

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

Cadillac Country Club,  
Petitioner,

v

MTT Docket No. 15-002996

Cherry Grove Township,  
Respondent.

Tribunal Judge Presiding  
Marcus L. Abood

**FINAL OPINION AND JUDGMENT**

Petitioner, Cadillac Country Club, appeals the ad valorem property tax assessment levied by Respondent, Cherry Grove Township, against the real property owned by Petitioner for the 2015 and 2016 tax years.

A hearing was held on January 4 and 19, 2017, to resolve the real property tax dispute. Peter Ellenson, attorney at Law Offices of Fred Gordon, PC appeared on behalf of Petitioner. Maurice A. Borden, attorney at Sondee, Racine & Doren, PLC, appeared on behalf of Respondent. Kevin Kernen, MAI, was Petitioner's valuation witness. Christine Brow and Ronald Vaughan were Respondent's witnesses.

**SUMMARY OF JUDGMENT**

The subject property's 2015 and 2016 True Cash Values (TCVs), Assessed Values (AVs), and Taxable Values (TVs) as determined by Respondent are:

Parcel No. 2110-12-3101

|      | Respondent  |           |           |
|------|-------------|-----------|-----------|
| Year | TCV         | SEV       | TV        |
| 2015 | \$1,041,400 | \$520,700 | \$201,220 |
| 2016 | \$1,144,600 | \$572,300 | \$201,823 |

Petitioner’s contentions are:

Parcel No. 2110-12-3101

|      | Petitioner |           |           |
|------|------------|-----------|-----------|
| Year | TCV        | SEV       | TV        |
| 2015 | \$276,000  | \$138,000 | \$138,000 |
| 2016 | \$276,000  | \$138,000 | \$138,000 |

The Tribunal’s conclusions are:

Parcel No. 2110-12-3101

| Year | TCV       | SEV       | TV        |
|------|-----------|-----------|-----------|
| 2015 | \$276,000 | \$138,000 | \$138,000 |
| 2016 | \$276,000 | \$138,000 | \$138,000 |

GENERAL PROPERTY DESCRIPTION

The subject property is known as the Cadillac Country Club, and is located at 5510 East M-55, in Cherry Grove Township, Wexford County, Michigan. This is an 18-hole golf course with membership and public play. The property consists of 136 acres, a clubhouse and utility building. The golf course has been in existence since 1910.

SUMMARY OF PETITIONER’S CASE

Petitioner presented testimony from its appraiser, Kevin Kernen, MAI. He is primarily a commercial appraiser and has appraised 15-20 golf course properties. He is licensed in the state of Michigan as well as approximately a dozen other states. Based on his education and experience, the Tribunal accepted Mr. Kernen as an expert real estate appraiser.

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

- P-1: Appraisal Report prepared by Kevin Kernen.
- P-2: Aerial Photograph of Cadillac Country Club.
- P-3: Aerial Photograph of Reddeman Farms Golf Course.
- P-4: Aerial Photograph of Cadillac Country Club.
- P-5: Aerial Photograph of Lenawee Golf Course.
- P-6: Aerial Photograph of Charlevoix Country Club.

P-7: Aerial Photograph of Forest Dunes Golf Club.

Kernen describes his initial research which included publically available information regarding the subject assessment history, the subject golf course and the general golf course market. Sources for golf course information and data included the Society of Golf Course Appraisers, the National Golf Foundation as well as prior golf course appraisal reports.<sup>1</sup>

Kernen describes the improvements to the golf course and notes that the property is 136.21 acres. The subject has been in existence since 1910, and was originally designed as a 9-hole golf course. The clubhouse was constructed in 1974, with 3,000 square feet including a snack shop, eating area, pro shop and manager's office. Kernen contends that the building and course layout are pretty basic. The property also includes two small maintenance buildings, but golf carts are stored in a basement area below the clubhouse.<sup>2</sup>

Kernen's market analysis starts with the identification of 8 golf courses in the area. He differentiates the subject's location to those courses that are proximate to the Great Lakes. He contends the golf course industry has become over-built in the past 20 years.<sup>3</sup> Research through the Golf Foundation indicates there has been a conversion of private country clubs to public daily-fee use. Further, golfing trends over the past 5-10 years indicate closures of 150 golf courses nationwide per year with the construction of 15 new courses per year which results in a net loss.<sup>4</sup>

Kernen asserts his highest and best use analysis supports the conclusion that the subject is a public daily-fee golf course.<sup>5</sup> Regarding valuation methodologies, Kernen states, "Well, I considered all three traditional approaches, so the ---the cost approach, the sales-comparison

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<sup>1</sup> Tr. Day 1, 19-20.

<sup>2</sup> Tr. Day 1, 23-29.

<sup>3</sup> Tr. Day 1, 35-36.

<sup>4</sup> Tr. Day 1, 38-39.

<sup>5</sup> Tr. Day 1, 41-45 and Petr.'s Ex. 1, 34-35.

approach, and the income-capitalization approach.”<sup>6</sup> He believes the income approach is the main driver because it gauges the actions of investors in the acquisitions of golf course properties. The sales comparison approach was developed as a check on reasonableness to the income approach. The cost approach was not meaningful for this appraisal assignment because of the difficulty in quantifying the three forms of depreciation (physical, functional and external). Further, what people are paying for golf courses is not commensurate with what it costs to invest or build them.<sup>7</sup>

Kernen points to the various components of his income analysis including the determination of greens fees, rack rates, 18-hole equivalence for annual golf starts, annual rounds of golf, food/beverage income, golf shop revenue and miscellaneous income to arrive at an effective gross income (EGI). The expense analysis covers payroll, repairs/maintenance, utilities and golf carts as a reserve item. He further believes the useful life of a golf cart is 5 years and new carts have a cost of \$3,700 each, resulting in golf cart reserves of \$35,000 per year.<sup>8</sup> Kernen concludes to a net operating income (NOI) and determines a capitalization rate from market derived capitalization rates, investor surveys and the band of investment methodology.<sup>9</sup> He points out the need to tax load the capitalization rate, to then apply to the stated NOI, which results in the going-concern value for the subject property. Kernen asserts one must account for and deduct the personal property (aka, furniture, fixtures and equipment – FF&E) and intangibles to then arrive at the conclusion of value for the subject’s real property in this tax appeal matter.<sup>10</sup>

Regarding the sales comparison approach, Kernen contends there are a lot of factors in order to quantify adjustments. Nonetheless, he analyzed comparable sales of private, semi-

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<sup>6</sup> Tr. Day 1, 48.

<sup>7</sup> Tr. Day 1, 48-53.

<sup>8</sup> Tr. Day 1, 97-100.

<sup>9</sup> Tr. Day 1, 114-119.

<sup>10</sup> Tr. Day 1, 125-129.

private and public courses in the state of Michigan to derive a price per hole as a unit-of-comparison. He points out that these golf properties reflect going-concern sale prices. Again, he claims this approach is just a reasonableness check for his income approach.

Kernen contends the reconciliation of market value for 2015 and 2016 is based on the consideration of all three approaches to value, but concludes to the income approach of \$276,000 for each year under appeal.

Kernen acknowledges the DuPont settlement, but asserts the majority of changes and improvements to the subject occurred after the relevant tax dates.<sup>11</sup>

#### SUMMARY OF RESPONDENT'S CASE

Respondent presented testimony from G. Ronald Vaughan. Mr. Vaughan has been a resident of Cadillac for 48 years and a member of the Cadillac Country Club for 40 years. In addition, he is a board trustee for Cherry Grove Township. Mr. Vaughan was presented as a fact witness to give testimony regarding the subject golf course as well as various golf courses in the subject area.

Respondent presented testimony from its assessor, Christy Brow. She is employed by Michigan Assessing Service (since 2004), which contracts with municipalities and government units, including Cherry Grove Township. Prior to that employment, she worked in the financial sector for PNC Bank and Washington Mutual Bank. She is currently a Michigan Advanced Assessing Officer (formerly known as a Level 3 Assessor). Based on her education and experience, the Tribunal accepted Ms. Brow as an expert in mass appraisal and assessing.

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

R-1, Tab A: Letter of Transmittal and Conclusion of Value (pp 2-4)

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<sup>11</sup> Tr. Day 1, 137 and Petr.'s Ex. 1, i.

- R-1, Tab B: Table of Contents (pp 5-6)
- R-1, Tab C: Aerial View of Subject Property (pp 7-8)
- R-1, Tab 1: Golf Course Evaluation – Michigan Assessors Association (pp 9-62)
- R-1, Tab D: Cost Approach (pp 63-93)
- R-1, Tab E: Sales Approach (pp 94-114)
- R-1, Tab F: Income Approach (pp 115-138)
- R-1, Tab 2: Cost Approach Support (pp 139-147)
- R-1, Tab G: Subject Property Record Cards for 2014, 2015 and 2016 (pp 149-164)
- R-1, Tab H: Subject Golf Course Website Information (pp 165-166, 169-197)
- R-1, Tab I: Wexford County 2015 Equalization Study (pp 198-209)
- R-1, Tab 3: Comparable Sales Support (pp 355-357)
- R-1, Tab K: Reddeman Farms Golf Course Website Information (pp 358-366)
- R-1, Tab L: Genesee Valley Meadows Golf Course Website Information (pp 367-370)
- R-1, Tab M: Links at Gateway Golf Course Website Information (pp 372-375)
- R-1, Tab N: A-Ga-Ming Golf Resort Website Information (pp 376-380)
- R-1, Tab O: Pleasant Hills Golf Course Website Information (pp 381-391)
- R-1, Tab P: Rattle Run Golf Course Website Information (pp 392-397)
- R-1, Tab 4: Income Approach Support (pp 612-619)
- R-1, Tab S: Financial Statements dated December 31, 2013 (pp 620-631)
- R-1, Tab T: Financial Statements dated December 31, 2014 and 2015 (pp 632-640)
- R-1, Tab U: 2012, 2013 and 2014 Subject Tax Returns (pp 641-754)
- R-1, Tab 5: Michigan Tax Tribunal Decisions (pp 755-799 and 811-851).
- R-2: Property Record Cards (pp 4-10).
- R-3: Property Record Card, 2017 Estimated TCV for Interlochen Golf Course (pp 1-6)
- R-4: DuPont Imprelis Claims to Cadillac Country Club dated November 25, 2014 (pp 1-4)

Respondent's 1<sup>st</sup> witness described the playability and characteristics of numerous courses including Treetops, Boyne, Manistee, Tawas, West Branch, Grand Rapids and Interlochen.<sup>12</sup> Vaughan further described the membership categories for the Cadillac Country Club and as a member he plays the course anytime he wants without first checking in. All non-members must first check-in, but Vaughan notes there is no ranger or starter to regulate pace of place from the 1<sup>st</sup> tee box for members. Based on the year round recreation, Vaughan contends Cadillac is a resort area with golf, watersports, skiing and camping.

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<sup>12</sup> Tr. Day 1, 215-217, 222 and 225.

Respondent's 2<sup>nd</sup> witness, Christine Brow, township assessor, described the subject golf course improvements, golf memberships and the DuPont settlement.<sup>13</sup> She contends Cadillac is a resort area. "Cadillac is the largest commercial hub between Mount Pleasant and Traverse City."<sup>14</sup>

Brow believes the highest and best use of the subject property is as a "public daily fee or a combination of a public daily fee [and] membership course."<sup>15</sup>

Respondent considers and develops all three approaches to value in the analysis of the subject golf course. The cost approach was developed on a mass appraisal basis with strict adherence to State Tax Commission (STC) guidelines. In turn, Brow relies on land sales, economic conditions factor (ECF) and multipliers derived from the Wexford County 2015 equalization study.<sup>16</sup> Regarding the sales comparison approach, Brow considered various sales and then drilled down to 7 specific sales for a comparative analysis. She uses a 30-mile radius in the search of golf courses.<sup>17</sup> She arrives at a per hole rate (on a straight average) of \$45,000 and a straight average per acre rate of \$5,192.<sup>18</sup> Regarding the income approach, Brow reviewed Petitioner's revenues and expenses to arrive at a net operating income. Brow asserts her capitalization rate analysis was based on research of other appraisal reports and internet sources. She then developed a capitalization rate to arrive at a conclusion of value. More specifically, Brow asserts her income valuation analysis is based on 1) actual income, 2) maximum number of memberships, and 3) an industry standard fee for a round of golf.<sup>19</sup> She contends a separate income analysis must be made for each of these elements. "In the course given by the State Tax

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<sup>13</sup> Tr. Day 2, 20-24.

<sup>14</sup> Tr. Day 2, TR, pp 25-28.

<sup>15</sup> Tr. Day 2, 87, 128, 150.

<sup>16</sup> Tr. Day 2, 39, 90-91, 98-103.

<sup>17</sup> Tr. Day 2, 127.

<sup>18</sup> Tr. Day 2, 92-95.

<sup>19</sup> Respt.'s Ex. 1, Tab 4, 613 and Tr. Day 2, 164.

Commission, no. You should not mix the information when developing your income approach.”<sup>20</sup> Brow received Petitioner’s 2015 tax returns but did not amend the indication of value from the income approach.

Respondent relies on an average of the three approaches for a reconciled conclusion of value.

#### FINDINGS OF FACT

1. The subject property is located at 5510 East M-55, Cherry Grove Township, and within Wexford County.
2. The subject parcel code number is 2110-12-3101 and is zoned RR, Resort Residential and AR, Agricultural Residential.<sup>21</sup>
3. The subject site consists of approximately 136 acres.
4. This tax appeal matter involves the real property for the subject property. In other words, this tax appeal matter does not involve the going-concern value of the subject property.<sup>22</sup>
5. This tax appeal matter involves a singular property and not a “universe of properties.”
6. The trend of golf courses in the state of Michigan over the past 5-10 years has become over-built.<sup>23</sup>
7. Petitioner describes the subject course as flat with fairways running side-by-side.<sup>24</sup> Respondent similarly describes the subject, but states the course is challenging by virtue of large trees with “spreading branches.”<sup>25</sup>
8. The subject consists of a 3,000 square foot clubhouse that has a snack bar/eating area, pro shop and manager’s office. The fleet of 40-44 golf carts are stored in a basement area below the clubhouse. In addition, the property includes an equipment shed and a maintenance building.<sup>26</sup>
9. Renovations, repairs and changes were made to the subject improvements after January 1, 2016.<sup>27</sup>
10. Petitioner acknowledges the DuPont settlement in its appraisal report.
11. DuPont settlement money spent from 2012 to 2014 was approximately \$40,000-\$50,000.<sup>28</sup>
12. Approximately \$370,000 was spent on equipment in 2015 for the subject golf course.<sup>29</sup>
13. In testimony, Vaughan admits the clubhouse was a “sieve” and the golf carts were beyond their useful life for December 31, 2014 and December 31, 2015.<sup>30</sup>

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<sup>20</sup> Tr. Day 2, 129-130.

<sup>21</sup> Tr. Day 1, 34 and Petr.’s Ex. 1, 2 and 26.

<sup>22</sup> Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 6<sup>th</sup> ed, 2015), p 102.

<sup>23</sup> Tr. Day 1, 35-39, 149.

<sup>24</sup> Tr. Day 1, 26.

<sup>25</sup> Tr. Day 1, 217.

<sup>26</sup> Tr. Day 1, 27-29, 196, 217.

<sup>27</sup> Tr. Day 1, 24-25, 220, 234-235 and Tr. Day 2, 24.

<sup>28</sup> Tr. Day 1, 139 and Tr. Day 2, 188.

<sup>29</sup> Tr. Day 1, 140-141.

14. Presently, the subject has approximately 180 memberships and the bylaws allow for a maximum of 400 memberships.<sup>31</sup>
15. The Cadillac Country Club does not keep a record of golf rounds played by members.<sup>32</sup>
16. Petitioner's valuation disclosure was submitted in the form of a narrative appraisal report prepared by Kevin Kernen, Certified General Real Estate Appraiser in the state of Michigan.
17. Petitioner's appraiser considered all three approaches to value in this tax appeal matter.<sup>33</sup>
18. Petitioner's appraiser consulted with Alan McColl in gathering information about the subject golf course.<sup>34</sup>
19. Petitioner's appraiser has appraised the Escanaba Country Club, Newberry Country Club, The Dream, The Nightmare, Bay Harbor and the Treetops Resorts golf courses.<sup>35</sup>
20. Petitioner's research included speaking with market participants from the various golf courses that he appraised.<sup>36</sup>
21. In testimony, Petitioner's appraisal report conforms to the fundamental concepts and principles of *The Appraisal of Real Estate* (Chicago: 14<sup>th</sup> ed, 2013).
22. Petitioner's appraisal report includes the income and sales comparison approaches to value for the years under appeal.
23. Petitioner's appraiser did not develop the cost approach because of the difficulty in determining the functional and external obsolescence attributable to the subject property.<sup>37</sup>
24. Petitioner's regional overview includes population, income, household, housing composition, employment composition, unemployment, entertainment/recreation expenditures analysis.<sup>38</sup>
25. Petitioner appraisal report includes a neighborhood analysis.<sup>39</sup>
26. Within Petitioner's appraisal report, the market analysis includes a National Golf Industry Analysis, golf course capitalization rates, golf activity by region, rounds played by region, competitor golf rates and number of rounds per specific Michigan courses.<sup>40</sup>
27. Petitioner's market analysis cites 8 competing golf courses in the subject market area.<sup>41</sup> Respondent also identified the same golf courses in the subject market area.<sup>42</sup>
28. Petitioner's appraisal report concludes to a highest and best as a daily fee public golf course for the subject.<sup>43</sup>
29. Petitioner's sales comparison approach identifies 12 comparable sales to derive a price per hole (as a unit of comparison) for a going-concern value. This approach was developed as a "test of reasonableness" to the income approach.<sup>44</sup>

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<sup>30</sup> Tr. Day 1, 230-231.

<sup>31</sup> Tr. Day 1, 46.

<sup>32</sup> Tr. Day 1, 217, 232.

<sup>33</sup> Tr. Day 1, 48 and Petr.'s Ex. 1, 6.

<sup>34</sup> Tr. Day 1, 104, 145, 198.

<sup>35</sup> Tr. Day 1, 147.

<sup>36</sup> Tr. Day 1, 199.

<sup>37</sup> Tr. Day 1, 51.

<sup>38</sup> Petr.'s Ex. 1, 9-12.

<sup>39</sup> Petr.'s Ex. 1, 15.

<sup>40</sup> Petr.'s Ex. 1, 15-23.

<sup>41</sup> Tr. Day 1, 31 and Petr.'s Ex. 1, 22.

<sup>42</sup> Tr. Day 2, 26.

<sup>43</sup> Petr.'s Ex. 1, 34-35 and Tr. Day 1, 41-45.

30. Petitioner's income approach includes an analysis of effective gross income, operating expenses, reserves, net operating income, an overall capitalization rate, a tax-loaded capitalization rate and a going-concern value. Each element of income analysis includes explanatory narration.<sup>45</sup>
31. Petitioner's income analysis summarized 18 golf course sales for a market derived capitalization rate from three methodologies.<sup>46</sup>
32. Petitioner's income components are market driven and supported. In other words, the subject's proforma analysis is acceptable in valuation theory and practice.<sup>47</sup> Further, Petitioner applied the subject's income and expenses to the market.<sup>48</sup>
33. Petitioner analyzed personal property and intangible value to arrive at a conclusion of value for the subject's real property.<sup>49</sup>
34. Petitioner's appraiser received additional information regarding actual rounds played at the subject golf course after the submission of his appraisal report. This information was not used by Kernan, nor did this information change his analysis or conclusions of value.<sup>50</sup>
35. Respondent submitted a valuation disclosure prepared by Christy Brow.
36. Christy Brow is the assessor for Cherry Grove Township. She is a Michigan Advanced Assessing Officer (MAAO) formerly known as a Level 3 Assessor.
37. In testimony, Brow admitted the last time she viewed the interior of the subject improvements was 2006.<sup>51</sup>
38. In testimony, Respondent's assessor states, "Our townships are relatively small."<sup>52</sup>
39. Respondent's valuation disclosure includes all three approaches to value for the years under appeal.
40. Respondent relied on the Wexford County 2015 equalization sales study for the economic conditions factor (ECF) and multipliers for the mass appraisal cost approach.<sup>53</sup>
41. Respondent's equalization study states,  
  
"The above values are strictly guidelines and may vary according to market data and factors in different areas. Judgment must be used when applying the above schedule to any individual parcel. If this schedule is used by anyone other than the Equalization Department it is done so by their acceptance and becomes their responsibility."<sup>54</sup>
42. Respondent relies on cost figures from the State Tax Commission and admits that the cost manual was last updated in 2003, but certain cost sections have been periodically updated. Brow was unable to recall when and which sections were updated.<sup>55</sup>

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<sup>44</sup> Petr.'s Ex. 1, 37-39.

<sup>45</sup> Petr.'s Ex. 1, 41-52.

<sup>46</sup> Petr.'s Ex. 1, 49 and Tr. Day 1, 114-120.

<sup>47</sup> Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 14<sup>th</sup> ed, 2013), Chapters 21 and 22.

<sup>48</sup> Tr. Day 1, 60, 73 and 207.

<sup>49</sup> Petr.'s Ex. 1, 54-56, 128-129.

<sup>50</sup> Tr. Day 1, 65-69.

<sup>51</sup> Tr. Day 2, 246.

<sup>52</sup> Tr. Day 2, 31-32.

<sup>53</sup> Tr. Day 2, 39, 91, 99, 255.

<sup>54</sup> Respt.'s Ex. 1, Tab I, 199.

<sup>55</sup> Tr. Day 2, 178-180.

43. Respondent's sales comparison approach is based on a grouping of golf course sales that were not adjusted.<sup>56</sup> The indication of value is based on a straight-line average of the unadjusted sale prices.<sup>57</sup>
44. In testimony, Respondent's assessor was unable to specifically name the sources utilized in her sales comparison approach.<sup>58</sup>
45. Regarding its income approach, Respondent's assessor states, "Using the State Tax Commission regulations and guidelines I went through their revenue and expenses."<sup>59</sup>
46. Respondent's assessor utilized an actual income based on a maximum membership as an "industry standard."<sup>60</sup>
47. Respondent's assessor assumes a maximum of 350 golf memberships for the subject property.<sup>61</sup>
48. Respondent's assessor utilizes 13,500 rounds of golf per year (as an industry standard) in her income analysis.<sup>62</sup>
49. In testimony, Respondent's assessor states the subject's actual income and memberships are relevant for only the income analysis and not for the cost or sales comparison approaches.<sup>63</sup>
50. Respondent's assessor does not believe that personal property (FF&E) needs to be analyzed in the sales comparison approach.<sup>64</sup>
51. Respondent's assessor was unable to name the specific sources for her capitalization rate conclusions.<sup>65</sup> Moreover, she did not verify data or make a record of her capitalization rate analysis.<sup>66</sup>
52. In testimony, Respondent's assessor's actual income analysis did not include a breakdown for her calculations.<sup>67</sup> Brow states, "My calculations aren't in here. Just my final conclusion."
53. In testimony, Respondent's assessor does not know the populations for Cherry Grove Township or the city of Cadillac. The assessor admits Cadillac is smaller than Traverse City, Charlevoix and Petoskey.<sup>68</sup>
54. In testimony, Respondent's assessor admits that personal property (furniture, fixtures, equipment) and intangible property must be subtracted from the going-concern value of the property.<sup>69</sup>

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<sup>56</sup> Tr. Day 2, 200.

<sup>57</sup> Tr. Day 2, 92 and Respt.'s Ex. 1, Tab 3, 356-357.

<sup>58</sup> Tr. Day 2, 185-186.

<sup>59</sup> Tr. Day 2, 106.

<sup>60</sup> Tr. Day 2, 124-125.

<sup>61</sup> Tr. Day 2, 164-166.

<sup>62</sup> Tr. Day 2, 169.

<sup>63</sup> Tr. Day 2, 152.

<sup>64</sup> Tr. Day 2, 223.

<sup>65</sup> Efforts to borrow, use and/or apply others' professional opinions, analysis and conclusions has no place in valuation practice and theory. The very foundation in the valuation of a singular property is the responsibility to defend and support one's own opinions, analysis and conclusions.

<sup>66</sup> Tr. Day 2, 111-115.

<sup>67</sup> Tr. Day 2, 152-153, 171, 176, 187, 189-190, 192.

<sup>68</sup> Tr. Day 2, 147-148.

<sup>69</sup> Tr. Day 2, 159-160.

55. In testimony, Respondent's assessor admits that she did not conclude to a value for the subject's real property. In other words, her conclusion of value is a going-concern value.<sup>70</sup>
56. Respondent's reconciliation of its three approaches to value is based on a straight average to arrive at a final conclusion of market value for the subject property.<sup>71</sup>

### APPLICABLE 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.<sup>72</sup>

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. . . .<sup>73</sup>

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.<sup>74</sup>

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value' . . . are synonymous."<sup>75</sup>

"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."<sup>76</sup> The Tribunal is not bound to accept either of the parties' theories of valuation.<sup>77</sup> "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."<sup>78</sup> In that regard, the

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<sup>70</sup> Tr. Day 2, 159-160.

<sup>71</sup> Tr. Day 2, 129. See also Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 14<sup>th</sup> ed, 2013), p 642.

<sup>72</sup> See MCL 211.27a.

<sup>73</sup> Const 1963, art 9, sec 3.

<sup>74</sup> MCL 211.27(1).

<sup>75</sup> *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

<sup>76</sup> *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

<sup>77</sup> *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

<sup>78</sup> *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

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.”<sup>79</sup>

A proceeding before the Tax Tribunal is original, independent, and *de novo*.<sup>80</sup> The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”<sup>81</sup> “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”<sup>82</sup>

“The petitioner has the burden of proof in establishing the true cash value of the property.”<sup>83</sup> “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.”<sup>84</sup> 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.”<sup>85</sup>

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.<sup>86</sup> “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”<sup>87</sup> 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.<sup>88</sup>

### CONCLUSIONS OF LAW

Petitioner developed and analyzed the income and sales comparison approaches to value. Respondent developed and analyzed all three approaches to value. Petitioner’s appraiser was

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<sup>79</sup> *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

<sup>80</sup> MCL 205.735a(2).

<sup>81</sup> *Dow Chemical Co v Dep’t of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

<sup>82</sup> *Jones & Laughlin Steel Corp*, 193 Mich App at 352-353.

<sup>83</sup> MCL 205.737(3).

<sup>84</sup> *Jones & Laughlin Steel Corp*, 193 Mich App at 354-355.

<sup>85</sup> MCL 205.737(3).

<sup>86</sup> *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).

<sup>87</sup> *Jones & Laughlin Steel Corp*, 193 Mich App at 353.

<sup>88</sup> *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984).

charged with determining the market value of the subject property for the 2015 and 2016 years under appeal. Respondent was charged with defending the assessments for the subject property for those years under appeal.

As noted in the extensive Findings of Fact, Respondent's documentary and testimonial evidence has inconsistencies, contradictions and misrepresentations. Specifically, Respondent's steadfast adherence to the State Tax Commission guidelines for mass appraisal is commendable, but misplaced for the valuation of a single property. This tax appeal matter focuses on a singular property and not on a universe of properties in uniformity. Reliance on an assessor's educational manual for the valuation of golf courses, in general, is a broad exercise for students and attendees, but is unpersuasive in the specific analysis of the subject property. This educational manual for assessors was not applied to the subject property as Respondent's assessor was unable to recall its date of publication or the date it was utilized in a classroom setting.<sup>89</sup> Next, the reliance on a county equalization study is equally broad in scope to the analysis and application to the subject property. More specifically, the development of a land sales study, an ECF and multipliers was identified as the county's work and care should be taken in the use of the overall study. Cogent testimony was lacking for the details of this sales study which was completed by someone other than the assessor. Equally troubling is the 2003 cost manual with unconfirmed and unspecified updates relied upon by Respondent. Presenting excerpts from a cost manual is not the equivalent of actually showing the cost calculations specifically applied to the subject improvements. Testimony merely identifying a cost manual and property record cards in conjunction with deference to the STC did not result in cost details. For these reasons,

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<sup>89</sup> Respondent's "*Golf Course Evaluation*" from the Michigan Assessors Association may loosely be construed as a learned treatise in the realm of mass appraisal but was nonetheless not applied in the same light as the noted treatise *The Appraisal of Real Estate* (Chicago: 14<sup>th</sup> ed, 2013) from the Appraisal Institute for the analysis and valuation of a singular property.

Respondent's mass appraisal cost approach is given no weight or credibility in the determination of market value for the subject property.

Respondent sets forth sales data for the proposition of a sales comparison approach. The missing link between this golf course data and a comparative methodology is analytical adjustments. The summary reference to this data is not the equivalent of comparative analysis. Respondent's twelve properties are located in Michigan; website print-outs were included for six out of the 12 properties. Further, a straight-line average was derived from seven specific sales for price per acre and price per hole. Overall, the data lacks necessary and important information for sufficient analysis. Again, identification of these properties did not result in an application, an analysis or adjustments to the subject property. The sales amount to raw, unadjusted, unapplied data relative to the subject property. Conclusory testimonial statements giving most weight to a particular sale were confusing and were further diminished by glib assessors' comments (or the lack of explanatory narration) within Respondent's golf course sales.<sup>90</sup> The lack of data familiarity or verification does not bolster the reasons for the use of any particular comparable sales data. For these reasons, Respondent's unadjusted sales as well as the averaging of units of comparison are insufficient to arrive at an independent determination of market value for the subject property.<sup>91</sup>

Next, Respondent's income approach lacks the necessary analysis, application and support to the subject property. Separate entries based on actual golf course income, maximum number of memberships and an industry standard for the annual number of rounds is not meaningful to an analytical process.<sup>92</sup> The initial step in obtaining the subject's income is not the last stop in the determination of the subject income. A proper market analysis of the subject

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<sup>90</sup> Respt.'s Ex. 1, Tab 3, 356-357 and Tr. Day 2, 195.

<sup>91</sup> Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 14<sup>th</sup> ed, 2013), p 394.

<sup>92</sup> Respt.'s Ex. 1, Tab 4, p 613.

income is the determination of the subject income as being commensurate with the given market. To merely settle on the subject's actual income without validation from the subject market is not a true analysis. Respondent's estimation of income for 2015 was not supported by income from other golf course properties. Next, utilizing the maximum number of memberships was not supported or justified by evidence on the record. To the contrary, the recent history of memberships demonstrates a reasonable basis for a trend analysis.<sup>93</sup> Reliance was placed outwardly on the retrieval of an "industry standard" annual golf rounds which is not the same as a market analysis.<sup>94</sup> More specifically, searching for a national benchmark to apply to the subject is different than relating the subject's golf rounds to market competition within the state. Again, an alleged "due diligence" was not corroborated by testimonial or documentary evidence. Vague references to articles, as well as the STC manual, are not more persuasive than the conventional application of an income analysis.<sup>95</sup> Lastly, Respondent's indication of value from the income approach based on a going-concern value stops significantly short of the green as this tax appeal matter involves the value of the subject's real property. For these reasons, Respondent's income approach is given no weight or credibility in the determination of market value for the subject property.

Petitioner's development and communication of a sales comparison approach was only rendered on the basis as a "check of reasonableness" to the income approach. The limitations of a comparative analysis for a golf course are persuasive given the difficulties in quantifying adjustments. Further, Petitioner acknowledges each comparable sale is based on a going-concern

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<sup>93</sup> Tr. Day 2, 21, 137, 164-166.

<sup>94</sup> Appraisal Institute, *The Dictionary of Real Estate Appraisal*, (Chicago: 6<sup>th</sup> ed, 2015), p 139.

<sup>95</sup> Tr. Day 2, 170-172, 203. All real estate markets are not the same and suggests a predetermination in analysis which is contrary to valuation practice and theory related to market analysis. The belief that "mixing and matching" is inappropriate underscores the lack of knowledge and understanding in real estate valuation. Classroom examples from the STC manual for golf course income is not the equivalent of actual market derived data applied to the subject property.

value. Petitioner stopped short of providing customary write-ups but denotes NOIs, capitalization rates, and gross income multipliers (GIM) for 4 out of the 12 comparable sales. In its final analysis and reconciliation, Petitioner places no weight on this approach and as such there is insufficient detail and analysis from this approach towards the Tribunal's determination of market value for the subject property.

Petitioner was able to explain and provide documentation for the income approach. Kernan analyzed the subject's historical revenues and expenses and then applied requisite components to the market. In other words, gross/net income, expenses, reserves, net operating income, capitalization rates, FF&E were analyzed from the market. Each component of the income analysis was given proper testimony and explanatory narration showing adequate market support. Specific comparable sales provided market indications of net operating income, capitalization rates and gross income multipliers (GIMs). Further, Petitioner presented market derived capitalization rates, investor surveys and band of investment methodologies for its capitalization rate conclusion. No attempt was made to isolate the subject's historical data from the relevant market in order to render an indication of *market value* for the subject property. Moreover, Petitioner did not stop at the going-concern value, but analyzed personal property and intangible property to then arrive at a value for the real property which is the focus of this tax appeal matter. Therefore, Petitioner's income approach is the most reliable indication of market value for the subject property.

The Tribunal finds that Petitioner was able to show that the subject's real property was over-assessed for the tax years under appeal. The extensive Findings of Fact not only focus on Petitioner's detailed evidence, but on Respondent's insufficient evidence. As such, and in light of the above, the Tribunal finds that Petitioner has succeeded in meeting its burden with

competent evidence on the issue of true cash value, assessed value, and taxable value. Petitioner has provided credible documentary evidence and testimony for the 2015 and 2016 tax years at issue and, as such, the Tribunal finds Petitioner's data within the income approach is sufficient to arrive at an independent determination of value.

### JUDGMENT

IT IS 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. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have

been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 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, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, and (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%.

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

#### APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.<sup>96</sup> Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.<sup>97</sup> A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof

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<sup>96</sup> See TTR 261 and 257.

<sup>97</sup> See TTR 217 and 267.

demonstrating that service must be submitted with the motion.<sup>98</sup> Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.<sup>99</sup>

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an “appeal by right.” If the claim is filed more than 21 days after the entry of the final decision, it is an “appeal by leave.”<sup>100</sup> A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.<sup>101</sup> The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.<sup>102</sup>

By Marcus L. Abood

Entered: April 13, 2017

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<sup>98</sup> See TTR 261 and 225.

<sup>99</sup> See TTR 261 and 257.

<sup>100</sup> See MCL 205.753 and MCR 7.204.

<sup>101</sup> See TTR 213.

<sup>102</sup> See TTR 217 and 267.