

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

Prairiewood Golf Club, LLC,  
Petitioner,

v

MTT Docket No. 418175

Township of Otsego,  
Respondent.

Tribunal Judge Presiding  
Preeti P. Gadola

**FINAL OPINION AND JUDGMENT**

**ORDER DENYING RESPONDENT'S  
MOTION FOR SUMMARY DISPOSITION**

**INTRODUCTION**

Petitioner, Prairiewood Golf Club, LLC, appeals the ad valorem property tax assessments levied by Respondent, Township of Ostego, against the real property owned by Petitioner for the 2011 tax year. The property under appeal is a golf course with the Parcel No. of 03-17-027-002-60, located in Otsego Township, Michigan. Petitioner was represented by Jason Fargo, whose wife and father-in-law are Members of Petitioner, and Respondent was represented by Robert Thall, attorney. Petitioner's witness was Jason Fargo and Respondent's witness was Patrick Couch, assessor. The hearing of this matter occurred on November 12, 2013.

Respondent, Township of Otsego, assessed the property as follows:

**Parcel Number:** 03-17-027-002-60

Year	TCV	SEV	TV
2011	\$1,093,600	\$546,800	\$546,800

Petitioner's contentions of the property's True Cash Value ("TCV"), State Equalized Value ("SEV"), and Taxable Value (TV) are as follows:

**Parcel Number:** 03-17-027-002-60

Year	TCV	SEV	TV
2011	\$275,000	\$137,500	\$137,500

Based on the evidence, testimony, and case file, the Tribunal's independent determination of TCV, SEV, and TV of the subject property for the years under appeal are as follows:

**Parcel Number:** 03-17-027-002-60

Year	TCV	SEV	TV
2011	\$1,093,600	\$546,800	\$546,800

### **PETITIONER'S CONTENTIONS**

Petitioner contends that the subject property should be valued based upon the purchase price of the property. Petitioner presented its seller's statement from its 2011 purchase as its only evidence of value. Petitioner contends that the purchase was not a distressed sale because the property was marketed for over one year. The \$275,000 contention of value stems from the removal of the personal property from the \$410,000 purchase price.

**PETITIONER'S ADMITTED EXHIBITS**

P-1 Seller's Statement

**PETITIONER'S WITNESS**

**Jason Fargo**

Jason Fargo, Petitioner's witness, is familiar with the subject property as his wife and father-in-law are Members of Petitioner, Prairiewood Golf Club, LLC. Mr. Fargo has viewed the property, worked at the property and helped to repair, maintain and improve it. Mr. Fargo testified that the subject property was purchased by Petitioner for \$410,000 in April 2011. This price included "the golf course, the equipment, a residential lot, and another parcel of about nine acres." Transcript at 6. He also stated that after removing the personal property, the purchase price reflects a true cash value of \$275,000 for the subject property. He contends that the purchase was not subject to duress because the property was marketed for over a year even though it had been foreclosed upon by Mercantile Bank and the seller, Prairiewood Golf Club, Inc., was in receivership. He also stated that the purchase was between unrelated parties. Transcript at 8.

Mr. Fargo contends that the price paid by Petitioner is its market value. He stated that "if we could sell it tomorrow for \$600,000, we would in a second." Transcript at 7. Overall, he contends that the cost approach is not reflective of the

market as a whole and that current market conditions do not support the assessment. On cross-examination, Mr. Fargo testified that he felt like the purchase was a good deal and that with better management, the profitability of the golf course could be improved.

### **RESPONDENT'S CONTENTIONS**

Respondent contends that Petitioner has failed to meet its burden of persuasion. Specifically, Petitioner has only submitted a seller's statement from a sale in 2011, which is after the relevant valuation date. In addition, it is a single sale which does not reflect the market, and the sale was out of receivership after foreclosure which would indicate that it is a forced sale disallowed by the relevant statute. Thus, Respondent contends that Petitioner did "not supply sufficient evidence to pass the burden of persuasion to the Respondent in this case" and made a Motion for Summary Disposition.

Respondent also contends that it presented its cost approach as established by the Michigan State Tax Commission and that the cost approach is the only valid valuation approach on record.

### **RESPONDENT'S ADMITTED EXHIBITS**

R-1 Property Record Card

R-2 Property Valuation Report

- R-3 Page from State Tax Commission Assessor's Manual, Section 17, regarding golf course costs.
- R-4 Aerial photo of subject property
- R-5 Sketch of subject buildings
- R-6 Photos of clubhouse and golf cart storage building
- R-7 Printout from Petitioner's website

**RESPONDENT'S WITNESS**

**Patrick Couch**

Patrick Couch, assessor for the Township of Otsego and Respondent's expert on the cost approach, testified that he utilized the BS&A software to create the subject property's record card. Transcript at 15-16. He described the property as a commercial property used as a public golf course with 18 holes. Transcript at 17. With regard to the land value, Mr. Couch testified that the property is 127.6 acres and he utilized the commercial rate from the county equalization department of \$3,598 per acre to determine the subject property's land value. He adjusted the value of the land down by 50 percent to account for the location which he testified was, in his opinion, an appropriate value based upon his experience in Otsego Township. Thus, he concluded the 2011 land value should be rounded to \$229,600. Transcript at 18-19.

Mr. Couch testified that the value of the subject property improvements include a low-cost pole barn and golf cart storage area, clubhouse and golf course holes. He testified that the buildings were valued using their respective dimensions and the cost data in the State Assessor's Manual, and each of the values was adjusted for depreciation. See Transcript at 19-23. The holes were valued on a per hole amount of \$30,000 per hole. The rate was lower than the lowest rate provided in the Manual for a class one golf course based upon the quality of the course, including the "minimal improvements [and] minimal bunkers." Transcript at 22. These values were also adjusted by a county multiplier which Mr. Couch testified is assigned by the State Tax Commission "to adjust for the pricing in different counties." Transcript at 19-20.

### **FINDINGS OF FACT**

1. The subject property is identified as Parcel No. 03-17-027-002-60 and is located at 315 Prairiewood Drive, Otsego Township, Michigan.
2. The subject property is classified as Commercial real property.
3. The subject property contains an 18-hole golf course, clubhouse, and equipment shelter/golf cart storage facility.
4. The most recent sale of the subject property was Petitioner's purchase in March 2011 for \$410,000; however, this sale included personal property which is not under appeal in this matter. The seller of the property,

Prairiewood Golf Club, Inc. was being operated by a receiver and the subject property had been foreclosed upon by Mercantile Bank.

5. Petitioner's contention of value of \$275,000 is based upon only the purchase price, excluding the value of personal property.
6. Respondent's contention of value of \$1,093,600 is based upon the cost-less-depreciation approach to value as reflected on the subject property's record card.

### **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 “true cash value” is synonymous with “fair market value.” See *CAF Investment Co v State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

Under MCL 205.737(1), the Tribunal must find a property's true cash value in determining a lawful property assessment. See *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. See *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (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. See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485-486; 473 NW2d 636 (1991).

A proceeding before the Tax Tribunal is original, independent, and de novo. See MCL 205.735a(2). The Tribunal's factual findings must be supported by competent, material, and substantial evidence. See *Antisdale v Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *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 v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

“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, 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. See *Meadowlanes, supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 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. See *Antisdale*. 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. See *Antisdale, supra* at 277. In this matter, the Tribunal finds the cost-less-depreciation approach to value to be the appropriate valuation technique.

At hearing in this matter, Respondent's representative made a Motion for Summary Disposition. Respondent contends that Petitioner failed to meet its burden of proof by failing to bring forth one of the three approaches to value. As indicated above, MCL 205.737 states that Petitioner "has the burden of proof in establishing the property's true cash value", which includes the burden of persuasion and the burden of going forward with evidence. Respondent contends specifically that Petitioner failed to meet the burden of persuasion and that the testimony and evidence on record "does not supply sufficient evidence to pass the burden of persuasion to the Respondent in this case." Transcript at 10. The Tribunal finds, however, that the burden of persuasion never shifts to Respondent. See *Jones & Laughlin, supra* at 354-355. Rather, the burden of persuasion remains on Petitioner throughout. Respondent likely intended to state that Petitioner has not met its burden of going forward with the evidence. The burden of going forward with evidence requires that Petitioner set forth evidence of value. See *Jones & Laughlin Steel Corp, supra* at 355-356. Here, Petitioner did bring evidence of value, specifically its seller's statement. While *Meadowlanes, supra*, sets forth the

three “traditional methods”, it also indicates that “[v]ariations of these approaches and entirely new methods may be useful if found to be accurate and reasonably related to the fair market value of the subject property.” *Meadowlanes*, at 485.

Thus, it is clear that there is no requirement that Petitioner must submit one of the three traditional approaches to value. Petitioner’s evidence of value is sufficient to meet its burden of going forward with evidence and this burden then shifts to Respondent. Respondent is required to bring forth evidence of value to enable the Tribunal to make an independent determination of value. Therefore, Respondent’s Motion for Summary Disposition shall be denied.

### **Purchase Price**

Petitioner contends that the subject property’s purchase price is its true cash value, however, the purchase price paid in a transfer of property is not the presumptive true cash value of the property transferred. See MCL 211.27(6). Evidence of the selling price of property can be a relevant factor, however, in determining the value of property. *Professional Plaza, LLC v City of Detroit*, 250 Mich App 473; 647 NW2d 529 (2002). As stated above, the purchase price of \$410,000 includes personal property not under appeal. Thus, Petitioner contends that the true cash value of the subject property should be \$275,000 based upon the value paid for the subject property, alone. However, the Tribunal finds that the

purchase price is not reflective of the market as a whole. The sale was from a receiver, after foreclosure which indicates that the seller may have been under duress to dispose of the property. More specifically, the definition of true cash value in Michigan is “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. [Emphasis added.] A sale after foreclosure is a forced sale and, absent ample information regarding the conditions of sale, marketing time, and the market as a whole, a forced sale is not reliable evidence of value.

The Appraisal of Real Estate defines “market value” as “[t]he most probable price, as of a specified date . . . for which the specified property rights should sell after reasonable exposure in a competitive market under all conditions requisite to a fair sale, with buyer and seller each acting prudently, knowledgably, and for self-interest, and assuming neither is under undue duress.” Appraisal Institute: The Appraisal of Real Estate (Chicago, Appraisal Institute, 14<sup>th</sup> ed, 2013), at 58. This definition provides guidance on the factors to be considered by the Tribunal. Here, Petitioner testified that “they had marketed it for over a year.” Transcript at 6. However, Petitioner failed to present any documentary evidence to support its

contention that the subject property was well exposed to the market prior to its purchase. With regard to the purchase being a “fair sale,” Petitioner failed to present any evidence or testimony indicating that the seller’s motivation was typical even though it was a sale after foreclosure. In addition, Petitioner testified that “if we could sell it tomorrow for \$600,000, we would in a second” to indicate that the market in the subject property area does not support the assessment. See Transcript at 7. However, Petitioner again failed to bring forth documentary evidence demonstrating sales prices in the subject property market other than the purchase of the subject property from a receiver after foreclosure. Further, Petitioner did not present evidence demonstrating that distress sales are prevalent in the area, and therefore, make up the subject property market.

Finally, a single sale is generally not considered reliable evidence of the market as a whole. More specifically, without evidence of what other competing properties are selling for, the Tribunal is unable to determine if the purchase of the subject property was in line with the market. This is even more important when the purchase price is after foreclosure.

Given the above, the Tribunal finds that the purchase price set forth by Petitioner is not the most reliable evidence of value. The purchase price reflects the price after foreclosure (i.e., forced sale), there is insufficient evidence to

demonstrate that the subject property received adequate market exposure, and there is no evidence indicating that the subject property's market contains primarily distressed sales. Thus, the purchase price is not considered to be the true cash value of the subject property as of December 31, 2010.<sup>1</sup>

### **Cost Approach**

Respondent's expert opined that the cost approach was the only reliable method to value the subject property on record. Mr. Couch testified that he calculated the value under the cost approach as approved by the Michigan State Tax Commission using the Assessor's Manual and BS&A Software. Transcript at 17.

With regard to the land value on the card, Mr. Couch testified that he utilized the County Equalization Department land sale studies to determine that the land value should be \$3,598 per acre. He also indicated that this value was reduced by 50 percent to account for the subject property's poor location. See Transcript at 18. He opined that this is supported, based upon his area of expertise and work in Otsego Township. Transcript at 19.

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<sup>1</sup> Respondent also contends that the subject property sold too remote in time from the relevant valuation date to be a reliable indicator of value. However, the Tribunal finds that a sale in March 2011 is relatively close to and can be evidence of value as of December 31, 2010, in the proper circumstances. The purchase price here, however, was found to be unreliable for the reasons discussed above.

Mr. Couch stated that he utilized the values from the Assessor's Manual to value the pole barn/golf cart storage building and the clubhouse building. In addition, he added the value for the golf course holes. He testified that he valued the golf course holes at \$30,000 per hole which is less than the Assessor's Manual class one value, the lowest class in the Manual. Transcript at 22, R-1. He indicated that he utilized a lower rate than that listed in the Assessor's Manual based upon the quality of the course and the condition of the golf course and holes. The reduction is based upon Mr. Couch's expert opinion and is also supported by Petitioner's contention that the irrigation system was not functioning properly causing the grass to not be lush and green. See Transcript at 34-35.

Mr. Couch also testified that the values from the cost manual were adjusted for depreciation based upon factors such as age and remodeling. See Transcript at 38. He also indicated that the county multiplier was applied to the values. "The county multiplier is assigned by the State Tax Commission. It's based on the idea that not all . . . materials cost the same in every county." Transcript at 19.

On cross-examination, Mr. Couch was asked about adjustments to the data in the Assessor's Manual. Specifically, Petitioner attempts to make the contention that the costs reflected in the Assessor's Manual are too high and do not properly reflect the market values after the 2008 and 2009 economic crisis. It appears that

Petitioner believes that the sales comparison approach should have been utilized instead of the cost less depreciation method, however, MCL 211.10e states:

All assessing officials, whose duty it is to assess real or personal property on which real or personal property taxes are levied by any taxing unit of the state, shall use only the official assessor's manual or any manual approved by the state tax commission, consistent with the official assessor's manual, with their latest supplements, as prepared or approved by the state tax commission as a guide in preparing assessments.

Thus, Respondent was required, by law, to utilize the values in the Assessor's Manual. He used his expert opinion to provide additional reductions in value based upon location and condition. Thus, the Tribunal finds that Petitioner has failed to demonstrate any error in Respondent's cost-less-depreciation approach that appears on the property record card and Respondent's expert testified that he applied the cost approach in conformity with the state assessor's manual. MCL 211.10e. As such, it is concluded, based upon a careful and independent review of the valuation evidence, that Respondent's cost approach is reliable and supports the current assessed and taxable values.

The Tribunal agrees with Respondent's assessor's expert opinion that the cost approach is the most reliable valuation method for the subject property on the record. As discussed above, the Tribunal finds that Petitioner's valuation evidence consisted only of the purchase price supported by the seller's statement. However,



this is insufficient evidence to demonstrate that the property is over-assessed for the 2011 tax year for the reasons discussed above. Petitioner has, therefore, failed to meet its burden of persuasion regarding the value of the subject property.

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. See *Antisdale, supra* at 277. In this case, the Tribunal has evaluated the evidence on record and finds that the most reliable approach on record is the cost-less-depreciation approach. The Tribunal has carefully, thoughtfully and independently reviewed all the evidence and testimony in this matter and finds that the cost approach is the correct technique to value the subject property. Therefore, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the subject property's TCV, SEV, and TV for the tax year at issue are as stated in the Introduction section above.

### **JUDGMENT**

IT IS ORDERED that Respondent's Motion for Summary Disposition is DENIED.

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

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

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Final Opinion and Judgment within 28 days of the 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 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 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 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, and prior to January 1, 2014, at the rate of 4.25%.

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

By: Preeti P. Gadola

Entered: Dec. 18, 2013