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

Jack Panitch and Pauline Park,
Petitioners,

v. MTT Docket No. 354366

City of Ann Arbor,
Respondent.

Tribunal Judge Presiding
Paul V. McCord

_____/

FINAL OPINION AND JUDGMENT

Bruce H. Benz (P23927), for Petitioners.
Kristen D. Larcom (P39550), for Respondent.

I. INTRODUCTION

This residential tax assessment appeal comes before the Tribunal for decision after hearing in the Entire Tribunal Division on September 30, 2011, in Lansing, Michigan. The issues for decision are whether: (1) Respondent's valuation evidence should be stricken; it should not, (2) the true cash value of Petitioners' home is less than that determined on Respondent's assessment rolls for the tax year at issue; it is, and (3) whether Petitioners are entitled to costs as the prevailing party; they are not.

II. JUDGMENT

We hold that the Subject Property'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
2008	09-09-27-311-008	$650,000	$325,000	$325,000
2009	09-09-27-311-008	$550,000	$275,000	$275,000

III. FINDINGS OF FACT

This section is a "concise, separate, statement of facts" within the meaning of MCL 205.751, and, unless stated otherwise, the matters stated or summarized are "findings of fact" within the meaning of MCL 24.285. Petitioners' principal residence is at 501 Burson Place, Ann Arbor, Michigan ("Subject Property"). Petitioners allege that the true cash value of their home likely does not exceed $650,000 and $550,000 for tax years 2008 and 2009, respectively.[1]

1. Assessment

The Subject Property is identified on Respondent's assessment rolls by Parcel I.D. No. 09-09-34-206-030. The indicated true cash value of the Subject Property by method of mass appraisal together with the state equalized value (SEV), and taxable value (TV), as confirmed by Ann Arbor Board of Review on the assessment roll as of each of the tax years at issue are as follows:

Parcel Number	Year	TCV	SEV	TV
09-09-27-311-008	2008	$690,400	$345,200	$345,200
09-09-27-311-008	2009	$653,600	$326,800	$326,800

2. Petitioners' Purchase of the Subject

Petitioners relocated to the Ann Arbor area from Philadelphia in February 2007. Petitioner, Pauline Park, works for the University of Michigan. Petitioner, Jack Panitch is an attorney who works in Lansing, Michigan. As of all of the relevant dates of this appeal, Petitioners had two children, one of elementary school age, the other of pre-K age. Petitioners

[1] Petitioners timely petitioned a decision of the March Board of Review confirming the assessment levied against their home by the City of Ann Arbor ("Respondent") for the 2008 tax year, and filed a motion to amend their Petition to include claims challenging the 2009 real property tax assessment, which was granted; the 2009 tax year is also at issue before us.

were unable to find suitable housing to purchase at the time of their move to Ann Arbor. Petitioners rented a house on Oswego Street, while they continued to search for housing close to work and served by the Angel Elementary School. In October 2007, Petitioners' landlord gave them notice that they would have to vacate the Oswego Street property by the end of the year. Petitioners purchased the Subject Property (sometimes referred to simply as the "Subject") on November 29, 2007, approximately one month before the first tax day at issue. Petitioners paid $789,700 for the Subject. Petitioners' purchasing decision was influenced by their desire to stay within the neighborhood serviced by Angel Elementary School.

3. The Subject Property

The Subject is a .85 acre irregularly shaped rectangular residential lot. The Subject is improved with a modern ranch-style house of 1957 vintage and approximately 2,570 square feet of above ground living area. The house sits up on a hill with the lot sloping down from the front (west) of the lot towards the rear (east) permitting the 2,290 square foot basement to serve as a walk-out lower level with approximately 1,600 square feet of finished area. The entire rear elevation of the basement is above grade as a result of the dramatic change in the grade of the lot.

The exterior finish is principally brick with a low slung gabled roof with wide eaves. The house is organized in a more-or-less open L-shaped plan with an attached two-car garage. The main level consists of six rooms: kitchen, family room, dining room, living room with a fireplace, a study, and a master bedroom with a full bath ensuite. A laundry room along with a half bath is also located on the main level. The main level is finished with hardwood maple floors and a slate entryway. The kitchen has granite counter tops and stainless steel appliances. The ceilings are finished with acoustic drop tiles with the exception of the family room, which

has a painted wood finish. A family room, two bedrooms, a study, and three full baths are located on the lower level. There is walkout access to a cement patio from the lower level. This lower level patio is partially covered by the main level family room roof, which cantilevers over the back of the home.

4. Condition of the Subject

The Subject is in average condition. The hardwood floor in the family room that cantilevers over the patio below experiences seasonal expansion and contraction. The retaining walls near the eastern edge of the subject site are nearing the end of their useful life. The Subject home of late-1950's vintage utilizes a low voltage electrical system. There is a broken window located in the living room that, given its location and installation, would be an expensive repair. At the time Petitioners purchased the Subject, high levels of radon gas were detected in the home. Radon gas is a leading cause of lung cancer and children have been reported to have a greater risk than adults of certain types of cancer. Remediation along with an additional radon suppression system was installed at the Subject.

5. The Subject's Location

The Subject Property is located in a fully mature built-up residential neighborhood east of downtown Ann Arbor and just south of Geddes Avenue. It is zoned for single family residential and is legally conforming. The neighborhood features irregular, curving street paths lined with mature trees and rolling terrain. Many of the houses in the immediate neighborhood were built prior to World War II of various architectural styles although there appears a mix of post-war style homes dotted within the neighborhood. The neighborhood schools are desirable with Angel Elementary School within walking distance.

6. Economic Conditions

The City of Ann Arbor is the largest city in Washtenaw County and home to the University of Michigan, which employs over 26,000 people. Home values began falling in Michigan during the latter part of 2005. The economic downturn that has affected the broader state economy was tempered in Ann Arbor due to the significant presence of the University of Michigan. In January 2007, Pfizer, Inc., a multinational pharmaceutical manufacturer, announced that it would be closing its research campus in Ann Arbor, resulting in the loss of 2,160 research and support jobs. With the broader national economic crisis that began in 2007, the availability of larger mortgage loans became more difficult to obtain, requiring higher credit scores and lower loan-to-value ratios, limiting the supply of potential buyers for homes such as the Subject.

7. Experts

The parties stipulated to the qualifications of both experts and the admission of their respective reports, and the Tribunal accepted and has incorporated that stipulation into the record.

Petitioners presented an appraisal report and testimony of Mark J. St. Dennis, a Certified General Appraiser, licensed by the state of Michigan. Petitioner's expert opined that the Subject's market value for the 2008 tax year was $650,000, and $550,000 for the 2009 tax year. Mr. St. Dennis testified that he was familiar with the residential property market in Ann Arbor having extensive work with Burgoyne Appraisal Company in Ann Arbor and having a background as an expert witness based on his experience as a real estate appraiser for over 18 years. Petitioner's expert relied on the market or comparable sales approach in arriving at his

conclusion of value. He selected sales that were within a mile of the Subject, with similar dates of construction, gross living area, and architectural style. Petitioners' expert used three different comparables for each tax year at issue. All of the comparables were located in Ann Arbor and similar location as the Subject.

Respondent's appraiser was Sharon L. Frischman, a Certified General Appraiser, licensed by the state of Michigan. Ms. Frischman also holds a Michigan Master Assessing Officer (4) certification, was the former assessor for Ypsilanti Township, and has approximately 27 years of experience in assessing and real estate appraisal. This was Respondent's expert's third residential appraisal engagement in Ann Arbor.

8. Respondent's Valuation Report

Pursuant to the Tribunal's Notice of July 1-15, 2011 Prehearing General Call and Order of Procedure and Rule 252, the parties exchanged and submitted valuation disclosures. Respondent filed and exchanged its valuation report, albeit untimely, on April 15, 2011, approximately two weeks late. Respondent's valuation disclosure was authored by Frischman Appraisal & Consulting and prepared by Howard Frischman and Sharon L. Frischman. Mrs. Frischman testified at hearing.

In her report, Respondent's expert concluded in the valuation disclosure that the value of the Subject for the two tax years at issue, 2008 and 2009, was $710,000 and $700,000, respectively.[2] She relied on three sales for the first tax year at issue and three sales, two of which she utilized previously in her valuation for the first tax year, for the second tax year at

[2] Respondent's expert also arrived at a conclusion of value for the 2010 tax year; however, that tax year is not at issue before us.

issue. All of her sales were within the City of Ann Arbor and within approximately a mile of the Subject.

At the beginning of her testimony, Respondent had its expert amend her appraisal on the stand in order to clarify certain points and correct various typos and computational errors. In total, Respondent's expert made about 44 corrections to her report while on the stand, the effect of which changed the numbers throughout the appraisal and also had an effect on her ultimate opinion of value. In the end, Respondent's expert modified her value conclusions, testifying that the true cash value of the Subject Property was $729,000 and $710,000 for tax years 2008 and 2009, respectively. Tr 130:22 and Tr 132:11.

IV. CONCLUSIONS OF LAW

1. Overview

We are once again obliged to delve into the value of residential property in the City of Ann Arbor, sifting through the testimony and the reports provided by the parties and applying our judgment. The value of property is ultimately a question of fact. See *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 638; 462 NW2d 325 (1990). A property's "true cash value" is defined as the property's "usual selling price" or "fair market value" under MCL 211.27(1). See also *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450; 221 NW2d 588, 592 (1974). Petitioner has the burden of proving the assessment of the Subject is excessive by establishing the true cash value of the Subject. MCL 205.737(3); *President Inn Props LLC v Grand Rapids*, 291 Mich App 625, 806 NW2d 342, 347 (2011). Petitioner may meet this burden by introducing credible evidence as to the Subject's market value. See *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 409-410; 576 NW2d 667 (1998). In

determining the market value of property, the Tribunal considers the three traditional approaches to valuation (income, sales, and cost). *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 353; 483 NW2d 416 (1992). Only the sales approach was specifically applied here.[3] We may place greater or lesser emphasis on a particular method or methods of valuation. See *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 485-486; 473 NW2d 636 (1991). And the Tribunal is under no obligation to accept the valuation figures or the approach to valuation advanced by either party. *President Inn, supra* at 351, citing *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985). After considering all the evidence, the Tribunal makes an independent determination based on the preponderance of the evidence. See MCL 205.735a(2); see also *President Inn Props LLC*, 806 NW2d at 352; *Great Lakes Div of Nat'l Steel, supra* at 389, 410. Regardless of the valuation approach we employ, the final value determination must represent the usual price for which the subject property would sell. *Meadowlanes, supra* at 485-486. Before turning to the valuation of the Subject, we address Petitioners' evidentiary objections.

2. Petitioners' Motion to Strike

[3] Because the Subject is an owner-occupied, single family residence that does not generate any income, neither party used the income approach in valuing Petitioners' property. We agree that an income approach is not applicable in this case. While neither of the party's experts applied a cost approach, Respondent's assessment records were developed on the basis of a cost approach methodology prescribed by the State Tax Commission. Given the age of the Subject, that it sits in a fully developed and mature market and the other evidence presented, it is unlikely that the application of the cost approach could produce the most accurate determination of the value of the Subject.

Following the close of proofs, Petitioners' counsel moved that Respondent's valuation disclosure be stricken, essentially asserting that the report was neither reliable nor relevant because:

1. Respondent's expert lacked the geographical competence of the Ann Arbor market to render a reliable conclusion of value of the Subject Property [Tr 185:9-17];
2. Large gross adjustments were applied to the comparable properties either in terms of percentage or value resulting in the final reconciled value conclusion of the Subject to be "way above the SEV values" as originally assessed [Tr 185:17-22];
3. The report is filled with gross unsupported assumptions with no fact to support them [Tr 186:17-18; Tr 186:19-24];
4. Respondent's expert essentially used only four comparables, two of which were used for both tax years at issue [Tr 186:2-5];
5. Respondent's report was sloppy, replete with substantial errors and mistakes such that its preparation did not meet the standards of USPAP 1.1(b) and (c) [Tr 186:5-13]; and
6. Petitioners would be prejudiced by the admittance of Respondent's report as corrected on the stand the effect of which changed the numbers throughout the appraisal and also had an effect on the expert's ultimate opinion of value; that the report on which Petitioners prepared their case was not the report presented at hearing [See Tr 187:14-25].

The totality of these mistakes, Petitioners assert, makes the appraisal offered by Respondent unreliable. For these reasons, Petitioners argued that we should not accept such unreliable evidence, receiving it "for what it is worth" and then rejecting it or giving it no weight, but instead we should not consider it at all. In contrast, Respondent does not refute Petitioners' specific objections to its expert's report, but argues instead that the mistakes were small, arise from one principal oversight in a comparable, the changes were minor, and suggests that adjustments could be made because the effects of the errors are not "all that different." Respondent contends that its valuation report provides substantial evidence of value that should be considered in valuing the Subject Property.

The Tribunal deferred ruling on Petitioners' motion to strike because of the importance of the issues raised and the substantial effect on this case of eliminating Respondent's primary valuation evidence.

In most cases, as in this one, there is no dispute about the qualifications of the appraisers. The problem is created as the number of mistakes in an expert's report accumulates. Although individually they may be insignificant,[4] in the aggregate they erode the basic foundation reliability of an expert's opinion to the point where the testimony and appraisal are fatally flawed. This is certainly the point we have reached with regard to Respondent's expert report. The errors made by the authors of Respondent's expert report undermine our confidence and reliability we place in their conclusions. Errors in expert reports or testimony go directly to the weight and credibility to be given their differing opinions and what portion we may accept or reject. See *Great Lakes Div of Nat'l Steel, supra* at 404.

Flawed as it may be, we decline to strike Respondent's appraisal. Generally, an expert's opinion is admissible if it assists the trier of fact to understand the evidence or to determine a fact in issue. We have wide discretion when it comes to accepting valuation testimony and appraisal evidence. See *President Inn Props LLC v Grand Rapids,* 291 Mich App 625, 806 NW2d 342, 348 (2011). Sometimes, it will help us decide a case. Other times, it will not. We weigh the parties' testimony in light of his or her qualifications, knowledge of the Subject and relevant market, and with proper regard to all other credible evidence in the record. See *Id.* at 352. We may accept or reject a party's valuation theory in total, or we may pick and choose the portions which we choose to adopt. *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland,* 437

[4] At times we have viewed the occasional computational error or typo that is credibly corrected on the stand as a non-event. See, e.g., *Georgetown Place Co-Op v City of Taylor,* 226 Mich App 33; 572 NW2d 232, 239-240 (1997).

Mich 473, 485-486; 473 NW2d 636 (1991). There may come a case where we may fairly reject the burden on the parties and on the Tribunal created by unreasonable, unreliable, and irrelevant expert analysis and testimony tainted by overzealous advocacy. This is not such a case. Respondent's report, errors and all, does not assert an unreasonable position in light of the other evidence presented, nor does it leave us to guess at how her valuation could be derived by reason of her erroneous computations.[5] In our view, Respondent's expert report is not so far beyond the realm of usefulness that admission would be inappropriate. We will accord it, however, only as much credence as we conclude it deserves.

3. Refinancing Appraisal

Petitioners also object to the introduction of a portion of Respondent's Exhibit R-3 that contained a residential appraisal report of the Subject as of May 21, 2009. This appraisal report was apparently commissioned by NPB Mortgage for purposes of refinancing Petitioners' mortgage of the Subject. Petitioners argue that the mortgage appraisal is neither relevant, reliable, nor credible because it was completed for a different purpose and user. The intended use of an appraisal is important in determining how much weight to give it as opposed to its admissibility. We are to be generally permissive in the admission of relevant evidence of the fair market value of property subject to an appeal, even if that evidence is not determinative. See *Jones & Laughlin Steel Corp* v *City of Warren*, 193 Mich App 348, 353-354, 483 NW2d 416 (1992) (instructing that evidence of the selling price of property is relevant in determining the

[5] Respondent's expert did provide quantitative adjustment in response to her admitted errors. We could do our own analysis and have done so where the experts provide enough useful and reliable data for applying the 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).

taxable value of property), *Professional Plaza, LLC* v *City of Detroit*, 250 Mich App 473; 647 NW2d 529 (2002); see also MRE 401. Under both the Tax Tribunal Act and the Administrative Act, we are required to follow the rules of evidence as far as practicable, but "may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs." MCL 205.746(1); MCL 24.275. Here the refinancing appraisal involves the subject and renders a value conclusion within the second tax year at issue, albeit almost six months after the second relevant tax date.[6] The report falls within the scope of the type of admissible evidence described in MCL 205.746(1) and MCL 24.275.

Admissibility aside, we are nevertheless inclined to give this report little weight insofar as its value conclusion of the subject. The appraisal limits its use to mortgage finance transactions and its intended user is the lender/client, going so far as to say that the appraiser may not testify without prior specific arrangements. R Ex 3, p 4 of 6. Consistent therewith the author of the report was not called to testify or provide any foundation for this document or the analysis contained herein. Part of the reason that lending appraisals are given less weight by the Tax Tribunal in entire tribunal proceedings is adjustments to sale comparables have to fall within a certain percentage or the appraisal will be rejected or require a more extensive analysis. This strongly suggests that the final appraisal report is significantly influenced by the client/lending institution or that the appraiser may have a preconceived value for the property prior to finding comparables, or have a limit set by the amount of the financing. By way of example, both

[6] Post valuation date evidence, such as evidence of a comparable sale or the sale of the subject, is admissible after considering such things as the time of the transaction, comparability, and whether there were intervening circumstances that would have affected value between the tax day at issue and the later occurring sale. See *Detroit/Wayne County Stadium Authority v Drinkwater, Taylor, and Merrill, Inc*, 267 Mich App 625, 649; 705 NW2d 549 (2005).

Respondent expert and the author of R-3 used the sale 2241 Belmont as a comparable sale. Their respective adjusted sale price for this same comparable property varies by over $120,000.

Further, reflected by the intended use of this particular appraisal report, when a lender is considering an appraisal for lending purposes it is not considering a selling price with a willing buyer and seller,[7] it is considering whether the value of the property will be sufficient to pay off the mortgage loan. If the property is not worth enough to support the loan, the loan will not be made. This is because the financing appraisal is used to determine the mortgage's loan-to-value ratio, which informs the lending institution's risk-acceptance criteria; the higher that ratio, the more risk, the onerous the loan terms, the lower the ratio, less risk, more favorable the loan terms. Petitioner's unrefuted and credible testimony was that the mortgage balance against the Subject was "[close] to four-hundred thousand," suggesting a loan-to-value ratio of around 50%. We find this document and the conclusions drawn therein unpersuasive.[8] We turn to Petitioners' sales approach.

4. Petitioner's sales approach

All of the comparables in Petitioners' appraisal appear reasonably supported in this particular market, by location, and other characteristics. The comparables Mr. St. Dennis used

[7] Inasmuch as true cash value and "fair market value" are synonymous concepts; they infer the usual price that a willing buyer would pay a willing seller, both persons having reasonable knowledge of all relevant facts and neither person being under any compulsion to buy or to sell. See, e.g., *United States v Cartwright*, 411 US 546, 551 (1973). The willing buyer and the willing seller are hypothetical persons, rather than specific individuals or entities, and the characteristics of these hypothetical persons are not necessarily the same as the personal characteristics of the actual seller or a particular buyer. See, e.g., *Consumers Power Company v Port Sheldon Twp*, 91 Mich App 180; 283 NW2d 680 (1979), abrogated in part on other grounds *County of Wayne v Michigan State Tax Com'n*, 261 Mich App 174; 682 NW2d 100 (2004).

[8] This is not to say, as a general rule, that appraisals prepared for purposes of financial transactions are not entitled to evidentiary weight in tax proceedings before the entire tribunal. We simply emphasize that given the circumstances and parameters under which this report was prepared and, in the absence of a witness to lay some foundation and support for the conclusions stated therein and dispel our concerns, we lend this document little probative weight. We also note that in a hearing in the small claims division of the Tax Tribunal, a hearing officer may rely and give probative weight to a refinancing appraisal under TTR 642(1). See, e.g., *Kozma v Independence Twp*, unpublished opinion per curiam of the Court of Appeals issued November 18, 1996 (Docket No. 183405).

were, generally speaking, analogous to the Subject. After adjustment, Petitioners' expert found that his Comparables 1 and 3 indicated a range of between $665,000 to $684,000. His Comparable 2 indicates that a lower value for the Subject may be appropriate of about $561,000. After considering the market information, Petitioners' expert concluded that the market value of the Subject as of December 31, 2007, was likely $650,000. While Comparable 2 is most similar to the Subject, and required the least amount of total adjustment, Mr. St. Dennis inspected the Subject, viewed the comparables, and researched the market; therefore, his conclusion appears reasonable in light of the evidence presented. The Tribunal notes, however, that this conclusion is $129,700 or 16.6% less than what Petitioners paid for the property about a month earlier, on November 29, 2007.

Evidence of the selling price of property is relevant in determining the value of property. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348 (1992); *Professional Plaza, LLC v City of Detroit*, 250 Mich App 473; 647 NW2d 529 (2002). While not conclusive, such evidence is nevertheless probative in regards to the "usual selling price" and must be considered by the Tribunal in the absence of an auction or forced sale. See *Jones & Laughlin, supra* 193 at 354. Here, Petitioners made an irrational purchase. Petitioners' expert adequately explained in his report that he was of the opinion Petitioners overpaid for the Subject given the timing of their purchase and an overstatement on the listing ticket in the above grade living area of the Subject. Mr. St. Dennis' opinion was further supported by Petitioner Panitch's testimony at hearing and his concerns regarding the radon levels at the Subject. We find the evidence presented is credible and supported.

For the 2009 tax year, Petitioners' comparables demonstrate a range of $445,000 to $509,000. Though the comparables warranted some adjustments, they were not excessive and

the Tribunal finds them a reasonable foundation for the expert's conclusion. On an adjusted basis, the comparable properties ranged from $508,400 to 569,100. Petitioners' expert placed greatest weight on his Comparable 4, 1045 Chestnut, as being most similar to the Subject. After our review, we agree.

Accordingly, the evidence adduced in this matter, principally from Petitioners' expert and testimony, permits the Tribunal to conclude an appropriate value by a fair preponderance of the evidence, that the true cash value of the Subject was $650,000 for the 2008 tax year and $550,000 for the 2009 tax year.

5. *Costs*

Petitioners request that the Tribunal award costs. TTR 145(1) allows the Tribunal to order costs be remunerated to a prevailing party in an appeal before the Tribunal. The Tribunal is generally hesitant to award costs. The rule itself, however, provides no guidelines or criteria by which the Tribunal is to measure whether costs should be awarded. While MCR 2.625 provides courts with some criteria in determining whether an award of costs is appropriate, such direction is only applicable where an action or defense was frivolous, as provided by MCL 600.2591. MCR 2.625(A)(2). Thus, the decision to award costs is solely within the discretion of the Tribunal judge.

MCL 600.2591 provides:

> [I]f a court finds that a civil action or defense to a civil action was frivolous, the court that conducts the civil action shall award to the prevailing party the costs and fees incurred by that party in connection with the civil action by assessing the costs and fees against the nonprevailing party and their attorney.

The statute defines "frivolous" as any one of the following: [t]he party's primary purpose in initiating the action or asserting the defense was to harass, embarrass, or injure; the party had no reasonable basis to believe that the facts underlying that party's legal position were in fact true; or the party's legal position was devoid of arguable legal merit. MCL 600.2591(3)(a)(i)-(iii); see also *Carpenter v Consumers Power Co*, 230 Mich App 547, 556; 584 NW2d 375 (1998).

Respondent's value evidence, errors and all, does not assert an unreasonable position in light of the other evidence presented. Credibility and reliability concerns notwithstanding, Respondent's position was not without merit or "frivolous." Respondent did not cause Petitioners to incur costs that would otherwise have been unnecessary in the context of a tax appeal. The Tribunal finds that, in light of the circumstances of this case, awarding costs to Petitioners is not appropriate.

V. CONCLUSION

After a careful review and weighing of the testimony and exhibits presented by both parties, and after considering the credibility of the witnesses, we conclude that Petitioners met their burden of proof and that a reduction in the assessment is warranted. Under the circumstances and evidence presented here, Petitioners' valuation approach, namely that presented by Mr. St. Dennis, yields the most accurate valuation of the Subject Property. For the above reasons, the conclusion of the Tribunal is that the true cash value of Petitioners' property was $650,000 and $550,000 for tax years 2008 and 2009, respectively. Therefore,

IT IS 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, and (v) after December 31, 2011, at the rate of 1.09 for calendar year 2012.

This Opinion resolves all pending claims and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: March 13, 2012 By: Paul V. McCord