

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

Menard, Inc.
Petitioner,

v

MTT Docket No. 14-001953

Port Huron Township,
Respondent.

Tribunal Judge Presiding
Preeti Gadola

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Menard, Inc. appeals the ad valorem property tax assessments levied by Port Huron Township against Parcel No. 74-28-168-0006-000 for the 2014 and 2015 tax years. The property consists of a build-to-suit, free-standing, class C retail building, with smaller, additional improvements discussed below. The property was 100% owner-occupied on December 31, 2013 and December 31, 2014. The site consists of 50.15 acres of which 5.57 acres is excess land which could be sold off and developed separately. Further, 20 of the 50.15 acres are located in a flood zone and are unusable. The property is located in Port Huron Township, Michigan.

A hearing on this matter was held on February 9-10, 2016. Carl Rashid, attorney, appeared on behalf of Petitioner, and Laura Hallahan, attorney, appeared on behalf of Respondent. Petitioner's witness was Kevin Kernen, appraiser, and Respondent's witness was Laurence Allen, appraiser.

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 tax years at issue are as follows:

Parcel Number: 74-28-168-0006-000

Year	TCV	SEV	TV
2014	\$5,800,000	\$2,900,000	\$2,900,000
2015	\$6,000,000	\$3,000,000	\$3,000,000

PETITIONER'S CONTENTIONS

Petitioner contends that the subject property is assessed in excess of 50% of its true cash value.

Petitioner's contentions of TCV, SEV, and TV are as follows:

Parcel Number: 74-28-168-0006-000

Year	TCV	SEV	TV
2014	\$5,200,000	\$2,600,000	\$2,600,000
2015	\$5,200,000	\$2,600,000	\$2,600,000

PETITIONER'S ADMITTED EXHIBITS

P-1 Appraisal Report prepared by Joseph L. Torzewski, MAI and Kevin A. Kernen, MAI

PETITIONER'S WITNESS

Kevin Kernen

Petitioner presented testimony from its appraiser, Mr. Kevin Kernen. Mr. Kernen prepared and communicated an appraisal of the subject property conveyed on the foundation of a fee simple interest. The parties stipulated that both Mr. Kernen, and Respondent's witness, appraiser Mr. Allen, are experts in the appraisal of real estate and the valuation of real property.¹ Based on their experience and training, the Tribunal accepted both appraisers as experts in the aforementioned fields.

Mr. Kernen's appraisal puts forth the cost, sales and income approaches to value as well as a land value conclusion. To the reconciled value of the three methods, Mr. Kernen added the value of the excess land, for a total true cash value conclusion of \$5,200,000 for the 2014 and 2015 tax years. In his value conclusion, Mr. Kernen placed most weight on the sales comparison approach. Mr. Kernen testified that he has appraised five to ten "Big Box Stores," such as the subject property in the last three years, some for tax purposes, but also for management planning and estate work, among other purposes. Mr. Kernen inspected the subject property on July 1, 2015, and then a second time one day prior to the hearing.

¹ Tr. at 8.

Mr. Kernen testified that the subject property is a class C discount retail store or, big box store. He testified the top end of square footage for a big box store is generally 130,000 square feet; however, the subject property, at 160,000 plus square feet, is significantly larger than stores at the top end. He testified that the property contains a mezzanine of approximately 9,000 square feet, but “it’s pretty light construction, its somewhat supported by the racking underneath it as well, it’s just used for some inventory storage. There’s an employee break area up there but it’s not something that has, in my opinion, any incremental value to the property”² He testified, “the next buyer would probably blow it out, demolish it”³ and as such, he did not place any value on the space. Mr. Kernen concluded the highest and best use of the property as vacant to be, hold for development of a commercial use. He determined the highest and best use of the property as improved to be for “continued use of the existing improvements as a free-standing retail building.”⁴

With regard to land valuation, Mr. Kernen valued the excess 5.57 acres separately than the main 45 acre parcel as he determined the excess acreage could be sold and developed separately as out lots, and as such, are more valuable, per acre, than the main site. The main parcel was valued under that sales comparison approach by identifying five comparable land sales and adjusting them to be consistent with the characteristics of the subject property. The conclusion of value for the main site is \$1.25 per square foot ⁵or \$2,400,000 for 2014 and \$1.20 per square foot or \$2,300,000 for 2015, the 2015 value reflecting a slight trend downward in the value of land. With regard to the potential out lots, six comparable sales were identified and adjusted concluding in value of \$1,100,000 for both tax years under contention.

Mr. Kernen prepared a cost approach to value the property by computing the replacement cost new of improvements by utilizing the calculator section of the Marshall Valuation Service Cost Manual (“MVS”). He determined that under MVS, the economic life of a building such as the subject is 30 years. Mr. Kernen placed little weight on the cost approach, however, as external obsolescence with regard to a property such as the subject is very high. “External obsolescence is calculated for this property as current costs of construction are greater than what

² Tr. at 29.

³ Id.

⁴ P-1 at 49.

⁵ The subject main parcel consists of 1,941,724 square feet.

an equivalent building would sell for under typical market conditions.”⁶ Mr. Kernen’s conclusion of external obsolescence for the subject property for the 2014 tax year is \$13,007,954 and for tax year 2015, \$12,918,516. To calculate value under the cost approach, Mr. Kernen computed depreciated replacement cost and added the land value determined under the above-noted analysis concluding in final value of \$4,400,000 for 2014 and \$4,200,000 for 2015. The decline in value was attributed to additional physical depreciation of the structures and the decrease in land value noted above.

Mr. Kernen’s income approach applied the direct capitalization method, which reflects the value of a stabilized property. Market rental rates are analyzed, estimated vacancy and operating expenses concluded to and the resulting net operating income is capitalized to determine market value. Mr. Kernen identified eight rental comparables and adjusted them to be consistent with the characteristics of the subject property. His conclusion of market rent per square foot is \$4.00 for 2014 and \$3.90 for 2015. He established stabilized vacancy and credit loss for a computation of net rental income of \$551,956 for 2014 and \$531,826 for 2015. Next he added expense reimbursements and concluded in effective gross income of \$800,336 for 2014 and \$784,034 for 2015. Total operating expenses were calculated from expense comparables and consisted of property insurance, common area maintenance, management fees, and non-recoverable expenses for total operating expenses of \$356,807 for 2014 and \$365,470 for 2015. Net operating income was calculated by subtracting total operating expenses from effective gross income and the result was divided by the tax adjusted capitalization rate, resulting in true cash value of \$4,300,000 for 2014 and \$4,000,000 for 2015. Mr. Kernen noted, however, that the subject property is an owner-occupied, non-income producing property and as such, the income approach received secondary weight.

Mr. Kernen’s sales approach to value put forth eight sales adjusted to be consistent with the characteristics of the subject property. Petitioner’s comparable one was a former Home Depot located in Redford Township. It consists of 135,728 square feet, was built in 1994, and renovated in 2000. It was adjusted for its superior location and inferior condition and Mr. Kernen concluded to a final adjusted price per square foot of \$21.37. Comparable two is a

⁶ P-1 at 77.

former Family Fare grocery store located in Cedar Springs, Michigan. It consists of 61,682 square feet, was built in 1978, renovated in 1995, and was adjusted for its inferior location, expenditures immediately after sale, building size, inferior condition and other economic factors⁷ for a concluded final adjusted price per square foot of \$17.90. Comparable three is a former Kroger and located in Commerce Township, Michigan. It consists of 66,000 square feet and was built in 1998. It was adjusted for its superior location, inferior condition, building size and other economic factors for a final adjusted sale price of \$32.20 per square foot. Comparable four is a former Kmart located in Gaylord, Michigan, consists of 90,470 square feet, and was built in 1981. It was adjusted for its inferior location, inferior condition, building size, and other economic factors. The concluded adjusted price per square foot is \$14.37. Comparable five is a former Home Depot in Holland Township, Michigan. It consists of 103,540 square feet and was built in 2006. It was adjusted for its superior location and inferior condition for a total adjusted dollar per square foot conclusion of \$16.90. Comparable six is a former Target located in Georgetown Township, Michigan. It consists of 104,113 square feet, was built in 1989 and renovated in 2013. It was adjusted for its superior location, inferior condition, market conditions,⁸ and other economic factors for an adjusted price per square foot of \$27.24. Comparable seven is a former Circuit City and World Plus located in Westland, Michigan. It consists of 63,686 square feet and was built in 1996. It was adjusted for its superior location, inferior condition, market conditions, building size and other economic factors for a total concluded value per square foot of \$23.53. Comparable eight is a former Walmart located in Alma, Michigan. It consists of 122,790 square feet and was built in 1989. It was adjusted for its inferior location and condition, market conditions, and other economic factors for an adjusted price per square foot of \$11.40. Mr. Kernén's concluded true cash value per square foot was \$25 for 2014 and 2015 which led to a fair market value for the property for the 2014 and 2015 tax years of \$4,100,000. Mr. Kernén did not make a market conditions adjustment to the 2015 sales as he testified that market was flat between years. Mr. Kernén's reconciled value after considering all three approaches to value, placing no weight on the cost approach and "heavy

⁷ Mr. Kernén made small adjustments to comparables that had no outbuildings recognizing there is some value to the same. Tr. at 63.

⁸ Mr. Kernén made a slight market conditions adjustment for this 2013 sale as he testified the market for Big Box stores was declining before 2014, when it stabilized. Tr. at 62.

weight” on the sales approach, and adding in the true cash value of the excess land, is \$5,200,000 for both tax years in contention.⁹

On cross-examination with regard to his appraisal report, Mr. Kernan testified that he did not personally inspect all the comparables, but did inspect comparables three and six before completion of the appraisal report.¹⁰ Further, on cross-examination, Mr. Kernan agreed that Port Huron is the largest city in St. Clair County and the subject property is located adjacent to the Canadian border, however, he did not include the Canadian market in his market data. He also testified that the primary areas he looked at were “traffic counts, three-mile demographics and primary road frontage,” in making his location adjustments.¹¹

RESPONDENT’S CONTENTIONS

Respondent contends that the subject property was over assessed on the tax roll under that mass-appraisal cost approach to value. After having an appraisal completed in which consideration of the cost, sales and income approaches to value was given, Respondent put forth a revised contention of value.

The property’s TCV, SEV, and TV as established by the Board of Review for the tax years at issue are as follows:

Parcel Number: 74-28-168-0006-000

Year	TCV	AV	TV
2014	\$7,082,200	\$3,541,100	\$3,541,100
2015	\$7,153,000	\$3,576,500	\$3,576,500

Respondent’s revised contentions of value:

Parcel Number: 74-28-168-0006-000

Year	TCV	AV	TV
2014	\$5,970,000	\$2,985,000	\$2,985,000
2015	\$6,230,000	\$3,115,000	\$3,115,000

⁹ P-1 at 120. Tr. at 74, 96.

¹⁰ Tr. at 80-81.

¹¹ Tr. at 131.

RESPONDENT'S ADMITTED EXHIBITS¹²

R-1 Appraisal Report prepared by Laurence Allen, MAI.

R-2 Article entitled, "Georgetown Twp. selling property at 1.2 M loss," published May 6, 2015.

R-3 esri Traffic Count Map, 334 Chicago Dr. Georgetown Township, Michigan.

R-4 MDOT Traffic Volumes.

RESPONDENT'S WITNESS

Laurence G. Allen, MAI

Respondent presented testimony from its appraiser, Mr. Laurence Allen. Mr. Allen prepared and communicated an appraisal of the subject property conveyed on the foundation of a fee simple interest. As noted above, the parties stipulated to acceptance of both Petitioner's and Respondent's appraisers as experts in the fields of real estate appraisal and the valuation of real property, and based on their experience and training the Tribunal accepted both appraisers as experts in the aforementioned fields.

Mr. Allen testified that the subject property is a big box store, however, his definition of the same is a retail store of 80,000 square feet or more. Mr. Allen testified that he prepared greater than ten big box appraisals in the last three years, considers himself an expert in the appraisal of big box stores, and does not know of any appraiser in the state of Michigan who has appraised a larger number of box stores than he. Mr. Allen testified that the subject property retail store has 162,340 square feet of ground floor area, a 9,900 square foot mezzanine, storage building and canopied areas. He valued the retail store at 167,290 effective square feet which consisted of ground area plus half of the mezzanine. He testified that the mezzanine was valued at 50% because it "is not as functional as ground floor area." The mezzanine has a staircase and elevator access and as such could be utilized by future retailers.¹³ He testified that Kohl's in White Lake Township sold with a mezzanine and Meijer in Grand Rapids has a mezzanine, but has not sold.¹⁴ Mr. Allen testified the site consists of 30.15 usable acres with the additional 20

¹² Petitioner objected to Respondent's desire to enter R-2 though R-4 into evidence at the hearing of this matter. The Tribunal overruled the objections, because the information therein was included in testimony and in part, was already included in the written appraisal reports prepared by both parties' expert witnesses. As such, the Tribunal found no reason to bar the documents from evidence as they were not prejudicial to either party.

¹³ Tr. at 191-192.

¹⁴ Tr. at 289.

acres located in a flood zone and thus unusable. He determined there was 5.57 acres of excess land, and valued the same separately from the main parcel at \$724,100. Mr. Allen did not present excess land comparables, but did provide land comparables to the main parcel.

Mr. Allen testified the subject property draws customers from a wider range than some big box stores due to its location near Interstate 94 and I-69, at an expressway exchange, and its location in close proximity to the border of Canada. “There’s a lot of Canadians that cross the border to shop in the U.S. and there’s a lot of U.S. residents who cross the border and have a second home in Canada.”¹⁵ Mr. Allen also concluded that overall, the market for big box stores is improving.

Mr. Allen’s appraisal put forth the cost-less-depreciation, sales and income approaches to value the subject property as well as the calculation of land value. His reconciliation of value after considering all three approaches, but relying primarily on the sales approach, is \$5,970,000 for tax year 2014 and \$6,230,000 for tax year 2015. Mr. Allen determined the highest and best use of the property as vacant to be to hold for future build-to-suit retail development and as improved, the maximally productive use would be “its use as a retail store with the eventual sell-off of and development of the excess land in front of the building.”¹⁶

As noted above, Mr. Allen considered the cost approach to value. Like Mr. Kernan, he utilized the cost estimate guide published by MVS, and also discounted the approach due to a large amount of functional, due to its size, and external obsolescence writing, “Unlike many other commercial properties, free standing ‘big box’ stores like the subject property are not constructed for the purpose thereafter of selling or leasing the property in the marketplace.”¹⁷ Mr. Allen calculated obsolescence to be \$8,895,940 for 2014 and \$8,335,932 for 2015. His final conclusion of value under the cost approach included adding estimated land value¹⁸ and depreciated cost for a conclusion of value under the approach of \$5,790,000 for 2014 and \$6,080,000 for 2015.

Under the income approach, Mr. Allen initially considered 25 lease comparables, including build-to-suit and leases of existing properties to demonstrate the difference between

¹⁵ Tr. at 183.

¹⁶ R-1 at 61-62.

¹⁷ R-1 at 97.

¹⁸ Land value was calculated by considering five land sales, including four Menards sites.

the types of properties. He concluded to an overall lease rate of \$4.50 per square foot utilizing only existing leases. He multiplied the rental rate by the effective square footage for a total rental income of \$752,805 for both tax years under contention. Reimbursed income included CAM, insurance and property taxes for a calculation of potential gross income minus vacancy and credit loss. The resulting effective gross income is \$1,073,075 for 2014 and \$1,079,235 for 2015. Expenses included CAM, insurance, property taxes, management fee and replacement reserves resulting in total expenses of \$523,884 for 2014 and \$531,069 for 2015. Net operating income (“NOI”) was determined by subtracting expenses from effective gross income for a conclusion of NOI of \$549,191 for 2014 and \$548,166 for 2015. NOI was divided by the overall rate to determine capitalized NOI, excess land value of \$724,100 was added for each tax year and leasing commissions were subtracted resulting in an overall conclusion of value under the income approach of \$6,130,000 for 2014 and \$6,420,000 for 2015. Mr. Allen testified that he primarily relied on the sales approach, “because there’s sufficient sales and it directly reflects on the market.” However, “[he] gave the income approach some consideration.”¹⁹

In his sales approach, Mr. Allen compared the subject property to six sales adjusted to be consistent with the characteristics of the subject property. Sale number one is a former Home Depot in Holland Township, MI which has also put forth by Mr. Kernen. Both appraisers agree the property has 103,540 square feet, and was built in 2006; however, Mr. Allen personally inspected the property, but Mr. Kernen did not. The sale took place in January 2014 and sold to Rural King, which is “a retailer that does kind-of farm-oriented equipment and merchandise.”²⁰ Rural King never took occupancy, the property was sold to a developer and it is being converted into a Dick’s Sporting Goods with additional space to be leased for other retail use.

Mr. Allen testified comparable one is located near the defunct West Shore Mall which went into bankruptcy, and is being “de-malled,” indicating that the area isn’t a strong retail area and also negatively impacted the sale of comparable one. He contends that the Rivertown Crossing shopping development opened in Grandville with more retailers and a more convenient location for Holland shoppers, therefore tenants are departing from this former Home Depot location. He also noted that the comparable is not located near a major expressway and the

¹⁹ Tr. at 255.

²⁰ Tr. at 205.

Canadian border, such as the subject property, all which reflect on its low sale price. The sale was adjusted for location and its inferior condition. Further, Mr. Allen adjusted all his sales comparables for market conditions by 5% in 2015 testifying the market increased by 5% between 2014 and 2015. Mr. Allen's conclusion of adjusted dollar per square foot of comparable one is \$17.34 for 2014 and \$18.04 for 2015, As such, he indicated the sale is an outlier, testifying, "It's outside of the normal range of prices for this type of property."²¹

Comparable two is a former Target and is located in Warren, Michigan. It consists of 98,634 square feet, was built in 1990, sold in December 2012 and was personally inspected by Mr. Allen. It is a Target store and Target chose to close the comparable and build a bigger store down the street. It is adjusted by Mr. Allen for its superior location and inferior age and condition. It also received a market conditions adjustment for the 2015 tax year as this same sale was utilized for both tax years under consideration. Mr. Allen's adjusted value per square foot is \$25.05 for 2014 and \$26.08 for 2015.

Comparable three is a former Target in Georgetown Township, Michigan and it was also put forth by Mr. Kernan in his appraisal report. It has 104,000 square feet, was built in 1989 and sold in October 2013. Mr. Allen testified that the former Target also closed when a bigger store was built down the street in Grandville. The store sold to Garden Ridge after a land lease was terminated as a fee simple sale. The sale was adjusted for market conditions and age and condition at 1% per year. Mr. Allen testified that his conclusion that the sale is not in a superior location than the subject was confirmed by the fact that the Kmart store adjacent to the comparable was sold to Georgetown Township in order for it to modify the building into a community center, but the center was never constructed and the Kmart was resold and was torn down rather than the improvement redeveloped. Furthermore, Mr. Allen testified that the traffic count surrounding this store is 17,000 while the traffic count surrounding the subject property is 27,000. Mr. Allen's adjusted value conclusion for comparable three is \$33.94 for 2014 and \$35.35 for 2015.

Comparable four was personally inspected and appraised by Mr. Allen. It is a former Walmart store in Frenchtown Township. It consists of 124,631 square feet, was built in 1992

²¹ Tr. at 207.

and sold in December 2009. The store was vacated because a Super Walmart was built across the street. Comparable four sold to a developer who divided it into several retail spaces. The comparable was adjusted for market conditions and for age and condition. Mr. Allen's conclusion of adjusted dollar per square foot for the comparable is \$23.43 for 2014 and \$24.39 for 2015.

Comparable five was originally a Builder's Square, became a Circuit City and Media Play and then it was purchased by Cabela's in July 2012. Cabela's will occupy part of the building and lease out the other portion. The property has 94,284 square feet and was built in 1985. It was adjusted downwards for size as the property had been split in two, for market conditions and for age and condition. Mr. Allen's conclusion of dollar value per square foot is \$28.74 for 2014 and \$29.94 for 2015.

Comparable six is a former Kroger store located in Commerce Township and Mr. Kernen also brought forth this comparable in his appraisal. It has 63,000 square feet and was built in 1998. It sold in September 2014 for secondary retail use and was split in two. Planet Fitness occupied the biggest portion of the property and held the additional portion for lease. Kroger moved to the building next door to the comparable and built a larger store on a corner site. The comparable was adjusted for size, location due to its higher population density and higher income levels and for age and condition resulting in an adjusted sale price is \$31.69 per square foot for 2014 and \$32.99 per square foot for 2015. After considering the adjusted sale price of each of his six comparables, Mr. Allen concluded to a value for the property under the sales approach of \$31 per square foot in 2014 and \$32.50 per square foot in 2015. Excess land was added to the dollar per square foot calculation and the conclusion of value is \$5,910,000 for 2014 and \$6,160,000 for 2015.

It should be noted that comparables two and four have deed restrictions, but they did not impact the sale price of the properties based on Mr. Allen's investigation. "[W]hat happens is, at least in these instances, is there's a buyer and a price negotiated and then the seller puts deed restrictions that won't interfere with the sale price or with the sale and so the deed restrictions vary depending on what the buyer plans on doing with the property."²² In his comparable write-

²² Tr. at 196-197.

ups it is written, “This property was sold, for use as a school, with a covenant deed restricting some types of future retail use of the property. This restriction was drafted after the potential purchasers identified what the future use of the properties would be and the price was established. According to the participants in the transaction, the deed restriction had no effect on the sale price.”²³

FINDINGS OF FACT

1. The subject property consists of a Menards retail store, built in 2012, with 162,340 square feet of ground area and a 9,900 square foot mezzanine. It is located on 50.15 acres of which approximately 20 acres are unusable, 5.57 acres are developable as out lots and there are additional improvements to the property including pole-barn storage shed, outdoor canopy space, garden center, surface parking improvements and additional paved areas.
2. Both Mr. Kernen and Mr. Allen prepared and presented appraisals of the property based on the foundation of a fee simple interest. Both appraisers prepared and put forth cost, sales and income approaches to value, and both appraisers principally relied on the sales approach to value.
3. Mr. Kernen put forth eight sales comparables with adjustments to make them consistent with the characteristics of the subject property and Mr. Allen put forth six adjusted sales. The appraisers utilized three sales in common.
4. Petitioner’s comparable one sold for industrial use.
5. Petitioner’s comparables two, four and eight are in rural locations. Comparable two has 3,420 households within a three-mile radius of the former Family Fare grocery store located in Cedar Springs, Michigan; comparable four has 3,710 households within a three-mile radius of the former Kmart in Gaylord, MI; and comparable eight has 5,300 households within a three-mile radius of the former Walmart located in Alma, Michigan. The subject property has 16,500 households within a three-mile radius.
6. Petitioner’s comparable two is 36 years-old, comparable four 33-years-old, and Petitioner’s comparable seven was sold to a governmental unit.

²³ R-1 at 67, 69. The write-up for comparable four does not contain the language “sold for the use as a school,” however the additional language is the same as the write-up for comparable two.

7. Respondent's comparable two is a former Target located in Warren, MI; its comparable four is a former Walmart that sold in 2009; and its comparable five is former Circuit City and Media Play built in 1985.
8. Petitioner's and Respondent's common comparables are the former Home Depot in Holland Township, Michigan; the former Target in Georgetown Township, Michigan; and the former Kroger in Commerce Township, Michigan.
9. The Holland Township comparable, which sold for \$16.90 per square foot, is located near the defunct West Shore Mall that went through bankruptcy and is being "de-malled."
10. The Georgetown Township comparable is located adjacent to a former Kmart that was sold to the Township for use as a community center. The building was not modified and the property sold and the improvement torn down.
11. Respondent's conclusion of adjusted square foot value for the former Kroger comparable is \$31.69 for 2014 and \$32.99 for 2015. Petitioner's conclusion of adjusted square foot value for both tax years is \$32.20.
12. Both Mr. Kernen and Mr. Allen presented land sales comparables to determine the value of the subject property site. Mr. Kernen put forth main site and out lot comparables to determine site value.
13. Mr. Kernen testified the property mezzanine has no value in exchange and Mr. Allen valued it at 50% of the main improvement.

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.²⁴

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. . . .²⁵

²⁴ See MCL 211.27a.

²⁵ Const 1963, art 9, sec 3.

The Michigan Legislature has defined “true cash value” to mean:

The usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale.²⁶

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”²⁷

“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.”²⁸ The Tribunal is not bound to accept either of the parties' theories of valuation.²⁹ “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.”³⁰ 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.”³¹

A proceeding before the Tax Tribunal is original, independent, and de novo.³² The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”³³ “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”³⁴

“The petitioner has the burden of proof in establishing the true cash value of the property.”³⁵ “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.”³⁶ However, “[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true

²⁶ MCL 211.27(1).

²⁷ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

²⁸ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

²⁹ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

³⁰ *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

³¹ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

³² MCL 205.735a(2).

³³ *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

³⁴ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

³⁵ MCL 205.737(3).

³⁶ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question.”³⁷

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.³⁸ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”³⁹ 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.⁴⁰

Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.⁴¹ After considering all three approaches to value, the Tribunal finds that the sales approach is the correct valuation technique to be utilized in determining the true cash value of the subject property for the 2014 and 2015 tax years.

In this matter two appraisers, Mr. Kernen and Mr. Allen, both Members of the Appraisal Institute, the highest designation for appraisers, put forth appraisals of the subject property. Both appraisals are correctly based on the foundation of a fee simple interest, both appraisals present the value in exchange of the property and are not based on the value of the property to the owner.⁴² The reconciled value conclusions in the appraisals for the property are \$5,200,000 for both tax years by Mr. Kernen, \$5,970,000 for 2014 and \$6,230,000 for 2015 by Mr. Allen, resulting in a taxable value contention for 2014 of \$385,000 and for 2015 of \$515,000. Mr. Allen’s appraisal suggests a lower revised contention of value for the property than what is currently on the tax roll, or \$7,082,200 for 2014 and \$7,153,000 for 2015, concluding that the

³⁷ MCL 205.737(3).

³⁸ *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).

³⁹ *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

⁴⁰ *Antisdale*, *supra* at 277.

⁴¹ See *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

⁴² See *First Fed S & L Ass’n of Flint v. City of Flint*, 415 Mich 702, 329 NW2d 755 (1982) wherein the Supreme Court of Michigan stated, “The constitution and the General Property Tax Act require that property tax assessments be based on market value, not value to the owner.”

property is over assessed by the municipality. Both appraisers relied on the sales approach to value, with lesser consideration of the income approach. Both appraisers considered the cost approach to value, but determined it not to be the best approach to value based on the large amount of obsolescence to a property, such as the subject, and its resulting reduced market value in exchange. As noted above, it is required that the Tribunal make an independent determination of value for the property for the 2014 and 2015 tax years, and as the parties, through their expert witnesses, primarily and correctly relied on the sales approach to value, the Tribunal will place the majority of its analysis on the market approach.

Highest and Best Use

As noted above, Mr. Allen determined the highest and best use of the property as vacant to be, hold for future build-to-suit retail development, and as improved, the maximally productive use would be “its use as a retail store with the eventual sell-off of and development of the excess land in front of the building.”⁴³

Mr. Kernan concluded the highest and best use of the property as vacant, to be, hold for development of a commercial use. He determined the highest and best use of the property as improved to be, “continued use of the existing improvements as a free-standing retail building.”⁴⁴

Both appraisers considered the existing use⁴⁵ of the property as a retail store in making their determination of the maximal productivity of the property, and found the highest and best

⁴³ R-1 at 61-62.

⁴⁴ P-1 at 49.

⁴⁵ The Court of Appeals in *Lowe’s Home Center v Marquette Twp* and *Home Depot USA, Inc v Breitung Twp*, unpublished opinion per curiam of the Court of Appeals, issued April 22, 2014 (Docket Nos. 314111 and 314301) suggested the Tribunal might consider two issues, the present economic income of a property and its existing use pursuant to MCL 211.27(1) and (5) which state in relevant part,

In determining the true cash value, the assessor shall also consider the advantages and disadvantages of location; quality of soil; zoning; **existing use; present economic income of structures**, including farm structures; **present economic income of land if the land is being farmed or otherwise put to income producing use**; quantity and value of standing timber; water power and privileges; minerals, quarries, or other valuable deposits not otherwise exempt under this act known to be available in the land and their value.

MCL 211.27(5) states, As used in subsection (1), ‘present economic income’ means for leased or rented property

use as improved to be continued use for retail purposes. The Tribunal also finds that the highest and best use of the property is as agreed to by both appraisers.

Income and Cost Approaches to Value

With regard to the income approach to value, the Tribunal places little emphasis on the approach, other than as a check of the sales approach, as the subject property is an owner-occupied, non-income producing property. The Tribunal places no weight on the cost approach to value, agreeing with both appraisers, that obsolescence affecting a property such as the subject is too great to render an accurate conclusion of the true cash value of the subject property for the 2014 and 2015 tax years.

Petitioner's Sales Comparables

In his sales approach to value, Mr. Kernen put forth eight comparable sales adjusted to be consistent with the characteristics of the subject property. His sales three, the former Kroger in Commerce Township, MI; sale five the former Home Depot in Holland Township; and sale six the former Target in Georgetown Township, were also utilized by Mr. Allen.

Petitioner's sales comparable one is a former Home Depot in Redford Township, MI and it was adjusted for location and condition. Mr. Allen testified that sale one is not a desirable retail property as Home Depot used it for a training center, closed it, and sold it for industrial use, which is "the last-resort use when a retail use won't work or it's not in the area that there's sufficient demand for retail."⁴⁶ Mr. Allen testified that he was aware of Petitioner's comparable one at the time of preparing his appraisal, but he did not utilize it finding it to be a poor comparable to the subject property. The Tribunal also finds that Mr. Kernen's comparable one is not the best comparable to the subject property due to its industrial, "last resort" use after sale.

Mr. Kernen's comparable two is a former Family Fare grocery store located in Cedar Springs, Michigan. It was adjusted for its inferior location, expenditures immediately after the sale, building size, inferior condition and other economic factors. Mr. Allen testified the comparable is located in a rural area, along with Mr. Kernen's comparable four located in

As stated above, the appraisers considered the existing use of the property. With regard to present economic income, the Court in *Lowe's* and *Home Depot* found that there is no present economic income to consider if a property is not leased or rented and as such, is not an income-producing property. The subject property is not leased or rented, is owner-occupied and as such, is not an income-producing property.

⁴⁶ Tr. at 233.

Gaylord and comparable eight located in Alma. Mr. Allen testified that he is aware of the comparable and has it in his database, but testified it is a 36 year-old-store, older than its economic life,⁴⁷ with only 3,420 households within a three-mile radius, while the subject property has 16,500 households within a three-mile radius.⁴⁸ Mr. Allen noted that “retailers count on retail spending from households,” therefore the number of households would increase the number of shoppers at a retail store.⁴⁹ Despite the fact that Mr. Kernen adjusted the comparable for age and location, the Tribunal finds the comparable to be less persuasive due to its age and the number of nearby households reflecting its rural location. It should also be noted that Petitioner’s comparables two, four and eight, all in rural locations, have adjusted sale prices per square foot of \$17.90, \$14.37 and \$11.40, among the lowest conclusions put forth by either party. Mr. Allen testified that former big box stores in rural areas sell for \$10-\$15 per square foot which is much lower than a big box store located adjacent to the Canadian border such as the subject, and as such rural big box stores are not truly comparable to the subject property.

Mr. Kernen’s comparable four is a former Kmart located in Gaylord, Michigan. Mr. Allen testified that he is familiar with the sale, but he does not find the sale comparable to the subject property, again due to its rural location. He testified that the property has 3,710 households within a three-mile radius and was 33 years old at the time of sale, much older than the subject property and older than its economic life. Based on an analysis of comparable four, the Tribunal finds it is not the best comparable to the subject given its rural location and age.

Mr. Kernen’s comparable seven is a former Circuit City in Westland. It was adjusted for location, building size, condition, market conditions and other economic factors, with a total of 36.4% in gross adjustments. The property was sold to the City of Westland for use as a City Hall. Mr. Allen testified that sales to government units are generally not the best comparables to utilize given government units can only afford to pay a set amount of dollars, so favorable, below market purchase prices often occur. The Tribunal finds that comparable seven is suspect and as such should be minimized when other sales more comparable to the subject property exist.

⁴⁷ Mr. Kernen testified that according to MVS, the economic life of a big box store is 30 years as was agreed to by Mr. Allen, Tr. at 235.

⁴⁸ Tr. at 235. Further, as noted above, Mr. Kernen testified that the primary areas he looked at in making location adjustments included traffic counts and three-mile demographics.

⁴⁹ Tr. at 239.

Mr. Kernen's comparable eight is a former Walmart in Alma, Michigan. Again, it is in a rural area with only 5,300 households within a three-mile radius and it was 23 years-old at the time of sale. It was vacated as a result of a Super Walmart construction down the road and in small towns, a secondary retail user is difficult to find, per Mr. Allen.⁵⁰ It was sold for industrial use and was adjusted by Mr. Kernen by 32.1% for market conditions, location, condition, and other economic factors. Again due to its rural location and sale for industrial purposes, the Tribunal finds that comparable eight is not probative.

Respondent's Sales Comparables

Mr. Allen presented the Tribunal with six sales comparable to the subject property with adjustments to make them consistent with the characteristics of the property. As noted above, he presented three sales, also presented by Mr. Kernen, which the Tribunal will discuss after an analysis of the sales Mr. Allen utilized that were not in common.

Respondent's comparable two is a former Target located in Warren, Michigan which was personally inspected by Mr. Allen, and was vacated when a larger Target was built down the street. It sold in December 2012 and was adjusted for location, age and condition in 2014, and additionally by 5% for market conditions in 2015, as were all Mr. Allen's sales. The Tribunal has no objection to the relevance of comparable two and considers it in its independent determination of value. The sale included a deed restriction, however, the Tribunal is persuaded by Mr. Allen's testimony, as described above, that the restriction did not affect sale price. Further, Mr. Kernen did not testify, or include in his appraisal report, any objection to the use of a property with a deed restriction as a comparable in this matter.

Mr. Allen's comparable four is a former Walmart located in Frenchtown Township. It sold in December 2009, quite distant from the dates of valuation in this matter of December 31, 2013 and December 31, 2014.⁵¹ It was vacated because a Super Walmart was built down the street. Due to its 2009 date of sale, the Tribunal finds that comparable four is not the best comparable to utilize when determining the market value of the subject property.

⁵⁰ Tr. at 238.

⁵¹ 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, any provisions in the charter of any city or village to the contrary notwithstanding.

Mr. Allens' comparable five was a Builder's Square, which became a Circuit City and Media Play which went bankrupt, then sold to Cabela's in July 2012. Cabela's will occupy half the store and hold the other half for lease. The store was built in 1985 making it near the end of its economic life at the time of sale, however, it was split into two properties when sold to Circuit City and Media Play, implying some renovation. Due to its age and unknown renovation, the Tribunal finds comparable five to be less probative.

Petitioner's and Respondent's Common Sales Comparables

The remaining comparables utilized by Mr. Allen were also put forth by Mr. Kernen. Again, as noted above, both appraisers carry the MAI designation; therefore, much consideration is given by the Tribunal to the comparables chosen to be three of the best comparables to the subject property by both appraisers. The Tribunal finds, however, that Mr. Allen's adjustments are more reliable given his expertise in appraising big box stores such as the subject property.

The first shared comparable is the former Home Depot store in Holland Township, Michigan.⁵² Both appraisers adjusted the comparable for its location and inferior condition. Mr. Kernen testified that he did not personally inspect the comparable property, therefore, the Tribunal is persuaded that he is unfamiliar with it given he is not knowledgeable regarding the bankruptcy and "de-malling" of the nearby West Shore Mall or the influence of the Rivertown Crossing shopping development shifting business away from the comparable area. The comparable sold for \$16.90 per square foot, the lowest dollar per square amount other than the rurally located comparables. Mr. Allen testified that the adjusted sale price of the property indicates that it is an outlier and the Tribunal finds the testimony persuasive.

The second shared comparable is the former Target located in Georgetown Township.⁵³ The comparable was adjusted by Mr. Allen for market conditions and age and condition. Mr. Kernen adjusted the comparable for market conditions, condition, and for its superior location by 15%. Mr. Allen testified that his conclusion that comparable is not situated in a superior location is based on the sale of the adjacent Kmart store to Georgetown Township for a community center that was never realized, and ultimately was sold and torn down rather than redeveloped. Further,

⁵² Respondent's comparable one is Petitioner's comparable five.

⁵³ Respondent's comparable three is Petitioner's comparable six.

Mr. Allen testified that the traffic count near the former Target is 17,000 vehicles while the traffic count on I-94, adjacent to the subject interchange property is 27,000 vehicles.⁵⁴ The Tribunal is persuaded by Mr. Allen's testimony that Mr. Kernen's adjustment for superior location is inappropriate and finds that consideration of Respondent's \$33.94 adjusted sale price per square foot for 2014, and \$35.35 adjusted sale price per square foot for 2015, should be given in making its independent determination of value.

The third shared comparable is the former Kroger store located in Commerce Township, Michigan.⁵⁵ Interestingly, both appraisers adjusted the comparable for its size, location and condition, resulting in adjusted sale prices of \$31.69 per square foot for 2014 and \$32.99 per square foot for 2015 for Mr. Allen and \$32.20 per square foot for Mr. Kernen, for both tax years. As such, the Tribunal finds the former Kroger store comparable to be most probative in determining the true cash value of the subject property for the 2014 and 2015 tax years.

The Tribunal's independent determination of the true cash value of the subject property for the 2014 and 2015 tax years is based on the sales approach to conclude in a dollar value per square foot. As such, the Tribunal must determine the correct square footage of the improvement in order to apply its conclusion of square foot value and finds the improvement consists of 162,340 square feet. The Tribunal finds a calculation of effective square feet related to the subject property mezzanine to be inappropriate given the value of the mezzanine has not been sufficiently supported in the testimony and evidence. Mr. Allen valued the 9,900 square foot mezzanine at 50% of the main improvement, concluding in an effective square footage of 167,290, based in part on the sale of a Kohl's department store, testified to in passing, that was not presented in the appraisal. Further, the effect of the mezzanine on sale price was not sufficiently communicated in Mr. Allen's testimony other than it might add value to a second generation user.

Further, the Tribunal finds Mr. Kernen's determination of the value of the excess 5.57 acre out lots to be persuasive as he put forth and communicated his technique and included the comparable sales he utilized in his conclusion of value in the appraisal with adjustments to make

⁵⁴ "High-volume local traffic in commercial areas is usually an asset." Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2014), p 209.

⁵⁵ Respondent's comparable six is Petitioner's comparable three.

the comparables consistent with the subject property. Comparable one is located at 4845 24th Ave. in Fort Gratiot Township; comparable two at 45115 Market Place Boulevard in Chesterfield Township; comparable three is located east of comparable two and north of Hall Road in Chesterfield; comparable four is located at 4214 24th Avenue, Fort Gratiot Township; comparable five at 4721 24th Avenue, Fort Gratiot; and comparable six at 8171 Lapeer Road in Davison Township. The Tribunal has considered the comparables and finds them to be truly comparable to the subject property and the adjustments appropriately supported. The Tribunal is unsure how Mr. Allen analyzed out lot comparables as only parcel comparables were included in the report and he did not testify as to how he reached his conclusion regarding out lots. As such, the Tribunal finds the true cash value of the excess land to be \$1,100,000 for both tax years.

With regard to value per square foot, the Tribunal places more weight on Mr. Allen's appraisal as he personally inspected or appraised the majority of his comparables before preparing the appraisal report for this property. Further, Mr. Allen considered the Canadian traffic in his traffic count which the Tribunal finds to be necessary when making adjustments given the property is an expressway exchange location, adjacent to two major expressways, and only three miles from the Canadian border. Mr. Allen did not consider rurally located comparables, sales to governmental units, or sales for industrial use.

The Tribunal finds the sales truly comparable to the subject property and therefore reflecting its market value, to be Respondent's comparable two, the former Target in Warren, with an adjusted sale price of \$25.05 per square foot for 2014 and \$26.08 per square foot for 2015. The shared comparable two, the former Target in Georgetown Township with Respondent's adjustments, concluding in an adjusted sale price of \$33.94 per square foot in 2014 and \$35.35 in 2015. Finally, shared comparable three, the former Kroger in Commerce Township, is given the most weight, with an adjusted sale price per square foot of \$32.20 by Petitioner for both tax years and an adjusted sale price per square foot of \$31.69 for 2014 and \$32.99 for 2015 by Respondent. The Tribunal finds its conclusion of dollar per square foot value of the big box improvement to be \$29 for 2014 and \$30 for 2015, which falls "within the range of the evidence" and is supported by substantial and competent evidence on record.⁵⁶ The

⁵⁶ *Pontiac Country Club v Twp of Waterford*, 299 Mich App 427; 830 NW2d 785 (2013).

Tribunal finds Mr. Allen's testimony credible regarding an increase in the market between 2014 and 2015, though, considering Mr. Kernen's testimony and comparables above, less than 5%. As such, the Tribunal finds the fair market value of the property for the 2014 tax year to be \$5,807,860, or \$5,800,000, rounded⁵⁷ and for 2015, the true cash value of the property is \$5,970,200, or \$6,000,000, rounded.⁵⁸ The subject property's TCV, SEV, and TV for the tax years at issue are as stated in the Introduction section above.

JUDGMENT

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

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

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

⁵⁷ 162,340 square feet x \$29, plus \$1,100,000 excess land value.

⁵⁸ 162,340 square feet x \$30, plus \$1,100,000 excess land value.

the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, and (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%.

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

APPEAL RIGHTS

If you disagree with the 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.⁵⁹ 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.⁶⁰ 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.⁶¹ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.⁶²

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."⁶³ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.⁶⁴

⁵⁹ See TTR 261 and 257.

⁶⁰ See TTR 217 and 267.

⁶¹ See TTR 261 and 225.

⁶² See TTR 261 and 257.

⁶³ See MCL 205.753 and MCR 7.204.

⁶⁴ 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.⁶⁵

By Steven H. Lasher

Entered: April 27, 2016

⁶⁵ See TTR 217 and 267.