

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

James and Karen Westphal,
Petitioners,

v

MTT Docket No. 354367

City of Ann Arbor,

Tribunal Judge Presiding

Paul V. McCord

Respondent.

FINAL OPINION AND JUDGMENT

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

I. INTRODUCTION

This residential property tax assessment dispute comes before the Tribunal for decision after hearing in the Entire Tribunal Division on September 29, 2011 in Lansing, Michigan. At issue is the market value (true cash value or TCV) of Petitioner’s single family residence at 384 Orchard Hills Drive, Ann Arbor, Michigan (“Subject Property”), as of the relevant assessment dates – December 31 – for each of the tax years 2008 and 2009.¹ For the 2008 tax year, Respondent’s

¹ Petitioners purchased their home in 2006 for \$675,000, and at all times relevant herein, continued to own and occupy the Subject as their principal residence. Petitioners timely petitioned a decision of the March Board of Review confirming the assessment levied against their home by Respondent for the 2008 tax year. They subsequently filed a motion to amend their Petition to include claims challenging the 2009 real property tax assessment levied against the Subject. 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.

Assessor placed a December 31, 2007, estimated market value on the Subject of \$716,000. For tax year 2009 Respondent estimated the market value of the Subject declined to \$675,000. Petitioners allege that the true cash value of their home likely did not exceed \$585,000 and \$550,000 for tax years 2008 and 2009, respectively. At hearing, Respondent claimed that the Subject Property was worth \$715,000 for tax year 2008, and \$700,000 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	09-09-27-301-001	\$590,000	\$295,000	\$295,000
2009	09-09-27-301-001	\$572,100	\$286,050	\$286,050

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. Assessment

The Subject Property (as described below) is identified on Respondent's assessment rolls by Parcel I.D. No. 09-09-27-301-001. 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	\$716,000	\$358,000	\$358,000	\$345,262
2009	\$675,000	\$337,500	\$337,500	\$337,500

2. The Subject Property

The Subject Property (sometimes referred to simply as the "Subject") is a .60 acre irregularly shaped hexagonal residential lot improved with a 2,151 square foot single family house of some eclectic northern European revival style built in 1915. The house sits up on a hill on a 1,284 square foot walk-out basement with the lot sloping down from the rear (north and west) of the lot towards the front (southeast). The Subject's building improvements encroach on the rear (north) lot

line with brick patio of the Subject appearing to spill over onto the adjacent property.

Given its 1915 vintage, the Subject is in average condition. The house boasts such architectural features as a steeply pitched gabled roof along its north-south axis and a hipped roof on the garage side toward the east. The roof is punctuated with large shed dormers, wide eaves, and architectural shingles. The exterior finish is stucco – although the rear of the house is finished with stucco up to a beltline with shingles above. Large banks of double or triple windows capped by timber headers complete the front façade. The main level consists of four rooms: kitchen, living room, dining room, and a family room laid out in a more-or-less open L- shaped plan. The kitchen has been updated with hardwood cabinets, granite counter tops, tile floor and stainless steel appliances. A half-bath is also located on the first floor. There are three fireplaces in the home, although only one is operational. The master bedroom, study, two additional bedrooms (one with an adjacent so-called sitting area), and two full baths are located on the second floor. The master bedroom was the subject of a contemporary building addition that extends the space over an unheated screened porch and features a reversed pitched or V- shaped roof. This design has led Petitioners to notice inefficient heating and cooling in the master bedroom. A wall-mounted air

conditioning unit and a balcony with stairs to the yard completes the master bedroom.

The walk-out basement is predominantly finished providing approximately 1,000 square feet of living space. Large banks of windows that look out to the front and provide generous natural light in the basement and a family room with one of the home's three fireplaces, a very small full bath (bringing the total number of full baths to three), and a laundry area are located on this level. The basement has approximately seven-foot ceilings with plumbing and heating piping encroaching below. It also has direct access to the garage and a walk-out to the front yard, although this door has been sealed shut. Given the slope of the lot, the attached two-car garage is located on the basement level on the east side of the house. The roof of the garage forms a concrete patio above. Some water infiltration is noticeable in the garage. The residence is heated with hot water baseboard heating; however, there is no central air conditioning system.

3. The Subject's Location

The Subject Property is located in a fully mature built-up residential neighborhood east of downtown Ann Arbor and southwest of the Huron River. It is zoned for single family residential and is legally conforming. The neighborhood features irregular, curving street paths lined with traditionally styled 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. Unlike the rest of the neighborhood, the portion of Orchard Hills Drive that runs past the subject is an unpaved dirt road. Geddes Avenue runs approximately east by south and lies generally south of the Subject. Angell Elementary School is west of the Subject and within walking distance with the Nichols Arboretum lying off to the northwest by 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 \$585,000 for tax year 2008, and \$550,000 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 \$715,000 for the 2008 tax year and \$700,000 for the 2009 tax year.²

6. Petitioners' Sales Approach

Mr. St. Dennis selected sales that were within a mile of the Subject, with similar date 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. Comparables 1 through 3 all sold in 2007 ranging in price from \$556,000 for Comparable 3 to \$595,000 for Comparable 1. Comparables 4 through 6, utilized to determine the market value of the Subject for the 2009 tax year, all sold in 2008 in the range of \$425,000 to \$555,000.

² 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.

Comparable 1 is located approximately 0.46 miles southwest of the Subject Property at 2015 Day. The sale occurred on May 23, 2007. It was built in 1927. After adjustments for seller concessions, room count, heating and cooling equipment, architectural style, gross living area, walk-out basement, basement finish, garage and patio, the adjusted sale price was \$583,600. No adjustment was made for lot size although the lot at Comparable 1 is half the size of that at the Subject.

Comparable 2 was a brick house located approximately 0.47 miles southwest of the Subject, in a similar location. Younger in construction than the Subject, it was built in 1928. The sale closed on June 1, 2007. After adjustments for seller concessions, lot size, heating and cooling equipment, architectural style, exterior finish, gross living area, walk-out basement, finished basement, garage, and patio, the adjusted sale price was \$576,000.

Comparable 3 was located approximately a half of a mile west of the Subject. It was built in 1917 in what is sometimes referred to as a four square design. The lot is approximately 50% smaller than the Subject Property. The sale closed in November of 2007. After adjustments, the adjusted sales price was \$597,000. The adjusted sale price of the three comparables utilized for the 2008 tax year ranged from \$576,000 to \$597,000.

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 just over three quarters of a mile southwest of the Subject. Built in 1912, it is a bit older than the subject and sits on a smaller lot. The location was similar to that of the Subject but had more above-grade bedrooms and less bathrooms than the Subject. Comparable 4 has a two-car detached garage and sits on a basement. The sale of Comparable 4 closed on July 11, 2008. After adjustments, the adjusted sales price of Comparable 4 was \$572,100.

Comparable 5 is located 0.71 miles southwest of the Subject at 1046 Baldwin, again on a smaller lot. The sale occurred on August 7, 2008. Also built in 1912 it has a one-car detached garage. After adjustments for heating and cooling equipment, architectural style, gross living area, walk-out basement, finish in the basement area, garage and wood deck, the adjusted sale price was \$534,500.

Comparable 6 was located almost a mile (0.96) southwest of the Subject. It was built in 1910 on a small corner lot. Comparable 6 has a one-car detached garage. The sale closed in October 2008. After adjustments for lot size, absence of a half-bath, architectural style, condition, gross living area, walk-out basement, unfinished basement area, garage and patio, the adjusted sale price was \$505,300. The adjusted sale price of the three comparables utilized for the 2009 tax year ranged from \$505,300 for Comparable 6 to \$572,100 for Comparable 4.

7. Respondent's Sales Approach

Respondent's appraiser sought to identify similar properties, in the same economic area, affected by the same value influences. For the 2008 tax year, Respondent's appraiser used three comparables in Ann Arbor that bracket the assessment date over an approximate 24-month period. Only Comparable 2 located at 10 Geddes Heights sold in 2007, specifically, on November 12, 2007, approximately a month and a half before the assessment date for an unadjusted sale price of \$556,000. Comparable 1 sold almost one year after the assessment date, on December 5, 2008, and Comparable 3 sold over a year before the assessment date on November 1, 2006. Respondent's analyzed re-sales concluding that prices fell by 6% during 2007 and 3% during both 2008 and 2009. Market conditions adjustments were applied to both Comparable 1, which sold towards the end of 2008, and Comparable 3, which sold towards the end of 2006. Comparables 2 and 3 are on or off of Geddes, as the Subject is located north of Geddes. Comparable 1 is quite some distance away lying west of Washtenaw Avenue in the Burns Park neighborhood, which is considered a superior location. The Subject sits on a larger lot than Comparables 1 and 2; however, given the slope of the lot at the Subject, Respondent's expert concluded that the net usable lot area was comparable. The lot at Comparable 3, however, was judged superior and an adjustment was applied.

Comparables 1 and 2 are of similar above grade gross living area albeit a bit larger than the Subject. All were considered inferior to the Subject in terms of quality of construction. All of the comparables were built in the same era as the Subject (1910s and 1920s) and all were considered to experience the same design flaws in terms of functional utility. The Subject does not have central air conditioning and the cost to cure was estimated at \$8,000; Respondent's expert made a negative adjustment to the comparables that have central air conditioning. The Subject Property has a two-car attached garage while Comparable 1 and 2 had inferior garages and received an adjustment. After adjustments, Comparable 1 had a sale price of \$705,381; Comparable 2 had a sale price of \$724,936; and Comparable 3 had a sale price of \$717,127. All of the three comparables were given equal weight and Respondent's expert concluded that the indicated market value of the Subject for the 2008 tax year was \$715,000.

For the 2009 tax year, Respondent's appraiser used three comparables in Ann Arbor that sold within a three-month period bracketing the assessment date. Comparable 1, located at 1706 Hermitage, was the only sale occurring in 2008, on December 5th. Comparable 2 located at 410 Highland sold just after the assessment date on January 5, 2009, and Comparable 3 at 330 Evergreen sold about two months later on February 23, 2009. After again analyzing re-sales, Respondent's expert concluded that only her Comparable 3 required a slight

positive adjustment for market conditions or time. Comparables 2 and 3 are within the same neighborhood and are in close proximity to the Subject. Comparable 1 is quite some distance away lying west of Washtenaw Avenue in the Burns Park neighborhood, which is considered a superior location. The Subject sits on a larger lot than all three of Respondent's comparables; however, as the net usable lot area at the Subject was judged to be comparable to that at the comparables no adjustment was applied. All of the comparables were larger than the Subject in terms of above grade gross living area and all receive negative adjustments. Respondent's expert found the condition of her Comparable 2 to be superior and the condition of Comparable 3 to be inferior. Comparable 2 was judged to be superior to the Subject in terms of quality of construction and Comparables 1 and 3 were determined to be inferior. All of the comparables were built in the same era as the Subject (1910s and 1920s) and all were considered to experience the same design flaws in terms of functional utility. The Subject's exterior is stucco which Respondent's expert considered to be similar to that of the comparable properties which had siding, stucco half timbering, block or stone. The Subject does not have central air conditioning and the cost to cure was estimated at \$8,000; all of the comparables have central air, and Respondent's expert made a negative adjustment to each of the comparables for the presence of this feature. The Subject Property has a two-car attached garage, Respondent's appraiser judged the garages at her

Comparables 1 and 3 to be inferior to that at the Subject and made adjustments.

After adjustments, Comparable 1 had a sale price of \$705,381; Comparable 2 had a sale price of \$710,628; and Comparable 3 had a sale price of \$681,344. As with the 2008 tax year, Respondent's expert concluded that all of the three comparables were to be given equal weight and concluded that the indicated market value of the Subject for the 2009 tax year was \$700,000.

IV. CONCLUSIONS OF LAW

1. 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); *Professional Plaza, LLC v Detroit*, 250 Mich App 473, 475; 647 NW2d 529 (2002). 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).

2. Valuation

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.

3. 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: 13th 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.

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. We are almost at the parties' mercy to learn from their experts the features of the subject, the market in which it resides, and the comparables sales and other relevant data in order to assist us in making a value judgment. As a result, property tax assessment disputes frequently boil down to a so-called "battle of the experts" and the probative value of an expert's opinion depends upon the facts and reasoning which form the basis of that opinion. Nevertheless, 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), but 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).

Mistakes 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. It is human to make mistakes. 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 (1997). At other times, as the number of mistakes add up, the basic foundation reliability of an expert’s opinion is called into question to the point where the testimony and appraisal are fatally flawed. A witness who is nonresponsive and evasive, cannot explain where she got information, did not adequately investigate comparable sales, admits that she relied on others for information without verifying it in combination with other errors in basic information about the Subject Property and comparables, can render an appraisal and testimony unreliable. Here, there were mistakes made in both parties’ expert reports. Under the circumstances and evidence presented, we find Petitioners’ sales comparison analysis, after correction, yields the best indicator as to the value of the Subject for both the 2008 and 2009 tax years.

a. 2008 tax Year

For the 2008 tax year, both experts utilized the sale of 10 Geddes Heights as a comparable, which sold on November 12, 2007 for \$556,000. After adjustment, Petitioners' expert concluded that this property yielded an indicated value of \$597,000, whereas Respondent's expert's adjusted sale price for this same property was \$724,936. Respondent's expert made three positive adjustments (meaning that a potential buyer would pay more for the Subject than the comparable) of \$55,600 each or 10% of the sale price, for condition, location, and quality of construction. We believe that a reasonably knowledgeable buyer having the opportunity to view and consider both the property at 10 Geddes Heights and the Subject would likely be unwilling to pay \$166,800 more for the Subject over the Geddes property. If the condition and location of the Geddes property is as Respondent's expert posits, then the two properties would really not be competitive with each other. On rebuttal, however, Petitioners effectively demonstrated that Respondent's expert's conclusion and opinions as to the condition and quality of this comparable were in error. The Geddes property is comparable to the Subject. As a result, we find Respondent's adjustments to this comparable for condition, location, and quality of construction totaling in the aggregate \$166,800 not convincing.

We are equally paused by Respondent's remaining two comparable sales that precede or antedate the relevant assessment date by approximately one year. Respondent reconciles this fact through the use of a market conditions adjustment based on her analysis of neighborhood re-sales. We note that the introduction of evidence of relevant post-valuation date comparable sales, including relevant sales of the subject property is to be considered as long as the property that is the subject of the later occurring sale is (1) similar in other respects, *i.e.*, comparable, and (2) has been sold within a reasonable time following the assessment date.

Detroit/Wayne County Stadium Authority v Drinkwater, Taylor, and Merrill, Inc., 267 Mich App 625, 647-649; 705 NW2d 549 (2005). Given the other sale evidence presented by Petitioners and the dramatic changes in the economy that occurred in 2007 and 2008, we are not persuaded that Respondent's market conditions adjustment adequately reflects the changes occurring in the market place during this period. 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). Respondent's Comparables 1 and 3 are too far afield and did not occur within a reasonable time to 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. As a result, we find Respondent's sales approach for the 2008 tax year to be unreliable.

Petitioners' expert corrected the gross living area of his Comparable 1 on the stand stating that it should be 2,217 verses the 2,858 in his report. The error apparently stems from the fact that he relied on the city's assessment records in March of 2011 to verify the gross living area of his Comparable 1 which included the square footage of an addition that was added sometime after the date of sale in May 2007. Petitioners' expert testified that this correction would not impact his final value conclusion, although he then hypothesized that he "may have bumped it up by five thousand dollars" or to \$590,000. See TR p 59:5-16.³ Petitioners' indicated value range, as corrected, stands at \$576,000 to \$615,700. Concluding that the value of the Subject lay near the center of his adjusted value range, we conclude that the value of the Subject for the 2008 tax year is \$590,000.

b. 2009 Tax Year

For the 2009 tax year, we note that all of Petitioners' comparables were located in the Burns Park area of Ann Arbor. Respondent's Comparable 1 was also located in this area at 1706 Hermitage. The experts differed as to whether an

³ Petitioners' expert's report states that he made size adjustment to account for differences in gross living area of the comparables and the Subject at a rate of \$50 per square foot. P-1, p 31. As a result, there is a 66 square foot size differential for Comparable 1 and his Gross Living Area adjustment should have been \$(3,300) resulting in a corrected adjusted sales price of \$615,700.

adjustment for this neighborhood location was warranted; Petitioner's expert believing the two neighborhoods were comparable and not applying an adjustment, whereas Respondent's expert found the location "slightly superior" and applied an adjustment equal to 10% of her Comparable 1's sale price or \$69,000. Given that this was Respondent's expert's first residential assignment in Ann Arbor, we are not persuaded to think that buyers in the market would pay measurably more for the comparables than the Subject because of their relative neighborhood locations. Even if buyers are inclined to pay more for a house in the Burns Park neighborhood over that of the Subject, an adjustment of 10% appears inconsistent with the conclusion that the Burns Park neighborhood is only "*slightly*" superior. Moreover we question whether Respondent's 10% location adjustment was derived from market observations, as we are at a loss to think of a case, in reality, where the application of a percentage adjustment, as a function of each sale price, lends any consistency in the applied adjustment.

Petitioners argue that Respondent's Comparable 2 at 410 Highland is not comparable to the Subject. We agree. Based on the testimony and rebuttal exhibits presented by Petitioners, Respondent's Comparable 2 is a superior property and likely would not compete for the same buyers as the Subject. That said, we agree with Respondent that her Comparable 3 at 330 Evergreen, which sold almost two months after the assessment date on February 23, 2009, is a

comparable property and its sale is probative evidence of the Subject's true cash value as of the relevant assessment date. It is essentially just a few houses up the road from the Subject, also perched on a hill with a sloping lot on an unpaved road, with an L-shaped floor plan, basement level garage (albeit a one-car garage). In rebuttal, Petitioners challenged Respondent's \$31,014 condition adjustment and her \$62,028 construction quality adjustment applied to the Evergreen property. After reviewing the evidence and the testimony, we agree with Petitioners that these adjustments are unsupported and not warranted. After striking the unsupported adjustments, the resulting indicated value of this comparable is \$588,300 (rounded).

We find Petitioners' three comparable sales (Comparables 4 through 6, as corrected) together with Respondent's Comparable 3 at 330 Evergreen offer assistance to the Tribunal in our attempt to assign a market value to the Subject Property for the 2009 tax year. After adjustments and corrections, these four comparables demonstrate a range of value of \$505,330 to \$597,300.⁴ Among the four comparables, Respondent's Comparable 3, although superior to the Subject, is perhaps a strong indicator as to the upper limit of what the Subject could have sold for in the market on December 31, 2008. Recognizing that the determination of

⁴ Petitioners' expert again corrected the gross living area of his Comparable 4, for the same explanation discussed earlier, stating that it should be 2,009 versus the 2,513 contained in his report. See P-1, p 37 and TR, p 60:4. This results in a corrected value range of \$505,300 to \$597,300, although he testified that this would have no impact on his final value conclusion. See TR, p 60:6-14.

true cash value is not an exact science and that the process of weighing evidence involves a considerable amount of judgment and reasonable approximation, *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 398-399; 576 NW2d 667 (1998), the range of the evidence presented supports a true cash value of the Subject for the 2009 tax year of \$572,100.

4. *Rebuttal Evidence*

Following the close of Respondent's case-in-chief, Petitioners recalled their expert to testify in rebuttal. During rebuttal, Petitioners offered seven exhibits in rebuttal (Pet Exh P-5 through P-11), which comprise MLS listing tickets of Respondent's comparable sales (P-5, 7, 8, and 10) and side-by-side interior photos of Respondent's comparable sales taken from the MLS listing tickets, and interior photos of the Subject from Respondent's appraisal report (P-6 and P-9), and front and rear side-by-side photos of the Subject, again taken from Respondent's valuation disclosure and of Respondent's Comparable 2, 410 Highland, from Respondent's report and the MLS listing ticket of the comparable. Respondent objected to the introduction of Petitioners' rebuttal exhibits, on the grounds that they had not been disclosed or exchanged before hearing, that the city was taken by surprise by this evidence and caught in an ambush. We disagree.

Hearings before the Tax Tribunal are conducted in accordance with the Administrative Procedures Act, MCL 24.271 *et seq.* *Georgetown Place Co-Op v City of Taylor*, 226 Mich App 33, 51-52; 572 NW2d 232 (1997). Chapter 4 of the Administrative Procedures Act requires that “[t]he parties must be given the opportunity to present evidence and arguments regarding issues of fact, cross-examine witnesses, and submit rebuttal evidence.” *Id.* at 52, citing MCL 24.272(4). “Rebuttal evidence is admissible to contradict, repel, explain or disprove evidence produced by the other party and tending directly to weaken or impeach the same. The question whether rebuttal is proper depends on what proofs the [Respondent] introduced. . . .” *People v Figures*, 451 Mich 390, 399; 547 NW2d 673 (1996). Here the exhibits all relate to the comparable sales offered by Respondent. The information and photos contained on each of the exhibits came directly from either Respondent’s expert’s report or MLS data that Respondent’s expert had access to and utilized. See R-1 and Tr 172:13. Under the circumstances, we do not see how Respondent could have been surprised or unduly prejudiced by these documents. Moreover, they were not being offered in an attempt to buttress the credibility of Petitioners’ expert or his work product but were instead being used to challenge the conclusions and comparable sales contained in Respondent’s valuation disclosure and the testimony of its expert.

Respondent had the opportunity to and did cross examine Mr. St. Dennis during his rebuttal testimony.

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 \$590,000 and \$572,100 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, 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: January 9, 2012

By: Paul V. McCord