

STATE OF MICHIGAN  
COURT OF APPEALS

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M. GARY HOLLAND,

Petitioner-Appellant,

v

CITY OF TAYLOR,

Respondent-Appellee.

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UNPUBLISHED

April 12, 2012

No. 303055

Michigan Tax Tribunal

LC No. 00-328356

Before: FORT HOOD, P.J., and CAVANAGH and K. F. KELLY, JJ.

PER CURIAM.

Petitioner appeals as of right from the final opinion and judgment of the Michigan Tax Tribunal (MTT) denying his request to reduce his assessment for residential property located in respondent city. We affirm.

Appellate review of the MTT decision is limited. *City of Mount Pleasant v State Tax Comm*, 477 Mich 50, 53; 729 NW2d 833 (2007); *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352; 483 NW2d 416 (1992). In the absence of fraud, we review the MTT decision to determine whether it erred in applying the law or adopted a wrong legal principle. *Michigan's Adventure, Inc v Dalton Twp*, 290 Mich App 328, 334; 802 NW2d 353 (2010). Factual findings rendered by the tribunal are final if supported by competent, material, and substantial evidence. *Id.* at 334-335. "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence." *Jones*, 193 Mich App at 352-353. "The appellant bears the burden of proof in an appeal from an assessment, decision, or order of the Tax Tribunal." *ANR Pipeline Co v Dep't of Treasury*, 266 Mich App 190, 198; 699 NW2d 707 (2005). A party may not merely announce its position and expect this Court to discover and rationalize the basis for the claims. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003). An appellant's failure to properly address the merits of a claim of error with citation to authority constitutes abandonment of the issue. *Woods v SLB Prop Mgt, LLC*, 277 Mich App 622, 626-627; 750 NW2d 228 (2008). A party may not leave it to this Court to search for the factual basis offered in support of a position, but must correlate factual assertions to the location in the record. *Begin v Mich Bell Tel Co*, 284 Mich App 581, 590; 773 NW2d 271 (2009).

Petitioner first alleges that the exercise of jurisdiction by the MTT's residential and small claims division was improper in light of respondent's responsive pleadings. We disagree.

Petitioner abandoned this issue by failing to cite applicable authority in support of his position.<sup>1</sup> *Woods*, 277 Mich App at 626-627. Furthermore, the MTT has exclusive and original jurisdiction over tax assessments disputes, MCL 205.731, and the residential and small claims division has jurisdiction over residential property, MCL 205.762(1). However, even if the jurisdiction of the residential and small claims division is established, a person or legal entity may elect to proceed before the entire tribunal. MCL 205.762(2). In the present case, there is no evidence that petitioner sought to remove the assessment dispute from the residential and small claims division despite the right to do so. *Id.* A party may not harbor error as an appellate parachute by assenting to action in the lower proceeding and raising the issue as an error on appeal. *Bates Assoc, LLC v 132 Assoc, LLC*, 290 Mich App 52, 64; 799 NW2d 177 (2010). Accordingly, petitioner's jurisdictional challenge does not entitle him to appellate relief.

Next, petitioner alleges that a misapplication of a legal principle and clear violation of law occurred when the highest and best use of the property was considered. We disagree. Three traditional methods of determining true cash or fair market value have been accepted by the MTT and Michigan courts: (1) cost-less-depreciation approach, (2) the sales-comparison or market approach, and (3) the capitalization-of-income approach. *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 484-485; 473 NW2d 636 (1991); *Jones*, 193 Mich App at 353. When using the cost approach to valuing property, the economic calculation recognizes that real property is devoted to its highest and best use. See *Meadowlanes*, 437 Mich at 503. Property shall be assessed at 50% of its true cash value pursuant to Const 1963, art IX, § 3. MCL 211.27a(1); *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 631; 462 NW2d 325 (1990). "Highest and best use is a concept fundamental to the determination of true cash value. It recognizes that the use to which a prospective buyer would put the property will influence the price which the buyer would be willing to pay. Land is appropriately valued as if available for development to its highest and best use, that most likely legal use which will yield the highest present worth." *Id.* at 633 (quotation marks and citations omitted). Although petitioner contends that the consideration of the highest and best use was legal error, highest and best use is an appropriate consideration for determining true cash value pursuant to the cost approach. *Meadowlanes*, 437 Mich at 503.<sup>2</sup>

Petitioner's third claim of error challenging the true cash value and the evidence to support the ruling also fails. The petitioner bears the burden of proof regarding the true cash value before the MTT. MCL 205.737(3); *Oldenburg v Dryden Twp*, 198 Mich App 696, 698-699; 499 NW2d 416 (1993). "The appellant bears the burden of proof in an appeal from an assessment, decision, or order of the Tax Tribunal." *ANR Pipeline*, 266 Mich App at 198.

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<sup>1</sup> Petitioner did not cite appropriate authority, but rather analogized to small claims court and district court jurisdiction.

<sup>2</sup> Petitioner also asserted that it was erroneous to presume that the subject property would be further developed. However, petitioner was aware of respondent city's position regarding the property's use, and there is no indication that petitioner submitted evidence to contradict this position. *Oldenburg*, 198 Mich App at 698-699.

In the present case, we cannot conclude that the MTT erred. The hearing officer and the MTT held that petitioner failed to meet his burden of proof. Although petitioner presented general information regarding the real estate collapse and home listings, he did not present evidence of an appraisal or the approved methods for determining true cash or fair market value as adopted by the MTT and Michigan courts. See *Meadowlanes*, 437 Mich at 484-485. Therefore, petitioner is not entitled to appellate relief. *ANR Pipeline*, 266 Mich App at 198.

Lastly, petitioner alleges that he was deprived of due process of law because he did not receive a fair and impartial, timely and meaningful hearing. We disagree. A failure to timely raise an issue waives review of the issue on appeal. *Walters v Nadell*, 481 Mich 377, 387; 751 NW2d 431 (2008). An issue must be raised, addressed, and decided by the administrative tribunal to be preserved for appellate review. *Gen Motors Corp v Dep't of Treasury*, 290 Mich App 355, 386-387; 803 NW2d 698 (2010). Petitioner did not raise this issue before the hearing officer, and the issue was not decided by the MTT. Therefore, it is not preserved for appellate review. *Id.* Furthermore, this issue was abandoned by insufficient briefing. *Peterson Novelties*, 259 Mich App at 14. Petitioner makes generalized statements of a conflict of interest and lack of procedural due process. However, he never presented evidence regarding any conflict or raised the timeliness issue before the residential and small claims division.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Mark J. Cavanagh

/s/ Kirsten Frank Kelly