

STATE OF MICHIGAN
COURT OF APPEALS

BIRCHWOOD GARDEN APARTMENTS,

Plaintiff-Appellant,

v

CITY OF LOWELL,

Defendant-Appellee.

UNPUBLISHED

April 11, 1997

No. 190943

Michigan Tax Tribunal

LC No. 00089941

Before: O'Connell, P.J., and Neff and Jansen, JJ.

PER CURIAM.

Plaintiff appeals as of right the September 15, 1995, opinion and order of the Michigan Tax Tribunal, claiming that defendant improperly assessed plaintiff's federally subsidized rental housing project for the years 1984, 1985 and 1986. We affirm.

I

Plaintiff first contends that the tribunal erred in adopting defendant's market comparison approach because it failed to discount to present value the mortgages of the comparable properties considered in making its valuation. We disagree.

A

The approach the tribunal adopted was a strict market comparison based on the recent sales price of the subject property and six other FmHA subsidized housing complexes. The portion of the sale prices for the comparable properties that may have represented the assumption of an existing subsidized mortgage was not determined, nor were any such mortgages discounted to present value. The sales prices were divided by the total number of units in each complex to arrive at a "per unit indicator." The per unit indicator for each comparable complex was then adjusted upward or downward for superiority or inferiority of location, condition and construction. The adjusted per unit indicators were averaged to yield a value per unit indicator of \$20,850 in 1984. This figure was adjusted by five percent annually to yield a value per unit indicator of \$21,900 for 1985 and \$23,000

for 1986. These figures, multiplied by the thirty-four units in the subject property, yielded the figures adopted by the tribunal for the property's true cash value: \$710,000 for 1984; \$745,000 for 1985; and \$780,000 for 1986.

In adopting this approach, the tribunal held that although it involved no discounting to cash equivalency, it benefited from a close reliance on applicable sales data that avoided the risk of discounting without having other independent market clues to reference the results. Further, the tribunal held that a strict market comparison approach was strongly market based and avoided the wrong principle of valuing a property by its underlying mortgage in a theoretical commercial paper market rejected in *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473; 473 NW2d 636 (1991).

B

The tribunal is not bound to accept the valuation figures or an approach advanced by either the taxpayer or the assessing unit. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985). Rather, the tribunal "must make its own findings of fact and arrive at a legally supportable conclusion of true cash value." *Pinelake Housing Cooperative v Ann Arbor*, 159 Mich App 208, 220; 406 NW2d 832 (1987). "Regardless of the valuation approach employed, the final value determination must represent the usual price for which the subject property would sell." *Meadowlanes, supra* at 485. However, the touchstone of uniform assessment is the true cash value or usual selling price of the property, not the cash equivalent of that selling price. *Id.* at 490.

Contrary to plaintiff's argument, the strict market approach used here was not repudiated by the Supreme Court in *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1994), and *Antisdale* does not require that a market approach to valuation of a federally subsidized apartment complex include a discounting to present value. We further find that where plaintiff argued that the property it had purchased at a distressed sale on December 30, 1983 for close to \$900,000 was worth \$220,000 in "cash equivalent terms" on January 1, 1984, and again in 1985 and 1986, its valuations were too far removed from the reality of the usual selling price. Plaintiff failed to meet its burden of proof to establish the true cash value of the property. MCL 205.737(3); MSA 7.650(37)(3).

II

Plaintiff next contends that the tribunal erred by adopting a market comparison approach that was based on a submarket analysis, violating the principle that a property cannot be withdrawn from the conventional marketplace by giving it a separate classification for valuation purposes except as provided by the Legislature. We disagree.

In *Meadowlanes, supra*, the Supreme Court specifically recognized that when utilizing a market comparison approach to find the true cash value of a federally subsidized housing complex, it is proper to use subsidized properties as comparables. On remand, the Court directed that the tribunal be presented with, inter alia, value estimates obtained from "the sales-comparison approach, using subsidized properties as comparables." *Id.* at 503.

Contrary to plaintiff's argument, *Comstock Village Ltd Dividend Housing Ass'n v Comstock Twp*, 4 MTT 155 (1986), as affirmed by this Court in *Comstock Village Ltd Dividend Housing Ass'n v Comstock Twp*, 168 Mich App 755; 425 NW2d 702 (1988), does not stand for the proposition that the use of submarkets is always a wrong principle. Although this Court affirmed the tribunal's rejection of the submarket approach in that particular instance, it did not reject the use of submarkets in all contexts. *Id.* at 763. Here, we find no error in the tribunal's use of subsidized properties as comparables.

III

Plaintiff also claims that the tribunal erred in attributing a positive value to its mortgage interest subsidy where none existed and failed to recognize offsetting negative aspects of the FmHA regulatory scheme that controlled its property. We disagree.

In *Meadowlanes*, *supra*, the Supreme Court held that it would be a wrong principle to ignore an interest subsidy in calculating true cash value because the subsidy affects the usual selling price of a property and adds value even though it is intangible. *Id.* at 495-496, 498. The Court further stated that "both the positive and negative aspects of the regulatory agreement voluntarily entered into between the owner and the government" must be considered in the valuation process. *Id.* at 499-500.

Here, the tribunal was fully cognizant of the fact that the primary issue in this case was the effect of the federal interest subsidy on the true cash value of plaintiff's property. The tribunal properly applied the holding of *Meadowlanes* and concluded that any positive effects of an FmHA interest subsidy were balanced out by the negative effects. It also properly rejected all plaintiff's valuation approaches because they treated the interest subsidy as a value reducer and ignored any positive benefit of the interest subsidy. Because none of plaintiff's approaches properly applied the holding in *Meadowlanes*, plaintiff failed to meet its burden of proof to establish the true cash value of the property.

IV

Plaintiff argues that, contrary to the holding in *First Federal Savings and Loan Ass'n v City of Flint*, 415 Mich 702; 329 NW2d 755 (1982), the tribunal failed to recognize the principle that the cost of construction of a subsidized property is higher than its actual worth because of FmHA regulations. This argument must fail because the tribunal relied on defendant's strict market comparison, rather than a cost approach, in valuing the property. *See Comstock Village*, *supra* at 761 ("*First Federal* only applies when a cost approach is used.").

V

Finally, plaintiff claims that the tribunal erred in adopting erroneously low income approach capitalization rates based on sales of comparable properties that contained atypical financing terms. Plaintiff claims that these terms distorted both the values of these properties and the capitalization rates derived from them, contrary to the holding in *Congresshills Apartments v Ypsilanti Township*, 128 Mich App 279; 341 NW2d 121 (1983). We disagree.

The tribunal saw defendant's income approach by direct capitalization as corroborating the true cash value obtained by the strict market comparison approach. The tribunal also held that defendant's approach of extracting the overall capitalization rate from the direct use of sales data from similarly subsidized properties offered a more persuasive value indicator than did plaintiff's income approach which based the capitalization rate on cash equivalency prices.

Contrary to plaintiff's argument, it is not legal error to consider an interest subsidy in determining the true cash value of the subject property. The Supreme Court has held that the intangible tax benefits of investing in federally subsidized apartment complexes could be considered in the assessment process. *Antisdale, supra* at 285. Further, as noted above, the Supreme Court has held that it would be a wrong principle to ignore an interest subsidy in calculating true cash value, because it affects the usual selling price of a property and adds value even though it is intangible. *Meadowlanes, supra* at 495-496, 498.

The opinion and order of the Michigan Tax Tribunal is affirmed. Defendant being the prevailing party, it may tax costs pursuant to MCR 7.219.

/s/ Peter D. O'Connell

/s/ Janet T. Neff

/s/ Kathleen Jansen