STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

Roger J. Christel Living Trust,

Petitioner,

v

MTT Docket No. 369465

City of Center Line,

Tribunal Judge Presiding
Paul V. McCord

Respondent.
_____/

ORDER DENYING RESPONDENT'S MOTION TO EXCLUDE

ORDER DENYING RESPONDENT'S MOTION FOR DIRECTED VERDICT

FINAL OPINION AND JUDGMENT

Jeffrey A. Heldt (P14849), for Petitioner

Joseph C. Pagano (P57107), for Respondent

I. INTRODUCTION

This property tax assessment dispute comes before the Tribunal for decision after hearing in the Entire Tribunal Division on June 27, 2012, in Lansing, Michigan. At issue is the market value (true cash value or "TCV") of Petitioner's industrial building located at 23930 Sherwood, Warren, Michigan ("Subject"). Only one tax year is at issue in this case, 2009, with a relevant assessment date of December 31, 2008. Respondent's assessment reflects that the true cash value of the Subject to be $1,073,960. Petitioner alleges that the market value of its property likely did not exceed $500,000 for tax year 2009. Prior to trial, Respondent filed a motion in limine to exclude Petitioner's trial exhibits. At trial, Respondent moved for a directed verdict after Petitioner rested its case. The issues for decision are: (1) whether Respondent's motion in limine should be granted; it should not, (2) whether Respondent is entitled to a directed verdict at the close of Petitioner's proofs; it is not, and (3) in any event, whether the value of Petitioner's property is less than determined in Respondent's assessment; it is not.

II. JUDGMENT

We deny Respondent's motion in limine captioned "Respondent's Motion to Exclude Petitioner's Final Exhibit List."

We hold that Respondent is not entitled to a directed verdict as Petitioner's evidence was sufficient to meet its burden of going forward with the evidence and our obligation to render an independent determination of the Subject's true cash value.

We further hold that the Subject's true cash value (TCV), state equalized value (SEV), and taxable value (TV) for the tax year at issue are as follows:

Tax Year	Parcel Number	TCV	SEV	TV
2009	01-13-28-251-015	$1,073,960	$536,980	$536,980

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After hearing and observing the witnesses who testified at the evidentiary hearing, allowing for the Tribunal to assess credibility, and having further considered the exhibits submitted by the parties, the arguments presented by counsel, and applying the governing legal principles, the Tribunal makes the following independent findings of fact and conclusions of law[1] set forth below in memorandum form. See MCL 205.751(1) ("A decision and opinion of the tribunal . . . shall be in writing or stated in the record, and shall include a concise statement of facts and conclusions of law, stated separately . . ."); see also MCL 24.285.

IV. FINDINGS OF FACT

This section presents a "concise, separate, statement of facts" within the meaning of MCL 205.751(1), and, unless stated otherwise, the matters stated or summarized are "findings of fact" within the meaning of MCL 24.285. The findings of fact are set forth in narrative form based on the Tribunal's conclusion that it is the most expeditious manner of proceeding where there are few disputes about facts and the main focus of the controversy is the valuation of the Subject as of the tax year at issue.

1. Assessment

The Subject is identified on Respondent's assessment roll by Parcel No. 01-13-28-251-015. Only the 2009 tax year is at issue in this case. For the 2009 tax year, Respondent

[1] To the extent that a finding of fact is more properly a conclusion of law, and to the extent that a conclusion of law is more properly a finding of fact, it should be so construed.

determined that the indicated true cash value of the Subject by method of mass appraisal was $1,073,960. Specifically, true cash value (TCV), state equalized value (SEV), assessed value (AV), and taxable value (TV) of the Subject as appearing on Respondent's assessment roll for the tax year at issue is as follows:

Year	TCV	SEV	AV	TV
2009	$1,073,960	$536,980	$536,980	$536,980

2. The Subject Property

The Subject is an older industrial building built in 1952 and located at 23930 Sherwood in the City of Center Line. More particularly, the Subject is a 3.19-acre lot improved with a 65,767 square foot, one-story Class C industrial building, including some office space. The Subject building is of block construction. The story of the warehouse/industrial section of the Subject building has a height of 24 feet, higher than the average building. The warehouse portion of the building has space heaters with a gas fan, while the office portion of the building (six percent of the building) has heating and cooling. There is 22,000 square feet of asphalt paving located on the Subject lot, with an additional 9,300 square feet of crushed rock. Finally, there is 2,640 lineal feet of wire mesh fencing at the Subject.

Petitioner's listing agent, Michael Davidson, a Senior Vice President of Grubb & Ellis, testified that the design of the building and the condition of the building would have limited appeal in today's marketplace. More specifically, the columns supporting the roof system are close together and do not leave enough open space for modern industrial users. Similarly, he opined that the ceilings are too low for modern machinery. (Tr, pp. 32-33). Both Mr. Davidson and Petitioner's Trustee, Roger J. Christel, testified that the condition of the subject building was "poor" including a partially renovated office space and a leaking roof. Mr. Davidson described the condition of the office portion as "rough," (Tr, p. 34) and that potential buyers were dissuaded by the leaking roof, "I had several occasions where we walked in, saw the leaks, and the client immediately turned around and walked out." (Tr, p. 35).

3. Petitioner's Purchase of the Subject

Petitioner is a trust, the Roger J. Christel Living Trust, whose trustee is Mr. Christel. Mr. Christel is also the president of All Type Truck and Trailer Repair ("All Type") and has been employed there for the past 42 years. All Type provides semi-truck and heavy equipment

maintenance, fleet repair, refurbishing, and on-site services. Most of All Type's customers are Fortune 500 fleet owners/operators such as, Coke, Pepsi, SMART, and Waste Management, for example.

In or around 2004 All Type had exceeded its capacity at its existing facility in Warren, Michigan, and sought to expand. Around this same time frame, All Type was aware that SMART (Suburban Mobility Authority for Regional Transportation), a public transit operator serving suburban metro Detroit, was seeking bids to retrofit about 130 buses to natural gas, along with additional refurbish work pursuant to a Federal program. (Tr, p. 59). All Type needed the capacity that the Subject offered in order to, among other things, demonstrate that it had the wherewithal to perform under the contract if awarded. (Tr, p. 60). So, Petitioner purchased the Subject in 2004 for $950,000 (Tr, p. 67) for use in All Type's business. Although All Type submitted the low bid, the contract did not materialize. (Tr, p. 60).

4. Petitioner's Efforts to Sell the Subject

After the SMART expansion and bus retrofit and rehab contract fell through, All Type no longer needed the extra space that the Subject provided. (Tr, pp. 59-60). Petitioner listed the Subject for sale with Grubb & Ellis in 2005 for $1.5 million. The listing agreement ran for a term of six months. Mr. Davidson was the listing agent. Even though the listing agreement expired by its terms, Mr. Davidson and Grubb & Ellis continued to market the Subject in 2006, 2007, and 2008, without a formal listing agreement. (Tr, pp. 18-21).

Petitioner received no offers for the Subject during the 2005 – 2008 period. (Tr, pp. 62-63). Petitioner again entered into a formal listing agreement sometime in 2009 with Grubb & Ellis to market the Subject for a substantially lower asking price of $795,000. (Tr, p. 62). Mr. Christel testified that in his opinion if "we could have got anywhere near the asking price, that would have been a home run." (Tr, p. 64). He stated he did not believe that the Subject could achieve an offer of more than $600,000 and gave Mr. Davidson authorization to accept any offers for $600,000 cash. (Tr, p. 64). Mr. Christel was of the belief that during the relevant time period, the market around the Subject was in decline and that the value of the Subject was falling. (Tr, p. 65) This opinion stemmed from Mr. Christel's assessment of the condition of the building as well as his statement that "in 2008 . . . three more buildings . . . went into foreclosure on the street that were right next to [the Subject]." (Tr, pp. 64-65).

Petitioner's listing agent, Mr. Davidson, has been involved in industrial real estate in the Metro Detroit area for many years. Mr. Davidson stated that the original listing price of $1.5 million was not reflective of the Subject's market value because, "[r]arely do you have a listing price become the sale price." (Tr, p. 20). This listing agreement expired sometime in 2005, but the property continued to be marketed by Mr. Davidson and his firm in 2006, 2007, and 2008 without a listing agreement. He stated that the market was strong in 2005 when the property was first listed, justifying the asking price, but that over the next few years the market slowed. While the beginning of 2008 was "okay" according to Mr. Davidson, by midyear to the end of calendar year 2008, the market "slowed dramatically." (Tr, pp. 30-31). Mr. Davison characterized the market at the beginning of 2009 as "brutal." Thus, he opined that the Subject's value would have been lower than its asking price due to the depressed financial market and real estate market. Nevertheless, if an inquiry came in regarding the Subject through 2008, the potential buyer would have been informed that the asking price was $1,500,000. (Tr, pp. 49-50). Mr. Davidson explained that, given the condition of the Subject and the prevailing market conditions in 2009, the relisted asking price of $795,000 was warranted. Mr. Davidson indicated that he believed that the potential purchaser would offer less than this lower asking price due to the undesirable features and condition and would negotiate a lower price upon discovering the cost to cure, or back out of the deal after an inspection. (Tr, pp. 36-37). Mr. Christel testified that had he received an offer of $600,000 that would have been a "good deal." The Subject did not sell during 2009.[2]

5. Valuation Disclosures

In accordance with the Tribunal's General Call Order and TTR 152, the parties exchanged and submitted valuation disclosures. Petitioner's valuation disclosure was prepared by its legal counsel, and consists of one full paragraph of four sentences. As a piece, the document does not contain Petitioner's value conclusions and data, valuation methodology, analysis, or reasoning in support of its contention. See TTR 101(1)(m).

Respondent offered its assessment records as its valuation disclosure and the testimony of its assessor, Julie Geldhof, Michigan Advanced Assessor, in support of its theory of value. Respondent's assessment records reflect the use of a modified cost-less-depreciation approach to value developed by reference to the commercial and industrial mass appraisal guidelines

[2] Petitioner eventually sold the Subject late in 2011 on land contract for $550,000. Tr, p 41.

published by the Michigan State Tax Commission in its Michigan Assessor's Manual.[3] Respondent's valuation disclosure concludes to a market value of the Subject for the 2009 tax year of $1,073,960.

6. Respondent's Motion in Limine

Prior to hearing, on June 19, 2012, Respondent filed a motion in limine, captioned "Respondent's Motion to Exclude Petitioner's Final Exhibit List" asserting, among other things, that Petitioner's attempt to submit various marketing materials prepared by Mr. Davidson and the Grubb & Ellis real estate firm, was an "11th hour" attempt to circumvent the Tribunal's previous order prohibiting the parties from supplementing their valuation disclosures. On June 22, 2012, Petitioner filed a response to Respondent's Motion contending that TTR 101(m) does not require that every exhibit or document to be offered shall be filed in conjunction with the valuation disclosures.

At hearing, the Tribunal deferred ruling on Respondent's motion in limine because of the importance of the issues raised and the substantial effect on the case of eliminating Petitioner's primary evidence. Petitioner's valuation disclosure was marked together with the other offered documents, and the related testimony of Petitioner's listing broker, Mr. Davidson, as to market value of the Subject was heard solely as an offer of proof. Whether the report and testimony will be received in evidence and considered in determining fair market value of the Subject is discussed below.

7. Petitioner's Offer of Proof

Petitioner offered the testimony of Mr. Davidson to provide market evidence in a generalized form. Petitioner also proposed to offer Mr. Davidson's testimony to bolster its claims as to the value of the Subject. Our rules have specific foundational requirements that must be met before an expert valuation witness may testify as to the value of property. See TTR 283(3). Petitioner's counsel – who signed Petitioner's valuation disclosure – was not permitted to testify as to the value of the Subject as it is well established that statements and arguments by counsel do not constitute evidence. *Guerrero v Smith*, 280 Mich App 647, 658; 761 NW2d 723 (2008); *Tobin v Providence Hosp*, 244 Mich App 626, 641; 624 NW2d 548 (2001).

[3] Local assessing officials are required to consult the State Tax Commissions assessor's manual as a guide in preparing assessments. MCL 211.10e; *Danse Corp v Madison Hts*, 466 Mich 175, 179; 644 NW2d 721 (2002).

As indicated in the Tribunal's May 15, 2012, Summary of Prehearing Conference and Scheduling Order, Petitioner was not permitted to supplement its valuation disclosure. The Order further states that ". . . Mr. Davidson will [not] be permitted to testify as to the value of the Subject" as he had not prepared Petitioner's valuation disclosure. When Petitioner's counsel asked Mr. Davidson on direct examination as to his views of possible purchase offers for the Subject, Respondent's counsel objected that such additional testimony on direct would not be allowed under Rule 183(3) and the Tribunal's prehearing summary. We sustained Respondent's objection but, given the importance of such testimony to Petitioner's case, we permitted Petitioner to make the following offer of proof:

> My offer of proof is that Mr. Davidson would testify in his judgment you're probably looking at something on the order of $750,000 as a purchase offer, once the due diligence is completed on this building and all of its many structural defects are nailed down. You're probably back to negotiating something on the order of $250,000 worth of fixing the roof and fixing electricals and fixing things that need to be done, so you're really down to a net purchase price on the order of $550,000. That's what somebody is going to pay to buy this property. (Tr, p. 40).

Respondent's counsel objected to the offer of proof stating that there is no evidentiary support on record for the statements contained in the offer of proof. (Tr, p. 40).

8. Respondent's Valuation

Respondent offered its assessment records and the testimony of its assessor in support of its theory of value. Respondent's assessment records were developed from a cost-less-depreciation method prescribed by the State Tax Commission. Respondent's assessor testified that the valuation sheet breaks down the calculations of the subject property's valuation into three parts: (1) the land value; (2) the land improvements; and (3) the building value. The land value estimate is valued for 138,779 square feet (3.9 acres) at a rate of $3.00 per square foot and reduced by 25 percent due to size, thus, the true cash value for the land is $312,253. (Tr, p. 84). For land improvements, Ms. Geldhof testified and Respondent's valuation disclosure reflects that land improvements of asphalt paving, crushed rock, and fencing had a true cash value of $34,698.

The Assessor further testified regarding the building improvement. She stated that it is a Class C, average commercial building, one story on block. The warehouse portion of the building is valued as having space heaters with a gas fan, which adds no value to the cost, while

the office portion of the building (six percent of the building) has heating and cooling, which adds $0.27 to the base cost of the square footage. (Tr, p. 85). The assessor determined that the Subject's story height of 24 feet was higher than the average building, which required a multiplier adjustment. Respondent adjusted the base cost new of the Subject for depreciation. Physical depreciation was rated at 40 percent "good." Functional depreciation was determined to be 50 percent of good, and the overall percent good was determined to be 20 percent. Therefore, the building is depreciated by 80 percent. (Tr, pp. 101-102).

V. CONCLUSIONS OF LAW

1. Respondent's Motion in Limine

A "motion in limine" refers to any motion, whether made before or during trial, to exclude anticipated prejudicial evidence before the evidence is actually offered. *Luce v United States*, 469 US 38, 40 n2 (1984); see also *Lapasinskas v Quick*, 17 Mich App 733; 170 NW2d 318 (1969). Although motions in limine are not found in our rules, Michigan statutes or the Michigan Court Rules, they are a creation of common law and the practice has developed pursuant to our inherent authority to manage the course of hearings. MRE 104(a) supports bringing motions in limine. Motions in limine are generally used to ensure evenhanded and expeditious management of hearings by eliminating evidence that is clearly inadmissible. See, e.g., *Nelson v American Sterilizer Co*, 212 Mich App 589; 538 NW2d 80 (1995) (upholding a trial court's decision to exclude testimony of an expert whose opinions were not generally recognized by the scientific community). Evidence should be excluded on a motion in limine only when the evidence is clearly inadmissible on all potential grounds. In considering a motion in limine the Tribunal may reserve judgment until hearing, so that the motion is placed in the appropriate factual context.

The Tribunal, having given due consideration to the Motion, response, and case file, finds that Respondent has failed to show good cause to justify the granting of its Motion. As stated at the hearing, the exhibits include generalized marketing documentation consistent with the type of evidence Petitioner was allowed to present. (Tr, p. 6). Therefore, Respondent's Motion is denied and all six of Petitioner's exhibits are admitted, including all subparts.

2. Respondent's Motion for Directed Verdict

At the close of Petitioner's case-in-chief Respondent moved for a directed verdict citing, among other things, the lack of expert testimony and supporting documentary evidence of value.

In determining whether to grant a motion for a directed verdict, we must examine the evidence presented up to the time of the motion in the light most favorable to the nonmoving party, grant that party every reasonable inference, and resolve any conflict in the evidence in that party's favor to decide whether a question of fact existed. See *Sparks v Luplow*, 372 Mich 198; 125 NW2d 304 (1963). A directed verdict is appropriate only when no factual question exists on which reasonable minds could differ. *Keywell & Rosenfeld v Bithell*, 254 Mich App 300; 657 NW2d 759 (2002); see also *Taylor v Kent Radiology, PC*, 286 Mich App 490; 780 NW2d 900 (2009) ("[i]f reasonable persons, after reviewing the evidence in the light most favorable to the nonmoving party, could honestly reach different conclusions about whether the nonmoving party established his or her claim, then the question is for the [fact finder]"). "Generally, directed verdicts are viewed with disfavor." *Zeeland Farm Servs, Inc v JBL Enterprises Inc*, 219 Mich App 190, 195; 555 NW2d 733 (1996).

The true cash value of property is ultimately a question of fact and, in deciding valuation cases, we often look to the opinions of witnesses. See TTR 283(3). To this end, our rules generally make the submission of an appraisal or documents supporting the contended value, together with supporting expert valuation testimony, a practical requirement. See TTR 252(1) and 283(3). Nevertheless, the Legislature provided a somewhat liberal standard regarding the admission of evidence, MCL 205.746(1), and TTR 283(4) permits lay testimony in the form of opinions or inferences by incorporating MRE 701. Consequently, alternative methods of proof and certain lay witness testimony are admissible in support of a party's claim.

Here, reasonable minds could differ regarding the best evidence of value. Petitioner presented testimony, including that in its offer of proof, regarding a declining market, deferred maintenance of the Subject building, and its listing of the Subject for sale at an asking price both above and below the assessment at issue without securing a willing buyer at either price. Viewing this evidence in the light most favorable to Petitioner, granting Petitioner every reasonable inference and resolving any conflicts in the evidence in its favor, this evidence could support a finding that Petitioner's property was worth less than that indicated by the assessment.[4]

[4] While evidence of a property's listing offer price may not always be probative of its fair market value, whether such evidence should factor into a determination of a property's true cash value is not a categorical question of law but a simple question of relevance: Does the proposed evidence assist the Tribunal in ascertaining facts of consequence to the determination of the case? See MRE 401. The question to be asked in a valuation case is whether the admission of the evidence would make more or less probable the proposition that the property had a

Although not conclusive, Petitioner's evidence was, in this light, sufficient to meet its burden of going forward with the evidence. As a result, Respondent had the burden of going forward with its evidence supporting its claim as to the market value of the property. See *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 409-410; 576 NW2d 667 (1998). Accordingly, Respondent's Motion for Directed Verdict is denied.

Finding that Petitioner has met its burden of going forward with the evidence does not equate to a finding that the value of the property is less than that on the assessment roll. To the contrary, by meeting its burden of going forward with the evidence, we must now turn to Respondent's evidence and give consideration of the evidence adduced on behalf of both parties. See *President Inn Properties, LLC v Grand Rapids*, 291 Mich App 625; 806 NW2d 342, 347 (2011). We must be persuaded by the preponderance of the evidence, that it is "more likely than not," that the true cash value of petitioner's property is less than that as established on the assessment rolls. See MCL 205.735(2); See generally, *ProMed Healthcare v City of Kalamazoo*, 249 Mich App 490, 495; 644 NW2d 47 (2002).

3. Valuation

Here, Petitioner argues that, given the Subject's long period of vacancy, exposure to the market, and level of deferred maintenance, any potential buyer for the Subject would pay an amount substantially less than the last offered list price of $795,000. On the other hand, Respondent presented the cost-less-depreciation method as reflected on its valuation sheets and record cards.

The assessed TCV must "reflect the probable price that a willing buyer and a willing seller would arrive at through arm's length negotiation." *Huron Ridge LP v Ypsilanti Twp*, 275 Mich App 23, 28; 737 NW2d 187 (2007). Fair market value is, at bottom, a question of fact. See *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 638; 462 NW2d 325 (1990). The Tribunal has broad discretion in forming its own conclusions about the record. See *President Inn, supra* at 351, citing *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985). We can find facts and accept or reject expert testimony as we see fit. *Jones & Laughlin*, 193 Mich App at 356. Regardless of the method employed, we must determine the most accurate valuation under the individual circumstances of the case.

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certain fair market value on a given date. In this regard, such offered evidence is likely sufficient as far as Petitioner meeting its burden of production.

Meadowlanes Ltd Dividend Housing Ass'n v City of Holland, 437, 485-486, 502; 473 NW2d 473 NW2d 636 (1991). Under the circumstances of this case, the cost-less-depreciation approach yields the most reliable indicator of the value of the Subject. Before turning to the cost-less-depreciation approach to value, we briefly discuss Petitioner's value evidence.

a. Petitioner's Valuation

Although an assessment carries no presumption of validity in the Tax Tribunal, the petitioner, not the taxing authority, bears the burden of establishing the property's TCV. MCL 205.737(3); *President Inn Properties, LLC v Grand Rapids*, 291 Mich App 625; 806 NW2d 342, 347 (2011); *Jones & Laughlin Steel Corp v Warren*, 1993 Mich App 348, 354-355; 483 NW2d 416 (1992). In deciding valuation cases, we often look to the opinions of experts although our rules do not require the use of expert testimony. See TTR 283(3) and (4). While from time-to-time we recognize that property owners who are sufficiently familiar with their property have an intuitive belief as to both their property's value and the surrounding market conditions, they must nevertheless set aside that perspective in the Tax Tribunal and focus on how an appraiser, had they retained one, would have valued their property. Such unsubstantiated testimony, by itself, is rarely sufficient for a taxpayer to meet the burden of proof under MCL 205.737(3) in a valuation matter. A taxpayer must offer something beyond its own testimony and theories about the law of property valuation to succeed at hearing. While we would grant Petitioner here that, under the prevailing market conditions during the relevant time period, a listing price likely represents a "ceiling" on value, meaning that a potential buyer would not likely be willing to pay more than the listing price for the property, it is not, standing alone, a conclusive indicator of the Subject's market value for several reasons.

First, apart from the testimony of Petitioner's trustee and that of its listing broker, Petitioner offered little documentary evidence in support of its contention of value other than various marketing materials and newsletters authored by its listing broker. Those documents refer to the prevailing market conditions for industrial real estate in Macomb County in general terms and highlight a few recent transactions. Petitioner merely provided evidence illustrating that the market was in decline during the months preceding and following the relevant valuation

date at issue but failed, however, to provide affirmative evidence as to the Subject's market value during tax year 2009.[5]

Next, we note that a well-articulated market analysis that is of probative value as to the usual selling price of a particular parcel of property comprehends careful comparison of the subject property with a number of similar properties that have sold within the locale—or, in the absence of sales of similar properties in the subject's vicinity, within a market akin to the Subject's—on dates fairly proximate to the relevant tax day – December 31, 2008, in this case. The probative value underlying the results achieved after consideration of actual closed sale transactions far exceeds any inference that may be drawn from a mere offer to sell that may at best mirror the seller's unguided guess as to the value of its property.

Finally, while it is widely accepted that the price for which a given property actually sells is a probative index of the property's true cash value, it is not, by itself determinative. See *Antisdale v Galesburg*, 420 Mich 265; 362 NW2d 632 (1984); *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 405; 576 NW2d 667 (1998); *Samonek v Norvell Twp*, 208 Mich App 80, 85; 527 NW2d 24 (1994). If the actual selling price of a parcel of property is not accorded conclusive probative value, it is difficult to see why such weight should be accorded the list price which reflects the seller's unsuccessful marketing efforts.

All we can conclude from Petitioner's testimony and evidence is that the Subject likely would not have sold for $1.5 million on December 31, 2008. While Petitioner eventually listed the property for sale "sometime in 2009" for $795,000, an amount less than the assessment, we don't know when this occurred as Petitioner never offered the listing agreement. Nor did Petitioner present any other facts or data, such as the specific rate of market decline during the period, that would allow us to even infer a market price as of the relevant tax day. We are not convinced that the final amount for which the Subject was listed reflects a detailed investigation of the market, or even evinces an aggressive marketing strategy on the part of either Petitioner or its broker.

In sum, Petitioner's quasi-market theory and lack of concrete valuation methodology is in sharp contrast to applying the recognized valuation methodologies approved in *Meadowlanes Ltd Div Housing Ass'n v City of Holland*, 437 Mich 473, 484-485; 473 NW2d 636 (1991). Based on

[5] Nor did Petitioner introduce any documentation quantifying the level of physical deterioration of the Subject or outlining the potential costs to cure these conditions, or anything that would otherwise support the value Petitioner plead in its Petition.

testimony and exhibits presented by Petitioner for use at trial, the suggested values range from $550,000, $600,000, $795,000 to $1.5 million – prima facie indications of the lack of reasonable certainty of Petitioner's valuation theories and unworkable for use to ascertain the Subject's "usual selling price." Stating a value is not equivalent to ascertaining and supporting a value with reasonable certainty. Neither Petitioner's witnesses nor its offer of proof satisfies the applicable legal standard. In short, we are not convinced by Petitioner evidence that the Subject would sell for less than $1,073,960 as of December 31, 2008.

b. Cost-less-Depreciation Valuation

Respondent's valuation disclosure consists of its assessment records, specifically, its property record card for the Subject. Petitioner takes exception to the information contained or not contained therein. Here we would note that, in the context of our rules, an "appraisal" and an "assessment" are substantively similar and both meet the requirements of a "valuation disclosure" under TTR 101(1)(m). An appraisal is a privately procured evaluation expressing an opinion as to the market value of property. An assessment is a government-initiated evaluation of a property's true cash value used to determine the proper amount of tax. Further, we note that in Michigan, a tax assessor's determination of property's "state equalized value" or "SEV" is a convenient and familiar shorthand measure of real estate values and colloquially frequent reference is made to "two times SEV" to establish value. This formula comes from Michigan's property tax scheme, which directs tax assessors to identify "true cash value" for parcels of taxable property within their respective jurisdictions, and defines "assessed value" as one-half of "true cash value." See Const 1963, art 9, § 3; see also MCL 211.27a(1). Accordingly, assessment records, such as Respondent's record cards here, are reliable forms of evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. MCL 205.746(1), and TTR 283(1); see also MCL 24.275.

Respondent's valuation was developed by reference to the commercial-industrial mass appraisal guidelines published by the Michigan State Tax Commission in its Michigan Assessor's Manual.[6] This method utilizes a modified cost-less-depreciation approach to value,

[6] Local assessing officials are required to consult the State Tax Commissions assessor's manual as a guide in preparing assessments. MCL 211.10e; *Danse Corp v Madison Hts*, 466 Mich 175, 179; 644 NW2d 721 (2002). We take official notice of public records and government documents such as the Michigan Assessor's Manual as not being subject to reasonable doubt. See MCL 24.277; see also *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 277 Mich App 379, 400-401; 576 NW2d 667 (1998); *US ex rel Dingle v BioPort Corp*, 270 F Supp 2d 968, 972 (WD Mich 2003).

which assumes that the market value of a building, such as the Subject, can be related to its cost to build a similar, new, or substitute property less an estimate for the subject's depreciation experience over time from all causes, The Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13th ed, 2008), pp. 377-378. The cost approach is one of the three traditional approaches to value recognized in *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 484-485; 473 NW2d 636 (1991), to be applied in determining the true cash value of property. In this case, the cost approach was the only fully developed valuation approach presented by either party. These factors make the cost approach an appropriate method for valuing the Subject. As a result, the Tribunal finds that primary reliance in this case should be placed on the cost approach as it yields the most accurate determination of the value of the property under appeal. See *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984).

Respondent's property record card breaks down the calculations of the Subject's valuation into three parts: (1) the land value; (2) the land improvements; and (3) the building value. Under the cost approach, land values are always estimated separately; this is because land does not have a construction cost. Land simply exists. Respondent valued the Subject's land at $312,253. While Respondent did not introduce its land value study into evidence, Petitioner did not challenge the value placed on the Subject's land. We find Respondent's land value computation supportable.

For land improvements, a total of 22,000 square feet of asphalt paving was estimated at the site at a rate of $1.51 per square foot, multiplied by the county multiplier of 1.33 and by 53 percent good, resulting in a true cash value estimate of $23,417. In addition, there is an area of 93,000 square feet of crushed rock to which a value of $7,998 was determined. Finally, approximately 2,640 lineal feet of wire mesh fencing is located at the Subject, which carried a depreciated value of $3,283. Again, Petitioner did not challenge the value placed on the site improvements at the subject and we find these computations probative as to the value of these elements.

Respondent's record card reflects the use of the cost calculator method in its cost approach. This technique essentially measures "the estimated cost to construct, at current prices as of the effective appraisal date, a substitute for the building being appraised using modern materials and current standards, design, and layout." *Appraisal of Real Estate*, *supra* at 385.

Respondent's evidence assigned a construction quality to the Subject of class C, indicating that the Subject is an average building constructed of brick or block walls, steel or wood frame, painted walls, finished office, adequate lighting, and low cost plumbing. This conclusion is supported by the photos of the Subject introduced into the record.

After developing a "cost new" of the Subject building improvements, including adjustments to the base cost of $29.80 per square foot for office area, heating, cooling, and story height, this figure is then adjusted downward to account for physical depreciation and local market. Respondent applied a 50% depreciation factor for functional obsolescence and assigned a percent good of cost new of 40%. Respondent's overall depreciation factor, expressed as a percent of cost new, was 20% suggesting that the Subject is in very poor condition, approaching unsoundness, extremely undesirable and barely usable. This characterization is consistent with the evidence and testimony Petitioner presented regarding the condition of the Subject. As a result, the poor condition of the Subject has already been accounted for in the assessment and no further reduction for condition is warranted in this case. We find that the depreciated cost of the Subject building as of December 31, 2008, was $582,390.

Respondent also included two unit in place costs; (1) $171,071 for two depreciated 5-ton overhead cranes, each with a 100' span, and (2) $3,829 for five overheard doors with digital or magnetic control units. Petitioner did not question the inclusion of these items, therefore, we conclude that their inclusion was appropriate.

Respondent then applied an economic conditions factor (ECF) of 0.96 to the depreciated costs of the building to arrive at a market value (inclusive of depreciation) of $726,999. Petitioner questioned the ECF Respondent applied to the property in light of the fact that sales studies supporting it were not provided. We note, however, that the applied ECF of 0.96 reflects a decline in market values for properties like the Subject within Respondent's jurisdiction. This is consistent with Petitioner's evidence indicating a market decline during the period. We also note that Petitioner presented no evidence to undermine its application. Accordingly, we conclude the ECF was appropriate.

Further, Petitioner has failed to demonstrate any error in Respondent's cost-less-depreciation approach that is reflected on Respondent's property record card of the Subject. Further, Respondent presented the testimony of its assessor who testified to the values and methods used to derive the assessments at issue. The cost approach was applied in conformity

with the state assessor's manual. See MCL 211.10e. As such, it is concluded, based upon independent review of the valuation evidence presented by both parties, that the cost approach provides the most reliable indicator of Subject's "usual selling price" as of December 31, 2008.

VI. CONCLUSION

After a careful review and weighing of the testimony and exhibits presented by both parties, and after considering the credibility of the witnesses, Respondent's cost approach provides the more reliable and probative evidence as to the value of the Subject for the tax year at issue. For the above reasons, the conclusion of the Tribunal is that the true cash value of Petitioner's property was $1,073,960 for the 2009 tax year.

In reaching the holdings in this opinion, we have considered all arguments for contrary holdings, and have rejected all arguments not discussed as without merit or irrelevant. To reflect the foregoing:

IT IS ORDERED that Respondent's Motion to Exclude is DENIED.

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

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year 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 90 days of the entry of the Final Opinion and Judgment, the 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 as required by this Order within 28 days of the entry of this Order. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of 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 the Tribunal's order. As provided in 1994 PA 254, being MCL 205.737, as amended, interest

shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest rate of the 94-day discount treasury bill rate for the first Monday in each month plus 1%. As provided in 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods after January 1, 1996 at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue . . . (i) after December 31, 2007 at the rate of 5.81% for calendar year 2008, (ii) after December 31, 2008, at the rate of 3.31% for calendar year 2009, (iii) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (iv) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (vi) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09% for calendar year 2012 and (vii) after June 30, 2012 and prior to January 1, 2013, at the rate of 4.25%.

This Opinion resolves all pending claims and closes this case.

MICHIGAN TAX TRIBUNAL

By: Paul V. McCord

Entered: October 8, 2012