

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

Bay City Yacht Club Inc,
Petitioner,

v

MTT Docket No. 454379

Bangor Township,
Respondent.

Tribunal Judge Presiding
Preeti P. Gadola

ORDER DENYING PETITIONER’S MOTION FOR IMMEDIATE CONSIDERATION

ORDER GRANTING PETITIONER’S MOTION TO AMEND PETITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Bay City Yacht Club, Inc., appeals ad valorem property tax assessments levied by Respondent, Bangor Township, against Parcel No. 09010-S35-004-001-00 for the 2013 and 2014 tax years.¹ Thomas W. McDonald, Jr., Attorney, represented Petitioner, and James M. Hammond, Attorney, represented Respondent.

A hearing on this matter was held on April 6, 2015. Petitioner’s witnesses were Kelly W. Karbowski, Michael J. Keenan, and Everett J. Vansickle. Respondent’s witness was Daniel W. Darland.

Based on the documentary evidence, testimony, and case file, the Tribunal finds that the true cash values (“TCVs”), state equalized values (“SEVs”), and taxable values (“TVs”) of the subject property for the 2013 and 2014 tax years are as follows:

Parcel Number: 09010-S35-004-001-00

Year	TCV	SEV	TV
2013	\$1,488,200	\$744,100	\$744,100
2014	\$1,461,300	\$730,650	\$730,650

¹ The 2015 tax year was severed from this case on April 17, 2015, and was assigned to Docket No. 15-000528.

PETITIONER’S CONTENTIONS

Petitioner contends that the subject property was assessed in excess of 50% of its true cash value for the 2013 and 2014 tax years. Petitioner states that the subject property is located along the Saginaw River and is used to further Petitioner’s purpose – “to advance motor safety, boating skills, and also to provide a safe haven for boaters to keep their boats.”² Petitioner further states that that the subject property has a clubhouse and docking facilities for up to 264 boats, the latter of which are only rented out to its members. Petitioner contends that in employing the sales comparison approach and in computing a value per boat slip based on comparable sales, the true cash value of the subject property is as follows:

Parcel Number: 09010-S35-004-001-00

Year	TCV	SEV	TV
2013	\$1,480,000	\$740,000	\$740,000
2014	\$1,480,000	\$740,000	\$740,000

Alternatively, Petitioner contends that the true cash value of the subject property for the tax years at issue is nominal, at best, arguing that since it, as a non-profit corporation, has no plan for the distribution of its assets upon dissolution, its assets will automatically escheat to the State upon dissolution pursuant to MCL 450.2855, thereby precluding the subject property from being sold. Petitioner also contends that the assessment of the subject property should be reduced by the same percentage amount as the Stipulation filed and accepted in *Steven E Smith & Assoc Receiver v Bangor Twp*, MTT Docket No. 387889 (October 11, 2012) (i.e., “the Bay Harbor Marina case”).

PETITIONER’S ADMITTED EXHIBITS

- P1 Aerial View Photo Entrance to Saginaw River
- P2 Aerial View Photo of Bay City Yacht Club
- P3 Aerial View Photo of North Channel Waterway
- P4 Petitioner’s Appraisal Prepared by B and K Appraisal, LLP
- P5 Report dated October 7, 2014, by Michael Keenan on Respondent’s Appraisal
- P6 Review dated December 16, 2014, by Michael Keenan on Respondent’s Appraisal
- P7 Bay City Yacht Club Policies and Dock Rules

² TR at 6.

- P8 Bay City Yacht Club Financial Statements and Tax Returns
- P9 Bay City Yacht Club Articles of Incorporation
- P10 MCL 450.2855 Nonprofit Distribution of Assets upon Dissolution
- P11 Dan Darland's Worksheet of Boat Slip/Stock Share Sales
- P12 Bay County General Property Information Private Dock Sales
- P13 Sunset Shores Yacht Club Share Sales
- P14 Bay City Yacht Club Constitution (2010)

PETITIONER'S WITNESSES

Kelly W. Karbowski

Kelly W. Karbowski is a Certified General Appraiser in the State of Michigan. Based on his education and experience, as testified to at the hearing and as documented in Petitioner's Appraisal, the Tribunal accepted Mr. Karbowski as an expert real estate appraiser.

Mr. Karbowski stated that all three approaches to value were considered in his Appraisal; however, most weight was given to the sales comparison approach. With regard to his sales comparison approach, Mr. Karbowski stated that Comparable No. 1 is a commercial marina in Port Austin; has 30 boat slips; has access to Lake Huron, like the subject property; and sold for \$280,000 on April 30, 2012. Mr. Karbowski testified that adjustments for gross building area, site size, and the number of boat slips were made to this comparable property, and after adjusting for these elements of comparison, he arrived at an adjusted sales price of \$12,600 per boat slip. Mr. Karbowski further stated that this comparable was real estate owned and was on the market for 329 days. For Comparable No. 2, Mr. Karbowski testified that this property is located in an urban neighborhood in Cheboygan; sold on February 17, 2011, for \$475,000; has 74 boat slips; and, although located on different river frontage than the subject property, has access to Lake Huron. As far as adjustments for elements of comparison, Mr. Karbowski stated that adjustments were made for view, gross building area, acreage, water accessibility, number of boat slips, age, and date of sale, which resulted in an adjusted sales price of \$6,739 per boat slip. Mr. Karbowski stated that Comparable No. 3 is a commercial marina in Linwood, six miles to the north and west of the subject property. According to Mr. Karbowski, Comparable No. 3 has a warehouse, sales, and service building and 153 boat slips and sold in an arm's-length transaction, after a few years on the market, for \$1,150,000 on April 12, 2007. Although Mr. Karbowski acknowledged that

this sale is older, he testified that he felt it was appropriate for use as a comparable in this case given its close proximity to the subject property and similar number of boat slips. For adjustments for elements of comparison, adjustments were made for gross building area, site size, number of boat slips, age, and date of sale, resulting in an adjusted sales price of \$5,637 per boat slip for Comparable No. 3. With regard to Comparable No. 4, Mr. Karbowski stated that it is located in Bay City, along the Saginaw riverfront, less than two miles from the subject property; has 81.27 acres with improvements totaling 230,852 square feet; has access to Lake Huron; and has 286 boat slips. According to the Appraisal and Mr. Karbowski, Comparable No. 4 sold for \$2,975,000 on May 24, 2013, after being on the market for a few years. Mr. Karbowski stated that adjustments, for elements of comparison, were made for gross building area, site size, and number of boat slips, resulting in an adjusted sales price of \$3,120 per boat slip. In further explanation as to why an asterisk was added to page 36 of his Appraisal, regarding Comparable No. 4, Mr. Karbowski testified that this comparable was added after being advised by the client that this appeal would also include the 2014 tax year, but “[t]he decision to add this [particular] comparable was [his].”³ Mr. Karbowski stated that there is a typographical error on page 37 of his Appraisal and that Comparable No. 3 was actually the comparable sale that was given most weight, due to proximity, size, and terms of sale, in arriving at a reconciled per boat slip value of \$5,600 for the 2013 tax year. Lastly, on direct examination, Mr. Karbowski testified that if there was a restraint on the ability of the subject property being sold, it would have a negative effect on his opinion of value, resulting in the subject property only being worth a nominal value, somewhere between \$100 and \$1,000.

On cross-examination, Mr. Karbowski, in acknowledging that his Comparable Nos. 1, 2, and 4 were REO/bank sales, stated that these properties were real estate owned, meaning that they “had gone through . . . a prior foreclosure process before being offered again on the market.”⁴ When questioned about the location of Comparable No. 2, Mr. Karbowski testified that this property is on the Cheboygan River, and an adjustment for location was coupled in with the adjustment for view. As far as the number of boat slips located on the subject property, Mr. Karbowski stated that, based on aerial views of the north and south basins and an examination of

³ TR at 37.

⁴ TR at 48.

the south side of the channel, the subject property has 264 boat slips. Mr. Karbowski testified that if there is no restraint on the alienability of the subject property, his value conclusion would be as stated in his Appraisal. If there was a restraint, however, Mr. Karbowski stated that the subject property would still have value-in-use. Although Mr. Karbowski indicated in his Appraisal that the cost approach, in today's economy, often leads to the highest end of a property's value, Mr. Karbowski testified that he did not develop a cost approach for this reason. Rather, the "choice was [his]"⁵ As to his reliance on the sales comparison approach, Mr. Karbowski stated that he "felt that the sales comparison approach offered the most amount of data available to [him] during the [appraisal] process."⁶ Mr. Karbowski further testified that he developed an income approach; however, a private yacht club, like the subject property, is not an income-producing property. When questioned about zoning, Mr. Karbowski acknowledged that the northerly-most basin of the subject property is zoned R2, and the southerly-zoned basin is zoned I-2. Mr. Karbowski then stated that he opined that the subject property's clubhouse is a commercial-use-type structure because it "has a rest room, a men's room, a women's room, [and] a kitchen area."⁷ With regard to his highest and best use opinion of the subject property, Mr. Karbowski confirmed that the highest and best use of the subject property, as vacant, is for commercial use and, as improved, is for a commercial/private yacht club despite the fact that the subject property is zoned R-2 and I-2, along with the fact that Mr. Karbowski did not know whether commercial marinas are allowed by special use permit and what uses are permitted under I-2. Mr. Karbowski testified that he does not believe that a private yacht club would be concerned with producing a net return to its members nor would someone who holds a private boat slip typically be concerned with making a profit. On cross-examination, Mr. Karbowski additionally stated that all his comparable sales are "commercially-classed properties,"⁸ confirming that commercial marinas are intended to generate a profit. As to his comparable sales, Mr. Karbowski affirmed that Comparable No. 1 has a two-bedroom apartment; however, Mr. Karbowski stated that this property is comparable to the subject property because it has boat slips and access to Lake Huron. When asked about land for commercial marinas, Mr. Karbowski

⁵ TR at 54.

⁶ TR at 55.

⁷ TR at 59.

⁸ TR at 72.

testified that he “would believe that they would [have a greater need for space than a yacht club]”⁹ Mr. Karbowski stated that “[t]he primary reason that [he] included [Comparable No. 2] for comparable purposes is [because of] the boat slips.”¹⁰ For Comparable No. 3, Mr. Karbowski testified that that the subject property does not need the type of buildings located on this comparable property; however, Mr. Karbowski could not calculate the value that these buildings bring to the value of this comparable property. Mr. Karbowski, despite indicating in his Appraisal that a property, such as Comparable No. 4, would normally be considered over-improved, as compared to the subject property, given its gross building area and site size, testified that Comparable No. 4 is comparable to the subject property because of its location and because it has boat slips.

On redirect, Mr. Karbowski testified that it is his “understanding . . . that [Petitioner’s members] couldn’t sell [their] individual [boat] slips,”¹¹ since there is only one deed to the subject property, which includes ownership rights to all 264 boat slips.

Michael J. Keenan

Michael J. Keenan, MAI and CCIM, is a Certified General Appraiser and a realtor in the State of Michigan. Based on his education and experience, as testified to at the hearing, the Tribunal accepted Mr. Keenan as an expert real estate appraiser.

Mr. Keenan testified that he reviewed Respondent’s Valuation Disclosure “strictly on methodology.”¹² After conducting such review, Mr. Keenan stated that he had some concerns about the methodology that was used by Mr. Darland. First, Mr. Keenan stated that Petitioner’s nonprofit status and provisions regarding the assignment of Petitioner’s assets upon dissolution “severely restricts the fee simple rights of the property,” arguing that Petitioner “no longer has the . . . full bundle of rights.”¹³ Mr. Keenan stated, “It’s interesting that, in the sales comparison and income approaches, [Mr. Darland] states that, since the property cannot be sold, these approaches will not be developed.”¹⁴ Second, Mr. Keenan stated that the “statement [made by Mr. Darland regarding determining the value to be used to set a base for the subject property’s

⁹ TR at 84.

¹⁰ TR at 90.

¹¹ TR at 126.

¹² TR at 211.

¹³ TR at 212.

¹⁴ TR at 213.

taxes] disqualifies any value that would be rendered because the only value that we're really concerned with is . . . market value," and "[i]f [the subject property] cannot be sold, there is no value."¹⁵ For property to have value, Mr. Keenan testified that all four of the following elements must be present: (1) Demand, (2) utility, (3) scarcity, and (4) transferability. In applying those factors to the subject property, Mr. Keenan stated that "the demand factor would be very low," due to most sales being "bank-owned foreclosure sales."¹⁶ As far as utility, Mr. Keenan testified that the subject property "has limited utility" because it "is a special purpose property [and] . . . is basically a place for parking sail[boats] and motorboats."¹⁷ For scarcity, Mr. Keenan stated that he "would qualify [the subject property] as a . . . property with a high degree of scarcity due to the amount of water frontage having a . . . dredged area . . ."¹⁸ And lastly, with transferability, Mr. Keenan stated that if the subject property is not able to be transferred, "[i]t would have the effect of giving the property nominal value at best."¹⁹ When questioned about determining land value under the cost approach, Mr. Keenan stated that land used as a comparison "must be a comparable site" – "similar in size [and s]imilar in utility and use."²⁰ Mr. Keenan further testified that if a comparable site is not available, which he asserts is the circumstance in this case, "[t]he [cost] approach becomes compromised because basically the . . . other two alternatives you have are to expand your horizons in time and space . . ."²¹ Mr. Keenan stated that there's "a massive size distortion" in comparing the subject property to "[a] boat slip [which] may encompass 800 square feet," and "there is another more fundamental argument against using slips because slips are sold in fee simple from one owner to another, so that he can then do whatever he wants."²² Mr. Keenan further stated that "the motivation of an individual buying a slip is for his own private recreational use for his boat [whereas t]he motivation of someone buying a marina is an entirely different rodeo."²³ Mr. Keenan testified that "when the entity being bought and sold is the same and the motivation is the same of the

¹⁵ *Id.*

¹⁶ TR at 218.

¹⁷ TR at 220.

¹⁸ TR at 220-221.

¹⁹ TR at 223.

²⁰ TR at 225.

²¹ *Id.*

²² TR at 226-227.

²³ TR at 227.

buyers and sellers, it is a common unit of comparison to use a boat slip[, b]ut to take individual fee simple slips and then compare them . . . is . . . [applying an] apples-and-oranges analogy.”²⁴

On cross-examination, Mr. Keenan confirmed that assessors and appraisers may have different methodologies in determining a property’s true cash value. Mr. Keenan stated that an owner of a private boat slip and a private yacht club possess the same motivation – to have a place to park a boat; however, “the motivations of buyers and sellers investing 3 to \$8,000 versus investors looking at marinas, commercial or private, for several million dollars [are dissimilar].”²⁵ When questioned about his review of Petitioner’s Constitution, Mr. Keenan testified that he did not see any provisions allowing for individual members to sell their boat slips or any provisions prohibiting the sale of the yacht club to another yacht club or commercial marina. As to the use of a private boat slip versus the subject property, Mr. Keenan stated that the two are not similar because “[t]here are a number of provisions in the . . . bylaws and the constitution restricting what can be on a slip, what cannot be on a slip, [and] what type of storage containers[; w]hereas a private slip, you can do whatever you want.”²⁶

Everett J. VanSickle

Everett J. VanSickle is the Treasurer for Petitioner and also a member of its Board of Directors. Mr. VanSickle testified that there are 264 boat slips located on the subject property; however, since four “are unassignable because of damage or . . . various purposes,” there’s only 260 “[u]nsable slips at this point in time.”²⁷ Mr. VanSickle further stated that “[t]he only person that can assign a dock slip to a member is the fleet captain or his assistant” – members cannot sell or assign their boat slips.²⁸ Mr. VanSickle testified as to Petitioner’s other rules and regulations, including what can be built in front of a boat slip, use of that boat slip, and modifications to the dock. Mr. VanSickle indicated that a member’s right and use of their boat slip is similar to a tenant or leasehold interest. As to questions regarding the steel seawalls that were installed, Mr. VanSickle testified that he “believe[d the steel seawall] was there to limit the

²⁴ TR at 229.

²⁵ TR at 248.

²⁶ TR at 245-246.

²⁷ TR at 254.

²⁸ TR at 255.

erosion of the bank into the . . . basin so that [Petitioner] doesn't have to dredge . . . up as much."²⁹

On cross-examination, Mr. VanSickle stated that Petitioner's "constitution can . . . be changed by a vote of the membership[, and t]he rules can be changed by a vote of the Board."³⁰ Mr. VanSickle further confirmed that a steel seawall can be used for other purposes other than just for erosion protection.

RESPONDENT'S CONTENTIONS

Respondent contends that the subject property is "a large-valuable piece of property located right on the Saginaw River,"³¹ can accommodate 264 boats, and has a 4,050 square foot clubhouse, a parking lot, and public improvements. Respondent further contends that valuing the subject property per boat slip is "the correct valuation unit for this property,"³² the highest and best use of the subject property is as a private club marina, and the true cash value of the subject property, in light of the foregoing, is as follows:

The property's TCVs, SEVs, and TVs, as established by the Board of Review for the tax years at issue:

Parcel Number: 09010-S35-004-001-00

Year	TCV	SEV	TV
2013	\$2,470,100	\$1,235,050	\$1,054,628
2014	\$2,425,500	\$1,212,750	\$1,071,502

Respondent's revised contentions of TCV, SEV, and TV:

Parcel Number: 09010-S35-004-001-00

Year	TCV	SEV	TV
2013	\$1,894,000	\$947,000	\$947,000
2014	\$1,894,000	\$947,000	\$947,000

²⁹ TR at 257-258.

³⁰ TR at 259.

³¹ TR at 11.

³² *Id.*

RESPONDENT'S ADMITTED EXHIBITS

- R-1 Tax Map Copy
- R-2 Bangor Township Zoning Map
- R-3 Tax Map Copy with Zoning on It
- R-4 Bangor Township Zoning Ordinance Excerpts
- R-5 Aerial Photograph of 119 E. Spring Street, Port Austin, Michigan
- R-6 Aerial Photograph of 9576 M-33, Cheboygan, Michigan
- R-7 Aerial Photograph of 9576 M-33, Cheboygan, Michigan
- R-8 Aerial Photograph of 9576 M-33, Cheboygan, Michigan
- R-9 Aerial Photograph of 135 Linwood Beach Road, Kawkawlin Township, Michigan
- R-10 Aerial Photograph of 5309 E. Wilder Road, Bangor Township, Michigan
- R-11 MCL 450.2855
- R-12 Sunset Shores Yacht Club Slips For Sale
- R-13 Respondent's Valuation Disclosure
- R-14 General Property Information for Parcel No. 010-S36-008-020-02
- R-15 General Property Information for Parcel No. 010-S36-008-014-01
- R-16 General Property Information for Parcel No. 010-S36-008-008-01
- R-17 General Property Information for Parcel No. 010-S36-008-011-00
- R-18 General Property Information for Parcel No. 010-S36-008-011-01
- R-19 General Property Information for Parcel No. 010-S36-008-012-01
- R-20 General Property Information for Parcel No. 010-S36-008-010-01
- R-21 Property Transfer Affidavit
- R-22 MCL 211.27a

RESPONDENT'S WITNESS

Daniel W. Darland

Daniel W. Darland, MAAO, is the Assessor for Bangor Township. Based on his education and experience, as testified to at the hearing and as documented in the Valuation Disclosure he prepared for this case, the Tribunal accepted Mr. Darland as an expert in real estate assessing.

Mr. Darland stated that he valued the fee simple interest in the subject property for the tax years at issue and considered all three approaches to value. In describing the improvements to the subject property, Mr. Darland stated that the subject property, being a private club marina, has a restaurant/clubhouse (i.e., “main building”), with a metal cooler attached; shower buildings; a 32 foot by 24 foot storage garage; a 12 foot by 12 foot shed; and a paved parking area. Mr. Darland opined that Petitioner’s nonprofit status, along with MCL 450.2855, has no effect on the subject property’s true cash value for the tax years at issue. Mr. Darland further opined that he considered the strip of property, within the subject property, owned by Consumers Energy but concluded that this easement also had no impact on the subject property’s true cash value. Mr. Darland testified that the subject property is zoned R-2, along the north basin, and I-2, along the south basin and some additional property. With regard to R-2 and I-2 zoning, Mr. Darland stated that marinas are allowed in both zoning districts with a special use permit. Mr. Darland testified that the highest and best use of the subject property, as vacant and as improved, is as a marina. In concluding to a true cash value for the subject’s land for the tax years at issue, Mr. Darland stated that he determined the same by computing a market value for the subject property’s boat slips. In doing this, Mr. Darland testified that he used private boat slips, in close proximity, as comparables since “[c]ommerical marinas are there to make a profit,” and “[t]his marina is pretty much a [place to] dock your boat.”³³ Further, the comparables used are “right across the channel from [the subject property], exact same distance to the mouth of the bay or the mouth of the river.”³⁴ Mr. Darland testified that he found ten comparable boat slip sales, but only used two, based on date of sale, in his sales comparison analysis, to conclude to an average sale price of \$6,250 per boat slip or \$1,631,250 for the subject’s land.³⁵ Mr. Darland stated that he only used a sales comparison approach to determine the subject’s land and then “utilized the cost approach for the main structure or the clubhouse and the 32-by-40 foot building [because] . . . all of these private boat slips, if there is a structure on them, [have] . . . an eight-by-eight shed that can be removed as soon as they sell the property.”³⁶ As far as the income approach, Mr. Darland

³³ TR at 147.

³⁴ TR at 148.

³⁵ The third comparable sale on page 18 of Respondent’s Valuation Disclosure (i.e., Parcel No. 09-010-S36-008-014-01) was removed from consideration at the hearing due to its terms of sale which were recognized after the Valuation Disclosure was written. See TR 149-152.

³⁶ TR at 153.

testified that it was considered by not used in this case because “there is no income to speak of;” “this is not a commercial marina, it’s a private marina.”³⁷ For his cost approach, with regard to the improvements of the subject property, Mr. Darland stated that “50 percent seemed reasonable . . .” for economic obsolescence for the improvements because of location and zoning, and “physical [depreciation] went down to 54 percent on the main building.”³⁸ Mr. Darland testified that the main building has “no functional obsolescence . . . [because i]t’s a hundred percent useable the way it is.”³⁹ As to the boat slips, Mr. Darland stated that he applied adjustments for those boat slips that have steel seawalls versus those that have riprap erosion barriers. Specifically, Mr. Darland testified that steel seawalls are more valuable than riprap barriers and, therefore, steel seawalls have \$1,700 added to their per slip value. Mr. Darland stated that “[t]he Bay County Equalization Department has been using that standard [for the value of steel seawalls] based upon an appraisal study that they’ve made,” and “[s]everal years ago [he] did the same type of study in Bangor Township[and] came up with a close number”⁴⁰

On cross-examination, Mr. Darland provided further clarification as to the difference between a steel seawall versus a riprap barrier. Mr. Darland stated that a steel seawall “prevents erosion . . . and . . . allows you to get up bigger boats into the slip such as a sailboat with a keel,” including being able to “park boats sideways”⁴¹ As to the seven private boat slip sales identified on page 18 of his Valuation Disclosure, Mr. Darland stated that, to his knowledge, none of these sales have steel seawalls; however, if a property did, it would affect that property’s assessment. When questioned about MCL 211.7g, Mr. Darland stated that this provision of the General Property Tax Act only applies “when [the steel seawall is] located on a wharf.”⁴² For his comparable private boat slip sales, Mr. Darland confirmed that deeds, conveying an undivided 1/3 interest, were transferred to the buyers in these transactions. When questioned about using comparable private boat slip sales to derive a value for the subject’s land, Mr. Darland testified that he did so because “[i]n Bangor Township, there is no comparable site of 24 acres on the

³⁷ TR at 154.

³⁸ TR at 156.

³⁹ TR at 157.

⁴⁰ TR at 159.

⁴¹ TR at 161.

⁴² TR at 167.

river that had the amenities of [the subject property].”⁴³ In regard to statements made on page 17 of his Valuation Disclosure, Mr. Darland affirmed that he stated that the subject property cannot be sold once the existing use is removed, and if property cannot be transferred, it would affect that property’s true cash value.

On redirect, Mr. Darland modified his statement made on cross-examination, in regard to a question about MCL 211.7g, and stated that “[w]harfs are assessable because the primary use of the seawall is for shipping,” and here, as discussed in MCL 211.7g, “nothing has been submitted to the Bangor Township Assessor’s Office regarding [a] statement from the DNR regarding the Bay City Yacht Club.”⁴⁴ Mr. Darland further stated that generally boat slips and wharfs fall under the provision in MCL 211.7g which states that structures that are not for erosion control or flood prevention are not exempt from taxation. Mr. Darland also stated that he is not aware of any exemption requests under MCL 211.7g for any of his comparable private boat slip sales. As to why he did not apply any depreciation to the subject property’s seawalls, Mr. Darland stated, “Seawalls in good condition are all assumed to have [the] same value.”⁴⁵ In providing additional testimony as to why the cost approach might not work in order to evaluate the subject property if you were doing it from scratch, Mr. Darland explained:

First you’d have to find something comparable. Let’s just say 24 acres of waterfront property in Bangor Township with . . . I-2 zoning or R-2 zoning where they could get the special use. Then you’d have to get all the permits from DEQ or whoever gives them. Then you’d have to do all the design and the architecture and the . . . dredging. It would be very, very expensive. Now, there . . . have been a number of marinas, commercial marinas, sold; and those commercial marinas, I’m going to say most of them, in the last four or five years, pretty much are foreclosure sales. So one would not think . . . this . . . would be the great time to construct a marina new today.⁴⁶

In regard to questioning involving Petitioner’s Comparable No. 4 and why he did not consider this sale, Mr. Darland stated that “[a] lot of the steel seawall is caving in . . . , [and] it was a bank sale,” on the market for “at least three or four years”⁴⁷ Mr. Darland further stated, when

⁴³ TR at 179.

⁴⁴ TR at 190.

⁴⁵ TR at 199.

⁴⁶ TR at 200-201

⁴⁷ TR at 202.

questioned, that an assessment appeal before the Michigan Tax Tribunal involving Petitioner's Comparable No. 4 was not actually tried on the merits of the case but was, rather, resolved via consent judgment.

FINDINGS OF FACT

1. The subject property is located at 3315 Shady Shore Road in Bangor Township within Bay County, Michigan.
2. The subject property is used as a private yacht club and has 23.99 acres of land, a 4,050 square foot clubhouse, shower buildings, a 32' by 24' foot storage garage, a 12' by 12' shed, a paved parking area, and 264 boat slips.
3. The subject property is zoned R-2, Single Family Residential District, and I-2, General Industrial District.
4. Marinas are allowed in both zoning districts with a special use permit.
5. The highest and best use of the subject property, as vacant, is for commercial use.
6. The highest and best use of the subject property, as improved, is as a marina.
7. B and K Appraisal, LLP prepared an Appraisal of the subject property for Petitioner that included a sales comparison approach and an income approach for the 2013 tax year.
8. Petitioner's Appraisal gave more weight to the sales comparison approach.
9. In the sales comparison approach, Petitioner's Appraisal utilized four commercial marina sales which were adjusted for elements of comparison to make the sales consistent with the characteristics of the subject property.
10. Mr. Darland prepared a Valuation Disclosure for Respondent that included a cost approach for the 2013 and 2014 tax years.
11. In his cost approach, and in determining the value of the subject's land, Mr. Darland averaged the sales price of two private boat slip sales, adding \$1,700 to that average for steel seawalls, and then multiplied those figures by the number of boat slips for steel seawalls and riprap barriers located on the subject property.
12. In his cost approach and in determining the value of the subject's improvements, Mr. Darland used the State Tax Commission's Assessor's Manual to determine their reproduction/replacement cost new ("RCN").

13. Respondent utilized the cost approach to determine the subject property's true cash value for the tax years at issue.
14. Petitioner's exemption request, for the steel seawalls located on the subject property, under MCL 211.7g was not pleaded in its Petition.
15. Petitioner did not submit a request to the department of natural resources asking for a determination as to the primary purpose of the steel seawalls located on the subject property.
16. Neither Petitioner's Articles of Incorporation or Petitioner's Constitution currently include a provision regarding the disposition of Petitioner's assets upon dissolution.
17. Article VI, Section 3, of Petitioner's Constitution states, "Any acquisition or sale of real property will require a majority vote of the members voting."⁴⁸
18. Article XI, Section 1a, of Petitioner's Constitution indicates that the Constitution can be amended by a vote of the Board of Directors or by written petition of the Voting Members.

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.⁴⁹

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not . . . exceed 50 percent. . . .⁵⁰

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.⁵¹

⁴⁸ P14 at 4.

⁴⁹ See MCL 211.27a.

⁵⁰ Const 1963, art 9, sec 3.

⁵¹ MCL 211.27(1).

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”⁵²

“By provisions of [MCL] 205.737(1) . . . , the Legislature requires the Tax Tribunal to make a finding of true cash value in arriving at its determination of a lawful property assessment.”⁵³ The Tribunal is not bound to accept either of the parties' theories of valuation.⁵⁴ “It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case.”⁵⁵ In that regard, the Tribunal “may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination.”⁵⁶

A proceeding before the Tax Tribunal is original, independent, and *de novo*.⁵⁷ The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”⁵⁸ “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”⁵⁹

“The petitioner has the burden of proof in establishing the true cash value of the property.”⁶⁰ “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.”⁶¹ However, “[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question.”⁶²

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.⁶³

⁵² *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

⁵³ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

⁵⁴ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

⁵⁵ *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

⁵⁶ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

⁵⁷ MCL 205.735a(2).

⁵⁸ *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

⁵⁹ *Jones & Laughlin Steel Corp*, 193 Mich App at 352-353.

⁶⁰ MCL 205.737(3).

⁶¹ *Jones & Laughlin Steel Corp*, 193 Mich App at 354-355.

⁶² MCL 205.737(3).

⁶³ *Meadowlanes*, 437 Mich at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), *aff'd* 380 Mich 390 (1968).

“The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”⁶⁴ 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.⁶⁵

Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.⁶⁶ After considering the approaches to value submitted in this case, the Tribunal finds that the sales comparison approach is the correct valuation technique to be utilized in determining the true cash value of the subject property for the 2013 tax year.

First, however, before expanding on why the sales comparison approach is the correct valuation technique in this case for the 2013 tax year, Petitioner’s Motions, filed on April 6, 2015,⁶⁷ need to be formally addressed.⁶⁸

On April 6, 2015, Petitioner filed Motions requesting that the Tribunal (i) permit it to amend its contentions in its Petition in this case to \$100 for the tax years at issue and (ii) give immediate consideration to its Motion to Amend Petition. In that regard, Petitioner’s Motion for Immediate Consideration did not include a statement (i) verifying that Petitioner notified Respondent of the filing of its Motion for Immediate Consideration and (ii) indicating whether Respondent would be filing a response to its Motion to Amend Petition, as required by TTR 225(5). Further, both Respondent and the Tribunal did not become aware of such Motions until the day of the hearing. As such, Petitioner’s Motion for Immediate Consideration shall be denied. Petitioner’s Motion to Amend Petition, however, shall be granted. More specifically, “leave to amend or supplement [a petition] shall be freely given when justice so requires.”⁶⁹ Further, the Michigan Supreme Court has held that “a motion to amend should be granted unless

⁶⁴ *Jones & Laughlin Steel Corp*, 193 Mich App at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

⁶⁵ *Antisdale*, 420 Mich at 277.

⁶⁶ See *Meadowlanes*, 437 Mich at 485.

⁶⁷ Petitioner’s Motions are considered to have been filed on the date payment for said Motions was submitted to the Tribunal.

⁶⁸ Although a verbal decision as to Petitioner’s Motion to Amend Petition was made by the Tribunal Judge Presiding in this case at the beginning of the hearing on April 6, 2015, that verbal decision was not reduced to a written order following the hearing and such verbal decision has since changed.

⁶⁹ TTR 221(1).

one of the following particularized reasons exists: (1) undue delay, (2) bad faith or dilatory tactics, (3) repeated failure to cure deficiencies by amendment previously allowed, (4) undue prejudice to the opposing party, or (5) futility.”⁷⁰ In that regard, because none of the preceding reasons exist in this case, the parties were afforded the opportunity to discuss the impetus behind Petitioner’s revised contentions of value at the hearing and through the submission of a brief following the same, and Respondent was aware of Petitioner’s assets escheating to the State upon dissolution under MCL 450.2855 prior to the commencement of this case, the Tribunal is satisfied that granting Petitioner’s Motion to Amend Petition facilitates the efficient administration of justice in this case.

That being said, in delving into Petitioner’s Motion to Amend Petition, the Tribunal disagrees with Petitioner’s contention that the subject property’s true cash value is nominal, at best, for the tax years at issue. Specifically, all property in Michigan, unless exempt, has value and is, therefore, subject to taxation.⁷¹ Further, in reading statutes *in pari materia*,⁷² to say that property, which escheats to the State, has no value would nullify the need for an exemption under MCL 211.71.⁷³ Notwithstanding the provision in Article VI of Petitioner’s Constitution regarding the acquisition or sale of real property, Petitioner can also amend its governing documents at any time, including amending the same to provide for the disposition of its assets upon dissolution.⁷⁴ As such, because Petitioner possesses all bundle of rights, in its fee simple interest in the subject property,⁷⁵ and because Petitioner has the ability to alter this self-imposed restriction,⁷⁶ the Tribunal finds that the same has no effect on the subject property’s true cash value, within the meaning of MCL 211.27, for the tax years at issue.

Next, as another preliminary matter, although Petitioner argued, at the hearing, that the steel seawalls located on the subject property are exempt from taxation under MCL 211.7g, this exemption issue was not pleaded in Petitioner’s Petition nor can this exemption issue be reasonably implied from the same to put Respondent on notice of this claim against which it

⁷⁰ *Ford Motor Co v City of Woodhaven*, 475 Mich 425, 447; 716 NW2d 247 (2006).

⁷¹ See MCL 211.1.

⁷² See *Menard Inc v Dep’t of Treasury*, 302 Mich App 467, 472; 838 NW2d 736 (2013).

⁷³ MCL 211.71 states, in pertinent part, “Public property belonging to the state . . . and still held by the state is exempt from taxation under this act.”

⁷⁴ See MCL 450.2601 and 450.2602 and Article XI of Petitioner’s Constitution. See also MCL 450.2643.

⁷⁵ See Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013) at 5-6.

⁷⁶ See *Canada Creek Ranch Ass’n Inc v Montmorency Twp*, 206 Mich App 498, 504; 522 NW2d 690 (1994).

must defend.⁷⁷ As a result, no analysis regarding the validity of Petitioner’s exemption claim is necessary. Nevertheless, even if this exemption issue had been properly pleaded, Petitioner’s seawalls would not be entitled to exemption from taxation under MCL 211.7g for the tax years at issue. Although the first sentence in MCL 211.7g states that “[t]he value of a seawall . . . whose primary purpose is to prevent or control [one of the stated affects caused by] the Great Lakes or their connecting waters and tributaries as affected by levels of the Great Lakes is exempt from taxation,” the statute must be read in its entirety, as “ ‘effect should be given to every phrase, clause, and word in the statute.’ ”⁷⁸ In that regard, the second sentence of MCL 211.7g reads, “The department of natural resources shall, when requested by the owner or the assessor, determine if such seawall . . . has as its primary purpose the prevention or control of erosion.” As a result, because it is clear, in reading MCL 211.7g as a whole, that the Legislature intended for the department of natural resources to make the determination as to the primary purpose of a seawall and because no such determination was provided as evidence in this case, Petitioner’s seawalls are not entitled to exemption under MCL 211.7g for the tax years at issue.

That being said, both parties submitted valuation evidence to support their respective contentions. Petitioner provided an Appraisal, authored by B and K Appraisal, LLP, for the 2013 tax year, and Respondent submitted a Valuation Disclosure, authorized by Mr. Darland, for the 2013 and 2014 tax years. In Petitioner’s Appraisal, although the sales comparison approach was given most weight, a sales comparison approach and an income approach were developed. In Respondent’s Valuation Disclosure, on the other hand, only a cost approach was developed.

In the sales comparison approach, Petitioner’s Appraisal utilized four commercial marina sales which were adjusted for elements of comparison to make the sales consistent with the characteristics of the subject property. The four comparable sales sold between April 2007 and May 2013, produced adjusted sale prices of \$3,120 to \$12,600 per boat slip, and produced gross adjustments of 45% to 70%. Of these comparable sales, less weight is given to Petitioner’s Comparable Nos. 1, 2, and 4. More specifically, Comparable Nos. 1 and 2 are substantially smaller in terms of site size and the number of boat slips, and Comparable No. 2 is geographically located along the northern tip of Michigan. Further, Comparable 4, albeit similar

⁷⁷ See TTR 227(1). See also *Kincaid v Cardwell*, 300 Mich App 513, 529; 834 NW2d 122 (2013).

⁷⁸ *Bush v Shabahang*, 484 Mich 156, 167; 772 NW2d 272 (2009).

in terms of the number of boat slips, is substantially larger in terms of site size and gross building area.⁷⁹ Comparable No. 3, on the other hand, although having sold in April 2007, is most similar in terms of elements of comparison, requiring the least amount of gross adjustments, and a market-based adjustment was made for date of sale. As a result, based on the *best* evidence of value submitted in this case, the Tribunal finds that the adjusted sales price per boat slip of Comparable No. 3, based on the characteristics of that property *as a whole*, as compared to the subject property, provides the most reliable indication of the subject property's true cash value, within the meaning of MCL 211.27, resulting in a true cash value of \$1,488,200 for the 2013 tax year.⁸⁰

Although Respondent contends that using commercial marinas are not suitable as comparable properties in this case, since “[c]ommerical marinas are there to make a profit,” and “[t]his marina is pretty much a [place to] dock your boat,”⁸¹ credible testimony and documentary evidence was submitted by Petitioner which has persuaded the Tribunal to conclude that commercial marinas coincide with the subject property's highest and best use.⁸² Further, Mr. Darland testified that marinas, both private and commercial, are allowed in both R-2 and I-2 zoning districts, with a special use permit, and the subject property, considering its value in exchange,⁸³ could be converted into a commercial marina.

As to other approaches submitted as evidence in this case, Petitioner's Appraisal also developed an income approach. However, given the fact that Petitioner's Appraisal did not rely on the same, along with the fact that the subject property is not an income-producing property, less weight is given to the income approach. As to Respondent's cost approach, Mr. Darland (i) averaged the sales price of two private boat slip sales, adding \$1,700 to that average for steel

⁷⁹ Although Petitioner's Comparable Nos. 1, 2, and 4 are also distressed sales, testimony from Mr. Darland demonstrates that these types of sales constitute a measurable portion of the subject's market. As such, the terms of these sales had no impact on them being given less weight and credibility in this case.

⁸⁰ $\$5,637 \times 264 = \$1,488,200$ (rounded).

⁸¹ TR at 147.

⁸² “Highest and best use” is defined as “[t]he reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, financially feasible, and that results in the highest value.” Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: Appraisal Institute, 5th ed, 2010) at 93.

⁸³ “Value in exchange” is defined as the “[a]tribution of value to goods or services based on what can be obtained for them in exchange for other goods and services.” Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: Appraisal Institute, 5th ed, 2010) at 206.

seawalls, and then multiplied those figures by the number of boat slips for steel seawalls and riprap barriers located on the subject property to determine a value for the subject's land and (ii) used the State Tax Commission's Assessor's Manual to determine the reproduction/replacement cost new ("RCN") of the subject's improvements. While there do not appear to be any issues with the cost calculations for the improvements to the subject property, notwithstanding the difficulty of using a cost approach when dealing with older properties and quantifying the appropriate amount of depreciation, the Tribunal is not persuaded that the use of individual private boat slips as comparables provides the most reliable indication of the subject property's land for the tax years at issue. Specifically, land must be valued based on its highest and best use, which, as indicated above, is for commercial use in this case. Further, Mr. Keenan credibly testified about the "massive size distortion" in comparing the subject property to "[a] boat slip [which] may encompass 800 square feet,"⁸⁴ along with the differing motivations of buyers and sellers investing in private boat slips versus marinas. Lastly, although Petitioner alternatively contends that the assessment of the subject property should be reduced by the same percentage amount as the Stipulation filed and accepted in the Bay Harbor Marina case, that case is not precedential. Further, the Tribunal did not render an independent determination of value, since a Consent Judgment, accepting the parties' Stipulation, was issued in that case; the Stipulation covered different tax years than those involved in this case; and there is no requirement that Respondent must apply a reduction in value, agreed upon by the parties in another case, to all cases in which it is a party.

For the 2014 tax year, absent any other reliable evidence as to the same, the Tribunal finds the subject property's assessment history to be the best indicator of value. In that regard, in applying the rate of market change to determine the true cash value of the subject property for the 2014 tax year, and in finding that the rate of market change between the 2013 and 2014 tax years, as demonstrated on the subject property's record cards, evidences an approximate 1.81% reduction, the Tribunal finds that the true cash value of the subject property is \$1,461,300 for the 2014 tax year.⁸⁵

⁸⁴ TR at 226.

⁸⁵ Both parties also requested costs and attorney fees in their Briefs submitted after the hearing; however, because neither request is properly pending before the Tribunal, as such requests were not accompanied by the applicable motion filing fee, no further analysis regarding the same is necessary.

JUDGMENT

IT IS ORDERED that Petitioner's Motion for Immediate Consideration is DENIED.

IT IS FURTHER ORDERED that Petitioner's Motion to Amend Petition is GRANTED.

IT IS FURTHER ORDERED that the property's state equalized and taxable values for the tax year(s) at issue are MODIFIED as set forth in the Introduction section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization.⁸⁶ To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 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, through December 31, 2015, at the rate of 4.25%.

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

APPEAL RIGHTS

If you disagree with the Tribunal's final decision in this case, you may either file a motion for reconsideration with the Tribunal or a claim of appeal directly to the Michigan Court of Appeals ("MCOA").

A motion for reconsideration with the Tribunal must be filed, by mail or personal service, with the \$50.00 filing fee, within 21 days from the date of entry of this final decision.⁸⁷ A copy of a party's motion for reconsideration must be sent by mail or electronic service, if agreed upon by the parties, to the opposing party and proof must be submitted to the Tribunal that the motion for reconsideration was served on the opposing party.⁸⁸ However, unless otherwise provided by the Tribunal, no response to the motion may be filed, and there is no oral argument.⁸⁹

A claim of appeal to the MCOA must be filed, with the appropriate entry fee, unless waived, within 21 days from the date of entry of this final decision.⁹⁰ If a claim of appeal is filed with the MCOA, the party filing such claim must also file a copy of that claim, or application for leave to appeal, with the Tribunal, along with the \$100.00 fee for the certification of the record on appeal.⁹¹

By: Preeti P. Gadola

Entered: July 6, 2015

⁸⁷ See TTR 257 and TTR 217.

⁸⁸ See TTR 225.

⁸⁹ See TTR 257.

⁹⁰ See MCR 7.204.

⁹¹ See TTR 213 and TTR 217.