

STATE OF MICHIGAN
COURT OF APPEALS

KARIM BERENJIAN and AZITA BERENJIAN,

Petitioners-Appellants,

v

CITY OF ANN ARBOR,

Respondent-Appellee.

UNPUBLISHED
November 29, 2011

No. 300490
Tax Tribunal
LC No. 00-360979

Before: M. J. KELLY, P.J., and SAAD and O'CONNELL, JJ.

PER CURIAM.

Petitioners appeal as of right the final opinion and judgment of the Michigan Tax Tribunal establishing the true cash value (TCV), state equalized value, and taxable value (TV) of petitioners' residential property for the tax year 2009. We affirm.

Review of a tax tribunal decision, in the absence of fraud, is limited to determining whether the tribunal made an error of law or adopted a wrong principle. Const 1963, art 6, § 28; *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984). This Court is bound by the tax tribunal's factual findings, provided they are supported by competent and substantial evidence. *Great Lakes Div of Nat'l Steel Corp v Ecorse*, 227 Mich App 379, 388; 576 NW2d 667 (1998).

Under the Tax Tribunal Act, MCL 205.703 *et seq.*, the Michigan Tax Tribunal has exclusive and original jurisdiction over proceedings for direct review of an agency's property tax assessment. MCL 205.731(a). The Legislature has not provided specific methods for determining TCV. See *Antisdale*, 420 Mich at 275-276. Rather, 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*, 227 Mich App at 389. Regardless of the method applied, "the value determined by the Tax Tribunal must be the usual price for which the property would sell." *Id.* at 390. The burden of proof to establish the subject property's TCV is on the petitioner. MCL 205.737(3).

Petitioners argue that because respondent relied on inaccurate information in making the original assessment, the tax tribunal should have lowered the subject property's TCV upon review. Specifically, petitioners contend that the subject property's value should have been assessed based on its 1922 build date and not the 1957 remodel. Additionally, petitioners

contend that had respondent correctly noted the presence of a septic system, the property's assessed value would have necessarily been much lower.

Petitioners' argument fails to recognize the tax tribunal's authority to "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 Grand Rapids*, ___ Mich App ___; ___ NW2d ___ (Docket No. 294452, issued February 17, 2011) slip op p 6, lv pending. Indeed, all proceedings before the tribunal are original and independent and are considered de novo. *Great Lakes*, 227 Mich App at 389. Moreover, the tribunal need not consider "every possible factor affecting value." *Id.* at 399.

The tax tribunal in this case made specific credibility determinations supported by the evidence provided by each party as to the features of the subject property. Notably, petitioners provided no evidence contradicting respondent's explanation that correct information relating to the septic system would have potentially increased the value of the subject property. Moreover, petitioners submitted no evidence as to the extent of the 1957 remodel and how this affected the subject property's value. Consequently, the tribunal concluded that respondent "credibly testified that the subject [property] has an effective age dating from a 1957 remodel and that an adjustment for a septic system is not required." Both petitioners and respondent submitted evidence during the hearing, and the tax tribunal fulfilled its statutory duty in evaluating the weight and credibility of this evidence before making its independent determination.

Petitioners further argue that respondent inaccurately assessed the selling price and market value of the subject property by failing to utilize petitioners' selected comparison property, instead relying on respondent's selected comparison property. Petitioners note that the tax tribunal itself found respondent's selected comparison property to be an outlier and assert that the selling price of the comparable property for 2010 is higher than the estimated cash value of the subject property in 2009.

Again, the tax tribunal is under no obligation to accept the valuation figures or the approach to valuation advanced by either petitioner or respondent in making its assessment. See *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992). Instead, in fulfilling its responsibility to make an independent valuation, the tax tribunal must make its own findings of facts and arrive at a legally supportable TCV. *Id.* at 355. Unlike *Jones*, where this Court remanded the matter to the tax tribunal because it had failed to make an independent determination of the property's TCV, *id.* at 356-357, the tribunal here provided thorough explanations and factual support for its legal conclusions. The tribunal determined that in offering sales-comparison evidence, petitioners made direct comparisons with their selected properties only as to features they "felt were inferior in the subject property." The tribunal observed that respondent adjusted for various other features and differences between the comparable properties and the subject property. The tribunal ultimately concluded that the "totality of the evidence" supports the original TCV assessment.

Petitioners also argue that the tax tribunal erred in failing to admit additional evidence regarding housing prices that petitioners filed with their exceptions to the proposed opinion. In support of this argument, petitioners cite *Prof Plaza, LLC v Detroit*, 250 Mich App 473; 647 NW2d 529 (2002), which indicates that a tax tribunal "should be permissive in the admission of

relevant evidence of the fair market value of property subject to an appeal, even if that evidence is not determinative.” *Id.* at 476.

Petitioners’ argument fails for two reasons. First, in *Prof Plaza*, the Court was addressing the tax tribunal’s “unexplained, perfunctory rejection” of the petitioner’s timely filed valuation disclosure form. *Prof Plaza*, 250 Mich App at 476. In the case at hand, the tax tribunal explicitly stated in its proposed opinion that any exceptions timely filed within the 20-day period would be “*limited* to the evidence submitted prior to or at the hearing.” Thereafter, petitioners provided written correspondence to the tribunal objecting to the proposed opinion, but untimely filed their official exceptions on May 3, 2010, presenting evidence of the 2010 sale price of respondent’s selected comparison property. Unlike *Prof Plaza*, the tribunal in this case did explain the reasons for rejecting petitioners’ evidence and appropriately rejected admission of the new evidence filed with petitioners’ untimely exceptions.

Second, even if the tax tribunal had considered the additional evidence, petitioners ultimately failed to meet their burden of proof and provide evidence relevant to the determination of the TCV. Under the sales-comparison approach, although the selling price of a particular piece of property is relevant, this selling price is “not conclusive as evidence of the value of that piece of property.” *Antisdale*, 420 Mich at 278; see also *Samonek v Norvell Twp*, 208 Mich App 80, 85; 527 NW2d 24 (1994). Petitioners refer to evidence of the decreased selling price of respondent’s selected comparison property, as well as an online business article that discusses the fall in the area’s housing prices. Petitioners have merely provided evidence illustrating a change in the area’s housing prices during the months following the tax year at issue. They have failed to provide affirmative evidence as to the subject property’s market value during tax year 2009.

Under the Tax Tribunal Act, the tribunal “may modify the proposed order and issue a final order or hold a rehearing” MCL 205.762(2). In that case, the “rehearing is not limited to the evidence presented before the hearing officer or referee.” *Id.* However, a petitioner filing exceptions to a proposed opinion has not been granted a rehearing and, therefore, this statutory language does not apply. Consequently, the tribunal is not barred from preventing the admission of additional evidence filed with a party’s exceptions to a proposed opinion issued after a hearing.

Petitioners also argue that respondent’s intentional over-assessment of the subject property’s value amounted to fraud. We disagree. For an agency’s property assessment to be fraudulent, it must be the result of an intentional over-assessment or based on plainly incorrect facts. *Helin v Grosse Pointe Twp*, 329 Mich 396, 407; 45 NW2d 338 (1951). Courts recognize, however, that “the determination of true cash value is not an exact science” and cannot be obtained with “mathematical exactitude.” *Great Lakes*, 227 Mich App at 398; *Conroy v Battle Creek*, 314 Mich 210, 219; 22 NW2d 275 (1946).

Petitioners’ argument fails to recognize that a single property feature, in itself, is not determinative in assessing the TCV of the property. The General Property Tax Act, MCL 211.1 *et seq.*, provides that when determining the TCV of a residential property, an assessor shall consider several factors including, but not limited to, the advantages and disadvantages of location, as well as water and power privileges. MCL 211.27(1). Conversely, the assessor shall

not consider an increase in the TCV that is a result of expenditures for normal repairs, replacement, and maintenance until the property is sold. MCL 211.27(2).

As the tax tribunal concluded, respondent credibly testified as to the effective age of the property and appropriately decided not to adjust for the presence of a septic field because of its potential to raise, not lower, the property's ultimate value. Importantly, petitioners failed to provide any evidence as to the extent of the 1957 remodel in order to dispute the increase in the property's value and failed to provide evidence to dispute respondent's decision not to adjust for a septic system. Again, petitioners have the burden of proof to establish the TCV of the subject property. Respondent's assessment does not amount to fraud as an intentional over-assessment simply because petitioners disagree with the final valuation.

Petitioners also dispute the assessment and TV of the subject property. These arguments rely on the validity of respondent's TCV assessment, which has been shown to be supported by substantial and competent evidence. Consequently, because the TCV has been legitimately assessed, there is no error regarding the ultimate assessment of the subject property or its TV.

Affirmed.

/s/ Michael J. Kelly
/s/ Henry William Saad
/s/ Peter D. O'Connell