Zaremba Group LLC,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 17-001291

Livingston Township,
Respondent.

Presiding Judge
David B Marmon

FINAL OPINION AND JUDGMENT

The Tribunal issued a Proposed Opinion and Judgment ("POJ") on April 5, 2019. The POJ states, in pertinent part, "[t]he parties have 20 days from date of entry of this POJ to notify the Tribunal **in writing, by mail or by electronic filing, if available,** if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions)."

On April 25, 2019, Respondent filed exceptions to the POJ. In the exceptions, Respondent states that it takes exception to the POJ because it is not based on substantial evidence. Comparable sales were ignored, and the below-market distressed sale of the subject property was relied on without adjustment for the distressed nature of the sale. If it determined that the sales comparison approach could not be used then the Tribunal should have considered Respondent's cost-less-depreciation approach and required Respondent to submit whatever additional information the Tribunal required for its consideration.

On May 9, 2019, Petitioner filed a response to the exceptions. In the response, Petitioner states that Respondent's arguments are without merit. The sale of the subject was not distressed and the 18 back acres of the property were accounted for by way of the Tribunal's consideration of that sale. The comparables were correctly rejected, as was Respondent's cost-less-depreciation approach.

The Tribunal has considered the exceptions, response, and the case file and finds that the Administrative Law Judge ("ALJ") properly considered the testimnony and evidence provided. Respondent contends that it was error to rely on the sale of the subject property because neither party's expert determined that it was appropriate and both testified that at the time of the sale, the seller was contracting its operations indicating the sale was under duress. Respondent argues that although Petitioner's owner did testify to his knowledge of the sale, he had no knowledge of the seller's motivations; more importantly, he contradicted what was known and testified to by his own expert

about the distressed nature of the sale. Respondent further argues that the use of the sale of the subject as a basis for valuation where the sales comparables support a finding that the sale was distressed. All of the comparable sales were determined to be unreliable indicators of value, however, and despite Respondent's assertion to the contrary, this determination is supported on the record. Even assuming the individual sales could be considered reliable indicators of value, the appraiser's specific approach to valuation was determined to be arbitrary, unsupported, and contrary to appraisal practices. Further, while it is true that neither party's expert utilized the sale of the subject property in their respective valuations, Petitioner's appraiser did, as specifically noted in the POJ, testify

> that the sale was an arms-length transaction and a 'very reliable indicator of the value for the true cash value of the subject property . . . . for the tax year at issue' based on his 'interview' of the realtors involved in the transaction that 'reported' to him 'that this was a fair reflection of market value at the time of the sale.' Mr. Sill also testified that this 'reporting' or the realtor's 'opinion' was:
>
> Based on their knowledge of the property and the market and the transaction . . . . It was offered for 306 days prior to the sale with an asking price of $444,000. That was a public listing for sale available to everyone. And it took nearly a year before it finally sold at $400,0000 after it had been listed at $444,000.

Petitioner's appraiser also indicated in its report that the sale of the subject appeared to be reflective of market value. The ALJ acknowledged both parties' failure to independently research the sale notwithstanding knowledge of the seller's contracting of its operations but also noted Mr. Zaremba's testimony on the negotiated purchase price. The fact that Mr. Zaremba had no personal knowledge of the seller's motivation is irrelevant because this testimony, combined with the indicated market exposure of over 2,000 days, establishes that the property sold subject to normal market conditions and pressures so as to be a reliable indicator of value and the Tribunal finds no contradictory statement's by Petitioner's appraiser.

Respondent's reliance on *Menard, Inc v City of Escanaba* [1] for the proposition that the Tribunal was required to utilize the cost-less-depreciation approach and permit Respondent to file additional evidence with respect to that approach is without merit, as that case was decided on its specific facts and circumstances, which are distinguishable from the instant appeal. Notably, there is no evidence establishing the lack of a market for properties with the subject's highest and best use; the parties comparable sales were rejected in this case solely due to the failure to consider and/or appropriately account for various factors. Moreover, there was testimony regarding numerous errors, both corrected and uncorrected, on the property record card.

[1] *Menard, Inc v City of Escanaba*, 315 Mich App 512; 891 NW2d 1 (2016).

Given the above, Respondent has failed to show good cause to justify the modifying of the POJ or the granting of a rehearing.[2] As such, the Tribunal adopts the POJ as the Tribunal's final decision in this case.[3] The Tribunal also incorporates by reference the Findings of Fact and Conclusions of Law contained in the POJ in this Final Opinion and Judgment. As a result:

a. The property's TCV, SEV, and TV, as established by the Board of Review for the tax year(s) at issue, are as follows:

Parcel Number: 080-031-400-005-01

Year	TCV	SEV	TV
2017	$1,335,800	$667,900	$667,900

b. The property's final TCV, SEV, and TV, for the tax year(s) at issue, are as follows:

Parcel Number: 080-031-400-005-01

Year	TCV	SEV	TV
2017	$449,300	$224,650	$224,650

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year(s) at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally provided in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization.[4] 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

[2] See MCL 205.762.
[3] See MCL 205.726.
[4] See MCL 205.755.

1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (ix) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (x) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, and (xi) after June 30, 2019 through December 31, 2019, at the rate of 6.39%.

This Final Opinion and Judgment resolves the last pending claim 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.[5] Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is $50.00 in the Entire Tribunal and $25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.[6] 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.[7] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[8]

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."[9] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[10] The fee for certification is $100.00 in both the

[5] See TTR 261 and 257.
[6] See TTR 217 and 267.
[7] See TTR 261 and 225.
[8] See TTR 261 and 257.
[9] See MCL 205.753 and MCR 7.204.
[10] See TTR 213.

Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[11]

By _____

Entered: June 5, 2019
ejg

[11] See TTR 217 and 267.

Zaremba Group, LLC,
Petitioner,

v

Livingston Township,
Respondent.

MICHIGAN TAX TRIBUNAL

MAHS Docket No. 17-001291

Presiding Judge
Peter M. Kopke

PROPOSED OPINION AND JUDGMENT

INTRODUCTION

Petitioner filed this appeal disputing the property tax assessment levied by Respondent against Parcel No. 080-031-400-005-01 for the 2017 tax year. Scott Aston, Agent and Jason Conti, Esq. represented Petitioner and Stephanie Simon Morita, Esq. represented Respondent.

A hearing was commenced on October 17, 2018 and continued on October 24, 2018 and November 28, 2018.[1] Petitioner's witnesses were Andrew E. Sill, Appraiser and John Zaremba and Respondent's witnesses were Susan Shipman, Appraiser and Sally Nowak, Assessor.[2]

[1] The October 17, 2018 hearing was recessed prematurely because materials relied upon in the preparation of Petitioner's valuation disclosure were not included in the appraiser's work file until after that work file was submitted to Respondent pursuant to a discovery request. Although Petitioner had, **contrary to the Presiding Judge's statements**, no duty to supplement that discovery response, the receipt and review of those materials by Respondent would not only address any potential prejudice to Respondent resulting from the failure to include those materials, but also facilitate a resolution of this matter, particularly with respect to Respondent's cross-examination of Petitioner's valuation expert relative to his calculation of the site improvement values under his cost approach. See October 17, 2018 Transcript ("TR1") at 115-21. See also TTR 239(7), 243, 215, MCR 2.302(1), and MCL 205.732(c). In that regard, the newly-completed work file was also submitted to the Tribunal and returned to Petitioner, as discovery responses are not generally included in the case file unless those responses are offered for admission and Petitioner had not indicated that the work file was going to be offered as an exhibit. See also October 24, 2018 Transcript ("TR2") at 5 and 9-28.

[2] Mr. Sill and Ms. Nowak both submitted valuation disclosures and were admitted, over objections, as expert witnesses for purposes of testifying as to the valuation of the property at issue. See TR1 at 11-21, TR2 at 6, and November 28, 2018 Transcript ("TR3") at 8-11. In that regard, Mr. Conti also objected to a question relating to Mr. Sill's appraisal relative to an adjustment for water and sewer indicating that Ms. Nowak was not qualified as an appraiser to give an expert opinion about Mr. Sill's appraisal because she's not a licensed appraiser. See TR3 at 47. As indicated to Mr. Conti, the Tribunal is not the regulatory

agency with authority over violations relating to the licensing of appraisers. Nevertheless, the objection was sustained as Ms. Nowak's testimony indicated that Livingston Township had no water and sewer and there would be no reason for her to make such an adjustment. See TR3 at 47-8. As for Ms. Shipman, she was offered as an expert witness. She did not, however, submit a valuation disclosure and, as such, she would have been precluded from testifying as to the value of the property without leave of the Tribunal and no such leave was granted or necessary. In that regard, see TTR 255(2), which provides:

> **Without leave of the tribunal**, a witness may **not** testify as to the value of property **without** submission of a valuation disclosure signed by that witness and containing that witness' value conclusions and the basis for those conclusions. This requirement does **not** preclude an expert witness **from rebutting another party's valuation evidence**. The expert witness may **not**, however, testify as to the value of the property at issue **unless** the expert witness submitted a valuation disclosure signed by that expert witness. [Emphasis added.]

More specifically, she was not offered as an expert for purposes of testifying as to value. Rather, she was offered as a rebuttal expert witness on appraisal practices and was, over Petitioner's unsupported and continuing objections, admitted as an expert witness for purposes of testifying as to appraisal practices only. See TR2 at 111- 28. As for Mr. Conti's many objections, he indicated that (i) she's not allowed to give anything other than factual testimony because she had not provided a report, (ii) she's not on the witness list, (iii) it is a violation of USPAP for her to rebut the substance of Mr. Sill's appraisal without submitting a report underlying her testimony relative to his appraisal, (iv) her testimony would be unfair and prejudicial because she has not provided in advance the basis of her opinions, and (v) it's a violation of his client's due process. As for those objections, Ms. Shipman was, based on her qualifications, admitted for the sole purpose of testifying as to proper appraisal practices or, more specifically, Mr. Sill's misapplication of appraisal theory relative to highest and best use. Although said testimony was ultimately determined to be unnecessary as a review of Mr. Sill's appraisal and his conflicting testimony clearly demonstrated that misapplication, as indicated herein. Nevertheless, the admission of Ms. Shipman as an expert was appropriate and based on a treatise that was admitted under judicial notice (i.e., Appraisal Institute: *The Appraisal of Real Estate* (2013, 14th edition). See TTR 215, MRE 702, 703 (i.e., "[t]his rule does not restrict the discretion of the court to receive expert opinion testimony subject to the condition that the factual bases of the opinion be admitted in evidence thereafter"), and 705, which also provides:

> The expert may testify in terms of opinion or inference and give reasons therefor **without prior disclosure** of the underlying facts or data, **unless** the court requires otherwise. The expert **may in any event be required** to disclose the underlying facts or data **on cross-examination**. [Emphasis added.]

Notwithstanding the announced limitation on her admission and his continuing objections based on her failure to file a "report" or valuation disclosure, Mr. Conti attempted to elicit an opinion of value from Ms. Shipman or, more specifically, have her indicate that Petitioner's purchase price was a reliable indicator of value. Said testimony, although deemed by Mr. Conti as a necessary part of Petitioner's "record" or "offer of proof," as made by him, was precluded based on her limited admission. See TR2 at 169-196. Additionally, Ms. Shipman also indicated that "I don't know enough about that sale to know if it's arm's length." See TR2 at 170, 176-77 and 194. The preclusion was, however, disputed by Mr. Conti, who continued objecting and indicated that "the Tribunal has changed how it does business, based on what's happened here today." Contrary to that statement, no "business" or, more appropriately, practice has changed as the admission of Ms. Shipman and her testimony, with the exception of the attempted solicitation of valuation testimony, was consistent with Tribunal rules and practice and, importantly, the Michigan Court Rules.

Based on the evidence (i.e., testimony and admitted exhibits) and the case file,[3] the Tribunal finds that subject property's true cash value ("TCV"), state equalized value ("SEV"), and taxable value ("TV") are as follows:

Parcel Number: 69-080-031-400-005-01

Year	TCV	SEV	TV
2017	$449,300	$224,650	$224,650

FINDINGS OF FACT

The following facts were proven by a preponderance of the evidence (i.e., testimony and admitted exhibits) and concern only the evidence and inferences found to be significantly relevant to the legal issues involved:[4]

1. The subject property is commercial real property located at 2010 West M-32, Gaylord, Michigan, which is in a primary commercial corridor located west of Gaylord.[5]
2. Petitioner purchased the property for $400,000 on June 16, 2015.[6] The property was originally listed for sale on August 9, 2007, for $1,000,000 and had several price reductions prior to Petitioner's purchase.
3. The property is a former lumberyard and the lumberyard's "primary" retail building burned down in 2008.[7] The property was, however, used for the tax year at issue by the owner for storage relating to his farm operations and his implement dealership business.[8]

With respect to Mr. Zaremba, he was offered as a rebuttal witness upon the conclusion of Respondent's proofs. See TR3 at 265-7. See also TR3 at 268-70 regarding Respondent's objection to the scope of Mr. Zaremba's testimony.

[3] P-1 was offered and, over Respondent's objection, admitted. See TR1 at 26-7. P-4 was offered and, over Respondent's objection, admitted. See TR1 at 34-6. P-2 and P-3 were offered and, over Respondent's objection, admitted. See TR1 at 47-50. Judicial notice was taken with respect *The Appraisal of Real Estate*, *supra*. See TR2 137-142. See also TTR 215 and MCL 24.277. R-12 was admitted without objection. See TR2 at 9-15. R-1 was offered for admission and, over Petitioner's objection, admitted. See TR3 at 13-29. R-4 was offered for admission and admitted without objection. See TR3 92-8. R-5 was offered for admission and admitted without objection. See TR3 at 98-101. R-3 was offered for admission and admitted without objection. See TR3 at 101-7. R-7 was offered for admission and admitted without objection. See TR3 at 107-14. P-9 was offered and, over Respondent's objection, admitted. See TR3 at 139-156 and 251-52. P-8 was offered for admission and, over Respondent's objection, admitted. See TR3 at 226-30. P-7 was offered for admission and, over Respondent's objection, admitted. See TR3 at 185-94 and 251-54.

[4] The Tribunal has not addressed every piece of evidence or every inference that might lead to conflicting conclusions and has rejected evidence contrary to these findings. Nevertheless, the parties stipulated that the level of assessment and ratio are not at issue. See TR3 at 11-2.

[5] See P-1 at 17-8 and at 28-30.

[6] See P-1 at 12 and R-1 at 2. See also TR1 at 7 and TR3 at 12.

[7] See P-1 at 2-3 and 16.

[8] See P-1 at 2-3 and 12.

4. The property consists of a narrow, irregular shaped parcel of 31.10 acres with 412.5 feet of frontage on West M-32 (an asphalt-paved state highway and Class A road) and 252.85 feet of frontage on Labrador Lane, which is a privately maintained loose gravel road.[9] The property is also impacted by easements for power distribution lines and gas pipelines.[10]
5. The property's improvements consist of two lumber storage buildings (i.e., wood pole building construction, wood truss roof, steel panel walls, and roof covering with no interior finish, no plumbing, no heating, no insulation, and minimal electricity) with attached lean-to storage areas, asphalt paving, fencing, well, and septic field.[11] The storage buildings and lean-tos were constructed in 2001.[12]
6. The property's values, as established by Respondent's March Board of Review, are for the tax year at issue as follows: AV and TV – $667,900.[13]
7. The property's values as contended by the parties are for the tax year at issue as follows: Petitioner's TCV – $475,000 and Respondent's TCV – $1,335,800.[14]
8. The property was zoned for commercial use (i.e., B-2) for the tax year at issue.[15]

---

[9] See TR1 at 30 and 39-40. As for the acreage, Petitioner's appraisal indicates that the subject land area is 31.1 acres (see P1 at 2 and 6), while the property's record card indicates that the land area is 31.41 acres (see R1 at 2). In that regard, both Mr. Conti and Mr. Sill indicated that the land "consists of approximately 31.1 acres." See TR1 at 5 and 30. With respect to Mr. Sill's acreage "calculation," he indicated that he "looked at the assessment records, the county GIS, and in the legal description it states the area of the site" and despite that statement "us[ed] the dimensions contained in the county GIS records." See TR1 at 30. Mr. Sill's appraisal does, however, include the legal description and said description does, as indicated above, indicate that the property consists of "31.10 acres." See P-1 at 8 and 19-22.

[10] See TR1 at 30-7. See TR3 at 139-156, which provides, in pertinent part:

> Q: Do you know how far it was from the back of the buildings to the first power line?
>
> A: I do **not** know . . . .
>
> Q: Okay. If there were a set of power lines south of easement C that crossed it, then you would - - you would reduce your acreage to where the other power lines are; right?
>
> A: For what amount of property sat in front of the power lines?
>
> Q: Yes.
>
> A: **That would be a correct statement**.
>
> [Emphasis added.]

[11] See TR1 at 39-42. See also P-1 at 21-7. In addition, Petitioner claims that the well and septic field have "not been used since the fire in 2008" and that "[i]t is not known whether they are still in functioning order as they're not currently in use." See TR1 at 6 and 40. See also TR3 at 55-7.

[12] The property's record cards do not indicate the year built and indicate an estimated effective age of 13 years for both the 2017 and 2018 tax years. See R-1 at 2-7. As for Petitioner, Mr. Sill's appraisal indicates that the buildings and lean-tos were built in 2001. See P-1 at 6.

[13] See R-1 at 2, TR2 at 110, and TR3 at 12.

[14] See P-1 at 7 and TR1 at 9-10 and 27. See also R-1 at 2, TR2 at 110, and TR3 at 12.

[15] See TR1 at 39 and P-1 at 10-11, which provides, in pertinent part:

ARTICLE II B2 GENERAL BUSINESS DISTRICT

INTENT

The B2 General Business District is designed to provide sites for more diversified business types than the B1 Local Business District and often located so as to serve passer-by-traffic. Tourist services are included as being in character with the District.

SECTION 11.1 PRINCIPAL USES PERMITTED

No building or land shall be used **and no building** shall be erected **except** for one (1) or more of the following specified uses . . . .

SECTION 11.2 PERMITTED USES SUBJECT TO SPECIAL CONDITIONS

The following uses may be permitted, subject to the conditions herein imposed on each use, the review standards of Article 19 and only after the review and approval of the site plan by the Planning Commission. [See Article 21 for applicable Specific Requirements for Certain Uses, if any and Article 23 for Site Plan Requirements. . . .

In that regard, the uses listed do **not** include residential or recreational uses. [Emphasis added.] See also TR3 92-107 and 121-139, which provides, in pertinent part:

Q: Can the property be used for a noncommercial recreational purpose?

A: In B2?

Q: Correct.

A: **No** . . . .

A: No. In that I think what Mr. Sill was trying to point - - he was trying to value the property strictly for it only being able to be used for recreational use. **He was valuing it as being zoned something other than B2, so that's the reason for why I stated that he's incorrect** . . . .

A: **I would have to flip through here, but in my understanding in the reading of the appraisal that his valuation of the back property using those comps 104, 105 and 106, he's valuing those as being recreational uses, being zoned for residential uses. That is not the case of the subject property. The subject property is zoned B2, not recreational forest or residential. It has a more diversified value. It's got a higher value being zoned commercial** . . . .

Q: Sure. Can you - - other than the buildings that are adjacent to M-32 and all these properties are shown, once you get behind those buildings can you identify for me one single commercial use of any of that property depicted on page 9 [of R1] on that aerial view . . . .

Q: Does this picture reflect any commercial uses for the properties that are currently behind those that are located on M-32 specifically?

A: They are undeveloped, by the looks of this picture.

9. The property's highest and best use for the tax year at issue is to hold the property for future development (i.e., "as vacant").
10. The designated market area (i.e., "a primary commercial corridor") has, since 2013, experienced growth and demand and, as such, reflects an increasing market for the tax year at issue.[16]

> Q: Okay. But you do not know the zoning for these properties?
>
> A: I do not.
>
> Q: Okay.
>
> Q: Are you aware of anyone attempting to develop any of these properties north of that line that we talked about, north of the buildings that abut M-32, attempting to develop those properties for a commercial use?
>
> A: I know that the one ending in 400-040-00 is **currently listed for sale and advertised as commercial use** - -
>
> Q: But no one's actually bought - -
>
> A: - - behind - -
>
> Q: - - and developed it . . . .
>
> A: Okay. I'll restate my answer. **The parcel ending in 400-040-00, that property is currently listed for sale. It is advertised for a commercial use**.
>
> Q: But my question is, **is there anyone currently developing any of this property north of that line for commercial use currently** . . . .
>
> Q: If you're going to list the property - -
>
> A: **I don't know** . . . .
>
> Q: Is it your job to know commercial - - what developments are going on in this particular area?
>
> A**: I do attempt to research as much as I can what's going on with development in that area**.
>
> [Emphasis added.]

It is, unfortunate, that more information was not provided regarding the listing of the sale of "back" acreage for commercial usage.

[16] See P-1 at 28, which provides, in pertinent part:

> Data has been reviewed from recent sales of vacant land in this market. The data indicates that there is a slowly **improving** demand for rural vacant land. [Emphasis added.]

See also TR3 at 29-46, which provides, in pertinent part:

ISSUES AND 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.[17] In that regard, the Michigan Legislature has, as directed by the Constitution, 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.[18]

In its review of that definition, the Michigan Supreme Court has determined that "true cash value" is synonymous with "fair market value."[19]

As for the Tribunal, the Tribunal must, under MCL 205.737(1), find a property's true cash value in determining a lawful property assessment.[20] The Tribunal is not, however, bound to accept either of the parties' theories of valuation.[21] Rather, 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.[22]

> Q: And in the last several years have there been any changes to the nature of the property in that area that you've noticed in your duties as an assessor?
>
> A: **We have seen development in the last few years has skyrocketed in that area**, more so than anywhere else on the commercial corridors in the Gaylord area.
>
> [Emphasis added.]

See further TR3 at 46 (i.e., "[c]ommercial property sells for more than residential . . . . [as] [t]hey're two completely different markets"), 156-171, and 254-57 regarding the erroneous inclusion of the subject sale in the sales study skewing the study and its removal from the study.

[17] See Const 1963, art 9, sec 3.
[18] See MCL 211.27(1).
[19] See *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).
[20] See *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).
[21] See *Teledyne Continental Motors v Muskegon Twp,* 145 Mich App 749, 754; 378 NW2d 590 (1985).
[22] See *Meadowlanes Ltd Dividend Housing Ass'n v Holland,* 437 Mich 473, 485; 473 NW2d 636 (1991).

Further, a proceeding before the Tribunal is original, independent, and de novo[23] and the Tribunal's factual findings must be supported by competent, material, and substantial evidence.[24] In that regard, “substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”[25]

Additionally, “the petitioner has the burden of proof in establishing the true cash value of the property.”[26] “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.”[27] 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.”[28]

As recognized by the courts of Michigan, 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.[29] The market approach is, however, the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.[30] Nevertheless, 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.[31] Regardless of the approach selected,

---

[23] See MCL 205.735a(2).
[24] See *Antisdale v Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984) and *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-3; 462 NW2d 765 (1990).
[25] See *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-3; 483 NW2d 416 (1992).
[26] See MCL 205.737(3).
[27] See *Jones & Laughlin Steel Corp*, *supra* at 354-5.
[28] See MCL 205.737(3).
[29] See *Meadowlanes*, *supra* at 484-85; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), *aff'd* 380 Mich 390 (1968).
[30] See *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale*, *supra* at 276 n 1).
[31] See *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale*, *supra* at 277 and *Teledyne Continental Motors v Muskegon Twp*, 163 Mich App 188, 193; 413 NW2d 700 (1987), *lv den* 429 Mich 889 (1987)).

the value determined must represent the usual price for which the subject property would sell.[32]

The Tribunal is also required to consider the "highest and best use" of property in determining the property's true cash value, as that concept is fundamental to such determinations, as "it recognizes that the use to which a prospective buyer would put the property will influence the price which the buyer would be willing to pay….[further,] [l]and is appropriately valued 'as if available for development to its highest and best use, that most likely legal use which will yield the highest present worth.'"[33] In that regard, "highest and best use" of property is shaped by the competitive forces within the market where the property is located, and it provides the support for a thorough investigation of the competitive position of the property "in the minds of market participants."[34] Additionally, highest and best use analysis strongly influences the choice of comparable sales in the sales approach. Only properties with the same or similar highest and best uses are suitable for use as comparable sales.[35] "If the property being appraised is a single site, not a site whose use depends on assemblage with other sites, the highest and best use of the site alone is analyzed as it currently exists by itself. If the property being appraised consists of multiple sites as though sold in one transaction, the highest and best use analysis considers them as one large site."[36]

Finally, the Tribunal is also required to determine the subject property or properties' taxable values for the tax years at issue.[37]

Here, Petitioner claims that the property's TCV should be based on Petitioner's 2015 purchase of the subject property (i.e., "a compelling indicator") and its appraiser's sales and corrected cost approaches.[38] Petitioner, in its closing statement, also claims that (i) Petitioner's appraiser and Respondent's assessor said that the property's highest and best use "would be for an interim storage use until the subject property's

---

[32] See *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Meadowlanes*, *supra* at 485).
[33] See *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 633; 462 NW2d 325 (1990).
[34] See Appraisal Institute: *The Appraisal of Real Estate* (2013, 14th ed) at 331.
[35] See *The Appraisal of Real Estate*, *supra* at 345.
[36] See *The Appraisal of Real Estate*, *supra* at 334.
[37] See MCL 205.737(1). See also MCL 211.27a(2).
[38] See TR1 at 7 and 24-6.

developed for its highest and best use," (ii) the property is "subdivided" into two parts "because there are certain structures on the subject property which, in essence, divide the property as such" (i.e., "several power distribution lines as well as a gas distribution line which traverse the property") and these structures or easements "limit" or "prevent" Petitioner "from being able to develop the property" (i.e., "the testimony of Mr. Sill made it clear, it is not feasible to develop for commercial use those 25 - - approximate 25 acres of back property"), and (iii) Petitioner's purchase of the property "was not a distressed sale and the property had been marketed for over 2,000 days" (i.e., "it was a negotiated sale" and "the evidence that was presented, including a press release from the very seller, showed that not only were they not having financial problems, but they were having record sales during the time in which they sold this property to the Petitioner").[39]

In response to Petitioner's claims, Respondent contends that "Petitioner's appraisal is just plain bad," as "[i]t contains bad comps with differing highest and best uses, bad and substantial adjustments and a methodology contrary to the treatise *The Appraisal of Real Estate*."[40]Respondent also contends that (i) "several of . . . Petitioner's sales are not comparable to the property because they are not located on a Class A road and how these - - those properties not on a Class A road are less valuable than our subject," (ii) Petitioner's "assumption that the back 25 acres of the property has little value is just dead wrong . . . [as] the utility easements do not affect the development of the property," (iii) "four of . . . [Petitioner's] six comparables suffered from inferior zoning yet no adjustment was made to them to account for this, (iv) Petitioner failed "to cost out all of the improvements at the subject property and in particular the fence . . . . [a]nd . . . when the corrected value of those items are adjusted an upward adjustment of $60,000 should be made to the property's price in . . . [Petitioner's] appraisal," and (v) "the reason that the property owner got such a good deal on the property is because it was a

[39] See TR3 at 284-90.
[40] See TR2 at 110. See also TR3 at 301-02.

distressed sale."[41] Respondent, in its closing statement, further contends that (i) "the evidence submitted [by Petitioner] was just not credible and should be deemed insufficient to reduce the assessed value of the property,"[42] (ii) Petitioner's statement that the back acreage does not have physically feasible commercial uses is "dead wrong,"[43] (iii) the area in front of the easements is admittedly larger than six acres,[44] (iv) Petitioner did not adjust for changes in the market even though its appraisal "concludes to a value for a date just over 18 months later that is 18.75 percent higher than the purchase price,"[45] (v) the fact that "a company has record sales does not mean that the . . . [company] is not also selling real property under duress,"[46] (vi) Petitioner's "sales comparables were not sold for the same use as his alleged highest and best use conclusion,"[47] and (vii) "[i]f the Tribunal accepts that there's a possibility that the entire parcel can be valued as commercial use because access is available and zoning permits it, then . . . [Petitioner's] economies of scale, land area and surplus land adjustments are completely worthless . . . . [a]nd valuing the property on the front feet on M-32 alone is just wrong."[48]

As for Respondent, Respondent claims that "in the last five years commercial property values in the area of the subject property have gone up at least 10 percent,"[49] and that Respondent's analysis, "which is actually supported by . . . [Petitioner's] own comparables, will present the better indicator of value."[50] Respondent, in its closing statement, also claims that (i) Respondent's assessment should be upheld in full . . . .

---

[41] See TR2 at 108-10. See also TR2 at 107 (i.e., "[t]his is a case who you have heard and will hear[] about a property owner who got a good deal on a piece of property in a prime commercial area and who continues to take advantage of that particular situation").
[42] See TR3 306. Said statement does, however, ignore the burden of proof or, more specifically, the burden of going forward, the Tribunal's responsibility to render an independent determination of value, and the fact that the Tribunal cannot "automatically" adopt an assessment. See *Jones & Laughlin*, *supra* at 354-55.
[43] See TR3 at 298-99.
[44] See TR3 at 299.
[45] See TR3 at 300-01.
[46] See TR3 at 301.
[47] See TR3 at 301-03.
[48] See TR3 at 299-306. Said contention is misleading, as Respondent is the only party that valued the subject property on the front feet on M-32 alone, albeit with four unsupported depth factors.
[49] See TR2 at 109.
[50] See TR2 at 109-10.

"because it's supported by Respondent's first comparable at 2300 Snowdrift . . . [and] Petitioner's own sales comparable 103 when it is adjusted properly,"[51] (ii) "the errors that did exist in the assessment records resulted in a valuation of the property that was maybe too low,"[52] and (iii) "the Tribunal [should] consider granting Respondent's costs, not only incurred because it had to defend this case but also because of the delays that were caused through no fault of the Respondent and the additional work that was required."[53]

In response to Respondent's claims, Petitioner contends that (i) "Respondent did not prepare or submit an appraisal in this appeal" rather, Respondent "relies upon the mass appraisal cost to value the subject property . . . . [and] [t]his Tribunal has repeatedly ruled that such reliance is misplaced for determining the valuation of a single property such as the subject property,"[54] (ii) "Respondent totally ignores the $400,000 2015 sale of the subject property and pretends as though it never happened,"[55] and (iii) Petitioner is entitled to costs, including attorney and expert fees, incurred in connection with bringing this appeal.[56] Petitioner, in its closing statement, also contends that (i) "[y]ou don't start with the highest and best use and then start picking comparables thereafter," rather "[y]ou start by picking comparables and doing the analysis . . . . [as] [t]hat's what the very Appraisal of Real Estate that . . . . [Respondent's rebuttal witness] relied on said,"[57] (ii) "the whole issue about zoning is a red herring, and their own expert completely shot that down,"[58] and (iii) Respondent's record cards "are nothing more

[51] See TR3 at 306-08 and 311.
[52] See TR3 at 308-09.
[53] See TR3 at 311-12.
[54] See TR1 at 9-10.
[55] See TR1 at 10.
[56] See TR1 at 10.
[57] The actual chapter in *The Appraisal of Real Estate*, *supra* is Chapter 16 beginning at p 331 and not Chapter 14 ("Statistic Analysis in Appraisal"), as indicated by Mr. Conti. Further, the chart referred to by Mr. Conti is located in Chapter 4 ("The Valuation Process") at 37 and the chart does provide, as indicated by Mr. Conti, that data collection including potential comparables precedes the determination of highest and best use. Said chart and the other materials in the treatise, specifically Chapter 16, do not, however, support his conclusion or, more appropriately, Mr. Sill's conclusion that the selection of comparables "drives" the highest and best use determination. Rather, the highest and best determination is, as indicated herein, utilized to determine the appropriate comparables. See TR3 at 290-2.
[58] Contrary to Mr. Conti, Ms. Shipman did not shoot "down" that issue by indicating that it didn't have to be the "exact same zoning," as there are, as indicated by the evidence, several commercial zoning categories that are not exactly the same (i.e., B1, B2, etc.) and use of comparables from those different

than a mass appraisal methodology used in connection with assessing property" and "[a]ssessing property and appraising property to find its true cash value are two completely exercises."[59]

The first step in this process does, however, require a determination of the property's highest and best use based on an analysis of the four criteria applied in making such determinations.[60] Unfortunately, Respondent's valuation expert did not provide a highest and best use analysis and the analysis provided by Mr. Sill is, as indicated above, incomplete and misleading.[61] Nevertheless, the analysis even though

---

commercial zoning categories may be appropriate if the proposed use is legally permissible. See TR3 at 292-3.

[59] In support of that statement, Mr. Conti referred to an Entire Tribunal decision and a statement in that decision (i.e., MAHS Docket No. 15-001837) indicating that reliance on a mass appraisal "is commendable but misplaced for the valuation of a single property." Said statement or, more specifically, Mr. Conti's statements are dismissive or conclusory in nature and ignore the requirement for the Tribunal to consider such evidence even if that evidence may not ultimately be deserving of any weight, particularly when the approach reflects uncorrected error and the underlying land sales study is not provided. See TR3 293-98, MCL 205.746(1) (i.e., "[t]he tribunal may admit and give probative effect to evidence **of a type commonly relied upon by reasonably prudent men in the conduct of their affairs**"), and *Jones & Laughlin*, *supra* at 354 (i.e., "[s]uch **cursory** rejection would be erroneous"). [Emphasis added.] See also TR3 at 309-11 and 217-20.

[60] See *The Appraisal of Real Estate*, *supra* at 331-58.

[61] See *The Appraisal of Real Estate*, *supra* at 42, which provides, in pertinent:

> Whenever a market value opinion is developed, highest and best use analysis is necessary. Through highest and best use analysis, **the appraiser interprets the market forces that affect the subject property and identifies the use or uses** on which the final opinion of value is based. [Emphasis added.]

See also P-1 at 6 and 30 and TR1 at 57-62 and 94-5 (i.e., "I can see how that could be confusing to the reader"), and TR2 at 28-33 (i.e., "[a]s an interim use with redevelopment potential in the future" and "[i]t is not labeled as my overall highest and best use conclusion") and 128-96 (i.e., "I find a disconnect between the highest and best use and the valuation analyses . . . . [r]eferring back to the Appraisal Institute textbook on highest and best use analysis, the real estate appraisal book", "[e]verything that I've just read and everything that I believe is that the highest and best use analysis should drive the selection of the comparables as opposed to vice versa . . . . [and] I found his selection of comparables to be inconsistent with his highest and best conclusion," "[t]here's no explanation of why the property can't be zoned for B2 uses, and no explanation as to how it could possibly be used for residential development . . . [i]n other words, his highest and best use doesn't support residential development and he doesn't explain how the use of those comparables relates back to the highest and best use of retail or service development," "he doesn't provide any reason for it being feasible or non-feasible . . . . [and] [h]e didn't provide any market analysis in his discussion or in his testimony," "I find his selection of comparables does not support his conclusion of highest and best use," "comparables 104, 105 and 106 do not – were not purchased for the same highest and best use as he concluded for the subject property," "I didn't understand that he said it was not feasible to develop it at all . . . . I thought that he was testifying that it was not feasible to develop it for retail or service use or to develop it to his

not differentiated or, more specifically, labeled and properly explained, analyzes the property's highest and best use and properly determines, despite being purportedly "[b]ased on the conclusions of value contained in the following valuation analysis," that "the subject's highest and best use is to hold for the development of a retail, or service building when the market is willing to pay the cost of new construction" (i.e., "as vacant").[62] More specifically, Petitioner would have been required under the circumstances of this case to value the property, at least initially, to determine the property's highest and best use given the property's location in a primary commercial corridor,[63] the disparity between the value of the land and the value of the improvements, and the likely demolition, rather than renovation, of the improvements by a potential purchaser.[64] However, said valuation, although necessary to determine the property's highest and best use, is limited and does not, contrary to Petitioner's

---

conclusions of highest and best use . . . [s]ame thing," "[h]e doesn't discuss valuing the property as two parcels in his highest and best use analysis," and "[y]ou might look at comparable property data to analyze the market, not just to appraise your property . . . . . [t]hose are indicators of market conditions in general").

[62] Although Petitioner provides some modicum of analysis of the criteria for determining highest and best use with respect to legally permissible and physically possible, Mr. Sill's analysis of the criteria for financially feasible and maximally productive is conclusory at best. More specifically, Mr. Sill does not discuss "the economic characteristics of the potential alternative uses" or specifically explain why "as vacant" highest and best use is the property's highest and best use, particularly in light of his determination that "[t]he existing buildings are an interim use until demand exists for redevelopment of the site." See *The Appraisal of Real Estate*, *supra* at 334. Rather, Mr. Sill simply relies, as indicated above, "on the conclusions of value contained in the following valuation analysis."

[63] See also TR1 at 28-30, which provides, in pertinent part:

> **This is the primary path of development in the greater Gaylord area**. The area within the first half mile of I-75 has seen the most **intense commercial development**, as it is a heavily utilized exit along I-75 for travelers both north and south. That first half mile contains several large box retailers, including Walmart, Lowe's, Home Depot, several large and small retail strip centers, convenience stores, several gas stations, several fast food restaurants. Most national retailers that have a presence in . . . . the area are located along the first half mile to the west of I-75. M-32 is heavily traveled by both local and tourist traffic, and there are multiple vacant parcels that are available for development. **There are multiple parcels** that have - - **that are considered redevelopment parcels whose uses are past their economic lives**. There are also several residential uses along that commercial corridor. [Emphasis added.]

See also P-1 at 17-8.

[64] The improvements are not currently utilized for a commercial purpose. Rather, the improvements are, as indicated above, an interim use (i.e., used by the owner for storage) and add value to the owner only. See P-1 at 2-3, 15-6 and 31 (i.e., "[t]he land value is **the primary contributor** to the subject true cash value"). [Emphasis added.] See also TR1 at 41.

mischaracterization of the testimony of Respondent's rebuttal witness and *The Appraisal of Real Estate*, *supra*, justify the selection of comparables that do not have the "same" or "similar" highest and best use as the subject (i.e., commercial use).[65]

---

[65] It is not clear from Mr. Sill's testimony or Mr. Conti's examination of Ms. Shipman as to whether Petitioner correctly applied the concept of highest and best use. In that regard, Mr. Sill testified in TR2 at 7-9 that:

> Q: Okay. So you took a look at the comparable that you used in your report first; correct?
>
> A: **Correct**.
>
> Q: And then you determined highest and best use; true?
>
> A: **That's part of the process**, **yes** . . . .
>
> A: That - - **going through the highest and best use narrows down the comparables used**.
>
> Q: But how can you then base your highest and best use on the comparables you used?
>
> A: **Perhaps it's misworded**. The valuation analysis - -
>
> Q: Well, your testimony - - I mean, whether that's misworded, your testimony is consistent with the way that it's worded.
>
> A: I **looked at market data** through - - sales throughout the market, **and I let the data steer the conclusion of highest and best use through the prism of legally permissible, physically possible and financially feasible**.
>
> Q: Again though, isn't the normal process to determine highest and best use **and then choose your comparables as opposed to letting the comparables drive the highest and best use**?
>
> A: That is - - **that is the way that it is spelled out in** - - **that is the way that it flows through the appraisal process**, but you cannot blindly choose - -
>
> Q: I didn't ask you - - you know, I understand that you can't blindly choose anything. But, you know, one of the - - - one of the keys in determining whether or not an appraisal was reliable is to determine whether the comparables were selected were selected and have a similar highest and best use.
>
> A: Yes, **all of the comparables selected have a similar highest and best use**.
>
> Q: Yeah. But that's because you looked at those comparables before you ultimately determined the highest and best use.

> A: **I look at all market data as I determine the highest and best use**. I let market data throughout the market steer the conclusion based on what exists in the market.

As for Mr. Conti's examination of Ms. Shipman, the chart on page 37 of *The Appraisal of Real Estate*, *supra* does reflect the collection of market data prior to the analysis of that data including the analysis of the property's highest and best use. The Appraisal of Real Estate at 42 also provides that "[t]hrough highest and best use analysis, the **appraiser interprets market forces** that affect the subject property **and identifies the use or uses** on which the final opinion of value is based." [Emphasis added.] Said interpretation does **not**, however, include the selection of comparables that "drive" the selection of highest and best use. [Emphasis added.] In that regard, *The Appraisal of Real Estate*, *supra* at 43, further provides, in pertinent:

> Analyzing the highest and best use of the land as though vacant **helps the appraiser identify comparable properties**. Whenever possible, the property being appraised **should be compared with similar properties** that have been sold recently in the same market. Potentially comparable properties that **do not** have the same highest and best use **are usually eliminated** from further analysis. Estimating the land's highest and best use as though vacant is a necessary part of deriving an opinion of value of land value.
>
> There are two reasons to analyze the highest and best use of the property as improved. **The first is to help identify potentially comparable properties**. Each improved property **should have the same or a similar highest and best use** as the improved subject property, both as though vacant and as improved. **The second reason to analyze the highest and best use of the property as improved is to decide which of the following options should be pursued**:
>
> - Maintain the improvements as is.
> - Cure items of deferred maintenance and retain improvements.
> - Modify the improvements (e.g., renovate, modernize, or convert).
> - **Demolish the improvements** . . . .
>
> The highest and best use conclusion **should specify the optimal use** (**or uses**), **when the property will put to this or achieve stabilized occupancy, and who would be the most likely purchaser or user of the property** (e.g., an owner-operator of the property or an equity or debt investor). [Emphasis added.]

With respect to Mr. Sill's "prism," the process actually contemplates a review of market data that may include potential comparables in determining a property's highest and best use and the "narrowing" of the potential comparables under the highest and best use criteria to determine the appropriate comparables as opposed to the ultimate comparables dictating the subject property's highest and best use. See *The Appraisal of Real Estate*, *supra* at 334. See further TR2 at 86-8, which provides, in pertinent part:

> Q: Okay. **So you agree that if** you did **not** carry your highest and best use conclusion and the legally permissible - - **especially the legally permissible portion** of that through your report **that your report would be faulty**; true?
>
> A: **Potentially**, **yes**.
>
> [Emphasis added.]

With respect to Petitioner's purchase price, a purchase price is "not the presumptive true cash value of the property transferred."[66] Further, the Michigan Supreme Court has stated, in pertinent part:[67]

> The rule in Michigan, as in many other states, is that the selling price of a particular piece of property is **not** conclusive as evidence of the value of that piece of property . . . . The Legislature has commanded that property be assessed as its "**usual selling price**." The **most obvious deficiency** in using the sales price of a piece of property as conclusive evidence of its value is that the ultimate sale price of the property, **as a result of many factors, personal to the parties or otherwise**, might **not** be its "usual" price. The market approach to value has the capacity to cure this deficiency because evidence of the sales prices of a number of comparable properties, if sufficiently similar, supports the conclusion **that factors extrinsic to the properties have not entered into the value placed on the properties by the parties**. Nevertheless, if it can be shown that the sale price each of the comparable properties has been determined by a flawed method the result of the market approach to valuation will also be flawed. [Emphasis added.]

As such, a purchase price can be considered and relied upon, if it is properly supported. In that regard, Mr. Sill testified that the sale was an arms-length transaction and a "very reliable indicator of the value for the true cash value of the subject property . . . . for the tax year at issue" based on his "interview" of the realtors involved in the transaction that "reported" to him "that this was a fair reflection of market value at the time of the sale."[68] Mr. Sill also testified that this "reporting" or the realtor's "opinion" was:[69]

> Based on their knowledge of the property and the market and the transaction . . . . It was offered for 306 days prior to the sale with an asking

---

Notwithstanding the above, Mr. Sill was required to value the improvements to determine their contributing value in relation to the value of the land to determine that the property's highest and best use "as vacant" was the property's highest and best use, rather than "as improved."

[66] See MCL 211.27a(6).

[67] See *Antisdale*, *supra* at 278-9.

[68] See TR1 at 47-51 and 53-7.

[69] See TR1 at 51 and 53. Mr. Sill further indicated that the above information "is also documented in the MLS history report on the subject property" and that the MLS history report is summarized in the appraisal and included in his work file but not the appraisal. See TR1 at 51-2. However, MLS information is not, as indicated on its listings, guaranteed for accuracy.

> price of 444,000. That was a public listing for sale available to everyone. And it took nearly a year before it finally sold at $400,000 after it had been listed at 444,000.

In response to questioning from Mr. Conti, Mr. Sill further indicated that the property's record card states that the sale was "arm's length."[70] Nevertheless, Mr. Sill did admit that he did not, despite the seller's failure to rebuild "the lumberyard's main retail building" and his knowledge of the seller's "contracting" of its operations, independently research the sale.[71] In that regard, Ms. Nowak also admitted that both she and the County failed to verify that sale which resulted in its incorrect listing on the record card as an arms-length transaction and incorrect inclusion in the County's sales study.[72] As for the newspaper articles and press release regarding resizing or right-sizing and

---

[70] See TR3 at 14-5 (i.e., "[a]t the time I entered that I was unaware of that fact that that is not an arm's length transaction . . . . [i]t should say not - - 'invalid sale' is usually what would be print[ed] there").
[71] See TR1 at 105-7. Mr. Sill also failed to indicate whether he discussed the sale with Petitioner's owner as to Petitioner's motivation in purchasing the property. See also TR1 at 114 (i.e., "**I'm not certain I would chalk that up to changes in market conditions**") and TR3 59-60.
[72] Based on the testimony by both Mr. Sill and Ms. Nowak, neither party verified that sale to determine whether the sale was actually an arms-length transaction that sold subject to normal market pressures. See MCL 211.27(1) and 2007 STC's Bulletin No. 6. Although the Bulletin addresses foreclosure issues, it also provides, in pertinent part:

> - **All sales must be analyzed and verified** to ensure they are arms-length transactions. **The appropriate verification process contains but is not limited to**:
>
> 1. A determination as to whether the type of sale being reviewed is a measurable portion of the market.
> 2. A determination that the sale property **was properly exposed** to the market. For example, by listing with a real estate company.
> 3. A physical inspection of the property to make a determination that the assessment reflects the condition of the property at the time of sale **unless** the condition can be verified by other means.
> 4. Receipt of a properly completed real property statement to determine the terms and conditions of the sale **unless** adequate alternative statistical procedures are utilized to ensure the sales are an adequate part of the market.
> 5. A determination that the parties to the transaction were **not** related **and each was acting in their own best interest**.
>
> - **Additional analysis specific** to foreclosure transactions . . . .
>
> [Emphasis added.]

record sales,[73] said information does not necessarily indicate that the purchase price was not the "usual selling price" of the property given its "reasonable exposure in a competitive market" (i.e., "2,000 days"). Rather, said information, including the failure to rebuild the main retail building and Mr. Sill's knowledge of the seller's "contracting" operations, justified or required both Petitioner and Respondent to verify that sale to determine that it met "all conditions requisite to a fair sale" (i.e., "the buyer and seller each acting prudently, knowledgeable, and for self-interest, [with] neither . . . under undue duress").[74] As for Mr. Zaremba, he did, fortunately, testify about the "negotiated" purchase price.[75] Said testimony did not, however, address the need to make an adjustment for time of sale. In that regard, Mr. Sill testified that no time adjustment was

---

[73] As for Ms. Nowak, she testified as follows in TR3 at 59-60:

> Q: Mrs. Nowak, you had previously testified that one of the mistakes in your report was indicating that the sale of the subject property in 2015 was arm's length?
>
> A: Correct.
>
> Q: Why do you believe that was in error?
>
> A: After reviewing - - **doing some more research on that sale** it was obvious during November of 2013 there are several articles stating the downsizing or resizing the Carter's Corporation, Carter Lumber Store. They had, like, **26 stores in the Midwest location closing**. **They were moving from being a residential type lumber store moving more into the largest commercial purposes**. **So that was the reason** from - - in the articles that I read is to the reason from - - in the articles that I read is to the purpose of this **downsizing or rightsizing**, I think is what they called it in a couple of the articles.
>
> Q: When did the store burn down?
>
> A: 2008.
>
> Q: Okay. And to your knowledge did they ever try to rebuild the store?
>
> A: Not that I know of.
>
> [Emphasis added.]

See also TR3 at 171-211 regarding the "press release".

[74] See *The Appraisal of Real Estate*, *supra* at 58. See also *Professional Plaza, LLC v City of Detroit*, 250 Mich App 473, 476; 647 NW2d 529 (2002) (i.e., "[e]vidence of the selling price of property is relevant in determining the [true cash] value of property]") citation omitted and *Huizenga v City of Grand Rapids*, unpublished opinion *per curiam* issued by the Court of Appeals on September 1, 2016 (Docket No. 327682).

[75] See TR3 at 270-71. See also TR3 at 281-83.

necessary to reflect market changes.[76] Said testimony is, however, contrary to his appraisal's finding that the market was increasing and Ms. Nowak's credible testimony supporting the appraisal's finding.

As for Petitioner's valuation disclosure or, more specifically, its appraisal, said appraisal consisted of two sales comparison approaches that were utilized to determine the value of the subject land and a corrected cost approach to value the subject improvements. With respect to the sales approaches, Petitioner claims that the property "can be subdivided into two parts" for purposes of this appeal with "[t]he first part . . . [being] the approximate front six acres which fronts the M-32 highway" and "[t]he second part . . . [being] the [vacant] back 25.1 acres of the subject property." In that regard, Petitioner contends, in pertinent part:[77]

---

[76] See TR1 at 113-14 (i.e., "I don't see any other evidence in the market that there's been an increase in value at the rate"). See also TR2 at 18-20 and TR3 at 156-171.

[77] See TR1 at 6-7 and 30-7. Notwithstanding Petitioner's contentions of two electrical transmission lines, Mr. Zaremba testified as to the existence of a third transmission line in close proximity to the pole buildings. See TR3 at 271-77, which also provides, in pertinent part:

> Q: Okay. So on this are there other - - is there a set of power distribution lines that cut across the subject property that are **within a couple hundred feet of the pole barns**?
>
> A: **Yes**, there's - -
>
> Q: Could you draw a line just like Respondent's witness drew?
>
> A: (Witness complying.)
>
> Q: And can you label it D?
>
> Q: **Have you measured the distance**, sir, so that you know that they're a couple hundred feet from the pole barn?
>
> A: **They're probably about 200 yards**, and the only reason - -
>
> Q: **You said a couple hundred feet, you're now saying 200 yards**. Have you measured the, was my question?
>
> A: I have **not** measured them with a tape measure.
>
> Q: So you don't know the exact measurement or the distance from the pole building to the additional power line?
>
> A: **Not the exact measurements**.

[Emphasis added.]

> There are two electrical transmission lines which cut through the property, one immediately north of the pole barns and another further north on the property. In addition, in the area between these two distribution lines is an underground natural gas distribution pipeline that also cuts through the subject property.
>
> Both the electrical and gas lines are distribution lines servicing the area. They are subject to easements and cannot be moved. As a result of these lines the back 25.1 acres is, in essence, subdivided into smaller separate portions which renders it unlikely that the back 25.1 acres will ever be developed in a commercial or industrial manner. There is no public access to the back 25.1 acres. The back portion of the 25.1 acres fronts a privately maintained loose gravel road called Labrador Lane, which again is a private street.

As such, Mr. Sill valued the front six acres as commercial property because it had "feasible commercial uses" and the area north of that or, more specifically, the remaining 25.1 acres ("back acreage") as "residential or recreational property" as it "doesn't have physically feasible commercial uses . . . . [b]ecause of the irregular shape, because of the - - the easements cutting the property up through the center and because of the - - the lack of public access from the north."[78] Said testimony is, however, inconsistent with his highest and best use analysis.[79] Further, Mr. Sill also

---

See also TR3 at 278-81.

[78] See TR1 at 42-3 and 63. Petitioner did not, however, perform a highest and best use analysis supporting the valuation of the "back" acreage based on "residential or recreational" usage. Further, access to the "back" acreage, although limited, does exist, as the easements can be traversed. See TR1 at 99 (i.e., "[t]hat's true"). See also TR2 at 72-7.

[79] See P-1 at 20, which provides, in pertinent part:

> It is **clear** that the rear portion of the site **is impacted** by two powerlines and a natural gas pipeline. **These three easements affect the usable area of the subject**. [Emphasis added.]

See also P-1 at 30, which provides, in pertinent part:

> Legally Permissible: The subject is zoned B-2. **The zoning district allows all uses in the B-1 district**. There are several allowed uses in this zoning district. There are **no known** private or deed restrictions **that may affect** the use of the property **for allowed uses** in the zone. There are **no** known zoning changes expected that will affect the subject. **The subject's use could be any use allowed by the ordinance**.

admitted that "the area in front of the easements is larger than six acres" and that he did not "know the exact area in front of the easements" indicating that the "subdivision" of the property was arbitrary, which is consistent with both Ms. Nowak's and Mr. Zaremba's testimony.[80]

Notwithstanding the above, Mr. Sill utilized, for purposes of the determining the front foot rate for the "front six acres," three comparables all within 1,500 feet of the subject with frontage along M-32.[81] As for the specific comparables: Comparable No. 101 was the sale of 3.06 acres of vacant land with 335 feet of frontage on M-32 at the corner of M-32 and Meijer Drive that sold for $435,000 on August 1, 2013;[82] Comparable No. 102 was the sale of an improved parcel consisting of a "simple" 4,800 square foot steel retail building constructed in 2002 and 1.70 acres with 236.50 feet of frontage on M-32 across M-32 from Meijer (i.e., on the same side of M-32 as the

---

> Physically Permissible: The subject's site **is physically capable** in size, topography, shape, depth and frontage **for the uses that are allowed by zoning and typical to this area**. Electricity and natural gas are available to this site. Municipal sewer and water are located across the highway from the subject.
>
> [Emphasis added.]

Although Mr. Sill's analysis indicates that "municipal sewer and water are located across the highway from the subject," Mr. Sill also testified that the property would not be permitted to connect to the sewer and water based on his review of an unadopted "master plan." See TR1 39-40. Mr. Sill did, however, contradict that testimony when he stated "my statement is not that it is impossible to extend it, it is not financially feasible in this market," which is also not supported by his further testimony relative to his lack of knowledge as to whether similarly-situated properties (i.e., on the same side of M-32 as the subject within that commercial corridor) are connected to sewer and water. See TR1 at 100-04. See also TR1 at 107-12 (i.e., "it's highly unlikely based on developments I've witnessed in the past that water and sewer would be extended under the highway at this point in time") and TR2 at 15-8 (i.e., "[i]t was **not** based on the [**unadopted**] master plan . . . . [i]t was based on primarily the economics of extending water and sewer to the property[] and supported by statements in the [**unadopted**] master plan that I reviewed **following** the conclusion of the appraisal"). [Emphasis added.]

[80] See TR1 at 98-9. See also TR2 at 91-5 and 100-3 and TR3 at 12.

[81] See TR1 at 63-4. See also *The Appraisal of Real Estate*, *supra* at 361-76 (i.e., "[s]ales comparison is the most common technique for valuing land, and it is the preferred method when comparable sales are available").

[82] See P-1 at 32-3 and TR1 at 64-5. The appraisal also indicated that "[t]he parcel was marketed for sale by the Meijer real estate division." See also TR3 at 47 (i.e., "the only comparable in here of his that does have city and water is comparable 101") and 91-2.

subject) that sold for $365,000 on October 13, 2016;[83] and, Comparable No. 103 was a "pending" sale of two parcels on the other side of M32 consisting of 39.13 acres with 816 feet of frontage along M-32 that was listed for $695,000 on November 2, 2015.[84] Of those comparables, Comparable No. 102 is the only potential indicator of value,[85] as Comparable No. 101 is a dated sale or too remote in time for consideration absent an adjustment to reflect the increasing market from the date of sales to the tax date at issue (i.e., December 31, 2016) and no adjustment was made by Mr. Sill despite his appraisal finding,[86] and, Comparable No. 103 was a pending sale that did not close (i.e.,

---

[83] See P-1 at 34-5 and TR1 at 65-6 and TR2 at 34-5. Petitioner's testimony also indicated that Comparable No. 102 "relies on a private well and private septic system" and sold "after 735 days on the market."

[84] See P-1 at 36-7 and TR1 at 66-8. Petitioner's testimony also indicated that "[t]he smaller parcel is improved with [two] old buildings that are - - that have passed their economic use and the property is being marketed as a redevelopment site." The appraisal further indicated that the parcels were "located across M-32 from the subject . . . with municipal water and sewer" and that "the transaction [i.e., pending April 2016 sale for $695,000] did not close due to a proposed anchor tenant backing out for a location across the road." See also TR1 at 80 and TR2 at 90-1 and 99-100.

[85] See TR1 at 79, which provides, in pertinent part:

> I found Comparable No. 2 to be the most influential in this analysis . . . . It's on the same side of the highway. It's the most similar in location. It required the fewest number of adjustments.

See also TR1 at 79-80, which provides, in pertinent part:

> Q: What did you conclude for a per front foot value as of 12/31/16 for the front six acres of the subject property?
>
> A: $850 per front.
>
> Q: How did you determine the $850 front foot value?
>
> A: I looked at **the most influential indication of value** and considered the other indications of value, and 850 was in the middle of the range **and also nearest the most influential comparable**.
>
> [Emphasis added.]

See further P-1 at 39-43. In that regard, Mr. Sill's actual conclusion of land value was $350,625, which he rounded to $350,000 rather than $351,000. However, most values for assessing purposes are rounded to the nearest $100, which would indicate a land value of $350,600 and not $350,000 or $351,000. **Regardless of the ultimate rate, said rate was determined based on Petitioner's arbitrary selection of six acres and, as such, would fail to properly value the undetermined acreage actually in front of the easements**. [Emphasis added.]

[86] See MCL 211.2(2). See also P-1 at 28 and TR1 at 112-14 and TR2 at 18-20.

a listing and not a sale).[87] Further, Comparable No. 102 is located on the same side of M-32 as the subject addressing the potential lack of sewer and water,[88] and sold close to the relevant tax date at issue alleviating the need to adjust for date of sale or, more appropriately, changing market conditions from October 13, 2016, to December 31, 2016.[89] Nevertheless, the frontage rate determined from that comparable was based on the arbitrary six acres and an extraction of the improvement contribution of the "simple" 4,800 square foot building that is not small in comparison to the resultant land value indicating that the rate was, unfortunately, for both reasons not a reliable indicator of value.[90]

With respect to the sales comparables for purposes of the determining the acreage rate for the "remaining 25.1 acres," Mr. Sill utilized three comparables with the closest comparable being one and ½ miles to the northeast and the farthest being four miles to the south of the subject property.[91] As for the specific comparables: Comparable No. 104 was a vacant land sale of 76.12 acres zoned R1-R2 with frontage along I-75 to the east that sold for $199,000 on December 2, 2014, after 483 days on the market;[92] Comparable No. 105 was a vacant land sale of 70 acres zoned

---

[87] Although listings are indicators of market activity, they are not reliable indicators of value, as they reflect "anticipated" values and not market value. See *The Appraisal of Real Estate*, *supra* at 118. See also MCL 211.2(2) and 211.27(1) (i.e., "'true cash value' means 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"). [Emphasis added.] See also TR3 at 114-16 regarding Petitioner's demolition costs for Comparable No. 103, **which are different than the demolition costs reflected for the subject**, and the lack of split zoning in Otsego County. [Emphasis added.]

[88] See P-1 at 39. See also TR1 at 70 and TR2 at 47-72, 96-9, and 104. See also TR3 at 34-9 (i.e., "[p]hoto eight in is Livingston Township on the same side of the road as our subject, a little to the east . . . [and] [t]hat's well and septic").

[89] See TR1 at 81. See also TR2 at 36-40 and 47.

[90] The valuation technique of market extraction for determining land value is generally most reliable when "the improvement contribution is typically small and relatively easy to quantify." See *The Appraisal of Real Estate*, *supra* at 368. See also TR2 at 21-3. See also TR2 at 89 and 104-5.

[91] See TR1 at 63-4.

[92] See P-1 at 44-5, which also provides, in pertinent part, "[f]orm-based structure (ICF) allows residential or commercial uses." See also TR1 at 81-2 and TR2 at 77-85. See also TR3 at 48-9, which provides, in pertinent part:

> Q: Do you know anything about the sale of that property in December of 2014?
>
> A: From my research that sale is not an arm's length transaction.

commercial on the south end of Gaylord just outside the city limits that sold with several other additional parcels not included in the listing for $125,000 on February 4, 2016, after 384 days on the market;[93] and, Comparable No. 106 is a vacant land sale of 13.4 acres zoned R-3 with 434 feet of frontage on M-32 outside of the commercial corridor that sold for $22,500 in a cash transaction on March 9, 2015, after 182 days on the market.[94] Of those comparables, the only comparable that could potentially be an indicator of value, reliable or otherwise, is Comparable No. 106, as that comparable, unlike the other two, had frontage on M-32 (i.e., a "Class A" road).[95] Said frontage is, however, outside of the "prime" commercial corridor and zoned for residential use rather than commercial use, which is, notwithstanding Petitioner's extensive, but incorrect, argument, a legally prohibited use for the subject property impacting the financially feasibility of any proposed residential or recreational use.[96]

> Q: Really? Why?
>
> A: That - - well, the reason for the property was purchased in the first place was for the development of dormitories for the college. That ended up falling through. **They did not want to hold onto this property so they needed a quick sale**.

[93] See P-1 at 46-7, which also provides, in pertinent part, "[p]erfect for recreation, golf, lodging or rental." See also TR1 at 82-3, which provides, in pertinent part:

> My understanding is that this buyer bought additional parcels from this seller that were not included in this listing. They had multiple closings and the listing agent and selling agent reported that this $125,000 price was reflective of the 70 acres that were listed in this - - in this listing . . . . My understanding is that it was not a proration. They negotiated this transaction for this 125 - - or, for this one - - for this 70 acres and they negotiated for additional parcels to the east of these.

[94] See P-1 at 48-9, which also provides, in pertinent part, "[p]roperty backs up to 280 acres of State of Michigan land." See also TR1 at 83.
[95] See P-1 at 50-2. See also TR1 at 83-9 and TR2 at 72.
[96] See TR1 at 84, which provides, in pertinent part:

> . . . the subject is zoned B2. The comparables are various forms of residential zoning. But that's only one factor in selecting comparables. Physical feasibility and financial feasibility is also necessary to consider. In the case of the subject with the physical limitations on the - - on the back 25 acres its - - its B2 zoning is inconsequential. The allowed uses in the B2 zoning would never be developed.

See TR2 at 35-6, which provides, in pertinent part:

As for Petitioner's cost approach for the valuing of the improvements, said approach, although necessary for purposes of determining the property's highest and

---

> Q: So when you were looking at comps and considering your highest and best use for what was legally permissible, **you would agree that your comps 104, 105 and 106 are zoned residential, a use that's not permitted in the subject's zoning district**?
>
> A: **Yes**.
>
> [Emphasis added.]

Notwithstanding Mr. Sill's failure to address the subject's "physical limitations" in his highest and best use analysis relative to "physical feasibility," his statement regarding zoning being inconsequential is inconsistent with his testimony. See TR1 at 15-8. More specifically, a residential or recreational use of the subject is, as indicated above, legally prohibited despite its potential financial feasibility. In that regard, *The Appraisal of Real Estate*, *supra* at 335 provides, in pertinent part, "[a] use may be financially feasible, **but this is irrelevant if it is legally prohibited** or physically impossible." [Emphasis added.]

See TR2 at 9-10, 43-46, 86, and 95-6 which provide, in pertinent part:

> Q: Would you read it back, please?
>
> (Record read as follows:) "Ms Morita: I'm trying to get him to opine as to **whether or not commercial property on M-32 in the Gaylord area and Livingston - - in the Gaylord area and Livingston Township whether that sells at a higher or a lower rate than property not on M-32 in the Gaylord area and Livingston Township**."
>
> Q: You've indicated to me that that question was clarified for you; is that correct?
>
> A: Yes.
>
> Q: You've also indicated to me that you are familiar with the sales of commercial properties in the area that she's described; is that also correct?
>
> A: Yes.
>
> Q: Would you go ahead and answer the question, please?
>
> A: **Yes**, **I would say that's a fair statement** . . . .
>
> A: Based on other factors relating to the subject property and the comparables. The - - practical uses of the subject's back 25 acres, the B2 zoning is not a likely - - there's no uses in the B2 zoning that would likely be used in that back 25 acres having to traverse through the power lines, gas line or to access from the private road from the north.
>
> Q: And yet it is zoned as B2; is that correct?
>
> A: **It is zoned B2**.
>
> [Emphasis added.]

See also TR3 at 92-7.

best use, is inconsistent with the property's highest and best use "as vacant."[97] More specifically, Mr. Sill indicates and includes in his final estimated TCV a contributory value for the buildings and lean-tos (i.e., $65,488) even though those improvements are at the end of their economic life span and provide, as indicated by Mr. Sill in support of his highest and best use determination, no contributory value to the subject land.[98] As for the demolition costs reflected in his appraisal, for removing the buildings and lean-tos (i.e., "Obsolescence From All Sources") and the value of the site improvements (i.e., asphalt parking and fencing), no documentation was provided in support of said costs and value and Mr. Sill's testimony was in support thereof inconsistent and not credible.[99]

Given the above, Petitioner's appraisal was an unreliable indicator of value. Nevertheless, Petitioner met its burden of proof as the purchase price provides, despite its lack of required verification, "the most accurate valuation under the circumstances."[100] More specifically, Respondent provided the property's record card and information on three sales but did not provide the land sales study underlying the

---

[97] See TR1 at 94, which provides, in pertinent part:

> Q: All right. So help me out here. I'm a little confused. I think you just testified that your valuation determination - - your conclusion of value was consistent with your highest and best use conclusion that the property should be held for redevelopment. Did I get that right?
>
> A: Yes.
>
> Q: Okay. So - - and then - - but when you add in the buildings and the parking lot aren't you actually valuing it for its continued use?
>
> A: That's a contributory value in an interim use.
>
> Q: Okay. **So are you valuing the property for redevelopment, Mr. Sill, or are you valuing it as its interim use**?
>
> A: **Both**.
>
> [Emphasis added.]

Mr. Sill's valuation of the property under "**both**" highest and best uses is not only confusing and unsupported, but also inappropriate and contrary to recognized appraisal practices. [Emphasis added.]

[98] See P-1 at 53-4, and 57. See also TR1 at 89-93.

[99] See TR1 at 91-2. See also TR1 at 115-16, TR2 at 17-8 and 40-2, and TR3 at 116-17.

[100] See MCL 205.737(3) and *Jones & Laughlin*, *supra* at 353.

front foot rate utilized to determine the property's land value.[101] Although Ms. Nowak did testify in support of the corrected and many uncorrected errors reflected on the record card and the underlying land sales study, she stated with respect to the land sales study that "the last sale that you would look at would be the end of March of 2016, and you look at sales going back to '14 and '15 - - April of 2014, '15 and '16 to come up with '17 values."[102] Said sales would, however, be dated or, as indicated above, too remote in time for consideration absent an adjustment for the subject's increasing market.[103] Further, such reliance on dated sales is also inconsistent with the directions provided to

---

[101] See TR3 at 231-5. Although Ms. Nowak also failed to provide the ECF analysis underlying the ECF factor reflected on the record card and utilized to adjust the depreciated cost of the improvements to market, the property's highest and best use reflects the sale of the land with fencing and paving but not the buildings or lean-tos.

[102] See TR3 at 60-2 and 66-90, which also provides, in pertinent part:

> Q: In your opinion does it deserve a percentage good of a hundred percent or should it be something similar to that, similar to the well and septic?
>
> A: **I don't think it should have as much depreciation as the well and septic, but a hundred percent probably is too high**.
>
> Q: Okay. **You've said that it's probably too high for both the well and the septic and now the pavement**. What, in your opinion, should it be?
>
> A: **The pavement I can see you could go 95. The well and septic, knowing that they're not hook up, I may have given those another 10 percent**.
>
> Q: So you're saying 73 percent for both and 95 for the pavement - -
>
> A: Correct.
>
> Q: - - based upon your opinion of assessing in this area.
>
> A: Correct.
>
> Q: And your inspection of the property.
>
> A: Correct.
>
> [Emphasis added.]

See also TR3 at 107-14, 211-17, 221-25, and 260-65 regarding errors on the record card.

[103] The sales range from 2014 to 2016 was used for both Respondent's land sales and ECF analysis. See TR3 at 81-2. See also 82-4 regarding the use of the same frontage rate for the 2018 tax year despite a different sales date range from 2015 to 2017.

assessors by the Michigan State Tax Commission ("STC"). In that regard, the STC has provided, in pertinent part:[104]

> Equalization study dates are as follows for 2017 equalization:
>
> Two Year Study: October 1, two years prior through September 30, current year
>
> Single Year Study: October 1, preceding year through September 30, current year
>
> For 2016 studies for 2017 equalization the dates are as follows:
>
> Two Year Study: October 1, 2014 through September 30, 2016
>
> Single Year Study: October 1, 2015 through September 30, 2016
>
> Note that the time period revisions apply to all equalization studies, that is: sales ratio studies, land value studies and economic condition factor studies for appraisals. Also note that the revised time period for two year studies applies to all real property classifications.
>
> **Please be advised that the above sale study dates are not the same as the valuation date used in appeals before the Michigan Tax Tribunal**. Evidence presented in a Tax Tribunal appeal **should reflect the value of the property as of tax day (December 31)**. This means **that sales occurring after September 30, 2016**, should still be considered **and** included when submitting evidence **in a Tax Tribunal appeal involving the 2017 tax year**.
>
> [Emphasis added.]

Notwithstanding the above, Ms. Nowak also testified as to the calculation of the subject's land value indicating the application of an unsupported front foot rate of $1,887 to the M-32 frontage reduced by a "front" and "depth" factor and the application of that same rate to "frontage" or, more appropriately, the "setback" created by the "L" or "bend" at the back of the parcel that is not on M-32 or any other road. Although the rate utilized for valuing the "setback" is reduced by the same "front" factor, it is also reduced by a different "depth" factor. No documentation or testimony was, however, provided to explain how the "front" factor and "depth" factors were determined or to support the

[104] See STC Bulletin 12 of 2016. For consistency purposes, see also STC Bulletin No. 24 of 2017 for 2018 appeals to the Tribunal. In that regard, the STC's 2015 Bulletin on "Procedural Changes for 2016" is not available online.

application of those factors, particularly with respect to her use of the same frontage rates and the application of the same "front" factor for both "frontages," a depth factor substantially greater than one (i.e., 1.8001) on the M-32 frontage, and a depth factor substantially less than one (i.e., 0.1392) on the "setback" frontage.[105] As for her "sales comparables," said comparables were provided for "informational" purposes only and were not adjusted.[106] In that regard, Ms. Nowak's testimony regarding the support provided for her assessment by Comparable No. 1 (i.e., the Menards site) is not credible, as the shape of the subject property with its admitted easements make it unlikely that the property would be purchased for development by a big box store. As a result, Respondent's valuation evidence is also an unreliable indicator of value. Nevertheless, Ms. Nowak did credibly testify that the market in the subject's commercial corridor increased 8% annually since the property's purchase and that being on a Class A road, such as M-32, would have a "big impact" on a property's value.[107] As such, Petitioner's purchase price was, as adjusted for the increasing market by 12% from the date of sale to the tax date at issue, the only reliable indicator of value provided by either party.

Finally, both parties have requested costs and attorney fees. Neither party is, however, entitled to costs and attorney fees under the circumstances of this case, as the case was prosecuted like Sherman's march to the sea (i.e., burn the other party's evidence and salt the ground to preclude any testimony in support of that evidence), albeit more respectfully by one party, so as to require the Tribunal to rely on only one

---

[105] See TR3 at 62-6, 235-40, and 254-59.
[106] See TR3 at 85-8, which also provides, in pertinent part:

> A: I believe these sales probably most closely reflect what's going on in current sales of property on the M-32 corridor. Especially sale number one, the 1.4 million for 20 acres for the Menard's.

See also TR3 at 118 relative to Ms. Nowak's testimony supporting in part Mr. Sill's adjustment for economies of scale or, more specifically, "the smaller the acreage . . . the higher the price per acre" and "[t]he larger the acreage . . . the [less the] price per acre."
[107] See TR3 at 52-5 and 57-9.

party's evidence.[108] Neither parties' actions were, however, frivolous or necessarily in bad faith.

Based on the above, the Tribunal concludes that the subject properties' TCV, SEV, and TV for the tax years at issue are as listed in the Introduction Section of this Proposed Opinion and Judgment (POJ).

PROPOSED JUDGMENT

This is a proposed decision and not a final decision.[109] As such, no action should be taken based on this decision. After the expiration of the time period for the opposing party to file a response to the exceptions, the Tribunal will review the case file, including the POJ and all exceptions and responses, if any, and:

1. Issue a Final Opinion and Judgment (FOJ) adopting the POJ as the final decision.
2. Issue an FOJ modifying the POJ and adopting the Modified POJ as the final decision.
3. Issue an Order vacating the POJ and ordering a rehearing or such other action as is necessary and appropriate.

EXCEPTIONS

This POJ was prepared by the Michigan Administrative Hearings System.

The parties have 20 days from date of entry of this POJ to notify the Tribunal **in writing, by mail or by electronic filing, if available,** if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions).

Exceptions are **limited** to the evidence submitted prior to or at the hearing and any matter addressed in the POJ. There is no fee for filing exceptions and the opposing party has 14 days from the date the exceptions were mailed to that party to file a written response to the exceptions.[110]

Exceptions and responses filed by *e-mail or facsimile* will **not** be considered in the rendering of the Final Opinion and Judgment.

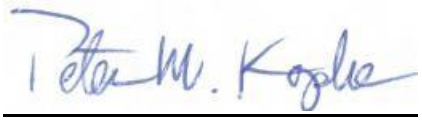
---

[108] "The granting of costs and attorney fees are within the discretion of the Tribunal" and the Tribunal, in exercising such discretion, generally looks to whether a claim or defense was frivolous or imposed for any improper purpose. See TTR 209(1). That rule is, however, silent as to the standards that are to be applied in making such determinations and, as such, the Tribunal looks to the Michigan Administrative Procedures Act ("MAPA") and the Michigan Court Rules ("MCR"). See MCL 24.323, TTR 215, and MCR 2.114. See also *Aberdeen of Brighton, LLC v City of Brighton*, unpublished opinion *per curiam* of the Michigan Court of Appeals, issued October 16, 2012 (Docket No. 301826).

[109] See MCL 205.726.

[110] See MCL 205.762(2) and TTR 289(1) and (2).

A copy of a party's written exceptions or response **must** be sent to the opposing party **by mail or email, if** email service is agreed upon by the parties**,** and proof must be submitted to the Tribunal demonstrating that the exceptions or response were served on the opposing party.

Entered: April 5, 2019 By 

pmk