STATE OF MICHIGAN

COURT OF APPEALS

BENSON FORESTS LIMITED PARTNERSHIP,

Plaintiff-Appellant,

v

McMILLAN TOWNSHIP,

Defendant-Appellee.

UNPUBLISHED
May 30, 1997

Nos. 179453;190217;190222
Michigan Tax Tribunal
LC Nos. 201288;212450;212452

Before: O'Connell, P.J., and Sawyer and Markman, JJ.

PER CURIAM.

In these consolidated cases, plaintiff appeals as of right from the opinions and judgments of the Michigan Tax Tribunal regarding plaintiff's request for a reduction in the assessments of two parcels of land for the tax years 1993, 1994 and 1995. Tax Tribunal Docket No. 201288 involves the appeal for the 1993 assessments for both properties at issue; the 1994 and 1995 assessments for parcel 48-003-020-032-0300 [parcel 032] are addressed in Tax Tribunal Docket No. 212450; and the 1994 and 1995 assessments for parcel 48-003-020-033-0300 [parcel 033] are the subject of Tax Tribunal Docket No. 212452. The hearing officer concluded that no revision in the 1993 assessments was warranted, but reduced the 1994 and 1995 assessments based on subsequent sales of property in the area. Plaintiff contends that, despite the reductions, the assessments exceed fifty percent of the property's true cash value and violate the requirement of uniformity of taxation. We affirm.

Plaintiff's two parcels are located in the Superior Dunes development on the shore of Lake Superior. In 1993, a house was under construction on parcel 032 and parcel 033 was vacant. Parcel 032 was assessed at $929,500 and parcel 033 was valued at $301,500. In Docket No. 179453, plaintiff claimed that these valuations, which resulted in an assessment equal to $200 per Lake Superior shoreline foot, were excessive because similar properties in the nearby Deer Park development had been assessed at $37.50 and $62.50 per shoreline foot. Defendant justified the assessments on plaintiff's parcels by reference to comparable sales of other properties in the Superior Dunes development, which sold for an average of $463 per shoreline foot. There were no recent sales in the Deer Park development available for comparison at that time. While acknowledging the apparent

disparity in assessments between the Deer Park properties and plaintiff's parcels, the officer determined that plaintiff's parcels had been properly valued using sales data from within the same development.

Plaintiff argues that the hearing officer erred because he did not take the valuations of the comparable Deer Park properties into account when determining the validity of the assessments. The Assessor's Manual employs factors such as the time of the sale and the location and characteristics of the properties to determine whether properties are comparable for purposes of the market value method of valuation, which was used in this case. 3 Michigan State Tax Commission Assessor's Manual, ch 6, p 6-2 (1991). There were no recent sales of property within the Deer Park development that would have met the time of the sale criterion for comparability. Old sales data does not comport with the Legislature's definition of true cash value, which is "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); MSA 7.27(1) (emphasis added).

In addition, the Deer Park properties were not comparable to plaintiff's properties. Plaintiff's parcels have electric and telephone service, while only some of the Deer Park properties have those utilities. The characteristics cited by plaintiff as evidence of the Deer Park properties' greater value, such as their proximity to stores and motels, access to a paved road and lack of restrictions on the number of home sites and location of roads, could equally render that property less desirable to those who would be willing to pay a premium price for a more private location where the natural environment is preserved. These considerations could explain why in 1993 there had been sales in the Superior Dunes development but not in Deer Park. Plaintiff failed to present any evidence supporting its claim that the Deer Park properties were assessed at less than fifty percent of their true cash value. Moreover, the data on recent sales of properties in the Superior Dunes development constituted competent, material and substantial evidence supporting the hearing officer's valuation of plaintiff's properties. Const 1963, art 6, § 28; *Speaker-Hines & Thomas v Dep't of Treasury*, 207 Mich App 84, 87; 523 NW2d 826 (1994).

In Docket Nos. 190217 and 190222, plaintiff challenged the 1994 and 1995 assessments on its properties. Plaintiff contended that the true cash value of parcel 032 was $648,598 in 1994 and 1995, rather than the $1,940,000 at which the property was assessed. For appraisal purposes, parcel 032 was viewed as two parcels: an improved parcel containing a 2,058 square foot finished home on 535 feet of lake frontage, and a remaining vacant parcel with 3,865 feet of lake frontage. Although defendant assessed the portion containing the house at $393,740 for 1994 and 1995, the hearing officer found the fact that the property had been adequately marketed and listed for sale at $350,000 since 1992 to be persuasive evidence of the upper limit of the property's value and reduced the assessment accordingly. The hearing officer also reduced the assessment on the remaining larger vacant portion of parcel 032 based on plaintiff's evidence demonstrating that a large tract of property within the development had been sold for thirty-two percent less per foot of lake frontage than the smaller parcels. The officer found the true cash value of parcel 032 to be $1,401,300 for both 1994 and 1995.

With regard to parcel 033, the assessments for both 1994 and 1995 were reduced by thirty-two percent based on plaintiff's evidence of a comparable sale of a large tract within the development. Using the market comparison method of valuation, the hearing officer found that the property had a true

cash value of $287,500 in 1994, when it consisted of more than fifty acres. This valuation was less than defendant's appraised value of $423,000, but more than plaintiff's valuation of $132,440. In 1995, parcel 033 consisted of approximately thirty acres. The hearing officer found that the true cash value of the property during this year was $173,300, which was less than defendant's appraisal of $255,000, but more than plaintiff's valuation of $80,000.

Since 1993, additional parcels have been sold within the Superior Dunes development, in which the subject parcels are located. There were also two lots sold in the Deer Park development, which plaintiff claims are comparable. One of the Deer Park lots sold for its assessed value; however, the other lot was assessed at $37,000 less than its selling price of $170,000. The hearing officer found this evidence to be insufficient to prove that the subject properties were not assessed uniformly. We agree.

To show that the requirement of uniformity of taxation has been violated, plaintiff has the burden of demonstrating "that the ratio of assessed value to fair market value of . . . [its] property is greater than the ratio of the average assessed value to the average fair market value in the taxing district." *Brittany Park Apartments v Harrison Twp*, 104 Mich App 81, 88; 304 NW2d 488 (1981). Plaintiff agrees that its properties are assessed at fifty percent of the selling price, or true cash value, of other parcels within the Superior Dunes development. Plaintiff also concedes that of the two sales in the Deer Park development, one parcel sold for its assessed value. The other parcel sold for $170,000, but was assessed at $133,000. Thus, plaintiff has not shown that the ratio of the average assessed value to the average fair market value in the taxing district is lower than the ratio of the assessed value to the fair market value of its property because plaintiff admitted that every parcel except one was assessed in the same manner as its property. The cases relied on by plaintiff, *Armco Steel Corp v Dep't of Treasury*, 419 Mich 582; 358 NW2d 839 (1984), and *Allegheny Pittsburgh Coal Co v Co Comm*, 488 US 336; 109 S Ct 633; 102 L Ed 2d 688 (1989), are inapplicable because both involved situations in which the average level of assessment in the district was below that of the plaintiff. There is no evidence in this case to support plaintiff's contention that defendant intentionally or arbitrarily assessed the Deer Park properties at less than their market value. Therefore, the hearing officer did not adopt a wrong principle or make an error of law in coming to his decision. *Speaker-Hines & Thomas*, *supra* at 87.

Affirmed.

/s/ Peter D. O'Connell
/s/ David H. Sawyer
/s/ Stephen J. Markman