STATE OF MICHIGAN

COURT OF APPEALS

SHELLY SCHELLENBERG and DAVID RIGGLE, Petitioners-Appellants, v TOWNSHIP OF BINGHAM, Respondent-Appellee.	UNPUBLISHED May 11, 2010 No. 289801 Tax Tribunal LC No. 00-313448

Before: BANDSTRA, P.J., and FORT HOOD and DAVIS, JJ.

PER CURIAM.

In this property assessment dispute, petitioners appeal as of right from the judgment of the Michigan Tax Tribunal, which determined the true cash value of petitioners' Lake Michigan property located at Suttons Bay to be $785,284 and $805,620 for 2005 and 2006, respectively. We affirm.

Petitioners first argue that the Tax Tribunal erred by ignoring substantial evidence that proved petitioner's contended true cash value. We disagree.

Our review of a Tax Tribunal decision is limited. *Mount Pleasant v State Tax Comm*, 477 Mich 50, 53; 729 NW2d 833 (2007). Absent fraud, we review a Tax Tribunal decision to determine whether the Tax Tribunal made an error of law or adopted a wrong legal principle. *Meijer, Inc v Midland*, 240 Mich App 1, 5; 610 NW2d 242 (2000). The Tax Tribunal's factual findings are final if supported by competent and substantial evidence. *Mount Pleasant*, 477 Mich at 53. "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).

True cash value is of key importance because the assessment of real property for tax purposes is limited to no more than fifty percent of that value. Const 1963, art 9, § 3; *WPW Acquisition Co v City of Troy*, 250 Mich App 287, 298; 646 NW2d 487 (2002). True cash value is defined as

> the 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. [MCL 211.27(1).]

Petitioners had the burden of proof to establish the true cash value for the property. See MCL 205.737(3). In support of their position, petitioners provided two appraisals, as well as beach samples, a land survey, and a letter from the Department of Environmental Quality outlining land improvements that might be undertaken at petitioners' cost.

After considering the evidence, the hearing referee recognized that the property was unique, and then determined the true cash value on the basis petitioners' land value methodology and respondent's building value. The referee opined that the land value established by one of petitioners' appraisers was too low, and that the one submitted by respondent was too high, then settled on the methodology used by petitioners' other appraiser, Mr. Timm. Petitioners took exception to the referee's findings, arguing that the referee disregarded important evidence, but the Tax Tribunal upheld the referee's findings and determined that all evidence was properly considered.

"Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence. Failure to base a decision on competent, material, and substantial evidence constitutes an error of law requiring reversal." *Leahy v Orion Twp*, 269 Mich App 527, 529-530; 711 NW2d 438 (2006), citing *Meijer, Inc v Midland*, 240 Mich App 1, 5; 610 NW2d 242 (2000). When considering evidence of a property's true cash value, the Tax Tribunal "may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination of true cash value." *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 390; 576 NW2d 667 (1998).

In this case, the record shows that the Tax Tribunal based its factual findings on, at minimum, two appraisals from petitioners and respondent's analysis. The Tribunal not only considered the evidence, but also explained how and why it chose to utilize a combination of two theories in arriving at its independent determination of petitioners' cash value. The Tribunal determined the land value in accord with the methodology of the Timm Appraisal, and determined the improvements put forward by respondent, expressly noting that petitioners did not meet their burden of proof regarding the improvements. The referee pointed out the difficulty in valuing petitioners' land in light of its unusual features, and agreed that Mr. Timm's treatment of the land value was most accurate. The referee further indicated that respondent failed to account for the varying attributes of the property, but that respondent properly addressed the value of improvements, and thus accepted respondent's improvement valuation only. The information in the proposed opinion and order shows that the referee arrived at an independent determination of true cash value on the basis of substantial evidence. It was not necessary for the referee to discuss each piece of evidence submitted. The findings of the referee were in turn adopted by the Tax Tribunal, upon appropriate review, and the Tribunal likewise was not obliged to discuss each piece of evidence. For these reasons, we conclude that the Tax Tribunal did not err in its review of the evidence.

Petitioners next argue that the Tax Tribunal erred in failing to show adjustments or calculations used to determine true cash value, and in failing to properly apply the Timm Appraisal methodology in not adjusting adjust the property value downward. We disagree.

"The purpose of the Tax Tribunal's opinion is to facilitate appellate review, but the Tax Tribunal Act and the [Administrative Procedures Act] require only a concise statement of facts and conclusions." *Great Lakes Div of Nat'l Steel Corp*, 227 Mich App at 402, citing MCL 205.751, MCL 24.285, *First City Corp v Lansing*, 167 Mich App 248, 255; 421 NW2d 651 (1988). MCL 205.751(1) provides as follows:

> A decision and opinion of the tribunal shall be made within a reasonable period, shall be in writing or stated in the record, and shall include a concise statement of facts and conclusions of law, stated separately and, upon order of the tribunal, shall be officially reported and published.

Likewise, MCL 24.285 of the APA provides as follows:

> A final decision or order of an agency in a contested case shall be made, within a reasonable period, in writing or stated in the record and shall include findings of fact and conclusions of law separated into sections captioned or entitled "findings of fact" and "conclusions of law", respectively. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. If a party submits proposed findings of fact that would control the decision or order, the decision or order shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by authority or reasoned opinion. A decision or order shall not be made except upon consideration of the record as a whole or a portion of the record as may be cited by any party to the proceeding and as supported by and in accordance with the competent, material, and substantial evidence. A copy of the decision or order shall be delivered or mailed immediately to each party and to his or her attorney of record.

Thus, the Tax Tribunal must provide a concise statement of the underlying facts supporting a factual finding, but it need not set forth every adjustment or calculation used to determine a property true cash value. We do not demand "overelaboration of detail or particularization of facts," see MCR 2.517(A)(2), but rather only need enough information to understand how the Tribunal arrived as its true cash value calculation.

Here, the Tax Tribunal supported its decision by stating which valuation method it agreed with for both land purposes (Timm Appraisal) and improvement purposes (respondent's analysis). The referee also explained its reasoning for selecting the land value presented in the Timm Appraisal—because it used a blend of categories to reflect the varying condition of the beach property. The referee further indicated why he did not select the land value as presented by respondent—because it pigeonholed all of petitioners' land into one category when it had attributes associated with more than one. There was sufficient evidence for the Tax Tribunal to make an independent determination of petitioners' true cash value. Thus, the referee's explanation, as adopted by Tax Tribunal member Enyart, is more than a concise statement of the underlying facts supporting the referee's factual finding.

Petitioners next argue that the Tax Tribunal erred in determining it did not have jurisdiction for the years 2002, 2003, and 2004. We disagree.

The Tax Tribunal Act, MCL 205.701 *et seq*., outlines the subject matter jurisdiction of the tribunal, providing in pertinent part as follows:

> The tribunal's exclusive and original jurisdiction shall be:
>
> (a) A proceeding for direct review of a final decision, finding, ruling, determination, or order of an agency relating to assessment, valuation, rates, special assessments, allocation, or equalization, under property tax laws.
>
> (b) A proceeding for refund or redetermination of a tax under the property tax laws. [MCL 205.731.]

The act also describes the procedural requirements for perfecting an appeal with the Tribunal. See *Parkview Mem Assoc v City of Livonia*, 183 Mich App 116, 121; 454 NW2d 169 (1990). The relevant statute states as follows:

> (2) A proceeding before the tribunal is original and independent and is considered de novo. For an assessment dispute as to the valuation of property or if an exemption is claimed, the assessment must be protested before the board of review before the tribunal acquires jurisdiction of the dispute under subsection (3), except as otherwise provided in this section for a year in which the July or December board of review has authority to determine a claim of exemption for qualified agricultural property or for an appeal of a denial of a principal residence exemption by the department of treasury in section 37(5) and (7). . . .
>
> (3) 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. . . . In all other matters, the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition within 35 days after the final decision, ruling, determination, or order that the petitioner seeks to review. . . . [MCL 205.735(2), (3).]

In order to raise challenges in connection with the tax years 2002 through 2004, petitioners were statutorily required to appeal the assessments to the Board of Review before June 30 of the year involved. MCL 205.735(2), (3). Once the Board of Review has made its decision, a taxpayer may appeal that decision to the Tax Tribunal. *Id*.

Petitioners acknowledge that the general rule under MCL 205.735(2) is that a petitioner must file a cause of action within thirty days[1] of a final decision, but nonetheless contend that this requirement may be overridden by another statute. Petitioners contend that the provision in MCL 211.53a allowing three years for the commencement of a suit where there is a mutual mistake of fact governs this situation, and thus that MCL 205.735 does not apply.

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[1] Effective May 30, 2006, this time limit was changed from thirty days to thirty-five days. See 2006 PA 174.

Assuming without deciding that the thirty-day filing requirement of MCL 205.735 is trumped by MCL 205.735, we nonetheless conclude that petitioners may not nose challenges within the jurisdiction of the Tax Tribunal because there is no final decision from an agency such as the Board of Review. Petitioners appealed the 2001 state equalized value assessment with the Board of Review, alleging that their house was improperly re-rated as newly built after it was reconstructed in 2000 after a fire in the home. The Board of Review subsequently revised the assessment, although neither petitioners nor respondent could determine how the taxable value reduction was determined, or whether the adjustment was correct.

Petitioners admit that they received some relief from the Board of Review, and that they did not appeal the decision of the Board at that time because they believed the revision was correct. Petitioners also state that they did not know how the revised assessment value was determined. Nonetheless, petitioners neither inquired how the Board of Review calculated the revised value, nor appealed the decision. Petitioners failed to appeal the assessments for the years 2002 through 2004. Therefore, there was nothing for the Tax Tribunal to review.

A party may not contribute to an alleged error by plan or negligence and then argue error on appeal. See *Munson Med v Auto Club*, 218 Mich App 375, 388; 554 NW2d 49 (1996). Petitioners were given an opportunity to appeal the prior decisions through the appropriate channels and declined to do so. We therefore affirm the Tax Tribunal's determination that it did not have jurisdiction over the tax years 2002 through 2004.

Petitioners final argument is that the Tax Tribunal erred in failing to correct the post-fire re-rating of the house. However, because petitioners did not properly raise this issue before the Tax Tribunal, it is not preserved, and this Court need not address it. See *Toaz v Dep't of Treasury*, 280 Mich App 457, 463; 760 NW2d 325 (2008).

Affirmed.

/s/ Richard A. Bandstra
/s/ Karen M. Fort Hood
/s/ Alton T. Davis