STATE OF MICHIGAN

COURT OF APPEALS

NIXON ROAD HOLDING COMPANY, LLC, Petitioner-Appellant,	UNPUBLISHED October 23, 2012
v	No. 303519 Tax Tribunal
TOWNSHIP OF DELTA, Respondent-Appellee.	LC No. 00-336287

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

PER CURIAM.

Petitioner appeals as of right from an order of the Tax Tribunal upholding property taxes imposed by respondent. We affirm.

I. FACTS

Petitioner purchased three parcels of property in 2004 and 2005 and subdivided them. Petitioner added public-service improvements to the property in the course of the subdivision process.

In 2007, petitioner appealed the assessed values and state-equalized values for the subdivided lots to the Board of Review, which denied petitioner's request for relief. Petitioner then filed a petition with the Tax Tribunal, citing *Toll Northville Ltd v Northville Twp*, 480 Mich 6, 14-15; 743 NW2d 902 (2008), and arguing that respondent had mistakenly included in its calculations the value of public-service improvements petitioner had made to the property for the purposes of platting and dividing the parent parcel. Petitioner subsequently appealed the assessed values and state-equalized values for the lots in question to the Board of Review in 2008, 2009, and 2010, and the Board of Review again denied petitioner's requests for relief. Petitioner subsequently amended its original petition to the Tax Tribunal to include the 2008, 2009, and 2010 tax years.

Following a hearing, the Tax Tribunal issued a final opinion and judgment affirming the assessments. In support of its judgment, the tribunal set forth several findings. First, the tribunal found that petitioner had failed to provide any valuation disclosures showing that the property was improperly assessed. Second, the tribunal found that petitioner's proposed valuation method of dividing the purchase price of the "parent" parcel by the number of "child" parcels was not an accepted method of calculating true cash value. Third, the tribunal found that the property

became uncapped for purposes of property taxes when petitioner acquired it, and that petitioner had not shown that any increase in taxable value following this uncapping event resulted from public-service improvements. Finally, the tribunal found that petitioner's only evidence that public-service improvements had been included in the assessments was respondent's answer to the initial petition, but that that answer was drafted by a non-lawyer without the assistance of counsel and was refuted by respondent's actions following the filing of that answer.

This appeal followed.

II. STANDARDS OF REVIEW

In the absence of fraud, this Court reviews the decisions of the Tax Tribunal for misapplication of the law or adoption of a wrong principle. *Briggs Tax Serv, LLC v Detroit Pub Sch*, 485 Mich 69, 75; 780 NW2d 753 (2010). This Court accepts the Tax Tribunal's factual findings as final if they are supported by competent, material, and substantial evidence. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352; 483 NW2d 416 (1992). This Court reviews the Tax Tribunal's enforcement of its own rules for an abuse of discretion. *Perry v Vernon Township*, 158 Mich App 388, 392; 404 NW2d 755 (1987).

III. ANALYSIS

First, petitioner argues that the Tax Tribunal erred by not allowing petitioner to present certain valuation evidence.

Petitioner offered the tribunal a spreadsheet listing proposed values for the lots at issue. In order to arrive at those figures, petitioner took the purchase price of the parent parcels and divided it by the number of child parcels. The tribunal declined, however, to treat the spreadsheet as a valuation disclosure, and it also refused to permit petitioner's witness to testify with regard to the spreadsheet.

According to the Administrative Code, "[a] party's valuation disclosure in a property tax appeal shall be filed with the tribunal and exchanged with the opposing party as provided by order of the tribunal." 1996 AACS, R 205.1252(1). A "valuation disclosure" is "documentary evidence 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 contains the party's value conclusions and data, valuation methodology, analysis, or reasoning . . . ." Rule 205.1101(1)(m). Further, "[w]ithout leave of the tribunal, a witness may not testify as to the value of property without submission of a valuation disclosure containing that person's value conclusions and the basis for the conclusions." Rule 205.1283(3).

Petitioner submitted a spreadsheet calculating the value of individual lots by dividing the cost of the parent parcel by the number of lots created from that parcel. While the spreadsheet shows petitioner's conclusions with regard to value, the document is devoid of analysis, valuation methodology, or reasoning. In fact, it is a series of columns with lot names and dollar values. Petitioner's document represents little more than an assertion of value, not a disclosure of proposed values and methodology. Accordingly, the Tax Tribunal did not err by refusing to classify it as a valuation disclosure. Moreover, because no valuation disclosure was filed, the

tribunal did not err by refusing to allow petitioner's witness to testify regarding matters of valuation. *Id*.

At any rate, despite its announced disinclination to treat petitioner's submission as a valuation disclosure, we note that the tribunal's final written opinion and judgment extensively addressed petitioner's valuation methodology and ultimately rejected it. Petitioner argues that the Tax Tribunal erred by finding petitioner's valuation methodology to be unsound.

There are three generally accepted methods of determining value before the Tax Tribunal: the cost-less-depreciation approach, the capitalization-of-income approach, and the market approach. *Antisdale v Galesburg*, 420 Mich 265, 276-277; 362 NW2d 632 (1984). Petitioner contends that it used the market approach. The market approach requires "an analysis of recent sales of similar properties, a comparison of the sales with the subject property, and adjustments to the sale prices of the comparable properties to reflect differences between the properties." *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 391; 576 NW2d 667 (1998). Different valuation methods may be useful if found to be accurate and reasonably related to the fair market value. *Meadowlands Ltd Dividend House Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1992).

Petitioner submitted charts that calculated the value of the child parcels by dividing the purchase price of the lots' parent parcel by the number of lots into which it was subdivided. This methodology did not involve an analysis of recent sales of similar properties, a comparison of such sales with those involving the subject property, or adjustments to the sale prices of the comparable properties to reflect differences between the properties. In fact, this Court has rejected the notion that the value of a child parcel could be determined through such a simplistic formula as petitioner's, holding that merely dividing the value of a parent parcel by the number of child parcels was improper where the calculation failed to adjust for different prices that buyers would pay for the variously sized child parcels. See, generally, *Malcho v Clark Twp*, unpublished opinion per curiam of the Court of Appeals, issued October 21, 2010 (Docket No. 293137), slip op at p 5.[1]

Petitioner asserts that its valuation calculations comported with *Malcho* because the calculations provided proper adjustments for different sized lots and did not reflect the mere division of the value of the parent parcel by the number of lots. This assertion, however, is not adequately supported by the record, and thus the tribunal did not err by determining that petitioner's valuation method was improper.

Further, even if petitioner's valuation method were deemed acceptable, resort to it would not have affected the outcome of this case. Petitioner's sole argument before the tribunal was that respondent had improperly included public-service improvements in its assessments of the subject parcels. Valuation evidence was thus relevant only insofar as it could establish that

[1] We are not bound by unpublished opinions of this Court. MCR 7.215(C)(1). However, we may consult them as persuasive authority. See *Hicks v EPI Printers, Inc*, 267 Mich App 79, 87 n 1; 702 NW2d 883 (2005).

respondent did indeed err in this regard, but petitioner's valuation method did not shed light on that question. Accordingly, even if the tribunal had accepted petitioner's methodology, petitioner would still have failed to provide sufficient evidence that respondent had improperly included public-service improvements in its assessments of the parcels in question.

Next, petitioner argues that the Tax Tribunal erred by allowing respondent to enter valuation documentation and testimony into evidence.

Again, in the absence of valuation disclosures, no witness may provide valuation testimony without leave of the tribunal. Rule 205.1283(3). In the instant case, the Tax Tribunal ruled that respondent had not submitted any valuation disclosures, but respondent nonetheless offered, and the tribunal accepted, assessment cards for the subject parcels and testimony from its assessor concerning general assessment procedures.

The assessment cards and testimony at issue, however, were introduced not for purposes of valuation, but instead for the purpose of establishing assessment methodology. Petitioner's petition asserted that petitioner was entitled to relief because respondent had incorrectly included public-service additions in assessing the lots at issue. The assessment cards and assessor's testimony directly challenged petitioner's position. Because that evidence was not offered to establish taxable or true cash value, the tribunal did not err by admitting the evidence.

Finally, petitioner argues that the Tax Tribunal erred by determining that petitioner's purchase of the parcels in question "uncapped" them for tax purposes and permitted the inclusion of public-service improvements into the valuations for those parcels.

Generally, the taxable value of a parcel of property is "capped" at the property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions. MCL 211.27a(2)(a); Const 1963, art 9, § 3. Public-service improvements are not "additions" under Michigan law. *Toll Northville*, 480 Mich at 14-15. Taxable value becomes uncapped, however, in the year following a transfer of ownership of the property. MCL 211.27a(3). At the end of the calendar year following the transfer of ownership, the taxable value becomes capped once again. MCL 211.27a(4); see also *Michigan Properties, LLC v Meridian Twp*, 491 Mich 518, 530; 817 NW2d 548 (2012) ("[t]he uncapped taxable value for the year after the transfer sets a new baseline value that is subject to a new cap").

Petitioner took ownership of the parent parcels in 2004 and 2005 and added public-service improvements to the parcels in those years as well. Accordingly, petitioner installed at least some of the public-service improvements during the uncapped period following acquisition of the parcels. Therefore, those public-service improvements would not be subject to the property-tax cap and its corresponding restrictions as set forth in *Toll Northville*. Further, petitioner submitted no evidence demonstrating that any later assessments improperly included public-service improvements as "additions." As stated by the tribunal in its opinion, "No evidence or testimony was given to distinguish public service improvements from the actual assessments. Petitioner did not isolate the alleged additions from the assessments. . . . Petitioner has not shown that the addition of public service improvements was calculated over the uncapping event of the subject property." Because petitioner failed to submit evidence establishing that any increase in taxable value resulted from public-service improvements

beyond the uncapped years, the tribunal did not err by finding that petitioner had failed to meet its burden of persuasion.

Affirmed.

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