervalued the training center by grouping it with older buildings in applying the cost less depreciation approach.

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

**Parcel Number:** 70-11-09-400-002

Year	TCV	SEV	TV
2015	\$7,500,000	\$3,750,000	\$2,455,683

### RESPONDENT'S ADMITTED EXHIBITS

R-1 Appraisal prepared by Heinowski Appraisal and Consulting, LLC, dated September 28, 2016.

R-2 MVS Life Expectancy and Depreciation Guidelines.

RESPONDENT'S WITNESSES

David Heinowski

David Heinowski, MAI, Michigan Certified Real Estate Appraiser was admitted as Respondent's appraisal expert. Mr. Heinowski testified that: (i) the highest and best use of the subject property as improved is industrial, in support of the adjacent power plant, (ii) he determined the TCV of the subject property using the cost less depreciation approach applied to each building separately, because all of the subject buildings are "custom build-to-suit buildings,"<sup>2</sup> (iii) he did not apply the sales comparison approach or the income approach to determine the TCV of the subject property because any potential comparable sold or rented properties were not located in the same market as the subject, (iv) in determining land value, he used agricultural land sales in Ottawa County as comparables because of their proximity to the subject and their size, (v) in valuing the training center using the cost approach, he applied the Marshall Valuation Service alternative method for office building, adjusted ten percent for physical depreciation, (vi) he did not further adjust depreciated cost values for functional obsolescence because "[t]he buildings were built to suit by the present user. So they're designed to fit – fulfill a specific need of that user and therefore they would not have a functional – I don't believe they would have a functional obsolescence measurement,"<sup>3</sup> (vii) he did not further adjust depreciated cost values for economic obsolescence because "[e]conomic obsolescence is from sources outside of the subject itself. And unless we went into entirely different markets, such as Kentwood, Cascade, Grand Rapids, Holland, where we're getting into so many other factors other than just the economic there's nothing to tell us or to indicate what economic was. So rather than fabricate it or say that this is my best guesstimate, I just left it as is,"<sup>4</sup> (viii) "physical deterioration – or, physical depreciation was adequate to cover both physical and functional obsolescence,"<sup>5</sup> and (ix) Petitioner's appraiser's grouping of certain of the subject buildings in applying the cost less depreciation approach is contrary to Marshall Valuation Service and disproportionately depreciates the training center constructed in 2013.

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<sup>2</sup> Transcript, p. 130.

<sup>3</sup> Transcript, p. 144, 145.

<sup>4</sup> Transcript, p. 145.

<sup>5</sup> Transcript, p. 167

### FINDINGS OF FACT

1. The subject property is located at 17000 Croswell Street, Port Sheldon Township, Ottawa County.
2. The subject property was assessed for the tax years at issue as follows:

**Parcel Number:** 70-11-09-400-002

Year	TCV	SEV	TV
2015	\$5,548,000	\$2,774,000	\$2,455,683

3. The subject property is zoned industrial.
4. The subject property's highest and best use, as improved, is industrial.
5. The subject property consists of several buildings with a total size of approximately 116,000 square feet,<sup>6</sup> located on a parcel of either 153 acres or 155.7 acres.<sup>7</sup>
6. Respondent's appraiser did not apply the sales comparison approach in valuing the subject property due to "the lack of reasonably relevant market data."<sup>8</sup>
7. Respondent's appraiser did not apply the income approach in valuing the subject property because "it is the methodology that relates the income-producing capability of a property to its market value is intertwined with the production cost of electricity."<sup>9</sup>
8. Respondent's appraiser utilized the cost less depreciation approach to determine the TCV of the subject property as of December 31, 2014.
9. Respondent's appraiser determined land value based on ten (10) sales of agricultural property, ranging in size from 73.18 acres to 141.25 acres, with sale dates ranging from May 16, 2013 to June 3, 2015, with adjustments for location and size, in concluding to a value per acre of \$6,808.
10. Respondent's appraiser determined the replacement cost of each of the subject buildings separately using the cost less depreciation approach, based on cost figures developed

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<sup>6</sup> Although the respective appraisers disagree regarding the number of buildings, with an adjustment of 1,120 square feet to Respondent's appraiser's calculation of the size of Warehouse M and N and an adjustment of 684 square feet for the guard house, which was constructed in 2015 and should not have been included in the valuation of the subject property for the 2015 tax year, they do agree that the total size of the various buildings is approximately 116,000 square feet.

<sup>7</sup> Petitioner's appraiser determined the site to be 153 acres, while Respondent's appraiser determined the site to be 155.7 acres.

<sup>8</sup> Respondent's Appraisal, p. 34.

<sup>9</sup> Respondent's Appraisal, p. 35.

from Marshall Valuation Service as of December 31, 2015 and then applied a comparative cost index to determine replacement costs as of December 31, 2014.

11. Respondent's appraiser determined physical depreciation, but did not conclude that any functional obsolescence or economic obsolescence was appropriate.
12. Petitioner's appraiser determined that four of the subject buildings were "main buildings" and applied all three approaches to value to determine the TCV of those buildings taken together as of December 31, 2014.
13. Petitioner's appraiser determined that the remaining buildings were ancillary buildings and applied only the cost less depreciation approach to determine the TCV of those buildings taken together.
14. Petitioner's appraiser determined that of the total 153.6 acres comprising the subject property, nine acres were non-usable because of railroad easements, three acres were allocated to the ancillary buildings, 35 acres were allocated to the "main buildings," and 106 acres were excess.
15. In applying the sales comparison approach to value the "main buildings," Petitioner's appraiser identified five sales of industrial buildings, with sale dates ranging from December 2012 to March 2015, ranging in size from 23,523 square feet to 138,700 square feet, ranging in land size from four acres to 16 acres, with unadjusted sale prices ranging from \$18.78 per square foot to \$69.08 per square foot.
16. In applying the sales comparison approach to value the "main buildings," Petitioner's appraiser adjusted the comparable sales for market conditions, size, ceiling height, percent finished space, functional utility, and age and condition, concluding to an adjusted value of \$25 per square foot, or a TCV of \$2,115,475.
17. In applying the income approach to value the "main buildings," Petitioner's appraiser identified eight comparable leases based on location, physical attributes, and general similarity to the subject property, with lease rates ranging from \$2.52 per square foot to \$6.97 per square foot, concluding to a lease rate of \$4 per square foot.
18. In applying the income approach to value the "main buildings," Petitioner's appraiser determined reimbursement income for CAM, insurance and property taxes, a vacancy rate of 20%, CAM expenses of \$0.50 per square foot, insurance cost of \$0.15 per square

foot, management fees of 3% of adjusted gross income, and a reserve for replacement of \$0.20 per square foot.

19. In applying the income approach to value the “main buildings,” Petitioner’s appraiser determined a capitalization rate of 10% based on information from Costar Property, a band of investment analysis, and investor survey information.
20. Petitioner’s appraiser determined the TCV of the “main buildings” to be \$2,129,547 (net of leasing commissions) using the income approach to value.
21. Although Petitioner’s appraiser did not rely on the cost less depreciation method to value the “main buildings,” he did prepare a cost approach that utilized Marshall Valuation Service for industrial, engineering (R & D) building, depreciating the replacement cost new by 13.3% for physical depreciation, and then calculating functional and external obsolescence by estimating the income loss that is caused by the obsolescence, which was calculated to be \$2.885 million, resulting in a TCV for the “main buildings” of 1,789,365.
22. In valuing the “excess land,” Petitioner’s appraiser identified five sales of industrial property, ranging in size from 9.5 acres to 68.4 acres, with sales dates ranging from May 2010 to March 2015, and ranging in per acre prices from \$15,615 to \$25,615.
23. Petitioner’s appraiser adjusted the comparable land sales for market conditions, size and location, concluding to a per acre value of \$13,000 for the “excess land.”
24. Petitioner’s appraiser applied the cost less depreciation approach to value the “ancillary buildings” using Marshall Valuation Service for Low Cost Class S Storage Buildings, as adjusted, with 85.7% physical depreciation, and 40% obsolescence.
25. Petitioner’s appraiser relied on the sales comparison approach (\$3,620,000) and the income approach (\$3,630,000) in concluding to a TCV of \$3,620,000 for the subject property as of December 31, 2014.

### CONCLUSIONS OF LAW

Pursuant to Section 3 of Article IX of the State Constitution, the assessment of real property in Michigan must not exceed 50% of its true cash value.<sup>10</sup> The Michigan Legislature

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<sup>10</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

has defined “true cash value” to mean:

[T]he 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>11</sup>

“True cash value is synonymous with fair market value.”<sup>12</sup> The Tribunal is charged with finding a property’s true cash value to determine its lawful assessment.<sup>13</sup> Determination of the lawful assessment will, in turn, facilitate calculation of the property’s taxable value as provided by MCL 211.27a. A proceeding before the Tax Tribunal is original, independent, and de novo.<sup>14</sup> The Tribunal’s factual findings must be supported “by competent, material, and substantial evidence.”<sup>15</sup> “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”<sup>16</sup>

“The petitioner has the burden of proof in establishing the true cash value of the property.”<sup>17</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 going forward with the evidence, which may shift to the opposing party.”<sup>18</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>19</sup>

The Tribunal is not bound to accept either of the parties’ theories of valuation.<sup>20</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>21</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

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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 . . . .” Const 1963, art 9, sec 3.

<sup>11</sup> MCL 211.27(1).

<sup>12</sup> *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 353; 483 NW2d 416, 419 (1992).

<sup>13</sup> *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

<sup>14</sup> MCL 205.735a(2).

<sup>15</sup> *Dow Chemical Co v Dep’t of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

<sup>16</sup> *Jones & Laughlin*, 193 Mich App at 352-353.

<sup>17</sup> MCL 205.737(3).

<sup>18</sup> *Jones & Laughlin*, 193 Mich App at 354-355.

<sup>19</sup> MCL 205.737(3).

<sup>20</sup> *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

<sup>21</sup> *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

of both in arriving at its determination.”<sup>22</sup> “Regardless of the valuation approach employed, the final value determination must represent the usual price for which the subject property would sell.”<sup>23</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>24</sup> “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”<sup>25</sup>

Typically, in deciding a valuation appeal, the Tribunal is presented with appraisals that generally agree with respect to the valuation method to apply, but disagree regarding the weight to be given to a specific approach, or how to determine the critical variables, such as identification of comparable sales, market adjustments, rent rate, capitalization rate, etc. In this case, however, the Tribunal is faced with appraisals prepared by appraisers experienced at the Tribunal, who offer valuation analyses so completely different that the Tribunal is left with no discernible means by which to compare or contrast them. Instead, the Tribunal must decide whether Respondent’s reliance solely on a cost less depreciation replacement cost approach applied to each of the subject buildings separately, without any effort made to even attempt a sales comparison approach or an income approach, is appropriate; or, whether Petitioner’s bifurcation of the subject property into three distinct valuation groups (“main buildings,” “ancillary buildings,” and “excess land”) and then application of one or more of the three approaches to value to each valuation group, is appropriate. After a thorough review of the valuation evidence presented in this case, the Tribunal finds that Petitioner’s approach and methodology in determining the TCV of the subject property for the 2015 tax year is more credible and more adequately supported.

#### Highest and Best Use

“Whenever a market value opinion is developed, highest and best use analysis is necessary. Through highest and best use analysis, the appraiser interprets the market forces that affect the subject property and identifies the use or uses on which the final opinion of value is based.”<sup>26</sup> Here, Petitioner’s appraiser determined the highest and best use of the subject

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<sup>22</sup> *Jones & Laughlin*, 193 Mich App at 356.

<sup>23</sup> *Meadowlanes*, 437 Mich at 485.

<sup>24</sup> *Id.*

<sup>25</sup> *Jones & Laughlin*, 193 Mich App at 353.

<sup>26</sup> *The Appraisal of Real Estate*, Appraisal Institute 14<sup>th</sup> ed. 2013) at 42

property, as vacant, to be “build-to-suit industrial development,”<sup>27</sup> and determined the highest and best use of the subject property, as improved, to be industrial or industrial development. Respondent’s appraiser concluded that the highest and best use of the subject property, as vacant, was to “hold for future development as an industrial complex used to support the neighboring power plant,”<sup>28</sup> and as improved, “continued use as support industrial buildings for the adjoining power plant.”<sup>29</sup> For reasons discussed in further detail below, the Tribunal concurs with Petitioner’s appraiser and concludes that the highest and best use of the subject property, as vacant, is future industrial development, and as improved, is industrial.

#### Respondent’s Single Approach to Determine TCV

Respondent solely relied on the cost approach to determine the TCV of the subject property for the 2015 tax year, dismissing the sales comparison approach “due to the lack of reasonably relevant market data,”<sup>30</sup> and the income approach because it “relates the income-producing capability of a property to its market value is (sic) intertwined with the production cost of electricity.”<sup>31</sup> Explaining further, Mr. Heinowski testified that he did not apply either the cost or income approach to value the subject property because “without going out of – into an entirely different market, and same with the availability of buildings being rented, they just weren’t there.”<sup>32</sup> The Tribunal finds that the cost approach is not the most appropriate method to use in determining the subject property’s TCV. The Appraisal Institute cautions appraisers that the cost approach is less likely to yield a reliable value conclusion from an investment perspective, and is subject to difficulty in estimating physical depreciation, functional obsolescence and external obsolescence, and in determining land values.<sup>33</sup> It is with respect to these cautionary observations that the Tribunal finds that Respondent’s cost approach simply fails to accurately determine the TCV of the subject property.

Even though Respondent’s appraiser acknowledges that the subject land is zoned industrial, and concludes that its highest and best use is industrial, he determines land value by relying on ten sales of vacant agricultural properties. This approach is problematic for several

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<sup>27</sup> *Appraisal Report, Allen & Associates*, p. 54.

<sup>28</sup> *Appraisal of Real Property Interest, Heinowski Appraisal and Consulting, LLC*, p. 29

<sup>29</sup> *Appraisal of Real Property Interest, Heinowski Appraisal and Consulting, LLC*, p. 32

<sup>30</sup> *Appraisal of Real Property Interest, Heinowski Appraisal and Consulting, LLC*, p. 34

<sup>31</sup> *Heinowski appraisal*, p. 35

<sup>32</sup> Transcript, p. 129; see also Transcript, p. 170.

<sup>33</sup> *The Appraisal of Real Estate*, Appraisal Institute 14<sup>th</sup> ed, 2013) at 566 -568.

reasons. First, it fails to recognize the excess land, i.e., “land that can be sold and not affect the functional utility of the improvements of the main parcel.”<sup>34</sup> Second, Petitioner’s appraiser testified that agricultural sales in the area of the subject property were significantly below typical industrial value, and acknowledging the selection of these comparables based primarily on location and size, Respondent’s appraiser fails to appropriately adjust for the difference between the per acre value of agricultural and industrial land.<sup>35</sup> Most importantly, however, Respondent’s appraiser assumes that anyone purchasing agricultural land in the proximity of the nearby power plant would apply for a zoning change and that change would be granted. As noted by the Michigan Court of Appeals, “the fact that variances *may* be granted does not equate to a finding that such a variance must be or likely will be granted upon request.”<sup>36</sup> And the Tribunal finds here, as it did in that case, that the subject property must be valued in accordance with its highest and best use and what is permitted under current zoning.<sup>37</sup>

For this same reason, Respondent’s valuation of the training center is erroneous. Respondent’s appraiser valued this structure as an office building rather than an industrial R&D engineering building, despite zoning and his own acknowledgement that the majority of the space is not office space. Even assuming that this approach is acceptable, Petitioner’s appraiser testified that he found no support for Respondent’s \$171.43 base square foot cost in the Marshall Valuation Service (“MVS”) database. According to his research, an average Class C shell office building has a cost of \$59.06 per square foot. Petitioner’s appraiser “ran the math through as an office building with the appropriate multipliers and current local HVAC, light multipliers as an office building and—including interior finish, which wasn’t included in the appraisal—that was just a shell building—and that came about to about \$4.1 million.”<sup>38</sup> Depreciating the structure in the same manner as Respondent’s appraiser resulted in a true cash value of \$3,690,000, thereby demonstrating that Respondent’s valuation for this building is overstated by more than \$1,260,000. Even a Class C engineering (R&D) building has a base cost of only \$102.68 per square foot, and an even lower true cash value of \$3,060,000 when all factors are considered and

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<sup>34</sup> Transcript, p. 39.

<sup>35</sup> Transcript, p. 108.

<sup>36</sup> *MS Brighton LLC v City of Brighton*, unpublished opinion per curiam of the Court of Appeals, issued April 21, 2015 (Docket No. 319909).

<sup>37</sup> *MS Brighton LLC v City of Brighton*, 24 MTTR 349 (issued Dec. 23, 2013, Docket No. 345507).

<sup>38</sup> Transcript p. 180.

accounted for. Based on this approach, Respondent's valuation for the training center alone is overstated by \$1,890,000 *before* any obsolescence considerations.

With respect to obsolescence, Petitioner's appraiser testified that the subject property is impacted by external obsolescence due to its remote location, as this creates less demand and makes it more difficult to find a tenant or buyer. Petitioner's appraiser also testified that there is significant functional obsolescence due to the multi-building layout and design, which results in increased maintenance costs, as well as the features of the individual buildings, such as the minimal dock loading on the distribution building, the long and narrow shape of the distribution building, the cut-up nature of the training center, the layout of the MP&C building, which is basically uninsulated breezeways going through prefab office units, and the lack of plumbing and heat in the majority of the ancillary buildings. Petitioner's appraiser testified that a single building with the indicated square footage is much more desirable than having the same square footage spread among several buildings. Additionally, the ancillary buildings, which were built for the specific purpose of housing contractors' equipment during construction of the power plant in 1977, would today be replaced with trailers and temporary structures. Consequently, neither Petitioner nor a prospective purchaser would duplicate the subject site as it stands. Respondent's appraiser acknowledged as much, noting that there is a lack of demand for industrial space other than that servicing the power plant, and that the subject buildings have below average functional adequacy due to land size and the number of structures. Respondent's appraiser also acknowledged that failure to account for obsolescence, both functional and external, results in an overstated value. Yet he premised his valuation on an assumption that a purchaser would value the property by replacing every single building in the exact same footprint, and made no adjustments for external or functional obsolescence.

Respondent's appraiser testified that there was insufficient data to measure external obsolescence, but this contention is without merit given that the lack of data is a result of the appraiser's self-imposed limitations. Respondent's appraiser also testified an adjustment for functional obsolescence wasn't necessary because the buildings were built-to-suit and designed to fulfill a specific need. This argument fails, however, as does his contention that any such obsolescence is accounted for by the physical depreciation adjustment. With respect to the latter, Respondent's appraiser acknowledged that MVS does not indicate that physical depreciation factors also account for obsolescence, and he provided no persuasive evidence to the contrary.

As for the build-to-suit claim, this line of reasoning succeeds only under the premise of value-in-use, i.e., “the value a specific property has for a specific use.”<sup>39</sup> The Michigan Supreme Court has held that “the constitution and the General Property Tax Act require that property tax assessments be based on market value, not value to the owner . . . .”<sup>40</sup> The only exception to this rule is if the highest and best use of the property is its current use, and no market exists for that use.<sup>41</sup> In such circumstances, “valuation can be determined strictly on a hypothetical basis, with the hypothetical buyer looking at the costs of building a new facility to determine the usual price of an existing facility even if a real buyer would not consider building such a facility.”<sup>42</sup> This does not mean, however, “that a hypothetical buyer must be presumed to have considered building an industrial facility as an alternative to purchasing an existing one when no such facility would be built *and* that hypothetical buyer has the ability to see what is occurring in the marketplace of existing facilities.”<sup>43</sup> Rather, “adequate market data and obsolescence are exceptions to this rule.”<sup>44</sup> Here, it has been established that the subject property is impacted by more than one form of obsolescence, and that an adequate market exists.

#### Petitioner’s Bifurcated Approach to Determine TCV

Petitioner relied on multiple approaches to value to determine the TCV of the subject property for the 2015 tax year. Petitioner’s appraiser separated the property into three distinct groups and utilized the sales comparison and income approaches to value the main buildings, the cost approach to value the ancillary buildings, and the sales comparison approach to value the excess land. Petitioner’s appraiser also prepared a cost approach for the main buildings, but did not rely on it in his final conclusions of value. Though unusual, the Tribunal finds this approach to valuation appropriate given the nature of the subject property and accepted appraisal practices and procedures. In that regard, the subject property consist of approximately 153 acres, most of which are “not needed to serve or support the existing use.”<sup>45</sup> Pursuant to the Appraisal Institute, “excess land has the potential to be sold separately and must be valued separately.”<sup>46</sup> The four main buildings were deemed functional industrial buildings with minimal obsolescence, and “the

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<sup>39</sup> Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14<sup>th</sup> ed, 2013), p 62.

<sup>40</sup> *First Fed Sav & Loan Ass’n of Flint v City of Flint*, 415 Mich 702, 703; 329 NW2d 755, 756 (1982).

<sup>41</sup> *Clark Equip Co v Leoni Twp, Jackson Cty*, 113 Mich App 778; 318 NW2d 586 (1982).

<sup>42</sup> *Great Lakes Div of Nat Steel Corp v City of Ecorse*, 227 Mich App 379, 403; 576 NW2d 667, 678 (1998).

<sup>43</sup> *Great Lakes*, 227 Mich App at 403.

<sup>44</sup> *Id.*

<sup>45</sup> Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14<sup>th</sup> ed, 2013), p 200.

<sup>46</sup> Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14<sup>th</sup> ed, 2013), p 200.

sales comparison approach is applicable to most types of real property interests when there are sufficient recent, reliable transactions to indicate value patterns or trends in the market.”<sup>47</sup>

Further, “any property that has the potential to generate income can be valued using the income capitalization approach.”<sup>48</sup> In contrast, the ancillary buildings were deemed to be older, obsolete facilities with limited useful lives remaining, and the cost approach, “is particularly important when a lack of market activity limits the usefulness of the sales comparison approach and when the property to be appraised . . . is not amenable to valuation by the income capitalization approach.”<sup>49</sup>

#### TCV of Main Buildings—Sales Comparison Approach

In applying the sales comparison approach, Petitioner’s appraiser identified and examined the sales of five properties located within the subject’s CSA. The individual attributes of each sale were analyzed and compared to the subject, and adjustments were made to account for differences between the properties. With respect to location, Petitioner’s appraiser testified that in general, the comparables are located in areas where there is greater demand for industrial properties, and all had better visibility and easier access to services. Adjustments for this element of comparison ranged between 15% and 20%. Comparables 2 and 3 had superior ceiling heights and were adjusted accordingly, while the subject had a superior percentage of finished space to all but Comparable 5. The functional utility adjustment considered all aspects of functionality, including the multi-building layout, the more limited utility of the distribution building, and the MP&C office space. Respondent noted that the largest comparable is just shy of 16 acres, while the subject is almost ten times that size. This discrepancy is accounted for in the valuation of the excess land, however, and the Tribunal is satisfied that the properties are sufficiently similar to properly be considered comparable to the subject. Further, the adjustments are reasonable and supported overall, as is the appraiser’s concluded price per square foot.

#### TCV of Main Buildings—Income Approach

In applying the income approach, Petitioner’s appraiser examined eight lease comparables to determine appropriate rental rates for the main buildings. All but one are located in the Grand Rapids area, and Comparable 6 consists of 100% office space. Respondent disputed the relevance of the latter, asserting a different highest and best use. Respondent also

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<sup>47</sup> *Id.* at 380.

<sup>48</sup> *Id.* at 441.

<sup>49</sup> *Id.* at 566.

noted that removal of this comparable from the analysis, along with Comparable 7 would increase the average lease rate. Petitioner's appraiser testified, however, that while the property was finished out for office space and does have a different use, it is an industrial building located in an industrial park. Further, the rental rate for the most recent lease is just over the concluded rate at \$4.37 per SF. This lease, identified as Comparable 5, was entered into in April 2015, and is closest in time to the relevant valuation date.

As with the sales comparables, Petitioner's lease comparables are located in more accessible, visible areas, and are generally more functional than the subject. The properties were adjusted for these, as well as other relevant elements of comparison. Petitioner's appraiser then reviewed local market data to determine appropriate vacancy and credit loss factors. He testified that there was only 3% to 4% vacancy on industrial properties in Ottawa County, but considering the location of the subject and difficulty in finding tenants and bringing them to the site, as well as the multi-building aspect, which makes it more difficult to keep it 100% occupied, he concluded to 20% credit and vacancy loss. Respondent disputed this factor, noting that it was more than two times the highest rate indicated for the comparables. Respondent also disputed the indicated cap rate, given Mr. Allen's acknowledgement that cap rates were decreasing during the survey period. The Tribunal finds merit in Respondent's arguments, but also finds that Petitioner's estimates are supported given the noted obsolescence. With respect to the cap rate, Petitioner's appraiser concluded to 10%, "which was a little above the average, but represents the higher risk of this location and less demand for this location." He explained: "Going down the ladder there's more risk in Michigan perceived by the investment market and cap rates are higher in Michigan than they are nationally. And then if you go into smaller markets, there's usually a higher risk, higher cap rates, and if you go to more remote locations, smaller markets generally have higher cap rates."<sup>50</sup> In this regard,

The anticipation of receiving future benefits creates value, but the possibility of not receiving or losing future benefits reduces value and creates risk. Higher rewards are required in return for accepting higher risk. To a real estate investor, risk is the chance of incurring a financial loss and the uncertainty of realizing projected future benefits. Most investors try to avoid excessive risk. They prefer certainty to uncertainty and expect a reward for taking a risk. Appraisers must recognize investors' attitudes in analyzing market evidence, projecting future benefits, and applying capitalization procedures. The appraiser must be satisfied

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<sup>50</sup> Transcript, p. 92.

that the income rate or yield rate used in capitalization is consistent with the market evidence and reflects the level of risk associated with receiving the anticipated benefits.<sup>51</sup>

Even if Petitioner's vacancy and cap rate estimates were not supported, the appraiser's concluded value determination is more than supported by his sales comparison analysis. And given that the market approach is the only appraisal method that directly reflects the balance of supply and demand for property in marketplace trading,<sup>52</sup> the Tribunal finds that it is the most reliable indicator of the true cash value of the subject main buildings.

#### TCV of Main Buildings—Cost Approach

In applying the cost approach, Petitioner's appraiser utilized replacement costs (as opposed to reproduction costs). Hard costs included an 84,619 SF Class C/S Industrial Engineering (R&D) building and site improvements. Petitioner's appraiser also included a 5% construction management fee as part of the soft costs necessary to complete development of the subject site. The property was depreciated using an age-life method with an effective age of 20 years for the four-building complex and a 45-year life, and obsolescence was calculated by estimating the corresponding income loss. Noting that the training center, which is two years old and identified as being good quality, comprises approximately one-third of the total square footage, Respondent disputed the lumping of this building in with the others and Petitioner's use of a cost estimate for an "average" building. Consolidation of the buildings accounts for some of the functional obsolescence, however, and Petitioner's appraiser testified that in combining the buildings, he came up with a number that he believed reflects their total age. He further testified that if the square footage of the training center was pulled from the calculation, the total MVS cost estimate per square foot would go down significantly: "Well, because the remaining buildings, for instance, the distribution building has hardly any office space. It wouldn't be—it isn't an engineering building, R&D building, it would be a warehouse distribution building, which is a lot lower cost. The maintenance building on its own is not an R&D building, it's just a small steel industrial building. And the MP—MP&C building are low cost office space, so you put those together and it would be a lower cost than a Class CS research and development building, as it is with the training center as part of it."<sup>53</sup> More importantly, Petitioner's appraiser

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<sup>51</sup> *Appraisal Institute: The Appraisal of Real Estate* (Chicago, Appraisal Institute, 14<sup>th</sup> ed, 2013), p. 458-459

<sup>52</sup> *Antisdale v City of Galesburg*, 420 Mich 265, 277, 362 NW2d 632, 637 (1984).

<sup>53</sup> Transcript, p. 125.

did not give any weight to the cost approach in his final conclusion of value due to the functional and external obsolescence.

#### TCV of Ancillary Buildings

As with the main buildings, Petitioner's appraiser utilized replacement costs (as opposed to reproduction costs). Hard costs included a 31,408 SF Class S storage building. The property was depreciated using an age-life method with an effective age of 30 years and a 35-year life, and obsolescence was again calculated by estimating the corresponding income loss. And as with the main buildings, Respondent disputed Petitioner's treatment of the buildings as a single unit, despite the complete mishmash of various amenities in each one. Again, however, this approach accounts for some of the obsolescence. Further, Petitioner's appraisal indicates that the buildings, which are utilized for storage, maintenance, and/or repairs, primarily consist of steel-sided buildings, generally with no finished space or restrooms. Three do have overhead space heaters and two have plumbing, but all were in below average condition as of the date of inspection and date of value. All are also indicated as having limited utility and appeal in the market. Indeed, Petitioner's appraiser also testified that it is likely that a typical buyer would demolish the ancillary buildings rather than use them.

#### TCV of Excess Land

Petitioner's appraiser identified and examined the sales of five properties located within the subject's CSA. As with the main building comparables, all are located in areas where there is greater demand for industrial properties, and all had better visibility and easier access to services. Though all of the comparables are substantially smaller than the subject, and four of the five sold more than one year prior to the relevant valuation date, Petitioner's appraiser adjusted for these and all other relevant elements of comparison. The Tribunal is satisfied that the properties are sufficiently similar to the subject to properly be considered comparable, and the adjustments are reasonable and supported overall, as is the appraiser's concluded price per square foot. In that regard, Comparables 1 and 5 are most similar to the subject in terms of size, and also required the least amount of adjustments. Comparable 1 is also most similar in terms of rurality. Petitioner's appraiser concluded to a value below the adjusted average and nearer to the low end of the indicated range due to the limited demand for industrial land in rural areas, as compared to more densely developed industrial neighborhoods with better highway access.

## JUDGMENT

Based upon the Findings of Fact and Conclusions of Law set forth herein, the Tribunal finds that the sales comparison approach, as set forth by Petitioner's appraiser, provides the best evidence of true cash value for the tax year at issue in this appeal and the subject property is assessed in excess of 50% of its true cash value. Therefore,

IT IS ORDERED that the property's state equalized and taxable values for the tax year 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.

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

This Final Opinion and Judgment resolves 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>54</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>55</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>56</sup> Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.<sup>57</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>58</sup> A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.<sup>59</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>60</sup>

By Steven H. Lasher

Entered: April 14, 2017  
ejg

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<sup>54</sup> See TTR 261 and 257.

<sup>55</sup> See TTR 217 and 267.

<sup>56</sup> See TTR 261 and 225.

<sup>57</sup> See TTR 261 and 257.

<sup>58</sup> See MCL 205.753 and MCR 7.204.

<sup>59</sup> See TTR 213.

<sup>60</sup> See TTR 217 and 267.