

STATE OF MICHIGAN
COURT OF APPEALS

UTAH COMPANY,

Petitioner-Appellant,

v

CITY OF DETROIT,

Respondent-Appellee.

UNPUBLISHED
April 17, 2014

No. 309203
Tax Tribunal
LC No. 00-402780

NEVADA CORPORATION,

Petitioner-Appellant,

v

CITY OF DETROIT,

Respondent-Appellee.

No. 309205
Tax Tribunal
LC No. 00-399770

ORCHARD COMPANY,

Petitioner-Appellant,

v

CITY OF DETROIT,

Respondent-Appellee.

No. 309224
Tax Tribunal
LC No. 00-399767

RAH ASSOCIATES, LLC,

Petitioner-Appellant,

v

CITY OF DETROIT,

No. 309296
Tax Tribunal
LC No. 00-399769

Respondent-Appellee.

SFR GROUP LLC,

Petitioner-Appellant,

v

CITY OF DETROIT,

Respondent-Appellee.

SFR GROUP, LLC,

Petitioner-Appellant,

v

CITY OF DETROIT,

Respondent-Appellee.

No. 309298
Tax Tribunal
LC No. 00-399959

No. 309300
Tax Tribunal
LC No. 00-399960

Before: SERVITTO, P.J., and SAWYER and BOONSTRA, JJ.

PER CURIAM.

In these consolidated cases, appellant property owners appeal as of right the tax assessments on their respective parcels of property. Each Petitioner had protested its subject property's tax assessment to the City of Detroit Board of Review, seeking a reduction in its property taxes for the properties, all of which are located in the City of Detroit. When the Board of Review did not provide the results sought, petitioners then individually appealed the tax assessment on their properties to the tax tribunal. A hearing was held in each matter wherein the hearing referee was to determine whether the properties were assessed in excess of 50% of their true cash value and whether the taxable value exceeded the amount provided by MCL 211.27a, as alleged by petitioners. The hearing referee ultimately issued a proposed Opinion and Judgment in each case confirming the Board of Review's determination of the properties' true cash value (TCV), state equalized value (SEV), and taxable value (TV) for the tax years at issue. Petitioners filed exceptions to the proposed judgments generally asserting that the judgments mistakenly stated that petitioners failed to meet their burdens of proof and based their conclusion

on rationales contrary to law. The tax tribunal issued a final Opinion and Judgment in each case, essentially adopting the values set forth in the proposed Opinion and Judgments.

Each petitioner was represented by the same attorney in the lower proceedings and is represented by the same counsel on appeal, and each petitioner submitted appraisals prepared by the same individual, Eugene Mroz, in support of its quest for a reduction of property taxes. Each petitioner also presented the same witnesses at hearing which consisted of Mroz and representing counsel. The six cases were consolidated on appeal.

We affirm the tax tribunal's assessments in all cases.

Docket No. 309203

Petitioner first asserts on appeal that the tribunal legally erred in failing to consider *all* portions of and relevant terms in the appraisal submitted as evidence on its behalf. To preserve an issue for appeal, a party must have raised the issue below, and received a ruling on it. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). Here, petitioner did not argue to the tax tribunal that it failed to consider the entirety of petitioner's appraisal. Therefore, this argument is unpreserved. In civil cases, this Court is not obligated to consider unpreserved issues. *Coates v Bastian Bros, Inc*, 276 Mich App 498, 510; 741 NW2d 539 (2007). Petitioner did, however, contend that its appraiser's evaluation method should have been accepted based on the appraisal. Thus, we will address this issue on appeal.

Our review of a tax tribunal decision is limited. *Mount Pleasant v State Tax Comm*, 477 Mich 50, 53; 729 NW2d 833 (2007). Absent fraud, we review a tax tribunal decision to determine whether the tax tribunal made an error of law or adopted a wrong legal principle. *Meijer, Inc v Midland*, 240 Mich App 1, 5; 610 NW2d 242 (2000). Thus, we may review the tribunal's rulings on evidentiary issues if they involve errors of law. *Alhi Development Co v Orion Twp*, 149 Mich App 319, 323; 385 NW2d 782 (1986).

Article 6, § 28 of the Michigan Constitution of 1963, specifically addresses the review of property tax valuation or allocation, and states that, “[i]n the absence of fraud, error of law or the adoption of wrong principles, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation.” See also *Ford Motor Co v Woodhaven*, 475 Mich 425, 438; 716 NW2d 247 (2006). Any factual findings of the tax tribunal are final if supported by “competent, material, and substantial evidence on the whole record.” *Catalina Marketing Sales Corp v Dep't of Treasury*, 470 Mich 13, 19; 678 NW2d 619 (2004). Substantial evidence is that which a reasonable mind would accept as adequate to support a decision. *In re Grant*, 250 Mich App 18-19; 645 NW2d 79 (2002). “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence. 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, 529-530; 711 NW2d 438 (2006) (citation omitted).

The precise argument raised by petitioner appears to be that the Tax Tribunal's factual finding that appraiser Mroz utilized only one approach to value, due to his agreement with petitioner, and that the same damaged Mroz's credibility was not supported by evidence in the

record. Petitioner directs this Court to (8.) in the appraiser's certification section of the appraisal which states:

I estimated the market value of the real property that is the subject of this report based on the sales comparison approach to value. I further certify that I considered the cost and income approaches to value, but, through mutual agreement with the client, did not develop them, unless I have noted otherwise in this report.

Petitioner further directs us to the "Additional Comments" section of the appraisal wherein it is stated:

All three approaches to value were considered in this analysis. The Cost Approach is considered inapplicable and was not developed due to the age of the subject and to the difficulties of depreciation estimation. An estimation of physical depreciation as well as any possible functional or locational obsolescence would have a highly questionable result. The Income Approach is considered to be inapplicable and was not developed due to a lack of reliable, verifiable rental data and to a variety of factors in the subject market that would have a significantly adverse effect on the accuracy of an income stream estimate. These factors include potential for liability due to presence of lead paint in most dwellings, a high probability of vandalism to any vacant dwelling, a high expectation of physical damage to the dwelling by the tenant and a low probability of reimbursement of landlord for said damage, high motivation of landlord to keep dwelling occupied at any cost due to likelihood of vandalism, and a relatively high turnover of tenants. In addition the cost of compliance with multiple inspections by various government agencies is highly unpredictable

Petitioner contends that the above establishes that Mroz considered and rejected various other methods of value for relevant reasons and the tribunal judge's statements otherwise are factually incorrect and inconsistent with the record.

In its March 6, 2012 Final Opinion and Order, the tribunal judge states:

Mr. Mroz indicated in his appraisal report that while he considered an income approach to value, "through mutual agreement with the client, did not develop [one]." We find this admission significant The problem is created by the appraiser's apparent willingness to use his qualifications and skills to advocate the position of the party who employs him without regard to objective and relevant facts, contrary to his professional obligations In this case, in the view of this presiding Tribunal member, omitting an otherwise applicable approach to value, especially on the basis of "mutual agreement," calls into question the overall usefulness of petitioner's appraisal evidence.

However, the tribunal judge also noted that petitioner presented an addendum to the appraisal at hearing that an income approach to value could not be developed due to "lack of reliable, verifiable rental data" and a variety of other adverse market factors. Thus, at least one of the

other approaches addressed in the “Additional Comments” section of the appraisal and the reason it was not utilized by Mroz was brought to the tribunal judge’s attention and *was*, in fact, considered by him.

Additionally, Mroz did, in the appraisal, explicitly state that he and the client (petitioner) had agreed to use the sales comparison approach to value. The trial court’s statement that Mroz made such an admission is thus supported by the record. The rest of the statements challenged by petitioner are not so much factual conclusions that could be deemed either consistent or inconsistent with the record, but more of a chastisement by the tribunal. The tribunal’s statement that the admission was troublesome and reflected on Mroz’s credibility indicated its overall dismay with an appraiser agreeing with a client to use any particular method of value to fit the client’s needs rather than the appraiser objectively selecting the method that fit the specific property’s factual circumstances. There is no identifiable error of law in the tribunal’s expressing an objective opinion concerning an appraiser and a client agreeing to use a specific appraisal approach rather than leaving the approach to the appraiser’s professional discretion.

The trial court did not commit an error of law in this instance, there has been no allegation of fraud, and the trial court’s factual conclusions, to the extent they could be called such, is supported by competent, material and substantial evidence on the whole record.

Petitioner next contends that the tribunal erred in disregarding petitioner’s evidence concerning true cash value of the property. We disagree.

True cash value (TCV) is synonymous with fair market value. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 353; 483 NW2d 416 (1992). The Legislature has not provided specific methods for determining TCV. See, *Antisdale v City of Galesburg*, 420 Mich 265, 275-276; 362 NW2d 632 (1984). Instead, it is the duty of the tax tribunal to apply its expertise in order to determine the appropriate method of arriving at the TCV of a property by “utilizing an approach that provides the most accurate valuation under the circumstances.” *Great Lakes Div of Nat’l Steel Corp v Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998). No matter what method applied, “the value determined by the Tax Tribunal must be the usual price for which the property would sell.” *Id.* at 390; MCL 211.27. “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 cash value.” *Id.* at 390-391. The tax tribunal has a duty to make its own, independent determination of true cash value. *Teledyne Continental Motors v Muskegon Twp*, 163 Mich App 188, 193; 413 NW2d 700 (1987). The burden of proof to establish the subject property’s TCV is on the petitioner. MCL 205.737(3).

In its Final Opinion and Judgment, the tax tribunal noted that petitioner challenged the Detroit Board of Review’s determination that the 2010 TCV of its three-bedroom residential rental unit was \$41,162. Petitioner asserted that the TCV likely did not exceed \$7,000 and the respondent asserted that the TCV actually ranged from \$60,000 to \$68,800. The tribunal acknowledged that respondent had provided assessment records utilizing a modified cost approach but indicated that “we decline to place significant weight on Respondent’s assessment records as bearing the most accurate reflection of the subject’s TCV as of the tax years at issue” and “we decline to place principal reliance on Respondent’s valuation evidence because the

process that yielded the indicated TCV lacks sensitivity to current market factors and specific property characteristics, and presents an unacceptable risk of imprecision.”

The tribunal also indicated that in support of its position, petitioner had submitted the residential appraisal prepared by Mroz and testimony by Mroz. The tribunal specifically addressed the comparable sales utilized by Mroz in reaching petitioner’s claimed market value of the subject property, indicating that two of the three comparables were sold too remotely in time to provide an accurate indicator of value as to the tax dates at issue. As to the third comparable, the tax tribunal questioned whether it was sold for the same use as petitioner’s home (tenant housing) and indicated that petitioner’s adjustments appeared overstated, given that there was no evidence to support them. The tribunal found respondent’s comparable number two as the most similar to the subject property and relied most heavily upon that comparable to determine the TCV of the subject property for the 2010 tax year.

Petitioner has identified no rule of law that *requires* the tax tribunal to accept its comparables in determining TCV because it performed a market study and reject respondent’s comparables because it did not. Given that the tribunal considered all of the evidence provided by petitioner and explicitly stated which evidence it found to be reliable and unreliable and why it found so, petitioner’s contention that the tribunal erred in its application of the standard rules of law in not accepting the submissions of petitioner is meritless.

Petitioner next asserts that the tribunal findings that Mroz had breached his professional ethics, that petitioner’s counsel lacked candor, and that the submissions of petitioner were unreliable were based upon misreadings of the appraisal and were unsupported by the record. We disagree.

As previously indicated, the tribunal acknowledged that petitioner presented an addendum to the appraisal at hearing wherein Mroz stated that an income approach to value could not be developed due to “lack of reliable, verifiable rental data” and a variety of other adverse market factors. And, its criticism of Mroz was not based upon a misreading of the appraisal, but simply highlighted a statement made by Mroz in the appraisal wherein he admitted that he and petitioner had agreed to utilize a specific approach to value. The tribunal was expressing dismay that an appraiser would ever let a client dictate the method of value to be utilized, suggesting that it led to questions of the appraiser’s objectivity.

The tribunal did not specifically state that Mroz breached his professional ethics. It stated, “In most cases, as in this one, there is no dispute about the qualifications of the appraiser. The problem is created by the appraiser’s apparent willingness to use his qualifications and skill to advocate the position of the party who employs him without regard to objective and relevant facts, contrary to his professional obligations In this case . . . omitting an otherwise applicable approach to value, especially on the basis of ‘mutual agreement,’ calls into question the overall usefulness of petitioner’s appraisal evidence.” The tribunal, in making such statements, did not misread the appraisal, nor did it make an error of law in opining about the credibility of petitioner’s appraiser.

The tribunal also made no error in commenting on the candor of petitioner. The tribunal stated:

Petitioner's lack of candor is equally troubling. We note that Petitioner (and its related entities) is a professional real estate company whose trade or business is leasing similar single family residential rental properties in the Detroit market. On this same hearing date, the Tribunal notes five related appeals by Petitioner's affiliates, all involving similar properties. One could reasonably infer that Petitioner is well aware of the fair rental rate government agencies offer through low income housing programs and/or examined comparable rentals in establishing the asking rent for the Subject. Further, one can also infer that Petitioner is intimately familiar with local market conditions, risks, and expenses associated with such properties We can only conclude that had Petitioner developed an income approach, it would not have supported the contention of value it advocates.

Given that petitioner had provided various reasons it had determined that an income approach was inapplicable, including "a lack of reliable, verifiable rental data" the tribunal's factual finding that petitioner's significant involvement in the rental home business indicated a lack of candor in making such representations was supported by competent, material, and substantial evidence on the record.

Finally, the tribunal did not, as alleged by petitioner, find some of its evidence unreliable based simply on the tribunal's misreading of the appraisal. The tribunal thoroughly addressed all of the evidence provided by petitioner, including its comparables, analyzed why said evidence was reliable or not and come to an independent conclusion of what approach would be best in determining the subject property's TCV. The tribunal committed no error of law as identified by petitioner.

Finally, petitioner asserts that the trial court erred in determining proper valuation of the property at issue when it employed a method of valuation while lacking the necessary components for said method to be employed. We disagree.

The concept of true cash value is synonymous with fair market value. *CAF Investment Co v State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974). Any method for determining true cash value which is recognized as accurate and reasonably related to fair market valuation is an acceptable indicator of true cash value. *Id.* at 450, n.2. It is the duty of the Tax Tribunal to adopt the method of valuation which is most appropriate to the individual case as the particular facts may indicate. *Consumers Power Co v Port Sheldon Twp*, 91 Mich App 180, 184; 283 NW2d 680 (1979), abrogated on other grounds, *County of Wayne v Michigan State Tax Com'n*, 261 Mich App 174; 682 NW2d 100 (2004). The three typical methods of determining true cash value are the capitalization-of-income approach, sales-comparison or market approach, and the cost-less-depreciation approach. *Jones & Laughlin Steel Corp*, 193 Mich App at 353.

In this matter, the tribunal opined that because the property is a rental property, the most accurate valuation approach would have been the income approach. However, neither party employed such an approach. The tribunal then rejected respondent's cost-less-depreciation analysis and instead used the sales comparison approach. "The sales-comparison approach indicates true cash value by analyzing recent sales of similar properties, comparing them with the subject property, and adjusting the sales price of the comparable properties to reflect differences

between the two properties.” *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 485, n 19; 473 NW2d 636 (1991). While petitioner asserts that a market study is central to a sales cost comparison approach, it has identified no binding authority supporting its position. The section of the Appraiser’s manual that it attached in support of this proposition simply states that the sales comparison approach begins with the investigation of recent sales of properties which are similar to the property to be appraised and the sales are then adjusted to make them like the subject property in all significant respects.

Respondent’s representative testified at hearing that she obtained comparables sales from the same neighborhood as the subject property, taken from a sales study made during the relevant time period. The representative further testified that adjustments were made based upon Marshall and Swift Cost Manuals, which were a standard rate used throughout the appraisal department. The representative testified that they used actual sales where the deed was recorded with the Wayne County Register of Deeds Office. She testified that they get a listing of every transfer that took place in the City of Detroit for the entire year and they look at each sale to try to determine whether it was an arm’s-length transaction and thus whether it could be included in their sales study.

In support of their respective positions regarding value, both parties thus provided information concerning recent sales of similar properties. Respondent’s testimony supports a finding that the comparable relied upon by the tribunal was an arm’s-length transaction and comparable to the subject property. The tribunal carefully analyzed each of the comparable sales provided by each party, specifically discussing why the same were or were not, in fact, comparable or reliable. Given its careful analysis, and its adoption of the method of valuation which is most appropriate to the individual case as the particular facts may indicate, *Consumers Power Co*, 91 Mich App at 184, the tribunal committed no error law.

Docket No.’s 309205, 309224, 309296, 309298, 309300

In the remaining five cases on appeal, each petitioner is represented by the same counsel, and presents the same arguments in nearly identical briefs. Petitioners first assert that the tribunal was required to conduct a de novo review and in relying upon the property record cards prepared by the government respondent, which constituted no new evidence, the tribunal failed to conduct the appropriate review. Petitioner further contends that the property record cards are merely existing records available to the public which provide for the prior assessment amounts on the subject properties and provide no relevant data upon which the respondent could support its position that the assessments were correct. According to petitioners, the property record cards thus provide no competent, material, or substantial evidence upon which the tribunal could base its decision.

As previously indicated, our review of a Tax Tribunal decision is limited. *Mount Pleasant*, 477 Mich at 53. Absent fraud, we review a Tax Tribunal decision to determine whether the Tax Tribunal made an error of law or adopted a wrong legal principle. *Meijer, Inc*, 240 Mich App at 5. The Tax Tribunal's factual findings are final if supported by competent and substantial evidence. *Mount Pleasant*, 477 Mich at 53.

A proceeding before the tribunal is original and independent and is considered de novo. MCL 205.735a(2). The term “de novo” has been defined as “anew; afresh; again; a second time; once more; in the same manner, or with the same effect.” *Heindlmeyer v Ottawa County Concealed Weapons Licensing Bd*, 268 Mich App 202, 219; 707 NW2d 353 (2005)(internal citations and quotations omitted). The review of a matter de novo, then, means that all matters in issue are to be considered anew, afresh, or over again. *Id.*

Petitioners each cite to a single case in support of their positions. In *Consolidated Aluminum Corp, Inc v Richmond Tp, Osceola County*, 88 Mich App 229; 276 NW2d 566 (1979), a corporate taxpayer appealed from an order of the tax tribunal which affirmed the township's assessments of two parcels of industrial property owned by the taxpayer. In that case, a hearing was held regarding the respondent's assessments of the properties, at which someone was called upon to testify in the place of the county assessor due to the assessor's illness. The replacement witness could not state any independent valuation conclusions concerning the properties because the assessor had not submitted any appraisals prior to the hearing, but instead explained only the basis upon which the original assessments had been made. The parties had stipulated that assessor had primarily used the consideration shown on the 1969 transfer deeds of the properties as his appraisal figures. This Court noted that there was no evidence to indicate that the assessor had complied with his statutory obligations in determining the value of the properties.

The *Consolidated Aluminum Corp, Inc* Court further noted that a proceeding before the tax tribunal is original and de novo such that it is the duty of the tribunal to independently determine the TCV of a property. The Court held there was no evidence presented at the hearing from which the tribunal could have determined the TCV of the properties in question due to two facts: that the respondent's only witness was not allowed to state any independent valuation conclusions and that there was evidence that the assessed valuation on the tax rolls was based upon a fiction of federal tax law. *Id.* at 233-234. It further held that given its obligation to make and independent determination of TCV, the tribunal's statement and position that “[i]n the absence of proof justifying a different value, the assessment as placed upon the rolls by the assessing authority must be presumed valid,” was incorrect. *Id.* at 232. The Court thus reversed the tribunal's affirmance of the township's assessments and remanded the matter to the tribunal for a determination of the TCV of the properties.

In each of the Proposed Opinion and Judgments in these matters, the referee indicated that respondent provided, as its evidence, only the property record card for the subject property. However, unlike the *Consolidated Aluminum Corp, Inc* case the referee in these matters did not state any presumption that the assessments shown on the property record cards were valid and there is no evidence that the assessed valuation on the tax rolls in these cases were based upon “a fiction of federal tax law.”

More importantly, petitioners' expert (Mroz) specifically testified in all of the cases (except Docket No. 309298 SFR #1 where documentary evidence attesting to the same was provided) that he had performed a detailed search as to all of the home sales that had occurred in the relevant time period and in the relevant area for each of the subject properties. Mroz testified how he had selected the three comparables to use for purposes of his valuations, but the referee heard testimony from Mroz and saw evidence that homes had sold for more than the comparables Mroz had selected and further heard testimony concerning whether the comparables

selected were bank owned or private arms-length transactions. The referee was thus justified in finding the comparables unreliable. Specifically:

In Docket No. 309205, Mroz testified that in looking at all of the 508 sales within the area of that particular property for the tax year 2009, sales prices ranged from \$100 to \$82,000. While the vast majority of the homes sold for \$20,000 or less, petitioner relied upon homes within one mile of the subject property which sold for \$10,500 and under for his comparables. The Board of Review had found the TCV of the property to be \$40,258 in 2010 and \$34,622 in 2011. Petitioner asserted that the TCV should have been \$6500.

In Docket No. 309224, Mroz testified that he found 103 sales of similar homes within 4 or 5 miles of the subject property within the relevant time frame and that the sales prices ranged from \$100 to \$55,000. Mroz testified that the vast majority of the sales were bank sales, rather than private sales. Of the sales, 17 occurred within 1 mile of the subject property and those all sold for \$10,000 or less; petitioner chose 3 of those as his comparables. On this property, the Board of Review had found the TCV of the property to be \$55,790 for 2010 and, for 2011, found the TCV to be \$47,980. Petitioner contended that TCV should have been \$5500.

In Docket No. 309296, Mroz testified that he found sales of 55 of the same type of home within 1 mile of the subject property with sales prices ranging from \$250 to \$10,200. The appraisal submitted by Mroz with respect to the property indicated that there were 1260 sales of properties in the subject property's area ranging in price from \$10 to \$115,000, though 1216 of those sales were for under \$30,000. The Board of Review had found the TCV of the property to be \$44,258 for 2010 and the TCV to be \$38,948 for 2011. Petitioner contended that the TCV should have been \$6500 for both years.

In Docket No. 309298, Mroz testified that the subject property, according to their appraisal, was worth \$15,000. The appraisal provided by Mroz stated that he had performed a detailed search for comparable sales and had found 1148 sales in the subject area ranging in price from \$1 to \$320,000. Mroz had reduced the number to 46 properties that were 2-story homes (similar to the subject property) that had sold for between \$1,195 and \$32,000. Mroz had selected 3 comparables for his use that were \$15,250 and under, all of which were bank sales. The Board of Review found the TCV of the property to be \$41,740 on 2010 and \$35,896 in 2011.

In Docket No. 309300, Mroz testified that the subject property, according to its appraisal, was worth \$14,000. The Board of Review found that the TCV of the property was \$54,874 in 2010 and \$48,290 in 2011. Mroz testified in his market study on the property, he found 40 sales of similar properties within 1 mile of the subject property. The sales prices ranged from \$900 to \$34,000 and that the most similar to the subject property was a home that sold for \$24,000. The appraisal prepared by Mroz indicated that he initially found 1148 sales in the area ranging in price from \$1 to \$320,000.

Thus, though the respondent provided only the property record cards as evidence, the referee was nonetheless provided with evidence of area properties (comparables) supporting a finding of a higher TCV than those argued by petitioner. TCV is, as previously indicated, synonymous with fair market value. *CAF Investment Co*, 392 Mich at 450. Any method for

determining true cash value which is recognized as accurate and reasonably related to fair market valuation is an acceptable indicator of true cash value. *Id.* at 450, n.2. By looking at the sales prices for recent home transactions that occurred in the area of the subject properties in the relevant time frame, the referee could have found that the TCV's as assessed, were proper.

Moreover, MCL 205.746(1) provides that: “[i]n a proceeding before the tribunal all parties may submit evidence. The tribunal shall make its decision in writing. The tribunal may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs.” Pursuant to MCL 211.10e, assessing officials are required to use an assessor's manual prepared by the State Tax Commission “as a guide in preparing assessments” and are required to maintain records relevant to the assessments, including record cards consistent with standards set forth in the manual published by the state tax commission. Thus, the property record cards are evidence of a type commonly used by reasonably prudent men in the conduct of their affairs and may be given probative effect by the Tribunal.

We also note that the referee found that petitioners failed to meet their burdens of proof, given that the three sales listed in its submitted appraisal were bank sales that sold for cash and that no additional information was provided including marketing times, condition, and ownership. In only one of the cases did petitioner submit a private sale as one of its comparables, Docket No. 309300. With respect to that comparable, the referee specifically stated that there was no indication if it was a distressed sale. The referee thus found petitioners' arguments unpersuasive and did not, as claimed by petitioners, totally disregard their evidence.

While the tax tribunal cannot merely affirm the assessments as placed upon the rolls by the assessing authority the tribunal may adopt the assessed valuation on the tax rolls as its independent finding of TCV when competent and substantial evidence supports doing so. *President Inn Properties, LLC v City of Grand Rapids*, 291 Mich App 625, 640-641; 806 NW2d 342 (2011). The referee stated in its Proposed Opinions and Orders the proper burden of proof and its obligation to make an independent determination of TCV.

In its Proposed Opinion and Judgment in Docket No. 309300, the referee referenced testimony by respondent at the October 27, 2011, hearing that the mass appraisal method used to determine the value of that property is a more accurate method than the comparison sales of three nearby homes used by petitioner because petitioner utilized bank owned home sales that were not arms-length transactions and that said sales did not include the marketing time for the sales or the condition of the home. The referee further referenced respondent's testimony that there was no inspection or the condition of the sales used by petitioner and that the purchase price indicated on warranty deeds and through purchase transfer affidavits, as used by respondent is an accurate indicator of value. Respondent also testified that it relies on seller's disclosure statements which indicate the property's condition. The referee referenced respondent's basing of the property's value on the cost approach which was supported by the mass appraisal method and sales study, noting that, “[t]his is the process of valuing a group of properties as of a given date, using standard methods, employing common data, and allowing for statistical testing.” The referee specifically referenced the appraisals by Mroz and the information contained in each, and ultimately concluded that petitioner's comparable sales were not reliable due to insufficient

evidence regarding condition of the property, time on the market, and due to the fact that they were bank owned and thus not arm's length transactions.

The referee made similar findings with similar citations to the hearing testimony and written evidence in each of the remaining four cases. Thus, the referee clearly relied upon the hearing testimony and documentary in determining the TCV of the subject properties and did not simply rely upon the property record cards submitted by respondent as presumptively valid. Where, as here, the properties' assessed valuations appeared in the property record cards and there was also testimony as to how the valuations were arrived at, along with expert testimony that sales of some of the potential comparables in the areas of the subject properties would have higher (and lower) valuations than those appearing on the property record cards, and the referee clearly analyzed the relevant evidence, his decisions were supported by competent, material and substantial evidence on the record.

Petitioners next claim in each of the five remaining appeals that the tribunal erred in disregarding petitioners' evidence because it included bank sales as comparables and in accepting respondent's property record card as the sole evidence to support its judgment. We disagree.

Petitioner has the burden of proof to establish the true cash value for a property before the tax tribunal. See MCL 205.737(3). The tax tribunal is required to make an independent finding of the property's true cash value rather than simply accepting a respondent's assessments. *Jones & Laughlin Steel Corp*, 193 Mich App at 355. It is not bound, however, to accept any party's theory of valuation. *Great Lakes Div of Nat'l Steep Corp*, 227 Mich App at 389. "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 cash value." *Id.* at 389–390.

The petitioner's burden of proof to establish the TCV of the property "encompasses two separate 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. *Jones & Laughlin Steel Corp*, 193 Mich App at 355. Although the tribunal still has the duty to make an independent determination of the TCV of the property, it is not precluded from dismissing a party's evidence, including the petitioner's, as irrelevant or immaterial. *Id.*, see also Mich Admin Code R 792.10255(5).

The hearing referee stated that respondent only provided the property record cards. The referee also stated, however, that the respondent indicated how the values for the properties were reached and that respondent argued that the mass market appraisal method utilized by it was more accurate because it concentrated on values within a specific neighborhood. The referee also stated that petitioner provided an appraisal of the subject properties which included three comparables but that the sales were not, in fact comparable because they were bank sales which sold for cash (except for one comparable, in one case) and they had insufficient information concerning the properties marketing times, condition and ownership. Thus the referee found that petitioner did not meet its burden.

Our Legislature defined the term "true cash value" as follows:

“[T]rue cash value” means 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. The usual selling price may include sales at public auction held by a nongovernmental agency or person if those sales have become a common method of acquisition in the jurisdiction for the class of property being valued. The usual selling price does not include sales at public auction if the sale is part of a liquidation of the seller's assets in a bankruptcy proceeding or if the seller is unable to use common marketing technique to obtain the usual selling price for the property [MCL 211.27(1).]

Notable in the above definition of “true cash value” is the exclusion of forced sales as well as sales at public auction if the seller is unable to use common marketing techniques to obtain the usual selling price for the property. The fact that these particular types of transactions are excluded suggests that in order to qualify as “the price that could be obtained for the property at private sale” the property must be subject to normal market pressures in arms-length transactions. Because the burden lies with the petitioner, it would thus be incumbent upon petitioners in these cases to establish that the bank sales it used as its comparables (and as evidence of its proposed TCV of the properties at issue) were subject to normal market pressures and were arms-length transactions. Petitioners have offered no such evidence, as stated by the hearing referee in all of the cases.

The Michigan State Tax Commission has published guidelines for the use of foreclosure sales in sales studies employed by assessing officers to figure the proper assessments of properties. In Tax Commission Bulletin No. 6, Foreclosure Guidelines, August 15, 2007, the Tax Commission indicated that all sales must be analyzed and verified to ensure they are arms-length transactions. It indicated that the appropriate verification process contains, but is not limited to:

1. A determination as to whether the type of sale being reviewed is a measurable portion of the market.
2. A determination that the sale property was properly exposed to the market. For example, by listing with a real estate company.
3. A physical inspection of the property to make a determination that the assessment reflects the condition of the property at the time of sale unless the condition can be verified by other means.
4. Receipt of a properly completed real property statement to determine the terms and conditions of the sale unless adequate alternative statistical procedures are utilized to ensure the sales are an adequate part of the market.
5. A determination that the parties to the transaction were not related and each was acting in their own best interest.

Because all but one of petitioner's comparables were bank owned sales, petitioners had to establish at least all of the above to ensure that the bank sales were arms-length transactions. They did not do so. Thus, the referee could properly find petitioners' evidence insufficient to meet its burden. The sales evidence in the record of the surrounding properties, as well as the property record cards of the subject properties were sufficient to support the tribunal's conclusions.

Finally, petitioners argue that the tribunal's use of the cost-minus-depreciation approach espoused by respondent was an error of law. They further contend that the tribunal's determination of the TCV of the property consistent with respondent's position was not supported by competent, material and substantial evidence on the record when the only evidence as to TCV offered by respondent was the record cards of the properties at issue and the record cards were deficient for purposes of employing the cost-minus-depreciation approach. We disagree.

The tax tribunal is free to utilize or reject either or both party's theory of valuation. *Nat'l Steep Corp*, 227 Mich App at 389-390. Regardless of the valuation approach employed, the final value determination must represent the usual price for which the subject property would sell. *Meadowlanes Ltd Dividend Housing Assoc*, 437 Mich at 484-485. Thus, 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. *President Inn Props, LLC*, 291 Mich App at 639.

In each of these matters the referee found that a cost minus depreciation approach was the best approach for determining the TCV of the property.¹ Under the cost minus 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. *Meadowlanes*, 437 Mich at 485, n 18.

In the present case, the hearing referee's opinions revealed that he determined to use what appears to be the cost minus depreciation approach to value the subject properties because petitioners' evidence failed to persuade him to use their suggested sales approach and no party submitted information concerning an income approach. The referee obviously found respondent's evidence, employing the cost approach, to be the most reliable. Though respondent's evidence consisted of the property record cards, the referee did hear and see evidence concerning the sales price of homes in the area and additionally saw photos of the

¹ In four out of the five cases, the referee *stated* in his Proposed Opinion and Judgment that the sales approach was the best approach, but in each of the Final Opinion and Judgments, the Tax Tribunal noted that while the referee made such statements he actually *utilized* the cost minus depreciation approach. The Tribunal thus corrected the statements in the proposed opinion and judgments, and found that the cost minus depreciation method was the proper method for determining the TCV in each case. In the fifth case (Docket No. 309205), the referee stated that the cost minus depreciation approach was the proper approach and utilized that method.

inside and outside of the subject properties. Consequently, because the cost-less-depreciation approach to valuing property is recognized and, based upon the referee's view of the evidence in this case, reasonably related to the fair market value of the property, it cannot be said that the referee adopted a wrong principle in using the cost approach to value the subject properties.

Petitioner, on whom the burden rests, did not establish that the cost less depreciation method of valuation did not lead to the most accurate determination of the taxable property's true cash value or fair market value. *President Inn Props, LLC*, 291 Mich App at 639.

Because the tax tribunal made no errors of law, adopted no wrong legal principles, and because its factual findings are supported by competent, material and substantial evidence on the whole records, we affirm the Tribunal's decisions in all of the cases, being Docket no. 309203, Docket no. 309205, Docket no. 309224, Docket no. 309296, Docket no. 309298, and Docket no. 309300.

Affirmed.

/s/ Deborah A. Servitto
/s/ David H. Sawyer
/s/ Mark T. Boonstra