

STATE OF MICHIGAN
COURT OF APPEALS

HARRY R. JAVENS and JOYCE A. JAVENS,

Petitioners-Appellants,

v

CITY OF BERKLEY,

Respondent-Appellee.

UNPUBLISHED

August 15, 2000

No. 211709

Michigan Tax Tribunal, Small
Claims Division

LC Nos. 0232291; 0232292

HARRY R. JAVENS and JOYCE A. JAVENS,

Petitioners-Appellants,

v

CITY OF FERNDALÉ,

Respondents-Appellee.

No. 211774

Michigan Tax Tribunal, Small
Claims Division

LC Nos. 0232293; 0232294

Before: Wilder, P.J., and McDonald and Doctoroff, JJ.

PER CURIAM.

Petitioners appeal as of right a judgment of the Michigan Tax Tribunal Small Claims Division finding that the true cash values of petitioners' four properties, two of which are located in Berkley and two of which are located in Ferndale, required no revision, and affirming petitioners' property tax assessments. Petitioners asserted that the income approach should have been used to value the properties because they were purchased with the intent to produce rental income. The referee found petitioners presented no evidence of any rental income and affirmed the cost less depreciation valuation method used by respondents. We remand for further proceedings consistent with this opinion.

Petitioners first contend that the Tax Tribunal erred by failing to make adequate findings of fact and conclusions of law as required by the tax tribunal act, MCL 205.751(1); MSA 7.650(51)(1). We agree. Whether the tribunal's findings of fact complied with MCL 205.751(1); MSA 7.650(51)(1) is a question of law, which we review de novo. *Lane v KinderCare Learning Centers, Inc*, 231 Mich App 689, 695; 588 NW2d 715 (1998).

A decision of the Tax Tribunal shall include a concise statement of facts and conclusions of law stated separately. MCL 205.751(1); MSA 7.650(51)(1). Adequate findings of fact are particularly important in proceedings before the Small Claims Division of the Tax Tribunal because appellate review is hindered by the informal record maintained in those proceedings. *Oldenburg v Dryden Twp*, 198 Mich App 696, 699; 499 NW2d 416 (1993); *Granader v Southfield Twp*, 145 Mich App 585, 588; 377 NW2d 893 (1985). Merely stating that the tribunal has reviewed the evidence and finds it to be insufficient as a basis for relief is not adequate as a concise statement of facts and violates MCL 205.751(1); MSA 7.650(51)(1). *Granader, supra* at 588.

Here, the Tax Tribunal issued written opinions and judgments for each of petitioners' properties. However, in the section entitled findings of fact, the Tax Tribunal merely recited the tax years at issue, the different types of values of the properties, the types and locations of the properties, and the average level of assessment for the properties. The Tax Tribunal further stated:

Petitioners contend that the assessments unlawfully exceed 50% of the subject property's true cash values.

Petitioners presented the following evidence at the hearing: Testimony of Petitioners, Harry Javens, stating that [the] subject property was purchased to produce income but that the City will not grant the required license because [the] subject property is not up to code. Petitioner further testified that the income approach should be used for assessment purposes. Petitioners provided a copy of the 1995 Board of Review Petition, and a copy of *Northwood Apartments v City of Royal Oak*, 98 Mich App 721; 296 NW2d 639 (1980).

Respondent contends that the assessments are not unlawfully excessive.

Respondent presented the following evidence at the hearing: Respondent did not appear at the hearing and the case was heard on the file, as authorized by Tax Tribunal Rule 617(2). Respondent's answer states that Petitioners failed to protest to the Board of Review and therefore, the Tribunal is without jurisdiction. Respondent provided a comparable analysis and the assessment record card for [the] subject property.

The MTT having given due consideration to all the evidence presented finds for Respondent for the years at issue.

The Tax Tribunal's findings of fact are insufficient to meet its statutory responsibility of making adequate factual findings and providing this Court with sufficient information to conduct a meaningful review of this case. *Oldenburg, supra*. We cannot ascertain from the findings what evidence and reasoning was relied upon to arrive at the tribunal's decision. *Id.* We therefore remand to the Tax Tribunal to make more explicit factual findings.

We further conclude that the Tax Tribunal erred by failing to make its own, independent determination of the true cash value of petitioners' properties. The Tax Tribunal is under a duty to apply its expertise to the facts of a case in order 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. *Great Lakes Division of National Steel Corp v City of Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998). True cash value is synonymous with fair market value. *Id.* In a proceeding before the Tax Tribunal, the burden of proving true cash value is on the petitioner. *Id.*; *Oldenburg, supra* at 698-699. However, the Tax Tribunal has a responsibility to make its own, independent determination of the true cash value of the petitioner's property. *Great Lakes, supra* at 389; *Oldenburg, supra* at 699.

The Tax Tribunal in this case made the following conclusions of law:

Valuation method most indicative of the subject property's true cash values: The Tribunal recognizes Respondent's cost-less-depreciation as supported by a market methodology to be the most accurate and thus the best indication of the property's true cash values.

Reason for selection of valuation method: [The Tax Tribunal found that it had jurisdiction over the matter. This issue is not before this Court.]

The Tribunal further finds that Petitioners provided no evidence as to the income produced from [the] subject property. Therefore, Petitioners' contention regarding the use of the income approach is rendered moot. The Tribunal notes that Petitioner conceded at the hearing that the subject property has been occupied as a rental, in violation of the licensing regulation.

The Tribunal bases a value determination on market evidence. The Tribunal finds that Petitioners had no independent market data to offer in support of any aspect of Petitioners' value contentions. Absent market data, Petitioners have failed to go forward with the evidence, the first of the two duties of carrying the burden of proof [*Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348; 483 NW2d 416 (1992)]. Accordingly, petitioners are unable to carry the burden of persuasion.

Thus, it is apparent that the Tax Tribunal concluded that because petitioners failed to meet their burden of proof, it could merely affirm respondents' valuation of the properties at issue. As this Court stated in *Jones & Laughlin, supra*:

The tribunal . . . erred in failing to make an independent determination of the true cash value of the property. The tribunal apparently believed that no such determination was necessary after it concluded that petitioner had failed to meet its burden of proof and dismissed petitioner's appeal. The tribunal correctly noted that the burden of proof was on petitioner, [MCL 205.737(3); MSA 7.650(37)(3)]. This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party. . . . The tribunal's decision, however, seems analogous to the entry of a directed verdict upon the failure of a plaintiff's proofs. To the extent this analogy may be accurate in this case, the entry of judgment against petitioner for its failure to provide sufficient evidence was erroneous because, while petitioner may not have met its burden of persuasion, it did meet its burden of going forward with evidence.

Even if the tribunal had correctly concluded that petitioner's proofs had failed, *the tribunal still would be required to make an independent determination of the true cash value of the property. The tribunal may not automatically accept a respondent's assessment, but must make its own findings of fact and arrive at a legally supportable true cash value.* [*Id.* at 354-355 (citations omitted) (emphasis added).]

Here, the tribunal erred by simply accepting respondent's assessment without discussing on the record why respondent's assessment represented the true cash value of the property. *Id.* On remand, the Tax Tribunal must make its own, independent determination of the true cash value of petitioners' properties.

Finally, petitioners contend that the Tax Tribunal erred by failing to use the capitalization of income method of valuation and by failing to consider current restrictions placed on petitioners' properties by respondents. We disagree that the tribunal erred in failing to use the capitalization of income approach to value the properties.

In the absence of fraud, error of law, or the adoption of wrong principles, our review is limited to determining whether the tribunal's decision is supported by competent, material, and substantial evidence on the whole record. *Oldenburg, supra* at 698. The Tax Tribunal's failure to base its decision on competent, material, and substantial evidence on the record as a whole is an error of law. *Id.*

There are three common approaches to determining the true cash value of property: the capitalization of income approach, the market approach, and the cost less depreciation approach. *Great Lakes, supra* at 390. In addition, variations of these approaches and entirely new methods may be employed if they are found to be accurate and reasonably related to fair market value. *Id.* However, regardless of which approach is used, the value determined by the Tax Tribunal must be the usual price for which the property would sell. *Id.*

The normal method for valuing income producing property is the capitalization of income approach. *Presque Isle Harbor Water Co v Presque Isle Twp*, 130 Mich App 182, 192-193; 344 NW2d 285 (1983). However, actual income must be used to value property under this approach. *Northwood Apartments, supra* at 727. The Tax Tribunal found that petitioners presented no evidence of any income produced by the properties at issue in this case. Therefore, it was reasonable for the Tax Tribunal to refrain from solely using the capitalization of income approach because there was no evidence of actual income on which to base the valuation.

However, whether and to what extent petitioners' properties are not up to code, whether there is some other reason respondents refuse to grant petitioners licenses to rent the properties, and whether it is likely the properties will be rented in the future affect the value of petitioners' properties, and it is unclear from the Tax Tribunal's opinions whether such factors were taken into consideration in the valuation process. Property valuation must be based on current market conditions and restrictions that burden the property, as well as other factors that affect what a willing buyer would pay for the property. *Pinelake Housing Cooperative v Ann Arbor*, 159 Mich App 208, 221; 406 NW2d 832 (1987); *Presque Isle Harbor Water Co, supra* at 192-194. Because the Tax Tribunal's findings of fact and conclusions of law make it impossible for this Court to properly review whether the valuation of petitioners' property took such factors into consideration, we remand this matter to the Tax Tribunal Small Claims Division with instructions to make more extensive findings of fact and conclusions of law and to make an independent determination of the true cash value of petitioners' properties, taking into consideration current market conditions and other restrictions on the properties' use.

Remanded for further proceedings consistent with this opinion. We retain jurisdiction.

/s/ Kurtis T. Wilder

/s/ Gary R. McDonald

/s/ Martin M. Doctoroff