

STATE OF MICHIGAN
COURT OF APPEALS

AMURCON/RIDGEWOOD VISTA,

Petitioner-Appellant,

v

LEONI TOWNSHIP,

Respondent-Appellee.

UNPUBLISHED

March 7, 1997

No. 192485

MTT

LC No. 00096544

Before: Murphy, P.J., and Markey and A.A. Monton,* JJ.

PER CURIAM.

Petitioner appeals as of right from the Michigan Tax Tribunal's computation of the true cash value of certain commercial property owned by petitioner (a federally subsidized low-income housing complex) for the purpose of assessing ad valorem taxes for the tax years 1985, 1986, and 1987. We affirm.

When fraud is not alleged, this Court reviews the decisions of the Tax Tribunal to determine whether the tribunal committed an error of law or adopted a wrong legal principle. *Samonek v Norvell Twp*, 208 Mich App 80, 84; 527 NW2d 24 (1994). The factual findings of the Tax Tribunal will be upheld if they are supported by competent, material, and substantial evidence on the entire record. *Id.* Our review of the record reveals no error on the part of the Tax Tribunal.

The taxpayer has the burden of proof to establish the true cash value of the property. *Samonek, supra*. True cash value is synonymous with fair market value and is commonly determined by three different approaches: (1) cost less depreciation, (2) sales comparison, and (3) capitalization of income. *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 484-485; 473 NW2d 636 (1991). These traditional approaches apply to the valuation of subsidized housing complexes as well as to other types of real property. *Id.*, 502-503. However, because there is no single correct approach to determining the true cash value of a federally subsidized housing complex, the appraiser should use variants of all three of these traditional approaches, valuing the property both as private apartments and as a federally subsidized housing complex. *Id.*, 502.

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

The Tax Tribunal has the duty to determine which approaches provide the most accurate valuation under the individual circumstances of each case. *Meadowlanes, supra*, 503. An appraisal approach is to be rejected only if there is research justifying its nonuse. *Id.* The final estimate of true cash value must represent the physical real estate and all the interests, benefits, and rights inherent in ownership of the subject real property. *Id.*

In the present case, each party submitted estimations of the value of the subject property using variations of each of the three traditional approaches. The tribunal considered all three approaches, and ultimately adopted the sales-comparison and capitalization-of-income approaches employed by respondent. Petitioner raises several allegations of error on the part of the Tax Tribunal, but we find none to be persuasive.

First, petitioner contends that the Tax Tribunal committed an error of law in considering a “sub-market” analysis when determining the true cash value of the subject 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) and MCL 211.27(1); MSA 7.27(1). This contention lacks merit. Our Supreme Court has authorized the valuation of a federally subsidized low-income housing complex through the employment of a sales-comparison approach that uses subsidized properties as sales comparables. *Meadowlanes, supra*, 437 Mich 502-503.

The question then becomes whether the tribunal adopted a wrong principle when it adopted respondent’s valuations that were arrived at through the use of the sales-comparison and capitalization-of-income approaches. As our Supreme Court cautioned, the Tax Tribunal is to disregard an appraisal approach only if there is research justifying its nonuse. *Meadowlanes, supra*, 437 Mich 502.

The record fails to contain research that would justify the nonuse of the resales of subsidized housing complexes as sales comparables when employing the sales-comparison approach to valuation. Testimony offered before the Tax Tribunal established that the Michigan State Housing Development Authority [MSHDA] had in place at the time of the resale of each comparable property used by respondent a process to guarantee that factors extrinsic to the properties had not entered into the value placed on the properties by the buyers and sellers and, thereby, to ensure resale at approximate market values. The involvement of MSHDA in the resale of Section 8 subsidized low-income housing developments injects sufficient checks and balances into the resale process to allow the resale of the comparable properties used by respondent to be termed “arm’s-length” sales for valuation purposes.

Second, petitioner contends that the Tax Tribunal adopted a wrong principle when it rejected petitioner’s income approach, which employed hypothetical market rents, and adopted respondent’s income approach, which employed actual rents received under the Housing Assistance Payments contract [HAP contract]. Again, petitioner’s contention lacks merit. This Court has recognized the Tax Tribunal’s ability to consider rent subsidies paid pursuant to a HAP contract when determining the true cash value of a Section 8 federally subsidized low-income housing complex. *Comstock Village Ltd Dividend Housing Ass’n, supra*, 168 Mich App 761-762; *Dowagiac Ltd Dividend Housing Ass’n v Dowagiac*, 166 Mich App 232, 236-237; 420 NW2d 114 (1987). Additionally, courts of both this

state and other jurisdictions have recognized the appropriateness of considering actual rents generated by subsidies rather than hypothetical market rents because the actual rents are a better indication of the property's true earning capacity. *Meadowlanes, supra*, 437 Mich 499, n 46; *Kankakee Co Bd of Review v Property Tax Appeal Bd*, 163 Ill App 3d 811; 516 NE2d 1006 (1987), *aff'd* 131 Ill 2d 1, 16-17; 544 NE2d 762, 768-770 (1989); *Executive Square Ltd Partnership v Bd of Tax Review*, 11 Conn App 566; 528 A2d 409, 412-413 (1987); *Kargman v Jacobs*, 411 A2d 1326, 1331 (RI, 1980); *Lake Co Bd of Review v Property Tax Appeal Bd*, 172 Ill App 3d 851; 527 NE2d 84, 86-88 (1988); *Community Development Co v Bd of Assessors*, 377 Mass 351; 385 NE2d 1376, 1378 (1979).

To the extent that petitioner argues that consideration of actual rents generated under the HAP contract is at odds with the definition of "present economic income" set forth in MCL 211.27(4); MSA 7.27(4), petitioner is mistaken. MCL 211.27(4); MSA 7.27(4) does not preclude the use of actual rents in calculating cash value. This provision specifically provides that actual income generated by a lease or rental of property is not to be "the controlling indicator of its cash value in all cases." From the Legislature's use of the qualifying phrase "in all cases," it can be inferred that the Legislature did not intend to preclude the consideration of actual rents in the value determination process when the circumstances of the particular case warrant such consideration. Here, we hold that the circumstances warrant the consideration of actual rents. As already observed, courts have repeatedly determined that it is appropriate to consider actual rents generated by the government subsidy rather than hypothetical market rents because the actual rents more accurately reflect the subsidized property's true earning capacity.

Third, petitioner contends that the Tax Tribunal's adoption of respondent's valuation methods and conclusions is inconsistent with *Meadowlanes, supra*. On the contrary, as explained above, the Tax Tribunal's approaches to valuation and its conclusions as to value comport with the principles set forth in *Meadowlanes*.

Fourth, petitioner contends that the Tax Tribunal adopted a wrong legal principle when it accepted respondent's cost approach while failing to give any consideration to external obsolescence. The Tax Tribunal's determination that external obsolescence was a minimal consideration was supported by the record and at law. *Meadowlanes, supra*, 503.

Fifth, petitioner contends that the Tax Tribunal committed an error of law by accepting respondent's appraiser's capitalization rates, which petitioner characterizes as being unreasonably low. Petitioner's contention is premised on the belief that the valuation process cannot include both the application of a sales-comparison approach that uses subsidized properties as comparables and the consideration of the actual rents generated by the subsidy guarantee of the HAP contract. Petitioner's underlying premise is faulty and, therefore, its contention must fail for a lack of foundation.

Affirmed.

/s/ William B. Murphy
/s/ Jane E. Markey
/s/ Anthony A. Monton