

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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FOREST HILLS COOPERATIVE,  
  
                    Petitioner-Appellant,

FOR PUBLICATION  
June 12, 2014

v

No. 305194  
Tax Tribunal  
LC No. 00-277107

CITY OF ANN ARBOR,  
  
                    Respondent-Appellee.

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FOREST HILLS COOPERATIVE,  
  
                    Plaintiff-Appellant,

v

No. 306479  
Washtenaw Circuit Court  
LC No. 09-001180-CZ

CITY OF ANN ARBOR and CITY ASSESSOR  
OF ANN ARBOR,  
  
                    Defendants-Appellees.

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Before: WHITBECK, P.J., and FITZGERALD and O'CONNELL, JJ.

WHITBECK, J. (*concurring in part and dissenting in part*).

I agree with the majority's conclusions regarding the Tax Tribunal's duty to make an independent determination of true cash value, the application of MCL 211.27, and Ann Arbor's cross-motion for summary disposition. But regarding the Tax Tribunal's true cash value determination, I would conclude that the Tax Tribunal adequately addressed the issue of economic obsolescence. Accordingly, I dissent from the majority's analysis under I.C.iii.

The majority concludes that the Tax Tribunal inappropriately applied the cost approach to the subsidized property. The majority reasons that the Tax Tribunal found that the referee found that there was no economic obsolescence when the referee determined that it could not make an independent estimate of functional obsolescence. I disagree with this characterization of the Tax Tribunal's finding.

When valuating property using “the cost approach, valuing the real property as subsidized,” the Tax Tribunal should calculate “economic or external obsolescence[.]”<sup>1</sup> But “[i]f there is a market for subsidized housing at the location where it is built and a sufficient number of individuals who can afford to pay the rent required, then there will be little economic obsolescence under this approach.”<sup>2</sup>

As the majority notes, the Tax Tribunal adopted the referee’s proposed opinion and judgment, and considered Forest Hills’s argument that the referee failed to make findings regarding an obsolescence adjustment. The referee determined that “where the vacancy rate has varied between 0% and 5% for the years at issue, this suggests that the cost approach could be used with no economic obsolescence applied.” The Tax Tribunal rejected Forest Hills’s argument that the referee failed to make findings on an obsolescence adjustment. The Tax Tribunal ruled that, given the referee’s use of the cost approach and the uncertain vacancy rate from 2004 to 2009, “the [referee] was correct in finding that, under *Meadowlanes*, there was no economic obsolescence.”<sup>3</sup>

Whether the Tax Tribunal properly or improperly interpreted the referee’s poorly phrased determination is irrelevant. We review the Tax Tribunal’s decision, not the hearing referee’s decision.<sup>4</sup> When read in conjunction with the *Meadowlanes* Court’s statement that there is little economic obsolescence when there is a market for subsidized housing, the Tax Tribunal’s statement that the referee correctly found that there was no economic obsolescence was, in fact, a finding that there was no economic obsolescence.

We must accept the Tax Tribunal’s factual findings if “competent, material, and substantial evidence on the record” supports them.<sup>5</sup> Because there was evidence that the vacancy rates were low, competent evidence supported the Tax Tribunal’s finding that the parcels did not have economic obsolescence. Accordingly, I would conclude that remand on this point is unnecessary. In all other respects, I agree with the majority opinion.

I would affirm in part, reverse in part, and remand.

/s/ William C. Whitbeck

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<sup>1</sup> *Meadowlanes Dividend Housing Ass’n v Holland*, 437 Mich 473, 503; 473 NW2d 636 (1991).

<sup>2</sup> *Id.*

<sup>3</sup> Emphasis added.

<sup>4</sup> See *President Inn Props, LLC v Grand Rapids*, 291 Mich App 625, 630, 635-637; (this Court reviews decisions of the Tax Tribunal; the Tax Tribunal’s determination is de novo).

<sup>5</sup> Const 1963, art 6, § 28; *Mich Props, LLC v Meridian Twp*, 491 Mich 518, 527; 817 NW2d 548 (2012).