STATE OF MICHIGAN

COURT OF APPEALS

RICHARD M. SHUSTER and ROSEMARY SHUSTER, Petitioners-Appellants,	UNPUBLISHED December 10, 2009
v	No. 286120 Tax Tribunal
TOWNSHIP OF LEELANAU, Respondent-Appellee.	LC No. 00-315526

Before: Beckering, P.J., and Cavanagh and M. J. Kelly, JJ.

PER CURIAM.

Petitioners appeal as of right the Michigan Tax Tribunal's judgment reversing a prior decision by a hearing referee, who found that petitioners' property located in Leelanau County, Michigan, had a true cash value of $85,000 for the 2005 through 2007 tax years. The tribunal determined that the true cash value of petitioners' property was $554,960 for the 2005 tax year, and $612,800 for the 2006 and 2007 tax years. Because we conclude that there were no errors warranting relief, we affirm.

We shall first address Petitioners' argument that the tax tribunal erred to the extent that it did not consider oral testimony presented at the referee's hearing and could not fully and fairly evaluate the referee's opinion without a formal record of the prior proceeding. Petitioners elected to file their tax claim in the small claims division. Proceedings in the small claims division of the Tax Tribunal do not require a formal record. MCL 205.762(2). Nevertheless, the Tax Tribunal may still review the referee's decision in the absence of a formal record. See, e.g., *Oldenburg v Dryden Twp*, 198 Mich App 696, 698-699; 499 NW2d 416 (1993). By proceeding in the small claims division without requesting the creation of a formal record, petitioners waived their right to challenge the Tax Tribunal's review of the referee's proposed opinion and judgment on the basis of errors predicated on the lack of a formal record. *Bloemsma v Auto Club Ins Ass'n*, 190 Mich App 686, 691; 476 NW2d 487 (1991) (stating that errors warranting reversal must not be errors "to which the appellant contributed by plan or negligence.").

Petitioners also argue that the tax tribunal erred as a matter of law when it failed to make an independent determination of the true cash value of their property. Specifically, petitioners argue that the tax tribunal adopted respondent's valuation of their property without an explanation as to why it believed respondent's valuation more accurately reflected the true cash value of the property. Our review of a tax tribunal's decision is limited to determining whether

the tax tribunal made an error of law or adopted a wrong legal principle. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352; 483 NW2d 416 (1992). We accept as true a tax tribunal's findings of fact where they are supported by competent, material, and substantial evidence. *Id*.

The taxpayer has the burden of proof to establish the true cash value of their property. *Oldenburg*, 198 Mich App at 698-699. Nevertheless, the tax tribunal must make its own independent determination of a subject property's true cash value. *Great Lakes Division of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 389; 576 NW2d 667 (1998). In doing so, the tax tribunal "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. However, the tax tribunal may not merely affirm a party's valuation theory without providing an explanation why the valuation accurately reflected the true cash value of the subject property. *Jones & Laughlin*, 193 Mich App at 355-356. A decision of the tax tribunal must include a concise statement of the facts and conclusions of law that support its decision. MCL 205.751(1).

The tax tribunal properly made an independent determination as to the true cash value of their property. In rendering its decision, the tribunal adopted the hearing referee's findings of fact and conclusions of law as its own, but modified them to reflect its specific findings. The tribunal reasoned that, in light of the evidence, the hearing referee erroneously found that a substantial portion of petitioners' property held no value to a potential buyer. Specifically, the tribunal rejected petitioners' argument and their appraisal that only 100 feet of the frontage of their property should be calculated as developable property with the remaining 1,300 feet classified as non-developable property.

In part, the hearing referee had rejected respondent's valuation based on the entire frontage because he did not believe that the sale of surrounding conservation-encumbered properties upon which respondent based its valuation were comparable properties. The referee rejected this valuation because those properties maintained "some development or use rights of value," which in his opinion, petitioners' property did not. The tribunal disagreed and explained that the sale comparisons offered by respondent accurately reflected the true cash value of petitioners' property. Thus, the tribunal sufficiently explained its decision. *Jones & Laughlin*, 193 Mich App at 355. It is not improper for the tax tribunal to adopt a party's theory regarding valuation as long as, in doing so, the tribunal explains why it believes the party's theory accurately reflects the true cash value of the subject property. *Id*. at 355-356.

Petitioners also argue that the tax tribunal improperly based its decision on evidence not properly before it when it considered issues on appeal that respondent did not raise in its exceptions to the referee's proposed opinion and judgment. However, a review of respondent's exceptions to the hearing referee's findings of fact and conclusions of law reflect that respondent specifically objected to the hearing referee's findings pertaining to the limited value of the excess frontage of petitioners' property. The tribunal directly addressed the referee's stated findings of fact that supported the latter's conclusion regarding the lack of potential development and the impact this has on the value of the property. The fact that the reasoning set forth by the tribunal does not track the argument advanced by respondent does not mean that the issue of the referee's characterization of the property and limitation of the frontage considered in valuing the property was not before the tribunal.

Lastly, petitioners argue that the tax tribunal erroneously held that the highest and best use of their property was not recreational. Specifically, petitioners take issue with the following statement: "The Administrative Law Judge's conclusion that '[a]ny purchaser is going to own a huge camp site with rustic buildings and little else' is not supported by the evidence as the conservation easement permits replacement buildings and ownership of 1,400 feet of lake frontage and 23 plus acres of land." Taken in context, this statement reflects the tribunal's disagreement with the hearing referee's findings regarding the limited value of the petitioners' property to a potential buyer and did not concern whether the highest and best use was recreational. Specifically, it is clear that the tribunal only rejected the characterization of the 23.06 acres as a "camp site," as well as the arguably dismissive reference to "rustic buildings" given that the conservation easement allowed for replacement buildings.

There were no errors warranting relief.

Affirmed.

/s/ Jane M. Beckering
/s/ Mark J. Cavanagh
/s/ Michael J. Kelly