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

Knollwood Country Club,
Petitioner,

v

MTT Docket No. 285849[1]

Township of West Bloomfield,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Knollwood Country Club ("Knollwood"), appeals ad valorem property tax assessments levied by Respondent, Township of West Bloomfield, against the real property owned by Petitioner for the 2001 through 2011 tax years (Parcel No. 18-25-400-002). Myles B. Hoffert, attorney, and David B. Marmon, attorney, represented Petitioner; and Derk W. Beckerleg, attorney, represented Respondent.

A hearing on this matter was held on November 7, 2011, through November 10, 2011. Petitioner's witnesses were David Oswalt, David DeWitt, Andrew Keilen, David Bur, MAI, Bur Valuation Group, Inc.[2], and Daniel J. Tomlinson, MAI, Tomlinson Valuation & Consulting, Inc. Respondent's witnesses were John R. Widmer, Jr., MAI, Frohm & Widmer, Inc., and Lisa Hobart,

[1] MTT Docket No. 341605 was consolidated with MTT Docket No. 285849 by Order of the Tribunal dated April 12, 2011.
[2] Mr. Bur was an employee of Allen & Associates Appraisal Group, Inc. when he prepared his Appraisal Report for the tax years ending December 31, 2000, through December 31, 2004. Mr. Bur also prepared an Addendum to his earlier Appraisal Report for the tax years ending December 31, 2005, and December 31, 2006, as the owner of Bur Valuation Group, Inc. For the tax years ending December 31, 2007, through December 31, 2010, Mr. Bur and Daniel Tomlinson filed a Summary Appraisal Report on behalf of Bur Valuation Group, Inc.

Respondent's Assessor, who was also called as an adverse witness by Petitioner. Respondent and Petitioner filed "Post-Hearing Briefs" on January 4, 2012.

Based on the evidence, testimony and case file, the Tribunal finds that the true cash values ("TCV"), the state equalized values ("SEV"), and the taxable values ("TV") of the subject property for the years under appeal are as follows:[3]

Parcel Number: 18-25-400-002

	TCV	SEV	TV[4]
2001	MTT denied jurisdiction	MTT denied jurisdiction	$3,959,770
2002	MTT denied jurisdiction	MTT denied jurisdiction	$4,086,480
2003	MTT denied jurisdiction	MTT denied jurisdiction	$4,147,770
2004	MTT denied jurisdiction	MTT denied jurisdiction	$4,394,323[5]
2005	MTT denied jurisdiction	MTT denied jurisdiction	$4,495,392
2006	$5,892,000	$2,946,000	$2,946,000
2007	$5,684,000	$2,842,000	$2,842,000
2008	$4,920,200	$2,460,100	$2,460,100
2009	$5,060,300	$2,530,150	$2,530,150
2010	$5,305,900	$2,652,950	$2,522,559
2011	$5,308,300	$2,654,150	$2,565,442

[3] On March 18, 2011, the Tribunal issued its Order limiting the issue in this appeal to a determination of the taxable value only for the subject property for the 2001 – 2005 tax years. (Exhibit A) For tax years 2006 – 2011, the issues under appeal include the true cash values, assessed values, and taxable values of the subject property. Given Petitioner's representation to the Tribunal that it intends to appeal the Tribunal's March 18, 2011, Order to the Michigan Court of Appeals, the Tribunal agreed to conduct the hearing in this matter to include evidence, testimony, and briefing of the issues of true cash value, assessed value, and taxable value for all tax years at issue in an attempt to avoid further delay of a resolution of this appeal, should the Court of Appeals reverse the Tribunal's Order limiting the Tribunal's jurisdiction to taxable value issues for the 2001 – 2005 tax years. The Tribunal's determination of the true cash values, assessed values, and taxable values of the subject property for tax years 2001 - 2005 if Petitioner's appeal of the Tribunal's March 18, 2011, Order is successful is attached as Exhibit B to this Opinion.

[4] The Tribunal issued its Opinion and Judgment dated April 23, 2002, (MTT Docket Nos. 238636 and 259512) establishing the true cash values, assessed values and taxable values for the subject property for the 1998, 1999, and 2000 tax years. The taxable value for the 2000 tax year was determined by the Tribunal to be $3,836,990. The Tribunal's Opinion and Judgment was affirmed by the Michigan Court of Appeals, *Knollwood Country Club v Township of West Bloomfield,* unpublished opinion per curiam of the Court of Appeals, issued March 23, 2004 (Docket No. 241297). Therefore, the 2001 taxable value was calculated to be the 2000 taxable value increased by the applicable inflation rate of 3.2%.

[5] The taxable value of the subject property was originally increased by an amount greater than the rate of inflation (2.3% for the 2004 tax year) because of "additions" in the amount of $723,120 attributable primarily to the addition of tennis courts (MCL 211.34d). In its Conclusions of Law, the Tribunal determined that "additions" for the tennis courts and tennis court building and for asphalt paving should be $246,553 and has recalculated the 2004 taxable value accordingly. The 2005 taxable value of the subject property has been recalculated to increase the revised 2004 taxable value by the applicable inflation rate.

PETITIONER'S CONTENTIONS

Petitioner contends that the evidence presented in this case strongly supports a determination that the true cash value of the subject property as determined by Respondent is substantially over-stated because (i) the "highest and best use" of the subject property "as improved" is its continued use as a private country club consistent with its improvements and zoning, rather than as a daily fee golf course with banquet facility, as is contended by Respondent, (ii) its appraiser's consideration of sales of comparable properties provides the best indication of the true cash value of the subject property and the failure of Respondent's appraiser to consider sales of comparable properties constitutes a major flaw in its appraisal, and (iii) Respondent's appraiser failed to properly follow USPAP Standards Rules when he separately valued three components of the subject property (daily fee golf course, banquet facility, and water tower leases) and then essentially added them together to determine the true cash value of the subject property.

As determined by Petitioner's appraiser, the TCV, SEV and TV for the subject property for the tax years at issue should be:

Parcel Number: 18-25-400-002

	TCV	SEV	TV
2001	$4,000,000	$2,000,000	$2,000,000
2002	$4,500,000	$2,250,000	$2,064,000
2003	$4,500,000	$2,250,000	$2,094,960
2004	$4,700,000	$2,350,000	$2,143,144[6]
2005	$4,400,000	$2,200,000	$2,192,436
2006	$4,000,000	$2,000,000	$2,000,000
2007	$3,700,000	$1,850,000	$1,850,000
2008	$3,500,000	$1,750,000	$1,750,000
2009	$3,300,000	$1,650,000	$1,650,000
2010	$3,100,000	$1,550,000	$1,550,000

[6] Petitioner contends that the taxable value of the subject property for 2004 should not have been increased by an amount greater than the rate of inflation primarily because Respondent was unable to identify the type and/or amount of the additions or omitted property determined by Respondent in calculating that taxable value.

	TCV	SEV	TV
2011	$2,900,000	$1,450,000	$1,450,000

PETITIONER'S ADMITTED EXHIBITS

P-1 Bur Appraisal for tax years 2001 - 2005.
P-2 Bur Appraisal for tax years 2006 and 2007.
P-3 Bur/Tomlinson Appraisal for tax years 2008 – 2011.
P-3A Corrections to Exhibit P-3.
P-5 Knollwood financial statements for fiscal year ended September 30, 2001.
P-6 Knollwood financial statements for fiscal years ended September 30, 2002 and 2003.
P-7 Knollwood financial statements for fiscal years ended September 30, 2004 and 2005.
P-8 Knollwood financial statements for fiscal years ended September 30, 2006 and 2007.
P-9 Knollwood financial statements for fiscal years ended September 30, 2007 and 2008.
P-10 Knollwood financial statements for fiscal years ended September 30, 2009 and 2010.
P-11 Published articles 2001.
P-12 Published articles 2002.
P-13 Published articles 2003.
P-14 Published articles 2004.
P-15 Published articles 2005.
P-16 Published articles 2006.
P-17 Published articles 2007.
P-18 Published articles 2008.
P-19 Published articles 2009.
P-20 Published articles 2010.
P-21 Published articles 2011.
P-22 Miscellaneous articles.
P-23 2006 Club Survey.
P-30 Respondent's record cards and worksheets for 2007.
P-31 Respondent's record cards and worksheets for 2008.
P-32 Respondent's record cards and worksheets for 2009.
P-37 Pages 14, lines 18-25 of Paul Dushane testimony of October 15, 2001.
P-50 Planning Commission Minutes dated July 26, 2005.
P-51 Planning Commission Minutes/Work Session dated July 12, 2005.
P-52 Planning Commission Public Hearing on redevelopment of the Bay Point Golf Course to a Single Family Housing dated February 14, 2006.
P-53 Application for Rezoning from REC to R-10 dated March 7, 2005.
P-54 Golf Course of Michigan Club Operations Survey 2006.
P-55 Detroit News article dated April 27, 2005.
P-56 Detroit News Article dated March 13, 2007.
P-57 Golf and Golf Courses – a one day forum prepared for International Association of Assessing Officers.
P-58 Article – Property Taxes – Is relief in sight?

PETITIONER'S WITNESSES

Randy Burgess

Mr. Burgess has been Petitioner's general manager/chief operating officer for six years and is a member and past president of the Detroit Club Managers Association, an organization that represents 53 country clubs in the metropolitan Detroit area. Mr. Burgess testified that (i) Petitioner was a non-profit equity private county club until two years ago when it became a non-profit, non-equity private country club with various classes of membership, (ii) Petitioner has experienced a substantial loss of members over the past ten years and does not have a waiting list for new members, (iii) the initiation fee for members has decreased from $55,000 in 2001 to $5,000 or less in 2011, (iv) Petitioner has experienced a significant decline in utilization of the banquet facilities during the past ten years, and (v) Petitioner has experienced an overall decline in revenues. (Transcript, Vol. 1, pp. 19 – 33)

David DeWitt

Mr. DeWitt has been Petitioner's controller since 2008, and is responsible for financial reporting and analysis, and information technology. Mr. DeWitt testified that (i) he was familiar with Petitioner's audited financial statements (Petitioner's Exhibits P-5 through P-10), (ii) Petitioner is currently experiencing difficulty with paying its mortgage, (iii) Petitioner's membership for the years 2007 through 2011 was 340, 301, 296, 290 and 339 members, respectively, (iv) Petitioner's golf rounds for 2008 were 15,755, for 2009 were 13,129, and for 2010 were 11,893, (v) Petitioner is a non-profit private country club, and (vi) Petitioner has experienced a decline in fees and revenues from 2000 to 2011. (Transcript, Vol. 1, pp. 49 – 74)

David Oswalt

Mr. Oswalt is Petitioner's facility manager and building engineer and has been employed by Petitioner since 1997. Mr. Oswalt testified that (i) in 2011, maintenance and/or repair of the facilities is needed on the clubhouse roof, the HVAC system, the hardwood floors, the carpeting, the east and west parking lots, building caulking, water heating boilers, lighting, sun deck and capstones, (ii) the cost of this maintenance and/or repair would exceed $1.7 million, (iii) the clubhouse, pool house, and cart storage facility were essentially rebuilt in 1997, and (iv) the tennis building was built in 2003. (Transcript, Vol. 1, pp. 34 – 48)

Andrew Keilen

Mr. Keilen has been Petitioner's golf course superintendent since 2005 and has been employed by Petitioner since 2000. Mr. Keilen testified that (i) the golf course has not undergone major renovation since the late 1990's, but did experience bunker work in 2002 and the installation of a new irrigation system in 2005, and (ii) the driving range needs to be replaced, as does the furnace in the maintenance facility, and the cart paths need to be resurfaced. (Transcript, Vol. 1, pp. 75 – 88)

Lisa Hobart

Ms. Hobart has been Respondent's assessor since 1999 and was called as an adverse witness by Petitioner and was also briefly called as a witness by Respondent. Ms. Hobart testified that (i) for assessment purposes, a value was determined by Respondent for land and for the clubhouse for each of the tax years at issue, (ii) based on land of 152.3 acres, a value per acre could be determined from the assessment records, (iii) based on the clubhouse size of 54,352 square feet, a value per square foot could be determined from the assessment records, (iv) an "addition" in the amount of $723,120 was reflected in the 2004 assessment of the subject

property comprised of the paving of the parking lots, the construction of a tennis court building and tennis courts, and the water tower, (v) Respondent did not receive an equalization "factor" for any of the tax years at issue in this appeal. (Transcript, Vol. 1, pp. 88 – 155; Vol. 2, pp. 155 – 164)

David Bur

Mr. Bur authored the appraisal and addendum submitted by Petitioner as Exhibits P-1 (for tax years 2001 – 2005) and P-2 (for tax years 2006 – 2007), and co-authored with Mr. Tomlinson the appraisal submitted by Petitioner as Exhibit P-3 (for tax years 2008 – 2011). Mr. Bur testified that (i) he is a licensed real estate appraiser, (ii) he has previously appraised numerous golf course properties, (iii) the subject property is an 18-hole country club with a driving range and clubhouse on 152.32 acres of land zoned recreational, (iv) the highest and best use of the subject property if vacant is for "publicly-funded recreational use," (v) the highest and best use of the subject property as improved is as a private golf and country club and did not change over the eleven years for which appraisals were submitted, (vi) the highest and best use of the subject property is "as a private country club as opposed to a public daily fee course because of the large size and high quality of the clubhouse building, and the location of the subject property in an area that has an above average household income," as well as the limitation of banquet facilities to those operated in conjunction with a country club, (vii) use of the clubhouse as a banquet facility would not satisfy the legally permissible test for highest and best use, (viii) he agrees that Petitioner has experienced a drop in memberships, an aging membership through 2010, and a local economy that has deteriorated during the eleven years under appeal, (ix) even though Petitioner's financial health was not good during the years 2009 – 2011, its highest and best use was still as a private country club because "no other use provided a

higher value . . . ," (x) he does not distinguish between not-for-profit and for-profit country clubs in determining the highest and best use of the subject property as improved, (xi) the cost approach to value was not appropriate for use in valuing the subject property because comparable land sales were not available and because the subject property is significantly impacted by economic obsolescence, (xii) the income approach to value was appropriate for use in valuing the subject property even though the subject is a non-profit country club because purchasers of these types of properties purchase them for a profit and because bank financing requires revenues and expenses sufficient to make debt payments and reasonable income and expense information is available, (xiii) the income approach measures the going concern value of the subject property and, as a result, the value of the subject personal property has been subtracted based on Respondent's assessment of Petitioner's personal property, (xiv) for the years at issue in this appeal, his analysis concluded that "there was not a significant change in the cap rates . . ." determined from actual market sales, industry publications, and bank of investment method, (xv) rental income received from cellular leases on the water tower was calculated each year based on leases in place and was included in revenues when applying the income approach to value, (xvi) the sales comparison approach to value was appropriate for use in valuing the subject property, with six sales identified for comparison, with the sale of the Wabeek Country Club determined to be the best comparable sale for analysis, (xvii) he prepared the sales comparison approach to value for the two appraisals that included the years 2001 – 2008 using the quality point method, but did not prepare the sales comparison approach used to value the subject property for the years 2009 – 2011, (xviii) the comparable sale of Wabeek Country Club required no adjustments in applying the sales comparison approach and is the best comparable, (xix) the income from the water tower was taken into consideration in applying the

market approach to value by concluding a value for the subject property at the high end of the range of the adjusted comparables, (xx) the sales comparison approach was given primary weight in Mr. Bur's determination of the true cash value of the subject property, (xxi) Petitioner's Exhibits P-2 and P-3 are addenda to Exhibit P-1, and are not separate stand-alone appraisals, and the three exhibits, when taken together, satisfy USPAP standards, and (xxii) adjustments were made to the Wabeek Country Club comparable sale in Petitioner's Exhibit P-3, sales comparison analysis, but were not made to the same comparable sale in Petitioner's Exhibits P-1 and P-2, sales comparison analysis using the quality point methodology. (Transcript, Vol. 1, pp. 165 – 265, Vol. 2, pp. 4 - 152)

Dan Tomlinson

Mr. Tomlinson co-authored the appraisal submitted as Exhibit P-3 by Petitioner. Mr. Tomlinson testified that (i) he is a licensed real estate appraiser, (ii) he prepared the sales comparison approach used by Mr. Bur and Mr. Tomlinson to determine the going concern value of the subject property for the years 2008 – 2011 (Petitioner's Exhibits P-3 and P-3A[7]), (iii) to determine the true cash values of the subject property for the tax years at issue he subtracted the value of personal property as reflected on Respondent's assessment rolls from the going concern values, (iv) the error regarding the sale price for the Wabeek Country Club increased the upper end of the range of values determined using the sales comparison approach, but did not change his ultimate value conclusions, (v) over the years of this appeal there has been a decline in the golf market/industry in Michigan, (vi) the highest and best use of the subject property as improved is as a private golf and country club rather than as a daily fee golf course because "public golf courses are, you know, a dime a dozen out there today," and the subject property's

[7] Mr. Tomlinson testified that because he erred in using a sale price of $4.9 million rather than $6.0 million for the sale of the Wabeek Country Club several pages of Petitioner's Exhibit P-3 needed to be corrected. Those corrected pages were admitted as Petitioner's Exhibit P-3A.

amenities in terms of size of course, size of clubhouse, tennis courts, and swimming pool are a "better fit for a private country club," (vii) because all entities must generate revenues sufficient to pay expenses, he does not distinguish between non-profit and for-profit private golf and country clubs, (viii) the existing clubhouse could not be used as a stand-alone banquet hall under current township zoning, (ix) in preparing the sales comparison approach, he identified many sales of golf courses and country clubs, but ultimately selected nineteen properties for initial analysis, and then selected six comparable sales for further analysis for the tax years 2008 - 2011, (x) adjustments to the comparable sales were made for market conditions, location, clubhouse size, age, and "other factors," which primarily consisted of the value of the cellular leases, (xi) the cell tower leases were not separately valued because expenses could not be separately allocated and because the revenue stream generated must be considered as "the value of the whole, not as a part," (xii) the adjustment made for the value of the cell tower leases was determined by first calculating the percentage of cell tower revenue (actual) to total revenue projected by Mr. Bur[8], then applying that percentage to the projected net operating income determined by Mr. Bur[9], yielding a contributing NOI from the water tower leases; the present value of that NOI was calculated using Mr. Bur's income approach, yielding a per hole value of $11,111 attributable to the water tower leases, which is then calculated to be a percent adjustment based on the adjusted price per hole determined in Petitioner's Exhibit P-3A, (xiii) he agrees that capitalizing the cellular lease rental income with a 13.2 percent terminal cap rate would yield a value of $1.8 million, (xiv) Petitioner is responsible for all expenses associated with the cellular leases except for painting the water tower, (xv) Respondent's appraiser did not take into consideration expenses associated with the cellular leases, (xvi) because specific

[8] Page 38, Petitioner's Exhibit P-3
[9] Page 39, Petitioner's Exhibit P-3

expenses associated with the cellular leases were unknown, the NOI approach he used best reflects the net income generated by the leases, and (xvii) Respondent's appraiser erroneously valued components to determine a total value for the subject property rather than valuing the subject property as a whole. (Transcript, Vol. 2, pp. 164 – 245; Vol. 3, pp. 4 – 86)

RESPONDENT'S CONTENTIONS

Respondent contends that the true cash, assessed, and taxable values determined by Respondent for the subject property for the tax years at issue should be affirmed by the Tribunal because (i) Petitioner appealed only the taxable values of the subject property for tax years 2001 – 2005, (ii) Petitioner has failed to satisfy its burden of proof with respect to the true cash values of the subject property for tax years 2006 – 2011, (iii) Petitioner has concluded an incorrect highest and best use for the subject property as vacant and as improved, (iv) Petitioner's primary reliance on the sales comparison approach, including the quality point methodology in analyzing comparable sold properties, to value the subject property was wrong and should be given no weight, (v) Petitioner's reliance on the income approach in valuing a private non-profit country club was also wrong and is contrary to prior Tribunal decisions, (vi) Petitioner's methodology in valuing income realized from leases of the water tower undervalued the contribution of the water tower, (vii) Petitioner's appraisals do not conform to USPAP, (viii) Respondent's calculation of the 2004 taxable value of the subject property was correct, and (ix) Respondent's appraiser properly valued the subject property as a daily fee golf course with banquet center, and properly concluded the following true cash values for the subject property:

Parcel Number: 18-25-400-002

	TCV	SEV	TV
2001	$10,700,000	$5,350,000	$3,959,770
2002	$10,850,000	$5,425,000	$4,086,480
2003	$11,000,000	$5,500,000	$4,147,770
2004	$11,250,000	$5,625,000	$4,966,280

	TCV	SEV	TV
2005	$11,500,000	$5,750,000	$5,080,500
2006	$11,500,000	$5,750,000	$5,248,150
2007	$10,550,000	$5,275,000	$5,275,000
2008	$10,100,000	$5,050,000	$5,050,000
2009	$8,650,000	$4,325,000	$4,325,000
2010	$8,525,000	$4,262,500	$4,262,500
2011	$8,200,000	$4,100,000	$4,100,000

RESPONDENT'S ADMITTED EXHIBITS

R-1 Appraisal prepared by John Widmer for the 2001 through 2006 tax years.
R-17 2001 Valuation records.
R-18 2002 Valuation records.
R-19 2003 Valuation records.
R-20 2004 Valuation records, land only.
R-21 2005 Valuation records.
R-22 2006 Valuation records.
R-23 Appraisal prepared by John Widmer for the 2007 through 2009 tax years.
R-25 2007 Valuation records.
R-26 2008 Valuation records.
R-27 2009 Valuation records.
R-36 Appraisal prepared by John Widmer for the 2010 and 2011 tax years.
R-37 2001 Oakland County Equalization Report.
R-38 2002 Oakland County Equalization Report.
R-39 2003 Oakland County Equalization Report.
R-40 2004 Oakland County Equalization Report.
R-41 2005 Oakland County Equalization Report.
R-42 2006 Oakland County Equalization Report.
R-43 2007 Oakland County Equalization Report.
R-44 2008 Oakland County Equalization Report.
R-45 2009 Oakland County Equalization Report.
R-46 2010 Oakland County Equalization Report.
R-47 2011 Oakland County Equalization Report.
R-48 2010 Valuation records.
R-49 2011 Valuation records.

RESPONDENT'S WITNESSES

Respondent presented John R. Widmer, Jr., MAI, as its primary witness. Mr. Widmer was qualified as an expert witness in the field of real property appraisal and property valuation. Mr. Widmer prepared three separate appraisals of the subject property (combined, the appraisals

included the tax years 2001 through 2011 at issue in this appeal), admitted into evidence as Respondent's Exhibits R-1 (tax years 2001 – 2006), R-23 (tax years 2007 – 2009), and R-36 (2010 – 2011). Mr. Widmer testified that (i) the highest and best use of the subject property as vacant is future/speculative single-family residential development, which he concludes is allowed under current zoning, although he did not perform a feasibility study for such use (ii) that the highest and best use of the subject property as improved is as a daily fee golf course with banquet center open to the public, which he concludes is allowed under current zoning, (iii) the true cash values of the subject property for the tax years at issue were primarily determined utilizing the replacement cost approach and a combined income approach (as a daily fee golf course) and sales comparison approach (banquet center), (iv) in using the cost approach, he did not adjust for the "super adequate" size of the clubhouse, but did adjust for such super adequacy in applying the income approach, (v) in determining land value for the cost approach, he identified five "comparable" sales, all less than 85 acres and all requiring gross adjustments in excess of 75 percent, including a 70 percent adjustment to all comparable sales for zoning differences, (vi) in applying the income approach, the value of the subject property as a daily fee golf course was determined using the direct capitalization method, treating personal property as a line item expense, (vii) in applying the market approach to the banquet center, he valued only 35,000 square feet of the 54,352 existing square feet as the most functional segment of the building, (viii) he also prepared an analysis of the subject property with its current use and concluded that its value would be less than the value determined for the subject property as a public golf course and banquet hall, (ix) the sales comparison approach to valuing the subject property is not appropriate to determine the true cash values of the subject property for the tax years at issue because there was a "lack of bona fide arm's length sales of golf courses that are

not impacted by what is identified as a compulsion to sell. Any sale that has been discussed in this courtroom over the last two days as of these valuation dates is too significantly impacted by the compulsion to sell . . . ," (x) for both Respondent's Exhibits R-23 and R-36, he utilized both the replacement cost and income approaches to value, and then added to a reconciliation of those values a value determined for the revenue generated by the cellular leases[10], (xi) the value of the cellular leases was determined by capitalizing the gross revenues received by Petitioner from cellular leases less 10 percent for "vacancy collection and maybe miscellaneous expense" at a rate ranging from 10 percent to 11.5 percent for the tax years at issue, (xii) he did not review any of the cellular leases and did not know any of their terms, including length of lease and ability to cancel, (xiii) Petitioner's appraiser Bur "double-dipped" in determining the impact of property taxes in his income approach to value because he "discounted the revenue over that five-year period at a loaded yield rate, per se, adding half of the millage. He's also already adjusted for his reversionary value using a loaded cap rate. You cannot discount that back at the fifteen point two percent because you've established that value using a loaded terminal cap rate. So you're discounting at a higher rate lower contribution of value," (xiv) Petitioner has improperly calculated the economic benefit of the cellular leases in determining the true cash value of the subject property for the tax years at issue, (xv) he valued the subject property by adding together component parts of the subject property rather than valuing the subject property as a whole. (Transcript, Vol. 3, pp. 94 – 179, Vol. 4, pp. 4 – 143)

FINDINGS OF FACT

1. The subject property consists of one parcel of property identified as Knollwood Country Club, located at 5050 West Maple Road, West Bloomfield Township, Michigan.

[10] Mr. Widmer testified at Transcript, Vol. 3, pp. 177 – 178 and Vol. 4, pp. 140 - 141 that he erred by not including in his reconciled value conclusions for tax years 2001 – 2006 (Respondent's Exhibit R-1) a value attributable to the revenue generated by the cellular leases for those tax years.

2. Respondent determined the true cash values, state equalized values, and taxable values of the subject property for the tax years at issue as follows:

Parcel Number 18-25-400-002

	TCV	SEV	TV
2001	$9,286,920	$4,643,460	$3,959,770
2002	$9,856,230	$4,928,130	$4,086,480
2003	$10,008,580	$5,004,290	$4,147,770
2004	$11,306,540	$5,653,270	$4,966,280
2005	$12,165,820	$6,082,910	$5,080,500
2006	$12,792,060	$6,396,030	$5,248,150
2007	$13,363,880	$6,681,940	$5,442,330
2008	$13,632,220	$6,816,110	$5,567,500
2009	$12,887,940	$6,443,970	$5,812,470
2010	$11,559,940	$5,779,970	$5,779,970
2011	$10,976,940	$5,488,470	$5,488,470

3. The subject property is a non-profit private country club with an 18-hole golf course, clubhouse, driving range and tennis facility located on 152.23 acres.

4. Petitioner had 460 members in 2008 and 2009, 458 members in 2010, and 455 members in 2011 (Petitioner's Exhibit P-10, p. 16)

5. Initiation fees have decreased from $50,000 to $5,000 during the eleven-year period that is the subject of this appeal.

6. The subject property is improved with a clubhouse with a gross building area of 54,352 square feet renovated in 1997, a cart storage building with a gross building area of 4,219 square feet, a snack bar (1,338 square feet), a tennis club building (which Respondent contends is 1,208 square feet and Petitioner contends is 1,800 square feet) and tennis courts constructed in 2003 at a cost of $495,000, a maintenance garage (7,545 square feet), a storage garage (623 square feet), an on-site residence (1,330 square feet), a pool house with locker rooms (2,552 square feet), and a 90,000 gallon water tower that no longer is used for its original intended purpose, but is leased to cellular companies to be used as a cellular tower.

7. The subject property is zoned recreational (REC). Section 26-285.18 of the zoning ordinance provides that "if it can be clearly demonstrated by the owner of property which is zoned as REC district that both section 26.285.18 and 26.285.19 do not permit economically viable use of the property, taking into consideration any relief available at the board of zoning appeals, such owner shall be entitled to apply for township board approval of a planned recreational development (PRD) after review and recommendation by the planning commission, and subject to and in accordance with the provisions set forth within the Ordinance." Such residential development is limited to three-acre lots.

8. Petitioner realized revenue from licensing of the water tower located on the premises to cellular companies in the amounts of:

Year Ending September 30	Cellular Lease Revenue[11]
2000	$170,000 estimated
2001	$173,686
2002	$188,494
2003	$197,936
2004	$203,995
2005	$216,583
2006	$229,041
2007	$205,357
2008	$244,483
2009	$296,498
2010	$318,796

9. Member equity in the Knollwood Country Club decreased from approximately $6.3 million as of September 30, 2000, to a negative $1.4 million as of September 30, 2010.

10. The water tower cellular leases were not entered into evidence by either party; further, none of the witnesses for either party could testify regarding the respective terms of these leases.

11. Note 8 to the audited financial statements for the year ending September 30, 2010, states:

> . . . the Club has incurred recurring losses from operations, and as of September 30, 2010, the Club's current liabilities exceeded its current assets by $8,241,729 and its total liabilities exceeded its total assets by $1,395,061. These factors raise substantial doubt about the Club's ability to continue as a going concern. Management believes that the Club can continue as a going concern by renegotiating its current bank debt and possibly selling some of its assets. The financial statements do not include any adjustments that might be necessary if the Club is unable to continue as a going concern.

12. Petitioner is exempt from income tax on net income from member activities under Section 501(c)(7) of the U.S. Internal Revenue Code. (Note 1 to audited financial statements (Petitioner's Exhibits P-5 – P - 10))

13. 2004 taxable value was increased by the statutory inflation rate of 2.3% and by the assessed value of additions in the amount of $723,112.

[11] Petitioner provided certified financial statements for fiscal years ended September 30, 2001, through September 30, 2010 (Petitioner's Exhibits P-5 through P-9). Because no financial statements for the year ended September 30, 2000, have been provided by either party, the Tribunal has estimated the revenue realized by Petitioner for water tower leases based on Petitioner's subsequent income stream.

14. The taxable value for tax year 2000 of $3,836,990 was established by the Tribunal in MTT Docket Nos. 238636 and 259512 and was affirmed by the Court of Appeals.

15. Petitioner's appraiser concluded that the highest and best use of the subject property, as vacant, for the tax years at issue would be "publicly funded recreational use," although both Mr. Bur and Mr. Tomlinson testified that they would draw no distinction between a for-profit private country club and a not-for-profit country club.

16. Petitioner's appraiser concluded that the highest and best use of the subject property, as improved, for the tax years at issue would be a "for-profit non-equity country club."

17. For the tax years at issue, Petitioner's appraiser(s) utilized the income approach and sales comparison approach to determine the true cash value of the subject property, with primary reliance on the sales comparison approach based on the quantity and quality of comparable sales. Petitioner's appraiser did not use the cost approach to value because there were an insufficient number of comparable land sales in the area to reliably estimate land value and, because of weak economic conditions in the golf industry, there was a significant amount of obsolescence that was not possible to estimate accurately. (Petitioner's Exhibit P-1, p. 92, Petitioner's Exhibit P-2, p. 34, Petitioner's Exhibit P-3, p. 57).

18. In applying the income approach to determine a going concern value for the subject property for all tax years at issue, Petitioner's appraiser Bur used a discounted cash flow analysis for each year that assumed a sale of the subject property, with revenues generated by the sale of 175 new membership in the first year, growing to 350 memberships by the fifth year, including initiation fees of $5,000, dues, food and beverage, pro shop, golf carts, etc., offset by fixed and variable operating expenses, escalated by 3% annually, with a discount rate of 13% plus 2.2% for property taxes for tax years 2001 – 2007 and a total discount rate of 15% for tax years 2008 - 2011. A value for personal property as reported by Petitioner to Respondent was then deducted from the going concern value to determine the true cash value of the subject property.

19. In applying the sales comparison approach to determine a going concern value for the subject property for tax year 2001, Petitioner's appraiser Bur identified six sales of golf course properties during the period October 2000 through December 2003, with positive or negative adjustments made to each comparable using the Quality Point methodology to account for differences between the subject property and the comparable properties. A composite point total is computed for each of the comparables and the subject property based upon a weighting of the attributes using a statistical formula that solves for the weighting that minimizes the variances between the predicated sales price and the actual sale price of the comparables. Utilizing all six comparable sales, but with emphasis on the sale of the Wabeek Country Club in December 2003, Petitioner's appraiser determined a per hole going concern value for the subject property of $330,000. A value for personal property as reported by Petitioner to Respondent was then deducted from the going concern value to determine the true cash value of the subject property for 2001. The same going concern value was calculated by Petitioner's appraiser for the 2002,

2003, 2004, and 2005 tax years, with true cash values varying for those years only by the personal property deduction made to the going concern value.

20. In applying the sales comparison approach to determine a going concern value for the subject property for tax year 2006, Petitioner's appraiser Bur identified five sales of golf course properties during the period April, 2001, through April, 2006, with positive or negative adjustments made to each comparable again using the Quality Point methodology to account for differences between the subject property and the comparable properties. For 2006, Petitioner's appraiser Bur used four of the same comparable sales used in his analysis for 2001, adding a 2006 sale of a country club in Holland, Ohio, to the analysis, to determine a per hole going concern value for the subject property of $300,000. Again, the value of personal property as determined by Respondent as of December 31, 2005, was subtracted from the going concern value to determine the true cash value of the subject property for 2006. For the 2007 tax year, the same methodology and comparable sales were used by Petitioner's appraiser to determine a going concern value of $285,000 per hole (to reflect a 5% downward adjustment for declining market conditions), with the true cash value of the subject property again determined by subtracting the true cash value of personal property.

21. In applying the sales comparison approach to determine a going concern value for the subject property for tax years 2008 – 2011, Petitioner's appraiser Tomlinson identified nineteen possible comparable sales and then used six of those comparable sales in his market analysis for one or more of the tax years at issue.[12] Quantitative adjustments were made to each comparable to account for differences between the subject property and the comparable properties. Applying that methodology, Petitioner's appraiser Tomlinson determined a per hole going concern value of $270,000 per hole for 2008, $250,000 per hole for 2009, $240,000 per hole for 2010, and $225,000 per hole for 2011. Again, the value of personal property as determined by Respondent for the respective tax years was subtracted from the going concern value to determine the true cash value of the subject property for the tax years at issue. Mr. Tomlinson's realization that the Wabeek Country Club sale price was $6 million rather than the $4.9 million reflected in his original report required revisions of several pages of Petitioner's Exhibit P-3, and led to an increase of approximately $1.1 million in his range of values, but did not result in a change in Mr. Tomlinson's opinion of value using the sales comparison approach for the 2008 – 2011 tax years.

22. Respondent's appraiser concluded that the highest and best use of the subject property, as vacant, for the tax years at issue would be "future/speculative single-family residential development."

[12] The sales of Wabeek Country Club in December 2003 and Heather Downs Country Club in April 2006 were used by Petitioner's appraiser Tomlinson for each of the tax years 2008 – 2011. For 2008, the sale of the Arbor Hills Country Club in March 2007 was also used. For 2009, the sale of the Liberty Golf Club in April, 2008, was also used. For 2010, the sale of Flushing Valley Country Club in December, 2009, was also used. For 2011, the sale of the Lenawee Country Club in March, 2011, was also used.

23. Respondent's appraiser concluded that the highest and best use of the subject property, as improved, for the tax years at issue would be "dissolving the private equity non-profit corporation, and changing the project to a daily fee golf course, and banquet center open to the public."

24. For the 2001 – 2006 tax years (Respondent's Exhibit R-1), Respondent's appraiser Widmer valued the subject property using (i) a combined cost (improvements) and market (land value) approach, (ii) a combined market (banquet center) and income (golf course) approach, (iii) an income approach to determine the value of the subject property as a private country club, and (iv) a sales comparison approach to determine the underlying value of the land assuming an investor would secure municipal approval for a large scale residential development. Given Respondent's appraiser Widmer's determination of highest and best use, Mr. Widmer primarily relied on the income and sales comparison analysis to determine the true cash value of the subject property for the subject tax years. Respondent's appraiser did not include any value attributable to the water tower cellular leases.

25. For the 2007 – 2011 tax years (Respondent's Exhibits R-23 and R-36), Respondent's appraiser Widmer valued the subject property using both a (i) cost approach (improvements) and sales comparison approach (land) and (ii) combined income (banquet center) and cost approach (daily fee golf course). Respondent's appraiser then calculated a value for the water tower cellular leases using a direct capitalization approach to value.

26. In applying the replacement cost approach to value the subject property for tax years 2001 – 2006 (Respondent's Exhibit R-1), Respondent's appraiser Widmer first determined the value of the land based on five vacant land sales occurring during the period May, 2000, to December, 2001, with parcel sizes ranging from 17.52 acres to 83.56 acres, concluding a value of $15,000 per acre for the 2001 and 2002 tax years, increasing to approximately $16,100 by the 2006 tax year. Gross adjustments made to the five comparable vacant land sales ranged from 75% to 102%. Mr. Widmer then determined building and site improvement costs using Marshall Valuation Service as a guide, added indirect costs of approximately 12%, and subtracted accrued depreciation. Mr. Widmer concluded that no external obsolescence adjustment was appropriate, but did determine physical depreciation to range from 23% increasing to 29% of total cost over these tax years.

27. In applying the replacement cost approach to value the subject property for tax years 2007 – 2009 (Respondent's Exhibit R-23), Respondent's appraiser Widmer first determined the value of the land based on eleven vacant land sales occurring during the period January, 2006, through January, 2009, with parcel sizes ranging from 1.62 acres to 127.03 acres, concluding a value of $15,200 per acre for 2007, $14,400 per acre for 2008, and $11,100 per acre for 2009. Mr. Widmer did not apply the same adjustment methodology for these tax years as he did in Respondent's Exhibits R-1 and R-36 and, as a result, gross adjustments could not be determined from the information he provided. Mr. Widmer then determined building and site improvement costs using Marshall

Valuation Service as a guide, added indirect costs of approximately 12%, and subtracted accrued depreciation. Mr. Widmer concluded that deteriorating market conditions warranted an adjustment for external obsolescence in the range of $1.95 million to $2.56 million. Total depreciation for these tax years ranged from 46% to 57% of total cost.

28. In applying the replacement cost approach to value the subject property for tax years 2010 and 2011 (Respondent's Exhibit R-36), Respondent's appraiser Widmer first determined the value of the land based on four vacant land sales occurring during the period February, 2009, through October, 2010, with parcel sizes ranging from 10 acres to 50.5 acres, concluding a value of $9,800 per acre for 2010 and $9,400 per acre for 2011. Gross adjustments made to the comparable land sales ranged from 127% to 140%. Mr. Widmer then determined building and site improvement costs using Marshall Valuation Service as a guide, added indirect costs of approximately 12%, and subtracted accrued depreciation. Mr. Widmer concluded that deteriorating market conditions warranted an adjustment for external obsolescence of approximately $2.6 million for 2010 and $2.7 million for 2011. Total depreciation for 2010 and 2011 was 59% of total cost and 61% of total cost, respectively.

29. In applying the income approach to value the subject property as a daily fee golf course for tax years 2001 – 2006, Respondent's appraiser Widmer applied a discounted cash flow analysis, after determining expected revenues and expenses, subtracting income expected from intangibles and personal property, and applying a capitalization rate ranging from 13.08% to 13.46%. Respondent's appraiser then added a value for the banquet center determined using a sales comparison approach that identified two comparable sales (a sale of a 24,132 square foot facility in October, 2002, and a sale of a 20,261 square foot facility in March, 2001. After applying gross adjustments of 65%, Respondent's appraiser determined an average square foot value, which was then applied to 35,000 square feet rather than the entire clubhouse space of 54,352 square feet because 35,000 square feet is "the most functional segment for the banquet center operation."

30. In applying the income approach to value the subject property as a daily fee golf course for tax years 2007 – 2009, Respondent's appraiser Widmer applied a discounted cash flow analysis, after determining expected revenues and expenses, subtracting income expected from intangibles and personal property, and applying a capitalization rate of 13.31% for 2007 and 13.81% for 2008 and 14.32% for 2009. Respondent's appraiser then added a value for the banquet center determined using a sales comparison approach that identified three comparable sales (the two sales identified above and a third sale of a 16,651 square foot facility sold in August, 2007). Applying gross adjustments in the range of 84%, Respondent's appraiser determined an average square foot value, which was then applied to 35,000 square feet rather than the entire clubhouse space of 54,352 square feet because 35,000 square feet is "the most functional segment for the banquet center operation."

31. In applying the income approach to value the subject property as a daily fee golf course for tax years 2010 and 2011, Respondent's appraiser Widmer applied a discounted cash flow analysis, after determining expected revenues and expenses, subtracting income

expected from intangibles and personal property, and applying a capitalization rates of 14.56% for 2010 and 14.82% for 2011. Respondent's appraiser then added a value for the banquet center determined using a sales comparison approach that identified three comparable sales occurring in 2009 and 2010, with sizes ranging from 4,182 square feet to 20,261 square feet. Applying gross adjustments ranging from 50% to 160%, Respondent's appraiser determined an average square foot value, which was then applied to 35,000 square feet rather than the entire clubhouse space of 54,352 square feet because 35,000 square feet is "the most functional segment for the banquet center operation."

32. Although Respondent's appraiser did prepare a value estimate based on the sales comparison approach and his highest and best use vacant determination, Respondent did not use this approach in making his final value determination for any of the tax years at issue in this appeal because of the highly speculative nature of this approach and because there was a "lack of bona fide arm's length sales of golf courses that are not impacted by what is identified as a compulsion to sell. Any sale that has been discussed in this courtroom over the last two days as of these valuation dates is too significantly impacted by the compulsion to sell . . . ."

ISSUES AND CONCLUSIONS OF LAW

Given the number of years involved in this appeal, it is not surprising to the Tribunal that a variety of issues have arisen beyond that of making an independent determination of the true cash values of the subject property. Thus, the Tribunal will first resolve those issues not specifically related to the parties' respective appraisers' determination of the true cash values of the subject property for the tax years at issue.

1. Taxable value of the subject property for the 2004 tax year.

As discussed above, the Tribunal's Order dated March 18, 2011, limited Petitioner's appeal to taxable value only for tax years 2001 – 2005. Petitioner contends that Respondent has increased the taxable value of the subject property for the 2004 tax year by an amount exceeding the applicable inflation rate. (Petitioner's Post Hearing Brief, pp. 17 – 20) Specifically, Petitioner contends that Respondent has failed to provide the requisite proofs that the water tower and the

asphalt paving had not been previously assessed. [13] Petitioner does not dispute that the tennis courts and tennis building were constructed in 2003. A review of Respondent's assessment records for the 2004 tax year reveals that the taxable value of the subject property was increased from 2003 by an amount greater than the applicable inflation rate of 2.3%. Specifically, the 2003 taxable value of $4,147,770 was increased to $4,966,280 for 2004, which increase includes a $95,398 increase attributable to the inflationary increase and $723,112 attributable to "additions" including "omitted property" pursuant to MCL 211.27a and MCL 211.34d. In this regard, Respondent's Assessor, Ms. Hobart, testified that although she was not the assessor for Respondent for the 2004 tax year, she determined that (1) the township converted from a mainframe records system to the B S &A Equalizer software system for assessment records, (2) the tennis courts and tennis court building were constructed during 2003, and (3) the paving of the subject parking lots and the water tower were not previously assessed. The Tribunal has reviewed the applicable assessment records (Respondent's Exhibits R-19 and R-20) and finds the tennis courts and tennis court building were constructed in 2003 and finds that no land

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[13] MCL 211.34d(1)(b) provides, in part: For taxes levied after 1994, "additions" means . . . all of the following:

(*i*) Omitted real property. As used in this subparagraph, "omitted real property" means previously existing tangible real property not included in the assessment. Omitted real property shall not increase taxable value as an addition unless the assessing jurisdiction has a property record card or other documentation showing that the omitted real property was not previously included in the assessment. The assessing jurisdiction has the burden of proof in establishing whether the omitted real property is included in the assessment. . . . [f]or purposes of determining the taxable value of real property under section 27a, the value of omitted real property is based on the value and the ratio of taxable value to true cash value the omitted real property would have had if the property had not been omitted. . . .

(*iii*) New construction. As used in this subparagraph, "new construction" means property not in existence on the immediately preceding tax day and not replacement construction. . . [f]or purposes of determining the taxable value of property under section 27a, the value of new construction is the true cash value of the new construction multiplied by 0.50.

MCL 211.34d (omitted property) provides that "the assessing jurisdiction has the burden of proof in establishing whether the omitted real property was not previously included in the assessment. Here, because of the conversion of record keeping systems, the records for 2003 do not reflect detail, but do reflect no assessment for land improvements. For 2004, the asphalt paving was valued at $60,200.

improvements were assessed on the subject property in 2003. Thus, the value of the tennis courts and tennis court building and the asphalt paving determined by Respondent for 2004 ($242,110 and $60,200, respectively) were properly treated as additions by Respondent. However, Respondent has failed to provide assessment records or other documentation required by the statute that specifically proves that any other property, including the water tower, was omitted from the prior year's assessment. (Respondent's Post Trial Brief, pp. 2 – 3) Therefore, the Tribunal finds that Respondent was able to support "additions" in the amount $242,110 + $60,200 True Cash Value or $151,155 Assessed Value, which when added to the 2003 Taxable Value, increased by the 2.3% rate of inflation, yields a Taxable Value for 2004 of $4,394,323. The 2005 TV has been recalculated to simply increase the revised 2004 TV by the applicable 2.3% inflation rate.

2. Do Petitioner's Exhibits P-2 and P-3 satisfy appraisal standards?

Respondent contends that Petitioner's Exhibits P-2 and P-3 do not comply with the Uniform Standards of Professional Appraisal Practice ("USPAP") and the Michigan Occupational Code (MCL 339.2601). Primarily relying on USPAP Standards Rule 2.3, Respondent contends that Petitioner's addenda to its appraisal for the 2001 – 2005 tax years (Petitioner's Exhibit P-1) fail to contain a signed certification and fail to include a variety of other items specifically required by USPAP and "said addendums(sic) cannot independently stand on their own inasmuch as they are missing several components required to be included in appraisals . . . and do not conform to USPAP." Therefore, Respondent asks that the Tribunal give Petitioner's Exhibits P-2 and P-3 "no weight and/or credibility." (Respondent's Post Trial Brief, pp. 18 – 20)

The Appraisal Standards Board of The Appraisal Foundation develops, interprets and amends USPAP. Advisory Opinions are forms of guidance issued by the Appraisal Standards Board to illustrate the applicability of USPAP in specific situations and to offer advice from the ASB for the resolution of appraisal issues and problems. The 2010 – 2011 Edition of USPAP includes Advisory Opinion 3, which states in part:

> [w]hen a client seeks a more current value or analysis of a property that was the subject of a prior assignment, this is not an *extension* of that prior assignment that was already completed – it is simply a new assignment. . . . [t]he same USPAP requirements apply when appraising or analyzing a property that was the subject of a prior assignment. . . . [f]or all assignments, the development of the assignment results must be in accordance with the requirements contained in the applicable STANDARD . . . [w]hen developing an opinion regarding a property that was the subject of a previous assignment, the scope of work in the new assignment may be different from the scope of work in the prior one. In addition, rather than duplicating steps in the appraisal process, the appraiser can elect to incorporate some of the analyses from the previous assignment . . . into the new assignment . . . . The new report is not required to have the same level of detail as the original report . . . [h]owever, the new report must contain sufficient information to be meaningful and not misleading to the intended users . . . [t]here are three ways that the reporting requirements can be satisfied for these types of assignments:
>
> > 1. Provide a new report that contains all the necessary information/analysis to satisfy the applicable reporting requirements, *without incorporation* of the prior report by either attachment or reference.
> >
> > 2. Provide a new report that *incorporates by attachment* specified information/analysis from the prior report so that, in combination, the attached portions and the new information/analysis added satisfied the applicable reporting requirements.
> >
> > 3. Provide a new report that *incorporates by reference* specified information/analysis from the prior report so that, in combination the referenced portions and the new information/analysis added satisfied the applicable reporting requirements. This option can only be used if the original appraiser's firm and original intended users are involved, since the prior report was issued from that appraiser to those intended users . . . [w]hen this incorporation by reference option is used, the following items from that prior report must be specifically identified in the new report to avoid being

> misleading: subject property, client and any other intended users, intended use, appraiser(s), effective date of value or assignment results, date of report, and interest(s) appraised.

The Tribunal finds that although Petitioner failed in some respects to follow USPAP generally, and Advisory Order 3 specifically, in drafting Petitioner's Exhibits P-2 and P-3, the Tribunal has been provided sufficient information and analysis by Petitioner's appraisers by virtue of those exhibits to enable it to make an independent determination of the value of the subject property for the tax years at issue. Although Respondent has raised certain issues regarding the failure of Petitioner's appraisers to specifically adhere to USPAP requirements, the Tribunal finds that none of those failures or omissions is so onerous as to warrant the Tribunal giving no weight or credibility to said appraisal addenda.

3. The true cash value of the subject property for the tax years at issue.

a. General. The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value.

> The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not...exceed 50%.... Const 1963, art 9, sec 3.

The Michigan Legislature has defined "true cash value" to mean:

> ...the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale. MCL 211.27(1); MSA 7.27(1).

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

Under MCL 205.737(1); MSA 7.650(37)(1), the Tribunal must find a property's true cash value in determining a lawful property assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal is not bound to accept either of the parties' theories of valuation. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 377 NW2d 908 (1985). The Tribunal may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination. *Meadowlanes Limited Dividend Housing Association v City of Holland*, 437 Mich 473, 485- 486; 473 NW2d 636 (1991).

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735(1); MSA 7.650(35)(1). The Tribunal's factual findings are to be supported by competent, material, and substantial evidence. *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Department of Treasury*, 185 Mich App 458, 462-463; 452 NW2d 765 (1990). Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence. *Jones and Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

"The petitioner has the burden of establishing the true cash value of the property...." MCL 205.737(3). This burden encompasses two separate concepts: (1) the 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. *Jones and Laughlin* at 354-355. However, “[t]he assessing agency has the burden of proof in establishing the ratio of the average level of

assessment 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." MCL 205.735(3).

b. Highest and Best Use. Because the parties' respective appraisers substantively disagree regarding the highest and best use of the subject property, both vacant and as improved, and therefore apply different valuation methods in determining substantially different values for the subject property, the Tribunal must first make a determination regarding highest and best use for all of the tax years at issue. This determination is especially critical where Respondent is advancing an alternative highest and best use (public golf course and banquet center) to its present use as a private country club. The danger in Respondent's conclusion of highest and best use is that its entire case is conditioned upon its appraiser's alternative highest and best use. If the alternative highest and best use is flawed, Respondent is essentially left without a value premise or supporting evidence.

In this regard, the Appraisal Institute states that an appraiser charged with developing a market value opinion must include a highest and best use analysis that identifies "the most profitable, competitive use to which the subject property can be put." Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13th ed, 2008), p. 277.

In all valuation assignments, opinions of value are based on use. The highest and best use of a property to be appraised provides the foundation for a thorough investigation of the competitive position of the property in the minds of market participants. Consequently, highest and best use can be described as the foundation on which the market value rests.

Highest and best use may be defined as follows:

> The reasonably probable and legal use of vacant land or an improved property that is physically possible, appropriately supported, and financially feasible and that results in the highest value. (*Id*., pp. 277, 278)

> The theoretical focus of highest and best use analysis is on the potential uses of the land as though vacant. In practice, however, the contributory value of the existing improvements and any possible alteration of those improvements, are also important in determining the highest and best use and, by extension, in developing an opinion of market value of the property. *Id*., p. 278

In addition to being reasonably probable, the highest and best use . . . must meet four implicit criteria. That is, the highest and best use must be:

1. Legally permissible (which speaks to eliminating from consideration those uses which are not thought likely to be legal);

2. Physically possible (which speaks to eliminating from consideration those uses to which it is not likely the property may reasonably be adapted);

3. Financially feasible (which speaks to eliminating from consideration those uses which are not thought likely to be financially feasible from a profitability standpoint); and

4. Maximally productive (which speaks to eliminating from consideration those uses which are not thought likely to return the maximum profitability to the land, once considerations for labor, capital and coordination are satisfied).

> Highest and best use analysis builds on the conclusions of market/marketability analysis. The analysis of land as though vacant focuses on alternative uses, with the appraiser testing each reasonably probable use for legal permissibility, physical possibility, financial feasibility, and maximum productivity. **In contrast, the appraiser applies the four tests in the analysis of the property as improved, but the focus is not on alternative uses but on three possibilities: continuation of the existing use, modification of the existing use, or demolition and redevelopment of the land.** (Emphasis added) (*Id*., pp. 281, 287.)

Here, Respondent's appraiser contends that the maximum productive use of the subject property would be to convert the subject private non-profit country club into a for-profit daily fee golf course and banquet center. Citing an article included in Petitioner's Exhibit P-3,

Respondent contends that the evidence and testimony in this case support a conclusion that where private country clubs have faced severe challenges (loss of members, declining revenues, rising costs, etc.) over the past several decades, said country clubs have converted to public play ten times as often as closing the country club. Further, Respondent's appraiser stated that critical to his conclusion of highest and best use of the subject property as improved is his assumption that current REC zoning would allow the operation of a banquet center open to the public and for highest and best use vacant is Respondent's appraiser's assumption that current REC zoning would allow for mixed-use residential development. (Respondent's Post Hearing Brief, pp. 3 – 6)

Petitioner argues that its appraiser witnesses successfully supported their conclusion that the highest and best use of the subject property as vacant would be a publicly funded recreation use for legal, physical, and financial reasons. As improved, Petitioner's appraisers concluded that the highest and best use of the subject property would be as a for-profit non-equity country club, rather than as a daily fee golf course, primarily because of (i) Wabeek Country Club's experience remaining as a private country club after its sale to an outside party, (ii) the quality and size of the subject facility, and (iii) the income-generating capacity of a private country club was superior to that of a public daily fee golf course. On the other hand, Petitioner contends that Respondent's appraiser (i) ignored the "over-developed and over-sized clubhouse to be used as a banquet center" (Petitioner's Post-Hearing Brief, p. 3), (ii) admitted that he performed no feasibility or market study to determine demand for a daily fee public golf course, (iii) ignored the Tribunal's skepticism regarding conversion of a country club into a daily fee golf course "where the clubhouse size is disproportionate to the proposed alternative use" (see *Warwick Hills Golf and Country Club v Grant Blanc Twp,* 11 MTT 281 (2001)), (iv) failed to identify comparables with a banquet facility close to the subject property in size, (v) ignored the

amenities found with the subject property, including the high end locker room, the tennis courts and tennis building, the swimming pool, the on site groundskeeper residence, the snack bar and its affluent location, and (vi) failed to confirm that the use of the clubhouse as a banquet center and the land as vacant for residential use was allowed under local zoning ordinances for this parcel zoned REC Recreation District Zoning. (Petitioner's Post Hearing Brief, pp. 1 – 4)

None of the appraisers for the parties to this appeal propose a continuation of the existing use of the subject property or a demolition and redevelopment of the land. Instead, the respective appraisers propose a modification of the existing use of the subject property, as improved. Petitioner's appraiser proposes a modest modification of the subject property as improved from a not-for-profit private country club to a for-profit private country club.[14] Respondent's appraiser, however, proposes a substantive modification of the subject property as improved from a not-for-profit private country club to a daily fee public golf course and banquet center. As discussed above, the highest and best use of the subject property as improved proposed by Respondent's appraiser is dependent upon a variety of assumptions that the Tribunal finds have not been adequately researched or analyzed. For example, the Tribunal cannot conclude from Mr. Widmer's testimony and appraisals he has submitted that the highest and best use proposed by Mr. Widmer for the current clubhouse would be allowed under Respondent's zoning ordinance. Further, Mr. Widmer has largely ignored the impact or value of the amenities found at the subject property that are not normally found at a daily fee public golf course, such as the tennis courts and swimming pool. Further, in attempting to value the clubhouse as a public banquet center, Mr. Widmer has identified comparable sold properties of a lesser quality and a substantially smaller size that simply do not support a conclusion that the highest and best use of

[14] Both of Petitioner's appraisers testified that they do not distinguish between a for-profit and a not-for-profit private country club. (Transcript, Vol. 2, pp. 41, 42, 197 – 201; Vol. 3, pp. 12 – 20)

the existing clubhouse would be as a public banquet center. Although Petitioner has experienced a decline in revenues and members over the eleven years at issue in this case, the Tribunal finds that the highest and best use determination made by Petitioner's appraisers for the subject property as improved is appropriate, as it requires minimal modification, is supported by the experience associated with the 2003 purchase and conversion of the Wabeek Country Club from a not-for-profit private country club to a for-profit private country club, and is generally supported by the evidence and testimony presented. Similarly, the Tribunal finds that the highest and best use of the subject property as vacant is as concluded by Petitioner's appraisers, as publicly funded recreational use rather than mixed use residential development because Petitioner's appraisers were able to adequately support their highest and best use determination pursuant to the four criteria discussed above, while Respondent's appraiser failed to provide adequate testimony and evidence in support of the legality of his conclusion.

c. Approaches to Value. The three most common approaches to valuation are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach. *Meadowlanes*, pp. 484-485; *Pantlind Hotel Co v State Tax Commission*, 3 Mich App 170; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968). The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in marketplace trading. *Antisdale*, p. 278. The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale*, p. 277. The Tribunal finds that the appropriate method of determining the true cash value of the subject property for the tax years at issue is the sales comparison approach.

1. Cost approach. The Tribunal finds that the cost-less-depreciation approach used by Respondent's appraiser to value the subject property for all tax years at issue is not appropriate. Generally, the cost-less-depreciation approach is applicable to a newly constructed property. The cost approach values a property based on a comparison with the cost to build a new or substitute property, presumably taking into consideration market influences. In the instant case, Respondent's appraiser has determined a land value based on comparable vacant land sales with total acreage ranging from 1.62 acres to 127.3 acres (only one vacant land comparable sale was in excess of 100 acres), all of which are substantially smaller in size than the subject property. Further, none of the comparable vacant land sales were of a size appropriate for a golf course (daily fee or private)[15], all were zoned residential, and none were located in West Bloomfield Township. Finally, all comparable vacant land sales required substantial gross adjustments, ranging from 75% to 140%. The Tribunal finds that Respondent's appraiser has not adequately supported the land value determination made as a component of the cost approach used to determine the true cash value of the subject property for any of the tax years at issue in this appeal.

The Tribunal generally does not take exception to Mr. Widmer's use of Marshall Valuation Service as a guide in attempting to determine the value of the subject buildings and other land improvements using the cost approach to value. Mr. Widmer, however, fails to credibly support various adjustments made to gross cost estimates, including a 12% addition for indirect costs, depreciation to tennis courts constructed in 2003 and external obsolescence. Further, Mr. Widmer admitted on cross-examination (Transcript, Vol 4, p. 62) that he did not

[15] Mr. Widmer testified that the appropriate size for a golf course could be in the range of 130 acres to 160 acres. (Transcript, Vol. 4, p. 67)

adjust for super adequacy associated with the clubhouse given his highest and best use determination.

That the cost new of a property must be depreciated for all forms of depreciation was appropriately recognized by Respondent's appraiser. While Respondent's appraiser agrees that subject property should be depreciated for physical deterioration, the Tribunal has some concerns with the appraiser's conclusions, without appropriate explanation or analysis, that no adjustment was deemed appropriate for external obsolescence[16] for tax years 2001 – 2006, but adjustments of 15% were appropriate for tax years 2007 and 2008, and adjustments of 20% were appropriate for tax years 2009, 2010 and 2011.

The Tribunal finds that for the reasons discussed above, Respondent's use of the cost approach is not appropriate in determining the true cash value of the subject property for the tax years at issue. As is discussed by The Appraisal Institute, "the cost approach is important in estimating the market value of new or relatively new construction. The approach is especially persuasive when land value is well supported and the improvements are new or suffer only minor depreciation." Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13th ed, 2008), p. 382. Here, the Tribunal has found that Respondent's land values are not "well supported" and Respondent's appraiser has calculated substantial depreciation (increasing from 23% in 2001 to 61% in 2011).

2. Income Approach.

As discussed above, the Tribunal has rejected Respondent's determination that the highest and best use of the subject property as improved is a daily fee golf course and separate

[16] External obsolescence is defined by the Appraisal Institute as "a loss in value caused by factors outside a property. It is often incurable. External obsolescence can be either temporary (e.g., an oversupplied market) or permanent (e.g., proximity to an environmental disaster). Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13th ed, 2008, p. 442.)

banquet center. Therefore, because the Tribunal does not accept Respondent's determination of highest and best use as improved, the Tribunal does not accept the combined income and market approaches to value utilized by Respondent's appraiser.

Further, as argued by Petitioner (Petitioner's Post-hearing Brief, pp. 14 – 16), USPAP Standards Rule 1-4(e) provides that "when analyzing the assemblage of the various estates or component parts of a property, an appraiser must analyze the effect on value, if any, of the assemblage. An appraiser must refrain from valuing the whole solely by adding together the individual values of the various estates or component parts." Simply, while the value of the whole may be equal to the sum of the separate parts, it may also be greater than or less than the sum of the parts. Here, Respondent's appraiser values the golf course using an income approach, separately values the clubhouse using a market approach and then separately values the water tower lease revenue using an income approach, and then simply combines the three components to determine a value. The Tribunal agrees with Petitioner that Respondent's appraiser fails to support this methodology given USPAP Standards Rules and further fails to defend a conclusion that anticipates the separate sale of each of the components. The Tribunal finds that this approach to value lacks credibility and will be given no weight by the Tribunal.

Respondent contends that Petitioner's income approach in valuing the subject property as a private country club is not a valid approach. Citing the Michigan Court of Appeals decision in *Knollwood Country Club v West Bloomfield Township,* unpublished opinion per curiam of the Court of Appeals, issued March 23, 2004, (Docket No. 241297), Respondent concludes that the income approach should not be used in determining the true cash value of a private country club. (Respondent's Post Hearing Brief, pp. 11, 12) Petitioner argues that in that case, the parties stipulated that the highest and best use of the subject property was as a not-for-profit country

club. Here, Petitioner contends that no such stipulation is present, as Petitioner's appraisers' determination of highest and best use is that of a for-profit private country club. Thus, Petitioner contends that the "income approach put forth by David Bur avoids the pitfalls found in *Knollwood*" and other cases cited by Petitioner. Here, Mr. Bur testified that when non-profit country clubs sell, they are typically purchased by an investor for profit. As a result, Petitioner contends that its appraisers' use of the income approach is a reasonable option to the sales comparison approach relied on by Petitioner. (Petitioner's Post Hearing Brief, pp. 4 – 8) The Tribunal has previously concluded that the highest and best use for the subject property for the tax years at issue as improved is as a for-profit private country club. The Tribunal finds that Respondent's argument that the Tribunal and the Court of Appeals have rejected the use of an income approach for non-profit equity country clubs is inapplicable to this appeal.

The Tribunal, however, does have some concern with certain of Petitioner's assumptions in using the income approach to value the subject property for the tax years at issue. Consistent with its highest and best use conclusion, Petitioner applies the income approach to value assuming the purchase of the subject property by an investor, estimating the future financial benefits derived from that investment and deriving the present value of those future benefits using a discounted cash flow methodology. The principal methodology issue of concern to the Tribunal is Petitioner's appraisers' assumption that the variables, such as number of memberships, revenue inflation, water tower income[17], initiation fee, and expenses, did not appreciably change over time. Further, the Tribunal does not accept Petitioner's appraisers' inclusion of water tower revenues as a revenue line item, particularly given Petitioner's

[17] The value of cellular lease revenue realized by Petitioner is discussed separately below. Given the actual water tower lease revenues realized by Petitioner during the tax years under appeal (increasing from approximately $174,000 to $319,000 over the period subject to this appeal), the Tribunal does not accept Petitioner's estimated annual lease revenue of $90,000, escalated by 3% annually.

extremely low estimate of water tower revenues actually realized by Petitioner. Given the numerous issues associated with the assumptions made by Petitioner's appraisers in applying the income approach to value, the Tribunal finds that such approach is not reliable and will not be considered in the Tribunal's independent determination of the fair market value of the subject property for the tax years at issue.

3. Sales Comparison Approach.

As stated above, the Tribunal finds that the sales comparison approach is the appropriate methodology to use in valuing the subject property for the tax years at issue. The Tribunal does not accept Respondent's appraiser's conclusion that the sales comparison approach is not an appropriate methodology to apply in this case. Although Respondent's appraiser did prepare a value estimate based on the sales comparison approach and his highest and best use vacant determination, Respondent did not use this approach in making his final value determination for any of the tax years at issue in this appeal because of the highly speculative nature of this approach and because there was a "lack of bona fide arm's length sale of golf courses that are not impacted by what is identified as a compulsion to sell. Any sale that has been discussed in this courtroom during the hearing as of these valuation dates is too significantly impacted by the compulsion to sell . . . ." This analysis and conclusion simply lacks any supporting evidence from Respondent and is mere unsupported conjecture. Instead, the Tribunal finds that Petitioner was able to identify numerous sales of potentially comparable properties and ultimately chose six of those sales for analysis in Petitioner's Exhibit P-1, five of those sales for analysis in Petitioner's Exhibit P-2, and six of those sales for analysis in Petitioner's Exhibit P-3.

Respondent takes issue with Petitioner's sales comparison approach in at least two respects: First, Respondent contends that Petitioner's "quality point" methodology in applying the sales comparison approach has been expressly rejected by the Tribunal (*Aldridge v Township of Greenbush*, MTT Docket No. 316677, 5/11/11).

> Finally, the Tribunal simply cannot accept Mr. Allen's "quality point methodology." Mr. Allen was unable to provide the Tribunal with an indication that this methodology had been determined to be an acceptable appraisal method by any U.S. court or by any appraisal institution. While this method may someday be recognized as valid, the Tribunal cannot accept an untested and unaccepted valuation theory.

Thus, Respondent argues that the sales comparison approach applied in Petitioner's Exhibits P-1 and P-2 should be given no weight or credibility. Petitioner contends that while the Tribunal has expressed concerns regarding the quality point method used by Mr. Bur for tax years 2001 – 2007, this method has been "widely taught throughout North America," and the value conclusions reached using this method and the traditional adjustment grid method are "sufficiently similar." (Petitioner's Post Hearing Brief, pp. 9 – 10) The Tribunal has reviewed Mr. Bur's application of the quality point methodology in valuing the subject property for tax years 2001 – 2007 and finds that this methodology has been sufficiently explained and supported by Mr. Bur in his testimony and in his appraisals, and the conclusions reached by Mr. Bur using this methodology are generally consistent with the conclusions reached by Mr. Tomlinson using a quantitative methodology. The Tribunal finds that Respondent's contention that Mr. Bur's sales comparison approach found in Petitioner's Exhibits P-1 and P-2 be given no weight or credibility is unsupported.

Second, Respondent contends that Petitioner's sales analysis is flawed and should be given no weight in this case because Petitioner's appraiser determined the going concern value of the subject property and then subtracted personal property to arrive at its true cash value, and that

methodology was expressly rejected by the Tribunal in *Greenridge Country Club v Township of Ada*, MTT Docket No. 318901, primarily because the appraiser assumes that the value of Petitioner's personal property equaled that of each of the comparable sales. It should be noted that the Tribunal in *Greenridge* determined that the "value conclusion reached by Petitioner in its sales comparison approach is given less weight," rather than no weight as contended by Respondent. Respondent also relies on *Aldridge, supra*, where the Tribunal concluded that valuing a property as a going concern "adds an unnecessary level of complexity and uncertainty" and was not accepted. (Respondent's Post Hearing Brief, pp. 9 – 11)

Petitioner contends that country clubs are generally sold with personal and intangible property. Here, Petitioner's appraisers assigned no value to intangibles, and did not separately appraise the personal property, instead simply subtracting from going concern value the true cash value of personal property on the tax roll for each year. Petitioner contends that recognizing that country clubs sell as entire units, rather than as components, supports a determination of the going concern value and then subtracting personal property, which Petitioner contends will "not significantly affect the concluded values of real estate." (Petitioner's Post Hearing Brief, pp. 11 – 13) Although the Tribunal has concerns regarding Petitioner's appraisers' valuation of the subject property as a going concern including an assumption that the personal property associated with that going concern value finding is consistent between the subject property and the comparable sold properties, the Tribunal general agrees with Petitioner that, given the similarity of those comparable sales to the subject property, such approach will not significantly impact the overall value conclusions.

For tax years 2001 – 2005, Petitioner's appraiser Bur identifies six comparable sales, five of which are located in Michigan and one in Ohio, five of which are 18 holes and one which is

27 holes, three of which are private country clubs with amenities such as swimming pool(s), tennis courts, etc. As is discussed throughout Mr. Bur's appraisal and his testimony, however, primary reliance was placed on the sale of the Wabeek Country Club because it is located in close proximity to the subject property and because its sale was essentially the sale of an equity private country club, converted into a non-equity private country club. The Tribunal has carefully reviewed Mr. Bur's market analysis and agrees with his conclusion of a going concern value for the subject property of $330,000 per hole, or $5,940,000. After deducting the value of the personal property on Respondent's assessment rolls, the Tribunal finds that the true cash values of the subject property exclusive of the value of the water tower lease income are: $4,280,000 for 2001, $4,770,000 for 2002, $4,710,000 for 2003, $4,900,000 for 2004, and $4,620,000 for 2005. However, the Tribunal does not accept Mr. Bur's explanation that water tower income was "taken into account in the reconciliation process, in that the concluded value for Knollwood is at the high end of the range of adjusted comparables." (Transcript, Vol. 2, pp. 109, 146-147). The Tribunal finds that the values of the water tower cellular leases separately determined by the Tribunal must be added to the true cash values determined by Petitioner for the country club to conclude a total true cash value for the subject property for these tax years.

For tax years 2006 and 2007, Petitioner's appraiser Bur identifies five comparable sales, four of which were also used in his sales comparison approach for tax years 2001 - 2005, three of which are located in Michigan and two in Ohio, four of which are 18 holes and one which is 27 holes, four of which are private country clubs with amenities such as swimming pool(s), tennis courts, etc. As is discussed throughout Mr. Bur's appraisal and his testimony, however, primary reliance was again placed on the sale of the Wabeek Country Club because it is located in close proximity to the subject property and because its sale was essentially the sale of an equity private

country club, converted into a non-equity private country club. The Tribunal has carefully reviewed Mr. Bur's market analysis and agrees with his conclusion that the going concern value for the subject property, after market adjustments made to the true cash values determined for tax years 2001 – 2005, of $300,000 per hole or $5,400,000 for 2006 and $285,000 per hole or $5,130,000 for 2007. After deducting the value of the personal property on Respondent's assessment rolls, the Tribunal finds that the true cash values of the subject property exclusive of the value of the water tower lease income are: $4,120,000 for 2006 and $3,810,000 for 2007. As discussed above, the Tribunal does not accept Mr. Bur's explanation that water tower income was "taken into account in the reconciliation process, in that the concluded value for Knollwood is at the high end of the range of adjusted comparables." (Transcript, Vol. 2, pp. 109, 146-147). The Tribunal finds that the values of the water tower cellular leases separately determined by the Tribunal must be added to the true cash values determined by Petitioner for the country club to conclude a total true cash value for the subject property for these tax years.

For tax years 2008 – 2011, Petitioner's appraiser Tomlinson identifies three comparable sales for each year, two of which (Wabeek Country Club and Heather Downs Country Club) were used for each of the four tax years at issue. Mr. Tomlinson then applies a quantitative and qualitative analysis to determined adjustments (for market conditions, location, clubhouse building size, age and condition and other relevant factors) to be made to the applicable comparables. Primary reliance was again placed on the sale of the Wabeek Country Club because it is located in close proximity to the subject property and because its sale was essentially the sale of an equity private country club, converted into a non-equity private country club. Mr. Tomlinson testified, however, that because an error was made in the sale price for the

Wabeek Country Club[18], it resulted in an overstated adjusted price per hole for that particular comparable sale. Previously, Mr. Tomlinson determined a range of adjusted per hole values for the 2008 tax year of $144,822 to $288,011 and concluded a value of $270,000 for the subject property. The error in the sale price for Wabeek Country Club increased the range from $144,822 to $352,667 for 2008, but Mr. Tomlinson concluded that no adjustment was necessary to his concluded true cash value for the subject property.[19]

Similarly, for the 2009 tax year, the error to the Wabeek sale price and a separate error to Mr. Tomlinson's Liberty Golf Club comparable, led to a revision in the range of adjusted per hole values of the comparables from $149,396 to $266,097 to a new range from $110,522 to $325,833. Mr. Tomlinson, however, did not change his value conclusion of $250,000 per hole for 2009. For 2010, the error to the Wabeek sale price led to a revision in the range of adjusted per hole values from $116,500 to $241,053 to $116,500 to $295,167. Finally, the error to the Wabeek sale price led to a revision in the range of adjusted per hole values from $128,889 to $228,531 to $128,889 to $279,833. Again, Mr. Tomlinson did not change his value conclusions of $240,000 and $225,000 per hole for 2010 and 2011, respectively.

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[18] Mr. Tomlinson testified that he erred in applying the sales comparison approach to value by using an incorrect sale price for the Wabeek Country Club. Mr. Tomlinson prepared revised pages to his appraisal (Petitioner's Exhibit P-3) and those revised pages were admitted into evidence as Petitioner's Exhibit P-3A.

[19] In response to questioning from Mr. Beckerleg, Mr. Tomlinson testified that "when you reconcile to a number, you consider all factors in the sales comparison approach. I recognize that Wabeek, as we discussed, that not only did I use this comparable in my four tax years and Mr. Bur has used it, it was very meaningful, but I also testified from yesterday that it was a March of '04 sale. And as you go through time, as you use older comparables, they become less reliable. I also testified from yesterday that what I liked about this sale was before the crash, so to speak, it was a sale of a – country club, continued as a country club, and so it has a lot of meaning. But I also recognize that now, you know, on three years after the fact, my first tax years, it will eventually be seven years after the fact in my last tax year, and that my conclusions still seem reasonable in my adjustments. They are still above the average, or, in other words, the upper end of the range, so it's consistent in that way. And I still felt that even with this new information that the conclusion seemed reasonable, reliable, and credible and did not feel that there was any need to change it." (Transcript, Vol. 3, p. 50)

The Tribunal has carefully reviewed Mr. Tomlinson's market analysis and agrees with his conclusion of a going concern value for the subject property, after market adjustments made to the true cash values determined for tax years 2008 – 2011, of $270,000 per hole or $4,900,000 for 2008, $250,000 per hole or $4,500,000 for 2009, $240,000 per hole or $4,300,000, and $225,000 per hole or $4,100,000 for 2011. After deducting the value of the personal property on Respondent's assessment rolls, the Tribunal finds that the true cash values of the subject property exclusive of the value of the water tower lease income are: $3,600,000 for 2008, $3,400,000 for 2009, $3,200,000 for 2010, and $3,000,000 for 2011. As discussed above, the Tribunal does not accept Mr. Tomlinson's explanation that water tower income was reflected in the adjustment process. (Transcript, Vol 3., pp. 57 – 69) The Tribunal finds that the values of the water tower cellular leases separately determined by the Tribunal must be added to the true cash values determined by Petitioner for the country club to conclude a total true cash value for the subject property for these tax years. Therefore, the Tribunal has adjusted Mr. Tomlinson's sales comparison approach to eliminate the "other factors" adjustments to each of his comparables for the 2008 – 2011 tax years, resulting in reduced value ranges of $134,477 to $337,333 for 2008, $99,058 to $311,666 for 2009, $104,850 to $282,333 for 2010, and $115,555 to $267,666 for 2011. The Tribunal finds that the net impact of eliminating the cellular lease revenue as an adjustment to the comparables is an approximate 10% reduction in the true cash values determined by Mr. Tomlinson for the 2008 – 2011 tax years. Thus, the Tribunal finds the true cash values for the subject property to be $3,240,000 for 2008, $3,060,000 for 2009, $2,880,000 for 2010, and $2,700,000 for 2011.

Valuation of Water Tower

There is no dispute that the revenue realized by Petitioner from the lease of the water tower located on the premises for cellular use is unique to Petitioner. The Tribunal concludes that because the water tower is no longer used by Petitioner and provides no benefit to Petitioner other than its use as a "cellular tower," and because of the uniqueness of the water tower leases to a typical private country club, the water tower on its own adds no value to the subject property. However, the lease revenue generated from the water tower must be taken into consideration in determining the true cash value of the subject property. Thus, the Tribunal finds it appropriate to identify this revenue stream as an exception to Standards Rule 1-4(e) and determine the value of the water tower cellular leases independent from the value of the subject property with a highest and best use of private country club. Petitioner contends that when Respondent's appraiser ultimately decided to value the water tower revenue (for tax years 2007 through 2011), his use of the direct capitalization method grossly over estimated the value contributed by the water tower leases to the overall value of the subject property (Respondent has valued the water tower as contributing 28% to 30% of total value of the subject property). The Tribunal does not agree with Petitioner.

Further, Petitioner correctly states that Respondent's appraiser failed to review any of the leases to determine their term, conditions, and expenses. Thus, Petitioner contends that its appraiser's attempt to value the water tower lease revenue as simply another line item in its income approach to value is appropriate as any seller would not sell the tower separately from the club. The Tribunal finds that not only has Petitioner's appraiser substantially understated the net revenue generated by these leases, but Petitioner's appraiser has attempted to adjust each comparable using a convoluted methodology that attempts to determine the added value of this

revenue stream on a value per hole basis that assumes that these lease revenues are consistent with all other revenues with respect to expenses and other factors.

The direct capitalization method is best used to determine value when current income is known and future income stream is uncertain. Here, none of the witnesses or exhibits offered by the parties was able to confirm any of the substantive details relating to the cellular leases, such as rental rates, term of lease, termination provisions, etc. Further, neither party was able to present testimony or evidence regarding expenses incurred by Petitioner that were directly attributable to the lease revenues. Thus, the Tribunal finds that Respondent's methodology used to determine a value for the lease revenues[20] is appropriate. The Tribunal further finds that a capitalization rate (exclusive of a property tax component) for the tax years at issue of 11% is appropriate based on the capitalization rates used by Petitioner and Respondent in their appraisals. The Tribunal has, therefore, calculated a true cash value for the revenues realized by Petitioner from cellular leases revenue as follows:

Tax Year	True Cash Value
2001	$1,390,900
2002	$1,421,100
2003	$1,542,200
2004	$1,619,500
2005	$1,669,000
2006	$1,772,000
2007	$1,874,000

[20] Respondent determined the value of the annual water tower cellular lease revenue by adjusting gross annual revenue by a 10% "stabilized occupancy parameter" and applying a capitalization rate "predicated upon the risk characteristics for the income . . . ." (Respondent's Exhibits R-23, p. 64 and R-36, p. 56)

2008	$1,680,200
2009	$2,000,300
2010	$2,425,900
2011	$2,608,300

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner did prove by a preponderance of the evidence that it is assessed in excess of 50% of market value. The subject property's true cash values (TCV) have been determined for each of the tax years at issue by combining the TCV determined by the Tribunal for the subject property (exclusive of water tower cellular lease revenues) and the TCV determined by the Tribunal for the water tower cellular lease revenues and then calculating the state equalized values (SEV), and taxable values (TV), as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that the property's assessed and taxable values for the tax year at issue are MODIFIED 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 90 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 as required by this Order within 28 days of the entry of this Order. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of the Tribunal's order. As provided in 1994 PA 254, being MCL 205.737, as amended, interest shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest rate of the 94-day discount treasury bill rate for the first Monday in each month plus 1%. As provided in 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods after January 1, 1996 at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 1995 at the rate of 6.55% for calendar year 1996, (ii) after December 31, 1996 at the rate of 6.11% for calendar year 1997, (iii) after December 31, 1997 at the rate of 6.04% for calendar year 1998, (iv) after December 31, 1998 at the rate of 6.01% for calendar year 1999, (v) after December 31, 1999 at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000 at the rate of 6.56% for calendar year 2001, (vii) after December 31, 2001 at the rate of 5.56% for calendar year 2002, (viii) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ix) after December 31, 2003 at the rate of 2.16% for calendar year 2004, (x) after December 31, 2004 at the rate of 2.07% for calendar year 2005, (xi) after December 31, 2005 at

the rate of 3.66% for calendar year 2006, (xii) after December 31, 2006 at the rate of 5.42% for calendar year 2007, and (xiii) after December 31, 2007 at the rate of 5.81% for calendar year 2008, (xiv) after December 31, 2008, at the rate of 3.31% for calendar year 2009, (xv) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (xvi) after December 31, 2010 at the rate of 1.12% for calendar year 2011, and (xvii) after December 31, 2011, at the rate of 1.09% for calendar year 2012.

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

MICHIGAN TAX TRIBUNAL

Entered: February 10, 2012 By: Steven H. Lasher

EXHIBIT A

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Knollwood Country Club,
Petitioner,

v MTT Docket No. 285849

Township of West Bloomfield,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

ORDER DENYING PETITIONER'S MOTION TO AMEND PETITION TO REFLECT PREHEARING CONFERENCE SCHEDULING ORDER

ORDER PARTIALLY GRANTING RESPONDENT'S MOTION FOR ORDER LIMITING SCOPE OF APPEAL

ORDER SEVERING PETITIONER'S APPEAL FOR THE 2006 TAX YEAR AND ASSIGNING APPEAL TO MTT DOCKET NO. 341605

ORDER CORRECTING PREHEARING CONFERENCE SCHEDULING ORDER

ORDER DENYING PETITIONER'S MOTION FOR IMMEDIATE CONSIDERATION

ORDER PARTIALLY GRANTING PETITIONER'S MOTION TO SET TRIAL

ORDER SCHEDULING TELEPHONIC STATUS CONFERENCE

ORDER GRANTING PETITIONER'S MOTION TO ISSUE ORDERS ON PENDING MOTIONS

I. Introduction

The subject matter of this appeal involves a commercial private golf club, located in the Township of West Bloomfield, Oakland County, Michigan. The subject property is designated on the assessment roll for all years involved as parcel number 18-25-400-002. This case presently involves Petitioner's appeal for the 2001 through 2006 tax years. The scope of Petitioner's appeal, and ultimately the Tribunal's authority, is, however, presently at issue.

II. Procedural History

In 2001, Petitioner appealed to the Board of Review requesting a downward adjustment on the subject property's 2001 taxable value. The requested adjustment for the 2001 taxable value was denied by the local Board of Review. On June 28, 2001, Petitioner filed a petition with the Tribunal appealing only the taxable value of the subject property for the 2001 assessment year. Respondent filed its answer on July 23, 2001 admitting that the Petitioner is appealing the 2001 taxable value of the subject property and maintained that the subject property had a taxable value for the 2001 tax year of $3,959,770. Furthermore, in paragraph 9 of its affirmative defenses, Respondent stated that "Petitioner failed in its appearance before the Board of Review to specifically allege that:

> The equalized assessment of the property is more than 50% of its true cash value and that the taxable value is in violation of applicable statutory and constitutional limitations.
>
> The property is assessed in a discriminatory manner and that the assessment is a higher level of true cash value than the average level of assessment of all other property within the Township, excepting this property and the assessment on other property which is also under appeal.
>
> The assessment and taxable value are unlawful and based upon application of wrong principles and thereby operate as a constructive fraud upon the taxpayer."

Respondent also stated in paragraph 9 of its affirmative defenses that, "the failure to raise such objections to the Respondent's Board of Review constitutes a failure to exhaust the administrative remedies provided for by the General Property Tax Act, constitutes a waiver of any such allegations in the Petition and further amounts to a failure by the Petitioner to appear in protest to Respondent's Board of Review as required by the Tax Tribunal Act."

On August 20, 2001, a counsel conference between the parties was held where the Petitioner, once again, expressed that the taxable value of the property in question is estimated to

be $1,800,000. During the counsel conference, Respondent maintained its position that the taxable value of the subject property remains to be $3,959,770. No mention was made of the property's true cash value.

On December 12, 2001, Respondent filed its prehearing statement where it listed the true cash value of the subject property for the tax years in question as a factual issue. Respondent also listed whether the assessment and taxable value of the property is lawful for the years in question as a legal issue. However, also listed in Respondent's prehearing statement was its reaffirmation of its affirmative defenses contained in its answer to petition.

On June 28, 2002, Petitioner filed a Motion to Amend to include the 2002 tax year. In its 2002 Motion, Petitioner asserted that the 2002 assessment of the subject property was appealed to the local Board of Review and specifically requested that the Tribunal enter an Order "amending the original Petition to include the 2002 tax year." Respondent did not file a response to Petitioner's 2002 Motion to Amend. On September 2, 2002, the Tribunal entered an Order granting Petitioner's 2002 Motion to Amend.

On May 22, 2003, Petitioner filed a Motion to Amend to include the 2003 tax year. In its 2003 Motion, Petitioner asserted that the 2003 assessment of the subject property was appealed to the local Board of Review and specifically requested that the Tribunal enter an Order "amending the original Petition to include the 2003 tax year." Respondent did not file a response to Petitioner's 2003 Motion to Amend. On July 28, 2003, the Tribunal entered an Order granting Petitioner's 2003 Motion to Amend.

On May 27, 2004, Petitioner filed a Motion to Amend to include the 2004 tax year. In its 2004 Motion, Petitioner asserted that the 2004 assessment of the subject property was appealed to the local Board of Review and specifically requested that the Tribunal enter an Order

"amending the original Petition to include the 2004 tax year for the issue of taxable value only." Respondent did not file a response to Petitioner's 2004 Motion to Amend. On February 24, 2005, the Tribunal entered an Order granting Petitioner's 2004 Motion to Amend.

On May 26, 2005, the case was placed on a Prehearing General Call commencing February 1, 2006 and continuing through February 10, 2006. The Notice of February 2006 Prehearing General Call and Order of Procedure required the parties to exchange and file valuation disclosures and prehearing statements on or before December 23, 2005.

On June 17, 2005, Petitioner filed a Motion to Amend to include the 2005 tax year. In its 2005 Motion, Petitioner asserted that the 2005 assessment of the subject property was appealed to the local Board of Review and specifically requested that the Tribunal enter an Order "amending the original Petition to include the 2005 tax year for the issue of taxable value only." On December 5, 2005, the Tribunal entered an Order granting Petitioner's 2005 Motion to Amend.

On June 13, 2006, Petitioner filed its prehearing statement where it listed the true cash value of the subject property for the tax years in question as a factual issue. As a legal issue, Petitioner listed whether the assessment and taxable value of the property is lawful for the years in question.

On June 14, 2006, Petitioner filed a Motion to Amend to include the 2006 tax year. In its 2006 Motion, Petitioner asserts that the 2006 assessed and taxable values of the subject property were appealed to the local Board of Review and specifically requested that the Tribunal enter an Order amending the original Petition to include the 2006 tax year "for taxable value only." Petitioner filed a second Motion to Amend to include the 2006 tax year on June 30, 2006. In its second 2006 Motion, Petitioner asserts that the 2006 assessment of the subject property was

appealed to the local Board of Review and specifically requested that the Tribunal enter an Order amending the original Petition to include the 2006 tax year "for the issue of assessed and taxable value." Respondent did not file a response to either Motion to Amend. On July 31, 2006, the Tribunal entered an Order granting the June 14, 2006 Motion to Amend. On January 15, 2007, the Tribunal granted the June 30, 2006 Motion to Amend.

On August 24, 2006, Respondent filed its prehearing statement. The prehearing statement listed the true cash value of the subject property for the tax years in question as a factual issue. Respondent also listed whether the assessment and taxable value of the property is lawful for the years in question as a legal issue. However, Respondent also reaffirmed its affirmative defenses.

On December 27, 2006, the Tribunal entered an Order scheduling a prehearing for January 25, 2007. On February 8, 2007, the Tribunal entered Summary of Prehearing Conference and Scheduling Order. The Summary listed the property's true cash value and taxable value for the 2001, 2002, 2003, 2004, 2005 and 2006 the tax years as the issues under appeal in this case and scheduled the trial for September 17, 2007.

On June 18, 2007, Petitioner filed a Motion to Amend to include the 2007 tax year. On July 2, 2007, Respondent filed a Response objecting to the 2007 Motion.

On June 20, 2007, Petitioner submitted a Proposed Stipulation of Uncontroverted Facts in which Petitioner listed the assessed and taxable values of the subject property for the 2001, 2002, 2003, 2004, 2005, 2006 and 2007 tax years as the issues pending before the Tribunal. Furthermore, Petitioner submitted its Exhibit List on June 27, 2007, which listed a January 31, 2006 appraisal report establishing true cash value for 2001, 2002, 2003, 2004, 2005, 2006 and 2007 tax years.

On June 22, 2007, Respondent filed its Exhibit List and Appraisal which listed 2001, 2002, 2003, 2004, 2005 and 2006 as the effective dates of market value. Further, the Appraisal lists Respondent's Appraiser's conclusions of true cash value of the subject property for those tax years.

On September 5, 2007, Petitioner filed a Motion requesting the Tribunal permit it to amend its petition "for tax years 2001 through 2005 to reflect that assessed value is also at issue, and to conform with the Tribunal's February 8, 2007 Summary of Prehearing Conference and Scheduling Order." In the Motion, Petitioner states:

a. "Both the Petitioner and Respondent have submitted appraisals, as well as witnesses and exhibits to determine the true cash value of the subject property for each year from 2001 through 2006."

b. "Both parties submitted prehearing statements indicating that assessed and taxable values were in dispute for tax years 2001 through 2006."

c. "The Tribunal has issued is Summary of Prehearing Conference and Scheduling Order dated February 8, 2007 wherein assessed value as well as taxable value for tax years 2001 through 2006 is before the Tribunal."

d. "During the course of negotiations, it has come to light that the original petition, as well as amendments for tax years 2002 through 2005…[were] filed as taxable value appeals only." (Emphasis added.)

e. "Said petitions and amendments do not conform to the valuation disclosures and other evidence prepared by the Respondent for hearing in this matter."

f. "The parties and the Tribunal rely upon the Prehearing Conference Scheduling Order, rather than the initial pleadings in determining the issues to be litigated."

g. "Amendment to pleadings at this time may only be allowed by consent or leave, but per MCR 2.118, leave shall be freely given when justice so requires."

Respondent filed a Response objecting to Petitioner's Motion to Amend to Reflect Prehearing Conference Summary on September 20, 2007. In its Response, Respondent states:

> "Respondent denies that the Prehearing Conference Scheduling Order is completely controlling with respect to all of the issues to be litigated in the instant

> case and Respondent further denies the Prehearing Conference Scheduling Order can confer jurisdiction to the Tribunal over the assessed values and true cash values of the subject property for the 2001 through 2006 tax years…[as] Petitioner failed to appeal the assessed values and true cash values of the subject property for the 2001 through 2006 tax years and, therefore, the Tribunal does not have jurisdiction over the assessed values and true cash values of the subject property for the 2001 through 2006 tax years."

On September 6, 2007, Respondent filed Motions requesting that the Tribunal (i) issue an Order limiting the scope of Petitioner's appeal for the 2001, 2002, 2003, 2004, 2005 and 2006 tax years to taxable value only and (ii) give immediate consideration to its Motion for Order Limiting Scope of Appeal. In the Motions, Respondent states:

a. "…Petitioner's June 28, 2001 Petition in the instant case only appealed the subject property's taxable value for the 2001 tax year and did not appeal either the true cash or assessed value for the subject property for the 2001 tax year. In addition, Petitioner's Motions to Amend with respect to the 2002 and 2003 tax year only requested in their respective prayers for relief that the Petitioner's petition be amended to include the 2002 and 2003 tax years, respectively. Inasmuch as the Petition for the 2001 tax year only appealed the 2001 taxable value of the subject property, by adding the 2002 and 2003 tax years to the Petitioner's Petition, it simply resulted in the Petitioner's Petition then being amended to be an appeal of the subject property's taxable value only for the 2001, 2002 and 2003 tax years. The Petitioner, in Motions to Amend for the 2002 and 2003 tax years did not request in their respective prayers for relief to amend the original Petition to include an appeal of the subject property's true cash value and assessed values for the 202 and 2003 tax years. With respect to the Petitioner's Motions to Amend for the 2004, 2005 and 2006 tax years, all three of said Motions to Amend specifically indicated they were only appealing the taxable value of the subject property…If Petitioner's Motions to Amend for the 2002 and 2003 tax years had intended to appeal not only taxable value, but also assessed value, they would have expressly stated so as the Petitioner's Motion to Amend for the 2007 tax year did."

b. "The June 30 filing deadline must be strictly applied by the Tax Tribunal so that municipalities, such as the Respondent, are not facing 'open ended liability' because of the uncertainty as to what tax refund claims are outstanding. Because MCL 205.735(2) is a statute repose and because the Petitioner failed to appeal the true cash values and assessed values of the subject property for the 2001 through 2006 tax years by June 30 of said respective tax years, and Petitioner is now barred and precluded from appealing the true cash values and assessed values of the subject property for the 2001 through 2006 tax years and the…Tribunal is also barred and precluded from now allowing the Petitioner to appeal the true cash values and assessed values for the subject property for the 2001 through 2006 tax years because statutorily the…Tribunal does not have jurisdiction over the subject property's true cash values and assessed values for the 2001

> through 2006 tax years. Therefore, the only issues that the Tribunal has jurisdiction over and, as a result, the only issues properly before this Tribunal are Petitioner's appeal of the subject property's taxable value for the 2001 through 2006 tax years and issues pertaining to the calculation of the subject property's taxable value for the 2001 through 2006 tax years."

Petitioner filed a Response to Respondent's Motion for Order Limiting Scope of Appeal on September 20, 2007. In its Response, Petitioner states:

a. "…in the…Tribunal, issues are determined by the Prehearing Summary, per TTR 270(8), which reads…The summary of results controls the subsequent course of the proceedings unless modified at or before the hearing by the tribunal to prevent manifest injustice."

b. "Motions to add tax years under §37 of the Tax Tribunal Act for Entire Tribunal property tax appeals are required to meet the same jurisdictional requirements as an original petition under §35 for invoking the Tribunal's jurisdiction, (board of review protest and June 30th filing). As such, they are treated by the Tribunal as original petitions for those tax years, in cases where the original tax year is dismissed due to flaws under §35 for invoking the Tribunal's jurisdiction. Because the same jurisdictional requirements were met for 2006 as an original petition, and because the 2006 Motion asked for relief concerning both assessed and taxable value, the Tribunal has an additional basis to deny Respondent's Motion concerning 2006."

On September 11, 2007, the parties had a telephonic conference with Judge Patricia Halm. As a result of the telephonic conference, the Tribunal adjourned the September 17, 2007 hearing, severed Petitioner's appeal for the 2007 tax year, assigned that appeal to MTT Docket No. 341605 and entered an Order on October 25, 2007, memorializing that action.

On April 7, 2009, Petitioner filed a Notice of Supplemental Authority in support of its Motion to Amend to Reflect Prehearing Conference Scheduling Order and its Response to Respondent's Motion to Order Limiting Scope of Appeal. Respondent has not filed a Response to Petitioner's Notice. Although MCR 7.212(F) relates to filings in the Michigan Court of Appeals and TTR 230 limits parties to a Motion and a single brief in support thereof or a single response to a Motion, the consideration of the Notice may facilitate a resolution of the Motions. In that regard, Petitioner states, in the Notice:

a. "In Superior Hotels [LLC v Township of Mackinaw, 282 Mich App 621; 765 NW2d 31 (2009)], the…[Court of Appeals] reversed the Tribunal and held that for jurisdictional purposes under MCL 211.154, assessed value and taxable value meant the same thing. As in § 154, MCL 205.737(4) does not differentiate between assessed value and taxable value appeals. Rather, it uses the term 'unlawful assessment.'"

b. "Under the reasoning in Superior Hotels, the Tribunal clearly has jurisdiction to hear true cash value appeal in subsequent years, even if the appeal was for taxable value only. The only issue, previously briefed, is whether or not there is prejudice in allowing an amendment to the previous years. A failure to allow amendment on jurisdictional grounds would clearly be in conflict with the court of appeal's published decision, and would constitute reversible error."

On September 3, 2010, Petitioner filed Motions requesting that the Tribunal (i) schedule a hearing in the case, (ii) issue orders addressing all pending motions and (iii) give immediate consideration to its Motion to Set Trial Date and Motion to Issue Orders. In the Motions, Petitioner states:

a. "On September 18, 2007, this court [issued] an order adjourning the hearing date and ordered reply briefs to the opposing parties' previous motions to be filed by September 20, 2007. Both Petitioner and Respondent timely filed said response motions…Those motions and reply briefs were filed three (3) years ago…To date, no Order has yet been [issued] on either of Petitioner's motion of September 5, 2007, nor Respondent's Motion of September 6, 2007."

b. "The petitioner is experiencing certain financial problems and is currently under review by its mortgagee. No decisions by this Tribunal have been forthcoming since the October 25, 2007 date on this matter."

c. "Present economic conditions in the State of Michigan have created a multitude of appeals by golf courses. This reflects the dour financial condition of these entities in Michigan."

Respondent filed a Response to Petitioner's Motion to Set Trial Date, Motion to Issue Orders on Pending Motions and Motion for Immediate Consideration. In the Response, Respondent states:

> "…Respondent objects to the Petitioner's request that, upon the…Tribunal ruling on said motions, an immediate trial be scheduled inasmuch as during the September 11, 2007, conference call between Judge Halm, Petitioner's attorney and Respondent's attorney, Judge Halm indicated that no trial date would be scheduled in order to allow the parties to take their respective interlocutory appeals to the Michigan Court of Appeals with respect to the Tribunal's ruling on

> the parties' motions. As a result, Respondent states that once the…Tribunal has issued its orders and made its rulings on the Petitioner's Motion to Amend Petition…[to Reflect Prehearing Conference Scheduling Order] and Respondent's Motion…[for] Order Limiting the Scope of Appeal…the…Tribunal should schedule a status conference with the parties' attorneys and the Tribunal can discuss how this case should proceed…"

III. Applicable Law

MCL 205.735(2) provides that "[t]he jurisdiction of the tribunal in an assessment dispute is invoked by a party in interest, as petitioner, filing a written petition on or before June 30 of the tax year involved." (Emphasis added.)

MCL 205.737 also provides:

> (1) The tribunal shall determine a property's taxable value pursuant to section 27a of the general property tax act, 1893 PA 206, MCL 211.27a.
>
> (2) The tribunal shall determine a property's state equalized valuation by multiplying its finding of true cash value by a percentage equal to the ratio of the average level of assessment in relation to true cash values in the assessment district, and equalizing that product by application of the equalization factor that is uniformly applicable in the assessment district for the year in question. The property's state equalized valuation shall not exceed 50% of the true cash value of the property on the assessment date…
>
> (4) If the taxpayer paid additional taxes as a result of the unlawful assessments on the same property after filing the petition, or if in subsequent years an unlawful assessment is made against the same property, the taxpayer, not later than the filing deadline prescribed in section 35 for a proceeding before the tribunal that is commenced before January 1, 2007 or section 35a for a proceeding before the tribunal that is commenced after December 31, 2006, except as otherwise provided in subsections (5) and (7), may amend the petition to join all of the claims for a determination of the property's taxable value, state equalized valuation, or exempt status and for a refund of payments based on the unlawful assessments… (Emphasis added.)

IV. Conclusion of Law

Although Petitioner is correct in its assertion that pursuant to TTR 270(8), "[t]he [prehearing conference] summary of results controls the subsequent course of the proceeding unless modified at or before the hearing by the tribunal to prevent manifest injustice," the

Tribunal erred in the entry of the December 27, 2006 Summary of Prehearing Conference and Scheduling Order. More specifically, the Tribunal improperly expanded the scope of its authority, as the property's true cash value for the 2001, 2002, 2003, 2004 and 2005 tax years was not and is not properly pending before the Tribunal in this case. In that regard, the Court of Appeals' decision in Superior Hotels, supra, addresses MCL 211.154 and not MCL 205.737, which is the relevant section of the Tax Tribunal Act relating to the filing of motions to amend and requires parties to not only file amendments relating to new claims "not later than the filing deadline prescribed in section 35 for a proceeding before the tribunal that is commenced before January 1, 2007," but also "join all of the claims for a determination of the property's taxable value, state equalized valuation."

Notwithstanding the fact that "assessment" and "assessment dispute" are terms of art that have been interpreted by the Tribunal to include both a property's true cash and taxable value, the Tax Tribunal Act, MCL 205.701 et seq, prior to the creation of taxable value through the adoption of Proposal A, required the Tribunal to render an independent determination relative to a property's true cash or fair market value only. As a result of the creation of taxable value, the Legislature amended MCL 205.737 to recognize an additional claim by requiring the Tribunal to also render an independent determination relative to the calculation of a property's taxable value under MCL 211.27a. Further, the Tribunal in recognition of this new claim amended its Rules of Practice and Procedure in 1996 to both provide for the filing of a taxable value appeal only by defining such appeals and establishing a separate fee for their filing. In that regard, Petitioner admittedly filed claims relative to taxable value only for the 2001, 2002, 2003, 2004 and 2005 tax years. Additionally, the fees paid by Petitioner for the filing of its petition and its motions to amend for those tax years reflected the filing of taxable value claims only as additional filing

fees would clearly have been required if Petitioner had, in fact, intended to appeal the property's true cash values as well. See TTR 101 and 202 and MCL 205.737.

Michigan Courts, including the Tribunal, also adhere to fact-based pleadings. MCR 2.111(B)(1) provides that allegations in a complaint must state "the facts, without repetition, on which the pleader relies," and "the specific allegations necessary reasonably to inform the adverse party" of the pleader's claims. See also TTR 240. Furthermore, the rules governing the practice and procedures in all cases and proceeding before the Tribunal require the petition in a property tax appeal to not only include "[a] description of the matter in controversy," but also "[w]hether the matter involves…valuation, assessment, taxable value, uniformity, exemption, [or] a combination of the areas specified." See TTR(240)(2)(c)(ii)(A-F). Requiring a Petitioner to specifically list its intention to appeal true cash, assessed and taxable value in its petition is not a return to form pleading; rather, it is in line with upholding the spirit of placing not only the parties, but also the Tribunal, on notice of what legal and factual issues are properly under appeal. If the Legislature had intended that appealing taxable value also meant an appeal of true cash value, it could have and would have expressly done so.

Petitioner further points to the Tribunal's rule governing the amending of pleadings (i.e., TTR 225(2)) and cites Ford Motor Co v City of Woodhaven, 475 Mich 425; 716 NW2d 247 (2006), to support its position. See also MCL 205.735. Petitioner relies on that portion of TTR 225(2) that provides for amendment "upon leave of the tribunal" and not the portion that provides for amendment "as provided by the act." Petitioner also relies on Ford Motor to the extent that the Court provided that a motion to amend should be granted unless one of the following particularized reasons exists: (1) undue delay, (2) bad faith or dilatory tactics, (3) repeated failure to cure deficiencies by amendment previously allowed, (4) undue prejudice to

the opposing party, or (5) futility. Specifically, Petitioner contends that its failure to identify a claim for true cash value in its original petition and subsequent motions to amend in no way meets one of the particularized reasons stated by the Court to deny a motion to amend. Rather, Petitioner contends that the petition and motions to amend are the only items in the present litigation that do not expressly treat the appeal as one involving true cash and taxable value. According to Petitioner, it has, for example, prepared and submitted an appraisal regarding the property's true cash value for tax year 2001 through 2006, named valuation witnesses for said years and conducted discovery relative to the issue of true cash value for said years.

Petitioner's contentions are, however, erroneous as MCL 205.737 clearly requires the filing of a motion to amend to include a new claim or claims "not later than the filing deadline prescribed in section 35 for a proceeding before the tribunal that is commenced before January 1, 2007" (i.e., by June 30 of the tax year involved) and, as such, the Court's holding in Ford Motor is not applicable. Rather, motions under TTR 225 relate to amendments regarding existing claims and not new claims.

Petitioner's reliance on the "relation back" doctrine under MCR 2.118(D) for motions to amend is also misplaced. Even though the rule is applicable under TTR 111, Petitioner's true cash and taxable value claims are separate claims that do not "[arise] out of the conduct, transaction, or occurrence set forth, or attempted to be set forth, in the original pleading." More specifically, a "finding" of true cash value requires the Tribunal to determine a property's fair market value as of the relevant tax date based on the condition, location and market influences on the property, while a "finding" of taxable value requires the Tribunal to determine whether the taxable value was properly calculated under MCL 211.27a. As such, true cash and taxable

value are two separate claims that needed to be specifically pled in the original petition and motions to amend for the Tribunal to have authority over both claims.

Given the above, the Tribunal has no authority over the subject property's true cash value under MCL 205.735 and 205.737, as Petitioner protested the property's taxable value to Respondent's 2001 March Board of Review and timely filed a petition raising only a taxable value claim. As for the 2002, 2003, 2004 and 2005 tax year, Petitioner was not required to further protest the property's taxable value to Respondent's March Board of Review in those tax years as said requirement was removed by virtue of the amendment to MCL 205.737 in 1993. Rather, Petitioner was only required to and did timely file (i.e., by June 30 of the tax year involved) motions to amend to include that claim only for those tax years. More specifically, Petitioner never raised or properly joined a claim for the property's true cash value for those tax years. See also Electronic Data Systems Corporation v Township of Flint, 253 Mich App 538; 656 NW2d 215 (2002). In that regard, Petitioner would have been required to not only protest the property's true cash value to Respondent's March Board of Review in subsequent tax years as that claim was not pending before the Tribunal, but also specifically join that claim in its motions to amend.

As for the 2006 tax year, the Tribunal entered Orders on July 17, 2006, granting Petitioner's June 14, 2006 Motion to Amend to include property's taxable value only for the 2006 tax year and on January 17, 2007, granting Petitioner's June 14, 2006 Motion to Amend to include both the property's assessed or, more appropriately, true cash value and taxable value for the 2006 tax year. To include the property's true cash value, Petitioner would have, as indicated above, been required to protest the property's assessment to Respondent's 2006 March Board of Review, as that claim was not pending before the Tribunal. Nevertheless, Petitioner's June 30,

2006 Motion to Amend was timely filed under MCL 205.737 and 205.735 and, as such, the property's true cash value for the 2006 tax year would be properly pending if protested. The Tribunal is, however, unable to determine what was actually protested and, as such, the Tribunal is unable to determine based on the information currently in the case file whether it has authority to consider the property's true cash value for the 2006 tax year. As such, the severing of that appeal and its assignment to Petitioner's true cash and taxable value appeal for the 2007 tax year in MTT Docket No. 341605 would facilitate the efficient administration of justice and permit the Tribunal to push forward with the overdue resolution of this case.

Finally, both Respondent and Petitioner have shown good cause to justify the scheduling of a telephonic status conference to discuss the further processing of this case and its scheduling for hearing or, more specifically, the partial granting of its Motion to Set Trial Date. As for Petitioner's Motion to Issue Orders on Pending Motions, the Tribunal should have already considered and rendered orders on those motions. Therefore,

V. Judgment

IT IS ORDERED that Petitioner's Motion to Amend Petition to Reflect Prehearing Conference Scheduling Order is DENIED.

IT IS FURTHER ORDERED that Respondent's Motion for Order Limiting Scope of Appeal is PARTIALLY GRANTED.

IT IS FURTHER ORDERED that Petitioner's appeal for the 2006 tax year is SEVERED from this case and ASSIGNED to MTT Docket No. 341605.

IT IS FURTHER ORDERED that the December 27, 2006 Summary of Prehearing Conference and Scheduling Order is CORRECTED to reflect that the only issue pending in this case relates to the subject property's taxable values for the 2001, 2002, 2003, 2004 and 2005 tax years only.

IT IS FURTHER ORDERED that Petitioner's Motion for Immediate Consideration is DENIED.

IT IS FURTHER ORDERED that Petitioner's Motion to Set Trial Date is PARTIALLY GRANTED.

IT IS FURTHER ORDERED that a telephonic status conference is scheduled to commence on April 1, 2011, at 9:00 a.m. The Tribunal will initiate the telephonic status conference. Failure to attend or otherwise participate in the telephonic status conference will result in the placement of a party or parties in default and may result in the dismissal of the case or the conducting of a default hearing, as provided by TTR 247. See also MCL 205.732.

IT IS FURTHER ORDERED that Petitioner's Motion to Issue Orders on Pending Motions is GRANTED.

MICHIGAN TAX TRIBUNAL

Entered: March 18, 2011 By: Steven H. Lasher

KNOLLWOOD COUNTRY CLUB V TOWNSHIP OF WEST BLOOMFIELD

MTT DOCKET No. 285849

EXHIBIT B

Pursuant to Footnote 3 of the Opinion and Judgment issued by the Tribunal in this matter, the following schedule reflects the Tribunal's conclusions of TCV, SEV and TV of the subject property for the 2001 through 2011 tax years if the Tribunal's March 18, 2011 Order is appealed by Petitioner to the Michigan Court of Appeals and the Court of Appeals does not affirm the Tribunal's Order.

	TCV	SEV	TV
2001	$5,670,900	$2,835,450	$2,835,450
2002	$6,191,100	$3,095,550	$2,926.184
2003	$6,252,200	$3,126,100	$2,970,076
2004	$6,519,500	$3,259,750	$3,038,387
2005	$6,289,000	$3,145,500	$3,108,269
2006	$5,892,000	$2,946,000	$2,946.000
2007	$5,684,000	$2,842,000	$2,842,000
2008	$4,920,200	$2,460,100	$2,460,100
2009	$5,060,300	$2,530,150	$2,530,150
2010	$5,305,900	$2,652,950	$2,522,559
2011	$5,308,300	$2,654,150	$2,565,442