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

RRAM Holdings LLC,
Petitioner,

v

MTT Docket No. 15-001582

Clinton Township,
Respondent.

Tribunal Judge Presiding
Steven H Lasher

FINAL OPINION AND JUDGMENT

The Tribunal issued a Proposed Opinion and Judgment ("POJ") on March 13, 2017. The POJ states, in pertinent part, "[t]he parties have 20 days from date of entry of this POJ to notify the Tribunal **in writing, by mail or by electronic filing, if available,** if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions)."

Neither party has filed exceptions to the POJ.

The Administrative Law Judge ("ALJ") considered the testimony and evidence submitted and made specific findings of fact and conclusions of law. The ALJ's determination is supported by the testimony, evidence and applicable statutory and case law.

Given the above, the Tribunal adopts the POJ as the Tribunal's final decision in this case.[1] The Tribunal also incorporates by reference the Findings of Fact and Conclusions of Law contained in the POJ in this Final Opinion and Judgment. As a result:

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

Parcel Number: CL6-108-2800-00

Year	TCV	SEV	TV
2015	$1,982,000	$991,000	$495,500

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

Parcel Number: CL6-108-2800-00

Year	TCV	SEV	TV
2015	$501,000	$250,500	$250,500

[1] See MCL 205.726.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year(s) at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as provided in this Final Opinion and Judgment within 20 days of entry of this Final Opinion and Judgment, subject to the processes of equalization.[2] To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

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

This Final Opinion and Judgment resolves the last pending claim and closes this case.

APPEAL RIGHTS

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

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.[3] 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

[2] See MCL 205.755.
[3] See TTR 261 and 257.

fee.[4] 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.[5] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[6]

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."[7] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[8] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[9]

By Steven H. Lasher

Entered: April 14, 2017
ejg

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

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

RRAM Holdings, LLC,
Petitioner,

v

MTT Docket No. 15-001582

Clinton Township,
Respondent.

Administrative Law Judge Presiding
Peter M. Kopke

PROPOSED OPINION AND JUDGMENT

INTRODUCTION

Petitioner appealed the ad valorem property tax assessments levied by Respondent against Parcel No. CL6-108-2800-00 for the 2015 tax year. Rajiv Naik represented Petitioner and Timothy R. Voorhees, Assessor, represented Respondent.

A hearing on this matter was held on November 30, 2016. Petitioner's witness was Mr. Naik. Respondent's witness was Mr. Voorhees.

As established by Respondent's March Board, the true cash value ("TCV"), assessed value ("AV"), and taxable value ("TV") of the subject properties are as follows:

Parcel Number: CL6-108-2800-00

Year	TCV	AV	TV
2015	$1,982,000	$991,000	$495,500

Based on the evidence (i.e., testimony and admitted exhibits), the case file and applicable law, the Tribunal finds that TCV, state equalized value ("SEV"), and TV of the subject property is as follows:

Parcel Number: CL6-108-2800-00

Year	TCV	SEV	TV
2015	$501,000	$250,500	$250,500

PETITIONER'S CONTENTIONS

Petitioner contends that the evidence presented in this case supports a determination that the subject property's AV for the tax year at issue is in excess of 50% of its TCV. Specifically, Petitioner contends that (i) the subject property's 2013 purchase price is the property's TCV for

the tax year at issue,[1] (ii) "the building was vacant when it was purchased and is now being used for warehousing of plastic materials . . . . and some grinding in the back room,"[2] and (iii) the property was purchased through "an arm's length transaction . . . from Pilkington, a corporation that . . . [Petitioner] had no relationship with, and . . . the value should be based on the purchase price of 501,000."[3]

As determined by Petitioner, the subject properties' TCV and TV for the tax year at issue should be as follows:

Parcel Number: CL6-108-2800-00

Year	TCV	AV	TV
2015	$501,000	$250,500	$250,500

PETITIONER'S ADMITTED EXHIBITS

P-1 Purchaser's Statement dated May 15, 2013, indicating a purchase price less "Total Charges" of $501,000.[4]

P-2 Warranty Deed dated May 15, 2013, relative to purchase of the property for $501,000.[5]

PETITIONER'S WITNESSES

Rajiv Naik

Rajiv Naik was Petitioner's first and only witness. He was not offered or admitted as a valuation expert. He did, however, testify that (i) he "is the sole member of RRAM Holdings, Inc" (i.e., Petitioner),[6] (ii) Petitioner "purchased the property located at 11700 Tecumseh-Clinton Highway in May of 2013,"[7] (iii) the previous owner (i.e., the Pilkington Corporation) "had shut down production" and had the property "on the market for many years" prior to its sale,[8] (iv) Petitioner "is [in] the plastic business . . . [and] needed an additional warehouse close to where . . . [it is] located in Toledo, (v) prior to its purchase of the property, the Pilkington Corporation

[1] Although Mr. Naik attempted to provide an opening statement, he is not an attorney and did not understand what was required of an opening statement. Nevertheless, he did indicate with the Tribunal's assistance that Petitioner would be introducing evidence in the form of a Purchase Statement and Warranty Deed to demonstrate that the purchase price is the property's true cash value for the tax year at issue. See Transcript ("TR") at pp 5-7. See also the May 15, 2015 Petition.
[2] See TR at pp 51-5.
[3] See TR at p 5.
[4] See TR at pp 9-10.
[5] See TR at pp 10-1.
[6] See TR at p 8.
[7] See TR at p 8.
[8] See TR at p 8.

("Pilkington") "had almost sold the property to a scrap dealer for $300,000,"[9] (vi) his real estate agent found the property,[10] (vii) the property was a "wide-open . . . empty building waiting to be sold, with front offices and a [one] hundred ninety thousand square foot warehouse,"[11] (viii) the "negotiations" resulted in a "purchase contract for $501,000, which Pilkington readily accepted,"[12] (ix) Petitioner's "initial offer for the building was around $400,000, which Pilkington did not accept . . . . [a]nd then we went back and forth many times, finally arriving at the . . . 501,000 price,"[13] and (x) neither the witness nor Petitioner had a "relationship" with Pilkington and, as such, it was "an arm's length purchase at a price that was . . . negotiated and [mutually] agreed [upon]."[14]

On cross-examination, Mr. Naik testified that (i) the building was purchased for warehousing use "and in the back there is grinding,"[15] (ii) the building is rented to a related company, Next Resins, and Next Resins is a plastic recycler,[16] (iii) the lease provides for the payment of $12,000 a month in rent "for use of the full building,"[17] (iv) "[i]n our type of business we end up with the property and fit our business to the property,"[18] and (v) the scrap offer to Pilkington "was the only one that I was familiar with."[19]

Finally, in response to questioning from the Tribunal, Mr. Naik testified that (i) the building had been on the market for "three or four years,"[20] (ii) the purchase was negotiated through a realtor "on both sides,"[21] (iii) "there really has not been much of a . . . market impact in the years from 2013 to [2016]" and, as such, the property's value for the tax year at issue "would be the same" as the price paid for the property or less "based on how we are using it" (i.e., "operational impact"),[22] (iv) the building was "clean and empty wall to wall when we moved in, now . . . a portion of it is plastic recycling and the rest of it is warehousing" and "[j]ust by using

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[9] See TR at p 9.
[10] See TR at p 9.
[11] See TR at p 9.
[12] See TR at pp 9-10.
[13] See TR at p 11.
[14] See TR at p 11.
[15] See TR at p 12.
[16] See TR at p 13.
[17] See TR at pp 13-4.
[18] See TR at p 14.
[19] See TR at p 14.
[20] See TR at p 15.
[21] See TR at p 15.
[22] See TR at p 16.

it, it's dirty, we would have damaged some walls, you know, plastic recycling is not the cleanest of operation" (i.e., "the back grinding area," as the "warehouse portion" is clean),[23] and (v) "[a]bout five to eight thousand square feet [is used] for grinding and the rest is warehousing."[24]

RESPONDENT'S CONTENTIONS

Respondent contends that the evidence presented in this case supports a determination that the subject property is lawfully assessed and that the assessment should be affirmed. Specifically, Respondent contends that (i) "[w]e do concur that . . . [Petitioner] did purchase the building . . . at 501,000; however, we felt and still feel that was a fire sale,"[25] (ii) "[w]e do concur that it's being used for warehousing use,"[26] (iii) "[w]e do feel that the . . . marketability of this property would be closer to a million dollars instead of what was paid . . . . [as they're] utilizing basically the entire building, they're receiving good rent at $144,000 a year for the building, therefore, it may have significantly more value now on an income approach, which we did not submit . . . as we didn't have those numbers before today."[27]

As determined by Respondent, the subject properties' TCV and TV for the tax year at issue should be as follows:

Parcel Number: CL6-108-2800-00

Year	TCV	AV	TV
2015	$1,982,000	$991,000	$495,500

RESPONDENT'S ADMITTED EXHIBITS

R-1 Copy of the property's record card (two pages) and an aerial photograph.[28]
R-2 Copy of printout of property's tax history, sketches of the property, and photographs of the property.[29]

RESPONDENT'S WITNESSES

Timothy R. Voorhees

Timothy R. Voorhees was Respondent's first and only witness. Although he was not offered as a valuation expert, he was, based on his testimony, admitted as a valuation expert.[30] In

[23] See TR at p 17.
[24] See TR at p 17.
[25] See TR at p 55-6.
[26] See TR at p 56.
[27] See TR at p 56.
[28] See TR at pp 20-3
[29] See TR at pp 23-7.
[30] See TR at p 35. See also TR at pp 19-20.

that regard, he testified that (i) he has been an assessor for 25 years and has been Respondent's assessor during that time period,[31] (ii) "[t]he subject property is a 29.26 acre parcel in the industrial class,"[32] (iii) the valuation of the property at the time it was "closed by Pilkington" was established by the Tribunal pursuant to a stipulation and consent judgment between Respondent and Pilkington,[33] (iv) both parties in that case had appraisals and negotiated a settlement at $1,000,000,[34] (v) Pilkington "vacated the building subsequent to . . . [its] appraisal, and we changed our appraisal . . . . to be as conservative as possible,"[35] (vi) the appraisal was reviewed with the Lenawee County Equalization Department "because they do studies of the industrials every year, to try [to] get a handle on what they felt the economic condition factor was, but no matter how many times we did this appraisal, we still ended up with more value than what twice the assessment was . . . . [a]nd there was no indication from Equalization that industrial needed any increases in the industrial class, which is minimal in the Village of Clinton . . . . [s]o we still arrived at a value on [the] appraisal of well over a million dollars, and . . . we did not make an adjustment on the assessment after our agreement in 2013 to reduce it to 500,000 . . . . [i]n fact, the assessment through studies by Equalization did reduce in 2014 to 495,5[00], in [2015] to 490,600, and [2016] it's $[503,300]"[36] (vii) he was part of a team that "interviewed a company out of Ottawa Lake that wanted to purchase the building [prior to its sale] for two plus million dollars and he is not aware of "any other offers,"[37] (viii) "[t]he County reviewed . . . [the sale] and thought that . . . it could have been a fire sale, just trying to unload the building because they wanted to get out of the State of Michigan,"[38] (ix) "we feel the value is there at a million dollars . . . . I feel that $501,000 was a good deal for the building . . . [as] he's able to utilize the entire building, which at the time he purchased [the building] was not being utilized at all for a couple of years,"[39] and (x) "[i]f in fact, he's getting $12,000 a month rent, depending on what his

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[31] See TR at p 19.
[32] See TR at p 27.
[33] See TR at pp 27-8.
[34] See TR at p 28.
[35] See TR at p 28.
[36] See TR at pp 28-9. The $503,300 is the property's assessed value for the 2016 tax year. In that regard, Mr. Voorhees indicated that the assessed value was $492,000 and then recanted or, more specifically, "apologize" for that statement as $492,000 was the property's taxable value for that tax year.
[37] See TR at p 29.
[38] See TR at p 30.
[39] See TR at p 30.

overhead is, even at a 15 percent cap rate, you'd be looking at close to a million dollars of value at 144,000 income for the annual [income] . . . . I'm not familiar with what his overhead is, but just on a quick review for the income approach, it still would be close to a million dollars in value."[40]

On cross-examination, Mr. Voorhees testified that (i) the pictures in R-2 "have been accumulated over the years . . . for that industrial file" (i.e., "they are historical"),[41] (ii) "[t]here have been no building permits issued on the building for years . . . [so] we had no reason to basically review the building . . . . [a]nd yes, the interior pictures were taken during the Pilkington operation" and "it was just a vacant complex when they were finished,"[42] (iii) they changed their appraisal value because Pilkington was leaving the building and "it was going to be either warehousing, unless some other industrial complex came in, so we tried to be as conservative on the numbers so we were within reason on our stipulation to consent judgment,"[43] (iv) "we did reduce it to a warehouse use and reduced the land from 10 to $12,000 an acre for commercial/industrial use to agricultural value at 4,000 an acre . . . . [w]e did try to be as conservative as possible because we're coming from three million dollars down to a million dollars in value, and we had a perfectly good appraisal submitted by Pilkington, that they spent a significant amount of money on . . . . [w]e reviewed that and found it to be accurate as far as their comparables, and so we stipulated [to a] consent judgment on that,"[44] (v) he has "not been in the building" since Petitioner's purchase of the property,[45] (vi) the assessment is not based on Pilkington's prior use of the property, (vii) when Pilkington vacated the property its highest and best use "became a highest and best use [as] a warehouse because it was no longer being used as industrial,"[46] (viii) he has "[b]een by the building several times . . . [and has] never seen a vehicle . . . [or] people there . . . [and] there is a sign on the outside saying that there's available space for lease . . . [that's] been there for some time,"[47] (ix) "there'd be no reason for [him] to stop, knock on the door if there's no one there" and "[w]e've received no building permits or changes

[40] See TR at p 30.
[41] See TR at p 31.
[42] See TR at pp 31-2.
[43] See TR at p 32.
[44] See TR at p 33.
[45] See TR at p 34.
[46] See TR at p 37.
[47] See TR at p 37.

permits from the Village of Clinton, and they keep this updated on, we've not received a permit for roofing, for anything on that building,"[48] and (x) "[w]e were aware it's being used as warehousing and since that was our reappraisal . . . we had no reason to change" our appraisal or visit the property.[49]

In response to questioning by the Tribunal, Mr. Voorhees testified that (i) the offices would add "very little [value] if it's being appraised as a warehouse because warehousing allows for minimal amount office use to being with . . . . [i]ndustrial is a different complex . . . [and] we're looking at it as a warehouse use . . . [with] minimal office necessary for warehousing, therefore . . . [offices] would . . . add very minimal value . . . . [as most] of it's just the building itself, its height and its warehouse use, and that's basically all we look at it for,"[50] (ii) he has "[n]o direct knowledge" as to whether the offices are being used, as he has "not been in the building,"[51] (iii) the property's record card's calculations reflect calculations for the 2016 tax year and not the 2015 or 2017 tax years,[52] (iv) the building value reflected on the property record card is "substantially less than one-half" of the calculated value of the building because "that's the number . . . [the Equalization Department is] using . . . . [f]or the study . . . [and they] did not recommend a raise in the assessment,"[53] (v) the Equalization Department told him "that was their study that showed in that one year that they had actually reduced industrial . . . . [i]f . . . [he would have] raised the assessment on this specific building, it would have put me over 50 percent, and then I would have been in violation of the law, therefore, we left the assessment as is,"[54] (vi) he "felt that . . . [their] economic condition factor was erroneous, that it should have been smaller . . . about .7 . . . [instead of .9] to bring the building down to where I believe the market value is,"[55] (vii) the .9 ECF "came directly from the Equalization Department study," which has not been presented to the Tribunal because he "wasn't given a copy of it either,"[56] (viii) "industrial did not increase for that year, therefore, we did not ask for an increase in the

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[48] See TR at p 37.
[49] See TR at p 38.
[50] See TR at pp 35-6.
[51] See TR at p 36.
[52] See TR at pp 38-9.
[53] See TR at p 39.
[54] See TR at pp 40-1.
[55] See TR at p 40.
[56] See TR at pp 40-1.

assessment,"[57] (ix) he doesn't "think that it had increased in value since the original work that we'd done,"[58] (x) the value reflected on the record card is based on "the new appraisal that they came up with at Equalization" and he "did not increase the assessment based on . . . [his] appraisal" because he "felt that it was too high,"[59] (xi) "[t]here were absolutely no industrial sales to use even close to Lenawee County" and "[t]here was no indication, as far as I was concerned, that any studies indicated an increase in the assessment,"[60] (xii) Respondent "is regressing in value . . . stagnant and regressing,"[61] (xiii) "[w]e have only one industry left . . . [i]n the county itself we lost about 80 percent of all our industry . . . . [and] we can't get people to locate here,"[62] (xiv) there would be no market change or, "if it continues this way," the market change would indicate a reduction in value,[63] (xv) he used agricultural land values, even though the land is not classified as agricultural, because "[i]t was most indicative of what the value of the surrounding was since we didn't have any industrial sales to go by . . . . [and we] just trying to be as conservative as possible,"[64] (xvi) he used the Equalization Department's land sales study for agricultural properties,[65] (xvii) his proposed ECF factor of .7 was based on his professional opinion with no supporting empirical data (i.e. "I felt that that's where the market was"),[66] (xviii) the assessment has essentially not been changed based on the appraisal that was performed and the consent judgment entered by the Tribunal,[67] (xix) the property's assessment history is not reflective of the local market conditions, rather "[i]t's reflective of what changes we got from Equalization as far as where industrial was going,"[68] and (xx) he is "supposed to receive copies of the studies from the Equalization Department and for several years now I have not received the studies, only sales study for residential were received, and/or agricultural studies for some

[57] See TR at p 41.
[58] See TR at p 42.
[59] See TR at p 43.
[60] See TR at pp 43-4.
[61] See TR at p 45-6.
[62] See TR at pp 45-6.
[63] See TR at p 46.
[64] See TR at p 47.
[65] See TR at p 47.
[66] See TR at pp 47-8.
[67] See TR at p 48.
[68] See TR at p 48.

time . . . . [i]t's a unique situation in Lenawee County with their SB&A software system . . . . [and] I wouldn't do it this way if it was my [decision] . . . but it is not my decision."[69]

FINDINGS OF FACT

The following facts were proven by a preponderance of the evidence:

1. The subject property is a warehousing facility of 195,600 square feet on 29.26 acres.
2. Petitioner purchased the property on May 15, 2013, for $501,000.
3. The property was listed and on the market for a period of three years prior to being sold to Petitioner.
4. Petitioner did not know the seller prior to the sale. Further, both the seller and Petitioner were represented by realtors and Petitioner's original offer was rejected by the seller.
5. The property was utilized for manufacturing purposes prior to being vacated by the seller and placed on the market and has been used since its purchase for warehousing and light manufacturing (i.e. "grinding").

ISSUES AND CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value.[70] In that regard, the Michigan Legislature has, as directed by the Constitution, defined "true cash value" to mean:

> . . . the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale.[71]

In its review of that definition, the Michigan Supreme Court has determined that "true cash value" is synonymous with "fair market value.[72]

As for the Tribunal, the Tribunal must under MCL 205.737(1) find a property's true cash value in determining a lawful property assessment.[73] The Tribunal is not, however, bound to accept either of the parties' theories of valuation.[74] Rather, the Tribunal may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination.[75]

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[69] See TR at pp 48-9.
[70] See Const 1963, art 9, sec 3.
[71] See MCL 211.27(1).
[72] See *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).
[73] See *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).
[74] See *Teledyne Continental Motors v Muskegon Twp,* 145 Mich App 749, 754; 378 NW2d 590 (1985).
[75] See *Meadowlanes Ltd Dividend Housing Ass'n v Holland,* 437 Mich 473, 485; 473 NW2d 636 (1991).

Further, a proceeding before the Tribunal is original, independent, and de novo[76] and the Tribunal's factual findings must be supported by competent, material, and substantial evidence.[77] In that regard, "substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence."[78]

Additionally, "the petitioner has the burden of proof in establishing the true cash value of the property."[79] "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."[80] 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."[81]

As recognized by the courts of Michigan, the three most common approaches to valuation are the capitalization of income approach, the sales comparison, or market approach, and the cost-less-depreciation approach.[82] The market approach is, however, the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.[83] Nevertheless, the Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances.[84] Regardless of the approach selected, the value determined must represent the usual price for which the subject property would sell.[85]

The Tribunal is also required to consider the "highest and best use" of property in determining the property's true cash value, as that concept is fundamental to such

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[76] See MCL 205.735a(2).
[77] See *Antisdale v Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984) and *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-3; 462 NW2d 765 (1990).
[78] See *Jones & Laughlin Steel Corp, supra* at 352-3.
[79] See MCL 205.737(3).
[80] See *Jones & Laughlin Steel Corp, supra* at 354-5.
[81] See MCL 205.737(3).
[82] See *Meadowlanes, supra* at 484-85; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), *aff'd* 380 Mich 390 (1968).
[83] See *Jones & Laughlin Steel Corp, supra* at 353 (citing *Antisdale, supra* at 276 n 1).
[84] See *Jones & Laughlin Steel Corp, supra* at 353 (citing *Antisdale, supra* at 277 and *Teledyne Continental Motors v Muskegon Twp*, 163 Mich App 188, 193; 413 NW2d 700 (1987), *lv den* 429 Mich 889 (1987)).
[85] See *Jones & Laughlin Steel Corp, supra* at 353 (citing *Meadowlanes, supra* at 485).

determinations, as "it recognizes that the use to which a prospective buyer would put the property will influence the price which the buyer would be willing to pay. Further, land is appropriately valued 'as if available for development to its highest and best use', that most likely legal use which will yield the highest present worth."[86] In that regard, "highest and best use" of property is shaped by the competitive forces within the market where the property is located, and it provides the support for a thorough investigation of the competitive position of the property "in the minds of market participants."[87] Additionally, highest and best use analysis strongly influences the choice of comparable sales in the sales approach. Only properties with the same or similar highest and best uses are suitable for use as comparable sales.[88] "If the property being appraised is a single site, not a site whose use depends on assemblage with other sites, the highest and best use of the site alone is analyzed as it currently exists by itself. If the property being appraised consists of multiple sites as though sold in one transaction, the highest and best use analysis considers them as one large site."[89]

Finally, the Tribunal is also required to determine the subject property or properties' taxable values for the tax years at issue.[90]

Here, Petitioner claims that the property's TCV should be based on its May 15, 2013 purchase price. MCL 211.27(6) does, however, provide, in pertinent part, that "the purchase price paid in a transfer of property is **not** the presumptive true cash value of the property transferred." [Emphasis added.] Further, the Michigan Supreme Court has also stated, in pertinent part:[91]

> The rule in Michigan, as in many other states, is that the selling price of a particular piece of property is **not** conclusive as evidence of the value of that piece of property. . . . The Legislature has commanded that property be assessed as its "usual selling price." The most obvious deficiency in using the sales price of a piece of property as conclusive evidence of its value is that the ultimate sale price of the property, as a result of many factors, personal to the parties or otherwise, might **not** be its "usual" price. **The market approach to value has the capacity to cure this deficiency because evidence of the sales prices of a number of comparable properties, if sufficiently similar, supports the**

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[86] See *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 633; 462 NW2d 325 (1990).
[87] See *The Appraisal of Real Estate*, Appraisal Institute, 2013, 14th ed at p 331.
[88] See *The Appraisal of Real Estate*, *supra* at p 345.
[89] See *The Appraisal of Real Estate*, *supra* at p 334.
[90] See MCL 205.737(1). See also MCL 211.27a(2).
[91] See *Antisdale v City of Galesburg*, 420 Mich 265, 278-9; 362 NW2d 632 (1984).

> **conclusion that factors extrinsic to the properties have not entered into the value placed on the properties by the parties.** Nevertheless, if it can be shown that the sale price each of the comparable properties has been determined **by a flawed method** the result of the market approach to valuation **will also be flawed.** [Emphasis added.]

As such, a purchase price can be considered, if it is properly supported. However, the first step in that process requires a determination of the property's highest and best use. Unfortunately, neither party discussed the property's highest and best use or, more importantly, provided any testimony or documentation indicating that the tests utilized for determining the property's highest and best use as vacant and improved had been performed.[92] Rather, the only evidence provided (i.e., the parties' testimony) relates to the property's valuation for warehousing use (i.e., the stipulation and consent judgment) and the property's continued use for warehousing purposes since its purchase. Nevertheless, said testimony would indicate or otherwise support the continued use for warehousing and some light manufacturing (i.e., "grinding") as the property's highest and best use for the tax year at issue, as said use is, at the very least, legally permissible, physically possible, and financially feasible and, possibly given the dearth of manufacturing or other industrial opportunities in Lenawee County, maximally productive.

With respect to the valuation of the property, no sales comparison approach was, unfortunately, provided by either party. Petitioner did, however, submit a purchase agreement, while Respondent submitted an admittedly unreliable cost approach for the wrong tax year (i.e., the 2016 tax year) that was that unsupported (i.e., no land sales or ECF study) and unsupportable (i.e., reflected numbers provided by the County Equalization Department and not those calculated under the cost approach, etc.). Fortunately, Petitioner's testimony relative to the underlying sales transaction was credible and sufficient to establish that the sale was an arms-length transaction subject to normal market pressures. Although the sale would generally be considered too remote in time to be a reliable indicator of value without an adjustment for changing market conditions, the testimony of Respondent's valuation expert was credible and sufficient to establish that there would be no market change, as the market was stagnant and would be regressing if current circumstances remain the same. In that regard, Mr. Voorhees also stated that "the assessment has essentially not been changed based on the appraisal that was

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[92] See *The Appraisal of Real Estate, supra* at p 335.

performed and the consent judgment entered by the Tribunal." As a result, Petitioner's purchase price is a reliable indicator of value and that value provides "the most accurate valuation under the circumstances."[93]

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

PROPOSED JUDGMENT

This is a proposed decision and not a final decision. As such, no action should be taken based on this proposed decision until a final decision is issued by the Tribunal.

After the expiration of the time period for the opposing party to file a response to the exceptions, the Tribunal will review the case file, including the POJ and all exceptions and responses, if any, and:[94]

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

EXCEPTIONS

This POJ was prepared by the Michigan Administrative Hearings System. The parties have 20 days from date of entry of this POJ to notify the Tribunal **in writing, by mail or by electronic filing, if available,** if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions). Exceptions are **limited** to the evidence submitted prior to or at the hearing and any matter addressed in the POJ. There is no fee for filing exceptions and the opposing party has 14 days from the date the exceptions were mailed to that party to file a written response to the exceptions.[95]

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

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[93] See *Jones & Laughlin, supra* at p 353. Although Respondent indicate that an income approach would support the assessment established as a result of the stipulation and consent judgment, the lease was between related parties. Further, no evidence (i.e., testimony or documentation) was provided to indicate the market rent and expenses for the property or support the purported cap rate suggested by Mr. Voorhees. As a result, Respondent's contentions relative to its purported "off-the-cuff" income approach have no basis in fact and are purely speculative.

[94] See MCL 205.726.

[95] See MCL 205.726 and TTR 289(1) and (2).

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

By Peter M. Kopke

Entered: March 13, 2017
pmk