STATE OF MICHIGAN

COURT OF APPEALS

MICHAEL V. MARSTON,

Petitioner-Appellant,

v

TOWNSHIP OF CANTON,

Respondent-Appellee.

UNPUBLISHED
August 2, 2012

No. 303924
Tax Tribunal
LC No. 00-353805

Before: STEPHENS, P.J., and SAWYER and OWENS, JJ.

PER CURIAM.

Petitioner appeals as of right the Michigan Tax Tribunal's final opinion and judgment affirming the board of review's calculation of petitioner's property tax values for the years 2008 through 2010. On appeal, petitioner argues that the Tax Tribunal erred as a matter of fact and law when it concluded that the board of review's assessments were properly calculated and properly based on the addition of new land to petitioner's properties. We agree, vacate and remand.

Petitioner is appealing the tax assessment of six properties in Wayne County, Michigan. Petitioner first argues that the assessment of one of the six properties—Lot 182—was improperly increased by the addition of an allegedly adjacent abandoned road right-of-way. Review of decisions of the Tax Tribunal is generally limited to determining whether the tribunal made an error of law or adopted a wrong principle, in the absence of an allegation of fraud. *President Inn Props, LLC v City of Grand Rapids*, 291 Mich App 625, 630-631; 806 NW2d 342 (2011). Factual findings of the tribunal are final if supported by competent and substantial evidence. *Id*.

In 2007, Wayne County abandoned rights-of-way for multiple roads and alleys in the Dye Bros. subdivision in which petitioner's six lots lie. Each of petitioner's lots acquired additional land from an abandoned alley that ran adjacent to all six lots. Lot 182 acquired even more additional land, which the tribunal repeatedly concluded was a result of Wayne County's abandonment of Gibson Street adjacent to that lot only. The tribunal further concluded that petitioner failed to demonstrate that the additional land did not add value to Lot 182.

In fact, petitioner was arguing that the portion of Gibson Street lying adjacent to Lot 182 was not abandoned by Wayne County. Lot 182 lies at the corner of Gibson and Corinne Streets.[1] The resolution published by Wayne County describes abandoning the portions of Gibson Street lying to the west of Corinne Street, specifically noting the adjoining lots—58, 59, 119, and 120. The portions of Gibson Street lying east of Corinne Street—including Lot 182—are not described by the resolution. Lot 182 is never mentioned in the resolution. Moreover, an examination of the subdivision plat attached to the resolution reveals that the resolution clearly describes abandoning roads only in the southwestern quadrant of the subdivision, of which petitioner's properties are not a part. In sum, the resolution clearly describes road sections not adjacent to Lot 182. The tribunal's factual findings in this respect were not supported by "competent and substantial evidence." *President Inn*, 291 Mich App at 630-631. Lot 182 should not have acquired more additional land than the other five properties.

Petitioner next argues that the land added to his properties by the abandoned alleyway does not justify the increase in valuation for his properties for a variety of reasons. As above, review of decisions of the Tax Tribunal is generally limited to determining whether the tribunal made an error of law or adopted a wrong principle, in the absence of an allegation of fraud. *President Inn Props,* 291 Mich App at 630-631. Factual findings of the tribunal are final if supported by competent and substantial evidence. *Id*. Further, questions of statutory interpretation are reviewed de novo. *Id*. at 631-632.

Petitioner first argues that the valuation of the additional land is not supported by the evidence and far exceeds the proportional increase in land area. Petitioner contends, and respondent does not dispute, that the additional land area from the alleyways increased his property land areas by about six percent. In 2008, the true cash value of the properties increased from $2,920 to $3,560, an increase of about 22 percent.[2] The taxable value increased from $664 to $894, or about 35 percent. Petitioner argues that this increase is out of proportion to the increase in land area. The tribunal concluded that petitioner failed to present any evidence that the assessed values were "overmarket" and that the assessed values were properly calculated using the cost less depreciation method of valuation.

We first note that petitioner's arguments regarding the value of the additional land—regarding the size and use of the land—are pure policy arguments. However, true cash value is merely intended to be a measure of fair market value. MCL 211.27; *Huron Ridge, LP v Ypsilanti Twp*, 275 Mich App 23, 27-28; 737 NW2d 187 (2007). The tribunal correctly concluded that petitioner did not provide any market analysis of the additional property.

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[1] We note for clarification that these streets have never actually been developed, but exist only on the plat of the subdivision.

[2] In light of our previous conclusion, we will now treat all six properties the same rather than engaging in a parallel analysis of Lot 182.

Nevertheless, petitioner also argues that the tribunal did not properly value the property based on the evidence presented.

> [T]he Tax Tribunal has a duty to make an independent determination of true cash value. Thus, even when a petitioner fails to prove by the greater weight of the evidence that the challenged assessment is wrong, the Tax Tribunal may not automatically accept the valuation on the tax rolls. Regardless of the method employed, the Tax Tribunal has the overall duty to determine the most accurate valuation under the individual circumstances of the case. [*President Inn Props*, 291 Mich App at 631 (internal citations omitted).]

The tribunal stated, "A review of the submitted property cards indicates that the original assessments, based on the cost less depreciation approach, were properly calculated." The tribunal reiterated this conclusion in its order denying petitioner's motion for reconsideration. The tribunal also concluded that the cost less depreciation method was the "most reliable" valuation method.

As petitioner notes, however, the property cards do not evidence the calculations or methodology the tribunal alleges they do. The 2008 property cards were attached to respondent's evidence submission to the tribunal. The tribunal's proposed opinion does not note any other evidence of the property assessments. The Land Value Estimates portion of the property card appears to indicate a valuation rate of $2 per square foot, but there is no indication of whence this rate comes. It appears that the tribunal's statement that the assessments were "properly calculated" refers to the mere fact that the square footage of the properties was properly multiplied by the valuation rate. However, the tribunal apparently never actually considered the validity of that valuation rate. Moreover, the tribunal never indicated how it determined that a cost less depreciation method was originally used.

We observe that the cost less depreciation method is "another type of comparative or market data approach" in which improvements to the land are valued separately from the land and then adjusted for depreciation to approximate replacement costs. *Antisdale v Galesburg*, 420 Mich 265, 276 n 1; 362 NW2d 632 (1984). In this case no improvements have been made to petitioner's properties; they are not even publicly accessible. Accordingly, the cost less depreciation method would be indistinguishable from a market data approach. There is also no evidence in the record of a market data analysis in support of the 2008 through 2010 assessments of the properties.

Thus, it was error for the tribunal to conclude that the record demonstrated that the cost less depreciation method was properly applied in this case. The tribunal apparently woodenly affirmed the 2008 assessment after discrediting both petitioner's proposed market evidence *and* respondent's market analysis, which actually differed from the 2008 assessment. Michigan law is clear, however, that "the Tax Tribunal may not automatically accept the valuation on the tax rolls." *President Inn Props*, 291 Mich App at 631. The tribunal erred when it failed to make an independent assessment of the properties' value.

Petitioner also argues that the taxable values on his properties should not have been "uncapped" as a result of the added alleyway land. MCL 211.27a provides that the taxable value

of property shall not increase by more than the rate of inflation or five percent per year unless there is a "transfer of ownership." MCL 211.27a(2). After a transfer of ownership, the taxable value is "uncapped" and becomes the state equalized value, regardless of rate of increase. MCL 211.27a(3). Further, MCL 211.27a(6) and (7) provide nonexhaustive lists of examples of actions that do and do not constitute transfers of ownership. Petitioner argues that the addition of abandoned public property, subject to a reserved easement, is most closely analogous to the transfer of property subject to a life estate, which does not constitute a transfer of ownership under MCL 211.27a(7)(c).

Alternatively, petitioner argues that the property should be treated as an omission under MCL 211.34d, and should not increase the taxable value of his property. MCL 211.34d(b)(i) provides:

> "[O]mitted real property" means previously existing tangible real property not included in the assessment. Omitted real property shall not increase taxable value as an addition unless the assessing jurisdiction has a property record card or other documentation showing that the omitted real property was not previously included in the assessment. . . . For purposes of determining the taxable value of real property under section 27a, the value of omitted real property is based on the value and the ratio of taxable value to true cash value the omitted real property would have had if the property had not been omitted.

There is no dispute that the abandoned alleyway was "previously existing tangible real property not included in the assessment." As such, the value of the omitted property should be "based on the value and the ratio of taxable value to true cash value the omitted real property would have had if the property had not been omitted." As such, the omitted property could have been responsible for the jump in assessed value of petitioner's properties if the value of the omitted property was determined to support such an increase. However, we are unable to find any evidence in the record to establish the value of the abandoned property in order to evaluate whether it constitutes an increase in taxable value beyond what MCL 211.27a or MCL 211.34d permits.

As a result, we conclude that this Court need not review this unpreserved issue. While petitioner raised the issue of whether the taxable value of his properties was uncapped, the tribunal failed to address this issue and, as a result, the factual record necessary to resolve this issue was never developed. *Heydon v MediaOne of Southeast Mich, Inc*, 275 Mich App 267, 278; 739 NW2d 373 (2007). We decline to review this issue.

Finally, petitioner also argues that the tribunal erred when it rejected petitioner's evidence of an ultimately unsuccessful sales negotiation regarding the properties from 2006. The tribunal concluded that the evidence was too remote in time and did not constitute evidence of the actual market value of the properties. As noted above, review of tribunal conclusions and findings is very limited. *President Inn Props,* 291 Mich App at 630-631. Petitioner's sales negotiation evidence was from two years prior to the date in question, predated the county's abandonment of a nearby road and adjacent alleyway, and, as the tribunal noted, consisted primarily of petitioner's recitation of the negotiation. The sales negotiations were fruitless because the only possible buyer discovered that the roads in the subdivision were undeveloped.

We are unable to conclude that the tribunal erred when it concluded that petitioner's evidence was insufficient to establish the true cash value of his properties. In particular, we note that petitioner's primary argument is that because the tribunal rejected respondent's market analysis, it must accept petitioner's analysis. The insufficiency of one set of evidence does not serve to render petitioner's evidence sufficient.

We hold that the tribunal erred when it affirmed the property assessments without making an independent valuation and, further, when it concluded that Lot 182 acquired additional land from part of Gibson Street. We vacate the 2008 (and subsequent) assessments of petitioner's properties and remand for an independent valuation consistent with this opinion. We do not retain jurisdiction. Petitioner, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Cynthia Diane Stephens
/s/ David H. Sawyer
/s/ Donald S. Owens