State of Michigan
Department of Licensing and Regulatory Affairs
Michigan Administrative Hearing System
Michigan Tax Tribunal
Small Claims Division

Daniel Patru,
Petitioner,

v

City of Wayne,
Respondent

MTT Docket No. 16-001828

Motion to Reconsider
Proof of Service

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ChkN: 4605 Amt: $25.00
ID: DANIEL PATRU

Motion to Reconsider

The Tribunal in its Final Opinion has accepted erroneous legal reasoning to reach a wrong result. Furthermore, it has refused to consider late-submitted evidence which would have helped it reach the right result, even though Respondent has not objected to it. I ask this Tribunal to reconsider and fulfill its duty to make a good-faith, independent determination of the true cash value of Petitioner's property.

Facts

The following undisputed facts were shown with written documentation and sworn testimony:

1. Petitioner's property sold for $32,000 on 8/19/2015, more than two years after first being put on the market. (MLS history sheet for 5073 Winifred)
2. Respondent required Petitioner to make repairs to the property after the sale. (page 3 of the Proposed Opinion)
3. By tax day, 12/31/2016, Petitioner had repaired the property and had received a certificate of occupancy from Respondent. (page 3 of the Proposed Opinion)
4. Per the Proposed Opinion, the property was worth about $50,400 on tax day. (page 6 of the Proposed Opinion)
5. Petitioner presented sworn oral testimony at the hearing that repairs fell within MCL 211.27(2). (page 3 of the Proposed Opinion) Petitioner provided additional

written documentation that the repairs fell within MCL 211.27(2). (Page 4 and the spreadsheet of Exceptions to the Proposed Opinion)

6. The Proposed Opinion said that the repairs were not covered under MCL 211.27(2) because they were done on property that was in substandard condition and were required by Respondent. (page 6 of the Proposed Opinion)
7. The Final Opinion adopts the Proposed Opinion.

Issue

The issue in this case is whether the repairs fall under MCL 211.27(2). If they do, the true cash value of the property would be its value before the repairs. If the repairs do not fall under MCL 211.27(2), the true cash value of the property would be its value after the repairs.

Law

MCL 211.27(2), reads:

> (2) The assessor shall not consider the increase in true cash value that is a result of expenditures for normal repairs, replacement, and maintenance in determining the true cash value of property for assessment purposes until the property is sold. For the purpose of implementing this subsection, the assessor shall not increase the construction quality classification or reduce the effective age for depreciation purposes, except if the appraisal of the property was erroneous before nonconsideration of the normal repair, replacement, or maintenance, and shall not assign an economic condition factor to the property that differs from the economic condition factor assigned to similar properties as defined by appraisal procedures applied in the jurisdiction. The increase in value attributable to the items included in subdivisions (a) to (o) that is known to the assessor and excluded from true cash value shall be indicated on the assessment roll. This subsection applies only to residential property. The following repairs are considered normal maintenance if they are not part of a structural addition or completion:
> (a) Outside painting. (b) Repairing or replacing siding, roof, porches, steps, sidewalks, or drives. (c) Repainting, repairing, or replacing existing masonry. (d) Replacing awnings. (e) Adding or replacing gutters and downspouts. (f) Replacing storm windows or doors. (g) Insulating or weatherstripping. (h) Complete rewiring. (i) Replacing plumbing and light fixtures. (j) Replacing a furnace with a new furnace of the same type or replacing an oil or gas burner. (k) Repairing plaster, inside painting, or other redecorating. (l) New ceiling, wall, or floor surfacing. (m) Removing partitions to enlarge rooms. (n) Replacing an automatic hot water heater. (o) Replacing dated interior woodwork.

Discussion

The Conclusions of Law of the Proposed Opinion, expressly adopted by the Final Opinion on page 2, are based on a wrong principle of law. The Proposed Opinion rules that the repairs do not fall under MCL 211.27(2) because 1) they were done on property that was in substandard condition and 2) they were required by the Respondent. (page 6 of the Proposed Opinion) These are not the statutory criteria. MCL 211.27(2) covers all "normal repairs, replacement, and maintenance" and explicitly includes 15 categories of repairs including replacing the roof, siding, concrete drive, and other expensive items that are normally not replaced unless the property is substandard in these areas. The rule adopted by the Tribunal, that repairs to a substandard property and repairs required by the city are not normal repairs, would gut the statute by including only repairs that are not needed.

The Final Opinion also errs in failing in its duty to make an independent determination of the property's true cash value. On page 1, the Final Opinion says that "the Tribunal is not persuaded that [the property's] substandard condition necessarily renders all subsequent improvements outside the scope of normal repairs and maintenance as indicated by the Referee" but that it will not consider any additional evidence except what was submitted 21 days prior to the hearing.

When more evidence is necessary to resolve an issue, this Tribunal must make an effort to get that evidence. The Michigan Court of Appeals in *Jones & Laughlin Steel Corporation v. City of Warren*, 193 Mich App 348 (1992), 483 NW2nd 416, has stated that this Tribunal has a duty to make "an Independent assessment of true cash value." (page 350) In that case, the Tribunal had concluded that the Petitioner had not met its burden of proving its case and had ruled for the Respondent without resolving all the relevant legal issues. The Court of Appeals reversed and directed the Tribunal to consider all the relevant issues and if necessary to "reopen proofs in order to resolve these issues." (page 357).

Similarly in *Fisher v. Sunfield Township*, 163 Mich App 735 (1987), 415 NW2nd 297, where petitioners had not presented enough evidence to conclusively resolve whether repairs were normal under 211.27(2), the Michigan Court of Appeals ruled that that "[p]etitioners shall be afforded further opportunity to submit proofs." (page 743)

As in *Jones* and *Fisher*, the Tribunal in this case has not determined all the relevant legal issues based on evidence. Rather, the Tribunal has refused to consider additional evidence because it was not submitted 21 days before the hearing. Under the rules in *Jones* and *Fisher*, this Tribunal must afford Petitioner opportunity to present the additional proofs needed to make an independent determination of whether the repairs were covered by MCL 211.27(2).

Ultimately the Tribunal must decide if it needs a new hearing to resolve the MCL 211.27(2) issue, but Petitioner believes that enough evidence has already been presented. Petitioner testified under oath at the hearing that the repairs were normal repairs that fall under the statute. In the Exceptions, Petitioner submitted an itemized list of the repairs with specific references to the subsections of the statute and a list published by Respondent (City of Wayne City Certification Guideline) which names all of the repairs except one as "most commonly required" by the city. (The repair not mentioned is replacement of broken window screens.)

Respondent has had opportunities to respond to Petitioner's evidence both at the hearing and following the Exceptions. Rather than contradict Petitioner on the type of repairs, Respondent and the Proposed Opinion have focused on the substandard condition of the house before the repairs were made. As mentioned above, the standard used by the Proposed Opinion would qualify only unnecessary repairs because a house that needs a repair is substandard in that respect. For example, a house that needs a new roof ($3500) is worth less by at least this amount than a house that already has a new roof. To not qualify the repairs just because the house needed them would gut the statute.

In contrast to the approach taken by the Proposed Opinion, the statute uses the qualifier "normal" on the repair, not the house. In *Fisher*, the court commented on repairs that were "far in excess of normal repairs. . . . the old porch was extremely narrow, of wood construction and without stairs. The porch following its improvement has been widened and restyled and brick stairs of a highly attractive design of superior quality have been installed." (page 742).

Rather than being "far in excess of normal repairs" the repairs in this case are just normal. New structures have not been added. Repairs have been done to bring the property back to good condition (roof, sidewalk leveling, painting, replace broken window glass, etc.) or to update to current codes (electrical). Most of the repairs were required by the city when it conducted its standard presale inspection to prevent blight.

Also, other homes in the area have also had similar repairs. Evidence of this is not hard to find. Of the five comparable homes selected by Respondent as being representative of and similar to Petitioner's home, three have experienced similar increases in value. Had the repairs necessary to bring up the value of the property been truly not normal or uncommon, it should not have been possible to find three examples among the very properties selected by Respondent as representing its best case.

	Value Before Repairs	Value After Repairs
4534 Niagara (Comp 2)	$20,500 (2010)	$49,750 (2015)
4462 Mildred (Comp 3)	$21,287 (2012)	$57,000 (2015)
3841 Mildred (Comp 4)	$30,000 (2008)	$65,000 (2015)
5073 Winifred (Petitioner's home)	$32,000 (2016)	$50,400 (per Proposed Opinion)

For the above reasons, Petitioner respectfully asks this Tribunal to reconsider its Final Opinion. If the Tribunal needs more evidence, Petitioner stands ready to provide it.

Proof of Service

I certify that on 2/16/2017 I served a copy of these Exceptions upon Defendant by first class mail to:

City of Wayne, Assessments, Attn. Tony Hobyak
3355 South Wayne Road
Wayne, MI 48184

Respectfully submitted,

Daniel Patru

Daniel Patru, P74387

163 Mich. App. 735 (1987)
415 N.W.2d 297

FISHER
v.
SUNFIELD TOWNSHIP

Docket No. 94592.

Michigan Court of Appeals.

Decided October 19, 1987.

Reid, Reid, Perry, Lasky, Hollander & Chalmers, P.C. (by *Michael H. Perry*), for petitioners.

Bauckham, Reed, Lang, Sparks, Rolfe & Thomsen, P.C. (by *Linda E. Thompson*), for respondent.

Before: CYNAR, P.J., and WEAVER and J.H. HAUSNER,[*] JJ.

CYNAR, P.J.

Petitioners appeal as of right from an August 4, 1986, decision of the Michigan Tax Tribunal.

737 *737 Although the testimony at the Tax Tribunal hearing was not transcribed, the facts are not in material dispute. Petitioners' home was built in 1865. The entire parcel of property contains 9.98 acres, outbuildings, a house, and a well and septic system. The property has been in Mrs. Fisher's family since 1855. Originally, the property was a Centennial farm.

After Sandra's grandmother left the home, petitioners began to restore it. The total cost of restoration amounted to $49,700 and included the following items: (1) outside painting of the home; (2) repairing or replacing siding; (3) repairing or replacing the roof; (4) repairing or replacing the porch; (5) repainting, repairing or replacing the existing masonry; (6) adding or replacing gutters or downspouts; (7) replacing storm windows and doors; (8) installing insulation and weather stripping; (9) rewiring; (10) replacing plumbing fixtures; (11) replacing light fixtures (included in rewiring); (12) replacing the furnace; (13) painting the interior; (14) installing cabinets; (15) replacing the inside ceilings and walls; (16) replacing the floor surfaces; (17) removing partitions; (18) replacing the water heater (included in replacement of plumbing fixtures); and (19) replacing dated interior woodwork. Petitioners also added more living space, the assessed value of which is not in dispute.

The Fishers submitted a request for nonconsideration of normal repair and maintenance expenditures pursuant to the home improvement act, MCL 211.27; MSA 7.27, for the 1983 tax year. The form signed by Mr. Fisher itemized the costs of the repairs totalling $49,700 as expenditures which were not part of the structural addition. The form assessed the estimated value of the home after repair and maintenance as
738 $32,750, before repair *738 and maintenance as $10,000, and the value of repair and maintenance for nonconsideration came to $6,550.

In response to the Fishers' request for nonconsideration, the township gave petitioners a credit of $6,550 for the cost of the new roof, siding and windows. For 1984, respondent increased this credit to $9,000. The township rejected the remainder of petitioners' expenditures on the basis that they were not for improvements which would constitute "normal maintenance" within the meaning of the act because those additional

improvements changed the character of the property and greatly extended its useful life. The respondent argues that the remainder of the improvements constitute a betterment of the property.

The 1983 assessment was based upon a cash value of $46,950. The 1984 assessment was based upon a cash value of $56,750. Petitioners maintained that the entire cost of repairs amounting to $49,700 should be excluded from consideration in the 1983 and 1984 determination of the true cash value of the property.

Subsequently on March 15, 1983, petitioners appealed the 1983 and 1984 tax assessments to the township board of review. The board ruled against petitioners and upheld the assessments.

Thereafter, the Fishers filed in the Tax Tribunal a petition for review of the board's decision. A hearing referee in the Tax Tribunal's Small Claims Division affirmed the board's decision which had established an assessed value of $23,475 for 1983 and $28,375 for 1984.

Following a rehearing, the Tax Tribunal ordered that the judgment of the hearing referee entered November 28, 1984, be vacated and dismissed the cause. The Tax Tribunal determined that the value of the
739 improvements listed in the act, rather *739 than the actual expenditures for the improvements, should be used for nonconsideration in figuring the true cash value of the property. The Tax Tribunal concluded that the Fishers had failed to meet their burden of proving how much the value of the property had been enhanced. From this decision, petitioners appeal.

Petitioners claim that the Tax Tribunal's decision should be reversed because the Tax Tribunal had adopted a wrong principle in its construction of the language of the act, the Tax Tribunal's decision was contrary to the act's common-law meaning, and the Tax Tribunal's decision was not supported by competent, material and substantial evidence.

In their first ground for error, petitioners maintain that the Tax Tribunal adopted a wrong principle and committed a legal error when it relied upon matters outside of the act and interpreted provisions of the act contrary to their clear, definite and easily understood meaning.

MCL 211.27(2); MSA 7.27(2) provides:

> (2) The assessor, beginning December 31, 1976, *shall not consider expenditures for normal repairs, replacement, and maintenance in determining the true cash value of property for assessment purposes until the property is sold. Value attributable to the items included in subdivisions (a) to (o) which is known to the assessor and excluded from true cash value shall be indicated on the assessment roll.* This subsection shall apply only to residential property. The following repairs shall be considered normal maintenance if they are not part of a structural addition or completion:

(a) Outside painting.

(b) Repairing or replacing siding, roof, porches, steps, sidewalks, and drives.

(c) Repainting, repairing, or replacing existing masonry.

740 *740 (d) Replacement of awnings.

(e) Adding or replacing gutters and downspouts.

(f) Replacing storm windows or doors.

(g) Insulation or weatherstripping.

(h) Complete rewiring.

(i) Replacing plumbing and light fixtures.

(j) New furnace replacing a furnace of the same type or replacing oil or gas burner.

(k) Plaster repairs, inside painting, or other redecorating.

(l) New ceiling, wall, or floor surfacing.

(m) Removing partitions to enlarge rooms.

(n) Replacing automatic hot water heater.

(o) Replacing dated interior woodwork. [Emphasis added.]

The emphasized portion of the statute is in dispute. Petitioners argue that, in accordance with the plain language of the statute, the actual expenditures should be utilized for nonconsideration in determining the true cash value. Respondent contends that it is the contribution to the total cash value of the property which is to be excluded.

We agree with petitioners' construction of the statute. The rules of statutory construction were concisely set forth in *Nicholas v Michigan State Employees Retirement Bd*, 144 Mich App 70, 74; 372 NW2d 685 (1985):

> (1) [W]hen a statute is unambiguous, further construction is to be avoided; (2) if an ambiguity exists, the intent of the Legislature must be given effect; (3) a construction which best accomplishes the statute's purpose is favored; (4) statutes are to be interpreted as a whole and construed so as to give effect to each provision; (5) specific words in a statute are given their ordinary meaning unless a different interpretation is indicated; and (6) respectful consideration is to be given to the construction of a statute used by those charged with its application.

741 *741 See also *Latham v Wedeking*, 162 Mich App 9; 412 NW2d 225 (1987).

This Court's review of Tax Tribunal decisions, in the absence of fraud, is limited to whether the Tax Tribunal made an error of law or adopted a wrong principle. The Court accepts the factual findings of the Tax Tribunal as final, provided they are supported by competent, material and substantial evidence. Const 1963, art 6, § 28; *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Xerox Corp v Oakland Co*, 157 Mich App 640, 647; 403 NW2d 188 (1987).

We conclude that there is no ambiguity in the statute. The first sentence states that the assessor "shall not consider *expenditures for normal repairs, replacement, and maintenance* in determining true cash value of property for assessment purposes until the property is sold." The very next sentence uses the phrase "[v]alue attributable to the items included in subdivisions (a) to (o)." We do not agree with respondent's contention that the language "value attributable" is different from the word "expenditures" in the sense that they do not describe the *actual value* or total amount (including materials and labor) spent by a taxpayer on repairs, replacements and maintenance of his home. We conclude that the use of the phrase "value attributable" simply refers to "expenditures" and does not constitute a separate meaning therefrom.[1] Had the Legislature
742 intended the result argued by respondent, it would have kept the *742 pre-1978 language. Since such an

amount was deleted, we are inclined to believe that the Legislature intended the actual amount expended to be included for purposes of nonconsideration in assessing the true cash value of residential property.

While we find that the Tax Tribunal made an error of law in construing the first two sentences of MCL 211.27(2); MSA 7.27(2), we find that the Tax Tribunal's interpretation of what constitutes "normal repairs, replacement, and maintenance" as listed in the statute to be supported by competent, material and substantial evidence.

We do not agree with petitioners' position that, because they submitted proof of expenditures for work done on the farmhouse, this work constituted normal repairs, replacement, and maintenance, even though their bill listed the very same items as found in subsections (2)(a) to (o) of MCL 211.27; MSA 7.27.

We think that some of petitioners' repairs were far in excess of normal repairs. Based on the photographs submitted, petitioners took an old dilapidated farmhouse, which may have been of average quality and design in its day, and completely changed its external and internal appearance into a higher quality modern residence. For example, as observed by the Tax Tribunal, the old porch was extremely narrow, of wood construction, and without stairs. The porch following its improvement has been widened and restyled and brick stairs of a highly attractive design of superior quality have been installed.

The board of review and the referee refused to allow petitioners credit for the repairs to their home other than the value of repair or replacement of the roof, siding and windows. The Tax Tribunal refused to give credit for
743 anything. The *743 reasonable value of all of the repairs, replacement or maintenance conducted by petitioners should have been utilized for nonconsideration in determining true cash value.

Further, we are not convinced from the record presented that petitioners submitted sufficient proofs showing that these expenditures were reasonable and normal, rather than constituting a betterment. We remand to the Tax Tribunal for a rehearing. Petitioners shall be afforded further opportunity to submit proofs.

Accordingly, we reverse and remand the case to the Tax Tribunal for rehearing not inconsistent with our opinion.

[*] Circuit judge, sitting on the Court of Appeals by assignment.

[1] This conclusion is supported by the fact that a 1978 amendment rewrote this section, which prior thereto read:

The assessor, beginning December 31, 1976, shall not consider expenditures for normal repairs and maintenance in determining the true cash value of property for assessment purposes. *In no event shall the amount excluded exceed $4,000.00 each year for not to exceed 3 consecutive years.* [1976 PA 293.]

JONES & LAUGHLIN STEEL CORPORATION
v.
CITY OF WARREN

Docket No. 119309.

Michigan Court of Appeals.

Decided January 10, 1992.
Approved for publication March 25, 1992, at 9:15 A.M.

Bodman, Longley & Dahling (by *John C. Cashen*), for Jones & Laughlin Steel Corporation.

W. Thomas Marrocco, Jr., for City of Warren.

Clark, Hardy, Lewis, Pollard & Page, P.C. (by *Neil H. Goodman*), for Fitzgerald Public Schools.

Before: MARILYN KELLY, P.J., and WAHLS and FITZGERALD, JJ.

PER CURIAM.

Petitioner Jones & Laughlin Steel Corporation appeals as of right from a judgment of the Michigan Tax Tribunal that dismissed petitioner's *350 appeal concerning the true cash value and lawful assessed value for tax year 1983 of personal property located at its facility in the City of Warren. We reverse and remand this case to the Tax Tribunal for further findings of fact and an independent assessment of true cash value.

The relevant tax date was December 31, 1982. Petitioner's personal property was originally assigned an assessed value on the roll for tax year 1983 of $4,933,100. Petitioner unsuccessfully protested the assessment to the local board of review and then sought review by the Tax Tribunal. After the tribunal ordered a continuance following bankruptcy proceedings involving petitioner, a hearing was held in April 1988. The parties stipulated to the value of the real property at the Warren facility and submitted proofs with respect to the value of the personal property. The main point of disagreement concerned the facility's blooming mill and billet mill, which together represented a substantial portion, if not most, of the total value of the personal property.[1]

Petitioner's proofs showed that the use of blooming and billet mills in steel production was no longer the most cost-advantageous method and that there is increasing use of the more efficient continuous-casting method of fabricating steel. Furthermore, 1982 was a difficult year for the steel industry, and in the last quarter of 1982 petitioner was operating at forty-six percent of capacity and sustaining a monthly loss of approximately $1 million. In November 1982, petitioner purchased an idle continuous-casting facility in Pennsylvania and made plans to sell or close the *351 Warren facility. Efforts to sell the Warren facility began and operations there ceased in May 1983. The facility was purchased in September 1983 by Youngstown Industrial, a machinery dealer and real estate developer, which hoped to find a

buyer who would use the facility for steel production, or, failing that, planned to demolish the facility and redevelop the land. Youngstown Industrial paid petitioner $1,001,000 for the facility's equipment, including the mills. According to a Youngstown employee, prospective buyers did not desire the entire facility because it was obsolete. Although Youngstown was able to sell a portion of the blooming mill for $30,000, the remainder of the blooming mill and the billet mill were eventually sold as scrap. Gross proceeds from all equipment and scrap sales totaled $420,000. Petitioner's proofs also included an appraisal, prepared in anticipation of the sale of the facility, that valued the blooming and billet mills together at $500,000. According to the appraiser, his research found only two comparable sales of blooming mills. These mills had sold for approximately twice their scrap value. Petitioner argued that true cash value was shown by the sale price of its equipment to Youngstown, plus original cost-less-depreciation estimates of other property not included in the Youngstown sale but owned or leased by petitioner on the tax date. Petitioner's estimate of true cash value was $2,331,866.

The respondent city's proofs were based on an application of the original cost multipliers found in the Tax Assessor's Manual to petitioner's equipment. According to the city's application of the assessor's manual, the true cash value of petitioner's personal property, including the mills, on December 31, 1982, was $9,466,000. This figure was based on the use of the long-life, in-use table *352 of multipliers. Petitioner argued that the correct long-life multiplier to use for the mills was that applicable to surplus equipment, which, according to petitioner's calculations, would have resulted in a total true cash value of $3,118,800. Another estimate of true cash value submitted by the respondent school district, which was greater than the city's estimate, was rejected by the Tax Tribunal on the ground that it did not adequately account for the depreciation and obsolescence of the blooming mill.

The Tax Tribunal held that petitioner did not present sufficient evidence to allow it to make an independent determination of true cash value and that petitioner therefore had failed to meet its burden of proof. The tribunal also held that, because there was no evidence that the blooming mill was not in use on the tax date, the city's use of the in-use multiplier, rather than the surplus multiplier, in its assessment was proper. The tribunal then accepted the city's true cash value estimate of $9,466,000 and assessment of $4,773,000, apparently for the reason that petitioner had not met its burden of proof. This appeal followed.

This Court's review of a decision of the Tax Tribunal is limited. When fraud is not alleged, we ask whether the Tax Tribunal committed an error of law or adopted a wrong principle. Const 1963, art 6, § 28; *William Mueller & Sons, Inc v Dep't of Treasury,* 189 Mich. App. 570, 572; 473 NW2d 783 (1991). We will accept the tribunal's factual findings as final, provided they are supported by competent, material, and substantial evidence. *Antisdale v City of Galesburg,* 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Dep't of Treasury,* 185 Mich. App. 458, 462-463; 462 NW2d 765 (1990). Substantial evidence must be more *353 than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence. *Id.* at 463; *Russo v Dep't of Licensing & Regulation,* 119 Mich. App. 624, 631; 326 NW2d 583 (1982).

The Tax Tribunal is under a duty to apply its expertise to the facts of a case to determine the appropriate method of arriving at the true cash value of property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale, supra* at 277; *Teledyne Continental Motors v Muskegon Twp,* 163 Mich. App. 188, 193; 413 NW2d 700

(1987). True cash value is synonymous with fair market value. MCL 211.27; MSA 7.27. Regardless of the approach selected, the value determined must represent the usual price for which the subject property would sell. *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland,* 437 Mich 473, 485; 473 NW2d 636 (1991). The three most common approaches to valuation are the capitalization-of-income approach, the sales-comparison or market approach, and the cost-less-depreciation approach. *Id.* at 484-485. Only the latter two methods were applied in the present case. The burden of proof was on petitioner to establish the true cash value of the property. MCL 205.737(3); MSA 7.650(37)(3).

The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading. *Antisdale, supra* at 277-278, n 1; *Teledyne Continental Motors, supra* at 193. Petitioner's proofs regarding the $1,001,000 sale of its equipment to Youngstown Industrial was intended to show the relatively small value the marketplace put on aging steelmaking equipment, including the mills. The Tax Tribunal, however, erred as a matter of law in its treatment of petitioner's evidence regarding *354 the sale. The tribunal held: "A sale that occurs *after* the tax date has little or no bearing on the assessment made prior to the sale." (Emphasis in original.)

We disagree. Unlike some situations involving assessments of industrial property for which no ready market exists and a hypothetical buyer must be posited,[2] in this case the equipment was actually sold in a commercial transaction, albeit after the tax date. We believe that evidence of the price at which an item of property actually sold is most certainly relevant evidence of its value at an earlier time within the meaning of the term "relevant evidence." MRE 401. Although the sale to Youngstown Industrial occurred approximately nine months after the tax date, the lapse in time is important only with respect to the weight that should be given the evidence, not to the relevance of the evidence. While the tribunal correctly noted that the sale price of a particular piece of property does not control its determination of the value of that property, *Antisdale, supra* at 278, the tribunal's opinion that the evidence "has little *or no* bearing" on the property's earlier value suggests that the evidence was rejected out of hand. Such cursory rejection would be erroneous.

The tribunal further erred in failing to make an independent determination of the true cash value of the property. The tribunal apparently believed that no such determination was necessary after it concluded that petitioner had failed to meet its burden of proof and dismissed petitioner's appeal. The tribunal correctly noted that the burden of proof was on petitioner, MCL 205.737(3); MSA 7.650(37)(3). This burden encompasses two separate *355 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. *Kar v Hogan,* 399 Mich 529, 539-540; 251 NW2d 77 (1976); *Holy Spirit Ass'n For the Unification of World Christianity v Dep't of Treasury,* 131 Mich. App. 743, 752; 347 NW2d 707 (1984). The tribunal's decision, however, seems analogous to the entry of a directed verdict upon the failure of a plaintiff's proofs. To the extent this analogy may be accurate in this case, the entry of judgment against petitioner for its failure to provide sufficient evidence was erroneous because, while petitioner may not have met its burden of persuasion, it did meet its burden of going forward with evidence.

Even 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. The tribunal may not automatically accept a respondent's assessment, but must make its own findings of fact and arrive at a legally supportable true cash value. *Pinelake Housing Cooperative v Ann Arbor,* 159 Mich. App. 208, 220; 406 NW2d 832 (1987); *Consolidated Aluminum Corp v Richmond Twp,* 88 Mich. App. 229, 232-233; 276 NW2d 566 (1979). In this case, the tribunal did consider whether the in-use multiplier or the surplus multiplier should have been used in respondent's costless-depreciation assessment,[3] but then simply accepted respondent's assessment without discussing why the assessment reflected the true cash value *356 of the property. On remand, the tribunal shall make an independent determination of true cash value. We note that the tribunal is not bound to accept either of 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. *Meadowlanes Ltd Dividend Housing Ass'n, supra* at 485-486; *Wolverine Tower Associates v Ann Arbor,* 96 Mich App 780; 293 NW2d 669 (1980).

We also hold that the Tax Tribunal's factual finding that the mills were only partially obsolete was supported by the evidence. Although petitioner continually implied on appeal that the tribunal found that the mills were totally obsolete, a review of the tribunal's decision shows that it found the mills to be only partially obsolete. However, the tribunal made no findings with regard to the extent of the obsolescence of the mills, a major point of contention below. On remand, the tribunal is instructed to find the extent to which the mills have suffered both functional and economic obsolescence. See *Fisher-New Center Co v Tax Comm,* 380 Mich 340, 362; 157 NW2d 271 (1968); *Teledyne Continental Motors v Muskegon Twp,* 145 Mich. App. 749, 754-755; 378 NW2d 590 (1985). The tribunal is also instructed to find the extent to which the assessor's manual adequately accounts for any obsolescence that may be found. We note that the record shows that the multiplier table for long-lived, in-use equipment, upon which the city's assessment was based, does not account for depreciation or obsolescence beyond a life of fifteen years. Put another way, the assessor's manual apparently would allow equal amounts of depreciation and obsolescence for an assessment of a thirty-two-year-old blooming mill and a nineteenth-century *357 traction engine that remained in use. Finally, the tribunal is instructed to consider separately the true cash values of the blooming mill and the billet mill. If the tribunal believes it to be necessary, it may reopen proofs in order to resolve these issues.

Reversed and remanded to the Tax Tribunal. We do not retain jurisdiction.

NOTES

[1] Although petitioner makes occasional references on appeal to the valuation of other equipment, that equipment is not identified and petitioner's argument seems solely concerned with the blooming mill and the billet mill. Our discussion will therefore be likewise limited.

[2] See, e.g., *Teledyne Continental Motors v Muskegon Twp,* 163 Mich. App. 188, 192-193; 413 NW2d 700 (1987), and *Clark Equipment Co v Leoni Twp,* 113 Mich. App. 778, 785; 318 NW2d 586 (1982).

[3] We agree with the Tax Tribunal that the city's use of the in-use multiplier was correct. Although petitioner may have been in the process of abandoning the Warren facility on the tax

date, we do not believe that petitioner has shown the concurrent requirement that the property had been declared as surplus as the word "surplus" is commonly understood.

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INSURE
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