

STATE OF MICHIGAN
COURT OF APPEALS

RICHARD TSVETANOFF,

Petitioner-Appellant,

v

TOWNSHIP OF AUGUSTA,

Respondent-Appellee.

UNPUBLISHED
February 26, 2013

No. 309765
Tax Tribunal
LC No. 00-388591

Before: FITZGERALD, P.J., and METER and M. J. KELLY, JJ.

PER CURIAM.

Petitioner appeals as of right from an order of the Tax Tribunal rejecting petitioner’s argument that his property had been overvalued for purposes of taxation. We affirm.

In May 2010, petitioner filed a petition with the Tax Tribunal challenging the valuation assigned to his home and accompanying agricultural property, located at 6100 Talladay Rd. in Milan, for the 2010 tax year. Respondent had assigned a true cash value (TCV) of \$305,200, a state equalized value (SEV) of \$152,600 and a taxable value (TV) of \$109,079.¹ Petitioner alleged that the fair market value of the home was \$150,000 and that the SEV should be \$75,000.² In a separate petition, petitioner alleged that the TCV of the property was \$145,000 and also alleged that the property should be reclassified as agricultural.³ Petitioner subsequently submitted a “residential appraisal summary report,” in which he used the “sales comparison approach” for determining value and alleged that two nearby houses—at 6068 Talladay and at

¹ We note that the property was classified as “101 Agricultural Improved,” with a “principal residence exemption.”

² Petitioner did not provide a proposed figure for the TV.

³ It is unclear why petitioner argued for a reclassification, because the property, according to a later document provided by the Tax Tribunal, was *already* classified as agricultural.

6400 Talladay—had “adjusted sale prices” of \$118,350 and \$141,140.”⁴ The “residential appraisal summary report,” evidently prepared by petitioner himself, stated:

The comparable properties are the house nest [sic] door and the house several down [sic] from 6100 Talladay Rd. Although these properties when [sic] through foreclosure [sic] the long time period of the process indicates that the maximum price was attained for the properties[.] They [were] not sold in a hurry under distress as you can see from the deeds.

An appraiser hired by petitioner, Peter Hendershot, provided a value of \$185,000 for petitioner’s property as of December 31, 2009,⁵ and stated the following in a letter:

This report is based on a physical analysis of the site and improvements, a locational analysis of the neighborhood and city, and an economic analysis of the market for properties such as the subject. The appraisal was developed and the report was prepared in accordance with the Uniform Standards of Professional Appraisal Practice.

On October 1, 2011, Patricia Zamenski, the Augusta Charter Township Assessor, sent a letter to petitioner in which she stated the following:

I have reviewed your appraisal and agree with the finds [sic] of the appraiser. However, the appraiser is valuing the property as a Residential parcel and not Agricultural. If you agree to having me change the class of your property to Residential and not Agricultural, I would be willing to stipulate to the values I have prepared in the Stipulation.

In the proposed stipulation, Zamenski proposed a TCV of \$185,000 and an SEV and TV of \$92,500. She also added a stipulation for the 2011 tax year, proposing a TCV of \$174,600 and an SEV and TV of \$87,300.⁶

Evidently, petitioner rejected this stipulation, and a hearing took place, but a transcript of this hearing was not provided in the certified record of proceedings. However, the tribunal summarized the proceedings in its proposed opinion and judgment, entered on December 5, 2011.

⁴ The actual sale prices were \$78,200 and \$154,900, respectively, but petitioner made adjustments for various features that were present or missing on the properties.

⁵ According to the factual summary contained in the Tax Tribunal’s proposed opinion and judgment, Hendershot did not use 6068 Talladay and 6400 Talladay in making his appraisal because those properties were sold at “bank sales.” Petitioner, however, decided to include them as part of his evidence because, according to him, they were “not distressed sales because of the length of time on the market”

⁶ Respondent’s original SEV for 2011 was \$141,700 and its original TV for 2011 was \$114,033.

According to the tribunal's summary, for 2010, petitioner requested a TCV of \$185,000 and an SEV and TV of \$92,500. For 2011, petitioner requested a TCV of \$174,600 and an SEV and TV of \$87,300.⁷

For 2010, respondent requested a TCV of \$305,200, an SEV of \$152,600, and a TV of \$109,079. For 2011, petitioner requested a TCV of \$283,400, an SEV of \$141,700, and a TV of \$114,033. In its summary, the Tax Tribunal stated that "Respondent testified that Respondent would agree with Petitioner's appraisal if the subject property was classified as residential, not agricultural" Somewhat paradoxically, respondent apparently then testified that "the subject's highest and best use is agricultural" Respondent also evidently testified that the comparables used by petitioner were "classified as residential," that respondent "was not allowed to inspect the interior" of petitioner's property, and that petitioner's two comparables at 6400 Talladay and 6068 Talladay involved "distressed sales."

In the proposed opinion and judgment, the tribunal adopted respondent's proposed values for the property for the 2010 tax year. For the 2011 tax year, the tribunal adopted the same TCV and SEV as proposed by respondent but changed the TV to \$110,933.⁸ The tribunal rejected the comparables from 6068 Talladay and 6400 Talladay, in part because they involved bank sales. The tribunal also rejected Hendershot's appraisal, stating:

[The appraiser's] Comparable Nos. 2 and 3 sold in October 2008 and June 2008, respectively, which is more than a year before the relevant tax date of December 31, 2009. The appraisal indicates that there were not many comparables that sold within a year; however, the appraisal failed to make adjustments to account for the date of sale.

The tribunal went on to state:

The Tribunal finally finds that the property record cards of the five properties on Talladay provided by Petitioner are not reliable indicators of value. Merely comparing the assessed values of neighboring properties to the subject property is not a valid method of valuation, nor is it sufficient to prove the true cash value of the subject property.

Notwithstanding that Petitioner has failed in its burden of proof to present convincing evidence of value, Respondent's values may not be automatically adopted as the Tribunal has . . . a duty to make an independent determination of value. In that regard, Respondent has failed to provide any market evidence of value. In this case, the Tribunal finds that the most reliable indicators of value are

⁷ Given the figures petitioner proposed at the hearing, it is unclear why petitioner did not accept Zamenski's proposed stipulation, which included identical figures. Presumably, petitioner did not want the property to be classified as residential.

⁸ The tribunal did not explain why it reduced the TV from the \$114,033 proposed by respondent.

the assessed values, as indicated on the property record card. The Tribunal has reviewed and analyzed Respondent's assessment record card and the calculation provided therein and finds the same to provide reasonable support for the assessed value on the roll.

On December 22, 2011, petitioner filed a "Disagreement with Proposed Opinion and Judgement [sic]," taking numerous exceptions with the tribunal's conclusions. Petitioner stated, in summary:

The petitioner did meet the burden of proof as previously determine[d] by this Tribunal with a certified appraisal and other comparables. The petitioner has shown that the cost less depreciation approach is not [a] reliable method of determining True Cash Value in this case. If one looks at all the evidence one has to conclude that the petitioners [sic] statement of True Cash Value of between \$150,000 to a maximum of \$185,000, which the township agreed with [sic]. The Township is incorrect in the statement that using a classification of agriculture [versus] residential makes a difference when the property has no agricultural income or potential. The petitioner believes the fair assessment of this property based on all the facts is \$165,000[] but will accept the \$185,000 per the appraisal.

On February 9, 2012, the Tax Tribunal rejected petitioner's arguments and adopted the proposed opinion and judgment as a final order, although the tribunal corrected a misspelling of petitioner's name.

On February 23, 2012, petitioner filed a motion for rehearing, reiterating the arguments made in his "Disagreement with Proposed Opinion and Judgement [sic]." On March 28, 2012, the tribunal denied the motion, stating, in part, that "all of the issues raised in Petitioner's Motion were considered in the rendering of both the Proposed and Final Opinion and Judgments." The tribunal also stated, "More specifically . . . while Petitioner has clearly met the burden of going forward in the instant appeal, it cannot be concluded, given the available evidence, that the Tribunal erred in finding that he did not meet the burden of persuasion."

This appeal followed.

"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). We review de novo any questions of statutory interpretation. *Id.*

Petitioner first argues that the tribunal erred in rejecting Hendershot's appraisal based on the fact that "Comparable Nos. 2 and 3 sold in October 2008 and June 2008, respectively . . . [and] the appraisal failed to make adjustments to account for the date of sale." Petitioner cites Hendershot's report, in which Hendershot stated:

The appraiser has analyzed 753 sales from the neighborhood . . . as defined in this report over the past 12 months and graphed the average sales price per square foot per month above. The statistics indicate a vacillation in rates over the past 24 months. This study includes all styles of dwellings and all types of transaction including REO [real estate owned] and “short sale” transactions. In order to support a “Date of Sale/Time” adjustment in the Sales Comparison Approach the local market and the subject’s sub market have to show specific signs of decline or increase in home values. The adjustment is intended to reflect significant changes in market values that have occurred between the contract date of the comparables sales and the date of appraisal (date of inspection) for the subject. Since a sustained decline of home values has not been recorded at the local sub market level, the data does not indicate or support an adjustment for declining home values. It appears that the sub market has stabilized and is performing better than either the state or county markets, but due to the limited number of sales this may be less representative and [is] further impacted by “seasonality” which clearly shows greater activity in the March-August season as opposed to the September-February periods.

In conclusion, the statistical results for the various markets are affected by REOs, seasonality and local economic conditions that are shifting periodically and therefore not consistent from period to period, rendering the trend conclusions less reliable and subject to factors not addressed by simple trend analysis. As such, the past trends shown^[9] are likely not reflective of current or future shifts and client should consider such issues in their risk management and any investment. **For purposes of this assignment the appraiser has determined NO TIME ADJUSTMENT IS WARRANTED.** [Bolding and capitalization in original.]

Petitioner contends that “[n]o other studies or evidence were presented to the Tribunal which would lead them to a conclusion that a Time Adjustment was necessary.” However, in *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485 n 19; 473 NW2d 636 (1991), the Michigan Supreme Court stated, “The sales-comparison approach indicates true cash value 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.” (Emphasis added.) The comparables at issue sold in June 2008 and October 2008, more than a year before the pertinent tax date of December 31, 2009. Hendershot did not make a time adjustment, indicating, in part, that various factors were involved that could not be addressed “by simple trend analysis.” However, Hendershot himself stated that “the sub market has stabilized and is performing better than either the state or county markets” Given the requirement that the sales-comparison approach use recent sales as comparables and given Hendershot’s remarks about the market, the tribunal’s conclusion with regard to the appraisal was supported by competent and substantial evidence. *Mt Pleasant v State Tax Comm*, 477 Mich

⁹ Hendershot had, earlier in his report, noted a trend of declining home values.

at 53. It was not unreasonable for the tribunal to conclude that some type of time adjustment, perhaps based on more than the “simple trend analysis” mentioned by Hendershot, was required in order to make the appraisal a reliable indicator of value.

Petitioner also contends that the tribunal erred in rejecting the appraisal based on the fact that “there were not many sales.” However, we do not read the tribunal’s opinion as rejecting the appraisal for this reason. Again, the tribunal stated:

Petitioner’s Comparable Nos. 2 and 3 sold in October 2008 and June 2008, respectively, which is more than a year before the relevant tax date of December 31, 2009. The appraisal indicates that there were not many comparables that sold within a year; however, the appraisal failed to make adjustments to account for the date of sale.

The tribunal *mentioned* the fact that there were not many comparables that sold within a year, but, given the wording of the sentence in question, we cannot conclude that the tribunal *relied* on this fact in rejecting the appraisal.

Petitioner next makes an argument regarding the agricultural-versus-residential classification, stating that respondent would have accepted the appraisal value if the property were classified as residential and further stating that “[i]n this case the residential and agriculture classification are the same because the best use is as a residence on a portion of land since it is to [sic] small to be commercially farmed and generates no income.” We find no basis for a reversal or remand with respect to this argument by petitioner. First, he did not include this “classification” argument in his statement of questions presented for appeal, thereby waiving the argument. *Marx v Dep’t of Commerce*, 220 Mich App 66, 81; 558 NW2d 460 (1996). Second, it is not clear which portion of the tribunal’s decision petitioner is attacking by way of this argument. Petitioner appears to be taking issue with respondent’s stance regarding classification, but the tribunal did not emphasize or rely on respondent’s classification argument in reaching its conclusions.

Petitioner next argues that the tribunal erred in rejecting 6400 Talladay Rd. and 6068 Talladay Rd. as comparables. The tribunal rejected these properties as comparables because they involved bank sales and because, according to the tribunal, petitioner failed to make proper adjustments with regard to them. The tribunal also stated:

Finally, 6068 and 6400 Talladay are not reliable indicators of value because they have sales prices of \$78,200 and \$154,900, respectively. However, Petitioner claims that both properties are similar to the subject property, which implies that they are also similar to each other. The large disparity in sales price suggest that the sales were distressed and not subject to normal market pressures.

MCL 211.27(1) states, in part:

As used in this act, “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 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. The

usual selling price may include sales at public auction held by a nongovernmental agency or person if those sales have become a common method of acquisition in the jurisdiction for the class of property being valued. The usual selling price does not include sales at public auction if the sale is part of a liquidation of the seller's assets in a bankruptcy proceeding or if the seller is unable to use common marketing techniques to obtain the usual selling price for the property.

Petitioner contends that the properties were sold under normal market conditions because deeds "showed the parties are not related" and because each transaction involved a real estate agent. Petitioner states that using such agents "is the common technique in this area."

The tribunal's decision to reject petitioner's two proposed comparables was supported by competent and substantial evidence. *Mt Pleasant v State Tax Comm*, 477 Mich at 53. In its summary of evidence, the tribunal stated the following: "Petitioner further testified that the appraiser did not use 6068 and 6400 Talladay because they were bank sales . . ." In a document submitted by petitioner, he admits that the properties went through foreclosure, and he attached sheriff's deeds for each property. Clearly, the properties involved bank sales, and it was reasonable for the tribunal to conclude that petitioner's evidence regarding the deeds and the real estate agents was insufficient to bring the comparables within the applicable allowable parameters as set forth in MCL 211.27(1). Indeed, petitioner's own appraiser rejected the comparables, thus lending support to the tribunal's decision. We find no basis for reversal with regard to this aspect of the tribunal's decision, and we need not address the further arguments petitioner makes with regard to the two proposed comparables.

Petitioner next argues that the Tax Tribunal erred in using the cost-less-depreciation approach, instead of the sales-comparison approach, in valuing the property.

"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.

Given the flaws in the sales-comparison approach that petitioner presented, the tribunal reasonably chose to rely on the cost-less-depreciation approach in valuing the property. *Meadowlanes Dividend Housing Ass'n*, 437 Mich at 485 ("[i]t 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" [emphasis added]). Petitioner contends that the tribunal was required to make an independent determination of the property's true cash value and could not simply adopt respondent's figures. This is an accurate statement of the law. See *President Inn Properties, LLC v Grand Rapids*, 291 Mich App 625, 640; 806 NW2d 342 (2011). However, we cannot conclude that the tribunal merely adopted respondent's figures, in light of the following statements made by the tribunal:

Notwithstanding that Petitioner has failed in its burden of proof to present convincing evidence of value, Respondent's values may not be automatically adopted as the Tribunal has . . . a duty to make an independent determination of value. In that regard, Respondent has failed to provide any market evidence of value. In this case, the Tribunal finds that the most reliable indicators of value are the assessed values, as indicated on the property record card. *The Tribunal has reviewed and analyzed Respondent's assessment record card and the calculation provided therein and finds the same to provide reasonable support for the assessed value on the roll.* [Emphasis added.]

The tribunal used the cost-less-depreciation approach as set forth on the property record card to make its independent valuation of the property, and it explained its rationale for doing so. Under these circumstances, we find no basis for reversal.

Petitioner lastly argues that the tribunal erred in concluding that petitioner did not meet his burden of proof in establishing the true cash value of the property. See MCL 205.737(3) (discussing the burden of proof). Given the flaws in petitioner's evidence, we find no error with respect to this issue.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Patrick M. Meter

/s/ Michael J. Kelly