

STATE OF MICHIGAN
COURT OF APPEALS

JOSEPH L. WHELAN.

Plaintiff-Appellant,

v

COLD SPRINGS TOWNSHIP,

Defendant-Appellee.

UNPUBLISHED

November 12, 1996

No. 174431

LC No. 00176155

Before: Gribbs, P.J., and Markey and T.G. Kavanagh,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the February 1994 order of the Michigan Tax Tribunal, pursuant to MCL 205.753; MSA 7.650(53) and MCR 7.203(A)(2), affirming the tax assessment on plaintiff's property for the 1993 tax year. We affirm.

Plaintiff has the burden of proof to establish the true cash value of his property. MCL 205.737(3); MSA 7.650(37)(3). In determining whether the tribunal's decision was based on competent, material and substantial evidence on the whole record, we recognize that "substantial evidence" is more than a scintilla but less than a preponderance of evidence that a reasonable mind would accept as adequate to support a decision. *McBride v Pontiac School District (On Remand)*, 218 Mich App 113, 123; ___ NW2d ___ (1996). Where plaintiff's proffered evidence consisted of a portion of an appraisal written only in conclusory terms, we will not substitute our discretion for that of the tribunal, who rejected this evidence as not credible or deserving little weight, because, "as a reflection of the exercise of administrative expertise," we give great deference to the tribunal's choice between two reasonable differing views. *Id.* Without more, we believe that the tribunal's resulting findings of fact are supported by competent, material and substantial evidence on the whole record. Const 1963, art 6, §28. *Schubert v Dep't of Treasury*, 212 Mich App 555, 558; 538 NW2d 447 (1995); see also *Pinelake Housing Cooperative v Ann Arbor*, 159 Mich App 208, 220; 406 NW2d 832 (1987). In the absence of fraud, error of law, or the adoption of wrong principles, the tribunal's findings are binding on this Court. *Canada Creek Ranch Ass'n, Inc v Montmorency Twp*, 206 Mich App 498, 503; 522 NW2d 690 (1994).

* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

The tribunal weighed all the pertinent factors, including the restrictions imposed upon the use of the land. *Lochmoor Club v Grosse Pointe Woods*, 3 Mich App 524, 530-531; 143 NW2d 177 (1966). Given the terms of the conservation easement, which allow plaintiff, his heirs, successors, and assigns continued use of the property, including an option to subdivide and construct an additional single family residence of 1,500 to 4,000 square feet and to expand the existing residence by up to 20 percent with respect to the land area occupied, plaintiff has failed to establish that the true cash value of the property is less than that fixed by the assessor. See *Canada Creek Ranch Ass'n, Inc, supra* at 503-504.

Affirmed.

/s/ Jane E. Markey

/s/ Roman S. Gibbs

/s/ Thomas Giles Kavanagh