

STATE OF MICHIGAN
COURT OF APPEALS

ACO HARDWARE,

Plaintiff-Appellant,

v

CITY OF LANSING,

Defendant-Appellee.

UNPUBLISHED

December 12, 1997

No. 192054

Michigan Tax Tribunal

LC No. 00221463

Before: Kelly, P.J., and Reilly and Jansen, JJ.

PER CURIAM.

Plaintiff appeals as of right from a December 28, 1995, opinion and judgment of the Michigan Tax Tribunal hearing referee, small claims division, that determined the 1994 and 1995 assessed value of certain fixtures and equipment at plaintiff's store located in the City of Lansing. We affirm.

The hearing referee determined that the true cash value of the fixtures and equipment for the 1994 tax year was \$57,660 and for the 1995 tax year was \$54,800. Plaintiff contends that the hearing referee adopted the wrong legal principle of valuation of property. Plaintiff also argues that the hearing referee was incorrect in determining that improvements to the real property should be assessed as personal property. We find no error on the record before us.

Const 1963, art 6, § 28 provides that "[i]n the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation." Further, the factual findings of the tax tribunal are final, provided they are supported by competent and substantial evidence. *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 632; 462 NW2d 325 (1990).

Plaintiff's first argument, concerning the valuation of the property in question, has been largely rejected by this Court in the recent opinion of *Lionel Trains, Inc v Chesterfield Twp*, 224 Mich App 350; 568 NW2d 685 (1997). Plaintiff, in the present case, as well as the plaintiff in *Lionel Trains*, argues that the "fair market value in use" multiplier is unconstitutional and results in an incorrect valuation of the true cash value, and that only application of the State Tax Commission manual's "residual

multiplier” yields the correct valuation of fair market value. These exact arguments were rejected by this Court in *Lionel Trains*. We are required to follow the decision in *Lionel Trains* pursuant to MCR 7.215(H), and believe that the case was correctly decided. Accordingly, the hearing referee did not err in utilizing the “fair market value in use” standard in determining the true cash value of the property.¹

Plaintiff also contends that the hearing referee erred in applying the “highest and best use” standard, which viewed the property as a group for use as hardware store equipment or fixtures, thus generating a higher value than if each item was valued or sold separately. “Highest and best use” is a concept fundamental to the determination of true cash value because it recognizes that the use to which a prospective buyer would put the property will influence the price which the buyer would be willing to pay. *Edward Rose Bldg Co, supra*, p 633. There was no record evidence that the property was no longer suited to its present use. Accordingly, we conclude that the hearing referee did not err in applying the “highest and best use” standard in this case.

Finally, plaintiff argues that the hearing referee erred in determining that leasehold improvements were assessable as personal property. Pursuant to MCL 211.8(h); MSA 7.8(h), leasehold improvements are considered to be personal property for purposes of taxation provided that the leasehold improvements add to the true cash value of the real property. The statute also provides that the cost of leasehold improvements shall not be the sole indicator of value. Plaintiff does not contest that the leasehold improvements were not such that they cannot be considered personal property for the purposes of taxation. Rather, plaintiff contends that the hearing referee abused its discretion in admitting defendant’s appraisal card and that the hearing referee’s exclusive reliance on the appraisal card violated the statutory requirement of MCL 211.8(h); MSA 7.8(h) that the cost of leasehold improvements shall not be the sole indicator of value.

Plaintiff has presented us with no record to review this issue.² The hearing referee’s opinion says nothing about leasehold improvements. Without any record to support its claim, we must find that plaintiff has failed to adequately present the issue for appellate review and consider the issue to be effectively waived.

Affirmed.

/s/ Michael J. Kelly
/s/ Maureen Pulte Reilly
/s/ Kathleen Jansen

¹ Thus, plaintiff’s contention that its represented values were fair market values, and not “forced sale” values as defendant argued below, is likewise rejected because the hearing referee correctly applied the “fair market value in use” standard to determine the valuation of the property.

² It is the appellant’s duty to ensure that this Court receives the full transcript of the lower court proceedings. MCR 7.101(C)(2)(d), (F)(1); MCR 7.210(B)(1).