



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

ORLENE HAWKS  
DIRECTOR

Carl E & Carol V Wiseman,  
Petitioners,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 18-000443

City of Kentwood,  
Respondent.

Presiding Judge  
Marcus L. Abood

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Carl E. and Carol V. Wiseman, appeals ad valorem property tax assessments levied by Respondent, City Kentwood, against Parcel No. 41-18-15-202-027 for the 2018 tax year. Joshua T. Shillair, Attorney, represented Petitioner, and Ryan M. Shannon, Attorney, represented Respondent.

A hearing on this matter was held on June 11, 2019. Petitioner’s sole witness was John R. Navarre IV, real estate appraiser. Respondent’s witnesses were Douglas C. Adams, real estate appraiser and Evan A. Johnson, assessor.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash values (“TCV”), state equalized values (“SEV”), and taxable values (“TV”) of the subject property for the 2018 tax year are as follows:

Parcel No.	Year	TCV	SEV	TV
41-18-15-202-027	2018	\$2,840,000	\$1,420,000	\$1,420,000

## PETITIONER'S CONTENTIONS

Petitioner contends that the valuation of the subject property should not include sale-leaseback transactions or bank sales. Fee simple sales in the context of TCV is the focus of the tax appeal matter. Respondent's appraisal report represents a leased fee value based on impermissible comparable sales data.

Petitioner's appraiser described the subject property and analyzed the subject market. Petitioner's data sources include Co-Star for the analysis of the retail market. The 28<sup>th</sup> Street corridor in Grand Rapids is a "significant retail node" and the market is in a growth state of its life cycle.<sup>1</sup> The subject improvements are "average" for McDonald's fast food restaurant. The subject's analysis is based on fee simple market value determination. In other words, the subject is not valued as a leased fee property and no leased fee data was utilized in Petitioner's appraisal report. Nonetheless, Petitioner's appraiser has reviewed other market lease agreements for fast food restaurants.

Petitioner's highest and best use analysis concludes that the subject improvements should be raised to capture the land value. Petitioner's appraiser reviewed the subject's C-2 zoning as well as examples of demolished and redeveloped properties. Those fee simple examples include the old Burger King, the old Papa Vino's and a Sear's anchor store on 28<sup>th</sup> Street.<sup>2</sup> This analysis covered the four tests of physically possible, legally permissible, financially feasible and maximally profitable in determining the subject site has greater value than the subject site and improvements

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<sup>1</sup> Tr, 31.

<sup>2</sup> The old Burger King was redeveloped into a credit union. The old Papa Vino's site was redeveloped into a hotel. The Sear's anchor site was redeveloped into a Von Maur store.

combined. Petitioner argues the McDonald's design is not conducive to any other fast food design; the improvements therefore don't add value to the subject property. The subject could be renovated to another non-fast food use but as an example, Petitioner's appraiser has not seen a McDonald's sell to a Wendy's franchise.<sup>3</sup>

“Even if a restaurant user were interested in the existing improvement, they would likely renovate the façade, repaint the exterior, and extensively renovate the interior to fit their specific branding or concept. Therefore, the existing improvements suffer from functional obsolescence due to the specific design as a McDonald's restaurant.”<sup>4</sup>

Petitioner's appraiser has observed and analyzed various Wendy's and Taco Bell locations and contends fast food owners don't retro-fit existing buildings but rather construct new buildings.<sup>5</sup> The subject land is so valuable that national franchises won't renovate existing improvements.

Petitioner developed a sales comparison approach for its conclusion of market value. Petitioner's appraiser researched and analyzed 14 sales of improved and vacant properties in support of its conclusion of land value. Demographic reports were reviewed from the source identified as Claritas. CoStar analytics was relied upon for the determination of the subject market (and submarkets) for comparable sales in a 1-mile, 3-mile and 5-mile radius from the subject. Further, linkages and main thoroughfares were reviewed within the parameters of Kent County for traffic count studies.

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<sup>3</sup> Tr, 46.

<sup>4</sup> Tr, 53.

<sup>5</sup> Tr, 58.

Petitioner's comparable sales were adjusted to the subject property.

Adjustments included a demolition cost of \$5 per square foot, market conditions at 2%, as well as for location, site size and shape/access differences.

Regarding Respondent's appraisal report, Petitioner contends all of Respondent's comparable sales are leased fee properties in contradiction to the requirements to value property in fee simple for TCV. Respondent's rentals 2, 3 and 7 are build-to-suit leases. Rentals 4 and 7 are sale leaseback properties.

#### PETITIONER'S ADMITTED EXHIBITS

In support of its value contentions, Petitioner offered the following exhibits, which were admitted into evidence:

P-1: Appraisal Report prepared by John R. Navarre.

#### PETITIONER'S WITNESS

Petitioner's witness was John R. Navarre IV, a real estate appraiser with 10 years of valuation experience. His certified general license was issued in 2013 and prior to that he was issued a limited license in 2009. He has attained a MAI designation through the Appraisal Institute. Based on his background, education and experience Mr. Navarre was acknowledged and admitted as an expert in real estate appraisal.

#### RESPONDENT'S CONTENTIONS

Respondent contends that Petitioner's appraisal report only renders a site value for the subject property. Petitioner has not met its burden in proving that the subject's TCV is not the aggregate of land and improvements as of December 31, 2017. The 28<sup>th</sup>

Street corridor in the Grand Rapids area is a desirable market area with heavy commercial retail activity.

“The location of many QSRs [Quick Service Restaurants] is another attraction for investors. Being near major roadways with good visibility will not only draw hungry people, but investors too. These locations are highly desirable be of their ease and convenience. The buildings are very easy to backfill, if the original tenant were to leave. The layouts of most QSR tenants are relatively similar meaning the renovations a second QSR tenant would need to complete would be mostly cosmetic and inexpensive.”<sup>6</sup>

High traffic counts in the subject market area and neighborhood on 28<sup>th</sup> Street indicate that property values are expected to be stable to moderately increasing in the near term.<sup>7</sup>

Respondent contends fast food facades have changed over the years. For example, McDonald’s building golden arches are diminished; today most buildings are more generic. In essence, branding for fast food restaurants has changed from the past 30 years.

Respondent’s highest and best use analysis concluded that the subject is properly suited as a chain fast food restaurant. This analysis gave consideration for the difference between a national chain restaurant and a local concept restaurant.<sup>8</sup>

Respondent contends national franchise restaurants typically don’t sell as fee simple unless the restaurant is no longer profitable.

Respondent considered and developed the income, cost and sales comparison approaches to conclude to TCV for the subject property.

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<sup>6</sup> Tr, 162-163.

<sup>7</sup> Tr, 165.

<sup>8</sup> Tr, 172.

Respondent researched such sources as the USA Network and The Gorman Group as well as had discussions with Mike Murray, a real estate agent, regarding fast food franchises. Typically, McDonald's lease data are ground leases which don't include the building improvements. Nonetheless, Respondent's appraiser developed an income lease rate of 8% from gross sales.<sup>9</sup> Further, Respondent's income analysis included 7 lease comparables with descriptions and adjustments. The capitalization rate conclusion was derived from fast food restaurant sales and property surveys. Overall, long term leases have lower capitalization rates, but Respondent relied on short term leases similar to the subject to arrive at a conservative capitalization rate.

Respondent's cost approach was based on costs taken from the Marshall Valuation Service (MVS) to arrive at an indication of market value. Respondent's appraiser developed five land sales with market supported adjustments. Given the relatively older age of the subject improvements as well as its renovations, the income approach to value was given minimal weight in the overall conclusion of market value.

Respondent's sales comparison approach was based on comparable sales in the west Michigan market. Comparable sale adjustments were made including differences between leased fee and fee simple. However, due to the lack of fee simple sales this approach was given minimal weight to the overall conclusion of value. Again, fast food restaurant sales are typically sold on a leased fee basis. The sales comparison approach acted as support for the indication of value from the income approach.

Respondent identifies examples of fast food restaurant sale transactions from one national chain to another national chain in the Greater Grand Rapids area. The first

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<sup>9</sup> Tr, 214.

example occurred in 2004 from McDonald's to an Arby's. Next, a Get-em-N-Go (drive-thru only restaurant) sold to a Checkers in the city of Kentwood. Also, an Arby's in Plainfield sold to a Tim Horten's. These are limited examples in the subject's real estate market.

In reviewing Petitioner's appraisal report and conclusion of value, Respondent argues the subject's improvements add value to the total property. Respondent contends Petitioner's comparable sales are overall inferior to the subject. Petitioner's sales generally lack visibility, direct access and/or have lower traffic counts. Sale 2 is located on Beltline and doesn't have a drive-thru. Sale 6 is a bank branch and is not comparable to the subject. Sale 7 is an out lot next to Meijer. Sale 11 is zoned office and is not comparable to the subject. Sale 13 is located in an older commercial corridor. Respondent's appraiser has appraised Petitioner's sales 3 and 11; Respondent has direct knowledge regarding these sales concerning their overall marketability and appeal.

#### RESPONDENT'S ADMITTED EXHIBITS

In support of its value contentions, Respondent offered the following exhibits, which were admitted into evidence:

- R-1: Appraisal Report prepared by Douglas Adams.
- R-2: Calkain Research Summary.
- R-5: Restaurant Valuation Article, Brock Rule (2014).

#### RESPONDENT'S WITNESSES

Respondent's first witness was Douglas C. Adams, a real estate appraiser with 30 years of valuation experience in the state of Michigan. He is licensed as a certified general real estate appraiser. He has attained a MAI designation through the Appraisal

Institute. Based on his background, education and experience Mr. Adams was acknowledged and admitted as an expert in real estate appraisal.

Respondent's second witness was Evan A. Johnson, Assessor for the city of Kentwood. He has been the city assessor for four and a half years and prior to that worked 18 ½ years within the assessing office of the city.

### FINDINGS OF FACT

1. The subject property is located at 2824 28<sup>th</sup> Street SE and located in Kent County.
2. The subject is developed with a 6,405 square foot commercial building located on approximately 2.5 acres.
3. The subject property is not a corner lot. The subject site is described as a "meat cleaver" (aka flag lot). The larger portion of the site abuts 28<sup>th</sup> Street with road frontage. The subject site is also accessible from the south at 29<sup>th</sup> Street.
4. The subject property is zoned C-2, Community Commercial.
5. The subject building was constructed in 1989 and remodeled in 2011.
6. The subject property is not owned in fee simple interest. In other words, the subject is a leased fee interest to Petitioners.
7. Petitioner submitted a valuation disclosure in the form of a narrative appraisal report prepared by John Navarre IV.
8. Petitioner's appraisal report is based on the development of the sales comparison approach to value. Petitioner's appraiser did not develop income or cost approaches to value.
9. Petitioner's appraisal report includes a lease abstract for the subject lease.<sup>10</sup>
10. Petitioner's appraisal report does not include any leased fee sales data.
11. In the past 3 years, Petitioner's appraiser has not appraised a property with a highest and best use resulting in the teardown or demolition of improvements to a property.<sup>11</sup>
12. Petitioner's appraiser stated, "Overall the market area is adequate to support the use of the subject as a commercial building given the population density, median income levels and present land uses."<sup>12</sup>
13. Petitioner's appraiser admitted that his report does not include an analysis of renovation costs.<sup>13</sup>
14. Petitioner's sales comparison approach contains 14 sales comprised of 4 improved sales and 10 vacant land sales.

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<sup>10</sup> Petitioner's Exh P-1, 16.

<sup>11</sup> Tr, 105.

<sup>12</sup> Petitioner's Exh. P-1, 34.

<sup>13</sup> Tr, 111.

15. Petitioner's appraiser did not analyze the subject's access from 29<sup>th</sup> Street (including its traffic count).<sup>14</sup>
16. In testimony, Petitioner's appraiser did not know the underlying data or criteria from CoStar.<sup>15</sup>
17. Petitioner relies on CoStar in the determination of its market description and boundaries.<sup>16</sup>
18. Respondent submitted a valuation disclosure prepared by Douglas Adams.
19. Respondent's appraiser developed the sales comparison, income and cost approaches to reconcile to a conclusion of market value for the subject property.
20. Respondent's appraiser analyzed the subject's neighborhood including both 28<sup>th</sup> and 29<sup>th</sup> Streets.<sup>17</sup>
21. Respondent's highest and best use analysis concluded that the subject is best suited for continued use as a chain fast-food restaurant.<sup>18</sup>

The Tribunal's Findings of Fact concern only evidence and inferences found to be significantly relevant to the legal issues involved; the Tribunal has not addressed every piece of evidence or every inference that might lead to conflicting conclusion and has rejected evidence contrary to those findings.

## 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.<sup>19</sup>

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

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<sup>14</sup> Tr, 126, 138.

<sup>15</sup> Tr, 135-136 and Petitioner's Exh. P-1, 58.

<sup>16</sup> Petitioner's Exh. P-1, 31.

<sup>17</sup> Tr, 163-164.

<sup>18</sup> "Fast food restaurants have a couple of main drivers. One, being close to regional mall like that is very attractive. Another driver is being close to a heavily traveled interchange, highway interchange. So yeah, being close to Woodland and CenterPoint Malls would be a very attractive location for a fast food restaurant." Tr, 199-200.

<sup>19</sup> See MCL 211.27a.

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. . . .<sup>20</sup>

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.<sup>21</sup>

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”<sup>22</sup>

“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.”<sup>23</sup> The Tribunal is not bound to accept either of the parties' theories of valuation.<sup>24</sup> “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.”<sup>25</sup> 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.”<sup>26</sup>

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<sup>20</sup> Const 1963, art 9, sec 3.

<sup>21</sup> MCL 211.27(1).

<sup>22</sup> *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

<sup>23</sup> *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

<sup>24</sup> *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

<sup>25</sup> *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

<sup>26</sup> *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

A proceeding before the Tax Tribunal is original, independent, and de novo.<sup>27</sup>

The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”<sup>28</sup> “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”<sup>29</sup>

“The petitioner has the burden of proof in establishing the true cash value of the property.”<sup>30</sup> “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.”<sup>31</sup> 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.”<sup>32</sup>

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.<sup>33</sup> “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”<sup>34</sup> The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the

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<sup>27</sup> MCL 205.735a(2).

<sup>28</sup> *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

<sup>29</sup> *Jones & Laughlin Steel Corp*, *supra* at 352-353.

<sup>30</sup> MCL 205.737(3).

<sup>31</sup> *Jones & Laughlin Steel Corp*, *supra* at 354-355.

<sup>32</sup> MCL 205.737(3).

<sup>33</sup> *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).

<sup>34</sup> *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances.<sup>35</sup>

Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.<sup>36</sup>

Petitioner's valuation disclosure is a conventional presentation of a narrative appraisal report. However, there are several elements of contradiction, inconsistency and omission which were pointed out by Respondent.<sup>37</sup> First, Petitioner's description of improvements (condition and quality) do not depict a building that has been fully depreciated. Photographs from both parties' appraisal reports portray a property that is physically and functionally acceptable for a fast food restaurant. In other words, the building improvements are not deteriorated.<sup>38</sup> Second, Petitioner deemed the subject use is physically possible and legally permissible as vacant and as improved. However, the tests for financially feasible and maximally profitable were combined in a narrative analysis for the subject as vacant. In other words, these two tests were not analyzed separately to gain a complete understanding. The subject's lease abstract<sup>39</sup> is an indication that an income analysis is pertinent to Petitioner's due diligence. Petitioner's appraiser stated, "All uses that are expected to produce a positive return are regarded

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<sup>35</sup> *Antisdale, supra* at 277.

<sup>36</sup> See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

<sup>37</sup> Navarre's open-ended testimony illustrates the very need for the examination and development of the income and cost approaches to value. Petitioner's direct examination was too broad and open-ended to elicit credible answers from Navarre. Conclusory answers without the underlying market support or analysis is unpersuasive.

<sup>38</sup> The analysis of the subject's "branding" as a negative to the highest and best use analysis was not articulated. In other words, it was unclear that the subject's façade alone created functional obsolescence because costs to convert to other uses would diminish the value of the existing use as a McDonald's franchise.

<sup>39</sup> Petitioner's Exh. P-1, 16.

as financially feasible.”<sup>40</sup> Third, Petitioner’s highest and best use analysis denotes that either demolition or the continued existing use of the subject (as improved) is financially feasible.<sup>41</sup> As pointed out by Respondent’s appraiser, both options cannot be financially feasible. Fourth, Petitioner’s scope of work<sup>42</sup> focuses on vacant land as the subject improvements should be demolished. On the other hand, Petitioner analysis for the Kent County real estate market<sup>43</sup> concludes vacancy rates have declined, rental rates have appreciated, construction remains active, sales volumes increased in 2018 and “. . . the market for retail properties has experienced modest appreciation over the past five years.” The representation of the relevant market must be presented in a consistent manner for a reader to understand an appraiser’s underlying logic and reasoning. Petitioner’s notation that the subject market is in a “growth stage” further raises questions about the devalue of the subject improvements. Fifth, Petitioner’s site analysis and highest and best analysis denoted the subject’s secondary access from 29<sup>th</sup> Street but this fact was not included in the sales comparison approach (with an analysis of traffic counts). This additional access point facilitates the drive-thru aspect of the subject’s fast food operation. The subject’s advantage of dual access points was not disputed. For these reasons, Petitioner’s market analysis and highest and best analysis are given no weight or credibility in the determination of market value for the subject property.

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<sup>40</sup> Petitioner’s Exh. P-1, 46.

<sup>41</sup> Petitioner’s Exh. P-1, 47.

<sup>42</sup> *Id.*, 14. A singular focus on a land value without the research and analysis from the other approaches to value is unpersuasive. It is unclear if the subject’s lease is market supported and if the rents are inferior in value to the land value. The relationship of the three approaches through the concept of substitution was not acknowledged by Petitioner’s appraiser in his analysis.

<sup>43</sup> Petitioner’s Exh. P-1, 30.

Petitioner's sales comparison approach is also a conventional presentation of a comparative analysis. However, this methodology was not developed or communicated in a meaningful manner. First, the adjustment grid only includes three line-item entries (location, land size, shape/access). The physical adjustments specific to the vacant land sales appears to overlook potential other characteristics (i.e. visibility, 29<sup>th</sup> Street access, zoning, land/building ratios etc.). The lack of additional line-item entries for physical characteristics for the four improved sales is not persuasive. Second, the market conditions adjustment (aka time adjustment) indicates that all of the sales (except sales 1 and 2) appreciated up to the December 31, 2017 tax day. The Tribunal is unable to ascertain whether this market appreciation for vacant land sales separately from improved sales in the subject market. Third, the comparative analysis does not present sufficient improved sales.<sup>44</sup> The data is skewed exclusively to vacant land sales. Merely analyzing more vacant land sales than improved sales is insufficient to prove that the subject improvements must be demolished. Fourth, the unit of comparison is based on price per square foot for vacant land which excluded a price per square foot from those improved sales. In other words, all 14 sales were analyzed solely on the basis of \$/SF for vacant land. The improvements for those sales were excluded without first analyzing the building components. Fifth, the transactional

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<sup>44</sup> A highest and best use analysis incorporates the subject's zoning. In this case, the subject's C-2 zoning covers many different uses that the market could accept. Absent the improvements to the site, are all other improved uses less than the subject's site as of the tax day? The valuation of the subject (as a whole economic unit) is based on value-in-exchange and not as use value. Petitioner did not specifically analyze other uses (with similar zoning) that would create greater value than a vacant site. Petitioner's lack of methodologies while discounting the subject's improvements is not acceptable in valuation practice and theory. The Tribunal does not have credible evidence that the subject's land is greater than the improved subject property.

adjustment for “expenditures immediately after sale” were identified as the cost of demolition for those improved sales. However, Petitioner’s appraiser makes a deduction for demolition costs from his conclusion of market value from the sales comparison approach. This double counting (aka double dipping) is not logical in light of adjusted vacant land sales that don’t require consideration of demolition costs. Petitioner’s comparative analysis failed to demonstrate that the market participants view the subject property exclusively in terms of vacant land for redevelopment. For these reasons, Petitioner’s sales comparison approach is given no weight or credibility in the determination of market value for the subject property.

Respondent’s development of the cost approach is relevant to this tax appeal matter. This approach acknowledges the concept of substitution and the inter-relationship of the approaches to value. Moreover, the cost analysis signified the contribution of improvements to the subject site. Vacant land sales and Marshall Valuation Service cost calculations were illustrated and narrated. The cost determination did not determine functional or external obsolescence in the subject market area. Nonetheless, this approach is best suited for new or newer construction. The subject is not new construction and deriving a physical depreciation is not easily attained. Respondent’s appraiser admitted that this approach was given minimal weight in his reconciliation.

Respondent’s development of the sales comparison approach is relevant to this tax appeal matter. This approach acknowledges the concept of substitution and the inter-relationship of the approaches to value. Moreover, the comparative analysis signified the contribution of improvements to the subject site. The sales comparisons

did not determine functional or external obsolescence in the subject market area.

Nonetheless, Respondent's utilization of leased fee sales and sale leasebacks admittedly minimized the strength of this approach to value. Further, investors typically do not rely on this approach in their investment analysis. Therefore, Respondent gave minimal weight to this approach in his final reconciliation to value.

Respondent's development of the income approach is relevant to this tax appeal matter. This approach acknowledges the concept of substitution and the inter-relationship of the approaches to value. Moreover, the income analysis signified the contribution of improvements to the subject site. Specifically, Respondent analyzed the subject's rental income through a percentage of gross fast-food sales, a summary of 46 lease comparables and a direct comparison of 7 rental leases.<sup>45</sup> Potential gross income was calculated and due to the subject's occupancy, vacancy/credit loss and operating expenses were considered but not applied due to Petitioner's tenancy to the property. Next, a capitalization rate analysis was performed through 52 capitalization rate comparable sales as well as through market surveys. The income comparisons and analysis did not determine functional obsolescence for the subject in this market area. Respondent's income analysis acknowledged the valuation of the subject as fee simple.<sup>46</sup> Respondent project the subject lease on a shorter term based on typical market lease activity. The fact that the subject is a leased fee property makes the

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<sup>45</sup> Petitioner refuted Respondent's lease comparables 2, 3, 4 and 7 but nonetheless, rental comparables 1, 5, and 6 give support to Respondent's conclusion of market rent for the subject.

<sup>46</sup> Respondent's Exh. R-1, 58.

income approach relevant.<sup>47</sup> Therefore, Respondent gave strongest weight to this approach in his final reconciliation to value.

Overall, Petitioner's valuation evidence is not more convincing than Respondent's approaches to value. Petitioner's conclusion of land value was not supported by logical market data or reasonable methodologies. Respondent's valuation evidence is the most credible and reliable to the independent determination of market value for the subject property. With a reasoned application, Respondent's cost approach is weighted at 10% ( $\$2,480,000 \times 10\% = \$248,000$ ), the sales comparison approach is weighted at 10% ( $\$2,880,000 \times 10\% = \$288,000$ ) and the income approach is weighted at 80% ( $\$2,880,000 \times 80\% = \$2,304,000$ ) for a market value of \$2,840,000.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the subject property was not over-assessed for 2018. The subject property's TCv, SEv, and TV for the tax year(s) 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 year(s) at issue are MODIFIED as set forth in the Introduction section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be

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<sup>47</sup> The General Property Tax Act specifically points to the market valuation of real property on the basis of fee simple. However, this does not preclude a party's income approach/analysis which includes both leased fee and fee simple sales to determine their application to the market. The value of an income property is tested in the market to income investors; turning a blind eye to leased fee income properties is not commonplace in valuation practice and theory.

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

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (ix) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (x) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, (xi) after June 30, 2019 through December 31, 2019, at the rate of 6.39%, and (xii) after December 31, 2019, through June 30, 2020, at the rate of 6.40%.

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.<sup>48</sup> 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.<sup>49</sup> 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.<sup>50</sup> Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.<sup>51</sup> 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."<sup>52</sup> A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.<sup>53</sup> The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.<sup>54</sup>

By 

Entered: December 27, 2019

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<sup>48</sup> See TTR 261 and 257.

<sup>49</sup> See TTR 217 and 267.

<sup>50</sup> See TTR 261 and 225.

<sup>51</sup> See TTR 261 and 257.

<sup>52</sup> See MCL 205.753 and MCR 7.204.

<sup>53</sup> See TTR 213.

<sup>54</sup> See TTR 217 and 267.