

STATE OF MICHIGAN
COURT OF APPEALS

MI MONTANA, LLC,

Petitioner-Appellant,

v

TOWNSHIP OF CUSTER,

Respondent-Appellee.

UNPUBLISHED
September 27, 2007

No. 269447
Tax Tribunal
LC No. 00-309147

Before: Bandstra, P.J., and Zahra and Owens, JJ.

PER CURIAM.

Petitioner appeals as of right the March 9, 2006 order of the Tax Tribunal determining the value of a parcel of improved residential property in respondent Custer Township. We reverse and remand.

David Slikkers is the sole member of petitioner limited liability company. According to Slikkers, petitioner purchased the lot in issue for approximately \$65,000 and, in 2002, had constructed thereon a log cabin style home and unattached garage at a cost of \$312,000. Slikkers maintains that construction of the home and garage was completed in 2002. However, respondent's assessor did not determine whether the construction was completed on the subject property by December 31, 2002. For the 2003 tax year the property was given a taxable value of \$212,732, and assessed and state equalized values of \$224,500. The property was reassessed in 2003, as part of a township wide reassessment performed by an outside firm. For the 2004 tax year, the taxable, assessed, and state equalized values placed on the property were raised to \$346,000.

Petitioner sought review of the 2004 valuation by the local board of review, which reduced the assessed value to \$286,600 and the tentative taxable value to \$270,024. Unsatisfied with this reduction, petitioner filed the present action in the Tax Tribunal, contending that, for 2004, the true cash value of the property was \$385,000 and the assessed, state equalized, and

taxable values were \$192,500.¹ The tribunal disagreed, accepting the true cash, taxable, and state equalized values proposed by respondent.

As this Court explained in *Michigan Milk Producers Ass'n v Dep't of Treasury*, 242 Mich App 486, 490-491; 618 NW2d 917 (2000):

This Court's authority to review a decision of the Tax Tribunal is very limited. In the absence of 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 adopted a wrong legal principle. The tribunal's factual findings will not be disturbed as long as they are supported by competent, material, and substantial evidence on the whole record. [Citations omitted.]

In 1994, the Michigan Constitution was amended to "limit annual increases in the assessed taxable value on a parcel of property to the lesser of five percent or the increase in the general price level." *Toll Northville, Ltd v Northville Twp*, 272 Mich App 352, 354; 726 NW2d 57 (2006);² see also Const 1963, art 9, § 3. However, that general limitation only applies as long as the same party owns the property, and the amendment allows the value of the property to be adjusted for "additions" thereto even if no transfer has taken place. *Id.*

Pursuant to MCL 211.34d(1)(b), "new construction" constitutes an "addition" to real property for purposes of determining taxable value when it was "not in existence on the immediately preceding tax day and [is] not replacement construction." Further, "[n]ew construction includes the physical addition of equipment or furnishings, subject to the provisions set forth in section 27(2)(a) to (o). For purposes of determining the taxable value of property under section 27a, the value of new construction is the true cash value of the new construction multiplied by 0.50." *Id.*

MCL 211.27a(2) provides that a property's taxable value is calculated to be the lesser of:

(a) 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. For taxes levied in 1995, the property's taxable value in the immediately preceding year is the property's state equalized valuation in 1994.

(b) The property's current state equalized valuation.

Petitioner argues that the property's taxable value in 2004 should have been limited to \$212,732 multiplied by the inflation rate pursuant to Const 1963, art 9, § 3, and MCL

¹ The petition was subsequently amended to request a reduction to the 2005 taxable, assessed, and state equalized values for the property.

² Leave to appeal from this Court's decision was granted by our Supreme Court earlier this year. 478 Mich 863; 731 NW2d 427 (2007). The proposition cited above is not at issue in that appeal.

211.27a(2). In this regard, petitioner represents that no additions were made to the property during 2003.

The Tax Tribunal indicated that respondent's assessor testified³ that "[i]n January of 2002 he inspected the property and did so again in January of 2003 and the improvements were not completed at that time." However, the assessor actually reported that, "[he] first looked at the house and garage in Jan[uary] 2002[, and] it wasn't complete at this time. [He] went back in Jan[uary] 2003, the gate on the road to [the property] was locked [and he] [sic] didn't know how to get in and didn't have time to walk a mile or more in the snow" to complete his inspection. (Italics removed.)

The tribunal also stated that "[b]uilding permits were pulled in 2002 and 2003 with the completion of these improvements in 2003." The 2004 property record has a table listing a building permit for a "GARAGE/POLE BARN" with a date of August 6, 2003, and building permits for two additions, both dated April 3, 2002. It appears that the referenced "GARAGE/POLE BARN" is a pole barn constructed in 2003, which was included in the same assessment as the main house because petitioner used the property number given to the home when applying for the building permit for the pole barn. Work descriptions for the permits indicate these were the dates the permits were issued for the construction of the pole barn, the home, and the garage.

From this evidence, it appears that, contrary to Slikkers' assertions that there were no additions to the property in 2003, the pole barn was a new construction addition made to the property in 2003. Therefore, it was appropriate for the pole barn to be included in the 2004 assessment.⁴ However, there is no evidence in the record before us that the house and garage, or any portion thereof, were new construction in 2003. Building permits were issued for these improvements in spring 2002, and there is nothing to indicate that the improvements remained incomplete on January 1, 2003. Thus, the construction may well have been completed in 2002, as attested to by Slikkers.

We thus conclude that the tribunal's determination that the house and garage were not in existence on December 31, 2002, and thus constituted "new construction" in 2003, is not supported by competent, material, and substantial evidence on the whole record. *Milk Producers Ass'n, supra* at 490-491. Accordingly, the tribunal made an error of law by allowing the value of those improvements to be added to the property's 2004 assessed taxable value on that basis. MCL 211.34d(1)(b)(iii).⁵ The 2004 property assessment could be increased, however, to account for the value of the pole barn, which was newly constructed in 2003. *Id.*

³ The hearing on the petition was conducted by mail; this testimony was by way of letter from the assessor to the tribunal.

⁴ According to respondent's assessor, the pole barn was valued at \$39,430.

⁵ A property record from 2004, which appears to have been printed on either March 29, 2004 or May 29, 2004, indicates that the 2003 assessment of the subject property was based on construction of the home being 50 percent complete. However, the issue whether there was a
(continued...)

Petitioner also argues that the tribunal's assessment of the property's true cash value was excessive. Petitioner maintains that the log cabin style home and unattached garage were constructed at a cost of \$312,000. Respondent's 2004 property record card indicates a total estimated true cash value of \$436,292 for improvements to the subject property. In arriving at this value, respondent applied an economic condition factor (ECF) of 1.806 to the unadjusted assessment of the cost of \$241,579.

Petitioner bears the burden of proof to establish the true cash value of the property. *Professional Plaza, LLC v Detroit*, 250 Mich App 473, 475; 649 NW2d 529 (2002). "True cash value" is "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." MCL 211.27(1). The phrase "true cash value" is synonymous with the phrase "fair market value." *Huron Ridge, LP v Ypsilanti Twp*, 275 Mich App 23, 28; 737 NW2d 187 (2007). "MCL 211.27(1) does not mandate a single method to arrive at the true cash value." *Id.* Rather, "[t]he Tax Tribunal is under a duty to apply its expertise to the facts of a case to determine the appropriate method of arriving at the true cash value utilizing the approach that provides the most accurate valuation under the circumstances." *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998).

Three accepted and reliable methods of determining true cash value are "(1) the cost-less-depreciation approach, (2) the sales-comparison or market approach, and (3) the capitalization-of-income approach." *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 484-485; 473 NW2d 636 (1991). The cost-less-depreciation approach is relevant here. This approach involves adding the estimated value of the land to an estimate of the current cost of reproducing or replacing the improvements, then deducting any loss in value due to depreciation of the improvements. *Id.* at 484 n 18.

Petitioner asserts that together the land and construction costs totaled approximately \$377,000, that a similar home sold for \$395,000, and that a realtor indicated the home should be listed for sale at a price between \$390,000 and \$425,000.⁶ However, a letter from respondent's assessor to the tribunal indicates that while a neighboring lot of similar size recently sold for \$110,000, respondent assessed the value of petitioner's lot at only \$87,742. That letter also draws a contrast between Slikkers' 1,464 square foot home situated on six acres and an 896 square foot home situated on three acres in the same area that sold for \$327,500. Petitioner also has additional living space above the garage, which was valued by respondent at \$33,000.

(...continued)

portion of petitioner's property that was completed in 2002 but was not included in the 2003 assessment, which could then be included in the 2004 assessment as previously "omitted property" pursuant to MCL 211.34d(1)(b)(i), see *Kok v Cascade Twp*, 265 Mich App 413, 421-422; 695 NW2d 545 (2005), was not raised below or on appeal, and therefore, it is not before us. Nevertheless, the tribunal may wish to consider this issue further on remand.

⁶ It appears these amounts do not account for the pole barn. The pole barn is never specifically mentioned in petitioner's pleadings and analysis, and there are no pictures of it included in the comparative market analysis prepared by the real estate agent.

The tribunal questioned the ECF respondent applied to the property in light of the fact that studies supporting it were not provided. However, the tribunal noted that there was evidence indicating the ECF was developed from a jurisdiction wide reassessment process performed in 2002 and 2003, and that the properties considered for the ECF were, like petitioner's, lakefront properties. Accordingly, the tribunal concluded the ECF was appropriate, especially given that no evidence was presented to undermine its application.

With regard to petitioner's evidence, the tribunal concluded that the comparative market analysis was an insufficient basis from which to determine the property's true cash value because it was not limited to actual sales and it failed to provide a detailed comparison of the properties referenced to the property in issue. The tribunal also found petitioner's unsupported assertion that a similar property had sold for \$395,000 of "little persuasive value." Thus, the tribunal concluded that while respondent's cost-approach valuation methodology was "flawed," it was "the most reliable indicator of the property's true cash value for the tax years at issue."

We conclude that the tribunal did not commit an error of law in finding that petitioner failed to meet its burden of proving the estimated true cash value that it proposed was correct. Petitioner makes no specific attack on the numbers used by respondent in its cost-less depreciation analysis, and the method used by respondent is considered accurate and reliable. *Meadowlanes Ltd Dividend Housing Ass'n, supra*. Therefore, because petitioner has not shown that the tribunal's factual findings with regard to the true cash value of the property were not supported by competent, material, and substantial evidence, or that the tribunal made an error of law or adopted a wrong legal principle by accepting respondent's estimate of true cash value, the tribunal's valuation of the property is affirmed.

We reverse that portion of the tribunal's decision finding that the 2004 taxable value of petitioner's property could be increased on the basis that the house and garage constituted new construction in 2003. We affirm, however, the tribunal's finding with regard to the true cash value of the property. We remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Brian K. Zahra
/s/ Donald S. Owens