

STATE OF MICHIGAN
COURT OF APPEALS

BROUGHTON DEVELOPMENT,

Petitioner-Appellant,

v

TOWNSHIP OF MACOMB,

Respondent-Appellee.

UNPUBLISHED

June 17, 2010

No. 290893

Michigan Tax Tribunal

LC No. 00-315333

Before: HOEKSTRA, P.J., and MARKEY and DAVIS, JJ.

PER CURIAM.

Petitioner, Broughton Development, appeals as of right the February 25, 2009, judgment entered by the Michigan Tax Tribunal, establishing the true cash value for taxation purposes of petitioner's real property in Macomb Township for 2005, 2006, 2007, and 2008. We affirm.

"Absent fraud, this Court's review of a Tax Tribunal decision is limited to determining whether the tribunal made an error of law or adopted a wrong legal principle." *Meijer, Inc v Midland*, 240 Mich App 1, 5; 610 NW2d 242 (2000) (citation omitted). We affirm the tribunal's findings of fact unless they are not supported by competent, material, and substantial evidence. *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 482; 473 NW2d 636 (1991). "Substantial" means evidence that a reasonable mind would accept as sufficient to support the conclusion." *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998) (citation omitted).

The purchase price that was paid for transferring the property "is not the presumptive true cash value of the property transferred." MCL 211.27(5). The "true cash value" is defined as "the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale." MCL 211.27(1). Further, when determining a property's true cash value

the assessor shall also consider the advantages and disadvantages of location; quality of soil; zoning; existing use; present economic income of structures, including farm structures; present economic income of land if the land is being farmed or otherwise put to income producing use; quantity and value of standing timber; water power and privileges; and mines, minerals, quarries, or other

valuable deposits known to be available in the land and their value. [MCL 211.27(1).]

The concept of the “highest and best use” is:

fundamental to the determination of true cash value. It recognizes that the use to which a prospective buyer would put the property will influence the price which the buyer would be willing to pay. Land is appropriately valued “as if available for development to its highest and best use, that most likely legal use which will yield the highest present worth.” [*Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 633; 462 NW2d 325 (1990) (citation omitted).]

Petitioner bears the burden of establish the true cash value of the property. MCL 205.737(3). “The tribunal is obliged, however, to make its own finding of true cash value and cannot merely affirm the assessment as placed upon the rolls by the assessing authority.” *Oldenburg v Dryden Twp*, 198 Mich App 696, 699; 499 NW2d 416 (1993).

“The three most common approaches for determining true cash value are the capitalization-of-income approach, the sales-comparison or market approach, and the cost-less-depreciation approach.” *Great Lakes Div of Nat’l Steel Corp*, 227 Mich App at 389 (citation omitted). However, variations, combinations, or new methods are permissible where they are “accurate and reasonably related to fair market value.” *Id.* In this case, the parties and tribunal used the sales comparison approach.¹

Petitioner owns two adjacent parcels of real property located in Macomb Township, east of Broughton Road and south of 25 Mile Road. Each parcel is approximately 40 acres, totaling 81.03 acres; they were assessed separately for taxation purposes. Respondent had valued petitioner’s property at \$75,000 per acre for 2005 and 2006, \$65,000 per acre for 2007, and \$60,000 in 2008. Petitioner asserted that the property should be valued at \$16,000 for 2008. Petitioner did not present an appraisal for the years 2005-2007, but offered the testimony of the owner of Broughton Development, Guirino D’Alessandro. The tribunal concluded that for 2005

¹ In *Great Lakes Div of Nat’l Steel Corp v Ecorse*, 227 Mich App 379, 391; 576 NW2d 667 (1998), we explained the sales comparison approach:

The sales-comparison or market approach has been described as requiring an analysis of recent sales of similar properties, a comparison of the sales with the subject property, and adjustments to the sale prices of the comparable properties to reflect differences between the properties. *Samonek [v Norvell Twp]*, 208 Mich App 80,] 84-85[; 527 NW2d 24 (1994)]. It has been described as the only approach that directly reflects the balance of supply and demand for property in marketplace trading. *Jones & Laughlin Steel Corp*, *supra* at 353. However, if the analysis of a comparable sale is flawed, the valuation for the subject property is also flawed. *Antisdale [v City of Galesburg]*, 420 Mich 265,] 278-279[; 362 NW2d 632 (1984)].

and 2006, petitioner's property should be valued at \$75,000 per acre value, and \$65,000 per acre value for 2007. The tribunal held that the 2008 market value was \$55,000 per acre.

Petitioner argues that the tribunal failed to determine the highest and best use of petitioner's property. However, the record reflects that the parties agreed that the highest and best use was important in determining the true cash value of petitioner's property. David D. Bur's appraisal, presented by petitioner, indicated that the "highest and best use as vacant is future residential development." Moreover, D'Alessandro indicated that he purchased the property in order to develop it into a residential area. "A party may not take a position in the trial court and subsequently seek redress in an appellate court that is based on a position contrary to that taken in the trial court." *Blazer Foods, Inc v Restaurant Properties, Inc*, 259 Mich App 241, 252; 673 NW2d 805 (2003). Moreover, it is clear from the tribunal's opinion that it considered the highest and best use to be future residential development, because it relied upon and discussed the valuations and comparison sales presented by respondent's assessor, Marcia Smith, and Bur, which in turn were based on the conclusion that the highest and best use was residential development.

Next, petitioner asserts that the tribunal failed to make detailed findings of fact, which preclude meaningful appellate review. *Oldenburg v Dryden*, 198 Mich App 696, 700-701; 499 NW2d 416 (1993). We disagree. The tribunal set forth an 11-page opinion containing a detailed review of the evidence presented by the parties, its analysis of that evidence, its findings of fact and law.

Petitioner also argues that the tribunal erred in failing to account for the fact that petitioner's property was currently zoned agricultural in analyzing the highest and best use and failed to adjust for the differences in zoning between the sales comparisons that Smith used. Petitioner cites extensively from *The Appraisal of Real Estate*. This resource is not binding on this Court. See e.g. *Danse Corp v Madison Heights*, 466 Mich 175, 182; 644 NW2d 721 (2002). Nonetheless, with respect to zoning, *The Appraisal of Real Estate* recognizes that uses requiring zoning changes may be considered when analyzing the highest and best use: "[o]nly when there is a reasonable possibility that one of the prior, unacceptable conditions can be changed is it appropriate to proceed with the analysis. If, for example, current zoning does not permit a potential highest and best use, but there is a reasonable probability that the zoning could be changed, the proposed use could be considered on that basis." *The Appraisal Institute, The Appraisal of Real Estate* (Chicago: 11th ed, 1996), p 303. See also *Teledyne Continental Motors v Muskegon Twp*, 163 Mich App 188, 192; 413 NW2d 700 (1987) ("In determining true cash value, the assessor must consider the 'existing use' of property. MCL 211.27(1). However, this does not preclude consideration of other potential uses.")

Although petitioner argues that respondent and the trial court did not make any adjustments to value based on zoning, we note that petitioner bore the burden of establishing the true cash value of his property. MCL 205.737(3). In Bur's appraisal, he did not make any adjustments to the properties based on differences in zoning for agricultural and residential. The only adjustment he made to his six selected sample sales was to the third property, which was zoned for multi-family use. The first and fourth sale properties were zoned residential, and the second, fifth, and sixth properties were zoned agricultural; there was no adjustment for zoning to any of these properties. Further, Bur also indicated that although petitioner's property was zoned for agricultural use, it was master-planned for "single-family residential development" and

“[l]egally permissible uses include residential or agricultural use.” Petitioner provided no evidence on which the tribunal could rely to determine whether to reduce the true cash value of its property because it was zoned agricultural. The township assessor, Marcia Smith, testified that the entire township had been agricultural in the past, but was being developed as residential. More importantly, Bur indicated that “there’s not a significant—maybe even no difference in value, between a property that’s zoned agricultural and residential as of 12/31/07” because of the economic downturn and collapse of the real estate market. In addition, Smith testified that the properties were used in her comparison samples were zoned agricultural at the time of the sale. Although some of the property record cards reflected zoning designations other than agricultural, Smith explained that they had been changed, and we defer to the tribunal’s assessment of the credibility of the evidence. *Great Lakes Div of Nat’l Steel Corp*, 227 Mich App at 408.

In ruling, we note that determining the true cash value of a parcel of property is “not an exact science”; it involves examining and weighing the values provided by both parties with the goal of reaching a “well-supported conclusion that reflects the study of all factors that influence market value” of the property. *Great Lakes Div of Nat’l Steel Corp*, 227 Mich App at 398-399 (citations omitted). However, the tribunal is not required by any law “to quantify every possible factor affecting value.” *Id.* (citation omitted). Here, the parties both utilized the comparable sales approach in determining the true cash value of petitioner’s property. The tribunal’s opinion reflects that it extensively reviewed the parties’ evidence, analysis, selected comparison sales and adjustments, and conclusions, and determined whether they were reasonable. On the whole, the tribunal’s findings were supported by competent, material, and substantial evidence. *Meadowlanes Ltd Dividend Housing Ass’n*, 437 Mich at 482.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Jane E. Markey

/s/ Alton T. Davis