

STATE OF MICHIGAN
COURT OF APPEALS

MANVIR S. GREWAL, SR.,

Petitioner-Appellant,

v

TOWNSHIP OF WILLIAMSTOWN,

Respondent-Appellee.

UNPUBLISHED
January 17, 2013

No. 309997
Tax Tribunal
LC No. 00-407292

Before: OWENS, P.J., and FITZGERALD and RIORDAN, JJ.

PER CURIAM.

Petitioner, Manvir S. Grewal, Sr., appeals by right the order of Michigan Tax Tribunal affirming the referee opinion that calculated the true cash value (TCV) of petitioner's real property. On appeal, petitioner argues that the tribunal erred by failing to deduct functional and economic obsolescence depreciation in its TCV calculation using the cost-less-depreciation approach. We affirm.

This case concerns the assessed tax value of petitioner's residential property (subject property) located at 671 East Sherwood Road in Ingham County, Parcel Number 33-03-03-21-326-002. Petitioner disputed the 2010 original assessed value of \$563,700 before the March Board of Review, which deducted value for the condition of the subject property, and lowered the 2010 assessed value to \$556,179. Petitioner appealed the Board's decision to the Tax Tribunal's Small Claims Division, asserting that the subject property's fair market value was \$300,000, thus rendering its taxable value \$150,000. Respondent provided the property record card for the subject property, which included values for TCV, state equalized value (SEV), and taxable value (TV), as follows:

Year	TCV	SEV	TV
2010	\$1,112,358	\$556,179	\$556,179
2011	\$1,158,400	\$579,200	\$565,634

Petitioner contended that the proper values of the subject property were as follows:

Year	TCV	SEV	TV
2010	\$250,000	\$125,000	\$125,000

2011	\$750,000	\$375,000	\$127,125
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In support of these values, petitioner provided two appraisals of the subject property's estimated market value as of December 31, 2009 and December 31, 2010. The appraiser offered the following explanation to justify the vast difference between the appraised values and respondent's assessed TCVs:

The subject's design is considered to be ultra-contemporary. Market acceptance of this style home was not considered to be present. The subject is also considered to be super-adequate for the marketplace, due to its large size and building materials used in construction.

The appraiser's TCV for December 31, 2009 was significantly less than the following year, presumably due to construction defects not mentioned in the appraisal for December 31, 2010:

Upon completion of the subject home, several construction defects were found to be present in the home. According to the owner, the builder did not follow proper building codes of construction. Items with defects included the entire roof that needed to be removed and replacing [sic], the front brick veneer wall was unanchored and needed to be removed and replaced, all wooden headers were found to be rotted, and the drainage system in the basement and throughout needed replacement including the installation of a sump pump. The original roof also caused mold throughout the 2nd floor of the home, which needed to be remediated.

Remedial construction costs were estimated at \$500,000 to \$800,000. As such, all comparables utilized in the market data approach were adjusted downward \$500,000 for the cost of remediation, and the subject was adjusted downward \$500,000 in the Cost Approach.

A hearing was held on December 21, 2011 before a Small Claims Division hearing referee. Because respondent failed to appear at the hearing, the referee relied on respondent's previously-submitted narrative and property record card.

On February 3, 2012, the referee issued a proposed opinion and judgment, concluding that petitioner failed to meet his burden of proof pursuant to MCL 205.737(3),¹ and that the cost-

¹ MCL 205.737(3) provides as follows:

The petitioner has the burden of proof in establishing the true cash value of the property. The assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question.

less-depreciation approach was the most reliable indicator of the subject property's true cash value. The referee found petitioner's appraisals unpersuasive, writing:

Petitioner submitted an appraisal as of October 5, 2009, at \$630,000. This appraisal did not make any adjustment for construction defects. The appraisal included three comparables that occurred during 2006-2008, with large time adjustments. The total gross adjustments for all comparables, were between 76.5% and 166.6%. In addition, the appraisal used a much larger square footage than what is contained in the assessment and used in Petitioner's more recent appraisals. The Tribunal finds that these comparables do not accurately reflect a market value of the subject property.

Petitioner submitted an additional appraisal as of December 31, 2009, at \$250,000. The comparables received a \$500,000 adjustment for construction defects with the subject property. This large adjustment resulted in overall gross adjustments in excess of 100% for the sales provided. Petitioner has failed to establish that the construction issues resulted in a decrease in market value of \$500,000. The Tribunal has reviewed the property record cards and finds that the true cash value of the building was decreased by \$353,000 from 2008 to 2009. While some of this value may be attributable to the ECF applied (which was not provided) it would appear that the majority of this decrease was due to the structural issues reported by Petitioner. Petitioner has failed to establish that an additional decrease in value of \$500,000 for 2010 is warranted. While Petitioner claims this was the cost of repair, the August 2010 building permit reflects a value of \$150,000 for repairs.

Petitioner also provided an appraisal for 2011. The appraisal contained two 2009 sales and two 2010 sales. No time adjustments were made. The relevant valuation date for a 2011 appeal is December 31, 2010. As such, the 2009 comparables should have been adjusted to reflect a value as of this date. All comparables had significantly less square footage than the subject property. The comparables were also much smaller in acreage, with an adjustment of \$2,000 per acre. The subject property was assessed at \$4,600 per acre in 2011. The Tribunal recognizes that the subject property is unique in terms of large acreage, square footage and type of construction. However, the sales comparables, with gross adjustments in excess of 80% cannot be found to reasonably reflect a value of the subject property.

The Tribunal has reviewed the property record cards and finds the values to be reasonable. Further, the 2010 March Board of Review reduced the true cash value by \$15,000. Petitioner has failed to establish that an additional decrease in value is warranted. As such, the Tribunal finds that the values as assessed for 2010 and 2011 are affirmed.

Petitioner filed exceptions to the referee's proposed opinion and judgment, which were rejected by the Tax Tribunal in its final opinion and judgment:

Further, Petitioner contends that Respondent did not submit a cost approach to valuation. However, Respondent submitted the 2011 property record card for the subject property. The record card depicts the cost loss depreciation approach to valuation which was considered by the Hearing Referee and determined to be the most reliable indicator of value.

The Hearing Referee did not err in considering the cost approaches that were contained in Petitioner’s appraisals. The Tribunal has analyzed Petitioner’s cost approaches and finds it is not more persuasive than Respondent’s. Respondent’s cost approach is more detailed and more accurately depicts the subject property. Further, Petitioner’s cost approaches utilize a 25% functional obsolescence and 30% economic obsolescence adjustment that is not supported. Although the appraiser indicates the functional obsolescence is caused by super adequacy, the appraiser fails to justify the percentages assigned.

In conclusion, even though the Referee failed to consider Petitioner’s cost approaches, the Tribunal finds the error *de minimis* as it did not effect [sic] the Hearing Referee’s determination to uphold Respondent’s values, as reflected on the property record card.

The Tax Tribunal adopted the referee’s proposed opinion as its final judgment in petitioner’s case, finalizing the subject property’s values as follows:

Year	TCV	SEV	TV
2010	\$1,112,358	\$556,179	\$556,179
2011	\$1,158,400	\$579,200	\$565,634

Petitioner appealed by right.

“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). “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.

While this Court is bound by the Tax Tribunal’s factual determinations and may properly consider only questions of law under this section, a Tax Tribunal decision that is not supported by competent, material, and substantial evidence on the whole record is an “error of law” within the meaning of Const 1963, art 6, § 28. *Oldenburg v Dryden Twp*, 198 Mich App 696, 698; 499 NW2d 416 (1993); *Kern v Pontiac Twp*, 93 Mich App 612, 620; 287 NW2d 603 (1979). Substantial evidence must be more than a scintilla of the evidence, although it may be substantially less than a preponderance of the evidence. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992). “Substantial” means evidence that a reasonable mind would accept as sufficient to support the conclusion. *Kotmar, Ltd v Liquor Control Comm*, 207

Mich App 687, 689; 525 NW2d 921 (1994). [*Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 388-389; 576 NW2d 667 (1998).]

The Michigan Constitution provides for the taxation of property assessed at not in excess of 50 percent of its TCV. Const 1963, art 9, § 3. “[T]rue cash value’ means the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale” MCL 211.27(1). TCV is synonymous with “fair market value.” *President Inn Props*, 291 Mich App at 637. In *President Inn Props*, this Court summarized TCV determination as follows:

Courts have generally recognized that the three most common approaches to valuation are the capitalization-of-income approach, the sales-comparison approach or market approach, and the cost-less-depreciation approach. Our Supreme Court has described these three common valuation techniques, quoting from the Michigan State Tax Commission Assessor’s Manual. Regardless of the valuation approach employed, the final value determination must represent the usual price for which the subject property would sell. In other words, a valuation method is wrong only if it does not lead to the most accurate determination of the taxable property’s true cash value or fair market value. Thus, the Tax Tribunal has a duty to select the approach which provides the most accurate valuation under the circumstances of the individual case. [*Id.* at 639 (quotation marks and citations omitted).]

“A proceeding before the tribunal is original and independent and is considered de novo.” MCL 205.735(2). Thus, the tribunal “has a duty to make its own independent determination of true cash value.” *Nat’l Steep Corp*, 227 Mich App at 389. “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 case value.” *Id.* at 389-390. “In the Tax Tribunal, a property’s assessed valuation on the tax rolls carries no presumption of validity.” *President Inn Props*, 291 Mich App at 640. While “[t]he Tax Tribunal has a duty to make its own, independent determination of true cash value,” *Nat’l Steel Corp*, 227 Mich App at 389, it “may adopt the assessed valuation on the tax rolls as its independent finding of TCV when competent and substantial evidence supports doing so.” *President Inn Props*, 291 Mich App at 640. “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.” *Id.* at 631.

Here, the tribunal applied the cost-less-depreciation approach. Petitioner does not argue that the tribunal erred in choosing this approach, but that it erred in its application. In *Meadowlanes Ltd Dividend Housing Ass’n v City of Holland*, 437 Mich 473; 473 NW2d 636 (1991), the Supreme Court described the approach as follows:

Under the cost[-less-depreciation] approach, true cash value is derived by adding the estimated land value to an estimate of the current cost of reproducing or replacing improvements and then deducting the loss in value from depreciation in structures, i.e., physical deterioration and functional or economic obsolescence. [*Id.* at 484 n 18.]

Petitioner's assertion that, in the absence of rebuttal evidence from respondent, the tribunal should have accepted his appraiser's depreciations for functional and economic obsolescence is without merit. The tribunal found petitioner's appraisals unpersuasive, and was not required to accept either party's theory of valuation. *Nat'l Steel Corp*, 227 Mich App at 389-390. Similarly, however, the tribunal cannot merely affirm respondent's assessed values unless supported by competent and substantial evidence. *President Inn Props*, 291 Mich App at 640. Contrary to petitioner's argument, it is not for this Court to determine whether petitioner proved by a preponderance of the evidence that his asserted values of the subject property were correct. Petitioner was required to prove his valuation by a preponderance of the evidence before the tribunal. However, petitioner is entitled to reversal only if the tribunal's decision was not supported competent and substantial evidence, which must be more than a scintilla of evidence, but may be substantially less than a preponderance of the evidence. *Nat'l Steel Corp*, 227 Mich App at 388.

Here, the tribunal determined that respondent's property record card was "more detailed and more accurately depicts the subject property" than petitioner's appraisals, and thus the most reliable indicator of the property's value. The tribunal was free to accept respondent's valuation and reject petitioner's. *Nat'l Steel Corp*, 227 Mich App at 389. As such, the tribunal adopted the cost-less-depreciation valuation as depicted on the property record card as its independent valuation of the subject property's TCV and expressed its rationale for doing so. *President Inn Props*, 291 Mich App at 640. Thus, the tribunal did not commit an error of law subject to reversal by this Court. Const 1963, art 6, § 28.

Affirmed.

/s/ Donald S. Owens
/s/ E. Thomas Fitzgerald
/s/ Michael J. Riordan