

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

International Tennis Corporation,  
Petitioner,

v

MTT Docket No. 451786

City of Southfield,  
Respondent.

Tribunal Judge Presiding  
Victoria L. Enyart

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, International Tennis Corporation, appeals ad valorem property tax assessments levied by Respondent, City of Southfield, against Parcel No. 76-24-07-326-028 for the 2013 and 2014 tax years. Myles B. Hoffert and Paige Harley Bachand, Attorneys, represented Petitioner, and Laura M. Hallahan, Attorney, represented Respondent.

A hearing on this matter was held on December 8, 9, 11, 12, and 16, 2014. Petitioner's witnesses were Thomas Schroeder, Vice-President and Chief Financial Officer for International Tennis Corporation, and Daniel J. Tomlinson, MAI, appraiser. Respondent's sole witness was Laurence G. Allen.

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 2013 and 2014 tax years are as follows:

Parcel No. 76-24-07-326-028

Year	TCV	SEV	TV
2013	\$5,800,000	\$2,900,000	\$2,900,000
2014	\$5,500,000	\$2,750,000	\$2,750,000

PETITIONER'S CONTENTIONS

Petitioner contends that the subject property is over assessed. Petitioner argues that the subject property is not a special purpose property; it is a tennis barn. Petitioner argues that this is a case of market value versus value-in use. The difference is that market value is couched in terms of the property's highest and best use and is a value-in-exchange concept, while value-in-

use is a function of the current use of the property regardless of the highest and best use.

Petitioner contends that property that is custom built for the current occupant will have a value-in-use that is higher than the market value.

#### PETITIONER'S ADMITTED EXHIBITS

- P-1 Appraisal by Daniel J. Tomlinson, MAI, as of December 31, 2012, and December 31, 2013.
- P-2 Revised Appraisal by Daniel J. Tomlinson, MAI, as of December 31, 2012, and December 31, 2013.<sup>1</sup>
- P-2A Replacement pages 102, 103, and 105 for P-2.
- P-3 Drawing renderings of the subject property.
- P-5 Joint stipulation of square footage of the subject property.
- P-6 Deferred maintenance records of subject property.
- P-10 Daniel J. Tomlinson's work file.
- P-14 Petitioner's 2014 L-4175 Personal Property Statement.
- P-15 Petitioner's 2013 L-4175 Personal Property Statement.
- P-16 Marshall Valuation Section 97, Page 26, October 2012 Depreciation-Fixtures and Equipment.
- P-17 RealtyRates.com Investor Survey-4<sup>th</sup> Quarter, 2013 Average Reserve Requirements.
- P-18 Petitioner's recalculation of Respondent's Income Approach.

#### PETITIONER'S WITNESSES

##### Thomas Schroeder

Thomas Schroeder, Vice President and Chief Financial Officer of International Tennis Corporation, was Petitioner's first witness. He testified as to the facilities located on the subject property by referencing P-3, and indicated that multiple levels of the facility are handicap accessible via two lifts, but the locker room located in the basement could not be accessed via wheelchair. He stated that competition has come up in the last five years from new facilities like LA Fitness and Lifetime Fitness. In his opinion, the HVAC system, parking lots, façade, outdoor pool, and roof of the subject are all in need of repairs, and there are issues with water elevation and flooding in the basement. Mr. Schroeder testified that other entities besides Petitioner also use the facility; DMC, a massage therapist, and a facial aesthetician, are all located in the lower level, with written Facility Usage Agreements.

On cross-examination, Mr. Schroeder testified that the subject operates a nursery and a pre-school, with no revenue being generated by the nursery and approximately \$130,000 annually being generated by the pre-school. He stated that the deferred maintenance detailed in

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<sup>1</sup> The last paragraph of P-2 at 35 was stricken and not admitted (relating to deferred maintenance). Tr. Vol. I at 59.

P-6 would be repairs that would be made over a period of time, not in one year. He further stated that the LA Fitness and Lifetime Fitness do not have an outdoor pool, 13 tennis courts, or multiple basketball courts, but he is not aware as to whether or not they have rehab facilities.

On rebuttal, Mr. Schroeder testified that the fitness area is 9,300 square feet, the indoor pool area is 4,000 square feet, the stretching area is 2,800 square feet, the two basketball courts and track are 17,800 square feet, and the squash court is 1,000 square feet. He stated that the combined square footage of the racquetball and squash area and rehab center is 14,081 square feet. He further stated that the cost new of the personal property for the 2013 tax year, based on the personal property tax returns, was \$1,140,000, and for 2014, it was \$1,137,289. He stated that the payroll cost is approximately 3.2 million, with \$540,000 being executive income.

#### Daniel J. Tomlinson

Daniel J. Tomlinson, MAI, general certified appraiser, was called as Petitioner's second witness, and was qualified as an expert in real estate appraisal. He testified that his original appraisal was prepared July 1, 2014 (P-1) and that his amended appraisal report was prepared November 24, 2014 (P-2), with changes and additional adjustments to P-2 relating to revisions based on the stipulated square footage between the parties. He stated that the neighborhood was still declining due to the recession and that there is competition because of the new facilities in the area. He further stated that the size of the subject is a "superadequacy" and if it was built today it would be built differently. He testified that the subject is an irregular-shaped site of 9.19 gross acres which limits what can be built on it. He stated that there was a consent judgment obtained in circuit court in 1975 that dictates how the property can be used and this affected the zoning, which is on the property record card as 21.98 % zoned as B-3 and 78.02% zoned as R-2. The current use of the subject is non-conforming, but is legally permissible under the consent judgment.

Under the cost approach contained in P-2, Mr. Tomlinson assigned a Class C construction for the main building and Class D for the smaller buildings. He stated that there were four different building types that were valued; tennis courts, basement, mezzanine, and concession and first aid. He testified that there were some areas of functional obsolescence, including the size of the basement and mezzanine area. The fitness center, basketball court, pools, Pilates, dance and aerobic studios, gymnasium, spa, banquet room, restaurant, a portion of

the preschool, and the racquetball courts are all included in his cost approach under the square footage for the tennis court building of 178,868.1 square feet. He further testified that he did not know the separate square footage for these individual components. He stated that Marshall Valuation Services does describe a Class C fitness center with a rate of \$94.36 per square foot, which is higher than the tennis club rate he used at \$61.79 per square foot. He testified that the land value was based on five land sales, with adjustments for location, size, zoning, utilities, configuration, and topography. He further calculated hard costs at \$2 per square foot for the 220,812 square foot area outside the building, as well as soft costs, which included the property taxes for the land and the entrepreneurial incentive. He stated that the sum of the hard and soft costs were then depreciated using an age-life method. Mr. Tomlinson testified that his vacant land sale comparables 1, 2, and 4 are not zoned to permit commercial use. He further stated that he did not go back after adjustments and test his vacant land comparables for reasonableness.

For his sales comparison approach, Mr. Tomlinson testified that there was not an abundance of tennis court sales and he looked at sales that would reflect the utility of the subject, which he would describe as minimum utility. He testified that an adjustment for market condition was made at a negative 5% per year, from the date of sale to the valuation date, due to the significant decline in property values that started in 2005. Adjustments were made as he felt necessary for location, building size, condition, and quality of construction, land to building ratio, and other factors. He stated that he did not do a study on traffic counts and did not include a demographic analysis in the work file, but highway access, linkage, and visibility would all be factors that could be considered in a location adjustment. He acknowledged that all of the sales comparables were smaller in square footage and could not accommodate a multi-use fitness club, but they were selected as comparables because they have similar attributes, like size and other features. Tomlinson explained that “other factors” included an adjustment for the basement size, which in his original appraisal (P-1) was 20,000 square feet, but in his amended appraisal (P-2) was 26,000 square feet. The adjustment was based on the cost new of a basement at the subject property, less the amount of depreciation he allocated to the basement, divided by the subject’s gross building area, and then divided by the adjusted sales price. He stated that his value conclusion would not change if the reported purchase price of sale 5 at \$1.9 million was used (which would take the high-end of the range up to \$28.99 per square foot), explaining that the final opinion of value is not a formula and is based on the appraiser’s judgment and experience.

He testified that he did conduct independent research into multi-use athletic facilities that could be used as sales comparables, by going on LoopNet and CoStar. He further stated that he was aware of a sale of an LA Fitness in Royal Oak, but that sale was not included in his work file. Mr. Tomlinson testified that the subject is not a special purpose property “because when you compare its design, its layout, especially the clear span type building, many buildings are like that in the marketplace. So in terms of construction, concern of layout, concern of utility, there’s[sic] similar properties out there.” (Tr. Vol. I at 201-202).

Mr. Tomlinson further explained that the reconstructed income and expense statements were included in his appraisal, but he did not use the income approach because it is subjective and difficult to do in valuing the subject just as a building, without the business being present.

On rebuttal, Mr. Tomlinson testified that he did not agree with the income approach prepared by Respondent’s expert and he believes there are specific issues that Mr. Allen did not address. The first issue is the reserves for replacement; Mr. Tomlinson stated that the RealtyRates investor survey discusses average reserve requirements and breaks down the calculations by property type and also calculates a percentage of effective gross income. The second issue is the 15 cents per square foot replacement reserve for the building when the range is 23 cents to 75 cents per square foot. Further, he stated that Mr. Allen does not reflect the deferred maintenance and the calculation of replacement costs should be much higher based on the RealtyRates surveys. The third issue is the reserve for personal property, which he testified was too low when compared to the cost new of the personal property; Mr. Tomlinson recommended the more appropriate value was \$114,000. The fourth issue relates to the capitalization rate, with Mr. Tomlinson disagreeing with (i) using the high-end of the range for business risk, (ii) developing business revenue, operating expenses, and net operating income, (iii) developing a net operating income, but using real estate income in the cap rate, and (iv) developing an income approach when a cap rate, based on sales from the market, is not possible given the lack of sales. He testified that he prepared a “sensitivity analysis” using Mr. Allen’s income approach, with re-calculations for the RealtyRates reserves for special purpose property, cost new of the personal property (at \$114,000 per year), cap rate, and \$540,000 payroll attributable to management.

Based on the revised appraisal, Petitioner contends that the TCV, SEV, and TV of the subject property are as follows:

Parcel No. 76-24-07-326-028

Year	TCV	SEV	TV
2013	\$3,900,000	\$1,950,000	\$1,950,000
2014	\$4,000,000	\$2,000,000	\$2,000,000

#### RESPONDENT'S CONTENTIONS

Respondent contends that the subject property is over assessed; however, based on its location, history of successful operation for 45 years, and renovations over the years, it is a special purpose property. Respondent argues that Petitioner's appraisal lacked credibility and reliability; it included only two sales comparables that are fitness or tennis clubs and these properties are not comparable to the subject and included three "big box" sales despite the subject not being a "big box." Respondent asserts that this is analogous to valuing a house and comparing it to a barn. Respondent contends that the adjustments made are not supportable. Further, Respondent argues that the sale at auction of the Farmington Hills Tennis Club was inferior to the subject and yet the value conclusion for the subject is nearly \$10 less per square foot than this inferior sale at auction. Respondent states that the sales comparison approach would not be a reliable method because there are no comparable sales to the subject.

Respondent further contends that Petitioner's cost approach lacks credibility, given that the appraiser valued almost all of the square footage as tennis barns and three of the vacant land sales were residential, when a portion of the subject is zoned commercial and the consent judgment allows use of the entire property for an athletic club.

#### RESPONDENT'S ADMITTED EXHIBITS

- R-3 Revised Appraisal Report by Laurence G. Allen, MAI, as of December 31, 2012, and December 31, 2013
- R-5 Fitness, Racquet Sports, and Spa Projects: A Guide to Appraisal, Market Analysis, Development and Financing, Chapters 1-10

#### RESPONDENT'S WITNESS

Laurence G. Allen

Laurence G. Allen, MAI, was called as Respondent's witness and was admitted as an expert appraiser. He testified that the subject is a special purpose property, with the layout and design being done for a specific purpose, which is not common in the marketplace. He stated that the subject is located in a prime real estate location, with high traffic counts and good visibility on Franklin Road. In his opinion, Petitioner's sale comparables 2 and 4, both "big box" stores,

are not comparable to the subject and do not have similar finishes, layouts, design, and cannot accommodate the same uses as the subject. He stated that the subject is a multi-sport athletic club.

He testified that the subject is income-producing property and that income is derived from selling the use of the property to members, like court time and other various activities. For the income approach, he looked at seven years of historical operating data for the subject, grouped into ten separate income sources in his appraisal. The two main revenue sources for the subject are dues and initiation fees and revenue for use of the tennis portion of the facility. He testified that the capitalization rate was derived from reviewing general cap rates for a combination of office, retail, and industrial property, band of investment for private clubs, and investments surveys for retail and private clubs; he used a 10% cap rate for the real estate portion of the subject and 20% cap rate for the business, with the most weight given to the real estate rate because most of the subject's value is in the real estate. He also calculated cap rates for the tangible personal property and intangible personal property, but did not provide a breakdown of what was included in his consideration of intangible personal property. He further stated that an adjustment was made for deferred maintenance based on interviewing the controller and visiting the subject. He testified that the replacement reserves for real property at 15 cents per square foot were taken mostly from the PWC Investment Survey, which gives a range in reserves for different types of property. He indicated that he used PWC instead of RealtyRates because, in the past, he has found PWC to be more useful and that PWC and RealtyRates have similar numbers. He stated that he gave the most weight to the income approach in his final conclusion of value.

Under his cost approach, Mr. Allen testified he looked at residential and commercial land sales, as the highest and best use of the subject is a combination of commercial and residential development. He stated that he used four vacant residential comparables and four vacant commercial comparables, with adjustments. He explained that his land value "reflects the premium for the allowance of the nonconforming improvements." (Tr. Vol. V at 13). For the building value, he testified that the subject has two major types of space: tennis club and fitness center, both Class C, with the tennis club being 93,778 square feet and the fitness center being 112,508 square feet. He applied separate costs for the snack bars and site improvements (parking and outdoor swimming pool). His conclusion of value under the cost approach includes values for land, buildings, furniture, fixtures and equipment, tangible personal property, and intangible

personal property. He explained that the \$100,000 adjustment for intangibles was based on the relationship between the cost and income approaches and that there were some business elements in the income approach. He stated that the intangible value of \$100,000 is made up of “goodwill or it’s a premium over the cost of construction.” (Tr. Vol. V at 11).

Mr. Allen testified that the sales comparison approach is not applicable to the subject because there are no sales of similar facilities. He stated that he did include two regional sales of tennis clubs that were not performing successfully, with both sales being inferior and one being at auction. He further stated that he did not value the subject based on a value-in-use to the owner; his value conclusion is based on the market value “to a purchaser who would buy it to operate it as an athletic facility and get revenue from selling the use of the various types of spaces.” (Tr. Vol. IV at 88).

Mr. Allen agreed that the cost to build custom-built commercial properties exceeds what the property would be able to command on the market for lease or sale. He further stated that the subject is not custom-built for the owner, it was built for an income stream for use by others and the subject has been adapted over time as the market has changed in order to maximize the income. He testified that the subject was built “to maximize its utility in the market and to attract as many users who will pay to use the facilities . . . . [I]t doesn’t have anything to do with value-in-use to the owner. Its market value of what the property could be sold for.” (Tr. Vol. IV at 102).

Based on the revised appraisal, Respondent contends that the TCV, SEV, and TV of the subject property are as follows:

Parcel No. 76-24-07-326-028

Year	TCV	SEV	TV
2013	\$5,910,000	\$2,955,000	\$2,955,000
2014	\$5,990,000	\$2,995,000	\$2,995,000

FINDINGS OF FACT

1. The subject property is located at 29350 Northwestern Hwy, Oakland County, Michigan.
2. The subject property is identified as Parcel Number 76-24-07-326-028.
3. The subject property is owned by International Tennis Corporation, d/b/a Franklin Athletic Club.

4. The subject property is zoned R-2 (Single Family Zoning District) and B-3 (General Business District). Per the assessment records, 21.98% of the subject site is zoned B-3 and 78.02% is zoned R-2.
5. The current use of the subject is non-conforming under its zoning but the use is permitted under the terms of a 1975 Consent Agreement and subsequent amendments.
6. Under the terms of the Consent Judgment, any use permitted under B-2 (Planned Business District) is permitted on the subject.
7. Based on a stipulation entered by the parties, the square footage of the buildings on the subject property are as follows:
  - Building footprint at 178,868.1 square feet
  - Basement at 26,430.1 square feet
  - Mezzanine at 988 square feet
  - Concession/First Aid at 635.6 square feet
8. The subject property contains 13 tennis courts, fitness classrooms for yoga, Pilates, spinning, martial arts, etc., gymnasium with running track, open fitness area (weight and cardio training), Franklin Academy Preschool, café, health spa, banquet room, racquetball courts, parking lot, two outdoor pools, and an outdoor playground area.
9. Petitioner's appraiser determined that the highest and best use of the subject, if vacant, is to hold for future economic development; the highest and best use, as improved, was determined as the continued use of the existing improvements.
10. Petitioner's appraiser utilized the sales comparison approach and the cost approach in his determination of value.
11. Petitioner's sales comparison approach included two sales of properties that were "big box" stores; comparable 2 in Sterling Heights and comparable 4, a former Target located in Warren.
12. Petitioner's adjustments, under the sales comparison approach, included an adjustment for "other factors" which was indicated to be for the utility of the basement area.
13. Petitioner's final value under the sales comparison approach was \$3,900,000 (rounded) for the 2013 tax year (\$22.00 per square foot) and \$4,000,000 (rounded) for the 2014 tax year (\$22.50 per square foot).
14. Petitioner's cost approach included a vacant land sales analysis using land sales 1-4 for the 2013 tax year and land sales 2-5 for the 2014 tax year.
15. Petitioner's estimated land value, based on the sales comparables used, was \$640,000 for 2013 and \$600,000 for 2014.
16. Petitioner's cost approach included values based on the Marshall Valuation Services Manual. The items being valued were broken down into four categories: Tennis Courts, Basement, Mezzanine, and Concessions/First Aid.

17. Petitioner's valuation of the Tennis Courts area was for the stipulated 178,868.1 square foot building footprint, valued at a base cost of \$61.79 per square foot.
18. Petitioner utilized the Marshall Valuation Services Manual rates for 2014 when preparing the cost approach for both the 2013 and 2014 tax years.
19. Petitioner's combined value, for the land plus improvements, under the cost approach was \$3,900,000 (rounded) for the 2013 tax year and \$4,000,000 (rounded) for the 2014 tax year.
20. Respondent's appraiser determined that the highest and best use of the subject, if vacant, is to hold for build-to-suit athletic club development or a combination of build-to-suit commercial and residential development; the highest and best use, as improved, was determined as tennis, athletic club and educational use.
21. Respondent's appraiser utilized the income approach and the cost approach in his determination of value.
22. Respondent's income approach utilized the historical operating data of the subject from 2007 through 2013, and concluded to total revenue for the 2013 tax year of \$6,680,000. The total revenue for the 2014 tax year was \$6,847,000.
23. Respondent's income approach included a cost of sales, comprised of payroll and payroll taxes of \$3,239,800 for the 2013 tax year and \$3,320,795 for the 2014 tax year.
24. Respondent also considered the historical operating expenses from 2007 through 2013, concluding to an operating expense level under the income approach at 35% of revenue. A real and personal property allowance of \$131,038 was also added, making the final operating expenses \$2,469,038 for the 2013 tax year and \$2,527,488 for the 2014 tax year.
25. Respondent's appraiser consulted RealtyRates and arrived at a capitalization rate for the real property of 10% and a rate of 20% for the tangible and intangible personal property. Most weight was given to the real property capitalization rate. The overall tax-loaded capitalization rate applied was 13.93%.
26. Respondent's income approach included a reduction in value for each tax year of \$429,408 for deferred maintenance (\$584,600 in deferred maintenance less \$167,548 for real property replacement allowance).
27. Respondent's cost approach included a vacant land sales analysis of four residential land sales and four commercial land sales. The combined residential and commercial land value was determined to be \$1,095,000 for 2013 and \$1,275,000 for 2014.
28. Respondent's cost approach included values based on the Marshall Valuation Services Manual. The items being valued were broken down into three categories: Class C Fitness Center, Class C Tennis Club, and Class D Snack Bar. Values were also included for site improvements, softs costs and entrepreneurial incentive.
29. Respondent's combined value for the land plus improvements under the cost approach was \$6,360,000 (rounded) for the 2013 tax year and \$6,120,000 (rounded) for the 2014 tax year.

30. Both appraisers identified LA Fitness and Lifetime Fitness as more modern facilities in the area, with Petitioner’s appraiser identifying both as competition for the subject.
31. The subject property’s values, as established by the Board of Review for the tax years at issue, are as follows:

Parcel No. 76-24-07-326-028

Year	TCV	SEV	TV
2013	\$7,576,800	\$3,788,400	\$3,072,000
2014	\$7,570,380	\$3,785,190	\$3,121,150

### 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* 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* 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* 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* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) 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* at 277.

Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell. See *Meadowlanes* at 485.

The subject property has been stipulated as a 178,868.1 square foot Tennis and Athletic Club. It was originally constructed in 1969 with 62,608 square feet (excluding mezzanine) as a

tennis club. Additional tennis courts (totaling 14) and a lower level fitness center were constructed in 1975. The gym area and additional fitness areas were constructed in 1994 (P-3 at 38).

The subject property currently contains 13 tennis courts; one was converted to a pre-school facility. The amenities, as of the relevant tax days, include the following: racquetball courts, fitness classrooms for yoga, Pilates, spinning, martial arts, etc., gymnasium with running track, open fitness area (weight and cardio training), Franklin Academy Preschool, café, health spa, and banquet room. (R-3 at 38, 39). The “restaurant” area was explained at the hearing as being a snack bar and not a full-scale restaurant. (Tr. Vol. III at 59).

### Sales Comparison Approach

The sales comparison approach is defined as:

The process of deriving a value indication for the subject property by comparing similar properties that have recently been sold with the property being appraised, identifying appropriate units of comparison, and making adjustments to the sale prices (or unit prices, as appropriate) of the comparable properties based on relevant, market-derived elements of comparison. The sales comparison approach may be used to value improved properties, vacant land, or land being considered as though vacant when an adequate supply of comparable sales is available. *The Appraisal of Real Estate* (Chicago: 14<sup>th</sup> ed, 2013) at 377.

Petitioner’s appraiser prepared a sales comparison approach that included a total of five sales, as follows:

	Subject	P-1	P-2	P-3	P-4	P-5
Location	Southfield	Bloomfield	Sterling Hts.	Brighton	Warren	Farmington
Sale Date		01-2005	03-2006	01-2011	12-2012	08-2013
Sale Price		\$3,700,000	\$4,500,000	\$1,585,000	\$2,250,000	\$1,614,404
Sq Feet	179,504	102,196	111,825	63,500	98,634	72,075
SP/SF		\$36.20	\$40.24	\$24.96	\$22.81	\$22.40
Year Blt	1977	1970/2002	1995	1977	1990	1973
Condition	Average	Similar	Superior	Inferior	Superior	Inferior
Quality	C/Average	Similar	Similar	Similar	Similar	Similar
Land/Bldg Ratio	2.23	1.59	4.85	8.31	3.93	3.06
Adj SP/SF		\$21.72	\$23.90	\$32.96	\$21.67	\$24.64

Petitioner sought sales that were large square footage and minimum utility. The grid above indicates the adjusted sale prices.

The Tribunal finds the following issues with Petitioner’s appraiser’s sales:

P-1 is an older tennis club that was sold out of bankruptcy, and took place 7 years ago in a different economy. P-2 is the sale of a vacated big box store that sold 6 years ago before the economic downtrend. The following three sales took place in an appropriate market period, but had issues. P-3 was a vacant tennis club that sold to a church for its use as an athletic club. P-4 was a vacated big box store. It was demolished after purchase by a company specializing in charter schools. P-5 was the additional sale that was included for the 2014 tax year. It was a vacant tennis club that was in foreclosure. It is 60% smaller than the subject property.

Respondent did not submit or rely on the sales comparison approach in its value determination. According to Respondent's expert, the sales comparison approach is not applicable because there are no sales of similar facilities. Although he did review two regional sales of tennis clubs, the properties were not performing successfully, were inferior to the subject, and one of the sales sold at auction. One of the sales was Petitioner's Sale 5. The second sale took place in 2007 in Dearborn. It was slightly larger than Petitioner's Sale 5, but was determined not to be an adequate basis for determining true cash value. (R-3 at 92, 93).

The sales comparison approach is one of the three commonly recognized methods of valuation, and can be an accurate indicator of a property's value "when there are sufficient recent, reliable transactions to indicate value patterns or trends in the market." Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14<sup>th</sup> ed, 2013) at 380. In this case, however, the comparables selected by Petitioner's appraiser *were not* sufficiently similar to the subject or reflective of the market value of a property such as the subject. Two of the comparables selected were "big box" stores. Further, while two of the sales (comparable 1 and 5) were sales of tennis clubs, comparable 1 sold on January 28, 2005, and comparable 5 sold in 2006. Neither are recent sales that would indicate trends in the market as of the December 31, 2012 and December 31, 2013 valuation dates. The selected comparables would not be considered substitute or alternate properties "of similar utility and desirability." *Id* at 379. Petitioner's sales are given no weight in the final analysis.

#### Income Approach

The income approach is defined as:

The present value of the future benefits of property ownership is measured. A property's income and resale value upon reversion may be capitalized into a

current, lump-sum value. Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 14<sup>th</sup> ed, 2013) at 46.

Petitioner's appraiser did not prepare an income approach, stating in his revised appraisal "a going concern estimate would have to be reported first, then intangible and tangible assets separated from this going concern estimate, resulting in a real property estimate. Such estimate is difficult at best. Depending on the methodology, the results may not be credible." (P-2 at 12).

Respondent's appraiser prepared an income approach, utilizing the historical operating statements from 2007 through 2013. The subject property is an income-producing business that is seldom leased. The intent is to generate sufficient income from the real and personal property to justify the investment. "Therefore, the value of income-producing real estate will typically be determined by the amount of net operating income the property can be expected to generate as well as by the rates of return on alternative investments available to potential buyers." (R-3 at 59).

Allen grouped the income into the basic income sources which included Membership dues, tennis, racquetball/squash/basketball, banquet/food, camps, personal training, fitness/dance classes, swimming, food and liquor and miscellaneous. Membership dues and tennis revenues are 72% of the gross income. Membership was at its lowest point in 2012 and increased in 2013. The trends were noted and used in comparison with the actual operating income and expenses. The historical operating expense data did not include capital expenditures. Allen included an allowance for real and personal property replacement at 2.0% and 1.9%. The gross revenue was determined, less the cost of sales, for gross profit, operating expenses were deducted for a net operating income excluding property taxes.

Allen then determined the overall rate by analysis of capitalization rates from property sales, band-of-investment techniques, and investor surveys. No health club sales in Michigan were found that were reliable. RealtyRates.com was consulted, as well as, investor surveys. A composite of multiple property types was considered, in addition to, the band-of-investment. The conclusions were 10% for the real property. The tangible and intangible personal property (which are subject to higher risks) was concluded to be at 20%. The conclusions were weighted and the tax load was added for a weighted cap rate.

OAR	Weight	Cap Rate	Tax Load	Cap + Tax Load	Weighted OAR
Real Estate	91.50%	10.00%	3.12%	13.12%	12.01%
Personal Property	7.07%	20.00%	3.12%	23.12%	1.63%
Intangible	1.43%	20.00%	0.00%	20.00%	0.29%
Overall Rate					13.93%

Net operating income was capitalized using the overall rate. Deferred Maintenance of \$429,408 was deducted from the concluded market value for the market values of \$6,540,000 and \$6,740,000 respectively.

Schroeder testified that the deferred maintenance found in P-6 would be accomplished over a period of time, not all in one year. The Tribunal finds that all of the quotes found in P-6 are dated 2014. The last tax date at issue is December 31, 2013. The information would not have been known on tax day, and therefore, not relevant for the tax years at issue.

Petitioner's appraiser in rebuttal, (P-6) reworked Respondent's income approach utilizing the true cash value of the personal property and a ten year life for reserves of \$114,000, which reduced the net operating income, with an indicated tax cap rate of 17.21% and 19.12% yields a going concern value of \$5,482,118 and \$4,324,273. The depreciated personal property and cash (\$200,000) were deducted, as well as trained work force of \$306,923 for tangible PP & Intangible of \$999,683, with a value attributable to real property of \$4,482,435. The average was rounded to \$3,800,000. The Tribunal found that the income approach, using actual income and expenses was not considered appropriate for the subject property; therefore, Petitioner's rebuttal is given no weight.

The Tribunal finds that the income approach would be an acceptable method, if the income and expenses were tested in the market. The use of actual income and expenses is troublesome. The income and expenses must be tied into the market when looking at fee simple interest. Using the actual data without documentation of market rent lacks an important component. Market rent is defined as:

The most probable rent that a property should bring in a competitive and open market reflecting all conditions and restrictions of the lease agreement, including permitted uses, use restrictions, expense obligations, term, concessions, renewal and purchase options, and tenant improvements. Appraisal Institute, *The Dictionary of Real Estate Appraisal* (Chicago: 5<sup>th</sup> ed, 2010) at 121, 122.

The income approach in this instance is based on actual income. The Appraisal Institute states:

To develop an opinion of market value with the income capitalization approach, the appraiser must be certain that all the data and forecasts used are market-oriented and reflect the motivations of a typical investor who would be willing to purchase the property as of the effective date of the appraisal. A particular investor may be willing to pay a price different from market value, if necessary, to acquire a property that satisfies other investment objectives unique to that investor. *The Appraisal of Real Estate* (Chicago: 14<sup>th</sup> ed, 2013) at 444.

The Tribunal finds that Respondent's income approach lacks a market based foundation and is not accepted as a valid indication of the market value of the subject property. No weight is given to Respondent's income approach.

### Cost Approach

In the cost approach, the value of a property is derived by adding the estimated value of the land to the current cost of constructing a reproduction or replacement for the improvements and then subtracting the amount of depreciation (i.e., deterioration and obsolescence) in the structure from all causes. Entrepreneurial incentive (the amount to developer expects to receive) or entrepreneurial proofing (the amount actually received) may be included in the value indication. This approach is particularly useful in valuing new or nearly new improvements and properties that are not frequently exchanged in the market. Cost approach techniques can also be employed to derive information needed in the sale comparison and income capitalization approaches to value, such as the cost to cure items of deferred maintenance. Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 14<sup>th</sup> ed, 2013) at 47.

Both appraisers prepared a cost approach to value the subject property. Both appraisers used Replacement Cost New from *Marshall Valuation Services*<sup>2</sup> ("MVS"). The appraisers differed, however, in their conclusions of land value and building value.

Petitioner selected five vacant land sales:

	Subject	1	2	3	4	5
Location	Southfield	Farmington Hills	Birmingham	Novi	Novi	Novi
Sale Price		\$400,000	\$1,100,000	\$300,000	\$300,000	\$750,000
Sale Date	NA	05-11	10-11	12-11	09-12	12-13
SF	400,316	514,008	261360	413,820	190,793	825,462
Acres	9.19	11.80	6.00	9.50	4.38	18.95
SP/SF		\$0.78	\$4.21	\$0.72	\$1.57	\$0.91

<sup>2</sup> Marshall & Swift/Boechk, LLC.

SP/Acre		\$33,898	\$183,333	\$31,579	\$68,493	\$39,578
Zoning	Resid/Comm	Residential	Mixed Use	Institutional	Residential	Residential
Configuration	Irregular		Irregular	Wooded		
Adjusted for:		Location/Size/Conf	Size	Config/Topography	Size/Config	Size/Utilities/ Config/Topo
Final Adj SP/SF		\$0.75	\$3.76	\$0.69	\$1.39	\$1.05

All of the sales were adjusted for market condition between the sale date and tax date. Sales 1 through 4 were used for the 2013 tax year. \$1.60 per square foot was selected for an indicated land value of \$640,000. Land sale 2 is the only parcel with a mixed-use zoning. The other parcels were zoned residential. Sale 5 was added for the 2014 tax year. Sales 2 through 5 were considered for 2014, which resulted in \$1.50 per square foot, for an indicated land value of \$600,000.

Allen split the land sales into the appropriate zoning, i.e., 7.168 acres residential and 2.02 acres commercial.

Residential	Subject	1	2	3	4
Location	Southfield	Commerce Twp	Farmington Hills	Rochester Hills	Rochester Hills
Sale Price		\$515,000	\$410,000	\$1,000,000	\$360,000
Sale Date	NA	09-13	05-11	08-12	04-11
SF	311,890	653,400	516,186	837,659	563,231
Acres	7.16	15.00	11.85	19.23	12.93
SP/SF		\$0.79	\$0.80	\$1.19	\$0.64
SP/Acre		\$34,333	\$34,746	\$52,002	\$27,842
Adjusted for:		Location/Function/Density	Function/Density	Location/Function/Density	Function/Density
Final Adj SP/SF		\$0.78	\$0.67	\$0.94	\$0.65
SP/Acre		\$34,067	\$29,373	\$41,074	\$28,143

Respondent’s appraisal indicated that Sale 3 is an outlier and was given limited consideration. The concluded market value for the 7.168 residential acres is \$0.6887 per square foot or \$30,000 an acre. No notable change in land value was concluded to earlier in the appraisal. Therefore, the residential land value is the same for both years at issue.

Respondent’s four sales of vacant commercial land for 2013 are:

Commercial	Subject	1	2	3	4
Location	Southfield	Troy	Novi	Farmington Hills	Wixom
Sale Price		\$750,000	\$609,000	\$525,000	\$660,000
Sale Date	NA	06-12	04-13	09-12	11-13
SF	88,078	108,900	69,696	55,757	75,359
Acres	2.02	2.50	1.60	1.28	1.73
SP/SF		\$6.89	\$8.74	\$9.42	\$8.76
SP/Acre		\$300,000	\$380,625	\$410,156	\$381,503
Adjusted for:		Location/Utility	Location/Utility	Utility	Location/Utility
Adj SP/SF		\$8.95	\$10.35	\$9.91	\$10.42
SP/Acre		\$389,862	\$450,846	\$431,680	\$453,895

The four sales were all adjusted for market conditions. The resulting value for the commercial portion of the subject's land is \$10.00 per square foot or \$880,000 for tax year 2013. The land was projected to increase 20% which Respondent opined would be \$1,060,000 for tax year 2014. The combined land values are \$1,095,000 for tax year 2013 and \$1,275,000 for tax year 2014.

Allen's appraisal included all of the details for each vacant land sale and the method for extracting the adjustments from the market for both the residential and commercial zoning. The Tribunal finds that the Respondent's land values accurately reflect the proper zoning for the subject property.

Regarding the building value, there are differences between the specific square footage for various areas of the subject, as used by Mr. Allen and as testified to by Mr. Schroeder. The Tribunal finds that Respondent's sketch (R-3 at 37) and testimony is correct. Although Mr. Schroeder testified as to the square footage of the fitness area, pool, stretch, basketball and squash, square footage that equals 34,900 square feet, the Tribunal finds that he did not consider other areas. Allen's sketch includes the other areas that make up his 112,508 square feet such as administrative offices, the cost for 26,000 square feet of lower level with spa, massage, locker rooms and laundry, as well as racquetball, aerobics and entrances. Allen's breakdown of square footage is appropriate for use in the cost approach. Further, Allen used appropriate rates from MVS to value the various areas of the building, and these rates were more applicable and reliable than the rates utilized in Petitioner's cost approach.

Schroeder also testified (in rebuttal to Allen's use of FF&E deductions of \$521,467 and \$530,453 from the cost of the building) that the cost new of the personal property reported was

\$1,140,000 and \$1,137,289, respectively. The Tribunal finds that Allen's use of the depreciated FF&E, rather than the cost new, is appropriate.

In contrast to Respondent's cost approach, the Tribunal finds the following issues with Petitioner's cost approach:

Petitioner separated the costs into four categories of function: tennis courts, basement, mezzanines, and concession/first aid. This leaves no consideration for a large area of newer renovation that was either undervalued or not valued at all.

Petitioner's cost approach utilized both a local multiplier and a Comparative Cost Multiplier. P-10 at 310 states "Since historical costs are already local in nature, do not use the Local Multipliers with these figures." The historical costs used are the original cost of construction, as opposed to the calculated replacement costs. Petitioner's application of the .958 Comparative Cost Multiplier, for the four categories above, underestimates the cost. Despite the various uses of the building, Petitioner valued all of the subject property's 178,868 square feet as a tennis barn at a base rate from MVS of \$69.12 per square foot. Petitioner did not consider any additional cost/value of the fitness area, rehab center, basketball courts, indoor pool, squash or racquetball courts.

Petitioner's work file contains the MVS pages that were used in the cost approach. However, Petitioner's calculations (P-2 at 63) for tax years 2013 and 2014 are the same, with the exception for Current Cost and Comparative Cost Multipliers. The 2013 calculations are incorrect. Petitioner's appraisal lacked detail and specificity to assist a reader in following the report without relying upon the appraiser's work file (P-10, 697 pages). Tomlinson's work file contained some of the information that Tomlinson should have included in his appraisal. In addition, the work file assisted the Tribunal in finding that the wrong MVS pages were used to cost the subject property for tax year 2013. The overall credibility of Tomlinson is tainted due to errors and reliance on the work file as the appraisal lacked information that is customarily found in the reports relied upon by the Tribunal.

The Tribunal finds that Respondent's Cost Approach is the best evidence of the true cash value of the subject property. The appropriate curable and incurable depreciation was considered by Allen. The report clearly explains in detail the calculation for adjustments. The report contained sufficient information to lead the reader to the same conclusion as the appraiser. The tangible and intangible personal property are deducted from the cost approach and rounded.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the true cash value of the subject property is \$5,800,000 as of December 31, 2012, and \$5,500,000 as of December 31, 2013.

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

#### JUDGMENT

IT IS ORDERED that the property's state equalized and taxable values for the tax years 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 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 June 30, 2015, 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: March 10, 2015