STATE OF MICHIGAN

COURT OF APPEALS

WENONA LTD, Petitioner-Appellant/Cross-Appellee, v BANGOR CHARTER TOWNSHIP, Respondent-Appellee/Cross-Appellant.	UNPUBLISHED June 28, 2002 No. 228857 Tax Tribunal LC No. 00-225488

Before: Bandstra, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Petitioner appeals as of right and respondent cross-appeals as of right from the Tax Tribunal's July 10, 2000, decision affirming respondent's taxable value assessment of petitioner's commercial real property. We affirm.

Our review of Tax Tribunal decisions is limited. *Michigan Milk Producers Ass'n v Dep't of Treasury*, 242 Mich App 486, 490; 618 NW2d 917 (2000). On appeal, absent a claim of fraud, we can determine only whether the tribunal committed an error of law or adopted a wrong legal principle. *Id*. Also, the tribunal's factual findings will not be disturbed if they are supported by competent, material, and substantial evidence on the whole record. *Id.* at 490-491.

Petitioner first asserts that the doctrines of res judicata and collateral estoppel barred the tribunal's consideration of this case because the State Tax Commission (STC) previously determined that respondent had not omitted property from its 1994 assessment of petitioner's property. We disagree.

The doctrine of res judicata precludes relitigation of a claim where (1) a prior action was decided on the merits, (2) a decree in the prior action was a final decision, (3) a matter contested in a second case was or could have been resolved in the first, and (4) both actions involve the same parties or their privies. See *Sewell v Clean Cut Management, Inc*, 463 Mich 569, 575; 621 NW2d 222 (2001). Contrary to petitioner's contention, this doctrine did not preclude the Tax Tribunal's consideration of this case because claims contested before the tribunal were not resolved before the STC. Specifically, respondent petitioned the STC on June 13, 1996, for permission to revise its assessment of petitioner's property for tax year 1994, 1995, and 1996[1] to

[1] A review of the assessor's "notice of property incorrectly reported or omitted from assessment (continued…)

account for previously omitted property, while petitioner brought a claim before the tribunal to prevent respondent from increasing its tax year 1995 through 1999 assessments by more than the constitutional cap.[2] Thus, the claims in the two causes of actions addressed different tax years. Further, a review of the STC's August 26, 1997, determination does not reflect that the STC rendered a decision on the merits concerning tax years 1998 and 1999.

Moreover, jurisdiction for taxpayers to appeal real property tax assessments lies within the tribunal's exclusive mandate, although the STC retains "purely administrative functions." MCL 205.731; *Richland Twp v State Tax Comm*, 210 Mich App 328, 334; 533 NW2d 369 (1995). Accordingly, we are not persuaded that res judicata applied to bar this action; see also *Baraga Co v State Tax Comm*, ___ Mich ___; ___ NW2d ___ (Docket No. 118922, decided 6/12/02), slip op at 9 (observing that the Legislature has assigned the STC a "supervisory role" over local assessors).

Meanwhile, the doctrine of collateral estoppel prevents relitigation of an issue where the same parties have previously had a full and fair opportunity to adjudicate their claims. *Nummer v Dep't of Treasury*, 448 Mich 534, 541; 533 NW2d 250 (1995). Likewise, three additional requirements must be satisfied where a party seeks to preclude relitigation on the basis of an administrative determination. "The administrative determination must have been adjudicatory in nature and provide a right to appeal, and the Legislature must have intended to make the decision final absent an appeal." *Id.* at 542. In this case, the parties do not dispute that a hearing was not held before the STC. Therefore, because the proceeding was not adjudicatory in nature, the parties did not have an opportunity to fully litigate before the STC the issue whether respondent omitted property from its 1994 assessment of petitioner's mobile home park. Thus, we do not agree with petitioner that collateral estoppel barred the tribunal's consideration of this issue.

Second, petitioner claims the tribunal erroneously shifted to petitioner the burden of proof regarding whether property had been omitted from respondent's assessment of petitioner's property. We disagree. By statute, an "assessing jurisdiction has the burden of proof in establishing whether the omitted real property is included in the assessment." MCL 211.34d(1)(b)(*i*). Although the tribunal in its opinion noted that petitioner had failed to meet its burden of persuasion, a close review of the opinion as a whole demonstrates that the tribunal correctly recognized that respondent bore the burden of proof concerning this issue. Indeed, the tribunal specifically held that under MCL 211.34d(1)(b)(*i*), respondent was required to prove that the omitted real property was not included in a prior assessment, and that respondent offered before and after assessment cards to meet its statutory burden of proof. To the extent that the tribunal made reference to petitioner's burden of persuasion, it is clear that it did so only to elucidate that it was relevant to petitioner's burden to establish true cash value.

Third, petitioner claims the tribunal erred in considering non-documentary evidence in determining whether respondent had omitted property from earlier assessments. We disagree. In

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(…continued)

roll" indicates that the notice pertained to tax years 1994, 1995, and 1996.

[2] The tribunal's July 10, 2000, order reflects that the taxable values for tax years 1995-1999 were at issue.

its written judgment, the tribunal observed that respondent presented "before and after" property record cards reflecting its belief that petitioner possessed only 150 lots subject to real property tax. The tribunal went on to observe that its review of the documents indicated that "the real property claimed as 'omitted' had not been included in the subsequent assessments." Accordingly, we are not persuaded by petitioner's argument that the tribunal relied on non-documentary evidence in finding that respondent satisfied its burden of establishing that the omitted real property was not included in a previous property assessment.

Further, both parties claim the tribunal improperly calculated the value of the omitted property. We disagree. The Tax Tribunal must apply its expertise to the facts to determine the appropriate method of arriving at a property's true cash value, using an approach that provides the most accurate valuation under the circumstances. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 353; 483 NW2d 416 (1992). True cash value is synonymous with fair market value. *Id.*; MCL 211.27. The three most common approaches to valuation are the capitalization-of-income approach, the sales-comparison or market approach, and the cost-less-depreciation approach. *Jones & Laughlin Steel, supra* at 353. However, regardless of the approach selected, the value must represent the usual price for which the subject property would sell. *Id.*

Although a petitioner bears the burden of proof to establish a property's true cash value, MCL 205.737(3), the tribunal must make an independent determination of valuation. *Great Lakes Division of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 389, 409; 576 NW2d 667 (1998). The tribunal is not bound to accept either party's theories of valuation; it may accept one theory and reject the other, reject both theories, or use a combination of both in arriving at its determination of true cash value. *Id.* at 389-390.

Petitioner asserts the Tax Tribunal erred in including all 182 licensed mobile home sites in its calculations. Petitioner claims the tribunal was bound to use an income approach because respondent had used it in earlier assessments, and argues the tribunal failed to account for vacancies in determining how much income the extra thirty-two sites would produce. However, the tribunal was not bound to use the income approach, but only to use whichever approach produced the usual price for which the subject property would sell. *Jones & Laughlin Steel, supra* at 353. Therefore, the tribunal could properly use a method that accounted for all 182 licensed sites without consideration of vacancies.

Meanwhile, respondent contends the tribunal erred in considering only the 182 licensed sites rather than the 186 existing sites on petitioner's property. Because the mobile home park was licensed for and could legally lease only 182 sites, the tribunal's conclusion that the additional four sites would not increase the fair market value of petitioner's property was supported by competent, material, and substantial evidence. *Michigan Milk Producers, supra* at 490-491.

Next, respondent argues the tribunal erred in adopting a $6,000-per-site value rather than the $7,500-per-site value it advocated. However, the tribunal did not err in concluding that the market analysis respondent relied on did not accurately reflect the value of petitioner's property, and the tribunal accounted separately for the road improvements to petitioner's property, which were the basis for respondent's increase. Finally, petitioner argues the tribunal erred in calculating the true cash value of its road improvements because petitioner's income did not

increase because of the paving. As discussed, the tribunal was not bound to use an income approach to calculate the true cash value of the omitted property and was free to use the actual cost of the improvements. *Id.*

Affirmed.

/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell