IRIS LLC,
Petitioner,

v

City of Royal Oak,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 18-001436

Presiding Judge
Christine Schauer

ORDER DENYING RESPONDENT'S REQUEST FOR COSTS

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, IRIS LLC, appeals ad valorem property tax assessments levied by Respondent, City of Royal Oak, against parcel number 72-25-14-101-040 for the 2018 and 2019 tax years. Brian E. Etzel, Attorney, represented Petitioner, and Seth A. O'Loughlin and Laura Hallahan, Attorneys, represented Respondent.

A hearing on this matter was held over a period of six days beginning October 26, 2021, and concluding December 2, 2021. Petitioner's witnesses were Leonard Nadolski, Daniel LeClair, and Daniel Tomlinson. Respondent's witnesses were John Widmer and Holly Donoghue.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash value (TCV), state equalized value (SEV), and taxable value (TV) of the subject property for the 2018 and 2019 tax years are as follows:

Parcel Number: 72-25-14-101-040

Year	TCV	SEV	TV
2018	$4,600,000	$2,300,000	$2,033,220

2019	$4,761,000	$2,380,500	$2,082,010

PETITIONER'S CONTENTIONS

Petitioner contends that the subject property has a 2018 TCV of $2.8 million and a 2019 TCV of $2.9 million as evidenced by its valuation disclosure. Petitioner contends that the subject property is over-valued by Respondent because it suffers from deferred maintenance, including the need for a new roof and new parking lot, which would in turn require the installation of an underground storm water detention system, and functional obsolescence because of the irregular shape of the subject property and that the Matthews-Hargreaves Chevrolet dealership is composed of four non-contiguous parcels, including the subject, that are separated by roads. Further, Petitioner claims that the price contained in an option to buy clause in the existing lease between Petitioner and Matthews-Hargreaves Chevrolet constitutes an arm's-length-transaction that should be taken into consideration when determining the TCV of the subject property.

PETITIONER'S ADMITTED EXHIBITS

P-1 Petitioner's Valuation Disclosure

P-3 Work File of Respondent's Appraiser, John Widmer

P-6 Respondent's Valuation Disclosure for MOAHR Docket No. 16-003127

P-17 Phase II Environmental Assessment

P-18 Real Estate Lease/Amendments/Renew/Option – Matthew Hargreaves Chevrolet

PETITIONER'S WITNESSES

Leonard Nadolski

Mr. Nadolski, a fact witness, testified as an owner and the Vice President of Matthew Hargreaves Chevrolet, occupant, and lessee of the subject property. Mr. Nadolski testified that Matthew-Hargreaves Chevrolet is part of a conglomerate group of seven car dealerships known as Champion Auto Group, and that he is president of the other six dealerships. Mr. Nadolski testified regarding the acquisition and operation of car dealerships, and to specific characteristics of Matthew-Hargreaves Chevrolet and the subject property. Mr. Nadolski also testified regarding the terms of the lease agreement with purchase option between Matthew-Hargreaves Chevrolet and Petitioner (IRIS LLC).

Daniel LeClair

Mr. LeClair, a fact witness, is president of GreenTech Engineering, a civil engineering and land surveying firm. Mr. LeClair testified regarding the process undertaken that resulted in GreenTech Engineering's 2016 preliminary estimate for storm water detention at the subject property.

Daniel Tomlinson

Mr. Tomlinson was admitted as an expert in real estate appraisal and testified to the process he followed to conduct the appraisal and his conclusions contained in the appraisal of the subject property he prepared for this case, which was entered into evidence as Petitioner's P-1.

RESPONDENT'S CONTENTIONS

Respondent contends that the subject property has a 2018 TCV of $4.91 million and a 2019 TCV of $5.08 million as evidenced by its valuation disclosure. Respondent contends that only the subject property in this case should be considered and valued

and not all four parcels that make up the Matthews-Hargreaves Chevrolet dealership. Further, Respondent contends that no deferred maintenance nor functional obsolescence is present at the subject property on the dates of valuation in this case and that the option price contained in the lease between Petitioner and Matthews-Hargreaves Chevrolet is not an arm's-length-transaction that should be considered when determining the TCV of the subject property.

RESPONDENT'S ADMITTED EXHIBITS

R-1 Respondent's Valuation Disclosure

R-4 Royal Oak Ordinance Chapter 644

R-6 Work File of Petitioner's Appraiser, Daniel Tomlinson

R-14 Rebuttal – Tomlinson Draft Appraisal of subject property as of April 5, 2017, for Champion Automotive Group

RESPONDENT'S WITNESSES

John Widmer

Mr. Widmer was admitted as an expert in real estate appraisal and testified to the process he followed to conduct the appraisal and his conclusions contained in the appraisal of the subject property he prepared for this case, which was entered into evidence as Respondent's R-1.

Holly Donoghue

Ms. Donoghue is the City Engineer for the City of Royal Oak and was admitted as an expert as it pertains to the application of the Royal Oak Stormwater Detention Ordinance. Ms. Donoghue testified that only total removal of the asphalt down to the stone base and replacement of the paved parking lot at the subject would trigger the Stormwater Detention ordinance but that milling off two inches of old asphalt and then

capping the remaining asphalt base with two inches of new asphalt would not trigger the ordinance. Ms. Donoghue further testified that she has not been asked to review the applicability of the Stormwater Detention ordinance for the subject property.

FINDINGS OF FACT

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.

1. The subject property is located at 2000 E. 12 Mile Road in Royal Oak, Michigan.
2. The subject property is a 5.29-acre irregularly shaped parcel improved with a building that is used as an automobile dealership with main floor space of 42,813 square feet and a mezzanine of 7,275 square feet; the parcel also contains an 800-square-foot outbuilding and 484 paved parking spaces[1].
3. The subject property is leased to Matthews-Hargreaves Chevrolet Co. by IRIS LLC (Petitioner) pursuant to a Real Estate Lease executed March 1, 2001, an Extension of Lease, executed September 11, 2012, and a Renewal and Option to Purchase Agreement executed on October 10, 2017.[2]
    a. Under the terms of the lease, Matthews-Hargreaves Chevrolet dealership leases four parcels from Petitioner, including the subject property, to accommodate the operation of its automobile dealership business.[3]
    b. Three of the parcels leased by Matthews-Hargreaves Chevrolet are located in Madison Heights across the street from the subject and are not under appeal in the instant case.[4]
    c. The original lease was signed on March 1, 2000, by Iris B. Allen on behalf of IRIS LLC (Lessor) and W. Robert Allen on behalf of Matthews-Hargreaves Chevrolet (Lessee).[5]
    d. The Extension of Lease executed on September 11, 2012, was signed by James H. LoPrete as IRIS LLC Trustee (Lessor) and also by James H. LoPrete as Matthews-Hargreaves Chevrolet Vice President (Lessee).[6]

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[1] See Petitioner's P-1, Exhibit E, Parcel Number 72-25-14-101-040 (pdf at 124-126).
[2] Petitioner's Exhibit P-18, at 26-39.
[3] See P-1, at 9: The four parcels included in the lease and option are parcel number 72-25-14-101-040 in Royal Oak (subject property) and Madison Heights parcel numbers 44-25-11-376-026, 44-25-11-376-028, and 44-25-11-376-029.
[4] Id.
[5] P-18, at 4-12.
[6] Id. at 22-25.

e. The Renewal and Option to Purchase Agreement executed on October 10, 2017, was signed by James H. LoPrete as Trustee of IRIS LLC (Lessor) and Leonard Nadolski as Vice President of Matthews-Hargreaves Chevrolet Co. (Lessee).[7]
f. The option purchase price of $3,000,000 stated in the Renewal and Option to Purchase Agreement is for four leased parcels, including the subject property.[8]
g. The monthly rental rate at the time of execution of the Renewal and Option to Purchase Agreement was $30,000 to be adjusted for the applicable Consumer Price Index (CPI) for the renewal term commencing January 1, 2019.[9]

4. The subject property is zoned as General Industrial, and the automobile dealership use is permitted subject to Special Land Use approval.
5. Petitioner's appraisal described the site appraised as the combination of five separate parcels consisting of the subject, or "main parcel",[10] plus three others, and referred to collectively as the "dealership parcel",[11] and a fifth parcel characterized by Petitioner's appraiser as "excess vacant land"[12] which is not included in the "dealership parcel".
6. Petitioner concluded the highest and best use of the "dealership parcel" as improved for continued use with the existing improvements as an automobile dealership.[13]
7. Petitioner's appraisal considered all three approaches to value but developed only the sales comparison and cost approaches for the entire car dealership consisting of four parcels, three of which are leased by Petitioner to Matthews Hargreaves Chevrolet, including the subject, and a parcel of 0.72 acres adjacent to the subject property and owned by 2015 Bellaire LLC.[14]
8. Petitioner's sales approach concluded a TCV for the "Automobile Dealership"[15] of $3,050,000 as of December 31, 2017, and a TCV of $3,140,000 as of December 31, 2018, using seven comparable sales.
9. Petitioner's cost approach concluded a TCV for the "Automobile Dealership"[16] of $3,040,000 as of December 31, 2017, for the 2018 tax year, and a TCV of $3,090,000 as of December 31, 2018, for the 2019 tax year.
10. Petitioner's cost approach applied 92.5% depreciation to the building replacement cost for the 2018 tax and 95% for the 2019 tax year.
11. Petitioner's reconciliation and final conclusion of TCV for the "Automobile Dealership" was $3,050,000 for the 2018 tax year. Petitioner's appraiser extracted the TCV for the subject property by subtracting the land values of the

[7] Id. at 26-39.
[8] Id. at 26–29.
[9] Id. at 22.
[10] P-1, at 35.
[11] Id.
[12] Id.
[13] Id., at 48.
[14] Id., and P-1, Exhibit E, Parcel Number 72-25-14-101-031 (pdf at 127-128).
[15] P-1, at 72.
[16] P-1, at 101.

other three parcels[17] not under appeal in the instant hearing to reach a 2018 TCV for the subject property of $2,800,000.[18]

12. Petitioner's reconciliation and final conclusion of TCV for the "Automobile Dealership" was $3,140,000 for the 2019 tax year. Petitioner's appraiser extracted the TCV for the subject property by subtracting the land values of the other three parcels[19] not under appeal in the instant hearing to reach a 2018 TCV for the subject property of $2,900,000.[20]
13. Respondent's appraisal developed the sales comparison and cost approaches but did not apply the income approach to conclude a 2018 TCV of $4,910,000, and a 2019 TCV of $5,080,000, weighted fully on its sales comparison approach.[21]
14. Respondent's sales approach for the 2018 tax year, concluded a December 31, 2017 TCV of $4,910,000 based on eight comparable sale properties.
15. Respondent's sales approach for the 2019 tax year, concluded a December 31, 2018 TCV of $5,080,000 by applying a market adjustment of +3.5% to the eight comparable sales used for the 2018 tax year as detailed above.
16. Respondent's cost approach concluded a TCV for the subject property of $4,700,000 as of December 31, 2017, for the 2018 tax year, and a TCV of $4,770,000 as of December 31, 2018, for the 2019 tax year.

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 TCV.[22]

> 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.[23]

The Michigan Legislature has defined TCV to mean:

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[17] See P-1 at 102-103: The land value of the following parcel numbers was subtracted from the Dealership Value to reach the TCV for the subject: 72-25-14-101-031, 44,25-11-376-028, and 44-15-11-376-026.
[18] Id.
[19] Id.
[20] Id. at 103-104.
[21] See Respondent's Exhibit R-1 at 84.
[22] See MCL 211.27a.
[23] Const 1963, art 9, sec 3.

> 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.[24]

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value' . . . are synonymous."[25]

"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."[26] The Tribunal is not bound to accept either of the parties' theories of valuation.[27] "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."[28] 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."[29]

A proceeding before the Tax Tribunal is original, independent, and de novo.[30] The Tribunal's factual findings must be supported "by competent, material, and substantial evidence."[31] "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence."[32]

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[24] MCL 211.27(1).
[25] *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).
[26] *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).
[27] *Teledyne Continental Motors v Muskegon Twp,* 145 Mich App 749, 754; 378 NW2d 590 (1985).
[28] *Meadowlanes Ltd Dividend Housing Ass'n v Holland,* 437 Mich 473, 485; 473 NW2d 636 (1991).
[29] *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).
[30] MCL 205.735a(2).
[31] *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).
[32] *Jones & Laughlin Steel Corp, supra* at 352-353.

"The petitioner has the burden of proof in establishing the true cash value of the property."[33] "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."[34] 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."[35]

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.[36] "The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading."[37] 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 TCV of the property, utilizing an approach that provides the most accurate valuation under the circumstances.[38] Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.[39]

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[33] MCL 205.737(3).
[34] *Jones & Laughlin Steel Corp, supra* at 354-355.
[35] MCL 205.737(3).
[36] *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).
[37] *Jones & Laughlin Steel Corp, supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).
[38] *Antisdale, supra* at 277.
[39] See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

Here, Petitioner is appealing the 2018 and 2019 tax year assessments of a single parcel within Respondent's taxing jurisdiction. The use of the subject property on the dates of valuation was as the main and largest parcel occupied by the Matthews-Hargreaves Chevrolet Dealership (the Dealership). The subject property contains a large building that operates as the primary sales and service facility of the Dealership. The subject also contains approximately 484 parking spaces in paved areas. As set forth in the Findings of Fact section above, Petitioner's appraiser, Mr. Tomlinson, engaged in a complicated process to first appraise the Dealership in its entirety, including parcels that are not under appeal here and are not even in Respondent's jurisdiction, and then extracting the tax roll land values of the other parcels to reach his conclusion of the TCV of the subject property. Further, it became clear to the Tribunal that the parcels included for certain purposes within Petitioner's appraisal were inconsistent with those used for other purposes. Specifically, Mr. Tomlinson first lists six parcels in his Introduction section,[40] but then in the Property Description section, he described the property he appraised (dealership parcel) as consisting of four parcels which included the subject, two parcels across the street in the City of Madison Heights used for parking, and a fourth parcel, adjacent to the subject, that was a former bank and is not owned by Petitioner, referred to in Mr. Tomlinson's report as, "31,363 SF, or 0.72 acres (parking parcel, south of 12 Mile)" .[41] This same parcel is referred to later in Mr. Tomlinson's appraisal in his allocation of value section as, "[Parcel ID. No.] 72-25-14-101-031 – Royal Oak – Parking"[42]. However, in the Premise of the Appraisal section

[40] P-1, at 1.
[41] P-1, at 35
[42] Id. at 102 and 103.

under the *Ownership and Sales History of the Subject Property* heading, Mr. Tomlinson wrote, "As of October 10, 2017, an option to purchase the Subject property and three other tax parcels was agreed to between Matthew Hargreaves Chevrolet Company and IRIS L.L.C. for $3,000,000. … Also, please note one tax parcel is not part of the Automobile Dealership."[43] Then Mr. Tomlinson presents an allocation of the $3 million option purchase price to conclude the option purchase price for just the subject property is $2,800,000 which he claims reflects the market value of the subject.[44]

During his testimony, Mr. Tomlinson stated, "I define that the subject property was part of what I call the automobile dealership, and that was consisting of four parcels: two in Madison Heights and two in Royal Oak."[45] On further direct questioning, Mr. Tomlinson testified as follows:

> Q. Okay. And just to be clear, you were only -- this appraisal report was only of the main dealership parcel which ends in 040?
> A. Correct. My -- my final value estimates is to reflect the subject property which corresponds with parcel ending in 040 in the City of Royal Oak.[46]

Later during direct examination, Mr. Tomlinson testified,

> I determined that the subject property is part of an automobile dealership. It's one parcels [sic] of four: two in Madison Height[s], the subject in Royal Oak, and then I would describe it as the former bank branch directly west of the -- of the subject.[47]

and testified,

> You know, when you go and appraise a property, you have to also consider its use, and its use in connection with other properties. Probably the excellent example of that is a -- is a golf course. You have a -- someone is just appealing three holes on a golf course, you wouldn't just appraise 3 holes; you would appraise all 18 holes, be it whatever number

[43] P-1, at 5.
[44] P-1, at 9.
[45] Tr., Day 1, at 207.
[46] Id.
[47] Id, at 214.

> of parcels those 18 holes consist of. So here when I went out there, I recognized that the car dealership, as most car dealerships, where parking is very important, not only the subject parcel under appeal, but he was using the bank branch that he bought in 2017 for parking. I believe his testimony is he [Mr. Nadolski] uses it for overflow parking. But it's still very -- an integral part of the dealership operation. And then he also parks cars on the north side of 12 Mile in Madison Heights where he parks cars, even though the parking lot consisting of two Madison Heights parcels is divided by a right-of-way.[48]

The subject property is the main and largest parcel among those making up the Dealership and contains the building that houses the Dealership operations, specifically sales and service of vehicles, and 484 parking spaces in paved areas. Mr. Tomlinson's reasoning that appraising the subject property without also including the other Dealership parcels would be like appraising three holes of an 18-hole golf course is a farfetched comparison. First, an automobile dealership shares little in common with a golf course, and second, if one were to attempt to compare the subject property to golf-course property, it would require a comparison of a far more significant portion of said golf course than a property containing mere three holes of an 18-hole course. The Tribunal finds it is not persuaded that including additional parcels was necessary to reliably appraise the subject property and that Mr. Tomlinson took less than a straight-forward approach to appraising the subject property which has unduly complicated his appraisal and this case. Nonetheless, the Tribunal has reviewed Petitioner's appraisal and finds the following troublesome issues with Petitioner's appraisal caused by including additional parcels rather than simply focusing on the subject property:

1. The appraisal assignment being addressed by Mr. Tomlinson was unclear. The instant case is the appeal of one parcel, but multiple parcels were included in Petitioner's appraisal.[49]

[48] Id. at 217-218.
[49] P-1, at 1, 4, and 35.

2. Most aspects of the property description contained in Petitioner's appraisal referred to multiple parcels including the site description,[50] improvements description,[51] real property and tax assessments,[52] and zoning.[53]

3. Mr. Tomlinson's highest and best use analysis for *as if vacant* was based on multiple properties and not just the subject property. In the *Legally Permissible* section, Mr. Tomlinson states, "The Subject Property is zoned industrial by Royal Oak and Madison Heights,"[54] which refers to more than the subject parcel as Madison Heights zoning ordinances are not applicable to the subject property which is in Royal Oak. Further, in the *Physically Possible* section, Mr. Tomlinson states, "We consider the main parcel and the three parking parcels as one larger parcel."[55]

4. Mr. Tomlinson's highest and best use analysis for *as improved* was based on multiple properties and not just the subject property. In the *Legally Permissible* section, Mr. Tomlinson states, "The sites are zoned industrial. This zoning does allow the existing automobile dealership with parking under a special land use permit under Royal Oak zoning and as special approval under Madison Heights zoning classifications."[56] This statement indicates multiple properties in different cities.

5. Mr. Tomlinson's sales approach included adjustments based on a 7.58 to one land-to-building ratio. The subject property is only 5.29 acres; therefore, the acreage of other parcels was included for this comparison. Further, in improved sale five, which was used in both the 2018 and 2019 comparable sales approaches, a land-to-building ratio adjustment of 10% was made for 2018 but only 5% for 2019. At 4.49 acres, improved sale five is actually the closest in size to the subject and likely should not have been adjusted for this factor, whereas, other of the improved sales including sales four and six should have received a land-to-building ratio adjustment when compared to the subject property.

Based on the above list of items, the Tribunal finds that either Mr. Tomlinson was given the wrong appraisal problem by Petitioner, or alternatively, he determined that he could not appraise the subject property on its own and, therefore, included other parcels

[50] P-1, at 35.
[51] P-1, at 37, which states, "Land-to-Building Ratio: 7.58 to 1 (Not including Excess Land)", and at 39, which states, "The main parcel does not contain any fencing or boundary dividers. The parking parcels are surrounded by a wood fence. Surplus parcel has no fencing."
[52] Id. at 40-41, containing charts with multiple parcels referred to as follows: "Information related to the Subject Property's historical SEV, Capped Value, and Taxable Value is detailed in the following charts."
[53] Id. at 42-43.
[54] Id. at 47.
[55] Id.
[56] P-1, at 48.

that are a part of the Matthews-Hargreaves Chevrolet Dealership. While Mr. Tomlinson claims that he appraised only the subject property for the instant case, the Tribunal is not persuaded that either of Mr. Tomlinson's approaches to value are reliable given the fact that in all aspects of his appraisal, he utilized multiple parcels and then simply deducted the land values on the tax rolls of the other parcels during the reconciliation process to reach the TCV conclusion for the subject. With the highest and best use analysis pertaining to multiple properties as well as his cost approach and sales approach, the Tribunal finds that Petitioner's appraisal is unreliable for valuing the subject property as a single parcel. As such, Petitioner's appraisal is given no weight in the Tribunal's determination of the TCV of the subject for the years at issue here, except to the extent that Petitioner's argument that deferred maintenance was present at the subject during the years at issue and was not considered by Respondent in its appraisal, which is further examined below.

One of the main arguments presented by Petitioner in support of its valuation of the subject property and in criticism of Respondent's valuation was the question of whether there were deferred maintenance items present at the subject property that should be accounted for in the valuation. Specifically, Petitioner claims that deferred maintenance included: 1.) the entire replacement of asphalt surface improvements at the subject property on each of the valuation dates which in turn would require the installation of a storm water detention system as required by local ordinance, and 2.) the replacement of the roof of the building as of both dates of valuation. On direct examination, Mr. Nadolski testified, " … because the roof is leaking. We've been patching it. It's a 25-year roof, normally in a – it's 30 years old. It is done. It is obsolete

and it needs to be repaired."[57] A roof replacement bid of $225,720 dated May 16, 2016, from City Sons Contracting Inc. was a contained in the exhibits attached to Petitioner's appraisal. However, no evidence other than Mr. Nadolski's testimony was provided to illustrate any issues with the roof that needed immediate attention, such as photos of the roof or interior areas being damaged due to leakage from the roof. In fact, as of the date of the hearing of the instant case, November and December 2021, the roof had not been replaced at the subject.

According to *The Dictionary of Real Estate Appraisal*, deferred maintenance is defined as:

> Items of wear and tear on a property that should be fixed now to protect the value or income-producing ability of the property, such as a broken window, a dead tree, a leak in the roof, or a faulty roof that must be completely replaced. These items are almost always curable.[58]

Further, in *The Appraisal of Real Estate*, deferred maintenance is a concept that is interchangeable with curable physical depreciation as stated in the following:

> Curable physical depreciation, also known as *deferred maintenance*, applies to items in need of immediate repair on the effective date of the appraisal. Some examples include broken windows, a broken or inoperable HVAC system, finished floor coverings in needs of immediate replacement, a leaking roof, and inoperable restrooms. For most properties, deferred maintenance involves relatively minor items that are 100% physically deteriorated (i.e. broken). The item must be replaced or repaired for the building to continue to function as it should and to be marketable to potential buyers.[59]

Therefore, the Tribunal finds that a full replacement of the roof does not constitute a deferred maintenance item as of the dates of valuation in this case as the definition of

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[57] Tr., Day 1, at 108.
[58] Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: Appraisal Institute, 7th ed, 2022), p 50.
[59] Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 15th ed, 2020), p 578.

deferred maintenance indicates a need for the item to be fixed “now” and the roof did not present such an immediate threat to the value of the property as Petitioner claims as Petitioner did not proceed to have it replaced in 2016 when the bid was received nor has it been replaced to date.

Regarding Petitioner’s claim that total replacement of the asphalt site improvements (parking lot) at the subject property is a deferred maintenance item, an asphalt replacement bid of $748,400 dated March 2, 2016, from Nagle Paving Company was a contained in the exhibits attached to Petitioner’s appraisal. Further, Petitioner argued that if the asphalt at the subject were completely removed and replaced as Petitioner claims is required, a storm water detention system would also have to be installed per City of Royal Oak Ordinance, Chapter 644. Stormwater Detention. In a letter dated February 12, 2016, to Champion Automotive Group from Daniel LeClair of GreenTech Engineering, a cost for such a system was estimated at $1.1 million for the subject property for an underground storm water detention system. While photographs of areas of pavement that were patched or partially replaced were provided and Petitioner spent a large amount of time arguing the need for an underground stormwater detention system, Petitioner did not proceed to have the asphalt parking lot of the subject property totally replaced in 2016 when the bid was received, nor has it been replaced to date. As such, the basic test for parking lot total replacement qualifying as a deferred maintenance item is not met as not doing so has not impeded the continued functioning of the subject property as an automobile dealership.

Petitioner argued that Respondent should have but failed to make condition adjustments in its sales comparison approach and should have applied a higher amount

of depreciation in its cost approach to account for these claimed deferred maintenance items. Petitioner claims that the building depreciation on December 31, 2018, was 92.5% and on December 31, 2019, was 95%. The Tribunal finds that as discussed above, Petitioner has not proved that the extent of curable physical depreciation claimed by Petitioner was present at the subject property on the dates of valuation in this case and, therefore, Respondent did not err in failing to address total roof replacement and/or total asphalt replacement costs in its appraisal.

Respondent's appraisal was of the subject property only and did not consider other parcels that are included in the Dealership. A highest and best use analysis of the subject property was conducted by Respondent which found that the highest and best use "as improved" is the current use of the subject as an auto dealership.[60] Although Petitioner used more than just the subject property, it too found, "The highest and best use of the Subject Property as improved is concluded to be for continued use of the existing improvements as an automobile dealership."[61] The Tribunal finds that "as improved" best meets the four criteria for highest and best use and that as such, Respondent's appraisal presents reliable evidence upon which to determine the TCV for the subject property for the 2018 and 2019 tax years.

Respondent's appraiser, Mr. Widmer, developed both a cost approach and a sales comparison approach but ultimately relied on the sales approach when concluding Respondent's final value contentions for the subject property.

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[60] See Respondent's Exhibit R-1, at 5, which further states: "The existing use was approved by the community and is consistent with the community zoning and is complimentary with adjacent uses. Likewise, a cost valuation has been implemented herein, the measure of underlying land value indicates that the building does contribute value, and demolition at this point in time is not viable.".
[61] P-1, at 48.

> Because cost and market value are usually more closely related when improvements are new, the cost approach is more important in estimating the market value of new or relatively new construction. The approach is especially persuasive when land value is well supported and the improvements are new or suffer only minor depreciation.[62]

The improvements on the subject property were constructed in 1989 and so are far from new. The estimation of physical depreciation in the form of deferred maintenance is the crux of Petitioner's most vehement argument in this case and the cost approach requires a subjective estimation of depreciation. Although, as reviewed above, Respondent's determination of the depreciation amount would not necessarily require inclusion of a replacement roof and parking lot, the Tribunal gives no weight to the Respondent's cost approach in the determination of the TCV of the subject property because it is far less reliable than the sales comparison approach. Further, as stated in *The Appraisal of Real Estate*,

> The sales comparison approach is applicable to most types of real property interests where there are sufficient recent, reliable transactions to indicate value patterns or trends in the market. For property types that are bought and sold regularly, the sales comparison approach often provides a credible indication of market value. When data is available, sales comparison can be the most straightforward and simple way to explain and support an opinion of market value.[63]

An adequate number of recent sales were available in the market as evidenced by the eight comparable sales used by Mr. Widmer. Therefore, the Tribunal finds that Respondent's sales approach is the only reliable evidence in this case upon which to determine the TCV of the subject property. Adjustments applied to the sales were reasonably supported and explained by the appraiser. Mr. Widmer then averaged the

[62] Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 15th ed, 2020), p 530.
[63] Id. at 353.

eight adjusted sales to arrive at a value conclusion. In his appraisal report, Mr. Widmer states, "Overall, the entire sampling of properties is considered to offer a reliable indication of value for the subject, and considering the subject's location and physical characteristics, a unit rate consistent with the average measure is considered most reasonable to apply herein."[64] However, this reconciliation of the sales based on a statistical indication of value rather than identifying the weight given each comparable is unpersuasive.

> In reconciling valuation indications in the sales comparison approach, the appraiser evaluates the number and magnitude of adjustments and the importance of the individual elements of the comparison in the market to judge the relative weight a particular comparable sale should have in the comparative analysis.[65]

The reconciliation of sales data is the opportunity to weigh strengths and weaknesses that are unattainable from quantitative methodologies. Valuation practice and theory provides a basis of comparative analysis above and beyond a simple average to arrive at a conclusion of value. In the Tribunal's review of the location and physical characteristics of the eight sales, or characteristics subject to cumulative adjustments, a range of gross cumulative adjustment of 8.4% to 24.7% and net cumulative adjustments of ±0.5% to ±21% are found. Sales three, five, seven, and eight had gross cumulative adjustment in excess of 18% while the other sales were all under 12%. When reviewing net cumulative adjustments, sales five and eight were adjusted more than ±10% while all others were adjusted at ±4.5% or less. Because they were

[64] P-1 at 69.
[65] *The Appraisal of Real Estate,* at 392.

among the highest in both the gross and net adjustment analysis, the Tribunal finds that Respondent's comparable sales five and eight are the least reliable.

> If a comparable transaction requires fewer adjustments than the other comparable transactions and the magnitude of adjustments is approximately the same, appraisers may give more weight to the value indications obtained from the transaction with the fewest adjustments. Similarly, the gross adjustment amount can be a significant factor in the reconciliation of various value indications. Even though the number of adjustments made to the sale prices of the comparable properties may be similar, the total gross adjustment as a percentage of each respective sale price might vary considerably….If the sales are similar otherwise, less accuracy may be attributable to the comparable property that required the larger adjustment as a percentage of the sale price.[66]

However, removing comparable properties five and eight does not change the TCV range for the subject bracketed by the eight adjusted sale prices at $96.25 to $137.40 per square foot ($4,199,291 to $5,994,624). However, two comparable sales stand out as having the least gross adjustment, both for overall and just for cumulative adjustment, sales one and two. While properties one and two were the oldest sales, they were each adjusted for market conditions accordingly. Further, these two sales had the lowest land-to-building ratio adjustments and sale two had the lowest location adjustment. Therefore, with most weight given to sales one and two, and less weight given to the remaining six comparable sales, the Tribunal finds that the TCV of the subject property as of December 31, 2017, is $4,600,000. After applying Respondent's market conditions adjustment of 3.5% per annum, which was supported by general market data,[67] the TCV as of December 31, 2018, is $4,761,000.

[66] Id., at 367.
[67] See R-1 at 65.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the 2018 and 2019 SEVs of the subject property as established by Respondent's Board of Review were more than 50% of its TCV. However, Petitioner has not proven that its contention of the TCV for the subject property is supported. The subject property's TCV, SEV, and TV for the tax year at issue are as stated in the Introduction section above.

Respondent requested costs and attorney's fees in its closing statement. In this regard, the Tribunal finds that it "may, upon motion or its own initiative, award costs in a proceeding . . . ."[68] The Michigan Court Rules and Administrative Procedures Act provide the Tribunal with some criteria in determining whether an award of costs is appropriate, but the Court of Appeals has held that costs are entirely within the Tribunal's discretion, and it is not limited to circumstances where the requesting party shows good cause or the action or defense was frivolous.[69] The Tribunal is nevertheless generally hesitant to award costs, and usually reserves such action for cases in which frivolity or other good cause exists.

"A claim is frivolous when (1) the party's primary purpose was to harass, embarrass, or injure the prevailing party, or (2) the party had no reasonable basis upon which to believe the underlying facts were true, or (3) the party's position was devoid of arguable legal merit."[70] "A court must determine whether a claim or defense is frivolous on the basis of the circumstances at the time it was asserted."[71] "[A] claim

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[68] TTR 209.
[69] See *Aberdeen of Brighton, LLC v Brighton*, unpublished per curiam opinion of the Court of Appeals, issued October 16, 2012 (Docket No. 301826), which noted that "The term 'may' is permissive and is indicative of discretion." *Id*. citing *In re Forfeiture of Bail Bond*, 276 Mich App 482, 492 (2007).
[70] *Cvengros v Farm Bureau Ins*, 216 Mich App 261, 266-267 (1996) citing MCL 600.2591(3)(a).
[71] *Meisner Law Group, PC v Weston Downs Condo Ass'n*, 321 Mich App 702, 732 (2017).

is devoid of arguable legal merit if it is not sufficiently grounded in law or fact, such as when it violates basic, longstanding, and unmistakably evident precedent."[72]

Given the specific facts and circumstances presented, the Tribunal is not persuaded that Petitioner's primary purpose was to harass, embarrass, or injure, or that they had no reasonable basis upon which to believe the underlying facts of the claim were true. The Tribunal also finds that Petitioner's claim was not interposed for any improper purpose, and it was sufficiently grounded in fact and warranted by existing law. As such, and in the absence of a showing of other good cause to justify the granting of Respondent's request, the Tribunal is not satisfied that costs are warranted in this appeal.

JUDGMENT

IT IS ORDERED that Respondent's Request for Costs is DENIED.

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

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent

[72] *Adamo Demolition Co v Dep't of Treasury*, 303 Mich App 356, 369 (2013) (quotation marks and citations omitted).

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%, and (xi) after December 31, 2020, through June 30, 2022, at the rate of 4.25%.

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

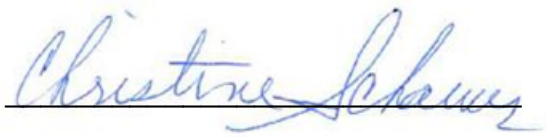
APPEAL RIGHTS

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 Tribunal with the required filing fee within 21 days from the date of entry of the final decision. 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. You are required to serve a copy of the motion 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. Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.

A claim of appeal must be filed with the Michigan Court of Appeals 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." You are required to file a copy of the claim of appeal with filing fee with the Tribunal in order to certify the record on appeal. The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.

By 

Entered: April 13, 2022
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PROOF OF SERVICE

I certify that a copy of the foregoing was sent on the entry date indicated above to the parties or their attorneys or authorized representatives, if any, utilizing either the mailing or email addresses on file, as provide by those parties, attorneys, or authorized representatives.

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By: Tribunal Clerk