STATE OF MICHIGAN

COURT OF APPEALS

AMERICAN REALTY CORPORATION, Plaintiff-Appellant,	REISSUED UNPUBLISHED July 3, 1997
v	No. 187386 LC No. 146091
COMMERCE TOWNSHIP, Defendant-Appellee.	ON REMAND

Before: Corrigan, P.J., and Taylor and D.A. Johnston,* JJ.

PER CURIAM.

In this property tax assessment case, plaintiff appeals by right the Michigan Tax Tribunal ("MTT") order setting the ad valorem property tax assessment on plaintiff's property for 1990 through 1993 and the order denying its motion for rehearing. After this Court denied plaintiff's motion for rehearing (Docket No. 176361, order issued October 27, 1994), our Supreme Court remanded this case to this Court for plenary consideration (Docket No. 101376, order issued June 30, 1995). We affirm.

In its petition to the MTT, plaintiff American Realty Corporation contested defendant Commerce Township's property tax assessment for the 1990 through 1993 tax years on plaintiff's medical building in Commerce Township. Plaintiff alleged that defendant improperly calculated the true cash value of the subject property and failed to assess uniformly the subject property at the average levels of assessment of comparable property.

At a MTT small claims division hearing, the valuations of defendant's appraiser exceeded those of plaintiff's appraiser for the pertinent tax years.[1] Essentially the parties' determination of the true cash value differed for two reasons: (1) for the subject property's gross rental income, plaintiff used the subject property's *net rentable* area, while defendant used the subject property's *gross building* area;[2] and (2) plaintiff used capitalization rates of 11.25 percent and 10.50 percent, while defendant used capitalization rates of 10.75 percent and 10.00 percent.[3]

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

The hearing referee determined that the true cash value of the property fell between plaintiff's and defendant's assessments.[4] He further found that the average level of assessment for the property's classification was fifty percent.[5] Plaintiff subsequently moved for rehearing, which the tribunal judge denied.

Plaintiff first argues that the hearing referee improperly permitted defendant's assessor to testify to statements made by another appraiser who was not present at the hearing because the testimony constituted inadmissible hearsay. We disagree.

Tribunal hearings are conducted under the Administrative Procedures Act, except as otherwise provided in the Tax Tribunal Act. MCL 205.726; MSA 7.650(26). Both acts permit the admission of "evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs." MCL 205.746(1); MSA 7.650(46)(1), MCL 24.275; MSA 3.560(175). The testimony at issue was "evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs" because it concerned the appraisal of property, which was within the assessor's expertise. Hearsay evidence may be considered if it is commonly relied on by reasonably prudent persons in the conduct of their affairs. *Spratt v Dep't of Social Serv*, 169 Mich App 693, 701; 426 NW2d 780 (1988). Also, evidentiary rulings in an administrative proceeding are not the same as those in courts of law. *Michigan State Employees Ass'n v Civil Service Comm'n*, 126 Mich App 797, 804; 338 NW2d 220 (1983). The rigid courtroom evidence rules may not apply. *Rentz v General Motors Corp*, 70 Mich App 249, 253; 245 NW2d 705 (1976). Finally, an expert witness may base opinions on evidence that the expert had learned about before the hearing under MRE 703.

Plaintiff next argues that the hearing referee erred in admitting into evidence defendant's appraisal because defendant failed to deliver the appraisal to plaintiff within the time required by 1981 AACS, R 205.1642(2). Tax Tribunal Rule 642(2) provides: "A copy of an appraisal report or other written evidence shall be submitted to the opposing party and the tribunal not less than 10 days before the date of the hearing." 1981 AACS, R 205.1642(2); *Oldenburg v Dryden Twp*, 198 Mich App 696, 698 n 2; 499 NW2d 416 (1993). Defendant submitted the report to plaintiff on Monday, November 1, 1993, which was within nine days of the hearing. Because the tenth day before the hearing was a Sunday, the filing period was extended to include the next day under MCL 8.6; MSA 2.217. Accordingly, defendant timely submitted the report.

Plaintiff next argues that the hearing referee failed to state sufficiently findings of fact and conclusions of law relating to the uniformity of assessment and the average levels of assessment for the subject property. We disagree.

The Tax Tribunal Act states:

> A decision and opinion of the tribunal shall be made within a reasonable period, shall be in writing or stated in the record, and shall include a concise statement of facts and conclusions of law, stated separately and, upon order of the tribunal, shall be officially reported and published. [MCL 205.751(1); MSA 7.650(51)(1).]

A mere statement that the tribunal has reviewed the evidence and finds it to be insufficient as grounds for relief is not adequate as a "concise statement of the facts" and violates MCL 205.751(1); MSA 7.650(51)(1). *Granader v Southfield Twp*, 145 Mich App 585, 588; 377 NW2d 893 (1985). Appellate review of MTT decisions is meaningful only if the decisions contain the factual and legal bases of the tribunal's determination. *Id.* Adequate findings of fact are important because the informal record maintained in proceedings before the small claims division hinders review. *Id.; Oldenburg, supra* at 699. The hearing referee's findings of fact complied with MCL 205.751(1); MSA 7.650(51)(1). Regarding the average levels of assessment, the referee specifically stated that "[t]he average level of assessment in effect for this property's classification for the year in issue is 50%."[6]

Plaintiff next argues that the tribunal judge committed an error at law in holding that it had the burden of proof on the uniformity issue. We disagree.

Under the Uniformity of Taxation Clause of the Michigan Constitution, Const 1963, art 9, § 3, similarly situated taxpayers must be treated equally. *Kellogg Co v Treasury Dep't*, 204 Mich App 489, 496; 516 NW2d 108 (1994). The burden of proof is on the taxpayer to show unequal treatment to those similarly situated. *Id.* Uniformity is achieved by assessing all property with the same true cash value at a consistent level. *CAF Investment Co v Saginaw Twp*, 410 Mich 428, 464; 302 NW2d 164 (1981). Because all property must be assessed at fifty percent of its true cash value under MCL 211.27a(1); MSA 7.27(1)(1), a taxpayer establishes that the assessment was not in uniformity with other assessments if it exceeds fifty percent of the true cash value. See *Brittany Park Apartments v Harrison Twp*, 104 Mich App 81, 88; 304 NW2d 488 (1981). In other words, the taxpayer must show that the assessing agency's determination of the property's true cash value was too high. Cf. *Rose Bldg Co v Independence Twp*, 436 Mich 620, 640-641; 462 NW2d 325 (1990); *Fairplains Twp v Montcalm Co Bd of Comm'rs*, 214 Mich App 365, 367; 542 NW2d 897 (1995).

The trial court properly held that plaintiff had the burden of proof to establish non-uniformity. *Kellogg, supra* at 496. Plaintiff erroneously asserts that defendant also had a burden of proof on the uniformity issue under MCL 205.737; MSA 7.650(37). That statute allocates the burden of proof in establishing the *assessed value* of a taxpayer's property before the MTT; it does not allocate the burden of proof in establishing the *true cash value* of a taxpayer's subject property, the basis of a uniformity claim.

Plaintiff next argues that the hearing referee erred in applying a market rent of $14 a square foot to the gross building area in determining the subject property's gross rent. We disagree.

The taxpayer has the burden of proof to establish the true cash value of the property. MCL 205.737(3); MSA 7.650(37)(3); *Samonek v Norvell Twp*, 208 Mich App 80, 84; 527 NW2d 24 (1994). The MTT, however, must make an independent determination of true cash value, utilizing an approach that provides the most accurate valuation under the individual circumstances. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 353; 483 NW2d 416 (1992). That determination will be upheld if it is supported by competent, material, and substantial evidence. *Oldenburg, supra* at 698.

True cash value is synonymous with fair market value. *Jones & Laughlin, supra.* Regardless of the method selected, the value determined must represent the usual price for which the subject property would sell. *Id.* In determining the true cash value of rental property, the actual income generated by the lease is not the controlling indicator of its cash value in all cases. See MCL 211.27(4); MSA 7.27(4); *Carriage House Co-op v Utica*, 172 Mich App 144, 149; 431 NW2d 406 (1988). Rather, the market value of the rental property is controlling. *Id.* at 151.

The weight given to evidence is within the MTT's discretion. *Comstock Village Ltd Dividend Housing Ass'n v Comstock Twp*, 168 Mich App 755, 760; 425 NW2d 702 (1988). The weighing process involves judgment and reasonable approximation. *Id.* If neither party's valuation figure is accurate, the tribunal should be free to reject both. *Id.* The tribunal, however, should not substitute some other figure that may be equally lacking in evidentiary support. *Id.*

The hearing referee's determination that the subject property's market rent was $14 a square foot based on the gross building area was supported by competent, material, and substantial evidence. *Oldenburg, supra* at 698. At the hearing, defendant presented its appraisal that the property's true cash value should be $14 a square foot based on its gross building area because a medical building located near the property, which was the only other medical office building within Commerce Township, produced a rental income of $14 a square foot based on its *gross building area*. Although plaintiff presented eight rental comparables supporting that the property's market rent should be $14 a square foot based on its *net rentable area*, plaintiff's rental comparables were not medical buildings in Commerce Township.

Plaintiff next argues that the hearing referee erred in using defendant's rental comparable in determining the property's true cash value because the comparable property's tenants did not negotiate their leases at arm's length. We disagree.

The hearing referee's determination that defendant's rental comparable better reflected the subject property's market value was supported by competent, material, and substantial evidence. *Jones & Laughlin, supra* at 352. Defendant's rental comparable was the only modern medical office building in the same township as the subject property. That its tenants may not have negotiated their leases at arm's length did not render the rental comparable evidence inadmissible. Rather, the tenants' relationship with their lessor went to the weight of the evidence. *Samonek, supra* at 84-86.

Plaintiff next argues that the hearing referee's valuation of the unfinished area of the subject property was inaccurate and not reasonably related to its true cash value. We disagree. In determining a property's true cash value, the MTT must utilize a valuation approach that provides the most accurate valuation under the circumstances of the individual case. *Jones & Laughlin, supra* at 353. The three most common approaches to valuation are: (1) the capitalization-of-income approach, (2) the sales-comparison or market approach, and (3) the cost-less-depreciation approach. *Id.* Variations of these approaches and entirely new methods may be used if they are accurate and reasonably related to the fair market value of the subject property. *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991). A combination of the approaches also may be

used. *Jones & Laughlin, supra* at 356. Regardless of the valuation approach employed, the final value determination must represent the usual price for which the subject property would sell. *Meadowlanes Housing Ass'n, supra*.

Defendant correctly points out that the hearing referee did not combine the cost approach with the income approach to account for the unfinished portion of the subject property. Rather, the hearing referee determined the value of the unfinished area using the income approach. The hearing referee's deduction for the unfinished area did not constitute an error of law because plaintiff has failed to show that the valuation method was inaccurate or not reasonably related to the property's true market value. *Meadowlanes Housing Ass'n, supra*.

Affirmed.

/s/ Maura D. Corrigan
/s/ Clifford W. Taylor
/s/ Donald A. Johnston

[1] Plaintiff's appraiser determined that the true cash value of the subject property was $1,434,720 for the 1990 and 1991 tax years, and $1,537,000 for the 1992 and 1993 tax years. Defendant's appraiser determined that the true cash value of the subject property was $1,917,023 for the 1990 and 1991 tax years, and $2,060,880 for the 1992 and 1993 tax years.

[2] The net rentable area was 13,725 square feet and the gross building area was 16,000 square feet.

[3] In each instance, the first figure was for the 1990 through 1992 tax years, the latter figure was for 1993.

[4] The hearing referee calculated the true cash value at $1,787,219 for the 1990 through 1992 tax years, and $1,988,683 for the 1993 tax year.

[5] The referee determined that the assessment was $893,610 for the 1990 through 1992 tax years, and $958,996 for the 1993 tax year

[6] The fact that the findings stated "year" instead of "years" in issue was clearly a typographical error. Moreover, this error was irrelevant because statutory law mandates that all property is assessed automatically at fifty percent of its true value. See MCL 211.27a(1); MSA 7.27(1)(1).