

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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JOSEPH REID,

Petitioner-Appellant,

v

TOWNSHIP OF CLARK,

Respondent-Appellee.

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UNPUBLISHED  
May 23, 2013

No. 309268  
Michigan Tax Tribunal  
LC No. 411257

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

PER CURIAM.

Petitioner appeals from the final opinion and judgment issued by the Michigan Tax Tribunal (“the Tribunal”) on March 2, 2012, adopting the proposed opinion of the hearing referee that calculated the true cash value (TCV)<sup>1</sup> of petitioner’s real property for the tax year 2010 and 2011. The Tribunal later partially vacated this opinion with respect to tax year 2011, because petitioner was not the owner of the subject property for that tax year. For the reasons stated below, we affirm the remainder of the opinion.

**I. BASIC FACTS AND PROCEDURE**

This case concerns an improved residential lot located in Clark Township, Michigan. The parcel has 1,400 feet of lake frontage on Lake Huron, and contains a peninsula that extends into the lake.<sup>2</sup> Respondent assessed the property’s TCV, state equalized value (SEV), and taxable value (TV), as follows:

Year	TCV	SEV	TV
2010	\$933,188	\$466,594	\$466,954

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<sup>1</sup> “True cash value” is defined as a property’s “fair market value” or “usual selling price.” MCL 211.27(1); see also *President Inn Properties, LLC v Grand Rapids*, 291 Mich App 625, 637; 806 NW2d 342 (2011).

<sup>2</sup> The record alternatively reflects a calculation of 1,440 feet of lake frontage, a figure that petitioner does not contest on appeal.

Petitioner appealed the assessment to the Tribunal, asserting that respondent incorrectly assessed the value of the land, although petitioner did not (and does not) challenge respondent's valuation of improvements to the land. Petitioner provided an appraisal report that employed a comparison of three properties sold in 2010, adjusted to the subject property, which concluded that the total value of the property with improvements was in the range of \$700,000 to \$750,000. Petitioner also provided listings of three comparable unsold properties that were not adjusted to the subject property. Respondent offered a property assessment card for the tax year 2010, as well as a warranty deed and property transfer affidavit indicating that petitioner had purchased the property from relatives for \$700,000.

The referee concluded that petitioner failed to submit evidence sufficient to carry its burden of establishing the TCV of the property for 2010. See MCL 205.737(3); *President Inn Properties LLC v Grand Rapids*, 291 Mich App 625, 806 NW2d 342, 347 (2011). The referee stated that he was "not persuaded" by petitioner's appraisal, because the appraisal "required gross adjustments from 81.2%, 167.4%, and 160.1%" for the three comparables, "far in excess" of a reasonable adjustment. The referee thus concluded that the properties utilized were not comparable to the subject property. The referee also concluded that the second set of unsold comparable properties were not persuasive because they were not adjusted to the subject property at all, stating that "[t]he market value cannot be determined on the sole basis of a listing price or square footage or price per square foot."

The referee did agree with petitioner that the peninsula at the end of the property should have been counted differently for determination of lakefront footage. Specifically, the referee found that only 195 feet of the 600 feet of the peninsula should be counted as lakefront footage.

Finally, the referee rejected petitioner's argument that the price he paid for the property (\$700,000) included \$100,000 dollars of personal property and thus the sale price listed on the property assessment card was inaccurate. The referee noted that the \$700,000 purchase price was set forth on the warranty deed and that, in addition, the transaction was not at arm's length but was a sale between family members.

The referee then stated that he had reviewed and analyzed the assessment record provided by respondent and found that it provided reasonable support for the assessed value on the record. The referee then adopted that valuation.

The Tribunal adopted the referee's proposed opinion as its final judgment in petitioner's case, finalizing the subject property's values as follows:

Year	TCV	SEV	TV
2010	\$933,188	\$466,594	\$466,954

This appeal followed.

## II. STANDARD OF REVIEW

Absent fraud, our review of Tribunal decisions is "limited to determining whether [the Tribunal] erred in applying the law or adopted a wrong legal principle." *Vanderwerp v*

*Plainfield Charter Tp.*, 278 Mich App 624, 627; 725 NW2d 479 (2008). In *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 388-389; 576 NW2d 667 (1998), this Court stated:

While this Court is bound by the Tax Tribunal's factual determinations and may properly consider only questions of law under this section, a Tax Tribunal decision that is not supported by competent, material, and substantial evidence on the whole record is an "error of law" within the meaning of Const 1963, art 6, § 28. *Oldenburg v Dryden Twp*, 198 Mich App 696, 698; 499 NW2d 416 (1993); *Kern v Pontiac Twp*, 93 Mich App 612, 620; 287 NW2d 603 (1979). Substantial evidence must be more than a scintilla of the evidence, although it may be substantially less than a preponderance of the evidence. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992). "Substantial" means evidence that a reasonable mind would accept as sufficient to support the conclusion. *Kotmar, Ltd v Liquor Control Comm*, 207 Mich App 687, 689; 525 NW2d 921 (1994).

### III. ANALYSIS

Petitioner argues that the Tribunal erred in determining that the cost-less-depreciation approach was the most reliable method of calculation of the property's TCV. We disagree.

"A proceeding before the Tribunal is original and independent and is considered de novo." MCL 205.735(2). Thus, the Tribunal "has a duty to make its own independent determination of true cash value." *Great Lakes Div of Nat'l Steel Corp*, 227 Mich App at 389. "The Tax Tribunal is not bound to accept the parties' theories of valuation. It may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination of true case value." *Id.* at 389-390. "In the Tax Tribunal, a property's assessed valuation on the tax rolls carries no presumption of validity." *President Inn Properties*, 291 Mich App at 640. "Regardless of the method employed, the Tax Tribunal has the overall duty to determine the most accurate valuation under the individual circumstances of the case." *Id.* at 631.

The Tribunal has a duty to select the approach which provides the most accurate valuation under the circumstances of the individual case. *President Inn Properties LLC*, 291 Mich App at 639. In *President Inn Properties*, this Court summarized the TCV determination as follows:

Courts have generally recognized that the three most common approaches to valuation are the capitalization-of-income approach, the sales-comparison approach or market approach, and the cost-less-depreciation approach. Our Supreme Court has described these three common valuation techniques, quoting from the Michigan State Tax Commission Assessor's Manual. Regardless of the valuation approach employed, the final value determination must represent the usual price for which the subject property would sell. In other words, a valuation method is wrong only if it does not lead to the most accurate determination of the taxable property's true cash value or fair market value. Thus, the Tax Tribunal

has a duty to select the approach which provides the most accurate valuation under the circumstances of the individual case. [*Id.* at 639 (quotation marks and internal citations omitted).]

Here, the tribunal applied the cost-less-depreciation approach. In *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 484 n 18; 473 NW2d 636 (1991), our Supreme Court described this approach as follows:

Under the cost[-less-depreciation] approach, true cash value is derived by adding the estimated land value to an estimate of the current cost of reproducing or replacing improvements and then deducting the loss in value from depreciation in structures, i.e., physical deterioration and functional or economic obsolescence.

Petitioner argues that because he agreed with respondent's valuation of the improvements to the land, the Tribunal erred in applying the cost-less-depreciation approach, because land does not depreciate. We find this argument unpersuasive.

At issue was the TCV of the property for the tax year 2010. The Tribunal was not bound to accept the parties' theories of valuation. *Great Lakes Div of Nat'l Steep Corp*, 227 Mich App at 389. Here, the Tribunal found petitioner's appraisal and other evidence, which used a sales-comparison approach, unpersuasive. It further found that the respondent's property record card, which employed a cost-less-depreciation approach, was the most reliable indicator of the property's value. The Tribunal was free to accept respondent's valuation approach and reject petitioner's. *Id.* The fact that petitioner did not challenge respondent's valuation of improvements to the land did not render the Tribunal's approach to valuation invalid, as it was required to make its own independent determination of the property's *entire* TCV, not merely the value of the unimproved land. *Id.* The Tribunal explained its rationale for rejecting petitioner's approach to valuation and adopting respondent's, and its rationale is supported by record evidence. Indeed, petitioner states on appeal that no other comparable properties existed other than those found in the appraisal, which the Tribunal found to be not comparable to the subject property. This fact, combined with the fact that the capitalization-of-income approach is generally used for income-producing, rather than residential, properties, see *Presque Isle Harbor Water Co v Presque Isle Twp*, 130 Mich App 182, 194; 344 NW2d 285 (1983), supports the Tribunal's use of the cost-less-depreciation method as the method likely to provide the most accurate validation under the individual circumstances of petitioner's case. *President Inn Properties*, 291 Mich App at 639. We hold that the Tribunal did not commit an error of law subject to reversal by adopting this method of valuation.

Petitioner further argues that the Tribunal incorrectly determined that the comparables used in the appraisal were not comparable to the subject property. However, the Tribunal indicated that the large adjustments necessary to compare the properties to the subject property were in excess of what is reasonable. This finding is supported by record evidence. Indeed petitioner's appraisal states, in its "Summary of Sales Comparison Approach" Section:

There are no comparable sales in the last 24 months of residential waterfront properties with gross living area near the size of the subject. The subject site is also larger than any other properties sold in the Detour, Hessel, Cederville [sic]

area with in [sic] the valid time period of this report. The comp search was extended back in time 24 months and in distance from Detour to Hessel. There have been no sale [sic] in the market area in the subject value range with in [sic] the past 24 months. Due to the large site and GLA [Gross Living Area] of the improvement *all adjustment percentages are higher than ideal.* [Emphasis added.]

Thus, petitioner's own evidence indicates that the properties used in the appraisal were not easily comparable to the subject property and required higher than ideal adjustment. Although petitioner argues that the Tribunal unfairly faults him for an economic recession outside of his control, the fact remains that no evidence of suitably comparable sales of property was presented upon which to base a sales-comparison approach. We hold that the Tribunal did not commit an error of law subject to reversal by discounting petitioner's appraisal evidence.

Petitioner further argues that the Tribunal erred in failing to give weight to petitioner's offer of unadjusted real estate listings. Again, we disagree. The Tribunal stated that the market value of a property is determined by factors including "age and style of home, bathroom number, garage size, lot size, and location, etc." Petitioner argues that because he is only disputing the value of the *land*, rather than the *improvements*, this statement was in error. However, it is clear that petitioner's listings included (1) properties with significantly different frontage feet and (2) sale prices that included the price of both the land and buildings on the land. Therefore, we conclude that the Tribunal did not commit an error of law subject to reversal by discounting petitioner's evidence of unadjusted sales listings.

#### IV. MATHEMATICAL ERROR

We find that the Tribunal did not err in applying the cost-less-depreciation approach or discounting petitioner's evidence. However, we do agree with petitioner that a mathematical error is present in the proposed opinion adopted by the Tribunal.

The Tribunal stated as follows regarding the peninsula at the end of the subject property:

We agree that the peninsula could be considered only 65% of the depth of front foot calculation and, in addition, only half should be counted or 300 feet. Starting with 840 front feet and adjusting 300 front foot area of the peninsula for its depth at 65% feet, and adding the resulting 195 front feet to the front footage of the remaining parcel results in 1,035 front feet. At a [sic] \$1,000 a front foot, which is what Respondent has used on the subject, before adjustments, the value of the land would be in excess of \$1,000,000. With Respondent's adjustment of 50% of the front foot value for the shape of the property, the resulting value is \$714,000. Clearly, Respondent has properly adjusted the land for its odd shape and made the appropriate front footage adjustments.

However, 1,035 front feet, at \$1,000 a front foot, adjusted to 50%, is not \$714,000, but rather \$517,500. It appears from Respondent's property record card that the peninsula was not adjusted in any way but was counted as full front footage on the subject property. Thus, the

Tribunal appears to have erred in its mathematical calculations and arrived at a figure very close to Respondent's valuation of the land.

Although the Tribunal stated that Respondent's evidence provided "reasonable support for the assessed value on the roll," it also stated that it "reviewed and analyzed Respondent's assessment record with the calculations provided . . . ." This comports with the Tribunal's duty to make an independent determination in valuation. *Great Lakes Div of Nat'l Steep Corp*, 227 Mich App at 389. However, in so doing, it appears that the Tribunal erred in its calculation of the adjustment for the peninsula portion of the subject property.

When corrected, the valuation would result in a TCV for the subject property of \$760,320 (\$517,500 for the land plus \$242,280 for improvements). We therefore affirm the Tribunal's reasoning and weighing of evidence, but remand for the limited purpose of correcting the opinion and judgment.

Affirmed and remanded for the purpose of correcting the opinion and judgment. We do not retain jurisdiction.

Affirmed.

/s/ Amy Ronayne Krause

/s/ Elizabeth L. Gleicher

/s/ Mark T. Boonstra