

STATE OF MICHIGAN
COURT OF APPEALS

TOWN COMMONS, L.L.C.,

Petitioner-Appellant,

v

CITY OF HOWELL,

Respondent-Appellee.

UNPUBLISHED

May 23, 2013

No. 311365

Michigan Tax Tribunal

LC No. 00-412210

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

PER CURIAM.

Petitioner Town Commons, L.L.C. appeals as of right the July 6, 2012 judgment of the Michigan Tax Tribunal, which reduced its property tax assessment for the 2010 and 2011 tax years, but not to the degree petitioner sought. Because we conclude that the true cash value adopted by the tribunal is not supported by evidence of record, we reverse and remand for an independent determination of true cash value.

The property at issue in this case was residential real property located within the Town Commons development. The property consisted of two non-contiguous parcels. However, petitioner only filed exceptions regarding the value of parcel 1 and, on appeal, only addresses the valuation of parcel 1. For the 2010 and 2011 tax years, respondent City of Howell determined that parcel 1 had a true cash value (TCV) of \$800,000 and a state equalized value (SEV) of \$400,000, and determined that parcel 1's taxable value (TV) was \$368,362 for 2010 and \$374,624 for 2011. Petitioner protested respondent's assessment and argued before a hearing referee that parcel 1 had a TCV of \$150,000 and a SEV and TV of \$75,000 for the 2010 tax year, and a TCV of \$100,000 and a SEV and TV of \$50,000 for the 2011 tax year.

The hearing referee issued a proposed opinion and judgment. At the outset of his analysis of parcel 1, the hearing referee explained that the tribunal "does not have jurisdiction over [parcel 1], if the amount of the property's taxable value or state equalized valuation in dispute is more than \$100,000. MCL 205.762."¹ The hearing referee then concluded that the

¹ The \$100,000 limit applies only to property that is not residential. MCL 205.762(1) provides in pertinent part:

most reliable indicator of the property's TCV was the sales-comparison approach, and found that "[p]etitioner's analysis supports a decrease in true cash value on parcel 1 for the tax years in question, but not to the values it contends." The hearing referee rejected respondent's supporting evidence, which consisted of property listings rather than actual sales. Ultimately, the hearing referee determined that for both the 2010 and 2011 tax years, parcel 1's TCV was \$600,000 and its SEV and TV was \$300,000. This conclusion lowered parcel 1's SEV and TV by exactly \$100,000. With the exception of the hearing referee's holding that it did not have jurisdiction over an amount in dispute exceeding \$100,000 with which it disagreed because the property at issue was residential, the tribunal adopted the hearing referee's opinion and judgment.

Petitioner filed exceptions to the hearing referee's valuation of parcel 1 with the tribunal, asserting that the valuation "appears to have been shaped by" the referee's erroneous belief that the tribunal's jurisdiction was limited to disputes of \$100,000 or less. In its final opinion and judgment, the tribunal found that petitioner's exceptions were ultimately without merit, holding:

The Referee erred in stating that the Tribunal would not have jurisdiction over [parcel 1] if the amount of the property's taxable value or state equalized valuation in dispute exceeded \$100,000. In that regard, there is no limit to the amount of SEV or TV that may be disputed for property that is classified as residential under MCL 205.762 or TTR 303. Nonetheless, Petitioner's exceptions are without merit, as the Referee ultimately assumed jurisdiction over [parcel 1] and rendered a value determination with respect to the same. Further, given the available evidence, the Tribunal cannot conclude that the Referee erred in finding that while Petitioner did in fact meet the burden of establishing that the property was assessed in excess of 50% of its true cash value, the evidence did not support Petitioner's specified contentions of true cash value. The Referee's proposed final values are supported on the record by the testimony evidence provided, as well as the applicable statutory and case law.

On appeal, petitioner argues that the tribunal's determination of parcel 1's TCV was not supported by competent, material, and substantial evidence of record, but instead was the result of the hearing referee's erroneous understanding regarding the tribunal's jurisdiction.

"This Court's ability to review decisions of the Tax Tribunal is very limited." *President Inn Props, LLC v Grand Rapids*, 291 Mich App 625, 630; 806 NW2d 342 (2011). Petitioner does not allege fraud on the part of the tribunal, so our review of the tribunal's decision is "limited to determining whether the tribunal committed an error of law or adopted a wrong legal principle." *Mich Milk Producers, Ass'n v Dep't of Treasury*, 242 Mich App 486, 490; 618 NW2d 917 (2000). "The burden of proof in an appeal from an assessment, decision, or order of

The residential property and small claims division created in section 61 has jurisdiction over a proceeding, otherwise cognizable by the tribunal, in which residential property is exclusively involved. Property other than residential property may be included in a proceeding before the residential property and small claims division if the amount of that property's taxable value or state equalized valuation in dispute is not more than \$100,000.00.

the Tax Tribunal is on the appellant.” *Dow Chem Co v Dep’t of Treasury*, 185 Mich App 458, 463; 462 NW2d 765 (1990). We will not disturb a tribunal’s factual findings “as long as they are supported by competent, material, and substantial evidence on the whole record.” *Mich Milk Producers, Ass’n*, 242 Mich App at 490-491. “‘Substantial evidence’ is evidence that a reasonable person would accept as sufficient to support a conclusion. While this requires more than a scintilla of evidence, it may be substantially less than a preponderance.” *Dowerk v Oxford Charter Twp*, 233 Mich App 62, 72; 592 NW2d 724 (1998).

“[A]ll property, real and personal, within the jurisdiction of this state . . . shall be subject to taxation.” MCL 211.1. “Assessed value under the General Property Tax Act is a percentage of true cash value. Under MCL 211.27a, except as otherwise provided, property is to be assessed at fifty percent of true cash value pursuant to Const 1963, art 9, § 3.” *Great Lakes Div of Nat’l Steel Corp v City of Ecorse*, 227 Mich App 379, 416; 576 NW2d 667 (1998). “True cash value is synonymous with fair market value.” *Id.* at 389.

With respect to general valuation principles in the Tax Tribunal, the petitioner has the burden to establish the true cash value of property. 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. 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. 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. Regardless of the method employed, the Tax Tribunal has the overall duty to determine the most accurate valuation under the individual circumstances of the case. [*President Inn Props, LLC*, 291 Mich App at 631 (citations and quotation omitted).]

In the present case, the tribunal ultimately determined that parcel 1’s TCV was \$600,000 for the 2010 and 2011 tax years. This figure was wholly independent from the property’s assessed value or any value proposed by the parties. Neither the hearing referee nor the tribunal explained how they concluded that parcel 1 had a TCV of \$600,000 for the 2010 and 2011 tax years. Further, the hearing referee’s valuation of parcel 1, which the tribunal adopted, reduced parcel 1’s TV and SEV by exactly \$100,000—which was the maximum amount of disputed value over which the hearing referee erroneously believed the tribunal had jurisdiction under MCL 205.762.

“If neither party’s valuation figure is accurate, the tribunal should be free to reject both. However, the tribunal should not substitute some other figure which may be equally lacking in evidentiary support.” *Comstock Village Ltd Dividend Housing Ass’n v Comstock Twp*, 168 Mich App 755, 760; 425 NW2d 702 (1988). See also *Great Lakes Div of Nat’l Steel Corp*, 227 Mich App at 407. Absent any evidence or explanation on the record supporting the tribunal’s value determination, and given that the \$100,000 reduction directly coincides with the hearing referee’s erroneous understanding of the tribunal’s jurisdictional limits, we conclude that remand is necessary to ensure that the tribunal’s determination of TCV was not influenced by the hearing referee’s erroneous legal conclusion regarding the tribunal’s jurisdiction. On remand, the

tribunal shall make an independent determination of parcel 1's TCV and specifically explain how its TCV determination is supported by evidence of record.

Reversed and remanded to the Tax Tribunal. We do not retain jurisdiction.

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