

STATE OF MICHIGAN
COURT OF APPEALS

STEELCASE INC.,

Petitioner-Appellant,

v

CITY OF KENTWOOD,

Respondent-Appellee.

UNPUBLISHED

September 20, 2005

No. 256174

Michigan Tax Tribunal

LC No. 243858

Before: Zahra, PJ, and Cavanagh and Owens, JJ

PER CURIAM.

Petitioner appeals as of right from a judgment and an order denying reconsideration by the Michigan Tax Tribunal. The judgment, modified erratum, determined that the true cash value (TCV) of petitioner's property was \$93,100,000 for the 1997 tax year, and \$94,962,000 for the 1998 tax year. Petitioner paid the amounts assessed by respondent under protest and petitioned for a refund. We affirm in part, reverse in part, and remand for proceedings consistent with this opinion.

The parties stipulated that the seven parcels owned by petitioner were not separately marketable, and the property was valued as a whole. Petitioner's appraiser Laurence Allen testified that he valued the marketable components separately, then applied a thirteen percent discount because the individual parts were more marketable than the whole property. He stated that the highest and best use for the property was to sell it as one parcel with the intent of leasing it to industrial tenants. His total reconciled value of the parts was \$63,000,000. Respondent's appraiser Joseph Dengel testified that the highest use of the subject property was the continued operation of a similar manufacturing facility. His reconciled value for the entire parcel was \$115,000,000. He did not make adjustments for the size of the parcel and did not analyze the costs involved in renting the property to multiple tenants.

The tribunal rejected respondent's highest and best use of the subject property and followed petitioner's highest and best use. Not allowing for external obsolescence or additional obsolescence, the tribunal otherwise reconstructed the cost information using petitioner's replacement cost to arrive at a value of \$91,662,231. Under the sales comparison approach, the tribunal found that respondent estimated a value of \$30 a square foot while petitioner estimated \$15 a square foot. After finding that petitioner's deduction of twenty percent for conditions of sale was unjustified, the tribunal found that \$24.03 a square foot was appropriate, and reached a value of \$93,100,000. The tribunal rejected several of Allen's deductions and concluded that

\$93,824,120 was an appropriate valuation under the reconstructed income approach. It then determined that the TCV for the 1997 tax year was \$93,100,000. Because of a stipulation between the parties, the TCV for the 1998 tax year was calculated two percent higher.

Absent an allegation of fraud, this Court may only review a tax tribunal's decision to determine whether an error of law was made or a wrong legal principle was adopted. *Meijer, Inc v City of Midland*, 240 Mich App 1, 5; 610 NW2d 242 (2000). "The tribunal's factual findings are upheld unless they are not supported by competent, material, and substantial evidence." *Id.*, citing *Georgetown Place Coop v City of Taylor*, 226 Mich App 33, 43; 572 NW2d 232 (1997). Substantial evidence is more than a scintilla of evidence but can be less than a preponderance of the evidence. *Meijer, Inc, supra.*, citing *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992). A decision not founded on competent, material, and substantial evidence is an error of law that requires reversal. *Id.*

Petitioner first argues that the square footage used by the tribunal in the sales comparison approach was not supported by the record, was inconsistent with the Tribunal's own findings and, thus, was an error of law and the adoption of wrong principles.¹ We disagree.

The tribunal concluded that the TCV for the entire property was \$93,100,000 for the 1997 tax year. In doing so, the tribunal valued the excess land at \$5,950,000, and determined that \$24.03 a square foot was an appropriate valuation using the sales comparison approach. Respondent argues that the tribunal accepted petitioner's valuation of the fleet facility at \$4,300,000 and its valuation of excess land at \$5,950,000, and only applied the \$24.03 a square foot valuation to the four main buildings and covered loading areas. The opinion indicated that petitioner concluded to \$15 a square foot, and Allen testified that the ground floor of the four main buildings was properly valued at \$15 a square foot, but stated that the office and repairs portion of the fleet facility was properly valued at \$45 a square foot. Moreover, petitioner acknowledged in its post-hearing brief that the value of the four main buildings was \$57,220,000, the value of the fleet facility was \$4,400,000, and the value of the excess land was \$5,950,000.² The opinion indicated Allen found that the four main buildings, valued at \$15 a square foot, plus the land reached a total value of \$57,220,000.

Although not crystal clear, the opinion appeared to indicate that the \$24.03 a square foot valuation did not apply to the fleet facility. Moreover, when the covered loading areas – which were excluded from petitioner's calculation of square footage but included in respondent's calculation – are valued at \$24.03 a square foot, the total is approximately \$93,100,000.

¹ Specifically, petitioner argues that \$93,100,000 minus \$5,950,000 equals \$87,150,000, \$87,150,000 divided by \$24.03 equals 3,626,716.6 square feet, and the record does not support a finding of 3,626,716.6 square feet.

² Petitioner waived the \$4,400,000 valuation of the fleet facility. A party may not argue for a certain result before the trial court, and then argue on appeal that the resultant action was error. *C.f. Weiss v Hodge (After Remand)*, 223 Mich App 620, 636; 567 NW2d 468 (1997).

Therefore, because there was competent, material, and substantial evidence to support the tribunal's concluded value, we find that no error occurred. *Meijer, Inc, supra* at 5.

Petitioner next argues the tribunal erred in its determination of the TCV of the whole because the TCV of the whole was less than the sum value of the marketable parts. We disagree.

Stipulated facts are generally considered conclusive. *Columbia Assoc, LP v Dep't of Treasury*, 250 Mich App 656, 665; 649 NW2d 760 (2002). Here, the tribunal approved a stipulation between the parties that stated in relevant part, "The tax parcels comprising the subject property are not independently marketable parcels and therefore both parties have valued the subject property as a whole." Although different parcels of land are generally valued separately for tax purposes, contiguous parcels belonging to the same owner and used and occupied as one tract may be assessed as one parcel. *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 411-412; 576 NW2d 667 (1998).

The only authority petitioner cites to support its contention that the value of the whole is less than the value of the sum of the parts is *Great Lakes, supra*, and *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620; 462 NW2d 325 (1990). We do not find either case dispositive with respect to petitioner's argument. The portion of *Great Lakes, supra* quoted by petitioner was merely dicta and not binding on this Court. *Cheron, Inc v Don Jones, Inc*, 244 Mich App 212, 216; 625 NW2d 93 (2000). In *Edward Rose Bldg Co, supra* at 624-625, our Supreme Court concluded the tribunal erred in applying a discount to the true cash value of the petitioner's property under the circumstances of that case. The Supreme Court noted that a developmental discount was only appropriate when valuing undeveloped, unimproved, raw land. *Edward Rose Bldg Co, supra* at 634-635. This specifically refutes any claim petitioner may have that it was entitled to a developmental discount. The Supreme Court also stated that the uniformity requirement of Michigan's constitution required valuation of property on a true cash basis and not on whether several tax parcels were owned by the same person. *Id.* at 640-641. This dispels petitioner's argument that it was entitled to a wholesale or quantity discount.

Petitioner next argues that the tribunal erred in applying a fifty percent ratio when the city assessor testified that the ratio for the 1997 tax year was 49.61 percent. We agree.

A taxpayer may only obtain relief if the taxpayer can show that the subject property was "assessed at a different proportion of true cash value than the rest of the property within the same class in the taxing district." *Great Lakes, supra* at 427, citing *Shaughnesy v Tax Tribunal*, 420 Mich 246, 249-250; 362 NW2d 219 (1984). The burden of proof for establishing the ratio and the equalization factor belongs to the assessing agency. MCL 205.737(3). The city assessor testified that she turned over a final ratio to the county board of equalization of 49.61 percent for the 1997 tax year, but claimed that this was considered fifty percent for both years because it was between forty-nine and fifty.

To support its contention that a valuation between forty-nine and fifty percent may be rounded to fifty percent, respondent cites the *Assessors Manual* and several State Tax Commission bulletins. Although administrative interpretations are given deference, *Ludington Service Corp v Acting Comm'r of Ins*, 444 Mich 481, 491; 511 NW2d 661, mod 444 Mich 1240 (1994), they are not binding, *Western Michigan University Bd of Control v State*, 455 Mich 531, 544; 565 NW2d 828 (1997). While the *Assessors Manual* may be used as a guide, it was not

promulgated under the Administrative Procedures Act and, thus, does not have the force of law. *Danse Corp v City of Madison Heights*, 466 Mich 175, 181; 644 NW2d 741 (2002). Although the Assessor's Training Manual appears to support respondent's position, it is not supported by 1997 State Tax Commission Bulletin No 19, which states in relevant part:

The assessor should also be aware that the County Board of Commissioners is permitted by the State Tax Commission to equalize as assessed in those classes where the ending ratio . . . falls between 49.00% and 50.00%. This means that if an assessor is striving to reach 50% but ends up, for example, at 49.50%, an equalization factor of 1.000 will be assigned by the County Board of Commissioners, NOT an equalization factor greater than 1.000.

In *Great Lakes*, *supra* at 428-429, this Court analyzed whether ratios adopted by the tribunal indicated that the tribunal adopted a wrong principle or committed an error of law. Some of the ratios considered in this analysis were less than fifty percent. *Id.* The Court suggested that if testimony established the same ratio would have been reached if the subject property had been excluded, then no error occurred in adopting the ratio; however, if the taxing unit failed to present substantial evidence that the ratio would have been the same if the subject property had been excluded, then it was error to adopt the ratio. *Id.* at 428. The Court briefly rejected the city's argument that it was entitled to a ratio of fifty percent rather than a ratio of 49.72 percent because the city failed to cite authority to support its claim. *Id.* Because respondent has not cited any binding authority requiring the ratio to be rounded to fifty percent,³ and respondent had the burden of establishing the ratio, MCL 205.737(3), the tribunal erred by adopting the fifty percent ratio. *Great Lakes*, *supra*.

Petitioner next argues that the tribunal erred by failing to deduct from replacement cost additional functional obsolescence attributable to (a) reduced rent because of excess operating costs, and (b) lost income during "lease-up." We disagree.

Petitioner specifically argues the tribunal erred by failing to deduct obsolescence regarding the irregular configuration of two buildings as required by zoning, which resulted in additional maintenance expense; the costs required to add more truck docks;⁴ and the

³ In *Shaughnesy*, *supra*, 420 Mich at 248-249, our Supreme Court noted that local valuations are merely tentative because each item of property is ultimately assessed at fifty percent of its TCV after equalization is complete, the aggregate assessed value of each class of property is equalized at fifty percent at the county level, and the aggregate assessment values among each county are equalized at the state level. However, the issue of an individual SEV was not before the Court. *Id.* at 248. The Court specifically noted, "Equalization is designed to remedy the potential for unequal assessment levels among different taxing districts and among different classes of property within the same taxing district. It is important to understand that equalization will not remedy unequal assessment levels within a given class of property in a single taxing district." *Id.* at 249-250. Thus, the statements by the Supreme Court did not require a ratio between forty-nine and fifty percent to be rounded to fifty percent.

⁴ With respect to petitioner's contention that the tribunal did not deduct for the costs required to add more truck docks, Allen testified that he accounted for the truck doors by deducting the cost
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superadequacies of the covered truck dock and the sixty-foot “stacker” area. The tribunal noted in the findings of fact portion of its opinion the obsolescence included within the subject property, but found that costs typically are not allotted for superadequacy items when the replacement cost method is used to value property. This Court has recognized that “replacement cost eliminates functional obsolescence due to excess construction or superadequacy.” *Meijer, Inc, supra* at 6, quoting *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 756; 378 NW2d 590 (1985). Superadequacy is defined as “a component or system in the property that exceeds market requirements and does not contribute to value an amount equal to its cost.” *The Appraisal of Real Estate* (11th ed), p 387.

The tribunal’s findings – that the covered truck docks, the high-rise inventory system, and the building configurations were superadequacies – were supported by (a) testimony from Allen that the high-rise storage area could only be used as an inventory stacking system, was obsolete, and was abandoned by petitioner; (b) admissions from Dengel that most stores do not have covered truck concourses; and (c) testimony from Stuart Kingma, a salesperson with a firm that specialized in industrial sales, that goods were unloaded from both types of truck docks, and the instant covered docks were somewhat obsolete as a result of the increase in truck lengths from forty-eight feet to fifty-three feet. Additionally, Allen testified that two of the buildings had irregular shapes, which were a drawback because they did not maximize the utility of the property. Therefore, the tribunal did not err when it declined to deduct for these items. *Meijer, Inc, supra* at 5, citing *Georgetown Place Cooperative, supra* at 43.

Petitioner next argues that the tribunal erred by failing to account, in the income approach to valuation, for expenses incurred as a result of vacancy and the costs incurred to reach ninety-five percent occupancy. We disagree.

To support its position, petitioner cites *The Appraisal of Real Estate* (11th ed), a 1984 Michigan Tax Tribunal decision, and a 1985 Court of Appeals decision. Both cases applied a cost-less-depreciation approach to valuation, *Ford Motor Co v City of Dearborn*, 3 MTT 255 (1984), *Teledyne Continental Motors, supra*, and none of the authority is binding on this Court, MCR 7.215(J)(1) (Court of Appeals decisions before November 1, 1990, are not binding); *Western Michigan University Bd of Control, supra* at 544 (administrative interpretations are not binding); *Cheron, Inc, supra* at 216 (dicta is not binding). In any event, the authority cited by petitioner – to the extent it might be considered persuasive authority – also does not support this contention. Because petitioner has not cited any binding authority to support its claim, we deem this issue abandoned. An appellant may not simply announce a position and leave it to this Court to research and analyze the basis for his claims, *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), nor may he give issues cursory treatment with little citation of supporting authority, *Silver Creek Twp v Corso*, 246 Mich App 94, 99; 631 NW2d 346 (2001).

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of adding the additional truck doors. When the data demonstrating the total estimated cost to cure the truck door deficiency is cross referenced with the table summarizing the appraisal’s cost approach, it is apparent that the only figures included in curable functional obsolescence were the figures representing the total estimated cost to cure the truck door deficiency. Petitioner acknowledges in its brief that the tribunal accepted these deductions. Therefore, petitioner’s argument in this regard is without merit.

Affirmed in part, reversed in part, and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Donald S. Owens