STATE OF MICHIGAN

COURT OF APPEALS

MICHIGAN STATE TAX COMMISSION, Petitioner-Appellant/Cross-Appellee,	UNPUBLISHED May 9, 2006
v	No. 257503 Tax Tribunal
CITY OF GROSSE POINTE, Respondent-Appellee/Cross-Appellant.	LC No. 00-284585

Before: Sawyer, P.J., and Wilder and H. Hood*, JJ.

PER CURIAM.

Petitioner appeals, and respondent cross appeals, from the Michigan Tax Tribunal order regarding a tax assessment of a park located in Grosse Pointe, Michigan, known as Neff Park. We affirm.

I. Petitioner's Appeal

Petitioner argues that the Tax Tribunal committed an error of law by calculating Neff Park's taxable value at $1 per resident. Petitioner essentially raises three closely intertwined issues: (1) whether the Tax Tribunal erred by ruling that Neff Park was a "common amenity property" that was subject to a nominal tax value assessment; (2) whether the Tax Tribunal erred by rejecting petitioner's evidence concerning the market value of Neff Park; and (3) whether the Tax Tribunal erred by calculating the value of Neff Park as $1 per resident of the city of Grosse Pointe.

The Tax Tribunal held that ". . . the City park . . . is a 'common amenity property' to all the residents in the City of Grosse Pointe for park purposes, with deed, charter and statutory restrictions." The Tax Tribunal then determined that the nominal value of the subject property was essentially dependant on the number of citizens within the city of Grosse Pointe according to the 2000 census and calculated the value at $1 per resident.

MCL 205.753(1) provides:

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

> Subject to section 28 of article VI of the state constitution of 1963, and pursuant to section 102 of the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, as amended, being section 24.302 of the Michigan Compiled Laws, and in accordance with the Michigan court rules, an appeal from the tribunal's decision shall be by right to the court of appeals. For purposes of the constitutional provision, the tribunal is the final agency for the administration of property tax laws.

Const 1963, art 6, § 28 provides:

> All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This review shall include, as a minimum, the determination whether such final decisions, findings, rulings and orders are authorized by law; and, in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record. Findings of fact in workmen's compensation proceedings shall be conclusive in the absence of fraud unless otherwise provided by law.
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> Property tax valuation or allocation; review. 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.

According to these statutes, because the Tax Tribunal has been designated as the "final agency for the administration of property tax laws" under MCL 205.753(1), this Court's review of tax tribunal decisions is limited to determining whether they are authorized by law and whether the factual findings are supported by competent, material, and substantial evidence on the whole record. *APCOA, Inc v Treasury Dep't*, 212 Mich App 114, 117; 536 NW2d 785 (1995). Substantial evidence is "the amount of evidence that a reasonable mind would accept as sufficient to support a conclusion," but it may be "substantially less than a preponderance." *In re Payne*, 444 Mich 679, 692; 514 NW2d 121 (1994).

In the absence of fraud, review of a tax tribunal decision is limited to determining whether the tribunal committed an error of law or adopted a wrong legal principle. Const 1963, art 6, § 28; *Danse Corp v Madison Heights*, 466 Mich 175, 178; 644 NW2d 721 (2002). Deference is given to an agency's findings of fact, *THM Ltd v Comm'r of Ins*, 176 Mich App 772, 776; 440 NW2d 85 (1989), especially as to conflicts in the evidence and credibility of witnesses, *Arndt v Dep't of Licensing*, 147 Mich App 97, 101; 383 NW2d 136 (1985). The burden of proof is on the taxpayer to establish the true cash value of the property. MCL 205.737(3).

The petitioner bears the burden of proof in establishing the true cash value of the subject property. MCL 205.737(3); *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998). Under MCL 205.737(1), the Tax Tribunal must find a property's true cash value in determining a lawful property assessment. *Alhi Dev Co v Orion Twp,* 110 Mich App 764, 767; 314 NW2d 479 (1981). While the Legislature provided a definition of true

cash value in MCL 211.27(1), it did not direct the specific methods to be used. *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 484; 473 NW2d 636 (1991). However, the following are three methods of determining true cash value, which have been found acceptable and reliable by the Tax Tribunal and the courts: (1) the cost-less-depreciation approach; (2) the sales-comparison or market approach; and (3) the capitalization-of-income approach. *Id.* at 484-485. "It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of the case." *Id.* at 485.

Under the sales comparison approach, " 'the market value of a given property is estimated by comparison with similar properties which have recently been sold or offered for sale in the open market.' " *Antisdale v Galesburg*, 420 Mich 265, 276 n 1; 362 NW2d 632 (1984), quoting 1 State Tax Comm Assessor's Manual, Ch VI, pp 1-2. Under the cost approach, the land, alone, is valued as if it were unimproved, then the value of any improvements is established separately by calculating what the improvements would cost to newly construct and deducting an appropriate amount for depreciation. See *id*. at 276 n 1, quoting 1 State Tax Comm Assessor's Manual, Ch VI, p 4. Under the income capitalization approach, the value of a property is established by estimating the future income it could earn. *Id*. at 276-277 n 1, quoting 2 State Tax Comm Assessor's Manual, Ch X, p 1.

Notably, there are valid variations of each method, *Antisdale, supra* at 277 n 1, and it is the tribunal's duty "to select the approach which provides the most accurate valuation under the circumstances of the individual case." *Id*. at 277. The tribunal "is not bound to accept the parties' theories of valuation. 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." *Great Lakes, supra* at 390-391.

Petitioner argues that the Tax Tribunal erred by finding the park is "common amenity property" subject to taxation upon only nominal value as set forth in State Tax Commission Bulletin No. 1 of 1990. The impetus behind petitioner's argument is the Tax Tribunal's alleged erroneous decision to disregard Dennis Platte's testimony that Bulletin No. 1 of 1990 was inapplicable with respect to this case. Platte is the Administrator of the Property Tax Division and the Executive Secretary of the State Tax Commission.

Specifically, petitioner challenges the Tax Tribunal's decision to disregard Platte's testimony that the Bulletin was inapplicable to this case. As stated, the Tax Tribunal "is not bound to accept the parties' theories of valuation. 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." *Great Lakes, supra* at 390-391. Here, the record indicates that the Tax Tribunal did not necessarily rule that Bulletin No. 1 was dispositive of the issue, but instead, found that the principles set forth in the Bulletin were persuasive, and thus, applied those principles in this case. In ruling on petitioner's motion for reconsideration, the Tax Tribunal stated that it "did not place heavy weight on the Bulletin." Either way, the Tax Tribunal's decision that Neff Park was a "common amenity property" as suggested by the principles set forth in the Bulletin was permissible given its latitude to use, reject or combine the valuation theories set forth by the parties. *Great Lakes, supra* at 390-391.

Indeed, the Bulletin provides that "[i]t is further recommended that in a recorded plat subdivision an assessed value of zero be entered for the types of common elements listed below when their actual value is reflected as a contribution to the sales prices of the lots in the recorded platted subdivision(s): 1. A park reserved solely for the use of the owners of lots in the subdivision(s)." State Tax Commission Bulletin No. 1, 1990. In this respect, James Hartman, testified about the "public interest value" of the park, and claimed that Neff Park added $42,000,000 in value to residential properties throughout the city of Grosse Pointe. Thus, even if the Bulletin was technically inapplicable to Neff Park, the Tax Tribunal acted within its province by combining the principles set forth by the Bulletin with witness' testimony and modifying those theories to reach a conclusion in this case. Accordingly, this Court cannot conclude that the Tax Tribunal's decision with regard to this issue was erroneous.

Petitioner also argues that the Tax Tribunal's ruling, that Neff Park had only nominal value because it would not be sold, was an error of law. Specifically, petitioner argues that there are no preclusions against the sale of Neff Park. We disagree.

Petitioner argues that the master plan of the city of Grosse Pointe does not require that the subject property be used as a park. Although the language in the master plan documentation provided to the Tax Tribunal indicates that the city of Grosse Pointe *intended* Neff Park to be used as a park, the record is devoid of any *requirement* imposed by the master plan that Neff Park be used as a public park. Because Neff Park is not required under the official master plan of the city of Grosse Pointe to be used as a public park, it may be sold by the city according to MCL 117.5(e), which allows a city to sell park where it is "not required under an official master plan of the city. . . ." MCL 117.5(e).

Section 45 of the Grosse Pointe City Charter provides that the City Council may not sell or lease property that is devoted to public use. Specifically, Section 45 provides:

> The council may provide by ordinance or resolution that the clerk shall bid in [sic] for the city any lot of land or premises at any sale for taxes or assessments levied or assessed by the city. Under such limitations as are provided by state law, the council may sell or lease in such manner and under such conditions as it may by resolution provide, any property of the city, whether acquired by purchase or tax sales or otherwise, that is not devoted to public use.

Here, whether Neff Park is devoted to "public use" for purposes of Section 45 is answered by looking to the deed restrictions that followed the property. In this regard, the deed by which Parcel No. 82-37-006-02-0001-001 was conveyed from several property owners to the city restricts the use of this parcel to a public park for the residents of Grosse Pointe. The deed provides:

> It is mutually understood and agreed that the premises hereby conveyed are conveyed to the Village of Grosse Pointe for the purpose of a public park, which shall be for the benefit of the residents of the Village of Grosse Pointe, and with that and in view said property shall be always used for park purposes and for no other purpose whatsoever . . . .

Further, the agreement under which the city was able to obtain a waiver of subdivision building and use restrictions on Parcel No, 82-37-006-04-0014-000 (and the waiver of two rights-of-way running to Lake St. Claire) restricts the use of the parcel to a public park by the city. That agreement provides in relevant part:

> 1. The parties hereto for themselves, their heirs, executors, administrators, successors and assigns forever release and discharge the respective owners of the servient lands, their heirs, executors, administrators and assigns from all their duties, obligations and liabilities with respect to the original right-of-way and the alternate right-of-way to the end that the same shall be forever distinguished.
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> 2. The parties hereto for themselves, their heirs, executors, administrators, successors and assigns release and discharge the City from all its duties, obligations and liabilities created by the said building and use restrictions for residential purposes only with respect to that part of Lot A which the City has agreed to purchase from Kathleen R. Doughty as hereinafter described for so long as
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> (a) Said premises are used by the City as a public park.

Thus, the deed and agreement unambiguously limit the use of Neff Park for use as a park for residents of the city.

Therefore, although the master plan and MCL 117.5(e) do not restrict the city's apparent ability to sell or lease Neff Park, the deed restrictions require the property to be used as a park for the residents of the city. The remaining issue, therefore, is whether this restriction causes the park to have no market value.

In this regard, *Canada Creek Ranch Ass'n, Inc v Montmorency Twp*, 206 Mich App 498; 522 NW2d 690 (1994), is instructive. There, Montmorency Township appealed an order of the Tax Tribunal fixing the value of certain real property at a nominal value. *Canada Creek, supra* at 503. The Canada Creek Ranch Association was a recreational club that owned property in Montmorency Township. *Id.* at 499. Members of the Association were required to buy lots on Association property. The purchase of the individual lots allowed individuals to use approximately 11,700 acres of common Association property. The bylaws of Canada Creek Ranch Association restricted the sale of the 11,700 acre common use parcel, stating:

> The Board of Directors shall control the policy, funds, and property of the Association, authorizing all contracts, sales and purchases and declaring and paying dividends. The Board of Directors, except as otherwise provided herein, shall not have authority to convey, sell, lease or mortgage, any of the land owned by the Association unless authorized to do so by the holders of a majority of the shares of the Association voting in person or by proxy at an Annual or Special Meeting. [*Canada Creek, supra* at 502.]

The bylaws also mandated that a minimum of 12.51 percent of the plaintiff's shares must vote to authorize the sale of the common property. *Id.* at 502.

The Tax Tribunal found that the bylaws and article restrictions made the sale of the property virtually impossible, reducing the value of the common property to a nominal sum. *Id.* at 503. The Court of Appeals reversed because "self-imposed restrictions on marketability are not proper considerations in assessing property value." *Id.* at 504.

However, part of the property was subject to a 1944 court decree, which incorporated an earlier agreement that the property "shall be held exclusively and continuously for the use, benefit and pleasure of the members of the Canada Creek Ranch Association." *Canada Creek, supra* at 500. This Court held that it was proper to take into consideration the effect of the court decree because that restriction was not self-imposed. *Id.* at 504. Thus, the Court affirmed in part, reversed in part, and remanded. *Id.* at 507.

Here, the tribunal weighed numerous factors, including the restrictions imposed upon the use of the land. *Lochmoor Club v Grosse Pointe Woods*, 3 Mich App 524, 530-531; 143 NW2d 177 (1966). Included in this determination was the fact that the parties that sold the city Neff Park imposed restrictions similar to those applicable to the Monteith property in *Canada Creek, supra*. Even if these restrictions could be removed by vote of the electorate, the former City Manager of Grosse Pointe testified that he believes the city's residents would not vote to sell the park. Although one witness testified that individuals from other branches of the Michigan government stated the state of Michigan would be interested in purchasing the property, hypothetical sale transactions based on unsupported speculation have been rejected by this Court in determining the market value of property. *Kensington Hills Dev* v *Milford Twp,* 10 Mich App 368; 159 NW2d 330 (1968) (township's valuation was based on hypothetical rezoning of the property, and this Court held that rezoning of property along a busy highway was highly conjectural.) In this regard, there was competent evidence to support the Tax Tribunal's finding that Neff Park was unmarketable and had only nominal value.

Petitioner also argues that the Tax Tribunal erred as a matter of law by rejecting the valuation evidence from one of its expert witnesses. The Tax Tribunal, however, "is not bound to accept the parties' theories of valuation. 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." *Great Lakes, supra* at 390-391. Petitioner's argument, therefore, is without merit.

Petitioner also criticizes the Tax Tribunal's methodology of determining nominal value. Petitioner argues that the Tax Tribunal's decision to calculate the value of Neff Park at $1 per each resident of Grosse Pointe was error requiring reversal. However, petitioner fails to set forth any governing standards regarding a so-called proper methodology other than those rejected by the Tax Tribunal. As stated, there are valid variations of each valuation method, and it is the Tax Tribunal's duty "to select the approach which provides the most accurate valuation under the circumstances of the individual case." *Antisdale, supra* at 277. Here, Bulletin No. 1 of 1990 provides in part:

> Recorded plat subdivisions occasionally include interests in common elements such as a park reserved for the use of the subdivision lot owners. Depending on the degree of permanence of the restrictions on the common element, assessment appeals have been decided ranging from zero or nominal, token value ($100) to almost full value of unrestricted land. [State Tax Commission Bulletin No. 1 of 1990.]

Thus, the trial court's valuation, in light of its ruling that Neff Park is a "common amenity property" that is subject to various restrictions, does not constitute "fraud, error of law or the adoption of a wrong principle." Const 1963, art 6, § 28; *Dow Chemical, supra* at 462. Rather, as discussed, the Tax Tribunal used its discretion to employ a variation of the various valuation methods presented to it, including Bulletin No. 1 of 1990. There is no error requiring reversal.

II. Respondent's Cross Appeal

Respondent argues on cross appeal that the Tax Tribunal erred by ruling that Neff Park was not exempt from taxation under MCL 211.7m and MCL 211. 7x. We disagree.

In its July 16, 2003, opinion, the Tax Tribunal addressed the exemption question after submission of the stipulated facts and briefs of the parties. The Tax Tribunal found that, according to MCL 211.7m, MCL 211.7x and *Balogh v City of Flat Rock,* 152 Mich App 517; 394 NW2d 1 (1985), a city park cannot restrict access to city residents and their guests and still receive a tax exemption. The Tax Tribunal read the statutes in conjunction with one another, and looked to *Balogh* for guidance in interpreting the word "public" as used in MCL 211.7m and MCL 211.7x. Accordingly, the Tax Tribunal denied the tax exemptions for Parcels 82-37-006-02-0001-001, 82-37-006-03-0001-000, and 82-37-006-04-0014-000.

Section 1 of the General Property Tax Act, MCL 211.1 provides "[T]hat all property, real and personal, within the jurisdiction of this state, not expressly exempted, shall be subject to taxation." MCL 211.7m and MCL 2117x provide an exemption for property used as park under certain circumstances. Those sections provide, in relevant part:

> Property owned by, or being acquired pursuant to, an installment purchase agreement by a county, township, city, village, or school district used for public purposes and property owned or being acquired by an agency, authority, instrumentality, nonprofit corporation, commission, or other separate legal entity comprised solely of, or which is wholly owned by, or whose members consist solely of a political subdivision, a combination of political subdivisions, or a combination of political subdivisions and the state and is used to carry out a public purpose itself or on behalf of a political subdivision or a combination is exempt from taxation under this act. Parks shall be open to the public generally . . . . [MCL 211.7m.]
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> Land dedicated to the public and used as a park open to the public generally; any monument ground or armory belonging to a military organization which is not used for gain or any other purpose; and all property owned by a nonprofit corporation organized to take title to property previously owned by the state when the property owned by that corporation is leased to the state are exempt from taxation under this act. As used in this subdivision, "public" means all the residents of this state. [MCL 211.7x.]

Respondent first cites *Village of Grosse Pointe Woods v Village of St Clair Shores,* 326 Mich 376; 40 NW2d 190 (1949), to support its argument. *Village of Grosse Pointe Woods* has

been superseded by statute. MCL 211.7m and MCL 211.7x. In this respect, *Balogh, supra* at 517, explains why respondent's reliance on *Village of Grosse Pointe Woods, supra,* is misplaced. There, this Court held that while a local municipality could restrict the use of its park to non-residents, such a restriction would result in a loss of any exemption from property tax. Specifically, this Court wrote:

> The words in the above provisions [MCL 211.7m and MCL 211.7x] "open to the public generally," as well as the definition of "public" to include all state residents, were added by the Legislature in 1952 PA 54, perhaps as a response to the Supreme Court's decision in *Village of Grosse Pointe Woods v Village of St Clair Shores*, 326 Mich 376; 40 NW2d 190 (1949). The Court in that case had held that a park restricted by deed for use by residents and taxpayers of the Village of Grosse Pointe Woods was exempt from taxation, despite the restriction, because it was still used for a public purpose, which is all that the predecessor to § 7x required for tax exemption. Whether the statute was amended to alter this holding we do not know. But the amendments effectively exterminated its precedential value. The city in the instant case thus could not argue that by opening the park only to its residents it nevertheless satisfies the statutory requirement that the park be open to the public, since the statute now makes clear that only parks open to all Michigan residents may enjoy tax exemption. [*Balogh, supra* at 521.]

Here, Neff Park is not open to all Michigan residents. Rather, the park is open only to residents of Grosse Pointe and their guests. See City of Grosse Pointe Ord. No. 287, § 1(3.12), 11-15-93. Thus, Neff Park is not exempt from taxation. *Balogh, supra* at 521. This conclusion is consistent with State Tax Commission Bulletin No. 19 of 2000, which explains the State Tax Commission's interpretation of MCL 211.7m and MCL 211.7x. There, the State Tax Commission wrote: "[i]t is the position of the State Tax Commission that, in order for a park to be exempt from property taxation, it must be open to the public without restriction, not just to a limited group such as residents of the governmental units and their guests." "The State Tax Commission therefore directs that assessors shall NOT grant exemptions to public parks owned by local units of government unless they are open to the public without restriction." State Tax Commission Bulletin No. 19 of 2000.

Respondent next contends that because MCL 211.7m and MCL 211.7x both state that "parks shall be open to the public generally," and MCL 211.7x defines the word "public" to mean "all residents of this state" whereas MCL 211.7m does not define the word "public," the word "public" as used in MCL 211.7m must have a different meaning than the word "public" as defined in MCL 211.7x. Under this construction, respondent argues, the use of Neff Park as restricted by respondent would, therefore, qualify as a use "open to the public generally" under MCL 211.7m. We disagree. Because both statutes address the exemption from property tax of property used as a park, they should be read *in pari materia* and construed together. *Inter Co-op Council v Dep't of Treasury***,** 257 Mich App 219, 225; 668 NW2d 181 (2003). "[S]tatutes that have a common purpose should be read to harmonize with each other in furtherance of that purpose. *Aspey v Memorial Hosp,* 266 Mich App 666, 675; 702 NW2d 870 (2005), citing *Jennings v Southwood,* 446 Mich 125, 136-137; 521 NW2d 230 (1994). Given the amendment of both MCL 211.7m and MCL 211.7x, following the Supreme Court's decision in *Village of*

Grosse Pointe Woods, *supra*, to require that property be not just *used* for a public purpose, but open to the public *generally* in order to qualify for tax exemption, we conclude that respondent's suggested construction of MCL 211.7m is inconsistent with the legislative intention, as expressed in the statute, to require a broader rather than limited accessibility to park property before it may be found exempt from property taxes.

Moreover, "[w]here a specific statutory provision differs from a related general one, the specific one controls." *Antrim Co Treasurer v Dep't of Treasury,* 263 Mich App 474, 484; 688 NW2d 840 (2004). Here, in order to harmonize the use of the phrase "open to the public generally" in both MCL 211.7m and MCL 211.7x, the more specific definition in MCL 211.7x, which defines "public" to mean residents of the state of Michigan, controls.

Respondent raises two additional arguments: that the definition of "public" in MCL 211.7m and MCL 211.7x is mutually exclusive to each subsection because MCL 211.7x concerns "land dedicated as a public park" and that the Tax Tribunal's interpretation of MCL 211.7m and MCL 211.7x would require taxation of public school playgrounds. However, respondent fails to cite to the record or any legal authority in support of its arguments. Failure to brief an issue abandons it on appeal. *Steward v Panek*, 251 Mich App 546, 558; 652 NW2d 232 (2002). "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claim nor may he give only cursory treatment [of an issue] with little or no citation of supporting authority." *People v Matuszak*, 263 Mich App 42, 59; 687 NW2d 342 (2004) (citation omitted).

The Tax Tribunal correctly ruled that parcel numbers 82-37-006-02-0001-0001, 82-37-006-03-0001-000, and 82-37-006-04-0014-000 were not exempt from taxation under MCL 211.7.

Affirmed.

/s/ David H. Sawyer
/s/ Kurtis T. Wilder
/s/ Harold Hood