STATE OF MICHIGAN

COURT OF APPEALS

WCY REALTY, L.L.C., Petitioner-Appellant,	UNPUBLISHED August 7, 2012
v	No. 296496 Tax Tribunal
TOWNSHIP OF FAIRHAVEN, Respondent-Appellee.	LC No. 00-327937

Before: GLEICHER, P.J., and SAAD and BECKERING, JJ.

PER CURIAM.

Petitioner WCY Realty, L.L.C. purchased approximately 13.25 acres of property in Fairhaven Township with frontage on Saginaw Bay and Lake Huron for $797,500 at a 2004 auction. WCY challenged the Township's subsequent determination that the property had a true cash value (TCV) of $876,000 for the 2006 tax year and $859,400 for the 2007 tax year. Basically, WCY claimed that it was duped into paying for a real estate developer's waterfront paradise, but actually received a duck-hunting swamp. WCY therefore argued that the property's purchase price was not indicative of its TCV. Both the local board of review and the Michigan Tax Tribunal (MTT) affirmed the Township's valuation over WCY's objections.

On appeal, WCY challenges the MTT's admission of an "appraisal" report from the Township's "assessor," arguing that she was unqualified to render an expert opinion as she was not a licensed real estate appraiser. The challenged report is actually a "valuation disclosure," which the Township's witness was more than qualified to prepare. Moreover, the MTT's ultimate ruling was based on competent, material, and substantial evidence and has a sound footing in law. Accordingly, WCY's appellate challenges lack merit and we affirm the MTT judgment.

I. STANDARD OF REVIEW

Absent a claim of fraud, we review MTT decisions "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). The MTT's factual findings are "conclusive if they are supported by 'competent, material, and substantial evidence on the whole record.'" *Id.* "Substantial evidence is the amount of evidence that a reasonable person would accept as being sufficient to support a conclusion; it may be substantially less than a preponderance of the evidence." *Wayne Co v Mich State Tax Comm*, 261 Mich App 174, 186-187; 682 NW2d 100 (2004). As with any

executive tribunal's judgment, we may not interfere with the MTT's "credibility determinations" or resolutions as to conflicting evidence. *Dep't of Community Health v Risch*, 274 Mich App 365, 372; 733 NW2d 403 (2007). We "may not set aside factual findings supported by evidence merely because alternative findings could also have been supported by evidence on the record or because the court may have reached a different result." *Id.* at 373. And we may not second-guess the MTT's discretionary decisions regarding the weight to assign to the evidence. *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 404; 576 NW2d 667 (1998).

II. VALERIE MCCALLUM'S TESTIMONY AND REPORT WERE PROPERLY ADMITTED INTO EVIDENCE

WCY challenges the MTT's denial of its motion in limine to bar the testimony of the Township's assessor, Valerie McCallum, and to strike McCallum's valuation disclosure, which was entitled "Complete Appraisal," from the record. We "review the [MTT's] rulings regarding evidentiary issues if they involve errors of law." *Georgetown Place Coop v City of Taylor*, 226 Mich App 33, 50; 572 NW2d 232 (1997).

McCallum assessed WCY's property in the 2006 and 2007 tax years as part of her employer's contract with the Township to provide property tax assessment services. To make an "annual assessment of property" on a township's behalf, a person must be certified by the state assessor's board "as having successfully completed training in a school of assessment practices or by the passage of a test" approved and conducted by the board. MCL 211.10d(1). Such tax assessments are specifically excluded from the occupational code's regulation of real estate appraisers. MCL 339.260(a)(*iii*). During the 2006 and 2007 assessments, McCallum was a state-certified level I assessor.

In preparation for WCY's MTT appeal, McCallum authored a "Complete Appraisal." WCY argues that neither McCallum's "appraisal" nor her testimony was admissible at the MTT hearing because she was not a licensed appraiser. See MCL 339.2607 (an unlicensed person shall not act as an appraiser and shall not hold him or herself out as a licensed appraiser). Contrary to WCY's assertion, McCallum did not act as an "appraiser" in valuing the property. As such we need not consider McCallum's qualifications to prepare and submit an appraisal report. We are not bound to blindly accept a party's or witness's characterization of a document and may independently adjudge its nature by its contents. See, e.g., *Manning v Amerman*, 229 Mich App 608, 613; 582 NW2d 539 (1998) (we must "look beyond a plaintiff's choice of labels to the true nature of a plaintiff's claim"). McCallum's report was actually a "valuation disclosure," a document required to be presented in all MTT appeals before the entire tribunal. As a certified assessor, McCallum was qualified to prepare that report.

As the MTT hearing referee observed, a party is not required to produce "appraisals" in MTT proceedings. Instead, a party must offer a "valuation disclosure" to support its position regarding a property's taxable value. Mich Admin Code, R 205.1101(1)(m) provides:

> "Valuation disclosure" means documentary or other tangible evidence in a property tax appeal which a party relies upon in support of the party's contention as to the [TCV] of the subject property or any portion thereof and which contains

> the party's value conclusions and data, valuation methodology, analysis, or reasoning in support of the contention. See also R 205.1252 and R 205.1283.

Rule 205.1252(1) in turn provides, "A party's valuation disclosure in a property tax appeal shall be filed with the [MTT] and exchanged with the opposing party as provided by order of the [MTT]." And Rule 205.1283 addresses the admission of evidence at an MTT hearing:

> (1) The [MTT] may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Irrelevant, immaterial, or unduly repetitious evidence may be excluded. Effect shall be given to the rules of privilege recognized by law.
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> (3) Without leave of the [MTT], a witness may not testify as to the value of property without submission of a valuation disclosure containing that person's value conclusions and the basis for the conclusions. This does not, however, preclude an expert witness from rebutting another party's valuation evidence or testifying as to the value of the property in issue if the expert witness's value conclusions were adopted by the party and included in the party's valuation disclosure.
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> (4) If a witness is not testifying as to the value of property or as an expert witness, then his or her testimony in the form of opinions or inferences is limited to opinions or inferences that are rationally based on the perception of the witness and that are helpful to a clear understanding of his or her testimony or the determination of a fact in issue. See rule 701 of the Michigan rules of evidence.

Had the Legislature intended to limit MTT evidence to "appraisal" reports prepared by licensed "appraisers," it easily could have done so. Instead, the Legislature required parties to present "valuation disclosures" and broadly described those documents' contents. Under the plain language of the MTT rules, the Township was not required to submit an appraisal prepared by an appraiser.

In any event, an "appraisal" and an "assessment" are substantively similar and both would meet the administrative requirements for a "valuation disclosure." An appraisal is a privately procured evaluation to confirm the value of a home, usually in connection with a mortgage application or in advance of placing a house on the market. An assessment is a government-initiated evaluation of a home's value to determine the property tax amount. See *Home appraisal vs. assessment: What is the difference?*, Official Site of the National Association of REALTORS®, <http://www.realtor.com/home-values/HomeValuesFaq.aspx?source=web> (accessed July 5, 2012).

Nothing in McCallum's report goes beyond the contents of a valuation disclosure. McCallum measured the property's dimensions, calculated the length of its water fronts, and considered the ratio of buildable area to marsh lands. McCallum inspected the buildings and improvements on the property. When WCY challenged her assessment, McCallum searched for other properties against which to compare her assessment and determined that no additional

value adjustments were necessary. It is true that an appraiser would embark on the same sort of investigation, albeit for a private person or company rather than for a governmental entity. That McCallum was an assessor did not render her incompetent to form a valuation opinion. The extent of McCallum's expertise and qualifications affected only the weight of her report and testimony, not its admissibility. Accordingly, the MTT did not err in admitting this evidence.

III. DETERMINATION OF TRUE CASH VALUE SUPPORTED BY RECORD EVIDENCE

WCY challenges the MTT's determination of the property's TCV in 2006 and 2007. We conclude that the MTT's findings are supported by competent, material, and substantial evidence on the whole record and that it committed no error of law in reaching its judgment. We are therefore bound to affirm.

TCV is defined in the general property tax act, MCL 211.1 *et seq.* as follows:

> As used in this act, "[TCV]" 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 technique to obtain the usual selling price for the property . . . . [MCL 211.27(1).]

"'[TCV] is synonymous with 'fair market value.'" *Huron Ridge LP v Ypsilanti Twp*, 275 Mich App 23, 28; 737 NW2d 187 (2007). The assessed TCV must "reflect the probable price that a willing buyer and a willing seller would arrive at through arm's length negotiation." *Id.* The petitioner, not the taxing authority, bears the burden of establishing the property's TCV. MCL 205.737(3).

WCY first contends that the MTT improperly accepted WCY's purchase price as presumptive evidence of the property's TCV in violation of MCL 211.27(5), which provided at all relevant times[1]:

> Beginning December 31, 1994, *the purchase price paid in a transfer of property is not the presumptive [TCV] of the property transferred*. In determining the [TCV] of transferred property, an assessing officer shall assess that property using the same valuation method used to value all other property of that same classification in the assessing jurisdiction. As used in this subsection, "purchase

[1] The statute was amended by 2010 PA 340, effective December 21, 2010. The amendment is not applicable to this case.

> price" means the total consideration agreed to in an arms-length transaction and not at a forced sale paid by the purchaser of the property, stated in dollars, whether or not paid in dollars. [Emphasis added.]

Contrary to WCY's assertion, the MTT did not accept this purchase price evidence as conclusive of the property's TCV. Rather, the MTT considered WCY's purchase price along with other relevant evidence to calculate the property's TCV. The statutes do not preclude consideration of purchase price in reaching a valuation judgment. *Great Lakes Div of Nat'l Steel Corp*, 227 Mich App at 405; *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 353-354; 483 NW2d 416 (1992). Moreover, the MTT was not precluded from considering WCY's purchase price even though the property was purchased at an auction. The MTT hearing referee acknowledged that auction sale prices are relevant evidence but are not necessarily conclusive proof of TCV. Accordingly, we find no error in this regard.

WCY also accuses the MTT hearing referee of ignoring factors within McCallum's valuation disclosure revealing her overestimation of the property's value. Specifically, WCY asserts that the house and pole barn were in poor condition and should have reduced the property's value. McCallum testified, however, that she visited the property and found the structures to be well maintained and functional for hunting, fishing, and recreation purposes. WCY asserts that the property's value should have been reduced because the previous owners removed most of the personal property from the house and the pole barn. Yet WCY fails to support that any removed personal property affected its auction bid or the Township's valuation of the real property and fixtures.

WCY further claims that the MTT relied on dissimilar properties provided by the Township as "comparables" to calculate value and ignored more similar properties provided by WCY. "The [MTT] is under a duty to apply its expertise to the facts of a case to determine the appropriate method of arriving at the [TCV] of property, utilizing an approach that provides the most accurate valuation under the circumstances." *Jones & Laughlin Steel Corp*, 193 Mich App at 353. Determining a property's TCV "is not an exact science;" it involves many judgment calls and "reasonable approximation." *Great Lakes Div of Nat'l Steel*, 227 Mich App at 398.

"The three most common approaches to valuation are the capitalization-of-income approach, the sales-comparison or market approach, and the cost-less-depreciation approach." *Jones & Laughlin Steel Corp*, 193 Mich App at 353. Here, the MTT used the sales-comparison/market and the cost-less-depreciation approaches to value WCY's property. The market or sales-comparison approach

> require[es] 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. [*Great Lakes Div of Nat'l Steel Corp*, 227 Mich App at 391 (citations omitted).]
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> "In reality the cost approach is another type of comparative or market data approach. The land is considered to be unimproved and valued by methods

> [stated elsewhere in the State Tax Comm Assessor's Manual]. The reproduction cost or replacement cost of the improvements is developed by comparison with the cost of new improvements, based on current prices of labor and materials for construction of similar improvements."
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> "For most structures, depreciation must be deducted from this estimate of cost new because an old or used property is usually less valuable than a similar new one. This loss in value (depreciation) may be divided into three categories which are often estimated separately: physical deterioration, functional obsolescence, and economic obsolescence." 1 State Tax Comm Assessor's Manual, Ch VI, p 4. [*Antisdale v City of Galesburg*, 420 Mich 265, 276-277 n 1; 362 NW2d 632 (1984).]

Both parties provided comparable properties for the MTT's consideration. McCallum determined that the property's "highest and best use" was private residential for recreational purposes, i.e., as a vacation home used primarily for hunting and fishing. McCallum made this decision based on the historical use of the land for that very purpose. "Normally, 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). WCY's appraisal expert, on the other hand, determined that the property would be most valuable for conservation or preservation purposes. The appraiser noted that the lake frontage was comprised of marsh lands and the buildable area was quite small.

Based on the parties' disagreement over the best use for the property, they provided very different comparables. Unable to find similar sized properties with the same type of rudimentary housing, McCallum compared the subject property to smaller lakefront parcels, which were purchased with the goal of razing an existing structure and building a new house. WCY's expert found large lakeside properties without houses and with significant wetland areas. Both witnesses "adjusted" the subject property's estimated value based on differences between it and the selected comparable properties. Ultimately, because of their highly divergent views of the property's utility, McCallum valued the property at over $850,000, while WCY's appraiser estimated the property's value near only $250,000.

We discern no clear legal error or lack of evidentiary support for the MTT's decision such that our interference would be permitted. We acknowledge that WCY's appraiser is more experienced than McCallum. However, the witnesses' relative experience goes to the weight of the evidence, a factor solely within the MTT's discretion. *Great Lakes Div of Nat'l Steel*, 227 Mich App at 404. The MTT accepted McCallum's opinion that the property could be used for residential purposes and therefore was of higher value than WCY estimated. This was a reasonable choice given that the property had been used as a vacation home for many years. The MTT found that McCallum's comparable properties more accurately reflected the value of such residential/recreational lakefront land.

WCY also argues that it was improper to value the property as "lakefront" as the shoreline is actually swamp, marsh, and submerged land with no beach. WCY ignores that the property has access to a Great Lake and Saginaw Bay through a canal that is already equipped with a dock. The property is located on a peninsula with significant water frontage. WCY's suggested comparable properties had either little to no water access or were so consumed by wetlands that they could not be used for residential purposes. Again, we find no clear legal error in the MTT's classification of the property based on the record evidence.

Finally, WCY rebutted the Township's assessment by presenting evidence of residential properties that WCY felt were more akin to the subject property than the comparables provided by the Township. The MTT hearing referee refused to consider this evidence because WCY did not use those specific comparables in support of its own appraised value. Specifically, the hearing referee characterized WCY as attempting to shift the burden onto the Township to support its valuation decision rather than accepting its legal burden to refute the Township's valuation. We discern no error in that ruling.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Henry William Saad
/s/ Jane M. Beckering