

STATE OF MICHIGAN
COURT OF APPEALS

ARATH III, INC.,

Petitioner-Appellant,

v

CITY OF GRAND RAPIDS,

Respondent-Appellee.

UNPUBLISHED
February 11, 2003

No. 233682
Tax Tribunal
LC No. 00-236813

Before: Sawyer, P.J., and Jansen and Donofrio, JJ.

PER CURIAM.

Petitioner appeals as of right from the Michigan Tax Tribunal's order increasing petitioner's tax liability based on an increased true cash value of petitioner's commercial property, for tax year 1996. We affirm.

The subject property, known as the Keeler Building, and sometimes referred to as Two Fountain Place, is located in downtown Grand Rapids. The commercial facilities tax exemption previously on the property expired for tax year 1996, and thus it required reappraisal under current market conditions. Additionally, pursuant to MCL 211.27a(3), the sale of the building in 1995 resulted in the property value becoming "uncapped" and the taxable value for 1996 was equal to the state equalized value of the property for the year following the sale. Respondent assessed the property for the 1996 tax year and arrived at a true cash value of \$1,263,000, resulting in a state equalized value, at fifty percent, of \$631,500. Previously, in 1995 the property had been assessed as having a true cash value of \$415,000, resulting in a tax assessment value of \$207,500.

Petitioner appealed the increase to the tribunal asserting that the true cash value was actually \$525,000 based primarily on petitioner's May 1995 purchase price and sales history of the building. Respondent moved to increase the true cash value to \$1,700,000 based on appraisal of the property. The tribunal conducted an independent valuation of the property using the sales-comparison/market approach for valuation and concluded that the true cash value was \$1,422,500, resulting in a tax assessment value of \$711,250.

Petitioner now argues that the tribunal erred in failing to consider petitioner's purchase price for the property in its determination of true cash value and that petitioner met its burden of proof by providing the tribunal with evidence of past purchase prices and arm's length transactions. We disagree. Appellate review of the Michigan Tax Tribunal's decisions is limited

to deciding if the tribunal's factual findings are supported by competent, material, and substantial evidence on the record. Const 1963, art 6, § 28; *Professional Plaza, LLC, v City of Detroit*, 250 Mich App 473, 474; 674 NW2d 529 (2002). Substantial evidence is that which a reasonable mind would accept as adequate to support a decision. Substantial evidence is more than a mere scintilla but less than a preponderance of the evidence. *In re Payne*, 444 Mich 679, 692 (Boyle, J.), 698 (Riley, J.); 514 NW2d 121 (1994). When there is sufficient evidence, a reviewing court must not substitute its discretion for that of the administrative tribunal even if the court might have reached a different result. *Black v Dep't of Social Services*, 195 Mich App 27, 30; 489 NW2d 493 (1992). It does not matter that alternative findings also could have been supported by substantial evidence on the record. *In re Payne, supra*, 444 Mich 692, 698. In the absence of fraud, this Court reviews the tribunal's legal decisions to determine whether the tribunal erred in applying the law or adopted the wrong legal principle. *Michigan Milk Producers Ass'n v Dep't of Treasury*, 242 Mich App 486, 490; 618 NW2d 917 (2000).

In determining a property assessment, the tribunal must make a determination of true cash value. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). True cash value is the same as fair market value. *Great Lakes Division of National Steel Corp v City of Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998). Further, MCL 211.27 defines "cash value" as the following:

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, and not at auction sale except as otherwise provided in this section, or at forced sale.

Petitioner has the burden of proof to establish the true cash value of his property. MCL 205.737(3); *Great Lakes Division of National Steel Corp, supra*, 227 Mich App 389. However, the tribunal must make its own independent determination of the true cash value of the property. *Id.*; *Oldenburg v Dryden Twp*, 198 Mich App 696, 699; 499 NW2d 416 (1993). The purchase price paid in a transfer of property is not the presumptive true cash value of the property transferred. MCL 211.27(d)(5).

After reviewing the record we find that the tribunal found that petitioner's evidence was deficient for a number of different reasons. Petitioner did not use any independent market evidence to measure its purchase price in order to determine if it was at or near the true cash value. Petitioner's sole shareholder did not testify to other office building sales, nor offers he received for the property in arriving at his final value. Petitioner had no obligation to produce an independent appraisal, but the failure to present expert opinions in evidentiary proceedings for real property appeal cases leaves a valuation gap in the presentation. No financial analysis was shown to demonstrate a plan to bring the building into a state of occupancy and profitability or to counter the effects of the slow market conditions of older downtown properties. Petitioner did not provide a statement of the highest and best use for the property, nor an investigation of feasible alternate functions, such as mixed usage or demolition and re-use.

The only evidence of value petitioner did provide was a letter from its real estate broker, reviewing the listing history and past purchase prices of the property, and his opinion that the property should be valued between \$260,000 and \$525,000. Petitioner's broker had limited experience working with downtown properties and was never trained in appraisal. While the

tribunal agreed with petitioner that the property's past sales transactions were done at arm's length, it noted that there were circumstances surrounding the sales that prevented the purchase prices from being an accurate reflection of the property's value. These circumstances include the property being bought through a quitclaim deed as part of a portfolio of acquisitions from a bank foreclosure, and a purchase and subsequent sale in the same day, indicating the property was not sold using common marketing techniques. The weight and credibility assigned to evidence is wholly within the court's discretion. *Black v Dep't of Social Services*, 195 Mich App 27, 30; 489 NW2d 493 (1992). After reviewing the record, we believe the tribunal did weigh evidence of the property's purchase price and sales history and gave the evidence little weight. Petitioner failed in its burden of proof when it relied merely on the purchase price of the property as the sole indicator of true cash value.

On appeal, petitioner also likens its case to *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348; 483 NW2d 416 (1992) and *Samonek v Norvell Township*, 208 Mich App 80; 527 NW2d 24 (1994). We have reviewed these cases and find them distinguishable. Unlike those cases, here, the tribunal did consider petitioner's evidence of purchase price, weighed the evidence, and also fully articulated its reasoning. In fact, our review of the record reveals that the tribunal reviewed petitioner's purchase of the property as well as the preceding two sales, and the listing price history of the building from 1992 to 1994. Several pages of the tax tribunal's fifty-five page opinion are dedicated to discussing and analyzing petitioner's evidence including the sale. Hence, we find that petitioner's evidence was not rejected "out of hand."

Petitioner also argues that respondent's appraisal was not done by an independent appraiser. Because petitioner did not raise this issue before the tribunal, and it was not addressed below, this issue is not properly preserved for this Court's review. *Town & Country Dodge, Inc v Dep't of Treasury*, 420 Mich 226, 228 n 1; 362 NW2d 618 (1984). Issues raised for the first time on appeal need not be addressed by this Court. *Booth Newspapers, Inc v University of Michigan Bd of Regents*, 444 Mich 211, 234; 507 NW2d 422 (1993). Since petitioner did not object to this issue below, it is not preserved for appeal, and we decline to review it.

Next, petitioner argues that the tribunal failed to place the burden of proof on respondent to demonstrate that the property assessment should be increased and respondent did not meet its burden. The burden of proof is properly moved onto the taxing authority if it asserts that an assessment is too low and should be increased. *Meadowlanes Limited Dividend Housing Ass'n v City of Holland*, 156 Mich App 238, 243; 401 NW2d 620 (1986), rev'd on other grounds 437 Mich 473 (1991). The tribunal stated that although petitioner failed in its burden of proof, the tribunal would not blindly accept respondent's appraisal as conclusive evidence of the property's true cash value. Instead, it properly shifted the burden to respondent to prove that the original assessment was too low. *Id.*

Respondent provided the tribunal with an appraisal analyzing the property's value under the income, cost, and sales-comparison/market approaches. In examining respondent's calculations, the tribunal did not agree with the determination of value under the cost and income approach, and it did not accept respondent's concluding value under the sales-comparison/market approach. However, it did find merit in the data presented, finding it was sufficient to allow the tribunal to perform its own adjustments and analysis in order to arrive at an independent determination of value. Thus, the tribunal did properly assign the burden of proof to respondent

and respondent met its burden through the presentation of an appraisal and sufficient market data, although ultimately its concluding value was not accepted.

Finally, petitioner asserts that the tribunal erred in its valuation of the property under the sales-comparison/market approach when it compared one of respondent's comparables ("C3") to the subject property and found that C3 was less valuable. As we recognized above, petitioner has the burden of proof to establish the true cash value of his property, and the tribunal must make its own independent determination of the true cash value of the property. MCL 205.737(3); *Great Lakes Division of National Steel Corp, supra*, 227 Mich App 389; *Oldenburg, supra*, 198 Mich App 699. "The Tax Tribunal is not bound to accept the parties' theories of valuation. It may accept one theory and reject another, it may reject both theories, or it may utilize a combination of both in arriving at its determination of true cash value." *Great Lakes Division of National Steel Corp, supra*, 227 Mich App 389-390. The tribunal should consider all relevant circumstances that may affect the property value, however, there is no rule of law requiring the tribunal to quantify every possible factor affecting value. *Id.*, 398-399; *Southfield Western, Inc v City of Southfield*, 146 Mich App 585, 590; 382 NW2d 187 (1985). In all cases, the tribunal's duty is to determine "the most accurate valuation under the individual circumstances of the case." *Great Lakes Division of National Steel Corp, supra*, 227 Mich App 399. Lastly, in order to determine if the tribunal applied a wrong principle or committed an error of law when making its determination of the true cash value of the property, this Court must have an understanding of the tribunal's formula. *Id.*, 390.

The tribunal used comparable three (C3), which was valued at \$6.41 per square feet, as the lower limit of value for the subject property since it was only seventeen percent leased at the time of its sale.¹ Upon examining the market data the tribunal calculated a final adjusted rate of \$8.50 per gross square foot for the subject property, taking into account any disadvantage for the property's insufficient on-site parking, partially-functioning air conditioning system, and the need for cleanup. This resulted in a true cash value of \$1,422,500, for the tax year 1996, and a state equalized value and taxable value of \$711,250.

Petitioner claims that the poorly maintained and nearly unoccupied subject property was less valuable than C3. C3 was seventeen percent leased and in "white box condition," indicating that it was ready for tenants. The tribunal noted that C3 was located near the subject property and was the same age and had a similar building structure as well. The tribunal also found that the subject property's vacancy rate was largely due to its lax management style, and not an incurable deficiency in the building itself. It was the tribunal's finding that petitioner had failed to develop an aggressive, competitive, and effective plan to manage its older downtown property and petitioner's broker specialized in suburban properties only.

We find that the tribunal did take the vacancy and need for cleanup into account and reduced the square foot unit rate for the property by fifteen percent to arrive at \$8.50 per square foot. Moreover, after reviewing the record it is our conclusion that the tribunal's factual findings regarding the estimated market value, disadvantages regarding insufficient parking, partially-functioning air conditioning system, building cleanup, and poor vacancy due to lax management

¹ The subject property had been unoccupied for most of 1995.

style, legally support its' concluding true cash value. Thus, the tribunal did not err in comparing C3 with the subject property in its determination of true cash value and petitioner is not entitled to relief.

Affirmed.

/s/ David H. Sawyer
/s/ Kathleen Jansen
/s/ Pat M. Donofrio