



STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

GRETCHEN WHITMER  
GOVERNOR

ORLENE HAWKS  
DIRECTOR

Carl E & Carol V Wiseman,  
Petitioners,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 18-000446

City of Wyoming,  
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 of Wyoming, against Parcel No. 41-17-33-427-043 for the 2018 tax year. Joshua T. Shillair, Attorney, represented Petitioner, and Scott G. Smith, Attorney, represented Respondent.

A hearing on this matter was held on July 22, 2019. Petitioner’s witness was James R. Navarre IV, real estate appraiser. Respondent’s witness was Douglas C. Adams, real estate appraiser.

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
41-17-33-427-043	2018	\$2,126,000	\$1,063,000	\$1,063,000

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES  
MICHIGAN TAX TRIBUNAL

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## 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 rental and sales data.

Petitioner's appraiser is familiar with subject's former prototypes and facades which have become more modern branding. This familiarity includes other national franchises including Burger King, Taco Bell, Wendy's and Long John Silver's. He is also familiar with McDonald's business and restaurant structure. Typically, these leased fee transactions involve amortized construction costs or a percentage of gross sales for the sale leaseback. Further, rental rates can vary drastically between two franchises.

Petitioner's appraiser described the subject property and analyzed the subject market. "There's a mix of commercial uses that align Byron Center Avenue. There's residential uses, both single-family and apartments, in the area. There's also the large hospital, the Metro Health Hospital."<sup>1</sup> The Byron Center Avenue has a traffic count of 23,000 vehicles per day and is a desirable market within the metropolitan area.

Petitioner's data sources include Co-Star for the analysis of the retail market. The subject site is adequate for commercial development especially based on a 20,000 square feet, two-story office and retail building across the street from the subject.<sup>2</sup>

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

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<sup>1</sup> Tr, 22.

<sup>2</sup> Tr, 23.

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 B-1 zoning, as well as examples of demolished and redeveloped properties. Those fee simple examples include Petitioner's sale 17 (the old Burger King redeveloped into a credit union) and sale 11 (the old Papa Vino's) and an old Big Boy restaurant in Grand Haven (redeveloped with a credit union) and a Burger King in Allegan which was redeveloped as an O'Reilly's store. In addition, one of Wendy's larger franchisees is rebuilding some of their stores. Petitioner's 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 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. Petitioner's appraiser has observed and analyzed various fast food restaurants and contends fast food owners don't retrofit existing buildings, but rather construct new buildings. The subject land is so valuable that national franchises won't renovate existing improvements.

Petitioner considered all three approaches to value but only developed a sales comparison approach for its conclusion of market value. Petitioner's appraiser researched and analyzed 17 sales of improved and vacant properties in support of its conclusion of land value.

Petitioner's information sources included the BS&A website, Moody's Analytics, and the city of Wyoming's website. Further, 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. Further, linkages and main thoroughfares were reviewed within the parameters of Kent County for traffic count studies. Likewise, Petitioner reviewed the subject's financial statements and franchise agreement.

Petitioner's 17 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. Most weight given to Sale 13.

Regarding Respondent's appraisal report, Petitioner contends all of Respondent's comparable rentals and sales are leased fee properties, contrary to the requirements to value property in fee simple for TCV.

#### 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 James R. Navarre.
- P-2: Petitioner's Financial Statements.
- P-3: 2018 Subject Property Record Card.

#### PETITIONER'S WITNESS

Petitioner's witness was James 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 views are presumption driven while Respondent's market views are data driven. Petitioner 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.

Respondent asserts the location of many QSRs [Quick Service Restaurants] is an attraction for investors. Being near major roadways with good visibility is important to the market analysis. Such commercial locations have desirable access close to highways, shopping malls and anchor stores. The layouts of most QSR tenants are relatively similar and interior changes between tenants is mostly cosmetic and inexpensive. Traffic counts in the subject market area and neighborhood in the Byron Center corridor indicate that property values are expected to be stable to moderately increasing in the near term.

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.

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.

Respondent researched numerous sources including discussions with brokers, developers and investors regarding fast food franchises.<sup>3</sup> 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>4</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. Respondent's appraiser admitted that he did not do a cost analysis for renovations to subject improvements.<sup>5</sup> Nonetheless, the cost approach was a check of reasonableness to the income approach (given the relatively newer age of the subject improvements) and was given secondary weight in the overall conclusion of market value.

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<sup>3</sup> Respondent's Exh. R-1, 8.

<sup>4</sup> *Id.*, 39.

<sup>5</sup> Tr, 145.

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, there is a lack of fee simple sales to create a meaningful comparative analysis. Again, fast food restaurant sales are typically sold on a leased fee basis. The sales comparison approach was given minimal weight in the reconciliation and conclusion of market value for the subject property.

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 3, 4, 8 and 16 are located in older neighborhoods which demonstrate shifts toward new areas of developments (i.e. Rivertown Crossings Mall area). Overall, Petitioner's analysis of these sales in older areas is not similar to the subject's market area.

#### 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: Operator's Lease for Subject Property.
- R-3: Franchise Agreement for Subject Property.
- R-4: Calkain Net Lease Report for QSR Sector, September 2018.
- R-5: Matthews QSR Report.
- R-6: The Boulder Group QSR Market Report Q2 2018.
- R-7: "Restaurant Valuation" Brock Rule, *The Appraisal Journal*, Spring 2014.
- R-8: Calkain Tenant Profile, McDonald's, May 2019.
- R-9: McDonald's Site Section Brochure, copyright 2016.
- R-10: McDonald's Franchising FAQs.
- R-11: McDonald's Existing U.S. Restaurants.
- R-12: McDonald's New U.S. Franchise Restaurants.
- R-13: McDonald's Excess Property – For Sale.
- R-14: Grand Valley Metropolitan Council Historic Traffic Count Data Base.
- R-15: "8M Fairfield Inn...announced for Metro Health Village," MLive, February 28, 2017.

- R-16: "Granger Project Soars to \$2B," MLive, May 10, 2019.
- R-17: Articles on sales of McDonald's restaurants/franchises.
- R-18: Kent County GIS photos of subject property and its vicinity.
- R-19: Kent County GIS photos of comparables used in Petitioner's Appraisal.
- R-20: BS&A Parcel Information and Kent County GIS photos of various Kent County drive-thru properties.
- R-21: Petoskey Duplicate Bridge v Township of Resort, Michigan Court of Appeals Docket No. 335326.
- R-22: Lakeshore Properties v Hudsonville, MTT Docket No. 416431.
- R-23: Old West Properties v Meridian Township, MTT Docket No. 416676.

### RESPONDENT'S WITNESS

Respondent's 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.

### FINDINGS OF FACT

1. The subject property is located at 5631 Byron Center Avenue, S.W., and located in Kent County.
2. The subject is developed with a 3,825 square foot commercial building located on approximately 1.29 acres.
3. The subject property is not a corner lot.
4. The subject property is zoned B-1, Local Business.
5. The subject building was constructed in 2010.
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 James 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>6</sup>
10. Petitioner's appraisal report does not include any leased fee sales data.

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<sup>6</sup> Petitioner's Exh P-1, 16.



11. 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>7</sup>
12. Petitioner's appraiser did not detail the specific features or improvements that are specifically designed for McDonald's.<sup>8</sup>
13. Petitioner's appraiser stated "... the improvements are considered 100 percent depreciated with no remaining economic life."<sup>9</sup>
14. The McDonald's corporation tightly controls franchise agreements and transfers.<sup>10</sup>
15. Petitioner's appraiser admits that a sale of a commercial property could include a tenant lease to real property.<sup>11</sup>
16. The subject property is profitable as a fast food restaurant.<sup>12</sup>
17. Respondent submitted a valuation disclosure prepared by Douglas Adams.
18. Respondent's appraiser developed the sales comparison, income and cost approaches to reconcile to a conclusion of market value for the subject property.
19. Respondent's highest and best use analysis concluded that the subject is best suited for continued use as a chain fast-food restaurant.
20. This tax appeal involves the true cash value of the subject's real property and not the market value of the subject's going-concern value.

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>13</sup>

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<sup>7</sup> Petitioner's Exh. P-1, 35.

<sup>8</sup> Tr, 47.

<sup>9</sup> Tr, 47 and Petitioner's Exh. P-1, 44.

<sup>10</sup> Tr, 68.

<sup>11</sup> Tr, 69-70.

<sup>12</sup> Tr, 74.

<sup>13</sup> See MCL 211.27a.

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. . . .<sup>14</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>15</sup>

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”<sup>16</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>17</sup> The Tribunal is not bound to accept either of the parties' theories of valuation.<sup>18</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>19</sup> In that regard, the Tribunal “may accept one theory and reject the other, it may

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<sup>14</sup> Const 1963, art 9, sec 3.

<sup>15</sup> MCL 211.27(1).

<sup>16</sup> *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

<sup>17</sup> *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

<sup>18</sup> *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

<sup>19</sup> *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

reject both theories, or it may utilize a combination of both in arriving at its determination.”<sup>20</sup>

A proceeding before the Tax Tribunal is original, independent, and de novo.<sup>21</sup> The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”<sup>22</sup> “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”<sup>23</sup>

“The petitioner has the burden of proof in establishing the true cash value of the property.”<sup>24</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>25</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>26</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>27</sup> “The market approach is the only valuation method that directly reflects the

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<sup>20</sup> *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

<sup>21</sup> MCL 205.735a(2).

<sup>22</sup> *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

<sup>23</sup> *Jones & Laughlin Steel Corp*, *supra* at 352-353.

<sup>24</sup> MCL 205.737(3).

<sup>25</sup> *Jones & Laughlin Steel Corp*, *supra* at 354-355.

<sup>26</sup> MCL 205.737(3).

<sup>27</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).

balance of supply and demand for property in marketplace trading.”<sup>28</sup> 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.<sup>29</sup> Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.<sup>30</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>31</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>32</sup> Petitioner contends the subject’s 100% depreciated improvements occurred somewhere within the 7-year chronological age of the subject property. However, Petitioner’s appraiser is uncertain when the economic life of the improvements declined up to the point of zero.<sup>33</sup> As demonstrated by Respondent’s appraiser, the improvements to the subject real property contribute to the

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<sup>28</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).

<sup>29</sup> *Antisdale, supra* at 277.

<sup>30</sup> See *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

<sup>31</sup> Navarre’s open-ended testimony illustrates the very need for the examination and development of the income and cost approaches to value. Conclusory statements without the underlying market support or analysis is unpersuasive.

<sup>32</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>33</sup> Tr, 49-50.

property value. 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 is an indication that an income analysis would be pertinent to Petitioner's due diligence. Petitioner's appraiser stated, "All things considered, given the traffic counts of the fronting street, the demand for space in the immediate area, and the recent construction which has occurred, it is financially feasible to improve the site with a build to suit use."<sup>34</sup> Third, Petitioner did not analyze or develop curable and incurable depreciation (short term and long term items) in support of its conclusion of functional obsolescence to the subject property.<sup>35</sup> Valuation practice and theory present various methodologies to discern depreciation (physical, functional and external) for an appraiser to create a meaningful analysis. Fourth, 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>36</sup> It is unclear if both options logically can be financially feasible at the same time. Fifth, Petitioner's scope of work<sup>37</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>38</sup> concludes "The region will be an above-average performer in terms of long-

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<sup>34</sup> Petitioner's Exh. P-1, 46.

<sup>35</sup> Tr, 57.

<sup>36</sup> Petitioner's Exh. P-1, 48.

<sup>37</sup> *Id.*, 9. 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>38</sup> Petitioner's Exh. P-1, 23.

term job and income growth because of favorable demographics.” 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. Sixth, Petitioner’s appraiser relies on CoStar to define the subject market and sub-markets, but does not know CoStar’s underlying criteria for the market determinations.<sup>39</sup> Seventh, Petitioner’s appraiser admitted to not knowing the full extent of his demolition examples on cross-examination.<sup>40</sup> Petitioner’s lack of due diligence into the details for these redeveloped properties is not persuasive to a general conclusion of demolition for the subject’s existing improvements. 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.

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 appear to overlook potential other characteristics (i.e. visibility, frontage, 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 sales 1 and 2 declined, while sales 3, 4, and 5 were neutral and all other sales had appreciated up to the December

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<sup>39</sup> Tr, 74-94. Petitioner’s appraiser resides in southeast Michigan and was cross-examined on his geographical competence to handle market and data analysis in west Michigan.

<sup>40</sup> Tr, 71-73.

31, 2017 tax day. The Tribunal is unable to ascertain this market appreciation for vacant land sales separately from improved sales in the subject market. Third, the comparative analysis presents 7 improved sales.<sup>41</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 17 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 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.

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<sup>41</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.

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 showed no functional or external obsolescence in the subject market area. This approach is best suited for new or newer construction. The subject is relatively newer construction and deriving a physical depreciation was reasonable. This approach to value focuses on the real property as opposed to the going-concern value of the subject's franchise agreement and lease. Therefore, the cost approach is given weight and credibility in the determination of market value for the subject property.

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 showed no 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. Similarly, Petitioner refuted this data in light of the fee simple market value of the subject property. Therefore, Respondent's sales comparison approach is given minimal weight and consideration in the determination of market value for the subject property.

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. References to CoStar data as well as Quick Service Restaurant (QSR) analytics for the west Michigan fast food market was persuasive. Respondent analyzed the subject's rental income through a percentage of gross fast-food sales, a summary of lease comparables and a direct comparison of rental leases.<sup>42</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 capitalization rate comparable sales as well as through market surveys. The income comparisons and analysis showed no functional obsolescence for the subject in this market area. Respondent's income analysis acknowledged the valuation of the subject as fee simple. Respondent projected 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 income approach relevant.<sup>43</sup> Nonetheless, Petitioner refuted Respondent's use of built-to-suit leases and sale leaseback properties in light of the fee simple market value of the subject property. Therefore, Respondent's income approach is given minimal weight and consideration in the determination of market value for the subject property.

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<sup>42</sup> Tr, 123-124. Respondent's acknowledgement and consideration of both leased fee and fee simple sales data is noteworthy with reference to Respondent's Exhibit R-7.

<sup>43</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.

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.<sup>44</sup> With a reasoned application, Respondent's sales comparison approach is weighted at 10% ( $\$2,120,000 \times 10\% = \$212,000$ ), the income comparison approach is weighted at 10% ( $\$2,500,000 \times 10\% = \$250,000$ ) and the cost approach is weighted at 80% ( $\$2,080,000 \times 80\% = \$1,664,000$ ) for a market value of \$2,126,000.

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 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

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<sup>44</sup> Respondent's appraiser's market analytics were presented with greater articulation and demonstrated geographical competency in the Grand Rapids metropolitan area.

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>45</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>46</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>47</sup> Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.<sup>48</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>49</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>50</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>51</sup>

By



Marcus L. Wood

Entered: January 2, 2020

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<sup>45</sup> See TTR 261 and 257.

<sup>46</sup> See TTR 217 and 267.

<sup>47</sup> See TTR 261 and 225.

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

<sup>49</sup> See MCL 205.753 and MCR 7.204.

<sup>50</sup> See TTR 213.

<sup>51</sup> See TTR 217 and 267.