STATE OF MICHIGAN

COURT OF APPEALS

DAGMAR AVOLIO and RALPH AVOLIO,

Petitioners-Appellants,

v

CITY OF DETROIT,

Defendant-Appellee.

UNPUBLISHED
May 23, 2013

No. 308885
Tax Tribunal
LC No. 384821

Before: HOEKSTRA, P.J., and TALBOT and WILDER, JJ.

PER CURIAM.

Petitioners appeal as of right from the Tax Tribunal's opinion and judgment, which adopted the referee's findings of fact and conclusions of law, who in turn set the assessed and taxable value of petitioners' property at the amounts provided in respondent's records. We reverse and remand.

I. BACKGROUND

Petitioners are the homeowners of the residential property located at 4884 Kensington in Detroit. Even though the property consisted of a single lot, it was nonetheless assigned two different parcel numbers, 27061705 (for the structure) and 21072798 (for the land). In the notice of assessment for 2010, respondent stated that parcel number 27061705 (structure) had a taxable value ("TV") and state equalized value ("SEV") of $48,747 (decrease from 2009's values of $59,448). This means that respondent assessed the true cash value ("TCV") of the structure to be $81,894, which is twice the TV. The notice for parcel number 21072798 (land) reflected a decrease in the TV from $1,437 to $1,432, but the SEV remained unchanged at $1,720.

Petitioners protested the 2010 assessments to the March 2010 Board of Review and timely appealed that Board's decision upholding the assessments to the Small Claims Division of the Tax Tribunal. A referee presided over the initial hearing. Because this hearing was held on in 2011, the referee noted that the respondent's assessment of the subject property for 2011 would be included in the proceeding as well.

At the referee hearing, petitioners relied primarily on an appraisal report to support their challenge to the assessment. The appraisal was prepared by Beverly A. Getz, a licensed real estate appraiser. Getz concluded in her report that the property, as a whole, was worth $18,000. She arrived at this value by using the "sales comparison approach," or in other words, she

compared petitioners' property to similar homes ("comps") that have recently sold in the neighborhood. Specifically, Getz listed four other homes that sold:

	Date Sold	Days on Market	Sale Price
Comp #1	February 8, 2010	8 days	$25,000
Comp #2	September 28, 2009	1 day	$19,900
Comp #3	September 17, 2009	189 days	$13,100
Comp #4	January 6, 2010	355 days	$17,511

She also noted that Comps #1 and #2 were "bank owned" and that Comps #3 and #4 were "government owned."

While separately comparing each property with petitioners' property, Getz made many adjustments to the comp property's selling price to arrive at an "adjusted sale price," which represented what petitioners' property was worth on the basis of that single sale. The results of the various adjustments are reflected in the "adjusted sale price" in the below table:[1]

	Sale Price	Adjusted Sale Price	Net Adjustment	Gross Adjustment	Net Adjustment %	Gross Adjustment %
Comp #1	$25,000	$20,200	-$4,800	$9,800	-19.2%	39.2%
Comp #2	$19,900	$14,600	-$5,300	$6,300	-26.6%	31.7%
Comp #3	$13,100	$16,800	+$3,700	$7,700	+28.2%	58.8%
Comp #4	$17,511	$26,311	+$8,800	$13,800	+50.3%	78.8%

Additionally, the referee noted that "the house next door is bank owned and is not maintained. The house across the street sold for $15,000, and the one next to it for $10,120." Petitioner also testified at the hearing "that 2 banks recalled their lines of credit or refused to refinance the subject [property] because the collateral was insufficient."

[1] A comp property's overall adjustments were quantified as "net adjustments" and "gross adjustments." The amount of a property's gross adjustment is determined by adding the absolute value of all individual adjustments, thereby treating each individual adjustment as positive for this purpose. The "net adjustment," however, sums the true values of the adjustments, maintaining the adjustment's positive or negative characteristic. As an illustration, Comp #1 had individual adjustments of -$2,000, +$1,000, -$1,800, -$2,500, -$1,000, +$1,000, and +$500 for a total gross adjustment of $9,800 and a total net adjustment of -$4,800. Thus, relayed as a percentage of how much its adjustments deviated from its selling price, its gross adjustment was 39.2% ($9,800/$25,000), and its net adjustment was -19.2% (-$4,800/$25,000).

Respondent offered its property record cards and assessing system printouts in support of its position that the subject property was assessed correctly. According to respondent, the properties had the following values for 2010 and 2011:

Parcel 27061705 [structure]

Year	TCV	SEV	TV
2010	$97,494	$48,747	$48,747
2011	$81,894	$40,947	$40,947

Parcel 21072798 [land]

Year	TCV	SEV	TV
2010	$3,440	$1,720	$1,432
2011	$3,440	$1,720	$1,456

The referee noted that, pursuant to MCL 205.737(3), petitioners had the burden of proof to establish the correct value of the property. The referee also noted in its conclusions of law that "[t]he valuation approach that is the most reliable indicator of the property's true case value for the tax years at issue is the sales comparison approach." However, in evaluating and weighing the evidence, the referee discounted the appraisal that petitioners provided. The referee stated in his opinion,

> Petitioner's contentions are not sufficiently documented to enable the Tribunal to conclude the subject assessment is unlawfully excessive. The Tribunal was not persuaded by Petitioner's market evidence, which consisted of an appraisal utilizing all bank owned and government owned comparable properties. In addition, all the comparables required adjustments from 31%-78%. The comparables utilized were not exposed to the market in the usual manner because the seller was motivated by financial distress to dispose of the properties quickly for prices that may have been below market. The adjustments made of the comparables were too large to conclude that these comparables were like the subject.

The referee noted that even though petitioners failed to meet their burden of proof, he could not just adopt by default respondent's values; instead, he acknowledged that an independent determination of value must be made. However, the referee noted that he "was unable to make an independent determination of value as [he] had no evidence from which to make such a determination except the subject assessment record provided by Respondent."

Because the referee was not able to make an independent evaluation, he simply "reviewed and analyzed Respondent's assessment record with the calculations provided" and determined that respondent's evidence "provide[d] reasonable support for the assessed value on the roll." Consequently, the referee proposed that respondent's assessments for 2010 and 2011 be used in the final judgment.

Petitioners filed exceptions to the referee's proposed opinion and judgment. After considering the objections, the Tax Tribunal found that petitioners' claims lacked merit. The

Tribunal found that the referee "properly considered the testimony and evidence submitted" at the proceeding:

> First, Petitioner argues that the Referee erred in determining the comparable properties were not proper because they were bank owned or government owned properties. Although the Tribunal finds a Referee cannot automatically throw out unconventional sales as not comparable, a closer look at the appraisal supports the Referee's determination in this case. It is incumbent on Petitioners to establish that the subject market neighborhood is a foreclosure market to warrant the use of foreclosure sales as reliable indicators of value. Further, the sales must be verified to determine whether they are arm's length transactions subject to normal market pressures. Petitioners failed to meet its burden in establishing the subject market was a foreclosure market that would warrant not utilizing any conventional sales. . . .
>
> Regardless of the terms of sale, the Hearing Referee also properly concluded that the comparable properties' gross adjustments were too high to consider them truly comparable to the subject property.
>
> Contrary to Petitioners' assertion, the Hearing Referee did make an independent determination of the subject property's true cash value and did not merely "rubber stamp" Respondent's assessment. The Hearing Referee analyzed the 2010 property record card, submitted as evidence by Respondent, and concluded that it is the most reliable indicator of value. Petitioners did not bring forth any evidence that the characteristics and amenities of the subject property are not accurately reflected on the property record card. Thus, the Hearing Referee analyzed the cost-less-depreciation approach reflected in the property record card and found it to be the most reliable indicator of value. Thus, the Referee property adopted Respondent's assessments for the 2010 and 2011 tax years and did not merely "rubber stamp" the assessment.

Consequently, the Tribunal adopted the referee's proposed opinion and judgment, and petitioners appealed to this Court.

II. ANALYSIS

Petitioners argue that the Tribunal erred as a matter of law when it failed to make an independent determination of TCV. We agree.

> Review of decisions by the Tax Tribunal decision is limited. In the absence of fraud, error of law or the adoption of wrong 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. The Tax Tribunal's factual findings are final if they are supported by competent, material, and substantial evidence on the whole record. [*Mich Props, LLC v Meridian Twp*, 491 Mich 518, 527; 817 NW2d 548 (2012) (quotation marks and citations omitted).]

This Court in *President Inn Props, LLC v City of Grand Rapids*, 291 Mich App 625, 631; 806 NW2d 342 (2011), provided the applicable law as follows:

> With respect to general valuation principles in the Tax Tribunal, the petitioner has the burden to establish the true cash value of property. MCL 205.737(3); *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998). The burden of proof encompasses two 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." *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 354–355; 483 NW2d 416 (1992). Nevertheless, because Tax Tribunal proceedings are de novo in nature, the Tax Tribunal has a duty to make an independent determination of true cash value. *Great Lakes Div of Nat'l Steel Corp*, 227 Mich App at 409. Thus, even when a petitioner fails to prove by the greater weight of the evidence that the challenged assessment is wrong, the Tax Tribunal may not automatically accept the valuation on the tax rolls. *Id.* at 409. Regardless of the methodology employed, the Tax Tribunal has the overall duty to determine the most accurate valuation under the individual circumstances of the case. *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 485-486, 502; 473 NW2d 636 (1991).

However, "the Tax Tribunal may adopt the assessed valuation on the tax rolls as its independent finding of TCV" as long as there is "competent and substantial evidence" to support such a finding. *President Inn Props*, 291 Mich App at 640. But in doing so, the Tribunal is nonetheless prohibited from according presumptive validity to a property's assessed valuation on the tax rolls. *Id.*

Here, the referee acknowledged that he had a duty to make an independent determination of TCV. The referee also properly noted that this obligation remained, even if petitioners failed to meet their burden of establishing that respondent's assessed values were incorrect. However, after determining that "the most reliable indicator of the property's true cash value for the tax years at issue is the sales comparison approach," the referee deemed that petitioners' appraisal, which was the only evidence presented that utilized the sales comparison approach, was not helpful. In discounting the relevance of the appraisal, the referee relied on the fact that the comparable properties used were either owned by the bank or the government and that the gross adjustments for all of those properties were "too large" to make the comparables valid.

The referee then explained:

> In this case, *the Tribunal was unable to make an independent determination of value* as it had no evidence from which to make such a determination except the subject assessment record provided by Respondent. The Tribunal reviewed and analyzed Respondent's assessment record with the calculations provided and finds that it provides reasonable support for the assessed value on the roll. [Emphasis added.]

Thus, it is patently clear that the referee did not make an independent determination of value as he was required to do. This error alone is ground for reversal. Further, the referee's determination impermissibly gave presumptive validity to respondent's assessments. After acknowledging that he was unable to make an independent evaluation of TCV, the referee found that there was "reasonable support for the assessed value on the roll." Thus, without explicitly saying so, the referee accepted that the assessment was correct, and then did not disturb that presumption when it found that the calculations reasonably supported the assessment. This is the quintessential application of a "presumption." This error also is ground for reversal.

In short, once the referee concluded that it had insufficient evidence to conduct an independent evaluation of TCV, it could not simply rely on the best remaining evidence. Instead, it should have sought additional data from the parties.

The Tax Tribunal's final opinion and order stating that the referee made "an independent determination" of the property's TCV cannot overcome the underlying error. This statement is contrary to the proclamation of the referee himself, where he stated that he was "unable to make an independent determination," which the Tax Tribunal adopted in its final opinion and judgment.

Because we are remanding, we caution the Tribunal to ensure that all of its factual findings are "supported by competent and substantial evidence." *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984). "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence." *President Inn Props*, 291 Mich App at 642 (quotation marks and citation omitted). Of note, the Tribunal found that the comp properties used in the appraisal were not "exposed to the market in the usual manner because the seller was motivated by financial distress to dispose of the properties quickly for prices that may have been below market." However, there was no evidence related to the motivations of the sellers or that the properties were indeed sold below market value. Further, the Tribunal found that the gross adjustments of the comp properties were "too high" in order for those properties to be truly comparable to petitioners' lot. Again, there was no evidence in the record to indicate what percentage would be too high resulting in a comp being invalid. In fact, the *only* evidence submitted on this matter contradicts this finding. In the section of the appraisal entitled, "Comments on Sales Comparison," Getz stated that "all of the comparables are well within the gross and net guidelines, except for comparable $3 [sic – #4[2]] which was given the least consideration due to the high gross and net adjustments."

Therefore, we reverse the Tax Tribunal's opinion and judgment and remand for the Tribunal to conduct its independent evaluation. And if the Tribunal further determines that the submitted evidence is insufficient to make such an independent evaluation, it should ask the parties for more information so it can fulfill its obligation.

---

[2] "$3" obviously has no discernible meaning and is a mistake. Gertz may have intended to type "#3," but more likely she intended to type "#4" because that lot possessed the largest net adjustment ($8,800; 50.3%) and largest gross adjustment ($13,800; 78.8%).

Reversed and remanded for proceedings consistent with this opinion. Appellants, as the prevailing parties, may tax costs pursuant to MCR 7.219. We do not retain jurisdiction.

/s/ Joel P. Hoekstra
/s/ Michael J. Talbot
/s/ Kurtis T. Wilder