STATE OF MICHIGAN

COURT OF APPEALS

MAURICE SOUTHERLAND,

Petitioner-Appellant,

v

CITY OF WIXOM,

Respondent-Appellee.

UNPUBLISHED
January 14, 1997

No. 186568
MTT Docket No. 210901

Before: Griffin, P.J., and T.G. Kavanagh* and D.B. Leiber,** JJ.

PER CURIAM.

Petitioner appeals a judgment of the Michigan Tax Tribunal [MTT] Small Claims Division affirming respondent's assessed value of $9,000, thus determining the true cash value of petitioner's property for the 1994 tax year to be $18,000. We affirm.

The Michigan Department of Natural Resources [DNR] deemed three vacant lots owned by petitioner, lots 197, 198 and 199, to be wetlands. The DNR informed petitioner that permits are necessary before any construction activity can occur within a state-regulated wetland and ordered petitioner to cease and desist all unauthorized activities pertaining to such wetlands. Petitioner contends that because his property has been deemed to be wetlands and is now subject to a cease and desist order, he is unable to build on the land and therefore its true cash value [TCV] is $100. Respondent argued below[1] that the subject property had an assessed value of $9,000, that the true cash value of the property was at least $25,000, and that petitioner's assessment should therefore be increased.

The MTT's findings of fact state in pertinent part:

> . . . [L]ots 255, 256, 257 and 258, which are adjacent to the subject property, are over 50% wetland, and have no developed road frontage, yet they sold in February 1992 for $25,000.

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* Former Supreme Court Justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-10.

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

> From its examination of the evidence received a the hearing in this matter, the Tribunal also finds: the purchases of the subject lots occurred in 1981 and 1987, thus the sale prices are outdated and not an indication of current TCV; even wetlands have some value; the subject lots were listed for sale for $27,900 on or around August 2, 1994, a date after Petitioner was informed that the lots were not buildable; and based on the August 10, 1992 letter for the Department of Natural Resources to Petitioner, it is found that all three lots are wetlands and therefore permits are necessary before any construction can occur.
>
> From its examination of the evidence received at the hearing in this matter, the Tribunal further finds: when asked at the hearing how much Petitioner would sell the three lots for, Petitioner's representative refused to answer.
>
> . . . The Tribunal recognizes Respondent's market methodology to be the most accurate and thus the best indication of the property's true cash value.

The MTT's conclusions of law were that the TCV of petitioner's three lots was $18,000, and:

> Reason for selection of valuation method: Petitioner's contentions are not sufficiently documented to enable the Tribunal to conclude that the assessment is unlawfully excessive. Statements of position, without confirming documentary evidence or other support, are generally not sufficient to carry the burden of proof.
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> Respondent's testimony, coupled with the exhibits presented at the hearing, more credibly outweigh the true cash value achieved by application of Petitioner's approach.
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> * * *
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> In the instant cause, Petitioner offered no evidence from which the Tribunal could make a finding of true cash value. Petitioner has thus failed to meet the burden of proof imposed by Section 37 of the Tax Tribunal Act.
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> This appeal ensued.

I

Petitioner first argues that the MTT committed an error of law because the assessment of petitioner's property did not take into account the existing use of his property as wetlands, and the effect of the designation of his property as wetlands and the cease and desist order issued by the DNR. In the absence of fraud, this Court reviews a decision of the Tax Tribunal to determine whether the tribunal erred in applying the law or adopted a wrong principle. *Holland Home v City of Grand Rapids*, ___ Mich App ___; ___ NW2d ____ (Docket No. 187280, issued October 11, 1996).

Existing use may be indicative of the use to which a potential buyer would put the property and thus may be relevant to the fair market value of the property for tax purposes. *Safran Printing Co v Detroit,* 88 Mich App 376, 382; 276 NW2d 602 (1979). In determining true cash value, the assessor must consider the existing use of property. *Teledyne Continental Motors v Muskegon Twp*, 163 Mich App 188, 192; 413 NW2d 700 (1987). However, this does not preclude the consideration of other potential uses. *Id.*

The record reveals that the MTT did consider the subject property's existing use as wetlands, and the value of such property. The MTT found that the three subject lots are wetlands and that permits are necessary before any construction can occur. The MTT found that "even wetlands have some value" and that the subject lots had been listed for sale at $27,900 after petitioner was informed that the lots were not buildable. Additionally, the MTT found that four lots adjacent to petitioner's property, which were over fifty percent wetland and had no developed road frontage, sold in 1992 for $25,000. Thus the record reveals the MTT properly considered the existing use of petitioner's property.

Petitioner also relies on *Lochmoor Club v Grosse Pointe Woods*, 3 Mich App 524, 533; 143 NW2d 177 (1966), in which this Court remanded a state tax commission decision to determine the extent of the effect of land use restrictions on the value of property to which they applied, noting that consideration of all relevant elements and factors, including restrictions, is essential to proper assessing. *Id.* at 531.

In the present case, the cease and desist order stated that the DNR had determined that filling and/or home construction had occurred in a state-regulated wetland on property owned by petitioner, and that such activities were conducted without the benefit of a state permit as required by state law. The record reveals that the MTT made a specific finding that based on the DNR's cease and desist order, "all three lots are wetlands and therefore permits are necessary before any construction can occur." Additionally, the MTT found that four lots adjacent to petitioner's property were over fifty percent wetland, with no developed road frontage, and sold in February 1992 for $25,000. Because the MTT properly considered the designation of petitioner's property as wetlands, and the cease and desist order, in reviewing petitioner's claim, it did not adopt an incorrect principle of law or commit an error law.

II

Next, petitioner argues that the MTT did not make an independent determination of the true cash value of petitioner's property and therefore the MTT adopted an incorrect principle of law and committed an error of law.

True cash value is typically calculated by using three different methods: the cost-less-depreciation method, the market method, and the income-capitalization method. *Meadowlanes Limited Dividend Housing Ass'n v City of Holland,* 437 Mich 473, 482-483; 473 NW2d 636

(1991). The MTT's duty is to determine which approach provides the most accurate TCV based on the evidence presented in each case. *Consumers Power Co v Big Prairie Twp,* 81 Mich App 120, 130-131; 265 NW2d 182 (1978).

The referee noted in adopting respondent's methodology that it was the most accurate and that respondent's testimony and the exhibits presented at the hearing supported respondent. The referee also looked to the sale price of $25,000 in 1992 of lots adjacent to petitioner's property, which were over 50% wetland, and noted that the purchase price of the subject lots in 1981 and 1987 were outdated. We therefore conclude that petitioner's claim is without merit.

We also reject petitioner's argument that the MTT erred in affirming respondent's original assessment where respondent did not meet its burden of proof in establishing the TCV of petitioner's property.

It was petitioner's, not respondent's, burden to prove the TCV of the property at issue. MCL 205.737(3); MSA 650(37)(3); *Jones & Laughlin Steel Corp v City of Warren,* 193 Mich App 348, 353; 483 NW2d 416 (1992). The MTT may properly place the burden of proof on respondent to establish that an original assessment was too low, in an action in which the taxpayer challenged the original assessment as too high and respondent disputed the original assessment even though it did not file a cross-petition to have the tax assessments raised. *Meadowlanes Limited Dividend Housing Ass'n v City of Holland,* 156 Mich App 238, 242-243; 401 NW2d 620 (1986). As the hearing referee affirmed respondent's original assessment of $9,000, it is of no consequence that respondent failed to prove that that assessment figure was too low.

Because the MTT properly made an independent determination of the TCV of petitioner's property and because the burden of proving the TCV was properly allocated between the parties, the MTT did not adopt an incorrect principle of law or commit an error of law.

Affirmed.

/s/ Richard Allen Griffin
/s/ Thomas G. Kavanagh
/s/ Dennis B. Leiber

[1] Respondent did not file an appellate brief.