STATE OF MICHIGAN

COURT OF APPEALS

DETROIT LIONS, INC.

Petitioner-Appellant,

v

CITY OF DEARBORN,

Respondent-Appellee.

UNPUBLISHED
June 5, 2007

No. 266260
Tax Tribunal
LC No. 00-293748

Before: Meter, P.J., and Kelly and Fort M. Hood, J.J.

PER CURIAM.

Petitioner appeals as of right the Michigan Tax Tribunal's decision regarding the true cash value of property known as the Detroit Lions headquarters and training facility and assessed taxes for the tax year 2002. We affirm.

Petitioner first contends that the Tax Tribunal committed an error of law or adopted a wrong legal principle by applying the costs method in determining the property's true cash value, determining that the property was special-purpose property, and not adjusting the true cash value for functional obsolescence. We disagree.

In the absence of fraud, this Court generally reviews Tax Tribunal decisions to determine whether the tribunal committed an error of law or adopted a wrong legal principle. *Ford Motor Co v Woodhaven*, 475 Mich 425, 438; 716 NW2d 247 (2006). "The Tax Tribunal's factual findings are conclusive if supported by competent, material, and substantial evidence on the whole record." *Catalina Marketing Sales Corp v Dep't of Treasury*, 470 Mich 13, 19; 678 NW2d 619 (2004); Const 1963, art 6, § 28. Substantial evidence is " 'the amount of evidence that a reasonable mind would accept as sufficient to support a conclusion,' " but it may be " 'substantially less than a preponderance.' " *Inter Coop Council v Dep't of Treasury (On Remand)*, 257 Mich App 219, 221; 668 NW2d 181 (2003), quoting *In re Payne*, 444 Mich 679, 692, 698; 514 NW2d 121 (1994). The weight given to evidence is within the tribunal's discretion. *Great Lakes Div of Nat'l Steel Corp v Ecorse,* 227 Mich App 379, 404; 576 NW2d 667 (1998).

Pursuant to MCL 205.737(3), the petitioner has the burden of proof in establishing the true cash value of the property. According to MCL 211.27(1), true cash value "means the usual selling price at the place where the property . . . is at the time of the assessment, being the price that could be obtained for the property at a private sale . . . ." "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 utilizing the approach that provides the most accurate valuation under the circumstances. True cash value is synonymous with fair market value." *Wayne Co v State Tax Comm*, 261 Mich App 174, 200; 682 NW2d 100 (2004), quoting *Jones & Laughlin Steel Corp v City of Warren,* 193 Mich App 348, 356; 483 NW2d 416 (1992). While the Legislature provided a broad definition of true cash value in MCL 211.27(1), it did not direct that specific methods be used. *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 484; 473 NW2d 636 (1991).

The three most common methods of determining true cash value are (1) cost-less-depreciation approach, (2) capitalization-of-income approach, and (3) the sales-comparison or market approach. *Id*. at 484-486. Under the sales comparison approach, " '[t]he market value of a given property is estimated by comparison with similar properties which have recently been sold or offered for sale in the open market.' " *Antisdale v Galesburg*, 420 Mich 265, 276 n 1; 362 NW2d 632 (1984*)*, quoting 1 State Tax Comm Assessor's Manual, Ch VI, pp 1-2. Under the costs approach, the land alone is valued as if it were unimproved, then the value of any improvements is established separately by calculating what the improvements would cost to newly construct and deducting an appropriate amount for depreciation. See *id*. at 276 n 1, quoting 1 State Tax Comm Assessor's Manual, Ch VI, p 4. Under the income capitalization approach, the value of a property is established by estimating the future income it could earn. *Id*. at 276-277 n 1, quoting 2 State Tax Comm Assessor's Manual, Ch X, p 1. "Variations of these approaches and entirely new methods may be useful if found to be accurate and reasonably related to the fair market value of the subject property." *Meadowlanes, supra* at 484-485.

In this case, the Tax Tribunal first considered the highest and best use of the property. " 'Highest and best use' is a concept fundamental to the determination of true cash value. 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." *Rose Bldg Co v Independence Twp*, 436 Mich 620, 633; 462 NW2d 325 (1990). "Highest and best use" means " 'the most profitable and advantageous use the owner may make of the property even if the property is presently used for a different purpose or is vacant, so long as there is a market demand for such use.' " *Detroit/Wayne Co Stadium Auth v Drinkwater, Taylor & Merrill, Inc*, 267 Mich App 625, 633; 705 NW2d 549 (2005), quoting SJI 2d 90.09, now M Civ JI 90.09. A highest and best use determination "requires simply that the use be legally permissible, financially feasible, maximally productive, and physically possible." *Detroit v City of Detroit Plaza Ltd Partnership*, ___ Mich App ___; ___ NW2d___ (Docket No. 258479, issued December 19, 2006), slip op at 13.

Although the Tax Tribunal noted that petitioner's expert, David Bur, opined that the market for an NFL office/training facility is "extremely limited" and "non-existent" and that the cost of converting the space was so high that the highest and best use was not its current use, it also noted that Bur did not provide "data support or meaningful analysis of the financially feasible uses or of the maximally productive use, but instead focuses on whether the use is possible." The Tax Tribunal further stated, "Any imagining as to the identity of likely purchasers from this possibility is speculative and a discussion of reasonable probability largely irrelevant." Additionally, the Tax Tribunal determined that Bur erred in dismissing petitioner's lease as not being an arm's-length transaction because when asked whether the lease was an arm's-length transaction, petitioner's own CEO responded that it was. The lease provides,

"Tenant shall use and occupy the Premises only for a professional football practice field and related office facilities to be utilized only by a franchisee of the National Football League." The declaration of covenants and restrictions provides, "Development on the Site shall be limited to professional football practice fields and related office facilities . . . to be utilized only by a franchisee of the National Football League." Additionally, J. Thomas Lesnau, senior vice-president of finance and CFO for petitioner was asked, "[T]o the best of your knowledge, is there any plan on behalf of the Detroit Lions to leave Detroit?" Lesnau answered, "[N]ot at the current time."

Based on the record evidence, we conclude that the Tax Tribunal did not commit legal error in determining that the highest and best use of the property was its current use; substantial evidence supported its conclusion. To the extent that the Tax Tribunal disregarded Bur's opinion, that was a matter of credibility left to the Tax Tribunal. Because the highest and best use is the current use, and Bur himself acknowledged that the property is a special-purpose facility[1], we also conclude that the Tax Tribunal did not commit legal error in determining that the facility was a special-purpose facility.

The next question is whether the Tax Tribunal committed legal error in using the costs method in determining property's true cash value. Bur admitted in his appraisal that the "[a]ppraisal methodology typically specifies that such special-purpose facilities are best valued through the use of the Cost Approach." The Tax Tribunal additionally noted that even if the property was not special-purpose property, the costs approach is the most accurate indicator of value for properties that are not completed. And, in this case, petitioner adamantly maintains that the property was not completed as of the tax day. As it is apparent from the record that the Tax Tribunal applied its expertise to arrive at an appropriate method for determining true cash value, we conclude that it did not commit an error of law or adopt a wrong legal principle in using the costs approach. *Wayne Co, supra* at 200.

Petitioner also contends that the Tax Tribunal erred in failing to adjust its value under the costs approach for obsolescence caused by super adequacy, pursuant to *Meijer v Midland,* 240 Mich App 1; 610 NW2d 242 (2000). In this regard, the Tax Tribunal determined:

> The Tribunal further finds the functional obsolescence, or flaw in the structure, material, or design that diminishes the function and utility of this special purpose facility does not affect the value of the improvement for which it was designed and built. Petitioner states in its own appraisal, page 36 under Functional Utility, "[T]he utility of the facility is well suited to support the use of the property as a special-purpose office and recreational building."

Petitioner's argument in this regard stems from the faulty premise that the highest and best use of the property is not its current use. However, having determined that the Tax Tribunal did not err

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[1] On page 6 of Bur's appraisal, he wrote, "[I]t is evident that the Subject Property is a special-purpose built facility constructed based on the design and qualifications desired by its intended user The Detroit Lions."

in determining that the highest and best use is the current use, we also conclude that did not err in determining that the property's value was not affected by any functional obsolescence. Unlike this case, the property owner in *Meijer* presented competent evidence of a super adequacy, the property was not special-purpose property, and the Tax Tribunal found that a subsequent purchaser would have to incur significant modification costs. Therefore, *Meijer* does not support petitioner's assertion that the Tax Tribunal erred in determining that there was no functional obsolescence.

Petitioner next contends that the Tax Tribunal abused its discretion in qualifying respondent's witness Michael Gerendasy as an expert. We disagree.

This Court "reviews a trial court's rulings concerning the qualifications of a proposed expert witness for an abuse of discretion." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006). The admission of expert testimony requires that: "(1) the witness be an expert; (2) facts are in evidence which require or are subject to examination and analysis by a competent expert; and (3) the knowledge is 'in a particular area which belongs more to an expert than to the common man.' " *King v Taylor Chrysler-Plymouth, Inc,* 184 Mich App 204, 215; 457 NW2d 42 (1990), quoting *O'Dowd v Linehan,* 385 Mich 491, 509-510; 189 NW2d 333 (1971). A witness may be qualified as an expert by knowledge, skill, experience, training or education. MRE 702. These qualifications must be broadly applied. *Grow v W A Thomas Co,* 236 Mich App 696, 713; 601 NW2d 426 (1999). "The critical inquiry with regard to expert testimony is whether such testimony will aid the factfinder in making the ultimate decision in the case." *People v Smith,* 425 Mich 98, 105; 387 NW2d 814 (1986); MRE 702.

Before the Tax Tribunal, petitioner objected to Gerendasy's qualifications on the basis that he had never appraised a building like the one at issue and had "no knowledge or experience in a particular type of facility such as this, of its size. He's never done anything in the arena of sports arenas, anywhere or anytime. . . . I acknowledge that he may be a good appraiser in certain types of buildings, but not in the type of property you have under this appeal." The Tax Tribunal ruled:

> It all goes to the weight that I put on the testimony. I'm going to allow this witness to be admitted as an expert as a licensed real estate appraiser. Tribunal recognizes he does not have the designation of SRI or MAI or any of the other designations, but he is a licensed real estate appraiser.

Petitioner has failed to demonstrate that the Tax Tribunal abused its discretion in qualifying Gerendasy as an expert. Petitioner provides no legal support for its contention that Gerendasy was required to have any designation other than licensed real estate appraiser. To the extent that Gerendasy never appraised a building like the one at issue and does not have in depth knowledge of the NFL, those factors go to the weight given his testimony, not his ability to testify as an expert.

Petitioner also contends that the Tax Tribunal abused its discretion in denying petitioner's motion to strike respondent's experts who were employed by a firm that was previously hired by petitioner's attorneys in another property matter. We disagree. "We review a trial court's decision concerning the admission of evidence for an abuse of discretion." *Zeeland Farm Services, Inc v JBL Enterprises, Inc,* 219 Mich App 190, 200; 555 NW2d 733 (1996).

Petitioner has provided no support for its assertion that the relationship between its counsel and Integra was like that of attorney-client thereby rendering their communications privileged. Furthermore, even if there were such a privilege, petitioner has failed to present any evidence that any privileged information was shared amongst the appraisers. Therefore, we conclude that petitioner has failed to demonstrate that the Tax Tribunal abused its discretion in denying petitioner's motion to strike respondent's appraisers and their appraisal.

Finally, petitioner contends that the Tax Tribunal erred in ruling that the taxes for the property were uncapped for the tax year 2002 under MCL 211.27. Petitioner did not raise this argument during trial, nor is this matter addressed in petitioner's appraisal. We have also reviewed petitioner's post-trial brief and found no such argument therein. However, in its motion for reconsideration, petitioner asserted, for the first time, that the taxable value should not have been uncapped for tax year 2002 albeit for an entirely different reason than that asserted on appeal. In its motion for reconsideration, petitioner asserted, "The lease is for a period less than 35 years and does not contain a bargain purchase. Therefore there is no basis for the property to be uncapped for 2002." On appeal, petitioner concedes that there is a lease for more than 35 years, but contends that the lease, though signed in early 2001, did not commence until "late 2002." Because this issue was never raised before or addressed by the Tax Tribunal[2], it is not preserved[3] for appellate review. Moreover, as respondent points out, under MCL 205.735(2), petitioner's argument is inconsistent with the filing of its petition in this case. Pursuant to MCL 205.735(2), "The jurisdiction of the tribunal in an assessment dispute is invoked by a party in interest, as petitioner, filing a written petition on or before June 30 of the tax year involved." Accordingly, by filing its petition for the 2002 tax year, petitioner implicitly asserted that it was a party in interest as of June 30, 2002, which is inconsistent with its assertion on appeal that the lease did not commence until November 2002, or "late 2002." Therefore, we conclude that petitioner waived[4] this issue by taking a stance in the tribunal that is inconsistent with its argument on appeal. Because this issue was not preserved and was waived, we decline to review it.

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[2] While the Tax Tribunal implicitly determined that the taxable value was uncapped in 2001 and affirmatively so stated in its order denying petitioner's motion for reconsideration, it never addressed the argument that there was no transfer before December 31, 2001, and petitioner never presented that argument to the Tax Tribunal.

[3] An issue is not properly preserved for appellate review if it is not raised before, addressed, or decided by the trial court. *Polkton Charter Twp v Pellegram*, 265 Mich App 88, 95; 693 NW2d 170 (2005).

[4] An error requiring reversal cannot be error to which the aggrieved party contributed by plan or negligence; under these circumstances, a party waives appellate review of the issue. *People v Griffin*, 235 Mich App 27, 46; 597 NW2d 176 (1999).

Affirmed.

/s/ Patrick M. Meter
/s/ Kirsten Frank Kelly
/s/ Karen M. Fort Hood