S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

GANNETT NEWSPAPER AGENCY,

Petitioner–Appellee,

v

CITY OF DETROIT,

Respondent–Appellant.

UNPUBLISHED
October 4, 1996

No. 183899
LC No. 00-172738

Before: Cavanagh, P.J., and Murphy and C.W. Simon, Jr.,* JJ

PER CURIAM.

Respondent appeals as of right from a Michigan Tax Tribunal decision reducing the property tax assessment on petitioner's real property for 1992, 1993, and 1994. The property is the site of a newspaper printing and distribution facility built in 1979. For purposes of this case, the parties refer to the property as Parcel A, a vacant field consisting of approximately 13.1 acres, of which approximately 3.78 acres are underwater, and Parcel B, consisting of 13.36 acres and containing the improvement. The Tax Tribunal found the true cash value of the property to be $8,543,323 for the years 1992, 1993, and 1994.

Respondent's appraisal used the cost approach to arrive at a final valuation of $14,550,000. Respondent's valuation was based on the assumption that the subject property was a special purpose facility. Petitioner's appraiser used the income approach to arrive at its final valuation of $7,180,000.

In the absence of fraud, review of a decision of the Tax Tribunal is limited to determining whether the tribunal committed an error of law or adopted a wrong principle. *Michigan Bell Telephone Company v Department of Treasury*, 445 Mich 470, 476; 518 NW2d 808 (1994). A decision of the tribunal is an error of law if it is not supported by competent, material, and substantial evidence. *Teledyne Continental Motors v Muskegon Township*, 163 Mich App 188, 191-192; 413

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* Circuit judge, sitting on the Court of Appeals by assignment.

NW2d 700 (1987). Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence. *Jones & Laughlin Steel Corporation v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

Respondent first argues that the tribunal committed an error of law or adopted a wrong principle by finding that the subject property was not a special purpose property. We disagree.

Special purpose property is property which has limited conversion potential because the property has "structures with unique designs, special construction materials, or layouts that restrict their utility to the use for which they were originally built . . . . Examples of such properties include houses of worship, museums, schools, public buildings, and clubhouses." *Rouge Steel Company v City of Dearborn*, 8 MTT 136, 158 (1993). Merely because the property is put to an unusual use does not render it unique for property tax purposes. *Safran Printing Company v City of Detroit*, 88 Mich App 376, 383; 276 NW2d 602 (1979).

The tribunal is free to accept or reject either or both of the parties' theories of valuation. *Jones & Laughlin Steel*, *supra*, at 356. Petitioner presented competent, material, and substantial evidence that Parcel B is not a special purpose property. Petitioner's appraiser, Andrew Froling, testified that Parcel B could be used for a variety of uses, including light manufacturing and warehousing. He testified that the heating, ventilating, and electrical systems in the building are typical of a light manufacturing facility. He also testified that that the portion of the building with reinforced floors, and with a two-story, forty-six foot ceiling, which are needed to accommodate the printing presses, only occupies approximately six or seven percent of the total space of the building. Froling also testified that there was nothing "significantly special" about the construction of the building. Therefore, it does not appear that the tribunal made an error of law or adopted a wrong principle when it determined that Parcel B is not a special purpose property.

Respondent also argues that the tribunal failed to consider the existing use of the property when determining true cash value. We disagree.

MCL 211.27(1); MSA 7.27(1) requires that, among other factors, the existing use of the property must be considered when determining true cash value. In *Safran, supra*, at 382, this Court explained that the existing use of property is relevant to the fair market value of the property because the existing use may be indicative of the use to which a potential buyer would put the property. However, when the existing use of property bears no relationship to what a likely buyer would pay for the property, it should not be considered a significant factor in determining true cash value. *Id*.

In the present case, the hearing testimony indicated that it was not likely that there would be a purchaser of the property for use as a major newspaper printing facility. In addition, the fact that an assessor must consider the existing use of the property does not prohibit the assessor from considering other possible uses. *Teledyne, supra*, at 192.

Respondent next argues that the tribunal committed an error of law or adopted a wrong principle by using comparables to determine the true cash value of the subject property. We disagree.

The three traditional methods of determining true cash value that have been accepted as reliable by the courts are 1) the cost-less-depreciation approach, 2) the market approach, and 3) the capitalization of income approach. *Meadowlanes Limited Dividend Housing Association v City of Holland*, 437 Mich 473, 484-485; 473 NW2d 636 (1991). It is the duty of the tribunal to determine which approach will provide the most accurate valuation under the circumstances of the case before it. *Id.* at 485.

In the present case, the tribunal used the market approach to arrive at its valuation of the property. The market approach determines the true cash value of the subject property 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. *Samonek v Norvell Township*, 208 Mich App 80, 84-85; 527 NW2d 24 (1994).

The tribunal's use of petitioner's comparable number three to value Parcel A was supported by competent, material, and substantial evidence. Petitioner's comparable number three was a 6.3 acre riverfront site sold in 1987 for development as a high rise apartment complex for a price of $15.67 per square foot, but listed for resale in 1992 at a price of $6.50 per square foot, with the proposed apartment complex never having been built. Both parties agreed in their appraisals that the highest and best use of Parcel A was as a high-rise residential complex. Although the testimony indicated that Parcel A was in a location superior to petitioner's comparable number three and, this difference between the properties was offset by the fact that $6.50 per square foot was merely the asking price for comparable number three, and that the actual market value of comparable number three was most likely somewhat lower. Because there was competent, material, and substantial evidence to support the Tribunal's valuation of Parcel A, it does not appear that the tribunal made an error of law or adopted a wrong principle by considering petitioner's comparable number three to arrive at its valuation.

Respondent also argues that the tribunal erred by using petitioner's comparable number four to arrive at its valuation of Parcel B. Specifically, respondent argues that consideration of comparable number four was improper because comparable number four was not a newspaper printing facility, but was used as an industrial facility, which use is prohibited by the current zoning of Parcel B. We disagree.

Although an assessor must consider the existing use of the property, the assessor is not prohibited from considering other potential uses of the property. *Teledyne, supra*, at 192. In the present case, because the tribunal determined that Parcel B was not a special purpose property, it had no reason to limit its consideration to newspaper printing facilities. Petitioner's appraiser testified that the highest and best use of Parcel B was light manufacturing or warehousing. He also testified that comparable number four was of comparable age and size as Parcel B. At the hearing, the tribunal questioned the witnesses concerning the zoning of Parcel B and, in its order denying respondent's

motion for reconsideration of the tribunal's December 2, 1994, order, the tribunal stated that zoning was one of the factors it took into consideration when determining true cash value. Therefore, we do not believe the tribunal made an error of law or adopted a wrong principle by considering petitioner's comparable number four to determine the true cash value of Parcel B.

Affirmed.

/s/ Mark J. Cavanagh
/s/ William B. Murphy
/s/ Charles W. Simon, Jr.