

STATE OF MICHIGAN
COURT OF APPEALS

COMFORT INN,

Petitioner-Appellant,

v

CITY OF SAULT SAINTE MARIE,

Respondent-Appellee.

UNPUBLISHED
October 15, 1996

No. 181297
LC No. 00198785

Before: Michael J. Kelly, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Petitioner Comfort Inn appeals as of right a judgment of the Tax Tribunal, Small Claims Division, affirming respondent City of Sault Sainte Marie's determination regarding the true cash value of petitioner's property. Because it appears that the tribunal relied upon evidence submitted in violation of the ten-day rule in making its determination and further, failed to make sufficient findings of fact from which this Court can conduct a meaningful review, we reverse the judgment of the tribunal and remand for additional proceedings consistent with this opinion.

Petitioner first argues that the tribunal committed an error of law by relying on written evidence submitted with respondent's post-hearing brief in violation of 1981 AACRS, R 205.1642(2) to support its findings. We agree. The Tax Tribunal's failure to base a decision on competent, material, and substantial evidence on the record as a whole is an error of law. *Oldenburg v Dryden Twp*, 198 Mich App 696, 698; 499 NW2d 416 (1993). Here, the tribunal's opinion and judgment indicates that it relied upon several documents that were not presented until after the date of the hearing in determining the proper valuation of petitioner's property. Accordingly, the tribunal's decision is not supported by competent, material or substantial evidence on the whole record.

Petitioner next argues that the tribunal's opinion and judgment is deficient because it does not separate the facts from the law and contains deficient facts. Again, we agree. A decision of the tribunal shall include a concise statement of facts and conclusions of law stated separately. *Oldenburg, supra* at 699. MCL 205.751(1); MSA 7.650(51)(1). Here, the facts and conclusions of law, which are not set forth separately, are so nonspecific and lacking in detail that this Court is unable to ascertain what

evidence or reasoning was relied upon by the tribunal in determining the true cash value of petitioner's property.

Finally, petitioner argues that the assessment on its property was not made in uniformity with other assessments. Because it does not appear that petitioner challenged the assessment on this basis below, we deem the issue unpreserved.

Reversed and remanded for further proceedings in the small claims division. We do not retain jurisdiction.

/s/ Michael J. Kelly

/s/ Joel P. Hoekstra

Judge O'Connell did not participate.