

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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KARTER LANDON,

Plaintiff-Appellant,

v

TOWNSHIP OF MT. MORRIS,

Defendant-Appellee.

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UNPUBLISHED

October 6, 2009

No. 287289

Michigan Tax Tribunal

LC No. 00-315091

Before: Murray, P.J., and Markey and Borrello, JJ.

PER CURIAM.

Petitioner appeals as of right from the Michigan Tax Tribunal's ("the tribunal") determination of the true cash value (TCV) of a parcel of real property plaintiff owns located at 1364 W. Tremont, Mt. Morris Township, Michigan, for the years 2005, 2006, and 2007. For the reasons set forth in this opinion, we vacate the tribunal's decision and remand for further proceedings.

Petitioner purchased the subject property on March 12, 2004, for \$3,850 in cash. The property was built in 1940 and has 616 square feet of living space. Petitioner offers the property to the public as a residential rental.

The tribunal entered a judgment finding the TCV of the subject property for the year 2005 to be \$22,102 and its state equalized value (SEV) and taxable value (TV) to be \$11,050. Petitioner moved for reconsideration, and the tribunal granted the motion. At issue on reconsideration were the subject property's TCV, SEV, and TV for 2005, as well as 2006 and 2007. Respondent contended that the subject property's TCV for the year 2005 was \$22,200 and SEV and TV were \$11,100. For 2006, respondent contended that the subject property's TCV was \$22,400 and SEV and TV were \$11,200. For 2007, respondent contended the subject property's TCV was \$22,800 and SEV and TV were \$11,400. Petitioner contended that the subject property's TCV for the year 2005 was \$4,900 and that its SEV and TV for that year were \$2,450. Petitioner did not provide any estimates for the years 2006 or 2007. The tribunal found that the subject property's TCV for the years 2005, 2006, and 2007 were \$10,000, while its SEV and TV for the same years were \$5,000.

"In the absence of fraud, review of a decision by the Tax Tribunal is limited to determining whether the tribunal erred in applying the law or adopted a wrong principle; its factual findings are conclusive if supported by competent, material, and substantial evidence on

the whole record.” *Michigan Bell Tel Co v Dep’t of Treasury*, 445 Mich 470, 476; 518 NW2d 808 (1994); Const 1963, art 6, § 28. “Evidence is competent, material, and substantial if a reasoning mind would accept it as sufficient to support a conclusion.” *Galuszka v State Employees Retirement Sys*, 265 Mich App 34, 45; 693 NW2d 403 (2004). Substantial evidence must be more than a scintilla but may be substantially less than a preponderance of the evidence. *Leahy v Orion Twp*, 269 Mich App 527, 529-530; 711 NW2d 438 (2006).

On appeal, petitioner argues that the tribunal’s determination of the subject property’s TCV was not supported by competent, material, and substantial evidence. While we find that the tribunal’s overall methodology for determining the subject property’s TCV, SEV, and TV was sound, we cannot determine that the basis for its calculations are supported by competent, material, and substantial evidence.

The assessment of real property in Michigan must not exceed fifty percent of its TCV. Const 1963, art 9, § 3; *WPW Acquisition Co v City of Troy*, 250 Mich App 287, 298; 646 NW2d 487 (2002). MCL 211.27(1) defines “true cash value” as:

[T]he usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale.

The TCV is synonymous with fair market value. *Great Lakes Div of Nat’l Steel Corp v City of Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998). The petitioner has the burden of proof in establishing the TCV of the property. MCL 205.737(3). “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 of property, utilizing an approach that provides the most accurate valuation under the circumstances.” *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 353; 483 NW2d 416 (1992). The three most common approaches for determining TCV are “the capitalization-of-income approach, the sales-comparison or market approach, and the cost-less-depreciation approach.” *Great Lakes, supra* at 390. In this case, the tribunal arrived at its determination of the subject property’s TCV relying primarily on the sales-comparison method of valuation. The tribunal stated that it gave “some consideration” to the capitalization-of-income approach offered by respondent, but that respondent had offered “very little documentation to support the numbers used in the calculation.” The tribunal did not discuss to what extent, if at all, its consideration of the capitalization-of-income approach affected its determination of the subject property’s TCV. Thus, we focus on the tribunal’s use of the sales-comparison approach.

Under the sales-comparison approach, TCV is determined by analyzing recent sales of properties similar to the subject property, i.e., “comparables,” while making adjustments to the comparable’s sale price to reflect differences between the properties. *Id.* at 391. In the instant case, both petitioner and respondent presented the tribunal with the details of various sales of comparables. The tribunal selected five comparables, two from petitioner and three from respondent, “that seem[ed] to reflect the characteristics of the subject property.” The tribunal then adjusted the sale price of each comparable to reflect differences between the comparables and the subject property with respect to lot size, square footage, number of bedrooms, age, the presence or absence of a garage, and other attributes. The tribunal adjusted each sale price using

dollar amounts offered by respondent that corresponded with each characteristic, ultimately singling out a comparable located at 1167 Temple as the most relevant because “it is used as a rental and the cash purchase was not open to any financial schemes.” 1167 Temple was sold on November 5, 2003 for \$5,500. The tribunal adjusted 1167 Temple’s sale price as follows: (1) added \$432 because it had 24 square feet less of living space than the subject property; (2) added \$2,000 because it was built ten years earlier than the subject property; and (3) added \$500 because, unlike the subject property, it did not have a garage. 1167 Temple’s adjusted sale price was \$8,432.

Petitioner argues that the tribunal erred when it based its adjustments of each comparable’s sale price, including 1167 Temple, on dollar amounts offered by respondent because those amounts were arbitrary and not based on competent, material, and substantial evidence. Petitioner is correct in his assertion that the tribunal’s decision merely notes its decision to adopt respondent’s offered values, but fails to explain its reasoning for adopting those values. We also note the tribunal’s failure to explain the \$1,568 difference between the adjusted sale price of 1167 Temple, \$8,432, and the subject’s property’s final TCV, \$10,000. The decision does not explain the reasoning process the tribunal used to reach its decision regarding the TCV of the subject property. As a result, we cannot determine if the tribunal’s findings of fact are supported by the requisite evidence.

Petitioner also argues the tribunal’s criteria for adjusting the sale prices of comparables was flawed or underinclusive in that the tribunal gave undue weight to some criteria, and failed to ascribe any importance to other criteria. Further, petitioner stresses that the tribunal did not adequately consider the price at which petitioner purchased the property in 2004 (\$3,850) or is currently attempting to sell it at (\$6,000).

MCL 211.27(5) provides, “[T]he purchase price paid in a transfer of property is not the presumptive true cash value of the property transferred.” Second, the tribunal did not err when it emphasized some characteristics of the properties over others in its application of the sales-comparison approach because “[t]he weight to be accorded to the evidence is within the Tax Tribunal’s discretion.” *Great Lakes, supra* at 404.

While the tribunal did not err in relying on the sales-comparison approach as the method to determine the subject property’s TCV, SEV, and TV, it failed to state its reasoning for relying on respondent’s proposed adjustments of comparable properties, and failed to state its reasoning for making adjustments as it did. Under the circumstances, we cannot determine if the tribunal’s factual findings are supported by the requisite evidence. Thus, we vacate the tribunal’s decision and remand this matter to the tribunal for reconsideration.

Vacated and remanded for the reasons stated above. We do not retain jurisdiction.

/s/ Christopher M. Murray  
/s/ Jane E. Markey  
/s/ Stephen L. Borrello