

STATE OF MICHIGAN
COURT OF APPEALS

GOLF COURSE PROPERTIES, L.L.C.,

Petitioner-Appellant,

v

TYRONE TOWNSHIP,

Defendant-Appellee.

UNPUBLISHED

June 12, 2008

No. 274923

Michigan Tax Tribunal

LC No. 00-301974

Before: Gleicher, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Petitioner, Golf Course Properties, LLC, appeals as of right the Michigan Tax Tribunal's determination of the assessed value of commercial property in Tyrone Township for purposes of taxation for the 2003 and 2004 tax years under the General Property Tax Act (GPTA), MCL 211.1 *et seq.* We affirm.

The subject property consists of both an 18-hole public golf course, known during the tax years at issue as "The Preserve," and 34.6 acres of vacant land.¹ The structures on the golf course include a one-story 8,902 square foot clubhouse, a 6,000 square foot equipment storage barn, a 3,180 square foot cart storage barn, and a parking lot. The clubhouse contains a pro shop, a golfers' grill, a kitchen, restrooms, and offices. Although the golf course cost approximately \$10,000,000 to build, petitioner sold the property in 2004 for \$3,900,000: \$3,650,000 for the real property and \$250,000 for the personal property.

In 2003 and 2004, respondent determined the true cash value of the subject property to be \$6,702,500 and \$6,313,070, respectively. Petitioner challenged respondent's assessment in the Michigan Tax Tribunal. Petitioner alleged that the true cash value of the property for 2003 was \$1,575,000, and for 2004 was \$1,775,000. Petitioner's valuation of the property was calculated using the income approach to value, and excluded the net operating income from golf cart rentals.

¹ The golf course is now known as The Coyote Preserve Golf Club.

The Tax Tribunal noted that the income capitalization approach was the most reliable indicator of a golf course property's true cash value, but it concluded that the income capitalization approach, as presented by petitioner, was "flawed and does not accurately represent" the property's true cash value. The Tax Tribunal, therefore, relied on the evidence of the 2004 sale respondent presented to conclude that the true cash value of the property was \$3,650,000.

On appeal, petitioner argues that the Tax Tribunal's valuation of the subject property was erroneous because it was not supported by competent, material, and substantial evidence. Petitioner further argues that the Tax Tribunal impermissibly relied solely on the recent sale price of the property, disregarding completely the appraisal evidence petitioner presented and failing to independently determine the property's value.

In the absence of fraud, this Court generally reviews Tax Tribunal decisions to determine whether the Tax 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 Co-op 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 Tax Tribunal's discretion. *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 404; 576 NW2d 667 (1998).

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. *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 484-486; 473 NW2d 636 (1991). 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.

Petitioner first argues that the Tax Tribunal erred by solely relying on the purchase price of the property to determine true cash value of the property. Although the Tax Tribunal relied on the purchase price of the property to determine its true cash value, it did so after reviewing and rejecting petitioner's appraisal that valued the property using the income capitalization approach. The only other evidence of the property's true cash value was the purchase agreement and the property transfer affidavit, which established that the real property sold for \$3,650,000.

Although the sale or purchase price is not conclusive evidence of the true cash value of a piece of property, Michigan law does not prohibit the Tax Tribunal from relying on a property's sale or purchase price to establish the true cash value. Rather, Michigan law simply does not presume that the sale or purchase price of a property is the true cash value of the property. See *Antisdale*, *supra* at 278 (“The rule in Michigan, as in many other states, is that the selling price of a particular piece of property is not conclusive as evidence of the value of that piece of property.”); MCL 211.27(5) (“ . . .the purchase price paid in a transfer of property is not the presumptive true cash value of the property transferred.”). Here, the Tax Tribunal did not use the purchase price of the property as conclusive evidence of its true cash value. The Tax Tribunal relied on the purchase price as a last resort, after it found petitioner's appraisal and appraiser's testimony to be inconsistent and incredible. Because the only credible evidence of the true cash value of the property was the purchase price and petitioner did not present any evidence showing that the purchase price was not the fair market value of the property, the Tax Tribunal did not err by relying on it to establish the true cash value of the property.

We also hold that the Tax Tribunal's determination that the purchase price was the true cash value of the property was supported by competent, material and substantial evidence. 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 Co-op Council*, *supra* at 221. The Tax Tribunal's determination of the true cash value of the property is supported by the purchase agreement and the property transfer affidavit, both of which state that the purchase price for the real property was \$3,650,000. These documents support the conclusion that the property's true cash value in 2003 and 2004 was \$3,650,000, because the sale occurred during the 2004 tax year and the documents specifically state that the purchase price for the real property was \$3,650,000. This evidence is sufficient for a reasonable mind to conclude that the true cash value of the property was \$3,650,000 in 2003 and 2004, particularly in light of the fact that no other credible evidence was presented.

Petitioner next argues, “the Tribunal failed to address the issue of the income generated by the [golf] carts,” which petitioner contends is relevant because the purchase price improperly reflected the golf cart income. This is simply untrue. The Tax Tribunal stated:

The Transfer Affidavit clearly states that the “purchase price of the real estate” is \$3,650,000 (R-2)[.] The purchase agreement is even more definitive, stating that “[t]he Purchase Price shall be Three Million Nine Hundred Thousand and 00/100 Dollars (U.S. \$3,900,000.00) of which \$3,650,000 shall be attributable to the purchase of the real property and buildings by Coyote II, LLC and \$250,000.00 shall be attributable to the purchase of the personal property and license used to operate the clubhouse, restaurant, and bar.” (Emphasis added.) (R-1, p1) There is no indication that the \$3,650,000 purchase price was for anything other than the real property and buildings. Petitioner had an opportunity to provide evidence to the contrary and was unable to do so. Petitioner may not now claim that this price was for the “going concern.”

The Tax Tribunal explicitly stated that the purchase price was for the real property and buildings; it did not include any personal property, or any income attributable to the real property. We therefore find that plaintiff's argument is meritless.

Lastly, petitioner argues that the Tax Tribunal erred when it accepted the purchase price of the real property as the true cash value without making an independent determination of the true cash value of the property. In support of its argument, petitioner cites *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 354-355; 483 NW2d 416 (1992), in which this Court held that if a petitioner fails to meet its burden of proof, the Tax Tribunal may not automatically accept the respondent's true cash value of the property. Rather, the Tax Tribunal must make an independent determination of the true cash value of the property. *Id.* at 355. "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.*

Unlike in *Jones & Laughlin Steel Corp*, *supra* at 355, here the Tax Tribunal made an independent determination of the true cash value of the property. After rejecting petitioner's appraisal and deciding that petitioner had not met its burden of proof, the Tax Tribunal made factual findings about the true cash value of the property. The Tax Tribunal found that the purchase agreement and the property transfer affidavit were the most reliable indicators of the true cash value of the property in 2003 and 2004 because the documents explicitly set a purchase price for the real property. The Tax Tribunal went on to arrive at a legally supportable true cash value when it set the true cash value at the 2004 purchase price. The true cash value the Tax Tribunal assigned to the subject property is legally supportable because the Tax Tribunal did not use the purchase price as conclusive evidence of the true cash value. Rather, after an extensive discussion of the flaws in petitioner's appraisal, the Tax Tribunal relied on the purchase price because the evidence supporting it was credible, and there was no evidence that the purchase price did not reflect the fair market value of the property. On the record, we find that the Tax Tribunal made an independent determination of the true cash value of the property. Accordingly, no error occurred.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra