

STATE OF MICHIGAN
COURT OF APPEALS

TOLL BROTHERS, INC.,

Petitioner-Appellant/Cross-
Appellee,

v

CITY OF NOVI,

Respondent-Appellee/Cross-
Appellant.

UNPUBLISHED
March 24, 2009

No. 277768
Tax Tribunal
LC No. 00-310749

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

PER CURIAM.

Petitioner, Toll Brothers, Inc., appeals as of right, challenging the Tax Tribunal's order dismissing its appeal of property tax assessments for the 2004 tax year. Respondent, the city of Novi (or, herein, the city), cross appeals the Tax Tribunal's order denying its motion for costs and attorney fees. We reverse the Tax Tribunal's order of dismissal, and remand for further proceedings.

I

Toll Brothers is a developer of several residential properties in the city of Novi. This matter arises from an appeal by Toll Brothers to the Tax Tribunal following the City's increase of the assessed true cash and taxable values of 329 residential condominium parcels for the 2004 tax year. The challenged assessment increases were based on public service improvements, which the city characterized as "additions" permitting assessment increases pursuant to MCL 211.34d(b)(viii).

While the petition was pending, the constitutionality of MCL 211.34d(1)(b)(viii) was before this Court in a different appeal. Toll Brothers filed with the Tribunal a motion to hold its tribunal appeal in abeyance, until the constitutionality of MCL 211.34d(1)(b)(viii) was decided

by the appellate courts.¹ That motion was itself held in abeyance until Toll Brothers cured various procedural deficiencies.

Questions subsequently arose regarding whether Toll Brothers had standing to challenge the assessment increases for all 329 parcels, and, even if it did, whether the parcels were contiguous, such that they could all be challenged in a single appeal. The tribunal ordered Toll Brothers to submit documentation showing (1) its ownership of the parcels, for purposes of standing, and (2) that the parcels were contiguous. Toll Brothers failed to comply with this order, was defaulted, and the tribunal again ordered it to submit the requested documentation.

Toll Brothers later submitted a spreadsheet listing the parcels, and indicating which parcels had been sold. Toll Brothers conceded that the various parcels were “technically not contiguous,” but argued that they were in the “same general area,” and that “many . . . are in contiguous clusters, while others are isolated.” Toll Brothers argued that judicial economy would be served by “split[ting] the cases by cluster, then combin[ing] them for hearing.” The Tax Tribunal found that Toll Brothers failed to comply with its orders, and dismissed the petition. The tribunal also denied Toll Brothers’ motion to hold the case in abeyance, pending the decision in the tax assessment appeals that culminated in *Toll Northville, Ltd v Northville Twp*, 480 Mich 6; 743 NW2d 902 (2008).

The Tax Tribunal granted the city’s request for costs, under 1999 AC, R 205.1145, and ordered it to submit a bill of costs. The city submitted a bill of costs, consisting almost entirely of attorneys’ fees and assessors’ fees. The tribunal held that such costs were not recoverable.

II

Toll Brothers first argues that the Tax Tribunal erred in dismissing its petition for failure to submit documentation showing ownership and contiguity of parcels. We agree.

This Court will not reverse a decision of the Tax Tribunal in the absence of fraud, an error of law, or the adoption of wrong principles. Const 1963, art 6, § 28; *City of Mt Pleasant v State Tax Comm*, 477 Mich 50, 53; 729 NW2d 833 (2007). The Tax Tribunal has the authority to dismiss a petition for failure to comply with its rules or orders. *Professional Plaza, LLC v Detroit*, 250 Mich App 473, 475; 647 NW2d 529 (2002). We review such a decision for an abuse of discretion. *Id.* An abuse of discretion occurs when the decision is outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719

¹ On September 12, 2006, before the Tax Tribunal dismissed petitioner’s petition, this Court held that MCL 211.34d(1)(b)(viii) was unconstitutional, and that a municipality may not increase the taxable value of property based on the installation of public service improvements. *Toll Northville, Ltd v Northville Twp*, 272 Mich App 352; 726 NW2d 57 (2006), aff’d in part and vacated in part 480 Mich 6 (2008). After the Tax Tribunal dismissed petitioner’s petition, our Supreme Court affirmed this Court’s determination that MCL 211.34d(1)(b)(viii) was unconstitutional. *Toll Northville, Ltd v Northville Twp*, 480 Mich 6; 743 NW2d 902 (2008).

NW2d 809 (2006); *McManamon v Redford Charter Twp*, 273 Mich App 131, 138; 730 NW2d 757, 762; 25 IER Cases 727 (2006).

We conclude that the Tax Tribunal's dismissal of plaintiff's petition, under these unique facts, did fall outside the range of reasonable and principled outcomes, and therefore, was an abuse of discretion. The underpinnings of plaintiff's challenge to the property assessments at issue in this matter was the constitutionality of the applicable statute, MCL 211.34d(1)(b)(viii). The subject statute had already been found unconstitutional by the circuit court and was on appeal to this Court. See *Toll Northville, Ltd v Northville Twp*, 272 Mich App 352; 726 NW2d 57 (2006), *aff'd in part and vacated in part* 480 Mich 6 (2008). As noted earlier, this Court's determination that the statute was unconstitutional was issued approximately three weeks before the Tax Tribunal dismissed the petition, effectively resulting in the upholding of erroneous assessment increases while precluding any potential for petitioner to obtain relief.

Because the Tribunal lacks jurisdiction "to undertake the determination of constitutional questions or possess power to hold statutes unconstitutional," *Sessa v State Tax Comm*, 134 Mich App 767, 771; 351 NW2d 863 (1984), citing *Wikman v Novi*, 413 Mich 617; 322 NW2d 103 (1982), under the circumstances of this case, the Tribunal's failure to hold this matter in abeyance, pending a determination in the Supreme Court regarding the constitutionality of the underlying statute on which the assessments were challenged, was not a reasonable and principled exercise of its authority. *Stevens v Bangor Twp*, 150 Mich App 756, 761; 389 NW2d 176 (1986). By dismissing the petition before the constitutionality of the statute was resolved, the Tribunal failed to acknowledge the need for uniform resolution of assessment challenges that hinged on the validity of MCL 211.34d(1)(b)(viii), but instead imposed "the harshest available sanction," *Stevens, supra* at 762, in the face of a procedural deficiency. Given the potential number of erroneous assessments resulting from the application of an unconstitutional statute, it would have been more efficacious for the Tribunal to wait for the outcome of the appeal so that it could determine whether it should invalidate all assessments based on this statute or hold separate hearings to determine the accuracy of any specific assessment. The former methodology would have obviated any need for petitioner to go forward with its petition or otherwise comply with the Tribunal's procedural directives.

Accordingly, the Tribunal abused its discretion by dismissing Toll Brother's petition challenging the validity of assessment increases based on public services improvements, when the Tribunal was aware at the time it dismissed the petition that the statute upon which the challenged assessments were based had been ruled unconstitutional. In light of our ruling reversing the dismissal of Toll Brother's petition, we need not address the city's cross appeal of the Tribunal's order denying its motion for costs and attorney fees.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. Petitioner, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Kurtis T. Wilder
/s/ Jane E. Markey
/s/ Michael J. Talbot