

STATE OF MICHIGAN
COURT OF APPEALS

ROYAL INDUSTRIAL CENTER,

Petitioner-Appellant,

v

TOWNSHIP OF ROYAL OAK,

Respondent-Appellee.

UNPUBLISHED

February 8, 2002

No. 225361

Tax Tribunal

LC No. 188920

Before: Cavanagh, P.J., and Neff and B. B. MacKenzie*, JJ.

PER CURIAM.

Petitioner appeals as of right the judgment of the Tax Tribunal regarding the assessment of petitioner's 1993 and 1994 ad valorem taxes for this multi-tenant industrial building. We affirm.

On appeal, petitioner primarily argues that the Tribunal improperly computed the true cash value of its property by considering the value of the leases in place as opposed to valuing the property as an unencumbered fee simple interest. We disagree. Appellate review of Tax Tribunal decisions is limited, in the absence of fraud, to determining whether the tribunal made an error of law or adopted a wrong principle. Const 1963, art 6, § 28; *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 482-483; 473 NW2d 636 (1991). Factual findings that are supported by competent and substantial evidence are final. *Antisdale v Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984).

Petitioner claims that the Tribunal had no "express authority" to consider the value of the leases in place at the subject property and that the leases are intangible business assets that must be excluded from the valuation because only real and tangible personal property are subject to ad valorem taxation. We disagree.

Property is assessed for tax purposes at fifty percent of its true cash value. Const 1963, art 9, § 3; MCL 211.27a; *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 631; 462 NW2d 325 (1990). True cash value is the property's usual selling price and is equal to its fair market value. MCL 211.27(1); *Meadowlanes*, *supra* at 484, n 17; *Samonek v Norvell Twp*, 208 Mich App 80, 84; 527 NW2d 24 (1994). Consequently, all valuation methods, including the capitalization-of-income approach used in this case, must result in a value that represents the

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

usual price for which the property would sell, i.e., “the fair-market value of both the physical real estate and all the interests, benefits, and rights inherent in ownership of that real property.” *Meadowlanes*, *supra* at 485. The income approach “measures the present value of the future benefits of property ownership by estimating the property’s income stream and its resale value . . .” *Id.* at 485, n 20; see, also, *Antisdale*, *supra* at 276-277, n 1.

Consistent with the goal of determining the usual selling price, an assessor must consider several factors, including the existing use and present economic income of structures on the subject property, when determining its true cash value. MCL 211.27(1); *Meadowlanes*, *supra* at 484; *Fairplains Twp v Montcalm Co Bd of Comm’rs*, 214 Mich App 365, 379; 542 NW2d 897 (1995). MCL 211.27(4) defines “present economic income” with regard to leased or rented property as “the ordinary, general, and usual economic return realized from the lease or rental of property negotiated under current, contemporary conditions between parties equally knowledgeable and familiar with real estate values.” Consequently, the Tribunal was expressly authorized to consider the value of the leases in place in determining the true cash value of petitioner’s property.

Further, petitioner’s claim that leases are intangible business assets that may not be considered for purposes of valuation is also without merit. The authority to impose a property tax, 1963 Const, art IX, § 3, applies to real and tangible personal property, not to intangibles. *Congresshills Apartments v Ypsilanti Twp*, 128 Mich App 279, 283; 341 NW2d 121 (1983). Petitioner argues, without support of apposite authority, that leases are intangible business assets. However, having leases in place are “interests, benefits, and rights inherent in ownership of that real property” and affect the “usual selling price” of the property. See *Meadowlanes*, *supra* at 485; *Antisdale*, *supra* at 285. Leases are properly considered in determining the true cash value because they are value-influencing factors, i.e., incorporeal items that, although “not taxable in and of themselves, can increase or decrease the value of real property.” See *Meadowlanes*, *supra* at 485, 495; *Antisdale*, *supra*; *Sweepster, Inc v Scio Twp*, 225 Mich App 497, 501-502; 571 NW2d 553 (1997). Consistent with the income approach, consideration of the leases, which generate an income stream that affects the property’s resale value, is proper to determine fair market value. Further, analogously to this Court’s holding in *Comstock Village Ltd Dividend Housing Ass’n v Comstock Twp*, 168 Mich App 755, 761; 425 NW2d 702 (1988) that a rental subsidy “was no more intangible than the actual rents paid by the tenants,” leases are no more intangible than the actual rents paid by the leaseholders. Consequently, petitioner’s argument is without merit.

Petitioner also alleges violations of its equal protection or tax uniformity rights because of the Tribunal’s consideration of the leases in place as opposed to considering the property as vacant. See Const 1963, art 1, § 2; Const 1963, art 9, §3. There is no practical difference between the two protections. *Armco Steel Corp v Dep’t of Treasury*, 419 Mich 582, 592; 358 NW2d 839 (1984); *Syntex Laboratories v Dep’t of Treasury*, 233 Mich App 286, 290; 590 NW2d 612 (1998).

Petitioner argues that its property, with leases in place, was treated differently than other structures that were vacant. However, neither constitutional guarantees require that persons in different circumstances be treated the same. *Id.* Further, the uniformity requirement does not require the tax tribunal to ignore circumstances that affect true cash value, such as “different lease terms, zoning restrictions, or deed restrictions.” *CAF Investment Co v State Tax Comm*,

410 Mich 428, 464; 302 NW2d 164 (1981). For the reasons previously discussed, the Tribunal properly considered the value of the leases in place in determining the true cash value of the property. Clearly, a vacant building would have a different cash value than a building occupied with multiple lessees. See *Id.* Petitioner failed to establish that its property was treated differently than similarly situated properties or that it bore an unfair tax burden under the circumstances. Consequently, these claims are without merit.

Finally, petitioner challenges the adoption of fifty percent as the average level of assessment. The Tribunal held that respondent met its burden of proving the average level of assessment to be fifty percent. See MCL 205.737(3); *Great Lakes Division of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 426; 576 NW2d 667 (1998). The Tribunal's decision is supported by competent and substantial evidence and, therefore, is final. See *Antisdale, supra* at 277.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Janet T. Neff

/s/ Barbara B. MacKenzie