STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Alvin Woolsey,
Petitioner,

v

MTT Docket No. 318823

Township of Casco,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

INTRODUCTION

A default hearing was held in the above-captioned case on July 17, 2008, pursuant to TTR 247. In that regard, the Tribunal entered an Order of Default on January 3, 2006, placing Respondent in default for failing to file an answer to the petition as required by TTR 245. The Tribunal required Respondent to cure the default within 21 days of the Order. Respondent failed to file a Motion to Set Aside Default by January 24, 2006. The Tribunal entered its Order scheduling a Default Hearing for July 17, 2008. Petitioner was represented by William H. Bowie, from McShane & Bowie, PLC. Respondent did not attend the default hearing. Respondent did not answer the Petition, nor submit evidence.

Petitioner appeals the taxable value ("TV") increase for residential real property for the 2005 tax year. The parcel number is 03-02-770-014-000. The subject property consists of a small cottage located at 244 74th Street, South Haven, Allegan County, Michigan. The issue before the Tribunal relates to the width of the land. The assessor's records prior to the 2006 assessment

year indicate that the subject property has a width of 280 feet. The assessor added as "new" an additional 70 front feet for a total width of 350 feet. The assessor, based upon faxed information, indicates that the property was "new." The additional $207,100 was added as Headlee new to the taxable value. Petitioner objects to the entire $207,100 addition to the taxable value based on MCL 211.34(d)(i). Petitioner believes the property is "omitted" and therefore the increase should be based on the proportion of the 2004 taxable value before applying the 2.3% C.P.I. versus just adding all of the $207,100. Petitioner contends this would reduce the Headlee new from $207,100 to $30,797 plus the 2.3% C.P.I. resulting in a taxable value of $158,618 for 2005. Petitioner amended his petition to add subsequent taxable values including 2006, 2007 and 2008.

PETITIONER'S CONTENTIONS

Alvin J. Woolsey, owner, testified that he has owned the property since the 1970's before Proposal A went into effect in 1994. He testified that the legal description of the property has never changed. The title and tax rolls should always have been calculated as having a width of 350 feet. He agrees that the 2005 property record card that the assessor faxed appears to have 280 feet width. The 2006 property record indicates the width is 350 feet.

Petitioner testified that his Exhibit No. P-16 is a Michigan Plat of Survey dated November 11, 2002 and that his parcel fronting on Lake Shore Drive (aka 74th Street) has a measurement of approximately 373.64 feet. Woolsey testified that if it were measured straight north and south the measurement would be approximately 350 feet. He stated that he has no issue with the actual 350 feet used to calculate the 2005 taxable value; he agrees that it does not appear to have been

included in the 2004 property record. Woolsey does not dispute the $207,100 added as new to the assessed value. He, however, feels that pursuant to the general property tax law that the entire $207,100 should be not added to his taxable value.

Petitioner offered exhibits 1 through 26 which were admitted. P-1 through P-8 are copies of tax bills that validate the taxable values for the years in contention. P-9 is the 2008 change of assessment notice. Exhibit P-10 is a memorandum faxed to Petitioner from Don Maxwell dated March 16, 2005,[1] indicating:

> Accompanying are valuation statements for 2004 and 2005. Based on my understanding that a court awarded the beach park area to Woolsey, the total acreage was changed and a correction made to the lake frontage. An assessment of $207,100 was added to the taxable value as a new addition to the parcel, that addition being the beach area, formerly a park.

The remainder of the exhibits are property statements from different years at issue, Decisions from the Circuit Court for Allegan County, the Court of Appeals, and the Supreme Court, and Petitions and Answers to the Board of Review for each year at issue.

Petitioner had petitioned the Allegan County Circuit Court to vacate the remainder of Variety Park Plat including the park, alley and streets within the Plat originally dedicated to public use. The original Variety Park Plat was platted in 1911; however, the owner passed away in 1921. The Probate Court ordered the Plat to be divided into two parcels for the purpose of the sale. The northern half of the Plat is currently owned by the Plachta family. The southern half of the Plat is currently owned by Petitioner.

[1] P- 10 The Memorandum has a fax date of March 16, 2005, at 12:10p, Casco Township, 1 (269)639-1991.

The Allegan County Road Commission never accepted the dedicated streets of the Plat as right-of-ways, with the exception of 74th Street. The Road Commission consented to the vacation of the right-of-ways. Roads were never constructed. Allegan County Circuit Court's decision was appealed to the Court of Appeals and the Supreme Court. The final judgment upheld vacating the remainder of the Plat in favor of Petitioner.

Petitioner contends that the metes and bounds description of the property contains the same acreage, which included the beach and vacated Variety Park Plat.

Petitioner contends that the taxable value of subject property for 2005 should be $158,618. The taxable value addition of $30,797 is the "omitted" correct taxable value. P-26(14) contains information from the 2005 assessment records (P-13) arranged to make the information more understandable and reflecting what was done, as follows:

Year	AV/SEV	Year	Taxable
2004	$835,600	2004	$124,255
New	$207,100	New	$207,100
Subtotal	$1,042,700	Subtotal	$331,335
Mkt Adj	$69,600	2.3% CPI	$2,857
2005 AV/SEV	$1,112,300	2005 TV	$334,212

Petitioner contends in P-26(15) that the $207,100 increase for "new" was actually for "omitted" as the owner had owned the property and did not buy or acquire new property. So the increase should have been the proportion of the 2004 taxable value before applying the 2.3% CPI versus adding the value of the 70 feet as the increase. That would reduce the $207,100 addition to $30,797 plus the 2.3%.

Petitioner in P-26(16) calculates the proportion of the increase as follows:

2004 AV/SEV	$835,600	
2005 New	$207,100	$207,100/$835,600 = 24.785%
2005 Subtotal	$1,042,700	

Petitioner continues the calculations P-26(17) and states:

> Although the 2004 assessed and taxable value had a small portion attributable to the home on the property, the adjustment in taxable value for 2005 should be the 2004 taxable value plus a 24.785% increase for the mistakenly omitted real property plus 2.3% for the 2004-2005 CPI. This would result in a taxable value in 2005, 2006, 2007, and 2008 as follows:

2004 TV	$124,255
24.785% for omitted	$ 30,797
Subtotal	$155,052
2.3% increase for 2004-2005	$ 3,566
2005 TV	$158,618
3.3% increase for 2005-2006	$ 5,234
2006 TV	$163,852
3.7% increase for 2006-2007	$ 6,052
2007 TV	$169,904
2.3% increase for 2007-2008	$ 3,908
2008 TV	$173,812

FINDINGS OF FACT

The subject property is designated as Parcel No. 03-02-770-014-000 and is classified as residential. It is located at 244 74th Street, South Haven, Allegan County, Michigan. The taxable value for the subject property for the 2004, 2005, 2006, 2007 and 2008 tax years as established by Respondent are as follows:

Year	TV
2004	$124,255
2005	$334,212
2006	$345,240
2007	$358,013
2008	$366,247

The taxable values for the 2005, 2006, 2007 and 2008 tax years are under appeal.

The Tribunal finds that the taxable value calculation for the "omitted" property, as determined by Respondent, is incorrect. Respondent used 50% of the additional value ($207,100) as if the additional land width was acquired as a new acquisition addition. This is not proper. Petitioner does somewhat better; however, the calculations were not appropriate.

The correct calculations for the "omitted" real property addition to taxable value is pursuant to MCL 211.34d(1)(b)(i), which states:

> Omitted real property. As used in this subparagraph, "omitted real property" means previously existing tangible real property not included in the assessment. Omitted real property shall not increase taxable value as an addition unless the assessing jurisdiction has a property record card or other documentation showing that the omitted real property was not previously included in the assessment. The assessing jurisdiction has the burden of proof in establishing whether the omitted real property is included in the assessment. Omitted real property for the current and the 2 immediately preceding years, discovered after the assessment roll has been completed, shall be added to the roll pursuant to the procedures established in section 154. For purposes of determining the taxable value of real property under section 27a, *the value of omitted real property is based on the value and ratio of taxable value to true cash value the omitted real property would have had if the property had not been omitted.* Emphasis added.

Petitioner, Respondent and this Tribunal agree that based upon the property record cards the additional 70 feet of width was not previously included in the assessment. However, the agreement ends there. The assessor treats the additional width similar to "new construction"

addition by adding 50% of the market value to the taxable value. The difference is the addition is actually property that should have been included in the assessment; it is not a piece of property that Petitioner just acquired but rather property that Petitioner owned and used. The assessor from the records had not previously included the additional 70 feet of width in the assessment. The calculation for "omitted" real property is a specific formula by statute. Therefore the calculations begin with the 2004 values. The ratio of the (2004) true cash value (which is the state equalized value doubled) to the taxable value is applied to the true cash value of the "omitted" property. This assures the property owner that the "omitted" real property value is given the protection of Proposal A. The entire value of the "omitted" real property is not added to the taxable value, as it would be if the real property were a new purchase. It is property that existed prior to proposal A but has never been added to the taxable thus it is "omitted" real property from the taxable value. It is added to the taxable value at the same ratio of true cash value to taxable value.

The formula starts with the 2004 assessed value ("AV")/state equalized value ("SEV") of $835,600 times 2 for the true cash value of $1,671,200. The 2004 taxable value ("TV") is $124,255. The taxable value of $124,255 is divided by the $1,671,200 to determine what ratio the taxable value is to the true cash value. This results in a determination that the taxable value is 7.44% of the true cash value. The ratio of true cash value to taxable value to be applied to the true cash value of the "omitted" real property is 7.44%. The TCV of the "omitted" real property is $414,200. The TCV of the "omitted" real property is multiplied by the 7.44%; this equals $30,816. $30,816 is the taxable value of the "omitted" real property that is allowable to be added to the 2005 taxable value. The calculation follows:

2004 AV	$835,600	X 2 =	$1,671,200
2004 TV			$124,255
TV divided by TCV = Ratio			7.44%
Ratio of TV to TCV multiplied by TCV Omitted			
7.44%	X	$414,200 =	$30,816

The next "formula" for use of the inflation rate multiplier is also a multi-step process. First the 2004 TV is multiplied by the Consumer Price Index ("CPI"):

$124,255 X 1.023 = $127,113

The next step is to add $30,816, the proper 2004 taxable value of the "omitted" real property:

	$127,113
+	$ 30,816
2005 Taxable Value	**$157,929**

After 2005 the inflation rate multiplier CPI for the years at issue is applied to the taxable value for the remainder of the years under appeal. The remainder of the calculation is shown below:

Year/TV	TV times CPI
2005 TV	$157,929 X 1.033 =
2006 TV	$163,140 X 1.037 =
2007 TV	$169,176 X 1.023 =
2008 TV	$173,067

Note: the $127,112 is what the 2005 taxable value would have been without omitted property.

Having considered the evidence properly submitted and the file in the above-captioned case, the Tribunal finds that the property's 2005, 2006, 2007, and 2008 taxable values (TV) are:

YEAR	TV
2005	$157,929
2006	$163,140
2007	$169,176
2008	$173,067

CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value, as equalized, and that beginning in 1995, the taxable value is limited by statutorily determined general price increases, adjusted for additions and losses.

> The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law…The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not…exceed 50%...and for a system of equalization of assessments. For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred. When ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value. Const 1963, Art IX, Sec. 3.

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735(1). The Tribunal's factual findings are to be supported by competent, material, and substantial evidence. *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Dept of Treasury*, 185 Mich App 458, 462-463; 452 NW2d 765 (1990). "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence." (Citations omitted) *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

The Tribunal is not bound to accept either of the parties' theories of valuation. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 377 NW2d 908 (1985). The 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. *Meadowlanes* at 485-486; *Wolverine Tower Associates v City of Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980). A similar position is stated in *Tatham **v** City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982): "The Tax Tribunal is not required to accept the valuation figure advanced by the taxpayer, the valuation figure advanced by the assessing unit, or some figure in between these two. It may reject both the taxpayer's and assessing unit's approaches."

In this instance, Petitioner was able to prove that the taxable value of the "omitted" real property was incorrectly calculated by Respondent. Petitioner did not transfer ownership, increase the size of the land nor construct new structures. The width of the property was simply incorrectly stated on the assessor's property record card. It was not discovered until the vacated plat was under appeal. The assessor has the obligation to increase taxable value if previously existing tangible real property is not included in the assessment MCL 211.34d(1)(a).

The calculation of taxable value is governed by MCL 211.27a, which provides, in pertinent part:

> (1) Except as otherwise provided in this section, property shall be assessed at 50% of its true cash value under section 3 of article IX of the state constitution of 1963.
> (2) Except as otherwise provided in subsection (3), for taxes levied in 1995 and for each year after 1995, the taxable value of each parcel of property is the lesser of the following:
> (a) The property's taxable value in the immediately preceding year minus any losses, multiplied by the lesser of 1.05 or the inflation rate, plus all additions. For taxes levied in 1995, the property's taxable value in the immediately preceding year is the property's state equalized valuation in 1994.
> (b) The property's current state equalized valuation.
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> ***
>
> (11) As used in this section:
> (a) "Additions" means that term as defined in section 34d.

MCL 211.34d(1) defines "additions" as:

(b) For taxes levied after 1994, "additions" means, except as provided in subdivision (c), all of the following:

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(i) Omitted real property. As used in this subparagraph, "omitted real property" means previously existing tangible real property not included in the assessment. Omitted real property shall not increase taxable value as an addition unless the assessing jurisdiction has a property record card or other documentation showing that the omitted real property was not previously included in the assessment. The assessing jurisdiction has the burden of proof in establishing whether the omitted real property is included in the assessment. Omitted real property for the current and the 2 immediately preceding years, discovered after the assessment roll has been completed, shall be added to the roll pursuant to the procedures established in section 154. For purposes of determining the taxable value of real property under section 27a, the value of omitted real property is based on the value and ratio of taxable value to true cash value the omitted real property would have had if the property had not been omitted.

(iii) New Construction. As used in this subparagraph, "new construction" means property not in existence on the immediately preceding tax day and not replacement construction. New construction includes the physical addition of equipment or furnishings, subject to the provisions set forth in section 27(2)(a) to (o). For purposes of determining the taxable value of property under section 27a, the value of new construction is the true cash value of the new construction multiplied by 0.50.

The Tribunal notes that MCL 211.34d(1)(i) "omitted real property "and MCL 211.34d(1)(iii) "new construction" are not similar. The calculations for "omitted" real property and "new construction" are dependent upon the individual situation. The subject matter of the instant case was clearly "omitted real property;" however, Respondent assessed it as though it were "new construction."

JUDGMENT

IT IS ORDERED that the property's state equalized, assessed and taxable values for the subject property shall be those set forth in the "Conclusions of Law" portion of this Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the assessed and taxable values in the amounts as finally shown in the "Final Values" section of this Opinion and Judgment, subject to the processes of equalization, within 20 days of the entry of this Order. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Final Opinion and Judgment within 90 days of the entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Opinion and Judgment. As provided by 1994 PA 254 and 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest shall accrue at an interest rate set monthly at a per annum rate based on the auction rate of the 91-day discount treasury bill rate for the first Monday in each month, plus 1%. After December 1, 1995, interest shall accrue at an interest rate set each year by the

Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue: (i) after December 31, 2001, at the rate of 5.56% for calendar year 2002; (ii) after December 31, 2002 at the rate of 2.78% for calendar year 2003; (iii) after December 31, 2003, at the rate of 2.16% for calendar year 2004; (iv) after December 31, 2004, at the rate of 2.07% for calendar year 2005; (v) after December 31, 2005, at the rate of 3.66% for calendar year 2006; (vi) after December 31, 2006, at the rate of 5.42% for calendar year 2007; and (vii) after December 31, 2007, at the rate of 5.81% for calendar year 2008.

This Opinion and Judgment resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: August 14, 2008 By: Victoria L. Enyart