

STATE OF MICHIGAN  
COURT OF APPEALS

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BRYAN SCOPEL,

Petitioner-Appellant,

v

CITY OF GROSSE POINTE PARK,

Defendant-Appellee.

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UNPUBLISHED  
March 27, 2012

No. 301045  
Tax Tribunal  
LC No. 00-353406

Before: FITZGERALD, P.J., and WILDER and MURRAY, JJ.

PER CURIAM.

Petitioner appeals as of right from the final opinion and judgment of the Michigan Tax Tribunal determining the true cash value (TCV) and taxable value of real property located in defendant city of Grosse Pointe Park (the city) for tax years 2009 and 2010. We affirm.

Petitioner is the owner of a home located on Three Mile Road in Grosse Pointe Park. Grosse Pointe Park utilizes the “cost-less-depreciation” method of valuation for real property. Under the cost-less-depreciation approach, “true cash value<sup>1</sup> is derived by adding the estimated land value to an estimate of the current cost of reproducing or replacing improvements and then deducting the loss in value from depreciation in structures, i.e., physical deterioration and functional or economic obsolescence.” *Wayne County v Michigan State Tax Comm’n*, 261 Mich App 174, 208; 682 NW2d 100 (2004). MCL 211.27a prescribes the procedure for assessing property, and requires that “property ... be assessed at 50% of its true cash value” and that the taxable value of property be “[t]he property’s taxable value in the immediately preceding year... plus all additions.”

In 2008, the city sent petitioner a tax notice indicating that petitioner’s property had a taxable value of \$414,000. Petitioner disagreed with the county’s determination of the taxable value and appealed to the board of review, asserting that the taxable value of his home was \$343,864. In support of his appeal, petitioner submitted data on recent home sales in the city and

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<sup>1</sup> “True cash value” means “the usual selling price at the place where the property to which the term is applied is at the time of the assessment.” MCL 211.27(1). It is essentially the fair market value of the property.

argued that the sales-comparison approach to valuation should be utilized.<sup>2</sup> The data presented by petitioner included a list of home sales and their selling prices. Petitioner added together the total value of home sales and divided this figure by the total square footage of the homes to come up with an “average price per square foot” for these homes. Although the board of review disagreed with petitioner’s calculation of the taxable value of his home, the board reduced the taxable value of the home to \$388,500.

In 2009, the city sent petitioner a tax notice indicating that petitioner’s property had a taxable value of \$372,500. Petitioner again disagreed with the taxable value as determined by the city and appealed to the board of review, arguing that the taxable value of his home was \$271,120. He again submitted data on recent home sales in the city and argued that the sales comparison method of valuation should be utilized. The board of review denied petitioner’s appeal and concluded that the taxable value calculated by the city was accurate.

In 2010, the city sent petitioner a tax notice indicating that the property had a taxable value of \$348,600. Petitioner disagreed with the assessment and appealed to the board of review, arguing that the taxable value of his home was \$231,068.

On July 3, 2008, petitioner appealed the board of review’s decision to the Tax Tribunal, asserting that the city’s 2008 tax assessment overstated the taxable value of his property. Because the board of review denied his subsequent appeals, he also appealed the board’s decisions for 2009 and 2010. Those appeals were consolidated with the 2008 appeal.

The city opted to have the case heard on file. Both parties submitted evidence in support of their respective positions to the Tax Tribunal. For 2008, petitioner presented home sales data to support his proposed TCV (and, therefore, the taxable value) of his property. The city agreed to reduce the taxable value to \$343,864 as petitioner requested and, therefore, the 2008 appeal was rendered moot.

For 2009, petitioner presented home sales data from throughout the city from October 1, 2007, through December 1, 2008. Based on these sales, petitioner concluded that the TCV of his home was \$120.56 per square foot, or \$542,400 (4,499 square feet times price per square foot), with a taxable value of \$271,199. For 2010, petitioner presented home sales data from October 1, 2008, through January 1, 2010. Based on these sales, petitioner concluded that the value of his home was \$102.72 per square foot, for a TCV of \$462,137 and a taxable value of \$231,068. Petitioner did not present any evidence or make any arguments regarding the equalization factors.

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<sup>2</sup> Under a traditional sales-comparison approach, true cash value is determined “by analyzing recent sales of similar properties, comparing them with the subject property, and adjusting the sales price of the comparable properties to reflect differences between the two properties.” *Meadowlanes Ltd Dividend Housing Ass’n v City of Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

The city presented evidence in support of the TCV of petitioner's property using the cost-less-depreciation method. The city submitted property cards, which take into consideration the cost of replacement for each of the property's specific features and amenities for tax years 2008, 2009, and 2010. The property cards also included the value of the land. The city also presented equalization data regarding both the Wayne County and state equalization factors. The data included only bona fide sales.

Although the city ultimately agreed to petitioner's taxable value for 2008, it did not agree with petitioner's proposed TCVs and taxable values for 2009 and 2010. The city asserted that petitioner's home sales data compared "values strictly on sq ft [while omitting the value of the land]. In regard to this, it needs to be noted that the land value for this parcel is 36% of the total." The city also noted that:

It needs to be pointed out, this property was purchased in 2003 for \$950,000. At the TCV of \$687,720, this is a 28% reduction for its purchase. [The City] showed a steady increase in value from 2003 [until] 2008. The average % reductions for the following years were 13% in 2008, 5.4% in 2009, and 5.6% in 2010. At the 28% reduction, this is higher than that of all surrounding properties.

Because the city had valued petitioner's property using the cost-less-depreciation method as adjusted by the equalization factors in accordance with state law and the State Tax Commission Assessor's Manual to determine the taxable value of petitioner's property, the city requested that the tribunal deny petitioner's request to further reduce the TCV and taxable value of petitioner's property.

After a review of the evidence, the Tax Tribunal's hearing referee drafted a Proposed Opinion and Judgment. After summarizing the procedural history, the issues and applicable law, the evidence submitted, and the parties' arguments, the referee made the following pertinent findings of fact:

6. There was a reduction in market value by 13%, 5.4%, and 5.6%, in tax years 2008, 2009, and 2010, respectively, in Respondent's assessing district.
7. Respondent has conceded to a true cash value of \$343,864 for tax year 2008, as the Petitioner has contended.

The referee also made the following conclusions of law:

1. Petitioner met the burden of proof, as required by MCL 205.737(3), for the tax years at issue.
2. The valuation approach that is the most reliable indicator of the property's true cash value for the tax years at issue is Petitioner's sales comparison approach, as indicated herein.
3. The following authority and reasoned opinion supports the above conclusions of law:

The Tribunal finds that Petitioner has supported its contentions of true case value for subject property for tax year 2008 through the admitted documentary and testamentary evidence. Further, Respondent has failed to provide adequate evidence to support its assessed values for the tax year in dispute. In particular, Respondent inappropriately relies on the reductions in the subject property's true cash value from the original purchase price of \$950,000 in 2003. Although evidence of purchase price paid in the transfer of real property is relevant in determining the value of the subject property, it is not presumptive of true cash value. See *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348 (1992), *Professional Plaza, LLC v City of Detroit*, 250 Mich App 473; 647 NW2d 259 (2002). However, a purchase price paid five years before the tax year in dispute, has no significance in the determination of the true cash value of the subject property in tax year 2008. The large lapse of time and the changes in the market are too considerable to constitute any probative evidentiary value here. As such, the Tribunal finds that Respondent has failed to substantiate its assessed values of subject property for tax years in dispute through adequate reliable evidence.

With respect to tax years 2009 and 2010, the Petitioner's contention that the percentage decline in market values is most likely higher than those contended by Respondent has not been adequately substantiated by Petitioner's admitted evidence. As such, and, contrary to Respondent's contentions, the Tribunal finds it appropriate to reduce subject property's true cash value by Respondent's percentage of the market decline of 5.4% and 5.6% for tax years 2009 and 2010, respectively.

4. Based upon the findings of fact and conclusions of law, the property's true cash, state equalized, and taxable values for the tax year(s) at issue are as listed in the Proposed Judgment Section of this Proposed Opinion and Judgment.

Because the city agreed with petitioner regarding the TCV for 2008, the referee proposed that the TCV be reduced to \$687,728, and the corresponding taxable value be reduced to \$343,864 as requested by petitioner. With respect to 2009 and 2010, the referee proposed that the TCVs be reduced by 5.4% and 5.6% respectively, which represented the percentage declines admitted by the city. Accordingly, the referee proposed that the TCV of petitioner's property be reduced to \$650,591 in 2009 and \$614,158 in 2010. As a result, the SEVs and taxable values were reduced to \$325,296 for 2009 and \$307,079 for 2010. The Tax Tribunal adopted the hearing referee's proposed opinion and judgment.

Petitioner argues that the Tax Tribunal erred in the valuation methodology it employed in determining his property's TCV and taxable value.<sup>3</sup> "In the absence of fraud, error of law, or the

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<sup>3</sup> Petitioner presents a number of sub-arguments that we are unable to address as the Tax Tribunal record is insufficient to address these arguments that are not well-developed in the brief.

adoption of wrong legal 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.” Const 1963, art 6 § 28. 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. *Oldenburg v Dryden Twp*, 198 Mich App 696, 698; 499 NW2d 416 (1993). Substantial evidence must be more than a scintilla, although it may be substantially less than a preponderance of the evidence. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992). “Substantial” evidence is that which a reasonable mind would accept as sufficient to support the conclusion. *Kotmar, Ltd v Liquor Control Comm*, 207 Mich App 687, 689; 525 NW2d 921 (1994).

Thus, when, as here, no fraud is alleged, judicial review of Tax Tribunal valuation decisions is limited to whether the tribunal committed an error of law or adopted a wrong legal principle. *Jones & Laughlin Steel Corp*, 193 Mich App at 352. Courts must accept the factual findings of the Tax Tribunal as final, so long as they are supported by competent, material, and substantial evidence on the record. *Edward Rose Building Co v Independence Twp*, 436 Mich 620, 632; 462 NW2d 325 (1990).

The Tax Tribunal has a duty to select the valuation approach that provides the most accurate valuation under the circumstances. *Antisdale v City of Galesburg*, 420 Mich 256, 276-277; 362 NW2d 628 (1984). Deference is given to the tax tribunal regarding the appropriate method of valuation and the interpretation of statutes pertaining to valuation, because these are matters within the tribunal’s area of expertise. See *Schultz v Denton Twp*, 252 Mich App 528, 529; 652 NW2d 692 (2002).

A petitioner had the burden of proof, before the Tax Tribunal, to establish TCV. MCL 205.737(3); see also *Oldenburg v Dryden Twp*, 198 Mich App 696, 698-699; 499 NW2d 416 (1993). Thus, in the Tax Tribunal, petitioner had the burden to prove, by the greater weight of the evidence, that the city’s assessment was too high.

The Tax Tribunal and Michigan courts accept three methods of determining TCV: the cost-less-depreciation approach, the capitalization-of-income approach, and the sales comparison (market) approach. *Antisdale*, 420 Mich at 276–277. As the *Antisdale* Court noted in a footnote, the State Tax Commission assessor’s manual, which all government assessors are required to use, describes each of the three approaches. *Id.* at 376 n 1. In this case, the tax tribunal rejected the city’s cost approach and found the sales comparison approach to be the most reliable indicator of valuation.

With regard to tax years 2009 and 2010, the Tax Tribunal found that petitioner met his burden of proving that the city’s assessments were too high, see MCL 205.737(3), presumably in light of the reduction in TCV for 2008. However, the tribunal found that petitioner failed to present evidence to adequately substantiate his contention that the percentage decline in market values was likely higher than the declines as presented by the city. Thus, the tribunal found it appropriate to reduce the agreed-upon 2008 TCV by the city’s percentage of the market decline of 5.4% and 5.6% for tax years 2009 and 2010, respectively. This Court’s review of the tribunal’s decision is limited, *Mount Pleasant v State Tax Comm*, 477 Mich 50, 53; 729 NW2d 833 (2007), and so long as the tribunal’s findings of fact are supported by competent, material,

and substantial evidence, this Court will generally accept them as true. *Jones & Laughlin Steel Corp*, 193 Mich App at 153. While the tribunal did not go into specific reasoning behind its conclusion, “[b]rief, definite, and pertinent findings and conclusions on the contested matter are sufficient, without overelaboration of detail or particularization facts.” MCR 2.517(A)(2). Petitioner has failed to show that the tribunal’s finding of a 5.4% decline in 2009 and a 5.6% decline in 2010 is unsupported by competent, material, and substantial evidence on the whole record, or represents error of law or the adoption of wrong principles. Const 1963, art 6, § 28.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Kurtis T. Wilder  
/s/ Christopher M. Murray