

STATE OF MICHIGAN
COURT OF APPEALS

DANIEL TURVEY,

Petitioner-Appellant,

and

KRISTI TURVEY,

Petitioner,

v

TOWNSHIP OF MANCHESTER,

Respondent-Appellee.

UNPUBLISHED

April 10, 2012

No. 303578

Michigan Tax Tribunal

LC No. 00-368525

Before: MARKEY, P.J., and MURRAY and SHAPIRO, JJ.

PER CURIAM.

Petitioner Daniel Turvey appeals as of right the February 22, 2011, order of the Michigan Tax Tribunal, finding that respondent Township of Manchester properly assessed petitioner's real property for the 2009 and 2010 tax years. We affirm.

I. BACKGROUND

Respondent assessed the property's true cash value (TCV) at \$235,300 for the 2009 tax year and \$223,600 for the 2010 tax year, and assessed the property's taxable value (TV) for the respective tax years at \$117,650 and \$111,800.¹ Petitioner filed an appeal with the Michigan Tax Tribunal, challenging the accuracy of respondent's assessment of the property. At the September 28, 2010, hearing before the hearing referee, petitioner argued that the property's correct TCV was \$144,400 for both the 2009 and 2010 tax years and, thus, the property's correct TV for the respective tax years was \$72,200. At the hearing, both parties focused on the sales comparison approach² as the method for establishing the validity of their respective assessments.

¹ MCL 211.27a provides that a property's TV shall be assessed at 50 percent of its TCV.

² "The sales-comparison approach indicates true cash value by analyzing recent sales of similar properties, comparing them with the subject property, and adjusting the sales price of the

In support of his assessment of the property's TCV, petitioner offered six comparable sales. Respondent likewise offered evidence to support its assessment of the property's TCV, including three comparable sales and the property record card for the property.

On November 24, 2010, the hearing referee issued a proposed opinion and judgment adopting respondent's assessment of the property for the 2009 and 2010 tax years. Thereafter, petitioner filed an exception to the proposed opinion and judgment. On February 22, 2011, the tribunal issued a final opinion and judgment adopting the proposed one and affirming respondent's assessment of the property for the 2009 and 2010 tax years. The tribunal found that petitioner's sales comparison analysis was unreliable and that both respondent's sales comparison analysis and its cost less depreciation³ calculations supported the adoption of respondent's assessment. Petitioner then moved for, but was denied, a rehearing. While the tribunal agreed with petitioner that respondent's sales comparison analysis was also unreliable, it found that this did not affect the tribunal's ultimate determination of the property's TCV, as the cost less depreciation approach still supported respondent's assessment of the property's TCV. Thereafter, on April 15, 2011, petitioner filed this claim of appeal.

II. ANALYSIS

Petitioner argues that the tribunal improperly relied on respondent's unreliable cost less depreciation calculations and failed to make an independent judgment based on substantial evidence. "This Court's authority to review a decision of the Tax Tribunal is very limited. In the absence of an allegation of fraud, this Court's review of a Tax Tribunal decision is limited to determining whether the tribunal committed an error of law or adopted a wrong legal principle. The tribunal's factual findings will not be disturbed as long as they are supported by competent, material, and substantial evidence on the whole record." *Mich Milk Producers, Ass'n v Dep't of Treasury*, 242 Mich App 486, 490-491; 618 NW2d 917 (2000) (citations omitted). "'Substantial evidence' is evidence that a reasonable person would accept as sufficient to support a conclusion. While this requires more than a scintilla of evidence, it may be substantially less than a preponderance." *Dowerk v Oxford Charter Twp*, 233 Mich App 62, 72; 592 NW2d 724 (1998). Moreover, "the petitioner has the burden to establish the true cash value of property. Nevertheless . . . the Tax Tribunal has a duty to make an independent determination of true cash value Regardless of the method employed, the Tax Tribunal has the overall duty to determine the most accurate valuation under the individual circumstances of the case." *President Inn Props, LLC v Grand Rapids*, 291 Mich App 625, 631; 806 NW2d 342 (2011) (citations omitted).

In both its final opinion and judgment and subsequent order denying petitioner's motion for a rehearing, the tribunal clearly stated that it reviewed the property's record card and made an

comparable properties to reflect differences between the two properties." *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485 n 19; 473 NW2d 636 (1991).

³ Under the cost-less-depreciation approach, "true cash value is derived by adding the estimated land value to an estimate of the current cost of reproducing or replacing improvements and then deducting the loss in value from depreciation in structures, i.e., physical deterioration and functional or economic obsolescence." *Meadowlanes*, 437 Mich at 484 n 18.

independent determination that the record card indicated that respondent's cost less depreciation calculations were correct. The tribunal found that there were no errors in respondent's cost less depreciation calculations and no sales data to the contrary. Recognizing that "the determination of true cash value is not an exact science" and that "the process of weighing evidence involves a considerable amount of judgment and reasonable approximation[,]" *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 398; 576 NW2d 667 (1998), we find, based upon our limited review of the tribunal's findings, that the property's record card provided competent, material and substantial evidence to support the tribunal's finding regarding the property's TCV, see *Dowerk*, 233 Mich App at 72.

We also hold that petitioner failed to demonstrate that the tribunal erred by denying his motion for rehearing. "We review a . . . [tax tribunal's] denial of a motion for reconsideration for an abuse of discretion. The movant must show that the . . . [tax tribunal] made a palpable error and that a different disposition would result from correction of the error." *Herald Co, Inc v Tax Tribunal*, 258 Mich App 78, 82; 669 NW2d 862 (2003) (citations omitted). Although petitioner argues that the tribunal abused its discretion by denying his motion for a rehearing without making an independent determination of the property's TCV, we have already rejected that argument. Thus, petitioner is unable to show that the tribunal "made a palpable error and that a different disposition would result from correction of the error." *Id.*

Affirmed.

/s/ Jane E. Markey
/s/ Christopher M. Murray
/s/ Douglas B. Shapiro