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IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE COUNTY, FLORIDA

RICK SINGH, as Orange County Property Appraiser,

Plaintiff,

Lead Case No.: 2014-CA-004289-O
Consolidated Case No.: 2015-CA-004980-O

v.

DARDEN RESTAURANTS, INC., a Florida corporation, GMRI, INC., a Florida corporation, and MARSHALL STRANBURG, as Executive Director of the Florida Department of Revenue,

Defendants.

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FINAL JUDGMENT

THESE CONSOLIDATED ACTIONS were tried before the Court from May 23, 2016, to May 31, 2016, and the Court having heard the witnesses' testimony and reviewed the documentary evidence, having considered the parties' written and oral arguments and the legal authorities submitted by them, and being otherwise fully advised in the premises, hereby makes the following findings of fact and conclusions of law:

I. Background of the Consolidated Actions

1. Plaintiff, RICK SINGH, as Orange County Property Appraiser ("OCPA"), filed the two actions consolidated herein against Defendants, DARDEN RESTAURANTS, INC., and GMRI, INC. (collectively "Darden"), appealing two decisions of the Orange County Value Adjustment Board ("VAB") pursuant to section 194.036, Florida Statutes.[1] Those VAB decisions substantially reduced OCPA's 2013 and 2014 ad valorem valuation and assessment of the tangible

[1] OCPA also named Marshall Stranburg, the (former) Executive Director of the Florida Department of Revenue, as a nominal defendant herein. The Department did not participate in the trial.

personal property ("TPP") located within Darden's corporate headquarters, which Darden calls its "Restaurant Support Center" or "RSC."

2. The RSC is a three-story, 469,000 square foot facility situated on a 57-acre a campus in Orange County, Florida. In 2013 and 2014 the RSC housed over 1,000 employees providing support to Darden's restaurants, including Olive Garden, Longhorn Steakhouse, Capital Grille, Bahama Breeze, and Seasons 52.

3. Darden's TPP at issue in these consolidated actions (collectively "Darden's TPP" or "Subject TPP") can be generally categorized as follows:

a) The RSC's computers, computer network, and related equipment, which Darden uses to operate and manage its business and restaurants. Computer servers are stored in a "data center" adjacent to the RSC, and the RSC is equipped with standard business computer equipment such as desk tops, monitors, printers, and the like. Darden's restaurants are networked with the data center, such that each store can electronically share and relay data regarding sales, inventory, etc., to the RSC.

b) All of the furniture, fixtures, and equipment within the RSC. Without limitation, this category includes over 1100 employee work stations manufactured by "Knoll," primarily its "Autostrada" line, which have wood veneers and custom components. The evidence established that Darden's work stations are of very high quality. Some of the other assets in this category are discussed below.

c) Commercial-grade kitchen equipment in the RSC's cafeteria and test kitchens, the latter of which are modeled after the kitchens in Darden's restaurants.

d) Fitness equipment in an in-house gym for Darden's employees.

e) A solar power or photovoltaics system comprised of solar panels, cells, and related equipment.

4. Darden's 2013 Tangible Personal Property Tax Return submitted to OCPA lists the Subject TPP's "Original Installed Cost" as $55,859,498. For 2013, OCPA determined that the Subject TPP had a fair market value of $29,033,332. Darden challenged that valuation by filing a Petition with the VAB. Following a hearing, a special magistrate recommended a valuation of $20,503,172, which was the estimated value set forth in Darden's 2013 tax return. The VAB later adopted the Special Magistrate's 2013 recommended value, thereby reducing OCPA's 2013 valuation of Darden's TPP by $8,530,160 (*i.e.*, $29,033,332 - $20,503,172 = $8,530,160).

5. Darden's 2014 Tangible Personal Property Tax Return lists the Subject TPP's "Original Installed Cost" as $58,203,787. For 2014, OCPA determined that the Subject TPP had a fair market value of $27,424,505. Darden again challenged that valuation by filing a VAB Petition. At the hearing before the same special magistrate who heard the 2013 Petition, Darden proffered a valuation of $17,265,000, which was calculated and testified to by Lazaro Seijo ("Mr. Seijo") of Landmapp Valuation and Asset Services, Inc. ("Landmapp"). The special magistrate accepted Mr. Seijo's valuation and recommended that the Subject TPP's 2014 valuation be reduced to $17,265,000. The VAB later adopted the special magistrate's 2014 recommended value, thereby reducing OCPA's 2014 valuation of Darden's TPP by $10,159,505. (*i.e.*, $27,424,505 - $17,265,000 = $10,159,505).

6. Mr. Seijo did not provide, or testify to, the valuation proffered by Darden in the 2013 VAB proceedings. In or around July, 2015, Mr. Seijo prepared a retrospective appraisal valuing Darden's TPP at $18,804,000 for the 2013 tax year. The evidence established that: a) Mr. Seijo's 2013 valuation of Darden's TPP is based almost entirely on the same data he used for the 2014 valuation; and b) for the majority of the Subject TPP, Mr. Seijo simply applied a "time

adjustment" to his 2014 values derived from the same data. (*i.e.*, an adjustment based on the fact that most of Darden's TPP was a year newer in 2013 than in 2014).

7. OCPA filed the actions consolidated herein to appeal the VAB's $8,530,160 and $10,159,505 reductions of OCPA's fair-market valuations of Darden's TPP for the 2013 and 2014 tax years, respectively.

II. Legal Standards Governing the Fair Market Value Determination

8. TPP located in Florida is subject to ad valorem taxation, and, in that context, TPP is defined as "all goods, chattels, and other articles of value ... capable of manual possession and whose chief value is intrinsic to the article itself." § 192.001(11)(d), Fla. Stat. (2013). Article VII, Section 4, of the Florida Constitution (1968) ("Article VII, § 4") requires a "just valuation" of Darden's TPP for the purpose of assessing annual ad valorem taxes thereon. Those valuations must be made as of January 1st of the relevant tax year(s), in this case January 1, 2013, and January 1, 2014 (collectively the "Valuation Dates"). § 192.042(2), Fla. Stat. (2013).

9. In *Walter v. Schuler*, 176 So.2d 81, 86 (Fla. 1965), the Florida Supreme Court defined "just value" synonymously with "fair market value" and as "the amount a purchaser willing but not obliged to buy, would pay to one willing but not obliged to sell."

10. "The property appraiser's determination of assessment value is an exercise of administrative discretion within the officer's field of expertise." *Mazourek v. Wal-Mart Stores, Inc.*, 831 So.2d 85, 89 (Fla. 2002). Section 193.011, Florida Statutes ("§ 193.011"), guides that discretion by setting forth eight factors property appraisers must consider, but not necessarily use, when valuing a taxpayer's TPP. *E.g., id.* at 88-89. There are three recognized approaches to property valuation: cost, income, and market or sales-comparison.[2] *E.g.*, *Havill v. Scripps*

[2] OCPA and Darden agreed that the income approach is not appropriate for valuing the Subject TPP and, therefore, that approach is not relevant to these actions.

Howard Cable Co., 742 So.2d 210, 212-13 (Fla. 1998). "The particular method of valuation, and weight to be given to each factor [in § 193.011], is left to the discretion of the" property appraiser. *Valencia Center, Inc. v. Bystrom*, 543 So.2d 214, 216 (Fla. 1989).

11. OCPA's consolidated actions appealing the VAB's reductions of OCPA's fair-market valuation of Darden's TPP are *de novo* proceedings. § 194.036(3), Fla. Stat. (2013). As the Plaintiff and party initiating these actions, OCPA bears the burden of proof. *Id.*

III. The Parties' Proposed Fair Market Valuations and Valuation Methodologies

A. OCPA's Valuations and Valuation Methodology

12. OCPA's lead witness was Brett Thayer, a long-time employee of OCPA, who explained the methodology OCPA used to value Darden's TPP. Mr. Thayer also ultimately opined that OCPA's $29,033,332 and $27,424,505 valuations for 2013 and 2014, respectively, represented the Subject TPP's just or fair market value pursuant to Article VII, § 4.

13. OCPA valued Darden's TPP using a Mass Appraisal Cost Approach performed under the guidelines set forth in the *Standard Measures of Value: Tangible Personal Property* (the "*Standard Measures*") promulgated by the Florida Department of Revenue ("DOR"), which were admitted into evidence.

14. Section 195.032, Florida Statutes ("§ 195.032"), requires the DOR to promulgate the *Standard Measures* for use by county property appraisers and deems them to be "prima facie correct":

> In furtherance of the requirement set out in s. 195.002, the Department of Revenue shall establish and promulgate standard measures of value not inconsistent with those standards provided by law, *to be used by property appraisers in all counties*, including taxing districts, to aid and assist them in arriving at assessments of all property. The standard measures of value shall provide guidelines for the valuation of property and methods for property appraisers to employ in arriving at the just valuation of particular types of property consistent with ss. 193.011 and 193.461. *The standard measures of*

> *value shall assist the property appraiser in the valuation of property and be deemed prima facie correct*, but shall not be deemed to establish the just value of any property. However, the presumption of correctness accorded an assessment made by a property appraiser shall not be impugned merely because the standard measures of value do not establish the just value of any property.

§ 195.032, Fla. Stat. (2013)(emphasis supplied). The Introduction to the *Standard Measures* explains their purpose and objective of achieving accuracy and fairness in the mass appraisal of TPP for ad valorem tax purposes:

> These guidelines have been prepared by the Florida Department of Revenue's Property Tax Administration Program to help achieve equity in the mass appraisal of tangible personal property through uniform application of valuation guidelines. The Florida Constitution mandates that general law regulations be prescribed to secure a just valuation of all property for ad valorem taxation. This will ensure equity within and between all classes of property among the taxing jurisdictions in Florida.

15. In *Mazourek*, the Florida Supreme Court described the DOR-approved Mass Appraisal Cost Approach used by OCPA to value Darden's TPP:

> The "cost approach" considers the cost that a prudent purchaser would pay to acquire an equally desirable substitute on the open market. The cost approach simply values the original, reproduction or replacement cost of the property, less an allowance for depreciation.

Mazourek, 831 So.2d at 89 (quoting *Havill v. Scripps Howard Cable Co.*, 742 So.2d 210, 213 (Fla.1998)). *Mazourek* also explained that the cost approach is "especially well suited" for valuing assets like Darden's TPP. *Id.* at 90 (quoting International Association of Assessing Officers, *Property Assessment Valuation* 360 (2d ed.1996).

16. Mr. Thayer also testified to actions taken by OCPA to look to, and analyze, the market for signs of obsolescence and other factors that could affect the depreciation and valuation of TPP under OCPA's jurisdiction as set forth in the *Standard Measures*. For example, Mr. Thayer testified that OCPA: a) holds regular staff meetings to discuss and analyze facts and trends that OCPA's staff appraisers are seeing in the market and consider potential adjustments

to OCPA's cost-approach methodology based on them; and b) has reassigned asset categories to shorter life-year tables in order to account for additional obsolescence OCPA identified in the marketplace, which over time results in a more rapid depreciation and reduction of the reclassified assets' value.[3] Mr. Thayer's testimony on these issues was uncontradicted, and the Court finds it is compelling evidence of OCPA's actions in looking to the market in its valuation methodology used to value Darden's TPP for the 2013 and 2014 tax years in compliance with the *Standard Measures*.

17. Ron Cardell, a former (retired) Field Operations Supervisor for OCPA, also testified to OCPA's ongoing efforts to look to, and analyze, the market for signs of obsolescence and other factors that could affect the depreciation and valuation of TPP under OCPA's jurisdiction. Mr. Cardell explained that such efforts include: a) ongoing communication with taxpayers, including fielding their calls, meeting with them at site inspections, and attending other in-person meetings with them; b) performing internet research and other research into the market; c) considering evidence submitted by taxpayers in support of VAB petitions and performing research in preparation for VAB hearings on those petitions; and d) preparing an annual "market study." While Darden and its experts focused substantial attention on alleged problems with OCPA's 2013 and 2014 market studies, Mr. Cardell's testified that they only constituted approximately 10% of OCPA's overall efforts to look to, and analyze, the market during those years. Mr. Cardell's testimony on all of the above issues was uncontradicted. As such, the Court finds that: a) any real or perceived problems with OCPA's 2013 and 2014 market

[3] For example, an asset assigned an eight-year life depreciates and decreases in value more slowly than an asset assigned a six-year life. Accordingly, moving an asset from an eight-year life to a six-year life will result in more rapid depreciation and reduction of its fair market value over time.

studies were not material to OCPA's 2013 and 2014 valuations of Darden's TPP;[4] and b) Mr. Cardell's testimony is additional competent evidence of OCPA's actions in looking to the market in the methodology OCPA used to value Darden's TPP for the 2013 and 2014 tax years in compliance with the *Standard Measures*.

18. Based on the above findings, the Court further finds that OCPA fully complied with the DOR's *Standard Measures* when valuing Darden's TPP for the 2013 and 2014 tax years, and, therefore, OCPA's fair-market-valuations are deemed "prima facie correct" pursuant to § 195.032.

19. Mr. Thayer also explained how OCPA considered each of the eight factors set forth in § 193.011 in arriving at OCPA's 2013 and 2014 fair-market valuations of Darden's TPP. The Court finds that Mr. Thayer's explanations were credible, and OCPA complied with § 193.011 in valuing Darden's TPP for the 2013 and 2014 tax years.

20. In sum, OCPA calculated its 2013 and 2014 fair-market valuations of Darden's TPP by using a Mass Appraisal Cost Approach that complies with the DOR's *Standard Measures* and § 193.011, and which the Florida Supreme Court has approved for valuing property like Darden's TPP for ad valorem tax purposes. After considering all of the evidence, the Court finds that OCPA's $29,033,332 and $27,424,505 fair market valuations of Darden's TPP for 2013 and 2014, respectively, are very reliable and credible.

B. <u>Darden's Valuations and Valuation Methodology</u>

21. Mr. Seijo of Landmapp was Darden's only trial witness to offer an opinion regarding the fair market value of the Subject TPP. He opined that its fair market value was

[4] *Cf.* Final Judgment in *Wal-Mart Stores, Inc. v. Crapo*, Case No. 97-CA-4728 (8th Jud. Cir. 2001) *5 (finding that the property appraiser's market study was neither effective nor material to the property appraiser's valuation of the plaintiff's TPP).

$18,804,000 for the 2013 tax year and $17,265,000 for the 2014 tax year, the same values at which he arrived with his earlier appraisals.

22. Mr. Seijo used a sales-comparison approach to value the vast majority of Darden's TPP for both years. As explained by the Florida Supreme Court, such an approach "analyzes the recent sales of similar property to arrive at the probable market price of the property being appraised." *Havill v. Scripps Howard Cable Co.*, 742 So.2d 210, 213 (Fla. 1998). The sales, or in this case, list prices the appraiser uses to arrive at a value of the subject property are usually called "comparables" or "comps."

23. A fundamental tenet of the sales-comparison methodology is that the comps used to value the subject property must have occurred in "arm's length transactions." *See, e.g.*, § 193.011(1), Florida Statutes (listing the amount a willing buyer would pay a willing seller for property in "a transaction at arm's length" as a factor to be considered when valuing property for ad valorem purposes); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So.2d 4, 6 (Fla. 1973)(explaining the disqualification of "sheriff's sales, sales by fiduciaries and the like" as non-arm's length transactions in the plaintiff's valuation model for its TPP). The type of arms-length transaction appropriate for serving as a comp in a sales-comparison approach to valuation is embodied in well-recognized definition of "Just Value" set forth in Rule 12D-1.002(2) of the Florida Administrative Code:

> "Just Value" – "Just Valuation", "Actual Value" and "Value" – Means the price at which a property, if offered for sale in the open market, with a reasonable time for the seller to find a purchaser, would transfer for cash or its equivalent, under prevailing market conditions between parties who have knowledge of the uses to which the property may be put, both seeking to maximize their gains and neither being in a position to take advantage of the exigencies of the other.

R. 12D-1.002(2) FAC (2013). As one court has explained, the "threshold requirement of comparability [is] the presence of a willing purchaser and a willing seller, in an arm's length transaction." *Florida East Coast Ry. Co. v. Department of Revenue*, 620 So.2d 1051, 1058-59 (Fla. 1st DCA 1993).

24. In his sales-comparison approach, Mr. Seijo used internet sales listings for items of personal property he found on Web sites like ebay.com as comps to value the majority of Darden's TPP. A fundamental and overriding defect in Mr. Seijo's valuation methodology is that he failed to provide any competent evidence that those internet sales listings represent arm's length transactions that are reliable and appropriate for valuing TPP. For example, Mr. Seijo did not provide any evidence of how the sellers came into possession of the listed items, the cost paid by the seller for them, or (in most cases) the seller's motivation for selling them. Pursuant to § 193.011(1), *Southern Bell, Florida East Coast*, and 12D-1.002(2), this type of internet data, which has not been qualified as representing arms-length transactions, is inherently unreliable and not sufficient for valuing Darden's TPP. *See also Hillsborough County v. Knight & Wall Co.*, 14 So.2d 703, 705 (Fla. 1943)(explaining that sales transactions in which there was an "element of liquidation" were not appropriate for valuing TPP for ad valorem purposes).

25. Mr. Seijo attempted to support the reliability of his valuations resulting from the sales-comparison approach by performing what he described as a "market derived cost approach" as a back-up or supporting valuation methodology for Darden's TPP. Mr. Seijo's market derived cost approach uses Landmapp's internally developed depreciation tables, which are derived from the same type of unreliable and unqualified internet sales-listing data he used in his primary sales-comparison approach for valuing Darden's TPP. Accordingly, Landmapp and Mr. Seijo's market derived cost approach suffers from the same defects and unreliability as their sales-comparison approach described in the preceding paragraph. After considering the evidence, the Court finds that OCPA's cost-approach methodology, which complies with the DOR's

Standard Measures and was approved by the Supreme Court in *Mazourek*, is substantially more reliable and credible than Landmapp's market derived cost approach.

26. Mr. Seijo also testified that Darden's use of the Subject TPP to operate its business on the Valuation Dates was irrelevant to his valuation methodology. His methodology is, therefore, contrary to 193.011(2), which expressly lists "the present use of the property" as a relevant consideration for valuing TPP for ad valorem tax purposes. In this regard, the Final Judgment in *Wal-Mart Stores, Inc. v. Crapo* explains the inherent defects of a methodology like Mr. Seijo's, which attempts to value TPP the taxpayer is using to operate its business with sales listings (internet or otherwise) that offer TPP for fire-sale prices because it is dormant and not in "present use" by a business:

> Quite obviously, there would be no willing seller that would sell relatively new property for ten cents on the dollar, especially when it had recently been installed in an ongoing business. The fact that there is a "market" in used equipment totally fails to take into consideration the reality of the way businesses are run. Ongoing operations such as Wal-Mart simply do not sell equipment that has a remaining useful life to the owner.

Case No. 97-CA-4728, *4 (8th Jud. Cir. 2001).[5] *See also Hillsborough County*, 14 So.2d at 705 (holding that the valuation of TPP must consider "all favorable and unfavorable circumstances that would control the admeasurement of its present value were it placed upon the market to be sold *by the owner*," which was a successful hardware store operating as a going concern)(emphasis supplied).

27. The evidence established other concerns with Mr. Seijo's valuation methodology that substantially affect the reliability of his valuation opinions, some of which are summarized as follows:

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[5] In *Mazourek*, the Florida Supreme Court quoted with approval different language from the Final Judgment in *Crapo*. 831 So.2d at 91.

a) Mr. Seijo used internet sales listings to value 599 categories of Darden's TPP, which together contain thousands of assets. Mr. Seijo valued 43.91% of those 599 categories of TPP by using only a single listing he found on the internet. In other words, Mr. Seijo used a single sales listing to value thousands of Darden's assets. Internet sales prices can vary from listing to listing, sometimes significantly. Accordingly, this methodology is clearly unreliable for valuing TPP. Mr. Seijo also used only two comps to value 19.70% of the same 599 asset categories. Darden's own expert witness, Tammy Blackburn, testified that such valuation methodologies violate professionally accepted appraisal practices, under which an appraiser valuing TPP with a sales-comparison approach should, with an exception not applicable here, identify and use at least three suitable comps.

b) Mr. Seijo did not make any adjustments to any of the comps he used to value Darden's TPP to account for differences in quality or condition between them. Ms. Blackburn also testified that making appropriate adjustments to the selected comps is fundamental to a properly performed sales-comparison approach. After considering the evidence, including the presentation of a substantial number of the comps used by Mr. Seijo, the Court finds that his failure to make any quality or condition adjustments is a fundamental defect in his sales-comparison methodology, which diminishes the reliability of his valuations of Darden's TPP.

c) Mr. Seijo valued a substantial portion of Darden's computer assets without using any accepted valuation methodology. With regard to these particular assets, Mr. Seijo simply adopted and restated estimated market values he found at the Web site usedprice.com. Mr. Seijo's failure to independently value these assets is a fundamental defect in his appraisals, which diminishes the reliability of his valuations of Darden's TPP.

d) Mr. Seijo did not provide evidence of any comps or methodology used to support his valuations of certain assets, which were substantially reduced from their original installed cost reported on Darden's tax returns:

i) Alarm System: Darden's 2013 and 2014 TPP Tax Returns reported an original cost of $2,017,575 for the RSC's alarm system. Mr. Seijo valued the alarm system at only $30,000 for both 2013 and 2014 without any identifiable comps or methodology.

ii) Artwork and Decor: Darden's 2013 and 2014 TPP Tax Returns reported an original cost of $1,142,491 and $1,149,709, respectively, for artwork and decor inside the RSC. Mr. Seijo valued the artwork/decor at only $50,000 for both 2013 and 2014 without any identifiable comps or methodology.

iii) Window Treatments: Darden's 2013 and 2014 TPP Tax Returns reported an original cost of $533,798 for treatments affixed to the RSC's substantial number of very large windows. Mr. Seijo valued the window treatments at only $10,000 for both 2013 and 2014 without any identifiable comps or methodology.

iv) Signage: Darden's 2013 and 2014 TPP Tax Returns reported an original cost of $266,963 for signage at the RSC. Mr. Seijo valued the signage at $10,000 for both 2013 and 2014 without any identifiable comps or methodology.

The monetary differences between OCPA's and Mr. Seijo's valuations of these above-listed assets alone total $2,421,536 and $2,042,897 for tax years 2013 and 2014, respectively. The Court finds that OCPA's valuations are more reliable.

e) Darden's RSC has a music system, for which Darden's 2013 and 2014 TPP Tax Returns reported an original cost of $1,081,426. When Mr. Seijo was asked to identify where the items of TPP composing the music system were located on the schedules of assets he valued for 2013 and 2014, he identified two DVD players, a media processor, a switcher, an amplifier, and a surge protector, all of which Mr. Seijo valued at a total of $1,670. After considering this testimony and related evidence, the Court finds that a music system with an original cost of $1,081,426 is very likely composed of more than just these relatively few pieces of equipment, and, therefore, Mr. Seijo's appraisals appear to have omitted substantial, additional equipment for the music system.

f) Mr. Seijo testified that he had no prior experience valuing a solar-power system, and that he did not perform any research on how to do so. Using a cost approach, he randomly assigned a ten-year life to the solar panels. The evidence established, however, that: i) the solar panels are warranted on a pro-rated basis for 25 years; and ii) the panels have not experienced any drop in energy output after five years of service -- half way through ten-year economic life Mr. Seijo assigned to them. This evidence is inconsistent with Mr. Seijo's ten-year life for the solar panels and consistent with OCPA's assignment of a 20-year life to them. Mr. Seijo valued the solar equipment at $4,703,220 and $4,255,290 for 2013 and 2014, respectively, whereas OCPA valued the solar equipment at $5,161,291 and $4,850,776 for 2013 and 2014, respectively. These competing valuations equate to monetary differences of $458,071 and $595,486 for tax years 2013 and 2014, respectively, for just the solar-power system alone. The Court finds that OCPA's valuations of the solar equipment are more reliable.

28. In addition to the above-described issues with Mr. Seijo's valuation methodology, there were multiple instances where Mr. Seijo's trial testimony was inconsistent with testimony he had previously given at the 2014 VAB hearing or in deposition. For example:

a) In trial, Mr. Seijo testified that the reason he used only one or two comps to value a substantial portion of Darden's TPP is that he felt that amount of data was sufficient. At the 2014 VAB hearing, however, Darden's counsel asked Mr. Seijo about that same issue, and he testified that the one or two comps were only a representative sample of the data he used to value those assets, and he could have brought "hundreds of thousands of pages" of additional comps to the VAB hearing.

b) In trial, Mr. Seijo testified that the reason he did not make an adjustment for the admitted difference in quality between Darden's Autostrada work stations with wood veneers, and the work stations with cloth veneers that he used as comps, is because the cloth-veneer work stations would be absorbed more quickly in the market. In deposition, however, Mr. Seijo testified that if he had used a cloth-veneer work station to value Darden's wood-veneer Autostrada work stations, he would have to make an adjustment to the comp for the difference in quality. Mr. Seijo offered no explanation for this inconsistency in his testimony.

c) In trial, Mr. Seijo testified that his appraisals of Darden's TPP did not follow USPAP Standard 6-3(b). In deposition, however, Mr. Seijo testified that his appraisals did follow USPAP Standard 6-3(b).

C. <u>Other Testimony and Evidence Regarding Valuation Methodologies</u>

29. Darden's expert witnesses other than Mr. Seijo testified that the depreciation table contained within the DOR's *Standard Measures*, which is a component of OCPA's Mass

Appraisal Cost Approach: a) has not been modified since the DOR promulgated the table in 1996; b) is based on the "Iowa Curve" studies performed in the 1930's; and c) and was not designed to capture functional or economic obsolescence that could impair the value of TPP. Messrs. Thayer and Cardell, however, both testified that: a) OCPA continuously looks to the market for signs of functional and or economic obsolescence that may be impairing the value of TPP under OPCA's jurisdiction; and b) OCPA makes adjustments to its cost-approach methodology to account for any such identified obsolescence, including reassigning assets to shorter life-year categories where appropriate, and negatively trending the calculation of replacement cost new in OCPA's four-year table used to value computer assets. Irrespective of the testimony of Darden's experts regarding the DOR's depreciation table, there is no or, at best, clearly insufficient evidence for this Court to conclude that Darden's TPP was impaired by any functional or economic obsolescence that is not already accounted for in OCPA's 2013 and 2014 valuations of Darden's TPP.

IV. Findings of Ultimate Fact

30. After considering and weighing all of the evidence the parties admitted at trial including, but not limited to, the evidence described herein, the Court finds that OCPA proved by at least a preponderance of the evidence that:

a) The Mass Appraisal Cost Approach used by OCPA to value Darden's TPP promotes "equity within and between all classes of property among the taxing jurisdictions in Florida," as well as between Orange County's taxpayers, as set forth in the Introduction to the DOR's *Standard Measures*.

b) The Mass Appraisal Cost Approach used by OCPA to value Darden's TPP is considerably more reliable and credible than Landmapp and Mr. Seijo's sales-comparison approach and market derived cost approach valuation methodologies.

c) OCPA's $29,033,332 and $27,424,505 valuations of Darden's TPP represent its just and fair market value for 2013 and 2014, respectively, pursuant to Article VII, § 4.

d) The VAB incorrectly reduced OCPA's $29,033,332 and $27,424,505 valuations of Darden's TPP for 2013 and 2014, respectively.

e) The VAB's $20,503,172 and $17,265,000 valuations of Darden's TPP for 2013 and 2014, respectively, are incorrect and substantially less than the just or fair market value of Darden's TPP for those years pursuant to Article VII, § 4.

f) Darden, Landmapp, and Mr. Seijo's proposed valuations of Darden's TPP for 2013 and 2014 are incorrect and substantially less than the just or fair market value of Darden's TPP for those years pursuant to Article VII, § 4.

Based on the above findings of fact and conclusions of law, it is hereby ORDERED and ADJUDGED:

1. The assessed values of Darden's TPP for the 2013 and 2014 tax years established by the VAB are vacated, stricken, and of no further force and effect.

2. OCPA's original assessed values of Darden's TPP for the 2013 and 2014 tax years are reinstated, and the assessed values previously established by the VAB for those years shall be corrected as follows:

Tax Year	VAB's (Incorrect) Value	OCPA's (correct) Value	Difference
2013	$20,503,172	$29,033,332	+ $8,530,160
2014	$17,265,000	$27,424,505	+ $10,159,505

3. On or before twenty (20) days from the date of this Order, OCPA shall issue

Certificates of Correction based on the reinstatement of OCPA's original assessed values of Darden's TPP as set forth in the preceding paragraph.

4. Upon receipt of the Certificates of Correction, Scott Randolph, as Orange County Tax Collector, shall recalculate the amount of taxes due based upon reinstatement of OCPA's original assessed values of Darden's TPP and issue revised tax bills for same directly to Darden. Payment of any taxes due and enforcement of any delinquency shall be in accordance with Florida Administrative Code Rule 12D-13.013.

5. OCPA is entitled to recover its costs from Darden pursuant to section 194.192, Florida Statutes. The Court reserves jurisdiction to determine the amount of recoverable costs and enter a cost judgment for same.

DONE and ORDERED in chambers, Orlando, Orange County, Florida on this 20 day of July 2016.

Lawrence Kirkwood, Senior Judge

Certificate of Service

I HEREBY CERTIFY that a true and correct copy of this Final Judgment was furnished by X e-mail ~~or~~ and X U.S. mail on this 20 day of July 2016 to: KENNETH P, HAZOURI, deBeaubien, Knight et al., 332 N. Magnolia Ave., Orlando, FL 32801, kph47@dbksmn.com and lquezada@dbksmn.com; ROBERT E.V. KELLEY, JR. and MARK M. WALL, Hill, Ward & Henderson, P.A., 101 E. Kennedy Blvd., Suite 3700 Tampa FL 33601, rob.kelley@hwhlaw.com, relitrevk@hwhlaw.com, mark.wall@hwhlaw.com, kelly.fritts@hwhlaw.com, joy.rumenik@hwhlaw.com; and ROBERT P. ELSON, Florida Department of Revenue, P1-01 the Capital Tax Section, Tallahassee, FL 32399, Robert.Elson@myfloridalegal.com, Lisa.Ryder@myfloridalegal.com, and jon.annette@myfloridalegal.com.

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