

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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YASH SHAH,

Petitioner-Appellant,

v

TOWNSHIP OF WEST BLOOMFIELD,

Respondent-Appellee.

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UNPUBLISHED

May 15, 2014

No. 310116

Michigan Tax Tribunal

LC No. 00-364308

Before: FITZGERALD, P.J., and SAAD and WHITBECK, JJ.

PER CURIAM.

Petitioner appeals by delayed leave granted a final opinion and judgment issued by the Michigan Tax Tribunal, Small Claims Division, which assessed the subject property's state equalized value (SEV) and true cash value (TCV) for 2009 and 2010. We affirm.

Petitioner owns residential property located in West Bloomfield on Walnut Lake. Petitioner challenged respondent's 2009 and 2010 assessment of the subject property, asserting that the assessment was more than 50 percent of the property's TCV. Petitioner submitted documentary evidence to the Tax Tribunal in support of his determinations regarding the TCV, SEV, and taxable value (TV) of the subject property for both years. Petitioner's evidence in support of these values included two appraisals, one for each year, both prepared by Linda A. Burton, stating that "the market approach is the approach most relevant to a purchase of this type of property." Respondent also submitted documentary evidence to the tribunal in support of its valuation determinations. Respondent's evidence included two valuation disclosures stating that both the cost approach and the sales comparison approach were utilized in preparation of the disclosures.

At a hearing before a tribunal hearing referee, petitioner presented the testimony of his attorney, Peter Ellenson. Ellenson testified that there was a significant difference in site value adjustments between petitioner's appraisals and respondent's valuation analysis because petitioner's appraiser, Burton, used a value of \$7,300 per frontage foot, but respondent used different front footage values and inconsistent methodologies. Ellenson also testified that the comparables used by Burton were appropriate and more reliable than those used by respondent.

Respondent presented the testimony of its representative, Daniel Sears. Sears testified that the site value adjustment should be determined by considering sales of vacant land or sales of properties that were demolished after the sale in order to create a vacant building site. He

indicated that two such comparable land sales on Walnut Lake had occurred, one valued at \$11,000 per frontage foot and one valued at \$18,000 per frontage foot. Ellenson also testified that the comparables respondent used were more appropriate because they were “closer to the subject property in quality and amenities and that the land adjustments were done on a land residual basis[.]”

The hearing referee concluded as a matter of law that the most reliable indicator of the TCV of the subject property for 2009 and 2010 was “the cost less depreciation approach, the sales comparison approach.” In support of his conclusion, the hearing referee stated in the proposed opinion and judgment:

Petitioner has the burden of proof to support their contention of value. In general, statements of position without supporting documentation are insufficient to carry the burden of proof required by the statute.

In this case, Petitioner has submitted an appraisal report by Linda Burton for each year under appeal. The Tribunal has reviewed Ms. Burton’s appraisals and finds they are inconclusive in support of the value contention. One of the biggest differences between Petitioner’s and Respondent’s valuation is the adjustment for land size and lake frontage. While Respondent has testified that they have used the difference in value between their market value and the value as calculated by sales and assessments of the comparables, Ms. Burton’s appraisal states that her \$7,300 per front foot adjustment is “based on a cursory review of vacant land sales and after reviewing the city assessment calculation.” No supporting documentation is provided and the Tribunal notes Respondent’s assessment calculation is based on a front foot value of the subject property of over \$14,000 per front foot.

In regards to the comparable sales used by Ms. Burton, the Tribunal notes that her appraisals do not contain any photos of the comparable properties so the Tribunal is unable to determine the degree to which the properties are comparable. The photographs of the subject property substantiate the fact that the subject property is a good quality home with many amenities. Petitioner’s comparables are on different lakes than the subject property and the one sale on Walnut Lake may have been a distressed sale, is a ranch home and has a shared driveway access off of Walnut Lake Road. In general, Petitioner’s comparables seem to be inferior to the subject property.

Similarly, Petitioner testified that Walnut Lake is an inferior lake. In support of this claim Petitioner testifies that they have calculated values based on average sales price. The Tribunal finds this methodology is flawed. The proper methodology would be paired sales analysis of vacant sales if available. The fact that there are several smaller homes on portions of the lake may account for the calculation differences yet the subject property is located among high end estate style homes.

Respondent has submitted a comparable sales analysis as well. Respondent has calculated land adjustments based on differences in assessments which, while not perfect, at least starts with a calculated land value based on comparable sales. Respondent has also included photographs of the properties used as comparables which indicate that, for the most part, the properties are similar to the subject property.

In conclusion, the Tribunal finds that neither valuation analysis is overwhelming but Respondent's comparable market analysis is more indicative of the subject property and as such, the best indicator of value for the tax years at issue. The Tribunal finds Respondent's comparable sales analysis supports the true cash value as indicated and affirms the state equalized value for the subject property for the tax years at issue[.]

After petitioner filed exceptions to the proposed opinion and judgment, and respondent replied, the tribunal adopted the proposed opinion and judgment and incorporated by reference the hearing referee's findings and conclusions of law into its final opinion and judgment. Petitioner now appeals by delayed leave granted.

"This Court's ability to review decisions of the Tax Tribunal is very limited." *President Inn Properties, LLC v Grand Rapids*, 291 Mich App 625, 630; 806 NW2d 342 (2011). "In the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation." Const 1963, art 6, § 28.

In *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 388-389; 576 NW2d 667 (1998), this Court stated:

While this Court is bound by the Tax Tribunal's factual determinations and may properly consider only questions of law under this section, a Tax Tribunal decision that is not supported by competent, material, and substantial evidence on the whole record is an "error of law" within the meaning of Const 1963, art 6, § 28. *Oldenburg v Dryden Twp*, 198 Mich App 696, 698; 499 NW2d 416 (1993); *Kern v Pontiac Twp*, 93 Mich App 612, 620; 287 NW2d 603 (1979). Substantial evidence must be more than a scintilla of the evidence, although it may be substantially less than a preponderance of the evidence. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992). "Substantial" means evidence that a reasonable mind would accept as sufficient to support the conclusion. *Kotmar, Ltd v Liquor Control Comm*, 207 Mich App 687, 689; 525 NW2d 921 (1994).

Petitioner first argues that the Tax Tribunal erred when it considered evidence that respondent offered at the hearing without first disclosing it in accordance with the tribunal's

rules, specifically citing 1999 Mich Admin Code, R 205.1320(3).<sup>1</sup> The Tax Tribunal is allowed to promulgate its own rules of practice and procedure. MCL 205.732(d). Proceedings in the tribunal are governed by Tax Tribunal rules. See 2011 Mich Admin Code, R 792.10201 (“These rules govern the practice and procedure in all cases and proceedings before the tribunal”). The parties do not dispute that petitioner filed the instant petition in the tribunal’s Small Claims Division. At the time, Rule 205.1320(3) provided that in appeals before the Small Claims Division:

A copy of a valuation disclosure or other written evidence to be offered in support of a party’s contentions shall be filed with the tribunal and served upon the opposing party or parties not less than 21 days before the date of the scheduled hearing unless otherwise ordered by the tribunal. Failure to comply with this subrule may result in the exclusion of the valuation disclosure or other written evidence at the time of the hearing because the opposing party or parties may have been denied the opportunity to adequately consider and evaluate the evidence before the date of the scheduled hearing.

In particular, petitioner asserts that respondent failed to disclose in advance of the hearing information regarding two sales of property on Walnut Lake upon which it relied for its determination of the valuation of petitioner’s property, but Sears gave testimony regarding those sales at the hearing. The record reveals that, indeed, Sears testified at the hearing that the land value adjustments in the comparable sales analysis should be based on vacant land sales and that there were two comparable vacant land sales<sup>2</sup> on Walnut Lake revealing values of \$11,000 and \$18,000 per frontage foot. The plain language of Rule 205.1320(3) required the filing of the valuation disclosure and other *written* evidence in advance of the hearing, but it did not require disclosure of the content of the *testimony* to be offered by a witness at the hearing. Thus, the tribunal did not violate Rule 205.1320(3) when it considered Sears’s testimony regarding the vacant land sales on Walnut Lake.

Petitioner also maintains that, without receiving the information regarding the two comparable vacant land sales on Walnut Lake before the hearing, petitioner could not investigate respondent’s evidence regarding these sales and was not allowed to provide its own evidence that these two sales were not comparable sales. But petitioner ignores the fact that he had every opportunity both before the hearing and at the hearing to provide evidence regarding his opinion of the appropriate site value adjustment in this case. In fact, petitioner’s appraiser, Burton, employed her own figure of \$7,300 per frontage foot in her sales comparison approach. Our review of the record reveals that Burton provided absolutely no support for the \$7,300 number

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<sup>1</sup> Rule 205.1320(3) was in effect at the time this case was pending before the Tax Tribunal; however, it has since been rescinded effective March 20, 2013. The Tax Tribunal Rules effective when the tribunal decided the instant case were revised effective March 20, 2013. See Rule 792.10201, *et seq.*

<sup>2</sup> Again, the parties both note that these properties were not actually vacant at the time of sale but were demolished shortly after they were sold to create vacant building sites.

other than stating that it was “based on a cursory review of vacant land sales and after reviewing the city assessment calculation.” Burton did not disclose sales upon which she relied to reach this adjustment figure in her appraisals and was not present at the hearing to provide testimony in support of the figure. After reviewing both parties’ evidence as well as the testimony offered at the hearing, specifically noting that petitioner provided no support for his \$7,300 frontage foot figure, the tribunal weighed the evidence presented and did not find either party’s valuation conclusive.

“The weight to be accorded to the evidence is within the Tax Tribunal discretion.” *Drew v Cass Co*, 299 Mich App 495, 501; 830 NW2d 832 (2013) (citation omitted). Moreover, “this Court may not second-guess the [tribunal’s] discretionary decisions regarding the weight to assign to the evidence.” *Id.* In other words, this Court defers “to the [tribunal] to assess the weight and credibility of the evidence before it.” *Id.* at 502. After evaluating the valuation analyses offered by the parties, it was squarely within the purview of the tribunal for the hearing officer to find respondent’s \$11,000 and \$18,000 frontage figures more credible than petitioner’s unsupported \$7,300 frontage figure. *Id.* at 501-502. The tribunal did not commit an error of law or adopt a wrong legal principle.

Petitioner also argues that the Tax Tribunal’s factual findings are not supported by competent, material, and substantial evidence because respondent admits that the “comparable, vacant” land sales occurred in 2006 and 2007, well before the market decline, and thus respondent essentially acknowledged that the sales evidence was inaccurate and unreliable. Petitioner further asserts that the tribunal erred when it relied on this testimony in its determination of TCV.

The Michigan Constitution provides for the taxation of property assessed at not in excess of 50 percent of its TCV. Const 1963, art 9, § 3. “[T]rue cash value’ means the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale . . . .” MCL 211.27(1). TCV is synonymous with “fair market value.” *President Inn Properties*, 291 Mich App at 637. “A proceeding before the tribunal is original and independent and is considered de novo.” MCL 205.735(2). Thus, the tribunal “has a duty to make its own, independent determination of true cash value.” *Great Lakes Div of Nat’l Steep Corp*, 227 Mich App at 389. “The Tax Tribunal is not bound to accept the parties’ theories of valuation. It may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination of true case value.” *Id.* at 389-390. “In the Tax Tribunal, a property’s assessed valuation on the tax rolls carries no presumption of validity.” *President Inn Properties*, 291 Mich App at 640. “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.” *Id.* at 631.

Petitioner challenges both the Tax Tribunal’s weighing of the evidence and testimony offered by the parties at the hearing, as well as the tribunal’s choice between opposing views of the method by which to value the subject property. The record reveals that the tribunal thoroughly considered and rejected petitioner’s valuation approach but, after reviewing the record evidence, found respondent’s valuation approach “more indicative of the subject property and as such, the best indicator of value for the tax years at issue.” As part of its analysis, the

tribunal weighed the evidence before it and determined that the most recent “comparable, vacant” land sales, which occurred in 2006 and 2007, were the most relevant sales representing the best frontage figures. The tribunal’s decision to rely on those figures in its determination of TCV, rather than on petitioner’s unsupported \$7,300 frontage figure, is a matter within the discretion of the tribunal. “The weight to be accorded to the evidence is within the Tax Tribunal discretion.” *Drew*, 299 Mich App at 501.

In sum, there is nothing in the record indicating that the Tax Tribunal shirked its duty to render an independent determination of true cash value, *Great Lakes Div of Nat’l Steep Corp*, 227 Mich App at 389, or failed to determine the most accurate valuation under the individual circumstances of the case. *President Inn Properties*, 291 Mich App at 631. The tribunal’s determinations do not constitute errors of law or the application of incorrect legal principles, and its factual findings are supported by competent, substantial, and material evidence on the record. Petitioner has failed to demonstrate that the tribunal’s decision is erroneous.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Henry William Saad  
/s/ William C. Whitbeck