

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT PICHULO,

Plaintiff-Appellant,

v

CHARTER TOWNSHIP OF MT. MORRIS,

Defendant-Appellee.

UNPUBLISHED

February 21, 1997

No. 181416

Michigan Tax Tribunal

LC No. 202107

Before: Young, P.J., and Markey and D.A. Teeple,* JJ.

PER CURIAM.

Plaintiff appeals as of right from the October 6, 1994 opinion and judgment of the Small Claims Division of the Michigan Tax Tribunal affirming his tax assessment of \$7,900.00 for residential real property located in Mt. Morris Township, Michigan. We affirm.

Plaintiff first argues that the referee's opinion is inconsistent with the record. He notes that the referee mentioned that defendant's cost-less-depreciation method was the most appropriate method for calculating true cash value of the property and claims this statement incorrectly implies that he challenged the method of valuation used by defendant in calculating the assessment. Plaintiff agrees with the chosen method of valuation. It is appropriate for the hearing referee to set forth in her opinion and judgment the method adopted to determine true cash value. See, e.g., *Oldenburg v Dryden Twp*, 198 Mich App 696, 697; 499 NW2d 416 (1993). Because the statement was appropriate and because plaintiff does not contest the use of the cost-less-depreciation method of valuation, we find that plaintiff's first presented question offers no justiciable issues.

Although plaintiff agrees with the basic method of valuation, he challenges the figures utilized in the calculation of true cash value. Specifically, plaintiff claims that an incorrect economic condition factor (ECF) was applied when calculating the true cash value of the property. Plaintiff has the burden of proving the true cash value of the property where he is

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

contesting it. MCL 205.737(3); MSA 7.650(37)(3); *Oldenburg, supra* at 698-699. Because an ECF is used in calculating true cash value, we believe that he also has the burden of proving that it was incorrect. We agree with the referee that plaintiff did not meet his burden of proof.¹

As a basic premise, property is to be assessed at fifty percent of its true cash value. Const, 1963, art 9, § 3; MCL 211.27a(1); MSA 7.27(1)(1). True cash value must be determined before one can calculate a lawful assessment. *Fairplains Twp v Montcalm Co Bd of Comm'rs*, 214 Mich App 365, 368; 542 NW2d 897 (1995). Under the method agreed upon in this case, true cash value equals the amount it would cost to replace the improvements on the land minus the value of current depreciation of the improvements plus the value of the land itself. See *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 484-485, n 18; 473 NW2d 636 (1991). In making a calculation under this method of valuation, an ECF is used to adjust the estimate on the improvements to account for current market conditions. See the Michigan State Tax Commission Assessor's Manual, p 14-1.

Plaintiff claims that the ECF defendant used was too high and was calculated incorrectly because it did not take into account twenty-one of twenty-seven recently sold properties that had assessment-to-market value ratios in excess of fifty percent, i.e., defendant refused to consider low-priced sales in determining the ECF and the true cash value. An ECF is generally calculated by a county appraiser and is retained on file in the county. The actual figure is calculated by comparing numerous property sales. See Assessor's Manual, Chapter 14. For each property sale, the sale value of the property improvements only is divided by the estimated replacement cost less depreciation value of the improvements. All the resulting ratios are averaged and an ECF is determined.

Plaintiff contends that in calculating the ECF, defendant did not use all recent property sales but only factored in high priced sales, thereby driving up the ECF. The limited record in this case does not support such a contention.² In accordance with the assessor's manual, defendant excluded all sales that were too high and all sales that were too low in making its calculation. It did so because there is a great range of market values in the depressed economic market where the property is located. Plaintiff did not present any evidence of the actual sales that were utilized by the county in its calculation, and he did not prove that the twenty-seven recent sales that he compiled were the sales that defendant allegedly omitted from the ECF calculation.

While not providing evidence to rebut defendant's calculation, plaintiff did supply the tribunal with his own calculation of the ECF. Plaintiff's calculation and the basic method used by plaintiff in calculating the ECF are incorrect. Plaintiff proposed that ECF be calculated by using land values as well as values of improvements on the land. This is not the correct method for calculating ECF. See Assessor's Manual, Chapter 14. The value of land itself is always omitted from an ECF calculation. Thus, plaintiff's method of calculation is therefore wrong and the tax referee correctly refused to hold otherwise. The referee properly concluded that plaintiff failed to carry his burden of proof, that the respondent's cost-less depreciation methodology was the best

indication of the property's true cash value, and that the true cash value of the property was \$15,800.00.

Affirmed.

/s/ Robert P. Young, Jr.

/s/ Jane E. Markey

/s/ Donald A. Teeple

¹ We note, however, that it is difficult at best to review the proceedings before a referee of the Small Claims Division because 1981 AACCS, R 205.1605(1) provides: "A formal transcript shall not be taken for any proceeding commenced and completed in the small claims division."

² We base our review on the referee's findings of fact and conclusions of law in the absence of any transcript. See note 1. "Adequate findings of fact are particularly important in proceedings before the small claims division because review is hindered by the informal record maintained in those proceedings." *Oldenburg, supra* at 699.