



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

Commercial Asset Finance LLC
and NOSAJ Properties LLC,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 18-001259

City of Belleville,
Respondent.

Presiding Judge
Marcus L. Abood

ORDER DENYING PETITIONER'S MOTION TO STRIKE

ORDER DENYING RESPONDENT'S MOTION FOR DIRECTED VERDICT

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Commercial Asset Finance, LLC and NOSAJ, LLC, appeal ad valorem property tax assessment levied by Respondent, City of Belleville, against Parcel Nos. 31-107-99-0001-002, 31-107-99-0001-006, 31-107-99-0001-003, and 31-107-99-0001-004 for the 2018 and 2019 tax years. Jason Conti, Attorney, represented Petitioner. Laura M. Hallahan and Seth A. O'Loughlin, Attorneys, represented Respondent.

A hearing on this matter was held on March 15-16, 25-26 and 31, 2021. Petitioner's witnesses were Jason M. Curis and Donald H. Treadwell Jr. Respondent's witness was John R. Widmer Jr.

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 are as follows:

Parcel Number	Year	TCV	SEV	TV
31-107-99-0001-002	2018	\$149,240	\$74,620	\$74,620
31-107-99-0001-003	2018	\$424,760	\$212,380	\$212,380
31-107-99-0001-004	2018	\$172,200	\$86,100	\$86,100
31-107-99-0001-006	2018	\$401,800	\$200,900	\$200,900

Parcel Number	Year	TCV	SEV	TV
31-107-99-0001-002	2019	\$152,820	\$76,410	\$76,410
31-107-99-0001-003	2019	\$434,954	\$217,477	\$217,477
31-107-99-0001-004	2019	\$176,332	\$88,166	\$88,166
31-107-99-0001-006	2019	\$411,442	\$205,721	\$205,721

PETITIONER'S CONTENTIONS

Petitioner contends Respondent illegally and improperly uncapped the subject property for the 2019 tax year in violation of MCL 211.27a(7)(e) and (j). Specifically, the deed in lieu foreclosure to Commercial Asset Finance LLC and the subsequent transfer to NOSAJ LLC did not constitute an uncapping event. The taxable value for 2019 should have only changed at the rate of the relevant CPI.

Petitioner contends its purchase price of \$948,000 in April 2018 (as disclosed by Petitioner's appraiser) is incorrect. The actual allocated cost to acquire the subject property was approximately \$600,000. The purchase price of the two underlying loans was \$1,475,000. Petitioner asserts Commercial Asset Finance LLC was created to buy debt; Petitioner purchased and negotiated the debt on the subject property. Petitioner states, "The purpose of entering the loan sale agreement was to ultimately have the borrower pay off the loan and make the spread on what we were buying the loan for and what was the balance on the loan through the guarantee."¹ Commercial Asset LLC stepped in as "receiver" for the estate since there was insufficient money in the estate to

¹ Vol 1, 22-23.

pay for a receiver. Petitioner was confident that it would be able to collect from the Marwaha estate.² Nonetheless, Petitioner's appraiser did not give weight or credence to Petitioner's purchase of the subject's loans. This information was not germane to the valuation of the subject property.³

Petitioner contends the subject property is not located in a major commercial corridor and is a tough property. The occupancy rate for the subject hovers around 50%. Petitioner started with Re/Max commercial brokers to lease space at the subject property. With little success, Petitioner then went to JMC Management to generate new leases at the subject property. Subsequently, Petitioner relied on Collier's International to fill lease space at the subject property.

Petitioner's appraiser inspected the subject property on April 5, 2018, and March 9, 2019. Petitioner appraiser relied on and included photographs taken by Petitioner.⁴

Petitioner's appraiser contends the City of Belleville is largely built out. The market area is a portion of southeast Michigan which includes Van Buren Township. The city is expected to remain stable over the next 20 years. "In contrast, Van Buren Township is expected to have growth. Most of that growth has been to the north of the lake. The lake referring to Belleville Lake."⁵ Moreover, the subject property is not located in a primary market area with high traffic and lots of activity.⁶

² Vol 1, 34-35.

³ Vol 1, 183 and 204.

⁴ P-1, 21-28.

⁵ Vol 1, 62.

⁶ Vol 1, 214.

Petitioner's appraiser considered all three approaches but only developed indications of value from two approaches. Petitioner's data search and collection included different years prior to December 31, 2017, for trending purposes.⁷

Petitioner developed the sales comparison approach by analyzing five sales in southeast Michigan. Adjustments were made to each comparable sale to convert those variances into an overall indication of market value for the subject property. The subject's deferred maintenance of \$144,000 was divided by the gross building area to arrive at \$5.40/SF. Other adjustments included differences in occupancy rates. However, no adjustments were made for building sizes based on multi-tenant use. Demographics for traffic counts and household income over various time increments allowed for a trending analysis. After adjustments, the comparable sales' range resulted in a median of \$16.09/SF. No one sale stood out for primary weight.

Regarding its development of an income approach, Petitioner began by initially analyzing six comparable rental properties. Market supported adjustments were made to each rental property to derive an adjusted range of \$6.98 to \$7.73/SF and a resulting median rental rate of \$7.50/SF. The subject property was then analyzed based on a market vacancy and credit loss. The subject's occupancy rate is 52.36% and 37.8% of the tenants that were not paying rent in a timely fashion as of December 31, 2017. The gross potential income of \$367,110 was deducted to arrive at an effective gross income of \$275,332. Next, market supported expenses were analyzed to arrive at a net operating income. Lastly, a direct capitalization rate was developed from a CoStar survey, a built-up method (a.k.a. band of investment), and market extracted method.

⁷ Vol 1, 172.

The capitalization rate was loaded to account for the relevant tax rate. Petitioner then accounted for the subject's deferred maintenance and overall market risk to the property to conclude to an indication of value from the income approach.

Petitioner's appraiser did not develop the cost approach because market participants would not consider this approach a useful measure of value. The age and location of the subject do not aid in a cost analysis.

Petitioner's reconciliation of the approaches to value puts most weight on the income approach because the subject is a multi-tenant neighborhood retail center. A potential market investor would look at leases as an indication of the subject's market value.

Regarding Respondent's conclusion of value, Petitioner refutes Respondent's methodologies. Petitioner questions Respondent's two different rents for the subject's occupied and unoccupied areas. Respondent's appraiser was unable to cite any valuation authority or methodology for his actions. Further, Petitioner rebuts Respondent's CoStar information for specific rental comparables utilized by Respondent. Respondent's analysis was not backed up by any specific information from Respondent's workfile. Likewise, Respondent was unable to discern CoStar data between institutional and non-institutional grade properties from his searches.

Respondent's explanations for the subject's effective age and utilizing a linear curve analysis do not make sense. Respondent viewed the subject when renovations were made to the property. Respondent's own assessor determined an effective age of 30 years when Respondent's appraiser used an effective age of 20 years.

Respondent's photographs do not depict the condition of the subject as of December 31, 2017; the photographs were taken by Respondent in 2019.

Respondent's capitalization rate analysis does not make sense. The subject's foreclosure and prior management reflected greater risk, but Respondent's capitalization rate appears to reflect less risk to the subject property. Respondent's reference to the subject being "capital starved" would reflect a capitalization rate greater than 9%.

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 Donald H. Treadwell.
- P-2: Appraisal Report prepared by Donald H. Treadwell (signature pages).
- P-3: Deed in Lieu of Foreclosure dated November 2, 2018.
- P-4: Petitioner's Response to Document Requests (Pages 33-35 and 40-91).
- P-5: Receiver Lawsuit Complaint.
- P-10: Rebuttal Document – Costar Report.

PETITIONER'S WITNESSES

Petitioner's first witness, Jason Curis, is the principal and owner of JMC Management which handles the day-to-day operations of various commercial properties, shopping centers, industrial buildings, and office buildings.

Petitioner's second witness, Donald H. Treadwell Jr., prepared an appraisal report for the subject property. He is primarily a commercial appraiser with 50 years of real estate and valuation experience. He is licensed in the state of Michigan and designated through the Appraisal Institute. Based on his background, education and experience, the Tribunal accepted Mr. Treadwell as an expert real estate appraiser.

RESPONDENT'S CONTENTIONS

Respondent contends that two years are under appeal in this matter, but Petitioner has only put forth evidence for the 2018 TCV contention.

Respondent contends its valuation evidence stands in contrast to Petitioner's valuation evidence. Petitioner relied on market-based data. The valuation evidence and analysis are market supported.

Respondent's reliance on CoStar for the purchase price of \$948,000 occurred before Respondent's appraiser reviewed documentation showing the acquisition of two loans of \$948,000 and \$527,000 (total purchase price of \$1,475,000) between Today's Bank and Petitioner. Regardless, Petitioner's conclusion of market value would not change.⁸

Respondent's market analysis included a median household income from 2010 to 2019; this is a positive indicator for the subject market area.⁹ Respondent's market and trend analysis indicates a decline in vacancies from 2016 to 2018.¹⁰ Issues affecting commercial vacancy and occupancy may include foreclosures which lead to "capital starvation" meaning a lack of cash flow for necessary repairs to a property. Respondent contends, generally, an ill-informed and incompetent management (i.e., delinquent taxes) can impact a commercial property's vacancy and occupancy. The subject's occupancy issues were related to the prior owner and not the subject property itself. Respondent contends the subject leases were negotiated and initiated as of December 31, 2017, and impacted by the prior owner of the subject property.¹¹

⁸ Vol 3, 466.

⁹ Vol 3, 468-469.

¹⁰ Vol 3, 470-474.

¹¹ Vol 3, 478.

Respondent considered all three approaches to value for its conclusion of value for 2018 and 2019. However, only two approaches were developed for indications of market value.

Regarding an income analysis, Respondent's analysis of one, three and five-mile radius for the subject indicates the largest per annum increase was the one-mile radius of 5.1%. Respondent asserts neighborhood retail centers are typically leased on a triple net basis and not as gross leasing.¹² Potential repair issues at the property would create "capital starvation" meaning tenants would reduce or stop rent payments due to the lack of repairs and maintenance to the property. Respondent applied an extraordinary assumption that the subject's condition (as of the inspection date) was the same as of the effective date of December 31, 2017. Respondent's vacancy analysis for the subject property considered the actual vacancy of 49% but relied on a market vacancy of 7.5%. The subject's actual vacancy was viewed as an outlier due to the subject's deed in lieu of foreclosure as well as the transfer between Petitioner's two affiliated entities.¹³ Respondent analyzed the subject's units in terms of tenant improvements (Tis) at \$10/SF to make a space a "white box" or as an allowance to a prospective tenant. Respondent's appraiser based this on a review of numerous lease deals for retail centers in southeast Michigan.¹⁴

Further, Respondent's income analysis included a discount for the loss in rent income. The adjustment reflects the fact that the direct capitalization model assumes a stabilized level of operation. This deduction is due to the non-stabilized rent and is a

¹² Vol 3, 494.

¹³ Vol 3, 627-628.

¹⁴ Vol 4, 653-665.

below the line deduction in the income analysis. The 15% deduction is based on Respondent's judgment and experience in appraising these types of properties.¹⁵

The cost approach was not developed due to the age of the subject improvements. Market participants do not rely on this approach. Further, determining depreciation is arbitrary and not meaningful.

Regarding the sales comparison approach, Respondent analyzed the subject's units in terms of visibility and proximity to Sumpter Road. A newer addition to the north building was given consideration. The analysis of the subject units was not necessarily quantified but rather qualitatively analyzed.¹⁶ The comparative analysis included "simple economics of the investment" referring to such things as rent, size, risk, location, etc. These elements are all inclusive to comparable sales and the subject.¹⁷ In addition, Respondent's comparative analysis gave consideration to creditworthiness of tenants, national tenants and NOIs (where available) as part of an economic adjustment.¹⁸

In final reconciliation, Respondent places majority weight on the income approach; the sales comparison approach is strictly a test of reasonableness of the income approach to value.

Regarding Petitioner's analysis, Respondent disagrees with Petitioner's use of the subject's actual property expenses in calculating the triple net expenses and application of the expense allocation.¹⁹ When converting triple net leases to gross

¹⁵ Vol 4, 671, 673-674.

¹⁶ Vol 3, 583-584.

¹⁷ Vol 4, 683-685.

¹⁸ Vol 4, 692-693.

¹⁹ Vol 3, 551-552.

leases, there should be an “apple to apple” comparison. Respondent would use the comparable’s actual triple-net expenses to convert that comparable to a gross lease.

Widmer would not have used Treadwell’s rental #3 without further investigation. The original building was demolished and involved the combination of 4 parcels. Widmer is familiar with Treadwell’s sale 4 (8010 Middlebelt Road in Westland) which reflects unpaid taxes for 2014 to 2017.

Respondent contends Petitioner’s lack of good faith in litigating the December 31, 2018, tax day for the 2019 tax year is prejudicial to Respondent. Petitioner filed a motion to amend but did not submit any valuation evidence for the 2019 tax year. Respondent was left to get an appraisal for 2019; Respondent had no choice but to defend the 2019 tax year.

Respondent contends Petitioner got a great deal on the property. Petitioner acquired the subject’s two loans in March 2018 when the subject was underperforming. The prior owner’s estate could have filed for bankruptcy immediately after Petitioner acquired the underlying debt. The only actual assets secured by the loan was the real property.

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 John Widmer.
- R-2: MLS Listings for the Subject.
- R-3: Colliers Listing the Subject.
- R-4: Petitioner’s Discovery Answers.
- R-5: Page 32 from Petitioner’s Exhibit P-4.
- R-5: CoStar and BS&A reports for 8010-8028 Middlebelt.
- R-6: Lease Offering for 10780-10900 Belleville Road.
- R-7: CoStar Demographics Report.

- R-8: BS&A Printout for 8010 Middlebelt Road.
- R-9: CoStar Demographics Report.
- R-10: BS&A Data Compilation Report.

RESPONDENT'S WITNESS

Respondent presented testimony from John R. Widmer Jr., who is a Certified General Real Estate Appraiser in the State of Michigan. He has appraised properties in Michigan for over 30 years. Based on his education, background and experience, the Tribunal accepted Mr. Widmer as an expert in real estate appraisal.

FINDINGS OF FACT

1. The subject property is located at 761-889 Sumpter Road, located in the City of Belleville and within Wayne County.
2. The subject property is classified as Commercial and is zoned as B-3, General Business District.
3. The subject property is referred to as the Belle Plaza Shopping Center.
4. The subject property is comprised of 5.64 acres and is improved with a neighborhood commercial retail shopping center comprising three buildings.
5. The subject is not an institutional grade or quality property.
6. The subject buildings comprise 48,661 square feet of gross building area and 47,667 square feet of gross leasable area.²⁰
7. As of December 31, 2018, and December 31, 2019, the subject property was improved as a commercial retail shopping center.
8. Today's Bank sold the mortgage-secured note to Commercial Asset Finance, LLC on April 12, 2018.²¹
9. As of December 31, 2017, the subject leases were negotiated and initiated by the prior owner of the subject property.

²⁰ It is noted that Petitioner has denoted 50,526 square feet of total gross building area and 48,948 square feet of gross leasable area. However, Respondent's building description (R-1, 22) states, "The GBA/GLA were calculated based upon City of Belleville Assessment records, a rent roll provided by ownership, and measurements made of the buildings during the property inspection." Further, Respondent's appraisal report included the subject property record cards. Reliance and credibility are placed on Respondent's reconciliation and determination of GBA and GLA for the subject buildings.

²¹ Respondent's appraisal report (R-1, p 15) asserts that there was a conveyance from Belle Shopping Center LLC to Michigan Asset Holdings LLC and JMC Management LLC on April 17, 2018.

10. Michigan Asset Holdings LLC, JMC Management LL, Commercial Asset Finance LLC and NOSAJ Properties LLC are affiliated entities with common ownership (Jason M. Curis).
11. Subsequent to the prior owner's death, the subject property was mismanaged.²²
12. The previous owner of the subject property was Subhash Marwaha who passed away in 2017.
13. Commercial Asset LLC received a deed in lieu of foreclosure for the subject property from the estate of Subhash Marwaha on November 1, 2018.
14. The highest and best of the subject "as vacant" is for retail development and "as improved" is for its current retail building use.
15. Petitioner submitted a valuation disclosure in the form of a narrative appraisal report prepared and signed by Ronald H. Treadwell.²³
16. Petitioner considered all three approaches to value but only developed the income and sales comparison approaches to value.
17. Petitioner's appraiser utilized 2018 and 2019 data for the value of the subject property as of December 31, 2017. Petitioner's appraiser did not disclose this within his appraisal report.²⁴
18. Respondent submitted a valuation disclosure in the form of a narrative appraisal report prepared and signed by John R. Widmer.²⁵
19. Respondent considered all three approaches but only developed the income and sales comparison approaches to value.
20. Today's Bank was collecting rents in the fall of 2017 for the subject tenants.²⁶
21. Neither party's appraiser developed the cost approach to value.
22. Each appraiser placed greatest weight on their indication from the income approach to value.
23. Neither party's appraiser was required to bring in their entire workfile for their appraisal reports.

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.²⁷

²² Vol 1, 212 and P-1, 72.

²³ Treadwell previously appraised the subject property for the Estate of Subhash Marwaha. This estate appraisal report was not offered into evidence for this tax appeal matter.

²⁴ Vol 1, 194.

²⁵ Each party's appraiser signed his own appraisal report and bears exclusive responsibility for the opinions, analyses, and conclusions regardless of unsigned individuals that might have been acknowledge in the signed certifications and limiting conditions.

²⁶ Vol 2, 365.

²⁷ 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. . . .²⁸

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.²⁹

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”³⁰

“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.”³¹ The Tribunal is not bound to accept either of the parties' theories of valuation.³² “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.”³³ 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.”³⁴

²⁸ Const 1963, art 9, sec 3.

²⁹ MCL 211.27(1).

³⁰ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

³¹ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

³² *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

³³ *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

³⁴ *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.³⁵

The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”³⁶ “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”³⁷

“The petitioner has the burden of proof in establishing the true cash value of the property.”³⁸ “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.”³⁹ 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.”⁴⁰

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.⁴¹ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”⁴² The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the

³⁵ MCL 205.735a(2).

³⁶ *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

³⁷ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

³⁸ MCL 205.737(3).

³⁹ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

⁴⁰ MCL 205.737(3).

⁴¹ *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).

⁴² *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.⁴³

Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.⁴⁴

SALES COMPARISON APPROACH

The parties' sales comparison approaches present a conventional framework for a comparative analysis to the subject property.⁴⁵ However, as will be discussed, there are inconsistencies as well as refutations made to each party's analysis. First, the range of unadjusted prices per square foot is broad. Petitioner's comparable sales have an unadjusted \$/SF range of gross building area from \$15.42 to \$31.01. Respondent's comparable sales have an unadjusted \$/SF range of gross leasable area from \$28.94 to \$64.26.⁴⁶ Second, Petitioner's five sales and Respondent's four sales were all adjusted downward. In other words, the comparisons are all skewed downward. Neither appraiser included any sales that adjusted upward to the subject property. Likewise, no explanations were given for the lack of bracketing to the subject. Third, Petitioner's lack of building size adjustments and corroborating testimony are not meaningful. The Tribunal is not convinced that market investors do not give consideration to building size

⁴³ *Antisdale, supra* at 277.

⁴⁴ See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

⁴⁵ Respondent's overall format and presentation of a comparative analysis was very difficult to follow. The actual adjustment grid did not include any property identification other than a sale number. Moreover, the sales grid did not include a column for the subject property to demonstrate side-by-side illustrative comparisons and adjustments. The actual detailed column entries for each comparable sale were placed in the addendum of Respondent's appraisal report.

⁴⁶ Respondent's comparative analysis based on gross leasable area properties does not make sense. Granted, an investor's purchase of a neighborhood retail shopping center may be based on tenant leases and occupancy in place at the time of sale. However, the investor is not only purchasing the value of the leases but is purchasing the total property and gross building area.

variations based on Petitioner's comparable GBAs of 15,695 to 70,941.⁴⁷ Fourth, Respondent's economic adjustment appears to encompass many income elements as was narrated by the appraiser in his report.⁴⁸ Nonetheless, the appraiser states, "This category will primarily include a downward adjustment to each comparable to reflect the subject's non-stabilized occupancy. . ." ⁴⁹ These economic adjustments (with a primary focus on occupancy) are varied and do not accompany meaningful narrative explanation. Fifth, the parties' respective reconciliations placed greatest weight on their income approaches to value. Therefore, having considered the sales comparison approaches, the Tribunal places no weight or credibility on this approach in the independent determination of market value for the subject property.

INCOME APPROACH

As noted in the Findings of Fact, each party developed an income approach to value. The direct capitalization method was employed by each party. While there are noted similarities, there are also dissimilar income elements to each party's analysis. The Tribunal has considered each income element based on each appraiser's analysis.

First, a market rent was determined for the subject on a price per square foot basis. Petitioner analyzed six rental properties with a range of leased space from 1,200 to 20,000 square feet and lease rates from \$10-\$12/SF. Three properties were lease

⁴⁷ Petitioner did not denote an effective age for sale 3 but states this sale is superior to the subject. (Vol 2, 332). Likewise, Treadwell did not identify the effective age of the subject in his report. (Vol 2, 384-386). Petitioner's sale 4 was listed for \$3.5 million in 2017 but sold in May 2018 for \$2.2 million; Petitioner did not provide verification for sale 4. Lastly, Treadwell did not include a condition analysis for his comparable sales. (Vol 2, 383).

⁴⁸ Widmer's analysis of market rent as an element to his comparative analysis illustrates the concept of substitution and the inter-relationship of the three approaches to value.

⁴⁹ R-1, 62.

offerings, and three properties were actual leases. After adjustments, the indicated square foot rent range was \$6.98 to \$7.73/SF. Petitioner's conclusion of market rent for the subject is \$7.50/SF.

Respondent analyzed 10 properties with a range of leased space from 511 to 3,300 square feet and lease rates from \$7.92 to \$13/SF. Two properties were lease offerings, and eight properties were actual leases. After explanatory narration, the rental rate from this initial data set was determined to be \$10.14/SF. Respondent went a step further in analyzing rents for the subject's vacant and occupied spaces at \$10/SF and \$6.91/SF respectively. This bifurcated analysis for the subject's rents is meaningful and persuasive.⁵⁰ From this analysis, Respondent concluded to an average of \$8.42/SF for the subject's market rents.

Petitioner's issue over contract and market rents in cross examination is nonsensical. The basis for relying on market rents begins with the subject's contract rents. Inferring that market rents do not begin with the analysis of contract rents is unpersuasive. Logic requires that the subject's actual rents are investigated in terms of the relevant market.

The analysis of market vacancy, market credit loss, market rent, and market expenses begin with the subject's actual income elements. Contrary to Petitioner's cross-examination of Respondent's appraiser, a subject's actual income elements are applied to the market. Said differently, consistent with valuation practice and theory, a market analysis of income does not occur without the initial review of the subject's

⁵⁰ Petitioner's cross examination over Respondent's methodology is not persuasive. (Vol 3, 556-580). Respondent's appraiser admitted that he is not aware of a formal valuation source for analyzing occupied and vacant spaces in "separate buckets". Nonetheless, Respondent's appraiser's identification of the subject's retail spaces relative to a vacancy rate is cogent and consistent with his market area analysis.

income elements. Likewise, a property's actual rental income may be commensurate with the established market.

The parties' concluded market rents are relatively similar. Petitioner's analysis included a comparable rental adjustment grid.⁵¹ Respondent presented a narrative analysis for its market rental income analysis. Both appraisers acknowledged the differences between triple net leases and gross leases. Further, the appraisers analyzed two common comparable rental properties located at 9800 Haggerty Road and 6040 Rawsonville Road. However, Petitioner did not include Tis for its rental 1. In addition, Petitioner had no data support for location differences for its rental data.⁵² Yet, Petitioner had a data analysis for location adjustments in its sales comparison approach. Neither appraiser reviewed leases for their respective rental comparables. Respondent refuted Petitioner's Exhibit P-10 (Costar report) which did not properly depict Respondent's income analysis as of Respondent's report date.⁵³ Aside from refutations, endless cross-examination, and testimony, the parties' indications of market rent bracket the Tribunal's rent conclusion. Therefore, a reasoned and reconciled determination of market rent for the subject property is \$8.00/SF.

Second, the subject's gross building area of 48,661 square feet is multiplied by \$8.00/SF to derive the potential gross income (PGI) of \$389,288. Similar to the

⁵¹ Petitioner's rental comparables were adjusted downward. In other words, the rental data was not bracketed to the subject property. Moreover, Respondent challenged Petitioner's use of a 20,000 square foot rental as an extreme outlier. Petitioner challenged and refuted Respondent's rental comparables 2, 3, 4, and 5 with rebuttal testimony from Jason Curis. Neither party presented lease information for their respective rental data.

⁵² Vol 2, 387.

⁵³ Vol 4, 803-805.

independent determination of market rent, the subject's PGI is bracketed by Petitioner's PGI of \$367,110 and Respondent's PGI of \$401,450.

Third, the parties' determinations of vacancy and credit loss is dissimilar. Petitioner analyzed the subject's overall vacancy as of December 31, 2017, at 52.36%. From this benchmark, Petitioner drilled down to discuss occupied spaces in terms of unpaid rent. "However, 19.79% of the rentable space (9,687 square feet) and thus 37.8% of the occupied space had tenants that were not paying their rent."⁵⁴ Petitioner's market analysis for commercial development is informative but was neither referenced or linked to Petitioner's determination of a 20% vacancy and 5% collection loss.⁵⁵ The vacancy rate in City of Belleville is under 10%.⁵⁶ Petitioner did not present any market vacancy data within his report.⁵⁷ Further, Petitioner analyzed industrial vacancy rates but did not do so for commercial properties.⁵⁸ The Tribunal is unable to ascertain or assume Petitioner's reasoning for a vacancy and credit loss which appears to be tied more to the subject than to the subject market. Conversely, Respondent's analysis of this income element was tied directly to its market area analysis. "As discussed in the Analysis of Market Area section of this appraisal, an average, long-term frictional vacancy has been reconciled at 7.5%."⁵⁹ Respondent considered the subject's actual vacancy and credit loss and applied this to the subject market through extensive CoStar reports.⁶⁰ As stated by Respondent's appraiser:

⁵⁴ P-1, 125.

⁵⁵ Vol 2, 393.

⁵⁶ Vol 1, 221-222 and P-1, 55.

⁵⁷ Vol 1, 230.

⁵⁸ Vol 2, 394-395.

⁵⁹ R-1, 71.

⁶⁰ Petitioner's contention over search criteria in Respondent's CoStar reports for a "Retail Market Overview" (R-1, 44-51) is without merit. Concerns over specific criteria points for institutional and non-

This data source is widely accepted and applied within the appraisal industry as a reliable source for research data. Likewise, it is noted that the entire data set presented has not been personally verified. While there may be inconsistencies relative to data that is personally verified, that would be the case with almost any research data provided in whole from brokerage sources. This section of the analysis is intended to represent a macro-presentation of market activity, with micro-analysis to be considered with each valuation approach, to the extent it would impact value.”⁶¹

Respondent’s appraiser was cross-examined about the subject’s actual vacancy as an outlier. Yet, Petitioner also raised the issue of the increased risk for a property that is in foreclosure.⁶² Market vacancy is a stabilized vacancy. The subject’s foreclosure was considered and impacted its income leading up to the December 31, 2017, tax day.

Respondent’s market analysis specifically related to commercially available space, occupancy, vacant space, and frictional vacancy with the larger demographics analysis. Petitioner’s determination of vacancy and credit loss is not more persuasive than Respondent’s analysis.⁶³ Therefore, Respondent’s analysis and support for its vacancy of 7.5% and credit loss of 1% for a total of 8.5% is given weight and credibility in the income analysis for the subject property. The vacancy and credit loss of 8.5% or \$33,089 is deducted from the PGI of \$389,288 to arrive at an effective gross income (EGI) of \$356,199.

Fourth, the parties’ determination of operating expenses was compared and contrasted. Petitioner’s indication of \$2.28/SF or \$114,353 in expenses is relatively

institutional grade commercial properties was specifically addressed by Respondent’s appraiser in the report on page 44.

⁶¹ R-1, 44-51.

⁶² Vol 3, 631-632.

⁶³ Petitioner’s concerns over Respondent’s CoStar data in the appraisal report without Respondent’s appraiser providing his workfile during cross-examination is without merit. As both appraisers relied on CoStar data, Respondent’s illustrative CoStar analytics is more convincing than Petitioner’s limited narration and workfile recollections.

similar to Respondent's expenses of \$2.33/SF or \$111,130. However, upon closer review, Respondent's expense analysis has greater detail.⁶⁴ Respondent's "Operating Expense Discussion"⁶⁵ analyzed specific expense entries compared to Petitioner's limited expense narration.⁶⁶ Petitioner's appraisal report did not include the subject's actual expenses. Petitioner merely forecasted expenses.⁶⁷ Nonetheless, the parties' expense indications bracket the Tribunal's expense conclusion. Therefore, a reasoned and reconciled determination of operating expenses for the subject is \$2.30/SF which is then multiplied by 48,661 SF to arrive at expenses of \$111,920.

Fifth, the operating expenses of \$111,920 are then deducted from the effective gross income of \$356,199. The result is the net operating income (NOI) for the subject property calculated at \$244,279.

Sixth, as articulated by the appraisers, a capitalization rate analysis parallels the level of risk associated with the subject property. Petitioner's capitalization analysis included the survey method⁶⁸ which relied on CoStar data of 211 shopping centers between 5,000 and 40,000 square feet that have sold in the Detroit market from 2014 to 2019.⁶⁹ Next, Petitioner utilized the "built-up" method which ". . . represents the combination of a safe, or risk-free, rate and rates that reflect risks inherent in nonliquidity, management, and other considerations."⁷⁰ Petitioner referenced investors

⁶⁴ Petitioner's concerns over Respondent's confidential expense comparable data are unpersuasive. Respondent's testimony coupled with the narration in its appraisal report shows greater expense detail and consideration than Petitioner's expense analysis. (Vol 2, 396-397).

⁶⁵ R-1, 72-74.

⁶⁶ P-1, 125.

⁶⁷ Vol 2, 370-371.

⁶⁸ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 15th ed, 2020), pp 465-466.

⁶⁹ P-1, 126.

⁷⁰ Appraisal Institute, *The Dictionary of Real Estate* (Chicago: 6th ed, 2015), p 27.

in commercial properties in southeast Michigan in terms of mortgage components.

Lastly, Petitioner developed the market extracted (capitalization comparables) method⁷¹ by analyzing seven shopping center sales in SE Michigan.⁷² Petitioner's indication of an overall "loaded" capitalization rate is 14.32%. However, Petitioner did not include underlying data for the capitalization rate analysis in his report.⁷³ Petitioner relied on past discussions with brokers over the last 5 years.

Respondent's capitalization analysis started with the market extracted capitalization rates from shopping center sales in southeast Michigan from 2012 to 2019. The sales were illustrated in a graph depicting a scatter diagram.⁷⁴ Next, Respondent analyzed published surveys while distinguishing between retail property categories on an institutional grade and non-institutional grade basis. Respondent's indication of an overall "loaded" capitalization rate is 12.20%.

Each appraiser's capitalization methods were considered. The parties' common reference to the analysis of surveys for a capitalization rate is noteworthy. Petitioner's CoStar survey was presented in a singular narrative paragraph. On the other hand, Respondent's PwC Investor Survey analysis included the publisher's premise, retail property categories, and quarterly timeframes for institutional and non-institutional grade rates. Petitioner's capitalization rate of 14.32% and Respondent's capitalization rate of 12.20% bracket a supported conclusion. As analyzed by both appraisers, the capitalization rate takes into account the level of risk associated with the subject

⁷¹ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 15th ed, 2020), pp 460-462.

⁷² As challenged by Respondent, Petitioner's capitalization comparable retail centers are older sales from 2010 to 2016.

⁷³ Vol 2, 399.

⁷⁴ As challenged by Petitioner, Respondent's graph did not illustrate specific retail shopping center sales.

property. Therefore, a reasoned and reconciled determination places more weight on Respondent's "loaded" capitalization rate (including the relevant tax percentage) at 13%.

In succession, the indication of \$244,279 NOI is divided by the capitalization rate of 13% which results in an independent determination of stabilized fee simple TCV of \$1,879,069. The remaining considerations are for the subject's vacancy absorption and curable deferred maintenance. Respondent's analysis of the non-stabilized occupancy for the subject property is compelling. The rental opportunity loss, tenant improvements and leasing commissions were broken down through four quarters. This analysis began with Respondent's market rent of \$10/SF for the subject's vacant space.⁷⁵ Further, the explanation for each specific element is reasonable and logical. Respondent's vacant space absorption deduction of \$460,000 is applied to the stabilized TCV.

Lastly, Petitioner's analysis of deferred maintenance to the subject property as of December 31, 2017, is persuasive. Given the parties' array of photographic evidence, the acknowledgement of the prior owner's passing, the reference to the capital starved nature of the property, and the interim management of the subject property, a deduction for deferred maintenance is supported. The deduction of \$271,382 is applied to the stabilized TCV.

Deductions of \$460,000 (vacant space) and \$271,382 (deferred maintenance) are applied to the stabilized fee simple TCV of \$1,879,069. The final independent

⁷⁵ Respondent's treatment of the subject's vacant space is consistent with the bifurcated analysis of occupied and vacant market \$/SF rent.

determination of market value for the subject property is \$1,147,687 which is allocated to each identified subject parcel.

SALE OF THE SUBJECT PROPERTY

The Tribunal has reviewed and considered evidence regarding the sales history for the subject property. As a valuation matter, conflicting information between the parties and their appraisers does not amount to reliability or credibility. For example, in testimony, Jason Curis corrected his appraiser's disclosure of the purchase amounts involving the subject property through the estate and subsequent deed in lieu of foreclosure. Next, Petitioner's appraiser admitted that he did not verify the conveyances between Petitioner's commonly controlled entities; Treadwell did not rely on these transactions.⁷⁶ The various documents for the subject's conveyances (and monetary amounts) between parties and entities is contradictory.⁷⁷ It is understandable that Petitioner's appraiser gave no weight to this information. Incongruities and challenges over the actual sale price for the subject (with and without the acquisition of the underlying mortgage notes) signifies alleged transactions that are not arm's length or grounded in the elements of *market value*.⁷⁸ Therefore, in the context of valuation practice and theory, the subject's sales history is given no weight or credibility for the 2018 and 2019 tax years.

⁷⁶ Vol 2, 248.

⁷⁷ One of the affiliated companies purchased the debt in early 2018. When the debt was not paid, foreclosure commenced, and the owner gave a deed in lieu of foreclosure. For reasons not entirely explained by Petitioner, NOSAJ is set up to be a holding company for properties that they acquire through foreclosure. The subject's TV remains capped until either 1) NOSAJ sells the property or 2) one year after the redemption period expires if there is one. However, for the purposes of the tax years at issue before the Tribunal, neither has occurred.

⁷⁸ The Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago, 6th ed, 2015), pp 141-142.

Petitioner is correct that the 2019 TV should not have uncapped. Its 2018 purchase of the loan is not a transfer of ownership interests because it is not “substantially equal to the value of the fee interest.”⁷⁹ The 2018 deed in lieu of foreclosure is also not a transfer of ownership, because MCL 211.27a(7)(e) says that a “deed or conveyance in lieu of a foreclosure or forfeiture, until the mortgagee or land contract vendor subsequently transfers the property” is not a transfer. As for the subsequent transfer from Commercial Asset Finance LLC to NOSAJ LLC, there is sufficient testimony that the entities are commonly controlled under MCL 211.7(m), the subject transfer therefore is not a transfer for uncapping purposes. Further, this transaction did not occur until January 2019, and thus would not uncap the property for 2019.

Respondent does not really dispute this, other than to say that Petitioner did not raise the argument until the hearing. Although Petitioner says they raised it in their motion to amend to add 2019, that motion does not explicitly say that they are contesting the uncapping. Ultimately, this is irrelevant, because the Tribunal has a duty to ensure that TV complies with the law.⁸⁰

PETITIONER’S MOTION TO STRIKE APPRAISER’S TESTIMONY

(MRE 702)

At the conclusion of Respondent’s case-in-chief, Petitioner motioned to strike Respondent’s appraiser’s testimony.⁸¹ Specifically, Petitioner contends Widmer’s

⁷⁹ MCL 211.27a(6).

⁸⁰ *Michinga Properties, LLC v Meridian Twp*, 491 Mich 518, 543–544 (2012)

⁸¹ Vol 5, 818-819.

testimony under MRE 702 should be stricken because Widmer was unable to cite any authority for the methodology for bifurcating the subject's occupied rent and vacant rent. Petitioner contends Widmer's actions in separating these rents into "two buckets" are unsupported.

Petitioner specifically argues that the tests under MRE 702 were not met as 1) Widmer's testimony was not based on sufficient facts or data, 2) Widmer's testimony was not the product of reliable principles and methods, and 3) Widmer did not apply principles and methods reliably to the facts of the case.

In response to the motion, Respondent contends Widmer's theories and conclusions were supported within his appraisal report. Widmer's lack of recall for certain elements of his workfile is typical of most appraisers that testify before the Tribunal. Widmer was qualified as an expert in this hearing. Petitioner's motion is without merit.⁸²

The Tribunal has considered the motion and response and finds that the motion is without merit. Both parties' appraisers relied on their respective workfiles which were not subpoenaed for the hearing. The compilation and reference to a workfile is reasonable given the reality that an appraisal report would be thousands of pages without a backup file. Each appraiser's narrative report contains a level of specific and summary information. Likewise, both appraisers were asked to recall elements from their workfiles that were not found in the appraisal reports. The lack of recall for specific items within a workfile was admitted by both appraisers in the midst of testimony. An appraiser's credibility is weighed against his/her opinions, analyses, and conclusions.

⁸² Vol 5, 820.

Both appraisers were qualified as experts in real estate valuation for this hearing. Both appraisers provided testimony based on sufficient facts and data. The appraisers' testimony was the product of cited authoritative valuation treaties. Both appraisers' applied principles and methods (i.e., income capitalization rates) to facts of this case. Respondent's appraiser can no more be discredited for not having his workfile than can Petitioner's appraiser.⁸³ As a result, Petitioner's Motion must be denied.

RESPONDENT'S MOTION FOR DIRECTED VERDICT

During the hearing, Respondent made a motion for directed verdict. The hearing was, however, a non-jury trial and "[a]bsent a jury, there is nobody for the [Tribunal] to direct and no one who will be rendering a verdict" other than the Presiding Tribunal Judge. Rather, Respondent should have requested "judgment as a matter of law," which typically challenges the legal sufficiency of the evidence presented.⁸⁴ In that regard, the evidence submitted by both parties was, as discussed above, legally sufficient for purposes of rendering the instant decision. As a result, Respondent's Motion must be denied.

Therefore,

IT IS ORDERED that Petitioner's Motion to Strike is DENIED.

IT IS FURTHER ORDERED that Respondent's Motion for Directed Verdict is DENIED.

⁸³ On cross examination, Respondent's counsel requested that Treadwell bring specific documentation from his workfile for the 2nd day of the hearing. In fact, Treadwell was not asked to bring in his total workfile for his appraisal report for the 2nd day of his cross-examination.

⁸⁴ See TTR 215 and MCR 2.610. See also Fed. R. Civ. Proc. 50.

JUDGMENT

IT IS FURTHER 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 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, 2013, through June 30, 2016, at the rate of 4.25%, (ii) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (iii) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (iv) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (v) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (vi) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (vii) after

December 31, 2018 through June 30, 2019, at the rate of 5.9%, (viii) after June 30, 2019 through December 31, 2019, at the rate of 6.39%, (ix) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, (x) after June 30 2020, through December 31, 2020, at the rate of 5.63%, (xi) after December 31, 2020, through December 31, 2021, at the rate of 4.25%.

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

APPEAL RIGHTS

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

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.⁸⁵ 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.⁸⁶ 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.⁸⁷ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.⁸⁸ 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

⁸⁵ See TTR 261 and 257.

⁸⁶ See TTR 217 and 267.

⁸⁷ See TTR 261 and 225.

⁸⁸ See TTR 261 and 257.

more than 21 days after the entry of the final decision, it is an “appeal by leave.”⁸⁹ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.⁹⁰ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.⁹¹

By 

Entered: November 30, 2021

⁸⁹ See MCL 205.753 and MCR 7.204.

⁹⁰ See TTR 213.

⁹¹ See TTR 217 and 267.