

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT HOFFMAN,

Petitioner-Appellant,

v

TOWNSHIP OF GERRISH,

Respondent-Appellee.

UNPUBLISHED

August 9, 2007

No. 270238

Tax Tribunal

LC No. 00-305809

Before: Smolenski, P.J., and Fitzgerald and Kelly, JJ.

PER CURIAM.

Petitioner appeals as of right and challenges the judgment of the Tax Tribunal establishing the assessed value of petitioner’s property for the tax years 2004 and 2005. The judgment, as modified erratum, established the true cash value (TCV) of petitioner’s property as \$2,814,240 for the 2004 tax year and \$3,171,648 for the 2005 tax year. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Petitioner contends that the tribunal incorrectly applied the law in its determination of the TCV. More specifically, petitioner claims that the depth factor table, which is meant to be used as a guide to determine the value of urban properties, should not have been applied to petitioner’s property, particularly where an appraisal of the particular property took into account the lot depth.

“The Tax Tribunal is under a duty to apply its expertise to the facts of a case in order 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.” *Great Lakes Div of Nat’l Steel Corp v City of Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998) (citations omitted). It “has a duty to make its own, independent determination of true cash value.” *Id.*

Absent fraud, this Court’s review of a Tax Tribunal decision is limited to determining whether the tribunal made an error of law or adopted a wrong legal principle. The tribunal’s factual findings are upheld unless they are not supported by competent, material, and substantial evidence. 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. [*Meijer*,

Inc v City of Midland, 240 Mich App 1, 5; 610 NW2d 242 (2000) (citations omitted).]

The dispute in this matter concerns the value of the land, rather than the structures, on the subject property. The parties agree that the land had 430 feet of frontage on Higgins Lake. Petitioner proposed, and the tribunal agreed, that the value of the land should be calculated by multiplying front feet by a lake front foot value. However, both of these factors were subject to adjustment. The supplemental addendum to the appraisal presented by petitioner indicated an existing unit rate for property on Higgins Lake of \$7,000 per front foot, which was then scaled back to \$5,243.93, a 25.1 percent discount. According to the appraisal and the addendum, the reduction was appropriate because of “bulk pricing,” i.e., more lake frontage means a lower unit per foot. The tribunal agreed with the existing unit rate as scaled back to reflect bulk pricing as explained in the addendum to the appraisal. With respect to the front feet, although the actual front feet was 430, respondent adjusted this amount by a “depth factor” to account for the depth of the property (697.1 feet on one side and 688.5 feet on the other, according to the appraisal). A depth factor is premised on the principle that a lot that is deeper than a standard depth lot will have more value and a lot with less depth will have less value. The depth factor applied by respondent in this case was 1.17. This factor, multiplied by the actual front feet of 430, equals 503.1 effective front feet. The tribunal recognized petitioner’s disagreement with the use of a depth factor in this matter. Nevertheless, the tribunal determined that respondent’s application of the factor was correct.

Petitioner’s argument on appeal is essentially that because the tribunal agreed with the appraisal’s calculation of the front foot value (reduced because of the “bulk sales” aspect), the tribunal should also have agreed with the appraisal’s repudiation of the application of the depth factor. He claims that the front foot value “was determined based on the specific details of the subject property, including analysis of the front footage of the property, the actual depth, the high dollar lake environment, and bulk sales.” According to petitioner, the front foot value as determined by petitioner and the depth factor effectively cancelled each other out.

We are not persuaded by petitioner’s arguments. Petitioner implies that the tribunal erred because it applied contradictory and overlapping adjustments that accounted for depth. However, the assertion that the front foot value as accepted by the tribunal took into account the depth of the property is inaccurate. In the original appraisal, the proffered \$7,000 front foot value instead of the \$6,000 used by the assessor, took depth into account, but the supplemental addendum indicated that \$7,000 per front foot was the existing unit rate for Higgins Lake properties generally. The judgment agreed with that value as explained in the supplemental addendum. Moreover, the reduction in front foot value and the application of the depth factor reflect distinct characteristics of the dimensions of the property. The reduction in the front foot value (from \$7,000 to \$5,243.93) was attributable to the large amount of water front footage of the subject property, i.e., 430 feet. In contrast, the application of the depth factor was based on the large depth of the property as compared to other lots in the area. The tribunal’s acceptance of petitioner’s argument with respect to one adjustment does not demonstrate error in the tribunal’s rejection of another.

Petitioner also notes that the discussion of the depth factor in the Assessor’s Training Manual indicates that it is used in the valuation of urban land, which the subject property is not. Petitioner is correct that the Assessor’s Training Manual refers to the depth factor in conjunction

with the assessment of urban properties. The Assessor's Manual is merely a guide; it does not have the force of law and is not controlling. *Danse Corp v City of Madison Hts*, 466 Mich 175, 182; 644 NW2d 721 (2002). Petitioner has not shown that the tribunal's use of the depth factor in this matter entitles him to relief. Assuming arguendo that the depth factor was not designed to apply to this type of property, the use of the factor does not demonstrate an error of law. This Court's review of the tribunal's decision is limited. *Meijer, supra* at 5. A mere disagreement about valuation is inadequate. The tribunal's determination of value is supported by competent, material, and substantial evidence, including the depth factor.

Affirmed.

/s/ Michael R. Smolenski

/s/ E. Thomas Fitzgerald

/s/ Kirsten Frank Kelly