STATE OF MICHIGAN

COURT OF APPEALS

WHITNEY YOUNG VILLAGE APARTMENTS, INC.,

Petitioner-Appellant,

v

CITY OF KENTWOOD,

Respondent-Appellee.

UNPUBLISHED
July 31, 1998

No. 201469
Michigan Tax Tribunal
MTT Docket No. 96562

Before: Doctoroff, P.J., and Fitzgerald and Talbot, JJ.

PER CURIAM.

Petitioner appeals as of right the October 1, 1996, final opinion and order of the Michigan Tax Tribunal, claiming that respondent improperly assessed petitioner's federally subsidized rental housing project for the years 1985, 1986 and 1987. We affirm.

Absent fraud, this Court's review of a Tax Tribunal decision is limited to determining whether the tribunal adopted a wrong principle of law or erred as a matter of law. Const 1963, art 6, § 28; *Georgetown Place Cooperative v City of Taylor*, 226 Mich App 33, 43; 572 NW2d 232 (1997). Because petitioner does not allege fraud, this Court's review is limited to whether the tribunal erred as a matter of law.

First, petitioner argues that the tribunal cannot ignore the concept of cash equivalency used by its appraiser and must discount the present value of the mortgage balances of comparable properties in its sales comparison approach, relying on *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984), and *Washtenaw Co v Tax Comm*, 422 Mich 346; 373 NW2d 697 (1986). We disagree. In *Meadowlanes v City of Holland*, 437 Mich 473, 492-493; 473 NW2d 636 (1991), our Supreme Court specifically repudiated the use of cash equivalency discounting, stating that the discounted mortgage approach is flawed because it values the property in large part by valuing its underlying mortgage in a theoretical commercial paper market. Petitioner's use of cash equivalency

discounting in both its income and sales comparison approaches is a version of the discounted mortgage approach which our Supreme Court rejected in *Meadowlanes, supra* at 492-493.

Contrary to petitioner's contention, neither *Antisdale* nor *Washtenaw* applies to the present case. In *Antisdale*, our Supreme Court expressed no opinion regarding whether the discounted mortgage approach can be substituted for traditional comparisons under the market approach. *Antisdale, supra* at 282-283. Furthermore, our Supreme Court limited its holding to the facts of that case, where the tribunal adopted a wrong principle when it valued the subject property by reference to the outstanding balances on mortgages which carried terms well below market rates. *Id*. In *Washtenaw*, our Supreme Court held that if market data shows that the sales price of a comparable property includes both the value of real property, and the value of an atypical financing arrangement between the buyer and the seller, then the sales price of the comparable properties must be adjusted to exclude the value attributable to the atypical financing. *Washtenaw, supra* at 373-374. However, our Supreme Court subsequently held that a federal interest subsidy is not the type of atypical financing referred to in *Washtenaw*. *Meadowlanes, supra* at 498.

Second, petitioner argues that the tribunal made an error of law by accepting respondent's submarket analysis to establish the true cash value of the property. We disagree. Contrary to petitioner's contention, this Court's decision in *Comstock LDHA v Comstock Twp*, 168 Mich App 755, 763; 425 NW2d 702 (1988), did not reject the use of submarkets in all contexts. Furthermore, our Supreme Court authorized the valuation of federally subsidized housing through the employment of a sales comparison approach that uses subsidized properties as sales comparables. *Meadowlanes, supra* at 502.

Third, petitioner argues that the tribunal made an error of law when it attributed a quantifiable value to the project's mortgage interest subsidy without recognizing the offsetting negative aspects of the federal regulatory scheme. We disagree. Although the mortgage-interest subsidy is an intangible, and not taxable in and of itself, it is a value influencing factor and should be reflected in the assessment process. *Id*. at 496. Both the positive and negative aspects of the regulatory agreement voluntarily entered into between the owner and the government must be considered in the valuation process. *Id.* at 499-500. In order to accomplish this, our Supreme Court sanctioned the use of the three recognized valuation approaches: the replacement-cost less depreciation approach, the market or comparison-sales approach, and the capitalization of income approach. *Id.* at 501-502. By using similarly subsidized and regulated housing projects as comparable properties in his market sales comparison approach, respondent's appraiser complied with *Meadowlane's* requirement that he consider both the positive aspects of the mortgage subsidy and the negative aspects of federal regulation in his valuation of the project. See *id*. at 502.

Finally, petitioner argues that the tribunal made an error of law by adopting respondent's low capitalization rates in contravention to this Court's holding in *Congresshills Apartments v Ypsilanti Twp*, 128 Mich App 279; 349 NW2d 121 (1983). We disagree. In *Congresshills*, this Court held that the federal interest subsidy was an intangible asset which could not be subject to taxation as real or tangible property and determined that the tax tribunal erred in part because its low capitalization rates

impermissibly incorporated the value of the interest subsidy as a real estate value subject to taxation. *Id*. at 282-283. However, *Congresshills* is no longer precedent on that issue, because our Supreme Court subsequently ruled in *Meadowlanes* that the value of federal interest subsidies should be reflected in the assessment process.

Affirmed.

/s/ Martin M. Doctoroff
/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot