

STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

Sunset Shores Yacht Club, Inc,
Petitioner,

v

MTT Docket No. 454459

Bangor Township,
Respondent.

Tribunal Judge Presiding
David B. Marmon

ORDER GRANTING PETITIONER'S MOTION TO AMEND ITS PETITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Sunset Shores Yacht Club, Inc, appeals ad valorem property tax assessments levied by Respondent, Bangor Township, against Parcel No. 09-010-S36-009-006-00 for the 2013, 2014 and 2015 tax years. Thomas W. McDonald, Jr., Attorney, represented Petitioner, and James M. Hammond, Attorney, represented Respondent. A hearing on this matter was held on April 8, 2016. Petitioner's witnesses were William Roberts and Kelly Karbowski, CGA. Respondent's sole witness was Daniel Darland, assessor

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash values ("TCV"), state equalized values ("SEV"), and taxable values ("TV") of the subject property for the 2013, 2014 and 2015 tax years are as follows:

Parcel No.	Year	TCV	SEV	TV
09-010-S36-009-006-00	2013	\$883,000	\$441,500	\$441,500
09-010-S36-009-006-00	2014	\$883,000	\$441,500	\$441,500
09-010-S36-009-006-00	2015	\$883,000	\$441,500	\$441,500

PETITIONER'S CONTENTIONS

Petitioner contends that the subject is assessed in excess of 50% of true cash value. Further, Petitioner contends that the seawall, present in some of its slips, along with the stone barrier known as riprap is also exempt under MCL 211.7g. Its contentions of true cash value state equalized value and taxable value are summarized as follows:

Year	TCV	SEV	TV
2013	\$650,000	\$325,000	\$325,000
2014 ¹	\$650,000	\$325,000	\$325,000
2015	\$558,000	\$279,000	\$279,000

PETITIONER'S ADMITTED EXHIBITS

- P-1 Map of Michigan
- P-2 Map of Bangor Twp
- P-3 Google earth photo of Saginaw River looking north
- P-4 Google earth photo of subject
- P-5 Photo of subject's drive, etc. looking south
- P-6 Photo of subject's drive, etc. looking north
- P-7 Photo of subject's drive, etc at curve
- P-8 Photo of subject's southern border
- P-9 Photo of Rip Rap, slips 181-183
- P-10 Photo of Rip Rap, slips 184 and 185
- P-11 Photo of steel seawall
- P-12 Photo of steel seawall
- P-13 Photo of steel seawall
- P-14 Photo of steel seawall
- P-15 Association rules
- P-17 Determination letter dated March 15, 2015 from DNR regarding MCL 211.7g
- P-18 Invoice from Dave's Contracting for Rip Rap repair
- P-19 Appraisal prepared by Kelly Karbowski as of December 31, 2014
- P-20 Appraisal prepared by Kelly Karbowski as of December 31, 2012
- P-21 Petitioner's Articles of Incorporation
- P-25 Assessor's Tax Record Card for parcel # S36-008-020-02
- P-27 Three photos of parcel # S36-008-020-02
- P-29 Assessor's Tax Record Card for parcel # S36-008-013-02
- P-30 Three photos of parcel # S36-008-013-02
- P-31 Assessor's Tax Record Card for parcel # S36-008-005-00
- P-32 Two photos of parcel # S36-008-005-00
- P-33 Assessor's Tax Record Card for parcel # S36-008-004-02
- P-34 Photo of parcel # S36-008-004-02
- P-38 aerial photo of parcels S36-008-008-01, 00 and 02
- P-39 Two photos of parcel # S-36-008-008-01
- P-40 Two photos of parcel # S-36-008-008-00 and 02

PETITIONER'S WITNESSES

¹ Per Petitioner's opening statement, T. p. 14

Petitioner called two witnesses, Petitioner's Commodore, William Roberts, and its appraiser, Kelly Karbowski

William Roberts

Petitioner's first witness was William Roberts, who is a club shareholder since 1996, holding two stock certificates and also holds the title of "Commodore" for Petitioner.² Roberts testified that Petitioner's purpose was to promote boating and to provide a safe haven for boats and its members. He testified that the subject has 186 boat slips, and there is a corresponding numbered stock certificate for each slip, entitling each stock holder to the use of that boat slip, provided that the association fee is paid, and the club's rules are followed.³

Regarding the fortunes of the club, Roberts had the following exchange on direct examination:

Q And have you observed a trend, say in the last five, six years regarding the use of recreational boaters?

A Well, with the high cost of fuel, boats have kind of taken a back burner. And the bad economy, they've taken a bad -- back burner to everything having to do with boating. So I'd say there's less boats on the river than there were five years ago.

Q So there's been a decline in the use?

A Yes.

Q As a result of that, have you noticed any change in the occupancy for the Sunset Shores Yacht Club?

A Yeah. We had less people. It's just been kind of hard to -- to keep all the slips in use. And that falls on the shareholders.

Q Okay. I understand last year that there were some shareholders who tried to sell their --

A Yes.

Q -- stock certificates?

A We had three people give their shares back. And we have a procedure, if they don't pay for taking them back; but, in this case, they just agreed to give it to us.

Q Do these three shareholders try to sell their --

A Yes, they did. And --

Q Do you know for how long they tried to sell them?

A I think they -- I would say at least seven, eight years at least.

Q And they could not sell them?

A They could not sell it.

² T. p. 20

³ T. p. 22-24

Q There's no market for their shares?

A Essentially, yes.

Q And did Sunset Shores pay any money to these members for their certificates?

A No, we did not.⁴

On a related matter, Roberts testified regarding the market for Petitioner's shares. Specifically, he testified that some of the members have had their shares for sale for 10 years or more with no takers, and 3 members have simply given their shares back to the club. Regarding his own shares, he testified that he paid \$15,000 for his slip in the 1990s, but now he cannot get even \$5,000.⁵ As to vacancy he testified that "we probably have 30 to 50 slips empty every year out of 186."⁶

Roberts also testified regarding the various club rules, which include the use of only approved storage boxes, a ban on boat trailers, a ban on fires in the common areas, an 11:00 pm noise curfew, a ban on foul language, a ban on fireworks of all types, a limitation on disposing fish guts, a limitation on boat fueling, a requirement of certain minimum insurance coverage, and the use of only certain types of electrical hook-up cords.⁷ On cross, Roberts agreed that these rules made the club more attractive,⁸ but on re-direct, conceded that some of the rules might discourage others from joining.⁹

Regarding the sea wall issue, Roberts testified as to when the wall and the riprap were installed, and their use to prevent erosion. He also testified regarding the cost to repair riprap that was missing or damaged, and the timeline for requesting a letter from the DNR.¹⁰

Kelly Karbowski

Petitioner's second and final witness was Kelly Karbowski, a licensed Certified General Appraiser, who was determined without objection to be qualified as an expert in valuation.¹¹

⁴ T. p. 29-30

⁵ T. p. 78-79.

⁶ T. p. 81

⁷ T. p. 44-53

⁸ T. p. 72

⁹ T. p. 76

¹⁰ T. p. 55-60

¹¹ T. p. 88

Regarding highest and best use as improved, Karbowski concluded is for commercial/private yacht club.¹² On cross examination, because of the subject's zoning, the minimum improvements on the land, and set-back requirements for greater improvement, he agreed that the present use (private yacht club) was in fact, the highest and best use, rather than commercial marina.¹³ In response to a question from the bench, Karbowski agreed that commercial marinas are generally more of a maximally productive use than private yacht clubs.¹⁴

Karbowski testified that he attempted to value the property using the income capitalization approach, but did not follow that approach to conclusion because he was "not provided any financial information for the property [or] financial statements to examine."¹⁵ Karbowski also considered the cost approach to valuation, but rejected it stating, "[b]ecause this property does not have many site improvements or has limited site improvements, we did not follow the cost approach to a conclusion."¹⁶

Karbowski explained how he looked for comparables for his sales approach:

Well, to complete a sales comparison approach, we examined a geographic area which we'll say ran along the Lake -- Lake Huron shoreline, stretching from the thumb all the way up to the Straits of Mackinaw. . . . And that search, we attempted to find sales of either -- the sales that we found were either of a yacht club or a commercial marina. But the one common thread that these comparables had, that they shared with the subject property, is that they all were comprised of boat slips.¹⁷

Two of Karbowski's comparables were extremely close to the subject in terms of distance. Comparable 4 located at 5309 Wilder Rd in Bay City is located within a mile and a half of the subject, while Comparable 3 Linwood Marina is located within 7 or 8 miles.¹⁸

When asked why he did not consider any private boat slip sales, Karbowski testified:

When you're dealing with one private boat slip versus a boat slip inside a yacht club, there is -- there are -- there are differences there in terms of the full bundle

¹² T. p. 96

¹³ T. p. 128

¹⁴ T. p. 206

¹⁵ T. p. 97

¹⁶ T. 98

¹⁷ T. 98-99

¹⁸ T. 100-101

of ownership rights. The circumstances are very different. They're very different properties.¹⁹

He elaborated, indicating that there is a large difference in square footage per boat slip between the subject and private slips, as well as restrictions of usage found on the subject's slips.²⁰

On cross examination, Karbowski admitted that four of his five sales comparables were commercial marinas rather than private yacht clubs, with the exception being Oscoda Yacht Club, Comparable 5. Further, four of the five sales are bank, or bankruptcy sales, with no adjustments for conditions of sale.²¹

Regarding his market (time) adjustment, he agreed on cross examination that the market was better in 2012 than in 2013, or up to the present day.²² Karbowski admitted that there was no explanation in his appraisal for his time adjustment.²³

Regarding the large differences found when comparing Karbowski's percentage adjustments on a square foot basis, he indicated that the variance was due to the difference in the structures on the property.²⁴

RESPONDENT'S CONTENTIONS

Respondent contends that the subject is a dockominium, and its highest and best use is as a private yacht club. Respondent further contends that the proper methodology for valuing the subject is by using sales of individual boat slips, adjusting those sales, and multiplying the concluded price per slip by the number of boat slips at the subject. Using this methodology, Respondent contends the following for its true cash value, state equalized value and taxable value:

Year	TCV	SEV	TV
2013	\$1,170,000	\$585,000	\$585,000
2014	\$1,413,000	\$706,500	\$594,360
2015	\$1,525,000	\$762,500	\$603,869

¹⁹ T. p. 106

²⁰ T. p. 107-108

²¹ T. p. 145

²² T. p. 149

²³ T. p. 165

²⁴ T. p. 199

RESPONDENT'S ADMITTED EXHIBITS

- R-1 Tax map
- R-2 Bangor Township zoning map
- R-3 Tax map with zoning
- R-4 Zoning ordinance
- R-5 Bing aerial photo of 119 E. Spring St., Pt. Austin, MI
- R-6 Bing aerial photo of 119 E. Spring St., Pt. Austin, MI (close up)
- R-7 Bing aerial photo of 9576 M-33, Cheboygan, MI
- R-8 Bing aerial photo of 9576 M-33, Cheboygan, MI (close up)
- R-9 Bing aerial photo of 135 Linwood Beach Rd., Kawkawlin, MI
- R-10 Bing aerial photo of 135 Linwood Beach Rd., Kawkawlin, MI
- R-10a Google aerial photo of 135 Linwood Beach Rd., Kawkawlin, MI
- R-10b Google aerial photo of 135 Linwood Beach Rd., Kawkawlin, MI
- R-11 Bing aerial photo of 135 Linwood Beach Rd., Kawkawlin, MI
- R-12 Bing aerial photo of 135 Linwood Beach Rd., Kawkawlin, MI
- R-13 Bing aerial photo of 5309 E. Wilder Rd., Bangor Twp., MI
- R-14 Bing aerial photo of 5309 E. Wilder Rd., Bangor Twp., MI
- R-15 Bing aerial photo of 5309 E. Wilder Rd., Bangor Twp., MI
- R-16 Bing aerial photo of 5309 E. Wilder Rd., Bangor Twp., MI
- R-17 Bing aerial photo of 5309 E. Wilder Rd., Bangor Twp., MI
- R-18 Bing aerial photo of 5309 E. Wilder Rd., Bangor Twp., MI
- R-19 Bing aerial photo of 5309 E. Wilder Rd., Bangor Twp., MI
- R-20 Bing aerial photo of 5309 E. Wilder Rd., Bangor Twp., MI
- R-21 Bing aerial photo of 5309 E. Wilder Rd., Bangor Twp., MI
- R-22 Petitioner's Bylaws
- R-23 Petitioner's Association Rules
- R-24 Bing aerial photo of subject
- R-25 Respondent's Valuation
- R-26 Record card for parcel No. S-36-008-020-02
- R-27 Record card for parcel No. S-36-008-004-02
- R-28 Record card for parcel No. S-36-008-005-02
- R-29 Record card for parcel No. S-36-008-013-02
- R-30 Record card for parcel No. S-36-008-011-00
- R-31 Record card for parcel No. S-36-008-011-01
- R-32 Record card for parcel No. S-36-008-012-01
- R-33 Record card for parcel No. S-36-008-010-01
- R-34 Verification of Purchase of share/slip# 133
- R-35 Verification of Purchase of share/slip# 136
- R-36 Verification of Purchase of share/slip# 76
- R-37 Verification of Purchase of share/slip# 27
- R-38 Google aerial photo of 430 State St., Oscoda Yacht Club
- R-38a Google aerial photo of 430 State St., Oscoda Yacht Club

R-38b Google aerial photo of 430 State St., Oscoda Yacht Club
R-38c Google aerial photo of 430 State St., Oscoda Yacht Club
R-38d Google aerial photo of 430 State St., Oscoda Yacht Club

RESPONDENT'S WITNESS

Daniel Darland

Respondent called one witness, its assessor Daniel Darland. Darland, a level 3 assessor was qualified as an expert in assessing. He claims that assessors do the same things as appraisers and use the same techniques in valuing property.²⁵ As to the subject, he explained his method of valuation as follows:

The subject property is a -- what I'm going to refer to as a dockominium. If counsel wants to argue that, well, you own a share; and a share is assigned a dock, it's all the same thing. But I'm not going to complain about that. Trying to find comparable properties for dockominiums. Treated this sort of like a residential condominium project. If you have residential condominiums, and you're doing a review of value on them, you find residential condominium sales that are comparable. The same thing here. I look for individual boat slips that were comparable. There were slips just outside the confines of the Sunset Shores Yacht Club what I considered very comparable.²⁶

Regarding Darland's method of taking sales outside of the subject property of individual slips and extrapolating the sales price by the subject's 186 boat slips, the Tribunal had the following exchange:

THE COURT: Okay. In your experience, are commercial marinas generally more valuable than yacht clubs; or is it the other way around?

THE WITNESS: Commercial marinas are generally, I'd say, more valuable, yes.

THE COURT: Okay. Your analysis here, you've got 11 sales; am I correct? I think I counted 11.

THE WITNESS: Yes.

THE COURT: Are those all the sales that occurred between 2011 and 2015.

THE WITNESS: Yes. There was one sale I had in the earlier appraisal of this property; but it ended up, as Mr. McDonald pointed out, it was a land contract payoff. So that one was removed.

²⁵ T. p. 221. The Tribunal notes that appraisers, unlike assessors are separately licensed and regulated, and are required to pass a separate examination, MCL 339.2619, and are required to follow uniform standards of professional appraisal practice, per MCL 339.2609(b).

²⁶ T. p. 222-223

THE COURT: So it's not like 186 slips ever sell [in] a year?

THE WITNESS: No.²⁷

Darland also admitted that in his 42 years of assessing experience, he has not seen any other valuation for dockominiums using his technique.²⁸

Darland differed in highest and best use with Petitioner, explaining his complaint with Karbowski's conclusion as follows:

One is it's being appraised as a commercial yacht club. It is not a commercial yacht club. It's individual ownership. It's a dockominium. You have a share, you have a stock, you have a dock. That's the way it is. So -- and, when they sell them, they're sold individually, not as the entire project. If a condominium were -- a subdivision were to sell, you don't sell the whole subdivision, it's individual condominiums sell. Same thing here. And I've shown how I did my adjustments.²⁹

Regarding Petitioner's Comp 5, Darland testified that he did some research, and concluded that it was a tax sale; that the marina had not been used since 2010, and that it was silted in.³⁰

As to highest and best use of the subject, Darland opined that the highest and best use of the subject is as a private club marina. He also testified regarding physical features of commercial marinas which are absent from the subject:

Things I've seen of commercial marinas were the boat hoist to lift the boat up and out of the water, boat launching facilities, repair services, parts departments. I believe all but one or two of the three had a sales area for new boats and used boats. A small convenience store. I think all three had gasoline service. Those are types of things. And storage. Indoor storage, indoor heated storage, outdoor storage, wrapping service where they put, like, a Saran Wrap around a boat-type thing.

Q And, for storage, do you generally need a much larger amount of land?

A Oh, you need a large amount of land for outdoor storing and indoor storing. You need a -- the shorter boats, they stack them on racks.³¹

²⁷ T. p. 302-303

²⁸ T. p. 303

²⁹ T. p. 257-258

³⁰ T. p. 259

³¹ T. p. 238

As to whether or not he assessed seawalls, he testified that he was unaware that any seawalls were present until the week prior to hearing.³²

At the conclusion of his testimony, Darland gave the following responses to questions from the bench regarding his conclusions and methodology:

THE COURT: Okay. In your experience, are commercial marinas generally more valuable than yacht clubs; or is it the other way around?

THE WITNESS: Commercial marinas are generally, I'd say, more valuable, yes.

THE COURT: Okay. Your analysis here, you've got 11 sales; am I correct? I think I counted 11.

THE WITNESS: Yes.

THE COURT: Are those all the sales that occurred between 2011 and 2015.

THE WITNESS: Yes. There was one sale I had in the earlier appraisal of this property; but it ended up, as Mr. McDonald pointed out, it was a land contract payoff. So that one was removed.

THE COURT: So it's not like 186 slips ever sell a year?

THE WITNESS: No.

THE COURT: Okay. My final question is do you have any authority, whether it's the STC, a learned treatise, a tribunal decision, case law for dockominiums in the manner that you did?

THE WITNESS: I don't understand the question. Dockominiums, the main purpose of – what you're appraising is a dock.

THE COURT: I understand this. Have you seen any other valuation that used this method in your 42 years experience as an assessor?

THE WITNESS: For dockominiums?

THE COURT: Yes, that's my question.

MR. HAMMOND: No. For residential condominiums, yes, sir.

THE COURT: So you're doing it all by analogy then?

THE WITNESS: Yes, that's correct.³³

FINDINGS OF FACT

³² T. p. 250

³³ T. p. 302-303

1. The subject consists of a strip of land, a bath house, a paved drive way, and 186 boat slips and docks, complete with riprap, holding back the land in all boat slips, and a metal sea wall in some of the strips.
2. The subject is classified as commercial, and zoned R-2
3. Petitioner, per its articles of incorporation is organized on a non-profit basis.
4. Each shareholder of Petitioner receives a numbered share certificate that entitles him or her to the use of a boat slip with a corresponding number, provided that the shareholder abides by Petitioner's Association Rules, and pays the annual dues.
5. Petitioner may sell or transfer its share, and the right to use the corresponding boat slip transfers with the share.
6. Petitioner may lease the boat slip to a non-member corresponding with its share.
7. The subject contains a metal seawall, and riprap to contain erosion, per letter from the DNR, dated March 15, 2016.
8. Respondent was unaware of the existence of the metal seawall on the subject until a week prior to hearing.
9. Neither valuation witness assigned any value to the riprap or the seawall on the subject property.
10. Petitioner's Commodore, William Roberts testified that there were 30 to 50 empty boat slips every year out of 186.
11. Roberts testified that some of the slips have been advertised for sale for over 10 years.
12. Roberts testified that he paid \$15,000 for his slips in the 1990s, but now cannot even get \$5,000 per slip.
13. Petitioner submitted two appraisals by Kelly Karbowski, CGA.
14. Karbowski concluded that the subject's highest and best use as improved is for a Commercial/Private Yacht Club.
15. Karbowski found, and relied exclusively upon four sales for tax year 2013 of marinas in the Lake Huron basin ranging in price from \$280,000 to \$2,975,000.
16. For tax year 2015, Karbowski relied upon the same sales, along with an additional comparable in Oscoda that sold for \$135,000.

17. Karbowski adjusted each sales price, and then concluded to price per slip, which he multiplied by 186 slips to determine the subject's true cash value for 2013 and 2015.
18. Petitioner's Comparable Sale #1, ("P1") 119 East Sprint, Pt. Austin, a commercial marina containing 30 boat slips, 5,000 square feet of gross building area and 1.60 acres sold on April 30 2012 in a REO sale for \$280,000.
19. Petitioner's Comparable Sale #2, ("P2")) 9576 M-33, Cheboygan, a commercial marina containing 74 boat slips, 4,600 square feet of gross building area and 5.22 acres sold on February 17, 2011 in a REO sale for \$475,000.
20. Petitioner's Comparable Sale #3, ("P3") 135 Linwood Beach Rd., Linwood, a commercial marina with 153 boat slips, 27,750 square feet of gross building area and 15.21 acres sold on April 12, 2007 in an arm's length sale for \$1,150,000.
21. Petitioner's Comparable Sale #4, ("P4") 5309 Wilder Rd., Bay City a commercial marina with 286 boat slips, 230,852 square feet of gross building area and 81.3 acres sold on May 24, 2013 in a REO sale for \$2,975,000.
22. Petitioner's Comparable Sale #5, ("P5") 430 State St., Oscoda, a vacant private yacht club with 52 boat slips, 7,818 square feet gross buildable area and 2.38 acres sold on September 3, 2015 in a bankruptcy sale for \$135,000.
23. Respondent relied upon the valuation prepared by its assessor, Donald Darland.
24. Darland concluded that the highest and best use of the subject is as a private marina.
25. Darland relied upon the sales of interests in 11 individual boat slips which took place in 2011, 2013, and 2015.
26. Darland testified that these were the only individual slips that transferred from 2011 to the present.
27. Eight of Darland's sales were one third undivided interests of 50 foot wide parcels, which he valued as if the sale price was for a 16.33 foot wide slip.
28. Three of Darland's sales were transfers of boat slips in the subject property in 2011; two which sold for \$5,000, and one which sold for \$3,000.
29. Darland adjusted these sales by front foot, and for presence of a seawall, assuming that the subject had no sea wall.

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.³⁴

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. 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 percent. . . .³⁵

The Michigan Legislature has defined “true cash value” to mean:

The usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale.³⁶

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”³⁷

“By provisions of [MCL] 205.737(1) . . . , the Legislature requires the Tax Tribunal to make a finding of true cash value in arriving at its determination of a lawful property assessment.”³⁸ The Tribunal is not bound to accept either of the parties' theories of valuation.³⁹

“It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case.”⁴⁰ In that regard, 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.”⁴¹

³⁴ See MCL 211.27a.

³⁵ Const 1963, art 9, sec 3.

³⁶ MCL 211.27(1).

³⁷ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

³⁸ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

³⁹ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

⁴⁰ *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

⁴¹ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

A proceeding before the Tax Tribunal is original, independent, and de novo.⁴² The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”⁴³ “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”⁴⁴

“The petitioner has the burden of proof in establishing the true cash value of the property.”⁴⁵ “This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party.”⁴⁶ However, “[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question.”⁴⁷

The three most common approaches to valuation are the capitalization of income approach, the sales comparison, or market, approach, and the cost-less-depreciation approach.⁴⁸ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”⁴⁹ The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances.⁵⁰ Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.⁵¹

The issues in this case involve the valuation of a yacht club, which consists chiefly of 186 boat slips. There is also an exemption issue involving a metal seawall, and another barrier used to hold back the tide, referred to by the parties as riprap. Per the request of the parties, this case was placed into abeyance pending the Tribunal’s decision in a neighboring property, *Bay City*

⁴² MCL 205.735a(2).

⁴³ *Dow Chemical Co v Dep’t of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

⁴⁴ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

⁴⁵ MCL 205.737(3).

⁴⁶ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

⁴⁷ MCL 205.737(3).

⁴⁸ *Meadowlanes*, *supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), *aff’d* 380 Mich 390 (1968).

⁴⁹ *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

⁵⁰ *Antisdale*, *supra* at 277.

⁵¹ See *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

Yacht Club Inc v. Bangor Twp., MTT Docket No. 454379. The Tribunal's decision in that appeal did not foster a settlement in the present case. While the proofs and properties are similar, the Tribunal has reached a different independent conclusion based upon the undersigned's analysis of the evidence presented.

Exemption under MCL 211.7g

As a preliminary issue, the Tribunal must determine whether to grant Petitioner's Motion to Amend/Supplement Petition to assert that pursuant to MCL 211.7g, the value of seawalls and other structures on Petitioner's property are exempt from taxation. The Tribunal, noting that this issue was discovered after the Petition was filed, and was also an issue in MTT Docket No. 454379, for which the present case was placed into abeyance, finds no prejudice in allowing that claim to proceed, and therefore took evidence on that claim, to the extent it exists.

MCL 211.7g states:

The value of a seawall, jetty, groin, dike, or other structure whose primary purpose is to prevent or control erosion or prevent or control inundation or flooding on property affected by waters or levels of the Great Lakes or their connecting waters and tributaries as affected by levels of the Great Lakes is exempt from taxation. The department of natural resources shall, when requested by the owner or the assessor, determine if such seawall, jetty, groin, dike, or other structure has as its primary purpose the prevention or control of erosion.

That portion of structures which are modified or designed to provide benefits other than erosion control or flood prevention are not exempt from assessment for property tax.

Unlike *Bay City Yacht Club*, Petitioner presented a letter from the DNR dated March 16, 2016,⁵² required under §7g, establishing that the seawalls were put in place to and "have as their primary purpose the prevention or control of erosion." Respondent argues that the DNR letter is dated after tax dates under appeal, and is inapposite, while Petitioner points out that the permits issued for installation as acknowledged in the DNR letter were in 1982 and 2000; well before tax day. However, the Tribunal need not make a finding as to whether these features qualify under §7g because it appears that they were never taxed in the first place, and not valued by either side in the present appeal.

⁵² Exhibit P-17

Respondent's assessor Donald Darland testified that he did not value the subject as if it had steel seawalls in place.⁵³ Further, neither Darland, nor Karbowski used the cost approach in valuing the subject, which might have assigned value to the seawall or riprap. Rather, both valuation witnesses relied strictly upon their variations of the sales approach. While Darland adjusted his comparables under the assumption that the subject had no seawall, his dollar amount for this adjustment was not supported by anything but average prices of private boat slips with, and within a sea wall. Interestingly, Darland's sale #4 (parcel 011-00) and sale #10 (parcel No. 011-01) each involving a 1/3 interest of a 50 foot wide boat slip, and each taking place on October 26, 2011 sold for the exact same amount of \$4,500 despite the latter comparable having a sea wall. The Tribunal holds that Darland's adjustment for a sea wall is an unreliable method to value the sea wall. Further, this method only applied to the steel seawall, and not to the riprap found throughout the subject.

Petitioner attempted to establish the value of the riprap by providing testimony of Roberts as to the cost to repairing it. However, the Tribunal finds that extrapolation to be an unreliable method for determining its contribution to true cash value for two reasons. First of all, cost does not necessarily equal market value. Second, the cost to repair a section may not have any relation to the cost of installing the riprap throughout the marina, nor reflect a depreciated value. In any case, no such evidence of the cost to install was provided. Petitioner's expert also testified that he made no adjustments for seawalls, riprap or bulkheads.⁵⁴ Accordingly, since the value of the sea wall cannot be determined under the methods used by either valuation witness, the Tribunal holds that there is no rational way to assign a value to the seawall and riprap to deduct its value from the overall true cash value, should it be determined that it is exempt. Accordingly, the Tribunal holds that while the seawall may qualify as exempt from taxation under MCL 211.7g, (at least for future years), Petitioner failed to bring forth any credible evidence as to how much of the subject's true cash value can be assigned to the seawall and riprap. Therefore, none of the true cash value of the subject as determined below, can be considered exempt.

⁵³ T. p. 250

⁵⁴ T. p. 304

Valuation

The second issue in this appeal involves valuation, and the subject's highest and best use is in dispute. Both Petitioner and Respondent agreed that the subject's highest and best use is as a yacht club. However, Petitioner's appraisal also included the subject's use as a commercial marina. Although Karbowski's appraisal also considered a commercial marina as a highest and best use, Karbowski backed away from that conclusion at trial, based upon the zoning ordinance, because as of the valuation dates, it is legally impermissible to use the subject as a commercial marina.⁵⁵ Additionally, there was testimony that a marina would have significantly more amenities than a private yacht club, including stores, storage, and fuel sales.⁵⁶ The lack of those facilities, along with the lack of vacant land, and set back requirements found in §17.02 of Site Development Standards also makes the use of the subject as a commercial marina to be physically impossible. Accordingly, under two of the four tests for highest and best use, the subject cannot be used commercial marina.

Respondent argues that Petitioner's use of commercial marinas as sales comparables is therefore inappropriate. The Tribunal disagrees. The main feature of the subject is the presence of 186 boat slips. The main feature of a commercial marina is boat slips. Darland agreed that generally, a commercial marina is a more profitable use of boat slips than a private yacht club. Accordingly, Petitioner's use of commercial marina sales is not likely to understate the value of the subject. Further, it is arguably a better method to determine what a lot of 186 boat slips will sell for if one looks at sales of multiple boat slips found in marina sales and adjusting for the presence of additional features. Petitioner's appraisal uses this approach. The Tribunal is not persuaded by Respondent's argument that the sale of commercial marinas, whose predominant feature is boat slips is inappropriate because the marinas are commercial rather than private yacht clubs. It is noteworthy that for both commercial marinas and private clubs, the foremost product they offer to customers/members are boat slips. Accordingly, Petitioner's appraisal will be considered, and discussed below.

Respondent argues that the subject is a dockominium, and should be valued as a residential condominium would be valued. Darland admitted that he had no authority for this

⁵⁵ Exhibit R-4

⁵⁶ See Darland's testimony, p. 238

proposition. Further, the fact that there were only eleven sales in 5 years of individual docks suggests that this method would not be reliable for valuing a parcel containing 186 boat slips.⁵⁷

The other problem with analogizing the subject to a condominium for valuation purposes is that the subject is made up of one parcel number. Petitioner argued that a shareholder entitled to the use of a boat slip does not possess the full bundle of rights that a dock owner with his own parcel would have. Petitioner further argues that the club's rules are a further restriction on shareholder ownership. Respondent counters that the rules make the subject a safer and a better place to keep a boat than a private dock, and that a condominium owner also has rules he or she must follow. In considering these arguments, the Tribunal holds that because the subject's individual shareholders can sell their shares, rather than their slips makes the subject analogous to a residential cooperative, rather than a condominium. As with a residential cooperative, a shareholder is entitled to the use of a specific unit, or in this case, a specific boat slip. In both a cooperative and a condominium, residents are bound by rules of the governing association of the residence. The lead case in valuing residential cooperatives is *Meadowlanes Ltd Dividend Housing v. City of Holland*,⁵⁸ where the Supreme Court stated:

We direct that on remand, the tribunal be presented with factually supported estimate of fair market value of the Meadowlanes property derived from the three recognized valuation approaches: (1) the replacement-cost-less-depreciation approach, (2) the market or comparison-sales approach, and (3) the capitalization-of-income approach. These traditional approaches are based on concepts that apply to subsidized housing complexes just as they apply to other types of real property. A survey of relevant decisions in other jurisdictions reveals reliance on these three recognized approaches. Evidence of an entirely new method of valuation may also be presented, but it must be demonstrated to be accurate and reasonably related to the fair-market value of the subject property. The values derived under the various approaches are to be correlated, reconciled, and weighed in order to reach a final estimate of value. It is the Tax Tribunal's duty to determine which approaches provide the most accurate valuation under the individual circumstances of each case. An appraisal approach is to be disregarded only if there is research justifying its nonuse. In addition, the final estimate of true cash value must represent the physical real estate and all the interests, benefits, and rights inherent in ownership of the subject real property. With these basic principles in mind, we acknowledge that there is no single correct approach for determining the true cash value of federally subsidized real property. Therefore, the appraiser should use variants of all three traditional approaches, valuing the

⁵⁷ T. p. 302-303

⁵⁸ 437 Mich 473, 501-502; 473 NW2d 636 (1991).

property both as private apartments and as a federally subsidized housing complex.

Again in light of *Meadowlanes*, and analogizing to a residential cooperative, the Tribunal finds it to be appropriate in the present case to value the private yacht club as if it were a marina, making appropriate adjustments and discounts for those differences. Karbowski does so in his sales approach. It is of note that he failed to conclude to a value under two of the three standard approaches, because of lack of data for an income approach,⁵⁹ and because any improvements to the subject are minimal, finding the cost approach inapposite. Respondent also eschewed the income and cost approach. Respondent did not use the income approach because the subject is a non-profit organization. While other approaches may be helpful, the Tribunal must decide upon a true cash value based upon the evidence presented, as opposed to any ideal evidence.

Despite Respondent's inability to cite a case where individual slip sales were used to value the whole, the Tribunal has in fact, used this method and was affirmed by the Court of Appeals. In *Malcho et al v Clark Twp.*,⁶⁰ the Tribunal valued eleven parcels using the sale of other individual interests in the subject property itself. The Tribunal held:

The Tribunal ... concludes that the sales comparison approach using approximately 41 sales (including the 11 parcels subject to this action, all being sales of identical 1/45 fee simple in common interests in Lot 56 and 57, Assessor's Plat of Hessel, yields the most accurate indication of value for each of the parcels on each of the valuation dates under appeal in this matter.⁶¹

The holding in *Malcho* can be distinguished from Respondent's methodology in that Clark Twp. used a far greater number of sales, (47 versus 11 sales), and that the sales used were all within the same facility. The Tribunal will also consider the sales of shares within the facility, as a check on value.

Darland's valuation

Donald Darland prepared a modified sales approach using 11 sales of interests in individual boat slips. Eight of his comparables were 1/3 undivided interests in parcels of land. While not apparent from Darland's appraisal, Petitioner's exhibits show that each undivided 1/3

⁵⁹ It is surprising that Petitioner's appraiser was not made privy to Petitioner's financial statements and data.

⁶⁰ 17 MTT 154 (2009), affirmed, Unpublished per curiam of the Court of Appeals, dated October 21, 2010 (Docket No. 293137).

⁶¹ *Id.*, p. 166

undivided interests were in fact divided into three boat slips.⁶² Petitioner showed through other exhibits⁶³ that several of these properties contained physical structures, as well as a greater amount of land than the 12 foot median strip found on the subject. Petitioner argues that these comparables provide for a greater number of rights for a fee simple slip holder owner than for a shareholder of the subject. Petitioner also argues that there may be more amenities available on the parcels in terms of storage than what it found at the subject. Respondent counters that a boat is safer at Petitioner's gated facility than in an open slip. While both arguments have some merit, neither is persuasive, each proving that the 1/3 interest parcel sales are different than what is present at the subject.

Respondent's valuation also has three sales of shares that are part of the subject. This evidence is more persuasive but fails to recognize that the subject has 186 parcels, with 30 to 50 vacancies. In valuing the subject, the best comparables are those that include multiple boat slips. The Tribunal is also unconvinced that Respondent's trend analysis, discussed below is applicable in the case at bar. Accordingly the Tribunal holds that the Respondent's valuation methodology is not likely to lead to a reliable indicator of value of the subject. However, the Tribunal will consider the 3 2011 sales of shares of the subject as a check on the reasonableness of the value determined by the Tribunal.

Karbowski's appraisal

Karbowski used four comparable sales for his tax year 2013 appraisal, and added an additional comparable for his 2015 appraisal. No appraisal was performed for 2014. Karbowski used sales of marinas that were within the Lake Huron basin. All except sale P3 were REO or bankruptcy sales. However, these four sales took place between 2011 and 2015, and tend to show what Roberts and Karbowski testified to, that the market for boat slips in the Lake Huron basin is weak. The principle of substitution, along with decisions of the Michigan Court of Appeals hold that bank sales should not be automatically excluded when they make up a significant portion of the market.⁶⁴

⁶² See photos included in record cards, Exhibits P-25, P-29, P-37 as well as photos found in P-38

⁶³ See P-30, P-33, P-34.

⁶⁴ See *Samonek v. Norvell Twp.* 208 Mich App 80; 527 NW2d (1994); *Abbas v. City of Dearborn*, Unpublished per curiam opinion of the Court of Appeals, issued Dec. 27, 2012 (Docket No. 307084).

As P1, P2, P4, and P5 are bank sales, and the only non-distressed sale reported took place in 2007, the Tribunal holds that such sales are appropriate to consider the true cash value in this circumstance. While P3 was non-distressed, and in close physical proximity to the subject, the sale took place on April 12, 2007, which is 5 years prior to the first valuation date, and prior to the major economic meltdown that affected Michigan and the world in late 2008. While Karbowski applied a -17% time adjustment to this comparable, along with negative adjustments to the 2011, 2012 and 2013 sales, no explanation was offered at hearing, nor can one be found in either appraisal as to his time adjustment. His testimony that the market continued to fall in 2013 was not supported by data, and would seem to be at odds with the state's general recovery commencing in 2013. Accordingly, the Tribunal finds that this comparable is too remote in time to be an accurate indicator of true cash value of the subject for the years at issue. P5, which sold in 2015 will be considered but given minimal weight for several reasons. First of all, it was a bankruptcy sale, rather than a bank sale. Second, it had been vacant for several years prior to sale. Finally, there was testimony from Darland that P5 was "silted in," and would have to be dredged in order to be used.⁶⁵

Karbowski heavily adjusted each of his comparables, with gross physical adjustments of 65% for P1, 45% for P2, 60% for P3, 87% for P4 and 51% for P5. All of these comparables with the exception of P5 were given net negative adjustments; -2% for P1, -31% for P2, -67% for P3 and -91% for P4. Moreover, these adjustments reduce the unit price for P2 from \$6,419 to \$4,429, and for P4 from \$10,402 to \$1,255 per slip. If accepted, Karbowski's adjustments to his sales are so large that the actual data item of sales price is eclipsed by the massive scale of the appraiser's unexplained judgment for adjustments.

Karbowski valued the property by taking adjusted sales prices, dividing that figure by the number of boat slips and concluding to an adjusted price per slip, which he then multiplied by the subject's 186 slips. While these individual physical adjustments are problematic in and of themselves and will be discussed below, a significant problem with their application is that the physical adjustments were applied to the sales price, rather than to the unit price. As stated in *The Appraisal of Real Estate*, "Property adjustments for location, physical characteristics, economic characteristics and non-realty components *are typically applied to a unit*

⁶⁵ Testimony of Donald Darland, T. p. 192, 259; Exhibits R-38, R-38a-d.

price.”[Emphasis added].⁶⁶ In the present case, Karbowski’s adjustment for number of boat slips was made on the sales price, rather than the unit price, which resulted in significant positive adjustments for sales with fewer boat slips, on a *per boat slip* basis than the subject. Had Karbowski negatively adjusted the per boat slip price of smaller comparables to reflect diminishing utility,⁶⁷ the Tribunal might have considered it appropriate. As applied however, the Tribunal holds that to the extent there is any validity to the adjustment for quantity of boat slips, said adjustment was in the wrong direction. The Tribunal agrees when sales prices are compared, rather than a per unit comparison, a positive adjustment would be required of a sales price to account for a lesser quantity of units. However, it is inappropriate where that *adjusted* sales price is then converted into a price per unit and the unit values, rather than sales price are used to determine the subject’s value. A positive adjustment subtracted from the sales price, then divided by the number of units *results in a positive adjustment for fewer units*. The point of valuing a property on a per unit basis is to equalize comparables of very different sizes with the subject. Moreover, per the concept of diminishing utility, any adjustment on a comparable for a smaller quantity of units would likely be in the opposite direction. As an example, P1 has 30 units, while the subject has 186 units. Accordingly, a 30 unit marina’s sales price, all else being equal, would require a positive adjustment to reflect that there are far fewer units. On the other hand, when comparing price per boat slip, per the law of diminishing utility, a buyer would likely pay more for the first 30 units of the subject, than it would for the remaining 186 units, all other variables being equal, as each additional unit adds a smaller percentage of value, thus requiring a negative adjustment. In any case, Karbowski failed to explain how he quantified this adjustment. Accordingly, the Tribunal disregards Karbowski’s adjustment for number of boat slips.

The Tribunal also disregards Karbowski’s adjustments for view, water accessibility, and year built, as the Tribunal is not convinced that these traits would make a significant difference in price received. Further, there was no attempt to explain how these values were determined. Additionally, it was not clear from testimony as to what constituted an excellent view, versus an above average view, nor was it clear that such amenities would call for a significant premium or

⁶⁶ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), p 362

⁶⁷ Diminishing utility is defined as “the concept that the consumption of each succeeding unit of an economic good yields less satisfaction than the preceding unit although satisfaction continues to increase at a positive rate. Thus, total utility increases as a decreasing rate.” *The Dictionary of Real Estate Appraisal*, 6th Edition, 2015.

discount. However, the Tribunal does hold that significant adjustments were required for gross building area and acreage, which would in fact account for the physical differences between the comparable commercial marinas and the subject private yacht club. While Karbowski's quantitative adjustments for gross building area and acreage were not adequately explained, Karbowski's numbers are the only ones placed into evidence for these traits, and the Tribunal holds that the adjustments provided lead to a more accurate picture than a grid without these adjustments. A summary of each comparable used, price per slip, with applied adjustments is as follows:

			Analysis grid*			
Item	Subject	P-1	P-2	P-4	P-5	
	3325 Sunset	119 E.Sprint St.	9576 M-33	5309 Wilder Rd	430 State St	
	Bay City	Pt. Austin	Cheboygan	Bay City	Oscoda	
Sale price		\$280,000	\$475,000	\$2,975,000	\$135,000	
Number of boat slips		30	74	286	52	
price per unit		\$9,333	\$6,419	\$10,402	\$2,596	
GBA	approx 2000 sq ft	5000 sq ft	4600 sq ft	230852 sq ft	7818 sq ft	
adjustment %		-20%	-20%	-35%	-23%	
		-\$1,867	-\$1,284	-\$3,641	-\$597	
acreage	3.56 acres	1.6 acres	5.22 acres	81.3 acres	2.38 acres	
adjustment %		5%	-5%	-20%	5%	
		\$467	-\$320.95	-\$2,080.40	\$129.80	
Adjusted price per slip		\$7,933	\$4,814	\$4,681	\$2,129	
			median is \$4,747, or		\$883,000 rounded	

*Unadjusted price per slip and other data from corrected p. 41, submitted separately from the appraisals

Giving P1 minimal weight because of its small number of slips, (30), and also, giving minimal weight to P-5, which was sold as vacant in a bankruptcy sale, the Tribunal finds that the mean adjusted price per slip of \$4,747 is the best indicator of value for the subject. Multiplying that by 186 boat slips and rounding results in a true cash value of \$883,000 for 2013, 2014 and 2015. As a check on value, Respondent provided 3 sales of the subject's stock certificates, which sold in 2011 for \$5,000, \$3,000 and \$5,000. The average is \$4,333 per sales per slip which is within 10% of the sales price per slip derived above, and thus provides a check on the reasonableness of the Tribunal's conclusion for tax year 2013. Regarding 2014 and 2015, Karbowski concluded that the values for boat slips has been steadily dropping since 2007, although his concluded adjusted prices per slip of each comparable does not support this

conclusion. Darland concluded the opposite, but had no sales for 2012, or 2014, and one lonely sale for 2013. Rather, in what he termed “trend analysis,” he drew a line on a graph from his 2011 sales into the group of sales he had of other boat slip interests in 2015 to infer values in the intervening years in which there were no sales. In using trend analysis, *The Appraisal of Real Estate*⁶⁸ states that “[t]rend analysis is applicable when a large amount of market data is available.” The Tribunal finds that eleven sales in five years, with no sales between 2011 and 2014 is not enough data for trend analysis to be a reliable technique in this appeal. As each party relied upon their same comparables for all three years, the Tribunal concludes that there is no evidence supporting a different value for any of the years under appeal, and therefore adopts the same values for 2013, 2014 and 2015.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the subject property’s TCV, SEV, and TV for the tax year(s) at issue are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that Petitioner’s Motion to Amend its Petition is GRANTED.

IT IS FURTHER ORDERED that the property’s state equalized and taxable values for the tax year(s) at issue are MODIFIED as set forth in the Introduction 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 the 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 within 28 days of 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 penalty and interest paid on

⁶⁸ *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), p 403

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, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, and (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%.

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

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.⁶⁹ Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.⁷⁰ A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.⁷¹ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.⁷²

⁶⁹ See TTR 261 and 257.

⁷⁰ See TTR 217 and 267.

⁷¹ See TTR 261 and 225.

⁷² See TTR 261 and 257.

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an “appeal by right.” If the claim is filed more than 21 days after the entry of the final decision, it is an “appeal by leave.”⁷³ A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.⁷⁴ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.⁷⁵

By David B. Marmon

Entered: May 23, 2016

⁷³ See MCL 205.753 and MCR 7.204.

⁷⁴ See TTR 213.

⁷⁵ See TTR 217 and 267.