

STATE OF MICHIGAN
COURT OF APPEALS

KARTER LANDON,

Petitioner-Appellant,

v

CITY OF FLINT,

Respondent-Appellee.

UNPUBLISHED
February 6, 2014

Nos. 311073; 311074; 311075;
311076; 311078; 311079;
311080; 311081

Tax Tribunal

LC Nos. 00-378055; 00-378056;
00-378057; 00-378058;
00-378059; 00-378060;
00-378061; 00-378064

KARTER LANDON,

Petitioner-Appellant,

v

TOWNSHIP OF FLINT,

Respondent-Appellee.

No. 311107

Tax Tribunal

LC No. 00-378054

Before: WHITBECK, P.J., and FITZGERALD and O'CONNELL, JJ.

PER CURIAM.

In these consolidated cases, petitioner appeals by right the Michigan Tax Tribunal's determinations of the true cash values of nine residential properties, none of which are petitioner's primary residence. In response, both respondents contend that petitioner cannot pursue his appeals, on the ground that petitioner is not the real party in interest for the properties at issue (other than the property in Docket No. 311076). Respondents also contend that the Tax Tribunal's decisions were correct on the merits.

We conclude that petitioner was an aggrieved party in the Tax Tribunal with regard to the subject properties, and that as an aggrieved party he may pursue all of the cases at issue here. We further conclude that the Tax Tribunal properly applied the controlling legal principles, and

that substantial evidence supports the Tax Tribunal's determinations of the true cash values on all the subject properties. Accordingly, we affirm.

I. FACTS

Petitioner purchased the nine properties at issue between 1997 and 2009, for prices ranging from \$3,000 to \$27,500. Eight of the properties are in Flint, and one is in Flint Township. Most of the properties were owned by lending institutions at the time of petitioner's purchases. The local Board of Review assessed the properties at values much higher than petitioner believed to be the true cash values. Consequently, petitioner appealed the assessments to the Tax Tribunal.

In his Tax Tribunal appeals, petitioner used a sales-comparison approach to argue that the true cash value of the properties were much lower than those assessed by the Board of Review. In support, petitioner submitted evidence of numerous sales that he contended were comparable to the subject properties. His evidence was comprised of listings from the Multiple Listing Service (MLS) and accompanying photographs. He argued that the true cash values of his subject properties should be the average of the sales evidence he presented, with greater weight given to properties that he deemed "most comparable" to the subject properties.

Respondent Flint Township ("the Township") argued that petitioner's evidence undervalued the properties. In support, the Township presented a sales-comparison approach using sales prices from ten properties in the same geographical area as the subject property. In addition, the Township indicated that it had based the original assessment on a cost-less-depreciation approach.

Respondent City of Flint ("the City") also argued that petitioner's evidence undervalued the properties. The City presented property valuations using three valuation approaches: a sales-comparison approach, a cost approach, and an income approach. The City's sales comparisons generally included sales of three or four properties that were in the same geographic area as the subject properties. The City adjusted the sale prices for these properties downward, because of differences in square footage and in the age of the properties. These adjusted sales comparisons indicated values considerably higher than those presented by petitioner. The other two valuation approaches used by the City generally resulted in somewhat lower values than the City's sales-comparison approaches, but still indicated values considerably higher than those proffered by petitioner. The City's proffered true cash values for the subject properties were based on a compilation of all three valuation methods.

Petitioner argued that the properties that respondents selected as comparable sales were not representative of the market. Petitioner claimed that he had offered the subject properties for sale at prices considerably lower than respondents' proffered true cash values, and that the properties had not sold. He contended that his inability to sell the subject properties indicated that respondents' proffered true cash values were unreasonably high. Against the Township, petitioner argued that several of the Township's proffered comparisons were in much better condition than the subject property, and that the Township had failed to account for creative financing. As against the City, petitioner contended that many of the proffered sales comparisons were the result of fraudulent transactions by a company known as Fortuno, and that

some comparisons were overvalued because of the City's failure to account for creative financing. Petitioner further argued that the City's other two valuation methods were unsupported and were not appropriate for valuing the subject properties.

The hearing referee found, based on the evidence, that most of the comparisons submitted by petitioner were not subject to normal market pressures. Correspondingly, the referee found that some of the comparisons submitted by respondents reflected the subject markets and that those comparisons were arms-length transactions. In particular, the referee noted that petitioner had failed to support his assertion that the sales involving Fortuno were fraudulent. The referee then adopted either respondents' proffered true cash values, or the true cash values originally assessed by the Board of Review.

Listed below are the proffered true cash values by the parties and the true cash values as found by the hearing referee and affirmed by the Tax Tribunal, for each property.

| <u>Property Tax</u> | <u>Year</u> | <u>Petitioner's TCV Proffer</u> | <u>Respondent's TCV Proffer</u> | <u>Tribunal TCV</u> |
|----------------------|-------------|-------------------------------------|-------------------------------------|---------------------|
| Docket No. 311073 | | | | |
| 1113 Vermilya, Flint | 2009 | \$6,200 | \$20,000 | n/a |
| | 2010 | \$6,800 | \$18,000 | \$18,000 |
| | 2011 | \$5,000 | \$15,300 | \$15,300 |
| Docket No. 311074 | | | | |
| 2021 Nebraska, Flint | 2009 | \$4,750 | \$23,000 | \$26,200* |
| | 2010 | \$3,600 | \$19,600 | \$22,200* |
| | 2011 | \$3,360 | \$16,600 | \$18,800* |
| Docket No. 311075 | | | | |
| 1825 Maryland, Flint | 2009 | \$3,000 | \$21,000 | \$21,000 |
| | 2010 | \$2,000 | \$17,800 | \$17,080 [sic] |
| | 2011 | \$1,500 | \$14,200 | \$14,200 |
| Docket No. 311076 | | | | |
| 1214 W. Court, Flint | 2009 | \$9,000 | \$35,000 | \$30,800* |
| | 2010 | \$6,800 | \$29,800 | \$26,000* |
| | 2011 | \$8,450 | \$25,200 | \$22,800* |
| Docket No. 311078 | | | | |
| 1538 Montana, Flint | 2009 | \$4,500 | \$20,000 | \$18,600* |
| | 2010 | \$3,000 | \$17,000 | \$15,800* |
| | 2011 | \$2,500 | \$13,600 | \$12,600* |
| Docket No. 311079 | | | | |
| 1437 Indiana, Flint | 2009 | \$6,000 | \$27,000 | \$18,000* |
| | 2010 | \$3,675 | \$24,000 | \$16,200* |
| | 2011 | \$3,000 | \$20,400 | \$13,800* |

| | | | | |
|-----------------------------|------|----------|----------|-----------|
| Docket No. 311080 | | | | |
| 1420 Dakota, Flint | 2009 | \$3,000 | \$18,000 | \$15,300* |
| | 2010 | \$2,500 | \$15,400 | \$13,400* |
| | 2011 | \$1,500 | \$12,900 | \$10,800* |
| Docket No. 311081 | | | | |
| 125 E. Oakley, Flint | 2009 | \$3,190 | \$20,000 | \$20,000 |
| | 2010 | \$2,625 | \$18,000 | \$18,000 |
| | 2011 | \$4,200 | \$15,300 | \$15,300 |
| Docket No. 311107 | | | | |
| 1049 Whittemore, Flint Twp. | | | | |
| | 2009 | \$ 6,100 | \$34,700 | \$41,600* |
| | 2010 | \$10,500 | \$29,500 | \$36,000* |
| | 2011 | \$ 8,000 | \$25,000 | \$30,600* |

* The hearing referee determined that respondent's sales comparisons were not accurate, because those sales involved lending institutions as buyers or sellers (Docket No. 311074), or because the properties were not comparable to the subject property (Docket Nos. 311076, 311080, 311107), or because the sales analysis was not sufficient to support the respondent's proffered higher values (Docket Nos. 311078, 311079). Instead, the referee determined that the cost-less-depreciation method reflected on the property record card was the most accurate evidence of true cash value.

II. PROCEDURAL HISTORY

After the hearing referee entered proposed opinions on each property, petitioner filed exceptions. In general, petitioner's exceptions challenged the referee's determinations that petitioner had failed to present comparable sales evidence. Petitioner also challenged the referee's valuation methods and contended that the referee had failed to exercise independent judgment in valuing the subject properties.

The Tax Tribunal considered petitioner's exceptions and then entered judgments adopting the referee's proposed opinions on each property. In general, the tribunal concluded that the referee had properly considered all of the evidence and had made valid determinations of the true cash values of each property. Petitioner filed motions to reconsider each of the Tax Tribunal decisions, which the tribunal denied.

Petitioner then appealed the Tax Tribunal decisions to this Court. Respondents filed motions to dismiss the appeals under MCR 7.211(C)(2)(b). The motions were applicable to all of the appeals other than Docket No. 311076. In the motions, respondents contended that the properties at issue are owned by petitioner's corporate entities, rather than by petitioner. Respondents then argued that petitioner is not the real party in interest and cannot pursue the appeals. This Court denied the motions to dismiss.

III. REAL PARTY IN INTEREST ON APPEAL

The property tax records presented to the Tax Tribunal indicated that petitioner is the record owner of the property at issue in Docket No. 311076 (1214 W. Court, Flint). The records indicate that petitioner is not the record owner of the other eight properties at issue in these appeals. Rather, the record owner of one of the properties is Top Dollar Investments, Inc. (Docket No. 311079), and the record owner of the other seven properties is Bossman Investments, Inc. The Tax Tribunal apparently recognized the discrepancy between the named record owner and the named petitioner, and in its orders denying reconsideration, the tribunal substituted Bossman or Top Dollar as the named petitioner. The Tribunal stated that it had erred in the processing of the appeal because the documentation indicated that Bossman or Top Dollar (respectively) was the property owner. The tribunal noted, however that petitioner is the president of both Bossman and Top Dollar, and that petitioner is the authorized representative of those entities.

Respondents now assert that petitioner lacks standing to pursue the appeals for these eight properties. Respondents maintain that the corporate entities Bossman and Top Dollar are the real parties in interest.

For purposes of this appeal, we conclude that respondent has standing to challenge the Tax Tribunal's decisions, and that he is a real party in interest to pursue the appeals. Petitioner has standing if he "has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large" *Lansing Schools Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349, 372; 792 NW2d 686 (2010). Respondents do not contend, and have provided no evidence to establish, that petitioner lacks a substantial interest in these appeals. To the contrary, it appears from the record that petitioner is the principal of both Bossman and Top Dollar, and the tribunal's orders indicate that petitioner was a party aggrieved by the tribunal's decisions. As an aggrieved party, petitioner may properly pursue appeals in this Court. MCR 7.203(A).

IV. TRUE CASH VALUES

A. STANDARD OF REVIEW

Absent allegations of fraud, this Court reviews Tax Tribunal decisions "for misapplication of the law or adoption of a wrong legal principle." *Briggs Tax Serv, LLC v Detroit Pub Sch*, 485 Mich 69, 75; 780 NW2d 753 (2010).¹ The Court accepts the Tax Tribunal's factual findings as conclusive if the findings are supported by "competent, material, and substantial evidence on the whole record." *Id.* (quotation marks and citations omitted). "Substantial evidence is the amount of evidence that a reasonable person would accept as being sufficient to support a conclusion; it may be substantially less than a preponderance of the

¹ Petitioner makes passing references to fraud, but those references do not alter our standard of review. Petitioner first claims that Fortunato's transactions of comparable properties were fraudulent. Petitioner failed to provide valid evidence of the alleged fraud. Petitioner next claims that the tribunal acted fraudulently by denying him his constitutional rights. This unsupported claim is insufficient to require a heightened standard of review.

evidence.” *Wayne Co v Mich State Tax Comm*, 261 Mich App 174, 186-187; 682 NW2d 100 (2004).

B. APPLICABLE LEGAL PRINCIPLES

Our Legislature defined the term “true cash value” as follows:

“[T]rue 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 technique to obtain the usual selling price for the property. . . . [MCL 211.27(1).]

This Court has summarized the legal standards governing true cash value:

The Michigan Constitution provides that true cash value is necessary to determine the tax applicable to real property. [Const 1963, art 9, § 3.] The Legislature has provided that “property shall be assessed at 50% of its true cash value” [MCL 211.27a(1).] The Legislature has defined “true cash value” as “the usual selling price . . . that could be obtained for the property at private sale” True cash value and fair market value are synonymous, and both are “the probable price that a willing buyer and a willing seller would arrive at through arm’s length negotiation.” [*Pontiac Country Club v Waterford Twp*, 299 Mich App 427, 434-435; 830 NW2d 785 (2013), quoting *Huron Ridge LP v Ypsilanti Twp*, 275 Mich App 23, 28; 737 NW2d 187 (2007).]

When determining the true cash value of a property, the Tax Tribunal must apply a valuation method that provides “the most accurate valuation under the circumstances of the individual case.” *Detroit Lions, Inc v City of Dearborn*, 302 Mich App 676, 700; 840 NW2d 168 (2013), quoting *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984). Three acceptable valuation methods are “the capitalization-of-income approach, the sales-comparison or market approach, and the cost-less-depreciation approach.” *President Inn Props, LLC v City of Grand Rapids*, 291 Mich App 625, 639; 806 NW2d 342 (2011); see also *Meadowlanes Ltd Dividend Housing Ass’n v City of Holland*, 437 Mich 473, 484-485; 473 NW2d 636 (1991).²

² The cost approach uses the sum of the estimated land value and the estimated cost of reproducing improvements, less depreciation. *Meadowlanes*, 437 Mich at 485, n 18. The sales-comparison approach requires comparing the sales price of properties comparable with

If a party's proffered comparable sales include foreclosure sales, the Tax Tribunal generally applies the Michigan State Tax Commission guidelines for the use of foreclosure sales. The relevant guidelines reiterate the factors for determining whether comparable sales are arms-length transactions:

1. A determination as to whether the type of sale being reviewed is a measurable portion of the market.
2. A determination that the sale property was properly exposed to the market. For example, by listing with a real estate company.
3. A physical inspection of the property to make a determination that the assessment reflects the condition of the property at the time of sale unless the condition can be verified by other means.
4. Receipt of a properly completed real property statement to determine the terms and conditions of the sale unless adequate alternative statistical procedures are utilized to ensure the sales are an adequate part of the market.
5. A determination that the parties to the transaction were not related and each was acting in their own best interest. [Tax Comm Bulletin No. 6, Foreclosure Guidelines, August 15 2007, p 2.]

The guidelines present the following specific considerations for foreclosure sales:

1. Was a market value appraisal obtained before listing?
2. Did the seller have the right to refuse all offers?
3. Did the property have full market exposure after governmental intervention?
4. Was the property marketed for an adequate period of time?
5. Whether the seller was obligated to prorate taxes in accordance with local custom and provide evidence of title and a warranty deed to the purchaser.
6. Was property purchase "as is" and was property well maintained during the marketing period?
7. Was purchaser supplied with a disclosure and/or lead paint statement?

the subject property and adjusting the sales price of the comparable properties to reflect differences between the comparables and the subject property. *Id.* at n 19. The income-capitalization approach "measures the present value of the future benefits of property ownership by estimating the property's income stream and its resale value (reversionary interests) and then developing a capitalization rate which is used to convert the estimated future benefits into a present lump-sum value." *Id.* at n 20.

8. Did seller help with financing? If yes, then the sale must also be treated as a creative financed sale and be treated under the same rules established for adjusting creatively financed sales.
9. Were concessions involved and if so, are they typical of market?
10. Were sale conditions affected by the financial institutions requirement to dispose of the foreclosed property within 1 year to avoid the uncapping of taxable value or because of banking regulation conditions requiring special treatment of property owned by the institution? [*Id.*]

Although the Tax Commission's guidelines are not binding on this Court, we conclude that the guidelines are persuasive for purposes of reviewing the Tax Tribunal's assessment of the evidence in these appeals. See *In re Complaint of Rovas Against SBC Mich*, 482 Mich 90, 117-118; 754 NW2d 259 (2008) (administrative guidelines not binding but entitled to respectful consideration).

C. ANALYSIS

The Tax Tribunal's factual findings on each property were supported by competent, material, and substantial evidence in the record. Because many of petitioner's proffered comparable sales involved foreclosures, petitioner had the burden of establishing that foreclosure sales were a measurable portion of the relevant markets for each subject property. Both the hearing referee and the Tax Tribunal found that petitioner had not met this burden. In particular, the tribunal applied the State Tax Commission guidelines to find that petitioner's sales evidence was not indicative of arms-length transactions, and that his proffered comparable sales were not reflective of the market conditions. In addition, the tribunal found that respondents' evidence established accurate values, or that the original values assessed by the Board of Review were valid. The sales evidence in the record, as well as the property record cards in the record, are sufficient to support the tribunal's conclusions.

Petitioner argues that the volume of his evidence greatly exceeded the volume presented by respondents, and that the tribunal failed to recognize and properly assess the weight of his evidence. Although the record confirms that petitioner proffered a greater number of sales, those sales did not definitively establish the true cash values of the subject properties. Instead, the Tax Tribunal assigned greater weight to the evidence presented by respondents. We will not interfere with the Tax Tribunal's discretion as to the proper weight to assign to evidence in the record. *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 404; 576 NW2d 667 (1998).

Petitioner next argues that the Tax Tribunal's determinations grossly exceeded the values of the subject properties. In support, petitioner points out that the values assigned by the tribunal for two of the properties are more than six times his purchase prices for the properties (Docket Nos. 311075 and 311107). Petitioner's argument rests on an incorrect premise, i.e., that petitioner's purchase price is determinative of the true cash value of the properties. A purchase price is *evidence* of true cash value if the purchase is an arms-length transaction, but the purchase price is not *determinative* of true cash value. *Antisdale v City of Galesburg*, 420 Mich 265, 278;

362 NW2d 632 (1984). In these cases, petitioner presented no evidence that the purchases were arms-length transactions between a willing buyer and a willing seller. Cf. *Pontiac Country Club*, 299 Mich App at 434-435. To the contrary, the record indicates that petitioner purchased these two properties from mortgage institutions. Given the lack of proof that petitioner's purchase prices were indicative of the true cash values, the evidence supports the tribunal's determinations of the values of these properties.

Petitioner also challenges the Tax Tribunal's decision to consider respondents' cost-less-depreciation approach to valuation. According to petitioner, respondents did not provide sufficient notice to petitioner that they intended to rely on a cost-less-depreciation approach. In addition, petitioner contends that the cost-less-depreciation approach is an invalid method to determine true cash value in this case. We disagree with both of petitioner's contentions. As previously noted, the Michigan Courts recognize the cost-less-depreciation approach as a valid approach to determining true cash value. *President Inn Props, LLC*, 291 Mich App at 639. Petitioner's challenge to the cost-less-depreciation method is unsubstantiated, and we need not consider the challenge further.

Regarding notice of the cost-less-depreciation approach, we note that the Tax Tribunal's procedural rules require a respondent to file an answer that advises the petitioner and tribunal of the respondent's defenses to the petitioner's contentions. Mich Admin Code, R 792.10229. In these cases, the tribunal correctly determined that the City and the Township both provided adequate answers to notify petitioner that the cost-less-depreciation approach would be at issue. Both respondents denied petitioner's challenges to the assessments, and both attached documentation to support the denials, including property record cards. The denials and the documentation were sufficient to give petitioner notice of respondents' proposed valuations.

V. DISMISSAL OF 2009 ASSESSMENT - DOCKET NO. 311073

A. STANDARD OF REVIEW

The Tax Tribunal's dismissal of a case for failure to protest to the Board of Review presents a jurisdictional issue, in that the tribunal has no jurisdiction over assessment disputes unless a protest was filed in the Board of Review. MCL 205.735a. We review jurisdictional issues de novo. See *Trostel, Ltd v Dep't of Treasury*, 269 Mich App 433, 440; 713 NW2d 279 (2006).

B. ANALYSIS

In the Tax Tribunal, respondent City alleged that petitioner had failed to protest the assessment of the subject property to the 2009 March Board of Review. The Tax Tribunal ordered petitioner to submit documentation to establish that he had filed a timely protest. In response, petitioner informed the tribunal that he did not have a copy of the 2009 protest. Nonetheless, he maintained that he had protested the 2009 assessment. He submitted to the tribunal an unsigned, unattested document, which he stated he had presented to the Board of Review as a protest of the 2009 assessment. Petitioner further informed the tribunal that respondent had misplaced his protests in two other cases and speculated that respondent had misplaced his protest of the 2009 assessment of the subject property.

The hearing referee concluded that petitioner's submissions were insufficient to demonstrate that he had submitted a protest to the 2009 Board of Review for the subject property. In addition, the referee found that petitioner was not the record owner of the property during the time that the 2009 March Board of Review was in session. The referee dismissed the appeal of the 2009 assessment for the subject property.

In petitioner's exceptions submitted to the Tax Tribunal, petitioner again stated that he had presented a protest to the 2009 Board of Review and stated that at the time of the alleged protest he was the "equitable owner" of the property. He acknowledged that he did not have a signed copy of his protest, but claimed that he had mailed a signed copy to respondent. The Tax Tribunal adopted the referee's conclusions and upheld the dismissal of the 2009 assessment.

The record supports the Tax Tribunal's dismissal of the 2009 assessment for lack of jurisdiction. There is no evidence in the record that the Board of Review considered a protest for the 2009 assessment of the subject property. Although petitioner submitted documentation to establish that the board had considered a protest for the 2010 assessment, petitioner submitted nothing, other than his unsigned, unattested copy, to establish that he had protested the 2009 assessment. Given the lack of any verifiable evidence that petitioner protested the 2009 assessment to the Board of Review, the Tax Tribunal correctly determined that it had no jurisdiction to consider the 2009 assessment. MCL 205.735a(3).

VI. CONCLUSION

The Tax Tribunal properly applied the controlling legal principles to make an independent determination of the issues in these nine property tax appeals. Substantial evidence in the record supports the Tax Tribunal's determinations of the true cash values on all the subject properties.

Affirmed.

/s/ William C. Whitbeck
/s/ E. Thomas Fitzgerald
/s/ Peter D. O'Connell