STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Charter Oak Homes,
Petitioner,

MTT Docket No. 354554

v

City of Detroit,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

INTRODUCTION

A default hearing was held in the above-captioned case on July16, 2009, pursuant to TTR 247. In that regard, the Tribunal entered an Order of Default on February 18, 2009, 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. On March 6, 2009, Respondent requested a copy of the petition filed in the above-captioned case. Respondent, however, failed to file a Motion to Set Aside Default by March 12, 2009. Petitioner filed a Motion for Default Hearing on April 17, 2009. The Tribunal entered its Order scheduling a Default Hearing for July 16, 2009. Petitioner was represented by Myles B. Hoffert, attorney. Respondent did not attend the default hearing, did not answer the Petition, nor submit evidence.

Petitioner appeals the true cash value, state equalized value and taxable value for the residential real property for the 2008 tax year. The parcel number is Ward 1, Item 000605-8. The subject property is located at 2555Brush Street, Detroit, and Wayne County, Michigan.

PETITIONER'S CONTENTIONS

Petitioner's counsel testified that the owner of the property, Mr. Glieberman, redid a whole subsection of the City of Detroit. He knocked down the existing improvements, redid the sewer system, utilities, repaved the roads and constructed Townhouses for sale. Counsel testified that the area is in a "NEZ," neighborhood enterprise zone, for those people who have qualified. Subject property is the only house left. Hoffert contends that the issue is a taxable value issue under "Toll."

Hoffert stated that he contacted Respondent's attorney but there was no specific person assigned to this parcel and, therefore, no information was exchanged. Petitioner was not sure if the city's parcel identification number is correct, or the address. Petitioner was not able to obtain a property record card. The proposed $81,268 assessed and taxable value was not confirmed with Respondent.

Petitioner does not know where Respondent's numbers come from without a property record card or information as to the value of the property.

When the Tribunal asked what evidence Petitioner had to establish value, Hoffert stated:

> I don't have anything because I can't get anything from them and I can't get the numbers. I have nobody to talk to. I have tried at least ten times, and this is a number based on the other cases that we have settled with them in that same subdivision. Tr. p 9.

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 state equalized and taxable value real property was incorrectly calculated by Respondent. Petitioner did not submit any evidence as to what the correct parcel identification number, street address, state equalized and taxable values are for subject property that Petitioner believes has an estimated true cash value of $100,000 for some property located in the vicinity of 2555 Brush Street, Detroit, Michigan. Petitioner provided no valuation evidence, no witnesses, nor any property record card on file with the City of Detroit.

It simply is insufficient for Petitioner to announce to the Tribunal that the subject property is over assessed; however, without any documentation as to what the actual state equalized value and taxable values are Petitioner simply does not meet the burden of proof.

JUDGMENT

IT IS ORDERED that the property's assessed and taxable values for the tax years at issue shall be as set forth in the Findings of Fact section of this Final 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 property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of this Final Opinion and Judgment, subject to the processes of

equalization. See MCL 205.755. 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 28 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 Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (ii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (iii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, and (iv) after December 31, 2008, at the rate of 3.31% for calendar year 2009.

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

MICHIGAN TAX TRIBUNAL

Entered: October 23, 2009 By: Victoria L. Enyart