

STATE OF MICHIGAN
COURT OF APPEALS

DOUGLAS WITALEC and JOANNE WITALEC,
Petitioners-Appellants,

UNPUBLISHED
December 20, 2011

v

TOWNSHIP OF WEST BLOOMFIELD,
Respondent-Appellee.

No. 299935
Tax Tribunal
LC No. 00-326515

Before: CAVANAGH, P.J., and SAWYER and METER, JJ.

PER CURIAM.

Petitioners appeal as of right an order of the Michigan Tax Tribunal setting the taxable value (TV) of petitioners' property for tax years 2006, 2007, and 2008. We affirm.

Petitioners began construction of their personal residence in 2004. The construction was completed in 2005. Petitioners challenged respondent's tax year 2006 assessment of their property to the board of review, which lowered the property's assessed value. Petitioners sought a further reduction before the tribunal. At various stages throughout the tribunal's proceedings, petitioners asserted the property's correct TV for tax year 2006 was \$323,904, \$329,516, and \$370,650.

On appeal, petitioners argue that the tribunal erred as a matter of law by adding 50 percent of the new construction's true cash value (TCV) from 2004 and 2005 to the property's TV for tax year 2006. Petitioners argue that the tribunal should have only added 50 percent of the new construction's TCV from 2005 to the property's TV for tax year 2006. We agree.

Review of the Michigan Tax Tribunal is governed by Article VI, § 28 of the Michigan Constitution. *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 482; 473 NW2d 636 (1991). Where there is no allegation of fraud, this Court's review is "limited to whether the tribunal made an error of law or adopted a wrong principle. [This Court accepts] the factual findings of the tribunal as final, provided they are supported by competent, material, and substantial evidence." *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990); see, also, Const 1963, art 6, § 28. "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence required in most civil cases." *Dow Chemical Co*, 185 Mich App at 463. At a minimum, "[s]ubstantial evidence is that which a reasonable mind would accept as adequate to support a decision." *In Re Kurzyniec Estate*, 207 Mich App 531, 537; 526 NW2d 191 (1994).

Const 1963, art IX, § 3, states as follows:

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. *For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred.* [Italics added.]

The italicized language was added by the Michigan voters to limit increases in property taxes. *Kok v Cascade Charter Twp*, 255 Mich App 535, 539; 660 NW2d 389 (2003).

The TV of property may be increased by “additions” under MCL 211.27a, which states:

(1) Except as otherwise provided in this section, property shall be assessed at 50% of its true cash value under section 3 of article IX of the state constitution of 1963.

(2) Except as otherwise provided in subsection (3), for taxes levied in 1995 and for each year after 1995, the taxable value of each parcel of property is the lesser of the following:

(a) The property’s taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions. For taxes levied in 1995, the property’s taxable value in the immediately preceding year is the property’s state equalized valuation in 1994.

(b) The property’s current state equalized valuation.

* * *

(11) As used in this section:

(a) “Additions” means that term as defined in section 34d.

MCL 211.34d(1)(b) states that “additions” include “new construction,” which is defined as follows:

As used in this subparagraph, “new construction” means property not in existence on the immediately preceding tax day and not replacement construction. . . . For purposes of determining the taxable value of property under section 27a,

the value of new construction is the true cash value of the new construction multiplied by 0.50. [MCL 211.34d(1)(b)(iii).]

The tribunal calculated the property's TV for tax year 2006 largely in accordance with the formula established in *Kok*, 255 Mich App at 543. First, the tribunal added the applicable CPI of 1.033 to the TV for tax year 2005 ($1.033 \times \$247,390 = \$255,553$). Second, the tribunal calculated 50 percent of the TCV of the house for tax year 2006 ($\$395,388 \times 0.5 = \$197,694$). Third, the tribunal added these two numbers ($\$197,694 + \$255,553 = \$453,247$). This \$453,247 was the property's initially calculated TV for tax year 2006. However, the tribunal noted that the property had a TCV of \$867,000 for tax year 2006 ($\$471,309 + \$352 + \$395,338 = \$867,000$). Because a property's TV cannot exceed 50 percent of the property's TCV, the tribunal lowered the property's TV for tax year 2006 from \$453,247 to \$433,500 ($\$867,000 \times 0.5 = \$433,500$). See Const 1963, art IX, § 3; MCL 211.27a(2).

The tribunal appears to have committed an error. Although the new construction occurred in calendar years 2004 and 2005, the tribunal added the entire TCV of the new construction in tax year 2006.¹ Thus, it appears that the tribunal considered the new construction entirely completed in calendar year 2005 alone. This by itself is not error because the house's TCV for tax year 2004 would have been "correspondingly higher" if the tribunal had allocated the two-year construction differently. See *Kok v Cascade Charter Twp (After Remand)*, 265 Mich App 413, 418-419; 695 NW2d 545 (2005). However, the property's TV for tax year 2005 included a \$15,250 "addition." This \$15,250 was included in the property's TV of \$247,390 for tax year 2005. And, the tribunal used this \$247,390 amount to determine the property's TV for tax year 2006 ($1.033 \times \$247,390 = \$255,553$). The tribunal also used the house's TCV to determine the property's TV for tax year 2006. Therefore, the \$15,250 amount was added to the property's TV for tax year 2005 and again for tax year 2006. Under *Kok*, the tribunal should have reduced the property's TV for tax year 2006 to take into account the previously included \$15,250 "addition." Thus, the tribunal should have added \$182,444 (not \$197,694) as an "addition" for tax year 2006 ($\$197,694 - \$15,250 = \$182,444$).

Petitioners' appeal nevertheless must fail because they cannot show prejudice. See *Community Assoc v Meridian Charter Twp*, 110 Mich App 807, 812; 314 NW2d 490 (1981). Assuming petitioners correctly argue that the tribunal calculated the property's TV for tax year 2006 by adding the "additions" from both calendar year 2004 and calendar year 2005, petitioners did not suffer any harm. The "addition" included in the property's TV for tax year 2005 was

¹ Petitioners' brief on appeal also contains numerous presentation and calculation errors. For example, petitioners' calculations are premised on a TV for tax year 2004 of \$113,465. Petitioners do not provide a supporting citation for this amount. See *Begin v Michigan Bell Telephone Co*, 284 Mich App 581, 590; 773 NW2d 271 (2009) ("A party may not leave it to this Court to search for the factual basis to sustain or reject its position, but must support its position with specific references to the record."). Further, petitioners' calculations assume respondent added \$131,315 as an "addition" in tax year 2005. However, the 2005 assessment record clearly states that Appellee added \$15,250 as an "addition" in tax year 2005.

\$15,250. The tribunal used \$197,694 as the “addition” for tax year 2006. At most, therefore, the TV for tax year 2006 was overstated by \$15,250 ($\$197,694 - \$15,250 = \$182,444$).

However, the tribunal reduced the property’s TV for tax year 2006 from \$453,247 to \$433,500. Had the tribunal used the \$182,444 amount instead of the \$197,694 amount, the TV for tax year 2006 would have remained at \$433,500, as the property’s TV for tax year 2006 could not exceed \$433,500 under any circumstances ($\$182,444 + \$255,553 = \$437,997$). The property’s TV for tax year 2006 does not change under either calculation. So, the TV for tax year 2007 would have utilized the same base amount from tax year 2006, and the TV for tax year 2008 would have utilized the same base amount from tax year 2007.

Affirmed.

/s/ Mark J. Cavanagh

/s/ David H. Sawyer

/s/ Patrick M. Meter