



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

MARLON I. BROWN, DPA
ACTING DIRECTOR

White Birch Lakes Recreational Association,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 20-001899

Lincoln Township,
Respondent.

Presiding Judge
Marcus L. Abood

FINAL OPINION AND JUDGMENT

INTRODUCTION

On December 3, 2021, Petitioner filed a Motion for Summary Disposition under Administrative Hearing Rule 792.10129. In pertinent part, Petitioner contended that the restrictions in the chain of title for the subject parcels have no value or minimal value for assessment purposes. Further, the value of the subject parcels was historically attributed to the individual lot owners' real property valuations.

On December 22, 2021, Respondent filed a response to the motion. In pertinent part, Respondent argued that the subject parcels were added to the 2020 tax roll as "omitted property" under MCL 211.34d(1)(b)(i). The subject property was in existence and was not already on the tax roll.

On January 25, 2023, the Tribunal rendered a decision denying Petitioner's Motion for Summary Disposition and granted summary disposition in favor of Respondent. The Tribunal stated that there were no issues of material fact in dispute regarding whether the subject properties were properly added to the 2020 tax roll as omitted property. However, there were outstanding issues regarding the valuation of the omitted property.

On May 22, 2023, a virtual hearing was held in this matter. Petitioner, White Birch Lakes Recreational Association, appeals ad valorem property tax assessments levied by Respondent, Lincoln Township, against parcel numbers 18-010-026-200-01 and 18-010-026-100-09 for the 2020 tax year. Paul A. Blanco, Attorney, on behalf of Petitioner. Andrew C. Thompson, Attorney, appeared on behalf of Respondent. Petitioner's witnesses were Richard Brandt, and Steven Bryant. Respondent's witness was Rebecca Taylor.

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 are as follows:

Parcel Number: 18-010-026-200-01

Year	TCV	SEV	TV
2020	\$401,400	\$200,700	\$200,700

Parcel Number: 18-010-026-100-09

Year	TCV	SEV	TV
2020	\$164,600	\$82,300	\$73,682

PETITIONER'S CONTENTIONS

Petitioner's contentions of TCV, SEV, and TV are as follows:

Parcel Number: 18-010-026-200-01

Year	TCV	SEV	TV
2020	\$0	\$0	\$0

Parcel Number: 18-010-026-100-09

Year	TCV	SEV	TV
2020	\$0	\$0	\$0

Petitioner contends that the property's chain of title and restrictions amount to a zero or minimal taxable value. The restrictions to the property make it virtually impossible to be sold on the open market.

Petitioner contends the covenants and restrictions (C&Rs) were in place when individual properties were purchased. The C&Rs were put in place by the original developer, Newman Development, out of Naperville, Illinois. It was understood that these C&Rs would remain in place for perpetuity.¹ Similarly, the settlement agreements included C&Rs for the common areas of the development.

Petitioner believes that the taxes for the common areas were spread among and included to each property owners tax bill.²

Petitioner further contends that the subject parcels are restricted in their use as common areas by recorded agreement (and other documents) that affect the entire

¹ Tr, 16.

² Tr, 29.

White Birch Lakes of Clare development. Petitioner cites case law which supports the position that restrictions or limitations can affect valuation.³

PETITIONER'S ADMITTED EXHIBITS

- P-1: Plats for White Birch Lakes of Clare.
- P-2: Settlement Agreement.
- P-3: Birch Tree Inc. 1981 Deed.
- P-4: Birch Tree Inc. 1984 Deed.
- P-5: 2002 First Recorded Restrictions.
- P-6: Various Recorded Plat Restrictions.
- P-7: Current Recorded Plat Restrictions.

PETITIONER'S WITNESSES

Petitioner's first witness, Richard Brandt, lives at 1670 Ivy Drive, Farwell, Michigan (located in White Birch Lakes). He has resided at White Birch Lakes since 1975. He described the history, management, and development of the subject property over the years. A homeowners' association was established to govern the property. The property owners and association board are responsible for maintaining the property.

Petitioner's second witness, Steven Brandt, owns lots 1, 2, and 3 in White Birch Lakes. He has lived in the development for 47 years. In addition, he sits on the Board of Directors and was on the Board of Review for Lincoln Township for 25 years. He provided an overall history of the development, ownership, and amenities to the property owners.

RESPONDENT'S CONTENTIONS

The property's TCV, SEV and TV, as confirmed by the BOR, are as follows:

Parcel Number: 18-010-026-200-01

Year	TCV	SEV	TV
2020	\$401,400	\$200,700	\$200,700

Parcel Number: 18-010-026-100-09

Year	TCV	SEV	TV
2020	\$164,600	\$82,300	\$73,682

Respondent argues that Petitioner's covenants and restrictions are contained in the settlement agreement but are not on the face of the deed. Further, the restrictions are

³ *Lochmoor Club v Grosse Pointe Woods*, 10 Mich App 394; 159 NW2d 756 (1968); *CAF Investment Co v Saginaw*, 410 Mich 428; 302 NW 2d 164 (1981); and *Moon Lake Property Owners Ass'n v Twp of Greenwood*, 1993 Mich Tax Lexis (MTT Docket No. 142702).

self-imposed and were created by Petitioner; the restrictions are not a means of avoiding taxation.⁴

Respondent also contends that the noted restrictions (within the subdivision plats) are not applicable to the parcels under appeal. Petitioner's deeds and restrictions do not encompass the subject common area parcels. The subject parcels are identified but the restrictions are not specifically applied to those parcels.

Respondent asserts that Petitioner has failed to provide any support for the valuation of the subject parcels attributed to the individual lot owners' real property valuations.

Respondent's assessor analyzed the subject parcels by reviewing land sales studies, and economic conditions factor (ECF) studies in support of the subject parcel assessments.

RESPONDENT'S ADMITTED EXHIBITS

- R-2: Parcel 010-026-100-09 – 2019 Breakdown of Sales.
- R-3: Parcel 010-026-100-09 – 2020 Property Record Card and Valuation Report.
- R-4: Parcel 010-026-100-09 – 2020 Residential Comparable Sales.
- R-6: Parcel 010-026-100-09 – Pictures and Sketches.
- R-8: Parcel 010-026-200-01 – 2020 Property Record Card and Valuation Report.
- R-9: Parcel 010-026-100-01 – Residential Comparable Sales.
- R-10: Parcel 010-026-100-01 – Commercial Building Values.
- R-11: Parcel 010-026-100-01 – Pictures and Sketches.
- R-13: Parcel 010-027-400-01 – 2020 Property Record Card and Valuation Report.
- R-14: Parcel 010-027-400-01 – Residential Comparable Sales.
- R-15: Parcel 010-027-400-01 – Commercial Building Values.
- R-16: Parcel 010-027-400-01 – Photographs.
- R-18: Parcel 010-034-200-04 – 2020 Record Card and Valuation.
- R-19: Parcel 010-034-200-04 – Comparable Acreage Sales.
- R-20: Parcel 010-034-200-04 – GIS Image of Parcel.
- R-22: Parcel 010-035-100-02 – 2020 Property Record Card and Valuation.
- R-23: Parcel 010-035-100-02 – Comparable Acreage Sales.
- R-24: Parcel 010-035-100-02 – 2019 Photographs.

RESPONDENT'S WITNESS

Respondent's witness, Rebecca Taylor, has been the assessor for Lincoln Township since 2018. She described the research, review, and analysis of market data for the assessment of the subject property.

⁴ *NeBoShone Ass'n, Inc v State Tax Commission*, 58 Mich App 324: 227 NW2d 358 (1975) and *Canada Creek Ranch Ass'n Inc v Montmorency Twp*, 206 Mich App 498; 522 NW2d 690 (1994).

FINDINGS OF FACT

1. The subject parcels 18-010-026-100-09 and 18-010-026-200-01 are common areas located within the private residential development known as White Birch Lakes of Clare, in Lincoln Township and within Clare County.
2. Subject parcel 18-010-026-100-09 is comprised of 18.26 acres and is improved with maintenance buildings. This parcel classification is commercial.
3. Subject parcel 18-010-026-200-01 is comprised of 55 acres and is improved with a campground (37 campsites), a restroom building, and a pavilion. This parcel classification is commercial.
4. The subject parcels (and improvements) were not included on the 2019 tax roll. The subject parcels (and improvements) were added to the tax roll as omitted property for the 2020 tax year.⁵
5. The subject parcels' amenities benefit the property owners.⁶
6. White Birch Lakes includes parcel numbers 18-010-035-100-02 (Residential Classification, 50.8 acres,), 18-010-034-200-04 (Vacant Land Classification, 3 acres), and 18-010-027-400-01 (Commercial Classification).
7. The subject parcels are not accessible to the public.
8. The White Birch Lakes development has a front entrance with a security gate for property owners to access.
9. The subject parcels are maintained for the exclusive use of the property owners and members in White Birch Lakes development.
10. Ownership of the common areas rest with the property owners and members of White Birch Lakes.⁷
11. Property owners (as members of the White Birch Lakes homeowner's association) pay annual membership dues.
12. The annual membership dues are utilized to maintain the subject residential development.
13. Petitioner did not submit any valuation evidence in support of its contention of "zero or minimal value" for the subject parcels.
14. Petitioner did not submit any valuation evidence to support the alleged attributed value of the subject parcels spread amongst the residential property owners' property values.
15. Respondent submitted valuation evidence in the form the subject property record cards, ECF analysis, comparable sales, and land sales studies.
16. Respondent researched and review market data from Lake George.⁸
17. The White Birch Lakes development C&Rs apply to all the property owners and members. These C&Rs pertain to the entire residential development. The C&Rs are posted on the White Birch Lakes website. The C&Rs are not exclusive to just the subject common area parcels.

⁵ MCL 211.34d(1)(b)(i).

⁶ Tr, 22 and 28. See Pet's Exh P-2, 1981 Settlement Agreement.

⁷ Tr, 17.

⁸ Tr, 51-52.

18. Petitioner's Settlement Agreement⁹ defines common areas as "the roads, lakes, clubhouse, oil, gas, and mineral rights, improvements, amenities, and other common areas within the Subdivisions, which are described in the copy of the Limited Warranty Deed attached hereto as Exhibit B."

CONCLUSIONS OF 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 TCV.¹⁰

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.¹¹

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.¹²

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value' . . . are synonymous."¹³

"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."¹⁴ The Tribunal is not bound to accept either of the parties' theories of valuation.¹⁵ "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."¹⁶ 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."¹⁷

⁹ Pet's Exh P-2.

¹⁰ See MCL 211.27a.

¹¹ Const 1963, art 9, sec 3.

¹² MCL 211.27(1).

¹³ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

¹⁴ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

¹⁵ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

¹⁶ *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

¹⁷ *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.¹⁸ The Tribunal's factual findings must be supported "by competent, material, and substantial evidence."¹⁹ "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence."²⁰

"The petitioner has the burden of proof in establishing the true cash value of the property."²¹ "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."²² 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."²³

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.²⁴ "The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading."²⁵ 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 TCV of the property, utilizing an approach that provides the most accurate valuation under the circumstances.²⁶ Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.²⁷

As noted in the Findings of Fact, the subject residential development provides exclusive benefits to property owners and members of the homeowner's association. Each property owner and member has use of the clubhouse, indoor swimming pool, tennis and basketball court, walking nature trails, three lakes, campground, and playground. The subject's amenities are maintained through the annual association dues collected from the property owners and members of White Birch Lakes Association. The subject's legally described parcels are not open or accessible to the public.

Within the subject private residential development, common areas exist for the overall benefit of property owners and members. Petitioner's arguments regarding the assessment of the subject parcels are without merit. As discussed below, the

¹⁸ MCL 205.735a(2).

¹⁹ *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

²⁰ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

²¹ MCL 205.737(3).

²² *Jones & Laughlin Steel Corp*, *supra* at 354-355.

²³ MCL 205.737(3).

²⁴ *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).

²⁵ *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

²⁶ *Antisdale*, *supra* at 277.

²⁷ See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

overwhelming evidence proves that the subject common area parcels (which were properly added to the 2020 tax roll as “omitted property”) are integral to the subject private residential development.

First, the subject parcels (with improved amenities) are no different than the benefits received by private landowners and members at other types of properties.²⁸ For example, a private country club offers amenities to its members where the total property is comprised of multiple legally described taxed parcels.²⁹ More specifically, a private golf course (with multiple parcels) may have a parcel designed and designated exclusively for the golf course maintenance and equipment. This parcel provides benefit to the golf course and thus provides benefit to its members. This parcel (improved with a maintenance building which houses lawn equipment) has contributory utility and value to the total golf course. The parcel acts in unison with the other contiguous parcels for the benefit of property owners and members. In essence, this example describes the very nature of the subject parcels to the total subject private residential development. Logically, the purpose of the subject parcels is not separate from the White Birch Lakes residential development.

Second, Petitioner’s constant reference for its contention of “zero or minimal value” to the subject parcels is an admission to value. Said differently, minimal value is not the same as zero value. The terms are not synonymous. Minimal value infers that a value can be ascribed to a property. Zero value means the property is without value. The subject parcels have useful purpose and utility to the whole White Birch Lakes development. The Tribunal is not convinced that the subject parcels have zero value while integrated to the development. The entirety of the subject residential development acts for the benefit of the residential property owners and members. The subject parcels contribute the value of the whole residential development.

Petitioner has failed to present any valuation evidence in support of a “zero” value or a “minimal” value. In the context of valuation practice and theory, both nebulous terms connote value to the properties. The proposition of proving a valueless property is potentially more daunting than a property with minimal value.³⁰ In other words, proving a zero value is more difficult than proving even a nominal value to a property. In either instance, Petitioner provided no market evidence or data in this regard. As purposely repeated, the subject parcels contribute to the subject residential development. There is no evidence on the record challenging the subject parcels (as common areas) as *physically possible, legally permissible, financially feasible, and maximally productive*³¹ to the overall development. The subject market would not have interest or use for the subject parcels in contradiction with the subject’s association bylaws. Further,

²⁸ Memberships at private golf courses, tennis clubs, polo clubs, social clubs, educational clubs, etc. provide member benefits which encompass personal and real property identified through parcel codes within a unit of government.

²⁹ *Meriam B & William B Leeke v White River Township* (MTT Docket No. 18-002469).

³⁰ Perhaps a valueless property may be cited as the Chernobyl nuclear power plant.

³¹ Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 15th ed, 2020), pp 305-315.

Petitioner has also failed to demonstrate the marketability of the subject parcels outside of the subject's private residential development.

Petitioner's claim that the value of the subject parcels was previously spread among the association property owners' property values is also without merit. Again, no evidence exists on the record to support this claim. Therefore, Petitioner's conclusory contentions of "zero or minimal value" to the subject parcels are given no weight or credibility in the independent determination of market value for the subject parcels.

Third, the covenants and restrictions outlined for the entire residential development are not exclusive to just the two subject parcel common areas. Petitioner's assertion that the C&Rs are a deterrent to the value of the subject parcels is without persuasion. C&Rs applicable to the entire subject development include the subject common area parcels under appeal. The subject parcels specific C&Rs appear to be in tandem with the amenities and benefits of the entire development. Review of the various recorded restrictions and the chronological amended iterations speak to the totality of the residential development. Various items of note include membership privileges, residential lot development construction, sanitary waste, fences, signs, vehicle parking, camping restrictions, forest conservation, easements, dedication of streets, etc. The use, utility, and benefit of the subject parcels are not independent of the total subject development. Divorcing the subject parcels from the private development would be in contradiction of the currently established C&Rs. Therefore, the C&Rs are not exclusive to the subject common area parcels.

Each residential property owner abides by the C&Rs. Petitioner has not claimed any corresponding diminished value to the property owners or members of the association. New residential property owners must abide by the established C&Rs (as amply noted on the subject's website). Logically, property owners and members must abide by the C&Rs pertaining to the subject common area parcels.

Lastly, Petitioner refuted the 2020 assessments for the subject parcels. However, Petitioner has failed to support its TCV contention or present calculations for a revised TV contention based on the subject parcels (as omitted property). Moreover, Petitioner has failed to demonstrate any errors within Respondent's 2020 subject property record cards, valuation reports, sales comparisons, or calculations. Respondent's consideration and analysis of Lake George properties illustrates relevant market due diligence. Respondent's valuation evidence is the most reliable and credible evidence for the subject parcels. Therefore, Respondent's valuation evidence supports the inclusion of the subject parcels (as omitted property) and the 2020 assessment.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner's evidence is not more persuasive than Respondent's evidence and analysis of the total subject residential development for the benefit of the property owners and members. Whether or not C&Rs are self-imposed or embedded in the chain of title, the property owners and members of the association benefit from the entire development (including the subject common area parcels). The subject

property's TCV, SEV, and TV for the tax year at issue are as stated in the Introduction section above.

JUDGMENT

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

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

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the 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%, (xiii) after December 31, 2022, through June 30, 2023, at the rate of 5.65%, and (xiv) after June 30, 2023, through December 31, 2023, at the rate of 8.25%.

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

APPEAL RIGHTS

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

A motion for reconsideration must be filed with the 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 or disabled veterans 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.

Alternatively, you may file a claim of appeal with the Michigan Court of Appeals. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal of right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave." A copy of the claim of appeal must be filed with the Tribunal to certify the record on appeal. There is no certification fee.

By  _____

Entered: November 21, 2023

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