

STATE OF MICHIGAN  
COURT OF APPEALS

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INN AT WATERVALE, INC.,

Petitioner-Appellant,

v

TOWNSHIP OF BLAINE,

Respondent-Appellee.

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UNPUBLISHED

May 20, 2010

No. 289869

Tax Tribunal

LC No. 00-327733

Before: SHAPIRO, P.J., and JANSEN and DONOFRIO, JJ.

PER CURIAM.

In this property assessment dispute, petitioners appeal as of right from the December 18, 2008 judgment of the Michigan Tax Tribunal, which determined the subject property's true cash value to be \$8,754,600 for 2006. The Tax Tribunal also ordered that the eleven parcels of property, which are all the subject of this appeal, be consolidated into one parcel. Because the Tax Tribunal did not err in ruling that petitioner's appraisal lacked credibility, we affirm in part. However, because the Tax Tribunal erred in failing to make an independent determination of the true cash value of petitioner's properties, and erred in failing to base its decision on competent, material, and substantial evidence, we reverse in part and remand for further proceedings.

Petitioner first argues on appeal that the Tax Tribunal committed legal error in ruling that petitioner's appraisal for the subject property lacked credibility because its "before-value appraisal" was not submitted in evidence after the Tax Tribunal ruled that it was not relevant to the issues at trial. 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.

In its opinion and order, the Tax Tribunal outlined the applicable appraisal methodology to be used in a situation where a conservation easement has been granted on property to be assessed as found in *Indian Garden Group*, 1995 WL 901434 (Mich Tax Tribunal Nos. 157543, 205036, issued February 17, 1995), and found that petitioner did not provide the necessary evidence. The *Indian Garden Group* decision was declared precedential by the Tax Tribunal with respect to the valuation methodology of a property that is encumbered by an easement. For

a contested assessment, that case mandated that a before- and after-easement appraisal be completed as of each relevant tax date in contention, using the following steps:

1. Determine the Highest and Best use of the property as though the Conservation Easement had not been granted (the Before Value property). The Highest and Best use of the property after the easement has been granted will most likely be as a nature preserve subject to the Conservation Easement (the After Value property).
2. Use comparable market sales data to determine the True Cash Value of the property in accord with the determined Highest and Best Use – as though the Conservation Easement had not been granted (the Before Value).
3. Examine the Conservation Easement document, and enumerate the easement property rights which have been granted (those contained in the Difference).
4. Evaluate the easement property rights granted, and determine the amount of value diminishment attributable to the granting of the Conservation Easement (the Difference), expressed either as (a) the percentage of loss from the Before Value, or (b) the dollar amount of that loss. Because it is unlikely sales data for actual conservation easement properties will be available, seek market data which possesses characteristics which most nearly approximate degree of loss of property rights and utility.
5. Determine the value of the real property as diminished by the granting of the easement (the After Value), by means of either applying the percentage loss to the Before Value, or deducting the dollar amount of loss (the Difference) from the Before Value.

The resulting After Value is the True Cash Value of the property for the relevant year. It is determined on a case-by-case basis. The value diminishment caused by the conservation easement is not an exemption. *The True Cash Value of the property is to be determined on a year-by-year basis according to the applicable and available market evidences.* [*Indian Garden Group v Resort Twp*, 1995 WL 901434 (Mich Tax Tribunal Nos. 157543, 205036, issued February 17, 1995), pp 3-4 (emphasis added).]

During the hearing, respondent questioned petitioner's appraiser regarding his before-value appraisal, and it became apparent that the before-value appraisal had been completed in 2003. Apparently, petitioner's appraiser generated a before- and after-value appraisal in 2003, and merely updated the after-value appraisal to account for economic conditions as of December 31, 2005.

Petitioner contends that it completed a before-value appraisal and submitted it into evidence. Petitioner specifically argues that the Tax Tribunal erred in its ruling because it stated during the hearing that the before-value appraisal was not relevant, but then admonished petitioner for failing to provide such appraisal. Petitioner maintains that the Tax Tribunal's actions at the hearing were inconsistent with its ultimate findings.

In this case, petitioner's appraiser first concluded that the highest and best use of the property under easement was for the continued use in conjunction with the Watervale resort. From this point forward, petitioner's methodology diverges from that required in *Indian Garden Group*. The Tax Tribunal's decision in *Indian Garden Group* mandated that the applicable appraisal methodology be used to determine the true cash value of a property that is encumbered by an easement *as of each relevant tax date*.<sup>1</sup> The *Indian Garden Group* opinion stated that the value of "the property is to be determined on a year-by-year basis according to the applicable and available market evidences." *Indian Garden Group v Resort Twp*, 1995 WL 901434 at 4. The Tax Tribunal's decision in *Indian Garden Group* had precedential effect based on its declaration of such. MCL 205.765 ("A decision of the division is not a precedent unless so designated by the tribunal"). Therefore, we do not find error in the Tax Tribunal's finding that petitioner's attempt to provide a before-value appraisal from 2003 with merely updated values as of December 31, 2005 did not satisfy the appraisal methodology outlined in *Indian Garden Group* for the relevant tax date.

Moreover, to the extent that petitioner argues that the Tax Tribunal insinuated the before-value appraisal was irrelevant, this argument fails. During the hearing, petitioner's counsel asked why the before-value was relevant, to which a Tax Tribunal Member inquired of respondent's representative: "That's a good question. Can you explain why we need that?" The Tax Tribunal Member did not make a ruling that the information was relevant, she simply accepted petitioner's relevancy objection and attempted to obtain a response from respondent. The Tax Tribunal did not err in its determination that petitioner's appraisal lacked credibility because it did not include an appropriate "before easement" value of the property as of December 31, 2005.

Petitioner next argues that the Tax Tribunal legally erred in failing to make its own independent determination of petitioner's true cash value, and it failed to base its decision on competent, material, and substantial evidence on the record. The importance of the true cash value is that the assessment of real property for tax purposes is limited to no more than fifty percent of its true cash value. Const 1963, art 9, § 3; *WPW Acquisition Co v City of Troy*, 250 Mich App 287, 298; 646 NW2d 487 (2002). A property's true cash value is synonymous with the property's 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 three typical methods of determining true cash value are the capitalization-of-income approach, sales-comparison or market approach, and the cost-less-depreciation approach. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 353; 483 NW2d 416 (1992). In this case, petitioner relied on the capitalization-of-income approach and respondent provided appraisals with the capitalization-of-income approach and also a modified cost-less-depreciation approach, which discounted the appraisal values to account for the applicable easements.

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<sup>1</sup> Perhaps the Tax Tribunal reasoned that timely before and after appraisals would provide more accurate market and sales information for the specific tax year in question.

Petitioner had the burden of proof to establish the true cash value for the property. See MCL 205.737(3). To meet this burden, petitioner provided a before- and after-easement appraisal from 2003 based on the capitalization-of-income approach with updated information effective December 31, 2005. In its ruling, the Tax Tribunal concluded that petitioner did not meet its burden of proof since its appraisal was not structured in a present day before and after approach in accordance with *Indian Garden Group*. However, the Tax Tribunal started its opinion and judgment by stating: “At issue is the true cash value for 11 parcels that contain three easements AND property that can be developed. Therefore the True Cash Value and allocation of values by the assessor may be somewhat incorrect.” The Tax Tribunal discredited petitioner’s evidence as lacking credibility, and also dismissed much of respondent’s evidence, indicating in relevant summary:

Without providing an appropriate appraisal that determines market value as of the tax date at issue the Tribunal finds Petitioner’s appraisals inadequate, inappropriate and misleading. Therefore, no credibility is given to Petitioner’s valuation disclosures for this property. Having said that, Respondent’s only valuation evidence is the property report cards. Respondent did not present the sales upon which the vacant land values are predicated, therefore, the Tribunal is left with affirming the assessments.

The Tax Tribunal then ruled that the true cash value of petitioner’s property would be the exact dollar amounts proposed by respondent/assessor.

Reviewing this decision, we conclude that the Tax Tribunal fell short of meeting the requirement that it make an independent determination of the true cash value of a taxpayer’s property. The Tax Tribunal conceded in its opinion that the “values by the assessor may be somewhat incorrect,” and discounted virtually all of respondent’s evidence, yet the Tax Tribunal adopted the values of the assessor/respondent’s as petitioner’s true cash value. The Tax Tribunal did not justify the values, but simply stated that “the Tribunal is left with affirming the assessments.” On the contrary, the Tax Tribunal was not left with affirming the assessments. The Tax Tribunal was instead, duty-bound to make its own determination of true cash value and not merely affirm the value of the assessing authority. *Oldenburg v Dryden Twp*, 198 Mich App 696, 699; 499 NW2d 416 (1993). See also *Jones & Laughlin Steel Corp*, 193 Mich App at 353. (“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.”) Discussing a similar situation, the Court in *Jones & Laughlin Steel Corp* outlined the Tax Tribunal’s independent duties:

The tribunal further erred in failing to make an independent determination of the true cash value of the property. The tribunal apparently believed that no such determination was necessary after it concluded that petitioner had failed to meet its burden of proof and dismissed petitioner’s appeal. The tribunal correctly noted that the burden of proof was on petitioner, MCL 205.737(3) . . . . This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing; and (2) the burden of going forward with the evidence, which may shift to the opposing party. *Kar v Hogan*, 399 Mich 529, 539-540; 251 NW2d 77 (1976); *Holy Spirit Ass’n For the Unification of World Christianity v Dep’t of Treasury*, 131 Mich App 743, 752;

347 NW2d 707 (1984). The tribunal's decision, however, seems analogous to the entry of a directed verdict upon the failure of a plaintiff's proofs. To the extent this analogy may be accurate in this case, the entry of judgment against petitioner for its failure to provide sufficient evidence was erroneous because, while petitioner may not have met its burden of persuasion, it did meet its burden of going forward with evidence. [*Id.* at 354-355].

Here, as in *Jones*, the Tax Tribunal's analysis should not have ended with a finding that petitioner had not met its burden of proof without further explanation. The Tax Tribunal was clearly required to make an independent finding of the property's true cash value rather than simply accepting respondent's assessments. *Id.* at 355-356.

Generally, this Court will accept as true Tax Tribunal findings of fact where they are supported by competent, material, and substantial evidence. *Jones & Laughlin Steel Corp*, 193 Mich App at 352. When considering evidence of a property's true cash value, the Tax Tribunal is permitted to "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*, 227 Mich App at 390. Nevertheless, the Tax Tribunal must arrive at a legally supportable true cash value. *Jones & Laughlin Steel Corp*, 193 Mich App at 352, 355.

Substantial evidence is that which a reasonable mind would accept as adequate to support a decision. *In re Grant*, 250 Mich App 18-19; 645 NW2d 79 (2002). "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) (citation omitted).

Here, the fact that the Tax Tribunal itself cast serious doubt on the values provided by respondent but then adopted those exact values as its own leads us to conclude that the evidence on which the Tribunal relied was not substantial and competent. The term "competent" means "adequate but not exceptional." The Tax Tribunal's own statement that the "values by the assessor may be somewhat incorrect," we conclude that the supporting evidence is not adequate to establish petitioner's true cash value. If the Tribunal did not have adequate evidence to make that determination, then it could have sought additional data from the parties.

We also question whether respondent's property record cards, which were generated based on the cost-less-depreciation appraisal methodology, meet the requirements of *Indian Garden Group* as espoused by the Tax Tribunal. In *Indian Garden Group*, the Tax Tribunal specified the process to be used to value property encumbered by an easement. One of the steps in that process was "2. Use comparable market sales data to determine the True Cash Value of the property in accord with the determined Highest and Best Use – as though the Conservation Easement had not been granted (the Before Value)." *Indian Garden Group v Resort Twp*, 1995 WL 901434 at 4. It is unclear, based on the record, whether respondent's information was based on comparable market sales data.

In sum, while we agree with the Tax Tribunal's decision that petitioner's appraisal was unreliable, we conclude that the Tax Tribunal erred when it failed to make an independent determination of the true cash value of petitioner's property, and also failed to base its decision

on competent, material, and substantial evidence. We thus reverse the Tax Tribunal's decision with regard to the true cash value of petitioner's property and remand for further proceedings. *Jones & Laughlin Steel Corp*, 193 Mich App at 355-356.

Affirmed in part, reversed in part, and remanded for further proceedings in accordance with this opinion. We do not retain jurisdiction. Costs to neither party.

/s/ Douglas B. Shapiro

/s/ Kathleen Jansen

/s/ Pat M. Donofrio