

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

G. Alfred Dodds III and  
Kendra Dodds,  
Petitioners,

V

MTT Docket No. 354364

City of Ann Arbor,  
  
Respondent.

Tribunal Judge Presiding  
Paul V. McCord

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FINAL OPINION AND JUDGMENT

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

I. INTRODUCTION

This matter comes before the Tribunal for decision after hearing in the Entire Tribunal Division on September 8, 2011 in Lansing, Michigan. Petitioners, Dr and Mrs. Dodds, 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. Follow a subsequent motion to amend their Petition to include claims challenging the 2009 real property tax assessment, Petitioners have placed tax years 2008 and 2009 at issue before us.<sup>1</sup>

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<sup>1</sup> Petitioners have sufficient interest in the property to maintain this petition; all statutory and jurisdictional requirements have been complied with, and the Tribunal has jurisdiction over the subject matter of the action and the parties hereto.

At issue in this property tax appeal is the market value (true cash value or TCV) of Petitioner’s single family residence at 1009 Berkshire Road, Ann Arbor, Michigan (“Subject Property”), as of the relevant assessment dates – December 31 – for each of the tax years at issue. Petitioners allege that the true cash value of their home likely does not exceed \$745,000 and \$705,000 for tax years 2008 and 2009, respectively. Respondent’s Assessor placed a December 31, 2007, estimated market value on the Subject Property of \$866,600. For tax year 2009 Respondent estimated the market value of the Subject Property at \$814,200. At hearing, Respondent claimed that the Subject Property was worth \$860,000 for tax year 2008, and \$810,000 for the 2009 tax year. For the reasons below, a reduction in the assessment is warranted.

## 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	09-09-34-206-030	\$721,000	\$360,500	\$360,500
2009	09-09-34-206-030	\$678,200	\$339,100	\$339,100

### 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. Immediately prior to hearing the parties submitted a stipulation of facts and admissibility of exhibits. The stipulation of facts and admissibility of certain exhibits are incorporated herein by this reference.

#### *1. The Subject Property*

The Subject Property is a .40 acre parcel. It is improved with a large single family Tudor Revival style house characterized by such architectural features as a steeply pitched roof, half-timbering and clinker brick work typical to its 1929 vintage. The Subject Property has a gross living area of 3,124 square feet. The house sits on a 1,518 square foot foundation that consists of a basement, crawl space and slab areas. Approximately 750 square feet of the basement area is finished. The main level consists of four rooms: kitchen together with a nook, living room, dining room, and study. The main floor kitchen has hardwood cabinets and stainless steel appliances. A foyer and ½ bath are also located on the first floor. The master bedroom together with three additional bedrooms and 2 full baths are located on the second floor. The third floor, which is finished attic space,

contains a recreation room/office. Many of the period details remain intact including hardwood floors, wood trim, stair rail system and solid wood doors. The residence is heated with gas forced air heating supplied by two furnaces one in the basement and the other on the third floor. The house is cooled by central air conditioning. The basement area is approximately 1,169 square feet that includes 750 square feet of average quality finished area that includes a family room, a bath, and a laundry area. There is also a storage room in the basement. The lot is generally level although it slopes down slightly towards the rear (east) of the lot such that the garage – a small one-car garage – is located at the rear of the house on the basement level on the east side of the house under kitchen. The driveway runs along the west side of the house swinging around the back of the house to the garage; the driveway takes up most of the back yard.

## *2. Condition of the Subject*

The Subject Property is in average condition given its 1929 vintage. The Subject being an older property, several condition issues were present. The asbestos composite roof shingles are at the end of their service life. Given the single material and steep pitch of the roof, replacement cost is estimated above average with a recent bid at \$40,000. Some of the interior ceiling plaster on the first floor has detached from its lath causing a sag. There is some water infiltration in the basement and garage during heavy rains and deterioration to the brick work

is noticeable around door sills, brick paver sidewalks, porches, and patio areas.

While the Subject has two furnaces, inefficient heating has been noticed due in part to insufficient insulation and inefficient original windows.

### *3. The Subject's Location*

The Subject Property is located in a fully mature built-up residential neighborhood of Ann Arbor. It is zoned for single family residential and is legally conforming. The neighborhood features irregular, curving street paths lined with traditionally styled affluent single family homes generally averaging over 3,000 square feet. 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. Washtenaw Blvd – Business US 23/94 cuts diagonally from northwest to southeast and lies generally west of the Subject, Vinewood Blvd. is to the Subject's immediate north.

### *4. Economic Conditions*

The City of Ann Arbor is the largest city in Washtenaw County and home to the University of Michigan employing 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.

##### *5. 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 of the Subject Property, completed by Mark J. St. Dennis, a Certified General Appraiser, licensed by the state of Michigan. Mr. St. Dennis also testified in Petitioners' case in chief 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 and opined that the Subject Property had a market value of \$745,000 for tax year 2008, and \$705,000 for the 2009 tax year.

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 matter was her first residential appraisal in the City of Ann Arbor. Respondent's expert also relied on the market approach in arriving at her valuation conclusion. She relied on two sales for the first tax year at issue and three sales for the second tax year at issue, all within the City of Ann Arbor and within approximately a mile of the Subject. The appraisal report prepared by Frischman Appraisal & Consulting and offered by Respondent concluded that the true cash value of the Subject Property was \$860,000 for the 2008 tax year and \$810,000 for the 2009 tax year.<sup>2</sup>

#### *6. Petitioners' Sales Approach*

Mr. St. Dennis selected sales that were relatively close in proximity to the Subject, date of construction, gross living area, and architectural style. Petitioners' expert testified that there were enough sales from which he was able to select his comparables. Mr. St. Dennis used three different comparables for each tax year at issue. All of the comparables were located in Ann Arbor and similar location within 0.30 miles of the Subject. Comparables 1 through 3 all sold in 2007 ranging

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<sup>2</sup> Respondent's appraiser also arrived at a conclusion of value for the 2010 tax year; however, that tax year is not at issue before us.

in price from \$590,000 for Comparable 3 to \$830,000 for Comparable 2.

Comparables 4 through 6, utilized to determine the market value of the Subject for the 2009 tax year, all sold in 2008 for \$587,500 to \$715,526.

Comparable 1 is located approximately 0.28 miles south from the Subject Property at 2038 Norway on a corner lot. The sale occurred on January 9, 2007. It was built in 1932. After adjustments for lot size, heating and cooling equipment, architectural style, size, finished basement, garage and enclosed porch, the adjusted sale price was \$750,300.

Comparable No. 2 was located approximately 0.2 miles east from the Subject Property, in a similar location as the Subject. It was built in 1948 but was renovated in 2005. The sale closed in November 2007. It is a larger house on a larger lot with a three-car attached garage. After adjustments for seller concessions, lot size, room count, architectural style, exterior finish, condition, gross living area, finish basement, garage, and lack of patio, the adjusted sale price was \$749,914.

Comparable No. 3 was located approximately a quarter of a mile south of the Subject Property. It was built in 1941. The lot is approximately 50% larger than the Subject Property. The location was similar. Comparable No. 3 has an enclosed porch and a two-car attached garage. The sale closed in July of 2007 and Petitioners' appraiser noted seller concessions. The adjusted sales price was

\$612,200. The adjusted sale price of the three comparables utilized for the first tax year at issue ranged from \$612,200 to \$750,300.

For the 2009 tax year, Petitioners' expert developed his opinion of value from three comparable sales: Comparables 4 through 6. Comparable 4 was located approximately 0.3 miles west of the Subject Property. Built in 1914, it is older than the subject and sits on a smaller lot. The location was similar to that of the subject and has the same number of bedrooms and bathrooms as the Subject. Comparable 4 has a two-car detached garage. The sale of Comparable 4 closed at the end of February 2008. The adjusted sales price was \$644,800.

Comparable 5 is located approximately a quarter of a mile southwest of the Subject at 1125 Fair Oaks, again on a smaller lot. The sale occurred on May 16, 2008. Although it is older than the subject, built in 1916, it has a two-car detached garage. After adjustments for seller concessions, lot size, architectural style, exterior finish, gross living area, and lack of finish in the basement area, the adjusted sale price was \$709,875.

Comparable 6 was located approximately 0.3 miles northwest of the Subject. It was built in 1927. Similar to the subject, Comparable 6 has a one-car attached garage. The sale closed in June 2008. It is smaller than the Subject by about 100 square feet. After adjustments for a larger lot, more bathrooms, heating and cooling equipment, condition, gross living area, and unfinished basement, the

adjusted sale price was \$709,526. The adjusted sale price of the three comparables utilized for the second tax year at issue (2009) ranged from \$644,800 to \$709,875.

### *7. Respondent's Sales Approach*

Respondent's appraiser sought to identify similar properties, in the same economic area, affected by the same value influences. Gross living area was a significant factor. Respondent's appraiser testified that it was difficult to find comparables, characterizing the neighborhood as an eclectic mix of unique properties, that it was not a "cookie cutter neighborhood." She also pointed out that she rejected a large number of sales because they were relocation sales. Ultimately, she used two comparables in Ann Arbor. Comparable 1 is in the same general location as the Subject located on Devonshire Road. Comparable No. 2 is further away on Geddes Avenue, which is considered an inferior location.

Both comparables sold over a year before the assessment date. Comparable 1 sold on October 2, 2006 for \$925,000, and Comparable 2 sold on November 11, 2006 for \$715,000. Both Comparables were located on larger lots; although the lot at Comparable 1 is similar and only a bit larger at .46 acres versus that of the Subject at .40 acres. Comparable 1 is similar in gross living area and architectural style as the Subject Property; Comparable 2 is about 600 square feet smaller than the Subject. Comparable 1 is a 5-bedroom, 2 ½ bath house, while Comparable 2 has 3 bedrooms and 2 ½ baths. The Subject has 4 bedrooms with two full and 2

half baths. The Subject and the Comparables have similar heating and cooling equipment. Both Comparables were in good condition, while the Subject Property was in average condition. Comparable No. 1 was built in 1919; Comparable No. 2 was built in 1920. The Subject Property was built in 1929. The Subject Property has a small one-car basement tucked under the garage, while Comparable Nos. 1 and 2 both have two-car detached garages. After adjustments, Comparable No. 1 had a sale price of \$858,726, and Comparable No. 2 had a sale price of \$885,366.

*8. 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), assessed value (AV), and taxable value (TV), as confirmed by the Ann Arbor Board of Review or on the assessment roll as of each of the tax years at issue are as follows:

Year	TCV	SEV	AV	TV
2008	\$866,600	\$433,300	\$433,300	\$433,300
2009	\$814,200	\$407,100	\$407,100	\$407,100

#### IV. CONCLUSIONS OF LAW

##### *1. Exclusion of Evidence*

At the outset we turn to the parties' arguments about the foundation and reliability of Respondent's appraisal. Respondent moved to supplement its appraisal exhibit with two pages ostensibly missing from the original document previously exchanged and filed with the Tribunal approximately 5 months before hearing. These two pages, designated as pages 34A and 34B, are Respondent's comparable sales adjustment grid and value conclusion via the sales comparison approach for the second tax year at issue, 2009. Adding to the confusion is the fact there is no jump in sequence in the pagination of Respondent's appraisal report indicating that pages were missing and that the report concludes to value for three tax years while there are only two at issue in this case. Thus, the fact that these pages were not part of the report submitted in accordance with Rule 252(1) and our Notice of General Call was not immediately apparent. In addition, during its case in chief, Respondent had its expert correct a number of mistakes to her appraisal report on the stand.

Petitioners objected to the admission of Ms. Frischman's appraisal report in general and specifically to the two additional pages. Petitioners assert that given the number of errors, mistakes and missing pages, Ms. Frischman's report does not meet USPAP Standards Rule 2-1 and is unreliable. Petitioners also objected to the

fact that Respondent only notified Petitioners of the significant changes to its report around noon the day before hearing. Petitioners essentially argue that Ms. Frischman's testimony and opinions expressed in her appraisal lacked foundational reliability because of the numerous errors in her appraisal and, as a result, they have been prejudiced in that they prepared for a case that Respondent did not present. Respondent's counsel asserted that the mistakes, however unfortunate, were only discovered as she prepared for hearing and that the sum and substance of the errors were only minor in nature, and that it is only two additional pages sought to be admitted. The Tribunal finds this unacceptable.

The decision whether to admit or exclude evidence is within the Tribunal's discretion. *Elezovic v Ford Motor Co*, 472 Mich 408, 419; 697 NW2d 851 (2005). As to the missing pages, lateness in itself will not automatically preclude evidence unless the unfair prejudice caused to the other party substantially outweighs its probative value. See, e.g., *People v Aldrich*, 246 Mich App 101, 114; 631 NW2d 67 (2001). Part of the logic underlying TTR 252(1) is to avoid unfair surprise by providing both parties an opportunity to review and prepare a response to the other party's evidence so far as is reasonably possibly before hearing. Sometimes we may accept evidence that is not timely submitted where we conclude under the particular circumstances that the late submission does not harm (prejudice) the other party's ability to respond. In these circumstances, however, we accept such

late evidence on the proviso than any prejudice caused can be compensated for. It does not mean that a party can have free rein to look the other way, prepare its case, and then throw all its evidentiary eggs into the Tribunal's basket at the time of hearing.

The valuation disclosures in this case were exchanged approximately five months before the hearing in this matter, and yet Respondent only discovered the missing pages and errors in its report on the eve of hearing. Meanwhile, Petitioners prepared their case on reliance of the documentation previously disclosed only to learn otherwise on the eve of hearing. Regardless of the timing of the discovery or need to correct mistakes, typos, or other errors in an appraisal, counsel must notify the other side of the errors and provide corrections as soon as possible. It is unfair to an attorney to find out either on the eve of hearing or at hearing that the other side's expert report has substantial changes. Further, a corrected appraisal or replacement pages should be made available to the Tribunal as soon as possible so that preparation time and hearing time are used efficiently. Under the circumstances, there is insufficient time and means to cure any harm done. Accordingly, while we will admit Respondent's appraisal report and expert testimony, and assign it the appropriate credibility and weight it deserves, we will preclude the admission of new pages 34A and 34B. Precluding Respondent's unreasonably late evidence is fair.

## 2. *Burden of Proof*

While a property's assessed valuation on the tax rolls carries no presumption of validity, *President Inn Props LLC v Grand Rapids*, 291 Mich App 625; \_\_\_ NW2d \_\_\_ (Docket No. 294452, issued February 17, 2011) slip op p 8, Petitioners nevertheless bear the burden to establish the "true cash value" of their property. MCL 205.737(3); *Georgetown Place Co-op v City of Taylor*, 226 Mich App 33; 572 NW2d 232, 236 (1997). In turn, the phrase "true cash value" is defined as "the usual selling price at the place where the property to which the term is applied is at the time of assessment." MCL 211.27(1). It is essentially the fair market value of property. *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 484 n 17; 473 NW2d 636 (1991). Petitioners meet their burden by introducing affirmative evidence as to the market value of their property. See *Berenjian v City of Ann Arbor*, unpublished opinion per curiam of the Court of Appeals issued November 29, 2011 (Docket No. 300490) slip op p 3. After considering all the evidence, the Tribunal makes a determination based on the preponderance of the evidence. See *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 409; 576 NW2d 667 (1998); *Allen v Dep't of Treasury*, 10 MTT 802 (2000).

### 3. Valuation

The true cash 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). In deciding valuation cases, we often look to the opinions of expert witnesses. Nonetheless, we are not bound by the opinion of any expert witness, and we may accept or reject expert testimony in the exercise of our sound judgment. See *Jones & Laughlin Steel Corp*, 193 Mich App 348, 356; 483 NW2d 416 (1992). Although we may largely accept the opinion of one party's expert over that of the other party's expert, see, e.g., *Southfield Western, Inc v City of Southfield*, 146 Mich App 585; 382 NW2d 187 (1985), we may be elective in determining what portions of each expert's opinion, if any, to accept, *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 390; 576 NW2d 667 (1998). Regardless of the method applied, the value we ultimately determine "must be the usual price for which the property would sell." *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991). Finally, because valuation is not an exact science it necessarily involves an approximation, the figure at which we arrive need not be directly traceable to specific testimony if it is within the range of values that may be properly derived from consideration of all the evidence. *Great Lakes Div of Nat'l Steel Corp, supra* at 398-399; *President Inn Props LLC v Grand Rapids*, 291 Mich App 625; \_\_\_ NW2d \_\_\_ (Docket No.

294452, issued February 17, 2011) slip op p 8-9; *Comstock Village Ltd Dividend Housing Ass'n*, 168 Mich App 755, 760; 425 NW2d 702 (1988).

The Tribunal considers the three traditional approaches (cost, income and sales) to determine the true cash value of property. *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 484-485; 473 NW2d 636 (1991). Although it is preferable to give weight to more than one approach to value, under appropriate circumstances, a single approach may be used to determine the true cash value of property. Indeed, we are to select the approach which provides the most accurate valuation. *Antisdale v City of Galesburg*, 420 Mich 265, 276; 362 NW2d 632 (1984). Here, both experts fully developed a sales comparison approach and considered but rejected the cost approach primarily due to the age of the Subject Property. We agree. Both experts also considered and but did not develop an income approach to value because the Subject Property is not income-producing. We agree, and find the market approach to be the best method for determining the true cash value of Petitioners' property.

#### 4. *Sales Approach*

The sales-comparison or market approach has been described as:

“the process of deriving a value indication for the subject property by comparing similar properties that have recently sold with the property being appraised, identifying appropriate units of comparison, and making adjustments to the sales price (or unit prices, as appropriate) of the

comparable properties based on relevant, market-derived elements of comparison.”

Appraisal Institute: *The Appraisal of Real Estate* (Chicago, Appraisal Institute, 13<sup>th</sup> ed, 2008), p 297; see also *Samonek v Norvell Twp*, 208 Mich App 80, 85; 27 NW2d 24 (1994). It has been described as the only approach that directly reflects the balance of supply and demand for property in marketplace trading when there are sufficient recent, reliable transactions to indicate value patterns and trends in the market. *Jones & Laughlin Steel Corp, supra* at 353; *The Appraisal of Real Estate supra* at 300. This is especially true in evaluating owner-occupied properties, like the Subject. See George F. Bloom, MAI and Henry S. Harrison, MAI, *Appraising the Single Family Residence*, American Institute of Real Estate Appraisers, Chicago, Illinois (1978), p 265 (stating that the sales comparison approach is generally regarded as the preferred approach to estimate the market value of single family residences). However, if the analysis of a comparable sale is flawed, the valuation for the subject property is also flawed. *Antisdale v City of Galesburg*, 420 Mich 265, 278-279; 362 NW2d 632 (1984). As a result, this case rests entirely on the strengths or weaknesses of the parties’ respective sales comparison approaches.

With regard to Petitioners’ analysis all of Petitioners’ comparables have gross adjustments of not more than 14% or less. Petitioners’ appraiser found

Comparable 1 as most similar to the subject. We agree and we also note that Comparable 1, similar to the Subject, has a steeply pitched roof of possibly slate shingles. Both the condition of Comparable 1 and the subject are described as “average,” although Petitioners’ expert notes under the Subject to “see report.” “Average” condition delineates that “normal wear and tear is apparent, average attractiveness and desirability.” State Assessor’s Manual, Volume I, Introduction, p 22. As a numerical percentage good a property in average condition is between 60% to 74% good with the midpoint of that range at 67%. *Id.*

The sales of Comparable 1 preceded the relevant tax day by almost one year. A sale closing in early January suggests that the purchase contract would have been negotiated sometime in late 2006. Petitioners’ appraiser took no market conditions into account, either for Comparable 1 or any of the other Comparables he utilized throughout his analysis. While he was consistent in his treatment of this item, he testified, and his report discloses, the significant loss of employment in the area as a result of Pfizer announcing closing of its research campus and that lenders began restricting mortgage credit during 2007. We wonder if an adjustment was warranted under the circumstances, given the changes occurring in the market during the relevant period. Petitioners’ appraiser also found that Comparable 2, although much larger, in better condition, and requiring larger gross adjustments, supported his reconciled value conclusion for the 2008 tax year.

For the 2009 tax year, we note the lack of an adjustment for the fact that Comparables 4 and 5 both have 2-car detached garages. In other parts of his report, Petitioners' appraiser made a \$7,500 downward adjustment for properties with 2-car attached garages. This lack of an adjustment does not appropriately reflect the comparability of these properties to the Subject Property and is inconsistent given that he made adjustments for the presence or absence of this item of comparability in his analysis for 2008. That said, we lack evidence as to how the market would quantify an adjustment for a 2-car detached garage. Petitioners' expert found Comparable 6 most similar and we would agree.

As for Respondent's sales approach, we note that her concept of "neighborhood" stuck us as novel, that a neighborhood was not limited to a set geographical area but included those properties that buyers and sellers would view as competitive. This view seems at odds with the so-called first rule of real estate. Comparable 2 is not a good comparable, given the difference in size, age, room count and location. Respondent's expert acknowledged that Comparable 2 was inferior to the Subject. We agree. The gross adjustment applied to Comparable 2 was over 60%. We give minimal or no weight to comparables with gross adjustments that exceed 50%. This leaves Respondent's entire valuation balancing precariously by its Comparable 1. While Comparable 1 shares a number of

similarities to the Subject, it sold approximately 15 months before the tax day at issue. Respondent's appraiser attempts to reconcile this fact through the use of a market conditions adjustment with which she expressed great confidence. Market conditions may create the need for an adjustment to sales prices that occurred during the year. Time adjustments are used to adjust the sale price to the date of assessment (December 31) to reflect any changes in market conditions that have occurred between the assessment date and the sale date. Time itself is not the cause for the adjustment; it is the movement of value over time. Given the dramatic changes in the economy that occurred in 2007 and 2008, we are not persuaded that Respondent's market conditions adjustment adequately reflected these changes. Sales that antedate the so-called "Great Recession" that began in December 2007 and took a particularly sharp downward turn in September 2008 are too far afield and not very informative as the motivation of market participants, lenders, and the availability of financing shifted dramatically. 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). Comparable 1 does not provide a reliable indication of the "usual selling price" for the Subject as of the relevant tax day. *President Inn Props LLC v Grand Rapids*, 291 Mich App 625; \_\_\_ NW2d \_\_\_ (Docket No. 294452, issued February 17, 2011) slip op p 6.

While we accepted the parties' stipulation qualifying Respondent's appraiser as an expert in real property valuation and admitting her appraisal report, thus permitting her to offer opinion testimony as to value, see TTR 283(3), being qualified as an expert is but the first part of accepting an expert's opinion. In addition to determining whether a witness is qualified to testify as an expert, we must also decide the closely related issue as to whether the expert's opinion is based on facts and data and whether her valuation disclosure or appraisal contains valuation methodology, analysis, or reasoning. See TTR 101(m). This requires that an expert's opinion be based on facts, data, or another expert's opinion, either perceived by or made known to the expert. At bottom, the rule requires that the opinion of an expert depend upon the facts and reasoning which form the basis of the opinion. Thus, an expert's opinion is only as good as the data upon which the expert relies and the reasoning developed therefrom. Since the probative value of an expert's opinion must stand or fall upon the facts and reasoning offered in support of that opinion, and given the missing analysis and errors in the report offered, we are not convinced by the appropriate standard of proof that Respondent's opinion is adequately supported in this matter. Based on the foregoing, we are constrained to reject the sales comparison approach methodology as presented by Respondent.

### 5. *Cost to Cure*

Both of the experts made mention of various deficiencies to the condition of the Subject in their respective reports and testimony, although they disagreed as to the significance of the various items. While Mr. St Dennis testified that he lacked sufficient information upon which to adequately evaluate whether a condition adjustment would be appropriate, he did note that “a buyer would have the full scope of information, both of the subject and of the comparables” and that such an adjustment could be “substantial.” We agree that a reasonably knowledgeable buyer in the market for an older home such as the Subject would have been cognizant of the deficiencies at the Subject and the condition of competitive properties, thus affecting the price he would be willing to pay for the Subject.

Major deficiencies in a property’s condition require a cost to cure. Condition deficiencies that may be of risk to health and safety of the occupants or soundness of property are “major deficiencies. Examples of such conditions may include leaking or worn out roofs, structural problems such as foundation damage caused by settlement, standing water against foundation, or an excessively wet basement. “Cost to cure” is an adjustment to the value of the subject property, for the dollar amount it would cost to restore the property to a particular state of condition.

For the first tax year at issue 2008 Petitioners' expert found Comparable 1 most probative of value. Both Comparable 1 and the Subject have steeply pitched roofs. Comparable 1 also appears to have slate roof shingles – a superadequacy. Both Comparable 1 and the subject are listed as being in average condition. As for the 2009 tax year, Comparable 6 was found the most similar to the Subject. It also has a steeply pitched roof covered with what we infer to be architectural shingle and not a superadequacy. Comparable 6 is listed in superior condition to the Subject's average condition and carries an adjustment for the difference. The testimony and evidence presented at hearing tells that the condition of the roof at the Subject was not, however, in average condition but was at the end of its service life and in need of replacement. Petitioner, Dr. Dodds' unchallenged testimony at hearing was that he received a recent bid of \$40,000 to re-roof the Subject.<sup>3</sup>

Based on the evidence presented, we will adjust Petitioners' appraiser's reconciled value conclusions down by \$24,000<sup>4</sup> for the 2008 tax year and by \$26,800<sup>5</sup> for the 2009 tax year to take into account the cost to cure the roof to the stated average condition. We note that after this adjustment, our final value conclusion lies within the range of values testified to by the experts. See *President*

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<sup>3</sup> No other evidence was presented at hearing from which to quantify a cost to cure adjustment for the other deficiencies that were identified.

<sup>4</sup> After taking into consideration of the super adequacy of the roofing shingle at Comparable 1 a cost to cure adjustment of \$24,000 (\$40,000 cost of new roof x 60%) appears appropriate from the evidence presented.

<sup>5</sup> A cost to cure adjustment of \$26,800 (\$40,000 new roof x 67%) is appropriate from the evidence presented.

*Inn Props LLC v Grand Rapids*, 291 Mich App 625; \_\_\_ NW2d \_\_\_ (Docket No. 294452, issued February 17, 2011) slip op p 8-9.

## 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, Petitioners' sales approach yields the more reliable and probative evidence as to the value of the Subject for each of the tax years at issue after our adjustment. We conclude that Petitioners met their burden of proof and that a reduction in the assessment is warranted. For the above reasons, the conclusion of the Tribunal is that the true cash value of Petitioners' property was \$721,000 and \$678,200 for tax years 2008 and 2009, respectively.

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, 1995 at the rate of 6.55% for calendar year 1996, (ii) after December 31, 1996 at the rate of 6.11% for calendar

year 1997, (iii) after December 31, 1997 at the 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, (xv) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (xvi) after December 31, 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.

This Opinion resolves all pending claims and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: December 28, 2011

By: Paul V. McCord