

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

TC Golf & Country Club,
Petitioner,

v

MTT Docket No. 441284

Traverse City,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, TC Golf & Country Club (“Club”), appeals ad valorem property tax assessments levied by Respondent, City of Traverse City, against Parcel No. 28-51-110-019-01 for the 2012, 2013, and 2014 tax years. William E. Delzer, Attorney, represented Petitioner, and Lauren Tribble-Laucht, Attorney, represented Respondent.

A hearing on this matter was held on July 28, 2014. Petitioner’s witnesses were Diane VanderVeen, CFO, TC Golf & Country Club, and Michael T. Williams, MAI. Respondent’s witnesses were Charles Cherney, appraiser and Polly Cairns, assessor.

The subject property is an 18-hole, equity, non-profit golf course and country club. The subject property consists of two parcels split in two adjacent communities. Garfield Township contains the south 111.50 acres and the remaining 23.26 acres are located in Traverse City. The Traverse City parcel is at issue for the above captioned case. The final valuation will hinge upon the proper determination of the highest and best use of the subject property.

The parties’ contentions are as follows:

Parcel No. 28-51-110-019-01						
	Petitioner			Respondent		
Year	TCV	SEV	TV	TCV	SEV	TV
2012	\$1,093,000	\$546,500	\$546,500	\$4,213,400	\$2,106,700	\$1,574,683
2013	\$1,042,000	\$521,000	\$521,000	\$4,329,400	\$2,164,700	\$1,612,475
2014	\$1,220,000	\$610,000	\$610,000	\$3,522,000	\$1,761,000	\$1,638,274

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash values (“TCV”), state equalized values (“SEV”), and taxable values (“TV”) of the subject property for the 2012, 2013, and 2014 tax years are as follows:

Parcel No. 28-51-110-019-01			
Year	TCV	SEV	TV
2012	\$1,338,300	\$669,150	\$669,150
2013	\$1,371,300	\$685,650	\$685,209
2014	\$1,537,700	\$768,850	\$696,172

PETITIONER’S CONTENTIONS

Petitioner contends that the highest and best use of the subject property is as an integral part of the entire TC Golf & Country Club. The subject property is over assessed, based upon an appraisal prepared by its expert witness.

PETITIONER’S ADMITTED EXHIBITS

- P-1 Appraisal by Michael T. Williams, MAI and David A. Williams.
- P-2 Photographs of the subject property.
- P-3 Membership package.
- P-4 Feasibility Study dated August 26, 2004¹.

PETITIONER’S WITNESSES

Diane VanderVeen, CFO of TC Golf & Country Club testified that her CPA is on a registered status. The subject property is located in Garfield Township and in the City of Traverse City. A tax appeal was filed in both communities. She described the amenities of the subject property including the clubhouse, halfway house, maintenance building, pump house and a cart barn with some outside restrooms located throughout the property. The clubhouse is open year-round.

The subject golf course is a member-owned facility with a nonprofit corporation under 501(c)(7). It has two basic memberships, golf and social. The membership remains steady at 380 to 400 members. VanderVeen testified that the Club is financially solid with a stable operating position.

VanderVeen explained that the subject property does not have a view of Grand Traverse Bay or Boardman Lake. She was at the Club when Gourdie-Fraser, Development Consulting

¹ The motion to admit P-4 was taken under advisement. The Tribunal finds this rebuttal document is admitted.

Services prepared a, August 26, 2004, feasibility study for property owned by the Club. The property was approximately 5 acres located on the south side of 17th Street, in Traverse City. The feasibility study contained several development scenarios with costs. The 5 acre parcel sold at a live auction to a local developer for \$810,000. The developer began infrastructure but was hindered by the economy. Construction stopped, she believed that the developer worked out a deal with the bank. There are no other sales, but a couple of easements for road and sewer.

Michael T. Williams, MAI, was admitted as an expert. He appraised the property in its entirety for the 2012, 2013 and 2014 tax years. The subject property is located both in Garfield Township and within the Traverse City. Garfield Township contains 111.50 of the 134.86 acres. Traverse City (the subject property) includes 23.36 acres, the half-way house, maintenance barn, and tennis courts the club house with 28,000 square feet in average condition, with a bar, restaurant, the lower level contains administrative offices, lockers and a fitness center, as well as 3 golf holes. Williams was admitted as an expert.

The property was appraised in its entirety. The resulting values were allocated utilizing the cost approach. The property was inspected, comparable properties were researched. The cost approach, market approach and an income approach were completed. The highest and best use was determined to be the continued use as part of the golf and country club. When making this determination, Williams testified that he took into consideration that the entire golf course and country club has stable membership and continues to be a stable operation. The parcels located in both municipalities needing each other to function. The economic slump of the area with the rest of the state was also considered. The residential market in Traverse City for new housing permits was “sluggish” and this was a challenge to the feasibility of using the subject for residential development. TR at 91.

The three approaches to value were all utilized in determining the market value of the subject property. The cost approach, typically found in new construction was utilized in assisting Williams in the allocation of true cash value for the two governmental units. The cost approach was not considered by Williams to be an indication of the true cash value of the subject property due to age and depreciation. It was calculated for the limited purpose of allocating the amenities between the two taxing units.

Williams testified that revenues for private clubs decreased from 2008 to 2011, as well as loss in members. Food and beverage sales average 32-36% of the income. The 1997 clubhouse renovation was funded with a 15-year special assessment. The special assessment ended September 2012. The club members cover any revenue shortfalls. Williams assumed that the membership will remain stabilized and employed a direct capitalization approach.

Williams stated that income producing capacity is the reason for an investor to purchase golf courses. He determined that an income approach is appropriate for the subject property.

In determining income, Williams considered historical operating statements, fee structure in local golf courses, as well as comparable operating statements for private country clubs. He utilized the percentage of each category for income and expenses also based on industry standards. Williams did a proforma income and expense statement which indicates the areas that he adjusted for market income and expenses. He applied the same calculations for each year. The 2012 Pro Forma is shown below:

Pro Forma	385 Members	2012
Revenues		
Dues/Assessments		\$1,325,000
Initiation Fees		\$27,000
Cart Fees		\$95,000
Guest Fees		\$80,000
Invitational Golf		\$50,000
Pro Shop		\$200,000
Food & Beverage		\$1,065,000
Locker/Storage		\$100,000
Fitness/Misc		\$65,000
Total Gross Income		\$3,007,000
Cost of Sales		
Pro Shop		\$160,000
Food & Beverage		\$437,000
Gross Profit		\$2,410,000
Operating Expenses		
Payroll		\$1,263,000
Administrative		\$241,000
Golf Cart Leases		\$41,000
Utilities		\$100,000

Repair/Maint.	\$160,000
Supplies	\$70,000
Insurance	\$40,000
Tournament	\$50,000
Replacement Reserves	\$30,000
Total Operating	\$1,995,000
Total Expenses	\$2,432,000
Net Operating Income	\$415,000

Williams used the same percentages to allocate income and expenses for the three years at issue. The next step is estimating a market derived capitalization rate in which the net operating income is capitalized into an indication of value.

The selection of the capitalization rate utilized three methods. Williams began with the market extraction method. Ten sales of golf courses were found from January 2008 to May 2011 with one sale pending. Williams discussed the sales and discarded Walnut Hills, East Lansing as its overall rate was 1.07%. It is an equity golf club that sold for use a for-profit club. The overall rates ranged from 8.72% to 11.67%. The mean was 10.11% with the median at 10.26%. The remainder of the sales was public daily-fee courses. Williams stated that they were inferior building improvements.

RealtyRates.com, a national investor survey indicates that fourth quarter of 2011 the average capitalization rate was 12.13%. Williams's third source is the Society of Golf Appraisers survey, which reflects average overall capitalization rates of 11.5% for 2011. After consideration of the three indicators of the capitalization rate, current market conditions, availability of financing, condition of the subject property including location and the net operating income, a capitalization rate of 11% was selected. Property taxes are excluded as an expense in an appeal. The tax neutral analysis required the addition of the effective tax to the rate. The resulting overall rate is 13.64%. The final step is the net operating income of \$415,000 is divided by 13.64% to equal \$3,040,000, the value of the going concern as of December 31, 2011.

Williams followed the same technique for the subsequent tax years. The resulting value from the income approach for December 31, 2012 is \$3,808,000 and December 31, 2013 is

\$3,760,000. The value increased for the 2013 year forward due to an increase in membership and the special renovation assessment was paid off in September 2012.

Williams explained that the sales comparison approach as typically applied with adjustments for differences in amenities is difficult due to the differences in each golf course, physical size, types of courses, location, and economic differences. He did not select the unit of comparison, but included all of the units that could be calculated. This included sale price per hole, per acre, gross income multiplier and net income multiplier.

Williams selected twelve sales, six for the first year and six for the last two years. Due to the difficulties of making adjustments for amenities which are varied, Williams extracted a gross income multiplier to determine market value.

The sales utilized for tax year 2012 are:

Comp No.	Course	Sale Price	Sale Date	Holes	SP/Hole	Acres	Gross Revenues	Cap Rate	GIM
1	Stonewater	\$4,900,000	01-08	18	\$272,222	186	\$4,770,000	9.08%	1.03
2	Walnut Hills	\$3,750,000	03-09	18	\$208,333	173	\$2,893,445	1.07%	1.26
3	Grand Blanc	\$3,000,000	04-09	36	\$83,333	322	\$1,160,000	9.67%	2.59
4	Rallside	\$1,650,000	12-09	18	\$91,667	153	n/a	n/a	n/a
5	Sunnybrook	\$1,695,000	01-10	18	\$94,167	160	n/a	n/a	n/a
6	Northville	\$3,600,000	01-12	18	\$200,000	213	\$2,200,000	11.67%	1.64

The additional sales considered for tax years 2013 and 2014 are:

Comp No.	Course	Sale Price	Sale Date	Holes	SP/Hole	Acres	Gross Revenues	Cap Rate	GIM
7	Bent Tree	\$3,000,000	06-12	36	\$83,333	358	\$2,696,572	11.87%	1.11
8	Fore Lakes	\$2,000,000	Pending	18	\$111,111	207	\$1,827,000	12.20%	1.09
9	Brandywine	\$2,950,000	Listing	27	\$109,259	206	\$2,921,071	9.30%	1.01

Williams after considering the sales calculated the Gross Income Multiplier (“GIM”) by dividing the sale price by the gross income. Sale 3 is outside the range of sales and was excluded. The subject’s operating expense ratio was considered the GIM of 1.26% was selected as appropriate for the 2012 value. The GIM was applied to the \$3,007,000 net operating income,

for a value of \$3,760,000. Also considered when determining the value of the subject property is the Net Income Multiplier (“NIM”), and the range of sale prices per hole and per acre. The value indicators for 2012 based on the four units of comparison are:

Gross Income Multiplier	\$3,760,000
Net Income Multiplier	\$3,040,000
Price per hole	\$3,150,000
Price per acre	\$2,700,000

Williams placed equal weight on the four units of comparison, resulting in a market indication of \$3,160,000 as of December 31, 2011 for the 2012 tax year.

Williams utilized the same technique for the 2013 and 2014 tax year with the addition of sales and listings 7-12. Sales 7, 8, and 9 were added and Sale 6 closed. This resulted in an increase in value. The GIM remained the same at 1.25%. The subject’s gross income was higher which resulted in a slightly higher indication of value as follows:

Gross Income Multiplier	\$3,890,000
Net Income Multiplier	\$3,080,000
Price per hole	\$3,150,000
Price per acre	\$2,700,000

Equal weight was applied by Williams resulting in a \$3,305,000 true cash value as of December 31, 2012.

The following listings were added and Sale 8 closed for the 2014 tax year:

Comp No.	Course	Sale Price	Sale Date	Holes	SP/Hole	Acres	Gross Revenues	Cap Rate	GIM
10	TCP Dbn	\$3,250,000	Listing	18	\$180,556	16753	\$2,809,269	12.64%	1.16
11	Tartan	\$5,950,000	Listing	18	\$330,556	27045	\$5,009,153	14.85%	1.19
12	Monroe	\$1,850,000	Listing	18	\$102,778	10393	\$1,252,748	15.39%	1.48

Gross Income Multiplier	\$4,180,000
Net Income Multiplier	\$3,760,000
Price per hole	\$3,150,000
Price per acre	\$2,830,000

Williams testified that Comp 10 sold April 2014, for \$3,000,000, Comp 11 sold for \$3,000,000 April 2014, and Comp 12 sold for \$1,000,000.

Equal weight was again given to all four units of comparison, resulting in an indicated value of \$3,480,000 as of December 31, 2013.

Williams next prepared a cost approach for the sole purpose to allocate the value for the two taxing authorities. The initial step in the cost approach is selecting appropriate sales for the land value for each year on appeal. Large tracts of land were scarce for the tax years at issue. Large adjustments were made which resulted in an indication of \$10,000 an acre for the Garfield Township parcel and \$16,000 an acre for Traverse City.

Williams selected *Marshall Valuation Service* as the cost provider to calculate the replacement cost new. The clubhouse was an average class C Country Club. The base cost plus sprinklers, ceiling height, floor area perimeter with adjustments for the local and current cost modifiers. A cost for the elevator, cart storage, maintenance building and half-way house was included in addition to the clubhouse. Site improvement for asphalt paving, fencing, landscaping and two tennis courts added \$374,000. The basic cost per hole for a Class III golf course is \$177,000 per hole.

Williams separated the values with the clubhouse, cart storage building, and half way house within Traverse City's jurisdiction. He included \$44,722 per hole for the equivalent three holes in the city, and all of the practice range. The site improvements within the city are the tennis courts, clubhouse patio and walks, parking area and landscaping. Total costs are \$1,017,585, with indirect cost as depreciated at \$100,972 to the subtotal; land value is included at \$370,000 for a total \$1,490,000 of the subject property within Traverse City. This equates to 43% of the total value via the cost approach². The same method was applied to the subsequent years.

The cost approach indicates 43%, 42%, and 43% respectively of the total true cash value is the city's portion of the true cash value of the subject property. The remaining 57%, 58% and 57% are the percentage of value allocated to Garfield Township.

Williams determined that the value of the subject property as improved exceeds the potential value as if it were vacant, less demolition costs. The building and golf course improvements contribute to the overall value of the subject property. He states:

² December 31, 2011.

However, considering the subject's location, the underlying land value was likely significantly higher in previous years, prior to the decline of the region's residential market. P-1, p 61.

The highest and best use was determined to be the continued use as part of the golf and country club. When making this determination, Williams testified that he took into consideration that the entire golf course and country club has stable membership and is a stable operation, with the parcels in located in both municipalities needing each other to function. The economic slump that the area faced along with the rest of the state was also considered. He indicated that the residential market in the Traverse City area for new housing permits was "sluggish" and this was a challenge to the feasibility of using the subject for residential development. TR at 91. However, the years under appeal, the improved property contributes more value than the subject as vacant land.

The final true cash value of the subject property as of December 31, 2011 is \$1,093,000, as of December 31, 2012 \$1,042,000, and as of December 31, 2013 \$1,220,000.

RESPONDENT'S CONTENTIONS

Respondent contends that the subject property is over assessed based upon an appraisal. Respondent believes that the highest and best use of the subject property is a 23.36 acre residential development.

RESPONDENT'S ADMITTED EXHIBITS

R-C Appraisal by Charles Cherney

RESPONDENT'S WITNESSES

Charles Cherney, a Certified General Appraiser, licensed in Michigan, prepared an appraisal of the subject property. He was admitted as an expert witness. He determined that the highest and best use of the subject is a 23.36 acre stand- alone parcel for residential development. His reasoning is found in the appraisal:

The subject had this physical benefit of being within a good well established neighborhood with appreciating resale prices and as a site overlooking the West Grand Traverse Bay to the north and Boardman Lake to the northeast and east. R-C at 37.

Cherney determined that it would not be appropriate to value the subject property as part of a golf course and allocate value. The income approach is not applicable to the subject

property. The economics played a part in indicating that the golf course wasn't making money. It was part of the decision not to do a feasibility study, as well as unknown density for residential property.

The zoning administrator from the city estimated approximately 113 residential lots under the existing R-1A zoning. This is approximately 9,000 square foot lots. Cherney believed that the estimated 113 lots include streets, clubhouse, streets, and easements.

Prior property splits were considered as part of the indication that residential development would be appropriate. The Fairway Hills Development sold June 2005, for a 5 acre parcel north of the subject for \$810,000. The second parcel described in Cherney's appraisal indicates a parcel annexed to Traverse City for a cul-du-sac named Fairlane Drive. The third parcel was identified as the westerly side of the golf course in Garfield Township with a sale price less than \$200,000. The date of sale was not known by Cherney.

Cherney considered the following sales:

	1	2	3	4	5	6	7
Location	9743 Montague	3380 Hartman Rd	4666 N Long Lake	Fairway Hills	115 E 8th St	309 Cass	141 W State
Acres	56	24.39	20.07	8.5	0.13	0.131	0.26
Zoning/Use	Ag/Winery	PUD	Comm	PUD	Condo	Comm/Condo	CBD
Sale Date	09-06	02-07	01-14	04-09	05-12	05-11	07-13
Sale Price	\$1,010,000	\$1,360,000	\$537,000	\$220,000	\$180,000	\$240,000	\$380,000
SP/Acre	\$18,036	\$55,761	\$27,539	\$25,882	\$11,250/unit	\$48,000/ unit	\$28,231/unit

The final sales are:

	1	2	3	4
Location	9743 Montague	3380 Hartman Rd	4666 N Long Lake	Fairway Hills
SP/Acre	\$18,036	\$55,761	\$27,539	\$25,882
Adjustments				
Water/Sewer	10%	10%	10%	
Size	10%			
Location	25%	20%	30%	5%
Residential	15%		10%	
View		10%	10%	10%
Gross Adj.	60%	40%	60%	15%

Adj TCV/acre	\$28,858	\$78,065	\$41,309	\$29,765
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No adjustments were made for differences in market time. Cherney analyzed Sale 1, 2, 3, and 4. The subject property has water and sewer Sales 1, 2, and 3 were adjusted 10% for lack of this amenity. Sale 1 was adjusted for the larger acreage. All of the sales were adjusted for location. Cherney considered the subject property was superior in location to all of the sales. Sales 1 and 3 were adjusted for location within a subdivision. The appraisal states,

As noted the subject was a superior site with very good water views and located within a good residential neighborhood. The synergy of positive features for the subject indicated that a value at least 10% more than the adjusted mean was required. R-c at 55.

Cherney determined that land value is \$50,100 per acre or \$1,170,000 for 2012 and 2013 tax years, and \$48,950 per acre or \$1,145,000 for 2014. Cherney then considered Sales 5, 6, and 7 for a per unit value indication to determine the value of 113 dwelling units. \$11,250 per dwelling unit was the lowest of the unadjusted sale price per unit. The indicated value per unit for 133 dwelling units as of December 31, 2011 and December 31, 2012 is \$1,270,000. A 3% decrease in value as of December 31, 2013 is \$1,232,000.

Cherney opined that the size and quality of the clubhouse would be a value enhancement with a residential development. The replacement cost approach, utilizing Marshall Valuation Services, Section 11, page 31, Class "C" good Country clubs was utilized to determine the value of the clubhouse, and yard improvements. The club house replacement cost then was depreciated 10% for functional obsolescence and 45% for physical depreciation. Yard improvements also had 45% physical obsolescence deducted. The total calculated value of the improvements is \$2,510,000.

Cherney's final cost approach resulted in \$3,780,000 true cash value for tax years 2012 and 2013, and \$3,742,000 for tax year 2014.

In defense of the methods selected Cherney states:

Elements of the Direct Sales Comparison Approach were described and used in the Estimate of Land Value section of the appraisal report. Given the unique nature of the subject's land and current usage, it was not an appropriate tool to use to evaluate the subject as a 23.36 acre parcel with a large clubhouse and 2 – 3 holes of a golf course, so this approach was not considered or used in the appraisal of the subject property. R-C at 61.

The final analysis was based on the cost approach because the subject property was a small portion of an operating golf course and club house. It was determined by Cherney that the economics were not present in the subject property for an income approach.

Polly Cairns is the current assessor for Traverse City. She accepted the cost approach as found on the property record, but did not prepare it. She testified that the subject property has two tennis courts. This information did not print on the property record. The third page was not included.

FINDINGS OF FACT

1. The subject property is located at 1727 South Union Street, Traverse City.
2. The subject property is identified as Parcel Number 28-51-110-019-01.
3. The subject property is located on the border of Garfield Township (where the remaining golf course is located) and Traverse City.
4. The subject property is part of an 18-hole private Golf Course and Country Club.
5. The subject property is zoned R-1A, Single Family Dwelling District.
6. The current use as a golf course meets zoning regulations.
7. The entire golf course and country club, located across both taxing jurisdictions, is 134.86 acres.
8. The subject property contains 23.36 acres with a Club House, cart storage building, halfway house, tennis courts, and three (3) golf holes.
9. Petitioner's appraiser determined that the highest and best use of the subject is continued use as a private golf course and country club.
10. Petitioner's appraiser utilized all three approaches to value and allocated between the taxing jurisdictions. Petitioner utilized the cost approach to allocate 43%, 42% and 43% of the true cash value to the subject property located in Traverse City.
11. Respondent's appraiser determined that the highest and best use of the subject was as a residential development.
12. Based on the highest and best use as residential development, Respondent's appraiser prepared a sales comparison approach based on vacant land sales.
13. Respondent's appraiser also applied a cost approach to value the clubhouse and site improvements. This was added to the land value to reach the appraiser's conclusion of value for each tax year.
14. Respondent's appraiser did not consider that the subject property was part of a larger entity.

CONCLUSIONS OF LAW

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value. See MCL 211.27a.

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

The Michigan Legislature has defined “true cash value” to mean:

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

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.” *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

“By provisions of [MCL] 205.737(1) . . . , the Legislature requires the Tax Tribunal to make a finding of true cash value in arriving at its determination of a lawful property assessment.” *Alhi Dev 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; 378 NW2d 590 (1985). “It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case.” *Meadowlanes Ltd Dividend Housing Ass’n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991). In that regard, the Tribunal “may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination.” *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 356; 483 NW2d 416 (1992).

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735a(2). The Tribunal's factual findings must be supported “by competent, material, and substantial evidence.” *Dow Chemical Co v Dep’t of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990). “Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence.” *Jones & Laughlin Steel Corp, supra at 352-353*.

“The petitioner has the burden of proof in 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 & Laughlin Steel Corp, supra* at 354-355. However, “[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question.” MCL 205.737(3).

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, supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), *aff’d* 380 Mich 390 (1968). “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.” *Jones & Laughlin Steel Corp, supra* at 353 (citing *Antisdale, supra* at 276 n 1). 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 v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984).

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth, that Petitioner has met the burden of proving the assessment is in excess of 50% of market value. The subject property’s TCV, SEV, and TV for the tax years at issue are as stated in the Introduction section.

HIGHEST AND BEST USE

The highest and best use of the subject property was the one issue that had to be resolved before the Tribunal determines the true cash value. 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: 14th ed, 2013) at 331.

In addition to being reasonably probable, the highest and best use must meet four implicit criteria. *Id* at 335:

1. The use must be physically possible.
2. The use must be legally permissible.
3. The use must be financially feasible.
4. The use must be maximally productive.

The highest and best use considers the subject property as if vacant and then a separate analysis as improved. Both parties considered that if the subject property were vacant the highest and best use would be residential development. Petitioner's analysis considered the permitted (legal) uses and determined that due to high construction costs and a weakened demand for golf the current use would not be financially feasible. Petitioner determined that the land as if vacant holding for future development for a residential use. Respondent's determination is use for residential development.

Both appraisers' acknowledge that the subject parcel is part of a larger golf course and country club. Petitioner's appraiser after considering alternative uses, the economy, and the highest and best use, found that the value of the subject property as improved exceeds the value as if vacant. Respondent determined that the subject property's highest and best use is single family residential lots.

Petitioner, determined, if the land were vacant, based on the current economy holding for future development of a residential use would produce the highest value. The current use and development of single family lots are both legally permissible.

However, the financial feasibility of the subject property as improved is where the two reports are opposite. Petitioner finds the current use versus residential development is the highest and best use. Respondent continues to indicate that a residential development is also the highest and best use with the addition of the current clubhouse.

Both appraisers stated that they followed Uniform Standards of Professional Appraisal Practice ("USPAP"). However, this Tribunal finds that Respondent's appraiser fails to follow the requirements for an appraisal.

When analyzing the assemblage of the various estates or component parts of a property, an appraiser must refrain from valuing the whole solely by adding together the individual values of the various estates or component parts.

A similar procedure must be followed when the value of the whole has been established and the appraiser seeks to value a part. The value of any such part must be tested by reference to appropriate data and supported by an appropriate analysis of such data. *Uniform Standards of Professional Appraisal Practice*, 2014-2015 USPAP Standard 1 (c), at U-20.

In addition, *The Appraisal of Real Estate* at 334 states “[i]f the property being appraised consists of multiple sites as though sold in one transaction, the highest and best use analysis considers them as one large site.” Accordingly, it is appropriate to consider the highest and best use of the subject parcel in light of its existence within the larger golf course and country club, located in both Garfield Township and Traverse City.

Respondent’s appraiser relied on a June 28, 2005 sale of 5 acres that is north of the subject to determine the residential development as the highest and best use. Petitioner’s witness VanderVeen testified that the sale of the 5 acres was for excess vacant land. A feasibility study was prepared for the Board of Directors prior to placing it on a live auction. A local developer purchased the 5 acres and began development, but lost the property. It was sitting partially developed for many years.

The two other sales described in Cherney’s report however, were easements, and not sales as indicated. The information provided on the easements were vague and of no assistance. The one sale is too dated to be of assistance in determining market value or that the subject property would be utilized for residential development.

The use of one sale from 2005, and mistaking easements for sales, does not assist this Tribunal in finding Respondent’s highest and best use of the subject property as residential should be adopted. The determination that the Club House would serve as a multi-purpose community building does not have a market basis that supports the conclusion. “There were no comparable sales of 2-4 hole golf courses with large clubhouses to consider and it would have been inappropriate to attempt to do so or to attempt to appraise the entire 18-hole course and “allocate” the value by number of holes, acreage, or any other method.” R-C at 43.

Petitioner’s appraiser considered the possible uses for the subject as vacant and as improved. He considered the economic downturn during the period just prior to the tax dates at issue. Respondent’s appraisal only contained a highest and best use analysis for the property as vacant; the appraiser failed to consider or value the subject as improved; therefore the analysis was not accurate or complete.

Petitioner went through all of the legally possible uses for the subject property as well as considering the economic downturn during the period just prior to the tax dates at issue. Respondent utilized sales that were close to ten years old that did not reflect current market trends. Both appraisers concluded that the subject property could be developed as residential if

the property were vacant. However, Respondent failed to consider any costs associated with residential development or the 6 to 12 month holding period.

Respondent's appraiser made statements related to the highest and best use without documentation. The clubhouse was discussed as contributing to the value of a residential development as building for ancillary services. He assumed that it had more value and contribution to value than \$100,000 to \$200,000 cost to raze. There was no documentation that the clubhouse would meet zoning, nor justification or a source of the estimated cost to raze.

Respondent's appraiser relied on prior property splits, one from approximately ten years ago, and two that were not sales but easements in determining residential development is the highest and best use. The only sale was the 2005 sale of 5 acres north of the subject property. The information provided on the easements were vague and of no assistance. The one sale is too dated to be of assistance in determining market value or that the subject property would be utilized for residential development.

The Tribunal finds that Petitioner's appraiser did utilize proper techniques in determining the highest and best use of the subject property as part of a larger golf course. Petitioner's appraiser reasonable supports a finding that "the market value of the property with the existing improvements is greater than the market value of the land as though vacant less cost to demolish the existing improvements . . ." and the highest and best use is the subject's continued use as part of a golf course and country club. *The Appraisal of Real Estate, supra* at 337. Continued use as a golf course and country club is legally permissible, and further, such use satisfies the physically possible, financially feasible, and maximally productive criteria used to establish highest and best use. Additionally, the subject, in its present state, is a special-purpose property. *The Appraisal of Real Estate, supra* at 335, states "[t]he highest and best use of a special-purpose property as improved is probably the continuation of its current use if that use remains viable and there is sufficient market demand for that use." The Tribunal finds that the subject's current use as part of the golf course and country club is viable and Petitioner has established that there is sufficient market demand for its continued use.

TRUE CASH VALUE

Having determined the highest and best use of the property, the Tribunal must next determine the true cash value for the tax years at issue. Respondent's appraisal, based on residential use does not provide an accurate or reliable indication of the true cash value of the

subject. Respondent's appraisal was lacking in detail and specificity for assumptions made in determining the highest and best use and contained poorly selected land sales. It does not appear that Respondent's appraiser was aware of the improvements located at the subject site.

Therefore, the appraisal by Respondent's witness Cherney is given no weight and credibility as it lacked the foundation for the highest and best use of the subject property as residential and failed to take into consideration the existing use as part of a larger golf course. Respondent did not submit any other evidence with respect to the valuation of the subject based on its current and highest and best use, outside of the 2014 property record card used to establish the original assessments and attached to Respondent's Exhibit C. This record card is insufficient to establish the value of the subject for all three tax years under appeal and there was no further testimony or supporting documentation to support these values.

Respondent's vacant land sales were questionable. The first two sales were 2006 and 2007 which are too old and prior to the economic collapse. Sale 3 had an approval prior to the sale for a 72-unit apartment complex. This is not the same proposed use as the subject property. Sale 4 is part of the 2005 sale that resold with approval for 9 site condominiums. The smaller sales utilized by Cherney were too small to be of assistance in determining the value of the subject property. Cherney utilized the small sales to indicate that the city had a need for residential properties.

Petitioner successfully rebutted Respondent's indication that the subject property has a good water view. There is a minimal water view at the top of a hill, as evidenced by Petitioner's Exhibit 2, page 11. Therefore, the appraisal by Respondent's witness Cherney is given no weight and credibility. It lacked the foundation for the highest and best use of the subject property as part of a larger golf course should be ignored and not considered. In fact it is a USPAP violation.

Petitioner's appraisal did utilize proper techniques in determining the value of the subject property as part of a larger golf course. Petitioner properly developed all three approaches to value. The cost approach was not considered a valid approach due to the age and difficulty estimating depreciation, but was applied to assist Petitioner in allocating value between the two taxing units. Petitioner determined the appropriate percentages to apply to the final true cash value.

Petitioner stated that the income approach is considered appropriate as a basis for an investor to determine the subject property's income producing potential. Petitioner did not consider that the subject property is a nonprofit private country club. The Court of Appeals in *Knollwood Country Club v West Bloomfield Twp*, unpublished opinion per curium of the Court of Appeals, issued March 23, 2004, (Docket No. 241297) gives this Tribunal guidance. In that case, petitioner appealed, claiming that the Tribunal's failure to adopt the appraiser's methodology, income capitalization, for determining true cash value was erroneous. The petitioner in *Knollwood* contended that the income capitalization approach is the proper method for valuing *Knollwood* because the sales comparison approach is not feasible. The Tribunal rejected this contention as flawed because it assumes the property and improvements will be sold to a purchaser whose motivation is to make a profit. The stipulated highest and best use of the *Knollwood* property was its "present" use as a nonprofit private equity golf club. The Court of Appeals determined:

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

The Tribunal finds that subject as a non-profit equity club is typically operated with minimal cash operating:

The Club is a nonprofit organization under Section 501(c)(7) of the Internal Revenue Code and is subject to income tax only on the business income of the Club not related to its members' social and athletic activities. Such taxes are generally insignificant. P-1, addenda Financial Statements p 8.

The non-profit is allowed to make some profit, and report such for but not an excessive amount or they will lose their tax exempt status. The direct capitalization approach is therefore instructive, but not relied upon.

Petitioner's sales comparison approach contains a combination of public and private golf courses. The difficult issue is Petitioner indicated all of the different units of comparison, but did not select one upon which to base the opinion. The sale price per Gross Income Multiplier, sale price per Net Income Multiplier, sale price per hole, and finally sale price per acre were all given equal weight in the Sales Comparison Approach. *The Appraisal of Real Estate, supra* at 386, states:

After sales data has been gathered and verified, systematic analysis begins. Lake units must be compared, so each sale price should be stated in terms of appropriate units of comparison. The units of comparison selected depend on the appraisal problem and nature of the property...

The Appraisal of Real Estate continues with “The sales should be analyzed to determine which units of comparison indicate the least amount of variance when applied to the comparable sales.” The Tribunal, considering all of the units of comparison presented by Petitioner finds that an investor would consider the gross income produced by the nonprofit property. However, due to the fact that the subject is a non-profit, the expenses include sales of both non-profit and for-profit which “makes direct comparison difficult.” P-1 at 72.

The Gross Income Multiplier is based on a relationship between the sale price and gross income at time of sale. “The application of income multipliers is a direct capitalization procedure. In developing an income or rent multiplier, it is essential that the income or rent of the properties used to derive the multiplier be comparable to that of the subject and that the specific multiplier derived be applied to the same income base.” *The Appraisal of Real Estate, supra* at 507. Utilization of gross income as a basis is consistent, versus the net income multiplier. The net income multiplier contains multiple deductions that may or may not reflect the same in all of the properties. Gross income is preferred as it is consistent without deductions. The GIM is also labeled as Total Revenue Multiplier (“TRM”).

The advantage of the TRM is that revenue production is directly related to the sale price. The multipliers vary from property to property depending on the mix of departmental revenues and the relative profitability of each revenue source. Appraisal Institute, *Analysis and Valuation of Golf Courses and Country Clubs* (Chicago: 2005) at 144.

The GRM as extracted by Petitioner in the Sales Comparison Approach is accepted as the indicator of the total going concern for the subject property. Deductions for personal property as well as the business assets should be subtracted from the true cash value.

A going concern is an established and operating business with an indefinite future life. For certain types of properties (e.g., hotels and motels, restaurants, bowling alleys, manufacturing enterprises, athletic clubs, landfills), the physical real estate assets are integral parts of an ongoing business. The market value of such a property (including all the tangible and intangible assets of the going concern, as if sold in aggregate) is often referred to as *business value* or *business enterprise value*, but in reality it is market value of the going concern including real property, personal property, financial assets, and the intangible assets of the business. (Emphasis in original.) *The Appraisal of Real Estate, Supra* at 63.

The Tribunal finds that Petitioner’s “estimating” costs for working capital, inventories, and start-up costs, as well as the unknown cost of the liquor license is not accepted as a deduction. Petitioner’s appraisal does not contain any documentation for the deductions. The sales utilized contain the same “business value.” The personal property (FF&E) value is known as the personal property assessments were part of Petitioner’s consideration³. This is the only component of the business value that contains documentation and is accepted as a deduction from the going concern value. Personal property in Michigan is assessed and taxed separately and to avoid double taxation the personal property component is deducted for the final value estimate for the subject property. The Tribunal accepts the allocation as presented by Petitioner (P-1 at 135,136). The final consideration is as follows:

	2012	2013	2014
Total	\$3,760,000	\$3,890,000	\$4,180,000
Personal	\$647,800	\$625,000	\$604,000
TCV	\$3,112,200	\$3,265,000	\$3,576,000
City %	43%	42%	43%
City TCV	\$1,338,300	\$1,371,300	\$1,537,700
SEV	\$669,150	\$685,650	\$768,850

The Tribunal finds that Petitioner has carried the burden of proving the assessed value of the subject property exceeds 50% of market value.

JUDGMENT

IT IS ORDERED that the property’s state equalized and taxable values for the tax year(s) 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 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year

³ Petitioner’s Exhibit P-1 at 40.

has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, and prior to July 1, 2012, at the rate of 1.09%, and (iv) after June 30, 2012, through December 31, 2014, at the rate of 4.25%.

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

By: Victoria L. Enyart

Entered: Oct 21, 2014