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

Frank Richardson,

Petitioner,

v

MTT Docket No. 434480

City of Westland,

Tribunal Judge Presiding
Paul V. McCord

Respondent.
_____/

FINAL OPINION AND JUDGMENT

Frank Richardson, *pro se.*
Keith W. Madden (P41302), for Respondent.

I. INTRODUCTION

This property tax assessment dispute comes before the Tribunal for decision after a hearing in the Entire Tribunal Division on January 13, 2014, in Dimondale, Michigan. At issue is the market value (true cash value or "TCV") of Petitioner's commercial property located at 7107 North Wayne Road, Westland, Michigan ("Subject"). There are two tax years at issue in this case, 2012 and 2013, and Respondent's assessments reflect a determination that the true cash value of the Subject for each year at issue was $552,500 and $348,520, respectively. Petitioner, on the other hand, alleges that the market value of his property likely did not exceed $262,595 in either year. In preparation for hearing, Respondent subsequently revised its value claims, asserting that the TCV of the Subject was $369,000 for 2012, and 322,000 for 2013. At hearing, Respondent moved *in limine* to exclude certain pages contained in Petitioner's trial exhibits and, at the conclusion of the hearing, requested an award of costs and attorney's fees. The issues for decision by this Tribunal are: (1) the true cash, state equalized and taxable values of the Subject as of the tax years at issue, (2) whether Petitioner's exhibits should be admitted into evidence in whole or in part, and (3) whether Respondent is entitled to costs and attorney's fees in defending this action.

II. JUDGMENT

This Tribunal holds that the Subject's true cash value ("TCV"), state equalized value ("SEV"), and taxable value ("TV") for the tax years at issue are as follows:

Tax Year	Parcel Number	TCV	SEV	TV
2012	56-034-01-003-001	$369,000	$184,500	$184,500
2013	56-034-01-003-001	$322,000	$161,000	$161,000

This Tribunal further holds that for the reasons discussed below, Respondent's motion in limine is denied.

Finally, this Tribunal holds that Respondent is not entitled to attorney's fees and costs.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

After hearing and observing the witnesses who testified at the 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. 56-034-01-0003-001. For tax years 2012 and 2013, Respondent determined that the true cash value of the Subject by its method of mass appraisal was $552,500 and $348,520, respectively. Specifically, true cash value ("TCV"), state equalized value ("SEV"), assessed value ("AV"), and taxable value ("TV") of the Subject as appearing on the assessment roll and confirmed by the Board of Review for the tax years at issue are as follows:

[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.

Year	TCV	SEV	AV	TV
2012	$552,500	$276,250	$276,250	$276,250
2013	$348,520	$174,260	$174,260	$174,260

The Subject is classified as "commercial" property. During the tax years at issue, the level of assessment for commercial real property within Respondent's jurisdiction equaled 50% of true cash value determined by method of mass appraisal.

2. The Subject Property

The Subject is a 0.256 acre (11,326 square feet) parcel located south of Warren Avenue on the west side of Wayne Road on the corner of Webster (a gravel road) in the City of Westland. Specifically, the Subject is located at 7107 North Wayne Road. A two-story commercial building is located on the Subject parcel. The building was built sometime around 1942, and it is considered to be in average condition for its age. It has an area of 3,822 square feet on the first floor, which has been divided into two suites, and a total of 1,000 square feet on the second floor. The building is generally vinyl-sided with a minimum of brick facing, a mansard overhang and a flat roof. The Subject has a land-to-building ratio of 57/43 and limited asphalt parking.

3. Petitioner's Purchase of the Subject

Petitioner purchased the Subject on June 9, 2011 for $175,000 from a financial institution. Prior to Petitioner's purchase, the Subject was used as a Mexican restaurant. From approximately June 2011 through February 2012, Petitioner renovated one of the two suites in the Subject for its current use as physical therapy center.

4. Petitioner's Valuation Disclosure

Petitioner opined that value of his property likely did not exceed $262,595 and offered a self-prepared valuation disclosure in support thereof. Page 1 of Petitioner's valuation disclosure sets forth his value conclusions. It also sets forth the methodology and data utilized in reaching those conclusions, which consists of five sales, including the subject property. A summary of the sales is as follows:

Sale #	1	2	3	4	5
Type	Restaurant	Restaurant	Medical	Medical	Subject
City	Livonia	Livonia	Livonia	Livonia	Westland
Sale Date	Mar-10	Dec-11	May-11	Aug-11	Jun-11
SP/SF	$52.35	$55.04	$45.55	$54.62	$46.29

Petitioner also included in his valuation disclosure of copies of excerpts of the City of Livonia's land sale study from which he selected his comparables, a photograph of the subject property, and photographs of Comparables 1 and 2. Though photographs of Comparables 3 and 4 were not provided, Petitioner testified that he had inspected these properties: "I went and looked at

them because I wanted to make sure that they were somehow favorable, comparable, or something. And they were medical facilities, so I'm not sure why I didn't take a picture, or I took a picture and—I don't remember. But . . . I did absolutely go look at them." TR, p. 23.

From these sales, Petitioner first calculated the average value per square foot of Comparables 1 and 2, arriving at an indicated value of $53.69/SF or $273,819 for the Subject property. Petitioner also averaged Comparables 3 and 4, and arrived at an indicated value of $50.08/SF for these two comparables and, when multiplied by the size of the Subject, an indicated value of $264,613 for the Subject property.

In the end, Petitioner concluded that giving equal weight to each comparable property would be the fairest method: "I took the four properties, I put my property in there, and my property was lower than all of them so it raised that up. I didn't try and go by my property alone." TR, p. 17. From this approach, Petitioner arrived at a true cash value of $262,595. Petitioner testified, however, that while he could have lived with this number for the 2012 tax year, "I think it's worth a lot less due to the fact that it was not completed. It was just that I was willing to live with that because I thought that was a fair compromise without being here. But the reality of it is I think the $262,000 is for 2013, and $130,000 or $140,000 for 2012." TR, pp. 33-34.

Petitioner noted that a value for the Subject could also be determined by actual cost (purchase price + renovation expenditures). Petitioner's renovation costs through December 2011 totaled $61,114. Pages 8-18 of Petitioner's valuation disclosure contain photocopies of various withdrawal slips and checks written on Petitioner's personal Chase bank account. Page 7 is a photocopy of an adding machine tape summarizing said checks, and Page 19 is a copy of a portion of Petitioner's check register reflecting fourteen additional check transactions. All of these documents were prepared by Petitioner and submitted as evidence of his asserted expenditures. Under this method, Petitioner concluded that the value of the Subject would be $236,114. Petitioner did not place significant reliance on this method in reaching his ultimate value conclusions for the tax years at issue.

The last two pages of Petitioner's disclosure are photocopies of pages taken from Respondent's valuation disclosure. The pages contain a description of the Subject, a permit and certification history, and summary of Respondent's valuation.

5. Respondent's Motion in Limine

At the opening of the hearing, Respondent moved to exclude pages 7 through 21 of Petitioner's valuation disclosure. Respondent objected to Petitioner's "11th hour" attempt to circumvent the Tribunal's previous order prohibiting Petitioner from supplementing his valuation disclosure by including the additional fifteen pages.

Petitioner originally filed this case in the Tribunal's Small Claims Division. Petitioner appended to his original Small Claims Petition documentation purporting to be his valuation evidence. As the amount of state equalized value or taxable value in dispute, as set forth in the pleadings, was

not within the jurisdictional limits of the Small Claims Division,[2] this case was transferred to the Entire Tribunal or "ET" division. Petitioner did not, as of the date set in our general call notice, re-file or exchange his valuation disclosure, believing that his earlier inclusion of those materials with his small claims petition satisfied the requirements of TTR 237 and the Tribunal's General Call Order. Petitioner also failed to file a prehearing statement as required by TTR 247 and the General Call order. At the prehearing conference, this Tribunal ordered that Petitioner file a prehearing statement, would only permit Petitioner to testify as to his property and give a lay opinion of value, and would only accept the materials appended to Petitioner's originally filed small claims petition as Petitioner's valuation disclosure.

At hearing, this Tribunal deferred ruling on Respondent's motion to exclude Petitioner's additional fifteen pages that were not part of materials originally appended to his small claims petition because of the importance of the issues raised and substantial effect excluding such pages might have on Petitioner's primary evidence. Petitioner's valuation disclosure was marked as Exhibit P-1 together with the pages in question. Whether the pages at issue and related testimony will be received in evidence and considered in determining the fair market value of the Subject property is discussed below.

6. Respondent's Valuation Disclosure

Respondent offered its valuation disclosure and the testimony of its assessor, Aaron Powers, in support its theory of value and claims. Mr. Powers testified that he considered all three approaches, but developed only the sales comparison approach for purposes of his valuation disclosure. According to Mr. Powers, the age of the Subject improvements made calculating depreciation and obsolescence using the cost approach difficult, and the income approach was not developed because the Subject is primarily owner-occupied. Mr. Powers acknowledged that Petitioner had been seeking to lease the south portion of the building, but indicated that it was not occupied and did not have any history of an income stream as of the date of his inspection.

As for the sales comparison approach, Respondent researched 2010, 2011, and 2012 sales of retail offices and medical facilities in Wayne County. Though the data was limited, Mr. Powers' analysis examines five sales that were concluded to be similar to the Subject in both type and location. Write-ups and photographs of each comparable are included in the report. A summary of the sales is as follows:

[2] See MCL 205.762(1).

Sale #	1	2	3	4	5
City	Wayne	Riverview	Southgate	Taylor	Livonia
Distance (miles)	3.93	14.93	12.79	9.62	3.09
Type	Medical	Medical	Medical	Medical	Medical
Sale Price	$375,000	$485,000	$295,000	350,000	$220,000
Improvements	Brick Block Flat Roof	Brick Block Pitched Roof	Brick Block Mansard Flat Roof	Brick Block Flat Roof	Brick Block Flat Roof
Year Built	1968	1998	1979	1974	1980
Building Area (SF)	4,712	5,675	4,000	5,326	4,000
Land Area (acres)	.61	.46	.30	.77	.56
Land/Bldg	84/18	72/28	69/31	84/16	84/16
Price/SF	$79.58	$85.46	$73.75	$65.72	$55.00
Listing	Unknown	$595,000	$300,000	Unknown	$250,000
Days on Market	Unknown	133	315	Unknown	35
Date of Sale	Mar-10	Dec-10	April-11	Jan-12	Feb-12
Tenancy	100% Occupied	100% Occupied	Vacant	Buyer User	Buyer User
Adjusted Price/SF	$78.78	$74.35	$76.33	$64.40	$59.40

Comparables 1, 2, and 3 were utilized in determining the value of the subject property as of December 31, 2011, while Comparables 3, 4, and 5 were utilized in determining value as of December 31, 2012. Weight allocation was based primarily on the properties' dates of sale and their relevancy to the respective tax years at issue. After adjusting for various elements of comparison, including size, location, age, condition, quality of construction, land-to-building ratio, and parking, Mr. Powers concluded to a value of $76.49/SF or $369,000 (rounded) for 2012, and a value of $66.71/SF or $322,000 (rounded) for the 2013 tax year.

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. *Lapasinskas v Quick*, 17 Mich App 733; 170 NW2d 318 (1969). Motions in limine are 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). In considering a motion in limine, the Tribunal may reserve judgment until hearing, so that the motion is placed in the appropriate factual context.

Generally, "all relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of Michigan, these rules, or other rules adopted

by the Supreme Court." MRE 402. See also *People v Aldrich*, 246 Mich App 101, 114, 631 NW2d 67 (2001). Relevant evidence is defined as "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more . . . or less probable than it would be without the evidence." As noted above, Pages 8-18 of Petitioner's valuation disclosure contain photocopies of various withdrawal slips and checks written on Petitioner's personal Chase bank account. Page 7 is a photocopy of an adding machine tape summarizing said checks, and Page 19 of the disclosure is a copy of a portion of Petitioner's check register reflecting fourteen additional check transactions. All of these documents were prepared by Petitioner, and according to his testimony, were offered as evidence substantiating his renovation costs. And inasmuch as these costs were utilized by Petitioner, at least in part, in arriving at his value conclusion, this Tribunal finds that these documents are relevant. Accordingly, barring any other considerations, they are admissible.

Putting aside the question of relevancy, TTR 237(1) mandates the disclosure of valuation reports by the date specified in our scheduling orders. By extension, a party must ask the Tribunal's leave to supplement, augment or amend a previously filed valuation disclosure. And, pursuant to TTR 255(2), "[w]ithout leave of the tribunal, a witness may not testify as to the value of property without submission of a valuation disclosure signed by that witness and containing that witness' value conclusions and the basis for those conclusions." *Id*. The purpose of these requirements is to eliminate unfair surprise and/or prejudice to the opposing party. Consequently, untimely disclosures are generally not permitted and supplements are infrequently granted. If, however, there is no prejudice, or the prejudice can be cured by a lesser available sanction, then a supplement may be accepted. See *Grimm v Department of Treasury*, 291 Mich App 140, 810 NW2d 65 (2010).

Page 1 of Petitioner's valuation disclosure, which was admitted timely and without objection, sets forth Petitioner's value conclusions. It also sets forth the methodology and data utilized in reaching those conclusions. See TTR 237. Pages 7-19 of Petitioner's valuation disclosure merely offers supporting data, specifically, Petitioner's expenditures calculation. Further, Respondent was provided an opportunity to, and did, cross-examine Petitioner at length on this evidence. This Tribunal finds that Respondent could not be prejudiced by the admission of these particular documents. See *Georgetown Place Co-op v City of Taylor*, 226 Mich App 33; 572 NW2d 232, 240 (1997).

As to the remaining two pages, pages 20-21, while this Tribunal questions the extent to which Petitioner may have relied on this documentation in reaching his value conclusions, it is also true that Respondent cannot be prejudiced by the presence of these pages in Petitioner's valuation disclosure, as they were prepared by Respondent's representatives. As such, the Tribunal finds no good cause to justify the granting of Respondent's Motion to exclude Petitioner's supplemental pages.

2. Burden of Proof

Once again this Tribunal is obliged to delve into the value of property, sifting through the testimony and evidence and applying our judgment. In the context of this tax assessment appeal, it was Petitioner's task to prove the true cash value of his property. MCL 205.737(3); *Pontiac*

Country Club v Waterford Twp, 299 Mich App 427, 435; 830 NW2d 785 (2013). Petitioner's burden of proof encompasses both the burden of going forward with the evidence and the ultimate burden of persuasion. *Jones & Laughlin Steel Corp*, 193 Mich App 348, 355; 483 NW2d 416 (1992); *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 409-410; 576 NW2d 667 (1998). Ordinarily, taxpayers meet this burden by showing the actual value of their property. Critical to the outcome in this case was the burden of persuasion. This burden remains with Petitioner always and refers to that point when the time for a decision finally comes, after all of the evidence has been introduced by both parties, if the Tribunal judge finds him or herself in doubt as to whether, by the preponderance of that evidence (i.e., that it is "more likely than not,"), the Subject's true cash value is in-fact as Petitioner claims it to be, the Tribunal must decide the issue against Petitioner, as he is the party who bears the burden of persuasion. See *McKinstry v Valley Obstetrics-Gynecology Clinic, PC*, 428 Mich 167; 405 NW2d 88 (1987) quoting McCormick, *Evidence* (3d ed), § 336, p. 947. As discussed in further detail below, this Tribunal finds that Petitioner has not met his burden of proof in this case.

3. Standard of Value

True cash value is consistently defined as "the usual selling price at the place where the property to which the term is applied at the time of assessment, being the price that could be obtained for the property at private sale . . . ." MCL 211.27(1). This phrase, "True cash Value" has been held to be synonymous with "fair market value." *President Inn Props, LLC v Grand Rapids*, 291 Mich App 625, 637; 806 NW2d 342 (2011). What the "true cash value" of any parcel of property may be is ultimately a question of fact. See *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 638; 462 NW2d 325 (1990).

Given the fact intensive nature of valuation cases, the Tribunal often looks to the opinions of witnesses. To this end, the Tribunal's 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 237 and TTR 255. Further, although none are mandatory, the courts in Michigan have recognized that there are three common approaches employed to value property: "the capitalization-of-income approach, the sales-comparison or market approach, and the cost-less-depreciation approach." *President Inn Props,* 291 Mich App at 639; see also *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 484—485; 473 NW2d 636 (1991).[3] Regardless of the approach employed, the final valuation determined by this Tribunal must represent the usual price for which the subject property would sell. See *Meadowlanes,* 437 Mich at 485-486.

All of this being said, the Legislature has provided a somewhat liberal standard regarding the admission of evidence as MCL 205.746(1) and TTR 255(3) permit lay testimony in the form of

[3] The cost approach uses the sum of the estimated land value and the estimated cost of reproducing improvements, less depreciation. *Meadowlanes*, 437 Mich at 485, n 18. The sales-comparison approach requires comparing the sales price of properties comparable with the subject property and adjusting the sales price of the comparable properties to reflect differences between the comparables and the subject property. *Id.* at n 19. The income-capitalization approach "measures the present value of the future benefits of property ownership by estimating the property's income stream and its resale value (reversionary interests) and then developing a capitalization rate which is used to convert the estimated future benefits into a present lump-sum value." *Id.* at n 20.

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 value claim. See, e.g., *Grand Rapids v H R Terryberry Co*, 122 Mich App 750, 755-756; 333 NW2d 123 (1983) (recognizing that with a proper foundation, property owners may testify regarding the value of their property without demonstrating special knowledge, skill, or training). But this Tribunal "is not bound to accept the parties' theories of valuation. It 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 of true case value." *Great Lakes Div of Nat'l Steep Corp*, 227 Mich App at 389-390. And 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). This Tribunal can find facts and accept or reject testimony as it see fit. See *Jones & Laughlin, supra* at 356. As a result, a taxpayer not relying on an expert appraisal typically must offer something beyond his or her own testimony and theories about the law of property valuation to succeed at hearing. In this case, Petitioner developed none of the commonly recognized approaches to value, but instead presented evidence that ranged from mere raw data to evidence that was otherwise insufficient or not relevant in so far as this Tribunal could use its own expertise to determine an accurate valuation therefrom. See *Meadowlanes*, 437 Mich at 485-486.

4. Petitioner's Evidence

Petitioner argues, based on his analysis of the four comparable properties that he selected, that any potential buyer would pay no more than $264,613 to $273,819 for the Subject. Ultimately, Petitioner claims that the Subject, as of each of the tax years at issue, was worth $262,595,[4] but Petitioner offered little workable documentary evidence in support of his $265,595 contention of value other than an excerpt from the City of Livonia's sales study that provides only a few data points as to the four sales that Petitioner utilized, a photo of the Subject and two of Petitioner's sales, various checks and an adding machine tape along with an excerpt from Respondent's valuation disclosure. Taken as a whole, this documentation provides no affirmative evidence as to the Subject's market value during tax year 2012 or 2013.

Although Petitioner testified that he believed that individuals in the market would view his four selected sales as being competitive with the Subject, this conclusion was based on only a few select criteria, most of which were locational in nature (i.e., general demographics, traffic count and road frontage). Overall, the evidence Petitioner offered was not very insightful as it failed to establish to any degree of certainty that his selected sales were sufficiently similar to the Subject to be properly considered comparable, even at the most basic level (i.e., building size, type, etc.). Petitioner did not consider the individual features and amenities of the various properties. He undertook no comparative analysis focusing on the similarities and differences between the Subject and the comparables that may affect value. See Appraisal Institute, *The Appraisal of*

[4] While Petitioner indicated at the hearing that he believed the actual value of the property to be much less ($130,000-$140,000) for the 2012 tax year due to the fact that it was undergoing renovations and not complete as of the relevant valuation date, he provided no documentary evidence supporting this value claim. There is nothing in the record establishing actual percentage of completion as of December 31, 2011, nor what, if any, quantitative impact any level of incompletion would have on market value.

Real Estate (Chicago: Appraisal Institute, 14th ed, 2013), pp 377-378. Instead, Petitioner relies solely on the raw, unadjusted sales prices of the properties.

Additionally, the documentation provided by Respondent on these same sales contradicts Petitioner's asserted price per square foot for a number of his comparables. Notably, Petitioner asserts an unadjusted price of $52.35 per square foot for Comparable No. 1, but Respondent's evidence indicates that this 2,170 square foot property sold for $140,000 in March of 2010, which results in a final sale price of $64.52 per square foot. Lesser discrepancies are indicated for Comparables 3 and 4: Petitioner asserts an unadjusted price of $45.55 per square foot for Comparable No. 3, while Respondent's evidence indicates that the property sold for $46.59 per square foot (4,400 square feet at $205,000). Similarly, while Petitioner claims an unadjusted price of $54.62 per square foot for Comparable No. 4, Respondent's evidence indicates that the property sold for $54.75 per square feet (7,125 square feet at $395,000).

Even assuming Petitioner's numbers were correct, his methodology is flawed. He merely averaged the indicated values. Averaging a small group of numbers produces a meaningless measure of that population's central tendency, which may or may not reflect the market place. The accepted procedure is to review each sale and judge its comparability to the property being appraised. The final value is based on all of the available information. See *The Appraisal of Real Estate*, p 392 ("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").

Petitioner's alternate valuation theory fairs no better. Petitioner posits that a value conclusion for the Subject achieved, based on the amount that he paid for the Subject in June 2011 ($175,000), plus his remodeling expenses through December of that year ($61,114), results in his conclusion that the Subject was worth $236,114. Understandably, Petitioner, as a lay person, may not fully comprehend the differences between cost and market value, as his theory is faulty in that it applies the wrong standard of value. Petitioner method describes the amount of his investment in the Subject, more akin to his cost basis in his property not its true cash value which is the appropriate standard of value to be applied.

It is a fundamental principle in the appraisal field that cost does not necessarily equal value. Such is the case here as the Subject may have a value to this particular Petitioner equal to his invested cost that is not shared by the market in general. While the price Petitioner paid for the Subject may offer some relevance, it is not conclusive evidence of that property's value. *Antisdale v City of Galesburg*, 420 Mich 265, 278; 362 NW2d 632 (1984); *Great Lakes*, 227 Mich App at 405. This Tribunal is reticent to ascribe much weight to the price Petitioner paid for the Subject as it was purchased from a bank. Such transactions require careful scrutiny. See *Landon v City of Flint*, unpublished opinion per curiam of the Court of Appeals, issued February 6, 2014 (Docket Nos 311073, et al); [5] see also State Tax Comm Bulletin No. 6, *Foreclosure Guidelines*, August 15, 2007. Given the limited information on record regarding the facts and circumstances

[5] While unpublished opinions of the Court of Appeals are not binding, but may be persuasive authority. MCR 7.215(C)(1).

surrounding this transaction, this Tribunal is not persuaded that the sale price paid for the Subject was indicative of normal market conditions and offers a reliable indicator of market value. Further, costs associated with construction, renovation, and repairs do not necessarily reflect the market value (*i.e.*, the value not to the particular owner, but to the market in general) attributable to these improvements. Simply put, invested costs do not represent a meaningful proxy for value.

This Tribunal recognizes that it is obligated to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the Subject. See *Antisdale*, 420 Mich at 277. We could do our own analysis and have done so where the parties, typically through their experts, provide enough useful and reliable data for applying an appropriate methodology to the Objective evidence. See, e.g., *Country Meadows et al v Township of Macomb*, an unpublished opinion *per curiam*, decided April 1, 1997 (Docket No. 182305); *Wolverine Tower Associates v City of Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980); *Tatham v City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982). However, based on the testimony and exhibits presented by Petitioner, the suggested value for the Subject ranges from $130,000 to $273,819 – a prima facie indication of the lack of reliability of Petitioner's data. This fact, coupled with Petitioner's lack of a concrete valuation methodology in sharp contrast to applying the recognized valuation methodologies approved in *Meadowlanes*, simply leaves this Tribunal to guess at how Petitioner's raw data, erroneous factual assumptions, and flawed valuation methodologies could be reduced into some plausible indication of the Subject's true cash value. Here, this Tribunal finds Petitioner's evidence as a whole too speculative, incomplete, and unreliable to be useful. This Tribunal now turns to Respondent's evidence.

5. Valuation of the Subject

After Petitioner's documentary evidence and testimony is entitled to little weight, the record contains factual evidence of value and the report and testimony of Respondent's valuation expert. Respondent presented a valuation disclosure that contains a recognizable sales comparison approach to value, prepared by Respondent's assessor. Based on the submitted analysis, Respondent contends that the Subject had true cash value of $369,000 as of December 31, 2011, and $322,000 as of December 31, 2012. These conclusions are less than the values established on the tax rolls for the tax years at issue. While not the only method for determining true cash value, the sales comparison method utilized by respondent is one of the three most common approaches. See *Great Lakes*, 227 Mich App at 390. With regard to the sales comparison approach, the value of a property is derived by comparing the subject property with similar properties, called comparable sales. See *The Appraisal of Real Estate*, p 404-405. That comparison is based on many factors, and adjustments are made for any differences between the comparable sales and the subject property so that the appraiser can derive a value for the subject property. *Id.* The sales comparison approach is most useful when a number of similar properties have recently been sold or are currently for sale in the subject property's market. See, e.g., *State Assessor's Manual*, Volume III, Chapter 9, p 9-1 (instructing that the reliability of the sales comparison approach is directly related to the availability of recent sales).

From Respondent's evidence, all of the comparable sales were purchased by owner-users, indicating that the typical buyer for the Subject would also be an owner-user. It does not appear

from the evidence that the market activity in the area for this particular type of smaller commercial property suggests that the property would sell based on its ability to produce a rental income. Accordingly, this Tribunal finds that under the circumstances of this case, the sales comparison approach is the valuation method that provides the most accurate valuation of the Subject's true cash value. See *President Inn Props*, 291 Mich App at 639; 806 NW2d 342. This Tribunal also notes that a well-articulated market analysis comprehends a careful comparison of the Subject 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 days – December 31, 2011 and December 31, 2012, as in this case is of probative value as to the usual selling price of the Subject.

After a careful review and weighing of the testimony and exhibits presented by both parties and completing our analysis, this Tribunal holds that Respondent's proofs, when viewed under the requisite evidentiary standard, offers credible and probative evidence of value. Respondent's consideration of actual closed sale transactions and multiple elements of comparability, far exceeds any inference that may be drawn from the limited data Petitioner provided that at best suggests an unguided guess as to what the value of his property may be. This Tribunal is satisfied that Respondent's selection of comparable properties was appropriate, and its adjustments are reasonable and supported overall. Respondent's final value conclusions are supported by the adjusted sales prices of the comparable properties. In the context of this case, the Tribunal is persuaded by the evidence in the record that the sales comparison approach as developed in Respondent's evidence provides the best evidence of true cash value or "usual selling price" of the Subject within the meaning of MCL 211.27. As a result, this Tribunal fairly concludes that the Subject is assessed in excess of 50 percent of its true cash value and the assessment should be adjusted accordingly.

6. *Costs and Attorney's Fees*

At the close of the hearing, Respondent's counsel moved for an award of costs and attorney's fees. Counsel argued that Respondent had gone to great lengths to settle this matter and indicated that the parties had in fact agreed upon a settlement approximately one week prior to the hearing. Despite no obligation to do so, Respondent prepared the stipulation and the check for entry; Petitioner reneged at the last minute on his agreement, however, and refused to sign the stipulation. Respondent argued that Petitioner's actions were unreasonable, and his arguments frivolous throughout, and as such, the entire proceeding was nothing more than a very expensive training exercise, "just to teach the petitioner what the appropriate factors and considerations are for assessing or appraising something." TR, p. 89.

Generally speaking, litigation costs and legal expenses are not recoverable unless otherwise authorized by statute, case law, or contract. *Nemeth v Abonmarche Development, Inc*, 457 Mich 16, 37; 576 NW2d 641 (1998). MCL 205.732(c) provides that the tribunal may grant "other relief or [issue] writs, orders, or directives that it deems necessary or appropriate in the process of disposition of a matter over which it may acquire jurisdiction." Further, TTR 209, provides that the Tribunal may, upon motion or upon its own initiative, award costs in a proceeding, as provided by Section 52 of the act, MCL 205.752. Section 52 of the Tax Tribunal Act simply

authorizes the award of costs in the Tribunal's discretion. MCL 205.752(1). However, neither MCL 205.732(c), 205.752(1) nor TTR 209 provide any guidance regarding when costs, attorney fees or other sanctions are appropriate. And the Tribunal is generally hesitant to award fees and costs.

MCR 2.114 authorizes the award of sanctions on a party who, among other things: (1) signs a document filed in a case for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, or (2) asserts a frivolous claim. There is no tribunal rule that mirrors MCR 2.114. However, the rules of the Tribunal provide that it may follow any Michigan Court Rule if there is not a Tribunal rule on point. TTR 215. Recently the Court of Appeals in *Schoeneckers, Inc v Dep't of Treasury*, unpublished opinion per curiam of the Court of Appeals, issued January 28, 2014 (Docket No. 313311), held that the Tribunal has the authority to award attorney fees as a sanction under MCR 2.114.

MCR 2.114 reads, in part:

> (A) This rule applies to all pleadings, motions, affidavits, and other papers provided for by these rules. See MCR 2.113(A). In this rule, the term "document" refers to all such papers.
>
> * * *
>
> (D) The signature of an attorney or party, whether or not the party is represented by an attorney, constitutes a certification by the signer that (1) he or she has read the document;
>
> * * *
>
> (2) to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the document is well grounded in fact and is warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law; and
>
> (3) the document is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
>
> (E) Sanctions for Violation. If a document is signed in violation of this rule, the court, on the motion of a party or on its own initiative, shall impose upon the person who signed it . . . an appropriate sanction, which may include . . . the reasonable expenses incurred . . . , including reasonable attorney fees. . . .
>
> (F) Sanctions for Frivolous Claims and Defenses. In addition to sanctions under this rule, a party pleading a frivolous claim or defense is subject to costs as provided in MCR 2.625(A)(2). The court may not assess punitive damages.

MCR 2.625(A)(2) directs that costs for frivolous claims shall be awarded under MCL 600.2591. That statute provides for awarding "costs and fees," which include "reasonable attorney fees." MCL 600.2591(1)-(2). The intersection of this court rule and statute indicate that the term "costs" may be interpreted to include attorney fees.

Here, Respondent complains mostly of actions occurring during settlement negotiations and not necessarily with conduct that occurred before the Tribunal. While MRE 408 contemplates the admissibility of evidence of settlement-related discussions to prove undue delay, *Zaremba Equip v Harco Nat'l Ins Co*, 280 Mich App 16, 48; 761 NW2d 151 (2008). It is a well know occupational hazard that settlement negotiations frequently break-down on the eve of hearing. In this case, the conduct described by counsel, while it may have been frustrating, it does not appear to this Tribunal, without more, to establish any undue delay or an attempt to harass on the part of Petitioner that would warrant sanctions.

Nor does this Tribunal find that Petitioner's claim was frivolous supporting an award of attorney's fees. The purpose of imposing sanctions for asserting frivolous claims "is to deter parties and attorneys from filing documents or asserting claims and defenses that have not been sufficiently investigated and researched or that are intended to serve an improper purpose." BJ's & Sons Construction Co, Inc v Van Sickle, 266 Mich App 400, 405, 700 NW2d 432 (2005), quoting *FMB-First Michigan Bank v. Bailey*, 232 Mich App 711, 723, 591 NW2d 676 (1998). Although Petitioner's valuation theories may have been naïve and proved incorrect in hindsight, his claim is not frivolous if it was premised on a reasonable belief that there is an arguable case. See *Robert A Hansen Family Trust v FGH Indus, LLC*, 279 Mich App 468, 486-487; 760 NW2d 526 (2008). And the fact that Petitioner eventually lost his case does not establish that his claim was frivolous. See *Kitchen v Kitchen*, 465 Mich 654, 663; 641 NW2d 245 (2002).

Here, Petitioner initiated and pursued this case on the premise that his property had been over assessed for the tax years in question. No evidence was presented, however, that Petitioner, either at the outset or through the course of this litigation, did not have a valid claim. And the evidence presented by Respondent established that Petitioner's property had in fact been over assessed, an outcome that would have not been realized but for this litigation. Because no document has been found to be in violation of the court rule, this Tribunal declines to award attorney fees under MCR 2.114.

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, this Tribunal concludes that the true cash value of Petitioner's property was $369,000 for the 2012 tax year and $322,000 for tax year 2013. 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 in Limine is DENIED.

IT IS FURTHER ORDERED that Respondent's Motion for Costs and Attorney's Fees 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 the Final Opinion and Judgment within 28 days of the entry of the Final Opinion and Judgment. 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 this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 1995, at a rate of 6.55% for calendar year 1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a rate of 6.04% for calendar year 1998, (iv) after December 31, 1998, at the rate of 6.01% for calendar year 1999, (v) after December 31, 1999, at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000, at the rate of 6.56% for calendar year 2001, (vii) after December 31, 2001, at the rate of 5.56% for calendar year 2002, (viii) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ix) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (x) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (xi) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (xii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, and (xiii) after December 31, 2007, at the rate of 5.81% for calendar year 2008 (xiv) after December 31, 2008, at the rate of 3.31% for calendar year 2009, and (xv) after December 31, 2009, at the rate of 1.23% for calendar year 2010, at the rate of 1.12% for calendar year 2011, and (xvi) after December 31, 2011, at the rate of 1.09 for calendar year 2012, (iv) after June 30, 2012, through December 31, 2013, at the rate of 4.25%, and (v) after December 31, 2013, and through June 30, 2014, at the rate of 4.25%.

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

Entered: Mar 3, 2014 By: Paul V. McCord