

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

Sunnybrook Golf Bowl & Motel, Inc.,
Petitioner,

v

MTT Docket No. 455797

City of Sterling Heights,
Respondents.

Tribunal Judge Presiding
Victoria L. Enyart

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Sunnybrook Golf Bowl & Motel, Inc., ("Sunnybrook") appeals ad valorem property tax assessments levied by Respondent, City of Sterling Heights, against Parcel Nos. 50-10-16-401-005-000 (real property) and 50-10-16-401-005-001 (personal property) for the 2013 and 2014 tax years. Peter Ellenson, Attorney, represented Petitioner and Linda McGrail Belau represented Respondent.

A hearing on this matter was held on September 21 and 23, 2015. Petitioner's witnesses were Michael Rende, MAI, and Randall Shank, owner. Respondent's witness was Dwayne McLachlan, Assessor (MMAO 4).

Upon the commencement of the hearing, Petitioner requested that its appeal relative to the assessments of its personal property be withdrawn and Respondent had no objection to the request, as neither party had appraised the personal property. As such, good cause was shown to justify the granting of Petitioner's request and the dismissal of those assessments.

The subject property, zoned M-1 and M-2 Industrial, is a 27-hole, public golf course, a 106,790 square foot property of which 68,792 square feet contains a 58-lane bowling center, banquet room for 275, golfers' bar and restaurant, and pro shop, with an attached 3-story 37,998 square foot motel with 68 habitable rooms on the upper two floors, a couple of storage buildings on 142.36 acres. It is located at 7191 17 Mile Road, Sterling Heights, Macomb County.

The subject property has a letter of intent to purchase dated April 2015, for \$10.8 million¹ Respondent argues that this proposed sale, which was not closed as of the September 21, 2015 hearing for tax years ending December 31, 2012, and December 31, 2013, for tax years 2013 and 2014, influences the highest and best use of the subject property as well as the market value. Petitioner's valuation report is dated September 25, 2014. The Tribunal's determination of the final valuation must hinge upon the determination of the highest and best use based upon the evidence timely exchanged, and the influence of the future sale of the subject is relevant in determining the highest and best use, as well as the determination of true cash value.

The parties' contentions are as follows:²

Parcel No. 50-10-16-401-005-000

	Petitioner			Respondent		
Year	TCV	SEV	TV	TCV	SEV	TV
2013	\$2,200,000	\$1,100,000	\$1,100,000	\$5,881,600	\$2,940,800	\$2,940,800
2014	\$2,300,000	\$1,150,000	\$1,150,000	\$5,636,400	\$2,818,200	\$2,818,200

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")³ of the subject properties for the 2013 and 2014 tax years are as follows:

Parcel No. 50-10-16-401-005-000

Year	TCV	SEV	TV
2013	\$8,800,000	\$4,400,000	\$4,400,000
2014	\$8,700,000	\$4,350,000	\$4,350,000

PETITIONER'S CONTENTIONS

Petitioner contends that the highest and best use of the subject property is as a daily fee public golf course, bowling alley and motel for the tax years at issue. The subject property is over assessed, based upon an appraisal prepared by its expert witness.

PETITIONER'S ADMITTED EXHIBITS

P-1 Appraisal by Michael Rende, MAI.

P-2 Poker Room analysis.

¹ See Exhibit R-3

² TCV true cash value, SEV state equalized value, TV taxable value based on Board of Review final values.

³ The taxable value is increased above the Consumer Price Index for the tax years at issue due to omitted property.

PETITIONER'S WITNESSES

Michael Rende, MAI, was admitted as an expert, which allowed him to opine on various topics including Respondent's records. Rende has appraised, over the last ten years, 50 golf courses, eight bowling centers, but no motels.

Rende testified that the pending offer to purchase in April 2015, was not a consideration, as it had not occurred as of the September 25, 2014 appraisal date. The pending offer was 2.5 years after the first tax date, and would not have occurred at the time of the appraisal. He was not aware of the pending offer until he spoke to Petitioner approximately a week prior to trial.⁴ At the time of the appraisal report, there was no interest in redevelopment of the subject. The local market was still in a state of chaos and there was not a market for the subject property as of the tax dates at issue, December 31, 2012 and December 31, 2013.

Rende prepared an appraisal that determined the market value of the fee-simple interest of the subject property. The appraisal considered all three approaches to value: cost, market, and income. The cost approach was not used due to obsolescence, age of the subject property, and market conditions. These types of mixed use properties are not traded based upon the cost to construct. The income approach was considered because of the revenue potential for the various business entities. Rende also considered the sales comparison approach. Both the income and sales comparison approach utilized each individual "profit center" to determine the value of the golf course, motel, and bowling center.

Rende testified that the westerly 120 acre portion of the subject is zoned heavy industrial with the easterly 42.36 acres zoned M-1, light industrial. The highest and best use was described as the use to which a property would be utilized that would provide for the highest return on invested dollars or the highest value. The four factors to consider include physical capabilities, legal capabilities, financial feasibility, and maximally productive.⁵ Rende considered the existing use, which was grandfathered in, as well as the actual zoning for the underlying site. Maximally productive considered the value of the subject as if it were vacant and available for development. Land value was found to be \$1,825,000 and \$1,925,000 respectively. The final value for the

⁴ Tr. 1 at 64.

⁵ Tr. 1 at 26.

subject, as improved, is \$2.2 million and \$2.3 million. The current improvements exceed the value of the land as if vacant.

Rende discussed that since the 2006 collapse of the commercial real estate market, there is an excess inventory of existing buildings and a lack of demand for vacant land regardless of the zoning. He estimated the loss in value ranged from 40-80%. CoStar was searched for vacant land sales with only ten sales that exceed 25 acres, with the largest at 99 acres. The sale prices ranged from \$.07 to \$.69 per square foot (\$3,049 to \$30,056 per acre). Rende opined that the lack of sales was not due to limited availability, but absence of demand to develop the properties.

Rende's parameters for vacant properties include properties sold from March 2011 to April 2014, and 10 acres minimum in size. Fifteen sales were found. However, six of the sales were REO, where the seller was a financial institution. The sales were narrowed to six in excess of 20 acres.⁶ The sales are:

Sale No.	Location	Sale Date	Sale Price	Acres	Sale per Acre	Sale price/SF	Condition
1	Shelby	Mar-11	\$400,000	34.21	\$11,692.49	\$0.27	REO
5	Romulus	Mar-12	\$540,000	30.86	\$17,498.38	\$0.40	Market
6	Romulus	Aug-12	\$325,000	90.00	\$3,611.11	\$0.08	Market
7	Chesterfield	Aug-12	\$510,000	94.49	\$5,397.40	\$0.12	REO
10	Wixom	May-13	\$525,000	46.69	\$11,244.38	\$0.58	Market
15	Shelby	Apr-14	\$140,000	44.71	\$3,131.29	\$0.07	REO

The sales were adjusted for differences in condition. Sales 1, 7, and 10 were bank-owned that were sold at a discount; Rende adjusted them +33%. Sale 5 was adjusted -5% because it is the only rectangular-shaped parcel. The subject's 142.36 acre parcel is much larger than the sales. As the size of a property increases, the price typically decreases. The sales were adjusted a negative 5-10%. Modest adjustments were made for frontages, freeway exposure, and rail line. After adjustments, the sales range from \$.07 to \$.23 per square foot. Rende explained that after 2011, prices in land began to stabilize. Rende lamented that the absence of sales of large parcels makes the final value difficult. The subject is a desirable location within an intensely developed industrial corridor. Because of the highly desirable location, Rende placed its value above the

⁶ P-1 p 154.

high end of the sale range, at \$0.35 per square foot, or \$15,246 per acre. This results in a final estimate for the land, as if vacant, at \$2,175,000, as of December 31, 2012. Rende determined that a nominal 5% increase in value would account for the increase in market conditions. This results in a value of \$2,275,000, as of December 31, 2013, for the 142.36 acres of land if vacant. Deducting the cost of razing the existing buildings was the last step, to result in a final land value, as if vacant. The \$3.00 per square foot was taken from Marshall Valuation Services. The demolition cost of \$350,000 for both years at issue was deducted, resulting in the final land value, as if vacant, at \$1,825,000 which is \$12,820 per acre, or \$0.29 per square foot for tax year 2013, and \$1,925,000 or \$13,522 per acre, \$0.31 per square foot for tax year 2014. Rende described the subject's neighborhood as stable and desirable. The area is characterized primarily by industrial properties with significant commercial development along Van Dyke Avenue, with residential properties east of Van Dyke Avenue and west of Mound Road.

The highest and best use determination by Rende for the subject property, as vacant, was to hold it for future re-development. The large land size contributes to the overall determination to hold the subject's 142.36 acres until it is financially feasible to redevelop the property. Rende also determined that the highest and best use of the subject, as improved, should continue as the current uses were grandfathered in for zoning. Further, Rende stated that "[t]he level of income being generated is sufficient so as to provide an adequate rate of return to a prospective purchaser rendering its current use financially feasible."⁷ Rende concluded that the maximally productive use of the subject is continued use as a 27-hole daily fee golf course, 58-lane bowling center, and a 68-room motel.

The multi-use property was appraised based on the individual "profit" centers. The golf course, bowling alley, banquet room, golfers' bar/restaurant and pro shop, as well as the 68-room motel and several storage buildings make up the subject property. The 142.36 acres, as vacant, were analyzed and Rende determined that the highest and best use is as improved, not as vacant and available for development. The value, as improved, exceeds the value of the vacant land.

⁷ P-1 at 67.

Income Approach

The income approach converts anticipated benefits to be derived from the ownership of property into a value estimate. The estimated market-based income is discounted to a present value by capitalizing net operating income into value using a market derived overall capitalization rate. Rende divided the subject property into its three profit centers, considering actual and market income and expenses, and then capitalized the net operating income from all three profit centers to determine market value based on the income.

The golf course was the first profit center discussed in Rende's income approach. He noted that the increased supply of golf courses and an indication of fewer golfers, as well as a declining participation rate, has led to many courses being foreclosed, indicating that the market for golf courses is saturated. The downward trend has continued from 2000 to 2013. Membership in private clubs declined, and many courses are experiencing financial trouble. Rende outlined several private courses that were foreclosed or converted to a semi-private club. The income is insufficient for the clubs to sell at a higher price. The population of the state has not increased. Overall, the golf industry in Michigan has not seen an increase in golfers, nor in income, nor rounds played.

The subject property has the following 9 to 18-hole round starts: 2011, 40,000; 2012, 35,000; 2013, 35,000 and 2014, 30,000. The subject has, within a 10-mile radius, 23 golf courses, encompassing 459 holes. Rende determined the 10-mile radius to be the primary market. However, within that radius, older communities are less affluent and its residents not likely to spend discretionary income for golf. The subject's actual rounds are substantially less than the 96,650 average rounds per golfer in the subject's market. Rende noted that within a four-mile radius, the subject competes with two 18-hole courses and a 54-hole public course (Sanctuary Lake). The following courses were utilized for the average rounds, rates, and located within a ten-mile radius:

Course	Holes	Yards	WD-18	WE-18	
Subject	27	6,350	\$30	\$40	1960 Older
Plum Brook, Sterling Hts.	18	6,273		\$43	1920, old small clubhouse, no practice range.

Crackleywood, Macomb	18	3,556	\$35	\$40	Large club house
Rackham, Huntington Woods	18	6,555	\$39	\$49	1923 limited clubhouse
Maple Lane, Sterling Hts.	54	6,066	\$36	\$38	Old clubhouse, no practice range.
Sanctuary Lake, Troy	18	6,554	\$45	\$53	Links on 190 acres, small clubhouse.
St Clair Shores, St. Clair Shores.	18	6,015	\$37	\$41	1975 clubhouse with practice range.

The rates displayed above are “rack rates” (the maximum rate during prime time). The rates do not include discounts for seniors, youth, twilight play or leagues. There is also a difference between weekday and weekend play, with weekend at a premium. The golf course rates shown above, within a 10-mile radius, are for 18-hole equivalent rounds, during weekdays and weekends.

Rende explained that golf courses all have discounted rates. Rende then went through each projection that was considered, which included actual revenue, as compared with market revenue and expenses, for a final projected 18-hole equivalent at 27,000 rounds, with 40% 9-hole and 60% 18-hole. The stabilized revenue is \$19.50 per 9-hole, and \$23.40 for 18-hole rounds. The revenue is \$737,100 and \$700,233 for the tax years at issue, respectively. The revenue for the golf course includes the amount per round spent at the pro shop, and on food and beverage.

Expenses for the golf course includes a deduction of \$144,450 for the cost of goods: \$36,450 for the pro shop (90%), and \$108,000 for food and beverage (40%). The operating expenses for golf are \$917,881. This results in a loss of \$14,000 for the 2013 tax year, and a loss of \$22,707 for tax year 2014.

The same analysis was performed to determine the income and expenses for the bowling center. Bowling also has seen a downtrend in participants and is in a stabilized mode in the area. Rende opined that the subject, with 58 lanes and given its proper management, is positioned to continue to operate in a stabilized mode. The subject indicates a slight increase in revenues for 2013. Rende considered the revenue from eight bowling centers to determine the proper revenue for the subject. The revenue was broken into revenue per lane. The subject’s actual revenues per lane fell to the low end of typical revenues by other bowling establishments. Rende added food and beverage to the gross income. The total revenue for both bowling and bar/restaurant sales is

\$1,083,000 and \$1,154,250 for the two years at issue. The bowling revenues were offset with expenses. Rende used seven bowling centers to determine a range of expense ratios (including cost of goods sold) of 83.1% to 105.5%. Rende found that the typical operating expense rate is 90%. The gross income, (\$1,083,000 and \$1,154,250), is multiplied by 90% which resulted in \$974,700 and \$1,038,820, deducted from gross income, resulting in net operating income of \$108,300 and \$115,430 respectively.

The third revenue source is the 68-room motel. The rental rate is \$39 per night and has been unchanged for many years. The actual occupancy for the past four years is 40%. The 2013 year saw a slight improvement. The actual revenue for 2012 is \$387,192; 2013 is \$428,000.

Rende used expense ratios from five limited-service motels.⁸ The expenses, some of which included franchise fees, were considered on an average percentage basis which resulted in 73%. The ratio was applied to the subject's revenue. Although property taxes of 5% to 7.8% were included in the expenses, Rende deducted 6%, resulting in adjustment of \$23,232 and \$25,680 for the subject property.

The ProForma Income and Expenses for the subject in its entirety as of December 31, 2012 are:

Golf Course Revenue (green fee, tournament, carts)		\$737,100
Pro Shop	\$1.50/Round	\$40,500
Food/Beverage/Golf	\$10/Round	\$270,000
Bowling		\$760,000
Food/Beverage/Bowl	42.50%	\$323,000
Motel Revenue		\$387,192
Gross Revenue		\$2,517,792
Cost of Goods		
90% Pro shop		-\$36,450
40% Food & Bev		-\$108,000
Adjusted Gross Revenue		\$2,373,342
Expenses		
Golf		-\$917,881
Bowling		-\$974,700
Motel Expenses		-\$382,650

⁸ The five sales were also used in the sales comparison approach.

Total Expenses Exc. Taxes		-\$2,024,761
Net Operating Income		\$348,581

Rende then selected the overall capitalization rate to apply to the income.

RealtyRates.com, Investor's Survey, was considered for the golf, lodging and special purpose properties. The Band of Investment Method was considered; special purpose properties were also appropriate. The National Golf Foundation published in its March 2013 newsletter "Dashboard" a survey that referenced the current cap rates averaging 11.1%, which have been flat since 2010. It continues to state that "most investors still focused returns on recent historical performance rather than "pro forma" or potential performance."⁹

The band of investment was utilized by Rende. It is described as:

The band of investment theory assumes that a composite rate of return can be computed by developing a weighted average of all the different rates applied to the various sources of capital in a typical real estate venture. The bank of investment concept is employed to make a simple blend of mortgage interest and equity yield rates. The rate of return required by each claimant is weighed by the proportion of the total property investment represented by that claim. The result of each calculation indicates the rate of return on the entire property investment required to meet the claim of that component. The individual weighted rates are then summed to obtain the overall rate that the entire property must earn to cover the individual claims against annual net operating income.¹⁰

Rende formulated value for the subject based on a 7% mortgage, with a loan to value ratio at 65% and a 15-year amortization. The return on cash was 15%. The same estimates were used for both tax years.

The calculation for both tax years is:

	Loan to Value		Cash Flow Rate	Weighted Rate
Mortgage Component	65%	X	10.79%	0.0701
Equity Component	35%	X	15.00%	0.0525
Rounded				12.25%

⁹ P-1 at 124.

¹⁰ P-1 at 122.

The effective tax rate (50% of the millage rate) is added for a tax neutral position. The tax neutral overall rate is 14.808% for December 31, 2012, and 14.955% for December 31, 2013. In dividing net operating income (“NOI”) by the overall capitalization rate, the result is \$2,350,000 and \$2,400,000 respectively for 2013 and 2014. However, the last portion of the income approach is to deduct the value of the going concern or the market value of the personal property. Rende doubled the personal property on the assessment roll \$480,050 and \$449,002 for the two tax years at issue. This results in a true cash value of \$1,875,000 as of December 31, 2012, and \$1,950,000 as of December 31, 2013, based on the income approach.

Rende did not include the income from the poker room in the appraisal. This is a second floor space, over the pro shop and golfers bar. It does have a separate entrance. P-2 was prepared to assist the reader in visualizing his testimony. Rende testified that he revisited the revenue for the 3,495 square foot room that was rented for \$36,000 annually. The utilities, taxes, and maintenance were deducted on a per square foot basis for a \$5.61 net operating income for the 3,495 square foot area. The concluded value by the income approach would go up slightly and would not increase the sales comparison approach, so an estimated overall final conclusion in the income approach may increase by \$75,000 to \$100,000. The poker room revenue increases Rende’s income approach to \$1,975,000 as of December 31, 2012, and \$2,150,000 as of December 31, 2013.

Sales Comparison Approach

The sales comparison approach is based on the principle of substitution which states that no buyer would expect to pay more for a property than the price at which an equally desirable substitute property can be acquired for in the open market.¹¹ The sales comparison approach was considered. However, serious limitations were noted for the subject property, due to the adequate number of “comparable” sales. It was considered a secondary approach.

Rende separated the sales comparison approach by profit center. There were no truly “comparable” sales of a multi-use property. The golf course sales were discussed first.

¹¹ P-1 at 127.

Rende explained that in the last ten years, the golf industry in Southeast Michigan has suffered and paralleled the national golf industry. Golf courses were overbuilt and the participants declined; then the 2008 economy crash did not help with a recovery. Private country clubs are turning to a combination of dropping initiation dues, using special assessment levies on existing members, and/or allowing some public play to generate additional income.

The resale of courses was considered in determining that the market value of golf courses has declined. Golf courses are struggling for increased revenue and decreased expenses. Many discounts are noted from the “rack” rate, or maximum rate, during prime time for 18-holes of golf with a cart.

The sales comparison approach is weighted in Rende’s analysis as a check on the income approach. He said he stays informed regarding sales of golf courses and requests the financial data to determine if the sale was profitable when it was listed for sale. Sales in the general range of \$20,000 to \$25,000 per hole are considered at the low end of profitability. He summarized twenty-six sales of golf courses that took place from 2000 to 2013. The range of sale prices (per hole) varied greatly from \$27,500 to \$333,333. The sales that took place after March 2007 were considered and found that they decreased in excess of 67%. Three of the sales also resold, indicating a decline in excess of 50%.

Four of the 2009 sales were noted, as two were country clubs. Washtenaw Country Club sold for \$1,000,000, which included all of the furniture, fixtures, deposits, leases, liquor license, etc. The purchaser owns another golf course in the area. After a reduction in membership and exposure to the market, the bank accepted the offer of \$1,000,000. The second sale was the venerable Flushing Valley Country Club which sold on December 31, 2009 for \$600,000. The bank held a loan in excess of \$2,000,000. Whispering Pines Golf Course sold in January of 2009 for \$495,000. The purchaser stated that it was not a foreclosure. The fourth 2009 sale is the former Grand Blanc Country Club. The 36-hole sold for \$2,755,000, April 2009. This was a REO, and included the 24,000 square foot clubhouse, multiple maintenance buildings and two single family residences. The 2009 sales mirror the national trend in the golf industry. Several examples were given in the appraisal that indicated losses in value that the golf industry has experienced.

The most notable sale is Northville Hills Golf Course, which sold in January, 2012 for \$3,650,000 or \$222,778 per hole. It is much newer; an upscale Arnold Palmer course. This sale would not be comparable to the subject, and Rende excluded it. Rende found that the range of sales is from \$27,778 to \$55,000 per hole. He opined that the subject would be at the lower end of the range due to its limitations for banquet/outing capabilities, and 27-holes. The final value of \$30,000 per hole was found to be appropriate for 27 holes, or \$810,000 for 2013. The 2014 tax year was adjusted a negative 5% to \$770,000. Rende noted that the value of the going concern for all of the profit centers contains personal property, which will be deducted at the final analysis.

The sales for the 58-lane bowling center were researched. Rende utilized fourteen sales from 2008 to 2013. The sale prices per lane ranged from \$29,125 to \$59,167. Four of the sales were 40-lanes, the remainder were 24 to 32 lanes. Rende noted that the sales included equipment and business. The sale prices, based on gross income, produced a gross income multiplier. Rende then created a graph of revenue by lane, gross income multiplier by date, to show the relationship of revenue and sale price per lane. The higher revenue resulted in a higher sale price per lane. The subject's gross income gives a value indication of \$20,000 to \$25,000 per lane, but the trend line for gross income multipliers between 2007 and 2013 indicates a decline. The range of gross income multipliers ("GIM"s) is 1.25 to 1.55. Rende found the subject is an established bowling center and has been well managed, but is negatively impacted by its larger size.

Rende multiplied the subject's gross income (\$1,083,000 for 2013 and \$1,154,250 for 2014) by the 1.25 GIM for both years at issue. The indicated value for the bowling center is \$1,350,000 (\$23,341 per lane) as of December 31, 2012, and \$1,450,000 (\$24,876 per lane) as of December 31, 2013. The personal property was not excluded.

The 68-room motel was the subject of the last sales comparison approach. Five sales of motel facilities that are considered similar to the subject were used to determine the value of the motel's profit center. Rende noted that the preferred method of adjusting sales to the subject is through the use of paired sales. However, when the pool of sales is limited, the appraiser

exercised judgment and general market trends. This market is not refined sufficiently to extract dollar or percentage adjustments. The five sales are:

No.	Location	Sale Date	Sale Price	# Rooms	Year Built	Price/Room
Subject	Sterling Heights			68	1962	
1	Red Roof, Southfield	Jun-12	\$1,950,000	113	1986	\$17,256
2	Comfort Suites, Warren	Oct-12	\$1,600,000	65	1999	\$24,615
3	7454 Convention, Warren	Sep-13	\$1,900,000	115	1988	\$16,522
4	La Quinta, Warren	Sep-13	\$2,310,000	97	1987	\$23,814
5	Microtel Inn, Roseville	Nov-13	\$1,700,000	97	1997	\$17,526

Rende considered the subject to be in an inferior location. The sales were all adjusted negatively for their better location, with Sale 2 adjusted 20%; the remainder of the sales were adjusted 10%. The sales (except Sale 2) were adjusted 5% for more rooms than the subject as larger properties generally command a lower sale price per room. The characteristics, or design and finish, were considered next. All of the sales were larger rooms with desirable common areas, which is lacking in the subject; they were adjusted a negative 10%. The subject is much older than the sales, again requiring an across the board adjustment of minus 10% for the age and condition of the sales. Sales 3 and 5 both contain pools, and were considered superior with a negative 10% adjustment.

The gross adjustments for the sales for Comparables 1 through 5 are 35%, 40%, 45%, 35%, and 45%. The adjusted sale prices per room ranged from \$10,739 to \$18,461. Sale 2 and 4 set the upper limits and were considered “significantly superior.”¹² When the two properties are taken out of the range, the range narrows to \$10,739 to \$14,557 per room. Rende selected \$12,500 per room, which is at the lower half of the sales for the subject’s 68 rooms. The value indication for the subject is \$850,000 as of December 31, 2012. The revenues for the subject increased 10% for the second date; however, sales did not indicate an increase for the second year at issue. The value remains at \$850,000 for both years at issue.

Based on the sales for the individual profit centers, the values are:

	12/31/2012	12/31/2013
Golf	\$810,000	\$770,000

¹² P-1 at 142.

Bowling	\$1,350,000	\$1,450,000
Motel	\$850,000	\$850,000
Total	\$3,010,000	\$3,070,000

The total reflects the value of the real estate, and all of the furniture, fixtures, and equipment used for the subject property. The personal property, reflected at double the assessment, indicates \$480,000 and \$449,002 which is deducted to result in an indicated true cash value of \$2,525,000 as of December 31, 2012 and \$2,650,000 as of December 31, 2013.

Rende then reconciled the income and sales approaches. It was determined that neither approach was ideal, but both reached a reasonable conclusion. Rende selected the midpoint of the two approaches. Rende's final reconciled true cash value¹³ as of December 31, 2012 is \$2,300,000; as of December 31, 2013 is \$2,400,000.

Rende testified that he had a copy of the bank appraisal prepared by Dan Essa, MAI, at the time he was preparing (P-1). Rende testified that he was underwhelmed by Essa's appraisal. While he could not remember the specifics, he stated that Essa's appraisal concluded to \$7,900,000, based on a highest and best use as industrial vacant land. He reviewed the appraisal by Dan Essa, MAI, (which was not in evidence), and was able to answer questions. In his opinion, Rende thought that the sales were not comparable due to location and size of the sales.

Randall Shank, owner of the subject property, was Petitioner's next witness. Sunnybrook was his first client after graduating from college. He became the general manager in 1987, and has owned the subject uninterrupted since that time.

Shank testified that the subject property was not listed for sale. He received an unexpected call from a broker from Signature and Associates around the second or third week of March, 2015. A meeting was then set up with the purchaser, J.B. Donaldson. The offer was open for one week. A second letter of intent was signed agreeing to a \$10,800,000 sale price. The closing is scheduled for November 15, 2015.

Shank explained that he asked if the golf season, (which was booked), could finish before the closing. The bowling season was questionable. The closing had not taken place as of the date

¹³ Including the additional \$100,000 for the poker room.

of the hearing. Upon cross-examination, Shank further testified that the developers did not want the terms of the purchase agreement divulged as it would jeopardize the agreement. It was signed the last week in April. Due diligence, which included surveys and phase I and phase II environmental studies, expired August 15, 2015.

Shank also testified on cross that he also received a verbal offer from a residential developer, (Mancini), in 2009/2010 for \$4,000,000, but it did not go anywhere. He was also questioned in reference to a \$4.9 million dollar promissory note on behalf of Petitioner, for the subject property in October 2013.¹⁴ He testified that it was a refinancing of an older loan. It was unclear if an appraisal was performed for the bank regarding this loan. Shank testified that he sought refinancing in order to get a better rate from the bank.

RESPONDENTS' CONTENTION'S

Respondent contends that the subject property is under assessed based upon an April 2015 letter of intent to purchase the subject property for \$10,800,000.

RESPONDENT'S ADMITTED EXHIBITS

R-1 Respondent's Valuation Disclosure.

R-3 April 17, 2015, Letter of Intent to Purchase.

R-4 2010-2011 Financial Statements.

R-5 2011-2012 Financial Statements.

R-6 2012-2013 Financial Statement.

R-7 Rebuttal Document October 2013 Mortgage. (Under Advisement¹⁵).

RESPONDENT'S WITNESSES

Dwayne McLachlan, MMAO (IV) was Respondents' only witness. McLachlan has been the assessor for the last three years.

McLachlan testified that he is responsible for the property tax administration and inventory and appraising all property within the city. He was admitted as an expert in mass assessing and is allowed to testify to the valuation disclosures that he prepared.

McLachlan explained that the mass appraisal process in the city of Sterling Heights involves 47,000 parcels. Land value is developed as a foundation for the valuation of the physical improvements. The cost manual is then used to cost the improvements and trend the

¹⁴ R-7.

¹⁵ The Tribunal admits the Rebuttal Document in the final conclusions.

depreciated costs after the application of an economic condition factor. The factor relates the depreciated costs to market values. The land and improvement values are summed to determine an individual value for each parcel. He went through each individual page of R-1, explaining the information. R-1, page 5, contains the legal description for 142.36 acres, field inspection dates and explanations, and land value estimate for 11.84 acres at \$1,289,385 for tax year 2013. The next page is land improvements, cost for Bowling Center's 55,209 square feet with a depreciated cost of \$1,140,149. The bottom of page 6 is the cost for the Banquet/Restaurant/Pro Shop's 9,488 square feet, depreciated cost of \$447,571, and common wall deduct and canopy for an additional cost of \$271,241. The golf cart storage is found on R-1, page 7, for the 1,400 square foot area depreciated to \$20,779. The lower portion is a storage building with 1,960 square feet, depreciated cost of \$30,979. R-1, page 8, is the cost for the Motel with 37,998 square feet, depreciated to \$1,063,947. The lower half of the page is the 27 hole "Class II" golf course. The UIP 17, page 1 cost is \$71,250 per hole; the 27 holes result in a depreciated cost of \$2,482,599, and an economic condition factor of 0.60 is applied for a depreciated \$1,489,560 cost. Page 9 is the 2008 first and second floor additions with an elevator, for 3,495 square feet depreciated to \$266,048, and 600 square feet depreciated to \$43,267. The total \$4,326,240 true cash value for all of the improvements, \$1,289,385 land value, and \$271,241 land improvements are summed for the total true cash value of \$5,881,600, which results in the State Equalized Value and Taxable Values at \$2,940,800.

McLachlan went through the 2014 valuation report pages 11 through 16 which concluded to the true cash value of \$5,636,400, State Equalized Value and Taxable Values of \$2,818,200. The differences between the two tax years was attributable to the County Multiplier increasing from 1.45 to 1.49, Effective Age increasing one year, and the economic condition factor decreasing from .60 to .55. The land value remained at \$2.50 per square foot for 11.84 acres.

The buildings were sketched on R-1, page 17, and indicated the bowling alley, storage, pro shop, motel, and a retail building.

McLachlan included nine sales from 2012 to 2014 of vacant developmental tracts. They are as follows:

	LOCATION	COMMUNITY	SALE DATE	SALE PRICE	ACRES	SP/ACRE
1	Lakeside Blvd.	Shelby REO	Aug-13	\$80,000	23.42	\$34,159
2	Dequindre	Sterling Hts.	Feb-14	\$1,100,000	18.53	\$59,363

3	24 Mile Rd	Macomb	Nov-13	\$1,950,000	88.00	\$22,159
4	Crenshaw	Macomb REO	Apr-12	\$4,263,000	250.00	\$17,052
5	South Blvd.	Rochester Hills	Aug-12	\$1,000,000	19.23	\$52,002
6	Nine Mile	Farm Hills	Jul-12	\$848,000	30.46	\$27,840
7	W 12 Mile	Novi	Nov-12	\$1,250,000	64.00	\$19,531
8	Cyprus Ct	Lyon Twp	Apr-13	\$892,500	33.55	\$26,602
9	Plumbrook	Sterling Hts	DNC 2014	\$10,000,000	95.74	\$104,450
	Subject 17 Mile	Sterling Hts			141.84	

McLachlan testified to the details of the sales. Sale 1 was owned by a bank, listed as commercial property, but is being developed into multi-family. Sales 2 and 3 also sold for single family residential development. Sale 4 was the Wolverine Golf Course; it sold for single family residential, went back to the lender during the recession and the lender resold it in 2012. Sales 5, 6, and 7 sold for single family residential development. Sale 8 is further west from the subject, and also sold for single family residential. Sale 9 was a purchase agreement that did not close; it had some commercial components, retail, and multi-family housing. It was included to give him an idea of the activity in the marketplace for large tracts of land.

The average sale price per acre for the nine comparables is \$40,361. This indicates that the land for the subject should be \$5,723,385. Respondent noted this is slightly less than the 2013 true cash value and more than the 2014 true cash value of the subject property in its entirety. McLachlan testified that the sales were of larger tracts of land, not industrial, that were selling in the 2012/2013 time period. He stated that demand was heating up for larger tract properties.¹⁶

The last page of R-1 is an excerpt from Chapter 11, cost approach. The three principal steps in the cost approach are:

1. Valuing the land separately using market data.
2. Estimating the reproduction or replacement of the subject by building a substitute.
3. Estimating the depreciation of the subject from the time it was built to the date of the assessment.

McLachlan testified that the subject, at 142 acres, is one of the last major parcels of land within the city, zoned industrial. The subject has Ford Motor Company to the west, Chrysler Sterling Heights Assembly Plant to its south, and some ancillary industrial development to the

¹⁶ Tr. 2 at 114.

north. The entire corridor is made up of industrial-related property. Further testimony indicated that in 2012, Chrysler Corporation added 2 million square feet of production space.

When questioned about the proposed sale of the subject property, McLachlan opined that it is relevant to the value of the subject property for the tax years at issue. He explained that while the overall market was flat in 2012 and 2013, the industrial class increased 11% between 2014 and 2015. McLachlan testified that he has revised the assessments for 2015.¹⁷

When questioned how the land was valued McLachlan testified:

Well, the land value, as expressed by this valuation summary, is captured at the bottom of the page there, it shows 11.84 acres, and that value is for the primary activity center on the – on the subject property. There's about 11 and a half acres, almost 12 acres there where the buildings are located. And that incorporates that land calculation. The balance of the golf course is valued with the golf course on a per hole basis.

....

R-1, page 8:

Yeah. It's a unit in place item.

Q. And so it's Respondent's page 8 at the bottom half, that's where you're valuing the golf course?

A. Well, it should read class 2-low, rate is 71,250 per hole.

....

A. So we're all on the same page, it reads, "Unit in place items," toward the bottom of the page, "class 2-low."

Q. Okay.

A. The rate is \$71,250 per hole, the quantity is 27 holes, the county multiplier is applied for locational difference, and then depreciation - physical depreciation is applied.

Q. All right. Where in your valuation disclosure do you provide the sales study from which you reached the conclusion of \$71,250 per hole?

A. That's not a sales study, that's a unit cost from the Marshall & Swift Cost Manual.¹⁸

When questioned why nine sales of residential property and no industrial land sales were presented, McLachlan stated "Well, as had been testified to earlier, and I certainly would confirm that they were sparse and nonexistent."¹⁹ When questioned if the valuation disclosure contained a sales comparison approach, he responded "It does not."²⁰ When questioned if it

¹⁷ Tax year 2015 was severed and was not at issue, therefore, the witness was not allowed to testify to the 2015 tax year in detail.

¹⁸ Tr. 2 at 125,126.

¹⁹ Tr. 2 at 137.

²⁰ Tr. 2 at 142.

included an income approach, he responded "It does not. The sales comparison is developed though ECF as I previously testified."²¹

Q. And your testimony is that the ECF in your cost approach develops a sales approach?

A. It trends the depreciated costs to the marketplace, that's correct.²²

Respondent's true cash value remains the same as of December 31, 2012 at \$5,881,600 and December 31, 2013, at \$5,636,400.

FINDINGS OF FACT

1. The subject property is located at 7191 East 17 Mile Road, Sterling Heights, Macomb County.
2. The subject property is identified as Parcel Number 10-10-16-401-005-000.
3. The subject parcel has 141.84 acres.
4. The easterly 42.36 acres of the subject property is zoned light industrial, and the westerly 120 acres is zoned heavy industrial.
5. The current mixed use as a golf course, bowling center, and motel was grandfathered in as zoning changed.
6. Petitioner received an offer of \$4 Million in 2009/2010.
7. Petitioner signed a letter of intent to sell the property dated April 2015, for \$10.8 million.
8. Petitioner's appraiser determined that the highest and best use of the subject is as vacant to hold for industrial development; as improved, the current multi-use property.
9. Petitioner's appraiser considered all three approaches to value, and relied upon the income and sales comparison approaches.
10. Petitioner considered, but did not use, the cost approach due to the age of the subject property.
11. Petitioner's sales comparison approach did not adjust for differences in amenities, due to the variety of differences. The unadjusted range of sales was considered appropriate.
12. Petitioner's use of a gross income multiplier is appropriate in the sales comparison approach.
13. Petitioner's income approach included an explanation for the differences in actual and market income in each profit center.
14. Petitioner's income approach included mathematical errors.
15. Petitioner erred in the calculation of gross income for the golf course.
16. Petitioner's selection of expenses were excessive for all three profit centers.
17. Petitioner's land value was below market value.
18. Respondent's assessor failed to perform a highest and best use analysis.
19. Respondent's assessor applied a mass assessment cost approach to value the improvements.
20. Respondent did not prepare a sales comparison approach or an income approach.
21. Respondent utilized sales of vacant residential land to indicate the activity in the marketplace for large tracts of land.

²¹ Tr. 2 at 142.

²² Tr. 2 at 142, 143.

22. Respondent's cost approach omitted land for 130.52 acres of the entire 142.36 acre parcel.
23. The true cash value of the omitted 130.52 acres is added to reach the conclusion of value for each tax year.

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.²³

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. . . .²⁴ 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.²⁵

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value' . . . are synonymous."²⁶

"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."²⁷ The Tribunal is not bound to accept either of the parties' theories of valuation.²⁸ "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."²⁹ 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."³⁰

²³ See MCL 211.27a.

²⁴ Const 1963, art 9, sec 3.

²⁵ MCL 211.27(1).

²⁶ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

²⁷ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

²⁸ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

²⁹ *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

³⁰ *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.³¹ The Tribunal's factual findings must be supported "by competent, material, and substantial evidence."³² "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence."³³

"The petitioner has the burden of proof in establishing the true cash value of the property."³⁴ "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."³⁵ 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."³⁶

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.³⁷ "The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading."³⁸ 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.³⁹

Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.⁴⁰

HIGHEST AND BEST USE OF THE SUBJECT PROPERTY

The highest and best use of the subject property is the key issue in this appeal that has to be resolved. Here, Petitioner determined the current use to be the highest and best use, even

³¹ MCL 205.735a(2).

³² *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

³³ *Jones & Laughlin Steel Corp*, *supra* at 352-353.

³⁴ MCL 205.737(3).

³⁵ *Jones & Laughlin Steel Corp*, *supra* at 354-355.

³⁶ MCL 205.737(3).

³⁷ *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).

³⁸ *Jones & Laughlin Steel Corp*, *supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

³⁹ *Antisdale*, *supra* at 277.

⁴⁰ See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

though its own analysis indicated that as vacant, the property should be held for further development. The use also conflicts with the property's industrial zoning, and is at odds with Respondent's determination of value trends for large parcels of vacant land. Rende's highest and best use is also at odds with the letter of intent signed in 2015. The true cash value of the vacant land and the true cash value of the current use, based on the party's evidence, is useful in determining the highest and best use based on the four criteria.⁴¹ 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."⁴²

In addition to being reasonably probable, the highest and best use must meet four implicit criteria.⁴³

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. Petitioner determined that due to the economic downturn, the physically possible and legally permissible highest and best use of the subject property as vacant is industrial, as zoned. The financial feasibility of redevelopment was considered. However, due to excessive vacancies in the industrial market, an oversupply of existing industrial buildings, and declining rents made the demand for the subject's industrial zoning non-existent as of the tax dates at issue. Accordingly, Rende did not consider the subject as financially feasible for redevelopment. He concluded that the permitted uses and economic conditions for the tax years at issue for the vacant land is to remain unimproved for future development.

The highest and best use of the subject as improved was considered by Petitioner. The multi-use subject's continued use is legal, but non-conforming. A change in zoning is not likely, given the location which contains multiple, large industrial properties. The existing use,

⁴¹ The TCV of vacant land and TCV of the existing use has to be determined for the final highest and best use to be resolved.

⁴² Appraisal Institute, *The Appraisal of Real Estate* (Chicago: 14th ed, 2013) at 331.

⁴³ Id at 335.

however, continues to generate positive cash flow. Petitioner found that the continued multi-use is the highest and best use as improved.

The Tribunal finds that based on the zoning, land value and value as improved, the current use is an interim use, for 2013 and 2014. The subject property is the largest acreage parcel left in Sterling Heights zoned for industrial use. The subject's improvement as multi-use is more valuable, for the tax years at issue, than the vacant land. As vacant industrial land sales were sparse for the tax periods at issue, the Tribunal finds that the highest and best use is to continue the current multi-use until such time the economy improves.

MORTGAGE

Respondent's Exhibit 7 is a copy of the mortgage that was offered and admitted for rebuttal purposes, for the subject property from Huntington Bank, recorded November 5, 2013, for \$5,000,000. The owner testified that R-7 was the mortgage for the subject property.⁴⁴ Although the document cannot and was not considered for purposes of the property's true value, it raises questions regarding Petitioner's conclusions without some type of an appraisal determining that the property had a value that exceeded the loan.⁴⁵ Common sense dictates that Huntington Bank would not, in late 2013, lend Petitioner \$5,000,000 for the subject property without some type of assurances indicating that the property had a value that exceeded the loan. As such, R-7 cast's serious doubt as to the credibility of Petitioner's appraisal as that appraisal determined the market value as of December 31, 2012, and December 31, 2013, to be \$2,200,000 and \$2,300,000, which was less than half of its mortgage in the same 2013 time period. The separate parts, as utilized by Petitioner, do not equal the whole. In this instance, Rende took the lowest end of the range of comparable properties for Petitioner's sales and income approaches. Petitioner's calculations, and selection of higher expenses than justified, give this report of the subject property little credibility or weight. This leaves Petitioner's estimate of true cash value lacking.

Respondent's mass assessment cost approach and sales of vacant were considered. The cost approach is difficult when a property is new, but in an older multi-purpose property, it serves as a reference point. Respondent's true cash value on the assessment roll is in excess of the \$5,000,000 mortgage, however, a bank typically also does not lend 100% of value.

⁴⁴ Tr. 2 at 51.

⁴⁵ Tr. 2 at 80,83. Dan Essa, MAI, prepared an appraisal for \$7,900,000 for the subject property.

VACANT LAND

The Tribunal considers the value of the vacant land. First, determined by Petitioner's appraiser at \$2,175,000 and \$2,275,000 (\$15,278 per acre, \$0.35 per square foot & \$15,980 per acre, \$0.37 per square foot), for the tax years at issue. Respondent's record indicates \$108,900 per acre for the 11.84 acres that were assessed, and in addition, averaged nine sales at \$40,351 an acre. When Respondent was requested to remove sales outside of the tax dates at issue, and less than 30 acres, Respondent's land estimates decreased to \$22,637 per acre, \$3,222,603 in total. The range of the party's sale price is narrowed to \$15,278 per acre, \$0.35 per square foot to \$22,637 an acre, \$0.52 per square foot. The Tribunal agrees that smaller land acreage does not assist in the determination of the subject's land value, which is part of the highest and best use process.

The range of true cash value for the subject land, based on the sales in excess of 30 acres presented by both parties, is \$2,175,000 to \$3,222,603. The subject is located in a highly developed industrial corridor and would be highly valuable as the last of the large industrial parcels. Although sales of industrial property were not located by either party, they both opined that the available sales are an indication of the value of larger tracts of vacant land. The parties agreed that values increased in tax year 2014. Petitioner opined that 5% increase was estimated, the Tribunal agrees that an increase for tax year 2014 is appropriate.

Rende testified that “[my] contention is that as of both dates of value, the local industrial market was still in a state of chaos and that there simply wasn’t a market for this property.”⁴⁶ McLachlan testified “I certainly would confirm that industrial land sales were sparse and nonexistent.”⁴⁷ The Tribunal finds that the value of the underlying land is \$3,200,000, (\$22,478 per acre, \$0.52 per square foot) for tax year 2013 and \$3,360,000⁴⁸ (\$23,602 per acre, \$0.54 per square foot) for tax year 2014. The subject’s 142.36 acres in located in a highly desirable location in an industrial corridor, and is the last large industrial property, making it valuable.

In this case, the failure of Respondent to properly consider the underlying land value for the golf course resulted in an understatement of value for the subject. Respondent omitted 130.52 acres from its assessment.

⁴⁶ Tr.1 at 65.

⁴⁷ Tr. 2 at 137.

⁴⁸ 5% increase for tax year 2014.

DEMOLITION

The parties also disagreed on whether to add the demolition costs or subtract the demolition costs to the new owner.

A knowledgeable buyer considers expenditures that will have to be made upon purchase of a property because these costs affect the price the buyer agrees to pay. Such expenditures may include costs to cure deferred maintenance, costs to demolish and remove a portion of the improvements costs for additions or improvements to the property costs to petition for a zoning change, and costs to remediate environmental contamination.

An adjustment for expenditures made immediately after purchase is distinct from an adjustment for the physical condition of a property. The expenditures adjustment is included among transactional adjustments because it reflects those items that a buyer would have considered part of the price at the time of the sale. For example, a buyer bought a property that included a 6.75 acre site improved with a 122,000 square foot industrial building with many environmental problems. The buyer told the appraiser the cost of removing the building with the environmental problems was \$750,000. The sale price of the property was \$225,000. The appraiser is considering using this as a comparable land sale, but the buyer actually has \$975,000 (\$750,000 + \$225,000) invested in the property, not just the \$225,000 sale price.⁴⁹

The Tribunal finds that Petitioner, based on Marshall Valuation Services, appropriately deducted the cost of razing the existing buildings from the sale price as an expenditure immediately after purchase, as part of the purchase price. Petitioner's testimony concluded that a new purchaser would raze the buildings immediately after purchase. Petitioner's use of Marshall Valuation Services \$3.50 per square foot, or \$350,000 to raze the existing improvements, would be an appropriate deduction from the consideration of a sale price. However, the current purchase agreement for \$10,800,000 does not appear to have a deduction to raze the improvements; therefore; while this is found to be an appropriate appraisal technique, in this instance, it does not comport with the actual future transaction.

PETITIONER'S SALES COMPARISON APPROACH

The sales comparison approach included sales of similar properties for the three separate "profit" centers. The sales were insufficient to make market adjustments based on a "paired

⁴⁹ Appraisal Institute, The Appraisal of Real Estate (Chicago: 14th ed, 2013) at 412, 413.

sales analysis”⁵⁰ that is comparing sales with similar amenities to the subject for a dollar adjustment for differences. The profit centers were all individually discussed; the nonspecific issues that were similar in the sales for the golf, bowling and motel centers suffered from a “dearth of truly comparable market data”⁵¹ which was applicable to the entire property. The limitation of the sales approach, in this case, relates to the difficulties in finding properties that have sold and have some relationship to the value of the subject property. The three component operations individually, are difficult to find comparable sales that are appropriate for the tax years at issue, when the golf, bowling, and motel industries have been noted as declining. The separate discussion on each facet of the subject noted the decline in participants in golf and bowling, as well as the lack of demand for a lower echelon motel, particularly in the middle of an industrial corridor.

Petitioner has described the subject golf course as a low to mid-level venue with 27-holes. Petitioner’s appraiser had 26 sales ranging from 2000 to 2014. The January 2012 sale of Northville Hills Golf Course at \$200,000 per hole was considered, but excluded, as it is newer, higher quality, and not competitive with the subject property. Nine sales from the last few years were utilized by Petitioner’s appraiser with ranges in sale prices from \$27,778 to \$55,000 per hole. The poor performance of the local golf market indicated a subjective 5% reduction for 2014. Petitioner’s appraiser testified that it is difficult to adjust for the variables in location, number of holes, amenities, quality of the course and demographics.

Rende considered the range of sales that took place from March 2010 to March 2014, excluding Northville Hills Golf Course. After discussion of the sales, and narrowing the sales to a range, the lower end of the range was selected. The value of the golf portion of the subject was \$30,000 per hole, or \$810,000, and a 5% reduction for tax year 2014, for \$795,000.

The bowling center is described as well managed. The subject’s 58 lanes is larger than the sales of similar properties. Fourteen sales, which included the sale price and revenue per lane, allowed Petitioner’s appraiser the ability to calculate a Gross Income Multiplier (“GIM”). GIM is derived from sales of properties that were rented at the time of sale. The ratio of the sale price of a property to its known gross income is the GIM. The revenue per lane was compared with the

⁵⁰ P-1 at 140.

⁵¹ P-1 at 131.

subject's \$18,672 and \$19,901 per lane.⁵² The trend line, as graphed by Petitioner's appraiser, indicates a decline in GIM. The lower end of the range of 1.25 GIM was determined to be appropriate for the subject property. The GIM indicates that 125% of the income generated is the indicated market value. This is based on the relationship of income to sale price. Per Rende, the bowling industry, while more popular in southeast Michigan, continues to lack vigor as the economy has not recovered. A GIM multiplied by gross income is appropriate for a sales comparison approach. \$1,083,000 multiplied by 1.25 is \$1,350,000 (\$23,341 per lane) for tax year 2013 and \$1,154,250 multiplied by 1.25 is \$1,450,000 (\$24,876 per lane) for tax year 2014.

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."⁵³ 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.⁵⁴

The GRM was extracted in the Sales Comparison Approach. 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.⁵⁵

⁵² P-1 p 138.

⁵³ The Appraisal of Real Estate, *supra* at 507.

⁵⁴ Appraisal Institute, *Analysis and Valuation of Golf Courses and Country Clubs* (Chicago: 2005) at 144.

⁵⁵ The Appraisal of Real Estate, *Supra* at 63.

Five sales of small motels within close proximity to the subject were considered. The subject was constructed around 1962 with 68 rooms, renovated in 2003, no elevator for the 2nd and 3rd floor where the rooms are located. The five sales were all newer construction ranging from 65 to 115 rooms. The superior comparable sales (Sales 2 and 4) were excluded from the final range of sale prices per room. The range of sale prices was \$10,739 to \$14,557 per room. Given the subject's age, design, location, lack of elevator, and room rent, the lower end of the range is appropriate. The subject's unit rate is \$12,500, multiplied by the 68 rooms, for \$850,000. The market did not change for the subsequent year; therefore, \$850,000 is for both tax years at issue.

Petitioner's sales comparison approach lacked specificity, due to the lack of sales during the appropriate time period. The Gross Rent Multiplier is an appropriate method to use; however, the properties must have comparable income and the same highest and best use. Petitioner's appraiser lamented that the lack of sufficient sales to extract market adjustments was preferable, but used experience for some adjustments. The aggregate total of the sales approach is \$3,010,000 as of December 31, 2012, and \$3,070,000 as of December 32, 2013. The personal property (\$480,050 and \$449,002) is deducted to reflect the true cash value of the real estate only of \$2,525,000 and \$2,625,000 respectively.

The Tribunal finds that the golf sales indicate a value lower than the value of the land as if vacant. Rende's land value (after demolition costs) is \$12,820 an acre. The golf course is 130.52 acres at \$12,820⁵⁶ an acre, is \$1,673,266. It is unclear if Petitioner's sales were skimming the bottom of the pool to result in a value for the golf course at 50% of its land value. The value of the Golf Course is below the value of its vacant land. This indicates the extent to which the property is undervalued by Petitioner.

In light of the recent \$5,000,000 mortgage, the Tribunal finds that the adjusted sales for all three operations results in an unrealistic low value. Moreover, the sales data for the golf course, hotel and bowling operations are unreliable because of the lack of contemporary sales, overly subjective adjustments, and wide range of sale prices.

INCOME APPROACH

The income approach was also utilized by Petitioner for each individual profit center. The consideration for the golf course income included determining the amount of play, weekday

⁵⁶ Rende's land value P-1 at 157.

or weekend, and discounts for spring and fall, seniors, juniors and leagues. The determination of rounds is influenced by weather, competition, and the economy. Petitioner's appraiser provided the basis for each category of income and expenses that was detailed and utilized in his Pro Forma Income and Expense Statement.

The income for the golf course was based on actual income compared with other similar courses. The subject's 27-hole course is made up of three separate nine-holes. It is within a four mile radius of three other golf courses with 99-holes that compete with the subject. The subject's number of rounds (35,000 and 30,000)⁵⁷ are below the estimated for the area.⁵⁸ The outlook for the golf industry, coupled with the financial rescission, results in a lesser value for the golf course. This is a daily fee golf course; not a private country club. The actual rates for the subject have been the same for three years. The rates for 18-holes range from \$21 to \$30 with a cart.

Competing courses were surveyed for income and expenses; similar courses were considered. For every facet of the golf course, actual income and expenses were compared with other courses to determine the market. This resulted in the projected 18-hole equivalent rounds of 27,000 and 25,650, and the projected revenue. (The Tribunal notes that the actual rounds for the subject were 35,000 and 30,000). The resulting expenses were also explained in detail in Petitioner's appraisal. Total income for the golf, which included the pro shop and food, is \$1,047,600, with expenses of \$833,963, results in net operating income of \$213,637 and \$184,777 for tax year 2014.

Petitioner's 2013 value for the golf course is \$1,025,000; after deducting \$302,220 for personal property, the result is \$725,000 (\$40,277 per hole) for the real estate only. Petitioner reduced the 2013 value by 5% and deducted the 2013 personal property. However, in this instance, Petitioner's appraiser "although somewhat subjective[ly]"⁵⁹ reduces the 2013 value 5%. The Tribunal finds that the reduction in value does not comport with Petitioner's testimony that "[the] market hadn't improved significantly, but this is acknowledgment of the fact that there was at least some improvement."⁶⁰ The market has improved significantly after the recent dates of value.

⁵⁷ P-1 at 75.

⁵⁸ P-1 at 77.

⁵⁹ P-1 at 128.

⁶⁰ Tr.1 at 37.

Petitioner's appraiser's income for the golf was based on 27,000 rounds, with 40% (10,800) 9-holes at \$19.50 a round, and 60% (16,200) 18-holes at \$23.40 a round. However, P-1 at 111 indicated a gross revenue of \$737,100, which is found to be:

	2013	2014
Total 18-Hole Equivalent	27,000	25,650
9 hole	10,800	10,260
18 hole	16,200	13,650
\$19.50	\$210,600	\$200,070
\$23.40	\$379,080	\$319,410
Golf Course Revenue	\$589,680	\$519,480

The appraisal indicates that the actual rounds for the subject are below average,⁶¹ but determined that 27,000 and 25,650 rounds would be used for the income portion of the approach. The subject's actual rounds were 35,000 and 30,000, but Rende utilized an 18-hole equivalent that under represents the subject's below-average golf rounds. In addition, the mathematical error in calculating the percentage of rounds in Rende's appraisal, indicates a below-average result. The use of equivalent rounds of golf closer to the subject's actual would still reflect the below-average rounds.

The metro Detroit area is the nation's most active bowling market. The industry has stabilized.⁶² The subject's bowling center with 58 lanes is well managed and will benefit from the overall improvements in the industry. The actual revenues for the subject increased 6.3% from 2012 to 2013. Petitioner's eight income comps indicate a decrease in income. Petitioner estimated a 2.0% decline in revenues from \$773,783 to \$760,000 for 2013.⁶³ Petitioner's appraiser averaged revenue for four years to conclude to \$808,000 revenue. The food and beverage revenues, based on four bowling centers, were 42.5% of total revenues. This added \$323,000 and \$344,250 for food and beverage, for a total income of \$1,083,000 and \$1,154,250, respectively.

The bowling income and expenses were also considered by the Tribunal. The stabilized income is close to the subject's actual income. Rende's 90% expense ratios included property

⁶¹ P-1 at 77.

⁶² P-1 at 97.

⁶³ The Tribunal notes that actual income for 2012 was \$773,783 and increased to \$822,236 for 2013.

taxes. The Tribunal excludes the property taxes and the extreme ratios; the operating expenses for the subject property would be 80%.

The motel's 68 rooms are rented at \$39.00 per night with 40-43% occupancy. The actual income increased over 2012. Petitioner's gross income for 2012 was \$387,192, increasing to \$428,000 for 2013. Rende utilized five rental comps to determine occupancy; with averaged expenses at 73.3%.

The motel's income is appropriate for the subject property; however, the expense comps include franchise fees and property taxes. The expense ratios for the five properties, excluding the franchise fees and property taxes, result in a range of 53% to 82%. The range narrows from 53% to 67%, when the comparables that are close to the subject's 40% occupancy were selected. The expense ratio should reflect 60%.

The golf, bowling center and motel have positive net operating income based on Petitioner's income approach. The Tribunal finds that the low revenue for the golf course is not an indication that the highest and best use is the continued use of the subject, or the income and expenses are inappropriate, or an interim use. It is noted that the actual number of rounds played at the subject was higher than projected, bowling income was close to actual and the motel was slightly higher than the actual.

Petitioner's final reconciled true cash value is \$2,300,000 as of December 31, 2012, and \$2,400,000 as of December 31, 2013.

The Tribunal finds that the Petitioner's income approach reflects mathematical errors. The individual profit centers income and expenses and capitalization were combined, notwithstanding the errors, the difficulty to understand the combined income and expenses; it was cumbersome. The Tribunal finds Rende's income approach selected the high end of the expenses which results in an unrealistic low value that does not reflect the true cash value of the subject property as of the tax dates at issue. Out of the three profit center components that were given, the income is understated for golf; however, the expenses for all three were overstated. The net operating income is unsupported; at best, reaches a nominal value. This results in no validity for Petitioner's final reconciled value. Particularly, in the face of the \$5,000,000

mortgage⁶⁴ given to Petitioner, based on an appraisal that was not prepared by Rende, for Huntington Bank, in 2013.

The vacant land does not exceed the interim multi-use property. The difference as put forth by Petitioner indicates that the current use is at the end of its useful life; however, the value as improved, is close to the value as vacant. The Tribunal finds that the current use as a multi-purpose golf, bowling and motel is an interim use. This may be the reason why the sales and income approaches appear out of line for the subject property. The lack of industrial land sales factored into the Tribunal's determination that the highest and best use for the tax years at issue is an interim continued use.

RESPONDENT'S COST APPROACH

Respondent's valuation disclosure included the property records. Respondent has properly identified all of the subject's improvements, utilized the proper cost category, applied county multipliers, and with the exception of the 2008 addition to the clubhouse, has depreciated the improvements at 40% good for the improvements. The economic condition factor reduced the value an additional 60%. The indication that the improvements are at the end of their useful life has been taken into consideration with the depreciation and the economic condition factor. The cost approach with the exception of the omitted 130.52 acres, is accurate as testified to by Respondent.

Respondent's property description is for 142.36 acres, which was also testified to by both parties. However, only 11.84 acres was assessed by Respondent for the tax years at issue. When questioned, Respondent testified that the cost of the golf course land and land improvements was found in the Assessor's Manual, Unit in Place, Class II-low quality.⁶⁵ UIP17, Pg1, \$71,250 multiplied by 27 holes with the 1.45 County Multiplier, 89% good and an ECF of .6 totals a depreciated cost of \$1,489,560 for the 27-holes of the golf course. The Tribunal finds that the subject has "omitted" property as the 130.52 acres are not assessed or on the roll. Respondent's improper assumption that land is included in the cost manual is simply incorrect.

Characteristics of golf courses are described as:

Daily fee, 18-hole regulation courses are fairly standard in size, typically averaging 155 acres maintained as turf, of which 90 acres are irrigated. The remaining 40 acres are used for the clubhouse, parking lots, maintenance

⁶⁴ R-7.

⁶⁵ Tr. 2 at 127.

facilities, landscaping, other outdoor amenities, and access roads. Despite these standards, courses vary in size due to topography and layout. Some tight, core courses are as small as 125 acres, while rambling, single fairway courses can have as many as 200 acres.⁶⁶

“The first step of the cost approach is to estimate land value (discussed in Chapter 7). The second step is to estimate cost new.” “Vacant land is not reproducible, so an estimate of its value must be made from the sales prices of other parcels of land similar to the property being appraised.”⁶⁷

The proper beginning for any cost approach is to first determine the value of the vacant land. The next step is to identify any buildings, list the square footage, type of building, use, age, depreciation and applies the appropriate cost per square foot, with County Multiplier, depreciate the result, and apply the Economic Condition Factor. The subject property also has the majority of its value in “site improvements” as described in the cost manual as:

Included in the cost per hole are normal clearing of land, including incidental grading, complete irrigation and drainage systems, planting of trees in open land, greens, tees, fairways, service roads and cart paths, builder’s profit and overhead, financing during construction and architect’s fee for all items except structures.

Courses are grouped into price classifications, with a limited description of what the price includes. Courses may fit into one class by sheer length (5,500 to 7,000 yards) and another by gross area covered (100 to 170 acres) or by overall quality, in which case, interpolations may be made.⁶⁸

However, the cost manuals cannot anticipate what the land value for Sterling Heights should be per acre. The cost manual for a golf course gives the base costs for the land improvements; the result of which is the golf course. The \$71,250 per hole cost does not include land value which is site specific.

The Tribunal is charged with determining the correct valuation for the subject, including the value of the 130.52 acres, not included in the assessment.⁶⁹

MCL 211.34d(b)(i) states:

Omitted real property. As used in this subparagraph, “omitted real property” means previously existing tangible real property *not included in the assessment*. Omitted real property shall not increase taxable value as an addition unless the

⁶⁶ Appraisal Institute, *Analysis and Valuation of Golf Courses and Country Clubs* (Chicago:, 2003) at 72.

⁶⁷ State Tax Commission *Guide to Basic Assessing*, March 2013, at 34.

⁶⁸ State Tax Commission *Cost Manual* 2003, at UIP 17, page 1.

⁶⁹ See MCL 205.737(2), and *Jones & Laughlin Steel Corp*, *supra* at 348, 353.

assessing jurisdiction has a property record card or other documentation showing that the omitted real property was not previously included in the assessment. Emphasis added.

Here, the Tribunal has reviewed the property record cards submitted and finds that other than the 130.52 acres of land of omitted property, the property records reflect the multi-use of the older subject property as accurately as Petitioner's appraisal, fraught with errors, and tipping the value to the low end of the scale. Therefore, based on the party's sales of vacant land, the assessed and taxable value shall be increased to reflect the omitted 130.52 acres of land. The omitted 130.52 acres as of December 31, 2012, is \$22,478 per acre; an additional \$2,900,000 TCV, \$1,450,000 SEV and TV is added. The omitted 130.52 acres as of December 31, 2013, is \$23,602 per acre; an additional \$3,800,000 TCV, \$1,900,000 SEV and TV.

CONCLUSIONS

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Petitioner failed to prove the true cash value of the subject property should be reduced. Petitioner's appraisal was given no credibility as its value conclusion was 50% less than the 2013, \$5,000,000 mortgage for the same time period, lack of sales, and errors in the income approach, in addition, overstating expenses, as well as understating the golf income. The Tribunal notes that the true cash value on the assessment roll is \$5,881,600 and \$5,636,400, without the entire acreage on the assessment roll. Therefore, based on the evidence presented, the Tribunal finds that Petitioner's appraisal was given no credibility, which leaves the Tribunal with the property records, vacant land sales, and the mortgage. Respondent testified to the property records with the only noticeable error, the lack of assessing 130.52 acres of the entire 142.36 acres.

The property did not have the entire 142.36 acres of land assessed, based on the property record, valuation statement, and Respondent's testimony. The assessment record omitted 130.52 acres. The vacant land is added to the subject property record, increasing the true cash, state equalized and taxable values. The Tribunal finds that the true cash value on the assessment roll is rounded to \$8,800,000 as of December 31, 2012 and \$8,700,000 as of December 31, 2013. The Tribunal is charged with determining the true cash value of the subject property for the tax years at issue. The subject property's TCV, SEV, and TV for the tax years at issue are as stated

in the Introduction Section above. The Tribunal notes that the omitted property should have been corrected by Respondent prior to appearing at the Tribunal.

The Tribunal must determine the true cash value for the tax years at issue. Petitioner's appraisal considered the three approaches to value, but found the cost approach not applicable. Respondent's valuation disclosure, utilized the cost approach and sales for vacant land, but failed to assess 130.52 acres (golf course). The three approaches to value were discussed individually.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law, testimony and evidence presented, that Petitioner has not met the burden of proving the assessment is in excess of 50% of market value. Further, Respondent improperly omitted the golf courses' underlying 130.52 acres. The subject property's TCV, SEV, and TV for the tax years at issue are as stated in the Introduction section.

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 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, 2015, at the rate of 4.25%.

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

APPEAL RIGHTS

If you disagree with the Tribunal's final decision in this case, you may either file a motion for reconsideration with the Tribunal or a claim of appeal directly to the Michigan Court of Appeals ("MCOA").

A motion for reconsideration with the Tribunal must be filed, by mail or personal service, with the \$50.00 filing fee, within 21 days from the date of entry of this final decision.⁷⁰ A copy of a party's motion for reconsideration must be sent by mail or electronic service, if agreed upon by the parties, to the opposing party and proof must be submitted to the Tribunal that the motion for reconsideration was served on the opposing party.⁷¹ However, unless otherwise provided by the Tribunal, no response to the motion may be filed, and there is no oral argument.⁷²

A claim of appeal to the MCOA must be filed, with the appropriate entry fee, unless waived, within 21 days from the date of entry of this final decision.⁷³ If a claim of appeal is filed with the MCOA, the party filing such claim must also file a copy of that claim, or application for leave to appeal, with the Tribunal, along with the \$100.00 fee for the certification of the record on appeal.⁷⁴

By: Victoria L. Enyart

Entered: February 24, 2016

⁷⁰ See TTR 257 and TTR 217.

⁷¹ See TTR 225.

⁷² See TTR 257.

⁷³ See MCR 7.204.

⁷⁴ See TTR 213 and TTR 217.