

STATE OF MICHIGAN
COURT OF APPEALS

MARK GATT,

Petitioner-Appellant,

v

TOWNSHIP OF MARION,

Respondent-Appellee.

UNPUBLISHED
February 11, 2014

No. 313656
Tax Tribunal
LC No. 00-426120

Before: BOONSTRA, P.J., and CAVANAGH and FITZGERALD, JJ.

PER CURIAM.

Petitioner appeals as of right the final opinion and judgment of the Michigan Tax Tribunal (“the Tribunal”) that established the property’s true cash value (TCV), state equalized value (SEV), and taxable value (TV) for tax years 2011 and 2012. We reverse and remand.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

The tax assessments for petitioner’s residential property (the “subject property”) have been at issue in at least two separate proceedings before the Tribunal. In the previous proceedings, petitioner successfully obtained relief for tax years 2009 and 2010 when the Tribunal reduced the tax assessments for the subject property as follows:

	TCV	SEV	TV
2009	\$955,000 to \$465,000	\$477, 800 to 232,500	\$477,800 to \$232,500
2010	\$901,200 to \$433,400	\$450, 600 to \$216,700	\$450,600 to \$216,700

Petitioner and his wife transferred the subject property to his parents in December 2010, and petitioner’s parents transferred the subject property back to petitioner and his wife in June 2011. The December 2010 transfer “uncapped” the subject property in tax year 2011, and the

June 2011 transfer “uncapped” the subject property in tax year 2012. See MCL 211.27a(3).¹ Respondent reassessed the subject property for tax years 2011 and 2012 as follows:

	TCV	SEV	TV
2011	\$750,000	\$375,000	\$375,000
2012	\$806,800	\$403,400	\$403,400

Petitioner appealed the 2011 and 2012 assessments to the Tribunal. In its proposed opinion and judgment, the Tribunal accepted the assessments and comparable sales identified by respondent. The Tribunal disregarded petitioner’s \$378,000 appraisal of the subject property, explaining that the properties identified as comparable sales in the appraisal had substantially lower value than the subject property. The Tribunal also observed that the \$378,000 appraisal included a \$350,000 sale price of the subject property between related parties, i.e., petitioner and his parents. Further, the Tribunal reasoned that the substantial increase in the subject property’s assessed values between tax year 2010 and tax year 2011 were caused by new additions to the subject property. After the Tribunal issued its proposed opinion and judgment, petitioner sent numerous documents to the Tribunal indicating that the subject property was not significantly modified between tax year 2010 and tax year 2011. The Tribunal nevertheless adopted the proposed opinion and judgment in its entirety, as petitioner’s documentary evidence was not timely submitted in accordance with tribunal rules.

Petitioner objected to the Tribunal’s final opinion and judgment, raising essentially the same arguments that he raised against the Tribunal’s proposed opinion and judgment. The Tribunal vacated its final opinion and judgment and ordered a rehearing to determine the extent of the additions to the subject property between tax years 2010 and 2011. At the rehearing, petitioner again argued that respondent had no factual basis for the significant increase in assessments for the subject property between tax years 2010 and 2011. Respondent, on the other hand, emphasized the comparable sales for tax year 2012 that it had introduced at the first hearing. The comparable sales were for \$750,000, \$775,000, and \$950,000, respectively.²

Subsequently, the Tribunal issued its second final opinion and judgment. The Tribunal again accepted the assessments identified by respondent for tax years 2011 and 2012. The Tribunal explained that only the assessor, not the Tribunal itself, was bound by the valuations from the previous Tribunal proceedings. As a result, the Tribunal reasoned, it was obligated to

¹ MCL 211.27a(2) generally “caps” a property’s annual TV increase, regardless of the actual annual increase in TCV. See *Schwass v Riverton Twp*, 290 Mich App 220, 222-223; 800 NW2d 758 (2010). When a property is sold or transferred, however, the TV may be “uncapped” in the following tax year. See *id.*

² Respondent submitted no comparable sales for tax year 2011.

independently value the subject property only on the basis of the evidence submitted in the instant proceedings. The Tribunal ultimately valued the subject property as originally assessed by respondent. This appeal, in which petitioner challenges the valuations for tax years 2011 and 2012 established by the Tribunal, followed.

II. STANDARD OF REVIEW

“This Court’s ability to review decisions of the Tax Tribunal is very limited.” *President Inn Props, LLC v Grand Rapids*, 291 Mich App 625, 630; 806 NW2d 342 (2011). “Absent 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 applied the wrong legal principles.” *AERC of Michigan, LLC v Grand Rapids*, 266 Mich App 717, 722; 702 NW2d 692 (2005); see also Const 1963, art 6, § 28. Findings of fact “are final if supported by competent and substantial evidence.” *Mt Pleasant v State Tax Comm*, 477 Mich 50, 53; 729 NW2d 833 (2007).

III. ANALYSIS

Real property in the State is subject to taxation, MCL 211.1, and it is generally taxed at 50% of its TCV. See *Great Lakes Div of Nat’l Steel Corp v City of Ecorse*, 227 Mich App 379, 416; 576 NW2d 667 (1998). TCV “is synonymous with fair market value.” *Id.* at 389. When considering a challenge to a property’s TCV, the Tribunal is obligated to make an independent finding of TCV without merely affirming the assessment. See *Oldenburg v Dryden Twp*, 198 Mich App 696, 699; 499 NW2d 416 (1993). The Tribunal “may adopt the assessed valuation on the tax rolls as its independent finding of true cash value when competent and substantial evidence supports doing so, as long as it does not afford the original assessment presumptive validity.” *Pontiac Country Club v Waterford Twp*, 299 Mich App 427, 435-436; 830 NW2d 785 (2013). “Competent and substantial evidence” is generally evidence that is consistent with the evidence submitted by the parties. *Id.* at 436.

As a threshold matter, the Tribunal misstated the law of Michigan when it stated that it was not bound by the previous decision of the Tribunal regarding the 2010 tax year. Even though the Tribunal is obligated to independently value property on the basis of the evidence presented, see *Oldenburg*, 198 Mich App at 699, the doctrine of res judicata applies to decisions of the Tribunal. *Wayne Co v Detroit*, 233 Mich App 275, 277-278; 590 NW2d 619 (1998).³

In disregarding the previous Tribunal decision establishing the tax year 2010 TCV at \$433,400, the Tribunal reasoned that it was not bound under MCL 211.30c(2) to accept valuations imposed by previous Tribunal proceedings. Rather, the Tribunal explained,

³ Res judicata does not apply when the Tribunal fulfills its “affirmative duty to correct a previous determination of taxable values that later proves to be incorrect.” *Toll Northville Ltd Partnership v Northville Twp (On Remand)*, 298 Mich App 41, 46 n 1; 825 NW2d 646 (2012). Here, however, there is no contention by either party that the previously established valuations were incorrect.

MCL 211.30c(2) by its plain language only binds the assessor to a Tribunal decision. MCL 211.30c(2) reads in relevant part as follows:

If a taxpayer appears before the tax tribunal during the same tax year for which the state equalized valuation, assessed value, or taxable value is appealed and has the state equalized valuation, assessed value, or taxable value of his or her property reduced pursuant to a final order of the tax tribunal, *the assessor shall use* the reduced state equalized valuation, assessed value, or taxable value as the basis for calculating the assessment in the immediately succeeding year. . . . [Emphasis added.]

It is true that MCL 211.30c(2) only binds the assessor, not the Tribunal. But MCL 211.30c(1) and (2) only codify the simple proposition that an assessor is not free to disregard an order of the Tribunal reducing a property's TCV, SEV, or TV. Indeed, MCL 211.30c is found in a section of the General Property Tax Act titled "Board of Review." The Tribunal is governed by a separate statute, the Tax Tribunal Act, MCL 205.701 *et seq.* See *Michigan Prop, LLC v Meridian Twp*, 491 Mich 518, 524; 817 NW2d 548 (2012). And MCL 205.752(1) of the Tax Tribunal Act provides that "[a] decision or order of the tribunal is final and conclusive on all parties." Although the Tribunal itself is not a "party" to the proceedings before it, the doctrine of *res judicata* applies to Tribunal proceedings, *Wayne Co*, 233 Mich App at 277-278, and the finality of a Tribunal decision must be respected in a subsequent proceeding before the Tribunal. Accordingly, we hold that the previous Tribunal decision finally and conclusively established that the subject property's TCV for tax year 2010 was \$433,400.

The Tribunal was correct that it had a duty to independently determine the TCV of the subject property for the tax years 2011 and 2012. However, it must do so while giving respect and finality to the prior decision of the Tribunal that established the subject property's value for tax year 2010 at \$433,400. On this Court's review of the record, neither respondent nor the Tribunal explained the large year-over-year increase in the subject property's valuation, thereby calling into doubt whether the current valuation is supported by competent and substantial evidence. In fact, the Tribunal explicitly acknowledged that respondent's assessor "could not completely explain the increase in true cash value from 2010 to 2011," and further that respondent's assessor stated that a 20% increase in TCV was warranted as a result of the completion of improvements to the subject property during 2010. Nonetheless, respondent increased the assessed TCV of the subject property to \$750,000 for tax year 2011, which was an increase of \$316,600, or 73%, over the established TCV for tax year 2010.

The 20% increase that respondent's assessor attributed to additions to the subject property equates to a net increase from 2010 to 2011 of \$86,680 ($\$433,400 \times .20 = \$86,680$), or a TCV of \$520,080 ($\$433,400 \times 1.20 = \$520,080$). See *Superior Hotels, LLC v Mackinaw Twp*, 282 Mich App 621, 638-639; 765 NW2d 31 (2009) (stating that the value of "new construction" to a property must be added to the property's TCV). Consequently, respondent's valuation for tax year 2011, which the Tribunal adopted, included an additional increase to the subject property's TCV of \$229,920 ($\$750,000 - \$520,080 = \$229,920$), or 53% ($229,920 / 443,400 = .53$), in one year because of other unexplained factors beyond the additions to the subject property.

Even according the Tribunal all due deference in valuing property, and disregarding the evidence submitted by petitioner after the applicable deadline, the Tribunal's valuation is not supported by competent and substantial evidence because over \$200,000 of the increase in the TCV of the subject property, which equates to a more than 50% increase over the established valuation for the prior tax year, finds no support in the record. There is nothing to suggest that the subject property suddenly became much more valuable because of improvements in the immediate area, nor is there anything to suggest that the locality experienced a highly unusual annual increase in residential property values.

In its final opinion and judgment, the Tribunal discussed at length why petitioner's appraisal of \$378,000 was flawed and thus not credible. The Tribunal noted that the appraisal did not include the correct square footage for the subject property and did not include proper comparable sales. However, the Tribunal's determination that the appraisal was not credible still fails to explain why the subject property experienced a 53% increase (after accounting for improvements to the subject property) in its TCV in just one year, especially when respondent failed to present comparable sales for tax year 2011. The Tribunal was obligated to support its independent valuation, not simply disregard one party's valuation in favor of another party's valuation. See *Oldenburg*, 198 Mich App at 699.

When an assessment increase appears to be excessive because it is unsupported by the record, the Tribunal may have employed a "wrong principle" to determine the TCV of the petitioner's property. See *Gannon v Cohoctah Twp*, 92 Mich App 445, 450-451; 285 NW2d 323 (1979). Therefore, reversal is warranted. On remand, the Tribunal should reconsider the subject property's taxable values for tax years 2011 and 2012, give due respect to the finality of the established 2010 valuation, and ensure that its valuation is supported by competent and substantial evidence. *Mt Pleasant*, 477 Mich at 53.⁴

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Mark T. Boonstra
/s/ Mark J. Cavanagh
/s/ /E. Thomas Fitzgerald

⁴ It is not necessary for this Court to address petitioner's remaining factual arguments because petitioner is entitled to a de novo hearing on remand. See *CAF Investment Co v State Tax Comm*, 392 Mich 442, 457; 221 NW2d 588 (1974), superseded in part by statute on other grounds as stated in *Carriage House Coop v City of Utica*, 172 Mich App 144; 431 NW2d 406 (1988).