



RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

SHELLY EDGERTON
DIRECTOR

Greenfield - 8 Mile Plaza,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MAHS Docket No. 17-001491

City of Southfield,
Respondent.

Presiding Judge
Preeti Gadola

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Greenfield - 8 Mile Plaza, appeals the ad valorem property tax assessment levied by Respondent, City of Southfield, against Parcel No. 76-24-36-452-005 for the 2017 tax year. Myles Hoffert and Paige Harley Bachand, Attorneys, represented Petitioner, and Laura Hallahan and Seth O'Loughlin, Attorneys, represented Respondent.

A hearing on this matter was held on July 19-20, 2018. Petitioner's witnesses were Deborah Silverstein and Dan Tomlinson. Respondent's sole witness was Jacob Thurston.

The subject property improvement, Universal Wholesale, is a former Home Depot, and on December 31, 2016, was an owner-occupied retail/wholesale warehouse that sells products to dollar stores.¹

¹ MCL 211.2(2) states: "The taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day"

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash value (“TCV”), state equalized value (“SEV”), and taxable value (“TV”) of the subject property for the 2017 tax year are as follows:

Parcel No.	Year	TCV	SEV	TV
76-24-36-452-005	2017	\$4,500,000	\$2,250,000	\$1,649,430

PETITIONER’S CONTENTIONS

Petitioner alleges that the subject property is over assessed. Petitioner contends the property is classed warehouse, is utilized as a warehouse and as such, should be compared to industrial properties under the sales approach. Petitioner contends the property is hard to get to, is only available to members and not the general public, and is situated near the defunct Northland Mall which has affected retail traffic in the area. Petitioner contends though industrial use is not permitted in the subject property B-3 zoning, the fact that it is utilized as a warehouse and Petitioner completed a City approved warehouse addition in 2016, demonstrates that warehouse use, which is essentially an industrial use, is permissible. Petitioner also presented an income approach to value the property and notes the property was initially sold with deed restrictions, lessening its appeal.

PETITIONER’S ADMITTED EXHIBITS

P-4: Warranty Deed

P-5: Petitioner’s Appraisal

P-11 Petitioner’s Appraiser’s Work File

PETITIONER'S WITNESSES

Deborah Silverstein

Ms. Silverstein is an employee of Petitioner, works at Universal Wholesale, and describes herself as “the administrative assistant,” “accounts manager,” “logistics manager,” “troubleshooter, and the old term ‘Gal Friday.’”² She has been employed by Petitioner for twenty years. She testified Universal Wholesale sells wholesale products to dollar stores and individuals may not come into the property to purchase products unless they have a sales tax ID number and are members. She testified, the subject property is a warehouse with a retail showroom and office space.

Ms. Silverstein, who is a lay person, read from a document she alleged to be the deed to the property from Home Depot to Petitioner, specifically the deed restrictions. The restrictions state, generally, that a purchaser of the property cannot sell home improvement products such as those sold by Home Depot. Included in the list are expected items such as countertops and bathroom fixtures, but also patio accessories, picture framing and Christmas items.

Dan Tomlinson

Petitioner's second witness was Dan Tomlinson. Mr. Tomlinson, qualified as an expert in appraisal by the Tribunal, prepared an appraisal of the subject property for the 2017 tax year using the sales and income approaches to value.

Mr. Tomlinson determined that the highest and best use of the property, as improved, to be warehouse development. He found that warehouse "falls under the

² July 19, 2018 (“7/19”) Transcript (“Tr.”) at 12.

industrial classification, so [he] looked at the market for industrial."³ He also testified that the property is located in a B-3 zoning district, which does not allow for industrial properties, yet the subject property operates as a warehouse and in fact, added a warehouse addition in 2016 which was approved by the City, therefore his conclusion was, its use as such is legally permissible.⁴ Mr. Tomlinson testified on cross-examination, however, that he reviewed the property location zoning ordinance, and found no industrial warehouse special use for the subject property. He testified,

"Q: And then there's some special uses that can be done for the property with consent [.]" "Okay. And even with consent industrial cannot be used at the subject property, correct?"

A: "As I read the zoning ordinance I didn't see any specific mention of an industrial warehouse as a special use."

"Q: Okay. So based upon your review of the zoning ordinance and your understanding, you know that no industrial use could be used on the subject property?"

"A: "that's correct."⁵

He also testified, however, that the property's maximally productive use, if there were no zoning or deed restrictions would be industrial over retail.⁶

Mr. Tomlinson testified the subject property was formerly a Home Depot and sold with deed restrictions, which indicate, its "trying to limit you where you basically can't be a big box either. And that was fairly common back then, because big boxes didn't want to sell to their competition or have their competition get the location."⁷ He further testified, "[b]ig boxes are called superadequacy now, meaning you wouldn't

³ 7/19 Tr. at 54.

⁴ 7/19 Tr. at 59.

⁵ 7/19 Tr. at 172-173.

⁶ 7/20 Tr. at 92.

⁷ 7/19 Tr. at 48.

build such a big structure for retail. It's more inclined to be used as an industrial user than as a warehouse."⁸ Mr. Tomlinson testified the property also has functional obsolescence and superadequacy because of its size, height and expense to subdivide for any retail buyer.

Mr. Tomlinson testified, though the property is located on a very busy road, it's also very difficult to get to relative to highway and service drive lanes. He also testified the property is located near the defunct Northland Mall which closed its doors in 2016 or 2017, thereby reducing retail traffic and creating economic obsolescence, meaning "there's forces outside the property that affects its depreciation."⁹ He did testify, however, that the City purchased the Northland property and is planning to redevelop the site, "but the plans and timeframe are not known or finalized."¹⁰

Mr. Tomlinson prepared a sales approach to value which put forth five sales he contended were similar to the subject property. Three of the sales were of industrial properties and two of retail properties. Mr. Tomlinson adjusted all five sales for variations in market conditions, location, building size, condition and land to building ratio, as appropriate.

Mr. Tomlinson's comparable one is a multi-tenant industrial building consisting of 72,247 square feet, sold for \$1,850,000 on June 24, 2016. It is not owner-occupied, was purchased for an income stream and was a leased-fee sale. It is

⁸ 7/19 Tr. at 60.

⁹ 7/19 Tr. at 42,54.

¹⁰ 7/19 Tr. at 53.

located near railroad tracks that sometimes impede access for trucks attempting to go in and out.¹¹ After adjustments for location, building size, and condition, Mr. Tomlinson's concluded adjusted dollar per square foot value is \$25.86. Mr. Tomlinson's comparable two, includes the tenant, International Wholesale, also a dollar store provider, and is located in Allen Park. It has 267,824 square feet, was vacant at the time of sale and was adjusted for its size difference relative to the subject and for land to building ratio. It was built in 1967 and renovated in 1978 and was also adjusted for its condition. The property sold on January 28, 2016 for \$3,996,000 and Mr. Tomlinson's adjusted dollar per square foot conclusion for comparable two was \$17.33.¹²

Comparables three and four are retail shopping centers. Comparable three, a leased-fee sale, is a large, retail mall with a "movie theater and a couple of anchors and some small retail spaces."¹³ In fact, Mr. Tomlinson testified, comparable three has twenty-one retail spaces. He also testified the sellers were disposing all their real estate assets, and holding it was merely for tax purposes. The property sold for \$5,300,000 on November 10, 2015 and its adjusted dollar value per square foot, after adjustments for building size, condition, and land-to-building ratio, is \$23.08.

Comparable four is a retail strip center, located near Westland Mall. Its tenants include a grocery store, beauty college, phone store and a retail store called Ollie's. It was a leased-fee sale and occurred on December 23, 2015 for \$4,750,000. Its adjusted

¹¹ 7/19 Tr. at 64-65, 201-202, 205.

¹² See P-5 at 58.

¹³ 7/19 Tr. at 217-218

dollar value per square foot is \$29.52, after adjustments for building size and condition.

Comparable five is an industrial building which Mr. Tomlinson contends has the same utility as the subject, as a warehouse. It was a leased-fee sale and is not owner-occupied, but leased to three tenants. It appears there is also confusion as to whether there are additional buildings attached to the comparable, however, Mr. Tomlinson only included the building in the front, not driving to the back where he could see any additional, attached buildings, during his exterior inspection. The property sold for \$2,000,000 on January 14, 2016 and consisted of 95,949 square feet. Its adjusted dollar per square foot value is \$21.05¹⁴ Mr. Tomlinson's concluded range of adjusted dollar per square foot values is from \$17.33 to \$29.52. He gave the most weight to his industrial comparables and his conclusion of true cash value was \$23 per square foot or \$2,890,000 for the 2017 tax year under the sales approach. It should be noted that Mr. Tomlinson did not measure the subject property, but determined its square footage from the architectural drawings for the warehouse addition.¹⁵ He also testified that none of his sales comparables had deed restrictions.¹⁶ Mr. Tomlinson testified that he was aware of Petitioner's comparable one, the sale of a former big box store within five miles of the subject property, but he did not use it.¹⁷

¹⁴ P-5 at 58, Respondent's Rebuttal Exhibit 2.

¹⁵ 7/19 Tr. at 174

¹⁶ 7/20 Tr. at 37-38.

¹⁷ 7/19 Tr. at 179.

Mr. Tomlinson also prepared an income approach to value. He put forth five rental comparables and adjusted them to be consistent with the characteristics of the subject property. He testified that triple net leases are the most common in the market, however, only one of his comparables had a triple net lease.¹⁸

Mr. Tomlinson's income comparable one is the same property as sales comparable one and consists of an industrial warehouse. He utilized it because the "sale was recent and the executed lease is fairly recent."¹⁹ Mr. Tomlinson testified that there are some inconsistencies with regard to the adjustments of the comparable in the sales and income approaches, for example, Mr. Tomlinson made a 5% adjustment for condition under the income approach, but a 10% adjustment to the same comparable, for condition, under the sales approach.²⁰ Comparable two is a listing of "an old warehouse in the City of Pontiac,"²¹ "which is heated at 40 degrees in the winter."²² Comparable three is located in Bridgeport Township near Saginaw, which is about 100 miles from the subject property and "[he] didn't give it much weight."²³ Comparable four is a multi-tenant retail center, which was a Farmer Jack and then became Ollie's. Comparable five is a very large industrial plant where jet engines were manufactured after WWII. Mr. Tomlinson utilized one retail comparable and four industrial comparables because again, "the industrial comps reflect the utility of the subject as a warehouse."²⁴ After considering

¹⁸ 7/20 Tr. at 42.

¹⁹ 7/19 Tr. at 99.

²⁰ 7/20 Tr. at 52.

²¹ 7/19 Tr. at 109. 7/20 Tr. at 53.

²² See P-5 at 65.

²³ 7/19 Tr. at 117.

²⁴ 7/19 Tr. at 131.

adjustments for location, tenant size, clear ceiling height, condition, and quality of construction, Mr. Tomlinson's concluded rental rate per square foot, placing the most weight on comparables one and five, was \$3.10.

Mr. Tomlinson computed revenue and reimbursable operating expenses, to conclude in potential gross income. He subtracted vacancy and credit loss to determine effective gross income and subtracted operating expenses to compute net operating income, which was capitalized with a tax loaded cap rate of 9.93%. Mr. Tomlinson's conclusion of value for the property for the 2017 tax year under the income approach, was rounded to \$2,990,000, which he reconciled with his value determination under the sales approach of \$2,890,000, to \$2,900,000.²⁵ Mr. Tomlinson considered, but rejected the cost approach to value, "due to the subject's age and the difficulty in estimating depreciation."²⁶

RESPONDENT'S CONTENTIONS

Respondent contends that the subject property, a former Home Depot, is a successful retail, not industrial, property because there is an "exchange of goods or services for monetary consideration."²⁷ Further, Petitioner added an addition in 2016, demonstrating the property's desirability. Respondent compared the property to three former big-box store comparables that were adjusted to be consistent with the characteristics of the subject property, under the sales approach to value. Respondent contends that the deed restrictions associated with the subject property are minor, common, and do not affect value.

²⁵ See P-5 at 73, 80.

²⁶ See P-5 at 37.

²⁷ 7/20 Tr. at 230

Respondent contends that property is located in a B-3 zoning district that does not allow for industrial properties. According to the zoning ordinance, industrial is not even a permitted special use and the property is not classed "industrial," but business improved. Respondent contends that Petitioner's sales approach included three industrial properties and two multi-tenant neighborhood shopping centers that were not comparable to the subject property. Respondent also contends the property is owner-occupied and has been owner-occupied since the day it was built. As such, Respondent contends the income approach to value is inapplicable. Respondent also finds the cost-less-depreciation approach unreliable with regard to valuing the subject property.

RESPONDENT'S ADMITTED EXHIBITS

R-1: Respondent's Valuation Disclosure.

Rebuttal 1: Map of Petitioner's Sales Comparable Three.

Rebuttal 2: Listing for Petitioner's Comparable Five.

RESPONDENT'S WITNESS

Jacob Thurston

Mr. Thurston was qualified by the Tribunal as an expert in assessing and valuation. He prepared a valuation disclosure which put forth the market approach to conclude in the true cash value of the subject property for the 2017 tax year.

Mr. Thurston's comparables were all former big-box stores, such as the subject property. They were not retail strip centers or industrial properties which he testified are not comparable to the property. Mr. Thurston further testified that an industrial warehouse, "is a warehouse where a going concern such as a

manufacturer may store their raw materials of their - - their goods until shipped to another location.”²⁸ He testified, “an industrial warehouse would have no retail orientation to it whatsoever.”²⁹ Mr. Thurston further alleged, “a strip mall is typically a multi-tenant building that’s - - that’s purchased for investment purposes.”

While, “[t]he purchaser of a single-tenant owner-occupied type of a building [is] going to be looking at buying that building based on whether or not it meets their business needs.”³⁰

Mr. Thurston testified that big box stores are open spaces that have utility. If they didn't have utility, no second generation tenant would purchase them and they would sit vacant or be demolished, and the market would not reflect any value relative to the improvements. All of Mr. Thurston's comparables were thus sales to second generation purchasers, as was the subject property. He also concluded that the addition to the property completed in 2016, confirmed that the property improvement is "a highly functional building while serving the current user."³¹

Mr. Thurston testified that the highest and best use of the property as improved is very expansive, diversified retail use, such as an auto dealership, hair salon, or grocery store, as is reflective of B-3 zoning. He testified the property is situated in a productive location, close to freeways and on a busy road. It also attracts drive-by traffic and has good demographics.³² He noted that a Family Dollar store was recently

²⁸ 7/20 Tr. at 175.

²⁹ *Id.*

³⁰ 7/20 Tr. at 150.

³¹ 7/20 Tr. at 138.

³² 7/20 Tr. at 140-141.

constructed nearby. He testified that a valuation expert must choose comparables with the same highest and best use as the subject property because if the comparables have a different highest and best use, “then it’s going to produce misleading value conclusions.”³³

Mr. Thurston presented three comparable sales in his market approach to value, with similar physical attributes and highest and best use, and testified his best comparable was comparable one, a former big-box store less than five miles from the subject property. It consists of 142,508 square feet, is class C construction such as the subject property and sold on December 23, 2015 for \$5,100,000. It has the least number of adjustments, for building size, condition and land-to-building ratio, and reflects the sale of a big-box store to a second generation tenant. Mr. Thurston’s adjusted dollar per square foot conclusion was \$35.79. Comparable two is also a former big-box store located in Waterford, Michigan. It is 18.7 miles from the subject property, consists of 114,227 square feet, class C construction and sold for \$4,000,000 on January 11, 2018. Its adjusted dollar value per square foot, after adjustments for location, building size, condition, and land-to-building ratio, is \$37.64. Comparable three, a former big-box store in Roseville, Michigan, is 21.7 miles from the subject property, consists of 96,268 square feet, class C construction and sold for \$3,350,000 on January 29, 2015. Its adjusted dollar value per square foot, after adjustments for location, building size, condition, and land-to-building ratio, is \$34.80. Mr. Thurston

³³ 7/20 Tr. at 147.

reconciled his three comparables' adjusted dollar value per square foot at \$35.79 for a concluded true cash value determination of \$4,500,000, rounded, for the 2017 tax year.³⁴

The subject property sold with deed restrictions, which Mr. Thurston testified, prevented, to the best of his recollection,

noxious uses, such as several -- or, most industrial uses would be considered noxious, particularly ones that could create unusual fire, explosive or other hazards, like, perhaps a warehouse could. It also prevented adult bookstores, it prevented gambling houses, it also prevented. . . marijuana distribution places. . . . And it prevented more or less the property to be used as a home improvement or hardware store.³⁵

He testified regarding the deed restriction, "it's a very common type of restriction. Not very restrictive at all."³⁶ He testified that it restricts only a very narrow population "of the overall diversified retail user's population. So, I mean there's still plenty of retail users or commercial property users that would find this building to have utility, so it only limits a very small percentage of the market."³⁷

Mr. Thurston explained that he did not utilize the income approach to value because the building, constructed in 1996, was owner-occupied the day it was built and continues to be owner-occupied. He testified, "[i]t is not an income-producing building nor in its operating history has it ever been an income-producing property."³⁸

He also testified that he considered, but did not utilize the cost approach to value,

³⁴ See R-1 at 52.

³⁵ 7/20 Tr. at 143.

³⁶ 7/20 Tr. at 144

³⁷ 7/20 Tr. at 143.

³⁸ 7/20 Tr. at 144.

because it is difficult to accurately estimate cost, as depreciation is complicated to calculate unless the building is new, or at the end of its life and ready to be torn down. He testified, “[s]o, due to the difficulty of estimating depreciation from all causes, I didn’t use the cost approach because I didn’t think it would produce meaningful or relevant value conclusions.”³⁹

FINDINGS OF FACT

1. The subject property, Universal Wholesale, is a former big-box store. It consists of approximately 126,000 square feet and sits on 8.67 acres of land. Universal Wholesale provides products to dollar stores and has a storage warehouse and retail showroom. Only members of the business may purchase products from Universal Wholesale.
2. Both Petitioner and Respondent presented valuation disclosures to conclude in the true cash value of the subject property. Mr. Tomlinson, Petitioner’s appraiser, presented an appraisal that included five sales of properties he contends were comparable to the subject property. Three of the sales were of industrial properties and two of retail, neighborhood shopping centers.
3. Respondent’s valuation expert, Mr. Thurston, put forth three sales of former big-box stores with adjustments to make them consistent with the characteristics of the subject property. Sale number one was under five miles from the subject property.

³⁹ 7/20 Tr. at 144-145.

4. Mr. Tomlinson also put forth an income approach to value which included five rental comparables which were adjusted to be consistent with the characteristics of the subject property.
5. Both Mr. Tomlinson and Mr. Thurston considered, but rejected, the cost-less-depreciation approach to value.
6. The subject property is owner-occupied and has been so since it was constructed in 1996.
7. The sale to Petitioner from Home Depot was subject to deed restrictions. None of Petitioner's nor Respondent's comparables were sold subject to deed restrictions.

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.⁴⁰

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not . . . exceed 50 percent. . . .⁴¹

The Michigan Legislature has defined "true cash value" to mean: The usual selling price at the place where the property to which the term is applied is at the time of

⁴⁰ See MCL 211.27a.

⁴¹ Const 1963, art 9, sec 3.

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.⁴²

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”⁴³ “By provisions of [MCL] 205.737(1) . . . , the Legislature requires the Tax Tribunal to make a finding of true cash value in arriving at its determination of a lawful property assessment.”⁴⁴ The Tribunal is not bound to accept either of the parties' theories of valuation.⁴⁵ “It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case.”⁴⁶ In that regard, the Tribunal “may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination.”⁴⁷

A proceeding before the Tax Tribunal is original, independent, and de novo.⁴⁸ The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”⁴⁹ “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”⁵⁰

“The petitioner has the burden of proof in establishing the true cash value of the property.”⁵¹ “This burden encompasses two separate concepts: (1) the burden of

⁴² MCL 211.27(1).

⁴³ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

⁴⁴ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

⁴⁵ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

⁴⁶ *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

⁴⁷ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

⁴⁸ MCL 205.735a(2).

⁴⁹ *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

⁵⁰ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

⁵¹ MCL 205.737(3).

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.”⁵² 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.”⁵³

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.⁵⁴ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”⁵⁵ 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.⁵⁶ This is the fee simple interest, which is the value of the property itself, irrespective of the owner.⁵⁷ Regardless of the valuation approach employed, the final valuation determined

⁵² *Jones & Laughlin Steel Corp*, *supra* at 354-355.

⁵³ MCL 205.737(3).

⁵⁴ *Meadowlanes*, *supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), *aff'd* 380 Mich 390 (1968).

⁵⁵ *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

⁵⁶ *Antisdale*, *supra* at 277.

⁵⁷ See *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 640; 462 NW2d 325 (1990).

The uniformity requirement of the Michigan Constitution compels the assignment of values to property upon the basis of the true cash value of the property and not upon the basis of the manner in which it is held. Noticeably absent from the statutory definition of “cash value” and those enumerated factors which an assessor must consider is any reference to the identity of the person owning an interest in the propertyM.C.L. § 211.27; M.S.A. § 7.27. In other words, the fact of ownership is not a germane consideration in determining value.

must represent the usual price for which the subject would sell.⁵⁸ The Tribunal finds the market approach is the best technique to utilize in determining the true cash value of the subject property for the 2017 tax year.

Highest and Best Use

Highest and best use is the crux to determining the market value of a property. As noted in the *Appraisal of Real Estate*,⁵⁹ “[t]he essential components of the analysis of highest and best use are contained in the following definition of the term: The reasonably probable use of the property that results in the highest value.”⁶⁰ In other words, in determining the true cash or fair market value of a property, it is the use that results in maximum productivity that is aimed for. Highest and best use “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.”⁶¹ In determining highest and best use, the appraiser must consider whether the use is legally permissible, physically possible, financially feasible and the maximally productive use of the property.

As noted above, Mr. Tomlinson found the highest and best use of the property to be warehouse development.⁶² He testified the subject property is “classed” industrial, utilized as a warehouse, has a warehouse addition, therefore it transforms from a

⁵⁸ See *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

⁵⁹ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), p 332.

The Appraisal of Real Estate is the appraisal profession’s “flagship text, reflects this recommitment to the essential principles of appraisal and the sound applications of recognized valuation methodology.” Further, “both appraisers and users of their services can be assured that this volume builds on time-tested foundational knowledge and contains the most up-to-date information and learning on valuation available anywhere.” *Appraisal of Real Estate*, Forward, written by Richard L. Borges II, MAI, SRA, 2013 President, Appraisal Institute.

⁶⁰ *Id.* at 332.

⁶¹ *Edward Rose*, 436 Mich at 633.

⁶² See P-5 at 40.

warehouse to an industrial property, as its maximally productive use. Mr. Thurston found the highest and best use of the property to be diversified retail use such as those uses legally allowed in the subject property's B-3 zoning. He also noted that the subject property currently has a retail component.

The Tribunal finds Mr. Tomlinson's conclusion of the property's highest and best use to be inaccurate. The subject property is classed 201, Business Improved,⁶³ not industrial. Industrial use is not a permitted use in B-3 zoning, even as a special use, therefore industrial is *not a legally permissible use* of the property and as such, Mr. Tomlinson's highest and best use, is incorrect. Even if the Tribunal were to provide some consideration to Mr. Tomlinson's conclusion, he did not provide any information regarding cost and feasibility of a zoning change to industrial. In fact, he wrote in his appraisal, "an analysis of the property's legally permissible uses must be based on those uses that are either currently in accordance with regulations, *or are reasonably certain to be allowed by the appropriate authorities.*"⁶⁴ Since, highest and best use is the crux of determining the market value of a property, the Tribunal finds it can provide little weight to Mr. Tomlinson's appraisal.

Valuation

In Mr. Tomlinson's appraisal, he chose three sales of industrial buildings and two neighborhood shopping centers. The Tribunal does not find industrial buildings and neighborhood shopping centers to be the best comparables to the subject property. His comparable one is a multi-tenant industrial building purchased for an income stream.

⁶³ See <https://bsaonline.com>

⁶⁴ See P-5 at 39 (Emphasis added).

Comparable two is a multi-tenant industrial building which was vacant at the time of sale, but now includes International Wholesale as one of its tenants which is also a dollar store provider. In the matter before us, we have a Home Depot, that after sale, became the owner-occupied Universal Wholesale. The Tribunal is now tasked with valuing the second generation land and improvement. If International Wholesale was an owner-occupied, former big box store and its land and improvements were similar to the subject property, and the *International Wholesale* property sold, there might be some basis of comparison, however, the fact that the two going-concern businesses are similar does not affect the inappropriateness of comparable two, a vacant multi-tenant industrial building, more than twice the size of the subject property, and land it sits on.⁶⁵

Comparables three and four are neighborhood shopping centers with multiple retail businesses. Comparable three has a movie theater and twenty-one retail spaces and comparable four has multiple businesses including a grocery store, phone store, beauty college and Ollie's. The Tribunal finds there is little similarity between a multi-tenant strip mall and a single, owner-occupied property, as the former is generally purchased for investment purposes and the latter for the purchaser's own business needs. Comparable five is an industrial building leased to three tenants and is not comparable to the subject property. The Tribunal finds that Mr. Tomlinson's sales comparables are not truly comparable to the subject property and provides them no weight. The Tribunal also finds the income approach to value is not the best technique to utilize in valuing the subject property for the 2017 tax year. As noted above, the

⁶⁵ *Edward Rose*, 436 Mich at 640

property is owner-occupied, has been owner-occupied since it was constructed in 1996, and has never been leased. Both appraisers also reject the cost approach to value, as does the Tribunal.

The Tribunal is persuaded by Mr. Thurston's sales approach to value. He found three former big-box store comparables, comparable one within five miles of the subject property. The Tribunal finds all three comparables were properly adjusted to make them consistent with the characteristics of the subject property and finds Mr. Thurston appropriately placed the most emphasis on comparable one, as it has the least number of adjustments, and concluded in an appropriate adjusted dollar per square foot value of \$35.79. It should also be noted that comparable one, located just a short distance from the property, would be subject to the same potential influence from the forthcoming closure of Northland Mall, as the subject property.⁶⁶ It should also be noted, the comparables did not have deed restrictions and the Tribunal agrees with Mr. Thurston, that the original deed restrictions from the sale of Home Depot to Petitioner, had an insignificant effect on value.

In *Menard, Inc. v City of Escanaba*,⁶⁷ Petitioner's appraiser put forth four sales comparables, under the market approach to value, that were deed restricted sales of former big-box stores. Petitioner's appraiser, similar to Mr. Thurston testified, that "in 'many cases,' deed restrictions did not 'have any effect on the sales price because the restrictions that were in place aren't really out of the ordinary or would affect the secondary use of the property. . . .'"⁶⁸ Respondent's assessor alleged, however, that

⁶⁶ Northland Mall which closed in "2016, maybe, 2017." See 7/19 Tr. at 42.

⁶⁷ *Menard, Inc. v City of Escanaba*, 315 Mich App 512; 891 NW2d 1 (2016).

⁶⁸ *Id.* at 517.

“properties with deed restrictions should not be compared to the subject property, which had no use restrictions in place.”⁶⁹ The Court found, that sales of deed restricted properties were “limited to those purchasers who were willing to accept the restrictions and so did not reflect the full value of the unrestricted fee simple.”⁷⁰

In the matter before us, a deed restriction was in place at the time of the sale of the property from Home Depot to Petitioner which according to the Court in *Menard*, might not reflect the full value of the property. Here, however, the Tribunal is tasked with determining the fair market value of the second generation property. Further, in this case, it is *Respondent* who is contending that deed restrictions have very little effect on the marketability of the property, thereby failing to reduce its appeal to potential purchasers.

The parties, through Mr. Tomlinson and Mr. Thurston have presented slightly different conclusions reflective of the square footage of the subject property improvement. Mr. Tomlinson computed the square footage of the property from the building plans for the 2016 addition, while Mr. Thurston measured the improvement from the outside with a tape measure. Petitioner’s conclusion is 125,806 feet and Respondent’s, 126,357. The Tribunal requested the parties resolve the difference in square footage and stipulate to its size, but they did not. As such, the Tribunal finds it will round the property improvement square footage to 126,000, as it finds both methods of determining the property size are acceptable. As such, it finds the true cash value of

⁶⁹ *Id.* at 518.

⁷⁰ *Id.* at 525.

the subject property for the 2017 tax year to be \$35.79 multiplied by 126,000 square feet, or \$4,500,000.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the subject property was under assessed in the 2017 tax year, but its taxable value remains the same.⁷¹ The subject property's TCV, SEV, and TV for the tax year at issue are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that the property's state equalized value for the tax year at issue is MODIFIED as set forth in the Introduction section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within

⁷¹ See MCL 211.27a.

28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, and (ix) after June 30, 2018, through December 31, 2018, at the rate of 5.41%.

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

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.⁷² 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.⁷³ 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.⁷⁴ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.⁷⁵

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."⁷⁶ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.⁷⁷

⁷² See TTR 261 and 257.

⁷³ See TTR 217 and 267.

⁷⁴ See TTR 261 and 225.

⁷⁵ See TTR 261 and 257.

⁷⁶ See MCL 205.753 and MCR 7.204.

⁷⁷ See TTR 213.

The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.⁷⁸

By Preeti P. Gadola

Entered: October 9, 2018

⁷⁸ See TTR 217 and 267.