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

City of Grosse Pointe Woods,
Petitioner,

v

MTT Docket No. 323829

City of St. Clair Shores,
Respondent.

Tribunal Judge Presiding
Kimbal R Smith III

FINAL OPINION AND JUDGMENT

Administrative Law Judge ("ALJ") Thomas A. Halick issued a Proposed Opinion and Judgment on May 26, 2010. The Proposed Opinion and Judgment states, in pertinent part, "[t]he parties have 20 days from date of entry of this Proposed Opinion and Judgment to file any written exceptions to the Proposed Opinion and Judgment. The exceptions must be stated and are ***limited*** to the evidence submitted prior to or at the hearing and any matter addressed in the Proposed Opinion and Judgment." (Emphasis added.)

On June 15, 2010, Petitioner filed exceptions to the Proposed Opinion and Judgment. In the exceptions, Petitioner states:

a. "The Administrative Law Judge ("ALJ") correctly acknowledged, under the statute and the case law interpreting it, that Lake Front Park could not be sold unless (a) it was 'released' from the city's master plan, or (b) the sale was approved by a public vote. . . ."

b. "Thus, the ALJ recognized that the provisions of the statute constitute a *bona fide* restriction on the sale of Lake Front Park. Having recognized that fact, he proceeded to ignore it for this stated reason: 'A process exists by which the subject property could have been sold on the relevant tax days[.]'"

c. "With all due respect to the ALJ, the existence of a 'process' marks the beginning of the inquiry, not the end of it."

d. "The ALJ distinguished *Consumers Power Company* on the basis that the restrictions in that case were imposed by the Federal Power Commission, a third party . . . . This conclusion is wrong in two critical respects. First, a 'beneficial owner' is not an 'owner.' The caption of this case is *City of Grosse Pointe Woods v City of St. Clair Shores* because the 'owner' of the property is the City of Grosse Pointe Woods, a municipal corporation that has an existence entirely independent and separate from that of its citizens."

e. "Second, and even more importantly, the restriction in question is in no way 'self imposed' in the sense that term is used, for example, in *NeBoShone Association v State Tax Commission*, 58 Mich App 324; 227 NW2d 358 (1975). Rather, this restriction was imposed by the Michigan legislature in enacting the Michigan Home Rule City Act, and it was imposed for a completely obvious reason: to prevent the sale of property of substantial public important without a vote of the people."

f. "The ALJ chooses to accept Respondent's assessor's valuation of the land at Lake Front Park at $50,000 per acre . . . [i]n point of fact, as of tax year 2003 and for all subsequent years, the value of park property in St. Clair Shores was and is $20,000 per acre. . . . That value was established for all intents and purposes by agreement between St. Clair Shores and the State Tax Commission . . . ."

g. "The ALJ also chooses to accept the conclusion of Respondent's assessor that the pedestrian bridge and vehicle bridge that currently exist at Lake Front Park would add value to a proposed residential development, and he therefore adopts the values placed thereon by the assessor."

h. The bridge does not even appear on the concept plan . . . [t]he existing vehicle bridge <u>is</u> mentioned in the concept plan, as an 'emergency

access.' . . . [T]he emergency access would likewise end in the backyard of a residential lot, which would seem to make it useless in an emergency."

i. "Mysteriously, the ALJ concludes that the assessor's valuation of 'pavement' should also be included in the property's value as contributing to a proposed residential development. . . . It is clear from the concept plan that none of this pavement would survive redevelopment of the property into a residential subdivision."

j. "The ALJ recognizes that a proposed residential development that could not support more than 100 lots has no need of 254 boat slips. . . . [A] rudimentary review of the concept plan suggests that no more than a couple dozen of the projected residential lots would have frontage on the Milk River."

k. "[T]he Proposed Opinion and Judgment takes not account whatever of the cost of demolition 'because the evidence is not sufficient to render a finding on that point.'"

Respondent has not filed exceptions to the Proposed Opinion and Judgment or a response to Petitioner's exceptions.

The Tribunal, having given due consideration to the exceptions, and the file in the above-captioned case, finds:

1. The ALJ partially erred in the rendering of the Proposed Opinion and Judgment. More specifically:

   a. With respect to Petitioner's stance that the subject property has no value in the market, the Tribunal finds that the ALJ properly determined that the ". . . subject park could be sold – it is marketable and has market value, or 'true cash value,' within the meaning of MCL 211.27(1)." Proposed Opinion and Judgment, p 23. Petitioner, in its exceptions, argues that even though the ALJ recognized that the subject property could not be sold unless the sale was approved by a

public vote or was released by the City from a master plan which could allow a sale without a public vote, the ALJ ignored these facts and erroneously determine the subject property could be sold on the relevant tax days. The ALJ properly concluded that "[a] restriction upon the power to sell property that is 'self-imposed' and over which the owner has control cannot be invoked by the owner in a property tax dispute as a negative value influence that reduced the property's true cash value to zero." *Id.* Further, the ALJ found that there were no deed restrictions or explicit charter provisions that restricted the use of the subject property. Petitioner's reliance on *Consumers Power Company v Big Prairie Township*, 81 Mich App 120; 265 NW2d 182 (1977) is misplaced. Specifically, the ALJ did not err in his determination that this case is factually distinguishable from the facts of the above-captioned appeal. The ALJ did not err in determining that because a process exists for the restriction to be lifted, the restriction does not have an impact on the marketability of the property. Therefore, contrary to Petitioner's exceptions, the ALJ was not required to hypothesize what the results of the process are likely to be.

b. Petitioner has not shown that the ALJ erred in his determination that the valuation of the land at Lake Front Park is $50,000 per acre. Petitioner argues that the ALJ should have utilized $20,000 per acre as was used for St. Clair Shores parks. The ALJ properly determined that the rate of $50,000 per acre was proper because the assessor determined that the St. Clair Shores parks were inferior to Lake Front Park, which justifies the higher price per acre.

c. Petitioner further argues that no value should be ascribed to either the pedestrian bridge or the vehicle bridge that currently exists at Lake Front Park. The Tribunal agrees with Petitioner's argument with regard to the pedestrian bridge only. Respondent has shown that the proposed residential use of the park would utilize the vehicle bridge for emergency access. Petitioner's argument that ". . . the emergency access would likewise end in the backyard of a residential lot . . .," is futile. The evidence shows that the existing vehicle bridge will be

retained and therefore assigning a value to it was appropriate. As to the pedestrian bridge, the Tribunal finds that the proposed residential concept plan contained in Respondent's appraisal shows that the pedestrian bridge does not exist. As such, this bridge would offer no value and should be deducted from the ALJ's value conclusions for the tax years at issue.

d. Petitioner also argues that the assessment of pavement should not be included in the property's value. Petitioner argues that "[i]t is clear from the concept plan that none of this pavement would survive redevelopment of the property into a residential subdivision." However, the concept plan does not identify which areas are paved and which areas were previously paved before the proposed redevelopment. As such, the ALJ did not err in considering the value of the asphalt in his conclusions of value.

e. With regard to the number of boat slips that were valued, Petitioner argues that "[a]n intelligent developer would simply tear out all the boat slips . . . rather than attempt to devise a way to rescue 100 of them for re-use." Petitioner's argument is meritless and fails to demonstrate error on the ALJ's part in determining that the proposed residential development that supports 100 lots would retain 100 boat slips.

f. Last, Petitioner contends that the cost of demolition should be deducted. However, the cost of demolition is an investment that adds to the value of the true cash value in its highest and best use as a residential development. As such, the ALJ properly excluded demolition costs as a deduction.

g. The revised values for both tax years, which accounts for the demolition of the pedestrian bridge, are as reflected below.

2. Given the above, Petitioner has shown good cause to justify the modifying of the Proposed Opinion and Judgment, but not the granting of a rehearing. See MCL 205.762. As such, the Tribunal modifies the Proposed Opinion and Judgment, as indicated herein, and adopts the modified Proposed Opinion

and Judgment as the Tribunal's final decision in this case. See MCL 205.726. The Tribunal also incorporates by reference the Findings of Fact and Conclusions of Law contained in the Proposed Opinion and Judgment, as modified herein, in this Final Opinion and Judgment. As a result:

a. The property's TCV, SEV and TV as established by the Board of Review for the tax years at issue are as follows:

Parcel Number: 14-35-327-013

Year	TCV	SEV	TV
2006	$5,183,800	$2,591,900	$2,405,000
2007	$5,166,200	$2,583,100	$2,493,900

b. The property's final TCV, SEV and TV for the tax years at issue are as follows:

Parcel Number: 14-35-327-013

Year	TCV	SEV	TV
2006	$2,880,000	$1,440,000	$1,440,000
2007	$2,830,000	$1,415,000	$1,415,000

IT IS SO ORDERED.

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 provided 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 the Final Opinion and Judgment within 28 days of the entry of the Final

Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (ii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (iii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, (iv) after December 31, 2008, at the rate of 3.31% for calendar year 2009, (v) after December 31, 2009, at the rate of 1.23% for calendar year 2010, and (vi) after December 31, 2010, at the rate of 1.12% for calendar year 2011.

MICHIGAN TAX TRIBUNAL

Entered: May 6, 2011 By: Kimbal R. Smith III

* * *

STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

City of Grosse Pointe Woods
Petitioner,

v

City of St. Clair Shores,
Respondent.

Michigan Tax Tribunal
MTT Docket No. 323829

Administrative Law Judge Presiding
Thomas A. Halick

PROPOSED OPINION AND JUDGMENT

Introduction

Petitioner, City of Grosse Pointe Woods, appeals property tax assessments levied against its property commonly known as Lake Front Park, located in the City of St. Clair Shores. This case was heard on September 24 and 25, 2009. Thomas S. Nowinski, Clark Hill P.L.C., appeared on behalf of Petitioner. Douglas J. Fryer, Dykema Gossett PLLC, appeared on behalf of Respondent. Each party presented documentary and testimonial evidence. At issue is the true cash value ("TCV") of Petitioner's real property for 2006 and 2007. Respondent, City of St. Clair Shores assessed the subject as follows:

Parcel No. 14-35-327-013

Year	TCV	AV/SEV	TV
2006	$5,183,800	$2,591,900	$2,405,000
2007	$5,166,200	$2,583,100	$2,493,900

Respondent alleges the following values in this proceeding:

Parcel No. 14-35-327-013

Year	TCV	AV/SEV	TV
2006	$4,650,000	$2,325,000	$2,325,000
2007	$4,650,000	$2,325,000	$2,325,000

Petitioner alleges the following values:

Parcel No. 14-35-327-013

Year	TCV	AV/SEV	TV
2006	$0	$0	$0
2007	$0	$0	$0

Conclusion of Values

The Tribunal concludes that subject property's TCV, SEV, and TV shall be:

Parcel No. 14-35-327-013

Year	TCV	AV/SEV	TV
2006	$3,000,000	$1,500,000	$1,500,000
2007	$3,000,000	$1,500,000	$1,500,000

Petitioner's Arguments

Petitioner's documentary evidence is described on its Exhibit List as Exhibits P-1 through P-23 and was admitted into evidence without objection.[1]

Petitioner presented the following witnesses:

Robert E. Novitke, Mayor of the City of Grosse Pointe Woods

Scott T. Vandemergel, Assessor for the City of St. Claire Shores

Mark Wollenweber, City Administrator for the City of Grosse Pointe Woods

Donald Wortman, Carlisle/Wortman Associates (state registered community planner and landscape architect)

James Hartman, MAI, Oetzel-Hartman Group

William W. Anderson, Atwell-Hicks, land development consultant and registered professional engineer

Mark J. St. Dennis, state certified real estate appraiser

Lack of Marketability Means the Subject has no Discernable Market Value

Marketability is Restricted by Charter and Statute.

1 Petitioner's documentary evidence will not be itemized with particularity in this Proposed Opinion, but documents shall be referred to when relevant.

Petitioner's Valuation Disclosure consists of an appraisal report by The Oetzel-Hartman Group, signed by James T. Hartman, MAI, Certified General Real Estate Appraiser, State of Michigan. The appraisal includes an opinion of value of $0 for the 2006 and 2007 assessments.

> As the property is effectively bound to non-economic uses and the existing restrictions constrain the ability to sell the property, the property does not have value in the market. Subject to the limiting conditions and assumptions contained herein, it is my opinion that the property is not marketable and, therefore, cannot have a market value. P-2 [Petitioner's Appraisal, page 3].

Section 8.8 of Petitioner's City Charter states in relevant part:

> The purchase or sale of real property by the city shall be authorized by appropriate action of the Council, provided that the city may not sell any park, except where such park is not required under an official master plan of the city, cemetery, or any part thereof, unless approved by a majority of the electors voting thereon at any general or special election.

Petitioner cites Section 5(e) of the Home Rule City Act, MCL 117.5(e), which states in relevant part:

> A city does not have the power:
>
> ***
>
> (e) [T]o sell a park, cemetery, or any part of a park or cemetery, except where the park is not required under an official master plan of the city; …unless approved by a majority of the electors voting on the question at a general or special election.

Petitioner interprets the City Charter and the above statutory provision to prohibit the sale of the subject property without a majority vote of the citizens. Although the property could be sold, the evidence indicates that it never will be sold, and therefore, "the property lacks value in exchange

because the test of legal permissibility under the analysis of highest and best use could not be met." Petitioner's Post-Hearing Brief, page 8.

Restrictions on Sale of Any Type Affect Market Value.

Petitioner cites *Consumers Power Company v Big Prairie Township*, 81 Mich App 120; 265 NW2d 182 (1977). In *Consumers Power*, the taxpayer argued that certain lands "had no value beyond historical value" because the lands were unusable for any purposes due to restrictions imposed by the Federal Power Commission ("FPC"). By "historical value" the court meant the amount that Petitioner paid to acquire the land. The Tribunal estimated that the land value would be $1,000 per acre if unrestricted, and reduced that value by 50% to account for restrictions that would be imposed on a private buyer by the FPC.

Petitioner's Appraiser's "Public Interest Value" Analysis Demonstrates That Any Value Attributable to Lake Front Park is Fully Accounted For.

This argument claims that the subject property is "common amenity property," the value of which has been transferred to the benefited lots in Grosse Pointe Woods.

Lake Front Park Was Not Assessed Uniformly with Similar Properties Within the Jurisdiction.

The original Petition alleges that the subject's TV is less than $20,000, based on the method of assessment of similar properties (municipal parks) in neighboring jurisdictions. Petitioner argues

that the assessment violates the principle of uniformity – specifically, that the subject property is assessed at a higher percentage of TCV relative to the true cash value of other municipal park property within the jurisdiction.

Petitioner asserts that Respondent has determined the TCV of the subject using a land value of $50,000 per acre, and adds more than $3,000,000 of TCV attributable to buildings and improvements. Respondent has assessed its own restricted parks at $20,000 per acre with no value attributed to any improvements, even though the parks have a total of more than 300 boat slips.

Respondent's Appraisal is Unreliable.

Petitioner's Post-Hearing Brief sets forth a critique of Respondent's appraisal.

These arguments shall be addressed in the Conclusions of Law section of this Proposed Opinion.

Respondent's Arguments

Respondent's exhibits identified on its exhibit list as R 1 through R 39 were admitted into evidence without objection.2

Respondent presented the following witnesses:

2 Respondent's documentary evidence will not be itemized with particularity in this Proposed Opinion, but documents shall be referred to when relevant.

Susan P. Shipman, MAI, Shipman and Associates

James M. Ludwig, McKenna & Associates, registered landscape architect

Respondent argues that neither the Home Rule City Act nor the Grosse Pointe Woods City Charter precludes the sale of Lake Front Park. The act and the charter provide that the city may sell park property that is not required to be used as a park under the city's master plan. The city's master plan contains no such requirement and therefore the property could be sold without a vote of the electorate. The property is marketable and has a market value. *Nash v City of Grand Rapids*, 170 Mich App 725; 428 NW2d 756 (1988).

Respondent contends that *Verburg v City of Grand Rapids*, 366 Mich 398; 115 NW2d 94 (1962), is not applicable to this case. In *Verburg*, the Supreme Court held that the City of Grand Rapids could not sell a park without a vote of the electorate because at the time of the sale, the park was included in the master plan.

Respondent contends that the legislature has provided for the taxation of restricted municipal parks by only exempting parks that are open to the public generally under MCL 211.7m. *Village of Grosse Pointe Woods v Village of St. Clair Shores*, 326 Mich 376; 40 NW2d 190 (1949); *Balogh v City of Flat Rock*, 152 Mich App 517; 394 NW2d 1 (1985); MCL 211.7m; MCL 211.7x; State Tax Commission Bulletin No. 19 of 2000.

Any restriction on the sale of the subject property is "self-imposed" and not a proper consideration for ad valorem taxation purposes. *Canada Creek Ranch Association, Inc v Montmorency Township*, 206 Mich App 498; 522 NW2d 690 (1994); *NeBoShone Assoc Inc v State Tax Commission*, 58 Mich App 324; 227 NW2d 358 (1975).

Respondent asserts that Petitioner has failed to carry its burden of proof that Lake Front Park and the three St. Clair Shores Parks are not uniformly assessed. Respondent's Post-Hearing Brief, pages 25-26. Respondent seeks a judgment affirming the current TCV, assessed, and taxable values, or in the alternative, rule that Respondent's sales comparison approach proves that the subject's TCV for 2006 and 2007 should be no less than $4,650,000.

Findings of Fact

The City of Grosse Pointe Woods owns the subject property, known as "Lake Front Park," which is located in the City of St. Clair Shores. The use of the park is restricted to residents of the City of Grosse Pointe Woods and their guests. The park land consists of 36.4 acres, with approximately 946 feet of frontage3 on Lake St. Clair and approximately 3,940 feet of frontage on the east and west sides of the Milk River, which provides access to the lake. The property also has frontage on Jefferson Avenue.

Petitioner acquired the subject property from Eleanor Clay Ford on February 26, 1948, in a transaction which imposed deed restrictions limiting the property for use as a park solely for the benefit of residents of Grosse Pointe Woods. The deed restrictions expired in 1985. The City continued to operate the property as a restricted park. The land is improved by the following structures:

> An activities building consisting of approximately 8,677 square feet and used for racquet ball, basket ball, and locker rooms. The activities building has a brick exterior. It is valued on the property record card as a "clubhouse" at $1,021,672 (2006).
>
> A main pool (29,845 square feet), a diving pool (2,080 square feet), a "baby pool" (1,385 square feet) and a wading pool (1,377 square feet).
>
> A pool equipment building with 2,625 square feet, located adjacent to the pool.
>
> A 1,060 square foot concession building with a kitchen and two bathrooms.
>
> A maintenance building (1,280 square feet).
>
> There are 254 boat slips consisting of docks on the Milk River.

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3 Based on Respondent's estimates, the peninsula area could be developed into five residential lots.

> There is a vehicular bridge and a pedestrian bridge over the Milk River, which provide access to the peninsula portion of the land. There is a boardwalk adjacent to the lake.

The property has large open spaces with playground equipment, tennis courts, and a pavilion.

Respondent determined the subject property's assessed value for 2006 and 2007 by the cost less depreciation approach, as set forth on the property record cards. R 4 and R 5. Respondent estimated the value of the land at $50,000 per acre, for an estimated True Cash Value of $1,820,000 for 2006 and 2007 (land only).

The following parks are located within the City of St. Clair Shores: Veteran's Memorial Park, Blossom Heath Park, and Lac Ste. Claire Park. A brief description of each park is set forth in R 20, which is a letter from Respondent's Assessor to the State Tax Commission, dated January 12, 2004.

Blossom Heath Park is a 6.3-acre parcel with "virtually no Lake St. Clair access" due to the United States Coast Guard Station. There is a beach area. The park is "four times longer than it is wide," which significantly reduces development potential.

Lac Ste. Claire Park is a 5.9-acre parcel located adjacent to the St. Clair Shores municipal

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Respondent's property records indicate a total of 946 front feet.

buildings and includes an area restricted to city residents with a swimming pool and a water slide. It also includes boat slips that are available to the public, which "block access to the lake" from the restricted portions.

Veterans Memorial Park consists of 10.4 acres. A portion of the property provides access to Lake St. Clair and has potential for residential development.

Respondent's assessor determined the land value for the St. Clair Shores parks by using "the $50,000 per acre valuation assigned to the unimproved land at the Grosse Pointe Woods Lake Front Park." From this the assessor "attempted to extrapolate a uniform value for all three sites." R 20. The assessor determined that the St. Clair Shores parks were all inferior to Lake Front Park with regard to five elements: road frontage (20%), size (10%), water frontage (10%), location (12%), and configuration (10%). The assessor concluded that the land value for the three St. Clair Shores parks was $20,000 per acre. R 20.

Respondent's tax records for "City of St. Clair Shores Nautical Mile Recreation Area" (parcel number 14-27-285-001), which includes Wahby Park, Blossom Heath Inn, Blossom Heath Harbor Marina, and Blossom Heath Park, includes the following notation: "Exclude value of all buildings, site improvements, and miscellaneous recreational items – highest and best use of site is as vacant land awaiting redevelopment with residential subdivision." R 22. The property record for Lac Ste. Claire Park (parcel number 14-23-101-015) also contains this same comment

regarding exclusion of all buildings. R 23. R 24 contains the same comment for St. Clair Shores Veterans Memorial Park, parcel number 14-02-405-022.

During the years at issue, Respondent assessed park land located within the City of St. Clair Shores at $20,000 per acre, with no value assigned to structures or improvements. TR 44. Prior to 1999, Respondent treated the St. Clair Shores parks as exempt public parks. TR I, 85. Lake Front Park was not treated as exempt. TR I, 86.

In 2000, the State Tax Commission issued Bulletin No. 19 of 2000, advising that restricted access parks are not exempt under MCL 211.7m and MCL 211.7x, at which time Respondent placed a nominal value on its parks and appealed the assessments to the Board of Review, which reduced the assessments to zero. In or around 2003, the State Tax Commission advised municipalities that restricted access parks could not be valued a nominal value. Thereafter, Respondent filed with the State Tax Commission an "Assessor's Notice of Property Incorrectly Reported or Omitted From Assessment Roll" for each of its three parks, which indicated the value of $20,000 per acre for its parks. There was also testimony by Mr. Vandemergel that this value was based on "Mr. Rychlik's opinion of value" developed in the context of a "154 proceeding" before the State Tax Commission. TR 39. Robert Rychlik was Respondent's Assessor until December 2003.

Respondent's valuation approach for its own parks assigns 100% functional obsolescence to the

improvements based on a determination that they contribute no value to the land. TR, pages 44, 83-84. Respondent's cost approach applied this same treatment to the subject, with the exception that the club house, two bridges, and boat slips, are not assigned 100% functional obsolescence. Mr. Vandemergel stated his belief that a developer would likely retain certain aspects of the improvements at Lake Front Park, including the club house. TR, 76. Respondent's appraisal by Ms. Shipman indicates that none of the buildings on the subject property contribute value to the property under the appraiser's opinion of highest and best use, which foresees a "hypothetical residential development" that retains some of the boat slips, the two bridges, and the access road, but does not include any buildings, including the activities building (club house). Upon consideration of the testimony, it is found that Ms. Shipman's opinion is more persuasive on this point.

The 2006 record card for the subject property includes 40,000 square feet of asphalt paving valued at $1.77 per square foot, for a value of $61,632. That record card also contains the following notation: "Assess club house, two bridges, and boat slips; exclude value of all other improvements due to highest and best use."

Another section of the subject property's record card includes the following: "Exclude value of all buildings, site improvements, and miscellaneous recreational items – highest and best use of site is as vacant land awaiting redevelopment with residential subdivision. However, assess new clubhouse building, two bridges, boat slips, access road asphalt paving (10x2000x2)…as retained

amenities in hypothetical residential development."

The club house ("activities building") is assessed as a class C, excellent quality, club house, with 8,397 square feet of ground area. It was built in 1989 and remodeled in 2000. Physical depreciation is estimated at "81%" good. There is no functional or economic obsolescence assigned on the record cards for the activities building.

The base replacement cost is $107.35 per square foot. With adjustments for height and perimeter, and with a county (cost) multiplier of 1.32, the final square foot cost is $150.21, for a base cost new of $1,261,323, which is depreciated to $1,021,672. The 2006 record card (R 4) also includes the depreciated costs of "unit in place items" described as "mezzanine storage" ($4,507), "Bridge Hwy" ($226,764), "Bridge Ped." ($87,961), and 254 "Boat Slips" ($1,961,463). The depreciated costs are indicated.

The record cards include a value for each building by the cost less depreciation approach, but the buildings other than the activities building are assigned 100% functional obsolescence, reducing the estimate of true cash value to zero. According to the record cards, the following buildings and improvements contribute no value to the land: comfort station (621 square feet); concession stand; maintenance building; comfort station (600 square feet); guard shack building; recreation equipment, picnic shelters, tennis courts, and miscellaneous playground and park equipment.

The 2006 card also includes the following: "…correct boat slip count from 223 to 254 based on

physical count provided by Bill Hansen of Integra Appraisal Company in December 2005."

The total building value and land improvement value (not including land) for 2006 is $3,363,800 ($1,681,900 AV x 2).This total building value includes the activity building ($1,021,672), "mezzanine storage" ($4,507), "Bridge Hwy" ($226,764), "Bridge Ped." ($87,961), asphalt paving ($61,362), and boat slips ($1,961,463), which totals $3,363,729 (which is rounded to $3,363,800). The record card indicates an estimated value of the boat slips of $7,722 each, which is applied to 254 boat slips. Respondent's valuation expert, Susan P. Shipman, MAI, testified that a residential development would include 100 lots. As Petitioner points out in its post hearing brief, it is difficult to conclude that 254 boat slips would be needed for a residential development with 100 lots. It is reasonable to find that only 100 boat slips would be retained for a hypothetical residential development with 100 dwellings.

Petitioner paid property taxes to the City of St. Clair Shores in 2006 of $134,451.24, and in 2007 the total property tax bill was $138,731.27. (R 8 and R 9).

Respondent's expert witness, Susan P. Shipman, MAI, prepared an appraisal of the subject property, with an opinion of value of $4,650,000 for each year at issue, based on the sales comparison approach, with support from the discounted cash flow method. Ms. Shipman testified that the highest and best use of the subject property is "to demolish the existing improvements and develop a single family residential development." TR I, 235.

Ms. Shipman determined the land value as vacant for the subject by comparison to sales of four properties ("comps"). None of the comps were located in St. Clair Shores. The sales occurred between November 2003 and October 2005. The unadjusted sales prices ranged from $73,529 to $204,688 per acre, and from $21,833 to $60,516 per unit. The comps were zoned for residential development, but comps 2 and 3 were purchased by municipalities for use as open park land. Respondent's comps are summarized as follows:

Comp	**Price**	**Date**	**Acres**	**$/Acre****	**$/Unit****
1	$2.96m	10/05	15.67	$188,860	37,000
2	$2.5m	1/04	34*	$73,529	37,511
3	$1.82m	11/03	16.24	$112,033	60,516
4	$131,000	2/04	.64	$204,688	21,833
Subject	*$1.82m*		*36.4*	*$50,000*	*18,200*

* The acreage for comp 2 is not all contiguous.

** Before adjustment.

Ms. Shipman adjusted the above prices for market conditions (3% per year in a rising market), location, configuration, size, water amenity, density (units per acre) and density (lot size). Except for market conditions, the adjustments are "qualitative." For each qualitative element, the comp

was determined to be similar, inferior, or superior. In case of comp 1, it was determined to be inferior in location, superior in configuration, superior in size, and superior in units per acre. (The water amenity was treated as similar in the adjustment process, and dealt with later by a premium developed from a matched-pairs study, for which little supporting evidence was introduced.) For each comp, this method resulted in minor net adjustments. The adjusted values per acre were $77,750, $118,860, $188,860, and $215,485. The adjusted values per unit were $22,985, $37,000, $39,664, and $64,270. Mr. Shipman determined that "a value of $40,000 per unit fits logically into the array of adjusted sale prices based on the subject's comparability and equates to $103,040 per acre. . . ."

None of the comps have water frontage or water access, except for Comp 3, which has "some riverfront." Ms. Shipman disregarded the water amenity in the initial adjustment process, and applied the adjustments as if the subject and the comps were similar in this value element (except for comp 3 where the river frontage was treated as a superior feature, but which had an insignificant effect on value). Ms. Shipman described the adjustment for the water influence as follows:

> Extracting matched pairs from an analysis of lot sales in St. Clair Shores between 2002 and 2006 revealed lakefront property should command a premium of approximately 400% whereas property on the canal should command a premium of about 250% over non-waterfront property. A prior analysis of waterfront premiums in another market in the Detroit metropolitan area, on the Detroit River, revealed similar premiums are supportable. R1, p 49.

The buildings on the subject were considered to contribute no value to the subject and, therefore,

were an inferior characteristic, for which a negative adjustment was made. This adjustment was based on the estimated cost to demolish the buildings, for which there is scant evidentiary support.

With the water amenity premium, Ms. Shipman estimated that the five lakefront lots (anticipated for the subject) would have a value of $80,000 per lot, the 29 canal front lots would have a value of $65,000 per lot, and the non-waterfront lots would have a value of $40,000. The non-waterfront lots would have access rights to use a boat launch and or boat slips. The indicated land value before demolition was estimated at $4,925,000, and with demolition costs, $4,625,000, rounded to $4,630,000.

There is no substantial documentary evidence to support Respondent's contention that demolition costs would equal $300,000. Exhibit P 19 merely contains a handwritten note by Ms. Shipman regarding costs to "demo site $200 to $250K." TR 327. There is testimony from Petitioner's witness, Mr. Anderson of Atwell-Hicks, who testified that the cost would be near $650,000, not including the boat slips and bridge. Both estimates are speculative. Neither party has presented persuasive evidence of the cost of demolition.

Respondent's comp 4 is a .64 acre street-corner lot that was developed into a 6-unit condominium, which was chosen as a comp principally because it was the most recent sale, and was the only sale located in St. Clair Shores. T 260. This sale is found to be substantially

dissimilar from the subject and is not accepted as a reliable indicator of value.

Respondent's comp 2 is located approximately 25 miles from the subject in Grosse Ile, and comp 3 is located approximately 20 miles from the subject in Southfield. Neither of these comps were purchased for residential development. Ms. Shipman constructed a hypothetical development for each comp based on minimum lot sizes allowed by local zoning ordinances. Petitioner's rebuttal witness, William W. Anderson, a professional engineer with extensive experience as a residential land development consultant, credibly testified regarding deficiencies in Respondent's hypothetical development that would increase costs, thereby calling into question the reliability of the assumptions underlying Respondent's DCF analysis. For example, he testified that the planned roads do not conform to typical standards, there is no storm water detention or water quality treatment, and a "fair portion of the property is the flood plain." TR 334 - 337.

Overall, the persuasive value of Respondent's sales comparison method does not arise to a preponderance of the evidence standard, which is to a large extent due to the dissimilarity of the comps. Three of the sales occurred approximately two years before the first relevant tax day. A significant dissimilarity is the influence of the frontage upon Lake St. Clair and the Milk River, and water access rights that would be available in a residential development. This difference was adjusted by a "waterfront premium." The report explains: "The entire lot premium, however, would not necessarily be realized until the lots are developed and sold. Therefore, a fraction of the premium is recognized as part of the underlying land. Using 25%, the $40,000 base price is

adjusted to $80,000 per unit for the lakefront lots and $65,000 per unit for the lots on the canal." R 1, p 49. Although the appraisal report contains some data on sales of non-waterfront, lakefront, and canal-front properties in St. Clair Shores, the evidence and testimony lacks a clear and persuasive exposition of how the 400% lakefront premium and the 250% canal-front premium were developed, and the allocation of that premium to the land is speculative.

Conclusions of Law

Pursuant to Section 3 of Article IX of the State Constitution, the assessment of real property in Michigan must not exceed 50% of its true cash value. 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 the assessment, being the price which could be obtained for the property at private sale, and not forced or auction sale. See MCL 211.27(1). The Michigan Supreme Court in *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450 (1974), has also held that true cash value is synonymous with fair market value.

The Tribunal is charged with finding a property's true cash value to determine the property's lawful assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767 (1981). The determination of the lawful assessment facilitates the calculation of the property's taxable value as provided by MCL 211.27a. A petitioner has the burden of establishing the property's true cash value. See MCL 205.737(3) and *Kern v Pontiac Twp*, 93 Mich App 612 (1974).

Under MCL 205.737(1), the Tribunal must find a property's true cash value in determining a lawful property assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal may not automatically accept a respondent's assessment but must make its own finding of fact and arrive at a legally supportable true cash value. *Pinelake Housing Cooperative v Ann Arbor*, 159 Mich App 208, 220; 406 NW2d 832 (1987); *Consolidated Aluminum Corp v Richmond Twp*, 88 Mich App 229, 232-233; 276 NW2d 566 (1979). The Tribunal is not bound to accept either of the parties' theories of valuation. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 377 NW2d 908 (1985). The Tribunal may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination. *Meadowlands Limited Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 485-486; 473 NW2d 363 (1991); *Wolverine Tower Associates v City of Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980); *Tatham v City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982).

Marketability

Restrictions by Charter and Statute

Petitioner contends the subject property is unmarketable, will never be sold, and has no value in exchange – meaning that fair market value cannot be determined for the subject property and its true cash value, assessed value, and taxable value should be zero. Petitioner argues that the city is legally precluded from selling the property without a vote of the electorate. Petitioner presented testimony from governmental officials who believe that the people of Grosse Pointe Woods

would never vote to sell Lake Front Park. Petitioner relies principally upon the Supreme Court's decision in *Verburg*, *supra*. *Verburg* is not a property tax valuation case and it does not support a conclusion that the subject property has a true cash value of zero. In that case, the Grand Rapids city commission determined to sell certain property that had been used as a city park and playground. The Grand Rapids recreation board and approximately 350 residents opposed the sale and a city resident sued to enjoin the sale.

Verburg interpreted the same language from the Home Rule City act that is at issue in this case, pertaining to the city's power to sell a park that is "not required under an official master plan." Under MCL 117.5(e), "A City does not have power. . . to sell a park. . . except where the park is not required under an official master plan of the city. . . unless approved by a majority of the electors voting on the question at a general or special election. . . ." Therefore, a property that *is required* under a city master plan may not be sold without a public vote.

Respondent argues that by definition a city master plan does not "require" that any particular property be used for a particular purpose, but rather a master plan contains *recommendations* to the city for land use. The Regional Planning Act provides that a "master plan" constitutes the planning commission's "recommendations for the development of the territory." MCL 125.36(3) and MCL 125.31.

In *Verburg*, the Supreme Court upheld the trial judge's determination that the park was "included

within the master plan" and that "it was not released therefrom until after the action of which the plaintiffs complain in the instant case had been taken." The Court did not directly confront the issue as to whether the city master plan in that case "required" the property to be used as a park. The court presumed that the outcome turned upon whether the property was "included in," "covered by," or "eliminated from" the master plan. Section 5(e) of the HRCA cannot be interpreted in a manner that renders it meaningless. The Supreme Court gave meaning to all the language of MCL 17.5(e), such that if property is "included in a master plan" it cannot be sold without a public vote. Therefore, the city was without authority to sell the park without a public vote. *Id.*, 402-403. However, the court's ruling allows a city to "release" property from the master plan, which would allow a sale without a public vote.

In *Nash v City of Grand Rapids*, 170 Mich App 725; 428 NW2d 756 (1988), the Court of Appeals ruled that the city could lawfully sell a park without voter approval. In *Nash*, the park had been included in the master plan but, "After a public hearing of vigorous debate, the planning commission released John Ball Park from the master plan pursuant to the commission's power to partially amend the plan under MCL 125.38." *Id.*, 728. The Court of Appeals decision is squarely within the parameters of *Verburg*, and recognizes that property that is included in a city master plan may be sold without voter approval if the city exercises its statutory authority to amend the master plan. The court was not persuaded by arguments that the park was "required under the master plan," and therefore, the sale required a public vote regardless of whether it had been released from the plan. The court discussed the argument that a master plan contains only

"recommendations for the development of the territory" under MCL 125.36. Nevertheless, the ruling is clear that land listed in a master plan as "recreation inventory" and displayed on a map of community parks – even though not expressly "required" by the plan – must be "released" from the plan in order to sell it without a public vote. *Id.,* 729-730.The *Nash* decision does not depart from the controlling law in *Verburg*.

The above cases demonstrate that the subject park could be sold – it is marketable and has market value, or "true cash value," within the meaning of MCL 211.27(1). This is true whether or not a public vote would be required by statute or by the City Charter, or whether political prudence would make a public vote practically indispensible. The citizens of Grosse Pointe Woods are the beneficial owners of the Lake Front Park. A restriction upon the power to sell property that is "self-imposed" and over which the owner has control cannot be invoked by the owner in a property tax dispute as a negative value influence that reduces the property's true cash value to zero.

In *Michigan State Tax Commission v City of Grosse Pointe*, MTT Docket No. 284585, the Tribunal held that a restricted city park could not be sold due to provisions in the city charter and deed restrictions. In that case, the city charter prohibited the sale of property. The Court of Appeals upheld the Tribunal's ruling in an unpublished decision, holding that the park at issue was "devoted to public use" as evidenced by deed restrictions that ran with the land and permanently restricted the property for use as a park by city residents. Because the park was

"devoted to public use" it could not be sold under the explicit terms of the city charter, which stated that city property could only be sold if it was not devoted to a public use. The Court of Appeals held that the Tribunal did not commit an error of law by holding that the property was unmarketable and therefore only had nominal value. However, in our present case, there are no similar deed restrictions or explicit charter provisions.

Therefore, under the facts of this case, and consistent with the body of appellate case law, it is concluded that the subject property could have been sold on the relevant tax days. The fact that an owner is *unwilling* to sell does not mean that the property has a "true cash value" of zero under MCL 211.27. Under the case law cited by the parties, the subject property could have been sold, whether by direct action of the city government, after a public hearing and action to "release" the property from the master plan, or after a vote of the people. A process exists by which the subject property could have been sold on the relevant tax days.

Restrictions on Sale and Market Value

Petitioner cites *Consumers Power Company v Big Prairie Township*, 81 Mich App 120; 265 NW2d 182 (1977). That case is factually distinguishable in that the taxpayer did not allege that the restrictions on the highest and best use of the property reduced its value to zero or a "nominal value." The relevant portion of that case involved the value of lands appurtenant to Petitioner's hydroelectric power station. The taxpayer argued that the appurtenant lands "had no value beyond historical value" because they were subject to restrictions imposed by the Federal Power

Commission ("FPC"). "Historical value" was the amount that Petitioner paid to acquire the land. The court noted that the lands at issue could not be sold without FPC approval and the use of the land was also restricted by federal law. The Tribunal estimated that the land value would be $1,000 per acre if unrestricted, and reduced that value by 50% to account for use restrictions that would be imposed on a private buyer by the FPC. Two types of restrictions must be considered. First, there was a restriction upon alienability, meaning that the owner needed to obtain approval from the FPC to sell the property. Second, there was a restriction upon the use of the property for recreational purposes in the event a sale was approved. The Tribunal determined the value under the assumption the FPC would approve a sale, and reduced the value due to the restrictions upon use that would be binding upon a private buyer.

The restrictions in *Consumers Power* were imposed by a governmental entity that was not an owner of the land, but which had a duty to regulate the sale and use of the land consistent with federal law. Consumers Power could not sell the lands without approval of a third party, the FPC. If the FPC approved a sale, the lands would be subject to restrictions upon use that would reduce its value.4 *Consumers*, p 146. The FPC Order No. 313 required the seller to include in the document of conveyance a covenant running with the land to insure that the lands would remain subject to restricted, recreational uses. These restrictions did not render the land "unmarketable" and without value in exchange.

4 The FPC "will not grant any authorization for a licensee to dispose of any interest in project lands, unless a showing is made that such disposal is not inconsistent with any approved recreational plan or in the absence of such a plan, that the lands do not have recreational value." *Id.,* p 146.

In our case, the property owner (the City of Grosse Pointe Woods) had the power to sell the property. Approval by the electors of the City of Grosse Pointe Woods to sell its own property is not the same as approval from a third party, such as another governmental entity. This is a critical difference. In *Consumers Power*, the restrictions upon sale and use could not be released without approval by a non-owner. In our present case, Petitioner had power to sell the property, by action of its Planning Commission, the City Council, the electors, or a combination thereof. Furthermore, the evidence in this case establishes that there are no restrictions upon the residential development of the subject property or continued use as a public park. In the event of a sale, the buyer could use the subject property for its highest and best use.

In *Consumers Power*, the court rejected the township's argument based on *State Highway Commissioner v Eilender*, 362 Mich 697; 108 NW2d 755 (1961), that the assessor could consider the "reasonable possibility" that a government "restriction on the use" of property will be changed. However, this portion of the opinion focused on the restrictions that limited the property to recreational use, rather than the restrictions on the power to sell or lease the property. This case does not support Petitioner's contention that the subject is unmarketable.

Ruling in favor of Petitioner would indirectly reverse cases holding that restricted parks are not exempt from property taxes. The general property tax act does not contemplate such a result, but MCL 211.7m provides an exemption for unrestricted parks only. *Balogh v City of Flat Rock*, 152

Mich App 517; 394 NW2d 1 (1986). It is highly improbable that the legislature intended to allow both restricted and unrestricted city parks to be effectively exempt where the relevant exemption statute states that "Parks shall be open to the public generally." MCL 211.7m. It is doubtful that the legislature intended to allow a restricted park to avoid taxation merely by including the property in the city master plan as a designated park.

In *Canada Creek Ranch Association, Inc v Montmorency Township*, 206 Mich App 498; 522 NW2d 690 (1994), the Court of Appeals considered certain restrictions upon the power to sell common amenity property. In that case, the property owner was an association of persons who each held a certificate of membership, which certificate was acquired upon purchase of a lot. The certificate of membership (stock) could only be transferred with the real estate. The owner of the stock, in addition to the lot, acquired the right to use 11,700 acres described as "common amenity property" that was contiguous to the 800-acre subdivided portion. The common amenity property consisted of recreational lands that the association acquired from various sources over a period of years and were subject to various restrictions limiting the property to recreational use.

One portion of the property was subject to a circuit court decree as a result of a suit brought by five lot owners against the association. The decree determined the property rights of the association members as a class.

Other portions of the common amenity property were subject to deed restrictions that limited the

use to recreational purposes by members, and included a clause that the land would revert to the seller upon violation of the restrictions. The restrictions could be avoided only with the consent of the seller, Black River Ranch, which owned neighboring land. A smaller 40-acre parcel with a cabin (the Vernor Estate) was not restricted, except that it could only be owned by an association member. In addition to the court decree and deed restrictions, the common land could only be sold upon a majority vote of the members pursuant to the association's governing documents. The Tribunal held that the common land had nominal value due to the severe use restrictions. The Tribunal's decision effectively recognized that the "common amenity property" benefited the improved parcels and increased the true cash value of those parcels, such that to some extent, the value of the common lands was reflected in the improved parcels owned by association members. The Tribunal questioned whether the full value of the common amenity property had been reflected in the current assessed valued of the improved parcels, and urged the respondent to consider this when assessing the property in the future.

The Court of Appeals reversed the Tribunal with regard to the "Black River Ranch" property and the Vernor Estate, holding that the restrictions were self imposed, notwithstanding that it was highly improbable that the members would ever vote to sell the property. "[S]uch self imposed restrictions on marketability are not proper considerations in assessing property value." *Id.*

With regard to the deed restrictions upon the <u>use</u> of the Black River Ranch property, the court held, "Although the restrictions undoubtedly have an effect on the value of the property for

assessment purposes, they do not necessarily render the property unmarketable or the value nominal." *Canada Creek,* 504. The court distinguished between restraint upon alienability and restrictions upon use. The restraint upon alienability appeared in the association articles and bylaws, and could be waived by a vote of the members, and was therefore "self imposed." The court so held even though "it was highly improbable that . . . its members would approve a sale . . . ." The court held that a property owner cannot reduce the value of the property for assessment purposes by such a self imposed restriction upon sale. The court recognized, however, that the *deed* restrictions on use ran with the land and could only be removed by consent of the grantor (Black River Ranch), and therefore, would impact the fair market value of the land. The by-law provisions in *Canada Creek* are similar to the city charter provisions in this case. In both cases the members or citizens have the power to sell the land, and therefore, the restrictions upon sale are self-imposed and are not "proper considerations in assessing property value." *Id.* 504.

The court in *Canada Creek* distinguished the "Monteith" parcel because the "restrictions were imbedded in the chain of title" by virtue of a recorded court decree. The court decree was "for the benefit of all Canada Creek members," which was held to mean "property owners" rather than as shareholders. The court found this significant because the restrictions on the Monteith property "go beyond merely limiting use of the property to recreational purposes. The rights to use and enjoy the property belong exclusively to petitioner's members. Thus the property is without value to anyone but petitioner's members." The court implied that the trial court's decree restricted not only use, but the alienability of the property – effectively preventing the members from selling it.

The only way to acquire rights to the Monteith parcel was to purchase a residential lot and become a member of the association. The court struggled to find legally significant distinctions between the Black River Ranch property and the Monteith property, and produced inconsistent results. Both portions were subject to the articles and bylaw provisions requiring a vote to sell the property, which was found to be improbable. The main distinguishing feature is that the Black River Ranch property was subject to deed restrictions whereas the Monteith property was subject to a court decree that was recorded and "imbedded in the chain of title." The court noted that restrictions on the Monteith property would "necessitate an expensive lawsuit against petitioner's members to quiet title." The court speculated that the members who did not vote to approve the sale would sue to block the sale based on the terms of the court decree. The court implied that the specter of costly litigation would dissuade any potential purchasers, thus rendering the property unmarketable. The court's ruling with regard to the "self imposed restrictions" upon the sale of the Black River Ranch property is more on point with our present case.

In *Safran Printing Company v Detroit*, 88 Mich App 376; 276 NW2d 602 (1979), the court held that,"The fact that Safran does not intend to sell is of no relevance for it is the duty of the tribunal to hypothesize highest probable price at which a sale would take place." *Safran*, p 605. This reasoning applies to our present case where the decision to sell or not lies with the property owner.

Common Amenity Property

Respondent's Exhibit 16 is a memorandum written by assessor Scott Vandemergel, which discusses the practice of placing a "zero value" on common area land which contributes value to the benefited parcels, where the value of the common area is effectively "accounted for" in the assessed values of the benefited parcels. R16 cites State Tax Commission Bulletin No. 1 of 1990. That bulletin discusses the statutory mandate that common elements in a condominium project must be taxed to the individual units and not separately assessed. (Note that for condominiums only this approach is established by MCL 559.231, which provides that ". . . property taxes shall be assessed against the individual condominium units…and not on the total property of the project or on any other part of the project . . .").

STC Bulletin No. 1 of 1990 (which is not an administrative rule) extends that concept to "a park reserved for the use of the subdivision lot owners" in a recorded plat subdivision. The STC bulletin states that "community property that is to be considered at zero assessed value shall be restricted by a permanent irrevocable plat dedication or deed restriction."

The "common amenity" valuation concept should generally be limited to the above contexts (condominium and recorded plat subdivisions) and should not be extended to restricted municipal parks that benefit an entire city.

The subject property could be sold and has market value based on both its current use and its potential for residential development. The common amenity principle does not apply here.

Uniformity

Petitioner argues that "Lake Front Park was not assessed uniformly with similar properties within the jurisdiction." Petitioner has established that Respondent has not applied the same method of valuation to the subject property that it applied to its own, similar parks located within St. Clair Shores.

Respondent's Appraisal

Petitioner's contention that "Respondent's appraisal is unreliable" has merit and will be discussed below.

Conclusion of Value

Having rejected Petitioner's view that the subject property could not be sold and therefore has no market value, the Tribunal concludes that Petitioner has failed to meet its burden to establish the property's true cash value, as required by MCL 205.737(3). Nevertheless, the Tribunal may not merely affirm the existing assessments, but must consider the evidence admitted at the hearing and render an independent determination of value.

Sales Comparison Approach

Respondent's sales comparison approach is found to be unpersuasive. Respondent's appraisal relies principally on the sales comparison approach. The reliability of the sales comparison

approach is dependent upon the availability of adequate market data. “The principle of substitution holds that the value of a property tends to be set by the price that would be paid to acquire a substitute property of similar utility and desirability . . . .” *Appraisal Institute*: The Appraisal of Real Estate (Chicago, Appraisal Institute, 12th ed, 2001), p 418. The sales comparison approach requires recent sales of properties that are competitive with the subject to indicate value patterns in the market.

The comps selected for Respondent’s sales approach are lacking with regard to the above criteria – they are not sufficiently similar to the subject and therefore, required significant adjustments. The adjustment process seeks to discern the reaction of market participants to differences in elements of value. The adjustment process presumes that “. . . in the period prior to the valuation date, buyers did weight the value elements in certain proportions, whether they did it subconsciously or not, and buyers will continue, at least for the immediate future, to weight the value elements in the same proportions.” Henry A. Babcock FASA: Appraisal Principles and Procedures (Washington D.C., American Society of Appraisers, 1994), p 214.

A property has value as a comparable, if the price paid for it reflects the same value elements that are present in the subject, which influenced the purchase price. In order to have confidence in the adjusted price, one must believe that the purchaser of each comparable paid fair market value for the comp based on knowledge of its key value elements. The subject must be a reasonable substitute for the comparable property in the eyes of potential purchasers in the relevant market.

In this case, the water amenity is a significant differentiating value element and the lack of a comparable sale with similar water influence is a significant deficiency. The Milk River, Lake St. Clair, the flood plane, and the peninsula portion of the land contribute to value and also present challenges to developing the site that are negative value influences, as compared to properties without the water influence. Even assuming that a developer would consider Respondent's comparable sales as competitive with the subject, the unadjusted sales prices are a weak indicator of value, which places great emphasis on the necessity of credible adjustments. Respondent's witness estimated that the "premium" for waterfront residences required an adjustment of 400% as compared to an otherwise similar non-waterfront lot, based on a study of matched pair sales of residential properties in St. Clair Shores. The premium for canal front lots was estimated at 250% over similar non-canal-front lots. The specifics of the matched pairs study are not in evidence.

The best comps would include properties with similar acreage and similar water frontage, view, and access that are located in St. Clair Shores or a competitive community, which sold close in time to the relevant valuation dates. The data is lacking with regard to these elements. There are significant differences in location for which no persuasive adjustments were made, but the comps were ranked qualitatively as "inferior" or "superior." The unadjusted values ranged widely from $73,529 to $204,688 per acre, and the adjustments did little to reduce that range, with adjusted values ranging from $77,750 to $215,485. The range of adjusted values per unit was similarly broad ($22,985 to $64,270). There was no persuasive evidentiary showing as to why the "value

of $40,000 per unit fits logically into the array." It appears that a median value was chosen without setting forth a sufficient comparative analysis of the subject's amenities relative to the comps.

Income Approach

Respondent's income method is found to be unpersuasive. It was offered as a check against the sales approach, which implies that a real estate developer would principally rely upon the sales method, and then engage in a discounted cash flow approach as a secondary approach to test the sales data. Relying principally upon the sales comparison method to determine the land value is appropriate. The discounted cash flow analysis of a hypothetical subdivision development is useful, however, it "can be the least accurate raw land valuation technique" when "used on its own without an abundance of reliable market data." *Appraisal Institute*: The Appraisal of Real Estate (Chicago, Appraisal Institute, 12th ed, 2001), p 342. In this case some of the same weaknesses in the sales approach translate into reduced reliability of the income approach. The projected sales prices of the lots, which are crucial to the discounted cash flow income approach, are limited in reliability due to the lack of quality comparable sales data.

The data presented provides insufficient evidentiary basis for Respondent's assertion that the subject could be developed into 100 lots for purposes of supporting the DCF analysis. There is conflicting evidence that the project could support only 70 lots. (However, there is no substantial evidence that the property could support *more than* 100 lots, and therefore, that figure is adopted

for purposes of determining the number of boat slips that contribute value to the land, rather than 254 as indicated on the property record card.) The data for Respondent's absorption rates is similarly inconclusive, in that rates of .21, 1.2, .47, .19, 1.1, .07, and 6.2 units per month were presented, and from this data Respondent selected 3.7 units per month for the initial 2.5 years, and then 4 per month in the third year. If the apparent outlier is eliminated, this suggests a lower absorption rate. This data does not provide persuasive support for Respondent's projected absorption rates. See testimony of Mark J. St. Dennis, TR 356.

Respondent's analysis also projected a real estate inflation rate of 4% annually during the development period, which even from the perspective on tax day (December 31, 2005) is likely an overstatement. See, testimony of Mr. St. Dennis. (TR 355).

Finally, there is no documentary evidence and little expert testimony to support the choice of the 18% discount rate, other than it was taken from "Korpacz" (Korpacz Real Estate Investors Survey). The perfunctory statement that the rate was based on "surveys of land developers and alternative investment opportunities" at page 62 of Respondent's appraisal report is not convincing. There is countervailing expert testimony that a discount rate as high as 25% would be appropriate. TR 367.

Given these weaknesses and uncertainties, the evidence does not support adoption of the opinion of value set forth in Respondent's appraisal report.

Cost Less Depreciation Approach

The determination of highest and best use by Respondent's assessor, which was applied in the current assessment based on the cost approach, is consistent with Respondent's stated highest and best use for the subject property, as indicated in its appraisal report: "Demolish the existing improvements and develop the property as an upscale single-family, gated-entry subdivision with approximately 100 lots."

On the other hand, Petitioner essentially claims that the subject's highest and best use is for non-economic use as a restricted municipal park.

It is concluded that the subject property's highest and best use on the relevant tax days both as vacant and as improved was for residential development. This conclusion controls the application of the cost less depreciation approach, and specifically, calls for the consistent estimation of functional obsolescence to all improvements.

Land Value

Respondent assessed the subject land at $50,000 per acre, for a total land value of $1,820,000. The rationale for the $50,000 per acre value is set forth in Exhibit R 4, a letter from Respondent's Assessor, Scott Vandemergel, dated January 12, 2004. Mr. Vandemergel testified that Lake Front Park is comparable to municipal parks owned by St. Clair Shores. As of 2003, Respondent assessed the subject property at $50,000 per acre. Mr. Vandemergel testified that he believed that

the subject property is appropriately assessed at $50,000 per acre. TR 72. Mr. Vandemergel did not testify regarding any sales evidence to support this land value. Nevertheless, this was the historic value that was accepted as representative of fair market value of park land when it came time to estimate the land value for St. Clair Shores' restricted access parks. Petitioner has not provided market evidence to disprove the accuracy of the $50,000 per acre value. In the absence of more persuasive evidence, the current value of $50,000 per acre shall be upheld.

Although Petitioner challenges the value of $50,000 per acre, it also argues that if the Tribunal were to affirm the current assessment, the highest supportable land value "in fact and law" would be $20,000 per acre, in order to achieve uniformity with the St. Clair Shores parks, and that no value would be attributed to buildings or improvements. Petitioner's Post Hearing Brief, p 28. This argument is has merit, but shall not be adopted in its entirety. It is concluded that uniformity in the land value is required, and was achieved by the adjustment process applied by Respondent, which was supported by the assessor's judgment that the subject land is overall superior to the parks owned by the City of St. Clair Shores. Therefore, it is concluded that Respondent did not violate principles of uniformity when it determined the TCV of the subject *land*. (The uniformity of the assessment of the buildings will be discussed below.) Petitioner has failed to prove that the subject's land value is less than $50,000 per acre as reflected in the current assessment. Respondent has failed to prove that the land value is greater than $50,000 per acre.

Value of Improvements

It is concluded that the subject's HBU is as vacant land awaiting future residential development and that some of the existing improvements would contribute value for such use.

Although the opinion of value contained in Respondent's appraisal report is not adopted, that report provides an evidentiary foundation to support a conclusion that the subject's highest and best use does not include retention of the "club house" or any other structures. R 1, pages 36 and 40. Respondent's appraisal report agrees with the assessor's HBU indicated on the record card to the extent that some of the boat slips would contribute value to a hypothetical residential development. R1, page 37. Also see R1, page 36, "…the existing vehicular bridge is constructed to specs to accommodate a fire truck."

Under Respondent's opinion of HBU in its appraisal, the land could support 100 residential units, and yet the existing 254 boat slips are currently assessed, according to the 2007 record card (P 5). Therefore, consistent with Respondent's stated HBU, it is concluded that only the asphalt paving, bridges, and 100 boat slips would contribute value to the land in the eyes of a developer, and the remaining improvements would be demolished. Although it may seem counterintuitive that the activity building (valued by the cost approach in excess of $1,000,000) would be demolished, this is precisely what would happen under the plan set forth in Respondent's appraisal report. R 1, page 40. This conclusion by Ms. Shipman is held to outweigh the opinion of Respondent's Assessor on this point. The land now occupied by the activity building is considered to have greater value and utility with the activity building demolished to make way

for “upscale” residences.

It is concluded that the cost method upon which the current assessments are based is lawful and reasonable, with the exception that the evidence does not support disparate treatment of the buildings on the subject and the buildings on the other municipal parks located within St. Clair Shores. Respondent has assigned 100% functional obsolescence to the buildings on its own restricted municipal parks, and all the buildings on the subject property, with the exception of “the new club house building.” The value conclusion reached herein includes 100% functional obsolescence for all buildings on the subject property.

The assessed value of the subject for 2007 is $2,583,100 and for 2006 the assessed value is $2,591,900, which indicates essentially a flat market. The TV increased by the rate of inflation (no additions or losses).

It is concluded that the TCV of the subject should not exceed the current value of the land and the contributory value of the bridges, pavement, and 100 boat slips. This is consistent with Respondent’s treatment of its own parks. Based on the 2006 property record card, the sum of the value of bridges ($226,764 and $87,961), pavement ($61,362), and 100 boat slips ($772,229) is $1,148,316. No deduction is made for demolition costs here because the evidence is not sufficient to render a finding on that point. Furthermore, Respondent’s cost approach does not include a deduction for demolition costs, but under that method, 100% functional obsolescence is

assigned to the buildings. The land value at $50,000 per acre is $1,820,000 for each year at issue. The sum of the land value and 2006 improvements indicated above is $2,968,316 (rounded to $3,000,000). The sum of the land value and the improvement values based on the 2007 record card (applying the appropriate county multiplier and depreciation) is $2,912,719 (rounded to $3,000,000), with a resulting SEV and TV of $1,500,000 for each year at issue.

JUDGMENT

IT IS ORDERED that the property's assessed and taxable values for the tax years at issue shall be as set forth in the *Conclusion of Values* section of this Proposed Opinion and Judgment.

MICHIGAN TAX TRIBUNAL

Entered: May 26, 2010 By: Thomas A. Halick

This Proposed Opinion and Judgment ("Proposed Opinion") was prepared by the State Office of Administrative Hearings and Rules. The parties have 20 days from date of entry of this Proposed Opinion to notify the Tribunal in writing if they do not agree with the Proposed Opinion and why they do not agree (i.e., exceptions). After the expiration of the 20-day time period, the Tribunal will review the Proposed Opinion and consider the exceptions, if any, and:

a. Adopt the Proposed Opinion as a Final Decision.
b. Modify the Proposed Opinion and adopt it as a Final Decision.
c. Order a rehearing or take such other action as is necessary and appropriate.

The exceptions are limited to the evidence submitted prior to or at the hearing and any matter addressed in the Proposed Opinion. There is no fee for the filing of exceptions. A copy of a party's written exceptions must be sent to the opposing party.