

STATE OF MICHIGAN
COURT OF APPEALS

THE HARBOURS LIMITED PARTNERSHIP,

Petitioner-Appellant,

v

TOWNSHIP OF SAUGATUCK,

Respondent-Appellee.

UNPUBLISHED

June 2, 1998

No. 194546

Tax Tribunal

MTT No. 00103344

Before: Corrigan, C.J., and Hoekstra and Young, Jr., JJ.

PER CURIAM.

Petitioner appeals as of right from the Tax Tribunal's final opinion and judgment establishing the true cash value of The Harbours Apartments ("The Harbours") for tax years 1986, 1987 and 1988. We affirm.

Petitioner filed a petition contesting Saugatuck Township's December 31, 1985, real estate tax assessment of The Harbours, a Farmers Home Administration ("FmHA") § 515¹ subsidized housing development in the village of Douglas. Petitioner later amended its petition to include real estate tax assessments and personal property tax assessments for December 31, 1986, and December 31, 1987. Petitioner contended that the true cash value of The Harbours real estate for each of the tax years at issue was \$500,000. Respondent contended that the true cash value of the real estate was \$1,400,000 in tax year 1986, \$1,370,000 in tax year 1987 and \$1,375,000 in tax year 1988. The Tax Tribunal, in its final opinion and judgment, adopted the findings of fact contained in the proposed opinion and judgment and used a weighted per-unit sales comparison approach to determine that the true cash value of the real estate was \$1,273,000 for each of the tax years 1986, 1987 and 1988. The assessment level was fifty percent of the true cash value for each year.

Absent fraud, this Court's review of a Tax Tribunal decision is limited to determining whether the tribunal adopted a wrong principle of law or erred as a matter of law. *Georgetown Place Cooperative v Taylor*, 226 Mich App 33, 43; 572 NW2d 232 (1997). The taxpayer bears the burden of proof with respect to the true cash value of property. MCL 205.737(3); MSA 7.650(37)(3); *Georgetown Place Cooperative, supra* at 43. The Tax Tribunal's factual findings are

upheld unless they are not supported by competent, material, and substantial evidence. *Georgetown Place Cooperative, supra* at 43.

Petitioner's first argument on appeal is that the Tax Tribunal committed an error of law or adopted a wrong principle in failing to recognize the negative effect on The Harbours' value of changes in federal income tax law occurring in 1986. Specifically, petitioner asserts that the tribunal ignored the impact of the Tax Reform Act of 1986, PL 99-514, 100 Stat 2085, by relying on tax-shelter-based sales at face value and applying them long after the tax shelters were absent. We find no error.

Tax-shelter benefits are value-influencing factors that should be reflected in the assessment process to the extent that they increase or decrease the value of the subject property. See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 495-496; 473 NW2d 636 (1991); *Antisdale v City of Galesburg*, 420 Mich 265, 284-285; 362 NW2d 632 (1984). Here, however, petitioner presented no evidence or methodology to show how the Tax Reform Act increased or decreased the value of The Harbours. On the contrary, petitioner's own appraisal supports the tribunal's finding that the Tax Reform Act had no discernible impact on the true cash value of The Harbours. Petitioner is not entitled to relief on this basis.

Next, petitioner argues that the Tax Tribunal committed an error of law by ignoring the concept of "cash equivalency" and failing, in its sales-comparison approach to valuing The Harbours, to adjust the sales prices of comparable properties by discounting to present value the outstanding mortgage balances of those comparables. Again, we are not persuaded that the Tax Tribunal erred.

The touchstone of uniform assessment is the "true cash value" or "usual selling price" of the property. *Meadowlanes, supra* at 490. Under the sales-comparison approach to valuation, "true cash value is derived by analyzing recent sales of similar properties, comparing those properties with the subject property, and adjusting the sales price of the comparable properties to reflect differences." *Id.* at 492. When using a sales-comparison approach, "the appraiser should adjust the sales price of comparables for differences in size, age, condition, location, and other value influences that buyers and sellers of real property take into account." *Id.* at 503.

The Tax Tribunal rejected petitioner's argument that *Antisdale v City of Galesburg*, 420 Mich 265, 284-285; 362 NW2d 632 (1984), mandates cash-equivalency discounting when using the sales-comparison approach to determine the true cash value of federally-subsidized property. We agree with the Tax Tribunal. Indeed, the Court in *Antisdale, supra* at 285-286, intimated "no opinion as to whether the creation of a formula expressing the value of subsidized property as a function of its discounted outstanding mortgage balance may substitute for traditional comparisons under the market approach."

The theory behind the concept of cash equivalency is that the financing terms of a sale, e.g., below-market interest rates, may influence and therefore require an adjustment to the sales price of comparable real property. *Meadowlanes, supra* at 491. Cash-equivalency analysis is typically used to adjust the sales price of comparable properties where there is market evidence that the sales price was artificially enhanced by *atypical* financing terms. *Id.* at 491 n 32; see also The American Institute of

Real Estate Appraisers, *The Appraisal of Real Estate* (9th ed) (Chicago, 1987), p 319.² However, according to the *Meadowlanes* Court, a federal mortgage-interest subsidy, such as the one involved in the present case, is not “atypical” or indicative of “creative financing” as defined by the Court in *Washtenaw Co v State Tax Comm*, 422 Mich 346; 373 NW2d 697 (1985). *Meadowlanes*, *supra* at 498. This is because the interest subsidy applies to all comparable properties and is transferable; it is not a negotiable term that would allow a seller to extract an artificially enhanced price upon a sale. *Id.* In other words, it is inappropriate to assume that true cash value is not represented by the likely selling price of the subject property merely because a sale involves the assumption of a low-interest mortgage. *Id.* at 489.

In this case, as the administrative law judge noted in his proposed opinion and judgment, petitioner’s appraiser “presented no market data to support the proposition that the sales price of any of his eight (8) comparables were artificially enhanced by atypical financing so as to require that the sales prices be reduced to their ‘cash equivalency.’” Petitioner’s appraiser also failed to consider the mortgage-interest subsidy as a value-influencer. See *Meadowlanes*, *supra* at 496. The Tax Tribunal’s analysis, on the other hand, by comparing the sales prices of eight similarly restricted and subsidized FmHA § 515 properties, properly took into account differences in size, age, condition, and location, as well as the ownership and use restrictions, government subsidies, and other value influences that buyers and sellers of real property consider. There is no indication that any further adjustments to the sale prices of the comparables needed to be made in order to determine the true cash value of The Harbours. Therefore, the tribunal did not commit an error of law in declining to use a cash-equivalency analysis.

Finally, petitioner argues that the Tax Tribunal committed an error of law or adopted a wrong principle by using a submarket analysis to establish true cash value contrary to MCL 211.27(1); MSA 7.27(1). Again, we disagree. By comparing sales of similarly restricted and subsidized FmHA § 515 properties, the Tax Tribunal properly took into account the usual selling price of the properties, the negative influence of the restrictions on the properties, and the value of the federal mortgage-interest subsidy. We are not persuaded by petitioner’s claim that the tribunal’s approach to valuation fails to reflect the true cash value of the property.

Affirmed.

/s/ Maura D. Corrigan
/s/ Joel P. Hoekstra
/s/ Robert P. Young, Jr.

¹ Section 515 of Title V of the Housing Act of 1949, 42 USC 1485.

² “Appraisers are cautioned to rigorously test their calculations under this analysis and to remember that the final adjustment must always be derived *from the market*.” *Meadowlanes*, *supra* at 491 n 32 (emphasis added).