

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

Fruitport Golf Center, LLC,
Petitioner,

v

MTT Docket No. 14-004014

Fruitport Township,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Fruitport Golf Center, LLC, appeals ad valorem property tax assessments levied by Respondent, Fruitport Township, against Parcel No. 61-15-127-300-0003-00 for the 2014 and 2015 tax years. Paul L. Winter, Attorney, represented Petitioner, and Bradley J. Fisher, Attorney, represented Respondent.

A hearing on this matter was held on February 18 and 19, 2016. Petitioner's witnesses were Richard Peters, majority owner, and Daniel Tomlinson, appraiser. Respondent's witnesses were Justin George, appraiser, and Brian Werschem, Township Supervisor.

The subject property is 22.57 acres utilized as a golf driving range, with a retail and clubhouse, golf tee shelter, and two ancillary sheds.

The parties' contentions of true cash value (TCV), state equalized value (SEV), and taxable value (TV) for each parcel and tax year at issue as established by the Board of Review:

Parcel No. 61-15-127-300-0003-00

	Petitioner			Respondent		
Year	TCV	SEV	TV	TCV	SEV	TV
2014	\$230,000	\$115,000	\$115,000	\$955,000	\$477,500	\$477,500
2015	\$230,000	\$115,000	\$115,000	\$1,202,400	\$601,200	\$485,140

Respondent's revised contentions:

Parcel No. 61-15-127-300-0003-00

	Petitioner			Respondent		
Year	TCV	SEV	TV	TCV	SEV	TV
2014	\$230,000	\$115,000	\$115,000	\$945,000	\$472,500	\$472,500
2015	\$230,000	\$115,000	\$115,000	\$955,000	\$477,500	\$477,500

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash values (“TCV”), state equalized values (“SEV”), and taxable values (“TV”) of the subject properties for the 2014 and 2015 tax years are as follows:

Parcel No. 61-15-127-300-0003-00

Year	TCV	SEV	TV
2014	\$955,000	\$477,500	\$477,500
2015	\$1,202,400	\$601,200	\$485,140

PETITIONER’S CONTENTIONS

Petitioner contends that the parties’ appraisals go in different directions; Petitioner’s appraisal was based on the subject’s R2 zoning with sales comparables including golf courses and other vacant residential land while Respondent’s appraisal looked at the subject as if it was commercial. Petitioner argues that Respondent’s appraisal is a hypothetical valuation that deviates from the current use of the subject.

PETITIONER’S ADMITTED EXHIBITS

- P-1: Appraisal prepared by Daniel J. Tomlinson, MAI (including replacement pages).
- P-2: Land Sale Data for Long Leaf Lane and 144th Street.
- P-3: Land Sale Data for SWC of Spring Lake and Van Wagoner Road.
- P-4: Land Sale Data for SWC of 180th and Hickory Street.
- P-5: Land Sale Data for Dangle and Ellis Roads.
- P-6: Land Sale Data for Leonard and 144th Street.
- P-7: Land Sale Data for Pontaluna Road.
- P-10: Fruitport Township Sanitary Sewer Map District B, April 24, 2009.

PETITIONER’S WITNESSES

Richard J. Peters

Richard J. Peters, majority owner of Fruitport Golf Center, LLC, was Petitioner’s first witness. Peters testified that the subject property was purchased January 2004 for \$1,300,000. The current capital investment is \$2,000,000 to \$2,500,000. The subject property was listed for sale to test the market. The partner has a commercial real estate brokerage company. The listing received no response.

Peters testified that Bob Sorensen, a residential developer, at Eastbrook Homes, opined that the subject was not a big enough property to be attractive.

Daniel J. Tomlinson

Daniel J. Tomlinson, MAI, was stipulated as an expert and testified to the appraisal he prepared. Tomlinson's replacement pages were questioned. He explained the change and omissions. The Tribunal admits the replacement pages.

The subject's highest and best use was considered first. The income from the driving range was found to be marginal, therefore Tomlinson considered an alternative residential as a basis. The subject is located in the northeast quadrant of South Harvey Street. It is adjacent to Fruitport Country Club, a public golf course without a driving range. North on Harvey Street is a variety of commercial developments. Harvey Street is the dividing line for Norton Shores and Fruitport Township.

A residential market analysis was considered with positive trends but not full recovery from the recession. The subject does not have water or sanitary sewer. Therefore, the developable area of the subject goes from a medium density allowed by zoning to low density due to the physical limitation of putting in a septic field on the site.

Based upon the current R-2 zoning, Tomlinson determined that rezoning to commercial would be hypothetical because it did not exist as of the tax dates. No requests to date have been made to rezone the subject property. The master plan does indicate commercial use. However, as a commercial property the front to depth ratio is a restriction, so is the flagpole shape of the lot with no curb cut for the 33 feet fronting on Pontaluna, and 726 feet on Harvey with 1,300 feet depth limits the use. The configuration of the lot where the frontage is less than the depth, limits the configuration of a commercial property, which needs visibility from the road.

A residential development would be speculative as of the tax dates but a developer would purchase and hold for future commercial use. The current use as a driving range is interim.¹

The income approach was developed based on the driving range. The actual income and expenses were considered and reconstructed to exclude mortgage, interest, depreciation and capital expenditures. Some golf courses were considered as similar operations in terms of ratios developed. Tomlinson's operating expense comparable data was generic, without location or an indication that the comparable properties were not similar golf driving ranges but some were identified as profiles of 18-hole daily fee public golf courses. The percentage of property taxes were excluded.

¹ P-1 28, 29.

Income from the driving range, some pro shop, renting for Christmas tree sales, and food operations were considered. Tomlinson compared the actual revenues and expenses with the 12 unnamed comparable properties and resulted in the following: payroll at 45%, repairs and maintenance at 21%, utilities were 9%, insurance was 3% office and miscellaneous was 7%, and advertising was less than 1% for net operating of 85% to 87% for the tax years at issue. The net operating income without taxes was divided by the overall capitalization rate which included the effective tax rate. The overall capitalization rate analyzed 17 golf course sales from 2004 to 2014 which ranged from 8.0% to 16.36%. RealtyRates.com indicated a 12.5% overall rate and that rates have increased over the last five year. The third was a bank-of-investment technique which included an interest rate of 8.77%, amortization of 18 years and 58% loan-to-value ratio which resulted in a range of 10.48% to 15.64%. The overall rate selected was 12.5% with the effective tax rate added for 14.74% and 14.81% overall capitalization rate utilized for the two tax years.

The net operating income of the subject for tax year 2014 is \$25,400 divided by the overall rate of 14.74% is an indicated true cash value of \$170,000 as of December 31, 2013. The operating income for the 2015 tax year did not change, the \$25,400 is divided by the overall rate of 14.81% for a true cash value as of December 31, 2014, of \$170,000.

The sales comparison approach for the subject property was considered. Four sales were used for the two tax years at issue. Three sales were golf courses with a driving range with one sale a miniature golf course. Tomlinson utilized the sale price per acre to determine, after adjustments, that the adjusted sale price for the subject as of December 31, 2013, was \$160,000, and as of December 31, 2014, was also \$160,000.

The cost approach started with sales of vacant land. Tomlinson researched similar land sales in the subject’s area and found that the actions of the buyers and sellers reflect the size and use of the subject property.² Six sales of vacant residential property were considered. They include:

	Subject	Sale 1	Sale 2	Sale 3	Sale 4	Sale 5	Sale 6
Location	Fruitport	Crockery	Spring Lake	Spring Lake	Fruitport	Spring Lake	Fruitport
Sale Price		\$115,000	\$180,000	\$920,000	\$64,900	\$185,000	\$75,000
Sale Date		12-Sep	13-Nov	13-Nov	13-Nov	13-Dec	14-Oct
Acres		10	13.5	92.95	24.75	30	10
Configuration	Irregular	Rectangular	Rectangular	Irregular	Irregular	Irregular	Rectangular

² P-1 at 63.

S P/ Acre		\$11,500	\$13,333	\$9,898	\$2,622	\$6,167	\$7,500
-----------	--	----------	----------	---------	---------	---------	---------

Sales 1-5 were used for the 2014 tax year valuation, Sales 2-6 were selected for the 2015 tax year. Sale 1 was adjusted for market conditions -2%. Sales 1, 2, 3, 5, and 6 were adjusted 5% for location. Sales 1, 2, and 6 were adjusted -5% for size, Sales 3 and 5 were adjusted upward. All of the sales were zoned residential requiring no adjustment. The subject is a rectangle with a 33' easement to Pontaluna Road, making it slightly irregular, Sales 1, 2, and 6 were adjusted upward 5% for rectangular configuration. The resulting land value is \$10,000 per acre or \$230,000 for both tax years at issue.

In the reconciliation, Tomlinson opined that the land value representing the subject as residential represents the existing residential demands as of the valuation dates at issue. The residential vacant land also represents the highest and best use of the subject property.

The individual write-ups for the land sales are not contained in the report. They were brought to the trial as additional evidence.³ The individual write-up contains some additional information, however the verification is unknown. Sale 6 has a bridge, however, it was not in the appraisal or in the additional write-up.

Upon cross-examination, Tomlinson was questioned about inconsistencies, or disconnected statements in the appraisal. Errors were made in determining percentage of population income bracket when referencing golf participation, and incorrectly labeling population and charts. The sale of the golf course immediately north of the subject was not mentioned or corrected after the appraisal exchange. The improved Sales 1 and 3 were foreclosures and may have been distressed sales based on rebuttal exhibits. Sale 2 with 50 acres was a small golf course and driving range in Flint. Vacant land Sale 1 was discovered after purchase that 50% of the property was wetlands. Vacant Land Sale 2 is used for hunting and a single family residence with 92.95 acres and Vacant Land Sale 4 was a foreclosure that was on the market for 1,000 days with deferred maintenance.

The access to sewer was a large contention, as Tomlinson spoke to Norton Shores. There is sewer available across the street from the subject. He opined that without sewer the subject's development would be limited.

³ P-2-P-7.

RESPONDENT'S CONTENTIONS

Respondent contends that this appeal is basically a highest and best use case, Petitioner's valuation of the subject as residential is contrary to the listing of the subject, the listings of neighboring properties, and the master plan for the subject.

RESPONDENT'S ADMITTED EXHIBITS

- R-1: Appraisal prepared by Justin George.
- R-2: 2002 Future Land Use Map Aerial Photo.
- R-3: 2015 Future Land Use Map Aerial Photo.
- R-10: Comparable #1 – Monroe, MI.
- R-11: Comparable #2 – Flint, MI.
- R-12: Comparable #3 – Clio, MI.
- R-13: Comparable #4 – Novi, MI.
- R-14: Comparable #5 – Greenville, MI.
- R-15: Property Transfer Affidavit, Fruitport Country Club.
- R-17: City of Norton Shores Zoning Map.
- R-18: Vacant Land Sale #5.

RESPONDENT'S WITNESSES

Brian Werschem

Brian Werschem, Fruitport Township Supervisor and Zoning Administrator, was called as a rebuttal witness. He testified that the current and future land use for the subject property is commercial. When questioned why, he responded:

Because several – two decades ago the entire corridor with the Hile Road being the northern boundary and Pontaluna Road being the southern boundary on both Fruitport and Norton Shores side with the advent of the Lakes Mall and Menards on the Norton Shores side, it was determined that this corridor would be used for commercial use.⁴

Werschem, starting with Hile Road and working south on the zoning map, described the businesses located on both the east (Norton Shores) and west sides (Fruitport Township) of Harvey Street to Pontaluna Road.

The developments along Harvey Street include a redevelopment of Perkins Restaurant which reopened as a Five Guys burger restaurant and mattress store. New developments since 2013 include: Lake Michigan Credit Union, Hometown Pharmacy, Bell Tire, Texas Roadhouse, My Auto Imports Toyota built a new dealership, and Hanson Collision. Qdoba, Verizon

⁴ Tr. at 139, 140.

Wireless, and GameStop strip center were redeveloped between 2013 and 2014, as well as The Surgical Associates. First General Credit Union acquired property but have not started the three-story construction.

The subject property is currently zoned R-3 residential, but because it is commercial zoning on the master plan, a request could be made to rezone as commercial. The subject has a special use permitting commercial use. Rezoning would take from six to nine weeks per Werschem.

The closest sanitary sewer is directly across the street. The City of Norton Shores and Fruitport Township have mutual agreements for both water and sewer. A single system for water is owned between the two entities. There is a history of entering into agreements to assure that sanitary sewer can be provided when requested. The nearest sewer is at the corner of the golf course directly north of the subject property.⁵

Werschem alluded to the golf course just north of the subject property that just recently sold, however, it was objected to and the information was not discussed. He was familiar with Petitioner requesting the 2015 Board of Review to reduce the subject property to \$35,000. One Board of Review member offered \$50,000, but Petitioner left without responding. The Board of Review had the 2015 listing for \$2.5 million. The township owns the property that borders the subject property to the east.

Justin George

Justin George, appraiser, was admitted as an expert and testified as to the appraisal he prepared. He testified that as a certified general appraiser he has been employed by the county for six months. In addition to being an employee of Muskegon County, he also is co-owner of Broersma and Broersma Real Estate Appraisals, and is an attorney. He was prosecuting attorney in Muskegon County, but ventured into commercial real estate January 1998.

In his current position, he has visited every commercial sale that has taken place in the last two and one-half years in Muskegon County. In the previous few years was responsible for 43 commercial real estate appraisals in the county. He explained that he was not engaged to

⁵ Tr. at 164.

defend the assessments. "Assessments have their purpose, but they're not necessarily the best indication of market value. So, absolutely I don't go about defending. I go about trying to determine the true cash value of the subject real estate."⁶

George testified that it is important to consider the uses on both sides of Harvey Street. The majority are commercial uses except for two PUD. One parcel is zoned agricultural, and is currently listed for sale as a commercial property. It is located north of the golf course. He was also aware of the listing for the subject property. The last \$2.25 million listing for the subject expired February 25, 2015. The subject property was listed for sale as a commercial property. The neighboring golf course sold in February 2015 to a developer. It is George's understanding that approximately 80 acres will be developed for commercial use, and the east 40 acres for multiple family residential use. George did not include the sale as a comparable as it had conflicting information on the sale price. The Property Transfer Affidavit indicated \$1,479,368.20. The odd amount raised a red flag, which other issues may be going on with the shares of the property by the owners. It may be attributed to some allocation with real and personal property. George testified that in the final analysis the sale price and any other issues could not be determined, therefore it was mentioned but not utilized as a comparable sale.

George was questioned why the vacant land sale at the northwest corner of Pontaluna and Harvey was not utilized. He responded that although it was 22.04 acres it sold in 2006 and then in 2010, which was prior to the effective tax dates at issue. It sold for \$152,768 per acre without sewer. However, sewer was available immediately to the north of that property. While it is indicative of the market it was not included in the appraisal, as he was not aware of it at the time of the report. The two sales do indicate that the area is in a period of growth.

The highest and best use of the subject property both as vacant and improved is for commercial redevelopment. The use is appropriate from a physical size, the legally permissible is the current zoning and pursuant to "*The Appraisal of Real Estate*, 14th edition, whether or not the reasonable probability of the zoning change would lead to the possibility of greater value."⁷ The subject, although currently zoned residential, has a special use granted for the commercial

⁶ Tr. at 184.

⁷ Tr. at 202.

property. The neighborhood was considered; no residential construction has taken place in the last ten years. The subject property was marketed for sale as commercial. The subject property is master planned for commercial uses, as well as the entire Harvey Street corridor for both sides of the street.

The assessors of both communities were contacted, the master plan was reviewed, and determined the evidence is that the subject is currently used as commercial and would likely be zoned to commercial if requested. The maximally productive use is also commercial. It is not a viable residential property. The only property left with a residential use is north of the golf course and is listed for sale. Its two parcels to the north of the subject. It has a house and out buildings. There is a pending sale on the last remaining residential property. The sale price could not be disclosed, due to a confidentiality agreement, but the purchasers of the golf course intend to use it as part of the commercial redevelopment.

George opined that a single family residential development would be highly unlikely, would not be maximally productive or bring the highest financial return.

The appraisal did not contain a cost approach since the existing improvements would most likely be razed with a redevelopment. An income approach was also determined to be of little assistance in determining true cash value because a potential purchaser would not consider the actual income from the subject as the business is losing money. The value would have been less than \$100,000, which again fed into George's highest and best use. The existing use is an insufficient return on the investment. The sales comparison approach was completed for the subject as vacant commercial property. The five listings are as follows:

Listings	Address	Zoning	Asking \$	Acres	\$/Acre
L-1	6072 S Harvey	R-4	\$399,900	3.94	\$117,618
L-1	2015-89 Sternberg	B-2	\$1,700,000	11.62	\$146,299
L-1	1455 Farr	Ag	\$135,000	2.15	\$62,790
L-4	1575 Hackley	PUD	\$415,000	2.81	\$147,686
L-5	6175 S Harvey	PUD	\$1,294,900	8.63	\$150,046

Sales of larger acreage were limited, therefore some sales were located in other West Michigan communities. The sales were divided in smaller and larger acreages. George also considered the listing of the subject and the listing just north of the golf course. After careful consideration, the following sales were selected as reflective of the subject property:

	Subject	Sale 1	Sale 2	Sale 3	Sale 4	Listing 1
Address	6420 S Harvey	Harvey St	84th St, Byron	168th St Gr Haven	Sternberg	Harvey St
Sale Price	\$2,275,000	\$950,000	\$7,950,000	\$350,000	\$300,000	\$419,900
Sale Date	Expired Listing	13-Mar	14-Jul	14-Aug	15-Feb	Listing
Acreage	22.75	3.15	43.13	15.00	2.50	3.40
SP/Acre	\$100,798	\$301,587	\$184,326	\$23,333	\$124,481	\$123,500

The same final sales were selected for both tax years at issue. The properties were adjusted for the difference in market conditions between March 2013 and February 2015; 1% annual adjustment for the closed sales prior to the effective dates and adjusted downward for the subsequent years sales. The two listings were adjusted an additional 30% downward due to the average asking to sale price ratios over the past couple of years. Although the subject is listed as an expired listing on the grid, George afforded it no weight.

The subject is south of the primary commercial hub of the county, ½ mile from the regional mall and ¼ mile from US 31 Expressway, and 1.5 miles to Interstate 96 Expressway. Sales 1, 2, and 4 were in superior locations and adjusted -15 to -30%, Sale 3 was considered inferior and was adjusted upward 25%. The acreage differences were adjusted downward 35% for Sales 1, 4 and L-1 Sale 2 was +10%, Sale 3 was -2%. Sale 2 was adjusted -10% for its inferior topography due to its steep grade. All of the properties had the same highest and best use as the subject and required no adjustment. The subject does not have sewer; Sales 1, 2, and 4 were adjusted -15% for having sewer. The final result is gross adjustments as follows: 80%, 65%, 27%, 65%, and 35%. The adjusted sales as vacant range from \$28,556 to \$100,872 for December 31, 2013, and \$28,844 to \$101,866 for December 31, 2014.

George's final analysis determined that the subject's 22.57 acres would sell for \$43,000 and \$43,500 per acre respectively. The cost of demolition for the existing buildings was estimated at \$25,000. The total true cash value is \$945,000 as of December 31, 2013, and \$955,000 as of December 31, 2014.

FINDINGS OF FACT

1. The subject property is located at 6420 S. Harvey Street, Fruitport Township, Muskegon County, Michigan.
2. The subject property is identified as Parcel No. 61-15-127-300-0003-00.
3. The subject property is classified as commercial and is zoned R-2, Residential District.

4. The current use of the subject is as a driving range.
5. The parties disagree as to the total acreage and gross building area of the subject. Petitioner's expert utilized 22.89 acres, with 3,300 square feet of gross building area. Respondent's expert utilized 22.57 acres, with 5,700 square feet of gross building area.
6. Petitioner's expert did not include the square footage of a semi-covered tee shelter.
7. Both experts prepared appraisals concluding to a true cash value for the subject as of December 31, 2013, and December 31, 2014.
8. Petitioner's appraiser developed the sales comparison approach and income approach as a driving range, as well as a cost approach for the residential land only.
9. Petitioner's appraiser concluded to a final true cash value for each tax year based on the cost approach for the residential land.
10. Petitioner's appraiser determined that the current use of the subject as a driving range is an interim use, with the highest and best use being to hold for future residential development.
11. Petitioner's appraiser included a sales comparison approach that utilized sales of properties that included driving ranges with either golf courses or miniature golf. Petitioner's appraiser concluded to a value as a driving range under the sales comparison approach of \$160,000 for both tax years.
12. Petitioner's appraiser applied an income approach to value the subject as a driving range, concluding to a value under this approach of \$170,000 for both tax years.
13. Petitioner's appraiser utilized a cost approach considering six sales of vacant residential land. Petitioner's appraiser concluded to a value under the cost approach of \$230,000 for both tax years.
14. Respondent's appraiser determined that the highest and best use of the subject is future commercial development.
15. In applying the sales comparison approach, Respondent's appraiser utilized both vacant sales and listings, concluding to a value of \$945,000 for the 2014 tax year and \$955,000 for the 2015 tax year.
16. Respondent's appraiser did not develop a cost approach or an income approach, based on his determination of highest and best use.
17. Both the 2002 and 2015 master plans for the subject property reflect a planned future use of the subject as commercial.
18. As indicated by Brian Werschem, Township Supervisor and Zoning Administrator, the existing improvements or planned improvements along the same corridor as the subject are commercial, including a proposed casino, strip malls, retail stores, offices and restaurants.
19. There were two recent sales; the golf course north of the subject, and the only residential property just north of the golf course. Neither sale was utilized by either party due to issues with allocations, proper sale prices, and non-disclosure of sale prices.
20. The recent sale of the two properties just north of the subject property was for purported commercial development.

CASE 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.⁸

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. . . .⁹

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.¹⁰

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”¹¹

“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.”¹² The Tribunal is not bound to accept either of the parties' theories of valuation.¹³

“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.”¹⁴ In that regard, the Tribunal “may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination.”¹⁵

A proceeding before the Tax Tribunal is original, independent, and de novo.¹⁶ The Tribunal's factual findings must be supported “by competent, material, and substantial

⁸ See MCL 211.27a.

⁹ Const 1963, art 9, sec 3.

¹⁰ MCL 211.27(1).

¹¹ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

¹² *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

¹³ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

¹⁴ *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

¹⁵ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

¹⁶ MCL 205.735a(2).

evidence.”¹⁷ “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”¹⁸

“The petitioner has the burden of proof in establishing the true cash value of the property.”¹⁹ “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.”²⁰ 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.”²¹

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.²² “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”²³ 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.²⁴

Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.²⁵

CONCLUSIONS OF LAW

Highest and Best Use

The highest and best use of the subject property was the one issue that had to be resolved before the Tribunal determines the true cash value. The Appraisal Institute states that an

¹⁷ *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

¹⁸ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

¹⁹ MCL 205.737(3).

²⁰ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

²¹ MCL 205.737(3).

²² *Meadowlanes*, *supra* 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).

²³ *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

²⁴ *Antisdale*, *supra* at 277.

²⁵ See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

appraiser charged with developing a market value opinion must include a highest and best use analysis that identifies “the most profitable, competitive use to which the subject property can be put.”²⁶

In addition to being reasonably probable, the highest and best use must meet four implicit criteria.²⁷

1. The use must be physically possible.
2. The use must be legally permissible.
3. The use must be financially feasible.
4. The use must be maximally productive.

The highest and best use considers the subject property as if vacant and then a separate analysis as improved. Petitioner considered that if the subject property were vacant the highest and best use would be to hold for future residential development. Petitioner’s analysis considered the permitted (legal) uses and determined that due to current zoning residential would be possible. The “as improved” use is the existing use as an interim use. Petitioner’s appraiser incorrectly states that the subject’s existing use as a golf driving range is legally non-conforming and is legally permissible. The subject is currently zoned residential and granted a “non-conforming special-use” for its current use.

Respondent’s appraiser also went through the physical, legal financially feasible and maximally productive use for the subject property. The reasonable conclusion was that it is highly probable that a commercial use would be permitted by the Township upon application.

The Tribunal finds that Respondent’s appraiser did utilize proper techniques in determining the highest and best use of the subject property. The Tribunal finds that the use as a commercial development is financially viable as all of the properties north of the subject on Harvey Street are commercial uses. The last residential property sold to the golf course directly north of the subject. The adjacent golf course and residential property just north of the subject has sold with commercial development for the Harvey Street frontage. The subject property has been utilized as a commercial driving range for, at minimum, the last twelve years. Respondent has established that there is sufficient market demand for a commercial development as the highest and best use of the subject property.

²⁶ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 14th ed, 2013) at 331.

²⁷ *Id* at 335.

TRUE CASH VALUE

Petitioner's appraiser did an income approach based on the premise that a potential buyer would analyze the subject's historical income, expenses and compare them with similar properties to capitalize into an anticipate value. Petitioner relied upon ten unnamed sources for operating expense data for public golf courses with taxes excluded, as well as National Golf Foundation data. The income approach was selected as representative of the subject's current interim use.

Respondent's appraiser considered the income approach, but did not fully develop it. The subject is owner occupied, and research of the multiple listing services revealed no leases for driving range properties. The determination was the ranges do not sell on a capitalized per square foot building rental rate, but rather the basis of the business income or the underlying land value. The property owner's information indicates a net loss for the last four years, resulting in a value below \$100,000. The increase in vacant land sales for commercial redevelopment indicates a higher value as if vacant.

The Tribunal finds that the subject property is not typically traded on a leased basis, and no comparable driving range income and expenses were available. Petitioner's income states that it is a "going concern", however, he fails to deduct any personal property. The income approach in this specific instance is not appropriate for the determination of the true cash value of the subject property.

Petitioner's sales comparison approach for the driving range included properties that were identified as arms-length transactions with no adjustments. However, in testimony it was determined that the comparable Sale 1 in Frenchtown was a bank sale with a driving range, mini golf, and batting cages. Sale 2 is a golf course with driving range, and Sale 3 was also a bank sale, with deferred maintenance and was on the market for 1,000 days. The Tribunal finds that the sales are not indicative of a driving range, less than arm-length, and given no weight.

Petitioner's second sales comparison approach is titled cost approach as it is for the land as if residential. The criteria selected is for low density residential zoning vacant property. The sales were selected with a range from 10 acres to 228 acres. One sale was located in Fruitport Township, with similar acreage, but little else is known about the parcel. The Tribunal notes that the individual write-ups for sales were added at the trial. They were not in the original appraisal for the subject. Having said that, the write-ups lacked any more specificity than found in the

body of the report. The sales were adjusted for location, size, configuration and topography. Sale 1, Crockery Township was found to be 50% wetlands, after the sale. Sale 5, Spring Lake Township was a distress sale. The value of residential property was found to be the highest and best use of the subject property based on Petitioner's appraisal.

The Tribunal finds that Petitioner's appraisal was based on an incorrect highest and best use, therefore, appraisal has the wrong value for the subject property. In addition, the report lacked the underlying data and analysis for the reader to conclude or understand the report in its entirety.

Respondent, after an analysis, determined that the highest and best use of the subject property is for commercial development. The only approach utilized by Respondent was a sales comparison utilizing parcels that were vacant commercial with a range of acreages from 2.5 to 43.13 acres. Shown, but not utilized in the analysis, was the listing for the subject property that expired February 2015 at \$100,798 per acre as a commercial property. Four sales and one listing were utilized by Respondent with three properties located in Fruitport Township. The sales had gross adjustments of 27% to 80%, with the largest for location and exposure. The Tribunal finds that the adjustment percentage is excessive without the supporting data for the adjustment. Although the exhibit R-1 at page 37 is titled Basis for Adjustments, the only basis explained is market conditions. The remainder explains what they are, but not any supporting data for the basis of the percentage adjustment.

Respondent's unadjusted sale prices per acre range from \$23,333 to \$301,587, with the majority at \$123,500, 124,481, and \$184,326 for the largest parcel. The Tribunal finds Respondent's final determination of \$43,000 per acre is conservative for the 2015 tax year at issue. This valuation is appropriate for the 2014 tax year. The indicated increase on the tax roll at \$53,275 per acre for the 2015 tax year is more reflective of the commercial sales and listings as presented by Respondent for that year.

Respondent's sales were commercial. The one listing was the residential property located just north of the golf course, (which was also just sold). Neither the golf course, nor the residential property (also purchased by the golf course) sale prices were available. Listing 1 was included in the appraisal and its use will be commercial development as testified to by

Werschem.²⁸ The golf course directly north of the subject is also for commercial development. The indication is that a residential development will not be the highest and best use of the subject property. Although, Respondent's final result is conservative, the Tribunal finds that it is the only analysis of the subject property as a commercial development which is the highest and best use. The analysis by Respondent's expert, without consideration of the unsupported adjustments, supports the true cash value based on Respondent's original assessments for both tax years.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner fails to prove that the subject property is assessed in excess of 50% of the market value. The subject property's TCV, SEV, and TV for the tax year(s) at issue are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that the property's state equalized and taxable values for the tax year(s) at issue are AFFIRMED 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

²⁸ Tr. at 146.

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%, and (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%.

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

APPEAL RIGHTS

If you disagree with the 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.²⁹ 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.³⁰ 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 demonstrating that service must be submitted with the motion.³¹ Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.³²

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."³³ A copy of the

²⁹ See TTR 261 and 257.

³⁰ See TTR 217 and 267.

³¹ See TTR 261 and 225.

³² See TTR 261 and 257.

³³ See MCL 205.753 and MCR 7.204.

claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.³⁴ The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.³⁵

Entered: April 19, 2016

By: Victoria L. Enyart

³⁴ See TTR 213.

³⁵ See TTR 217 and 267.