STATE OF MICHIGAN

COURT OF APPEALS

CAPCO 1998-D7 PIPESTONE, L.L.C., Petitioner-Appellant,	UNPUBLISHED December 28, 2006
v	No. 260823 Tax Tribunal
BENTON CHARTER TOWNSHIP, Respondent-Appellee.	LC No. 00-290990

Before: O'Connell, P.J., and White and Markey, JJ.

PER CURIAM.

Petitioner appeals as of right from a Tax Tribunal judgment establishing a true cash value of $7,250,000, and assessed and state equalized values of $3,625,000 for petitioner's 15.15-acre parcel, the Pipestone Plaza shopping center in Benton Township, for the 2003 tax year. We affirm.

Until July 2002, most of Pipestone Plaza was occupied by a Kmart store, which subsequently vacated the premises due to bankruptcy. Other tenants also left, resulting in a 77 percent vacancy rate on December 31, 2002. An assessor determined that the true cash value of the property on that date was $10,674,800, and that its assessed value was $5,337,400. Petitioner appealed to the Tax Tribunal, asserting that the assessed value exceeded 50 percent of the true cash value. Following a hearing, the tribunal issued a 25-page opinion establishing the various values for the property. Although the tribunal judge expressed agreement with respondent's appraiser's determination that the true cash value of the property was $7,250,000, a chart on p 22 of the judgment listed the following values:

> Taxable Value: 2,484,892
>
> Assessed Value: $5,337,400
>
> State Equalized Value: $5,337,400
>
> "TVC": 2,400,000

Respondent subsequently notified the tribunal that these figures were not correct and asked that the tribunal issue an errata correcting the figures to conform with the value determination reflected in the tribunal judge's opinion. After petitioner filed its claim of appeal, the tribunal

issued an "erratum to correct order" modifying the values in the chart on p 22 to reflect a true cash value of $7,250,000, and assessed and state equalized values of $3,625,000 each.

On appeal, petitioner first argues that the Tax Tribunal did not have jurisdiction to issue the "erratum to correct order" after a claim of appeal was filed. We disagree. Under MCR 7.208(C)(2), the tribunal could correct any part of the record upon notice to the parties and an opportunity for a hearing. As petitioner concedes, the figures reflected in the chart on page 22 of the tribunal's opinion were inconsistent with the value determination actually made in the opinion and were in conflict with each other. It was apparent that there was a clerical error in preparing the chart on page 22, and the erratum that was issued corrected the figures in that chart consistent with the actual value determination made in the opinion. Further, petitioner received notice of the proposed corrections approximately six weeks before the erratum was issued and never requested a hearing on the corrections. Under these circumstances, we conclude that the tribunal had jurisdiction to issue the erratum to correct the clerical error in the record.

Relying on MCR 2.613(B), petitioner also asserts that the erratum was invalid because it was not issued by the same tribunal judge who issued the original opinion and judgment. Petitioner's reliance on MCR 2.613(B) is misplaced because that rule only applies to a judgment or order that is set aside or vacated. In this case, the erratum merely corrected a clerical error in the judgment. The judgment itself was neither set aside nor vacated.

Petitioner next argues that the Tax Tribunal erred in accepting respondent's valuation, because that valuation employed faulty methodology, i.e., the use of the direct capitalization method and failure to consider the actual vacancy rate of the property. We disagree. In the absence of fraud, this Court's review of a Tax Tribunal decision is limited to determining whether the tribunal erred in applying the law or adopted a wrong legal principle. *Georgetown Place Co-op v City of Taylor*, 226 Mich App 33, 43; 572 NW2d 232 (1997). The Tax Tribunal's factual findings are upheld unless they are not supported by competent, material, and substantial evidence on the whole record. *Id*.

The Legislature did not direct that specific methods be used in valuing property. *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 484; 473 NW2d 636 (1991). The statutory provisions on which petitioner relies neither mandate the use of a discounted cash flow method (DCF), nor indicate that direct capitalization is improper in situations involving a significant vacancy. Direct capitalization, while a simpler process than DCF, is an acceptable method of performing the income analysis. The Tax Tribunal decisions cited by petitioner are factually distinguishable because, apart from the high vacancies, they each involve additional factors, not present here, justifying use of the discounted cash flow methodology. The gist of petitioner's argument is that the true cash value of the property could not be determined without taking the actual vacancy rate into account. We are not persuaded that the methodology used here was improper. There was testimony that the Pipestone area was surveyed and that the occupancy rate was 10%, and, more specifically, that the expert made an investigation of potential tenants for the vacant space. There was no evidence that the actual vacancy rate was due to some feature of the property, rather than K-Mart's departure. Under these circumstances, we find no error in the use of the market rate.

Petitioner also complains that the tribunal made unwarranted criticisms of its appraisal, but there has been no showing that an error of law was committed or that the tribunal's factual findings were unsupported by competent, material, and substantial evidence.

Affirmed.

/s/ Peter D. O'Connell
/s/ Helene N. White
/s/ Jane E. Markey