

STATE OF MICHIGAN
COURT OF APPEALS

HOLLAND LAND COMPANY, L.L.C.,
Petitioner-Appellant,

UNPUBLISHED
June 26, 2014

v

CITY OF TAYLOR,

Respondent-Appellee.

No. 312534
Tax Tribunal
LC No. 00-412246

Before: BORRELLO, P.J., and SERVITTO and BECKERING, JJ.

PER CURIAM.

Petitioner appeals as of right from a final order of the Michigan Tax Tribunal that assessed its real property for the 2010, 2011, and 2012 tax years. We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Petitioner commenced the present appeal by challenging respondent's 2010 assessment of certain real property located at 10405 Holland Road ("the property"). Because the Tax Tribunal proceeding remained pending through 2013, petitioner's appeal also included the 2011 and 2012 tax years. MCL 205.737(5)(b). In July 2013, the hearing referee entered a proposed opinion and judgment that the tribunal adopted in September 2013.

The hearing referee identified the exhibits of comparable sales submitted by petitioner and testimony by M. Gary Holland that no market existed for the property or a vacant, nearby subdivision. The hearing referee identified petitioner's estimates that for 2010, the property's true cash value was \$165,402 and its state equalized and taxable values were \$82,701; and the 2011 and 2012 true cash values (TCV) were \$150,000, with state equalized and taxable values of \$75,000. The opinion referenced that respondent had initially calculated: (1) a 2010 true cash value of \$260,800, a state equalized value of \$130,400, and a taxable value of \$109,520; (2) a 2011 true cash value of \$224,000, a state equalized value of \$112,000, and a taxable value of \$111,381; and (3) a 2012 true cash value of \$165,000, a state equalized value of \$82,500, and a taxable value of \$82,500. However, respondent offered revised contentions for 2011 and 2012: a 2011 true cash value of \$159,800, a state equalized value of \$79,900, and a taxable value of \$79,900; and a 2012 true cash value of \$156,800, a state equalized value of \$78,400, and a taxable value of \$78,400.

The hearing referee found that the property had a residential classification, the average assessment level for that property classification was 50%, and the property had a “bungalow built in 1936 with 1,100 square feet of living space, 1 bath, basement and garage on 7.89 acres.” The referee further found that respondent’s “sales comparison analyses for . . . [the] 2011 and 2012 tax years . . . use[d] three comparable sales and ma[d]e reliable and consistent adjustments to account for the differences between the subject property and the propert[ies] that sold.” The hearing referee offered the following conclusions:

. . . Petitioner provided the sale of 25320 Goddard Road as a comparable property to the subject property. Respondent provided that residential land in Taylor is valued at \$12,000 per acre. 25320 Goddard Road is very comparable to the subject property except for the larger acreage of the subject property. Indeed, 25320 Goddard Road is a 1944 bungalow with 1,157 square feet of living space, 1 bath, basement and garage which is so similar to the subject property that no adjustments are necessary. But, 25320 Goddard has 1.09 acres where the subject property has 7.89 acres. Using \$12,000 per acre creates an adjusted sale price for 25320 Goddard of \$151,600. The adjusted sale price for 25320 Goddard supports a TCV of \$151,600 for the subject property for 2010.

Respondent’s evidence for 2011 and 2012 is reliable and credible. Respondent provided three comparable sales for 2011 and three comparable sales for 2012, applying adjustments to each sale to account for differences such as acreage, location, year built and square footage. Based on the adjusted sales prices, Respondent provided that the sales comparison approach supports a TCV for the subject property of \$159,800 for 2011 and \$156,800 for 2012. Petitioner did not support [its] contention of TCV for 2011 and 2012 by a reliable valuation approach. The sales comparison analysis provided by Respondent supports a TCV for the subject property of \$159,800 for 2011 and \$156,800 for 2012.

The hearing referee assigned the following values to the property: (1) for 2010, a true cash value of \$151,600, a state equalized value of \$75,800, and a taxable value of \$75,800; (2) for 2011, a true cash value of \$159,800, a state equalized value of \$79,900, and a taxable value of \$77,088; and (3) for 2012, a true cash value of \$156,800, a state equalized value of \$78,400, and a taxable value of \$78,400. In September 2012, the Tax Tribunal affirmed the referee’s findings.

II. THE TAX TRIBUNAL’S VALUATIONS

Petitioner first argues that the Legislature enacted conflicting concepts in MCL 211.27 that allow for arbitrary and capricious valuations, which becomes apparent in comparing the vastly different assessments reached in a prior appeal involving the same property¹ and the assessments reached in this case. Petitioner theorizes that the absence of a standard for objectively ascertaining true cash value in the statute violates its due process rights. According

¹ See *Holland v City of Taylor*, unpublished opinion per curiam of the Court of Appeals, April 12, 2012 (Docket No. 303055).

to petitioner, the Tax Tribunal's decision also incorrectly utilized the comparable properties referenced by respondent, which were further away than the comparables supplied by petitioner.

The Michigan Supreme Court summarized as follows the applicable standards governing review of Tax Tribunal decisions:

The standard of review for Tax Tribunal cases is multifaceted. Where fraud is not claimed, this Court reviews the tribunal's decision for misapplication of the law or adoption of a wrong principle. We deem the tribunal's factual findings conclusive if they are supported by competent, material, and substantial evidence on the whole record. . . . Const 1963, art 6, § 28 [*Wexford Med Group v City of Cadillac*, 474 Mich 192, 201; 713 NW2d 734 (2006) (internal quotation and citations omitted).]

The substantial evidence standard signifies a level reaching "more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence. Failure to base a decision on competent, material, and substantial evidence constitutes an error of law requiring reversal." *Leahy v Orion Twp*, 269 Mich App 527, 529-530; 711 NW2d 438 (2006) (internal quotation and citation omitted).

"The petitioner has the burden of proof in establishing the true cash value of the property." MCL 205.737(3). "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." *President Inn Props, LLC v Grand Rapids*, 291 Mich App 625, 631; 806 NW2d 342 (2011).

Petitioner has failed to substantiate that the Tax Tribunal erred in assessing its property for the 2010, 2011, and 2012 tax years. Initially, contrary to petitioner's suggestion that MCL 211.27 allows for an arbitrary calculation of true cash value, the Legislature supplied direction concerning the ascertainment of true cash value in MCL 211.27(1):

As used in this act, "true 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, and not at auction sale except as otherwise provided in this section, or at forced sale. . . . In determining the true cash value, the assessor shall also consider the advantages and disadvantages of location; quality of soil; zoning; existing use; present economic income of structures, including farm structures; present economic income of land if the land is being farmed or otherwise put to income producing use; quantity and value of standing timber; water power and privileges; minerals, quarries, or other valuable deposits not otherwise exempt under this act known to be available in the land and their value. . . .

Thus, we disagree with petitioner that the Legislature did not provide a standard that would permit an objective determination of property value.

Although "the Legislature has provided a broad definition of true cash value and has listed a variety of factors to be considered in the valuation determination," the "Legislature did

not direct that specific methods be used. Thus, the task of approving or disapproving specific valuation methods has fallen to the courts.” *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 484; 473 NW2d 636 (1991). Our Supreme Court has summarized the approved methods of fair market valuation, as follows:

There are three traditional methods of determining true cash value, or fair market value, which have been found acceptable and reliable by the Tax 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. Variations of these approaches and entirely new methods may be useful if found to be accurate and reasonably related to the fair market value of the subject property. It is the Tax Tribunal’s duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case. Regardless of the valuation approach employed, the final value determination must represent the usual price for which the subject property would sell. [*Id.* at 484-485 (citations omitted).]

The Court summarized the sales-comparison approach as “indicat[ing] true cash value by analyzing recent sales of similar properties, comparing them with the subject property, and adjusting the sales price of the comparable properties to reflect the differences between the two properties.” *Id.* at 485 n 19.

In making its claim that the tribunal’s decision in this case was arbitrary and capricious, petitioner references a prior dispute involving the subject property, Tax Tribunal No. 00-328356, a case in which this Court upheld property tax assessments for the same property for tax years 2006, 2007, 2008, and 2009. *Holland v City of Taylor*, unpublished opinion per curiam of the Court of Appeals, April 12, 2012 (Docket No. 303055). This Court’s prior decision reflects that the tribunal previously used a cost-less-depreciation approach to valuation:

Next, petitioner alleges that a misapplication of a legal principle and clear violation of law occurred when the highest and best use of the property was considered. We disagree. Three traditional methods of determining true cash or fair market value have been accepted by the MTT and Michigan courts: (1) cost-less-depreciation approach, (2) the sales-comparison or market approach, and (3) the capitalization-of-income approach. *Meadowlanes Ltd Dividend Housing Ass’n*[, 437 Mich at 484-485] When using the cost approach to valuing property, the economic calculation recognizes that real property is devoted to its highest and best use. See *Meadowlanes*, 437 Mich at 503. Property shall be assessed at 50% of its true cash value pursuant to Const 1963, art IX, § 3. MCL 211.27a(1); *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 631; 462 NW2d 325 (1990). “Highest and best use is a concept fundamental to the determination of true cash value. It recognizes that the use to which a prospective buyer would put the property will influence the price which the buyer would be willing to pay. Land is appropriately valued as if available for development to its highest and best use, that most likely legal use which will yield the highest present worth.” *Id.* at 633 (quotation marks and citations omitted). Although petitioner contends that the consideration of the highest and best use was legal

error, highest and best use is an appropriate consideration for determining true cash value pursuant to the cost approach. *Meadowlanes*, 437 Mich at 503. [*Holland*, unpub op at 2.]

We reject petitioner's contention that the Tax Tribunal employed an arbitrary or capricious valuation standard for the 2010, 2011, and 2012 tax years. That the Tax Tribunal previously valued petitioner's property by utilizing the cost-less-depreciation method of assessment did not render arbitrary or capricious its use of a different valuation approach for the 2010, 2011, and 2012 tax years, especially when the Tax Tribunal pursued another court-sanctioned method of ascertaining the property value: the sales-comparison or market method. Indeed, the tribunal is not required to use the same valuation method in every instance; instead, it is only required to determine the property's true cash value, which is what the tribunal did in this case. See *Meadowlanes*, 437 Mich at 484. Petitioner has not established that the Tax Tribunal employed an arbitrary and capricious valuation standard, or that the proceedings before the tribunal deprived him of due process. *Bullington v Corbell*, 293 Mich App 549, 556; 809 NW2d 657 (2011) (observing that procedural due process fundamentally requires notice and the opportunity to be heard).²

We further conclude that competent, material, and substantial evidence supports the Tax Tribunal's determinations of petitioner's property value. The tribunal took into account the evidence regarding one comparable property that petitioner submitted for the 2010 tax year. In reaching the 2011 and 2012 assessment amounts, the tribunal relied on detailed sales comparison analyses that respondent submitted, which the tribunal deemed accurate and reliable. Although petitioner introduced evidence of two allegedly comparable property listings relevant to the 2011 and 2012 tax years, it offered no sales-comparison analysis or analysis illustrating another recognized method for ascertaining property values. Because "more than a scintilla of evidence" supports the tribunal's findings of fact, *Leahy*, 269 Mich App at 529-530, we "deem the tribunal's factual findings conclusive." *Wexford Med Group*, 474 Mich at 201. Furthermore, petitioner does not allege fraud by the tribunal and has not demonstrated that it adopted a wrong principle or misapplied the law. *Id.*

III. CONSTITUTIONAL CLAIMS

Next, in making constitutional claims, petitioner outlines the repeal of congressional regulations and restrictions on banking practices in the late 1980s, subsequent subprime lending practices, inflated real estate values, the inability of many people to pay back improvidently granted loans, and the real estate collapse. According to petitioner, this combination of factors (denominated as the "specie effect") led to the present, arbitrary and capricious valuation

² To the extent that petitioner submits that an unconstitutional taking of its property occurred, we reject such a claim because petitioner offers no facts or authority to support the position that a taking occurred. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003) ("An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims," "nor may he give issues cursory treatment with little to no citation of supporting authority . . .").

methods and a taking of its property, “the government . . . pre-staged the statutes to take advantage of the collapse, . . . [and] pulled out the protections and defenses against it in order to make it happen[.]” and that these practices violated petitioner’s due process rights and its rights under the Ninth Amendment to the United States Constitution. We review de novo constitutional issues. *Elba Twp v Gratiot Co Drain Comm’r*, 493 Mich 265, 277; 831 NW2d 204 (2013).³

Petitioner has not established that anything pertaining to the valuation of its property violated its constitutional due process rights or rights under US Const, Am IX. First, petitioner has not elaborated any factual basis for a determination that: (1) the practices leading to the recent collapse of the real estate market unconstitutionally affected the tribunal’s present valuation of its property; or (2) a Michigan governmental actor bore responsibility for any of the consequences of which petitioner complains. See *City of Dearborn v Freeman-Darling, Inc*, 119 Mich App 439, 442; 326 NW2d 831 (1982) (observing that “[t]he proscriptions of the Due Process Clause apply only to actions of the state . . .”). Furthermore, petitioner has cited no authority supporting its contention that an unconstitutional taking occurred. We conclude that petitioner has abandoned appellate review of these issues. *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 14; 672 NW2d 351 (2003) (citations omitted) (“An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, . . . nor may he give issues cursory treatment with little or no citation of supporting authority . . .”).

Affirmed.

/s/ Stephen L. Borrello
/s/ Deborah A. Servitto
/s/ Jane M. Beckering

³ Although the Tax Tribunal lacked jurisdiction over these constitutional claims, we may address the merits of the claims on appeal. See *Electronic Data Sys Corp v Flint Twp*, 253 Mich App 538, 549; 656 NW2d 215 (2002).