



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

Meriam B & William B Leeke,
Petitioners,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 18-002469

White River Township,
Respondent.

Presiding Judge
Marcus L. Abood¹

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioners, Meriam B. & William B. Leeke, appeal ad valorem property tax assessments levied by Respondent, White River Township against Parcel Numbers 61-01-126-100-0001-00, 61-01-126-300-0001-00, 61-01-126-100-0003-00, 61-01-126-100-0005-00, 61-01-126-200-0001-00, 61-01-126-200-0002-00, 61-01-126-200-0005-00, 61-01-127-400-0001-00, 61-01-127-200-0001-00, and 61-01-127-200-0002-00, for the 2018 and 2019 tax years. Brian Etzel, Attorney, represented Petitioners, and Ryan Shannon, Attorney, represented Respondent.

A hearing was held in this matter on December 2, 3, 4 and 9, 2020. Petitioners' witness was Michael Rende. Respondent's witness was Justin George.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash value (TCV), state equalized value (SEV), and taxable value (TV) of the subject property for the 2018 and 2019 tax years are as follows:

¹ The hearing of this matter was conducted by former Tribunal Judge, Preeti Gadola. Judge Gadola is no longer with the Tribunal. As a result, after careful consideration of the transcripts, admitted evidence, and the case file, this Final Opinion and Judgment is rendered by the above-noted Tribunal Judge.

Parcel Number: 61-01-126-100-0001-00 (40.54 acres)

Year	TCV	SEV	TV
2018	\$268,872	\$134,436	\$106,052
2019	\$268,872	\$134,436	\$108,597

Parcel Number: 61-01-126-100-0003-00 (37.47 acres)

Year	TCV	SEV	TV
2018	\$248,706	\$124,353	\$124,353
2019	\$248,706	\$124,353	\$124,353

Parcel Number: 61-01-126-100-0005-00 (40.51 acres)

Year	TCV	SEV	TV
2018	\$268,872	\$134,436	\$79,459
2019	\$268,872	\$134,436	\$81,366

Parcel Number: 61-01-126-200-0001-00 (79.36 acres)

Year	TCV	SEV	TV
2018	\$526,540	\$263,270	\$163,155
2019	\$526,540	\$263,270	\$154,500

Parcel Number: 61-01-126-200-0002-00 (5.89 acres)

Year	TCV	SEV	TV
2018	\$44,812	\$22,406	\$5,773
2019	\$44,812	\$22,406	\$5,911

Parcel Number: 61-01-126-200-0005-00 (41.79 acres)

Year	TCV	SEV	TV
2018	\$277,834	\$138,917	\$18,508
2019	\$277,834	\$138,917	\$18,592

Parcel Number: 61-01-126-300-0001-00 (39 acres)

Year	TCV	SEV	TV
2018	\$259,908	\$129,954	\$122,406
2019	\$259,908	\$129,954	\$125,343

Parcel Number: 61-01-127-200-0001-00 (19.60 acres)

Year	TCV	SEV	TV
2018	\$129,954	\$64,977	\$64,977
2019	\$129,954	\$64,977	\$64,977

Parcel Number: 61-01-127-200-0002-00 (13.60 acres)

Year	TCV	SEV	TV
2018	\$89,624	\$44,812	\$23,914
2019	\$89,624	\$44,812	\$24,487

Parcel Number: 61-01-127-400-0001-00 (19.44 acres)

Year	TCV	SEV	TV
2018	\$127,714	\$63,857	\$63,857
2019	\$127,714	\$63,857	\$63,857

PETITIONERS' CONTENTIONS

Petitioners contend that the subject golf course is relatively flat and has few bunkers. Overall, the course does not have views of Lake Michigan and is not similar to such resort courses as Arcadia Bluffs or Bay Harbor. The subject's 27 holes are basically configured as three 9-hole courses. The original 9-hole course was developed in the 1920s. The most recent 9-holes were developed in the 1960s. The subject is an old-style course which is basically flat.²

Petitioners' appraiser sought data and information from White Lake Township, Muskegon County, and ESRI (Environmental Systems Research Institute). Rende researched demographic information in a 10-mile, 20-mile, and 30-mile radius. The county's 2000 population was 170,200 and had a slight increase for the 2019 population of 175,000. Further, the 30-mile radius indicated a population of 262,000. Overall, there is very limited development in the area. Rende was unable to find any residential developments within a 10-mile radius in the last 5 years.³ Further, he was unable to locate online information for residential building permits in the 20-mile radius. While information was obtained from the township, there is a lack of demand for the development of residential homes. On the other hand, there is high-level activity for improved residential waterfront properties.

² Vol 1, 28-29.

³ Vol 1, 45.

Petitioners' appraiser considered and analyzed the 4 tests of highest and best use for the subject property. As vacant, the subject's highest and best use is to remain vacant available for some future development once it can demonstrate financial viability. As improved, the subject's highest and best use is to remain as a daily fee public golf course given residential development is not economically feasible as of the dates of value under appeal. The subject's waterfront sites are impacted by the critical dune overlay; governmental oversight makes residential development prohibitive. Likewise, Rende took into consideration observations from other professionals regarding the shoreline and risks associated with erosion.⁴ The subject's residential sites (as minimum 1-acre sites) would take decades to sell or be absorbed by the market.⁵ There are examples of golf courses in southeast Michigan which were sold for residential development but are not comparable to the subject. Moreover, such examples have greater demographics (i.e., population, density) dissimilar to the subject area.

Petitioners considered all three approaches to value. Rende is constantly in the habit of seeking out information even after the completion of an appraisal assignment and report.⁶ The cost approach was considered but it is difficult to quantify depreciation for improvements to a golf course. This approach was not developed for this appraisal assignment. A golf course comparative analysis is also difficult to adequately adjust for the numerous differences (amenities, improvements). The sales comparison approach was only developed in a cursory fashion. The primary function of the sales comparison approach was to support the conclusions in the income approach. In this regard, the

⁴ Vol 2, 119-120.

⁵ Vol 1, 61.

⁶ Vol 2, 141-142.

income approach was developed and relied upon for the subject as a daily fee public golf course.

Petitioners' appraiser reviewed the national prospective for the golf industry (National Golf Foundation) as well as the State of Michigan (Michigan Golfer News and Crain's Detroit Business). There have been significant golf closures in the state.⁷ Reviewing golf courses in Michigan included the consideration of management to the going concern. Petitioners' appraiser asserts that there is a difference in management between a "mom and pop" operation versus a large resort course such as the Boyne complex which includes 10 courses.⁸ Drilling down, Petitioners' appraiser analyzed the golf participation rate in Michigan as well as projected rounds played for the subject.⁹ In reconciling 27-holes, 18-holes, and 9-holes, Petitioners' appraiser states, "But, again, for purposes of this discussion, I came up with my estimate of the number of rounds, both 18-hole equivalent and 9-hole equivalent, and - - and used that to conclude an estimate of the volume of play on the subject."¹⁰ The projected 18-hole equivalent rounds for the subject is 22,545.

Petitioners' appraiser analyzed competing golf courses within a 10-mile and 20-mile radius to formulate an estimate of play at the subject golf course. Rende concluded to a rack rate of \$36 for 18-holes (with a cart) on the weekend and \$31 on a weekday. The pro forma shows a golf course revenue of \$451,458 (12,600 rounds multiplied by \$14 and 12,600 rounds multiplied by \$21.83). Next, additional revenues (driving range, pro shop, food & beverage) were analyzed for the subject for gross

⁷ Vol 1, 92-96.

⁸ Vol 1, 103.

⁹ Vol 1, 109.

¹⁰ Vol 1, 111.

revenue of \$545,958. Petitioners' appraiser admits that he has never come across a golf course without a kitchen for food concessions like the subject. Rende reconciled to a lower \$/SF for the subject's minimal food and beverage revenue.¹¹ Research and analysis included ratios from other golf courses for expenses. As part of Petitioner's income analysis, Rende believes that the subject golf course was not being properly managed.¹² Rende reviewed the financial information for the subject and contends the golf course is under-performing. Nonetheless, the subject as a daily fee public golf course is greater than the subject as a proposed residential development. Pursuant to its valuation disclosure, Petitioners assert that the subject property's 2018 and 2019 TCV is \$545,000.

Petitioners refutes Respondent's analysis of the subject as residential development. Specifically, Petitioner argues that Respondent's appraiser did not include an absorption analysis in regard to the subject as residential development.¹³ Respondent presented no evidence of demand for the residential development of the subject's 337-acre property. Respondent failed to consider the challenges of financially feasibility, issues of density due to zoning restrictions, the potential of landlocked parcels, and the impact of Critical Dune Overlay area. Regarding Respondent's analysis, the cost to construct a roadway for residential development would be approximately \$150 per lineal foot. A gravel road would be cheaper.¹⁴ Petitioners also contend that it is highly unlikely that the subject would be sold to a purchaser for a

¹¹ Vol 1, 126-127.

¹² Vol 2, 111.

¹³ Vol 3, 149.

¹⁴ Vol 1, 69-70.

single family homesite.¹⁵ Respondent's valuation analysis is not credible in this tax appeal matter.

PETITIONERS' ADMITTED EXHIBITS

- P-1: Petitioners' Valuation Disclosure.
- P-2: Respondent's Valuation Disclosure.
- P-3: Article from University of Michigan News, titled "Coastal Care: Researchers work with communities to shore up effects of erosion," dated March 1, 2018.
- P-4: Article from the Wisconsin Examiner, titled "Rising waters threaten Great Lakes communities," dated October 13, 2020.
- P-5: **(From line 85)** Article from MiBiz, titled "Shoreline erosion poses issues for coastline development," dated November 24, 2019.
- P-6: Article from MLive, titled "As the Great Lakes surge to record heights, coastal areas face a time of reckoning," dated March 28, 2020.
- P-7: Article from MLive, titled "Beach armor plans rile Lake Michigan town," dated October 8, 2020.
- P-8: Article from WHMI 93.5 Local News, titled "Great Lakes Water Levels Still Setting Records," dated June 13, 2020.
- P-9: Article from the Manistee News, titled "Historic building to be relocated due to erosion," dated June 18, 2020.
- P-10: Two articles from MLive, the first titled "Lake Michigan erosion in Southwest Michigan," and the second titled "Lake Michigan swallows structures, puts property owners on edge," posted January 22, 2020.
- P-11: Article from MLive, titled "Lawmakers consider state task force for flooding and erosion issues," posted September 23, 2020.
- P-12: Article from Crain's, titled "As PGA returns to Detroit, Michigan golf business is in a fragile state," dated June 23, 2019.
- P-13: Article from the Detroit Free Press, titled "Home crashes down sandy bluff along Lake Michigan shoreline plagued by erosion," published January 1, 2020.
- P-14: Article from WSJ.com, titled "Tiger Woods Can't Keep Golf Out of the Bunker," dated April 19, 2019.
- P-15: *Scott Lake Golf & Practice Center v Plainfield Township*, unpublished per curiam opinion of the Court of Appeals, issued July 23, 2020 (Docket No. 348058).
- P-16: A list of golf course closings in Michigan from Michigan Golfer News, dated April 27, 2018.
- P-17: Development Cost Data.
- P-19: White River Township Zoning Map, approved February 12, 2019.
- P-20: White River Township, Critical Dune Map.
- P-21: White River Township, High Risk Erosion Areas & Critical Dunes Map.
- P-22: Natural Resources and Environmental Protection Act, Part 323, Shorelands Protection and Management, MCL 342.32301 et seq.

¹⁵ Vol 1, 87.

- P-23: Natural Resources and Environmental Protection Act, Part 353, Sand Dunes Protection and Management, MCL 324.35301 et seq.
- P-24: Article from the Michigan Department of Environment, Great Lakes, and Energy, titled "High Risk Erosion Areas; Program and Maps."
- P-25: Rules of the Michigan Department of Environmental Quality Land and water Management Great Lakes Shorelands.
- P-32: Coldwell Banker real estate listing for C-1 Meinert Road, Montague, Michigan.
- P-33: Coldwell Banker real estate listing for C-2 Meinert Road, Montague, Michigan.
- P-34: Coldwell Banker real estate listing for 7605 Old Channel Trail, Montague, Michigan.
- P-35: Coldwell Banker real estate listing for Lot 1S N Old Channel Trail, Montague, Michigan.
- P-36: Coldwell Banker real estate listing for Lot 1N N Old Channel Trail, Montague, Michigan.
- P-37: Coldwell Banker real estate listing for 3767 Scenic Drive, Muskegon, Michigan.

PETITIONERS' WITNESS

Petitioners' witness, Michael Rende, MAI, prepared an appraisal report for the subject property. He is primarily a commercial appraiser with 43 years of valuation experience and specializes in income producing properties. He is licensed in the state of Michigan and designated through the Appraisal Institute. Based on his education and experience, the Tribunal accepted Mr. Rende as an expert real estate appraiser.

RESPONDENT'S CONTENTIONS

Respondent contends that Muskegon County has changed substantially. While not necessarily in terms of population, changes have occurred in employers including Mercy Health, and Arconic Power & Propulsion. Further, turnover in residential properties (with value increases), low unemployment, and tourism are strong county indicators.¹⁶ Respondent's primary data sources were Flexmls (formerly known as SWMRIC) and Commercial Alliance of Realtors (CAR) but equally relies on planning

¹⁶ Vol 2, 190-191.

departments and housing inspectors.¹⁷

Respondent's appraiser asserts the subject site is a "blank slate" allowing all sorts of opportunities for development. The subject's contiguous 10 parcels under one owner alleviates concerns over easements. The issue of minimum 1-acre lots could be minimized with a request for a planned unit development (PUD). Lots zoned under R-Residential allow for reduced lot sizes. However, those lots zoned Waterfront Residential would not allow for reduced lot sizes. Constructing a road is not an issue because the entire property has a single owner in a "stacking" situation.¹⁸ Respondent's appraiser spoke with a real estate broker about technical difficulties in developing Lake Michigan properties. The broker told George that such requirements and limitations for critical dunes are anticipated by developers.¹⁹

Respondent points out that there are some residential properties with high bluffs overlooking Lake Michigan.²⁰ Residential properties located in designated critical dune areas must go through a permitting process through the Environmental, Great Lakes and Energy Department (EGLE, formerly the DEQ). George contends that lake front properties typically include additional issues such as EGLE in terms of residential development (i.e., roadways, utilities) and associated risks.²¹

Respondent contends that the primary driver for the subject's acreage is the 2,600 feet of Lake Michigan frontage.²² As part of Respondent's highest and best use analysis, George reviewed land sales to determine a \$/acre. Overall, he has not seen

¹⁷ Vol 207-208.

¹⁸ Vol 3, 4-8.

¹⁹ Vol 3, 12.

²⁰ Vol 2, 179.

²¹ Vol 4, 18-20.

²² Vol 4, 22-24.

agricultural vacant land at \$3,500/acre. Respondent also reviewed county information for improved sales to extract land values.²³ Petitioner determined the value of the subject in its entirety. The subject's ten parcels would be purchased for residential development, but the valuation of the contributory elements of the property (i.e., the lakeshore parcels) are necessary.²⁴ Respondent assumes a singular buyer for the subject property; the buyer could develop the waterfront parcels into 17 residential sites and the owner would be able to construct a road for their access.²⁵

Respondent's sales comparison approach is based on the market value of the subject land and not on the value of potential developed residential sites. In other words, supply and demand was not based on the potential of sites to the subject property, but rather the demand of the total subject property to the market. George states, "I'm confident there is demand for developers."²⁶ In general, there would be more buyers for smaller acreage sites than larger acreage sites such as the subject.²⁷ Respondent's comparative analysis considered but did not make location adjustments to properties in Arcadia or Onekama. Resorts such as Michigan Adventure, the Double JJ Ranch, and Michillinda Resort are relatively proximate to the subject for tourist activities. These properties have various tourist amenities similar to the subject.²⁸

Respondent did not perform a residential subdivision analysis because it would require compound assumptions and would be a budgetary restraint.²⁹ Nonetheless,

²³ Vol 3, 73.

²⁴ Vol 4, 28.

²⁵ Vol 4, 49.

²⁶ Vol 4, 69-72.

²⁷ Vol 4, 137.

²⁸ Vol 4, 164.

²⁹ Vol 4, 153, 155.

George did consult with a developer and a real estate agent about reasonable development possibilities for the subject property. Through conversations with township officials, Respondent's appraiser found out that in 2015 a developer was interested in developing the subject property.³⁰

Respondent developed an income approach and concluded that the subject is losing money every year. Respondent's appraiser, through analysis of the subject's financial information and the Society of Golf Appraisers (SGA), says the subject falls to the lower quartile.³¹ Petitioners also compared financial information from 5 golf courses in the subject market area for a ratio analysis.

The subject's highest and best use is not as an interim use as a golf course because the subject loses money. Respondent's going concern value is well below the value of the subject land. Determining deductions to the going concern value were not necessary as a result. The subject might generate slightly greater income with stronger management but still would not come close to the value of the land for residential development. Respondent contends that the subject property's TCV is \$3,680,000 for the 2018 and 2019 tax years.

Regarding Petitioners' exhibits, Respondent objects to those articles which are dated after the relevant tax days at issue. Respondent argues that Petitioners' appraiser quoted from a NGF article but generated a pro forma income analysis without utilizing the subject's historical financial information as well as tax returns.³²

³⁰ Vol 3, 14.

³¹ Vol 3, 46-47.

³² Vol 2, 54-55.

Next, Respondent questions Petitioners' income analysis for food and beverage revenue as the subject does not have a kitchen or banquet center. The subject merely has a hot dog rotisserie and beverage cooler.³³

Further, Respondent contends that Petitioners' appraiser did not articulate his premise for the value and sale of the subject property in aggregate.³⁴ As there are 10 legally described parcels, further due diligence would be reasonably expected for a comparative analysis. On the other hand, Respondent's appraiser demonstrated due diligence in obtaining sales information (after his appraisal report) for additional vacant land on Lake Michigan.³⁵ Respondent refutes Petitioners' appraiser's comparable sales. Petitioners' sale 2 does not have 3.9 acres but rather 4.5 acres. This sale has 136.3 front feet and is in a high-risk erosion area. Petitioners' sale 3 has 105 front feet and 2.9 acres (and not 150 FF and 3.85 acres as indicated by Rende).

RESPONDENT'S ADMITTED EXHIBITS

- R-1: Respondent's Valuation Disclosure.
- R-2: NOAA Great Lakes Dashboard.
- R-3: Article from MLive, titled "Condo development goes up on old leather tannery's lakefront brownfield," posted June 15, 2016.
- R-4: Article from MLive, titled "Tourists spend \$313M in Muskegon County during 2017," posted December 20, 2018.
- R-5: Article from WZZM13.com, titled "Tourists spent nearly \$330 million in Muskegon County in 2018," published October 11, 2019.
- R-6: Article from MLive, titled "See 26 projects, \$1 billion in investments coming to Muskegon County," posted May 23, 2017.
- R-7: Appraiser Rende's work file.
- R-8: White River Residential Improved chart, listing those with Principal Residence Exemptions (PRE) and those without.
- R-9: Norton Shores report excerpt concerning vacant land sales.
- R-10: Information concerning the sale of a property located on N. Old Channel Trail, Parcel No. 61-01-135-300-0015-00.

³³ Vol 2, 24-25.

³⁴ Vol 2, 48-49.

³⁵ Vol 3, 108-113.

- R-11: Information concerning the sale of property at 7958 Hancock Road, Parcel No: 01-122-400-0016-00.
- R-12: Information concerning the sale of a property on Indian Point Road, Parcel No: 01-410-000-016-00.
- R-13: Aerial photograph and Property Record Card for property located at 150 Viridian Drive, Parcel No. 24-607-000-0001-00.
- R-14: Aerial photograph and Property Record Card for property located at 7605 N Old Channel Trail, Parcel No. 01-135-100-0011-00.
- R-15: GIS printout indicating the location of Parcel No: 01-127-400-0001-00 relative to Lake Michigan.
- R-16: Department of Environment, Great Lakes, and Energy, Preapplication Meeting Letter, dated May 2, 2019, to Jon Scott from Nancy Cuncannan.

RESPONDENT'S WITNESS

Respondent's witness, Justin George, prepared an appraisal report for the subject property. He is a certified general real estate appraiser who has been employed by the Muskegon County Equalization Department since 2015. He also owns his own appraisal company and primarily does commercial and industrial work in West Michigan. He is licensed in the state of Michigan and designated through the Appraisal Institute. Based on his education and experience, the Tribunal accepted Justin George as an expert real estate appraiser.

FINDINGS OF FACT

The Tribunal's Findings of Fact concern only evidence and inferences found to be significantly relevant to the legal issues involved; the Tribunal has not addressed every piece of evidence or every inference that might lead to conflicting conclusion and has rejected evidence contrary to those findings.

1. The subject property is located at 8325 North Old Channel Trail in White River Township and within Muskegon County.
2. The subject property is comprised of 10 parcels totaling 337.20 acres.

3. Four of the subject parcels are adjacent to one another and are located on the east of Old Channel Road. The other seven parcels are adjacent to one another and are located on the west side of Old Channel Road.³⁶
4. The subject property is improved with a 27-hole daily public fee golf course. There are 9 holes located on the east side and 18 holes located on the west side of Old Channel Road.
5. Parcel 61-01-126-100-0001-00 is comprised of 40.54 acres and is improved with a 44' x 60' storage barn, an attached to a 14' x 44' lean-to, a 12' x 25' storage shed, and another 9' x 16' lean-to, and a separate 16' x' 22' wood frame utility shed. This parcel is zoned R Residential.
6. Parcel 61-01-126-100-0003-00 is comprised of 37.47 acres and is improved with a 1,894 square feet clubhouse with an attached 1,400 square feet golf storage area, and a separate 40' x 66' maintenance barn. This parcel is zoned R Residential.
7. Parcel 61-01-126-100-0005-00 is comprised of 40.51 acres and is improved with a secondary 758 square feet clubhouse. This parcel is zoned R Residential.
8. Parcel 61-01-126-200-0001-00 is comprised of 79.36 acres and is zoned R Residential.
9. Parcel 61-01-126-200-0002-00 is comprised of 5.89 acres and is zoned R Residential.
10. Parcel 61-01-126-200-0005-00 is comprised of 41.79 acres and is zoned R Residential.
11. Parcel 61-01-126-300-0001-00 is comprised of 39.00 acres and is zoned R Residential.
12. Parcel 61-01-127-200-0001-00 is comprised of 19.60 acres, is improved with three 15' x 20' storage sheds. This parcel is zoned WR Waterfront Residential District and in a Critical Dune Overlay District.
13. Parcel 61-01-127-200-0002-00 is comprised of 13.60 acres and is zoned WR Waterfront Residential District.
14. Parcel 61-01-127-400-0001-00 is comprised of 19.44 acres and is zoned WR Waterfront Residential District and in a Critical Dune Overlay District II.
15. The subject's waterfront parcels are part of a DEQ overlay district, a critical dunes designation, and a high-risk erosion area.³⁷
16. The subject clubhouse does not have a kitchen or a banquet center.
17. The subject golf course does not have any direct views of Lake Michigan.³⁸

³⁶ Old Channel Trail bisects the property, with 9 holes being located to the east of the road and 18 holes being located to the west. The 27 holes are broken down into three nine-hole courses. The Valley course is a 3,339-yard par 36 course with limited paved cart paths first opened in 1994. This course is located to the east of Old Channel Road. The Woods course is a 3,173-yard, par 35 course with limited cart paths which first opened in 1927. This course is located to the west of Old Channel Road. The Meadows course first opened in 1966 has a 3,248-yard, par 36 course with no paved cart paths. This course is located to the west of Old Channel Road.

³⁷ Vol 1, 58-59 and P-21.

³⁸ Vol 2, 184.

18. Subject site restrictions include a minimum lot width of 150 feet, a minimum lot area of 1 acre, and a depth no greater than 4 times the width.
19. Petitioners' submitted valuation evidence in the form of a narrative appraisal report prepared by Michael Rende.
20. Petitioners' appraiser considered the cost, sales comparison, and income approaches to value. However, only the income and sales comparison approaches to value were developed.
21. Respondent submitted valuation evidence in the form of a narrative appraisal report prepared by Justin George.
22. Respondent's appraiser considered the cost, sales comparison, and income approaches to value. However, only the sales comparison and income approaches to value were developed.
23. Respondent's appraiser compiled market trends for the Muskegon County Equalization Department.
24. Respondent's appraiser does not compile residential or agricultural studies for Muskegon County Equalization Department. George does the commercial and industrial studies for the county.³⁹
25. The subject is mismanaged and under-performing as a public daily fee golf course.⁴⁰
26. Neither party's appraiser developed a feasibility study or analysis for residential development.
27. Neither party's appraiser developed an absorption study or analysis for residential development.
28. The parties developed a common comparable non-lake front sale located at Chase Road (parcel number 61-01-114-100-0002-10).
29. Petitioners' 2018 and 2019 TCVs are \$545,000 indicating no change in market conditions.
30. Respondent's 2018 and 2019 TCVs are \$3,680,000 indicating no changes in market conditions.
31. Petitioners' deduction for demolition costs in its vacant land analysis is \$100,000.
32. Respondent's deduction for demolition costs in its vacant land analysis is \$50,000.
33. Each party's appraiser allocated their respective TCV determinations to the 10 parcels by using the size ratio of each parcel to the subject's total acreage.

CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the

³⁹ Vol 4, 24-25.

⁴⁰ Vol 2, 111.

constitutional standard that such property shall not be assessed in excess of 50% of its TCV.⁴¹

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not exceed 50 percent.⁴²

The Michigan Legislature has defined TCV 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.⁴³

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”⁴⁴

“By provisions of [MCL] 205.737(1) . . . , the Legislature requires the Tax Tribunal to make a finding of true cash value in arriving at its determination of a lawful property assessment.”⁴⁵ The Tribunal is not bound to accept either of the parties' theories of valuation.⁴⁶ “It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case.”⁴⁷ In that regard, the Tribunal “may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination.”⁴⁸

⁴¹ See MCL 211.27a.

⁴² Const 1963, art 9, sec 3.

⁴³ MCL 211.27(1).

⁴⁴ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

⁴⁵ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

⁴⁶ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

⁴⁷ *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

⁴⁸ *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

A proceeding before the Tax Tribunal is original, independent, and de novo.⁴⁹

The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.”⁵⁰ “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.”⁵¹

“The petitioner has the burden of proof in establishing the true cash value of the property.”⁵² “This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party.”⁵³ However, “[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question.”⁵⁴

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.⁵⁵ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”⁵⁶ The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the

⁴⁹ MCL 205.735a(2).

⁵⁰ *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

⁵¹ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

⁵² MCL 205.737(3).

⁵³ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

⁵⁴ MCL 205.737(3).

⁵⁵ *Meadowlanes*, *supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), *aff'd* 380 Mich 390 (1968).

⁵⁶ *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

appropriate method of arriving at the TCV of the property, utilizing an approach that provides the most accurate valuation under the circumstances.⁵⁷ Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.⁵⁸

MARKET DESCRIPTION AND ANALYSIS

“The identification and interpretation of real estate markets are analytical processes.”⁵⁹ The springboard to meaningful opinions, analyses and conclusions starts with understanding a subject property’s surroundings. Here, Petitioners’ market analysis did not fully capture market attributes. Petitioners’ appraiser analyzed the subject demographics on the basis of radius circles but admitted that there were no specific demographics for White River Township and Muskegon County. Rende did identify residential vacant parcels within the township. Further, regarding golf course closures, Petitioners’ appraisal report did not include any specifics for this data (i.e., date of closure, public/private course, number of holes, location in the state, etc.). The further reference of 12 other golf courses in Michigan omitted their specific locations in the state. Closures in 2018 did not include relevant specifics and was followed by another ambiguous statement about the local economy and golf industry.⁶⁰ Lastly, Petitioners’ ESRI data did not include sufficient analysis from Petitioners’ appraiser. In other words, the cut/paste data pages were not summarized or given articulation with actual demographics for a specific township and or county by Petitioners’ appraiser. Respondent questioned and refuted Petitioners’ reference and reliance on a 2013

⁵⁷ *Antisdale*, *supra* at 277.

⁵⁸ See *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

⁵⁹ Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 15th ed, 2020), p 137.

⁶⁰ P-1, 44-48.

National Golf Foundation (NGF) publication as well as a Detroit Free Press article dated April 11, 2016, golf article and the relevance to the tax day.⁶¹ Petitioners' golf outlook and data did not properly portray the golf industry leading up to December 31, 2017, and December 31, 2018.

Respondent reviewed White River Township demographics to gain an initial prospective. In other words, the subject's placement within the township was considered and analyzed. Respondent's demographic descriptions and analysis are specific to White River Township and Muskegon County.⁶² Further, information such as household income, land uses, residential building permits, and a summary of lot sales was analyzed in conjunction with the subject's highest and best use. Market influences including golf course statistics were analyzed relative to the subject. The overall information, analysis, and cross reference to other sections of the appraisal report demonstrated consistency and persuasion.

Petitioners' radius circles for a market analysis are not more persuasive than Respondent's specific market description and analysis of the subject market area. Radius circles reaching out into Lake Michigan are not meaningful and would compel other sources and methods to obtain demographic data. Petitioners' references to Southeast Michigan golf courses are not necessarily applicable to golf courses in West Michigan.⁶³ Acknowledged moderate growth in Muskegon County does not parallel with

⁶¹ P-1, 49.

⁶² Respondent's appraiser articulated the attributes of the market area. However, the appraiser's efforts to extoll the virtues of the subject market were excessive in endless testimony without a question from Respondent's counsel in direct examination. Vol 3, 34-43, 46-58, 60-68, 70-76, 78-81, 83-91, and 93-94.

⁶³ Petitioners' appraiser's typographical errors do not bolster a level of credibility or reliability for his appraisal report. Vol 2, 19, 26-35, 66-69, 74, 158 and P-1, 11, 13, 39, 40, 47, 59, 67, 73, 79, 101.

Petitioners' reliance on rounds of golf for golf courses from 2014-2018 in SE Michigan.⁶⁴

Therefore, Petitioners' market description and analysis is given no weight or credibility in the independent determination of market value for the subject property.

INCOME APPROACH

Petitioners' income analysis is a conventional framework for the development of an income approach. However, the analysis has gaps, inconsistencies, contradictions, and omissions within the data.

First, Petitioners devised a 50/50 split between 9-hole play and 18-hole play.⁶⁵ The acknowledgement of 9-hole starts, and 18-hole starts is confusing when the focal point is 18-hole equivalent rounds to carry through with the income analysis. Such creative methodologies did not bolster the thought of just analyzing 18-hole equivalents. Attempting to compare and contrast golf course amenities along with the number of holes is not meaningful when private golf courses are included. Analyzing similar public golf course amenities through 18-hole equivalents strengthens an analysis. The subject's lesser golf course amenities must be properly analyzed. Private courses and high-end golf courses with superior amenities do not give clarity to a reasoned and reconciled analysis.

Second, Petitioners acknowledged the subject's historical financial data but instead gathered other golf course financial data to derive a pro forma for a daily fee public golf course. There is a lack of understanding whether Petitioners' appraiser truly analyzed the subject's financials to the relevant market. Merely reviewing the subject's

⁶⁴ Vol 2, 116-117.

⁶⁵ P-1, 70.

financials but utilizing other golf course data appears to be two separate actions that were not analyzed together. In other words, the Tribunal is not convinced that Petitioners actually applied the subject's financial data to the relevant market. Petitioners' use of other golf course financial information infers that the subject's income/revenue is not commensurate with the relevant market. Further, Petitioners' comparable expense ratios were set off in the addendum of the appraisal report and lacked the location of each golf course. Again, Petitioners failed to articulate the relevance of prominent golf courses in SE Michigan to the analysis.

Third, regarding number of rounds, Petitioners omitted the differential between 18-hole equivalents and 18-hole starts. Specifically, Petitioners' golf course data summaries were not labeled showing those 18-hole starts in turn to get the rounds played for a resulting revenue. Petitioners ultimately relied on 18-hole equivalents but begs the question whether this was an "apples to apples" comparison by analyzing 18 hole starts. The confusion is furthered by 9-hole and 18-hole starts for walkers. Petitioners state that 100% of golfers will use carts at the subject but then admitted that many golfers will walk because the subject is a flat course (thus resulting in less maintenance/expense for the existing golf carts). Rende equated 72 carts for an 18-hole golf course but also said the subject's 27 holes only needs 60 carts. The lack of consistent testimony and analysis is not persuasive.

Fourth, Petitioners developed an income pro forma which was questioned by Respondent. Specifically, Respondent questioned whether Petitioners' revenues/expenses were typical for the subject and representative of the market. Rende applied expenses to the subject that the subject did not have (or at the level of

expense to the subject). For example, the food/beverage sales were estimated at \$47,000 (\$128/day). Further, the rent expense to LandCo was questioned as appropriate. Petitioners pay themselves rent through this entity. Rende also relied on estimates and not the subject's actual information which begs the question of a legitimate analysis. Equally confusing was Petitioners' computations of a 15% gross margin without adequate explanation leaving a reader to believe that the 15% was gross revenue.

Fifth, regarding a capitalization rate analysis, Petitioners' 4th Quarter 2018 Realtyrates for public golf courses was outdated information. Moreover, there was no verification whether these national capitalization rates were reflective of golf courses in West Michigan. No capitalization comparable sales were illustrated or analyzed as a capitalization rate methodology. Again, reliance on a band of investment methodology is not persuasive given Petitioners' deficient income elements within its pro forma analysis.

Overall, Petitioners' appraiser admitted to numerous gaps in his information including vague statements without proper context. Petitioners' appraisal report (without specific workfile support) lacked customary data support. Compounding this issue was dated information and sources.⁶⁶ Older data may be relevant to demonstrate the existence of similar property types in the market, but Petitioners loose haphazard development of older data is not meaningful and is quite misleading.

⁶⁶ There is a difference between an expert's speculation and opinion. The expectation that an opinion would be supported by market evidence is not unreasonable in light weight and credibility.

Arriving at stated conclusions is quite telling. In other words, income analysis indicators are not the sole issue but the support and narration for those elements is the issue. Espousing an appraiser's income indicators does not give credence to the conclusion of value when the report does not display any support other than the appraiser's knowledge, judgment, and experience. A report must carry support and persuasion beyond conclusory statements. An expert's testimony and documentary evidence must be weighed to determine credibility and reliability. Repeatedly, an appraisal report is based on the opinions, analyses, and conclusions of the appraiser. In this instance, the Tribunal cannot place reliance on conclusory statements based on an appraiser's testified "experience and expertise" which nebulously refers to data not included in an appraisal report. "Perfection is impossible to attain, and competence does not require perfection. However, an appraiser must not render appraisal services in a careless or negligent manner. This Standards Rule requires an appraiser to use due diligence and due care."⁶⁷ Petitioners' actions belie the importance of rendering a meaningful appraisal report. An appraiser's opinions, analysis and conclusions do not come before the market data is developed. Whether a property is over-performing or under-performing, the subject's pro forma must still be supported by the market. Therefore, Petitioners' income analysis is given no weight or credibility in the independent determination of market value for the subject property.

Respondent's income analysis was also given consideration in the Tribunal's independent determination of market value for the subject property. However, the

⁶⁷ The Appraisal Foundation, *Uniform Standards of Professional Appraisal Practice* (Chicago: 2018-2019 Edition), p 15.

income analysis is deficient in several regards. First, Muskegon County has had great development, but Respondent's appraiser acknowledges that population growth was small or limited. While Respondent tracked county market trends and population,⁶⁸ George admitted that no golf courses in Muskegon County have converted to residential development in the last 5 years.⁶⁹ Second, Respondent's income analysis is based solely on the subject's income and expenses for formulated comparable income/expense ratios. However, these ratio comparables lacked sufficient golf course description, information, and detail. Third, Respondent's income analysis did not include a pro forma for market supported revenues and expenses. Respondent refuted Petitioners' pro forma for not including alleged rent payments to the entity LandCo. Respondent's refutation appears to be disingenuous given Respondent's own abbreviated income analysis. For these reasons, Respondent's income analysis is given no weight or credibility in the independent determination of market value for the subject property.

SALES COMPARISON APPROACH

Petitioners' golf course sales comparisons are a general framework for a comparative analysis. However, as acknowledged by Petitioners' appraiser, quantitative adjustments for comparison are difficult due to the variations in golf course amenities. Moreover, Petitioners' appraiser presented his comparative analysis in a cursory fashion. While the Tribunal has considered this approach, the analysis has limitations. First, the summary of 36 sales only presented general information. Said

⁶⁸ Vol 3, 135.

⁶⁹ Vol 4, 8-9.

differently, the golf course information is insufficient to compare and contrast differences with the subject. Second, the summary data is dated information that occurred between 2000 to 2015. Merely admitting that the data is old (but provided as a historical prospective) does not bolster credibility. Third, many of the golf courses are located in SE Michigan and are not more comparable than golf courses in West Michigan. Moreover, the summary data included private country club golf courses which offer no comparison to the subject. Fourth, the summary of sales was not adjusted qualitatively or quantitatively to the subject. The presentation of 36 summary sales under the guise of a comparative analysis is not credible. Fifth, the comparative analysis as a check on reasonableness to the income approach is illogical. Said differently, a comparative analysis that is admittedly cursory is then not persuasively used as support for another approach to value. The stated weaknesses of this approach do not logically support Petitioners' income approach to value.⁷⁰ For these reasons, Petitioners' summary of 36 golf course sales (as a broad compilation) are given no weight or credibility in the independent determination of market value for the subject property.

Petitioners' land sales analysis was presented in a cursory fashion similar to Petitioners' golf course comparative analysis. The vacant land sales were merely summary of sales without qualitative or quantitative adjustments. Emphasizing critical

⁷⁰ Through testimony, Rende acknowledged that the original appraisal report did not include a vacant land analysis. Petitioners' counsel engaged Rende to perform such an analysis after the first appraisal report was rendered. Rende submitted a draft appraisal report to Petitioners dated August 29th but the invoice is dated August 13. Rende's workfile denoted an additional fee of \$1,750 for a land value analysis to the subject appraisal. Rende sent a 2nd report (with land analysis) on September 23. (Vol 2, 94-97). Rende has developed and communicated two separate and different reports under the guise of an initial "draft" report. These actions do not bolster Petitioners' credibility when coupled with the corrections/contradictions found in the "final" appraisal report. A land analysis would be necessary to support the underlying conclusion for highest and best use in the initial report. (Vol 2, 109).

dunes overlays and high-risk erosion areas in Petitioners' narrative were not applied to the summary of lake front sales. Further, Petitioners' appraiser, while not having developed a land feasibility study, presented thoughts on how split offs might occur for the subject's interior lots to satisfy zoning and accommodate road access. Next, Rende's lake-front land sale 2 (2123 Scenic Drive) has 136.3 FF which calculates to \$3,815/FF and not at Rende's calculation of \$2,476/FF (based on 210 FF).⁷¹ Further, sale 3 does not have 3.9 acres but rather 4.5 acres and is located in an erosion area.⁷² Lastly, Petitioners' appraiser devised a subjective discount of 50% to sales 6 and 7.⁷³ Nonetheless, Petitioners' general range of prices per acre for lakefront and non-lake front sales support the concept of diminishing returns when coupled with Respondent's land sales data.

Respondent's sales comparison approach for vacant land parcels is a conventional framework for a comparative analysis of the subject property. However, certain aspects of the comparative analysis are not meaningful or logical. First, the lakefront parcels were analyzed on the basis of \$/FF. The non-lakefront parcels were valued on the basis of \$/acre. This distinction is not consistent with the premise of valuing the subject's parcels as a whole. Moreover, the primary driver for the subject is not exclusively the 2,600 feet of frontage on Lake Michigan as opined by Petitioners' appraiser.⁷⁴

⁷¹ Vol 2, 82-83 and P-18, 1148.

⁷² Vol 3, 115-116.

⁷³ Vol 2, 78-79.

⁷⁴ Valuing the subject's three lakefront parcels solely on the basis of \$/FF infers that the parcels: 1) are stand alone lots, 2) have met erosion issues through EGLE, 3) have separate site ingress/egress, and 4) are cleared of any other environmental or engineering issues. As aforementioned, the lakefront parcel values are based on the entirety of the subject property. Each subject lakefront parcel does not have a presumed higher value as a separately marketed single family residential *site*.

Second, Respondent's lakefront sales comparison adjustment grid omitted specific adjustments from the analysis. Specifically, the adjustment grid omitted market conditions (a.k.a., time) to the sales. The Tribunal is not persuaded that sales occurring in 2013, 2014 and 2016 do not warrant adjustments based on all of the glowing attributes of the township and county as described by Respondent's appraiser.

Third, Respondent's improved residential sales were appropriate for the market and neighborhood description and analysis. However, these improved sales are not necessarily relevant as Respondent's appraiser did not follow through with a feasibility or absorption analysis. Respondent's reference to improved sales to create residual land values appears to be a mass appraisal methodology which was not employed in Respondent's vacant land analysis. On the other hand, Respondent's current vacant land listings are relevant for the analysis of demand in the market area.

Nonetheless, Respondent has analyzed and valued the subject property as raw *land* and not necessarily as a *site* (with entitlements in place). Petitioners' claim that Respondent has separately valued the waterfront parcels and residential parcels for different values is a misinterpretation of Respondent's analysis.⁷⁵

Respondent's data illustrated sufficient activity of residential properties in the subject market. The bifurcation of waterfront parcels and non-waterfront parcels for analysis has merit in valuation practice. Interior subject parcels (without access) do not appear to have appeal to market participants. Logically, the subject parcels, as a whole, would garner the most interest to potential developers in the market.

⁷⁵ Similar to the analysis of 1-bedroom, 2-bedroom, and 3-bedroom units in a large 500 apartment complex, the rental analysis to derive a total value from varied units is acceptable in valuation practice and theory. Respondent's endeavor to value the subject's differently zoned parcels is acceptable and customary.

Respondent did not value the subject on the basis of residential feasibility but rather based on the marketability of the entire contiguous parcels. Respondent assumes that the developer or investor will figure out the specifics for the development of the subject property. Again, Respondent's market description and data is an indication of general market demand for residential development. George stopped short of developing a residential feasibility analysis but gave consideration to potential sites to the subject property. There should be no misunderstanding between the valuation of raw land versus valuing potential residential sites. Stronger narration would have been preferred, but George's analysis was for the value of the land and not as a site. George's land analysis goes far enough to prove land value greater than the subject's existing golf course. In other words, the subject land was valued without entitlements or infrastructure. Clearly, the subject vacant land is not to be construed as a *site* which is defined as "Land that is improved or it is ready to be used for a specific use."⁷⁶ George states,

"This is one potential - - one potential use of the property. I believe I've testified several times that it's not necessarily the entire 337 [acres] would be purchased by a single owner, but that that is a possibility that it could be. But that it could be sold to different owners as long as the - - but that's what the market indicates the value is on the effective dates of appraisal."

Once again, Respondent contends that the most likely scenario is the entire site would be sold to a single developer.⁷⁷ Respondent's comparative land analysis did not include access adjustments to sale 1 because it is part of the whole property and is not landlocked. The separate analysis for interior parcels and lake front parcels (even

⁷⁶ Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 7th ed, 2022), p 176.

⁷⁷ Vol 4, 117.

without certain adjustments) is consistent with the value determination for the whole property.⁷⁸ Respondent's analysis and reasoning for the whole subject property makes sense.

Petitioners' assertion that the 52-acre portion zoned Waterfront Residential is landlocked is a misrepresentation of Respondent's analysis. As presented, the subject's 10 contiguous parcels are optimal to be sold to a purchaser. Separately zoned parcels purchased in their entirety do not present a landlock issue. Again, the whole is greater than the sum of the parts in this instance.

Because the subject parcels were valued as a whole, valuing the lakefront parcels on the basis of \$/FF and the non-waterfront parcels on the basis of \$/acre is not logical. Said differently, the lakefront parcels by themselves do not have any road access. The determination and value of lake frontage is predicated on reasonable access through non-lake front lots. None of the subject's lakefront parcels can be split-off when no road access exists. George made no adjustments for his lakefront sales (which have road access) compared to the subject's waterfront parcels which have road access through the contiguous non-lake front parcels. Testimony over landlocking, stacking, and workarounds were a few of the many variables endeavoring to analyze the subject property in terms of residential development. Contrived and speculative assumptions are not persuasive. As repeated, the whole is greater than the sum of the parts. The 10 parcels function as one; the market does appear to recognize the potential marketability of a single parcel (in the middle of the golf course) as suggested

⁷⁸ Vol 4, 126-127.

to by Petitioners' appraiser.⁷⁹ The lake front parcels need to be considered in terms of the total 10 parcels. Therefore, Respondent's vacant land analysis for the subject's 10 parcels as a whole is given weight and credibility in the independent determination of market value for the subject.

CONCLUSION

As of the relevant tax days, the subject was developed as a public golf course. Analyzing the subject property for another potential use requires many considerations including roadways, lot splits, infrastructure (entitlements), etc. As noted in the Finding of Facts, neither party fully undertook such in depth analysis for prospective single family residential sites. As such, the Tribunal is unable to assume or ascertain the subject as residential development. However, the premise that the subject's contiguous parcels would sell "as is" is a reasonable assumption. The parties' vacant lake front and non-lake front sales provide the most reliable and credible valuation evidence for the independent determination of market value for the subject property.

Differently zoned parcels may have different highest and best uses but creating such conjecture is not meaningful in this instance. Once again, the subject's contiguous parcels have overlapping residential zoning. While there is a specific difference between waterfront residential zoning and residential zoning, both permit residential use. The parties' gyrations over what could be made of the subject property is unpersuasive. Neither party developed feasibility studies nor absorption studies for prospective residential development. For the subject to be maximally productive as a

⁷⁹ Vol 2, 132-133.

public golf course (or residential development) presupposes *hypothetical conditions*⁸⁰ and/or *extraordinary assumptions*⁸¹ specifically overlooked by both appraisers. Neither of these alternative uses are reasonable as of December 31, 2017, and December 31, 2018.

Petitioners' refutation of Respondent's separate analysis for lakefront parcels and interior parcels is without merit. Granted, valuing lakefront parcels without a full analysis of road access to those parcels is notable. However, Petitioners' land analysis also gave consideration to lakefront and non-lakefront parcels.⁸² In essence, the parties' acknowledged concerns over differences in zoned parcels, lakefront parcels, and units of comparison (\$/acre, \$/FF) are equally noteworthy.

In essence, the parties' vacant land analyses are akin to valuing the subject's acreage on the basis of incremental contributory values. The lake frontage has the greatest value; the next layer of acreage has a slightly less value, the next acreage lesser, so forth and so on.

Respondent's separate land classifications for lakefront sales and non-lakefront sales is supported by the concept of *diminishing utility*⁸³. More specifically, Respondent's lakefront sales range from \$27,941 to \$38,352/acre. The subject's 3 lakefront parcels (52.64 acres) indicate a premium for Lake Michigan frontage. On the other hand, Respondent's non-lakefront sales range from \$1,799 to \$3,797/acre.

⁸⁰ Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 7th ed, 2020) p 113.

⁸¹ *Id.*, 83-84.

⁸² P-1, 92-95.

⁸³ "In economics, the concept that the consumption of each succeeding unit of an economic good yields less satisfaction than the preceding unit although satisfaction continues to increase at a positive rate. Thus, total utility increases at a decreasing rate." Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 7th ed, 2022), 53.

Similarly, Petitioners' lakefront sales range from \$62,666 to \$416,037/acre. Petitioners' non-lakefront sales range from \$2,066 to \$4,400/acre. As shown, lakefront acreage is greater than non-lake front acreage. The parties' valuation evidence for the unit of comparison of \$/acre is more persuasive than just \$/FF. In this regard, market evidence helps to distinguish between the subject's parcels. Again, the subject's 10 contiguous parcels function together as one. This point is manifested by the road frontage on Old Channel Road. As noted, the parties' land analyses demonstrate support and credence for the concept of diminishing utility. While Petitioner's lakefront \$/acre range is larger and wider, (\$62,666 to \$416,037/acre), greater reliance is placed on Respondent's lakefront range \$/acre range of \$27,941 to \$38,352/acre. Respondent's analysis included descriptive narration, comparative analysis, and property record cards. Respondent's lakefront \$/acre range is relatively tighter than Petitioner's \$/acre range. Regarding the non-lakefront \$/acre, the parties have similar ranges. Once again, Respondent's narration and analysis is cogent while Petitioners' appraiser admitted that his comparative analysis was performed in a cursory fashion.

Therefore, a reasoned and reconciled determination of \$30,000/acre is bracketed by the parties' overall range of lakefront prices per acre (with greatest weight to Respondent's tighter range). The \$30,000/acre is applied to the subject's lakefront 52.64 acres ($\$30,000/\text{acre} \times 52.64 \text{ acres}$) to arrive at a value indication of \$1,579,200.

In similar fashion, a reasoned and reconciled determination of \$2,500/acre is bracketed by the parties' relatively close range of non-lake front prices per acre. The \$2,500/acre is applied to the subject's non-lake front 284.56 acres resulting in a value of \$711,400. Next, the demolition costs of \$75,000 (bracketed by the parties' derived

demolition costs) are deducted for the subject's golf course improvements which results in a value of \$636,400 for the non-lake front acreage.

The subject's lakefront value of \$1,579,200 is added to the non-lake front value of \$636,400 which results in a TCV of \$2,215,600 for 2018 and 2019.⁸⁴

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the parties' valuation evidence demonstrated that the subject property was over-assessed for 2018 and 2019. The parties land sales data is consistent with the concept of diminishing utility. Further, the value of the raw land is supported by the parties' land sales. Neither party presented relevant methodologies to support the subject as sites for residential development. The subject property's TCV, SEV, and TV for the tax years at issue are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that the property's SEV and TV for the tax years at issue are set forth in the Introduction section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and

⁸⁴ Consistent with the parties' method of allocation, each parcel value is derived from the size ratio to the subject's total acreage.

published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2013, through June 30, 2016, at the rate of 4.25%, (ii) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (iii) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (iv) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (v) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (vi) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (vii) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, (viii) after June 30, 2019 through December 31, 2019, at the rate of 6.39%, (ix) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, (x) after June 30 2020, through December 31, 2020, at the rate of 5.63%, (xi) after December 31, 2020, through June 30, 2022, at

the rate of 4.25%, (xii) after June 30, 2022, through December 31, 2022, at the rate of 4.27%, and (xiii) after December 31, 2022, through June 30, 2023, at the rate of 5.65%. This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.


APPEAL RIGHTS

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

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

A claim of appeal must be filed with the Michigan Court of Appeals with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision,

it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave." You are required to file a copy of the claim of appeal with filing fee with the Tribunal in order to certify the record on appeal. The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.

By 

Entered: December 27, 2022

PROOF OF SERVICE

I certify that a copy of the foregoing was sent on the entry date indicated above to the parties or their attorneys or authorized representatives, if any, utilizing either the mailing or email addresses on file, as provide by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk