

STATE OF MICHIGAN
COURT OF APPEALS

FREMONT LIMITED DIVIDEND HOUSING
ASSOCIATION,

UNPUBLISHED
December 27, 1996

Plaintiff-Appellant,

v

No. 180505
LC No. 89942

CITY OF FREMONT,

Defendant-Appellee.

Before: Fitzgerald, P.J., and O’Connell and T.L. Ludington,* JJ.

PER CURIAM.

Plaintiff appeals as of right the Michigan Tax Tribunal’s computation of the true cash value of a commercial piece of property for purposes of assessing ad valorem taxes for the tax years 1984, 1985, and 1986. The property in question is a federally subsidized low-income housing project. We affirm.

As stated in *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 482-483; 473 NW2d 636 (1991), “appellate review of Tax Tribunal decisions, as set forth in Const 1963, art 6, § 28, is limited. All factual findings are final if supported by competent and substantial evidence. When fraud is not alleged, appellate courts are limited to determining whether the tribunal made an error of law or adopted a wrong principle.” Our review of the record reveals no error on the part of the Tax Tribunal.

Ad valorem taxation is governed by Const 1963, art 9, § 3, which provides that the Legislature must determine appropriate methods for determining the “true cash value” of real and tangible personal property not exempt from taxation. MCL 211.27(1); MSA 7.27(1), states that “‘cash value’ means the usual selling price[, that is,] the price that could be obtained for the property at private sale” There exist three commonly accepted methods of arriving at true cash value: the cost-less-depreciation approach, the market comparison approach, and the capitalization-of-income approach. *Meadowlanes, supra*, pp 484-485. Variations of these approaches, and entirely different approaches, may be used where the goal of determining true cash value is better served by such departures.

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

In the present case, each party submitted estimations of the value of the subject property utilizing variations of each of the three traditional approaches. The Tax Tribunal considered all three approaches, and ultimately adopted, in large part, the capitalization-of-income approach used by defendant. Plaintiff raises several allegations of legal error on the part of the Tribunal, but we find none persuasive.

First, we do not find the ruling of the Tax Tribunal to be inconsistent with either *Antisdale v Galesburg*, 420 Mich 265; 362 NW2d 632 (1985), or *Washtenaw County v Tax Commission*, 422 Mich 346; 373 NW2d 697 (1985). Both the *Antisdale* and *Washtenaw County* decisions dealt with the market comparison approach to determining true cash value and addressed the propriety of adjustments to the selling price of comparable market transactions to exclude the effect of unique financing terms on the resulting sale prices. As set forth above, plaintiff's property in the immediate case was primarily evaluated by the Tribunal's application of the capitalization-of-income approach. Moreover, the record in the present case reflects that the Tribunal recognized the legal principles set forth in *Washtenaw* and *Antisdale*. There is no evidence that the Tribunal relied on below-market seller financing techniques, as in *Washtenaw*, or that the Tribunal categorically disregarded the effect of federally subsidized financing, as in *Antisdale*. Because we find no reliance by the Tribunal on the general legal principles set forth in *Antisdale* and *Washtenaw Co*, necessarily, the Tribunal's decision may not conflict with those opinions.

Second, plaintiff argues that the Tax Tribunal misapplied *Meadowlanes* when arriving at a value for the property under the capitalization-of-income approach. As relevant to the present appeal, *Meadowlanes*, *supra*, p 495, stands for the proposition that "it is proper for the Tax Tribunal to consider [interest-reduction subsidy] payments in the valuation process." Plaintiff asserted "that the interest subsidy in and of itself is of no value to a potential purchaser of the property," and, therefore, plaintiff valued the subsidy at zero in its proffered capitalization-of-income valuation.

While plaintiff is, in a sense, correct that the interest-reduction subsidy payments have no intrinsic value in that the property owner receives no cash-in-hand, the *Meadowlanes* decision emphasizes that the payments do, nonetheless, have value in reducing the financing expense associated with ownership of the property. Equally important, the financing is available for 50 years, is "saleable" to purchasers of the property with prior government consent and can therefore affect true cash value. While there exist various methods to reflect this value when determining the true cash value of a property, such subsidies must be considered in some fashion. We find the Tax Tribunal's interpretation of *Meadowlanes*, and concomitant incorporation of the value of the subsidy payments when arriving at the true cash value of plaintiff's property, to be correct.

Additionally, we would note that under plaintiff's proffered capitalization-of-income approach to valuation, the value of the subsidy is not only entirely eliminated in light of the assertion of plaintiff's appraiser that "it did not have value to the owner," but that a negative economic value was assigned to the regulatory restrictions imposed on the use of the property as a condition of the availability of the financing to further reduce the appraised value of the property. Disregarding the propriety of the Tribunal's resolution of the issue, plaintiff's valuation technique is in patent conflict with *Meadowlanes*.

Third, plaintiff contends that the Tax Tribunal erred in considering a “sub-market” analysis when determining the true cash value of the property, which, it is asserted, is in contravention of *Comstock Village Ltd Dividend Housing Ass’n v Comstock Twp*, 168 Mich App 755; 425 NW2d 702 (1988). Again, plaintiff has confused the market comparison approach, which was not primarily relied upon by the Tribunal and which *Comstock Village* addresses, with the capitalization-of-income approach, which was relied upon by the Tribunal. Because the Tribunal did not utilize a market comparison approach, plaintiff’s reliance on a perceived conflict with *Comstock Village* is misplaced. Additionally, we would note that plaintiff apparently misapprehends the gist of *Comstock Village*. That decision held that a sub-market analysis was inappropriate under the facts of that case, but did not, as plaintiff suggests, condemn the approach generally.

Fourth, plaintiff claims that the Tribunal erroneously interpreted *First Federal Savings and Loan Association v Flint*, 415 Mich 702; 329 NW2d 755 (1982). This time, plaintiff conflates the cost-less-depreciation approach to determining true cash value, which was rejected by the Tribunal under the facts of this case, with the capitalization-of-income approach, which was accepted. The Tribunal’s interpretation of *First Federal* had no bearing on its ultimate decision, and, further, the Tribunal did not misconstrue its holding.

Finally, plaintiff submits that the Tax Tribunal arrived at an inflated capitalization rate. The capitalization rate was derived from comparable sales prices that, in plaintiff’s opinion, were unjustifiably inflated. We find the conclusions of the Tribunal to be supported by competent and substantial evidence. *Meadowlanes, supra*, p 482. To the extent that this constitutes an issue of law, a conclusion inexplicably reached in *Congresshills Apts v Ypsilanti Twp*, 128 Mich App 279, 282; 341 NW2d 121 (1983), and upon which plaintiff relies, we find no legal error in this component of the decision of the Tribunal.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Peter D. O’Connell
/s/ Thomas L. Ludington