

STATE OF MICHIGAN
COURT OF APPEALS

TG LANSING, LLC,

Petitioner-Appellant,

v

CITY OF LANSING,

Respondent-Appellee.

UNPUBLISHED
September 27, 2012

No. 305918
Tax Tribunal
LC No. 00-350285

Before: SHAPIRO, P.J., and GLEICHER and RONAYNE KRAUSE, JJ.

PER CURIAM.

Petitioner appeals by right from a Tax Tribunal judgment affirming the original assessed, taxable, and true cash valuations of a parcel of property. The tribunal concluded that petitioner’s expert had not provided credible evidence supporting his claimed lower valuations, but that respondent had also not provided credible evidence supporting its claimed revised higher valuations. Consequently, the tribunal concluded that the original assessment had been fair and reasonable. We affirm the trial court’s decision to reject the parties’ proffered evidence. However, because the tribunal failed to make an independent determination of true cash value, we reverse its decision regarding the property’s true cash value and remand for further proceedings.

In the absence of fraud, this Court’s review “is limited to determining whether the tribunal made an error of law or adopted a wrong principle.” See *Antisdale v Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984). “Failure to base a decision on competent, material, and substantial evidence constitutes an error of law requiring reversal.” *Leahy v Orion Twp*, 269 Mich App 527, 530; 711 NW2d 438 (2006) (internal quotation and citation omitted). The tribunal’s factual findings are conclusive if they are supported by “competent, material, and substantial evidence on the whole record.” *Briggs Tax Service, LLC v Detroit Pub Schools*, 485 Mich 69, 75; 780 NW2d 753 (2010) (quotation marks and citation omitted). “Substantial evidence is the amount of evidence that a reasonable person would accept as being sufficient to support a conclusion; it may be substantially less than a preponderance of the evidence.” *Wayne Co Mich State Tax Comm*, 261 Mich App 174, 186-187; 682 NW2d 100 (2004).

Petitioner first argues that the tribunal improperly concluded that petitioner had not met its burden of proof under MCL 205.737(3) by rejecting petitioner’s expert’s testimony when the tribunal found the expert’s testimony not credible. We disagree.

This Court is generally highly deferential to lower courts' and tribunals' assessments of witnesses' credibility. "[T]he Tax Tribunal may make its own determinations regarding the credibility of witnesses and the weight to be assigned to evidence in the record." *President Inn Props LLC v City of Grand Rapids*, 291 Mich App 625, 636; 806 NW2d 342 (2011). We do not assess the credibility of witnesses in front of the Tax Tribunal. See *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 408; 576 NW2d 667 (1998).

Petitioner's expert admitted that he did not have firsthand knowledge about the condition of the property during the tax years at issue. He "assum[ed]" the property had been in the same condition, and that he had only visited five or six of the property's 57 units. The reliability of petitioner's expert's rental data was rebutted by respondent's expert, who provided a rental data study that contradicted specific figures. Petitioner's expert admitted that he had provided only general data, unadjusted for "discrepancies in amenity, size, age, anything like that." He admitted that his net operating income analysis method would not be found in treatises and was not taught in seminars. His analysis also did not account for differences in properties' economic characteristics, locations, or physical traits. He testified that it was important to make certain there were no "special conditions" on the sales he used for his sales comparison approach, but respondent rebutted this analysis with evidence that three of the transactions petitioner's expert had relied on were not arms-length. The tribunal also found that petitioner's expert had omitted necessary elements in his appraisal, including a disclosure of how many units he had inspected, and that petitioner's expert had not included a scope of work entry or an engagement letter. The tribunal opined that "[k]nowing what the appraiser did to arrive at the opinions, analysis, and conclusions is the very essence of ethical compliance." The tribunal's finding that petitioner's expert was not credible or reliable was supported by substantial evidence.

Petitioner next argues that the tribunal erred as a matter of law when, after it rejected petitioner's evidence, it failed to make an independent determination of true cash value, but rather simply adopted the initial property assessments. We agree.

"[T]he tribunal may not automatically accept the taxing authority's assessment because the Tax Tribunal has a duty to make its own, independent determination of true cash value." *President Inn Props LLC*, 291 Mich App at 640, citing *Great Lakes Div of Nat'l Steel Corp*, 227 Mich App at 389. The tribunal is not obligated to accept the valuation or approach to valuation by either party. *President Inn Props LLC*, 291 Mich App at 639. The tribunal may accept, reject, or utilize a combination of theories and "may correlate, reconcile, and weigh valuations derived under various approaches with the ultimate goal of considering all factors under the circumstances in determining the fair market value of the subject property." *Id.* at 639-640. However, it "cannot merely affirm the assessment placed upon the rolls by the assessing authority." *Id.* at 640 (internal quotations and citation omitted). This assessed valuation "carries no presumption of validity." *Id.*

Here, the Tax Tribunal erroneously characterized what portion of its "burden of proof" petitioner failed to meet. The term "burden of proof" is used in MCL 205.737(3). However, this "burden of proof encompasses two concepts: '(1) the burden of persuasion, which does not shift during the course of the hearing; and (2) the burden of going forward with the evidence, which may shift to the opposing party.'" *President Inn Props LLC*, 291 Mich App at 631, quoting *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 354-355; 483 NW2d 416

(1992). The tribunal stated that petitioner had failed to meet its burden of not going forward with the evidence because petitioner had not provided competent evidence showing that the property was over-assessed for the tax years at issue. However, a failure to convince the tribunal that petitioner's expert's evaluation was accurate and correct is a failure to persuade, not a failure to go forward with the evidence. *President Inn Props LLC*, 291 Mich App at 631, 640. While the tribunal may not have accepted petitioner's expert's valuation as accurate, petitioner did present independent evidence of the value of the property by a competent appraiser with a rational basis for his appraisal. Petitioner met its initial burden of going forward with the evidence.¹ See *Id.* at 631; *Great Lakes Div of Nat'l Steel Corp*, 227 Mich App at 408-409.

As discussed, the tribunal did not err in concluding that petitioner's evidence was unconvincing. Respondent has not appealed the tribunal's finding that its expert was also not credible and that the property was also not under-assessed. However, the tribunal then apparently simply found that the original assessment values were "fair and reasonable," with no other stated reasoning or evidence in support of that conclusion. Indeed, the true cash values adopted by the tribunal were inexplicably greater than the valuations provided by *either* party's expert. Accordingly, given the lack of underlying evidence in support, the tribunal appears to have impermissibly automatically accepted the original assessment.

We are therefore compelled to reverse the tribunal's judgment and remand for an independent determination of the property's true cash value. If the tribunal does not have adequate evidence to independently determine the property's true cash value, it should seek additional data from the parties.

Petitioner also argues that the tribunal abused its discretion when admitting respondent's exhibit into evidence. A party's failure to properly address the merits of an alleged error constitutes abandonment of the issue on appeal. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002). Petitioner's argument fails to address the merits of this issue under controlling law.² Therefore, we consider it abandoned.

¹ We note that "[e]ven if the tribunal had correctly concluded that petitioner's proofs had failed, the tribunal still would be required to make an independent determination of the true cash value of the property." *Jones & Laughlin Steel Corp*, 193 Mich App at 355. The case law does not condition the tribunal's duty to make a de novo determination of true cash value on petitioner meeting its evidentiary burden, but rather emphasizes the tribunal's duty to make an independent determination. *President Inn Props LLC*, 291 Mich App at 640.

² "This Court may review the tribunal's rulings regarding evidentiary issues if they involve errors of law." *Georgetown Place Coop v City of Taylor*, 226 Mich App 33, 50; 572 NW2d 232 (1997). A party must demonstrate that it was prejudiced by the error. *Id.* at 51.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Douglas B. Shapiro
/s/ Elizabeth L. Gleicher
/s/ Amy Ronayne Krause