

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

Superior Extrusion, Inc,
Petitioner,

v

MTT Docket No. 455829

Forsyth Township,
Respondent.

Tribunal Judge Presiding
David B. Marmon

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Superior Extrusion, Inc, appeals ad valorem property tax assessments levied by Respondent, Forsyth Township, against 3 parcels for the 2013, 2014 and 2015 tax years. Laura Reilly, Attorney, represented Petitioner, and Kevin Koch, Attorney, represented Respondent.

A hearing on this matter was held on September 9 and 10, 2015. Petitioner's witnesses were Dean Borlace and George Dempsey III. Respondent's witnesses were Henry DeGroot and Sharon Frischman.

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 2013, 2014 and 2015 tax years are as follows:

Parcel No.	Year	TCV	SEV	TV
52-05-255-003-00	2013	\$2,200,000	\$1,100,000	\$1,007,500
52-05-255-003-00	2014	\$2,144,000	\$1,072,000	\$1,023,620
52-05-255-003-00	2015	\$2,165,000	\$1,082,000	\$1,039,998

Parcel No.	Year	TCV	SEV	TV
52-05-799-001-00	2013	\$2,700,000	\$1,350,000	\$1,350,000
52-05-799-001-00	2014	\$2,508,000	\$1,254,000	\$1,254,000
52-05-799-001-00	2015	\$2,533,000	\$1,266,500	\$1,266,000

Parcel No.	Year	TCV	SEV	TV
152-05-799-001-10	2014	\$448,000	\$224,000	\$224,000
152-05-799-001-10	2015	\$452,000	\$226,000	\$226,000

PETITIONER'S CONTENTIONS

Petitioner contends that the subject, a 114,530 square foot heavy manufacturing industrial property built on the former K.I., Sawyer Air Force Base is over-assessed, based upon the market for such facilities in a remote area of Michigan's Upper Peninsula. Petitioner relies upon three appraisals performed by George Edward Dempsey III. Mr. Dempsey's true cash values for the entire fee simple are as follows:

2013 \$4,600,000 as built; \$5,050,000 upon completion of maintenance building
2014 \$5,100,000
2015 \$5,150,000

Petitioner further contends that \$4,000,000 of the total for each year should be allocated to the 2008 addition, ("parcel # 001-00"); \$600,000 for 2013 and 2014, and \$625,000 for 2015 for the original building, ("parcel # 003-00") and for the 2012 addition, ("parcel # 001-10") \$450,000 for 2013, \$500,000 for 2014 and \$525,000 for 2015.¹

JOINT EXHIBITS

The parties jointly submitted exhibits, the admission of which each party stipulated to. Those exhibits are as follows:

J1 Colored diagram of Superior Extrusion, Inc. ("SEI") building
J2 2012 Notice of Assessment and Property Record Card for parcel #52-05-255-003-00
J3 2013 Notice of Assessment and Property Record Card for parcel #52-05-255-003-00
J4 2013 Notice of Assessment and Property Record Card for parcel #52-05-799-001-00
J5 2014 Notice of Assessment and Property Record Card for parcel #52-05-255-003-00
J6 2014 Notice of Assessment and Property Record Card for parcel #52-05-799-001-00
J7 2015 Notice of Assessment and Property Record Card for parcel #52-05-255-003-00

¹ T.1 p. 40-41.

- J8 2015 Notice of Assessment and Property Record Card for parcel #52-05-799-001-00
- J9 Notice of Assessment and Property Record Card for parcel #52-05-799-001-10
- J10 IFT Certificate 2012-454 and supporting documents
- J11 IFT Certificate 2013-123 and supporting documents
- J12 2013 SEI Petition to Board of Review
- J13 2013 Board of Review decision
- J14 2014 SEI Petition to Board of Review
- J15 2014 Board of Review decision
- J16 Summary Appraisal Report, August 22, 2012, G. Edward Dempsey III of Appraisal Associates of Marquette
- J17 Appraisal Report, January 29, 2014, G. Edward Dempsey III of Appraisal Associates of Marquette
- J18 Appraisal Report, May 21, 2015, G. Edward Dempsey III of Appraisal Associates of Marquette
- J19 Sharon Frischman Appraisal Review dated January 29, 2014
- J20 Sharon Frischman Appraisal Review dated May 27, 2015
- J21 Answer to Petitioner's First Set of Interrogatories and Document Requests, signed by Henry DeGroot, dated June 12, 2015.

JOINT STIPULATION OF FACTS

The parties submitted at hearing a joint stipulation of facts which set forth each parcel's square footage; the IFTs placed on parcels 001-00 and 001-10, along with the statement that the IFT's do not run with the property, and stipulated that George Edward Dempsey III and Sharon Frischman were expert witnesses.

PETITIONER'S WITNESSES

Dean Borlace

Dean Borlace, Petitioner's Vice-President, Treasurer and Chief Financial Officer was Petitioner's first witness. Borlace described the operations of Petitioner, as to what aluminum extrusion is, and the physical requirements to perform these operations. He testified as to the purchase of the facility in 2002 because of its (now expiring) renaissance zone designation. He also testified as to the super-adequacies of the building to support and to lift very heavy equipment and product. He further testified to the need for expansion to accommodate a nine inch line of aluminum extrusion, and how the 2008 addition to the premises came about. He also testified regarding the second expansion completed in 2013, to build a maintenance facility to service its equipment indoors, and the need to lease extra land in which to store raw materials. The second addition was completed in February of 2013.² When asked if the subject was worth what Petitioner had spent on it to facilitate its operations, Borlace stated:

Well, I'm not an appraiser, but I would doubt it. Simply because there's a lot of extra costs that are essential and necessary in the way of supporting the equipment and the manufacturing process itself that went into the design of the buildings. That may or may not be usable by a future entity.³

When asked about the uniqueness of the subject, Borlace indicated that the uniqueness came from the equipment rather than the facility.⁴

George Dempsey

Petitioner's second witness was its appraiser, George Edward Dempsey III. Dempsey has written appraisals in the Upper Peninsula from 1989 to present.⁵ Dempsey testified that he was quite familiar with K.I. Sawyer, having prepared various appraisal assignments on the former base.⁶ He described the former base as follows:

Q. Can you give us just a description of the base and the properties on it?
A. Certainly. Well, the -- when the base decided to close in '93, the county and everybody was sucking wind that, oh, my gosh, we lost our major employer. You know, it was a small city. K. I. Sawyer was a small city when the base was in operation. Gone. So the county started, you know, ad hoc committees and all

² T.1 p. 177

³ T.1 p. 33

⁴ T.1 p. 48

⁵ T.1 p.52

⁶ T.1 p. 59-60

different committees to try to reuse, what are we going to do to reuse this property. And then started applying for grants and tax abatements, you know, designations and things to try to get people into the base, to try to use these vacant buildings.

And in the meantime, you know, some developers bought all the residential properties and condo sited them off and sold them, including duplexes and residential homes. The restaurant opened up and, you know, attached to it was a motel. Some businesses moved out there, struggled, left and/or stayed. It's -- it's off the beaten path, so there's not a whole lot that, you know, like, I-75 doesn't drive through it, you know, there's no major thoroughfare through it. Once -- if you're looking to get there you got to find it.

Q. And what types of buildings are there? You mentioned duplexes, apartment buildings. What other buildings are there on the former base?

A. There's a mix. There's former large hangers. There's large, you know, block and metal-constructed properties, structures throughout the base that were used for different purposes for the Air Force when in operation.

Q. Now, since it was an Air Force base, there was a giant runway there; correct?

A. That's correct.

Q. And did Marquette County move its airport there?

A. They did. And all the operations for the entire county runs out of there now.⁷

Dempsey testified as to the values reached in his first appraisal, dated August 22, 2012.⁸ He testified that he performed the appraisal for the bank for financing purposes, but that the audience does not change his methodology or conclusion; rather it changes the degree of detail in the report. He concluded to two separate values. His "as is" value prior to the completion of the addition was \$4,600,000, and upon completion, he valued the property at \$5,050,000. He testified that these values were likely applicable to December 31, 2012, as nothing significant happened between August 22, 2012, and December 22, 2012 that would result in a significantly different value.⁹

Dempsey's appraisals used all three approaches. He gave an overview as to the kinds of factors necessary for each approach, and a justification as to how he weighted each approach in the final reconciliation:

Well, it -- it's normal for an appraiser to look at all three approaches to make sure that we're not missing something, you know. The cost approach to value is real

⁷T.1 p.55-56

⁸ Exhibit J-16

⁹ T.1 p. 66-69

relevant when the property is brand new and there's no external factors, no physical, no functional, no external. You've got good land data, you've got good cost estimates. It's a good approach if you have all those factors. It's rare that you do.

The sales comparison approach is real good if you have competing properties that have sold, okay? If you look in the market and in this case the market might be, you know, this big rather than this big. I'm sorry for the hand gestures. It -- you have to try to go out and search for those comparables. So if they're out there and they're, you know, relatively recent, then that's a good approach to have. The income approach if it's -- if it's an income-producing property and an investor is going to purchase it for that purpose, then that's also a good indication. Then you have to put all those in a bucket and kind of reconcile which one you feel is best based on the property that you have and the reconciliation is kind of a living, breathing thing.¹⁰

As to his cost approach, Dempsey testified as to why he determined that there was a large amount of functional and economic obsolescence concerning the 2008 addition:

And it was amazing that the size, the sheer size that they are putting on would kick it from anything I've seen in 15 years of doing commercial appraisals in the Upper Peninsula. And I was like, uh-oh. Whenever you see that it's like, what are they doing here. And so I went into the market and I looked, and I started searching around the UP, you know. And it looks like I found one on Industrial Drive in Iron Mountain owned by Northern Star Industries that was, you know, a mix of a warehouse, 99,566 square feet, and then office of eleven five.

Q. Now, Ed, I'm just going to stop you there. We'll get in your sales comparison in a second, but in looking at the cost approach, the 40 percent deduction is a pretty significant one. Are you saying you went around -- that you then went to the sales approach to determine where this building fit in with its neighbors?

A. Well, I wanted to make sure that they weren't over improving for the area. I mean, if there were a whole bunch of 114,000 square foot industrial buildings out there then they're probably not over improved. I didn't find any or very many. I found the one that was out there in Iron Mountain, and then I started looking at other ones in Marquette County.

I said, well, I've got a beer distributorship that's almost 32,000 square feet, which they run their entire operation out of. They also have an 18,595 square feet -- it was obvious that the subject's square footage when completed would place itself in one of the largest buildings in Marquette County and even in the UP.¹¹

¹⁰ T.1 p. 70-71

¹¹ T.1 p 74-77.

On cross, Dempsey responded to questions as to why he considered the subject to be super-adequate:

Now, as an appraiser if you start finding these, then maybe that deduction starts to evaporate, okay? Because obviously if you build it they'll come; right? Well, in this case there's still a lot out there that's built and they haven't come, okay?¹²

* * *

There aren't too many Superior Extrusions out there that would come to Forsyth Township on the former base and use this facility. There are not. My highest and best use analysis looks at, well, maybe we could chop it up and have Willie's Auto Shop over here and a tire over here and, you know, industrial this or that. This facility is all interconnected, you know. And, yeah, an overhead door here or here can do it, but you still got 114,000 square feet of space. The one that's 120,000 on Telkite's website has been vacant since 1995.¹³

Dempsey next testified concerning his sales approach, which featured older sales, as well as some listings. Regarding Comparable 1, which he used in all three of his appraisals, he explained the use of a 2005 comparable while testifying on direct:

Q. Well, let's look at a comparable you did use. So comparable number one, this is on page 32 of Exhibit J-16, and that you started talking about that one, the 3201 East Industrial Drive in Iron Mountain, Michigan. Now, Iron Mountain is in the UP; right?

A. That's right.

Q. And how far away is it from Forsyth Township?

A. About an hour, hour 15.

Q. Now, this is kind of an older comparable. The sale took place in 2005. Why did you use this?

A. Because it's in the UP.

Q. Okay.

A. They're few and far between, you know. They really are. And it's an industrial property of 116,000 square feet. I did a little happy dance next to my desk. I really did that. You find one and you're like, oh-oh, there's one. And then you start analyzing, start going, you know, you do the due diligence that you do and you're, okay, even though it's older, I've got a sale. And that's what you're trying to do when you're proving to a lender is why should I even borrow or lend money in the Upper Peninsula on a 114,000 square foot facility if it's the only one. You know, so you really have to try to dig a little harder in the Upper Peninsula to find comparables to prove that point.

¹² T.1 p. 165-166

¹³ T.1 p. 171

Q. Well, for a 2005 sale how do you even make it a comparable? Do you make an adjustment or what do you do?

A. Well, you do, normally. If the market is appreciating, you look at what has happened since '05. In this case it was probably going up, up, up and then '07-'08 hit, and then kind of did this. And where we're in '012 it was probably back up here. So I didn't make an adjustment. I think if you look on the grid, it says, Considering the current market environment, no time adjustment is felt to be warranted even on the oldest of sales.¹⁴

He next testified regarding his second comparable, also used in all three appraisals, which was a 2010 sale:

Now, let's take a look at comparable number two, next page 33, 1924 Industrial Parkway, Marquette. And how far from the subject is Marquette, Michigan?

A. About 20 miles.

Q. Why did you use this one?

A. Well, I've -- I've looked and found one of 28,800 square feet. And it was a recent sale, 2010, and I thought I would at least put it on the grid. And it made the cut and I put it on the grid to see where I was with value on that one.

Q. What do you mean recent? It's 2010 and we're looking at the 2012 appraisal. Still call it recent in that situation?

A. Oh, with commercial industrial, you can -- yeah, I've gone back as far as ten years in the UP. I don't have a good database to draw from from sales of other properties of 114,000 square feet.

Q. Simply because there aren't many?

A. There are not.¹⁵

Dempsey went on to elaborate why Comps 1 and 2 are still relevant to tax years 2014 and 2015:

Q. Why?

A. Well, there's not a whole lot that changes in the Upper Peninsula. There really isn't. You know, we had the downturn of, you know, '07-'08, and everything in the UP takes about to two years to get to us. We're always about two years behind. So we're still looking at, you know, property values up, up, up, and then '07-'08 and kind of flattened and then we're on this downslide and then we probably hit bottom about 20 late '10, early 2011 and then turned the corner up.

But we don't have the wild swings that a lot of areas do, where they say 40 percent or 30 percent down. We see six, eight, you know, up by four, up by three.

Q. So wild swings, would you include the Lower Peninsula in this?

¹⁴ T.1 p. 82-84

¹⁵ T.1 p. 85-86

A. Well, some of them are. Well, if you have major economic events, which actually caused the downslide of '07-'08 in Lower Michigan, so, yes.¹⁶

Regarding his use of comparable 3, also used in all three appraisals, Dempsey testified that the communities were comparable to the subject, and had comparable square footage. As to comparable 4, Dempsey testified that he used it because although it is half the size of the subject, it is in the Upper Peninsula, and in a Renaissance Zone. He testified as follows regarding his choice of comparables:

So when I first reviewed and my circle got bigger and nothing came up, nothing came up, well, then all of a sudden you start dropping your idea of, well, I'd like to stay between 80 and 140,000 square feet, you know, that parameter. Well, that's out because I've only got two. So I've got to go down and look down and say, okay, this is half the size but it's in a Renaissance Zone and it's in the UP. So, you know, it became more relevant as those factors came into play.

Q. So were you able to extrapolate then, even though it's a smaller square into the age?

A. Yes.

Q. While we're on the subject of the Renaissance Zone, do you recall what, if any, significance did you attribute it to in doing your appraisals here in 2012, 2014 and 2015 of Superior Extrusion?

A. I didn't think this was any effect at all.

Q. Why?

A. It brought the subject property, being Avenue A or P, onto a level playing field. If you didn't have that there weren't a whole lot of investors banging on the door to get into this place, just because there's available square footage and just because it was low rent. You had to entice them. And I think the Renaissance Zone did some, but there's still a lot of vacant buildings out that didn't entice anybody.¹⁷

On cross, Dempsey elaborated further regarding how the subject's presence in a Renaissance zone was accounted for in his appraisals:

That's what I meant by my testimony, that I thought that it brought the subject from a very negative place to at least a level playing field, that it was trying to attract people to the base. And instead of, like, on the comparables, I would have probably made more of a negative adjustment for location versus the Renaissance Zone where I did not.¹⁸

¹⁶ T.1 p. 86-87

¹⁷ T.1 p. 89-90

¹⁸ T.1 p.129

As to Dempsey's Comparable 5, in Kentwood, Michigan, used for valuing the subject in 2014 and 2015, he testified that it is close in size to the subject at 129,484 square feet. He testified that he used Comparable 6 in, Byron Center, which has 138,700 square feet, because it has similar quality construction, and Comparable 7 in Wixom, Michigan with 110,000 square feet on 7.4 acres because of its similarity in size and size of land to the subject.¹⁹

Dempsey also included two additional comparables for tax year 2015 only. His Comparable 8 is located in Lansing, Michigan and contained 53,600 square feet, and sold for \$1,800,000 in 2014. While it was a bank sale, Dempsey testified that it was listed for a reasonable amount of time. His Comparable 9 was located in Auburn Hills, Michigan and contained 183,000 plus square feet. This sale was also bank owned. Dempsey testified that he included this sale for "bracketing" as to size.²⁰

As to his adjustments for his sales comparables, he testified as follows:

Well, the ideal situation is that you have a property next door to you. In this case a Renaissance Zone on a former Air Force base on six and a half acres that sold within the last six weeks for cash dollars, you know, and there's adjustments to be made. If that property sold for \$20 million, then your property is probably worth \$20 million.

In the UP and in most cases with appraisals you don't have that. You don't have that similarity. So what you have to do is go out and try to find the best and most comparable properties that you can find. Put them on a grid and start making adjustments.²¹

When questioned on cross regarding his use of older listings and comparables, his response was "Sometimes, you have to use what you have to use."²²

Dempsey went on to explain his income capitalization approach, which used three alternate methods to conclude to a value. Along with a direct capitalization approach, he used a band of investment and a discounted cash flow.²³

¹⁹ T.1 p. 90-92

²⁰ T.1 p. 93

²¹ T.1 p. 97

²² T.1 p. 162

²³ T.1 p. 101-107

Dempsey concluded his testimony on direct with a discussion regarding reconciliation of the three approaches. He placed the most weight on the sales approach.²⁴

RESPONDENT'S CONTENTIONS

Respondent contends that despite problems with its record cards, they are a better indicator of value than Petitioner's appraisal, which it contends, is deeply flawed. Respondent contends that the following values on the roll are correct.

Parcel Number: 52-05-255-003-00 (original parcel)

Year	TCV	AV	TV
2013	Pre-IFT formation	\$1,007,500	\$1,007,500
2014	\$1,974,700	\$987,350	\$987,350
2015	Parcel divided	Parcel divided	Parcel divided

Parcel Number: 52-05-799-001-00 (2008 expansion)

Year	TCV	AV	TV
2013	\$4,000,000	\$2,000,000	\$2,000,000
2014	\$4,000,000	\$2,000,000	\$2,000,000
2015	\$4,000,000	\$2,000,000	\$2,000,000

Parcel Number: 52-05-799-001-10 (2012 expansion)

Year	TCV	AV	TV
2013	Pre-IFT formation	Pre-IFT formation	Pre-IFT formation
2014	\$950,000	\$475,000	\$475,000
2015	\$950,000	\$475,000	\$475,000

RESPONDENT'S WITNESSES

Henry DeGroot

Respondent's first witness was its assessor, Henry DeGroot. While DeGroot has been an assessor since 1979, he is only certified as a "Level 2," MCAO. DeGroot is also a licensed certified general appraiser.²⁵

DeGroot testified on direct to errors on the face of the record cards. He stated that the first entry on the record card that the sale to Petitioner was through a mortgage rather than a quit

²⁴ T.1 p. 111-122.

²⁵ T.1 p. 179-181

claim deed was erroneous.²⁶ As to the second entry which showed another sales price, DeGroot stated, "I'm not sure where that came from. I couldn't find no -- no reason to have that in there."²⁷

When asked to explain where the true cash value indicated on the card came from, DeGroot stated:

- Q. What is the next line there beneath map that says, 2012 estimated TCV?
A. True cash value is 7,460,900.
Q. And then what does it say after that?
A. It's a value override.
Q. What does that mean?
A. It means that the assessment does not match the true cash value computed on the record card.
Q. And where does that computation come from, the 7,460,900?
A. Well, it came from prior years. It carried down through the years.²⁸

DeGroot later explained that the overridden values were the result of IFT parcels overlapping with the subject, causing a portion of the value of the original parcels to be spread among the two additional IFT parcels.²⁹

DeGroot next testified that the indication on the record card of the land table used was erroneous. DeGroot explains:

- Land value estimates for land table and then four zeros a four and then a period and it says East Bass Lake. What does that mean?
A. That's references to land tables that are set up in the database, which I have not used in this case. And I don't know how that East Bass Lake got in there, but it was apparently a default and I didn't realize that was in there at the time.

Q. How did it get there?
A. That I'm not sure. It apparently was left in the database from the last parcel I worked on and I never changed it. Didn't catch it at the time.³⁰

DeGroot testified to inaccuracies on the record cards as to land improvements, noting that none of the boxes are checked regarding public improvements such as paved roads, sidewalks, utilities, streetlights or curbs. DeGroot's explanation was "an oversight." As to topography,

²⁶ T.1 p. 185

²⁷ T.1. p. 186

²⁸ T.1 p. 187

²⁹ T.1 p. 205

³⁰ T.1 p. 188-189

DeGroot testified that he also omitted checking any of the proper boxes describing the subject's topography.³¹

DeGroot next testified as to how he derived his figures for obsolescence. He testified that he determined physical obsolescence "from the book," although he made the judgment that the original building, built during the height of the cold war in 1962 had an effective age of 15 years.³² As to his finding of no functional obsolescence, DeGroot testified on direct examination as follows:

A. Functional -- that's again the call, appraisal call or assessment call. I didn't see no functional obsolescence because the building was designed to meet the needs of their factory, their operation.

Q. Why did you put -- or, did you put a hundred percent?

A. It's a hundred percent. There's -- there was no plus or minus adjustment for it.

Q. Did that come out of the assessor's manual or is that --

A. No, that's a visual thing.

Q. And why did you put a hundred?

A. Because I didn't see -- because the building was designed for the operation. There was no reason to have some -- any functional obsolescence in there.

Q. And we're talking about the original building.

A. That's right, it was redesigned after it was purchased to their -- to meet their needs sort of thing.³³

DeGroot made a similar finding concerning economic obsolescence.³⁴

DeGroot's conclusions regarding functional and economic obsolescence were examined on cross as follows:

Functional, that's based on the -- on the use of the building. Is it -- is it being -- is it workable? Is it -- there's no nonfunctional issues to the building. Because it was built and designed for their business for operation, for manufacturing, there would be no functional depreciation.

Q. So you made no functional depreciation in this -- in valuing this original building here?

A. Because it was designed for that -- for their operation.

Q. Okay. So functional depreciation to you means if it's designed for the current owner?

A. That's right.

³¹ T.1 p. 190-191

³² T.1 p. 196

³³ T.1 p. 197-198

³⁴ T.1 p. 198

Q. There's no need to depreciate it; right?

A. That's right.

Q. When would you depreciate based on functional?

A. Say he sold it to some other use -- for other use then there may be some functional obsolescence.

Q. Okay.

A. For that new purchaser, the owner.³⁵

Regarding economic obsolescence, DeGroot testified on direct as to why he determined that number to be zero:

Q. And what's the next entry beneath that one?

A. That's economic obsolescence. There again, economic obsolescence is something outside the property. It has nothing to do with the property itself, and I -- I determined that to be a hundred percent. [good] There's no plus or minus depreciation. They're alongside of an international airport. They have a Class A highway access to their property. The economy is rather pretty strong right now.

Q. Is this a number that comes from the manual or is this one that comes from you?

A. No, this is a visual number.

Not only did DeGroot find that there was no economic or functional obsolescence, he also found that despite the subject's location in the Upper Peninsula, there was no economic adjustment factor in determining the building's cost. His explanation was that because there were no sales, he did not need to make an adjustment, stating, "because there were no sales I left it [the ECF] at one."³⁶

Sharon Frischman

Respondent's second and last witness was Sharon Frischman, who is a MMAO assessor (level 4) in southeastern Michigan, as well as a licensed appraiser. Frischman did not assess or appraise the subject. Rather, the scope of her assignment was to critique Dempsey's 2014 and 2015 appraisals. She testified that while she has done appraisals in the Upper Peninsula, she primarily works in southeast Michigan.³⁷ On cross she elaborated on her experience in the UP

³⁵ T.1 p. 237-238

³⁶ T.1 p.206

³⁷ T.2 p. 7

Q. Ms. Frischman, you mentioned in your background comments when Mr. Koch was speaking with you that you have done some appraisal work in the UP. What have you done?

A. There was a cold storage distribution facility. We also worked on a very interesting study about the effects of a gravel mining operation on the neighboring residential properties. So that wasn't an appraisal, per se, more of a value study. Those are the two projects that come to mind, so certainly not as much work as Mr. Dempsey has done.

Q. How long ago were those projects?

A. Within the last few years.³⁸

While her expertise on functional obsolescence was trumpeted, she testified on direct that her expertise is on brownfield studies in the City of Southfield.³⁹

Her criticism of Dempsey's reports mostly concerned the age of his comparables, and the time differential between the date of the appraisal and valuation dates.⁴⁰ She conceded that Dempsey's reports were USPAP compliant.⁴¹

In defense of DeGroot's assessment on cross, she testified as follows:

A. Well, I'm not sure which section of the manual that is, but I can tell you that very few assessors have time to create three approaches on every property in their jurisdiction annually. And we do have prescribed mass appraisal procedures which actually work very well. Because logistically, I mean, I don't know -- I'm sure you're not familiar with preparing an assessment roll, but there's just no way that an assessor can apply three approaches to value, in essence, doing a single-property valuation on every property in their jurisdiction every year.⁴²

FINDINGS OF FACT

1. The subject is industrial real property located on the former K.I. Sawyer Air Force Base in Forsyth Township, 4 miles north of Gwinn, Marquette County, Michigan.
2. The Air Force closed K.I. Sawyer, and turned it over to Marquette County in 1995.
3. The population of the former K.I. Sawyer base is 3,000 persons, while Gwinn has a population of approximately 2,000.

³⁸ T.2 p. 24

³⁹ T.2 p. 9

⁴⁰ T.2 p. 9-11

⁴¹ T.2 p. 39

⁴² T.2 p. 32-33

4. To attract people and businesses, a renaissance zone was set up in 2000, providing for waiver of various taxes, including real and personal property taxes for 15 years.
5. The renaissance zone provides for a phase in of taxes, providing for 25% of real property taxes in 2013, 50% in 2014 and 75% in 2015, and 100% beginning in 2016.
6. Petitioner purchased the subject in 2002.
7. The original structure in parcel # 003-00 was built for the United States Air Force in 1962 and contains 48,155 square feet, 92% of which is finished for manufacturing and distribution, with the remaining 8% is finished for office.
8. In 2008, Petitioner added 56,343 square feet, and was fitted with overhead cranes and an overhead door 28 feet tall, to accommodate a press for 9 inch aluminum extrusion.
9. An Industrial Facilities Tax parcel, 001-00 covers the 2008 expansion.
10. Petitioner added an additional 10,032 square feet for an attached maintenance building which was completed in February of 2013 and placed upon the tax rolls in 2014.
11. The 2012 addition is also covered by an IFT, parcel # 001-00 for tax year 2014 and 2015.
12. Petitioner submitted three appraisals performed by George Dempsey, valuing the property on August 22, 2012, January 29, 2014 and May 21, 2015, which he testified were roughly equivalent for tax years 2012, 2014 and 2015.
13. Dempsey employed three approaches to value and concluded to overall values of \$4,600,000 (“as is”) and \$5,050,000 (“upon completion”) for 2013; \$5,100,000 for 2014 and \$5,150,000 for 2015.
14. Dempsey testified at length as to the difficulties in valuing large industrial properties in the upper peninsula.
15. Respondent’s only valuation for the subject were record cards prepared by its assessor Henry DeGroot, using the mass appraisal cost approach for the original parcel, 003-00.
16. For the two additions, DeGroot’s only evidence of value is an overridden record card showing only a parcel number and a value of \$2,000,000 SEV and Taxable for parcel 001-00, and a Notice of Assessment for parcel # 001-10 at \$475,000.
17. On direct examination, DeGroot highlighted the errors in the record cards.
18. DeGroot found that there was no functional obsolescence because the property was built to suit its owner.

19. DeGroot found no economic obsolescence because of the subject's location near an airport.
20. Respondent's cost approach did not include any Economic Adjustment Factor, (ECF of 1.0) in calculating costs because there were no sales in the area.
21. Sharon Frischman, Respondent's review appraiser testified that she primarily works in southeast Michigan.
22. Frischman provided no alternative value to the values submitted by Dempsey and DeGroot.

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.⁴³

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. . . .⁴⁴

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.⁴⁵

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value' . . . are synonymous."⁴⁶

"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."⁴⁷ The Tribunal is not bound to accept either of the parties' theories of valuation.⁴⁸

⁴³ See MCL 211.27a.

⁴⁴ Const 1963, art 9, sec 3.

⁴⁵ MCL 211.27(1).

⁴⁶ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

⁴⁷ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

⁴⁸ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

“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.”⁴⁹ 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.”⁵⁰

A proceeding before the Tax Tribunal is original, independent, and de novo.⁵¹ The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”⁵² “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”⁵³

“The petitioner has the burden of proof in establishing the true cash value of the property.”⁵⁴ “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.”⁵⁵ 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.”⁵⁶

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.⁵⁷ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”⁵⁸ 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

⁴⁹ *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

⁵⁰ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

⁵¹ MCL 205.735a(2).

⁵² *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

⁵³ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

⁵⁴ MCL 205.737(3).

⁵⁵ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

⁵⁶ MCL 205.737(3).

⁵⁷ *Meadowlanes*, *supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), *aff'd* 380 Mich 390 (1968).

⁵⁸ *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

the circumstances.⁵⁹ Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.⁶⁰

The Tribunal is asked to decide what the usual selling price is for a type of property that does not often sell in the Upper Peninsula; a 114,530 square foot industrial building. The subject is located in the remains of K.I. Sawyer Air Force Base, once an outpost of the cold war, and a bulwark against the former Soviet Union, which announced its closing in 1993. The evidence provided by Petitioner are three appraisals featuring sales comparables that appear to be distant in time or place from the valuation dates and location of the subject. Respondent provided values taken from Marshall Swift, without taking into account the subject's location in a relatively desolate environment, and without taking into account the subject's large size for the market.

The Tribunal finds that Respondent's record cards are an unreliable indicator of value. Putting aside the inaccuracies on the face of the record cards as to purchase price, terms of financing, land value and land improvements, the Tribunal finds that valuing the property as if there is no functional obsolescence because the structures were custom built for the Petitioner is to ignore market forces. Per MCL 211.27, the Tribunal must determine the usual selling price. In determining the usual selling price, the appropriate inquiry is to what the likely use would be of the subject if it were to be sold.⁶¹ As the Court of Appeals recently held in *Lowes Home Centers Inc v. Marquette Twp.*⁶²

Moreover, by taking the position that the HBU [Highest and Best Use] of the properties is use as a Lowe's and Home Depot store, respondents confuse the distinct concepts of fair market value (i.e., value-in-exchange) and value to the owner (i.e., value-in-use) by treating them as one in the same. Our Supreme Court has expressly stated that "the constitution and the General Property Tax Act require that property tax assessments be based on market value, not value to the owner...." *First Fed S & L Ass'n of Flint v. City of Flint*, 415 Mich. 702, 703; 329 NW2d 755 (1982). [Footnotes omitted].

While *Lowes* involved the valuation of big box stores rather than industrial property, the principle is the same. Respondent has valued the subject "in use," rather than "in exchange," and

⁵⁹ *Antisdale, supra* at 277.

⁶⁰ See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

⁶¹ *Huron Ridge LP v Ypsilanti Twp.*, 275 Mich App 23, 33; 737 NW2d 187 (2007).

⁶² unpublished opinion per curiam of the Court of Appeals, issued April 22, 2014 (docket nos. 314111, 314301)

therefore fails to set forth a “usual selling price,” the very definition of true cash value in Michigan. Respondent ignores the fact that the subject’s 114,530 square feet is much larger than any other industrial property in the UP that has sold since 2005. While this amount of space may be ideal for Petitioner’s operations, it would be tough to find another enterprise that requires that much space.

As to DeGroot’s finding that there is no economic obsolescence for the subject, he failed to take into account that it is unlikely that another aluminum extrusion plant will purchase this large, industrial space. In fact, without additional significant tax breaks as were enjoyed by Petitioner, it is hard to imagine that any large manufacturer would consider setting up shop in the under-populated and isolated spot where the subject is located.

Finally, the Tribunal finds that DeGroot’s decision not to have an ECF other than 1, because there are no sales in which to determine a factor, while not necessarily wrong, is indicative of a lack of demand for industrial property in this area, thus supporting Petitioner’s claim. Accordingly, the cost approach, which was the only approach submitted by Respondent is not credible for determining the subject’s true cash value.

Petitioner on the other hand relied upon three appraisals for determining true cash value. A legitimate criticism of each appraisal is that none of them value the property on tax day, December 31, 2012, 2013 and 2014. However, the Tribunal finds Dempsey’s testimony that there is little that changes in the UP to be uncontroverted by Respondent, and credible. Similarly, the Tribunal accepts Dempsey’s valuation for the same reason. Dempsey’s lengthy experience in appraising property in this region of our state, as well as his detailed testimony of the difficulty in finding sales in the area ring true, and add credibility to his appraisals.

While Sharon Frischman’s criticisms of Dempsey’s appraisals articulate various concerns, “[s]ometimes, you have to use what you have to use.”⁶³ In the present appeal, *the only credible valuation evidence submitted to aid the Tribunal in determining the subject’s true cash value is Dempsey’s appraisals*. As ideal comparables were hard to come by, Dempsey by necessity had to use sales that were more remote in time and distance. As he explained, his sales and listings attempted to reflect the region, as well as the size of the subject, and were useful for this purpose. He also explained why he believes it is inappropriate to have adjustments for each

⁶³ T.1 p. 162

amenity of the subject, such as number of overhead doors, when there are so few sales.

Frischman agreed that most of the weight was properly placed on the sales approach.

Similarly, Dempsey's income capitalization approach, which used several different methods, has elements that are also of concern, including the use of different classifications of property in determining a portion of the capitalization rate, which may be on the low end, especially considering that the cap rate was not loaded for the vacancy portion of 10%, which tends to overstate the subject's value. Some of Dempsey's rental comparables were also suspect, as one of them involved a sale-leaseback. However, Dempsey testified that he previously appraised this comparable, and the rental rate was "at market." In any case, his income approach was not chiefly relied upon, since Dempsey found it to be unlikely that this property would be income-producing.⁶⁴

As to Dempsey's cost approach, the Tribunal agrees that it should be given little weight because of the large adjustments that are required for a property of this size and type in a place so remote. The Tribunal concludes that Dempsey's appraisals and conclusions, while far from ideal, are the best evidence of value submitted in this case, with no credible alternative presented by Respondent. Accordingly, the Tribunal accepts the overall values given by Dempsey for the property. Therefore, the Tribunal accepts Dempsey's values for the subject as a whole for each year. Because the 10,032 square foot maintenance section was not up and running by tax date for 2013, the Tribunal accepts Dempsey's determination of "as built" value of \$4,600,000, rather than the "upon completion" value. For 2014, the Tribunal accepts Dempsey's value of \$5,100,000 and for 2015, his value of \$5,150,000.

Finally, the Tribunal must allocate the value of the subject property among the three parcels. As referenced in the Statement of Facts section of this decision, Respondent submitted no evidence of value for the IFT parcels, other than the agreed upon amount. While Respondent contends that the 2008 addition is worth what it is assessed, per its IFT application, (\$4,000,000), the Tribunal is not bound by that contention. If the Tribunal is to accept \$4,000,000 for the 2008 addition, then the original parcel, which is 48,155 square feet, is worth only 15% of the 2008 addition, which although larger at 56,343 square feet, is not 7 times as large, nor are any of the newer improvements in this parcel worth 7 times as much. As Petitioner's expert valued the

⁶⁴ T.1 p. 111

property based upon its price per square foot, this large disparity in value between the parcels is difficult to defend. While the 2008 and 2012 additions are newer, and contain over-improvements, such as extra high overhead doors and overhead cranes, Dempsey's appraisal and testimony indicated that the market would not pay a premium for these amenities. Further, Dempsey valued the subject on a square foot basis, using a sales approach, and found a very large amount of functional obsolescence in his cost approach based upon its total square footage of 114,530 square feet for the subject. Therefore, the Tribunal finds that the best way to allocate the overall value of the subject is by square foot, with some rounding. Accordingly, the subject property's TCV, SEV, and TV for the tax year(s) at issue, which are rounded, 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 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, and prior to July 1, 2012, at the rate of 1.09%; and (iv) after June 30, 2012, through December 31, 2015, at the rate of 4.25%.

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

APPEAL RIGHTS

If you disagree with the Tribunal's final decision in this case, you may either file a motion for reconsideration with the Tribunal or a claim of appeal directly to the Michigan Court of Appeals ("MCOA").

A motion for reconsideration with the Tribunal must be filed, by mail or personal service, with the \$50.00 filing fee, within 21 days from the date of entry of this final decision.⁶⁵ A copy of a party's motion for reconsideration must be sent by mail or electronic service, if agreed upon by the parties, to the opposing party and proof must be submitted to the Tribunal that the motion for reconsideration was served on the opposing party.⁶⁶ However, unless otherwise provided by the Tribunal, no response to the motion may be filed, and there is no oral argument.⁶⁷

A claim of appeal to the MCOA must be filed, with the appropriate entry fee, unless waived, within 21 days from the date of entry of this final decision.⁶⁸ If a claim of appeal is filed with the MCOA, the party filing such claim must also file a copy of that claim, or application for leave to appeal, with the Tribunal, along with the \$100.00 fee for the certification of the record on appeal.⁶⁹

By: David B. Marmon

Entered: December 4, 2015

⁶⁵ See TTR 257 and TTR 217.

⁶⁶ See TTR 225.

⁶⁷ See TTR 257.

⁶⁸ See MCR 7.204.

⁶⁹ See TTR 213 and TTR 217.