

STATE OF MICHIGAN
COURT OF APPEALS

KARTER G. LANDON,

Petitioner-Appellant,

v

CITY OF FLINT,

Respondent-Appellee.

UNPUBLISHED

November 24, 2020

Nos. 350187, 350188

Tax Tribunal

LC Nos. 18-003392; 18-003389

Before: REDFORD, P.J., and RIORDAN and TUKEL, JJ.

PER CURIAM.

In Docket No. 350187, petitioner appeals as of right a final opinion and judgment of the Tax Tribunal that determined the true cash value (TCV), state equalized value (SEV), and taxable value (TV) for tax years 2018 and 2019 for a parcel of real property located on Lincoln Avenue in Flint, Michigan (the Lincoln Avenue property). In Docket No. 350188, petitioner appeals another final opinion and judgment of the Tax Tribunal that determined the TCV, SEV, and TV for tax years 2018 and 2019 for a parcel of real property located on Corunna Road in Flint, Michigan (the Corunna Road property). In each case, petitioner argues that the Tax Tribunal erred in its determination of the properties’ respective TCVs by failing to apply the market approach properly and by failing to support its findings with competent, material, and substantial evidence. Being satisfied the Tax Tribunal correctly applied the law to the facts of the case, we affirm.

I. FACTUAL BACKGROUND

These consolidated cases¹ arise from two petitions appealing respondent’s property tax assessments on the Lincoln Avenue and Corunna Road properties. The Flint City Assessor’s Office sent petitioner a property tax assessment listing the SEV and the TV for each property for

¹ *Karter G. Landon v City of Flint*, unpublished order of the Court of Appeals, entered September 9, 2019 (Docket Nos. 350187, 350188). This order consolidated Docket No. 350187 and Docket No. 350188.

the 2018 tax year. The Lincoln Avenue property had an SEV of \$8,100 and a TV of \$6,025. The Corunna Road property had an SEV of \$9,000 and a TV of \$5,562. Petitioner protested the property tax assessments at a hearing of the Board of Review for the Flint City Assessor's Office which concluded that the SEVs and TVs of the properties were correct. Petitioner filed two petitions with the Tax Tribunal appealing the Board of Review's rulings respecting the two properties. Petitioner argued that the TCV of the Lincoln Avenue property equaled \$7,000 resulting in a TV of \$3,500. Petitioner argued that the TCV of the Corunna Road property equaled \$5,000 resulting in a TV of \$2,500.

The parties do not dispute the general attributes and amenities of each property. The Lincoln Avenue property, built in 1929, is a vinyl-sided, three-bedroom home with 780 square feet living space, one full bathroom, a one-car garage, and no finished basement. Similarly, the Corunna Road property, built in 1927, is an asphalt-sided, two-bedroom home with 927 square feet living space, one full bathroom, a two-car garage, and no finished basement.

Petitioner and respondent each submitted evidence to the Tax Tribunal of properties they considered comparable to the Lincoln Avenue and Corunna Road properties. Both parties supported the use of the market approach for the determination of the subject properties' valuation.

Petitioner presented a summary of 24 properties he contended were comparable to the Lincoln Avenue property that sold during 2017 at prices ranging from \$4,500 to \$9,000. He similarly presented a summary of 13 properties he contended were comparable to the Corunna Road property that sold during 2017 at prices ranging from \$4,000 to \$8,500. Petitioner also submitted real estate listings of properties that he contended were comparable to the Lincoln Avenue property that sold at prices ranging from \$4,250 to \$9,800, and real estate listings of properties that he contended were comparable to the Corunna Road property that sold at prices ranging from \$4,500 to \$12,500. He also provided a set of undated photographs of a number of unidentified properties. Petitioner calculated the market value for the Lincoln Avenue property at \$7,300 and the market value of the Corunna Road property at \$6,500.

Respondent presented three comparable properties near the Lincoln Avenue property that sold within the last six months of 2017 for \$19,500, \$12,000, and \$14,000, and three comparable properties near the Corunna Road property that sold within the last six months of 2017 for \$16,500, \$22,500, and \$20,000. For each property, respondent presented a chart comparing the various features and sale prices for its comparable properties for the two subject properties. Respondent contended that the Tax Tribunal should find that the Lincoln Avenue property had a TCV of \$13,800, an SEV of \$6,900, and a TV of \$6,025, and that the Corunna Road property had a TCV of \$16,600, an SEV of \$8,300, and a TV of \$5,562.

The Tax Tribunal issued a final opinion and judgment regarding each property. The Tax Tribunal explained that it reviewed the evidence presented by the parties but found petitioner's evidence unpersuasive primarily because it lacked organization and sufficient data for the Tax Tribunal to conduct a comparative analysis of the properties. The Tax Tribunal observed that petitioner relied on unsupported conclusory statements, assumptions, and accusations. The Tax Tribunal determined that respondent presented credible evidence of comparably-priced properties. Regarding the Lincoln Avenue property, the Tax Tribunal found the third property presented by respondent a suitable comparable property for valuation purposes. That property featured a house

with vinyl-siding, 717 square feet living space, built in 1926, with similar amenities, located within one-half mile of the Lincoln Avenue property that recently sold for \$14,000. Based on the comparison, the Tax Tribunal ruled that the TCV of the Lincoln Avenue property equaled \$12,000 with an SEV of \$6,000 and a TV of \$6,000. For the Corunna Road property, the Tax Tribunal found the first property presented by respondent a suitable comparable property for comparison purposes because it featured a house with vinyl-siding, 816 square feet living space, built in 1924, with similar amenities, located less than one mile from the Corunna Road property that sold recently for \$16,500. Based on the comparison, the Tax Tribunal ruled that the TCV of the Corunna Road property equaled \$16,600, with an SEV of \$8,000, and a TV of \$5,695.

II. STANDARD OF REVIEW

We review decisions of the Tax Tribunal as governed by Const 1963, art 6, § 28 which in relevant part provides:

All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record.

* * *

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.

Error of law or the adoption of wrong principles occurs under this constitutional provision when the Tax Tribunal's decision is not supported by competent, material, and substantial evidence. *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 388; 576 NW2d 667 (1998). When facts are undisputed and fraud is not alleged, our review is limited to whether the Tax Tribunal made an error of law or adopted the wrong principle. *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 482-483; 473 NW2d 636 (1991). An "error of law" occurs where "the Tax Tribunal's decision is not supported by competent, material, and substantial evidence on the whole record." *Forest Hills Coop v Ann Arbor*, 305 Mich App 572, 586; 854 NW2d 172 (2014). To the extent that petitioner's issue concerns whether the TCVs of the properties were correctly assessed, "appellate review is limited to whether the Tax Tribunal made an error of law or adopted a wrong legal principle." *Id.* at 587 (citation omitted). Additionally, we review issues of statutory construction de novo. *Id.*

Petitioner failed to raise before the Tax Tribunal whether it properly applied the market approach and whether its calculations were supported by competent, material, and substantial evidence. Therefore, these issues are unpreserved. See *Toaz v Dep't of Treasury*, 280 Mich App 457, 463; 760 NW2d 325 (2008) (stating that a petitioner must raise an issue before the Tax

Tribunal to preserve it for review). Consequently, we review these issues for plain error. *Nat'l Wildlife Federation v Dep't of Environmental Quality (No 2)*, 306 Mich App 369, 373; 856 NW2d 394 (2014). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) the error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Demski v Petlick*, 309 Mich App 404, 427; 873 NW2d 596 (2015) (quotation marks and citation omitted). An error affects a party's substantial rights if it "caused prejudice, i.e., it affected the outcome of the proceedings." *Lawrence v Mich Unemployment Ins Agency*, 320 Mich App 422, 443; 906 NW2d 482 (2017) (quotation marks and citation omitted).

III. ANALYSIS

Petitioner argues that the Tax Tribunal reached an inaccurate result regarding the properties' respective TCVs because it erred in its implementation of the market approach for assessment of TCV. Further, petitioner argues that the Tax Tribunal failed to support its calculations of TCV for each property with competent, substantial, and material evidence. We disagree.

A property tax assessment is determined on the basis of a calculation of the property's TCV. Generally, a property's TCV is synonymous with its fair market value. *Jones & Laughlin Steel Corp v Warren*, 193 Mich App 348, 353; 483 NW2d 416 (1992). MCL 211.27(1) in relevant part defines TCV as follows:

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

* * *

In determining the true cash value, the assessor shall also consider the advantages and disadvantages of location; quality of soil; zoning; existing use

However, "the selling price of a particular piece of property is not conclusive as evidence of the value of that piece of property." *Antisdale v Galesburg*, 420 Mich 265, 278; 362 NW2d 632 (1984) (citations omitted).

"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*, 193 Mich App at 353. The market approach which the parties agreed upon and the Tax Tribunal used in this case "is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading." *Id.* Under the market approach, the value of a property "is estimated by comparison with similar properties which have recently been sold or offered for sale in the open market." *Antisdale*, 420 Mich at 276 n 1 (quotation marks and citations omitted). The Tax Tribunal must "make its own, independent determination of true cash value." *Great Lakes Div of Nat'l Steel Corp*, 227 Mich App at 389 (citation omitted). The Tax Tribunal "is not bound to accept the parties' theories of valuation. It may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination of true cash value." *Id.* at 390 (citation omitted).

A petitioner challenging an assessment bears the “burden of establishing the property’s true cash value.” *Forest Hills Coop*, 305 Mich App at 588. The petitioner’s burden of proof “encompasses both the burden of persuasion, which never shifts during the course of the hearing, and the burden of going forward with evidence, which may shift to the opposing party.” *Id.* (citation omitted). “In a property tax dispute, the petitioner must prove by the greater weight of the evidence that the disputed assessment was too high on the basis of the Tax Tribunal’s findings of true cash value.” *Id.* (citation omitted).

Petitioner contends that the Tax Tribunal erred by completely ignoring his evidence and relying solely on one comparable sales property presented by respondent for each property. The record, however, establishes that the Tax Tribunal considered all of the evidence presented by the parties and evaluated it, then determined that respondent presented more credible evidence. The Tax Tribunal explained that petitioner failed to present credible evidence usable for valuation because petitioner did not present a conventional analysis of comparable properties. Petitioner did not proffer a rational or usable sales analysis, failed to consistently apply adjustments to properties modifying their values, and did not present an orderly array of photographic evidence of the comparable sales properties, among other evidentiary issues. The record supports the Tax Tribunal’s analysis and conclusions regarding the deficiencies of petitioner’s evidence and the manner in which petitioner presented the evidence. Petitioner has failed to establish plain error in this regard.

The Tax Tribunal also found unpersuasive some of respondent’s evidence which consisted of presentation of three comparable sales from the nearby area surrounding the Lincoln Avenue property as well as three comparable sales from the nearby area near the Corunna Road property because of some inconsistencies regarding sales data. Nevertheless, the Tax Tribunal concluded that respondent presented more reliable and credible evidence for its use in determining the properties’ TCVs. Petitioner’s assertion that the Tax Tribunal dismissed petitioner’s evidence out of hand lacks merit. The record actually indicates the Tax Tribunal made a measured and complete analysis of the evidence presented by both petitioner and respondent, and declined to utilize petitioner’s evidence in making its independent determination of the properties’ TCVs. Petitioner has failed to establish plain error in this regard.

Regarding petitioner’s argument that the Tax Tribunal erred in its implementation of the market approach, the record establishes that the Tax Tribunal evaluated the comparable properties presented by the parties and found that respondent presented comparable properties that sufficiently permitted accurate comparison and calculation of the TCVs of petitioner’s properties. The Tax Tribunal compared the Lincoln Avenue property to a nearby property comparable in size, age, and features which had recently sold for \$14,000. Based on that comparable property, the Tax Tribunal determined that the Lincoln Avenue property’s TCV equaled \$12,000. Similarly, the Tax Tribunal compared the Corunna Road property to a comparable property that had recently sold for \$16,500, and determined that the Corunna Road property’s TCV equaled \$16,600. The record indicates that the Tax Tribunal properly used the market approach. It derived the value of comparable properties in the near vicinity of the subject properties that had recently sold and performed a comparative analysis of those properties to the subject properties to derive their respective TCVs. *Antisdale*, 420 Mich at 276 n 1. Petitioner has failed to establish plain error in this regard.

Petitioner also contends that respondent failed to present enough evidence for the Tax Tribunal to accurately assess the properties' TCVs. Specifically, petitioner argues that the Tax Tribunal's calculation of the TCVs lacked support by substantial, material, and competent evidence. Generally, "[t]he Tax Tribunal's factual findings are final if they are supported by competent, material, and substantial evidence on the whole record." *Forest Hills Coop*, 305 Mich App at 586 (citation omitted). Substantial evidence is "evidence that a reasonable mind would accept as sufficient to support a conclusion." *Inter Coop Council v Tax Tribunal Dep't of Treasury*, 257 Mich App 219, 221-222; 668 NW2d 181 (2003) (quotation marks and citation omitted). Substantial evidence must be "more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence." *Garfield Mart, Inc v Dep't of Treasury*, 320 Mich App 628, 642; 907 NW2d 880 (2017) (quotation marks and citation omitted). In this case, the Tax Tribunal properly considered the evidence submitted by the parties and gleaned from the evidence the most comparable properties based upon numerous factors. The record reflects that the Tax Tribunal based its decision on competent, material, and substantial evidence on the whole record. Therefore, petitioner has failed to establish plain error in this regard.

Petitioner contends the Tax Tribunal erroneously ignored the bulk of the evidence presented by both parties, and instead chose to base its calculation of TCVs merely on the two comparable properties presented by respondent. The record, however, indicates that petitioner and respondent presented an abundance of evidence that the Tax Tribunal considered and analyzed but found most of the proposed comparable properties information too flawed, out-of-date, or otherwise inaccurate for a proper determination of TCVs under the market approach. The Tax Tribunal found particularly applicable evidence of two comparable properties relied upon by respondent. Petitioner fails to acknowledge the principle that the Tax Tribunal's findings need only be supported by "more than a scintilla of evidence." *Garfield Mart, Inc*, 320 Mich App at 642. Moreover, "[t]he weight to be accorded to the evidence is within the Tax Tribunal's discretion." *Drew v Cass Co*, 299 Mich App 495, 501; 830 NW2d 832 (2013) (quotation marks and citation omitted). Although petitioner submitted a greater bulk of evidence, the Tax Tribunal properly found respondent's evidence more credible and sufficient for determination of the properties' values. The record establishes that the evidence it considered constituted "competent, material, and substantial evidence." *Forest Hills Coop*, 305 Mich App at 586 (citation omitted). Generally, "this Court may not second-guess the [Tax Tribunal's] discretionary decisions regarding the weight to assign to the evidence." *Drew*, 299 Mich App at 501. In this case, the Tax Tribunal properly analyzed the evidence presented by the parties, correctly used the market approach, and accurately determined the properties' respective TCVs, SEVs, and TVs. Petitioner failed to meet his burden of proof, and therefore, has failed to establish that the Tax Tribunal erred. Therefore, petitioner has failed to establish that the Tax Tribunal committed plain error affecting his substantial rights.

Affirmed.

/s/ James Robert Redford
/s/ Michael J. Riordan
/s/ Jonathan Tukel