



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

Emmar Holdings LLC,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MAHS Docket No. 17-001064

Redford Township,
Respondent.

Presiding Judge
David B. Marmon

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Emmar Holdings LLC, appeals ad valorem property tax assessments levied by Respondent, Redford Township, against Parcel No. 79-002-99-0005-000 for the 2017 tax year. Jason Conti, attorney, represented Petitioner, and Laura Hallahan, attorney, represented Respondent.

A hearing on this matter was held on September 18 and 19, 2018. Petitioner’s witnesses were its principal, Jason Curis, and Donald Treadwell, Jr., appraiser. Respondent’s sole witness was Jere Neill.

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 2017 tax year is as follows:

Parcel No.	Year	TCV	SEV	TV
79-002-99-0005-000	2017	\$3,425,000	\$1,712,500	\$1,712,500

PETITIONER'S CONTENTIONS

Petitioner contends that the appraisal prepared by Donald Treadwell, indicating a true cash value of \$2,530,000 (rounded) is the correct true cash value for tax year 2017. Consistent with this appraisal, the SEV and TV should be \$1,265,000. Using the income approach, Treadwell concluded to a value of \$3,425,000 prior to a deduction for curable deferred maintenance of \$900,000.

PETITIONER'S ADMITTED EXHIBITS

- P-1 Treadwell and Associates Inc Appraisal
- P-3 Co-star page from work file for sales comparable 5 for mid-size rental rates.
- P-4 October 26, 2017 email from Conti to Aaron Powers with rent roll dated 10/1/2017 and Agreement of purchase and sale dated December 13, 2016.
- P-5 Data sheet on Cherry Hill Shopping Center sale
- P-6 Data sheet on sale of 4-Star Retail Supermarket

PETITIONER'S WITNESSES

Jason Curis

Jason Curis, Petitioner's principal, was Petitioner's first witness. Curis testified regarding his purchase of the property, and his decision to improve the façade of the buildings. He testified that he owns and operates approximately 40 shopping centers, and has owned over 60 in his career.¹ Curis described the shopping center as old, having been previously owned by the same owner for almost 50 years, without ever

¹ T1 at 11.

having had money put into it.² As to tenant mix, Curis testified regarding the desirability of having a grocery store as an anchor to help with foot traffic.³

Curis next testified as to his purchase of the subject. He testified that while the reported price was \$4 Million, the real purchase price was slightly more than \$3.6 Million.⁴ He explained the difference, noting that an affiliated broker was paid a \$200,000 commission, and that he also received an over-funded escrow account at closing.⁵

Curis testified regarding certain assumptions made in arriving at the purchase price, stating:

After I inspected the property in December the assumption was made that all of the tenants that were there were going to remain and stay. Specifically two of them, which had rollover leases in the beginning of 2017, which were the grocery store, called Wow, and the bridal store.⁶

Curis agreed with counsel that he would not have paid \$3.6 Million for the subject if those two tenants had told him they were not going to renew their leases. Curis stated:

The value to me was the tenants that were there. Without the tenants that were there that told me they were going to stay and moved out, I had to update and upgrade the shopping center, which I wasn't planning on. So if I was going to do that going in, I would have had paid \$2.5 million and then upgraded the shopping center.⁷

² T1 at 12.

³ T1 at 13-14.

⁴ T1 at 14.

⁵ T1 at 14.

⁶ T1 at 15.

⁷ T1 at 22.

He also conceded that he knew at some point he would have to refresh and update the center, as it was 50 years old.⁸

After closing on the subject and after the two tenants left, others followed. This convinced Curis that he had to renovate the property in order to stop the free fall. He changed the center's façade and spent \$900,000 for those renovations. Curis denied that he intended to change the façade when he purchased the subject.⁹

On cross examination, Curis testified that the transaction closed in April of 2017, and the grocery store vacated between April and May of 2017, and the bridal store vacated in late May of 2017.¹⁰ Curis admitted that the grocery store was not open every day during the due diligence period, but that did not raise red flags because that tenant had pulled building permits.¹¹ Curis also testified that he received a mortgage to purchase the subject in the amount of \$3,385,500.¹²

Donald Treadwell, Jr

Donald Treadwell, appraiser, testified regarding his credentials and methodology in preparing his appraisal. He testified to 47 years of appraisal experience, his MAI designation and his status as a licensed appraiser in Michigan. He was qualified as an expert in valuing real property, including retail shopping center properties.¹³ Treadwell

⁸ T1 at 17.

⁹ T1 at 21-22.

¹⁰ T1 at 28. Per Exhibit R-7, Wow Grocery moved out May 22, 2017, while Kims G & J Bridal store moved out June 12, 2017.

¹¹ T1 at 30-31.

¹² T1 at 43. See also Exhibit R-3.

¹³ T 53-55.

testified that he appraised the subject as a fee simple, which required him to use market rents under the income approach rather than actual contract rents.¹⁴

Treadwell described the area, the neighborhood, and the subject property. The subject fronts both Grand River and Seven Mile Rd and has three buildings. Building A is 23,006 square feet, probably built in the 1960's. The space in this building is divided into 7 units.¹⁵ The main building, Building B, has 129,821 square feet on the first floor with 15 rentable units, in average condition, plus second floor space of 46,054 square feet, mainly for storage, but some are leased month-to-month. That space is divided into 64-66 spaces. There is also 13,962 square feet of mezzanine space. Building B was built in 1958. Treadwell described Building B in overall below average condition because of the condition of the roof, sidewalk and general age of the façade.¹⁶ Building C is 4,180 square feet gross, believed to have been built in the 1980's. The building has two rentable units. One is designed as a quick oil change, the other for general automobile service.¹⁷

Treadwell also discussed the situation with the grocery store and bridal shop tenants. He stated:

The problem with the subject was you had two tenants that were, A, local businesses, and, B, had indicated, if I understood Mr. Curis correctly, that actually the grocery store had some days off, if you will, during their business.

So in looking at it you would have been very concerned how long they're going to really be there and take into account the risk. So basically you have a difference between a leased fee and a fee simple at market rents.¹⁸

¹⁴ T1 at 60.

¹⁵ T1 at 65-66.

¹⁶ T1 at 66-68.

¹⁷ T1 at 68.

¹⁸ T1 at 82.

Treadwell concluded that the highest and best use as improved is “[c]ontinued use [as] a multiple tenant shopping center with commercial service, office and retail tenants on the first floor.”¹⁹ While considering all three methods of valuation, he used the income approach and direct sales comparison approach. He did not use the cost approach because typical market participants would not consider it useful, and because the property has substantial depreciation.²⁰ In the end, he relied completely on the income approach because purchasers acquire such properties to obtain net income from rental of the property.²¹

Treadwell testified regarding his sales comparable approach and gave details about his sales comparables and adjustments. He testified that he gave greatest weight to building comparables 1 and 5. He explained:

Well, one had significant vacancies; i.e., represented a significant investor risk, which in my opinion the subject property does. Building comparable five was an interesting example because you had as your major tenant a supermarket whose lease expired. They're on a month-to-month basis. And they refused to negotiate a longer term lease, or new lease, I should say, until the property sold. They weren't real friendly with their prior landlord, if you will.

So the investor buying that center not only had a -- you know, a significant number of vacancies plus the deferred maintenance and the leaky roof, they didn't know really till after the sale closed whether or not they were going to have that supermarket as their tenant. But made even more interesting was the hardware store had a clause that their rent would be reduced if the supermarket space went dark.

So basically that sale kind of demonstrates how investors react to risks where they know there's risk going to be there, which on December 31, 2016 was really the situation with the subject property. Now, there was an effort to try to develop what the leased fee was based on oral discussions

¹⁹ T1 at 87.

²⁰ T1 at 87

²¹ T1 at 88.

with some of the tenants and a prospect of a future tenant, but you really didn't know. So I'm looking at the fee simple interest at market rents. I think you have to look at the -- at the risk that these tenants are going to move, which, in fact, they ended up doing. And furthermore, you have to look at the risk that you might have to do something dramatic to the center, such as the \$900,000 renovation, to make the center viable and attract new tenants and retain your existing tenants.²²

Treadwell concluded to a value of \$15.00 per square foot via this approach, or \$2,400,000.²³

Treadwell next described his income capitalization approach. He testified that he looked at the property's occupancy and concluded to a vacancy rate of 20%, not including collection loss. He based this conclusion in part on having only two national tenants, taking up 10% of rentable space, which he considered low.²⁴

On cross-examination, Treadwell further elaborated on his conclusion regarding vacancy:

My review of the space in terms of its demographics, which, as I mentioned before, was an area within the three-mile radius with a population that was declining and expected to continue to decline. You had approximately 25 percent of the households were making 25,000 or less, based on the Site To Do Business demographics, which put the median income was approximately \$40,000. So again, it's lower middle, middle income, with a significant poverty factor. And so as a result, you had less buying power in that neighborhood than you would in many of the other suburban locations. And as a consequence you had more trouble getting tenants.²⁵

Treadwell also testified regarding his choice of comparables, where he determined several categories of leases based on unit size, as well as rental rates for

²² T1 at 108-109.

²³ T1 at 109.

²⁴ T1 at 111.

²⁵ T2 at 13.

the quick oil change/auto center building. He used large unit rents for spaces larger than 19,000 square feet. For this category, he concluded to a large space rent of \$5.40 per square foot and applied this rate to the furniture store space at the subject.²⁶

Treadwell's next category was mid-size spaces, 4,000 – 16,000 square feet. He found six comparables, adjusted them, and concluded to a range of rents, with the indicated rent at \$6.98 per square foot. When applying this rate, he gave a large premium to the ACO Hardware space, as is much more visible from the roads, and it has outdoor storage.²⁷

For small rental comparables, Treadwell looked for rental units from 1,200 to 2,600 square feet. For these spaces, he concluded to range of rents from \$7.00 to \$11.00 per square foot, with the higher rents going to smaller spaces, or spaces with a higher level of finish.²⁸

In determining rents for the oil change/auto service building, Treadwell looked at restaurant rentals, "which reflect the premium paid for special features." He concluded that the quick oil change area would rent for \$22 per square foot, while the general auto maintenance would rent for \$12 per square foot. Applying the rents to the square footage, he concluded that potential rent was \$1,353,978 per year. For the second floor, he concluded that \$54,000 annually was the potential rent.²⁹

Next, Treadwell explained his vacancy rate and collection loss as follows:

Well, I looked at the actual experience through 2017, which was between 7 to 8 percent, and looking at the tenant mix of local businesses. And looking at the expected trend in income levels and in households and

²⁶ T1 at 123.

²⁷ T1 at 127-129.

²⁸ T1 at 132.

²⁹ T1 at 134.

population reached the conclusion that that experience was probably due to the center itself and its location and therefore expected to continue for the future.

Q. So what was your conclusion -- total conclusion for vacancy and credit loss -- collection loss?

A. The total -- yeah, the total between vacancy and collection allowance or loss was 30 percent.³⁰

As to his calculation of expenses, he testified that he used a combination of actual historical expenses, and experience with other properties. He testified that he used both the build-up method and sales comparables to derive a cap rate, and concluded to a rate of 11.5%, based upon the risk factors of declining population in the area, and expiring leases.³¹ He then added 50% of the millage to the cap rate to come up with the loaded cap rate of 15.63 %. He divided the NOI by this number and concluded to a value of \$3,425,822. He then reduced that number by \$900,000, representing "curable deferred maintenance", and included the new façade.³² Subtracting that number and rounding up, Treadwell concluded to a value via the income approach of \$2,530,000.³³

On cross examination, Treadwell was shown a permit report showing that a permit was issued on July 27, 2017 for the façade, with a value of \$295,000.³⁴

Treadwell was unable to testify as to how long it takes a permit application in Redford to

³⁰ T1 at 136.

³¹ T1 at 142-144.

³² T1 at 145.

³³ T1 at 146.

³⁴ T1 at 157; Exhibit R-4

be approved. On Day 2 of the hearing, Treadwell testified that Wow Grocery vacated on May 27, 2017, and the bridal store vacated on June 12, 2017.³⁵

Treadwell also admitted that Petitioner would have been aware of the need for roof and parking lot improvements prior to purchase, and that these items would be taken into account in the purchase price.³⁶ He also admitted that \$656,700 spent on roofing would be required regardless of whether tenants vacated.³⁷

RESPONDENT'S CONTENTIONS

Respondent contends that the subject property is worth \$4,040,000, as set forth in the appraisal performed by Jere Neill, and that the SEV and TV are \$2,020,000.

RESPONDENT'S ADMITTED EXHIBITS

- R-1 Appraisal prepared by Jere Neill
- R-2 Documents related to the 2016 sale of the subject
- R-3 Mortgage on subject dated April 19, 2017
- R-4 List of permits on subject property.³⁸
- R-5 Property summary report by CoStar on 20850 W Plymouth
- R-6 Lease Comp Detail on 29195-29215 Plymouth
- R-7 "Customer Listing" showing lease expiration date of Wow Grocery and Kims G&J
- R-8 Corrected p. 83 of R-1

³⁵ T2 at 74.

³⁶ T1 at 174.

³⁷ T1 at 196-197.

³⁸ Petitioner objected to the admission of this document on foundation grounds. Respondent's counsel represented that it was a print-out from Redford Township. The Tribunal admitted it into evidence, relying upon the standard found in MCL 205.746.

RESPONDENT'S WITNESS

Respondent's only witness was Jere Neill, appraiser. He testified that he has appraised 50 shopping centers during his career.³⁹ After a lengthy voir dire, Neil was qualified as an expert without objection.⁴⁰

Neill considered all three approaches to value, but decided to use the sales and income approach, finding the cost approach not to be applicable because of the age, deterioration of the subject, and because it is the least relied upon by market participants.⁴¹

After describing the subject, Neill testified that the strip mall did not really have an anchor store.⁴² He was then asked about the sale of the subject and testified that the mortgage loan "appeared to be 70 or 75 percent of the purchase price, so that looked like a normal transaction to me."⁴³

Neill testified regarding his sales comparables. He performed a broad search of the west Wayne market, then the submarket of I-275 and the Dearborn market. He narrowed that further to four sales, two which he had previously appraised.⁴⁴ After going through his comparables and adjustments, Neill came up with "a tight range of value from \$23.57 to \$24.20 ... and concluded [to] a \$23.75 per square foot value ... just over \$3,730,000."⁴⁵

³⁹ T2 at 95.

⁴⁰ T2 at 101-102.

⁴¹ T2 at 104-105.

⁴² T2 at 123.

⁴³ T2 at 134.

⁴⁴ T2 at 135.

⁴⁵ T2 at 148.

As to his income approach, Neill testified that he saw no rent rolls.⁴⁶ Instead, he looked at asking rents on CoStar and found the average triple net rent for the Detroit market was \$13.07 and the west Wayne market was \$12.03, while the southern I-275 corridor, which included the subject has an average asking rent of \$11.94 per square foot.⁴⁷

As to his use of asking rents, versus actual rents Neill explained:

Appraisers find that it's often hard to get rock solid lease information unless you're able to get ahold of one of the participants that's willing to share it. So I wanted to start with asking rents, because they are an indication of what market rents will be, and they have a large enough sample that I believe it's reliable.⁴⁸

* * *

From the data that I concluded, I determined that the subject should be at the low end of the market rent ranges and I -- rather than try to come up with individual rents for each size category, I believe that the best estimate would be a blended rate for the centers. And that helped in choosing \$7.50 as the overall blended market rate for the subject.⁴⁹

On cross examination, Neill clarified that his rent comparables were the same as his sales comparables.⁵⁰ He admitted that he did not talk to anybody to confirm any of the information that he is relying upon in his report.⁵¹

Neill came up with a 20% vacancy rate. As to expenses, he had no historical information regarding the subject. As he was assuming triple-net leases, he only

⁴⁶ T2 at 149.

⁴⁷ T2 at 153.

⁴⁸ T2 at 154.

⁴⁹ T2 at 156.

⁵⁰ T2 at 170.

⁵¹ T2 at 171.

needed four categories of expenses. He eventually concluded to expenses of \$275,000, or \$1.87 per square foot.⁵² As to cap rate, he concluded to 10%.⁵³

After loading the cap rate, Neill concluded to a value of \$4,355,000 via the income capitalization approach. In reconciling both approaches, he weighed them with equal value. In explaining why he placed weight on the sale approach rather than rely solely on the income approach, Neill stated:

In fact, they will tell you what other properties have sold for as a -- generally as a price per square foot. So the income approach, yes, is important, but since the sales approach presented the lower end of the range for older shopping centers like this, I believe that would also influence a buyer, so I weighted them equally.⁵⁴

On cross examination, Neill was asked about adjustments for the condition of the roof. He stated, "that would be an additional increase to the sales prices, how it's often concluded."⁵⁵

Neill admitted that he was off on the net building area by 1,000 feet.⁵⁶ He also admitted that he found the age of the improvements to be 30 years when the assessor found it to be 47.72%.⁵⁷ He also agreed that the subject area has a declining population.⁵⁸

As to Comparable R3, Neill admitted to a 13,800 square foot difference between CoStar and his table. He agreed that there would be a \$4.00 per square foot difference

⁵² T2 at 157-161.

⁵³ T2 at 165.

⁵⁴ T2 at 167.

⁵⁵ T2 at 194.

⁵⁶ T2 at 196.

⁵⁷ T2 at 210.

⁵⁸ T2 at 216.

in purchase price, depending upon which CoStar information was used, and that he did not verify the square footage by speaking to anyone.⁵⁹ Also as to comparable R3, Neill was shown a CoStar report showing that an undisclosed amount of debt assumption was involved in the sale.⁶⁰ As to comparable R4, Neill was shown a CoStar printout indicating that the sale was part of a portfolio sale.⁶¹ He responded that he relied upon the assessment records.⁶²

Neill was also cross examined about his income approach. He admitted that the asking rents came from his sales comparables, which were significantly superior to the subject, with no adjustments. His response was “Except I did not make any adjustments to any rent because I’m relying on the largest sampling that I could get of the market.”⁶³

Neill was also grilled on using asking rents rather than actual rents, and admitted as follows during this exchange:

Q: So in order to use those rent comparables to have an indication of value, you would have to adjust those rent comparables downward in order to make them similar to the subject property; right?

A: Yes, in answering your question. The fact that it's an offering rent and plazas that are superior, then since I need to try to adjust these specific rents then I would grant you that the range might be more like five to eight.⁶⁴

⁵⁹ T at 220-221.

⁶⁰ Exhibit P-5, T2 at 223-224

⁶¹ Exhibit P6, T2 at 225

⁶² T2 at 226.

⁶³ T2 at 236-237.

⁶⁴ T2 at 238.

As to CoStar's asking rents, Neill admitted that he did not understand how it came up with the numbers.⁶⁵ He also admitted that he did not put any weight on actual rents that the subject was receiving in 2017.⁶⁶

As to collection loss, Neill admitted that the 1% number he testified to was included in his 20% vacancy rate, and that the collection loss figure was not derived from data, but rather "an accumulation of my experience."⁶⁷ Similarly, his expense figure came from his experience.⁶⁸

FINDINGS OF FACT

1. The subject property is a shopping center located at 25379-25495 Grand River Ave, Redford Township, Wayne County.
2. The subject fronts Grand River Avenue and Seven Mile Rd and has access from both streets.
3. Redford Township is an inner ring suburb of Detroit, bordering Detroit to the east, Livonia to the west, Southfield to the north and Dearborn Heights to the south.
4. Redford has a declining population, with lower to middle incomes.
5. The subject has three buildings. The original building ("Building B") was built in 1958, has 129,821 square feet on the first floor, divided into 15 units, plus a 13,392 square foot mezzanine and a 46,054 square foot second floor space, with 64 units, ranging in size from 207 to 1,616 square feet.

⁶⁵ T at 246.

⁶⁶ T2 at 249.

⁶⁷ T2 at 255-256

⁶⁸ T2 at 257.

6. The second building (“Building A”) was estimated to have been built in 1970 has one story with 23,006 square feet, divided into 7 units.
7. The third building, (“Building C”) is a 4,180 square foot building with a 2-bay quick oil change in one unit, and a 4-bay automobile general service area.
8. Petitioner signed a purchase agreement for the subject on December 13, 2016, and closed on the purchase on April, 19, 2016, for a reported purchase price of \$4,000,000.⁶⁹
9. Jason Curis, Petitioner’s principal testified that \$200,000 of that purchase price was paid back to an entity he owns as a brokerage fee.
10. Petitioner gave a mortgage on April 19, 2017, secured by the subject to Bank of Ann Arbor in the amount of \$3,385,500.⁷⁰
11. Respondent issued a permit on July 27, 2017 to D & A Contracting for “Exterior Façade Remodel” on the subject property.⁷¹
12. Donald Treadwell, MAI appraised the subject on behalf of Petitioner as of December 31, 2016 and concluded to a value of \$3,425,822 before subtracting \$900,000 for “curable deferred maintenance.”
13. Treadwell calculated his value relying solely on the direct capitalization approach, although he also performed a market approach.
14. Treadwell’s market approach utilized 6 sales comparables. Building sales 1 and 3 were bank sales, sale 5 was sold by a court appointed receiver, and sale 6 was a §1031 exchange rather than a sale.

⁶⁹ Exhibit R-2.

⁷⁰ Exhibit R-3.

⁷¹ Exhibit R-4.

15. Only Sale 1 used by Treadwell was for property that sold in Wayne County, where the subject is located.
16. Treadwell's report used actual rents for spaces of similar sizes to calculate potential gross income, while Neill used only asking rents from superior properties.
17. Treadwell's income approach used a blend of historical expenses of the subject, along with his experience, while Neill relied entirely on his experience for determining expenses.
18. Treadwell's capitalization rate was derived in part from local sales, while Neill's was derived from published rates.
19. Neill's sales approach used four actual sales, all in Wayne County in close physical proximity to the subject.
20. Neill's sale R3 and R4 were shown on a CoStar report to be portfolio sales.
21. R3 was shown to have significantly less square footage than what was shown in Neill's report, and contained an unknown amount of debt assumption in the purchase price.
22. Neill's income approach used asking rents only from superior properties, and did specifically not take into account the various size rental units present on the subject.
23. Neill's expenses for the subject were all based upon his experience, rather than any historical data tied to the subject.
24. Neill's cap rate was derived solely from published sources.

CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value.⁷²

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not . . . exceed 50 percent. . . .⁷³

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.⁷⁴

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”⁷⁵

“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.”⁷⁶ The Tribunal is not bound to accept either of the parties' theories of valuation.⁷⁷ “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

⁷² See MCL 211.27a.

⁷³ Const 1963, art 9, sec 3.

⁷⁴ MCL 211.27(1).

⁷⁵ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

⁷⁶ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

⁷⁷ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

case.”⁷⁸ 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.”⁷⁹

A proceeding before the Tax Tribunal is original, independent, and de novo.⁸⁰ The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”⁸¹ “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”⁸²

“The petitioner has the burden of proof in establishing the true cash value of the property.”⁸³ “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.”⁸⁴ 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.”⁸⁵

The three most common approaches to valuation are the capitalization of income approach, the sales comparison, or market, approach, and the cost-less-depreciation

⁷⁸ *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

⁷⁹ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

⁸⁰ MCL 205.735a(2).

⁸¹ *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

⁸² *Jones & Laughlin Steel Corp*, 193 Mich at 352-353.

⁸³ MCL 205.737(3).

⁸⁴ *Jones & Laughlin Steel Corp*, 193 Mich at 354-355.

⁸⁵ MCL 205.737(3).

approach.⁸⁶ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”⁸⁷ The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances.⁸⁸ Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.⁸⁹

Purchase Price

The subject was recently purchased by Petitioner. At issue is how the purchase price should be handled in determining the subject’s true cash value. Evidence was presented surrounding the purchase of the subject by Petitioner. The offer was accepted on December 13, 2016, 17 days before Tax Day for tax year 2017. Testimony established that the sale was arm’s length. Testimony also established that while the reported purchase price was \$4 Million, the brokerage commission of \$200,000 was paid back to an entity controlled by Petitioner, lowering the out of pocket price to \$3,800,000. There was further testimony regarding over-funded escrows which Petitioner claims lowered the price even more. However, the Tribunal does not find escrows, over-funded or otherwise to be determinative of a purchase price. Escrows

⁸⁶ *Meadowlanes*, 437 Mich 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).

⁸⁷ *Jones & Laughlin Steel Corp*, 193 Mich at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

⁸⁸ *Antisdale*, 420 Mich at 277.

⁸⁹ See *Meadowlanes*, 437 Mich at 485.

are generally part of every real estate sale transaction, and it serves no purpose to parse them out here when determining the purchase price.

In any case, the Tribunal declines to rely on the purchase price as the sole indicator of value. First, the definition of true cash value explicitly states that the purchase price is not the presumed true cash value.⁹⁰ Although the purchase price can be considered in determining true cash value, especially in an arm's length transaction, the Tribunal declines to use it an end point, in part because testimony shows that the purchase price was based in part on the leases in place. Jason Curis testified:

The value to me was the tenants that were there. Without the tenants that were there that told me they were going to stay and moved out, I had to update and upgrade the shopping center, which I wasn't planning on. So if I was going to do that going in, I would have had paid \$2.5 million and then upgraded the shopping center.⁹¹

In other words, Petitioner's purchase price included the purchase of an income stream based upon the current tenants, rather than merely the land, bricks and sticks.

Leased fee vs fee simple.

In determining a property's true cash value, courts have long held that the fee simple interest is to be determined. In *Edward Rose Bldg Co v Independence Twp*, the Supreme Court stated:

The uniformity requirement of the Michigan Constitution compels the assignment of values to property upon the basis of the true cash value of the property and not upon the basis of the manner in which it is held. Noticeably absent from the statutory definition of 'cash value' and those enumerated factors which an assessor must consider is any reference to the identity of the person owning an interest in the property or whether there are other parcels which are owned by the same taxpayer. In other words, the fact of ownership is not a germane consideration in determining value:

⁹⁰ MCL 211.27(6).

⁹¹ T1 at 22.

'The Constitution requires assessments to be made on property at its cash value. This means not only what may be put to valuable uses, but what has a *recognizable pecuniary value inherent in itself, and not enhanced or diminished according to the person who owns or uses it.*'⁹²

Generally, valuing the property itself, rather than the in-place lease agreements is required by uniformity. Otherwise, the identical property would be valued differently, depending upon the leases in place. The definition of true cash value also requires that actual income generated by the lease or rental of property is not the controlling indicator of its true cash value in all cases. Rather, the ordinary, general, and usual economic return realized from the lease or rental of property negotiated under current, contemporary conditions between parties equally knowledgeable and familiar with real estate values is the definition of present economic income,⁹³ which may be considered in determining true cash value.⁹⁴

Respondent has urged the Tribunal to consider the purchase price, plus the cost of curing known defects expended after the sale.⁹⁵ As to the purchase price being a bench-mark, Respondent argues that the purchase price was supported by the mortgage used to finance the transaction. However, a bank financing a sale may also have valued the property as a leased fee, rather than fee simple. In any case, whatever the bank relied upon in making the loan was not placed into evidence.

⁹² *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 640-641; 432 NW2d 325 (1990) (citations omitted).

⁹³ MCL 211.27(5). Uniformity aside, there is a carve-out allowing the use of actual rents for lease agreements entered into prior to 1984.

⁹⁴ MCL 211.27(1).

⁹⁵ There is some support for this position. See Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013) at, at 412-414. This point will be discussed further below.

While not the end-point in determining the subject's true cash value, the purchase price, even as it reflects the subject's leased fee value, does provide an upper limit to the value of the subject, and provides a reality check on appraised values.

Sales Approach

Both appraisers prepared a sales approach. Donald Treadwell prepared a sales approach and concluded to a value of \$2,400,000 under this approach, which relied upon six comparable sales to conclude to a value of \$15.00 per square foot. As noted in the Finding of Facts, four of Treadwell's sales comparables appeared to transfer at something shorter than arm's length. Two of his sales were bank sales, one of his sales was a court ordered sale by a receiver, and one was not a sale at all, but a like-kind exchange under IRC §1031. For those four sales, the seller likely had motivations to move the property, other than obtaining the best price. Further, many of the properties themselves appear to be distressed. Moreover, none of Treadwell's sales were in Wayne County where the subject is situated. It is noteworthy that Treadwell placed no weight on his sales approach in his final reconciliation. The Tribunal agrees and finds that Treadwell's sales approach to be an unreliable indicator of value for the subject property.

Jere Neill also performed a sales approach, and concluded to \$23.75 per square foot, or \$3,730,000 rounded. In contrast to Treadwell, Neill eliminated sales that were receiverships, or foreclosures.⁹⁶ None of his sales were bank sales or appeared to be under duress, and all were in Wayne County, near the subject. However, Sale R3,

⁹⁶ T2 at 136.

(Cherry Hill Plaza) involved a debt assumption of undisclosed magnitude, and the gross leasing area was listed as 125,533 square feet, as opposed to 111,699. This results in an unadjusted price per square foot that is \$3.78 lower than what appears in Neill's report.⁹⁷ Neill admitted on cross examination that he did not verify the transaction "with a person."⁹⁸ He further admitted that this discrepancy "may have changed" his conclusion under the sales approach.⁹⁹ There is also the issue that both Sale R3 and R4 were portfolio sales.¹⁰⁰ If part of a portfolio sale, the sale price for both R3 and R4 would be the result of an allocation. An allocation may be made for reasons other than market value. In any case, the market is not privy to the calculations made in determining that allocation. While Respondent's sale R3 and R4 gave support for his conclusion of \$23.75 per square foot, these two comparables were the most heavily adjusted. Sales R1 and R2 as adjusted still result in a narrow range of values that support this determination. However, the Tribunal also notes that each of the four comparables were negatively adjusted, indicating that each was superior to the subject. Neill's failure to bracket the subject with an inferior property removes further luster from his sales approach, and may skew the values to the high side. Nonetheless, his value, which is in halting distance of the Tribunal's conclusion, supports the Tribunal's conclusion of value.

Neill gave his sales approach equal weight with his income approach in his reconciliation. Interestingly, his sales approach was significantly lower (by \$625,000)

⁹⁷ See Exhibit P-5 and compare with R1 at 62.

⁹⁸ T2 at 221.

⁹⁹ *Id.*

¹⁰⁰ See Exhibit P-5 as to Sale R3 and P-6 as to Sale R-4.

than his income approach, which concluded to a value of \$4,355,000. The Tribunal disagrees with Neill's rationale for giving each approach equal weight, which he based upon what market participants would rely on. A proper reconciliation should also be based upon the reliability of the data for each approach, as well as what participants in the market rely upon.¹⁰¹

The Income Capitalization Approach

Both parties utilized and relied upon the income capitalization approach. The first step is to determine gross potential rent. For Respondent, Neill used only asking rents rather than actual lease rates. Neill's asking rents came from the same comparables that he used in his sales approach, all which were superior to the subject. As admitted on cross examination, superior malls are likely to command higher rents than the subject.¹⁰² Neill also used one blended rent rate for all sizes of rental units, based again upon the asking rents of all sizes at the same four comparables. He then took the average, of \$7.73 per foot and reduced this to \$7.50 per foot on a triple net lease basis. He also admitted that if he had adjusted his rents, they would be in the \$5.00 to \$8.00 range.¹⁰³

Treadwell for Petitioner used a range of actual gross rents for spaces that corresponded with the unit size categories found at the subject and applied these rates to each unit to determine gross potential income. While Neill implicitly criticized this method as using "hand-picked" comparables, it is more likely a justification for Neill's lack of access to Treadwell's information. By virtue of Donald Treadwell's long career

¹⁰¹ *The Appraisal of Real Estate*, 14th ed at 645.

¹⁰² T2 at 232.

¹⁰³ T2 at 238.

and varied assignments, he appears to have access to more lease data than Neill; data that is often not made public. Further, Treadwell's methodology is far more precise than hoping that a so-called large sample size will, on average give a correct result.¹⁰⁴ The Tribunal doubts Neill's assurances regarding sample size, as the average rents in his sample were much larger than the value he concluded to, using a much smaller sample size -- his comparables. The Tribunal holds that Treadwell's methodology and data regarding potential gross income is a more reliable than Neill's.

Both parties agreed that vacancy would be 20% for the subject. Treadwell however, opined that collection loss would be an additional 10%. Neill claimed it would only be 1% based on his experience. He did not, however, add an additional 1% to his 20% vacancy. While Treadwell's collection loss was much higher, he could point to both the subject's history, the demographics of the area, and the fact that out of the tenancies present, only two were national chains (Ace and Sherwin Williams) with presumably better credit than local retailers. The Tribunal holds that Treadwell's vacancy and credit loss are more credible than Neill's.

The final step in arriving at net operating income ("NOI") is to determine expenses. Treadwell used gross leases rather than triple net leases used by Neill and was able to calculate various categories of expenses from the subject's history. In contrast, Neill claimed not to have any historical data, and based his expenses purely on his own judgment. On cross examination, some of these assumptions were shown to be much too low, such as reserves for a new roof. Considering the age of the

¹⁰⁴ To be fair to Neill, there is some support for crowd wisdom. See Surowiecki, James *The Wisdom of Crowds*, Anchor Press 2004. The opening anecdote is a story where a crowd successfully guesses an ox's weight.

improvements, and the testimony that the prior owner of the subject for the last 48 years never remodeled, the Tribunal finds Treadwell's determination of expenses to be more credible. While the market is an appropriate source for determining rental income, and market rates are a check on reasonableness of expenses, the subject's history is more likely to be accurate in determining projected expenses than mere appraisal judgment because of the uniqueness of each property.

The last piece of data needed to determine a value via the direct capitalization income approach is a capitalization rate, which the NOI is then divided by to convert an income stream into a value. The cap rate is a measure of risk. The higher the risk, the higher the cap rate.

Treadwell used actual market transactions in the area as well as published rates to derive a cap rate, while Neill used only published rates. The result was that Treadwell's cap rate was 147 basis points higher. Considering the age of the mall, the recent loss of tenants, the area's demographics and the need to shortly update the mall, the Tribunal finds Treadwell's cap rate to be more credible, and his value via this approach to be the best indicator presented in this case to determine the property's true cash value. That value rounded, is \$3,425,000.

Facia Replacement

Petitioner and Donald Treadwell contend that \$900,000 spent after the sale for unexpectedly having to replace the facia on the mall and refresh its appearance should be removed from the true cash value for 2017. The *Appraisal of Real Estate* is instructive on this point. For expected expenditures after the sale, that value may be

added to the purchase price, rather than subtracted.¹⁰⁵ The Tribunal finds no support for Petitioner's position that subtracting expenditures immediately after the sale from the purchase price, or more importantly, from an income approach is a proper methodology. At best, it might be a condition adjustment on a sales grid, or an indication that the cap rate for the sale should be higher. Petitioner clearly expected to spend money after the sale for a new roof and parking lot of repairs. While Curis testified that he did not expect to immediately update a 50-year-old strip mall, he clearly expected to do so sometime in the future. The fact that he closed on the property in April of 2017 after a 4-month inspection period and received a permit from Respondent a mere 3 months later suggests that he had plans at the ready for such improvements at the time of closing.

Even if the Tribunal were to accept that the expenditure was unexpected, and further accept that such an expenditure should be subtracted as "curable deferred maintenance,"¹⁰⁶ the \$900,000 for the facia would be offset by the expenditures for a new roof and parking lot repairs, which were clearly anticipated and considered by Petitioner in its purchase price. Said expenditures were also for a similar amount. However, the Tribunal is not relying upon the purchase price. Further, the Tribunal finds that these expenditures are adequately dealt with by Treadwell in choosing his rental comparables and adjusting for condition where necessary. Any further addition or subtraction would effectively be double counting.

¹⁰⁵ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013) at 412-414.

¹⁰⁶ See bottom of pro forma income approach, P1 at 177.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the subject property's TCV, SEV, and TV for the tax year(s) at issue are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that the property's state equalized and taxable values for the tax year(s) at issue are AFFIRMED/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%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (ix) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, and (x) after December 31, 2018 through June 30, 2019, at the rate of 5.9%.

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.¹⁰⁷ Because the final decision closes

¹⁰⁷ See TTR 261 and 257.

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.¹⁰⁸ 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.¹⁰⁹ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.¹¹⁰

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."¹¹¹ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.¹¹² The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.¹¹³

By David B. Marmon

Entered: December 6, 2018

¹⁰⁸ See TTR 217 and 267.

¹⁰⁹ See TTR 261 and 225.

¹¹⁰ See TTR 261 and 257.

¹¹¹ See MCL 205.753 and MCR 7.204.

¹¹² See TTR 213.

¹¹³ See TTR 217 and 267.