



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

MARLON I. BROWN, DPA
DIRECTOR

Bay City Yacht Club Inc,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MTT Docket No. 15-000528

Bangor Township,
Respondent.

Presiding Judge
Jason C. Grinnell

FINAL OPINION AND JUDGMENT ON REMAND

BACKGROUND

On August 19, 2016, the initial hearing in this case was held, hereinafter referred to as the August 19, 2016 hearing, by former-presiding Tribunal Member, Judge Gadola. On October 14, 2016, Judge Gadola issued a Final Opinion and Judgment (FOJ). That decision concluded that the true cash values (TCV), state equalized values (SEV), and taxable values (TV) of the subject property for the 2015 and 2016 tax years are as follows:

Parcel Number: 09-010-S35-004-001-00

Year	TCV	SEV	TV
2015	\$1,439,380	\$719,690	\$719,690
2016	\$1,483,220	\$741,610	\$721,849

Judge Gadola further determined that “the subject property shall not be granted an exemption for the 2015 and 2016 tax years for the value of its ‘seawall, jetty, groin, dike, or other structure,’ pursuant to MCL 211.7g.”¹

Petitioner appealed the decision to the Court of Appeals (COA) who vacated the Tribunal’s FOJ and remanded the case for further proceedings on January 11, 2018, consistent with its opinion regarding the exemption of the seawall.² The Court ordered the Tribunal to consider anew Respondent’s request to reopen the proofs and in doing so, to ensure that all parties are afforded appropriate due process protections.

Following the filing of numerous motions and responses, a virtual oral argument on Respondent’s Motion to Reopen Proofs was held on August 8, 2023, where Respondent’s motion was granted. The Tribunal found “good cause to reopen the proofs and grant Respondent’s motion based on the fact that the initial letter, there is

¹ October 14, 2016 Final Opinion and Judgment, p 1-2.

² *Bay City Yacht Club Inc v Bangor Township*, unpublished per curium opinion of the Court of Appeals issued January 11, 2018, (Docket No. 335551).

due process concerns because Respondent wasn't involved. The August letter, same thing, Petitioner wasn't involved."³

INTRODUCTION

Petitioner, Bay City Yacht Club Inc, appealed the ad valorem property tax assessments levied by Respondent, Bangor Township, against Parcel No. 09-010-S35-004-001-00 for the 2015 and 2016 tax years. Petitioner also seeks an exemption from the payment of property tax for the value of its seawalls under MCL 211.7g. A hearing on remand was held August 8, 2023, hereinafter referred to as the August 8, 2023 hearing. Thomas McDonald, attorney, represented Petitioner, and John Brennan, attorney, represented Respondent. The Tribunal incorporates by reference and reaffirms the October 14, 2016 FOJ concluding that the TCVs, SEVs, and TVs of the subject property for the 2015 and 2016 tax years are as follows:

Parcel Number: 09-010-S35-004-001-00

Year	TCV	SEV	TV
2015	\$1,439,380	\$719,690	\$719,690
2016	\$1,483,220	\$741,610	\$721,849

Further, after reopening proofs, considering the evidence provided, and testimony given the Tribunal finds that the subject property shall not be granted an exemption for the 2015 and 2016 tax years for the value of its "seawall, jetty, groin, dike, or other structure," pursuant to MCL 211.7g.

PETITIONER'S CONTENTIONS

Petitioner's contentions of value of the property for the 2015 and 2016 tax years:

Parcel Number: 09-010-S35-004-001-00

Year	TCV	SEV	TV
2015	\$1,320,000	\$660,000	\$410,000
2016	\$1,320,000	\$660,000	\$410,000

During the August 19, 2016 hearing and the August 8, 2023 hearing, Petitioner was barred from calling any witnesses in its case-in-chief, for its failure, without good cause, to file a prehearing statement and valuation disclosure as required by the Tribunal.⁴ Petitioner was free, however, to call rebuttal witnesses, participate in cross-examination, and make opening and closing statements. Petitioner contends the subject property is over assessed in the 2015 and 2016 tax years. Petitioner also contends the Michigan Department of Natural Resources (DNR), in its March 15, 2016 letter, has determined the primary purpose of the seawalls and bulkheads located at Bay City Yacht Club to be

³ August 8, 2023 hearing transcript at 11.

⁴ See the Tribunal's Summary of Prehearing Conference and Scheduling Order entered June 3, 2016.

for the prevention of erosion control.⁵ As such, their value is exempt from taxation under MCL 211.7g, and their value reduces the TV of the property.

Judge Gadola, who presided over this matter for the August 19, 2016 hearing, also presided over the appeal of the subject property value and exemption for the 2013 and 2014 tax years, approximately one year before the first hearing of this matter. As such, Petitioner's counsel, Mr. McDonald, referred back to the former hearing and transcript to rebut Respondent's contention of value in the present matter, especially with regard to the value of steel seawalls, alleged to be exempt from taxation. The parties in the prior appeal were identical, counsel identical, and Respondent's valuation witness, Mr. Daniel Darland, Assessor Bangor Township, was the same. The issues were identical regarding value and exemption, however, in the former case, an additional issue was present that was not pled in this action.⁶

Petitioner raised several theories regarding the value of the steel seawalls. Petitioner first pointed to the property record card for the subject property for the 2015 tax year and noted that steel seawalls were assessed at \$200 per linear foot. It alleged the number is calculable because Respondent applied lesser value to boat slips with rip-rap shore, or stones and chunks of concrete for the boats to pull up to. On the 2015 property record card, 2,400 linear feet of "Rip-Rap wall" was valued at a rate of \$320 and 2,600 linear feet of "Steel Wall" was valued at a rate of \$520. As such, subtracting \$320 from \$520 puts forth the value of the Bay City Yacht Club steel seawalls at \$200 per linear foot.⁷

The second theory regarding the value of steel seawalls concludes \$100 per linear foot, as allegedly testified by Mr. Darland in his deposition for this matter and in the 2013-2014 appeal. Finally, Petitioner contends Mr. Darland testified that he completed a paired-sales analysis, for the present action, concluding in value of \$20 to \$21 per linear foot of steel seawall.

With regard to the value of the property, Petitioner contends that it be valued at its highest and best use as a commercial marina as concluded in the 2013-2014 tax appeal. Respondent raised the TCV and assessed values (AV) of the property in 2015 and 2016, in part based on the level it determined in 2013-2014, by using a private boat slip value and the cost approach to value, rather than determining value based on the Tribunal's conclusion in the prior matter. In conclusion, Petitioner contends that the TCV for the 2015 and 2016 tax years be determined based on the Tribunal's former conclusion of highest and best use, and the TV be determined by subtracting the value of the steel seawalls which it alleges are exempt from taxation.

⁵ See P-13B and also R-3.

⁶ In the 2013-2014 appeal, MTT Docket No. 454379, Petitioner alleged the property had no value in exchange because it escheats to the state upon dissolution, such issue was not raised or pled in the matter before the Tribunal. The Tribunal rejected the contention in the earlier case.

⁷ See R-1 at 48.

Mr. McDonald objected to Mr. Todd Fackler’s testimony and admission of the third July 1, 2021 DNR letter during the August 8, 2023 hearing and stated that the five factors in the *Moore* case have not been satisfied. The report of Petitioner’s marine expert witness was allowed into the record by Order of the Tribunal dated January 3, 2022. The expert is a marine contractor who installs seawalls and rip-rap. He concluded that the steel seawall and rip-rap do indeed have as their primary purpose, the prevention or control of erosion. Although the expert agreed that 100% of the seawall and rip-rap’s purpose is erosion control, at a minimum, it would be 90%. Mr. Darland testified in the first hearing that the value of the steel seawall is \$1,193,400 and the rip-rap value is \$1,058,400 for a total of \$2,251,800. Mr. McDonald concluded that based on a 39.7% reduction in value from the FOJ, applying that reduction, he gets a reduced value by \$638,862 for a net SEV of \$80,828 for 2015 and \$62,593 for 2016.

PETITIONER’S ADMITTED EXHIBITS⁸

- Petitioner rebuttal exhibit 1: View of North Basin boat slips driveway
- Petitioner rebuttal exhibit 2: View of South Basin North side
- Petitioner rebuttal exhibit 3: View of South Basin South side
- Petitioner rebuttal exhibit 4: View of Seawall along Saginaw River
- Petitioner rebuttal exhibit 5: View of Seawall North Basin entrance
- Petitioner rebuttal exhibit 6: View of Seawall South Basin entrance
- Petitioner rebuttal exhibit 7-A: Assessor Tax Record Card for parcel no. 09010-S36-008-005-00
- Petitioner rebuttal exhibit 8-A: Assessor Tax Record Card for parcel no. 09010-S36-008-020-02
- Petitioner rebuttal exhibit 8-E: Photo
- Petitioner rebuttal exhibit 8-F: Photo
- Petitioner rebuttal exhibit 10-A: Excerpt of Daniel Darland Deposition
- Petitioner rebuttal exhibit 13-A and B: DNR letter dated March 15, 2016, cover letter to Mr. Darland with DNR letter attached.
- Petitioner rebuttal exhibit 42: Liberty Harbor Marina photo and amenities
- Petitioner rebuttal exhibit unnumbered: Report of marine structure contractor, Benjamin Priem dated August 5, 2021⁹

RESPONDENT’S CONTENTIONS

The TCV, AV, and TV for the parcel and each tax year at issue as established by the Board of Review:

Parcel Number: 09-010-S35-004-001-00

Year	TCV	AV	TV
2015	\$2,388,400	\$1,194,200	\$742,340
2016	\$2,463,000	\$1,231,500	\$744,567

⁸ Petitioner’s exhibits, except Petitioner’s unnumbered rebuttal exhibit, were admitted at the August 19, 2016 hearing and are incorporated herein.

⁹ This exhibit was admitted pursuant to the Tribunal’s Order issued January 3, 2022.

Respondent's revised contention of value:

Parcel Number: 09-010-S35-004-001-00

Year	TCV	AV	TV
2015	\$2,040,000	\$1,020,000	\$742,340
2016	\$2,170,000	\$1,085,000	\$744,567

Respondent's sole witnesses were the Bangor Township Assessor, Daniel W. Darland at the August 19, 2016 hearing and Todd Fackler for the August 8, 2023 hearing. Respondent contends that the value of the Bay City Yacht Club steel seawalls are not included in the TV of the property, as such, if they are exempt, the value has already been excluded. Mr. Darland testified the Tribunal determined the TCV, AV, and TV of the property for the 2013 and 2014 tax years based on Petitioner's valuation disclosure which included no value for seawalls. Mr. Darland found the Tribunal's determination of value to be incorrect and as a result, he raised the TCV and AV of the property for the 2015 and 2016 tax years based on his method of valuation, also utilized in the prior appeal; however, he could not raise the TV of the property as it was capped under "Proposal A," at the inflation rate, of 1.016 in 2015 and 1.003 in 2016.¹⁰ As Mr. Darland was prohibited from raising the TV of the property beyond the rate of inflation, and the Tribunal based its determination of TV on Petitioner's valuation disclosure in the prior case, he reasoned the value of the seawalls was not included in the TV in this matter.

While Respondent contends that the seawall and rip-rap are not entitled to an exemption under MCL 211.7g, Mr. Brennan argued that Petitioner had the burden of proving the value of the steel seawall and rip-rap and has failed to do so. So, if a basis for exemption existed, there is no basis for calculating what the exemption is worth.

RESPONDENT'S ADMITTED EXHIBITS¹¹

R-1: Respondent Valuation Disclosure

Respondent rebuttal exhibit 2: July 11, 2016 letter from DNR to Mr. Darland

Respondent rebuttal exhibit 3: Deposition excerpt

Respondent unnumbered rebuttal exhibit: August 24, 2016 letter from DNR to Mr. Darland

R-5: July 1, 2021 letter from DNR

R-7: Transcript of deposition *de bene esse* of Kirk Lapham, conducted on June 6, 2023

¹⁰ See MCL 211.27a(2)

¹¹ Respondent's R-1, rebuttal exhibit 2, and rebuttal exhibit 3 were admitted at the August 19, 2016 hearing. Respondent's unnumbered rebuttal exhibit, R-5, and R-7 were admitted at the August 8, 2023 hearing.

RESPONDENT'S WITNESS

Daniel Darland

Mr. Darland's testimony from the August 19, 2016 hearing is incorporated herein. The October 14, 2016 FOJ stated:

As noted above, Mr. Darland is the assessor for Bangor Township. He assessed the subject property for the 2013 and 2014 property tax appeal which was heard in 2015 and for the 2015 and 2016 appeal which is the subject of this matter. Mr. Darland testified that the Tribunal determined the TCV of the subject property for the 2013 and 2014 tax years based on Petitioner's valuation disclosure, from which there was no indication that seawalls were valued or adjusted for.

On cross-examination, Mr. Darland was questioned whether he was familiar with the March 15, 2016 letter from the DNR which concluded that the value of all seawalls and bulkheads at Bay City Yacht Club are for the primary purpose of erosion control and he answered in the affirmative. He also testified that he finds the steel seawalls adjacent to the Saginaw River and Sunset Shores Channel to be exempt from taxation because their primary purpose is erosion control, however, the seawalls adjacent to the boat slips are not for the purpose of erosion control, and as such, he finds the DNR determination to be incorrect regarding those seawalls. He testified the primary purpose of the boat slip seawalls is to allow a greater number of boats to use the slip channel as steel seawall slips allow for shorter docks and as such, the channel can be narrower and dredged less often.

Mr. Darland testified he wrote a letter to the DNR putting forth his objection to its determination that all Bay City Yacht Club seawalls have as their primary purpose, erosion control. He testified the determination was in part based on photographs sent by Mr. McDonald and not from an on-site inspection. Mr. Darland received a response letter from DNR, dated July 11, 2016, indicating it was in the process of meeting with the Michigan Department of Treasury to discuss the issue and "better identify criteria and factors used in this type of decision."¹² On August 24, 2016, the DNR sent a letter to Mr. McDonald indicating that it had amended its findings and "only those seawalls or bulkheads that do not include boat docking have as their primary purpose the prevention of erosion control."¹³ The DNR indicated its decision was based on further review and on-site inspection and "[t]hose seawalls or bulkheads that provide boat docking are modified or designed to provide benefits other than erosion control."¹⁴

¹² See Respondent's rebuttal exhibit 2.

¹³ See Exhibit D to Respondent's Motion to Reopen Proofs.

¹⁴ On August 30, 2016, Respondent filed a Motion to Reopen Proofs in this matter. Petitioner filed its response on September 13, 2016. On October 13, 2016, the Tribunal granted the Motion to Reopen

With regard to the value of the assessable seawalls, Mr. Darland completed a paired sales analysis and concluded a market value of \$20 to \$21 per linear foot. He testified that Mr. McDonald's analysis regarding steel sea wall value at \$200 per linear foot is incorrect as he valued the entire steel seawall slip, including the land the seawall is attached to, the dock, and the land under water, therefore \$200 does not represent steel seawall value, but the difference in value between a steel seawall slip and a rip-rap shore slip. With regard to the alleged \$100 per linear foot of steel seawall value, Mr. Darland testified the number is an old number from Bay County Equalization which he determined may be outdated, so he completed his own paired-sale analysis comparing the sale price of steel sea wall slips and rip-rap shore slips.

Mr. Darland testified the zoning for the north basin of the property is R-2, single family residential, which allows private marina use with special permission, but not commercial marina use. The south basin of the property is zoned I-2, general industrial, which allows commercial use. Dr. Darland testified he found the highest and best use of the property to be for a private yacht club or owner-occupied marina, not for a commercial marina as the Tribunal found in the prior matter because the property could not be used for commercial use due to set-back requirements on the I-2 parcel. Further, there is not enough land for typical commercial marina amenities such as a convenience store, gasoline, boat sales, boat repair and indoor storage. He also testified that presently the marina has a restaurant/clubhouse on the R-2 parcel, which is a commercial use, though not legally permissible.¹⁵ Mr. Darland prepared cost and market approaches to value the property and determined, under the market approach, a per slip value of \$7,715 per rip-rap shore boat slip of which there are 165, and \$8,058 per steel sea wall slip of which there are 95. Mr. Darland's reconciled value as completing both cost and market approaches to value is \$2,040,000 for 2015 and \$2,170,000 for 2016.

Mr. McDonald questioned Mr. Darland regarding other marinas in the Bay City area on the Saginaw River, including Liberty Harbor. Mr. Darland agreed that the marina could operate without storage facilities and that the R-2 area could be rezoned to include commercial marina use.¹⁶

Finally, Mr. Darland testified that if the Tribunal finds the Bay City Yacht Club seawalls exempt from taxation, the exemption would apply forward

Proofs. "A motion to reopen the proofs is a matter within the discretion of the trial court." *Bonner v. Ames*, 356 Mich 537, 541; 97 NW2d 87 (1959). In this matter, the Tribunal found the additional proof was unavailable at the time of trial, as it did not exist. Furthermore, while instructive in this matter, the additional proof does not apply to the determination of value for the tax years in question, therefore there is no harm or prejudice to either party.

¹⁵ August 19, 2016 hearing transcript at 63.

¹⁶ August 19, 2016 hearing transcript at 101.

from the March 15, 2016 date of determination, for the 2017 tax year, and not retroactively, for 2015 and 2016, which are in contention here.¹⁷

Todd Fackler

Mr. Fackler has been the assessor for Respondent since September 2017. While he did not assess the subject property for the tax years at issue, he testified that he has visited the subject property twice, and on one visit measured the steel seawalls and frontage. Mr. Fackler testified as to the land values on the subject property's 2015 and 2016 property record cards. He stated that the prior assessor used four different land tables: the steel seawall, rip-rap, the acreage table number one, and excess under water. The total acreage is 23.99 acres. To come up with that number you have to account for, in that area above, that same amount of area. If you take 2,600 feet, seawall, times 50 and 2,400, rip-rap, times 50, convert it to acres, add the 15 acres that is the acreage table, and the area underwater, it will come up to 23.99 acres. That is all the property being considered in this valuation. Mr. Fackler testified that based on his visit to the property, the seawall and rip-rap frontage is the area, going out 50 feet, where the boats are parked. Mr. Fackler testified that the land improvement section on the property record cards does not contain a valuation of the steel seawall and rip-rap wall.

Under cross examination, Mr. Fackler testified that in a prior deposition he stated that Respondent does not assess the steel seawall along the Saginaw River as well as in the two basins at the Bay City Yacht Club. Mr. McDonald questioned Mr. Fackler as to discrepancies between his testimony at the hearing and in a prior deposition. To clarify, Mr. Fackler stated that Respondent assesses the land up to the river but does not assess anything out into the river, which is the water. In the basin area, they include the land and the water area.

FINDINGS OF FACT¹⁸

1. The subject property is comprised of a marina, clubhouse, and detached garage. It consists of 165 boat slips with rip-rap wall and 95 boat slips with steel seawall. There are 2,600 linear feet, total, of steel seawall and 2,400 linear feet, total, of rip-rap wall. The clubhouse was built in 1976, and the garage was built in 1989.
2. Respondent presented a valuation disclosure putting forth a reconciled value for the property, after consideration of both the sales and cost approaches to value, of \$2,040,000 for 2015 and \$2,170,000 for 2016. Respondent put forth a per boat slip value in its sales approach of \$7,715 per rip-rap shore boat slip and \$8,058 per steel seawall slip. Under the cost approach, Respondent found the clubhouse and garage to be 52% good, depreciated by 48%, for the 2015 tax year. For the 2016 tax year, Respondent found the clubhouse to be 51% good (depreciated by 49%) and the garage to be 50% good, depreciated by 50%.

¹⁷ October 14, 2016 FOJ at 5-7.

¹⁸ The Tribunal incorporates the Findings of Fact from the October 14, 2016 FOJ herein.

3. In its tax years 2013 and 2014 appeal, Respondent put forth a per boat slip sales approach and a cost approach to value.
4. MTT Docket No. 454379 determined the 2014 AV was \$730,650.
5. Respondent's 2015 and 2016 property record cards, submitted as part of its valuation disclosure, show the market-based percent decrease between the 2014 and 2015 tax years was 1.5% and the market-based percent increase between the 2014 and 2016 tax years was 1.5%.
6. On March 15, 2016, the DNR determined the primary purpose of all seawalls and bulkheads at Bay City Yacht Club is for erosion control.
7. On August 24, 2016, the DNR, after a site inspection, determined the primary purpose of the boat slip bulkheads and seawalls at Bay City Yacht Club is not for erosion control, and they are designed to provide benefits other than the same.
8. On July 1, 2021, the DNR, after an Order from the Tribunal requesting a third determination, found the primary purpose of the rip-rap and seawalls at Bay City Yacht Club is not for erosion control, but to preserve the depth of an artificial channel or basin that was created to store watercraft.
9. On August 5, 2021, at the request of Petitioner, a marine structure contractor, found that erosion control accounts for 90% of the other purpose served by the rip-rap and seawalls located at the Bay City Yacht Club.
10. The tax years in question in this matter are 2015 and 2016, therefore, value must be determined as of December 31, 2014, and December 31, 2015.
11. The deposition of Mr. Fackler that occurred in approximately 2021 was not entered into the record.

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.¹⁹

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. . . .²⁰

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

¹⁹ See MCL 211.27a.

²⁰ Const 1963, art 9, sec 3.

for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale.²¹

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”²²

“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.”²³ The Tribunal is not bound to accept either of the parties' theories of valuation.²⁴ “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.”²⁵ 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.”²⁶

A proceeding before the Tax Tribunal is original, independent, and de novo.²⁷ The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”²⁸ “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”²⁹

“The petitioner has the burden of proof in establishing the true cash value of the property.”³⁰ “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.”³¹ 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.”³²

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.³³ “The market approach is the only valuation method that directly reflects the

²¹ MCL 211.27(1).

²² *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

²³ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

²⁴ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

²⁵ *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

²⁶ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

²⁷ MCL 205.735a(2).

²⁸ *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

²⁹ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

³⁰ MCL 205.737(3).

³¹ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

³² MCL 205.737(3).

³³ *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).

balance of supply and demand for property in marketplace trading.”³⁴ 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.³⁵

Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.³⁶

Further, the general property tax act provides that “all property, real and personal, within the jurisdiction of this state, *not expressly exempted*, shall be subject to taxation.”³⁷ Exemption statutes are subject to a rule of strict construction in favor of the taxing authority.³⁸

Valuation Analysis

The Tribunal’s October 14, 2016 FOJ stated the following:

As noted above, in 2015, the Tribunal heard the appeal of the 2013 and 2014 true cash, assessed and taxable value of the subject property. At that time, the Tribunal found the highest and best use of the property to be as vacant, for commercial use, and as improved, for marina use in part, because a private marina is not concerned with producing a net return to its members nor would someone who holds a private slip be concerned with making a profit. Furthermore, Mr. Darland’s per slip value analysis was not probative given the motivation of a buyer of the entire yacht club would be different from the buyer of an individual slip. The Tribunal was not persuaded the use of individual boat slips as comparables, provided the most reliable indication of the property’s land value as land value must be based on the property’s highest and best use, which the Tribunal found [and reiterates here] is for commercial use. Further, comparing the subject property marina to an 800 square foot boat slip is simply not comparable or probative.

As noted above, Petitioner was barred from presenting valuation evidence in this matter and as such, only Respondent presented its case-in-chief. The Tribunal, however, does not find Respondent’s valuation evidence in this matter to be probative for the reasons presented above. In essence, Respondent presented very similar evidence in this appeal as in the 2013

³⁴ *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

³⁵ *Antisdale*, *supra* at 277.

³⁶ See *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

³⁷ See MCL 211.1 (emphasis added).

³⁸ *Retirement Homes v Sylvan Twp*, 416 Mich 340, 348-349; 330 NW2d 682 (1982), *APCOA, Inc v Dep’t of Treasury*, 212 Mich App 114, 119; 536 NW2d 785 (1995).

and 2014 tax years' appeal.³⁹ The Tribunal is not persuaded that Mr. Darland's per slip value is the best evidence of value in this appeal, under the market approach, nor does the Tribunal find Mr. Darland's cost approach to be persuasive given the age of the improvements which he depreciated by almost 50%. "The cost approach is most applicable in valuing new or proposed construction when the improvements represent the highest and best use of the land as though vacant and the land value is well supported."⁴⁰ Here, the subject improvements were built in 1976 and 1989, making depreciation difficult to calculate.

The Tribunal found the true cash value of the subject property to be \$1,488,200 in 2013 and \$1,461,300 in 2014⁴¹ after a thorough, independent analysis of the testimony, evidence and case file, and as such, finds the true cash value of the property for the 2015 and 2016 tax years should be based on the prior numbers. The Tribunal did not base its 2013 and 2014 decision on Petitioner's appraisal as alleged by Respondent, but only on its independent analysis of the entirety of the evidence presented including seawall value and zoning.⁴²

In 2015 and 2016, as noted above, Respondent's revised contentions of value for the property are \$2,040,000 for 2015 and \$2,170,000 for 2016⁴³, which the Tribunal finds is not based on the Tribunal's determination of value in the prior tax years. In fact, Mr. Darland, valuation expert in both appeals, admits that same by testifying he is in disagreement with the Tribunal's determination of value in 2013 and 2014.⁴⁴ [MCL] 211.30c(2) states, however,

(2) If a taxpayer appears before the tax tribunal during the same tax year for which the state equalized valuation, assessed value, or taxable value is appealed and has the state equalized valuation, assessed value, or taxable value of his or her property reduced pursuant to a final order of the tax tribunal, *the assessor shall use the reduced state equalized valuation, assessed value, or taxable value as the*

³⁹ August 19, 2016 hearing transcript at 91.

⁴⁰ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), at 566.

⁴¹ AV of \$744,100 in 2013 and \$730,650 in 2014. MCL 211.27a(1) states: "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."

⁴² In the previous appeal, Mr. Darland testified that marinas, both private and commercial, are allowed in both R-2 and I-2 zoning districts, with a special use permit, and the Tribunal found the subject property, considering its value in exchange, could be converted into a commercial marina. See MTT Docket No. 454379. In this appeal, Mr. Darland testified again, that a commercial marina operation is possible because the possibility of rezoning the R-2 parcel, exists. See August 19, 2016 hearing transcript at 101.

⁴³ AV of \$1,020,000 for 2015 and \$1,085,000 for 2016.

⁴⁴ August 19, 2016 hearing transcript at 91-92.

*basis for calculating the **assessment** in the immediately succeeding year.* However, the taxable value of that property in a tax year immediately succeeding a transfer of ownership of that property is that property's state equalized valuation in the year following the transfer as calculated under this section. [Emphasis added].

Furthermore, as noted above, the Tribunal finds the best evidence of value to be based on its prior opinion and analysis. Respondent raised the 2015 assessed value of the property, from the Tribunal's conclusion of true cash value in 2014, by approximately 40% and the assessed value of the property was raised by approximately 48% in 2016 from the Tribunal's 2014 value determination.⁴⁵ However, the assessed value of the property on the tax roll was lowered by Respondent by 1.5% from 2014 to 2015 and raised by Respondent by 1.5% from 2014 to 2016.

In *Gatt v Twp of Marion*,⁴⁶ the Court found the Tribunal's determination of value for the property included a large increase over the prior year's conclusion and the Tribunal failed to properly explain the reason for the increase. The court stated,

The Tribunal was correct that it had a duty to independently determine the TCV of the subject property for the tax years 2011 and 2012. *However, it must do so while giving respect and finality to the prior decision of the Tribunal that established the subject property's value for tax year 2010 at \$433,400.* On this Court's review of the record, neither respondent nor the Tribunal explained the large year-over-year increase in the subject property's valuation, thereby calling into doubt whether the current valuation is supported by competent and substantial evidence. [Emphasis added.]

The Tribunal finds this proposition supports its position that respect must be given to its prior decision in the 2013 and 2014 appeal, in determining true cash value in this appeal.⁴⁷ Further Respondent's large increase in

⁴⁵ Respondent's revised contention of assessed value for 2015 is \$1,020,000. $\$1,020,000 - \$730,650 = \$289,350$; $\$289,350/\$730,650 = 40\%$. Respondent's revised contention of assessed value for 2016 is \$1,085,000. $\$1,085,000 - \$730,650 = \$354,350$. $\$354,350/\$730,650 = 48\%$.

⁴⁶ *Gatt v Twp of Marion*, unpublished opinion per curiam of the Court of Appeals, issued February 11, 2014 (Docket No. 313656)

⁴⁷ In the appeal of the Tribunal's opinion after remand, the Court found the Tribunal was justified in its determination of value. See *Gatt v Twp of Marion*, unpublished opinion per curiam of the Court of Appeals, issued December 8, 2015 (Docket No. 323473)

value between 2014 and 2015 is insufficiently explained. The Court in *Gatt* also reiterated that MCL 211.30c(2) “only binds the assessor, not the Tribunal. But MCL 211.30c(1) and (2) only codify the simple proposition that an assessor is not free to disregard an order of the Tribunal reducing a property's TCV, SEV, or TV.” In *Smith v Twp of Forester*,⁴⁸ the Court also found that looking to a prior year's value is relevant in determining present value, stating, “[a]lthough petitioner does not contend that the subject property's TCV in 2011 conclusively establishes its TCV in 2012, its 2011 value and the tribunal's prior findings of fact are certainly relevant and probative in determining its value in the following year.”

For the 2015 tax year, the Tribunal finds the best evidence of value is the market change reflected on the subject property's property record card. The original assessed value indicates a decrease in assessment from 2014 to 2015 of 1.5%. For the 2016 tax year, the original assessed value indicates an increase in assessment from 2014 to 2016 of 1.5%. The Tribunal finds that the property's assessment history is the best indicator of value.⁴⁹ As such, The Tribunal finds the TCV of the property for the 2015 tax year to be its 2014 AV conclusion minus the roll decrease in value from 2014 to 2015, or \$730,650, minus 1.5%,⁵⁰ equals $\$719,690 \times 2 = \$1,439,380$, TCV. The Tribunal's TCV determination for 2016 shall be increased by 1.5% from its 2014 determination of value for a conclusion of \$1,483,220.⁵¹

The Tribunal adopts the October 14, 2016 FOJ's analysis regarding the valuation of the subject property as the decision in this case. The COA's remand was specific to the exemption claimed and did not require the Tribunal to reverse or amend its valuation decision. Nevertheless, the Tribunal did reopen proofs, however, neither the additional proofs given, nor additional testimony provided changed the outcome of the valuation conclusion, as made by Judge Gadola. As such, the Tribunal finds the 2015 and 2016 TCV and TV are as stated in the Introduction section.⁵²

Exemption Analysis

Petitioner maintains it is entitled to an exemption under MCL 211.7g. MCL 211.7g states:

⁴⁸ *Smith v Twp of Forester*, unpublished opinion per curiam of the Court of Appeals, issued June 19, 2014 (Docket No. 315480)

⁴⁹ “The MTT's highly logical approach of relying on the property's assessment history to determine TCV for tax year 2012 was clearly supported by competent, substantial, and material evidence on the whole record.” *David A Allemon and Andrea G Allemon v Rose Twp*, unpublished opinion per curiam of the Court of Appeals, issued January 22, 2014 (Docket Nos. 313119 and 315306).

⁵⁰ 1.5% of the Tribunal's 2014 determination of AV is \$10,960, rounded ($\$730,650 \times .015$).

⁵¹ Roll value increase from 2014 to 2016 is 1.5%. The Tribunal's 2014 determination of AV is \$730,650 + \$10,960 (1.5% of \$730,650) = \$741,610. $\$741,610 \times 2 = \$1,483,220$, TCV for 2016.

⁵² See October 14, 2016 FOJ at 10-13.

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.

The October 14, 2016 FOJ stated the following:

The Tribunal finds Petitioner's seawalls are not entitled to an exemption from taxation under MCL 211.7g for the tax years at issue. Although the first sentence in MCL 211.7g states that "[t]he value of a seawall . . . whose primary purpose is to prevent or control erosion . . . on property affected by waters or levels of the Great Lakes or their connecting waters and tributaries⁵³ as affected by levels of the Great Lakes is exempt from taxation," the statute must be read in its entirety, as "effect should be given to every phrase, clause, and word in the statute."⁵⁴ In that regard, the second sentence of MCL 211.7g reads, "The department of natural resources shall, when requested by the owner or the assessor, determine if such seawall . . . has as its primary purpose the prevention or control of erosion." As a result, it is clear, in reading MCL 211.7g as a whole, that the Legislature intended for the DNR to make the determination as to the primary purpose of a seawall.

In this matter, on March 15, 2016, the DNR determined the primary purpose of all Bay City Yacht Club seawalls and bulkheads are for the prevention of erosion control, however, on August 24, 2016, the DNR sent an additional letter indicating that it had amended its findings and only those seawalls that do not include boat docking have as their primary purpose the prevention of erosion control. As of today's date, it appears the primary purpose of the seawalls in contention in this matter is not for erosion control, therefore their value is not exempt. However, it should be noted that the tax years in contention in this matter are 2015 and 2016, and as such, the Tribunal must determine value as of December 31, 2014, and December

⁵³ It should be noted that Bay City Yacht Club is located on the Saginaw River, a tributary to Saginaw Bay, a connecting water to Lake Huron.

⁵⁴ *Bush v Shabahang*, 484 Mich 156, 167; 772 NW2d 272 (2009).

31, 2015.⁵⁵ The letters from the DNR were not composed until 2016, and no retroactivity was indicated. As such, the letters have no effect on the value of the property for the tax years in question [and the exemption or lack of exemption conclusion does not apply to tax years in issue in this appeal.]⁵⁶

However, the COA in its opinion, found that the March 2016 and August 2016 DNR letters are relevant to the question of whether the Petitioner was entitled to the exemption under MCL 211.7g, and the Tribunal erred by declining to consider it.

Based on the COA's instruction to ensure that all parties are afforded appropriate due process protections, the Tribunal directed the DNR to prepare a third letter determining the primary purpose of the seawalls and rip-rap at the Bay City Yacht Club. Prior to issuing its letter, the DNR requested information from each party, provided each party with the information submitted by the other party, and offered each party an opportunity to respond to the other party's submittal. On July 1, 2021, the DNR issued its third determination, finding that the primary purpose of the rip-rap and seawalls at Bay City Yacht Club is not for erosion control, but to preserve the depth of an artificial channel or basin that was created to store watercraft. On January 3, 2022, the Tribunal granted Petitioner's motion to allow an August 5, 2021 report by Petitioner's "expert", a marine structure contractor, into the proofs as rebuttal evidence. The report concluded that if the primary purpose of the seawalls and rip-rap at the Bay City Yacht Club is depth control, erosion control accounts for 90% of the other purpose. In reviewing the letters of determination regarding the purpose of the seawalls and rip-rap, the Tribunal gives deference to the DNR's July 1, 2021 determination. However, MCL 211.7g specifically provides that the determination be made by the DNR, not a private contractor. While the DNR was statutorily required to make its determination, it was not compensated by either party and the third determination was conducted with input from both parties as an appropriate due process protection. In addition, the July 1, 2021 DNR letter is supported by the deposition of Kirk Lapham, who was instrumental in drafting the letter prior to his departure from the DNR. While Petitioner's attorney objected to the admittance of Mr. Lapham's deposition, he was given every opportunity to attend said deposition and chose not to. While Mr. Lapham was not the person who signed the July 1, 2021 letter, his testimony clearly shows that he was directly involved in the determination process while the person signing the letter, Shannon Lott, was the upper-level manager.

Based on the COA's determination that the first two DNR determinations are relevant in this case and given the Court's instruction to afford all parties the appropriate due process protections, the Tribunal admits the three DNR determination letters, Petitioner's marine structure contractor's report, and the deposition of Kirk Lapham as additional evidence in this case. The deposition of Todd Fackler, which was discussed

⁵⁵ MCL 211.2(2) states: "The taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day, any provisions in the charter of any city or village to the contrary notwithstanding.

⁵⁶ October 14, 2016 FOJ at 13-14.

at the hearing on remand, was not entered into the record at the August 8, 2023 hearing, and is moot given the Tribunal's conclusion that the seawalls and rip-rap are not exempt from taxation.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the value of the subject property's seawalls and bulkheads are not exempt from taxation under MCL 211.7g. Therefore, the separate value of the seawall and rip-rap, as distinguished from the total value of the subject property, is not at issue here. Further, the subject property's TCV, SEV, and TV for the tax years at issue are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that the property's SEV and TV for the tax years 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 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, 2013, through June 30, 2016, at the rate of 4.25%, (ii) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (iii) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (iv) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (v) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (vi) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (vii) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, (viii) after June 30, 2019 through December 31, 2019, at the rate of 6.39%, (ix) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, (x) after June 30 2020, through December 31, 2020, at the rate of 5.63%, (xi) after December 31, 2020, through June 30, 2022, at the rate of 4.25%, (xii) after June 30, 2022, through December 31, 2022, at the rate of

4.27%, (xiii) after December 31, 2022, through June 30, 2023, at the rate of 5.65%, (xiv) after June 30, 2023, through December 31, 2023, at the rate of 8.25%, (xv) after December 31, 2023, through June 30, 2024, at the rate of 9.30%, and (xvi) after June 30, 2024, through December 31, 2024, at the rate of 9.50%.

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 COA.

A motion for reconsideration must be filed with the Tribunal with the required filing fee within 21 days from the date of entry of the final decision. 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 or disabled veterans exemption and, if so, there is no filing fee. You are required to serve a copy of the motion 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. Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.

Alternatively, you may file a claim of appeal with the Michigan COA. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal of right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave." A copy of the claim of appeal must be filed with the Tribunal to certify the record on appeal. There is no certification fee.

By 

Entered: August 9, 2024

PROOF OF SERVICE

I certify that a copy of the foregoing was sent on the entry date indicated above to the parties or their attorneys or authorized representatives, if any, utilizing either the mailing or email addresses on file, as provide by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk