

STATE OF MICHIGAN
COURT OF APPEALS

DAVID FISHER and JANICE FISHER,

Petitioners-Appellants,

UNPUBLISHED
April 12, 2012

v

TOWNSHIP OF WHITE RIVER,

Respondent-Appellee.

No. 303159
Tax Tribunal
LC No. 00-356567

Before: FORT HOOD, P.J., and CAVANAGH and K. F. KELLY, JJ.

PER CURIAM.

Petitioners, David and Janice Fisher, appeal as of right from an order of the Tax Tribunal, establishing the taxable value of their residential property in White River Township for the years 2008, 2009, and 2010. We affirm.

I. BASIC FACTS

Petitioners own a home in White River Township. The home was originally built in the early 1900's as a two story frame-built home over a crawl-space. In addition, the home had a 200 square foot single-story structure in the back of the home, which was also over a crawl space. The home had a wood covered front porch and a 128 square foot glass-enclosed porch on the back.

In 1999 the home was badly damaged during a storm. It was knocked and twisted off of its foundation. To stabilize the home, petitioners propped up the structure, dug a full basement, and added a major support beam. Beginning in 2005, petitioners decided to make further repairs to the home. In conjunction with the planned repairs, petitioners sought, and were issued, a building permit for a two-story, 750 square foot addition, as well as a 150 square foot deck and a 150 square foot balcony. As a result, the single-story portion at the back of the home was demolished and a two-story addition constructed in its place. Additionally, a two-foot wall was built between the original two-story structure and the new two-story add-on. The wall was intended to brace and secure the original structure which was still "badly twisted and out of plumb" as a result of the storm damage. Petitioners also indicated they undertook these changes to their home to combat a problem with black mold and wood rot.

In relation to the improvements on the home, on December 21, 2007, petitioners submitted a "Request for Nonconsideration of True Cash Value of Normal Repair Replacement and Maintenance Expenditures." The request indicated a total expenditure of \$18,421. Of the

\$18,421, \$10,395 was listed as part of a structural addition, and \$7,796 was not part of the structural addition. Additionally, David did much of the work on the home himself, and he indicated in his request that he had not accounted for labor costs because he did not know what would be “fair.” Petitioners were granted nonconsideration for tax assessment purposes in the amount of \$36,000.

In light of the improvements to the home, the assessor determined that the true cash value (TCV) of the addition, absent the nonconsidered value, was \$83,000. In total, the 2008 TCV of the home was \$206,770. The result was an increase in petitioners’ tax liability, particularly their new assessment and state equalized values (SEV) were \$103,400. Their 2008 taxable value (TV) was assessed at \$63,422. Before the addition, petitioners’ 2007 TV was only \$21,234.

Petitioners protested the tax assessment to the Board of Review and then the Tax Tribunal, arguing that the assessor erred in her calculations for a number of reasons including: using inaccurate measurements for the rear deck; using the length of stabilizing wall in determining the size of the addition; not properly depreciating the property’s value in light of the damage it suffered particularly to the home’s foundation; ignoring the effect of the stabilization beam on the home’s market value; ignoring the use of used materials in the construction of the addition; wrongly classifying the home as Class C/D rather than D; ignoring the home’s mold problem; ignoring David’s amateur workmanship; errors in the Mathieu-Gast¹ calculation; improperly raising the value of the lot without reason; and, ignoring the value of surrounding properties.

Ultimately, the Tax Tribunal substantially agreed with the assessor’s determination and determined that petitioners failed to meet their burden of establishing the home’s value. However, the Tax Tribunal determined that the assessor had relied upon incorrect measurements for the home’s decks. Based on this measurement error, the Tax Tribunal reduced the total value of the new construction from \$83,000 to \$82,450.

Petitioners filed a motion for reconsideration, arguing that White River Township “uncapped” the property’s value in violation of Mathieu-Gast legislation prohibiting an increase in value based upon normal repairs, replacement, and maintenance, and also failed to use relevant comparison properties in determining the home’s value. Additionally, petitioners maintained they had presented adequate documentation to support their assessment of the home’s TV.

The Tax Tribunal denied petitioners’ motion, finding that (1) petitioners had not provided sufficient evidence to establish the property’s TCV or TV; (2) the property’s taxable value was not uncapped; rather, White River Township presented evidence that petitioners received the appropriate Mathieu-Gast non-consideration amount for the normal maintenance, repair and replacement of the property; and (3) petitioners failed to present a palpable error that may have misled the Tribunal. Petitioners now appeals as of right.

II. ANALYSIS

¹ The Mathieu-Gast Home Improvement Act is codified in part at MCL 211.27(2) and prohibits an assessor from considering an increase in true cash value that results from normal repairs, replacement and maintenance until the property is sold.

A. STANDARD OF REVIEW

“Absent fraud, this Court’s review of a Tax Tribunal decision is limited to determining whether the tribunal made an error of law or adopted a wrong legal principle.” *Meijer, Inc v City of Midland*, 240 Mich App 1, 5; 610 NW2d 242 (2000). Any factual findings must be upheld unless they are not supported by competent, material, and substantial evidence. *Id.* “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.” *Id.* Where questions of statutory interpretation are involved in the Tax Tribunal’s decision, our review is de novo. *Mapleview Estates, Inc v Brown City*, 258 Mich App 412, 413-414; 671 NW2d 572 (2003). Statutes exempting taxation must generally be narrowly construed in favor of the taxing authority, and we generally defer to the “Tax Tribunal’s interpretation of a statute that it is charged with administering and enforcing.” *Moshier v Whitewater Twp*, 277 Mich App 403, 409; 745 NW2d 523 (2007) (citations omitted). However, we will not allow a “strained construction adverse to the Legislature’s intent.” *Id.*

B. “UNCAPPING” OF PETITIONERS’ PROPERTY

Petitioners argue that the value of their property was improperly “uncapped” in violation of the Headlee Amendment, Proposal A, and Mathieu-Gast protections. We disagree. While, in relevant part, the Headlee Amendment, Const 1963, art 9, § 31, and Proposal A, Const 1963, art 9, § 3, place restrictions on increases in property tax, both exclude “additions” from this protection. “Additions” refers to “all increases in value caused by new construction or a physical addition of equipment or furnishings, and the value of property that was exempt from taxes or not included on the assessment unit’s immediately preceding year’s assessment role.” *WPW Acquisition Co v City of Troy*, 466 Mich 117, 122; 643 NW2d 564 (2002). In the present case, it is undisputed that petitioners added a two-story addition to the back of their home that involved considerable new construction and added value to the home.

While value may be adjusted for “additions,” petitioners also seek the protection of the Mathieu-Gast Home Improvement Act which prohibits an assessor from considering “the increase in true cash value that is a result of expenditures for normal repairs, replacement, and maintenance in determining the true cash value of property for assessment purposes until the property is sold.” MCL 211.27(2). Petitioners are correct that “normal repairs, replacement, and maintenance” performed on the home could not be used to increase their tax assessment. For this reason, petitioners were granted nonconsideration in the amount of \$36,000. However, there is substantial evidence to support the Tax Tribunal’s conclusion that the two-story addition (replacing a former one-story addition and adding a second story, additional square footage on the first floor, and deck space) added value beyond normal repair, replacement and maintenance. As required, the Tax Tribunal exercised its independent judgment, *Great Lakes Div of Nat’l Steel Corp v City of Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998), and concluded the TCV of the addition was \$82,450. This figure was an adjustment from the assessor’s estimate of \$83,000 based upon incorrect deck measurements. The Tax Tribunal had substantial evidence upon which to rely including the assessor’s report, measurements of the home, comparison valuation estimates, cost approach estimates, and evidence presented by petitioners as to their expenditures on improvements. While petitioners dispute the figure, and suggest the home’s entire true cash value is \$150,000, they present this figure without benefit of an appraisal or other substantial proof documenting their assertion. MCL 205.737(3) (placing the burden of proof upon the petitioner to establish true cash value).

We find that, having concluded the true cash value of the addition (in excess of the repair, replacement and maintenance value) was \$82,450, the Tax Tribunal properly increased the taxable value of the property by \$41,225 (half of \$82,450). MCL 211.27a(2). Contrary to petitioners' assertions, this was not an uncapping of the home's value but an increase in the taxable value of the home to account for the value added by the addition that was not normal repair, replacement, and maintenance. MCL 211.27a(2)(a); MCL 211.27(2).

C. ASSESSOR'S MATHEMATICAL ERRORS

Petitioners argue that the assessor made mathematical errors in her use of the nonconsideration form. We find their argument unpersuasive as it fails to recognize that the Tax Tribunal was not bound to follow any of the assessor's opinions. On the contrary, proceedings before the Tax Tribunal are de novo and the Tax tribunal must make its own independent determination of true cash value. *Great Lakes Div of Nat'l Steel Corp*, 227 Mich App at 390. The Tax Tribunal did not blindly agree with the figure entered on the form; rather, the Tax Tribunal independently weighed the evidence and arrived at an independent determination of value. Therefore, even assuming assessor error in the use of the form, petitioners have asserted no argument warranting reversal of the Tax Tribunal's independent determination.

D. RECLASSIFICATION OF PROPERTY

Petitioners argue that their home was improperly reclassified from D to C/D. While MCL 211.27(2) prohibits the reclassification of property based on normal repair, replacement, or maintenance, as we have previously discussed, the addition added value to the property beyond "normal repair, replacement, or maintenance." Accordingly, we find that reclassification of the property was not prohibited.

E. PASSAGE OF TIME AND PROPERTY COMPS

Finally, petitioners challenge reliance upon an appraisal conducted 2-1/2 years after the tax assessment, and the assessor's choice in comparable properties. We conclude that these arguments speak to the weight of the appraisal. The Tax Tribunal may make its determinations as to the weight of evidence, *President Inn Props, LLC v Grand Rapids*, 291 Mich App 625, 636; 806 NW2d 342 (2011), and is not required to consider every possible factor affecting value, *Great Lakes Div of Nat'l Steel Corp*, 227 Mich App at 390-391. While petitioners may disagree with the Tax Tribunal, they have offered nothing to suggest the Tax Tribunal's decision was an error of law or the implementation of a wrong legal principle. *Meijer*, 240 Mich App at 5. Rather, competent, material, and substantial evidence supports the Tax Tribunal's valuation decision. *Id.*

Affirmed.

/s/ Karen M. Fort Hood

/s/ Mark J. Cavanagh

/s/ Kirsten Frank Kelly