STATE OF MICHIGAN

COURT OF APPEALS

SUMMIT DEVELOPMENT GROUP, INC., Petitioner-Appellant,	UNPUBLISHED October 23, 2012
v	No. 307773 Tax Tribunal
CITY OF BATTLE CREEK, Respondent-Appellee.	LC Nos. 00-355793 & 00-375830

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

PER CURIAM.

Petitioner appeals as of right from an order of the Tax Tribunal granting respondent's motion for summary disposition. By way of its order, the Tax Tribunal affirmed the 2008 and 2009 taxable values of the properties at issue and declared that it lacked jurisdiction to review the 2007 taxable values. We affirm in part and reverse and remand in part.

In 2006, public-service facilities were installed on a single parcel of land owned by petitioner to provide access to city utilities such as water and sewer services. That parcel was then subdivided into 25 residential lots. During the 2007 tax year, petitioner owned the 25 vacant residential lots. Pursuant to MCL 211.34d(1)(b)(viii), respondent increased the taxable values of the subject parcels for tax year 2007 due to the public-infrastructure improvements made by petitioner. The Michigan Supreme Court, in *Toll Northville Ltd v Twp of Northville*, 480 Mich 6, 15; 743 NW2d 902 (2008), held MCL 211.34d(1)(b)(viii) unconstitutional. On February 21, 2008, the State Tax Commission sent a memo informing all assessing units of the *Toll Northville* decision. Petitioner filed an appeal for the 2007 tax year after the applicable deadline for appeals, and that appeal was dismissed for lack of jurisdiction by the Tax Tribunal on November 26, 2008. Petitioner timely appealed the taxable values of the subject property for tax years 2008 and 2009.

> Review of decisions by the Tax Tribunal is limited. *Mt Pleasant v State Tax Comm*, 477 Mich 50, 53; 729 N.W.2d 833 (2007). "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." Const 1963, art 6, § 28. The Tax Tribunal's factual findings are final if they are supported by competent, material, and substantial evidence on the whole record. *Id.*; *Meadowlanes Ltd.*

Dividend Housing Ass'n v City of Holland, 437 Mich 473, 482; 473 NW2d 636 (1991). If the facts are not disputed and fraud is not alleged, our review is limited to whether the Tax Tribunal made an error of law or adopted a wrong principle. [*Michigan Properties*, *LLC v Meridian Twp*, 491 Mich 518, 527; 817 NW2d 548 (2012).]

Because the 2007 taxable values were used as a starting point for the 2008 and 2009 taxable values, petitioner wants the Tax Tribunal to reach back to 2007, a year not under review, and remove the unconstitutional public-infrastructure additions from the assessments for 2007 onwards. At the time of the Tax Tribunal's decision, it did not have the benefit of the June 14, 2012, decision in *Michigan Properties*, *id*. In that opinion, the Michigan Supreme Court faced an identical issue and held "that the Tax Tribunal does have the authority to reduce an unconstitutional previous increase in taxable value for purposes of adjusting a taxable value that was timely challenged in a subsequent year." *Id*. at 524. Therefore, in the present case, timely appealed taxable values for years after 2007 are subject to adjustment, and the trial court's affirmance of the 2008 and 2009 values therefore must be reversed.

Petitioner contends that the 2007 assessment is also subject to reversal because a "qualified error" occurred, and thus, under MCL 211.53b, a correction of the preceding year's assessment was appropriate as part of the appeal of the 2008 assessment. Petitioner contends that the inclusion of the public-service improvements was a "qualified error" under MCL 211.53b(8)(f), defining "qualified error" as "[a]n error regarding the correct taxable status of the real property being assessed." This argument is untenable. As noted by the Tax Tribunal, the present case involves an "incorrect mathematical calculation of taxable value," not an incorrectly identified "taxable status." Moreover, in *Michigan Properties*, 491 Mich at 544 n 49, the Supreme Court specifically stated that "[*a*]*lthough the Tax Tribunal cannot adjust the tax year 2000 taxable value because of Toll's failure to timely appeal that value*, the tribunal can consider data from that year when adjusting the timely challenged 2001 taxable values." While it is true that the issue of a possible "qualified error" was not raised in *Michigan Properties*, it is not reasonable to conclude that the Supreme Court would have declined to mention MCL 211.53b if that statute truly did provide a "qualified error" avenue for challenging the 2000 taxable value in that case. Petitioner's MCL 211.53b argument is without merit.

Petitioner contends that it should be entitled to challenge the taxable values for 2007, despite its untimely challenge of them, because the 2007 notices of assessment were not timely delivered to petitioner and a due-process violation occurred. Respondent mailed the 2007 assessment notices for the subject properties to the following address: "1050 Columbia Ave. W, Suite B, Battle Creek, Michigan 49015-3058." Petitioner claims that "it had previously notified Respondent of its [actual] mailing address by the property transfer affidavit filed at the time the parcel was acquired and in the deed transferring property to the Petitioner-Appellant." Petitioner claims that its actual mailing address was a variation on the Columbia Avenue address: "1050 West Columbia Ave., Battle Creek, Michigan 49015."[1] Petitioner claims that respondent should

[1] Petitioner's address later changed to "2943 W. Dickman Road, Battle Creek, Michigan 49015." A letter in the record indicates that petitioner notified respondent of this change after the 2007

have sent additional notices when the first notices were returned as undeliverable. The Tax Tribunal found that respondent sent the notices to the address on record and that "[i]f any error was made, it was Petitioner's failure to notify Respondent of its change of address prior to Respondent's mailing of the 2007 Notices of Assessment."

According to the United States Supreme Court, "due process requires the government to provide 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Jones v Flowers*, 547 US 220, 226; 126 S Ct 1708; 164 L Ed 2d 415 (2006), quoting *Mullane v Central Hanover Bank & Trust Co*, 339 US 306, 314; 70 S Ct 652; 94 L Ed 2d 865 (1950). Further, "'when notice is a person's due . . . [t]he means employed must be such as one desirous of actually informing the absentee might *reasonably* adopt to accomplish it . . . .'" *Jones*, 547 US at 229, quoting *Mullane*, 339 US at 315 (emphasis added). Accordingly, due process does not require actual notice. *Jones*, 547 US at 226. The notice required depends on the circumstances. *Id*. at 227. The Michigan Supreme Court has stated that "[t]he government's knowledge that its attempt at notice has failed is a circumstance and condition that varies the notice required." *Sidun v Wayne County Treasurer*, 481 Mich 503, 511; 751 NW2d 453 (2008) (internal citations and quotation marks omitted). If the government has knowledge that a first mailing was not received, the government must take reasonable additional steps to notify the interested party, but "it is not required to go so far as to 'search[ ] for [an owner's] new address in the . . . phonebook and other government records such as income tax rolls.'" *Id*. at 512, quoting *Jones*, 547 US at 235-236).

If petitioner could prove that the 2007 notices were not received and respondent had knowledge of that fact, then the failure of respondent to take further action may have given rise to a due-process violation. However, as respondent points out in its brief, there is a dearth of evidence that the 2007 notices were sent to the wrong address or that the notices as sent were undeliverable. Petitioner failed to provide the tribunal an affidavit from the post office that mail could not be delivered to the address used. Petitioner failed to provide the tribunal any evidence that the notices were returned to respondent. Petitioner failed to provide the tribunal a copy of the deed or the property-transfer affidavit to support its assertion that respondent sent notice to an incorrect address.[2] Most significantly, petitioner failed to show that respondent mailed notice to an address not on record in violation of MCL 211.24c. By mailing the 2007 notices to the address on record for petitioner,[3] respondent satisfied MCL 211.24c(4).[4] The Tax Tribunal's

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notices had been mailed. In the tribunal, petitioner argued that the 2007 notices should have been sent to the Dickman Road address, but it has altered this argument on appeal to focus on the alternative Columbia Avenue address.

[2] Petitioner belatedly includes these documents in its reply brief on appeal to this Court.

[3] The tribunal, relying on documents, found that this occurred.

[4] This statute states, in pertinent part, that "[t]he assessment notice shall be addressed to the owner according to the records of the assessor . . . ."

conclusion regarding the notice issue was adequately supported, *Michigan Properties*, 491 Mich at 527, and there is no basis for appellate relief.[5]

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

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

[5] In its reply brief on appeal, petitioner emphasizes its assertion, by way of briefing, that it did not receive the notices. However, petitioner's mere assertion that it did not receive the notices is insufficient for us to overturn the Tax Tribunal's supported ruling that respondent satisfied MCL 211.24c(4), and, as discussed above, petitioner has established no basis for concluding that respondent should have been aware that notice was not received and thus should have taken further actions to satisfy due-process requirements. Further, we note that the notice issue has not, in fact, been adequately preserved for appeal, considering that petitioner has changed its argument on appeal to refer to a different address (focusing on the alternate Columbia Avenue address and not the Dickman Road address).