

STATE OF MICHIGAN
COURT OF APPEALS

LES JAVOR,

Petitioner-Appellant,

v

TOWNSHIP OF PLYMOUTH,

Respondent-Appellee.

UNPUBLISHED
November 2, 2004

No. 247098
Tax Tribunal
LC No. 284366

Before: Markey, P.J., and Wilder and Meter, JJ.

PER CURIAM.

Petitioner appeals as of right from a decision by the Michigan Tax Tribunal regarding the value of petitioner's property for the 2001 and 2002 tax years. We affirm. This appeal is being decided without oral argument in accordance with MCR 7.214(E).

On June 22, 2001, petitioner notified the tribunal that he disagreed with the tax assessment value assigned to his home. He filed a petition in the small claims division, stating that, for the year 2001, his home was assigned a true cash value (TCV) of \$402,980¹ and an assessment value (AV) of \$201,490 (50% of the TCV). He contended that the actual TCV for 2001 was \$337,000, the price he paid for the property in 2000. Petitioner's claim was later expanded to include a dispute with regard to the 2002 tax year. Respondent assigned a TCV of \$422,740 to the property for the 2002 tax year, and petitioner again alleged a TCV of \$337,000.

The hearing referee summarized the evidence presented by each side and held, on November 18, 2002, that the TCV was \$391,780 and the AV was \$195,890 for the 2001 tax year. He held that the TCV was \$422,740 and the AV was \$211,370 for the 2002 tax year. The referee stated, in part:

The price paid by Petitioner for the subject property is not accepted as a sole measure of value because "usual selling price" is determined with reference to sales of several properties to ensure that price reflects only market motivation.

¹ As noted *infra*, this amount was revised by respondent after respondent re-measured the property.

Petitioner did not testify as to the length of time that the property was listed on the market or whether any other factors affected the price Petitioner paid for the subject property. In support of Petitioner's contention of true cash value Petitioner relies, in part, on the Appraisal of Real Property prepared for Dearborn Federal Savings Bank on the subject property as of July 24, 2000. This appraisal states that the "indicated value by sales comparison approach" is \$345,000, and on the fact [sic] that Petitioner's purchase price of the property was \$330,000, which the Tribunal notes is less than the appraised value. The Tribunal notes that in reviewing the bank appraisal, the square footage of the subject property is noted as 3,264; the Respondent's revised Market Comparable Approach measures the square footage at 3,066. Petitioner did not object to Respondent's measured square footage used to recalculate the 2001 Revised assessment. The Tribunal accepts the Respondent's revised field sheet as the accurate record of the square footage of the subject property.

Petitioner's testimony, coupled with the exhibits presented at the hearing, more credibly outweigh the true cash value achieved by application of Respondent's Market Data Approach. The initial Market Data Approach prepared by Respondent was based on incorrect square footage of the property. Once Petitioner notified Respondent of this fact and Respondent re-measured the subject property on June 19, 2002, a revised Market Comparable Approach was submitted to the Tribunal at the final hearing. This revised document reflects a \$40,000 reduction in the estimated value for the subject property from the original submission.

Respondent testified that the 2001 assessment based on the corrected field sheet was \$195,890, making the true cash value of the property for 2001 \$391,780. . . . Following Petitioner's proofs indicating a 7.9% increase in property values in Plymouth Township in 2001 . . . the Assessed value and State Equalized values on the tax roll for 2002 are correct at \$211,370, thus establishing the true cash value of the property at \$422,740 ($\$391,780 \times 7.9\% = \$422,730.62$).

The values for tax years 2001 and 2002 require some clarification since two values were put forth by Respondent for each tax year at issue. The taxable value for 2001 is \$201,490, which is the taxable value set forth under the 2001 values established by Respondent. The taxable value for 2002 is the taxable value set forth under the 2002-Assessment Roll values established by Respondent.

On February 14, 2003, the tribunal denied petitioner's request for rehearing.

Because this case was heard in the small claims division of the tribunal, no transcript was prepared of the proceedings that occurred before the hearing referee. Instead, petitioner submitted a "proposed statement of facts in lieu of transcript pursuant to MCR 7.210." Respondent objected to petitioner's proposed statement of facts and submitted, instead, a "counter-statement of facts in lieu of transcript pursuant to MCR 7.210." Because the original referee was no longer employed with the tribunal, another tribunal member reviewed petitioner's

and respondent's statements of fact and concluded that respondent's submission constituted "a concise statement of proceedings and facts in support of the appeal filed in said cause."

Respondent's submission indicated, in part, the following:

9. Both parties agreed that the square footage of the subject was 3,066. . .

10. The square footage of the subject used by the Respondent in its Revised Market Valuation analysis was correct.

11. Petitioner contended that Respondent's market analysis was in error because the Respondent adjusted prices for time based upon a 3% annual rate. Respondent contended that its average annual adjustment of 3% per year or .0025% per month to adjust all sales data and the subject property to tax day is reasonable and is not an error on its part.

12. The Tribunal found that both the Petitioner and the Respondent's market methodologies to be [sic] the most accurate and best indicator of the property's True Cash Value.

13. The Tribunal found that the proofs of the Petitioner and the Respondent were not sufficiently satisfactory so as to allow either party to prevail in full. The combination of proofs presented led the Tribunal to the conclusion that there is some room for a compromised determination based on nothing more precise than reasoned judgment.

* * *

16. The Tribunal found that the Assessed Value of the subject was best indicated by Respondent's Revised Market Valuation analysis based on it's [sic] corrected Field Sheet disclosing that the subject property consisted of 3066 square feet, rather than 3460 square feet. This approach to value resulted in an assessed value of \$195,890.00, suggested a True Cash Value of the property for 2001 in the amount of \$391,780.00. The Tribunal found that for tax year 2002, that [sic] the Assessed Value should be increased 7.9% as indicated by the Plymouth Township 2001 Percentage Change Report submitted into evidence by the Petitioner.

Appellate review of the factual portions of Michigan Tax Tribunal decisions is limited to determining whether the tribunal's factual findings are supported by competent, material, and substantial evidence on the record. *STC, Inc v Dep't of Treasury*, 257 Mich App 528, 533; 669 NW2d 594 (1994). Substantial evidence is evidence that a reasonable mind would accept as adequate to support a decision. *Dignan v Michigan Public School Employees Retirement Bd*, 253 Mich App 571, 576; 659 NW2d 629 (2002). Substantial evidence is more than a mere scintilla of evidence, but it may be less than a preponderance of the evidence. *City of Lansing v Carl Schlegel, Inc*, 257 Mich App 627, 630; 669 NW2d 315 (2003). With regard to the tribunal's legal reasoning, the Supreme Court noted in *Danse Corp v City of Madison Heights*, 466 Mich 175, 178; 644 NW2d 721 (2002), that, "in the absence of fraud, review of a Tax

Tribunal decision is limited to determining whether the tribunal erred in applying the law or adopted a wrong principle” (internal citation and quotation omitted).

Petitioner first argues that the tribunal erred in failing to accept petitioner’s purchase price as the best and most accurate determination of the TCV of the property. Petitioner argues that respondent submitted no competent evidence to rebut petitioner’s evidence with regard to the TCV of the property.

The tribunal must make an independent determination of the TCV in determining the correct assessment amount for real property. *Alhi Development Co v. Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). “It is cause for remand if the tribunal merely affirms the assessment as placed on the rolls by the assessing authority.” *First City Corp v City of Lansing*, 153 Mich App 106, 114; 395 NW2d 26 (1986). TCV is the same as fair market value. *Great Lakes Division of National Steel Corp v City of Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998). However, MCL 211.27(5) states that “the purchase price paid in a transfer of property is not the presumptive true cash value of the property transferred.”

“Generally, there are three accepted methods of valuation: the capitalization-of-income approach, the cost-less-depreciation approach, and the market approach. The tribunal’s duty is to select the method which most accurately determines True Cash Value after considering all the facts before it.” *First City Corp, supra* at 114.

Here, the hearing referee acknowledged the price that petitioner paid for the property but ultimately found “the Petitioner’s and Respondent’s market methodologies to be the most accurate and thus the best indication of the property’s true cash value.” The referee rejected the initial value of \$430,000 suggested by respondent’s market approach because the approach – like the appraisal petitioner submitted with respect to the property – employed an incorrect square footage. The referee noted that respondent “testified that the 2001 assessment value based on the corrected field sheet was \$195,890, making the true cash value of the property for 2001 \$391,780.” It is not entirely clear to us why respondent “testified that the 2001 assessment value based on the corrected field sheet was \$195,890,” when the revised market approach summary set forth a TCV of \$390,000 (and 50% of \$390,000 is \$195,000). At any rate, petitioner does not presently take issue with the small dollar difference in the market approach summary versus the assessment value as testified to by respondent, but instead argues that the referee should have accepted the sale price as the TCV.

The referee ultimately chose \$391,780 as the TCV of the property. He then used the adjustment rate provided by respondent, 7.9%, to determine a TCV for 2002 of \$422,740.

As the trier of fact, the referee was entitled to accept respondent’s market approach as ultimately setting forth the TCV of the property. In fact, it appears from the record that this was the only method submitted that provided a value for the property *as of tax day* for the 2001 tax year. Moreover, the use of the 7.9% adjustment rate was supported by evidence submitted by petitioner, as noted in respondent’s “counter-statement of facts in lieu of transcript pursuant to MCR 7.210,” which was accepted by the tribunal as “a concise statement of proceedings and facts in support of the appeal filed[.]” The referee did not commit an error of law or adopt a wrong principle, and there is no allegation that he committed fraud. See *Danse, supra* at 178. The referee simply *was not required* to accept petitioner’s purchase price as the TCV value of

the property. Competent, material, and substantial evidence supported the tribunal's decision, and no error requiring reversal is apparent. *STC, supra* at 533.

Petitioner next argues that the tribunal erred in failing to make an independent determination of the TCV of the property. Petitioner states that the tribunal accepted respondent's valuations without making independent findings. We disagree. Indeed, while the referee did eventually accept a valuation suggested by respondent, it did so *after considering the various options available*. Petitioner notes the referee's statement that "Petitioner's testimony, coupled with the exhibits presented at the hearing, more credibly outweigh the true cash values achieved by application of Respondent's Market Data Approach." Petitioner contends that the referee's opinion is contradictory in stating that the petitioner's testimony was the more credible and then proceeding to "accept[] the Respondent's assessment." While we agree that the tribunal opinion was not artfully worded, contradictory language in a Tax Tribunal opinion is simply not a proper basis for reversal, given the limited judicial review we must employ.

Petitioner next argues that the tribunal applied "inconsistent market increases" for determining the TCVs of the property. Specifically, petitioner argues that one of the comparable properties in respondent's market data approach was sold sixteen months after the sale of petitioner's property and was assigned a price reduction based on a 3% market increase instead of the 7.9% increase applied to petitioner's 2002 assessment. We again find no basis for reversal. First, petitioner acknowledges in his brief that "Respondent had a study which showed that properties appreciated 3% per year in Plymouth Township. However, there was also another study for the subject property's specific economic area indicating that properties were appreciating at a rate of 7.9% per year." Accordingly, there was evidence on the record to support the tribunal's acceptance of each rate. *Dignan, supra* at 576. Our limited powers of judicial review with respect to Tax Tribunal decisions do not allow us to overturn a decision merely because of inconsistency. Additionally, petitioner fails to note that, under his argument, the other two comparable properties in respondent's market data approach would likely be adjusted *upward* in price, because they sold *before* the sale of petitioner's property. We are thus not convinced that petitioner's requested adjustment would result in anything other than a de minimus change.

Petitioner next argues that "the tribunal's factual findings recited in justification of its TCV determination were not supported by competent, material and substantial evidence on the record." Petitioner's argument is nothing more than a laundry list of alleged errors. He makes no attempt to develop a reasoned argument regarding why the tribunal's ultimate factual findings were incorrect. He makes no attempt to cite relevant authorities in support of his allegations of error. We conclude that he has waived this appellate issue because of inadequate briefing. See, generally, *Goolsby v Detroit*, 419 Mich 651, 655 n 1; 358 NW2d 856 (1984). At any rate, as noted in our discussion of petitioner's first appellate issue, the tribunal's factual findings were indeed supported by competent, material, and substantial evidence on the record.

Finally, petitioner argues that the tribunal incorrectly denied his motion for rehearing. Once again, petitioner's argument on appeal is skeletal and insufficient. Plaintiff states that "Petitioner's Request for Rehearing recited all of the errors of law and mistakes of fact set forth above, as well as other perceived errors. A cursory review of the written exhibits and opinion would have confirmed these errors." It is apparent to us that plaintiff's argument is simply a

rehashing of the other arguments he presently raises on appeal. As noted, none of those arguments provide a basis for reversal.

Affirmed.

/s/ Jane E. Markey
/s/ Kurtis T. Wilder
/s/ Patrick M. Meter