

STATE OF MICHIGAN
COURT OF APPEALS

CENTRAL DETROIT WAREHOUSE,

Petitioner-Appellee,

v

CITY OF MELVINDALE and COUNTY OF
WAYNE,

Respondents-Appellants.

UNPUBLISHED

April 15, 1997

No. 192818

Tax Tribunal

LC No. 00188100

Before: Markey, P.J., and Bandstra and Hoekstra, JJ.

PER CURIAM.

Respondents appeal as of right from the decision of the Michigan Tax Tribunal concluding that the property tax assessments on petitioner's property for tax years 1993, 1994 and 1995, were overstated. We affirm.

Petitioner owns the subject property, a parcel of land consisting of 26.36 acres in the City of Melvindale that is improved with an industrial warehouse building of approximately 419,200 square feet. The property is zoned for general manufacturing (M-2) and its tax parcel number is 47-003-99-0004-000. For the years 1993, 1994, and 1995, the parcel was assessed at \$3,044,140 which represented a true cash value of \$6,088,280. Petitioner's appeals of these assessments to the Michigan Tax Tribunal for each of those three years were consolidated.

Petitioner argued to the tribunal that the assessments were overstated. Petitioner presented an extensive appraisal report and expert testimony to support its assertion that the proper true cash value of the property for all three years was \$4,450,000. Respondents argued that the true cash value for the subject property had been understated. They presented a thorough appraisal report and expert testimony to support the assertion that the true cash value for the three years was \$7,000,000. After considering the evidence presented in the two-day hearing on the matter, the tax tribunal issued a lengthy opinion concluding that the true cash value of the subject property for all three years was \$5,427,100. From that judgment, respondents appeal as of right.

On appeal, respondents argue that the tribunal's decision is based on several errors of law and, otherwise, is not supported by competent, material and substantial evidence. We disagree. As in the present case, where fraud is not alleged, we review a decision of the tax tribunal to determine whether the tribunal erred in applying the law or adopted a wrong legal principle. *Comcast Cablevision of Sterling Heights v Sterling Heights*, 218 Mich App 8, 11; 553 NW2d 627 (1996); *Maxitrol Co v Dep't of Treasury*, 217 Mich App 366, 370; 551 NW2d 471 (1996). Factual findings of the tribunal are final, so long as they are supported by competent, material, and substantial evidence on the whole record. *Comcast, supra*, at 11. "Substantial evidence" means more than a scintilla, yet less than a preponderance of evidence. *Fairplains Twp v Montcalm Co Bd of Comm'rs*, 214 Mich App 365, 372; 542 NW2d 897 (1995). Where the tribunal's decision is not supported by competent, material and substantial evidence, it is an error of law. *Teledyne Continental Motors v Muskegon Twp*, 163 Mich App 188, 191-192; 413 NW2d 700 (1987).

As a general matter, in a challenge to the assessment of property, the taxpayer carries 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). True cash value means fair market value and is typically determined by using either (1) the cost less depreciation method; (2) the sales comparison method; or (3) the capitalization of income method. *Id.* Regardless of the method utilized, the value determined must represent the usual price that the property would sell for. *Id.*

Here, the record indicates that each party presented in-depth appraisal reports which analyzed the value of the subject property from each of the three approaches. These analyses were based on numerous comparable properties to which the parties applied adjustment factors to equate them with the subject property. The information contained in the reports was further explained and argued by expert testimony from both sides. In its opinion, the tribunal discussed and analyzed this evidence at length in making conclusions under the sales comparison approach and the income-capitalization approach. Contrary to respondents' contentions, the tribunal's conclusions rested on evidence presented from both sides and the final valuation figure was based on a balancing of the findings under each valuation approach. Even if the tribunal's decision rested solely on petitioner's evidence, that evidence is clearly substantial and is certainly material to the valuation determination. Moreover, we find that respondents have not established that petitioner's appraisal and the testimony of two licensed appraisers was not competent. Contrary to respondents' assertion, Michigan law does not mandate that the tribunal may only consider comparable properties for which a highest and best use analysis has been performed by the appraiser of the subject property. Therefore, such comparables are not rendered incompetent as a matter of law. Hence, respondents have failed to establish that the tribunal's decision was not based on competent, material and substantial evidence.

With respect to respondents' allegations that the tribunal committed several errors of law, we find those claims to be without merit. First, respondents claim that the tribunal erred by not providing a sufficient explanation of its valuation decision. The tax tribunal may not offer a mere conclusory decision, but must set forth a concise statement of facts and conclusions of law. *Plymouth Twp v Wayne Co Bd of Commrs*, 137 Mich App 738, 756; 359 NW2d 547 (1984); MCL 205.751(1);

MSA 7.650(51)(1). However, this rule does not require that every minute aspect of the tribunal's thought process be documented. Hence, we find no error in the tribunal's failure to detail its rationale for not adopting certain of respondents' comparables as most accurate or in failing to explicitly detail its rationale for adopting petitioner's capitalization figure.

Respondents also argue that the tribunal erred in basing its valuation decision on just a single comparable property. Even assuming that reliance on a single sales comparison would be an error of law, this is not the case here. The tribunal clearly considered the applicability of many of the comparables submitted under the sales comparison approach and chose one sale as most indicative of the value of the subject property. Therefore, the tribunal's decision rested on an analysis of several properties. Moreover, the tribunal used the conclusions under the sales approach in combination with the income-capitalization findings to reach its ultimate conclusion on valuation of the subject property. The income-capitalization findings were also based on several comparable properties. Therefore, we find respondents' assertion that the tribunal relied on only one comparable property to make its valuation decision completely without merit.

Respondents also assert that the tribunal erred in using a flawed comparable under the sales approach to reach its valuation decision. The record indicates that the tribunal recognized that the comparable property it utilized in its sales approach had certain dissimilarities. In spite of this, the tribunal found that property more similar to the subject property than any of the other comparables. What weight to give certain evidence is a matter left to the tribunal's discretion. *Teledyne, supra*, at 191. We find no error in the tribunal's exercise of that discretion here.

Finally, respondents argue that the tribunal committed an error of law in allowing petitioner to present the testimony of Michael Kelly because he did not perform the appraisal on which petitioner was basing its valuation. For this proposition, respondents cite 1979 AC, R 205.1252(1) which reads in pertinent part: "Without permission of the tribunal for good cause shown, an assessor or expert witness may not testify as to the value of property without submission of a written report, such as an appraisal or an appraisal card, containing the person's value conclusions and the basis therefor." Respondents contend that since Kelly only signed the petitioner's appraisal report as a reviewer, the report did not contain his valuation conclusions. As such, respondents argue that he should not have been allowed to testify absent a showing of good cause.

Here, the record showed that Kelly participated in the preparation of the appraisal which was primarily performed by an employee of Kelly. Kelly testified to having personally inspected the subject property and that his signature on the appraisal indicated his knowledge and responsibility for the entire contents of the report. Hence, the report embodied Kelly's valuation conclusions in conformance with Rule 252. Therefore, we find no error in the tribunal's decision to allow Kelly to testify as to the valuation.

Affirmed.

/s/ Jane E. Markey
/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra