

STATE OF MICHIGAN
COURT OF APPEALS

CHARTER OAK HOMES,

Plaintiff-Appellant,

v

CITY OF DETROIT,

Defendant-Appellee.

UNPUBLISHED
October 6, 2011

No. 297509
Tax Tribunal
LC No. 00-354554

Before: MURPHY, C.J., and FITZGERALD and TALBOT, JJ.

PER CURIAM.

Charter Oak Homes (Charter Oak) challenges the opinion and judgment of the Michigan Tax Tribunal (MTT) finding in favor of the city of Detroit (“City”) regarding the assessed value of a property. We vacate and remand.

Charter Oak is a local property developer contesting the City’s 2008 taxable and assessed valuation of \$81,000 for property located at 2555 Brush. The subject residential real property is an unsold unit within a development that involved the razing of dilapidated structures and building of new townhouses over a two-block area within the City. Charter Oak asserted that it made improvements and/or replaced the sewer system, utilities and roadways serving the development, which comprises a neighborhood enterprise zone (NEZ). Charter Oak contends that the valuation is in error and alleges the assessed and taxable value of the property to be \$50,000.

Charter Oak filed a petition with the Tax Tribunal appealing the local Board of Review, contending that the City’s assessment was in violation of statutory mandates as it exceeds 50 percent of the property’s true cash value.¹ The City failed to file an answer to the petition and the Tribunal entered an order placing the City in default. Despite being permitted 21 days to cure the default, the City failed to act and Charter Oak filed a motion seeking a default hearing. Once again, at the scheduled default hearing, the City failed to appear or respond. Charter Oak indicated that, despite ongoing efforts, it was unable to obtain any information from the City regarding the property or how it calculated or derived the challenged taxable value. When

¹ See MCL 211.27 and MCL 211.27a.

queried by the Tribunal, counsel for Charter Oak indicated it lacked proof of value due to the failure to obtain information from the City. Yet, counsel did explain how Charter Oak arrived at their valuation of the property, stating:

When we take the numbers that the city has on their schedule, it doesn't correspond to any of our numbers, other than figuring out what our cost numbers are. By that I mean, the city numbers – the city address and our address are different. The post office address is our address; the city address, we were told, was something but it's not. I don't know what's going on here.

We've been dealing in this total subdivision I don't know how many times. This is the last case left in there. And I took my numbers from the other cases that have been adjudicated or agreed to. I can't get anybody to talk to, because we've had two different people from the City of Detroit on the other four-block area, and so we don't know who's what. And I took those numbers . . . I'm disclosing where I got those numbers from and I got those numbers from the other cases, the six other cases of houses that we have in that subdivision that have been sold and settled.

And the taxable values were – there were only two models, and I took it from another model that was similar to this.

The Tribunal issued an opinion and judgment in favor of the City finding that Charter Oak “was not able to prove that the state equalized and taxable value . . . [were] incorrectly calculated.” Notably, the Tribunal's opinion lacked any designated findings of fact. Charter Oak filed a motion for reconsideration that was denied by the Tribunal based, again, on the failure of Charter Oak to carry its burden of proof. This appeal ensued.

Charter Oak contends that the Tribunal committed an error of law when it required Charter Oak to meet a burden of proof despite the City's ongoing lack of cooperation and default status. In evaluating Charter Oak's appellate claim we recognize:

This Court's review of Tax Tribunal decisions is very limited. On appeal, absent a claim of fraud, this Court can determine only whether the tribunal committed an error of law or adopted a wrong legal principle. Factual findings that are supported by competent, material, and substantial evidence on the whole record will not be disturbed on appeal.²

² *Columbia Assoc, LP v Dep't of Treasury*, 250 Mich App 656, 665; 649 NW2d 760 (2002) (internal citations omitted).

We further acknowledge that this Court will not undertake to assess a witness' credibility or the weight attributed to evidence as both are within the discretion of the Tribunal.³ Yet,

[w]hile this Court is bound by the Tax Tribunal's factual determinations and may properly consider only questions of law under this section, a Tax Tribunal decision that is not supported by competent, material, and substantial evidence on the whole record is an "error of law" within the meaning of Const. 1963, art. 6, § 28. Substantial evidence must be more than a scintilla of the evidence, although it may be substantially less than a preponderance of the evidence. "Substantial" means evidence that a reasonable mind would accept as sufficient to support the conclusion.⁴

The burden was on Charter Oak to establish the true cash value of the subject property.⁵ "This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party."⁶ In turn, the phrase "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."⁷ Our Supreme Court has indicated that "the statutory definition of true cash value-'the usual selling price'-requires that actual facts be a significant consideration in the valuation of property."⁸

Contrary to the Tribunal's indication, Charter Oak did submit proof in the form of counsel's indication of the method used for deriving its proposed assessed and taxable values, citing similar models within the same development that had already been negotiated or adjudicated regarding their assessed valuations. As the City was in default and did not appear or submit documentation for any of the hearings, the Tribunal had only the value alleged by the City without any supporting documentation or method of calculation. At oral argument before this Court, counsel for the City acknowledged that the statements of Charter Oak's counsel before the Tribunal impliedly served as a submission of evidence as there was no objection at the time the information was proffered.

We find, as legal error, the failure of the Tribunal to perform its duty in simply "rubber stamping" the valuation of the City and failing to engage in an independent determination of the

³ See *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 407; 576 NW2d 667 (1998) and *Teledyne Continental Motors, Inc v Muskegon Twp*, 163 Mich App 188, 191; 413 NW2d 700 (1987).

⁴ *Great Lakes Div of Nat'l Steel Corp*, 227 Mich App at 388-389.

⁵ MCL 205.737(3).

⁶ *Jones & Laughlin Steel Corp*, 193 Mich App 348, 354-355; 483 NW2d 416 (1992).

⁷ MCL 211.27(1).

⁸ *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 638; 462 NW2d 325 (1990).

value of the subject property. The ruling of the Tribunal is particularly suspect given the default status of the City in this matter. “Even if the tribunal had correctly concluded that petitioner's proofs had failed, the tribunal still would be required to make an independent determination of the true cash value of the property. The tribunal may not automatically accept a respondent's assessment, but must make its own findings of fact and arrive at a legally supportable true cash value.”⁹ In sum, we find that the Tribunal’s determination was not “supported by competent, material, and substantial evidence on the whole record.”¹⁰

Based on the Tribunal’s error of law in failing to independently determine the true cash value of the property, we vacate its judgment and remand this matter back to the Tribunal for further consideration. By way of this Opinion, we do not alter the default status of the City in the Tribunal proceedings.

Vacated and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ E. Thomas Fitzgerald
/s/ Michael J. Talbot

⁹ *Jones & Laughlin Steel Corp*, 193 Mich App at 355.

¹⁰ *Columbia Assoc, LP v Dep’t of Treasury*, 250 Mich App at 665.