

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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CONRAD CHAPELLE and MARY ANN  
CHAPELLE,

UNPUBLISHED  
December 6, 2012

Petitioners-Appellants,

v

No. 308023  
Tax Tribunal  
LC No. 00-388568

CITY OF BRIDGMAN,

Respondent-Appellee.

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

PER CURIAM.

Petitioners appeal as of right from an opinion by Michigan Tax Tribunal regarding respondent's assessments of their property for the years 2010 and 2011. For the reasons stated in this opinion, we affirm.

Petitioners are the owners of residential real property located in Bridgman, Michigan. For the 2010 tax year, respondent calculated a true cash value (TCV) of \$324,200 for the property. The state equalized value (SEV) and taxable value (TV) were calculated at \$162,000. For the 2011 tax year, respondent calculated the TCV at \$311,800 and both the SEV and TV at \$155,900. Petitioners appealed both years' assessments to the Small Claims Division of the Michigan Tax Tribunal,<sup>1</sup> arguing that the values were too high. On November 4, 2011, a hearing referee issued a proposed opinion lowering respondent's assessment. The referee determined that petitioners failed to meet their burden on the matter. See MCL 205.737(3). However, the referee also found issues with respondents' evidence and made certain corrections to both years' assessments. For the 2010 tax year, the referee calculated the TCV at \$318,000 and both the SEV and TV at \$159,000. For the 2011 tax year, the referee calculated the TCV at \$305,800 and both the SEV and TV at \$152,900. Petitioners filed exceptions to the proposed judgment. On December 27, 2011, the tribunal entered a final opinion and judgment rejecting petitioner's exceptions and adopting the referee's proposed opinion and judgment. This appeal followed.

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<sup>1</sup> The 2010 and 2011 assessments were separately appealed, but the 2011 assessment was automatically added to the 2010 petition in accordance with MCL 205.737(5)(b).

“This Court’s review of Tax Tribunal decisions is very limited.” *Columbia Assocs, LP v Dept of Treasury*, 250 Mich App 656, 665; 649 NW2d 760 (2002). “Absent an allegation of fraud, this Court’s review of a tax tribunal decision is limited to determining whether the tribunal committed an error of law or applied the wrong legal principles.” *AERC of Michigan, LLC v Grand Rapids*, 266 Mich App 717, 722; 702 NW2d 692 (2005); see also Const 1963, art 6, § 28. The Tax Tribunal’s findings of facts are final if they are supported by competent and substantial evidence. *Mt Pleasant v State Tax Comm*, 477 Mich 50, 53; 729 NW2d 833 (2007). This Court reviews the interpretation of a statute de novo as a question of law. *Id.*; *AERC of Michigan*, 266 Mich App at 722.

Petitioners argue that the TCVs assessed by the tribunal were too high. TCV is synonymous with fair market value, *CAF Investment Co v State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974), and means “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, and not at auction sale except as otherwise provided in this section, or at forced sale,” MCL 211.27(1). “There are three traditional methods of determining true cash value, or fair-market value, which have been found acceptable and reliable by the Tax Tribunal and the courts. They are: (1) the cost-less-depreciation approach, (2) the sales-comparison or market approach, and (3) the capitalization-of-income approach.” *Meadowlanes Dividend Housing Ass’n v City of Holland*, 437 Mich 473, 484-485; 473 NW2d 636 (1991). “However, variations of these approaches and entirely new methods may be useful if found to be accurate and reasonably related to fair market value.” *Great Lakes Div of Nat’l Steel Corp v Ecorse*, 227 Mich App 379, 390; 576 NW2d 667 (1998). The tribunal’s “overall duty is to determine the most accurate valuation under the individual circumstances of the case.” *Id.* at 399. In fulfilling this responsibility, it is “not bound to accept” either party’s theory of valuation. *Id.* at 389-390. “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.

Petitioners rely heavily on a document entitled “REQUEST FOR ADMISSION” that they served upon respondent, arguing that because respondent never answered, it is deemed to have admitted all the facts alleged therein. This argument is without merit. Proceedings in the Tax Tribunal are governed by Tax Tribunal rules. See 2009 AC, R 205.1111(1) (“These rules govern the practice and procedure in all cases and proceedings before the tribunal.”). Regarding the issue of discovery, 2009 AC, R 205.1111(3), provides, in relevant part: “If an applicable small claims division rule does not exist, then the entire tribunal rules shall govern, except for R 205.1288 and rules that pertain to discovery, which, in the small claims division, is by leave of the tribunal only.” Petitioners filed their petitions in the Small Claims Division of the Michigan Tax Tribunal. Therefore, petitioners had no right to discovery except as granted by the tribunal. Petitioners never requested leave from the tribunal, and such leave was never granted. Accordingly, petitioners’ request was improper and respondent had no duty to respond.

Because petitioners’ discovery request was improper, the tribunal correctly limited its review to the evidence that was submitted before and during the hearing. Both respondent and petitioners submitted sales data to support their contentions of TCV based on the sales-comparison or market approach. However, both respondent and petitioners failed to make adjustments to take into account differences between the purported comparables and the subject property. The sales comparison method “requir[es] an analysis of recent sales of similar

properties, a comparison of the sales with the subject property, and *adjustments to the sales prices of the comparable properties to reflect differences between the properties.*” *Great Lakes Div of Nat’l Steel Corp*, 227 Mich App at 391 (emphasis added). Because adjustments were not made, respondent’s and petitioners’ sales comparables were not reliable indications of true cash value. Therefore, the tribunal declined to rely on the comparables data, which was certainly within the tribunal’s powers. See *Meadowlanes Dividend Housing Ass’n*, 437 Mich at 485 (“It is the Tax Tribunal’s duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case.”).

The tribunal then looked to the 2010 property-record card that respondent submitted and noted that there was some dispute over the property’s square footage. Given the conflicting evidence presented, the tribunal was unable to resolve this dispute. However, the tribunal did find an error in the property-record card that needed to be and could be corrected. Specifically, the tribunal found that respondent “improperly costed the overhang above the garage . . . .” By applying the proper rates, the tribunal reduced the TCV of petitioners’ property by \$6,200 and the state equalized and taxable values by \$3,100 for 2010. The property-record card for the 2011 tax year was not submitted to the tribunal; therefore, the tribunal used a market-based decrease between the 2010 and 2011 tax years to determine the property’s value for the 2011 tax year.

Because of the flawed evidence they submitted, petitioners did not meet their burden of establishing the TCVs of the property. See MCL 205.737(3). In fact, because their evidence was fundamentally flawed, we find that petitioners did not even meet their burden of going forward with the evidence, meaning that the burden of going forward never shifted to respondent. See *Jones v Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 344-345; 483 NW2d 416 (1992) (discussing the different concepts of “burden of persuasion” and “burden of going forward with the evidence”). The tribunal was forced to analyze limited evidence in determining the values of the property. Significantly, in doing so it made adjustments to the values proposed by respondent. Although petitioners’ appellate brief is very poorly worded and difficult to follow, they appear to be arguing that the tribunal could not simply use the concept of “burden of proof” in order to rely upon respondent’s representations of value but instead was required to make independent TCV determinations. See, e.g., *Jones, id.* at 355. In light of the unique circumstances, however, we find no violation of the general tenets of *Jones* and no basis for reversal.

Affirmed.

/s/ David H. Sawyer  
/s/ Henry William Saad  
/s/ Patrick M. Meter