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

Green Ridge Country Club,
Petitioner,

MTT Docket No. 318901

v

Township of Ada,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

This case is an appeal of the 2005 true cash and taxable values of five parcels of real property (the subject property) located at 7333 Knapp Street SE, in Ada Township, Kent County, Michigan. Four of the five parcels under appeal are classified as commercial and are utilized as a private, *non-profit*, *non-equity*, 36-hole country club. The remaining parcel of property is classified as residential and contains a single-family dwelling. Both of the 18-hole courses, known as the Ridge and the Valley, were designed by Arthur Hills. For eleven years, the Senior PGA Golf Tournament was held at the subject property.

This appeal was filed under the name of "Green Ridge Country Club" (Petitioner); however, the club's name was changed in 2002 to the "Egypt Valley Country Club." The subject property's values were established by the Township of Ada (Respondent) under the general property tax act (GPTA). The parties stipulated that the subject property's highest and best use as improved is as a private, *for-profit*, *non-equity* country club. For the reasons set forth herein, the Tribunal finds that Petitioner did not meet its burden of proof in establishing the subject property's true cash value.

A hearing was held on July 2 and July 3, 2007 before then Tribunal Member Patricia Halm. Petitioner was represented by attorneys Sean P. Fitzgerald and William Bowie, from the law firm of McShane & Bowie; Respondent was represented by attorneys Steven Stapleton and Jessica Wood from the law firm of Law, Weathers & Richardson. Witnesses appeared on behalf of both parties. They include Stephen Pastoor, Chief Operating Executive; Daniel Tomlinson, MAI; Jonathan Smith, President and CEO of Kindel Furniture Company; and Fred Gordon, attorney for Petitioner. Ginger Soles, Assessor, and James Hartman, MAI, appeared on behalf of Respondent. Ms. Halm's term as a member of the Michigan Tax Tribunal ended on July 31, 2011. Pursuant to TTR 140, this matter was, on August 1, 2011, assigned to this member for decision.

The subject property's 2005 true cash value (TCV), state equalized/assessed value (SEV/AV), and taxable values (TV), as originally established by Respondent are:

Parcel No.	TCV	SEV/AV	TV
41-15-09-226-001[1]	$ 9,062,400	$4,531,200	$4,212,671
41-15-09-100-017	$ 3,337,800	$1,668,900	$1,257,493
41-15-10-100-018	$ 1,877,600	$ 938,800	$ 706,000
41-15-09-100-007	$ 750,000	$ 375,000	$ 279,904
41-15-10-100-010	$ 88,200	$ 44,100	$ 39,594
TOTAL	$15,116,000	$7,558,000	$6,495,662

Respondent's appraiser's contentions of values are[2]:

41-15-09-226-001	$5,913,000	$2,956,500	$2,956,500
41-15-09-100-017	$2,168,100	$1,084,050	$1,084,050
41-15-10-100-018	$1,222,020	$ 611,010	$ 611,010
41-15-09-100-007	$ 492,750	$ 246,375	$ 246,375
41-15-10-100-010	$ 59,130	$ 29,565	$ 29,565
TOTAL	$9,855,000	$4,927,500	$4,927,500

[1] Respondent's assessor corrected the TCV and SEV/AV for this parcel during the hearing. The correction did not impact the parcel's TV.

[2] Respondent's appraiser did not provide values on a per parcel basis; instead, the appraiser provided a total value for the subject property. The Tribunal allocated values to each parcel based on the percentage of true cash value the parcel had to the true cash value of the subject property, as determined by Respondent's assessor.

Petitioner's contentions of value are[3]:

Parcel No.	TCV	SEV/AV	TV
41-15-09-226-001	$3,713,728	$1,856,864	$1,856,864
41-15-09-100-017	$1,095,180	$ 547,590	$ 547,590
41-15-10-100-018	$ 616,066	$ 308,033	$ 308,033
41-15-09-100-007	$ 246,086	$ 123,043	$ 123,043
41-15-10-100-010	$ 28,940	$ 14,470	$ 14,470
TOTAL	$5,700,000	$2,850,000	$2,850,000

FINAL VALUES

The subject property's 2005 true cash value (TCV), state equalized/assessed value (SEV/AV), and taxable value (TV), as determined by the Tribunal are:

Parcel No.	TCV	SEV/AV	TV
41-15-09-226-001	$5,038,200	$2,519,100	$2,519,100
41-15-09-100-017	$1,855,500	$ 927,750	$ 927,750
41-15-10-100-018	$1,043,800	$ 521,900	$ 521,900
41-15-09-100-007	$ 416,900	$ 208,450	$ 208,450
41-15-10-100-010	$ 49,000	$ 24,500	$ 24,500
TOTAL	$8,403,400	$4,201,700	$4,201,700

PETITIONER'S CASE

Petitioner called Mr. Stephan Pastoor as its first witness. Mr. Pastoor has been employed by Petitioner for 19 years as its Chief Operating Executive and General Manager. Mr. Pastoor primarily testified as to Petitioner's income and expenses. According to Mr. Pastoor:

> A little over 50 percent of [Petitioner's] revenue comes from member dues. . . Following that about 2.1 million dollars comes from food and beverage sales. We also receive revenues from rental of the facilities and food and for golf outings. We receive revenues from green fees and cart fees. (Transcript 1,[4] p28)

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[3] Petitioner's appraiser did not provide values on a per parcel basis; instead, the appraiser provided a total value for the subject property. The Tribunal allocated values to each parcel of property based on the values contained in Petitioner's Prehearing Statement.

[4] Hereinafter, references to the transcripts will be denoted either "T1," for the first day of hearing, or "T2," for the second day of hearing.

Pro shop revenues are not considered Petitioner's revenues as the merchandizing rights are owned by Petitioner's Director of Golf.

Mr. Pastoor testified that for eleven consecutive years Petitioner hosted the Senior PGA Golf Tournament. However, due to the loss in sponsorships, 2004 was the last year this event was held at the subject property. The net revenue received each year from this tournament was in excess of $200,000. To recoup this loss of revenue, Petitioner aggressively sought out other means of raising revenue, such as hosting weddings, golf outings and other functions. However, only Petitioner's members may utilize the subject property for these functions. In other words, a person from the general public may not hold a wedding event at the subject property. (T1, p100)

In terms of Petitioner's expenses, Mr. Pastoor testified that costs were in excess of $6,000,000 in 2004.

> [I]t's a very expensive operation. The golf courses alone [cost] about 1.3 million dollars just to maintain them per year. When we built the golf courses we asked for very challenging, competitive golf courses. And the style at the time was to build them very severe. That's nice from a golfer's perspective. But from a maintenance perspective, it's very difficult because they are very labor intensive. We have . . . 55 employees on the golf course alone, which I think is the highest number in Michigan. (T1, p31)

Mr. Pastoor further testified that maintenance costs for the 57,000 square foot clubhouse range from $600,000 to $640,000 each year. General administrative expenses of $1,000,000 to $1,100,000 are incurred each year, as are pool and tennis court expenses of approximately $100,000. Utility expenses average $125,000 per year, with insurance costs equaling approximately $90,000. Petitioner does not own its golf carts, choosing instead to lease them at a cost of $82,000 per year. While Petitioner does not receive any income from the pro shops, Petitioner incurs costs for utilities and staff of $480,000 to $500,000 each year. Capital replacement costs range from $300,000 to $420,000 each year, not including $150,000 in capital replacement costs incurred solely for the two golf courses.

According to Mr. Pastoor, Petitioner's food and beverage operation is very expensive and that with costs of approximately $2,000,000 each year, the goal is to break even. Petitioner operates five kitchens on the property, with 30 to 32 kitchen staff and approximately the same number of staff performing other services.

Mr. Pastoor testified that there are 12 country clubs within a 15 mile radius of the subject property. Of these, Petitioner's primary competition for members are the Cascade Hills Country Club, Kent Country Club, and Blythefield Country Club. Mr. Pastoor further testified that the economy has had an impact on Petitioner's membership.

> We've seen higher turnover of members. As an example, the first ten years, from 1991 through 2000, we suffered about six percent attrition a year from our membership and had to replace those. In 2000 through 2006 that has been 8.9 percent. So we are seeing a marked increase, almost a 50% percent increase in the number of people leaving the club and resigning. (T1, p53)

This marked increase in member turnover has resulted in an increase in membership dues (T1, p56) and a reduction in the number of people on the waiting list of those who wish to become members.

Pursuant to its Bylaws, Petitioner may have no more than 550 playing memberships. "[P]laying memberships are made up by four categories: Family playing, senior playing, junior playing, and widowed playing." (T1, p82) When questioned as to why these memberships were limited in number, Mr. Pastoor testified that "[w]e have always tried to maintain ease of use of the golf course by our membership . . . The 550 provides us with the lowest ratio of members per golf course in the area." (T1, p81) In other words, "that's what our membership has determined would . . . maximize their usage of the golf course and their pleasure of the golf course. That is the number that we have determined that works best for us as far as accessibility." (T1, p104) As of December 31, 2003, and December 31, 2004, Petitioner had 550 playing memberships.

In addition to playing memberships, Petitioner offers non-playing, or social, memberships. "Sports social permits use of the pool and tennis facilities and limited golf. Social members, pure social members, dining only, we also have senior social, emeritus members, nonresident members." (T1, p82) In 2004, Petitioner had approximately 150 non-playing members, or 700 total members. Mr. Pastoor explained that the club members own the subject property. (T1, p74)

During cross-examination, Mr. Pastoor testified that the Internal Revenue Service rescinded Petitioner's 501(c)(7) tax status because the PGA Senior Tournament generated income "[a]bove and beyond the 15 percent threshold that a club is allowed for nonmember dues." (T1, p94) Mr. Pastoor acknowledged that even though Petitioner is no longer a 501(c)(7) organization, it is still organized as a Michigan non-profit corporation. Pursuant to its Bylaws, upon dissolution of the club all net assets must be distributed to a 501(c)(7) entity. Mr. Pastoor further acknowledged that Petitioner's Bylaws state that "[t]he club is formed for the pleasure, recreation, and other nonprofit purposes of its members," and that this remains Petitioner's purpose. (T1, p78) Finally, Mr. Pastoor agreed that the Bylaws state that "[t]he club has not been formed for pecuniary profit or gain," and that profit or gain is not Petitioner's primary motive. (T1, p78)

Mr. Pastoor was questioned as to the average number of rounds played at a golf course each year. In response, Mr. Pastoor stated:

> Well, it certainly is geographically pertinent or specific. But it's my belief that [Petitioner] plays the fewest rounds per 18 holes of any of the clubs in West Michigan. Typically its 20 to 22,000 rounds of golf [per 18 holes] that a public course must have in order to maintain its budget. (T1, p97)

Mr. Pastoor testified that green fees are charged to guests or family members not covered by a membership. In 2004, the green fees were $60 per 18 holes for guests and $30 for family members not included in a membership. (T1, p107) Golf carts are not required; however, if carts are rented the cost is $12.00 per 18 holes. At the subject property, golf carts are utilized in 65% of the rounds played. (T1, p108)

Petitioner's next witness was Mr. Daniel J. Tomlinson of the firm Stout, Risius and Ross. Mr. Tomlinson received a Bachelor of Arts degree in Economics from Stanford University and a Masters degree in Real Estate and Urban Analysis from the University of Florida. He holds the MAI designation from the Appraisal Institute and has held that designation since 1997. Since 1993, Mr. Tomlinson has been certified by the State of Michigan as a certified general real estate appraiser. Mr. Tomlinson testified that during 2004 he was involved in appraising approximately 100 properties. Due to his education and experience, Mr. Tomlinson was designated as an expert in real estate appraisal.

In his appraisal report, Mr. Tomlinson describes the subject property as consisting of 335.40 acres, with one access point from Knapp Street NE. The property has a slightly irregular shape and is gently rolling. Completed in 1990, Egypt Valley Country Club contains two 18-hole, par-72 golf courses designed by Arthur Hills. The courses are known as the Ridge and the Valley.

> The Ridge course yardage from the championship tees, blue tees, white tees, and gold tees is 7,043 yards, 6,643 yards, 6,246 yards, and 5,672 yards, respectively. The Valley course yardage from the championship tees, blue tees, white tees, and gold tees is 6,955 yards, 6,581 yard, 6,169 yards, and 5,667 yards, respectively . . . Each course contains four par 3's, ten par 4's, and four par 5's. The fairways and greens are bent grass and water hazards and bunkers come into play throughout the course. (Tomlinson Appraisal, pp24-25)

There are several buildings located on the subject property. According to Mr. Tomlinson, the clubhouse is a two-story, Class C building with 36,406 square feet and an 18,400 square foot basement. Located on the first floor are the women's locker room and lounge, pro shop, administrative offices, kitchen, two dining rooms, and bar. A large patio area is also located on this level. The second floor contains the men's locker room and lounge, and the ballroom. General storage, golf cart parking, and golf club storage areas are located in the basement.

In addition to the clubhouse, the subject property has a 2,290 square foot, Class D Recreational Pool Enclosure, a 14,088 square foot, Class D maintenance building, a 2,098 square foot, Class D single-family residence, a 60 square foot, Class D starter shed, a 320 square foot, Class D halfway house, and a 120 square foot Class D snack bar with restrooms. Other property improvements include a parking lot, a practice facility, a pool and four tennis courts.

Mr. Tomlinson's appraisal assignment was to value the subject property's fee simple estate. (Tomlinson Appraisal, p1) To do this, he first valued Petitioner as a going concern. He did this because Petitioner is not comprised solely of real property; instead, Petitioner also contains personal and intangible property components. (T1, p116) Once Petitioner's going concern value was determined, the value of the personal property and the liquor license/intangible property were "backed out" to arrive at the subject property's true cash value. (T1, p117)

According to Mr. Tomlinson, the subject property's current use is as a private, non-equity, for-profit, country club. Mr. Tomlinson opined that the subject property's current use is its highest and best use. (Tomlinson Appraisal, p37)

> [H]ighest and best use is viewed in two components, one as vacant and then as improved. As vacant we look at the four criteria: Legally permissible, physically possible, financially feasible, maximally productive. Certainly with the golf course there, we wanted to come to some conclusion if you would rebuild the golf

> course if it was vacant, and certainly by our analysis we wouldn't. We would go to a residential development. This is what we concluded to as vacant.
>
> As improved, we look at again the four criterias. Certainly the existing improvements do contribute to the overall property, golf course and the buildings. We did come to a land estimation, which is not presented here because we didn't do a cost approach. But we came up to a land value of 3 million 9, and we compare that to 5 million 7, we concluded that you would not demolish the existing improvements, you would still keep them because they still contribute above land value. If by chance we concluded under 3 million 9, you come to a different highest and best use conclusion, and you would demolish improvements and put it to that higher use.
>
> Our conclusion is that we feel that the highest and best use would be a private, *non-equity* country club and it's stipulated for profit. (T1, pp126-127)

Mr. Tomlinson explained that the difference between an *equity* country club and a *non-equity* country club, such as Petitioner, is that in an *equity* country club:

> . . . the equity member could anticipate a redemption of his initiation fee. A non-equity member is obviously a member that does not anticipate a redemption of any of his initiation fee.
>
> So because I concluded to the non-equity, the issue then comes up is . . . how do you value the non-equity. Well, you look at the non-equity with the basis that the members will stay or the members will continue to be members with the course, will continue to pay dues or members in place. Maybe that's a better terminology for it. The equity, because everyone gets a redemption, then there is a repopulation, repopulation of the club. So if you go down the equity method . . . you have to look at repopulating the membership and obviously the money coming from that repopulation.
>
> For a non-equity, because the members don't anticipate any redemption from their initiation fee, then you assume that they will stay and that they would be in place. (T1, pp136-137)

Having determined the subject property's highest and best use, the next step was to determine Petitioner's going concern value. In his appraisal, Mr. Tomlinson considered the cost approach, the sales comparison approach, and the income capitalization approach. However, Mr. Tomlinson testified that while he considered the cost approach, he did not utilize this approach "because there was so much external obsolescence." (T1, p127)

As to his sales comparison approach, Mr. Tomlinson testified he had to conduct a "national search" for sales of similar properties as "transactions of private golf clubs do not commonly occur." (Tomlinson Appraisal, p42) From this search Mr. Tomlinson was able to identify four sales of private country clubs. The first was Red Mountain Ranch Country Club, located in Meza, Arizona; the second was Oakridge Country Club, located in Garland, Texas; the third was Metamora Golf & Country Club, located in Metamora, Michigan; and the fourth was Ohio Prestwick Country Club, located in Uniontown, Ohio. Mr. Tomlinson testified that he visited the clubs in Metamora, Michigan, and Uniontown, Ohio. (T1, 130)

Having selected the sales of private country clubs to use in his sales comparison approach, Mr. Tomlinson calculated a sales price per hole for each sale. He then considered the differences between the subject property and the comparable sales in terms of property rights, financing terms, conditions of sale, expenditures after the sale, market conditions, location, and other physical characteristics. Given the weak economy, adjustments were made for market conditions, or date of sale, of -1% per year. Additionally, all of the comparable sales, but for the golf course located in Uniontown, Ohio, were considered to have superior locations. Given this, these three comparable sales received a -10% adjustment. All of the comparables were 18-hole courses, compared to the subject property's 36-holes. Mr. Tomlinson testified that a -5% adjustment to the comparables was necessary because:

> . . . when you construct a 36 hole golf course, we have economies of scale. The more construction dollars you spend, the less per unit it costs. Typical example is a large industrial building, if you look at per unit cost of a thousand square foot industrial building, compare it to a hundred or 200,000, its going to be less because the economies of scale. We feel that adjustment was the same here in the sense that if you just did an 18 hole, its going to cost you more than a 36 hole. (T1, pp133-134)

Finally, because the clubhouses at the Garland, Texas, and Uniontown, Ohio, courses were smaller than the subject property's clubhouse, Mr. Tomlinson applied a +5% adjustment to these sales. After applying all of these adjustments, Petitioner's value per hole was determined to be $200,000. Given that the subject property has 36 holes, Mr. Tomlinson concluded that Petitioner's going concern value under the sales comparison approach was $7,200,000.

Mr. Tomlinson's next step was to determine Petitioner's going concern value under the income capitalization approach. Mr. Tomlinson testified that "a discounted cash flow model is the traditional model that is utilized . . ." in estimating a going concern value. (T1, p136) In his discounted cash flow (DCF) analysis, Mr. Tomlinson concluded that Petitioner has two sources of income that must be considered.

> The first source of income is the sale of memberships in the club. In the DCF analysis, membership sales are projected over a five-year period. [Petitioner] has been open since 1990, and only 11 new memberships are currently available for purchase (the club has a maximum playing membership count of 550, and 539 current members.) As such, only six new memberships are sold off in the DCF as [Petitioner] then reaches stabilization (545 members.) Additionally, stabilized membership sales are projected at 45 per year. This reflects the members that quit the club and are replaced and is consistent with historical turnover. There are several types of memberships in the club; however, the stabilized rate of 45 new members per year reflects playing memberships. These playing memberships have an initiation fee of $12,000 and the member leaving the club is not eligible for any refund of this fee. (Tomlinson Appraisal, pp54-55)

The second source of income is "operating income" generated from green fees, cart rentals, etc. However, income from the pro shop is not included in this source of income. "[T]he pro shop operation is run by the Director of Golf at the club; any profit from the operation does not pass to the Subject Property. As such, the pro shop operations expense is also projected to be equal to its corresponding income." (Tomlinson Appraisal, p61)

Mr. Tomlinson utilized a five-year period in his DCF analysis and relied upon the *Korpacz Real Estate Investor Survey* for information as to annual growth rates. Based on this survey Mr. Tomlinson concluded that income and expenses should increase 2.5% annually.

Mr. Tomlinson reviewed Petitioner's historical membership count as well as income and expense data for the period January 1, 2001, through December 31, 2004. He also reviewed information from the country clubs in direct competition with Petitioner, namely the Blythefield Country Club, the Cascade Hills Country Club, and the Kent Country Club. In doing so, he concluded that Petitioner was bracketed among its competitors.

After estimating Petitioner's income and expenses for tax years 2005 through 2009, Mr. Tomlinson concluded to a net cash flow, or net operating income (NOI), for each year. Next, he estimated a tax adjusted discount rate by first adding a 10.0% overall capitalization rate, derived primarily from sales of comparable golf courses, to the 2.5% estimated annual growth rate, for a total of 12.5%. (Tomlinson Appraisal, p62) He then determined an effective tax factor by dividing Ada Township's 4.6% millage rate by the assessment factor of 50%, the result being 2.3%. The combination of these two rates is known as the tax adjusted discount rate, which in this case is 14.8%. Mr. Tomlinson's next step was to multiply the net cash flow for the 2005 through 2008 tax years by the tax adjusted discount rate of 14.8% to arrive at the "present value of net cash flow." These values were then totaled, the result being the "total present value of net cash flow."

Finally, Mr. Tomlinson determined Petitioner's reversion value at the end of the five-year period by multiplying the 2009 net cash flow by a terminal cap rate of 12.55%. The result of this formula was then multiplied by a present value factor of 0.5757 to arrive at the "total present value of reversion value." The last step in determining Petitioner's 2005 going concern value using the discounted cash flow method was to add the “total present value of net cash flow” to the “total present value of reversion value.” In doing so, he concluded to a going concern value of $7,100,000.

Mr. Tomlinson explained that in addition to determining Petitioner’s going concern value using a discounted cash flow analysis, he also performed a direct capitalization analysis using market rents.

> [Petitioner] is relatively stable in its membership count; however, there is turnover annually. As such, [Petitioner] will have fluctuating cash flows over the next several years. Therefore, a discounted cash flow analysis would accurately reflect the Going Concern Value of [Petitioner].
>
> Additionally, the direct capitalization method of the Income Capitalization Approach is utilized. This method is also referred to as the Market Rent method when pertaining to golf courses. This method is based on a direct capitalization of rental income an owner of a golf course or country club similar to [Petitioner] would receive. This method is a reliable tool in estimating True Cash Value as the value is directly attributable to the Real Property. Furthermore, the International Association of Assessing Officers (“IAAO”) supports this method of golf course valuation. (Tomlinson Appraisal, p54)

Thus, unlike the discounted cash flow analysis, the conclusion reached by Mr. Tomlinson using the direct capitalization method is the subject property’s true cash value and not Petitioner’s going concern value. Mr. Tomlinson testified that this appraisal method is applicable because “the golf industry is so soft, a lot of people are looking at turning over their golf courses to a management firm that basically leases the real property.” (T1, pp149-150)

In performing the direct capitalization analysis, Mr. Tomlinson reviewed leases for seven public and municipal golf courses. Based on the terms of these leases, he concluded that the subject property would rent for $150,000 per year plus 7% of gross sales. After deducting minor expenses, Mr. Tomlinson divided the NOI by a 9% real property overall capitalization rate to reach a conclusion of the subject property's *true cash value* via the market rent approach of $5,600,000.

In reconciling Petitioner's going concern value under the sales comparison approach of $7,200,000 and of $7,100,000 under the income capitalization approach/ discounted cash flow analysis, Mr. Tomlinson gave the most weight to the income capitalization approach. In doing so, he concluded to a going concern value for the 2005 tax year of $7,100,000.

Because, ultimately, only the subject property's true cash value is at issue in this case, Mr. Tomlinson was required to subtract the value of Petitioner's personal and intangible property from the going concern value. Mr. Tomlinson did not appraise Petitioner's personal property, opting instead to utilize the property's value as it appears on Respondent's assessment roll. Specifically, the property is known as Parcel No. 41-50-11-020-179 and is assessed at $1,344,600.

Similarly, Mr. Tomlinson did not appraise Petitioner's intangible property, consisting solely of Petitioner's liquor license. Instead, he relied upon an estimated value he obtained from Mr. Randy Whately, "an attorney who represents clients on purchasing and selling liquor licenses." (Tomlinson Appraisal, p72) Mr. Whately opined that the value of Petitioner's liquor license is $55,000. With this, Mr. Tomlinson reported the total value of Petitioner's personal and intangible property at $1,400,000. After subtracting this value from Petitioner's going concern value, Mr. Tomlinson concluded that the subject property's 2005 *true cash value* is $5,700,000. This value is consistent with the value determined by Mr. Tomlinson under the income capitalization approach/direct capitalization method.

On cross-examination, Mr. Tomlinson testified that one of the items he utilized in preparing his appraisal report was an article written by Mr. Martin Benson, titled *Challenges in* *the Appraisal of Private Golf Clubs*. (Petitioner's Exhibit LL) In that article, Mr. Benson describes private *equity* golf clubs and private *non-equity* golf clubs. As to private equity clubs, Mr. Benson states: "As owner-occupied properties, equity clubs are typically not operated for profit, for any profit would be pocket to pocket from the owner to itself." (T1, p164) Mr. Tomlinson stated that he does not believe Petitioner is an equity club because it is being operated to generate a profit. Mr. Tomlinson acknowledged that Petitioner's Bylaws state that it is organized for nonprofit purposes; however, Mr. Tomlinson testified that "[t]he corporate entity may say that. But the operation is to run it as a profitable entity." (T1, p165)

When questioned as to why, in his sales comparison approach, Mr. Tomlinson concluded that the location for the Metamora Golf & Country Club was superior to that of the subject property, Mr. Tomlinson explained that he "ran demographic rings around the comparable sales [and] compared it to the subject property." (T1, p175) Mr. Tomlinson selected a 15-mile radius for the comparison and justified using that distance by stating that this is the trade area from which the clubs would draw. Mr. Tomlinson determined that the median income in the Metamora Golf & County Club's trade area was $68,367, while the median income in the subject property's trade area was approximately $50,000. However, Mr. Tomlinson acknowledged that the subject property's 15-mile radius included the City of Grand Rapids, which would tend to lower the median income, and that the median income for Ada Township was approximately $83,000.

Mr. Tomlinson was next asked a series of questions regarding his income capitalization approach. Specifically, he was asked to explain why he valued the subject property as if the current members remained in place after the property sold instead of valuing the property as if it were repopulated with new members. According to Mr. Tomlinson, a potential buyer would prefer to purchase the property subject to these existing memberships because it is less risky. While Mr. Tomlinson acknowledged that a potential buyer would receive more revenue if new memberships were sold, he did not believe it realistic to assume that a buyer could sell 300 memberships in one year, as did Respondent's appraiser. Finally, Mr. Tomlinson explained that while the subject property is an unencumbered fee simple estate, the property's going concern is encumbered by the memberships.

In its rebuttal case, Petitioner called Mr. Jonathan L. Smith to testify as to golf course lending practices. Petitioner also called Mr. Fred Gordon who, as a member of the Heathers Club in Bloomfield, Michigan, testified that the club did not sell as indicated in Respondent's appraisal.

RESPONDENT'S CASE

Respondent's first witness was Ms. Ginger Soles. Ms. Soles is certified by the State of Michigan as a Level III assessor and is employed by Respondent in that capacity. Given her training and experience, Ms. Soles was accepted as an expert in assessing property.

Ms. Soles testified as to how the property was assessed for the 2005 tax year under the cost approach. Ms. Soles first obtained information from Kent County regarding golf courses located within the county. Ms. Soles was informed that there were 41 golf courses in Kent County, ten of which were either private or semi-private courses. Ms. Soles also obtained information regarding the quality of the subject property from a survey conducted by the County. Using this information, Ms. Soles determined that the subject property is a Class IV course as defined by the cost manual approved by the State Tax Commission. Pursuant to the manual, a Class IV course is a "[b]etter championship-type course on good undulating terrain, fairway and greens bunkered and contoured, large tees and greens, large trees transplanted, driving range, may have named architect." Class IV courses range in cost of between $117,500 and $164,500 per green. Ms. Soles selected the mid-point and valued the subject property at $141,000 per green.

Ms. Soles next testified that she determined the value of the subject property's land through a study of vacant land sales. This study included land located within Ada Township; however, Ms. Soles testified that she also considered a land sale located in Cascade Township and one in Vergennes Township. From this, Ms. Soles concluded to a land value of $9,420 per acre.

Ms. Soles then provided a description of each of the five parcels of property under appeal. Specifically, Ms. Soles described Parcel No. 41-15-09-100-007 as being classified as commercial and containing 20 acres of land with four greens. Thus, at $9,420 per acre and $141,000 per green, Parcel No. 41-15-09-100-007 was determined to have a true cash value of $750,000.

Parcel No. 41-15-09-226-001 was described as being classified as commercial and containing 104.9 acres of land with 12[5] greens. Located on this parcel are a two-story clubhouse, a parking lot, an L-shaped, Olympic-sized swimming pool, a hot tub, four tennis courts and a maintenance building. This parcel was determined to have a true cash value of $9,062,400.

Parcel No. 41-15-10-100-010 was described as being classified as residential and containing .69 acres of land. Located on this parcel is a one story, single-family residence, 1,086

[5] According to Parcel No. 41-15-09-226-001's property record card, this parcel had 28 greens. Ms. Soles testified that, in fact, this parcel only contained 12 greens. Ms. Green corrected the parcel's value, which is reflected on page 2 of this Opinion.

square feet in size, with a one-car garage and a small metal shed. This parcel was determined to have a true cash value of $88,200.

Parcel No. 41-15-10-100-018 was described as being classified as commercial and containing 78.86 acres of land with eight greens. At $9,420 per acre and $141,000 per green, this parcel was determined to have a true cash value of $1,877,600.

Finally, Parcel No. 41-15-09-100-017 was described as being classified as commercial and containing 143.76 acres of land with 14 greens. At $9,420 per acre and $141,000 per green, this parcel was determined to have a true cash value of $3,337,800. With this, Ms. Soles determined that the subject property's true cash value under the replacement cost approach was $15,116,000.

When questioned as to her opinion as to the best appraisal method to utilize when valuing the subject property, Ms. Soles stated:

> [W]ith the income approach the investor is looking for the maximum profit or net return on his investment. With the property being self-limited to receiving revenues such as initiation fees, for one example, they had limited their potential in earnings or profit and the profits that are being earned were only for the perpetuation of the golfing facility and to entice new members and not for the purposes of generating a profit.
> With the sales approach, I determined that because of dissimilarities between the golf courses, and the lack of a sufficient number of sales of equity and non-equity golf [courses], in addition to vacant land sales that were used for the purposes of a golf course, that I would have to make speculative adjustments for the quality of the course, the design, the playability or even the maintenance of the course. So I deemed that would be an unreliable approach to the value. (T2, p255)

Respondent's next witness was Mr. James Hartman of the Oetzel-Hartman Group. Mr. Hartman testified that he received a Bachelor's degree from Michigan State University's College of Business with an emphasis in finance. Additionally, he testified that he holds the MAI designation from the Appraisal Institute and has been licensed by the State of Michigan as a certified general real estate appraiser since 1997. Given his education and experience, Mr.

Hartman was qualified as an expert in appraising property. While he did not testify, Mr. Terrell R. Oetzel completed some of the work on the appraisal and co-signed the report.

Like Mr. Tomlinson, Mr. Hartman's appraisal assignment was to determine the true cash value of the subject property's fee simple estate. However, unlike Mr. Tomlinson, Mr. Hartman concluded that the fee simple estate was encumbered by Petitioner's memberships. To value the subject property as unencumbered, Mr. Hartman assumed that the subject property would sell and that all of the memberships would be terminated. (Hartman Appraisal, pi)

> Typically, when the property sells, a new purchaser, particularly if it's going to be operated on a for profit venture where they are going to buy the assets of the corporation, they do not necessarily by the memberships, the memberships are terminated. Also, to value it based on current memberships would be to value less than a hundred percent interest in the property. (T2, pp293-294)

Mr. Hartman agreed with Mr. Tomlinson's conclusion as to the subject property's highest and best use as improved, that being as a private, *non-equity, for-profit* country club. (T2, p285) However, Mr. Hartman disagreed with Mr. Tomlinson's determination that the subject property is currently operated as a for-profit club; instead, he asserts that it is being operated as a non-profit club.

Mr. Hartman also disagreed with Mr. Tomlinson's definition of non-equity and his conclusion that Petitioner is a non-equity club. According to Mr. Hartman, the dispositive factor in determining whether a club is an equity or non-equity club is not whether the initiation fee is returned to a member if the member resigns from the club. Instead:

> [T]he determining factor whether it's equity or non-equity is the ownership. If it's owned by the members, it's an equity club. If it's owned by an individual, then it's a non-equity club that turns around and has memberships to the club. Which is different than an equity club where you have stock and you're an owner of the club itself. (T2, pp296-297)

In this case, the members own stock in Petitioner; therefore, Petitioner is an equity club.

Mr. Hartman testified that he did not know of any equity clubs that were also for-profit clubs. "[T]here is no reason necessarily to be for-profit because you're basically taking money from yourself to give to yourself . . . Generally the [non-profit clubs] are operated to cover the operating expenses and debt service" because there is no profit motive. (T2, p298)

In valuing the subject property's fee simple estate, Mr. Hartman, like Mr. Tomlinson, began by valuing Petitioner as a going concern. "The operation of the golf course is so closely tied to the real estate that the valuation becomes one of its going concern value. It is the appraisers' opinion that this is the basis upon which the property would be purchased." (Hartman Appraisal, p23)

In determining Petitioner's going concern value, Mr. Hartman considered the income approach, the sales approach and the cost approach. Like Mr. Tomlinson, Mr. Hartman opined that the income capitalization approach provides the most reliable indication of the subject property's value.

> Golf course properties are developed and purchased primarily for investment. The objective of the developer and purchaser is to realize a profit from their investment. The better the earning power of the course, the better the profit, and thus, the higher value of the investment. Therefore, the income approach is the most applicable analysis of the market value for the subject property. (Hartman Appraisal, p23)

While the appraisers agreed that the income capitalization approach is the most reliable approach to use in this case, they differed on one significant point. Mr. Tomlinson asserted that a buyer would purchase the subject property with the membership intact, while Mr. Hartman asserted that the members, as the property's owners, would have to have voted to sell the property and that, once it is sold, they would no longer be involved with the property. Therefore, the property would have to be repopulated. In making this determination, Mr. Hartman relied upon the same article utilized by Mr. Tomlinson, specifically the article written by Mr. Martin

Benson, MAI, titled *Challenges in the Appraisal of Private Golf Clubs* (1998). (Petitioner's Exhibit LL)

Mr. Hartman projected that the subject property would be repopulated at 550 members in three years. When asked whether the subject property could accommodate a larger number of members than 550 without jeopardizing the ability to accommodate the members, Mr. Hartman respondent that "typically 18-hole courses might have upwards of 350 golf members. So, potentially there could be more members, this being a 36-hole [course]." (T2, p289)

In his appraisal, Mr. Hartman reported information he had obtained as to the number of golf rounds played at private clubs and the projections he made in this case.

> Private club rounds in the market are generally stable with an overall range from 19,000 to 28,000 per year, per 18 holes. The courses with less play are higher priced and have more restrictive guest policies. Golf Association of Michigan Club Operations Survey indicated the mean for 18-hole rounds is 21,807. The Club Managers survey indicates the 2004 average to be 22,885 for golf clubs and 26,458 for country clubs. [In this case, projections] include the typical membership playing 50 rounds per year and the social members rounds at 4 per year. The guest rounds are projected at 8 per year (per full member). The projected stabilized number of rounds is 30,850. (Hartman Appraisal, p93)
>
> For a private course, the property valuation is a combination of the present value from the selling and reselling of the membership initiation fees and the income stream derived from operation of the club. (Hartman Appraisal, p23)

Both Mr. Hartman and Mr. Tomlinson utilized a discounted cash flow analysis; however, while Mr. Tomlinson projected a five-year holding period, Mr. Hartman projected a 14-year holding period even though he asserted that the property would stabilize in four years. When asked why he utilized a 14-year period instead of a shorter period, Mr. Hartman testified that "[o]nce a property reaches stabilization, if the income and expenses are trending forward at a similar rate, it's not really going to make a difference or a significant difference." (T2, p302)

Mr. Hartman estimated that income and expenses would trend forward by 2.5% each year. (Hartman Appraisal, p100)

Mr. Hartman's income approach also differed from that of Mr. Tomlinson in that he assumed that a for-profit club would receive income from pro shop sales. Mr. Hartman arrived at a figure for pro shop income based upon information he obtained from the market and from the *2004 Society of Golf Appraiser's Income Expense Report*.

Under his income capitalization approach, Mr. Hartman concluded to a going concern value for the subject property of $11,200,000. From this he subtracted the value of Petitioner's personal property. Like Mr. Tomlinson, Mr. Hartman did not appraise Petitioner's personal property. Instead, he utilized the value of the personal property as indicated on Respondent's assessment roll for Parcel No. 41-50-11-020-179, namely $1,344,600. Mr. Hartman did not find that Petitioner's going concern value included the value of any intangible property. Thus, Mr. Hartman concluded to a 2005 true cash value for the subject property of $9,855,000.

In addition to the income capitalization approach, Mr. Hartman also valued the subject property using the cost approach.

> The cost approach has some relevance. The cost to build, however, can be unreliable as the going concern value may be above or below the cost to build. In the subject's case, the general market creates economic deficiencies. Thus, it is necessary to estimate significant depreciation. The cost approach is considered, but significant economic obsolesces is noted. (Hartman Appraisal, p24)

Mr. Hartman began his cost approach by determining the value of the land. To do so, Mr. Hartman reviewed the sales of five parcels of property. Of these five sales, three parcels of property were located within Ada Township, one was located within Grand Rapids Township, and one was located within Algoma Township. Mr. Hartman adjusted these sales for market conditions, or date of sale, at 4% per year. He also made adjustments for size, location, utilities, and zoning/density. With these adjustments, Mr. Hartman concluded to a value of $10,000 per acre. According to Mr. Hartman, the subject property is 346.9 acres in size. Thus, the estimated land value for the subject property is $3,470,000.

Mr. Hartman reported that "[t]he estimated reproduction cost of the golf course improvements are based on actual costs and cost incurred in the construction of similar quality golf course developments." (Hartman Appraisal, p76) A summary of these costs, totaling $7,136,785, was provided. To this, the costs of the remaining site improvements were added. Mr. Hartman also added entrepreneurial incentive, estimated at 10%, and indirect costs, estimated at 2%. Physical/functional depreciation, ranging from 17% for the golf course to 87.5% for the single-family home, was applied to the value of the improvements. Because Mr. Hartman appraised Petitioner's going concern value, he added the true cash value of Petitioner's personal property, as indicated by Respondent's assessment roll. With this, Petitioner's total going concern value under the reproduction cost approach was determined to be $16,850,000.

Having reached this conclusion, Mr. Hartman stated:

> The depreciated cost of the improvements, prior to applying external obsolesces, is substantially above the estimated market value from the income and sales comparison approaches. This indicates that the subject incurs substantial external obsolesces, thus, rendering the cost approach an unreliable indicator of value. (Hartman Appraisal, p81)

While Mr. Hartman considered the sales comparison approach, he did not value the subject property using this approach. In his appraisal, Mr. Hartman states:

> For a private course, it is difficult to apply the sales comparison approach utilizing comparable sales. The sale of a private country club includes membership initiation sales. Unless the comparable private club is at the same membership level, a direct comparison is misleading. (Hartman Appraisal, p24)

Given this belief, Mr. Hartman reviewed the sales of five private country clubs and used them as a test for reasonableness. These sales included the Webeek Country Club in Bloomfield

Hills, Michigan, the Country Club of the North in Dayton, Ohio, the Metamora Golf and Country Club in Lapeer, Michigan, the Heathers Club in Bloomfield, Michigan, and the Wetherington Golf and Country Club in Cincinnati, Ohio. (Hartman Appraisal, p111) Finally, Mr. Hartman testified that he did not complete a sales comparison analysis using these sales as they "were sales of properties that were not fee simple interest, and I was looking at valuing the fee simple interest of the real estate." (T2, p288)

On cross-examination, Mr. Hartman admitted that his appraisal did not contain any authority to substantiate his decision to appraise the subject property as a repopulated course instead of a course with its memberships intact. (T2, p309) He also admitted that he did not perform a market study, or "Level C or D study," to determine how many of the existing members would rejoin the club as repopulated members.

STIPULATION OF FACTS

The parties stipulated to the following facts:

1. "Petitioner is organized as a Michigan non-profit corporation under Michigan law whose principal office and place of business is located at 7333 Knapp NE and is commonly known as Egypt Valley Country Club. Petitioner is not tax exempt and therefore pays federal corporate income tax as a taxable C corporation under the Internal Revenue Code."

2. "The subject property is comprised of five parcels identified as parcel numbers 41-15-09-226-001, 41-15-09-100-017, 41-15-10-100-018, 41-15-09-100-007, 41-15-10-100-010."

3. "The subject property is currently being used as a private golf course and country club."

4. "The [subject property encompasses] 335.40 acres and consists of a 36 hole golf course, clubhouse, clubhouse basement, pool house, maintenance building, single family residence, starter shed, halfway house and restrooms."

5. "The property is currently classified as follows:

I.D. Number(s)	Class of Property
41-15-09-226-001	201-Commercial
41-15-09-100-017	202-Commercial

41-15-10-100-018	202-Commercial
41-15-09-100-007	201-Commercial
41-15-10-100-010	401-Residential”

6. “The subject property is located in Kent County and in the following school districts:

I.D. Number(s)	School District
41-15-09-226-001	Lowell
41-15-09-100-017	Forest Hills
41-15-10-100-018	Lowell
41-15-09-100-007	Forest Hills
41-15-10-100-010	Lowell”

7. “The level of assessment for each year at issue is 50%.”

8. “The Highest and Best Use of the land, as vacant, is as residential property.”

9. “The Highest and Best Use of the land, as improved, is as a private, non-equity, for-profit golf course and country club.”

FINDINGS OF FACT

The Tribunal adopts the parties’ stipulation of facts with the caveat that Parcel No. 41-15-10-100-010’s highest and best use as improved is as a single-family residence. In addition, the Tribunal makes the following findings of fact:

1. The golf course facilities were completed in 1990 at a cost of $15,200,000.

2. The two 18-hole courses are known as the Ridge and Valley.

3. For the five years preceding the valuation date of December 31, 2004, the number of rounds played was:

Tax Year	No. of Rounds
2000	33,015
2001	31,394
2002	30,799
2003	31,527
2004	32,390

4. The country club's existing use is as a non-profit club; it is not operated as a for-profit club.

5. Petitioner's appraiser did not value the country club as a for-profit club.

6. The golf course also includes a driving range and putting practice green.

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 five parcels of real property. Four of these parcels are known as the Egypt Valley Country Club and contain two 18-hole golf courses, a clubhouse, and various other improvements. The remaining parcel, Parcel No. 41-15-10-100-010, contains a single-family residence and is utilized as such. Of the three people who valued the subject property, only Respondent's assessor specifically addressed the true cash value of this parcel of property.

The remaining four parcels of property involve a somewhat unique and complicated valuation question. These four parcels of property are owned by Petitioner, a Michigan non-profit corporation. In the past, the Internal Revenue Service granted Petitioner tax exempt status as a 501(c)(7) organization. While Petitioner no longer holds the 501(c)(7) designation and may pay state and federal taxes, it has not taken any steps towards becoming a for-profit corporation.

Pursuant to Section 1.2, Article I of its Bylaws, Petitioner "is formed for the pleasure, recreation, and other non-profit purposes of its members." (Petitioner's Exhibit I, p1) The Bylaws further state that Petitioner "has not been formed for pecuniary profit or gain." *Id*.

Section 2.1 of Article II of the Bylaws provide that "[o]nly persons who have been elected to Club membership may own shares in the Club," the Club being Petitioner. *Id*. This Section also provides that "[a]ll members are required to own one (1) share of the Club's common stock. No more than one share shall be issued or recorded to any one (1) member." *Id*. Thus, Petitioner is owned by its members. However, pursuant to Section 7.15 of Article VII, "[u]pon termination of membership, a shareholding member shall receive no monetary sum, value, compensation, property, equity, reimbursement of initiation fees, reimbursement of dues, or the like, except as directed by the Board of Directors or as outlined hereto in these Bylaws." (Petitioner's Exhibit I, p18)

According to Section 11.6 of Article XI, "[l]iquidation, sale, or disposition of substantially all of the properties and assets of the Club or the dissolution of the Club shall require the affirmative vote of two-thirds (2/3) of the shareholding members." (Petitioner's Exhibit I, p22) "Upon dissolution of the Club, the directors shall, after paying or making provision for the payment of all the liabilities of the Club, distribute all of the assets of the Club to organizations chosen by the directors which are tax exempt under Section 501(c)(7) of the Internal Revenue Code." (Petitioner's Exhibit I, p26)

While the parties have stipulated that the highest and best use of these four parcels of property as improved is as a private, non-equity, for-profit golf course and country club, it is clear that there was not a "meeting of the minds" as to what this actually means. Specifically, the parties disagree as to the definition of the term "equity." Complicating matters further, the parties have a difference of opinion as to whether Petitioner is currently operated as a for-profit club. How these questions are resolved will significantly impact the property's true cash value under the income capitalization and sales comparison approaches to value.

Again, according to Petitioner, "the basic difference [between and equity and a non-equity club] is the equity member could anticipate a redemption of this initiation fee. A non-equity is obviously a member that does not anticipate a redemption of any of his initiation fee."

(T1, p137) Respondent, on the other hand, believes that "the determining factor whether it's equity or non-equity is the ownership. If it's owned by the members, it's an equity club." (T2, p296)

The Tribunal concurs with Respondent's definition and finds that Petitioner is an equity club. The article submitted by Petitioner as Exhibit LL, discussed earlier, supports this interpretation. Specifically, in his article titled *Challenges in the Appraisal of Private Golf Clubs*, Mr. Martin E. Benson defines "equity clubs" and "non-equity clubs."

> **Equity Clubs**. A private club is a golf course that restricts the use of its facilities to specific individuals called "members." A private club may be either an equity or a non-equity club. In an equity club (also known as a proprietary club), the club members own the real estate. More specifically, the real estate is typically owned by a legal entity such as a corporation (the club), which in turn is owned by the shareholders (the members). In other words, the members own the club, and the club owns the real estate.
>
> Members (owners) enjoy certain rights, privileges, and obligations specified in the bylaws, which typically include the right to use the golf facility. As owner-occupied properties, equity clubs are typically not operated for profit, for any profit would only be pocket to pocket from the owner to itself.
>
> An equity club may own more than one golf facility and other property as well, such as a ski lodge or city club. Also, an equity club may have different classes of members – such as honorary, restricted, family, or corporate – who participate in the ownership.
>
> **Non-equity clubs**. The other private club structure is non-equity (also known as a non-proprietary club), in which members do not own the real estate. Instead, another party owns (leases or otherwise controls) the real estate, and grants certain rights to its use to others who wish to become members under the terms of a membership agreement or similar document.
>
> Such rights are often considered licenses, effectively a rental agreement, with the owner (lessor/licensor) granting use to individual members (lessees/licensees) in exchange for entry fees and monthly dues (rent, both prepaid and monthly). They are typically operated for profit.
>
> A non-equity club may offer different classes of membership, such as transferable, non-transferable, lifetime, family, temporary, corporate, or others. Like equity clubs, these are typically private and exclude public use. Also,

> members may enjoy the use of other facilities that the subject property owner also owns or with which he has made other arrangements. *Id*.

The question then becomes, how does this finding impact the parties' conclusions as to the property's true cash value?

In terms of Petitioner's income capitalization approach, the Tribunal finds that the value conclusion is rendered meaningless as the appraiser premised his analysis on his belief that Petitioner is a non-equity club. In other words, the appraiser assumed that a buyer would purchase the country club and that Petitioner's members would remain in place after the purchase. This simply would not occur. The club members own the country club. In order for the club to be sold, the Bylaws require an affirmative vote of two-thirds of the club members. Once the club was sold, the club members would no longer have an interest in the club. Again, the Benson article supports this analysis.

> The owner's interest is typically what is being valued . . . To determine the owner's interest in the property correctly, the appraiser must keep in mind that market value assumes that the owner sells its interest. Therefore, it is important to focus on determining exactly what rights the owner has to sell (and will therefore be giving up) and what rights the buyer will receive for the consideration paid.
>
> ***
>
> Fee simple is the most straightforward interest to appraise and lays the foundation for more complicated assignments. The income approach – a very important toll in valuing a golf facility as an equity club – may seem confusing since, with non-profit operations the net operating income (NOI) may be zero (or very low, or negative). Capitalizing the NOI would indicate a very low (or negative) value by the income approach, leading some appraisers either to undervalue the property or abandon the income approach.
>
> ***
>
> The underlying error is that it was incorrectly assumed that the existing members would continue to use the facility following the assumed sale.
>
> ***

> Because the members own the club and the club owns the real property, if the fee simple interest in the real property is sold, the members have sold their rights to their former property, including their right to use or occupy it. If prior members want to play, they must rejoin the facility, assuming the new owner wants to continue operating it as a private (equity or non-equity) golf course. Prior members must then pay the new entry fee, which will be reflected as revenues to the new owner (and included as such in the income approach to value). *Id*.

Valuing a country club as a non-equity club instead of an equity club could also impact the conclusions drawn under the sales comparison approach.

> The sales comparison approach is also problematic since equity clubs rarely sell their full fee simple interest in bulk. Therefore, a sales comparison approach must use the sales of daily fee and non-equity clubs, with their substantially dissimilar characteristics. The resulting value is, therefore, likely to reflect that of a daily fee or non-equity facility, when indeed the maximum value (and highest and best use) may be for an equity club. *Id*.

Petitioner's appraiser agreed that it was difficult to find sales of private country clubs. For this reason, he utilized sales of clubs in Arizona, Texas, and Ohio, in addition to the sale of one club in Michigan. Petitioner's appraiser stated that these were sales of non-equity clubs; however, given the differing interpretations of this term, the Tribunal is unclear as to whether these clubs were, in fact, equity or non-equity clubs.

While this question, in and of itself, is not enough to discredit Petitioner's sales comparison approach, there are other issues that, when combined, make the appraiser's analysis not as reliable. It is understood that sales of private country clubs are difficult to find; however, it is difficult to believe that country clubs in Arizona and Texas are comparable to those in Michigan. The differences in climate alone would cause one to wonder why these courses would be comparable as the average number of rounds played each year must be significantly different. Petitioner's Chief Operating Officer acknowledged that geographic location is important in terms of rounds played. The location adjustments made by Petitioner's appraiser appear to be made on the basis of population and income. This makes sense, as discretionary income is utilized for private golf membership. When income goes down there is less discretionary income to be utilized.

Moreover, Petitioner's appraiser testified that he visited two of the four comparables and was only able to speak to someone knowledgeable at one of the four clubs, that also being one of the two that he visited. In spite of this, he made adjustments to the comparables for condition and improvements.

A -5% adjustment was also made for number of holes as all four of the comparable sales were 18-hole courses, compared to the subject's 36-holes. Petitioner's appraiser testified that the reason he made this adjustment was due to economies of scale.

> The more construction dollars you spend, the less per unit it costs. Typical example is a large industrial building, if you look at a per unit cost of a thousand square foot industrial building, compare it to a hundred or 200,000, it's going to be less because the economies of scale. We feel that adjustment was the same here in the sense that if you just did an 18-hole, it's going to cost you more than a 36-hole. (T1, p134)

While the appraiser's theory is true for cost of construction, he has not proven that this theory transfers to the facts of this case. By reducing the value of each of the comparable courses by 5%, the appraiser is asserting that, all things being equal, the market value of a 36-hole course is less than the market value of an 18-hole course. This is nonsensical. Granted, at some point the law of diminishing returns will set in, but that does not equate to a 36-hole course being of less value than an 18-hole course, or that 18 holes of a 36-hole golf course are worthless.

In this case, the appraiser attempted to establish the subject property's true cash value by first determining Petitioner's value, and then subtracting the value of Petitioner's personal and intangible property. The appraiser did not establish the value of the liquor license but relied on values as stated by another attorney.

Petitioner's appraiser testified that the sale prices reported for the comparable sales were the properties' going concern values; however, the appraiser provided no information as to what other property was included in the sale price of these properties. It is unknown, for example, if a liquor license or other intangible property was actually included in the sale of these comparable properties. By deducting the value of Petitioner's personal and intangible property from the going concern value concluded to under the sales comparison approach, the appraiser assumes that the value of Petitioner's personal and intangible property equaled that of each of the comparable sales. For these reasons, the Tribunal finds that the value conclusion reached by Petitioner in its sales comparison approach is given less weight.

The Tribunal agrees with Respondent. While it is clear that Petitioner is being run efficiently, the Tribunal cannot conclude that it is being operated as a for-profit organization. To do so would mean that Petitioner is being operated in violation of its Bylaws.

While Petitioner valued the subject property using a market rent approach, it appears it only utilized the results from this approach as a test to determine the reasonableness of its reconciled estimate of true cash value. In this approach, the golf courses from which rental information was obtained were all public or municipal courses. Two of the seven courses were 27-hole courses, with the remaining five courses being 18-hole courses. Only one course was located in Michigan. Petitioner selected $150,000 as the "rent" for subject property. The Tribunal finds that the subject property would command a rent at the higher end of the range. For these reasons, the Tribunal finds that these courses are too dissimilar from the subject property to be of value in this approach.

Moreover, in determining an overall capitalization rate derived from market derived rates, five of the eight sales considered occurred in 1999, with only one sale occurring within a reasonable time period. Assuming that Petitioner had given this approach some weight, the Tribunal would have to find that the results were not reliable.

While Petitioner did not meet its burden of persuasion, i.e., the burden of proof in establishing the subject property's true cash value as required under MCL 205.737(3), Petitioner did meet its burden of going forward. As such, Respondent's case must be considered.

Unlike Petitioner, Respondent determined that Petitioner is an equity club. As such, Respondent valued the subject property using the income capitalization approach suggested by the Benson article, *supra*, albeit with a few different assumptions as to his discounted cash flow analysis.

> To project the revenues and expenses, appraisers must recognize that the hypothetical buyer would recognize that the hypothetical buyer would establish an equity club structure and generate revenues, in large part, by selling equity memberships. In doing so, the buyer is proceeding to resell his fee simple interest in the property to the members one membership at a time until his entire interest is sold out – similar to selling out a condominium or subdivision development. *Id*.

Respondent determined that the subject property would have to be repopulated with 300 of the possible 550 members joining the first year. Respondent, however, did not prove that the subject property would have to repopulate the membership. This, in fact, is the opposite of the market. Respondent's "test of reasonableness" included five sales of private country clubs. (The sale price per hole ranged from $277,000 to $494,444.) The clubs all retained the current memberships. (Exhibit R-4, p111). Mr. Hartman noted that the major difference in the parties' reports is the fact that he assumed that the club would be resold on a repopulation basis. This huge difference accounts for some of the $4,000,000 difference between the parties. Respondent was not able to cite any authority that substantiates the repopulation versus the "members in place" method to determine value. Mr. Hartman testified that "I don't know of any transactions where they have had a repopulation of an existing club." T2, p309. He further testified that his own club, Walnut Hills, sold to a private investor. Part of the negotiations for the sale was that the current membership was retained. Therefore, the Tribunal finds that Respondent's discounted cash flow analysis determining that the subject property is repopulated over a three-year period is flawed with no basis.

The assessment of the subject property is also not correct. The clubhouse has the second floor double counted as the assessor costed out the second floor separately. The State Tax Commission cost manual gives instructions for multi-story property. It states, "The base costs given are for buildings of three stories or fewer." State Tax Commission, *Introduction to the Calculator Method*, CAL INTRO 1. This error alone overvalues the subject property by $3.6 million. The Tribunal does not rely on the cost less depreciation approach.

Both parties established Petitioner's going concern value by deducting the true cash value of the personal property.

> A going concern is an established and operating business with an indefinite future life. For certain types of properties (e.g., hotels and motels, restaurants, bowling alleys, manufacturing enterprises, athletic clubs, landfills), the physical real estate assets are integral parts of an ongoing business. The market value of such a property (including all the tangible and intangible assets of the going concern, as if sold in aggregate) is commonly referred to by laymen as *business value* or *business enterprise value*, but in reality it is market value of the going concern including real property, personal property, and the intangible assets of the business. (Emphasis in original.) (Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13th ed, 2008), p29)

The Tribunal considers each appraisal, and their flaws, and determines that, based on a dollar value per hole for the subject's 36 holes, the reasonable conclusion of value that best indicates the true cash value of subject property is the common sale used by both parties. The unit of comparison used for subject property is the conversion of true cash value to a value per hole. This is a more meaningful comparison.

The Tribunal finds that an income approach is the preferred method to determine the true cash value of a golf course. Neither party provided an income approach that the Tribunal found useful or appropriate for the subject property. Both parties determined that a discounted cash flow would be the appropriate technique, but with different reasons behind their determination. Petitioner determined that subject property has a stable membership count, but there is turnover annually. Thus it was determined by Petitioner that the cash flow would fluctuate. Therefore, Petitioner relied on the discounted cash flow. 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 income stream is not as fluctuating as indicated by Petitioner. 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, and finds that in the instant case the sales of private golf courses indicate that the subject property is overvalued.

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. The parties have one common sale, Metamora Golf and Country Club. It sold April, 2001 for $281,778 per hole. This sole sale is the most relevant. This golf course does not have the same amenities as the subject property, was not analyzed as being the most comparable property, but is an indication that the true cash value of subject property should not be less than $281,778 per golf hole.

Petitioner adjusted the sale price to reflect that in his opinion the location was superior, the 18-hole golf course was superior to the subject’s 36 holes, and the condition was superior to the subject property. The Tribunal finds that Petitioner’s adjustments of the Metamora sale were excessive. The adjustments should have indicated that the subject property is superior with 36 holes and additional amenities that may not add additional value to an investor. The sales of various private country clubs indicate to the Tribunal that there was an active market. Petitioner adjusted the sale of the Metamora Golf and Country Club for market conditions. The Tribunal accepts that the similar location and demographics of the Metamora Golf and Country Club indicate $270,500 per hole. This results in a true cash value indication of $9,738,000 for the subject property. The personal property on the roll of $1,334,600 is deducted from $9,738,000 for a true cash value of $8,403,400. The Tribunal realizes that this is not the preferred method to determine true cash value, but it is appropriate for the subject property.

JUDGMENT

IT IS ORDERED that the subject property’s true cash, assessed and taxable values for the 2005 tax year 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: August 31, 2011 By: Victoria L. Enyart