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

Hartland Glen Development, LLC,
Petitioner,

v

MTT Docket No. 416369

Township of Hartland,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

Petitioner, Hartland Glen Development, LLC, appeals the ad valorem property tax assessment levied by Respondent, Township of Hartland, against the real property owned by Petitioner for the 2011 and 2012 tax years.

A hearing was held on July 29, 2013, July 30, 2013, and August 6, 2013, to resolve the real property dispute. Jeffrey B. Levine, attorney at Strobl & Sharp, P.C., appeared on behalf of Petitioner. Michael D. Homier, attorney at Foster, Swift, Collins & Smith, P.C., appeared on behalf of Respondent. Petitioner's witnesses were Steven Scherff, General Manager, and Basil Nona, Manager of the Investment Group; Michael Rende, MAI, was Petitioner's valuation witness. James Heaslip, MAAO (3) and Assessor,

appeared for Respondent. James Hartman, MAI, was Respondent's valuation witness.

SUMMARY OF JUDGMENT

The parties' contentions and the Tribunal's findings of the subject property's 2011 and 2012 True Cash Values ("TCV"), State Equalized Values ("SEV") and Taxable Values ("TV") are set forth below:

Petitioner's value contentions are:

Parcel No. 4708-26-100-019

Year	TCV	SEV	TV
2011	$555,000	$277,500	$277,500
2012	$0	$0	$0

Values as determined by Respondent are:

Parcel No. 4708-26-100-019

Year	TCV	SEV	TV
2011	$2,980,000	$1,490,000	$1,490,000
2012	$2,741,600	$1,370,800	$1,370,800

Respondent's revised values per Hartman's appraisal are:

Parcel No. 4708-26-100-019

Year	TCV	SEV	TV
2011	$3,260,000	$1,630,000	$1,630,000
2012	$2,880,000	$1,440,000	$1,440,000

The Tribunal's conclusions are:

Parcel No. 4708-26-100-019

Year	TCV	SEV	TV
2011	$2,700,000	$1,350,000	$1,350,000
2012	$2,400,000	$1,200,000	$1,200,000

GENERAL PROPERTY DESCRIPTION

The subject property is located at 12400 Highland Road, Hartland, Livingston County. It is a 36-hole public golf course, with a 5,476-5,605[1] square foot clubhouse, pro shop, restaurant-bar, offices, and miscellaneous maintenance outbuildings. It contains 383.58 acres. Both parties presented appraisals indicating that the highest and best use of the subject property is as a golf course on an interim basis until the land is needed for development.

The appeal is to determine the true cash value of the subject property. A $792,000 Special Assessment was levied in 2005 for 144 Residential Equivalent Units ("REUs") for residential unit sewer taps. The annual payments were $71,000. In 2011, the Township corrected the Special Assessment and levied $2,364,596.85 for 603.14 REUs (Resolution 11-R032). Respondent also levied a Supplemental Special Assessment of $199,488.76 (Resolution 11-R034) in 2011. This caused Petitioner to

[1] Petitioner states 5,476 square feet, Respondent states 5,605 square feet.

determine that the value of the subject property is zero for 2012and for its appraiser to determine that abandonment is appropriate.

This appeal is to determine the true cash value of the fee simple interest for the subject property. It is not to determine the validity of the Special Assessment.

SUMMARY OF PETITIONER'S CASE

Petitioner presented testimony from its appraiser, Michael Rende, MAI. Based on his experience and training, the Tribunal accepted Rende as an expert appraiser.

In support of its value contentions, Petitioner offered the following exhibits, which were admitted into evidence:

P1: Appraisal of the subject property, by Michael Rende, MAI.
P-2: Hartland Township Resolution No. 11-R032.
P-3: Hartland Township Resolution No. 11-R034.
P-8: Rounds Played 2008 through 2012.

Rende prepared an appraisal that determined the market value of the fee-simple interest of the subject property. The appraisal considered all three approaches to value: cost, market, and income. The cost approach was not used due to obsolescence, age of the subject property, and market

conditions. Commercial golf courses are not traded based upon the cost to construct. The income approach was considered because of the revenue potential. Rende also considered sales of golf courses. However, sales of vacant land exceeded the value of the subject property as a golf course. Therefore, he concluded that the golf course should continue to operate in the interim. However, it does not contribute to value but to offset expenses and the holding cost of the land.

The subject property lies approximately 1.5 miles west of the US-23 and M-59 interchange. The population in 2010 was 14,663 and is estimated to grow to 16,040 in 2040. Rende estimates that the demand for new housing is limited due to little demand.

The highest and best use of the subject property is an interim use - the continuing use as golf course. This is based on the national and state statistics that golf courses are no longer used at premium rates. The number of courses in Michigan is overbuilt for the declining number of golfers. This glut has left golf courses with discounting the rates per round. The decline in the economy leaves little extra discretionary money to be

spent on extracurricular activities. In addition, the Special Assessment in 2011, when deducted from market value, results in a negative figure.

Income Approach

Rende's initial step in estimating the potential income for the subject property was to do a survey of surrounding courses. Livingston County has 18 golf courses. Within a ten-mile radius, there are 17 courses that compete with the subject property. The subject property is not forecasted to increase its number of golf rounds. All golf courses are dependent upon weather, competition, as well as the economy. Rende, using five courses that would be in direct competition with the subject property, determined that $40 was the rate for 18 holes with a cart on weekends and $30 for weekdays. Cart fees were then calculated separately. This resulted in a $7 cart fee for nine holes and $10 cart fee for 18 holes. Rende calculated the revenue for golf cart usage. It was very close to the actual. The estimate of 18 hole equivalent rounds that was used to estimate the greens' fees, as well as cart usage, is $25,300.

The Pro Forma Income and Expense Statement (using December 31, 2010) indicates that gross revenue includes greens' fees, cart rental, pro-

shop, food and beverage, and driving range. Rende explained each category of expenses and its basis. As an example, payroll and general manager are typically 40% of expenses according to the industry standard. The 2011 tax year pro forma is as follows:

Income	2011 tax year
18 hole Equ	$25,300
40% @ 9 holes	$12,650
60% @ 18 holes	$18,976
Revenue 9 holes	$13.00
Revenue 18 holes	$16.73
Revenue	
Greens Fees	$481,901
Cart	$270,473
Pro Shop	$50,600
Food/Beverage	$240,350
Range	$10,250
Gross Revenue	$1,053,574
Cost of Goods Sold	
75% Pro Shop	-$37,950
40% Food/Beverage	-$96,140
Gross Margin	$919,484
Expenses	
Gen Manager	$65,000
Payroll/Benefits	$379,287
Maintenance	$39,082
Utilities	$158,036
Administrative	$73,450
Cart Reserve	$63,214
Insurance	$74,520
Replacement Reserves	$15,804
total Operating	$21,071
Projected	
Net Operating Income	$889,764
Less SA	-$48,436
NOI	-$18,716

The net operating income for the tax years at issue is negative without any consideration for property taxes. Therefore, Rende's conclusion was,

without any income to capitalize into a value estimate that the going-concern represented by the golf course would not sell for its continued use as such. He testified that, after the Special Assessment, the highest and best use may be abandonment. The subject property is not financially feasible as a golf course.

Sales Comparison Approach

Rende presented sales of 19 golf courses between December 2000 and January 2012. The sale prices range from $27,500 to $333,333 per hole. He discussed the decline in sale prices and in the golf industry. The sales are indicating an oversupply and lack of demand for golf clubs with clubhouses, pools, and private memberships. Rende reported that, based on all of the information that he was able to gather, the sales are not indicating a robust outlook.

Rende presented sales in the earlier years, as the sale prices averaged $200,000 per hole. The sales from March 2007 to December 2011 saw a significant decrease. The sale price went to an average of $68,000 per hole indicating a 65% decline in value. Several courses that were resold in this time period were noted by Rende.

Rende summarized that the information presented reflects the demand for golf courses is down, as reflected in the limited number of sales, the decline in price per hole, downward trend in rounds played, and lower fees. Three recent sales of golf courses in Howell, Marysville, and China Township indicate that from December of 2010 and May 2012 the sales ranged from $15,000 to $41,000 per hole. It is a buyer's market.

Rende's conclusion of value was $25,000 per hole. The resulting value for the 36 holes is $900,000, as a going-concern. However, the personal property should be deducted. Rende deducted the personal property ($300,600). This results in a value for the real estate only.

This resulted in indicated market values of $600,000 as of December 31, 2010, and $700,000 as of December 31, 2011.

Rende, in his appraisal, states:

> The final consideration before concluding a value by the Direct Sales Comparison Approach relates to the impact upon value that the outstanding special assessment balance will have. The purchaser of the subject site, as of the dates of value, would also be responsible for payment of the SAD (sewer assessment district) obligation. When originally established, the subject site was obligated for 144 REU's at a total cost of $5,500 each or a total obligation of $792,000. Assuming the appropriate annual payments were made beginning February 2006 and continuing for the next few years, by December 31,

> 2009, the outstanding balance of this SAD approximates $633,600. The appraiser acknowledges and the reader must recognize that this is based upon a straight-line reduction of the balance with no consideration given to any interest payments, delinquent payments, or accrued interest. Similarly, as of December 31, 2010, the balance would have fallen to $594,000. P-1, p 113.

Anticipating that a purchaser would reduce the purchase price by the outstanding balance of the Special Assessment, Rende deducted this from the Sales Comparison Approach value as a golf course.

Tax Date	Real Estate Value	SAD Balance	TCV
December 31, 2010	$600,000	$594,000	$6,000
December 31, 2011	$700,000	$2,365,000	$0

Rende considered the market value of the land as if unimproved. Before going into the sales of vacant land, he discussed the weakened economy. This leads to more unemployment, less new home construction, and a flood of homes that were under water being sold as short sales or foreclosures. The number of building permits for Livingston County was 1,726, in 2000, 168 in 2011, and 312 in 2012. Hartland Township experienced a high of 175 new homes in 2003 with two permits in 2011, and seven new home permits in 2012. The demand for new single-family residential homes is limited. The absence of demand for homes also is found in the limited amount of vacant land sold since 2009.

Rende assembled all of the vacant land sales; seventeen parcels were found. They ranged from 25.9 to 255 acres, with unadjusted sale prices per acre from $2,000 to $12,259. Adjustments were made for location, size, paved frontage, and “other”. Rende narrowed the sales to seven. Those unadjusted sale prices ranged from $2,000 to $4,324 per acre. The sale prices were adjusted for location, size, utilities, and access/visibility. The following sales were utilized by Rende:

	Arms-length	Acres	Sale Price/Acre
Sale 1	Yes	65	$3,462
Sale 3	No	74	$4,324
Sale 7	No	55	$2,000
Sale 8	No	80	$2,534
Sale 9	No	74	$2,972
Sale 13	Yes	51	$3,406
Sale 16	Yes	69	$3,625

The purchaser of Sale 3 also assumed the responsibility for an outstanding sewer assessment. No adjustments were made to the sale price for the special assessment.

Rende opined that vacant land value is $3,000 per acre. This results in a value of $1,150,000. He deducted the Special assessment for an indicated value of $515,000 as of December 31, 2010, and December 31, 2011 is $555,000.

Respondent questioned Rende on his conclusion at $25,000 per hole for the golf course when the average sale price from March 2007 and February 2011 averaged $68,338 per hole. Rende stated “The market was continuing to erode.” Transcript 1 at 166. Looking at a narrower scope from April 2009 to December 2010, the average sale price is $50,000 per hole. Rende did not include this analysis in the report. He testified that the subject is 36 holes with less amenities than some of the sales, as well as less revenue generated. However, if a $50,000 sale price per hole was utilized it would result in a different value.

The 2012 true cash value conclusion by Rende is zero. The highest and best use and the most financially fiscal approach to the subject property is abandonment.

Steven Scherff, the General Manager at the golf course and owner of two insurance companies, testified there are only five other systems in the state that are similar to the irrigation system used at the subject property. The system is antiquated since it was installed in 1972. It requires almost daily maintenance to keep it working. The Tribunal notes that Scherff prepared a list of properties that were foreclosed that had special assessments. The

argument was that Petitioner was going to testify about the effect that REUs may have on value. However, Scherff was not a valuation witness and did not prepare a valuation; therefore, the proposed exhibit 10 was not admitted through Scherff.

Dr. Basil Nona, is one of the managing partners that oversees the investment. The subject property was acquired in 1999. It had a positive cash flow of $500,000, which was approximately 10% of the purchase price. The sale included everything that would come with a golf course. The investment strategy was to run the golf course and, if the opportunity arose, to develop other adjoining parcels. Approximately 510 acres were assembled but never developed. Some preliminary development plans were submitted in 2007, but he was not part of the discussion. Although, he believed that a requirement was to pave adjacent roads and contribute to a fire station. The testimony was objected to as irrelevant to the valuation issue.

Nona did testify that the correction of the special assessment roll allocated the REUs from 144 to 603. However, the zoning would not accommodate 603 properties. Nona stated that if 18 holes of the golf course were

utilized, there are only 300 to 350 units due to approximately 80 acres of wetland, infrastructure, and roads, leaving approximately one-acre sites. It is physically impossible to have 603 units even if all 36 holes were utilized for housing. Absorption rate of five units a year indicates a 60-year life span to develop a project. There is no demand and no market for an additional 600 housing units.

Nona believes that Respondent has several properties that it has purchased and are for sale for less than their acquisition costs. He opined that this is due to the Special Assessment.

SUMMARY OF RESPONDENT'S CASE

Respondent argues that the market value of the subject property is positive, contrary to Petitioner's appraisal. Respondent requested that the Tribunal issue an involuntary dismissal and affirm the assessments. The Tribunal finds that Petitioner met its burden of going forward.

In support of its value contentions, Respondent offered the following exhibits, which were admitted into evidence:

R-1: Summary Appraisal Report by James Hartman, MAI.

R-2: A. 2011 Property Record Card.
B. 2012 Property Record Card.
R-3: Affidavit of Interest in Real Property.

Petitioner's first witness was James Heaslip, MAAO (3) and Assessor for the Township. He prepared the 2011 and 2012 property record cards for the subject property. There was an error in the calculation of acreage for the subject property. The legal description was correct, but the acres should be 383.58 acres not 381.56 acres. This is to account for a small piece of property located along Highland Road/M-59.

Heaslip has been the Assessor for six years. He explained that the land value starts with sales of agricultural property. The land value for 2011 was $9,000 an acre, which was reduced 48% for wetlands. The 2012 land value was $8,000 an acre, again reduced 48% for wetlands.

Heaslip further explained that the economic condition factor ("ECF") that is applied to the cost new less depreciation starts in comparing sales to the assessments at the time of a sale. Assessors throughout the state have worked on an ECF for golf courses based on the region of its location. He has a list that is ongoing of sales of golf courses. Some of which have sold multiple times. The ratio of the difference between the sale price and the

assessment at the time of the sale is calculated. Outliers are removed from the analysis.

James Hartman, MAI, prepared an appraisal, and based on his experience and training, the Tribunal accepted Hartman as an expert witness. He formed a group of MAI's that specialized in golf course appraisals around 1980. It has approximately 25 members throughout the U.S. He has appraised golf courses for mortgage financing purposes and tax valuation cases.

Hartman valued the fee simple estate, which is defined as absolute ownership unencumbered by any other interest or estate. This is subject only to the limitations of eminent domain, escheat, police power, and taxation. He did not deduct the mortgages, special assessments, or any other liens against the property. This was due to the scope of work and the valuation of the fee simple interest.

Hartman made extraordinary assumptions; one was zoning, and the other assumed that the subject property was in a similar condition, as viewed as of the dates of the appraisal.

Hartman also had hypothetical conditions that relates to REUs and the outstanding balance for the Special Assessment. The client requested that the appraisal assume that, as of the valuation dates, the Special Assessment was paid off. Special assessments can be paid off up front or financed over time. The property taxes were not paid as of the tax dates at issue. Hartman was also requested by the client to estimate the market value as if the outstanding property taxes were paid.

Hartman's highest and best use of the subject property is to hold the property for redevelopment. The interim use is as a golf course. This is the same use as Rende, Petitioner's appraiser.

The highest and best use of the subject property is residential single-family development, recreational property including a golf course, or agricultural use. The decline in residential new home construction and demand has dramatically declined due to the length of time it would take to develop. New home construction won't occur for a minimum of five years. The location is not in a high demand, or growth, area. The easy access to the interchange will support development in the future.

Hartman also explained, in great detail, that a new golf course is not financially feasible. The current market is significantly oversupplied. Revenue does not support new construction. Some of the acreage could be cultivated but requires clearing of trees and ponds. Agricultural development is also an interim use.

The financially feasible maximally productive use of the land, as though vacant, is as residential/agricultural acreage held for future residential development once market conditions and demand improves.

Hartman stated that the current zoning is CA, conservation agricultural. The minimum lot size is two acres. The future land map designates the area as medium suburban density residential, which allows a density of two lots per acre. The subject property has 603.14 sewer REUs which results in 1.57 lots per acre density.

Hartman began the market analysis considering the general forecast for the subject area. He considered the decline in population and new home construction. The 2012 new home construction was seven. He also considered the value of the golf course as a going-concern. The demand

in the area, the rural nature of the subject property, and declining supply and demand did not paint a rosy picture for the golf course. The subject property is located in an area of limited demand. The golf course is stabilized, but the competitive market indicates that the revenues will be decreasing.

The 36-hole golf course location is considered average by Hartman. The exposure and marketing times for the subject property, based on information on days on market, sales, and interviews with market participants, and anticipated change in market conditions, indicate that marketing time is 12-24 months for the subject property at its highest and best use to be held for future residential development and used in the interim as a golf course.

The subject has 380.30 acres, excluding road right-of-ways with approximately 83.44 acres of wetlands. The subject property is sufficient for a variety of uses. This includes a modern-length (7,000 yards from the back tees) golf course.

Hartman developed a sales comparison approach for vacant land to determine the value of the asset. He found the following sales:

	Acres	Sale Price/Acre
Sale 1	88.04	$15,578
Sale 2	40.63	$16,306
Sale 3	86.48	$7,111
Sale 4	49.37	$11,281
Sale 5	50.89	$11,789
Sale 6	76.19	$9,271
Sale 7	152.33	$10,504

Hartman adjusted the sales for differences in location, road access and frontage, size, site utility, and utilities- prepaid REUs (tap-in fees). The adjusted sale prices range from $6,792 to $12,189. (Respondent's Sale 6 and Petitioner's Sale 3 are the same.) Hartman adjusted Sale 6 for its unpaid balance for its 80 REUs. The unpaid balance was added to the sale price. Hartman testified that the outstanding amount of the special assessment was added to the sale price because the purchaser assumed the responsibility of paying it.

Hartman interviewed different taxing authorities in the area to determine that $7,500 per tap-in was the average fee price. Various development scenarios were considered. He estimated that it will take five to seven years. The fees were discounted to determine that $800 an acre is what

the market will recognize in value. This was converted into a percentage adjustment for the comparable sales.

Hartman concluded to a value of $3,422,700 for the vacant land. A cost to raze the improvements was necessary for redevelopment. After the deduction, the rounded market value for tax year 2011 is $3,360,000. The same comparables were used for tax year 2012, with the addition of Sale 8.

After the same analysis, Hartman concluded to a market value of $2,880,000 for tax year 2012.

Hartman, in determining the market value, placed in the addendum his valuation as golf course going-concern. This was used to determine if the highest and best use was continuation as a golf course in the interim. The income approach and sales analysis were also performed.

The direct capitalization approach was used by Hartman to convert future benefits to the present value equivalent. This method reflects actions of buyers of similar properties.

Based on financial statements, the information was put into a common income and expense format. The Society of Golf Appraisers industry survey data was used to determine industry standards for operating income and expenses. After determining the appropriate income and expenses, the net operating income is utilized for application of an appropriate overall capitalization rate.

Hartman considered the competitive golf courses in the area including the rounds of play and pricing for the rounds. The driving range, food, and beverage, as well as pro-shop revenues were calculated for the subject's projected income and expenses. The treatment of golf carts, maintenance and equipment reserves was also a combination of actual and comparative costs.

The net operating income for tax year 2011 is $133,129 (2012 is $123,160). Hartman considered the following sources for the overall rate: The Society of Golf Association's 2011 Golf Course Lenders Survey and *RealtyRates.com.* Hartman concluded to a mortgage loan-to-value of 60% and an interest rate of 7.75% a year with 20-year financing. The resulting overall capitalization rate is 10.7%. Recent sales indicate an overall rate of

10.25% to 10.5%. Hartman added the effective "blended" tax rate for 85% real property and 15% personal property, resulting in a tax neutral rate of 2.15%, which is added to the 10.50% to equal the overall rate loaded with the effective tax rate of 12.65%. The 2011 value as a going-concern is $1,050,000. Hartman followed the same methodology for the 2012 tax year. The net operating income was $123,160, and the overall rate loaded with the effective tax rate is 12.53%. The going-concern was $985,000.

Hartman also did a sales comparison approach using a gross income multiplier that adjusts for differences in amenities based upon income and the sale price. The result is an indicated value of $965,000, for 2011 and $910,000 for 2012.

The final reconciliation resulted in an indicated true cash value of $3,260,000 as of December 31, 2010, and $2,880,000 as of December 31, 2011.

FINDINGS OF FACT

1. Subject property is located at 12400 Highland Road, Hartland Township, Livingston County.
2. The tax years at issue are 2011 and 2012.
3. Subject property for the tax years at issue is used as a 36-hole golf course.
4. Subject property has approximately 383.58 acres.

5. The subject property contains the following:
a. 5,476-5,605 square foot one-story clubhouse (constructed in 1972 with an addition in 2005),
b. 4,400 square foot pole building for cart storage,
c. two- 2,560 square foot pole maintenance buildings,
d. 684 square foot storage garage/shop,
e. 480 square foot wood frame garage, and
f. 224 square foot wood pole fuel storage shed.

6. Petitioner determined that the highest and best use of the subject property is to "remain vacant available for future development if and when demand warrants such development in accordance with its zoning restrictions." P-1, p 66. As of December 31, 2011, Petitioner determined: "the subject's special assessment obligation increased significantly to a point where the assessment balance far exceeded the value of the site such that its highest and best use is abandonment." P-1, p 66.

7. Respondent determined that the highest and best use of the subject property, as vacant, is as recreational/agricultural acreage held for future residential development. The highest and best use, as improved, is for future residential development with interim use as a 36-hole public golf course for each of the tax years at issue.

8. Petitioner's appraiser did not have any extraordinary assumptions or hypothetical conditions.

9. Respondent outlined both extraordinary assumptions and hypothetical conditions.

10. Petitioner appraised the subject property deducting the Special Assessment.

11. Respondent appraised the subject property in fee simple without encumbrances.

Expert witness status is based on the appraiser's education, experience, skill, and training. Based on the MAI designation, both appraisers were designated as an expert in the appraisal field. The expert witness status does not automatically grant the witness or exhibits credibility or weight.

APPLICABLE 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 that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section or at forced sale." MCL 211.27(1). The Michigan Supreme Court in *CAF Investment Co v State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974) has also held that true cash value is synonymous with fair market value.

In that regard, the Tribunal is charged in such cases with finding a property's true cash value to determine the property's lawful assessment. See *Alhi Dev v Orion Twp*, 110 Mich App 764, 767; 314 NW 2d 479 (1981). The determination of the lawful assessment will, in turn, facilitate the calculation of the property's taxable value as provided by MCL 211.27a. A petitioner does, however, have the burden of establishing the property's true cash value. See MCL 205.737(3) and *Kern v Pontiac Twp*, 93 Mich App 612; 287 NW2d 603 (1979).

> The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not. . . . exceed 50 percent; and for a system of equalization of assessments. For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred. When ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value. Const 1963, Art IX, Sec 3.

The Michigan Supreme Court, in *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 484; 473 NW2d 636 (1991), acknowledged that the goal of the assessment process is to determine '"the usual selling price for a given piece of property. . . ." In determining a property's true cash value or fair market value, Michigan courts and the Tribunal recognize the three traditional valuation approaches as reliable evidence of value. See *Antisdale v Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984).

"The petitioner has the burden of proof in establishing the true cash value of the property." MCL 205.737(3). "This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift

during the course of the hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party." *Jones & Laughlin Steel v City of Warren,* 193 Mich App 348, 354-355; 483 NW2d 416 (1992).

The three most common approaches to valuation are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach. See *Meadowlanes*, *supra,* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170; 141 NW2d 699 (1966); *Antisdale*, *supra,* at 276. 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. *Antisdale*, *supra,* at 277. Petitioner utilized a sales comparison approach. Respondent also used the sales comparison approach to value the subject property.

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. See *Pinelake Housing Co-op v Ann Arbor*, 159 Mich App 208, 220; 406 NW2d 832 (1987); *Consolidated Aluminum Corp, Inc 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. See *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985). The Tribunal may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination. See *Meadowlanes*, *supra,* at 485-486; *Wolverine Tower Assoc v Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980); *Tatham v Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982).

CONCLUSIONS OF LAW

The parties are charged with determining the true cash value of the fee simple interest for the subject property. Fee Simple is defined as:

> Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat. *The Dictionary of Real Estate Appraisal*, Appraisal Institute, (Chicago, 5th Edition, 2010), page 78.

Both Rende and Hartman are experts in valuation. They individually stated correctly that they followed the Uniform Standards of Professional Appraisal Practice ("USPAP"). USPAP and the Appraisal Institute require that the appraisers meet the standards, which they did. However, they

went in opposite directions as far as the issue of how the Special Assessment influenced or affected the true cash value of the subject property.

Rende first detailed the market conditions which indicated a decline in the golf course market. The decrease in demand resulted in investment uncertainties and lack of financing, with foreclosures of golf courses increasing. The highest and best use analysis resulted in vacant land with the interim use as a golf course. Hartman, after doing a similar analysis, also considered the current use of the subject property and found the same - the highest and best use as a golf course, is the interim use. The sales and income approaches were utilized by both appraisers.

The Tribunal is not going into the specific details of the analysis performed that resulted in the same conclusions as to the highest and best use of the subject property.

Rende considered 19 sales of golf courses from December 2000 to January 2012 to show the trend of excess supply and lagging demand. However, given the quality of the subject, age, condition, and amenities, he found that the subjective estimate of the value of the going-concern was

$25,000 a hole. However, when the personal property[2] and the outstanding balance of the Special Assessment are deducted, the 2011 value is reduced from $600,000 to $6,000 and the 2012 value of$700,000, is reduced to $0. Rende stated that a purchaser of the subject property would be responsible for the payment of the Special Assessment. He believed that a purchaser would reduce the sale price by the outstanding balance of the Special Assessment.

Hartman's sales comparison approach of golf courses did not deduct the amount of the outstanding Special Assessment. He found that golf courses were substantially unique; adjustments for differences in amenities could not be meaningfully quantified. He selected a gross income multiplier to determine that the continuation of the golf course was not the highest and best use.

Both parties also utilized the income approach. The income and expenses necessary to operate the real estate as a golf course were properly considered. Information was utilized based on determining the subject property's actual income and expenses and comparing them to National

[2] This was based on the self-reporting value of the personal property.

Golf Foundations. The overview of the golf industry, supply and demand, the reasons why the industry has declined, and the overbuilding of courses at the time of an economic recession were found in both appraisals. The picture was bleak for current golf courses. The decline in golfers and overbuilding impacts revenues negatively. The highest and best uses of golf courses in Michigan are changing. Golf courses that are not profitable are considered an interim use.

Rende, in his appraisal, states on page two of the transmittal letter, “Liens and encumbrances, if any, have been disregarded and the property was appraised as though free of indebtedness.” Also described in the definition of fee simple is ‘absolute ownership unencumbered’”. P-1, p 5. However, Rende deducted the outstanding balance of the Special Assessment. It was explained that, in doing mortgage work, he is required by the bank (since around 2000) to deduct any liens on the property.

Hartman appropriately explained in his Scope of Work, as a Hypothetical Condition, that the outstanding balance of the Special Assessment was paid. Hartman properly, in his Scope of Work, established that he had both an extraordinary assumption and a hypothetical condition.

In this instance, Rende's use of the appraisal (effectively a mortgage appraisal technique) to determine the true cash value of the subject property is improper. The deduction of the unpaid Special Assessment balance is akin to deducting an outstanding mortgage balance. It may be a function of a lending institution to follow federal regulatory agencies to provide for lending capital and determine a party's equity position, but it is not appropriate for determining true cash value under MCL 211.27.

Hartman, when questioned, explained that if the appraisal of the subject property was for a mortgage, the bank's position would be second to the Special Assessment, and he would then be required to make a reduction of the market value estimate. The bank would have a second lien position if the property reverted back to the bank, as Special Assessment would be paid first.

However, this Tribunal is not to determine if a party can qualify for mortgage purposes. The Tribunal is also not considering the validity of the Special Assessment. The Tribunal is charged with determining the true cash value of the subject property.

Both parties claim to have appraised the fee simple interest. Petitioner deducted the outstanding balance for the Special Assessment and determined that the highest and best use for the 2012 tax year is abandonment of the subject property. Rende testified that the banks instructed appraisers around 2000 to value a property inclusive of whatever benefits there may be. Then from that value, the outstanding balance of special assessments is deducted. Respondent explained that, for an appraisal for mortgage purposes, the special assessment is a deduction. This is due to the banks having a second lien position if the property were foreclosed; it would be subject to the special assessment.

The Tribunal finds that Petitioner's deduction for the balance of the special assessment is not considered an appropriate deduction to determine the fee simple value. It may be an appropriate deduction for a lender to consider. Depending upon the lender, the lending requirements are set by the regulatory agency to value an equity interest.

Valuing the subject property's equity interest is not fee simple interest. The fee simple interest does not include a deduction of the unpaid balance of a special assessment. The Special Assessment was considered an

encumbrance pursuant to Petitioner's appraisal. Therefore, Petitioner's resulting value indication is not considered an "unencumbered" fee simple interest.

The value of the land, as if vacant, was dependent upon the sales comparison approach developed by both parties. The total number of sales considered was 14. The parties had one sale in common for the Tribunal to take out of the combination of sales and discuss in detail. Petitioner's Sale 3 and Respondent's Sale 6 are the same property. It is located in close proximity to the subject property. This property is 76.19 acres (much smaller than the subject's 380 acres). At the time of sale, it was subject to the same Special Assessment. It contained 80 REUs, and an unpaid balance of $386,361.25 at the time of sale. Rende determined that its $4,234 per acre sale price required a negative adjustment of 20% for size. Hartman included the outstanding balance of the Special Assessment as part of the sale price. After adjustments, the differences per acre are $3,387 (Petitioner) and $7,201 (Respondent).

Hartman clarified his addition of the outstanding balance of the Special Assessment to the sale price, "Because the purchaser had to assume the

responsibility of paying it." Tr. III, p 303. Special assessments run with the land, not the owner. The Tribunal finds that this is akin to expenditures immediately after purchase. The inclusion of the balance makes sense and is an appropriate appraisal methodology when determining the true cash value of the subject property, which contains the same Special Assessment and outstanding balance thereof.

Although the comparable sale was owned by a bank, Hartman testified that he spoke to the broker, who indicated that the property was not discounted and sold at fair market value. The purchaser was aware that there was an outstanding balance of the Special Assessment that would become their obligation. The Tribunal finds that this sale is reliable and Respondent properly adjusted the sale price.

Petitioner's ability to finance the cost of the Special Assessment over twenty-years should not have a negative effect on the true cash value of the subject property. The Tribunal finds that Petitioner's appraisal is not considered an "unencumbered" fee simple valuation. Petitioner's deduction of the unpaid balance of the Special Assessment may be a requirement for a mortgage appraisal, hence the difference between an appraisal for

financing purposes and one for true cash value of the fee simple interest. Petitioner's methodology (mortgage appraisal) is not accepted as the fee simple interest of the subject property.

Petitioner's election to not pay the Special Assessment in its entirety should not result in a reduction in the market value, based on the outstanding balance. If this were an accepted method, then no public improvements would be financed in this manner. This would be a substantial disadvantage to the property that paid for its benefits of the REUs up front. To give Petitioner a break on the subject property's market value based on the deduction of the outstanding (delinquent) Special Assessment is not a function of value.

Petitioner fails to meet its burden of proving that this methodology, that is found when appraising a property for a different Scope of Work (financing appraisal), is also appropriate for determining the true cash value of the subject property. The deduction of the outstanding balance of the Special Assessment is not appropriate for determining the market value of the subject property.

> Further, when a lender is considering an appraisal for lending purposes it is not considering a selling price with a willing buyer and seller, it is considering whether the value of the property will be sufficient to pay off the mortgage loan. If the property is not worth enough to support the loan, the loan will not be made. This is because the financing appraisals are used to determine the mortgage's loan-to-value ratio, which informs the lending institution's risk-acceptance criteria; the higher that ratio, the more risk, and more onerous the loan terms; the lower the ratio, the less risk, and the more favorable the loan terms. In this instance the appraisal is as required by a lending institution as it is placed in a secondary lien position. *Panitch v Ann Arbor*, MTT Docket No. 354366, p 13.

The Tribunal considers the 383.58 acres of the subject property with an effective acreage of 300 acres. This is giving consideration to the 83.44acres of non-buildable wetlands. The $9,000 per acre value for 2011 and $8,000 per acre value for 2012, as determined by Hartman, is accepted as the market value for the subject property. The improvements as a golf course are given no additional value consideration at this time as the Tribunal finds that the interim use as a golf course indicates that it does not add value to the subject property. This does not relieve Petitioner of the obligation to file its personal property statement, as personal property was not appealed in this matter.

The Petitioner does receive a reduction in true cash value based upon the value of the land as vacant. Petitioner's appraiser utilized a methodology

required by financial institutions when applying for a loan. The financial position of the Petitioner in applying for a loan on the subject property is not considered when determining the market value of the subject property. Value-in-exchange is not dependent upon ownership of the property.

JUDGMENT

IT IS ORDERED that the subject property's true cash, equalized, and taxable values for the 2011 and 2012 tax years are those shown in the "Summary of Judgment" section of this 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 assessed and taxable values in the amounts as finally shown in the "Summary of Judgment" section of this Opinion and Judgment, subject to the processes of equalization, within 20 days of the entry of this Opinion and Judgment. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Opinion and Judgment within 20 days of the entry of this 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 Order. 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% for calendar year 2012, and (iv) after June 30, 2012, through December 31, 2013, at the rate of 4.25%.

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

By: Victoria L. Enyart

Entered: October 11, 2013