

STATE OF MICHIGAN
COURT OF APPEALS

CHARLES MALCHO, TORTOLA
ENTERPRISES, INC., BRIAN MALCHO,
CHARLES W. ALLBRIGHT III, LEA
BRONSON, STEPHEN WITTMANN, GARY
DUMBAULD, FOX FAMILY PARTNERSHIP,
L.L.C., ROBERT FRAPPIER, MARIE E.
FRAPPIER, GREGORY MALCHO, LEE
HUBBARD, HENRY MAST, CONNIE MAST,
DAVID MCDANIEL, JANE MCDANIEL, and
JAMES G. ROMANUK,

UNPUBLISHED
October 21, 2010

Petitioners-Appellants,

v

CLARK TOWNSHIP,

No. 293137
Tax Tribunal
LC No. 00-294834

Respondent-Appellee.

Before: MURPHY, C.J., and BECKERING and M. J. KELLY, JJ.

PER CURIAM.

Petitioners appeal as of right the judgment of the Michigan Tax Tribunal determining the true cash values, assessed values, and taxable values of 11 parcels of real property in Clark Township for tax years 2002 through 2007. Because we conclude that there were no errors warranting relief, we affirm.

Petitioners each acquired a 1/45th property interest in two lots that are operated as a marina along the shore of Lake Huron in Mackinac County. Eleven parcels are at issue in this appeal. The deeds under which petitioners acquired their property interests specified that petitioners also obtained the rights associated with a specific dock and parking place. The docks varied in length, and the prices that petitioners paid for their respective property interests varied depending on the length of the assigned dock. That is, those petitioners who received rights to a longer dock paid a greater price for their property interest compared to those petitioners who received rights to a shorter dock. Petitioners maintain that after they acquired their property interests, they discovered that a previous lease between the state of Michigan and the original developer prohibited any condominium development from selling or leasing the right to use any portion of the bottomlands of Lake Huron for more than a single boating season. Thus, petitioners learned that they did not actually acquire any property interests in the assigned docks.

Petitioners thereafter brought this action challenging the assessed, taxable, and true cash values of their individual parcels for tax years 2002 to 2007, which petitioners maintained were based on an inaccurate understanding of the nature of the property interests that they had acquired.

The Tax Tribunal determined that petitioners reasonably believed that they were purchasing “something in the nature of a dockominium,” and that they did not actually acquire any property interests in the bottomlands of Lake Huron or the docks themselves. Nonetheless, the tribunal upheld respondent’s use of the sales comparison approach as the most accurate approach for determining the true cash values of petitioners’ actual property interests. The tribunal further found that “the ‘Dock Mooring rights referenced in each of the deeds, although not conveying a fee or tangible interest in the mooring rights, is a valid value indicator and that this value is best codified base[d] upon a linear foot basis.’” Petitioners now challenge the Tax Tribunal’s decision.

In the absence of a claim of fraud, this Court reviews “the Tax Tribunal’s decision for misapplication of the law or adoption of a wrong principle.” *Briggs Tax Serv, LLC v Detroit Pub Sch*, 485 Mich 69, 75; 780 NW2d 753 (2010). Further, we must accept the Tax Tribunal’s factual findings “if they are supported by ‘competent, material, and substantial evidence on the whole record.’” But when statutory interpretation is involved, this Court reviews the Tax Tribunal’s decision de novo.” *Id.* (citation omitted).

At the outset, we emphasize that the issue in this appeal is not whether petitioners received the actual property interests that they reasonably believed they were acquiring. Indeed, the tribunal expressly found that petitioners reasonably believed that they were purchasing “something in the nature of a dockominium,” but that they did not actually acquire any property interests in the bottomlands of Lake Huron or the docks themselves. We have no reason to question that finding. Instead, the sole issue in this appeal is whether respondent properly relied on sales of approximately 41 conveyances of interests in this development, including sales for the 11 parcels involved in this action, as providing an accurate indication of the true cash values of petitioners’ actual property interests, notwithstanding petitioners’ misapprehension of the nature of their interests.

Under our Constitution, the Legislature is required to provide for the uniform general ad valorem taxation of real and tangible personal property, not exempt by law, and must determine the “true cash value” of such property. Const 1963, art 9, § 3. For purposes of taxation, the true cash value is generally the value that could be obtained in a private sale:

As used in this act, “true cash value” means 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. The usual selling price may include sales at public auction held by a nongovernmental agency or person if those sales have become a common method of acquisition in the jurisdiction for the class of property being valued. The usual selling price does not include sales at public auction if the sale is part of a liquidation of the seller’s assets in a bankruptcy proceeding or if the seller is unable to use common marketing techniques to obtain the usual selling price for the property. . . . *In determining the true cash value, the assessor shall also consider the advantages*

and disadvantages of location; quality of soil; zoning; existing use; present economic income of structures, including farm structures; present economic income of land if the land is being farmed or otherwise put to income producing use; quantity and value of standing timber; water power and privileges; and mines, minerals, quarries, or other valuable deposits known to be available in the land and their value. . . . [MCL 211.27(1) (emphasis added).]

Petitioners had the burden of establishing the true cash values of their properties. See MCL 205.737(3).

In *Antisdale v City of Galesburg*, 420 Mich 265, 276-277; 362 NW2d 632 (1984), our Supreme Court observed:

Generally, there presently are three methods of valuation which are acceptable to the Michigan Tax Tribunal and the courts. They are the cost-less-depreciation approach, the capitalization-of-income approach, and the market approach. It is the duty of the Tax Tribunal to select the approach which provides the most accurate valuation under the circumstances of the individual case. [Citations and footnote omitted.]

In this case, respondent used the market or sales approach to determine the true cash values of petitioners' properties. In particular, because the evidence showed that the amount petitioners paid for their interests varied, depending on the size of the dock they were entitled to use, respondent utilized the records of sales for interests in the development during the relevant time period to arrive at a linear foot price based on the length of each dock.

In *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 391; 576 NW2d 667 (1998), this Court explained:

The sales-comparison or market approach has been described as requiring an analysis of recent sales of similar properties, a comparison of the sales with the subject property, and adjustments to the sale prices of the comparable properties to reflect differences between the properties. It has been described as the only approach that directly reflects the balance of supply and demand for property in marketplace trading. [Citations omitted.]

Under the sales approach, however,

the selling price of a particular piece of property is not conclusive as evidence of the value of that piece of property. The Legislature has commanded that property be assessed at its "usual selling price." The most obvious deficiency in using the sales price of a piece of property as conclusive evidence of its value is that the ultimate sale price of the property, as a result of many factors, personal to the parties or otherwise, might not be its "usual" price. The market approach to value has the capacity to cure this deficiency because evidence of the sales prices of a number of comparable properties, if sufficiently similar, supports the conclusion that factors extrinsic to the properties have not entered into the value placed on the properties by the parties. Nevertheless, if it can be shown that the sale price of

each of the comparable properties has been determined by a flawed method the result of the market approach to valuation will also be flawed. [*Antisdale*, 420 Mich at 278-279 (citations omitted).]

“Regardless of which approach is used, the value determined by the Tax Tribunal must be the usual price for which the property would sell.” *Great Lakes Div of Nat’l Steel*, 227 Mich App at 390.

Although the Tax Tribunal found that petitioners did not acquire the actual property interests they reasonably believed they were acquiring (that is, the ownership interests in the docks that were associated with their properties), this does not mean that the prices petitioners paid for their property interests did not accurately reflect the fair market value of the interests they actually received. MCL 211.27(1) provides that an assessor may consider the “existing use” of property as a guideline for determining the fair market value of property: “existing use may be indicative of the use to which a potential buyer would put the property and is, therefore, relevant to the fair market value of the property.” *Safran Printing Co v Detroit*, 88 Mich App 376, 382; 276 NW2d 602 (1979).

The evidence in this case showed that petitioners purchased their property interests to provide them with use of a dock to moor their boat in a market where dock availability was limited. Throughout the relevant time periods, petitioners had uninterrupted use of their property interests for this purpose. The evidence also showed that during the relevant time periods and even after the discovery of the true nature of the property interests, no one interfered with petitioners’ access to, or usage of, their respective boat slips. Although petitioners contend that the State’s interest in the bottomlands prevents them from transferring any rights associated with the docks to future purchasers, they failed to show that this affected the fair market values of their property interests. On the contrary, the evidence showed that since the discovery of the bottomlands lease, resales of property interests in the development to third parties continued to occur, at a slight increase in value compared to earlier sales. Moreover, several petitioners admitted that, despite their misunderstanding of the nature of the property interests they received, they were not sure that they had actually overpaid for their interests. For these reasons, the Tax Tribunal’s finding that the sales comparison method provided an accurate indication of the values of petitioners’ property interests is supported by competent, material, and substantial evidence on the whole record.

Nevertheless, petitioners argue that because they did not actually receive any property rights in the assigned docks, it was improper to consider dock length as a valid value influencer in setting the tax assessments. We do not agree. The Tax Tribunal has a duty to determine the most accurate valuation, which may depend on a variety of relevant factors:

[W]hile all relevant circumstances that tend to affect property value should be considered in the valuation process, there is no rule of law that requires the Tax Tribunal to quantify every possible factor affecting value. The Tax Tribunal’s overall duty is to determine the most accurate valuation under the individual circumstances of the case. [*Great Lakes Div of Nat’l Steel*, 227 Mich App at 398-399 (citations omitted).]

Although petitioners emphasize that they did not actually acquire any property rights in the docks as a result of the bottomlands lease, the evidence showed that they had uninterrupted access to their assigned docks during the relevant time periods. Furthermore, the evidence showed that there was a correlation between the prices that petitioners paid for their respective property interests and the lengths of the docks each petitioner was assigned in return. Given this evidence, we agree with the Tax Tribunal's conclusion that the dock length was relevant: "[T]he Dock Mooring rights referenced in each of the deeds, although not conveying a fee or tangible interest in the mooring rights, is a valid value influencer and that this value influence is best codified base[d] upon a linear foot basis."

We also disagree with petitioners' argument that it was improper for the Tax Tribunal to consider the mooring rights because those rights can only be considered an intangible value influencer. Contrary to what petitioners assert, intangible factors may be considered when assessing property. *Huron Ridge LP v Ypsilanti Twp*, 275 Mich App 23, 43; 737 NW2d 187 (2007). Courts "have held that the value of nontaxable intangible assets may be included in the assessment of real property or tangible business property if the intangibles 'are deemed to be directly related to the tangible property, but not [where they] are deemed to be related to the business in which the tangible property is used.'" *Id.* at 37-38, quoting Anno: *Inclusion of intangible asset values in tangible property tax assessments*, 90 ALR5th 547, § 2(a), pp 562-563. Thus, even if the mooring rights can be considered intangible assets, it was not improper for the Tax Tribunal to consider them where the evidence showed a direct correlation between the prices paid for the various property interests and the lengths of the docks associated with each respective property interest.

We also disagree with petitioners' argument that the Tax Tribunal erred by rejecting their own appraiser's method for valuing the respective property interests. Petitioners' appraiser, Terrell Oetzel, believed that the most appropriate way to value each interest acquired by a deed was to determine the entire value of the property as a whole, and then divide that amount by 45. An assessment should reflect the probable price that a willing buyer and a willing seller would arrive at through arm's length negotiation. *Huron Ridge*, 275 Mich App at 28. The Tax Tribunal properly rejected petitioners' method for appraising the property because it failed to consider the different prices that different buyers were willing to pay to acquire the use of different size docks. Under petitioners' proposal, each property owner would be treated as possessing an equal property interest, despite the differences in the sizes of the docks that they had a right to use. This method would be unfair to property owners who paid less to obtain access to a shorter dock and would unfairly benefit those owners who paid more to obtain access to a longer dock. Although assessments must be uniform among similarly situated taxpayers, *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 640; 462 NW2d 325 (1990), the property owners in this case were not similarly situated because the docks that they had access to varied in length. Conversely, respondent appropriately used a uniform method for determining the value of each owner's property interest by applying a uniform rate to the linear footage of each dock. Finally, while we agree with petitioners that an assessment must be based on a legal use of property, *id.* at 633, there was no showing of an illegal use in this case. For these reasons, the Tax Tribunal did not err in rejecting petitioners' proposed valuation method.

There were no errors warranting relief.

Affirmed.

/s/ William B. Murphy

/s/ Jane M. Beckering

/s/ Michael J. Kelly