

STATE OF MICHIGAN
COURT OF APPEALS

ARTHUR BIENZ and GRANT BIENZ,

Plaintiffs-Appellants,

v

CLARENCE TOWNSHIP,

Defendant-Appellee.

UNPUBLISHED

November 15, 1996

No. 189669

LC No. 215133

Before: O'Connell, P.J., and Smolenski and T.G. Power,* JJ.

PER CURIAM.

Plaintiffs, owners of a piece of agricultural property located in defendant Clarence Township, appeal as of right the opinion and judgment of the Michigan Tax Tribunal, Small Claims Division, upholding the 1994 and 1995 assessed values of the property. We affirm.

The property at issue is a forty-acre parcel containing numerous improvements, including a 1,090 square foot dwelling that is rented to tenants, a grain storage facility, a hog farrowing barn, a cattle barn, a silo and various other buildings and structures. In 1993, the property was assessed at \$48,750 and plaintiffs appealed that assessment to the full Tax Tribunal, which affirmed. In 1994, after the \$51,680 assessment was made, plaintiffs filed a petition, claiming that the true cash value of the property was approximately \$65,000, and not \$103,360 as defendant had determined. The 1995 assessment was subsequently added to the appeal. On June 20, 1995, the referee issued an opinion and judgment, affirming defendant's assessment based on the finding that defendant's cost-less-depreciation valuation method was the most accurate method to determine the property's true cash value. The referee concluded that plaintiffs' appraisals were not reliable because they contained many flaws, and that the data supported defendant's valuation of the property.

We review decisions of the Tax Tribunal only to determine if the Tribunal erred in applying the law or adopted wrong legal principles. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348; 483 NW2d 416 (1992). We accept the Tribunal's factual findings as final, provided that they are supported by competent, material and substantial evidence. *Id.* In addition, we review the Tax

* Circuit judge, sitting on the Court of Appeals by assignment.

Tribunal's enforcement of its own rules for an abuse of discretion. *Perry v Vernon Twp*, 158 Mich App 388, 392; 404 NW2d 755 (1987).

Plaintiffs first argue that the referee's determination that defendant's assessment was lawful and proper was not supported by competent, material and substantial evidence. Plaintiffs maintain that defendant never rebutted plaintiffs' documentary evidence, including two appraisals, which plaintiffs claim indicated that the assessment should be lower based. However, the referee indicated that it considered all of the evidence and that it found that plaintiffs' appraisals were flawed. Plaintiffs' appraisals did not include calculations of the true cash value of the property based on the cost-less-depreciation method. In *Meadowlanes Ltd Dividend v City of Holland*, 437 Mich 473, 485; 473 NW2d 866 (1991), the Supreme Court ruled that an appraisal which disregards a method of valuation without justifying the non-use of that method is incomplete. Moreover, a thorough analysis of the documentary evidence produced by plaintiffs demonstrate that all of the agricultural properties within the defendant township were valued and assessed using the cost-less-depreciation method. Further, plaintiffs' appraisals utilized the sales comparison method of valuation but did not demonstrate that the properties used for comparison were similar. In *Community Associates v Meridian Charter Twp*, 110 Mich App 807, 814; 314 NW2d 490 (1981), this Court noted that use of the sales comparison method requires comparison to comparable properties. Accordingly, the hearing officer properly found that the appraisals were flawed, and that plaintiffs failed to demonstrate the accuracy of their proposed true cash value or that their property was treated differently than any other property.

Even though plaintiffs had the burden of proving that defendant's assessment was erroneous, it is the duty of the Tax Tribunal to make its own finding of true cash value. *Oldenburg v Dryden Twp*, 198 Mich 696, 699; 499 NW2d 416 (1993). If there is an indication that in affirming the value as determined by the assessor, the referee carefully reviewed all the evidence presented and found that the assessment was supported, the Tribunal has met its obligation. *Wolverine Tower v Ann Arbor*, 96 Mich App 780, 781; 293 NW2d 669 (1980). In this case, based on the referee's finding that defendant's valuation was accurate, we find no basis for reversal and affirm the decision of the referee.

Plaintiffs next argue that the referee should not have considered defendant's documentary evidence because it was filed in violation of 1981 AACRS R 205.1642(2), which requires written evidence to be submitted to the opposing party and the Tribunal not less than ten days before the date of the hearing. Plaintiffs contend for the first time on appeal that defendant's valuation evidence was not provided in a timely manner. Where plaintiffs failed to object at the hearing, the issue is not preserved for appeal. See *MSEA v Civil Service Comm*, 126 Mich App 797, 804; 338 NW2d 220 (1983). Further, we note that the settled record in this case indicates that defendant's documentary evidence was produced in a timely fashion.

Plaintiffs finally argue that it was an abuse of discretion not to provide them with prehearing discovery. It was not. There is no constitutional right to discovery as a matter of right in any judicial or quasi-judicial proceeding, including an administrative proceeding. In *the Matter of Del Rio*, 400 Mich 665, 687 n7; 256 NW2d 727 (1977). The Tax Tribunal is allowed to promulgate its own rules of practice and procedure. MCL 24.274; MSA 3.560(174); MCL 205.732; MSA 7.650(32). The Tax Tribunal rules do not provide for discovery in small claims cases. Therefore, because the administrative

rules applicable to small claims cases before the Tax Tribunal do not provide for discovery, we find no abuse of discretion in the Tribunal's refusal to grant plaintiffs' discovery request. *Perry, supra*.

Affirmed.

/s/ Peter D. O'Connell

/s/ Michael R. Smolenski

/s/ Thomas G. Power