

STATE OF MICHIGAN
COURT OF APPEALS

MCPHERSON MANSION LLC,

Petitioner-Appellant,

v

CITY OF HOWELL,

Respondent-Appellee.

UNPUBLISHED
October 16, 2012

No. 305705
Tax Tribunal
LC No. 00-373570

Before: FITZGERALD, P.J., and METER and BOONSTRA, JJ.

PER CURIAM.

Petitioner appeals as of right from the opinion and judgment of the Michigan Tax Tribunal. We affirm.

This case involves a dispute over the state equalized value (SEV), taxable value (TV), and true cash value (TCV) of a parcel of property commonly known as McPherson Mansion, located in Howell, Michigan. Roger and Kelly Myers purchased the property in 2007 for \$650,000 in a sale in lieu of foreclosure. Shortly thereafter, the property was transferred by quitclaim deed to petitioner. After the property was transferred, petitioner procured a construction mortgage for \$2,184,500. Petitioner then applied for and obtained building permits to make several improvements, including a full two-story addition. Petitioner also sought and obtained a special use permit to allow the building to be occupied for professional office use. Construction began in September 2007. A certificate of occupancy was granted in January 2009, after the addition was complete.

On May 30, 2008, petitioner filed a petition contesting respondent's assessment of its property for the 2008 tax year. Petitioner subsequently filed petitions contesting respondent's assessments for the 2009 and 2010 tax years. The petitions were consolidated and the tribunal ordered the parties to submit and exchange valuation disclosures.¹ Petitioner submitted a

¹ 2009 AC, Rule 205.1101(1)(m) provides as follows:

“Valuation disclosure” means documentary or other tangible evidence in a property tax appeal which a party relies upon in support of the party's contention as to the true cash value of the subject property or any portion thereof and which

valuation disclosure, which consisted of an appraisal report. Respondent did not submit a valuation disclosure; rather, respondent submitted the tax cards for the 2008, 2009, and 2010 tax years.

Following a two day hearing, the tribunal issued an opinion affirming respondent's assessments. The tribunal concluded that petitioner failed to meet its burden of going forward with competent evidence on the issues of TCV, SEV, and TV. The tribunal further concluded that respondent presented credible documentary evidence and testimony to support the subject property's assessment for the years at issue.

This Court's ability to review decisions of the Tax Tribunal is very limited. *Columbia Assocs, LP v Dep't 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 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).

Petitioner first argues that the tribunal erred when it ruled that petitioner failed to meet its burden of coming forward with evidence. We agree. In *President Inn Props LLC v Grand Rapids*, 291 Mich App 625, 631; 806 NW2d 342 (2011), we explained the burden of proof with respect to valuation principles in the tribunal:

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).

Contrary to the tribunal's conclusion, petitioner met its burden of going forward with evidence. Petitioner submitted a valuation disclosure to the tribunal. Petitioner's disclosure consisted of an appraisal report and contained petitioner's "value conclusions and data, valuation methodology, analysis, or reasoning." 2009 AC, R 205.1101(1)(m). The report was prepared by Lawrence Allen, a state certified real estate appraiser and member of the Appraisal Institute. Allen was qualified as an expert in real estate appraisal and testified before the tribunal. Allen stated that he prepared the appraisal report by utilizing the income approach and sales comparison approach to valuation, explaining that the cost approach to value was not a reliable

contains the party's value conclusions and data, valuation methodology, analysis, or reasoning in support of the contention.

indication of value of the subject property.² Based on his analysis, Allen opined a TCV for the tax years in question, which was reflected in the appraisal report.

The tribunal's conclusion on this point appears to confuse the burden of going forward with evidence and the burden of persuasion. The tribunal dedicated much of its opinion discussing what it perceived as deficiencies in the appraisal report and Allen's testimony. The reliability of petitioner's evidence, however, goes to the weight of the evidence, which necessarily encompasses the burden of persuasion. See *Bay Harbor Yacht Club v City of Petoskey*, 16 MTTR 339 (Docket No. 298777, May 2, 2006) (“[A]ny deficiencies in the valuation disclosure to establish the true cash value of property go to the weight accorded to it by the Tribunal as it considers evidence bearing on valuation issues within its jurisdiction.”). See also *Great Lakes Div of Nat'l Steel Corp*, 227 Mich App at 410.

Petitioner also argues that it met its burden of persuasion.³ Petitioner argues that respondent failed to produce any evidence of value. Petitioner notes that Gladys Niemi, respondent's assessor, testified before the tribunal and gave her opinion of TCV for the years at issue. However, petitioner argues that Niemi's testimony should have been excluded because respondent failed to submit a valuation disclosure. Because petitioner did not object to Niemi's testimony below, the issue is unpreserved. See *Booth Newspapers, Inc v Univ of Mich Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993). In any event, petitioner's argument is without merit.

Petitioner relies on 2009 AC, R 205.1283(3) for its argument that Niemi's testimony was inadmissible. 2009 AC, R 205.1283(3) provides as follows:

Without leave of the tribunal, a witness may not testify as to the value of property without submission of a valuation disclosure. This does not, however, preclude an expert witness from rebutting another party's valuation evidence or testifying as to the value of the property in issue if the expert witness's value conclusions were adopted by the party and included in the party's valuation disclosure.

Respondent's failure to submit a valuation disclosure did not mandate that Niemi's testimony be excluded. Rule 283(3) states “without leave of the tribunal,” which indicates that the tribunal

² “There are three traditional methods of determining true cash value, or fair market value, which have been found acceptable and reliable by the 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). “The Tax Tribunal determines which approach provides the most accurate valuation in any given case.” *Meijer, Inc v City of Midland*, 240 Mich App 1, 4-5 n 5; 610 NW2d 242 (2000).

³ That petitioner met its burden of going forward with evidence, however, does not mean that petitioner met its burden of persuasion. See *Jones & Laughlin Steel Corp*, 193 Mich App at 355.

has discretion to allow a witness to testify as to the value of property even without the submission of a valuation report. Further, the second sentence of Rule 283(3) states that the rule does not “preclude an expert witness from rebutting another party’s valuation evidence.” Here, petitioner presented its valuation disclosure and Allen’s testimony to establish TCV. Therefore, Niemi’s testimony was admissible to rebut petitioner’s evidence.

Petitioner’s final argument is that the tribunal erred because it did not make an independent determination of value. In *President Inn Props LLC*, 291 Mich App at 631, we explained that

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 method 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).

We further explained that a “property’s assessed valuation on the tax rolls carries no presumption of validity.” *President Inn Props LLC*, 291 Mich App at 640. However, “the Tax Tribunal may adopt the assessed valuation on the tax rolls as its independent finding of TCV when competent and substantial evidence supports doing so.” *Id.*

Here, the tribunal affirmed respondent’s assessments, thereby adopting the assessed valuations on the tax rolls as its independent determination of value. The tribunal’s determination was supported by competent and substantial evidence in the record. Respondent submitted the tax cards for the subject property, which include the property’s assessed value for the years at issue. Included in the tax cards for each year is a TCV calculation based on the cost approach to valuation, which is one of the three traditional methods of determining true cash value that has been found acceptable and reliable by the tribunal and the courts. Niemi stated that she determined cost by applying a “cost value” from the State Assessor’s Manual. These calculations are reflected in the tax cards, which show a cost based on the property’s square footage. Additional costs were then added to account for finishes and features in property. Finally, a county multiplier was applied and depreciation was taken into account. The tax cards, together with Neimi’s testimony, provide competent and substantial evidence supporting the tribunal’s determination.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter
/s/ Mark T. Boonstra