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

Land Holding, LLC and Pere Pointe Village, LLC
Petitioners,

v

MTT Docket No. 416040

City of Ludington,
Respondent.

Tribunal Judge Presiding
Preeti Gadola

OPINION AND JUDGMENT

Introduction

Petitioners, Land Holding, LLC and Pere Pointe Village, LLC appeal the ad valorem property tax assessments levied by Respondent, City of Ludington, against the real property owned by Petitioners for the 2011 and 2012 tax years. The property under appeal consists of four parcels located in Ludington, Michigan. Petitioners were represented by Peter Ellenson, Justin Gray, and Fred Gordon, attorneys, and Respondent was represented by Andrea D. Crumback, attorney. Petitioners' witnesses were James Hartman, Scott Shurlow, and William Shurlow. Respondent's witness was Brent Bosley, Respondent's Assessor. The hearing of this matter occurred on July 25, 2013, and July 26, 2013.

Respondent, City of Ludington, assessed the property as follows:

Parcel Number: 53-051-460-083-20 ("Future Development East")

Year	TCV	SEV	TV
2011	$844,600	$422,300	$377,065
2012	$1,046,800	$523,400	$523,400

Parcel Number: 53-051-460-083-30 ("Marina parcel")

Year	TCV	SEV	TV
2011	$730,200	$365,100	$331,063
2012	$762,400	$381,200	$381,200

Parcel Number: 53-051-460-083-40 ("Clubhouse parcel")

Year	TCV	SEV	TV
2011	$1,049,800	$524,900	$479,132
2012	$1,054,400	$527,200	$527,200

Parcel Number: 53-051-460-083-50 ("Future Development North")

Year	TCV	SEV	TV
2011	$235,400	$117,700	$104,927
2012	$245,000	$122,500	$122,500

Respondent, City of Ludington, revised its contentions, as reflected in its Post Hearing Brief, and are as follows:

Parcel Number: 53-051-460-083-20 ("Future Development East")

Year	TCV	SEV	TV
2011	$844,188	$422,094	$422,094
2012	$1,011,846	$505,923	$505,923

Parcel Number: 53-051-460-083-30 ("Marina parcel")

Year	TCV	SEV	TV
2011	$1,067,200	$533,600	$533,600
2012	$1,086,300	$543,150	$543,150

Parcel Number: 53-051-460-083-40 ("Clubhouse parcel")

Year	TCV	SEV	TV
2011	$615,250	$307,625	$307,625
2012	$627,822	$313,911	$313,911

Parcel Number: 53-051-460-083-50 ("Future Development North")

Year	TCV	SEV	TV
2011	$235,200	$117,600	$117,600
2012	$240,124	$120,062	$120,062

Petitioners' contentions of the property's True Cash Value ("TCV"), State Equalized Value ("SEV"), and Taxable Value ("TV"), as reflected in the Post Hearing Brief, are as follows:

Parcel Number: 53-051-460-083-20 ("Future Development East")

Year	TCV	SEV	TV
2011	$151,645	$75,822.50	$75,822.50
2012	$309,339	$154,669.50	$154,699.50

Parcel Number: 53-051-460-083-30 ("Marina parcel")

Year	TCV	SEV	TV
2011	$131,105	$65,552.50	$65,552.50
2012	$134,645	$67,322.50	$67,322.50

Parcel Number: 53-051-460-083-40 ("Clubhouse parcel")[1]

Year	TCV	SEV	TV
2011	$0.00	$0.00	$0.00
2012	$0.00	$0.00	$0.00

Parcel Number: 53-051-460-083-50 ("Future Development North")

Year	TCV	SEV	TV
2011	$42,250	$21,125	$21,125
2012	$43,391	$21,695.50	$21,695.50

[1] Petitioners contend that this parcel should have a zero value as it is a "common element." In the alternative, Petitioners contend that if the Tribunal finds this parcel is not a common element, it should have a value of $615,251 for the 2011 tax year and $627,824 for the 2012 tax year. This is Respondent's valuation excluding the value for the pool which Petitioners contend is located on a parcel not under appeal. See Petitioners' Brief, p. 8.

Based on the evidence, testimony, and case file, the Tribunal's independent determination of TCV, SEV, and TV of the subject properties for the years under appeal are as follows:

Parcel Number: 53-051-460-083-20 ("Future Development East")

Year	TCV	SEV	TV
2011	$844,200	$422,100	$422,100
2012	$1,011,900	$505,950	$505,950[2]

Parcel Number: 53-051-460-083-30 ("Marina parcel")

Year	TCV	SEV	TV
2011	$1,068,000	$534,000	$534,000[3]
2012	$1,086,300	$543,150	$543,150[4]

Parcel Number: 53-051-460-083-40 ("Clubhouse parcel")

Year	TCV	SEV	TV
2011	$615,250	$307,625	$307,625
2012	$627,800	$313,900	$313,900

Parcel Number: 53-051-460-083-50 ("Future Development North")

Year	TCV	SEV	TV
2011	$235,200	$117,600	$117,600
2012	$240,100	$120,050	$120,050

PETITIONERS' ADMITTED EXHIBITS

P-1 Appraisal

P-2 May 2, 2011 closing documents

[2] The taxable value is set at the state equalized value because the prior year's taxable value multiplied by the inflation rate of 1.027 *plus* additions (the garages and pavement) exceeds the state equalized value. See MCL 211.27a.

[3] The taxable value of the omitted property (the boat slips) is valued as an addition and utilizing the formula provided in MCL 211.34d(1)(b)(i).

[4] The taxable value of the omitted property (the boat slips) is valued as an addition and utilizing the formula provided in MCL 211.34d(1)(b)(i).

P-5 Aerial Photographs of the Subject Property

P-6 Disclosure Statement for Pere Pointe Village

P-7 Master Deed

P-9 Documents relating to construction costs of garages in 2011

P-10 Zoning regulations

PETITIONERS' CONTENTIONS

Petitioners contend that the Clubhouse parcel is a common element and should be assessed against the individual condominium units ("condos") under MCL 559.231. See also *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136; 783 NW2d 133 (2010). While Petitioners acknowledge that the legal description in the Master Deed does not include the parcels at issue, it does include the "community facility" as a "general common element" which is the clubhouse. See Petitioners' Brief, p. 6. Petitioners also state that the condo owners expect to have use of the clubhouse and that the clubhouse would never be sold separately from the condos. Further, Petitioners contend that the clubhouse adds value to the individual condominiums and without the clubhouse the value of the condos would be reduced.

Petitioners indicate that there is no market for a building like the subject and that "there can be no 'arm's length negotiation' for the sale of the clubhouse [because] none of the witnesses . . . was aware of any Michigan sale of a condominium clubhouse." Petitioners' Brief, p. 7. "There is no likely sales price for the subject. Therefore, there can be no assessment." *Id.* at 8. In the alternative, Petitioners contend that if the Tribunal finds that the clubhouse must be valued, the Tribunal should "adopt Respondent's updated valuation disclosures." *Id.*

Petitioners also contend that given that the agreed upon highest and best use is to hold for future development of condominiums, "the only rational unit of comparison is the condo unit." Petitioners' Brief, p. 9. Petitioners also contend that it would be inappropriate to use a three-year-old sale as a baseline because of the "abrupt cessation of land sales in 2007." *Id*. Respondent's sales comparison approach is further flawed because one sale is insufficient to derive a value, square feet should not be considered but rather the number of approved units, and that the market condition adjustment is not supported.

For the Marina parcel, Petitioners contend that this should be valued as vacant land and that the Tribunal does not have authority to include the "omitted" property because this "may only be taxed if the taxing authority files a successful motion to add omitted property with the State Tax Commission. MCL 211.154. Therefore, this Tribunal should not value the slips. Alternatively, the value of the slips was appraised by Mr. Hartman as $155,000." Petitioners' Brief, p. 13.

PETITIONER'S WITNESSES

James Hartman

James Hartman, Petitioners' valuation expert, testified that he was hired by PNC Bank to appraise the subject property and that his appraisal would not have been conducted any differently if he had been hired to prepare it for the purpose of appeal. See Transcript, p. 38. The appraisal report is dated October 21, 2010, the date of inspection. Mr. Hartman testified that the garages were not valued, the clubhouse was not valued separately from the condominium units, and that the vacant, waterfront land of the marina is not included in the appraisal report. See Transcript pp. 42-45. He further stated that when he conducted the appraisal, the

subject "was one big property" which has "been separated out since. . . ." Transcript, p. 54.

When asked if there were market changes between his appraisal date and the first relevant valuation date of December 31, 2010, Mr. Hartman responded that "[t]here are none that I am aware of, but I cannot testify that is my valuation of the tax date. I've not [done] an appraisal as of that date." Transcript, p. 53. He testified that he valued the subject in two components: (1) the future development of the "vacant" parcels or "raw land," as testified to; and (2) the marina slips. The clubhouse was considered in the valuation of the existing 31 condominium units, which are not part of this appeal. See Transcript, pp. 59, 79. He also stated that he cannot divide his valuation opinion amongst the parcels because he has "not done [an] appraisal of the individual parcels." Transcript, p. 77. See also Transcript, p. 110. He testified that the split, which occurred after his appraisal, could affect the valuation of the subject property. See Transcript, p. 115.

Mr. Hartman testified that he used the sales comparison approach in valuing the Future Development parcels. He stated that he used three sales, all of which were "approved for condominiums" in the City of Ludington that sold in 2004, 2005, and 2007. Transcript, p. 61. These sales were used to derive a price per unit. He further stated that the market had "changed substantially since the time of these sales" but that there were no comparable sales to derive a "traditional" market condition adjustment. Transcript, pp. 63-65. He "used the land residual" to "help derive a market adjustment." Transcript, pp. 75-76. His calculated "market adjustment" resulted in an 86 percent adjustment. Mr. Hartman also testified that the subject property has a greater amount of water frontage than any of his three comparables.

Regarding the clubhouse, Mr. Hartman testified that he was not aware of any sale of a condominium clubhouse without the sale of anything else. He would reduce the valuation of the individual condominiums if the clubhouse was not available but could not testify to a value, as he stated, "I have not put a number on that and I've not analyzed it that way." Transcript, pp. 80-81. He also testified on cross-examination that his Comparables 2 and 3 did not have clubhouses, and that no adjustment was made for lack of clubhouse. Transcript, p. 88.

With regard to the slips, Mr. Hartman testified that slips are typically valued on a per-foot basis. His appraisal valued 27 slips at a 30-foot rate. See Transcript, p. 107. Mr. Hartman also stated that he considered the income approach using rental rates but found that "the highest and best use" of the slips was "to sell [them] off as dockominiums." Transcript, p. 124.

Scott Shurlow

Scott Shurlow, co-owner of the subject property, testified that he and his father purchased "Pere Pointe" for $1.4 million. This purchase included "the building, all the vacant land, the marina."[5] Transcript, p. 173. He stated that the clubhouse is approximately 5,000 square feet and is one story. Mr. Shurlow also testified that the Condo Association has "rights to the pool area and facilities that adjoin the pool area, the showers" and that the members pay dues which, in part, are used to "maintain and keep that pool up and running." Transcript, p. 179. In addition, "[t]he people that rent the slips have use of the larger side of [the clubhouse]." Transcript, p. 180. This side, or portion, of the clubhouse may be

[5] Mr. Shurlow further explained that the "marina" included the boat slips and the clubhouse. Transcript, p. 173.

made available to the Condo Association members but "[t]hey do not have access to the marina building side." Transcript, p. 182.

Mr. Shurlow testified that the Master Deed (P-7) states that there is to be a "community facility," which he contends is the clubhouse. See Transcript, p. 186. He also testified that the condo owners walk on the Future Development sites and treat the land as a lawn. He contends that having the green space makes the building more appealing to a potential buyer. See Transcript, p 197. The owners also use the garages and the peninsula. See Transcript, p. 200.

Mr. Shurlow also stated that in 2011, construction began on the garage buildings located on Future Development East, and no construction was on Future Development North as of any of the relevant tax days. He also testified that Exhibit P-9 accurately represents the costs incurred pursuant to the construction of the garages. Mr. Shurlow testified that there have been no steps taken towards building the potential additional units because "the first building is not sold out; and secondly, the economy is not strong enough where [he] would feel comfortable." Transcript, p. 195.

Mr. Shurlow testified that the boat slips are rented out and prices "range from 2300 and change on up to 2995." Transcript, p. 206. The costs incurred with the slips include the cost of electric and maintenance of the docks. Further, Mr. Shurlow indicated that in 2012 Pere Pointe lost $1,600 on the slips. Transcript, p. 206.

<u>William Shurlow</u>

William Shurlow, co-owner of the subject property, testified that the community facility is the clubhouse. The only other thing that could be considered the community facility is the gazebo, which is part of the clubhouse. Transcript, p.

237. The members of the association have the right to use a portion of the clubhouse as part of their purchase. See Transcript, p. 238. Mr. Shurlow also testified that no changes have been made to the Master Deed as originally filed. *Id*.

RESPONDENT'S ADMITTED EXHIBITS

R-1 Valuation Disclosure

R-2 Diagram of subject with legal descriptions

R-3 Information from Petitioner's website including photos

R-5 Pere Pointe condo sales from 10/1/10-12/31/11 and 10/1/10-12/31/12

R-6 Property record cards for the Subject property

R-7 Property record card and demolition costs for One Ludington Place

R-9 Marina slip information

R-11 Condo sales in Ludington from 10/1/10-12/31/12

R-12 Photos of the Subject property

R-13 Condo and residential single home sales in Ludington from 10/1/10-12/31/11

R-14 Corrected valuation for 2011, Parcel 53-051-460-083-40

R-15 Corrected valuation for 2012, Parcel 53-051-460-083-40

RESPONDENT'S CONTENTIONS

Respondent contends that the Subject property cannot be a "common element" because it is not included in the Master Deed. More specifically, MCL 559.104(3) states that common elements are "'the portions of the condominium project other than condominium units.'" Respondent's Brief, p. 2. Since the subject property is not included in the Master Deed, it "by definition" cannot be "dedicated land" that should be assessed to the individual units. See Respondent's Brief, p. 2.

Respondent relies upon *Bay Harbor Yacht Club v City of Petoskey*, 16 MTTR 339 (Docket No. 298777, May 2, 2006), to support the contention that the Clubhouse is not a common element. Respondent contends that the Tribunal found that the facility maintained by a third-party and not the co-owners of the condominiums, it should be separately assessed. The subject clubhouse is owned by a third party and is not exclusively for the use of co-owners. Rather, the use of the Clubhouse is shared with the individuals who lease the marina slips.

Respondent also distinguishes *Paris Meadows*, *supra*, from the case at hand. Respondent contends that in that case, "the disputed property was land in the master deed's legal description" and thus, could be considered a "common element." Respondent's Brief, p. 4. However, in the case at hand, the subject property is not "part of the condominium project at all" which is distinguishable. Respondent's Brief, p. 4. The Master Deed only indicates that the property can be added in the future. Thus, the property must be valued independently and not assessed to the individual condominiums.

Respondent contends that Petitioners failed to meet their burden of proof because they only contend that the clubhouse is a "common element" that should not be independently assessed. Petitioners, therefore, failed to set forth valuation evidence regarding the proper valuation of this parcel. Respondent also critiques the usage of the "development approach" as it is not one of the recognized valuation approaches. Respondent's Brief, p. 7. Further, Respondent indicates that Petitioners' appraiser makes "astonishing" market adjustments of 86%. See Respondent's Brief, p. 10.

Respondent also contends that the purchase price of the subject should not be considered as reliable market evidence because the sale was not subject to

normal market pressures. Specifically, Respondent states that the sale "was a bank sale of a distressed property under receivership" and that "[b]ank-owned sales are 'forced sales,' not arms-length transactions, within the meaning of MCL 211.27(1)." Respondent's Brief, p. 12.

Respondent indicates that the vacant land should be valued based upon the comparable sale (106 Laura Street) and its paired sales analyses. Further, the garages and clubhouse should be valued using the cost less depreciation method reflected in the property record card and amended calculations in R-14 and R-15, and the boat slips should be valued at $12,000 per slip considering the income they produce. In addition, the boat slips can be added by the Tribunal as omitted property under MCL 211.53b(8)(e).

RESPONDENT'S WITNESS

Brent Bosley

Brent Bosley, contracted Assessor for the City of Ludington, testified that he used the sales comparison approach to value the vacant land at issue and the cost less depreciation approach to value the improvements.

In his sales comparison approach, Mr. Bosley testified that he utilized "the only true comparable [located at] 106 Laura Street. . . ." Transcript, p. 260. He based his market adjustment on condominium sales indicating an overall decline of 16.5 percent and 24 percent for newer developments, but that he felt the market declined even further so he utilized 38 percent. Transcript, pp. 264-266. The comparable located at 106 Laura Street sold for $9.63 per square foot, adjusted for market condition, indicated $6 per square foot. This derived a value of $844,188 for the Future Development East parcel for 2011. For 2012, he used $6.125 per square foot to yield a value of $861,775. Transcript, pp. 284-287. The same

methodology was used for the vacant land of Future Development North, the land of the Clubhouse parcel, and the vacant land associated with the Marina parcel. Transcript, p. 314. However, a higher rate per square foot was utilized for the Marina parcel based upon the water frontage of this parcel. Transcript, p. 299. Mr. Bosley testified that his valuation disclosure had errors which need to be corrected and which were not corrected in his "Corrected Valuation" R-14.[6] He also states that he did not utilize the cost per unit price "[b]ecause per-approved-units are not the only possible use for said property." Transcript, p. 318. More specifically, he said that the developmental approach to valuation is not "an accurate way of valuing property in a situation like this. It relies on too much speculation. . . ." Transcript, p. 364.

In the cost less depreciation approach, Mr. Bosley testified that he used the State Tax Commission's Assessor's Manual. The garages were valued, for the 2012 tax year, as four buildings, rather than individual garages, at $42,456 per completed building. The fourth building was not completed so it was valued as being 10 percent complete. Transcript, pp. 288-289. With regard to the Clubhouse parcel, Mr. Bosley testified that this parcel contains the "clubhouse, pool, and spa area." Transcript, p. 300. He stated that the value of the clubhouse has not been assessed to the individual condominium units. He indicated that he originally inspected the clubhouse in the winter and thought that there was a basement space underneath, thus, erred in listing the square footage of the building in his Valuation Disclosure, R-1. The corrected square footage is listed in R-14 for 2011 and R-15 for 2012. Using the area of 4,821 square feet at $101.20 per square foot,

[6] Specifically, he testified that for the 2012 tax year, the vacant land values for the Future Development East and North parcels should be $6.125 per square foot rather than $6.25 per square foot. See Transcript, pp. 301, 309, 314.

reproduction cost is $487,855. Transcript, p. 304. He used 5.5 percent depreciation to derive a building value of $461,051 for the 2011 tax year. See Transcript, pp. 304-306. He also valued the pool, which is 1,800 square feet, at $71 per square foot for 2011.

Mr. Bosley testified that his valuation disclosure does not address the boat slips, but that if the Tribunal finds they are part of the project and should be valued as omitted property, Petitioners' valuation is "on the low side." Transcript, pp. 293, 297. He agrees that *if* the slips are "30 feet long, $400 a linear foot would yield a [$12,000] true cash value." Transcript, p. 370.

He testified that the legal description contained in Article III of the Master Deed does not contain any of the subject parcels. Rather, this description contains the existing condominium units, the gazebo, and some of the parking lot. See Transcript, pp. 359-360, 371-372.

FINDINGS OF FACT

1. The subject property consists of four real property parcels located in the City of Ludington.
2. Parcel No. 53-051-460-083-20 ("Future Development East") contains 3.23 acres of land. During 2011, 14,406 square feet of asphalt and 4 garage buildings were added to this parcel. As of December 31, 2010, 3 of the garages were completed, 1 was only 10 percent complete.
3. Parcel No. 53-051-46-083-30 ("Marina parcel") contains 2.8 acres of land and 27 boat slips. The 27 boat slips are 30-foot slips. The boat slips were not previously assessed.
4. Parcel No. 53-051-460-083-40 ("Clubhouse parcel") contains 0.59 acres of land and a 4,821 square foot building ("the Clubhouse"). The Clubhouse is

not owned by the condominium owners, but by Scott and William Shurlow, co-owners of Pere Pointe. The clubhouse is not for the exclusive use by the condominium owners.

5. The Clubhouse parcel is not specifically included in Article III of the Master Deed or specifically listed as a common element in the Master Deed.
6. The pool is not located on the Clubhouse parcel.
7. The gazebo is not located on the Clubhouse parcel.
8. The Clubhouse is *not* part of the condominium project and is *not* a common element.
9. Parcel No. 53-051-460-083-050 ("Future Development North") contains 0.9 acres of vacant land.
10. Petitioners' appraisal values the property as of October 21, 2010, and is not for the purpose of tax appeal. Petitioners' appraisal does not value the "Excess Land" on a per parcel basis because the parcels were split after the appraisal. The Marina Parcel land is not included in Petitioners' appraisal.

ISSUES PRESENTED AND 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. See MCL 211.27(a).

> The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not...exceed 50%.... Const 1963, art 9, sec 3.

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. MCL 211.27(1); MSA 7.27(1).

The Michigan Supreme Court has determined that "true cash value" is synonymous with "fair market value." See *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450; 221 NW2d 588 (1974).

Under MCL 205.737(1), the Tribunal must find a property's true cash value in determining a lawful property assessment. See *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal is not bound to accept either of the parties' theories of valuation. See *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985). The Tribunal may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination. See *Meadowlanes Ltd. Dividend Housing Ass'n v City of Holland,* 437 Mich 473, 485-486; 473 NW2d 636 (1991).

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735a(2). The Tribunal's factual findings are to be supported by competent, material, and substantial evidence. See *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990). "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence," *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

"The petitioner has the burden of establishing the true cash value of the property." MCL 205.737(3). "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." *Jones & Laughlin* at 354-355. However, "[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessment 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." MCL 205.735(3).

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. See *Meadowlanes* at 484-485; *Pantlind Hotel Co v State Tax Commission*, 3 Mich App 170; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968). The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in marketplace trading. See *Antisdale*. 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. See *Antisdale* at 277. In the matter before us, the Tribunal finds that the sales comparison and cost-less-depreciation approaches are the correct approaches to apply when determining the fair market value of the subject property for the tax years at issue.

Common Element

Petitioners contend that the value of the Clubhouse parcel (Parcel No. 53-051-460-083-40) should be $0.00 for each tax year at issue because it is a

"common element." See Petitioners' Post Hearing Brief. MCL 559.172 states that "[a] condominium project for any property shall be established upon the recording of a master deed that complies with this act." The term common element is defined in MCL 559.103(7) as "the portions of the condominium project other than the condominium units." Further, MCL 559.163 states that "[e]ach co-owner has an exclusive right to his condominium unit and has such rights to share with other co-owners the common elements of the condominium project **as are designated by the master deed**." (Emphasis added).Thus, by definition, to be a "common element" the property must be part of the condominium project and be designated as a common element in the master deed.

In this case, Petitioners admit that the legal description of the property in the Master Deed (P-7) does not include the subject property. See Petitioners' Brief, p. 6. In addition, Brent Bosley testified that he reviewed the legal descriptions contained in Article III of the Master Deed and compared this with the legal descriptions of the subject parcels. He testified that Article III of the Master Deed does not specifically describe the parcels at issue in this appeal, including the Clubhouse parcel. Rather, this description contains the existing condominium units, the gazebo,[7] and some of the parking lot. See Transcript, pp. 359-360, 371-372. William Shurlow also testified that no changes (i.e., amendments) have been made to the Master Deed as originally filed. See Transcript, p. 238. Petitioner relies upon Article V of the Master Deed to indicate that the Clubhouse must be considered a common element because it is the only property that could be the

[7] Mr. William Shurlow testified that the gazebo is part of the Clubhouse [parcel]. Transcript, p. 237. However, Mr. Bosley testified that the gazebo is not the Clubhouse parcel. Transcript, p. 360. It appears that Respondent has correctly valued the gazebo on a parcel not under contention in this matter, and therefore, not on the Clubhouse parcel.

"community facility" as described in the Master Deed. Article V states that the General Common elements include "[t]he real property described in Article III . . ." the "community facility, gazebo, building walkways . . . as depicted on the Condominium Subdivision Plan" and "[s]uch other elements of the Condominium Project not herein designated as general or limited common elements which are intended for common use or necessary to the existence, upkeep and safety of the Condominium Project as a whole." P-7, Master Deed, pp. 9-10.

The Tribunal finds that Petitioners' reliance upon the "community facility" language is misplaced. Nothing in the Master Deed specifically refers to or includes the parcel known as the Clubhouse parcel. This cannot, therefore, be considered part of the condominium project as it is not a part of the Master Deed. See MCL 559.172 and 559.103. Further, MCL 559.163 specifically states that the common elements must be specifically designated in the Master Deed. Petitioners' contention that the clubhouse is the only possible "community facility" is erroneous as the parties have agreed that the pool and surrounding area is not a part of the parcels under appeal but is actually included in the description in Article III. As such, the "community facility" could, in fact, be the pool or for that matter, the gazebo which is also not situated on the Clubhouse parcel per the Master Deed.

As indicated above, MCL 559.163 states that "[e]ach co-owner has an exclusive right to his condominium unit and **has such rights to share with other co-owners** the common elements of the condominium project as are designated by the master deed." (Emphasis added.) MCL 559.106(1) defines "co-owners" as "a person, firm, corporation, partnership, association, trust, or other legal entity or any combination of those entities, **who owns a condominium unit within the condominium project.**" (Emphasis added.)

The facts of this case are similar to *Bay Harbor Yacht Club, supra*. In that case, the Tribunal held that the Bay Harbor Yacht Club could not be a "common element" because:

> BHYC membership [] does not strictly consist of owners and purchasers of condominium units within Bay Harbor, the club facilities are not owned and maintained by the co-owners of the select condominium developments in Bay Harbor nor are they reserved for the use of the condominium unit owners. Rather, the club facilities are owned and maintained by the BHYC, which the Tribunal finds to be operated as a private yacht club for the use and benefit of all its members, consisting of both Bay Harbor property owners and those who do not own property within Bay Harbor.

Further, MCL 559.161 specifically states that:

> [u]pon the establishment of a condominium project each condominium unit, together with and inseparable from its appurtenant share of the common elements, shall be a sole property subject to ownership, mortgaging, taxation, possession, sale, and all types of juridical acts, inter vivos or causa mortis independent of the other condominium units." This statute indicates that the condominium unit owners are also the owners of the common elements. *Bay Harbor Yacht Club, supra*.

The facts of this case make it clear that the condominium owners (i.e., co-owners) do not have ownership rights in the Clubhouse parcel. The testimony and evidence on record clearly establishes that not only are the co-owners not *owners* of the parcel but they do not have the right to use the entire facility. The co-owners of Pere Pointe, Scott Shurlow and William Shurlow, testified that the condominium owners only have "rights to the pool area and facilities that adjoin the pool area, the showers" and "[t]he people that rent the slips have use of the larger side of [the clubhouse]." Transcript, pp. 179-180. Thus, the individuals

sharing rights to use the clubhouse are not all "co-owners." There is nothing on record demonstrating that the slip renters also must own a condominium unit. Thus, the use of the clubhouse by slip renters clearly is not in conformity with the statutory requirements of a common element. See MCL 559.163 and *Bay Harbor Yacht Club, supra*.

Given the above, the Tribunal finds that the Clubhouse parcel cannot be treated as a common element because: (1) it is not a part of the condominium project as it is not included within the Master Deed; and (2) it is not owned by the co-owners of the individual units or used exclusively by the co-owners of the individual units. As such, the Clubhouse parcel shall be separately assessed and valued as indicated below.

Petitioners' Appraisal

Petitioners provided an appraisal as of October 21, 2010. The date of the appraisal is only two months prior to the first relevant valuation date. However, Petitioners' appraiser and valuation expert, James Hartman, testified regarding market changes and stated that "[t]here are none that I am aware of, but I cannot testify that is my valuation of the tax date. I've not [done] an appraisal as of that date." Transcript, p. 53. Mr. Hartman was hired by PNC Bank to appraise the subject property, and the appraisal was not conducted for tax appeal purposes. The improvements added in 2011 were not included as they were added after Mr. Hartman's inspection and appraisal. The clubhouse was not valued separately from the condominium units. The vacant waterfront land of the marina was not included in the appraisal report because, at the time of valuation, Mr. Hartman was under the belief that this waterfront parcel was leased out, and he was directed that this not be included in his valuation.

Petitioners' valuation expert indicates that his valuation of the "Excess Land" is a sales comparison approach. This valuation resulted in a conclusion of $325,000 for the "Excess Land" and was not apportioned by the appraiser to the individual parcels. Since it was not apportioned by the appraiser, Petitioners contend that this value should be dispersed between the 3 parcels with vacant land on a proportionate basis as it relates to the original assessments. The Tribunal finds that this methodology is not appropriate and is not a reliable indicator of the value of each parcel. Petitioners' valuation expert testified that he did not include part of the vacant land under appeal (i.e., the Marina parcel). See Transcript, p. 45-46. Thus, the $325,000 valuation is not representative of the entire property under appeal and cannot be properly apportioned to the individual parcels.

Petitioner's appraisal does not value the Clubhouse parcel as it was determined to be a common element. As discussed above, the Clubhouse parcel is not a common element and must be individually valued. Petitioners' appraisal provides no reliable information with regard to this portion of the subject property. Petitioner's appraisal does not value the garages or land improvements added to the subject property after October 21, 2010. Petitioner's appraisal also does not address the 2012 tax year at all. Petitioner contends that the 2012 values should be derived by multiplying the 2011 apportioned values by the CPI for the 2012 tax year. The multiplier is provided under MCL 211.27a for the purpose of setting the taxable value of property that has not had a transfer of ownership. This rate is not reflective of the market and is not based upon sales of comparable properties. It is not, therefore, a reliable way to adjust the true cash or market value of the subject property for the subsequent tax year.

Overall, the appraisal is not considered generally reliable due to the deficiencies discussed above. The appraisal and its methodologies are further discussed below in discussion relevant to the individual parcels at issue.

Future Development East **(**Parcel No. 53-051-460-083-20)

The Future Development East parcel contains 3.23 acres (140,698 square feet) of land, garage buildings, and land improvements (i.e., asphalt paving). The Tribunal finds that the most reliable method for valuing the land of this parcel is the sales comparison approach. For 2011, the property did not contain any improvements and, therefore, shall only have a value with regard to the land itself. The improvements for the 2012 tax year are discussed further below.

Petitioners' appraisal valued the excess land on a per unit basis. Petitioners' appraiser utilized three comparable sales that sold between 2004 and 2007. These properties sold for between $13,281 per unit to $26,923 per unit. The appraiser applied a discount rate and considered holding costs to value the "excess land" at a rate of $4,070 per approved unit. Petitioners' valuation expert testified that his calculations resulted in an 86 percent downward market adjustment. Transcript, p. 92. The comparables were also not adjusted to consider differences in features such as acreage and water frontage. Specifically, Mr. Hartman testified that he did not adjust for the lack of a clubhouse or marina even though these features may add value to the price per unit. See Transcript, pp. 89 and 119-121. He also testified that the parcel splits, which occurred after his appraisal, could have an effect on the valuation and his finding that the property was irregular in shape. Transcript, p. 115. The Tribunal finds that Petitioners' sales comparison approach is too speculative and contains too high of a downward adjustment for market conditions and holding time. The sales comparables used were not adjusted for differences

which could have a significant effect on value. More importantly, the value conclusion of $325,000 does not include all of the subject property, and the Tribunal does not have sufficient information and data to apportion this value to the Future Development East parcel. Petitioners' appraiser and valuation expert himself testified that he could not divide the value amongst the parcels because "[i]t would be improper . . . and [he has] not done an appraisal of the individual parcels." As such, this methodology is not appropriate and does not provide a reliable basis for the Tribunal to value the vacant land associated with the Future Development East property.

Respondent also provided a sales comparison approach for the vacant land associated with the Future Development East property. Respondent's appraisal values each parcel separately and provides valuation information as of each of the relevant tax days. Respondent utilized one sales comparable located at 106 Laura Street. This comparable was also used by Petitioners' appraiser. Rather than evaluating this sale on a price per unit basis, Respondent valued it on a price per square foot basis. This is a reliable approach and Respondent's assessor reliably testified that this is the more appropriate valuation method considering that the property could be used for other purposes than condominium development. This is also supported by Mr. Scott Shurlow's testimony that there are no plans currently for additional units to be built as the current units are not all sold. See Transcript, p. 195.

The Laura Street comparable sold for $9.63 per square foot of vacant land. Mr. Bosely reliably testified that this comparable was very similar to the subject and did not need adjustments in features. Transcript, p. 262. The Tribunal also finds no adjustments for location were needed as this comparable is on the same

body of water and is located only 0.5 miles from the subject. The Tribunal finds that the use of one sale is generally not the best practice. However, in this case the comparable located at 106 Laura Street is the most reliable sale and Respondent's sales comparison using this one sale is the most reliable indicator of true cash value for the land in this appeal.

As the comparable sold in 2007, a market adjustment is required to reflect the value of the subject property as of December 31, 2010. There were no comparable vacant land sales to examine to calculate a market adjustment. Thus, Respondent looked to sales of developed condominium units. Respondent looked at the two most comparable condominium developments and a decline of 24 percent was calculated. He calculated this rate by looking at the developments that were built roughly the same time as the subject property and examining the percentage change in sales prices between 2007 and December 31, 2010. While not the preferred methodology for determining a market rate change, in the absence of comparable vacant land sales, the Tribunal finds that this methodology is the most reliable indicator of value on record. For the 2011 tax year, Respondent found that an additional market decline was necessary and as such, utilized the rate of $6.00 per square foot. While the $6.00 per square foot value is not supported by sales data on the record, Respondent's assessor reliably testified that the market showed even further decline. If the Tribunal utilized Respondent's calculation of a 24 percent market adjustment, which results in a rate of $7.32 per square foot, the assessments would increase. The Tribunal finds an increase in assessment is not supported, as Respondent is agreeing that the property is over assessed based upon his judgment and market evidence. Thus, the $6.00 per square foot rate shall be used for the 2011 tax year, resulting in a rounded true cash value of $844,200 for

the land only. For 2012, Respondent's assessor determined that condominium sales increased by approximately 2 percent from 2011, resulting in a rate of $6.125 per square foot. Thus, the true cash value for 2012 shall be rounded to $861,800 for the land only.

The land improvements (14,406 square feet of asphalt) as valued by the cost less depreciation method utilizing the Assessor's Manual is appropriate and supported on the record. Petitioners' appraisal does not value these improvements as they were added after the date of the appraisal. As such, the best evidence of value is Respondent's cost approach resulting in a true cash value of $18,457 for land improvements. This value shall be added to the true cash value of this parcel for the 2012 tax year only.

Similar to the land improvements, the garage buildings were added to the subject property after the date of the appraisal and are not, therefore, included in Petitioners' appraisal report. Petitioners did, however, submit an exhibit that describes Petitioners' costs incurred in building the garages. Thus, Petitioners contend that the value of the garages should be set at their cost of construction, approximately $161,680. See P-9. Respondent has also valued the garages using the cost approach. There were four garage buildings under construction in 2011. Respondent valued three of the garage buildings at 100 percent complete and the fourth was valued at only 10 percent complete as of December 31, 2011. Respondent utilized the Assessor's Manual to derive a cost of $32.62 per square foot, depreciated at 3 percent. This resulted in a value of $42,456 for each of the three complete units. For the fourth, Respondent contends its value should be $4,246, or 10 percent of the completed value. This results in a true cash value for the garage buildings of $131,614. The Tribunal finds that the most reliable method

is Respondent's cost approach using the Assessor's Manual. Petitioners' actual costs are more speculative as there are not specific receipts and other documents indicating that the actual costs were appropriately reflected entered into the record. Thus, the building value for the Future Development East parcel shall be $131,614 for the 2012 tax year only.

The Tribunal's determination of true cash values for this parcel are as follows:

Future Development East **(**Parcel No. 53-051-460-083-20)

	Rounded True Cash Value 2011	Rounded True Cash Value 2012
Land	$844,200	$861,800
Land Improvements	n/a	$18,457
Building	n/a	$131,614
TOTAL:	**$844,200**	**$1,011,900**

Marina parcel (Parcel No. 53-051-460-083-30)

The Marina parcel contains 2.8 acres (121,968 square feet) of land and 27 boat slips. As indicated above, the land value as determined by Petitioners is not inclusive of this parcel. Thus, Petitioners' appraisal fails to provide any reliable valuation with regard to the land value of this parcel. Respondent's land valuation was determined in the same manner as the Future Development East parcel discussed above. However, Respondent found that this land value was slightly higher based upon the water frontage. Respondent's values, as determined by the sales comparison approach, are the most reliable indicator of land value for this parcel. Thus, for 2011, the vacant land shall be valued at rate of $6.10 per square

foot, or a rounded true cash value of $744,000. For 2012, the rate of $6.25 per square foot, results in a rounded true cash value of $762,300.

This parcel also contains 27 boat slips.[8] The boat slips are not presently valued on this parcel for the 2011 or 2012 assessments. Petitioners do not dispute that the slips are omitted property but contend that the Tribunal cannot add the value of the slips to the parcel at this time and that Respondent must file a motion with the State Tax Commission under MCL 211.154 to add the omitted property. However, the Tribunal finds that its jurisdiction was properly invoked by Petitioners with regard to the valuation of the subject property for the 2011 and 2012 tax year. This jurisdiction includes the power to correct errors on the property record card to ensure proper valuation of the subject for the years at issue, as the Tribunal has the duty to render an independent determination of value. See *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348; 483 NW2d 416 (1992). Thus, the Tribunal does have the authority to add the value of the boat slips to the Marina parcel's assessment.[9] It is clear from the property record cards on record that the boat slips were not previously added to the assessments.

Respondent did not provide a valuation of the boat slips but provided information regarding rental rates of comparable slips in Ludington. The rental rates, alone, are insufficient information to calculate a reliable value based upon the income approach. Although the income approach would be the most reliable

[8] While there was some dispute regarding the number of boat slips at hearing, the Tribunal finds that the numbering of the slips is misleading and there are, in fact, only 27 slips.

[9] Petitioner's argument that the Tribunal does not have this authority is frivolous in nature and is contrary to law. The Tribunal's duty to render an independent determination of true cash value for each of the tax days at issue is clear in case law. This duty is to value the property *as it existed* on the relevant valuation dates including any property not previously assessed. "For purposes of the constitutional provision, the tribunal is the final agency for the administration of property tax laws." MCL 211.753

method of valuing the boat slips, as they are rented, there is insufficient data on record to calculate a value under this method. Petitioners' appraiser considered the income approach using rental rates but found that "the highest and best use" of the slips was "to sell [them] off as dockominiums." Transcript, p. 124. Thus, he valued the slips on a per foot basis and considered projected sales.[10] Mr. Hartman stated that he valued the 27 slips at $400 per foot. He also projected sales and cost to hold until the slips sold for a final value conclusion of $155,000.

The Tribunal finds that Petitioners' value conclusion of $155,000 is speculative and does not represent the market value of the slips as of the relevant valuation dates. The Tribunal agrees with Respondent that the proper sales comparison approach method would simply indicate the market value of the slips. Mr. Hartman specifically testified that for a 30-foot slip, "[b]ased on a dockominium slip, [$12,000] would be true cash value, estimating market value, assuming that the true cash value is the same." Transcript, p. 108. Thus, the Tribunal finds that each 30-foot slip has a market value of $12,000, resulting in a true cash value of $324,000 for each of the tax years at issue.

Thus, the Tribunal finds that the true cash value of the Marina parcel is as follows:

Marina parcel (Parcel No. 53-051-460-083-30)

	2011	2012
Land	$744,000	$762,300
Omitted Property (Boat Slips)	$324,000	$324,000
TOTAL:	**$1,068,000**	**$1,086,300**

[10] Petitioner's appraiser testified that he did not measure the slips but relied on information provided to him that the slips were 30-foot slips. Transcript, p. 107. However, this is the best evidence of value for the slips at issue because Respondent failed to provide any reliable valuation conclusion for the boat slips.

Clubhouse parcel (Parcel No. 53-051-460-083-40)

The only valuation information regarding the Clubhouse parcel was submitted by Respondent. Respondent utilized the sales comparison approach for the land value as discussed above. Respondent utilized the cost approach to value the clubhouse building and the pool. However, the parties are in agreement that the pool was included in error and shall be removed from this parcel's valuation, as was suggested by Respondent's revised contentions of value for the clubhouse parcel. Respondent's Brief, p. 15. Petitioners did not submit valuation evidence because they contended a $0 value as a common element. As fully discussed above, this parcel is not a common element and shall be separately assessed.

This parcel contains 0.59 acres (25,700 square feet) of land. For 2011, the land shall be valued at rate of $6.00 per square foot, or a true cash value of $154,200. For 2012, the rate of $6.125 per square foot results in a rounded true cash value of $157,400. This parcel also contains a 4,821 square foot building that is utilized as a Clubhouse. There were no sales of comparable properties and the property is not income producing. As such, the most reliable indicator of value is the cost less depreciation approach. Respondent concluded that a true cash value of $461,051 was appropriate for the 2011 tax year and $470,411 for the 2012 tax year. The Petitioners also indicated that, if the Clubhouse was to be valued, they agreed with Respondent's valuation. Thus, the Tribunal finds that the true cash value of this parcel is as follows:

Clubhouse Parcel **(**Parcel No. 53-051-460-083-40)

	Rounded True Cash Value 2011	Rounded True Cash Value 2012
Land	$154,200	$157,400
Building	$461,051	$470,411
TOTAL:	**$615,250**	**$627,800**

Future Development North (Parcel No. 53-051-460-083-50)

The Future Development North parcel contains 0.9 acres (39,204 square feet) of vacant land. The Tribunal finds that the most reliable method for valuing the land of this parcel is the sales comparison approach. The best indicator of value, as indicated above, is Respondent's valuation. Thus, for 2011 the vacant land shall be valued at rate of $6.00 per square foot, or a rounded true cash value of $235,200. For 2012, the rate of $6.125 per square foot results in a rounded true cash value of $240,100.

In this case, the Tribunal concludes that the evidence, testimony, and case file indicate that the subject property's assessments are not supported on record. The assessments are revised as indicated above.

JUDGMENT

The subject property's true cash value (TCV), state equalized value (SEV), and taxable value (TV) for the tax years at issue are as stated in the Introduction section above.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable value 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 as required by this Final Opinion and Judgment within 28 days of the entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest 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 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 the Tribunal's 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, and prior to July 1, 2012, at the rate of 1.09%, and (iv) after June 30, 2012, and prior to January 1, 2014, at the rate of 4.25%.

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

By: Preeti Gadola

Entered: October 11, 2013