STATE OF MICHIGAN

COURT OF APPEALS

WAYNE A. SMITH, Petitioner-Appellant,	UNPUBLISHED June 19, 2014
v	No. 315480 Tax Tribunal
TOWNSHIP OF FORESTER, Respondent-Appellee.	LC No. 00-440608

Before: CAVANAGH, P.J., and OWENS and STEPHENS, JJ.

PER CURIAM.

Petitioner appeals as of right from the final opinion and judgment of the Michigan Tax Tribunal, Small Claims Division, in which the tribunal accepted respondent's proposed true cash value (TCV), state equalized value (SEV), and taxable value (TV) of petitioner's residential real property for tax year 2012. We reverse and remand.

I. FACTS

In 2008, petitioner obtained an appraisal for his residential real property, located in Sanilac County, Michigan (the "subject property"), and the appraised value was $425,000. Petitioner protested the valuation of his property for tax years 2009, 2010, and 2011 before the March Board of Review, which confirmed the following values:

Year	TCV	SEV	TV
2009	743,600	371,800	206,072
2010	579,800	289,000	205,453
2011	574,600	287,300	208,945

Petitioner thereafter appealed to the tribunal's small claims division. During the appeal, respondent revised its proposed values as follows:

Year	TCV	SEV	TV
2009	687,000	343,500	206,072
2010	579,800	289,900	205,453
2011	574,600	287,300	208,945

Petitioner proposed the following values:

Year	TCV	SEV	TV
2009	425,000	212,500	206,072
2010/2011	Same % decrease as respondent		

The major issue was the value of the land, which the appraisal valued at $250,000 and respondent valued at $500,000.[1] In its June 30, 2011 proposed opinion and judgment, the hearing referee made the following factual findings with respect to the land: (1) the subject property has 200 feet of lake frontage, whereas the average amount of lake frontage in the neighborhood has between 50 and 100 feet; (2) the subject property was appraised in 2008 for $425,000, and the appraiser estimated the land value at $250,000; (3) the appraisal adjusted the differences in comparables by $500 per foot for anything over 100 feet; (4) respondent reduced the land rate by 10 percent between 2009 and 2011; and (5) respondent's land chart for 2010 showed that a property located very near the subject property, which had 194 feet of lake frontage, sold in 2008 with an extracted land value of $292,917.

The hearing referee concluded that the appraisal was the best indicator of market value because: (1) the comparables used were in the same neighborhood as the subject property and had minimal adjustments; (2) the appraiser adjusted the excess land over 100 feet when analyzing the adjustments to the comparables; and (3) the reasonableness of the appraiser's land valuation was supported by evidence that the comparable property had a land value of $292,917. The hearing referee further concluded that because respondent had decreased the land value by 10 percent between 2009 and 2011, the appraised value should similarly be decreased by 10 percent during those years (5 percent in 2010 and 5 percent in 2011). Through its final opinion and judgment (the "2011 Judgment"), the tribunal adopted the hearing referee's proposed opinion and judgment and made the following values final for 2009, 2010, and 2011:

Year	TCV	SEV	TV
2009	425,000	212,500	206,072
2010	403,750	201,875	201,875
2011	382,500	191,250	191,250

For tax year 2012, respondent's assessor valued the subject property as follows:

Year	TCV	SEV	TV
2012	566,400	283,200	196,413

The 2012 property record card reflected a land value of $426,284, with no adjustment for lake frontage in excess of 100 feet, and provided that the 2011 SEV was $287,300. The 2011 property record card reflected a land value of $457,047.

[1] The appraisal valued the improvements at $175,000, and respondent valued the improvements at $178,000.

Petitioner protested the increase in his property's 2012 SEV to the March Board of Review, which confirmed the assessor's valuations, stating, "Values were derived using generally accepted mass appraisal techniques." Petitioner thereafter appealed the board's decision to the tribunal's small claims division.

In its January 17, 2013 proposed opinion and judgment, the hearing referee found that petitioner did not provide an appraisal or market approach or other evidence of value for the property, and that respondent relied solely on its cost-less-depreciation approach. The hearing referee also noted that "Petitioner testified that he did not provide an appraisal in this case because it is too expensive to obtain an appraisal every year to prove the value of the subject property when the value was already established by the Tribunal for 2009, 2010, and 2011." In proposing the adoption of respondent's valuation, the hearing referee made the following conclusions of law:

> Petitioner's contentions are not sufficiently documented to enable the Tribunal to conclude that the true cash value of the property is correct in the amount contended by Petitioner. Petitioner's contention of true cash value consists of unsupported assertions. Statements of position, without confirming documentary evidence or other support, are generally not sufficient to carry the burden of proof. Petitioner has not supported its contention of value by a recognized valuation approach. Further, Petitioner has failed to demonstrate any error in Respondent's cost less depreciation approach that appears on the property record card and Respondent's assessor testified that he applied the cost approach in conformity with the state assessor's manual. MCL 211.10e. As such, it is concluded, based upon independent review of its contentions of the valuation evidence, that Respondent's cost approach is reliable and supports its contentions of value for the 2012 tax year.

In its March 13, 2013 final opinion and judgment, the tribunal addressed petitioner's exceptions and concluded that the doctrines of res judicata and collateral estoppel did not bar respondent from valuing the property differently in 2012 on the basis that there had been no attempt to alter the values established for tax years 2009 through 2011. The tribunal next concluded that respondent was not required, under MCL 211.30c(2), to use the subject property's 2011 values as a basis for calculating the 2012 values, stating as follows:

> MCL 211.30c(2) **only relates to** the "calculation" of assessed values or across the board increases or decreases in such values, and not a new valuation of the subject property as of the relevant tax date. As such, Respondent was only required to utilize the Tribunal's revision to the property's true cash value for the 2011 tax year to "calculate" the property's true cash value for the 2012 tax year **if** the values for that classification of property in the area were increased or decreased by an across the board percentage in 2012. Neither party has provided evidence of any increases or decreases in value that would clearly demonstrate a lack of uniformity in values in the area. MCL 211.30c(2) does not require the subject property's state equalized value to be calculated by using the Tribunal's prior decision. [Emphasis in original.]

Lastly, the tribunal ruled that the hearing referee did not err in adopting respondent's cost-less-depreciation approach because neither party provided a sales-comparison approach for the 2012 tax year, and the only valuation evidence submitted was the cost-less-depreciation approach on the 2012 property record card. The tribunal noted that the hearing referee did not find petitioner's testimony regarding other property owners in the area to be credible, and that it agreed with the hearing referee's decision to adopt respondent's assessed value "based on the calculations contained on the property record card."

II. STANDARD OF REVIEW

As this Court stated in *Meijer, Inc v Midland*, 240 Mich App 1, 5; 610 NW2d 242 (2000) (citations omitted):

> 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. [See also Const 1963, art 6, § 28.]

Questions of law, such as the application of res judicata and collateral estoppel, are reviewed de novo. See *Wayne Co v Detroit*, 233 Mich App 275, 277; 590 NW2d 619 (1998) (holding that res judicata applies to the tax tribunal as a quasi-judicial agency).

III. ANALYSIS

Petitioner first argues that the doctrines of res judicata and collateral estoppel required respondent to use the subject property's 2011 TCV, SEV, and TV as the starting point for determining those values in 2012. We disagree.

"Under the doctrine of res judicata, 'a final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action.'" *Wayne Co*, 233 Mich App at 277, quoting *Black's Law Dictionary* (6th ed), p 1305. "Collateral estoppel bars relitigation of an issue in a new action arising between the same parties or their privies when the earlier proceeding resulted in a valid final judgment and the issue in question was actually and necessarily determined in that prior proceeding." *Leahy v Orion Twp*, 269 Mich App 527, 530; 711 NW2d 438 (2006).

Here, however, respondent had made no attempt to relitigate a claim or issue that was decided in petitioner's prior tax appeal. Through its 2011 Judgment, the tribunal only established the TCV, SEV, and TV for the subject property for tax years 2009 through 2011. The tribunal did not decide the TCV, SEV, or TV for 2012, and respondent's valuation of the subject property in 2012 does not seek to revisit the property's valuation in 2009, 2010, or 2011. Rather, the issue in this appeal is what, if any, weight such values have in determining the subject property's TCV, SEV, and TV in 2012, which raises a question of substantive tax law

beyond the scope of res judicata and collateral estoppel. Accordingly, the tribunal did not make an error of law in rejecting petitioner's res judicata and collateral estoppel claims.

Petitioner next argues that the tribunal made an error of law in concluding that respondent was not required under MCL 211.30c(2) to use the subject property's 2011 SEV as the basis for calculating the 2012 SEV. We agree.

There appears to be little doubt that respondent did not use the subject property's 2011 SEV, as established by the tribunal in 2011, in calculating the property's SEV in 2012. The property record card for 2012 lists the 2011 SEV for the subject property as $287,300, as opposed to the $191,250 value established by the tribunal for 2011, and it makes no adjustment for the value of the land with lake frontage in excess of 100 feet, as the tribunal found appropriate for tax years 2009 through 2011 based on petitioner's 2008 appraisal. Thus, the question is whether respondent was required to do so under MCL 211.30c(2).

"In resolving disputed interpretations of statutory language, it is the function of the reviewing court to effectuate the legislative intent." *People v Valentin*, 457 Mich 1, 5; 577 NW2d 73 (1998). "If the language used is clear, the Legislature must have intended the meaning it has plainly expressed, and the statute must be enforced as written." *Id*. "Only where the statutory language is ambiguous may a court properly go beyond the words of the statute to determine legislative intent." *People v Borchard-Ruhland*, 460 Mich 278, 284; 597 NW2d 1 (1999). "Where the language of a statute is of doubtful meaning, a court must look to the object of the statute in light of the harm it is designed to remedy, and strive to apply a reasonable construction that will best accomplish the Legislature's purpose." *Marquis v Hartford Accident & Indemnity*, 444 Mich 638, 644; 513 NW2d 799 (1994).

MCL 211.30c(2) provides as follows:

> If a taxpayer appears before the tax tribunal during the same tax year for which the state equalized valuation, assessed value, or taxable value is appealed and has the state equalized valuation, assessed value, or taxable value of his or her property reduced pursuant to a final order of the tax tribunal, the assessor shall use the reduced state equalized valuation, assessed value, or taxable value as the basis for calculating the assessment in the immediately succeeding year. However, the taxable value of that property in a tax year immediately succeeding a transfer of ownership of that property is that property's state equalized valuation in the year following the transfer as calculated under this section.

We conclude that MCL 211.30c(2) is unambiguous and required respondent to use the subject property's 2011 SEV as the basis for calculating the property's SEV in 2012.

It is undisputed that petitioner appeared before the tribunal during 2011 and, for that year, had the SEV and TV of the subject property reduced pursuant to a final order of the tribunal. Accordingly, MCL 211.30c(2) unambiguously provides that respondent "*shall* use the reduced state equalized valuation, assessed value, or taxable value as *the basis* for calculating the subject property's assessment in the immediately succeeding year." MCL 211.30c(2) (emphasis added). By using the word "shall," the Legislature made the assessor's duty to use the reduced values as

"the basis" for assessing the property in the immediately succeeding year "mandatory and imperative." See *Michigan Ed Ass'n v Secretary of State*, 489 Mich 194, 218; 801 NW2d 35 (2011) ("The use of 'shall' in a statute generally 'indicates a mandatory and imperative directive.'") (citations omitted).

"Although the statute here is unambiguous, and thus does not require interpretation, it is nonetheless proper to consult dictionary definitions to ascertain the meaning of words used in the statute." *People v Hack*, 219 Mich App 299, 305; 556 NW2d 187 (1996).[2] The common meaning of the words "the" and "basis" are particularly relevant here. As defined in *Random House Webster's College Dictionary* (1997), "basis" means "the principal constituent; fundamental ingredient," and "a basic fact, amount, standard, etc., used in making computations, reaching conclusions, or the like." The meaning of "basis" is further limited, however, because it is immediately preceded and modified by a definite article—"the." Thus, by providing that the assessor must use the tribunal's reduced SEV, assessed value, or TV as "the" basis for assessing property, as opposed to merely "a" basis, the plain text of MCL 211.30c(2) demonstrates the Legislature's intent that the tribunal's reduced values must be used as *the* principal constituent in calculating the subject property's assessment in the year following a successful appeal.

The plain text of MCL 211.30c(2) does not support the tribunal interpretation, as it does not state that it applies only to "across-the-board" increases or decreases in values for a particular classification, nor does it otherwise evince any intent to place a conditional limitation on the assessor's duty to use the tribunal's reduced valuations as "the basis" for assessing the taxpayer's property in the year immediately following a successful appeal. Accordingly, we hold that the tribunal made an error of law in ruling that respondent was not required, under MCL 211.30c(2), to calculate the subject property's 2012 SEV using the 2011 SEV established in the tribunal's 2011 Judgment.

Next, petitioner argues that the tribunal committed an error requiring reversal in adopting respondent's proposed TCV and SEV. We agree. "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." *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 353; 483 NW2d 416 (1992). "Regardless of the approach selected, the value determined must represent the usual price for which the subject property would sell," and "[t]he 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*. (citation omitted). "[T]he 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." *Id*. at 356.

The petitioner bears the burden of proof in establishing TCV, which "encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the

[2] See also MCL 8.3a ("All words and phrases shall be construed and understood according to the common and approved usage of the language[.]").

hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party." *Id*. at 354-355. Even if the petitioner does not meet its burden of persuasion, the petitioner may meet its burden of going forward with evidence, and the tribunal must still make an independent determination of TCV. *Id*. at 355. Further, "[t]he 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." *Id*. "The Tribunal may adopt the assessed valuation on the tax rolls as its independent finding of true cash value when competent and substantial evidence supports doing so, as long as it does not afford the original assessment presumptive validity." *Pontiac Country Club v Waterford Twp*, 299 Mich App 427, 435-436; 830 NW2d 785 (2013).

We agree that the tribunal failed to make an independent determination of the subject property's TCV. As in *Jones & Laughlin Steel Corp*, the tribunal "simply accepted respondent's assessment without discussing why the assessment reflected the true cash value of the property." 193 Mich App at 355-356. The tribunal stated that it agreed with respondent's assessment "based on the calculations contained on the property card," but it offered no explanation for why it found the calculations on the property record card to be the most accurate valuation under the circumstances, nor did it explain why petitioner's contentions were inaccurate. More specifically, the tribunal made no findings regarding the subject property's TCV in 2011, the justification for dramatically increasing the subject property's land value from 2011 to 2012, or respondent's decision to value all of petitioner's land at the same rate, in contravention of the approach adopted by the tribunal for tax years 2009 through 2011. Instead, the tribunal merely found that petitioner did not provide "an appraisal/market approach or other evidence of value for the subject property" and failed to demonstrate that respondent's cost-less-depreciation approach was erroneous. By making an entry of judgment against petitioner for his failure to provide sufficient evidence, the tribunal failed to make an independent determination of TCV.

We also agree that the tribunal's decision regarding TCV was not supported by competent and substantial evidence.[3] First, there was not competent and substantial evidence supporting the tribunal's factual finding that petitioner did not provide evidence of value for the subject property. The tribunal is correct that petitioner did not provide the tribunal with a new appraisal, but petitioner did submit as evidence the tribunal's 2011 proposed and final judgments, which provided conclusive evidence of the subject property's TCV in 2009 through 2011. Further, the 2011 proposed and final judgments provided evidence of the following factual findings: (1) the subject property has 200 feet of lake frontage, whereas the average amount of lake frontage in the neighborhood is between 50 and 100 feet; (2) the subject property was appraised in 2008 for $425,000, with an estimated the land value of $250,000; (3) the appraiser adjusted the value of the land for lake frontage exceeding 100 feet; (4) respondent reduced the land rate by 10 percent between 2009 and 2011; and (5) respondent's land chart for 2010 showed that a comparable property had an extracted land value of $292,917. Although

[3] Petitioner also argues that there was substantial and compelling evidence to support his proposed TCV and SEV, but the only relevant issue on appeal is whether the tribunal's findings were supported by substantial and compelling evidence, as the tribunal may reject a well-supported valuation in favor of another. *Jones & Laughlin Steel Corp*, 193 Mich App at 356.

petitioner does not contend that the subject property's TCV in 2011 conclusively establishes its TCV in 2012, its 2011 value and the tribunal's prior findings of fact are certainly relevant and probative in determining its value in the following year.

Second, there was not competent and substantial evidence supporting the increase in TCV from $382,500 to $566,400. The tribunal viewed the 2012 property record card as the only evidence submitted in support of respondent's cost-less-depreciation approach, but the 2012 property record card suggests that the subject property's SEV should have decreased from 2011 to 2012. Indeed, respondent listed the 2011 SEV as $287,300, and then listed a negative adjustment of $4,100 for 2012, thus arriving at $283,200. More specifically, the property record cards suggest that the land value should have decreased, as the 2011 property record card lists a land value of $457,047, and the 2012 property record card lists a land value of $426,284. Thus, the sole evidence considered by the tribunal does not provide competent and substantial evidence supporting for the dramatic increase in the subject property's TCV from 2011 to 2012. At most, the sole evidence considered by the tribunal suggests that respondent should have decreased the TCV and SEV for the subject property in 2012.[4]

Accordingly, we reverse the tribunal's 2013 final opinion and judgment and remand for an independent determination of the subject property's TCV in 2012. On remand, the tribunal must make its own factual findings leading to a legally supportable TCV.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction. Petitioner is entitled to costs as the prevailing party. See MCR 7.219.

/s/ Mark J. Cavanagh
/s/ Donald S. Owens
/s/ Cynthia Diane Stephens

[4] Petitioner further argues that the tribunal applied the wrong principle in considering respondent's cost-less-depreciation approach because that approach only measures the improvements to the land, and the primary issue here is the value of the land itself. Contrary to petitioner's assertion, however, the cost-less-depreciation approach considers land-value because it derives TCV "by adding the estimated land value to an estimate of the current cost of reproducing or replacing improvements and then deducting the loss in value from depreciation in structures, i.e., physical deterioration and functional or economic obsolescence." *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485 n 18; 473 NW2d 636 (1991). Thus, the cost-less-depreciation approach itself is not a wrong principle to be adopted, as petitioner contends. Rather, the issue is whether there is competent and substantial evidence supporting the estimated land value used in applying the approach.