

STATE OF MICHIGAN
COURT OF APPEALS

WYOMING GREEN ASSOCIATES LIMITED,

Petitioner-Appellee,

v

CITY OF WYOMING,

Respondent-Appellant.

UNPUBLISHED

January 3, 1997

No. 185835

MTT Docket No. 00218270

Before: Markey, P.J., and Michael J. Kelly and M.J. Talbot,* JJ.

PER CURIAM.

Respondent City of Wyoming appeals as of right a judgment of the Michigan Tax Tribunal [the MTT] that reduced the true cash value [TCV] of petitioner Wyoming Green Associates' property to \$4,600,000. We affirm.

Petitioner owns Wyoming Green Apartments, which is a seven-building apartment complex that contains 161 one-bedroom units, sixty two-bedroom units, a rental office building, a clubhouse building, and an outdoor pool. Rents in the complex range from \$380 per month to \$525 per month depending on the unit's size and amenities.

Respondent determined that the complex's TCV was \$4,717,400; however, petitioner challenged that determination at the board of review and to the MTT, claiming the correct TCV was \$4,519,000. During the appeal to the MTT, respondent asserted that the complex's \$4,717,400 TCV had originally been incorrectly calculated and should be corrected to reflect a \$4,880,000 TCV. Following the MTT hearing referee's determination that the complex's TCV was \$4,600,000, respondent appealed, claiming that the MTT's judgment was not supported by competent, material and substantial evidence because petitioner's appraisal did not utilize all three valuation methods. Respondent also challenged petitioner's appraisal as lacking credibility and erroneously based on a capitalization rate that respondent alleged was not a market derived rate.

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

Our review of MTT judgments is extremely limited. As an initial matter, an appellate court accepts the MTT's findings of fact so long as those findings are supported by competent, material and substantial evidence. *Meadowlanes Limited Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 482-483; 473 NW2d 636 (1991). Furthermore, an appellate court also limits its review, unless fraud has been alleged, to determining whether the MTT adopted a wrong principle of law or erred as a matter of law. Const 1963, art 6, § 28; *Oldenburg v Dryden Twp*, 198 Mich App 696, 698; 499 NW2d 416 (1993).

Respondents' appeal challenges whether the MTT's judgment is based on competent, material and substantial evidence. Petitioner's appraisal was based on the income valuation approach which the hearing referee found to be the most accurate and the tribunal found to be the best estimate of the subject value. It discounted respondent's cost approach on the basis that the latter was not a good estimate of value because of the property's age. Furthermore respondent's comparables were not located in the city and were not adjusted for age and size differences. In other words the tribunal assessed the credibility of the testimony of petitioner's appraiser and found it more credible. The tribunal concluded that the value it determined was "within the range of the evidence presented." In doing so it adjusted slightly upward from petitioner's proposed TCV and substantially downward from respondent's proposed TCV. We believe that was within the tribunal's discretion and that it was not bound to accept dollar for dollar the amount of either proposal but permissibly adjusted the valuation as being "within the range of the evidence presented". The tribunal referee had the opportunity to observe the demeanor of the witnesses on both sides and the duty to determine credibility. The MTT is free to reject either party's evidence or both party's evidence in total or in part. *Teledine Continental Motors v Muskegon Township*, 145 Mich App 749; 378 NW2d 590 (1985). The tribunal did not substitute a figure outside the range of the evidence presented.

Affirmed.

/s/ Jane E. Markey
/s/ Michael J. Kelly
/s/ Michael J. Talbot