STATE OF MICHIGAN

COURT OF APPEALS

RED RUN GOLF CLUB,

Petitioner-Appellee,

v

CITY OF ROYAL OAK,

Respondent-Appellant.

UNPUBLISHED
July 29, 1997

No. 184448
Michigan Tax Tribunal
LC No. 00119383

Before: Doctoroff, P.J., and MacKenzie and Griffin, JJ.

PER CURIAM.

Petitioner challenged the valuation and property tax assessment of its commercial real property located in respondent city for the tax years 1988, 1989, 1990, and 1991. The tax tribunal determined that the true cash values for the years at issue started at $1,059,000 for 1988 and rose incrementally to $2,178,100 for 1991. Respondent appeals as of right. We affirm.

In the absence of fraud, this Court's review of tax tribunal decisions is limited to whether the tribunal adopted a wrong legal principle or made an error of law. *Speaker-Hines v Dep't of Treasury Dep't*, 207 Mich App 84, 87; 523 NW2d 826 (1994). If the factual findings of the tribunal are supported by competent, material, and substantial evidence on the whole record, those findings are accepted as final. Const 1963, art 6, § 28; *Antisdale v Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Speaker-Hines*, *supra*. Substantial evidence must be "more than a mere scintilla" of evidence but may be "substantially less" than the preponderance of evidence of a civil case. *Dow Chemical v Dep't of Treasury*, 185 Mich App 458, 463; 462 NW2d 765 (1990). In an appeal from a tax tribunal assessment, decision or order, the burden of proof is on the appellant. *Id.*

The tax tribunal is required to reach an independent determination of true cash value, utilizing the approach which provides the most accurate valuation under the circumstances. *Antisdale*, *supra.* In *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 353; 483 NW2d 416 (1992), a panel of this Court stated:

> The Tax Tribunal is under a duty to apply its expertise to the facts of a case to determine the appropriate method of arriving at the true cash value of property, utilizing

> an approach that provides the most accurate valuation under the circumstances. True cash value is synonymous with fair market value. Regardless of the approach selected, the value determined must represent the usual price for which the subject property would sell. The three most common approaches to valuation are the capitalization-of-income approach, the sales-comparison or market approach, and the cost-less-depreciation approach. [Citations omitted.]

In the case at bar, there is ample record support for the determinations by the tribunal, especially in the particular areas challenged by respondent. On the basis of the testimony of the experts called by the parties, the tribunal determined that the highest and best use of the subject property would be as a daily fee public golf course. This was the opinion of appraiser Jay Messer, who was called by petitioner. Although respondent's expert, Thomas Petz, testified that the property's highest and best use would be as a private golf course, he appraised it as though it were a public course.

The tribunal employed Income Approach to valuation, which was the method employed by the two experts, and the tribunal adopted values supplied by both Messer and Petz. Messer and Petz both testified that the Income Approach is the most commonly used and typically the most accurate measure of the value of a golf course property. In areas where the appraisers agreed, such as highest and best use and valuation method, the tribunal adopted their testimony. For subjects on which the appraisers did not agree, the tribunal relied on the testimony it deemed most reasonable.

For example, Petz tabulated the greens fees based on a survey of weekend and weekday prices; Messer averaged the two. The tribunal adopted Messer's method. The tribunal also adopted Messer's reasoning regarding cart rental income (Petz determined that carts would be required on each round of golf, while Messer estimated that twenty-five percent of the rounds would support cart rental). Similarly, the tribunal adopted Messer's projection of pro shop income and his capitalization rate. However, the tribunal adopted Petz's testimony as to the cost of replacing the heating and plumbing systems and as to the determination of value for the restaurant/bar and banquet hall. The tribunal also relied on Petz's estimates of the replacement cost for the ventilation and electrical systems and the cost of deferred parking lot maintenance. Based on these figures, the tribunal determined that the true cash values for the years at issue started at $1,059,000 for 1988 and rose incrementally to $2,178,100 for 1991.

From our review of the record, we conclude that the tax tribunal's findings and conclusions are supported by competent, material, and substantial evidence on the whole record, and those findings are accepted as final. Const 1963, art 6, § 28; *Antisdale*, *supra*; *Speaker-Hines*, *supra*.

Respondent asserts that the tax tribunal should not have relied on Messer's testimony, since the hearing officer's proposed opinion (which was not adopted by the tribunal) stated that the testimony was not credible. Respondent correctly notes that the amount of weight given to the hearing officer's findings of fact depends upon the impact credibility assessments have on the final decision. *Universal Camera Corp v National Labor Relations Board*, 340 US 474; 71 S Ct 456; 95 L Ed 2d 456 (1951). The instant case, however, does not turn upon credibility, *i.e.*, it is not a truth-telling contest

between Messer and Petz. The "classic credibility contest" involves the factfinder in choosing between two witnesses' version of the facts. See, e.g., *People v Grunbaum*, 170 Mich App 821, 824; 429 NW2d 239 (1988). In this case, the hearing officer rejected Messer's appraisal because he found some of the conclusions to be unreasonable. However, there was no indication that he found Messer to be dishonest. Unlike *MERC v Detroit Symphony Orchestra*, 393 Mich 116; 223 NW2d 283 (1974), the record does not compel us to rely more heavily on the hearing officer's determinations. In making its final decision, the tribunal properly looked at the testimony of both experts and relied on the portions of each which seemed most reasonable. This was not error.

We also find that the tribunal's opinion comports with MCL 205.751(1); MSA 7.650(51)(1), which provides:

> A decision and opinion of the tribunal shall be made within a reasonable period, shall be in writing or stated in the record, and shall include a concise statement of facts and conclusions of law, stated separately and, upon order of the tribunal, shall be officially reported and published.

In *Oldenburg v Dryden Twp*, 198 Mich App 696, 701; 499 NW2d 41 (1993), this Court reversed and remanded a tax tribunal decision because the panel "could not ascertain what evidence and reasoning was relied upon by the tribunal member" in reaching its decision. Similarly, in *First City Corp v Lansing*, 153 Mich App 106; 395 NW2d 26 (1986), this Court criticized a tribunal opinion that "did not even go so far as to state what evidence it had reviewed." *Id.* at 113.

In this case, the tribunal issued a twenty-page statement of the facts which thoroughly recounted the evidence adduced at the hearing. In the conclusions of law, the tribunal stated the information on which it relied and the appraiser who provided the information. For example, the tribunal noted that appraiser Petz erred in his Cost Approach analysis by depreciating a new wading pool. Similarly, the tribunal noted that "both parties considered 35,000 to be the estimated number of rounds for 1987. . . ," rejected Petz's tabulation of the average greens fee, and adopted Messer's methodology. The opinion and judgment is well supported by factual comparisons and conclusions. Unlike the opinion rejected in *Oldenburg*, *supra*, the opinion in this case was sufficient. Accordingly, respondent's claim is without merit.

Affirmed. Petitioner being the prevailing party, it may tax costs pursuant to MCR 7.219.

/s/ Martin M. Doctoroff
/s/ Barbara B. MacKenzie
/s/ Richard Allen Griffin