

STATE OF MICHIGAN
COURT OF APPEALS

PETOSKEY DUPLICATE BRIDGE,

Petitioner-Appellant,

UNPUBLISHED
January 23, 2018

v

TOWNSHIP OF RESORT,

Respondent-Appellee.

No. 335326
Tax Tribunal
LC No. 15-004270-TT

Before: MURPHY, P.J., and SAWYER and BECKERING, JJ.

PER CURIAM.

Petitioner owns a 3,688 square foot “bridge hall” that consists of a small meeting room, a large open meeting area, a foyer, a kitchen, an office, a mechanical storage room, two bathrooms (a male and a female restroom), and an extensive parking lot located within respondent Resort Township (the township) and in an area zoned one-family residential. This tax assessment dispute concerns the ad valorem taxation of petitioner’s real property and whether a sales-comparison approach, as advocated by petitioner, is the better valuation methodology than the cost-less-depreciation approach, as advanced by the township, in determining the true cash value of the property. The township’s appraisal was nearly \$200,000 more than petitioner’s appraisal. The Michigan Tax Tribunal (MTT) sided with the township, and petitioner appeals as of right. We affirm.

This case ultimately entails tax years 2015 and 2016. With respect to 2015, the township determined that the true cash value of petitioner’s property was \$594,000, with a taxable value of \$297,000, as confirmed by the board of review. In regard to 2016, the township found that the true cash value of the bridge hall was \$596,000, with a taxable value of \$297,891, as confirmed by the board of review. The township’s valuation of the property was determined by employing a cost-less-depreciation methodology through use of a “calculator” provided in the Michigan Assessor’s Manual. The township’s position was that the highest and best use of the bridge hall was as a clubhouse, which was the current use.¹ Petitioner, supported by an appraisal, maintained that the true cash value of the property for the years in question was \$400,000, with a

¹ There is no dispute that use of property as a clubhouse was a permissible use within an area zoned one-family residential.

taxable value of \$200,000. Petitioner's appraiser used a sales-comparison approach, examining and comparing residential properties on the basis that the subject property was zoned residential, was surrounded on three sides by residential structures, and served no true commercial purpose.² In his appraisal, petitioner's appraiser noted that the property was in "[a] mixed area of residential/multi family and commercial properties just southwest of" Petoskey. Petitioner's position was that the highest and best use of the bridge hall was as a residence, which would require the property to undergo a conversion. Petitioner's appraiser stated, "This limited use building is super adequate in both size and quality for the neighborhood[;] [s]hould be converted to residential use." He further indicated that "[c]onversion of [the bridge hall] into a functional single family unit is estimated to be from \$150,000.00 to \$200,000.00 and its highest & best use."

The hearing referee issued a proposed opinion and judgment affirming the township's assessment, reasoning as follows:

The Court of Appeals held in *Clark Equip Co[v Twp of Leoni]*, 113 Mich App 778; 318 NW2d 586 (1982),] and recently in . . . *Menard[, Inc v City of Escanaba]*, 315 Mich App 512; 891 NW2d 1 (2016),] . . . that when the highest and best use of the property is its existing use and the property is built to suit resulting in little to no secondary market for the property where it would still be used in its highest and best use, then the application of the sale-comparison approach would undervalue the property leaving the determination that the cost-less-depreciation approach is more appropriate. The property in this case is a property used in a manner not akin to a residential property[;] it would require intensive remodeling or restructuring to result in a residential property and its "obsolescence" noted by Petitioner, would require substantial changes to the subject for it to serve a residential purpose. The subject property's current market is also limited in the sense that an[] inadequate or distorted market exists for similar properties. . . . The most appropriate methodology in this matter is one which evaluates the subject property [at] its highest and best use, and current use, as a club house or . . . similar commercial structure. To value the subject property as a residential property[] and . . . compare [it] to single family homes[] would be to compare the subject property to a use which is not its own and frustrate the very purpose of the valuation or appraisal. The most reliable approach would be the cost less depreciation method which was applied by [the township] utilizing the state cost and assessors manual in accordance with state tax commission guidelines. The assessment is affirmed.

² Petitioner's appraiser also included an analysis under the cost-less-depreciation approach, concluding that the property had a value of \$402,450 pursuant to that approach. Petitioner, however, focused on the valuation derived from the sales-comparison approach in pursuing its challenge.

Petitioner filed exceptions to the referee's recommendation, which exceptions the MTT rejected, ruling:

The Tribunal has considered the exceptions and the case file and finds that the Hearing Referee properly considered the testimony and evidence submitted in the rendering of the Proposed Opinion and Judgment. More specifically, the Hearing Referee's determination that the highest and best use of the subject property is its current use is supported on the record. The Tribunal recognizes that Petitioner submitted photos showing the existence of residential properties near the subject property; however, this fact alone does not render the subject property's highest and best use residential. The totality of the circumstances surrounding the subject property's location, and reasonably probable use of the property supports the Hearing Referee's findings. Further, the Hearing Referee properly relied on the Court of Appeals' holding[s] in *Clark Equip Co* and *Menard* to determine "the application of a sales-comparison approach would undervalue the property leaving the determination that the cost-less-depreciation approach is more appropriate." Thus, the Hearing Referee's proposal to rely on the cost less depreciation method and affirm the assessment is supported.

On appeal, petitioner argues that the MTT committed an error of law by relying on *Clark Equip*, given that it was indirectly and effectively overturned, and on *Menard*, as it was wrongly decided. Petitioner further contends that, even if *Clark Equip* and *Menard* are legally sound, the MTT adopted an incorrect principle by relying on them, considering that they are factually distinguishable from the instant case. And petitioner additionally maintains that the MTT's determination of the true cash value was not supported by competent, material, and substantial evidence, where it rejected the detailed valuation prepared by petitioner's expert, and where the township only submitted its property record card in support of its position.

The MTT "has exclusive and original jurisdiction over . . . [a] proceeding for direct review of a final decision . . . relating to [an] assessment [or] valuation . . . under the property tax laws of this state." MCL 205.731(a). An appeal of an MTT decision is by right to this Court. MCL 205.753(1); MCR 7.203(A)(2). With respect to our standard of review, the Michigan Supreme Court in *Mich Props, LLC v Meridian Twp*, 491 Mich 518, 527-528; 817 NW2d 548 (2012), observed:

Review of decisions by the Tax Tribunal is limited. In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation. The Tax Tribunal's factual findings are final if they are supported by competent, material, and substantial evidence on the whole record. If the facts are not disputed and fraud is not alleged, our review is limited to whether the Tax Tribunal made an error of law or adopted a wrong principle. [Citations and quotation marks omitted.]

The interpretation and application of tax statutes are legal issues subject to de novo review. *Danse Corp v City of Madison Hts*, 466 Mich 175, 178; 644 NW2d 721 (2002).

The taxing authority of the state emanates from the Michigan Constitution, which provides in relevant part:

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not, after January 1, 1966, exceed 50 percent; and for a system of equalization of assessments. [Const 1963, art 9, § 3.]

MCL 211.27(1) defines the term “true cash value,” as referenced in Const 1963, art 9, § 3, providing as follows:

“[T]rue cash value” means 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. . . . In determining the 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

“True cash value is synonymous with fair market value.” *Great Lakes Div of Nat’l Steel Corp v City of Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998). Accordingly, an “assessment must reflect the probable price that a willing buyer and a willing seller would arrive at through arm’s length negotiation.” *Huron Ridge LP v Ypsilanti Twp*, 275 Mich App 23, 28; 737 NW2d 187 (2007). In determining the true cash value of property, the property must be assessed at its highest and best use. *Menard*, 315 Mich App at 522. The highest and best use of property means the most advantageous and profitable use the owner can make of the property, even when the property is presently used for a different purpose or is vacant, so long as there exists a market demand for such use. *Id.* The highest and best use of property simply requires the use to be legally permissible, financially feasible, physically possible, and maximally productive. *Detroit Lions, Inc v City of Dearborn*, 302 Mich App 676, 697; 840 NW2d 168 (2013). Existing use can be indicative of the use to which a potential purchaser would put the property; therefore, existing use is relevant to determining the fair market value of property. *Id.*

The MTT “is under a duty to apply its expertise to the facts of a case in order to determine the appropriate method of arriving at the true cash value of property, utilizing an approach that provides the most accurate valuation under the circumstances.” *Great Lakes*, 227 Mich App at 389. The MTT must “make its own, independent determination of true cash value.” *Id.* The goal, ultimately, is for the MTT to employ a valuation process that leads to a well-supported conclusion reflecting the study of all factors influencing market value, which process can entail reasonable approximations and a considerable amount of judgment, absent the need to quantify every possible value factor. *Id.* at 398-399. “Regardless of the valuation approach employed, the final value determination must represent the usual price for which the subject property would sell,” and an appraiser must analyze “data mathematically to determine an

estimate of 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 Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991) (citation omitted).

In *Great Lakes*, 227 Mich App at 390, this Court discussed the various approaches to valuation, stating:

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. However, variations of these approaches and entirely new methods may be useful if found to be accurate and reasonably related to fair market value. Regardless of which approach is used, the value determined by the Tax Tribunal must be the usual price for which the property would sell. The task of approving or disapproving specific valuation methods or approaches has fallen to the courts because the Legislature did not direct that specific methods be used. [Citations omitted.]

“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.” *Id.* at 391. Quoting the Michigan Assessor’s Manual, our Supreme Court in *Antisdale v City of Galesburg*, 420 Mich 265, 276 n 1; 362 NW2d 632 (1984), explained the cost-less-depreciation method:

“In reality the cost approach is another type of comparative or market data approach. The land is considered to be unimproved and valued by methods (stated elsewhere in the manual). The reproduction cost or replacement cost of the improvements is developed by comparison with the cost of new improvements, based on current prices of labor and materials for construction of similar improvements.”

“For most structures, depreciation must be deducted from this estimate of new cost because an old or used property is usually less valuable than a similar new one. This loss in value (depreciation) may be divided into three categories which are often estimated separately: physical deterioration, functional obsolescence, and economic obsolescence.”

We cannot conclude that the MTT made an error of law or adopted wrong principles in upholding the township’s 2015 and 2016 tax assessments of petitioner’s property. On examination of the photographs of the bridge hall and consideration of the hall’s structure, dimensions, and layout, we highly question petitioner’s view that the highest and best use of the hall is as a residence, given that such use would require an extensive alteration of the entire property, entailing a major construction project costing \$150,000 to \$200,000. Thus, while converting the bridge hall to a home may be legally permissible and physically possible, petitioner has not shown that doing so would be financially feasible and maximally productive. See *Detroit Lions*, 302 Mich App at 697. Simply because the bridge hall is within an area that is zoned residential and has some homes around it does not mean that its highest and best use

would be as a residence or home. The property is essentially commercial in nature and character, and the general area is comprised of a mix of residential and commercial properties. Petitioner argues that “[t]he only potential purchaser of the property on tax day is a buyer who will convert the property to a home.” Petitioner, however, provides no basis for this claim, other than a general contention that the bridge hall would be difficult to sell in its current form. We do not find this argument persuasive, as a small market for a particular property does not mean that the property is not being put to its highest and best use. Taking petitioner’s theory to its logical end, conversion of property to an entirely different use would almost always have to be contemplated as to property for which there is a limited market. Rather, as reflected below, a small market provides a basis to employ a cost-less-depreciation approach for purposes of valuation, as opposed to a sales-comparison approach. We find no error in the MTT’s determination that the highest and best use of the property is as a bridge hall or clubhouse, i.e., its existing use.

Moreover, we hold that the MTT did not err in accepting the township’s cost-less-depreciation approach to valuation and in rejecting the sales-comparison approach advanced by petitioner. We conclude that *Clark Equip* and *Menard* stand for the proposition that when determining the true cash value of a property with a limited market, a sales-comparison approach may have to give way to a cost-less-depreciation approach in order to more accurately assess the property’s value. Construing *Clark Equip*, the *Menard* panel stated:

In other words, *Clark* provides that (1) when the HBU [highest and best use] of the property is its existing use and (2) when, because the property was built-to-suit, there would be little to no secondary market for the property to be used at its HBU, then the strict application of the sales-comparison approach would undervalue the property, so the cost-less-depreciation approach is more appropriate.

Although petitioner argues that *Clark Equip* was effectively overruled and that *Menard* was wrongly decided, the *Menard* panel favorably cited *Clark Equip*, *Menard* is binding precedent, MCR 7.215(J)(1), and our Supreme Court declined to grant leave in *Menard* after recently conducting oral argument in the case, 501 Mich 899 (2017). Accordingly, we reject petitioner’s argument that *Clark Equip* and *Menard* are bad law. Furthermore, in *Detroit Lions*, 302 Mich App at 700, this Court observed that “[i]t is well settled that the cost-less-depreciation method is particularly appropriate for valuing special-purpose properties with a limited or inadequate market.” The bridge hall is just such a property, even by petitioner’s own estimation. Reversal is unwarranted.³

Petitioner additionally argues that the MTT’s determination of the property’s true cash value was not supported by competent, material, and substantial evidence, where it rejected the detailed valuation prepared by petitioner’s expert, and where the township only submitted its

³ As noted earlier, petitioner’s appraiser included an analysis under the cost-less-depreciation approach, arriving at a value of \$402,450; however, petitioner, when filing its objection to the referee’s recommendation, chose to argue in favor of the sales-comparison approach, absent mention of the valuation based on cost less depreciation.

property record card in support of its position. We have already held that the MTT did not err in rejecting petitioner's appraisal and valuation. And petitioner fails to cite any binding authority for the proposition that it is improper for the MTT to consider an assessor's property record card as evidence of true cash value. Petitioner does point to an MTT Administrative Guidance which provides that the MTT should disregard property record cards that do not fully display value calculations, as they constitute unreliable evidence. Here, however, the property record card submitted by the township contained value calculations. Petitioner appears to complain about the township assessor utilizing the Michigan Assessor's Manual. However, MCL 211.10e provides that "[a]ll assessing officials . . . shall use only the official assessor's manual or any manual approved by the state tax commission, consistent with the official assessor's manual, with their latest supplements, as prepared or approved by the state tax commission as a guide in preparing assessments." In sum, the MTT's findings were supported by competent, material, and substantial evidence. Reversal is unwarranted.

Affirmed. Having fully prevailed on appeal, the township is awarded taxable costs under MCR 7.219.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Jane M. Beckering