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

UP Concrete Co., Inc.,
Petitioner,

v

MTT Docket No. 321421

Township of Bark River,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

INTRODUCTION

A default hearing was held in the above-captioned case on August 27, 2008, pursuant to TTR 247. In that regard, the Tribunal entered an Order of Default on April 4, 2007, 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 April 26, 2007. The Tribunal entered its Order scheduling a Default Hearing for August 27, 2008. Petitioner was represented by John H. Bergman, attorney with Stupak & Bergman, P.C. Respondent did not attend the default hearing. Respondent did not answer the Petition, nor submit evidence. It is curious to the Tribunal that, although Respondent did not answer the petition, on April 10, 2007, Gregg Johnson, Supervisor on a Bark River Township fax cover stated "Per our conversation ref docket 0321421 I have not yet responded to this docket, understanding I should have received a "Petition" of which I did not. I will respond upon receiving petition. Please send. Thank You." On April 16, 2007, the Tribunal faxed the petition to Respondent for the instant case. On June 26, 2007, Respondent

wrote a letter advising the Tribunal that the parcel in dispute is no longer owned by Petitioner. Respondent asked to be advised what documents the Tribunal may need. On August 3, 2007, Respondent again wrote a letter to the Tribunal refuting Petitioner's $25 per square foot building costs. Respondent appeared to have some knowledge of subject property; however, the information was not available to the Tribunal because Respondent was in default for failure to file its answer. Respondent failed to cure the default, but had information that may have been considered if the Tribunal had received, first, an answer to the petition and, second, some type of valuation confirmation of how the assessment was placed on the property initially. Having stated that, the Tribunal conducted a Default Hearing in this matter.

PETITIONER'S CONTENTIONS

Franklin T. Stenberg, owner, testified that he was the President of UP Concrete in 2005 and 2006. Petitioner purchased the vacant 90 acres "9 or 10 years ago." The original purchase contained an old farm house. The old farm house is still located on the property and is occupied.

In 2005, Petitioner constructed a ready-mix plant and shop building. He estimated that it cost him $138,770 to construct the two buildings. This estimate does not include labor.

The first building is 40 by 80 feet with approximately 18 feet clear span. This is considered the shop building that stores and maintains the trucks. This building is the shop which has floor heating, and no air conditioning. The property has an exterior wood stove that heats the boiler.

The shop is 28 by 40 feet and the office area is 34 by 34 feet. Petitioner testified that he had a $79,000 estimate for constructing the 40 by 80 foot building. This is $24.69 per square foot. This is where he estimated that it would cost him $25 per square foot to construct the property because that is what was estimated. He thought it could be done cheaper and proceeded to save approximately $9,000.

Petitioner testified that the second building cost approximately $14,000 to construct. This building is 40 by 30 foot with 25 to 30 foot height, and is considered the plant. The tower is located in this building and contains an area where gravel is stored. He estimated that he saved $5,000 in labor costs.

The property was sold in 2007 after the land was split to different entities. Petitioner did not provide the terms or the new owner's name.

The Tribunal notes that the information for the property comes from testimony and three photographs. No sketches or property records were provided. Petitioner provided six exhibits. The exhibits are:

P-1 Proposal
P-2 2005 Winter Tax Bill
P-3 2006 Summer Tax Bill
P-4 Photograph of Shop area for truck storage and maintenance
P-5 Photograph of Plant with foundation for office
P-6 Photograph of Plant with concrete block reinforced walls

FINDINGS OF FACT

Petitioner appeals the taxable value ("TV") increase for the commercial real property for the 2006 tax year. The parcel number is 21-002-104-016-00. The property is currently used for manufacturing. The property is located in Delta County, Michigan and is in the school district of Bark River-Harris Public Schools. The intermediate school district is the Delta-Schoolcraft Intermediate School District and Bay de Noc Community College. The property consists of two buildings constructed in 2005 for the 2006 tax year. The issue before the Tribunal relates to the true cash, assessed and taxable value of the subject property for tax year 2006 only.

The 2006 values placed on the property by Respondent are:

TCV	SEV	TV
$539,220	$269,610	$230,525

Petitioner believes the 2006 values should be:

TCV	SEV	TV
$298,234	$149,117	$149,117

Having considered the evidence properly submitted and the file in the above-captioned case, the Tribunal finds that the property's 2006 true cash, state equalized and taxable values (TV) are affirmed at:

TCV	SEV	TV
$539,220	$269,610	$230,525

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 not able to prove that the subject property was over-assessed based upon his costs to construct the property. An owner has specific knowledge about his property. Petitioner knew the costs to construct the property. Petitioner provided some information, but it is not an independent determination; instead, it is his specific building costs. The value of the land was not part of the appeal. Petitioner specifically requested that the buildings be valued at $25 per square foot. However, without the specific details of the actual construction with sketches and specifics on construction the Tribunal has no alternative but to affirm the assessment as placed on the property.

Notwithstanding that Petitioner has failed in its burden of proof to present convincing evidence of value, Respondent's value may not be automatically adopted. The Tribunal has a duty to make an independent determination of value. In this case, Respondent offered no independent market evidence with respect to the value of subject property. Respondent did not furnish a property record card. An assessor is required to defend the assessment in its jurisdiction. MCL 24.291 and MCL 24.292 provide for the State Assessors Board to revoke or suspend a license for failure to respond. In the absence of such evidence, the Tribunal was unable to make an

independent determination of value. Accordingly, the Tribunal adopts the value on the roll as adjusted at the hearing as the best evidence of the value of subject property.

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.
> ***
> (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:
> ***
> (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.

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: October 9, 2008 By: Victoria L. Enyart