

STATE OF MICHIGAN
IN THE MICHIGAN COURT OF APPEALS

DANIEL PATRU,

Petitioner/Appellant,

vs

COA Case No. 346894
MTT Docket No. 16-001828-TT

CITY OF WAYNE,

Respondent/Appellee.

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APPELLEE CITY OF WAYNE'S BRIEF ON APPEAL

ORAL ARGUMENT **NOT** REQUESTED

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STATEMENT OF JURISDICTION

Respondent/Appellee does not dispute this Court's jurisdiction pursuant to MCR 7.203(A)(2), MCL 205.753(1) or the timeliness of this appeal under MCR 7.204(A)(1)(b) in this matter.

COUNTER-STATEMENT OF ISSUES INVOLVED

I. WHETHER, AS DETERMINED BY THE MICHIGAN TAX TRIBUNAL, THE APPELLANT FAILED TO SATISFY HIS BURDEN OF PROOF CONCERNING THE TRUE CASH VALUE OF THE PROPERTY

Appellee Answers: YES.

Appellant Answers: NO.

The MTT Answers: YES.

II. WHETHER, AS DETERMINED BY THE MICHIGAN TAX TRIBUNAL, THE TRIBUNAL PROPERLY APPLIED THE COST LESS DEPRECIATION APPROACH AND SALES COMPARABLES IN DETERMINING TRUE CASH VALUE, AND ITS DETERMINATION SHOULD BE AFFIRMED.

Appellee Answers: YES.

Appellant Answers: NO.

The MTT Answers: YES.

COUNTER-STATEMENT OF FACTS

Appellant/Petitioner protested the subject property's assessment to the March 2016 Board of Review. Appellant filed his Petition with the Tribunal on May 31, 2016, and Appellee/Respondent filed its Answer on July 11, 2016. After a prior decision and appeal to this Court (Docket No. 337547), a hearing was held on October 18, 2018, and on December 4, 2018, a decision of the Tribunal found that Respondent's 2016 assessment was not based on Petitioner's normal repairs to the subject property; and further concluded that Petitioner purchase price was to be given no weight or credibility. The Tribunal adopted the Assessor's TCV for the subject property. A Motion for Reconsideration was filed by Petitioner on December 5, 2018, and an Order Denying Reconsideration was issued by the Tribunal on December 14, 2018. A Claim of Appeal was filed with this Court on December 18, 2018.

Appellant is contesting the true cash value (TCV) of the subject property, alleging that his purchase price of \$32,000 is the TCV, with an SEV of \$16,000. Appellant acknowledges that he does not dispute the house is worth the assessed TCV of \$50,400 on tax day December 31, 2015. (See Appellant's Brief, p. 4).

Appellee provided five comparable sales that support the assessment, all of which were arm's lengths transactions, with only one adjustment, if any, made per comparable. Appellee noted to the MTT and reiterates to this Honorable Court that the subject property was a HUD home, listed only by electronic means. Appellee's property record card indicates that Appellee believes the TCV of the subject property to be \$48,000 before Appellant purchased the property. Accordingly, Appellee's TCV of \$50,400 and SEV of \$25,200, as determined by its cost-less-depreciation approach and sales comparables properly determined the TCV of the property.

A hearing before an MTT Hearing Officer was held on October 18, 2018, with Appellant and Appellee's representatives present. On December 4, 2018, the MTT Presiding Judge signed a written, "Proposed Opinion and Judgment", which held, in pertinent part, as follows:

- 1) Petitioner's property assessment did not change by virtue of the repairs Petitioner made. The assessment for 2016 changed based on the sale transaction of August 2015;
- 2) The Assessor's determination of the subject's average condition was made as of December 31, 2015;
- 3) Petitioner did not contend that his purchase of the subject property was an arm's length sale transaction. Petitioner's purchase price is not the presumptive determination of market value.
- 4) The following conclusions of law by the Tribunal are well reasoned:

... Therefore, Petitioner's contentions related to his purchase price and "normal" repairs are given no weight or credibility in the determination of market value for the subject property.

* * *

... Respondent's sales adjustment grid does not include a line-item entry for repairs. This comparative analysis is devoid of any relationship to Petitioner's "normal" repairs to subject property which occurred before the issuance of a certificate of occupancy and the December 31, 2015 tax day. ... Respondent's sales comparison approach is the most reliable and credible valuation evidence which also supports the assessment and 2016 uncapping of the subject property.

(Exhibit 1, Final Opinion and Judgment, p. 6).

The Appellant then filed a Motion for Reconsideration of this Judgment. On December 14, 2018, the MTT issued an Order Denying Petitioner's Motion for Reconsideration, which stated, in pertinent part:

To begin, there is nothing in MCL 211.27(2) requiring "before repair" and "after repair" appraisals when determining whether an assessment includes the true cash value of the normal repairs.

... This is supported by the fact that the property record card indicates that Respondent believed the true cash value of the subject to be \$48,000 *before Petitioner purchased the property* and \$50,400 as of December 31, 2015, after the repairs were complete. An increase of \$2,400 in true cash value (5%) is easily attributable to inflation and increases in the market. In addition, as stated by the FOJ, the interior photographs depict a property in average condition before Petitioner acquired it. ... this evidence supports the property's assessment as a property in average condition both at the time Petitioner acquired it and after he completed the normal repairs. In other words, the record evidence supports the conclusion that the assessment did not consider the increase in true cash value that was the result of normal repairs.

(**Exhibit 2**, Order Denying Petitioner's Motion for Reconsideration, p. 2) (emphasis in original).

On or about December 18, 2018, the Appellant filed his claim of appeal. For the reasons stated herein, and for those stated in the record and incorporated herein by the MTT in its Final Opinion and Judgment, and in its Order Denying Petitioner's Motion for Reconsideration, there is no factual or legal merit to the Appellant's claims on appeal.

ISSUE I

AS DETERMINED BY THE MICHIGAN TAX TRIBUNAL, THE APPELLANT FAILED TO SATISFY HIS BURDEN OF PROOF CONCERNING THE TRUE CASH VALUE OF THE PROPERTY.

COUNTER STATEMENT OF STANDARD OF REVIEW: In *Teledyne v Muskegon Township*, 145 Mich App 749, 753; 378 NW2d 590 (1985), the Court held that:

The standard of review of the Tax Tribunal's determination of value is a limited one. Review of Tax Tribunal determinations, when fraud is not alleged, is limited to the questions of whether the tribunal committed an error of law or adopted a wrong legal principle. *Tatham v City of Birmingham*, 119 Mich App 583; 326 NW2d 568 (1982); *First Federal Savings & Loan Ass'n of Flint v City of Flint*, 104 Mich App 609; 305 NW2d 553 (1981), *rev'd on other grounds* 415 Mich 702; 329 NW2d 755 (1982); Const 1963, art 6, § 28; MCL 205.753; MSA 7.650(53). Thus, on appeal from a ruling of the tribunal, this Court is bound by the factual determinations of the tribunal and may properly consider only questions of law.

Consolidated Aluminum Corp, Inc v Richmond Twp, 88 Mich App 229; 276 NW2d 566 (1979).

ARGUMENT

In *Teledyne, supra* at page 753, the Court held:

The burden of proof is on the taxpayer to establish the true cash value of the property. MCL 205.737(3); MSA 7.650(37)(3). The taxpayer must prove, by the greater weight of evidence, that the assessment was too high. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 768; 314 NW2d 479 (1981). The weight given to evidence is a matter within the Tax Tribunal's discretion. *Kern v Pontiac Twp*, 93 Mich App 612, 622; 287 NW2d 603 (1979).

As discussed below, the Appellant failed to satisfy his burden of proof concerning the true cash value of the property in this matter.

A. The Subject's Purchase Price Is Not a Reliable Indicator of Value Due to the Home at the Time of Purchase, it Being a Bank Sale.

As succinctly determined by Judge Abood in this matter:

... Petitioner's property assessment did not change by virtue of the repairs Petitioner made to subject property. To the contrary, the subject property's assessment for 2016 changed based on the sale transaction of the subject property in August 2015.

* * *

... Petitioner's MLS print-out information for the subject and its comparable sales illustrate properties in "average" condition. Specifically, the subject and comparable sales' interior photographs do not depict neglected or vandalized properties.

(Exhibit 1, Final Opinion and Judgment, p. 5).

For these reasons, the value submitted by the Appellant are unsupported, unreasonable, and not indicative of the subject property's value. As determined by the MTT in its Final Opinion and Judgment and its Ordering Denying Petitioner's Motion for Reconsideration, the Appellant

completely failed to satisfy his burden of proof in establishing the true cash value of the property.
Teledyne, supra, and MCL 205.737(3).

ISSUE II

THE MTT PROPERLY APPLIED THE COST LESS DEPRECIATION APPROACH AND SALES COMPARABLES IN DETERMINING TRUE CASH VALUE, AND ITS DETERMINATION SHOULD BE AFFIRMED.

COUNTER STATEMENT OF STANDARD OF REVIEW: In *Teledyne v Muskegon Township*, 145 Mich App 749, 753; 378 NW2d 590 (1985), the court held that:

The standard of review of the Tax Tribunal's determination of value is a limited one. Review of Tax Tribunal determinations, when fraud is not alleged, is limited to the questions of whether the tribunal committed an error of law or adopted a wrong legal principle. *Tatham v City of Birmingham*, 119 Mich App 583; 326 NW2d 568 (1982); *First Federal Savings & Loan Ass'n of Flint v City of Flint*, 104 Mich App 609; 305 NW2d 553 (1981), *rev'd on other grounds* 415 Mich 702; 329 NW2d 755 (1982); Const 1963, art 6, § 28; MCL 205.753; MSA 7.650(53). Thus, on appeal from a ruling of the tribunal, this Court is bound by the factual determinations of the tribunal and may properly consider only questions of law. *Consolidated Aluminum Corp, Inc v Richmond Twp*, 88 Mich App 229; 276 NW2d 566 (1979).

ARGUMENT

In *Presque Isle Harbor Water Company v Presque Isle Township*, 130 Mich App 182, 190-191; 344 NW2d 285 (1983), the court held:

In *Consumers Power Co v Big Prairie Twp*, 81 Mich App 120, 130; 265 NW2d 182, lv den 403 Mich 848 (1978), we enumerated five acceptable methods for determining true cash value of property for tax assessing purposes: (1) actual cash value ascertained by the current selling price of the property or comparable property at a private sale after negotiations; (2) adjusted reproduction cost method; (3) capitalization of income method; (4) depreciated net cost (book value); and (5) a comparison method, which involves a determination of the depreciated construction cost of equivalent buildings and facilities. It is the duty of the Tax Tribunal to adopt an assessment method which is most appropriate to the case before it as the particular facts indicate. *Pantlind Hotel Co v State Tax*

Comm'n, 3 Mich App 170, 176-177; 141 NW2d 699 (1966), aff'd 380 Mich 390; 157 NW2d 293 (1968). An assessment will not be susceptible to attack unless fraud, error of law, or adoption of the wrong principles is shown. *Fisher-New Center Co v State Tax Comm'n*, 380 Mich 340, 352-353; 157 NW2d 271 (1968), rev'd on reh on other grounds 381 Mich 713; 167 NW2d 263 (1969); *Tatham v Birmingham*, 119 Mich App 583, 589; 326 NW2d 568 (1982).

In its decision in this matter, the MTT expressly stated, "Therefore, Petitioner's contentions related to his purchase price and normal repairs are given no weight and credibility in determination of market value for the subject property." "Therefore, a reasonable and reconciled determination of market value is obtained from Respondent's sales." "Respondent's sales comparison approach is the most reliable and credible valuation evidence which also supports the assessments and uncapping of the subject property." (**Exhibit 1**, Final Opinion and Judgment, incorporating by reference, the Proposed Opinion and Judgment).

For all of the reasons stated by the MTT in its Opinion and Judgment, and for the reasons stated in the Tribunal's Order Denying Petitioner's Motion for Reconsideration, the Appellee, City of Wayne, submits that there is no factual or legal merit to any of the claims made by the Appellant, and this Appeal should be dismissed.

RELIEF REQUESTED

WHEREFORE, the Respondent/Appellee, CITY OF WAYNE, respectfully requests that this Honorable Court affirm the decision of the Michigan Tax Tribunal, dismiss the Appellant's Appeal, and grant the Appellee such further relief for which it is deemed to be entitled.

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Dated: April 22, 2019

CERTIFICATE OF ELECTRONIC SERVICE

STEPHEN J. HITCHCOCK states that on April 22, 2019, he did serve a copy of the Appellee City of Wayne's Brief on Appeal via electronic transmission on the aforementioned date.

GIARMARCO, MULLINS & HORTON, PC

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