

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

Country Club of Detroit,
Petitioners,

v

MTT Docket No. 301215

City of Grosse Pointe Farms,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

This case is an appeal of the true cash, assessed and taxable values established for the 2003, 2004, and 2005¹ tax years by the City of Grosse Pointe Farms (“Respondent”) under the general property tax act for three parcels of real property (the “subject property”) owned by Country Club of Detroit, (“Petitioners”). The subject property is located at 200 Country Club Drive, Grosse Pointe Farms in Wayne County, Michigan.

A hearing was held on October 15, 16, 17, and 18, 2007 before then Tribunal Member Patricia Halm. Petitioners were represented by attorneys Michael B. Shapiro and Jason Schian Conti, from the law firm of Honigman Miller Schwartz and Cohn, LLP.

Respondent was represented by attorney James F. Mauro, from the law firm of Dickinson Wright, PLLC. Ms. Halm’s term as a member of the Michigan Tax Tribunal

¹ Value as of tax day, December 31, 2002, December 31, 2003, and December 31, 2004.

ended on July 31, 2011. Pursuant to TTR 140, this matter was, on August 1, 2011, assigned to this member for decision.

Witnesses appeared on behalf of both parties. Petitioner’s witnesses are: Gary Evanko, CMAEIV, Thomas D. Kitz, MAI, Timothy O’Donnell, CMAEIII, and Cleatus Spacht, CPA. Respondent’s valuation witness was Terrell Oetzel, MAI, Bruce J. Dunn, CPA was a rebuttal witness.

Petitioner’s 2003, 2004 and 2005 True Cash Values (TCVs), Assessed Values (AVs) and Taxable Values (TVs) are:

38-002-01-0087-001 Petitioner

Year	TCV	SEV	TV
2003	\$342,000	\$171,000	\$171,000
2004	\$342,000	\$171,000	\$171,000
2005	\$342,000	\$171,000	\$171,000

38-002-01-0088-000 Petitioner

Year	TCV	SEV	TV
2003	\$6,000	\$3,000	\$3,000
2004	\$6,000	\$3,000	\$3,000
2005	\$6,000	\$3,000	\$3,000

38-002-01-0085-001 Petitioner

Year	TCV	SEV	TV
2003	\$5,652,000	\$2,826,000	\$1,413,000
2004	\$5,652,000	\$2,826,000	\$1,413,000
2005	\$5,652,000	\$2,826,000	\$1,413,000

The subject property’s 2003, 2004 and 2005 TCVs, AVs and TVs as determined by Respondent’s assessor and as set forth in Respondent’s Prehearing Statement are:

38-002-01-0087-001

TCV	SEV	TV
\$664,400	\$332,200	\$290,175
\$731,000	\$365,500	\$296,849
\$731,000	\$365,500	\$303,676

38-002-01-0088-000

TCV	SEV	TV
\$14,200	\$7,100	\$6,154
\$15,600	\$7,800	\$6,295
\$15,600	\$7,800	\$6,439

38-002-01-0085-001

TCV	SEV	TV
\$11,100,000	\$5,550,000	\$4,835,540
\$12,138,600	\$6,069,300	\$4,946,757
\$12,138,600	\$6,069,300	\$5,060,532

Respondent's revised contentions of true cash value based on the appraisal are:

38-002-01-0087-001

Appraisal

Year	TCV	SEV	TV
2003	\$733,876	\$366,938	\$290,175
2004	\$741,000	\$370,500	\$296,849
2005	\$741,000	\$370,500	\$303,676

38-002-01-0088-000

Appraisal

Year	TCV	SEV	TV
2003	\$12,874	\$6,437	\$6,154
2004	\$13,000	\$6,500	\$6,295
2005	\$13,000	\$6,500	\$6,439

38-002-01-0085-001

Appraisal

Year	TCV	SEV	TV
2003	\$12,128,250	\$6,064,250	\$4,835,540
2004	\$12,246,000	\$6,123,000	\$4,946,757
2005	\$12,246,000	\$6,123,000	\$5,060,532

FINAL VALUES

The Tribunal finds that the true cash, state equalized, and taxable values are:

38-002-01-0087-001

Year	TCV	SEV	TV
2003	\$502,026	\$251,013	\$251,013
2004	\$504,913	\$252,456	\$252,456
2005	\$504,913	\$252,456	\$252,456

38-002-01-0088-000

Year	TCV	SEV	TV
2003	\$10,730	\$5,365	\$5,365
2004	\$10,775	\$5,388	\$5,388
2005	\$10,775	\$5,388	\$5,388

38-002-01-0085-001

Year	TCV	SEV	TV
2003	\$8,387,245	\$4,193,622	\$4,193,622
2004	\$8,384,312	\$4,192,156	\$4,192,156
2005	\$8,384,312	\$4,192,156	\$4,192,156

The Tribunal allocated the true cash value each year based on the same percentage allocation as the assessment.

PETITIONER'S CASE

Petitioner called Gary Evanko, Michigan Master Assessing Officer (IV), as its first witness. Evanko testified that in 1994 the Tribunal amended the true cash value of the value of subject property. The 1995 to 2005 values were increased by the same percentage increase that was used to determine the value of the commercial class of property. This resulted in annual increases to the cost approach. In 2003 only one sale was available and it was not used, 2004 five sales took place and in 2005 seven sales took place however, Evanko stated that none of the sales included were golf course property. Exhibit P-9 Property Records were admitted.

Thomas D. Kitz, MAI, American Property Analysts, a partner and appraiser, was admitted as an expert witness. Kitz prepared P-1, Appraisal of Country Club of Detroit, which was admitted.

Kitz prepared an appraisal of subject property as of December 31, 2002, finding the True Cash Value, exclusive of personal property and liquor license, was \$6,000,000.

Kitz in the transmittal letter explains that initiation and transfer fees are not directly related to real estate, but are instead one of the many intangible assets associated with private membership clubs. He further states,

Equity membership clubs, with their non-profit tax status, do not operate with a positive net cash flow each year. That does not mean that the real estate has no value. In order to determine the value of the real estate, we have formed an opinion of value, under the assumption that the course was being operated according to its highest and best use - as a high-end daily-fee golf course facility. P-1, p 1.

The golf industry was discussed in Kitz's report, which indicated that the early projections were that a golf course a day would have to be built until 2000 to keep up with the demand per the National Golf Foundation ("NGF"). Some of the golf courses are closing to be redeveloped for alternative uses. The 2002 overview for golf in Michigan includes 709.5 privately owned daily-fee courses, and 142 private courses. The average age of the golfer is 40 years with a \$60,000 per year household income. Michigan ranks sixth in the nation for total number of golfers over eighteen years old. Nationwide participation is 9.4%, with Michigan at 13.2%. This translates into approximately 1,563 golfers per course in Michigan. This suggests to Kitz that the market is over-built. A survey of golf courses has determined that the slowing economy

and increased supply decreases the number of “rounds”² played. Kitz listed fifteen courses that were opened in 2000-2001 or were under construction or in the planning stage. The fifteen courses were in neighboring counties.

Kitz discussed that there are some golf courses that have closed and were redeveloped into residential subdivisions or alternative land uses. The underlying land values exceeded that value of the golf courses going concern value due to the concentration of residential development in Oakland and Macomb Counties. The following were included: Wolverine Golf Course (54 holes), Partridge Creek (45 holes), Bogie Lakes, Rochester Hills Golf and Country Club, El Dorado Golf Club has an option, the Links at Pinewood are also under consideration. The 27-hole Links of Novi is under an option to purchase, Burning Tree (18 holes) sold for redevelopment.

The primary market for the subject property included the City of Detroit in 20-mile radii, but due to the lower income level of the larger percentage of the population within the City of Detroit, the area was expanded to include southern Macomb and southeastern Oakland Counties. Kitz concluded that the subject property operating as a daily fee golf course should capture 35,000 18-hole equivalent rounds in a year. However, it is based on the economy, weather, and some of the competing courses are closed. In addition, Kitz states “The number of rounds is also dependent, however, on the level of maintenance, the quality of the service, and the pricing of the green fees.” P-1, p 33.

² A round is one golfer playing an 18 hole equivalent.

Kitz found that the cost approach would not provide a meaningful indication of value and was therefore not included in the appraisal.

Kitz testified that the subject property was currently an equity private country club. He determined that the highest and best use of the subject property is as a for-profit daily fee golf course. The following testimony relates to the highest and best use analysis:

Q. Mr. Kitz, let's talk about first a nonprofit equity club. Why is the highest and best use of the subject property not a private equity club?

A. A private non equity club is..

Q. I'm asking a private nonprofit equity club. Asking that first.

A. There's just—there's no income to capitalize to value.

Q. And why is there no income to capitalize to value of a private nonprofit equity club?

A. Because the private non equity clubs are meant to operate—

Q. Private non equity, or equity?

A. Excuse me, private equity nonprofit clubs are – typically operate with a zero cash flow.

Q. And why is your conclusion for the subject property highest and best use not that of a private for-profit club?

A. Because I determined that it just couldn't generate enough income in membership sales and dues and that an owner would have to fund the operation of the club.

Q. As opposed to the values as a daily fee course being a positive value?

A. In my determination, the use as a daily fee – high-end daily fee course resulted in the highest net operating income.

Tr. Vol. 1B, pp 56,57.

The income approach was calculated building a pro forma as a daily fee golf course using industry standards and information from other daily fee courses in upper Midwest.

While the actual historical income and expenses are not pertinent, because of the conclusion that the highest and best use is as a daily fee course, the income as a private facility generates very little to the bottom line. Kitz states that the initiation and membership fees for the Country Club of Detroit are used to pay for capital improvements, and that the revenues are not directly related to the real estate. In

addition, the initiation and membership fees would not be applicable if the course were operated as a daily fee golf course.

The National Golf Foundation's operating surveys were used to determine median operating margins and trends. Information from several 18-hole daily-fee courses was presented to indicate the downtrend in golf rounds before September 11, 2001. Kitz surveyed the high-end daily-fee golf courses in the market to compare green fees, rate increases and rounds.

Kitz projected income based on his analysis of other daily fee courses that compete with the subject property. As a result, Kitz determined that the cost to play the daily fee course is \$40 to \$45 per 18-hole round of golf with an estimated 35,000 rounds per year. The nine-hole short course is estimated to generate 8,000 rounds with \$15 a round for walking. The ancillary services can contribute 50% of revenue. Kitz suggests maximizing practice range, merchandise sales, banquets, and food and beverage income. The estimate of income was the initial step in the income approach.

Total revenue included the \$42.50 greens fees, cart rentals, short course revenue, range sales, grill food and beverage, banquet sales and miscellaneous for \$2,809,950 income. Deductions were made which included net revenue from the cost of goods sold. Operating expenses of \$1,818,803 were deducted for wages, administrative, advertising, professional, credit card fees, swimming pool, maintenance, supplies,

telephone, utilities, insurance, course costs, carts, banquet, etc. Kitz found that the total net operating income of 29% is \$802,147, which is typical for similar courses.

The overall rate was derived from fifteen sales of various golf courses that took place between 1999 and 2004 located in Michigan and Ohio. Kitz calculated the mortgage equity rate and finalized two overall rates which included the effective tax rate of 12.17% to 13.17%. Kitz capitalized the income using both of the overall rates. His indicated value for the going concern is \$6,340,000 via the income approach. (This includes the personal property and liquor license.)

The sales comparison approach was considered by Kitz. Kitz stated:

Unfortunately, golf course properties do not lend themselves well to physical comparison, because most are unique, each is located in a specific market that determines its fee structure and amount of play, and no two are built exactly alike. As a result, it is difficult to make comparison based on price per hole, or even price per round. There does, however, appear to be a loose relationship between the gross income multipliers (GIM) and the operating expense ratio (OER). P-1, p 82.

Kitz found five sales, four of which were daily-fee golf courses. The fifth sale was Wabeek Country Club a GIM was not calculated for Wabeek Country Club. The remaining four sales were all sales of properties that the banks sold. The data supported a GIM of 2.2 to 2.3 multiplied by gross income of \$2,809,000³. The result is an indicated true cash value of \$6,460,000.

Kitz determined the “as is” market value for the going concern of the Country Club of Detroit, operating as a daily fee golf course is \$6,500,000. The licenses,

³ The Tribunal notes Exhibit P-1, page 81, indicates total revenues of \$2,809,950.

permits, furniture, fixtures and equipment of \$500,000 is deducted for true cash value of \$6,000,000.

Timothy O'Donnell, Michigan Advanced Assessing Officer (III), was Petitioner's next witness. He is the contract assessor for the City of Grosse Pointe Farms for residential property. He was the assessor for residential properties for the tax years at issue. He described the general value of the homes surrounding the subject property.

Petitioner's rebuttal witness Cleatus Spacht, a Certified Public Accountant ("CPA"). He is employed by UHY Advisors. His specialty is private member-owned clubs. He audits, consults and does tax work, and has provided financial advice since 1979. He provides services for eighteen private country clubs with twelve located in the greater Detroit area.

Spacht testified that he was a member of Pine Lake Country Club for fourteen years. It has both indoor and outdoor tennis courts, a marina, and a beach to the private all-sports lake. Members cannot resign until there is a substitute member. Dues are paid until the substitute is accepted. He was a member of the Detroit Golf Club⁴ for ten years. He has performed their audits. He is familiar with initiation fees, dues and membership structures through the auditing of private clubs in greater Detroit and through association with the club managers association in preparation of an annual survey of clubs.

⁴ This is not to be confused with the subject property, Country Club of Detroit.

Spacht was designated as an expert in accounting, auditing private clubs including initiation fees, club operations, and financial consulting relating to country clubs.

Country Club of Detroit is high on the social status ladder. The entrance and admission criteria are dependent upon the social status of the member.

Spacht compared Country Club of Detroit with Lochmoor Country Club. Lochmoor has water hazard holes; otherwise the courses are both nice, but Spacht indicated he has a personal preference to Country Club of Detroit. The Lochmoor Country club does not have the issues that the older clubhouse for Country Club of Detroit has in terms of age, design, and areas that are not air conditioned. Lochmoor's initiation fee was \$25,000, Green Oaks was \$28,000, Pine Lake Country Club was \$65,000, and Wyndgate Country Club charged \$32,000.

Spacht opined that he would not advise a potential buyer of the Country Club of Detroit as of December 31, 2002 to buy the property at zero dollars, charge \$48,000 for golf memberships, and incur a negative cash flow until the memberships are sold.

RESPONDENT'S CASE

Respondent's first witness was Terrell Oetzel, MAI, and the Oetzel-Hartman Group. He and James Hartman, MAI, prepared an appraisal of the subject property for each tax year at issue, as improved, for continued use as a private equity golf club.

Exhibit R-1, Respondent's Appraisal, was admitted.

Oetzel discussed the golf industry with an overview of the general and Michigan golf market. He relied on the National Golf Foundation as one of the data sources. He states "For the first time in 6 decades there were more closings than openings." Exhibit R-1, p 43. The Michigan golfing industry is supported by its residents. The economic slowdown and overbuilding of courses had a negative impact on the public golf courses. Oetzel, however, states that the private golf clubs have also seen a slight negative impact but not to the extent of the public courses. The private golf clubs have the ability to reduce initiation fees to help attract members.

Oetzel's appraisal assignment was to determine the true cash value of the subject property's fee simple estate. However, unlike Petitioner, Oetzel concluded that the fee simple estate was encumbered by Petitioner's memberships. To value the subject property as unencumbered, Oetzel assumed that the subject property would sell and that all of the memberships would be terminated. Exhibit R-1.

Oetzel's highest and best use includes legal uses, financial feasibility, as well as a determination that there is a market for the subject property and its amenities. Country Club of Detroit has over a thousand members who bought in and use it. Oetzel believes that the true cash value of subject requirements in a fee simple estate is to sell out the membership. The members want the use of the subject property, to play golf, attend social events, but not necessarily a return in dollars.

The appraisal begins with the assumption that the property has zero members. The membership is sold and at the end the entity purchasing the subject property operates it as it has been operated for 75 years. Oetzel testified that the property operates at no profit. The initiation fees and dues match the expenses. There is no intent to make a profit other than to cover depreciation and capital improvements.

The Pellucid Demographic Analyzer for golf information within a 20 minute radius of the subject property was used by Oetzel for supply and demand. He found that the primary market area is City of Grosse Pointe, City of Gross Pointe Park, Village of Grosse Pointe Shores, and City of Gross Pointe Farms. Oetzel found that the subject property is well located to attract members from the surrounding immediate areas.

Oetzel's highest and best use as vacant and as improved was based on the Community Recreational Zoning. The highest and best use of the land as if vacant is to remain as vacant. The highest and best use of the subject property as improved is to continue as a private not for profit equity club. Oetzel held that the majority of the improvements on site would require extensive rehabilitation and conversion costs to develop the property to an alternative use.

The cost approach due to the age of the subject property was not a proper method to utilize to determine the true cash value of the subject property Oetzel agreed with Kitz.

The income approach includes the income produced during the selling of memberships. Oetzel based the discounted cash flow on the owner funding operational deficits and retaining any operational profits during absorption. Once the memberships are sold out, the owner ceases to have an interest in the property. The discounted cash flow was considered most applicable to the subject property. It projects revenues, expenses and the net operating income that is discounted to a present value.

Respondent states in Exhibit R-1, "We have based our cash flow model on the member receives no refund of the membership purchase price when they terminate their membership (similar to the existing by-laws)." Exhibit R-1, p 91.

Oetzel reasons that the actual fees and dues structure appear to be supported in the market place. The memberships are expected to be fully absorbed in four years. Oetzel assumed that many of the existing members would want to continue to be members. The source used for dues and typical costs of golf club operations were the *Club Managers Association of America – 2004 Operations and Financial Data Report*.

The next step in the income approach was the determination of the number of golf rounds per season. The Golf Association of Michigan Club Operations Survey indicates that the mean for 18-hole rounds is 21,807. Oetzel stabilized the number of 18-hole rounds to 21,255. The remaining income and expenses for the clubhouse and operations were estimated using the historical data as well as stabilized projections.

Oetzel opined on the four-year projection:

	Year 1	Year 2	Year 3	Year 4
New Memberships	345	225	165	60
Fees Initiation/Mbr	\$12,581,000	\$9,726,533	\$9,086,646	\$5,297,871
Gross Revenues	\$13,761,120	\$11,715,514	\$11,721,151	\$8,206,359
Cost of Sales	\$284,625	\$482,006	\$637,073	\$706,306
Gross Income	\$13,476,495	\$11,233,508	\$11,084,078	\$7,500,053
Operating Expenses	\$5,443,000	\$6,101,825	\$6,254,371	\$6,410,730
Net Operating Income	\$8,033,495	\$5,131,683	\$4,829,707	\$1,089,323
Present Value Factor	0.85727	0.73490	0.63001	0.54008
Cash Flows	\$6,886,837	\$3,771,294	\$3,042,752	\$588,326

The present value of the cash flows for December 31, 2002 used a rate of return of 16.65%, which included the effective tax rate. The \$14,290,000 included \$1,445,000 for furniture, fixtures and liquor licenses. Oetzel deducted furniture, fixtures and liquor licenses for a value allocated to the real estate of \$12,845,000. The same methodology was used for all the years at issue.

The sales comparison approach was discussed by Oetzel. He states, "As stated earlier, it is difficult to directly compare sales of private country clubs, given the impact of memberships." He includes five sales from 1997 to December 2003 of three Michigan golf clubs and two in Ohio. He did not make a conclusion based on the sales, but indicates that the information shows that there is a market for private clubs.

Oetzel opined that the non-profit course operating at a minimal profit margin has value because there are sufficient members. The members buy into the club for the amenities, not for financial gain. When questioned if his value was based on an

investor purchasing the subject property, Oetzel stated that the membership is buying the subject property.

Respondent's rebuttal witness was Bruce Dunn, CPA, with Maner, Costerisan and Ellis. He was qualified as an expert in accounting. The firm provides audited services to Walnut Hills Country Club and the Country Club of Lansing. He is not the primary contact or partner responsible for the two country clubs. The primary services are to charter and public schools, trade associations and closely held businesses.

He testified regarding the three methods of accounting used to put financial statements in a format for Financial Accounting Standard Board Statement 117. They are the accrual method of accounting, the cash method of accounting, and the modified cash method of accounting. He opined that audited financial statements can be prepared and issued on the three methods of accounting and the financial statements can be audited. The reports are different.

FINDINGS OF FACT

The Tribunal makes the following findings of fact:

1. Subject property is a private nonprofit golf club.
2. The subject property is located at 200 Country Club Drive, Grosse Pointe Farms.
3. The subject property consists of three contiguous parcels.
4. The subject property contains approximately 225 acres.
5. The subject property is zoned CR, Community Recreational District.
6. The subject property contains the following:

Clubhouse,	70,521 square feet,
Pro shop/storage,	6,957 square feet,
Maintenance,	7,200 square feet,
Storage Barn,	8,250 square feet,
Work shop,	2,811 square feet,
Sports Building,	1,739 square feet,
Pool House,	1,141 square feet,

Halfway Shack, 529 square feet,
Residence 1,902 square feet.

7. The subject property has an 18-hole regulation length golf course, an executive short course, and a practice range.
8. The owner of record for the tax years at issue was Country Club of Detroit.
9. The existing clubhouse was built in 1926.
10. The economic slowdown and overbuilding of golf courses had a negative impact on the performance of most of Michigan's public golf courses.
11. Petitioner appraised the subject property as a for-profit daily-fee golf course.
12. Respondent appraised subject property as a not-for-profit private golf course.

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.

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% Const 1963, art 9, sec 3.

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. MCL 211.27(1).

The Michigan Supreme Court has determined that "true cash value" is synonymous with "fair market value." See *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450; 221 NW2d 588 (1974).

"The petitioner has the burden of establishing the true cash value of the property"
MCL 205.737(3). This burden encompasses two separate concepts: (1) the risk 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 Corp v City of Warren*, 193 Mich App 348, 354-355; 483 NW2d 416 (1992).

Under MCL 205.737(1), the Tribunal must find a property's true cash value in determining a lawful property assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). A proceeding before the Tax Tribunal is original, independent and de novo. MCL 205.735(1). The Tribunal's factual findings must be supported by competent, material and substantial evidence. *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Department of Treasury*, 185 Mich App 458, 462-463; 452 NW2d 765 (1990). Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence. *Jones & Laughlin, supra*, pp352-353.

The Tribunal is not bound to accept either of the parties' theories of valuation. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 377 NW2d 908 (1985).

The Tribunal may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination. *Meadowlanes Limited Dividend Housing Association v City of Holland*, 437 Mich 473, 485- 486; 473 NW2d 636 (1991).

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. *Meadowlanes*, pp484-485; *Pantlind Hotel Co v State Tax Commission*, 3 Mich App 170; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968). 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*, p277.

A concept fundamental to the determination of true cash value is the highest and best use of the property. *Edward Rose Bldg Co v Independence Twp*, 436 Mich 620, 633; 462 NW2d 325 (1990). This concept recognizes that “the use to which a prospective buyer would put the property will influence the price which the buyer would be willing to pay.” *Id.* It is a use that is “legally permissible, financially feasible, maximally productive, and physically possible.” *Detroit v Detroit Plaza Ltd Partnership*, 273 Mich App 260, 285; 730 NW2d 523 (2006).

CONCLUSIONS OF LAW

At issue in this case is the true cash value of three parcels of real property. They contain the Country Club of Detroit, an 18-hole golf course, an executive nine-hole golf course, a clubhouse, and various other improvements. The clubhouse is described by

Petitioner as:

The clubhouse is a 70,500 sq. ft. two-story stone, brick and stucco veneered building with a partial basement. The concrete encased steel frame structure was originally constructed in 1926, but areas have since been remodeled and modernized. The front of the building features a portico off the main greeting lobby. The west end of the building contains the dining rooms and kitchen on the 1st floor, storage and a snack bar on the lower level, and board meeting room on the 2nd level. The east end of the building contains the men's locker rooms and the golfer's grille on the 1st floor. The center part of the building contains the Great Hall, the grille, the women's locker room, the main hallway, and the bowling lanes. There

is an open patio outside the west wall of the great room, and covered verandas adjacent to the dining room. Exhibit P-1, p 39.

The second floor of the clubhouse also contains five (5) sleeping rooms with a bedroom, bathroom and kitchenette. The pool building contains locker/shower rooms. Two pools (one is a kiddie's pool) are located on the subject property. There is also an all sports/day camp building adjacent to the four platform tennis courts.

The first issue the Tribunal considers is the zoning of the subject property. Article XI CR Community Recreational District states in pertinent part(s):

Preamble:

The CR Community Recreational District as herein established is intended to provide suitable location for desirable and necessary public and private nonprofit recreational areas which may be used by the residents of the City but also to limit the locations, size and character of such so that the activity which they generate does not become a nuisance or overburden the Facilities of the residential community.

Sec. 1100. Principal Uses Permitted:

In a CR Community Recreational District the use of land, the location and erection of new buildings or structures, and the alteration and enlargement of existing buildings or structures shall conform to the following specified uses unless otherwise provided in this Ordinance:

1. Private non-profit recreational clubs, parks, playgrounds, golf courses, ball fields, athletic fields, tennis courts, and swimming pools, and other similar recreational facilities.

The Tribunal finds that the zoning of the subject property does not allow a for-profit recreational property. The zoning is unambiguous and clear, the use of the subject property is a non-profit recreational use.

Petitioner's appraisal specifically valued the subject property as a for-profit daily fee golf course. "In order to answer the highest and best use of a site, either as if vacant or as improved, any potential use must prove to be financially feasible and maximally productive. A private membership club at this site – either equity or non-equity – does neither." Exhibit P-1, p 46. Kitz testified that a private non-profit equity club is not the highest and best use because there is no income to capitalize to value.

Highest and best use is defined as:

The reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, and financially feasible and that results in the highest value. Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 12th ed, 2001), p 305.

The four criteria must be met, beginning with the test of legal permissibility. Petitioner fails to consider that the subject property cannot be used for an alternative use that precludes it from use as a for-profit golf course. Petitioner did not discuss whether a zoning to allow its use as a for-profit high end golf course is possible. Petitioner, therefore, based its valuation disclosure on a wrong highest and best use and, in fact, a use that is clearly not allowed with the current CR Community Recreational District. Petitioner did not discuss the possibility of rezoning. Therefore, Petitioner's appraisal, based on an illegal highest and best use as of tax day is given no weight or credibility. Respondent appraised the subject property as a nonprofit private golf club, which is an appropriate legal use based on the zoning. Respondent's assumption that the subject property would be sold without any members flies in the face of his five sales of private golf courses that sold with the current memberships in place.

Both appraisers found that a direct sales comparison approach was difficult. Petitioner stated it is difficult to compare sales of other golf courses, because each golf course is unique, located in a specific market that determines fee structure and amount of play. Respondent stated that it is difficult to directly compare sales of private golf clubs given the impact of memberships. Kitz found a loose relationship between the gross income and the operating expense ratio. Kitz calculated a Gross Income Multiplier using four sales of distressed daily fee for-profit golf courses. He lists the sales and anticipated gross revenues. Only one of the five sales was a private country club, its income and expenses were not considered. The remainders of the sales were “motivated” sellers. The application of a Gross Income Multiplier using distressed sales is not convincing and lends weight to the Tribunal's conclusion that Petitioner's appraisal of subject property is not credible.

The Tribunal finds that *neither* party was convincing. Petitioner's entire appraisal was based on an incorrect highest and best use. Respondent's appraisal used the correct highest and best use. Respondent failed in its assumption that the subject property would be sold with zero members and over a four-year period some the current members would pay a \$48,000 initiation fee to rejoin the same private country club. None of Respondent's sales indicated that this was any way based in reality. Respondent misused the discounted cash flow by initially using a short holding period and secondly not applying a reversion. The short holding period takes any anomalies and enhances the outliers. The abbreviated definition of Discounted Cash Flow analysis is:

Discounted cash flow (DCF) analysis is a procedure in which a yield rate is applied to a set of projected income streams and a reversion to determine whether the investment property will produce a required yield given a known acquisition price. If the rate of return is known, DCF analysis can be used to solve for the present value of the property. If the purchase price is known, DCF analysis can be applied to find the rate of return. Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 12th ed, 2001), p 569.

The Tribunal finds that the DCF as used by Respondent results in an unsupported market value. Respondent was clear that a reversion was not required because the maximum memberships (that miraculously appeared in each year) would be filled in four years. The club is then owned by the membership. The first year's income from initiation fees and dues is estimated at \$12,581,000. The Tribunal's issue is that Oetzel did not cite any instances where an existing private country club sold, and immediately received that amount of income. In fact, the opposite appears, Exhibit R-1, p 119. The subject property's history also does not substantiate the influx of \$12,581,000. Actual gross revenue from all sources is less than \$8,000,000 for 2002 and 2003, slightly above that in 2004 and 2005. The subject property's net operating income pursuant to Respondent's DCF at \$8,033,945; \$5,141,683; \$4,829,707 for the first three years of the DCF is substantially above what the subject property has ever realized. The exception is year 4 of Respondent's DCF, with a net operating income of \$1,089,323, which was not unreasonable for the subject's history of actual income.

The subject property is a nonprofit private country club. The Court of Appeals in an unpublished opinion gives this Tribunal guidance. *Knollwood Country Club v Township of West Bloomfield*, No. 241297 (2004) indicates that Petitioner appealed, claiming that the tribunal's failure to adopt Bur's methodology, income capitalization, for determining

true cash value was erroneous. The petitioner in *Knollwood* contended that the income capitalization approach is the proper method for valuating *Knollwood* because the sales comparison approach is not feasible. The Tribunal rejected this contention as flawed because it assumes the property and improvements will be sold to a purchaser whose motivation is to make a profit. The stipulated highest and best use of the *Knollwood* property was its “present” use as a nonprofit private equity golf club. The Court of Appeals determined:

Because the highest and best use of the property is determined to be a non-profit golf course, the tribunal did not make an error of law or adopt a wrong principle when it determined that Knollwood should not be evaluated pursuant to the income capitalization approach, but instead, the cost approach should be applied. 2004 WL 576259 (Mich App), p 5.

The parties did not stipulate that a nonprofit country club was the highest and best use of Country Club of Detroit. Petitioner believes that a daily-fee for-profit course is possible. The Tribunal finds that Petitioner is incorrect that a daily-fee for-profit course is possible. Petitioner neglected to discuss a requirement would be, first, a change in zoning, the likelihood or the feasibility that the 225 acres could or would be rezoned to allow a daily-fee for-profit golf course, or what changes would have to take place for a for-profit golf course.

The Tribunal finds that an income approach is the preferred method to determine the true cash value of a public golf course. Neither party provided an income approach that the Tribunal found useful or appropriate for the subject property. Petitioner determined that the subject property could be used as a daily-fee public course. Respondent relied on a discounted cash flow for a flawed reasoning that an investor would have to

repopulate the membership. Both parties deducted the value of the personal property as submitted by Petitioner. The subject property has a stable income source between memberships and dues, but the expenses vary from year to year. The public fee daily course as indicated by Petitioner is a false assumption based on zoning. The repopulation of the membership was also found to be a false presumption as testified to by Respondent. Therefore, the Tribunal finds both income approaches flawed.

The Tribunal is charged with determining market value of the subject property as of December 31 for each year at issue. Market value is described as:

As used in this act, "true cash value" means 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. The usual selling price may include sales at public auction held by a nongovernmental agency or person if those sales have become a common method of acquisition in the jurisdiction for the class of property being valued. The usual selling price does not include sales at public auction if the sale is part of a liquidation of the seller's assets in a bankruptcy proceeding or if the seller is unable to use common marketing techniques to obtain the usual selling price for the property. A sale or other disposition by this state or an agency or political subdivision of this state of land acquired for delinquent taxes or an appraisal made in connection with the sale or other disposition or the value attributed to the property of regulated public utilities by a governmental regulatory agency for rate-making purposes is not controlling evidence of true cash value for assessment purposes. In determining the true cash value, the assessor shall also consider the advantages and disadvantages of location; quality of soil; zoning; existing use; present economic income of structures, including farm structures; present economic income of land if the land is being farmed or otherwise put to income producing use; quantity and value of standing timber; water power and privileges; and mines, minerals, quarries, or other valuable deposits known to be available in the land and their value. In determining the true cash value of personal property owned by an electric utility cooperative, the assessor shall consider the number of kilowatt hours of electricity sold per mile of distribution line compared to the average number of kilowatt hours of electricity sold per mile of

distribution line for all electric utilities.
MCL 211.27(1)

Petitioner and Respondent's appraisers both relied on the income approach to determine the value of the subject property. Neither party believed that the cost approach was appropriate when the subject property is older with obsolescence that cannot be accurately be measured. The Tribunal agrees that it is difficult to measure economic, physical and functional obsolescence in a cost approach.

The sales comparison approach on a specialty type property can be difficult, but in this instance it does give a range of values. This Tribunal cannot cost the subject property and properly apply depreciation, or adjust the flawed income approaches. The only option for an independent determination of value is to consider the assessment or do a value ranking.

The Tribunal cannot accept the values placed on the roll by the assessing department. The value on the assessment roll was agreed to by the parties in an earlier appeal. The values were corrected for 1995. The subsequent years' values placed on the subject property were "factored" or increased the same percentage as the commercial class of property. The Equalization Director testified:

Again, to reiterate my prior testimony, the 1995 assessed and taxable value for the subject property was established pursuant to a decision in the Michigan Tax Tribunal. And then for each year subsequent from 1995 through to 2007, the value was increased by the average level of assessment increase for commercial properties in the City of Grosse Pointe Farms. Tr 1-A, p 41.

None of the commercial sales were golf courses. Therefore, there is not a basis for this Tribunal to affirm the assessed and taxable values.

Value ranking using all sales organizes them in order of their “value” based on the appraiser’s judgment regarding the relative desirability of each property. The “best” property is ranked 1 and the “worst” property (based upon consideration of all relevant value elements) is ranked last. The sales prices are not considered in this ordering process. The subject is included in the ranking, based on how it compares to the other properties, in consideration of the same value element. Upon examination of the sales prices, it is expected that the range of values will correlate with the ranking and the value of the subject should fall within the range of the properties that it most closely resembles. See, Henry A. Babcock FASA: *Appraisal Principles and Procedures* (Washington D.C., American Society of Appraisers, 1994), p 216.

The parties’ sales included the following:

1. The Preserve, Livingston County. This was a bank-owned property with 18 holes of golf, 234 acres, 9,000 square foot clubhouse, constructed in 2001. May 2004 TCF Bank sold it for \$3,600,000. The 2003 18-hole equivalent rounds were 24,196. This is a public daily fee course. The Tribunal finds that the bank/seller sale of this daily-fee public course is not a good comparable to the subject property.

2. Wabeek Country Club, Oakland County. This was a private equity club changed to private membership non-equity club. 2004 sale price is \$6,500,000 for 18 holes, 180

acres, 43,000 square foot clubhouse. This sold with 140 members in place, no new initiation fees with the idea of increasing membership to 300. 18-hole equivalent rounds were 23,000.

3. Boulder Point Golf Club, Oakland County. This was a motivated seller, Standard Federal Bank, sold September 2003 for \$7,200,000. This was a public daily-fee course with 27 holes and 307 acres. It has a 26,000 square foot clubhouse built in 1998-1999. It has 18-hole equivalent rounds of 23,000. The Tribunal finds that the bank/seller sale of this daily fee public course is not a good comparable to the subject property.

4. Blackberry Patch Golf Club, Branch County, is a public daily-fee course. One of the four investors purchased the property for \$2,250,000. This has 18 holes on 408 acres with a one-story clubhouse. The course was built around 1998. The Tribunal finds that this daily-fee public course is not an appropriate comparable to the subject property.

5. The Medalist, Calhoun County, was owned by Bank One and sold at an auction in 2003 for \$2,200,000. This is a public daily-fee course with 18 holes on 275 acres. The clubhouse/golf course was built around 1994. This has extensive wetlands and wooded areas. The 18-hole equivalent was estimated at 19,000. The Tribunal finds that the bank/seller sale of this daily-fee public course is not a good comparable to subject property.

6. Country Club of the North (Dayton, Ohio) sold August 2003 for \$7,000,000. The 18 holes are located on 238 acres with a 42,000 square foot clubhouse. The course sold with 312 members.

7. Metamora Golf and Country Club (Lapeer, Michigan) sold March 2001 for \$5,000,000. The 18 holes are located on 172 acres with a 6,500 square foot clubhouse. The course sold with 302 members in place.

8. The Heathers Club (Bloomfield, Michigan) was under contract to sell in June of 2001 for \$3,690,000. This is a 9-hole course that is on 52.47 acres with a 16,040 square foot club house. The members stayed in place. The Tribunal finds that this 9-hole course has insufficient data to use as a comparison to the subject property.

9. Wetherington Golf and Country Club (Cincinnati, Ohio) sold December 1997 for \$8,900,000 to the membership. The course sits on 130 acres with a 26,700 square foot clubhouse. All 400 memberships had been sold.

The Tribunal finds that the public daily-fee courses were located in different economic areas of the state, appear to have some motivation on the part of the sellers (banks) to sell the properties. The sales that the Tribunal finds of some assistance in determining the true cash value of the subject property are, in order, Wetherington, Wabeek, Country Club of the North, and Metamora. The values range from \$8,900,000 to \$5,000,000. The location of subject property would indicate that the land if vacant

would be more valuable than property located in a remote area with an abundance of land. Subject property would not be worth less than Wetherington, but more than the Metamora Country Club. The parties provided some information for the Tribunal to determine that the subject property is overvalued.

The parties stipulated to a true cash value in 1994 for the 1995 tax roll. The true cash value of \$8,450,000 has been increased since that time based on sales of commercial properties. However, the Tribunal finds that this carte blanche method does not work with a larger commercial property that did not see a 14.00% increase from tax year 2002 to 2003, or an additional 9.36% from 2003 to 2004. The Tribunal finds that the aggregate true cash value of the subject property based upon the cost and market approach is \$8,900,000. The Tribunal realizes that this is not the preferred method to determine true cash value, but it is appropriate for the subject property, and the only option for the Tribunal to determine subject's true cash value.

The Tribunal finds that the cost approach is not applicable due to the difficulty in determining depreciation. The income approach to value was considered, discussed, and the Tribunal determined that neither party's discounted cash flow is appropriate. This leaves the Tribunal with the sales comparison approach. The information presented, albeit a bit sketchy, does indicate that there are and continue to be sales of private country clubs.

JUDGMENT

IT IS ORDERED that the subject property's true cash, assessed and taxable values for the tax years at issue are those shown in the "Final Values" 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 "Final Values" 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 90 days of 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 Opinion and Judgment. Pursuant to MCL 205.737,

interest shall accrue (i) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (ii) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (iii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (iv) after December 31, 2007, at the rate of 5.81% for calendar year 2008, (v) after December 31, 2008, at the rate of 3.315% for calendar year 2009, (vi) after December 31, 2009, at the rate of 1.23% for calendar year 2010, and (vii) after December 31, 2010 at the rate of 1.12% for calendar year 2011.

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

MICHIGAN TAX TRIBUNAL

Entered: September 28, 2011

By: Victoria L. Enyart