

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

Golf Course Properties, LLC,
Petitioner,

v

MTT Docket No. 319618 and
324348

Township of Tyrone,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

Introduction

Petitioner, Golf Course Properties, LLC, appeals ad valorem property tax assessments levied by Respondent, Township of Tyrone, against the real property owned by Petitioner for the 2005, 2006, 2007, 2008, 2009, and 2010 tax years. Frederick Gordon, and Peter J. Ellenson, attorneys, appeared on behalf of Petitioner. Bruce Little, assessor, appeared on behalf of Respondent. Witnesses appeared on behalf of both parties. They include: Richard Osborn, and Michael Rende, MAI, for Petitioner; and Bruce Little, Certified Michigan Assessor Evaluator IV, for Respondent.

The proceedings were brought before this Tribunal on October 4, 2010, to resolve the real property dispute.

The Township of Tyrone has assessed the property on the tax roll at:

Parcel Number: 4704-08-101-075¹

Year	TCV*	SEV	TV
2005	\$6,702,500	\$3,351,250	\$3,254,216
2006	\$3,641,400	\$1,820,700	\$1,820,700
2007	\$3,788,400	\$1,894,200	\$1,888,065
2008	\$3,776,660	\$1,888,330	\$1,888,330
2009	\$3,313,800	\$1,656,900	\$1,656,900
2010	\$3,216,400	\$1,608,200	\$1,608,200

* TCV = true cash value; SEV = state equalized value; TV = taxable value

Petitioner's attorney believes that the values of the subject property are:

Parcel Number: 4704-08-101-075

Year	TCV	SEV	TV
2005	\$1,550,000	\$775,000	\$775,000
2006	\$1,550,000	\$775,000	\$775,000
2007	\$1,325,000	\$662,500	\$662,500
2008	\$1,225,000	\$612,500	\$612,500
2009	\$1,278,900	\$639,450	\$639,450
2010	\$1,325,000	\$662,500	\$662,500

The Tribunal finds the values shall be:

Parcel Number: 4704-08-101-075

Year	TCV	SEV	TV
2005	\$1,550,000	\$775,000	\$775,000
2006	\$1,550,000	\$775,000	\$775,000
2007	\$1,325,000	\$662,500	\$662,500
2008	\$1,225,000	\$612,500	\$612,500
2009	\$1,278,900	\$639,450	\$639,450
2010	\$1,325,000	\$662,500	\$662,500

Background and Introduction

At issue is the true cash value for subject golf course. The subject property consists of a one-story 8,902 square foot clubhouse, a public 18-hole golf course located on 233.3 acres, and some ancillary amenities. Petitioner filed an appraisal.

¹ For tax year 2005 the parcel number was 4704-08-101-073. It was split and a new parcel number assigned for the remaining tax years at issue.

Respondent's valuation disclosure, in the form of property record cards and calculations, indicates how the subject property was assessed.

Petitioner's Arguments

Petitioner believes that the true cash value of the subject property for the tax years at issue should be reduced based on Petitioner's appraisal.

Petitioner's admitted exhibits:

P-1 Appraisal.

Richard Osborn, sole owner, testified that in May 2004, he purchased the golf course from TCF Bank for \$3,650,000. The subject property includes 233 acres that have an elevation of 160 feet. The golf course is very hilly and rolling much akin to a northern Michigan course. Osborn expected 30,000 18-hole equivalents at \$78 a round. Actually, the number of rounds were 20,000 for 2006 and 2007, and 22,000 for 2008, 2009 and 2010. The price charged for seniors averages \$25; regular golf is \$45 during the week and \$55 on the weekends.

Osborn stated that his exit strategy was a choice that the community would purchase the golf course or a conglomerate would purchase the subject property.

Michael Rende, MAI, prepared an appraisal for tax years 2005, 2006, 2007, and 2008. Rende explained that the sales comparison approach has too many variables; therefore, he did not use it. He stated that each golf course is unique, and that the cost approach is not applicable because there is significant loss due to depreciation.

Rende testified that he found that the income approach was the most recognized accepted method for knowledgeable purchasers. Purchasers of income-producing property want to measure and quantify the benefits of the anticipated income using an income approach.

The steps that Rende took were to first identify potential revenue, then anticipated expenses are deducted, with the result being the net operating income. The net operating income is then capitalized into an indication of value.

Rende surveyed other golf courses and compared their green fees and compared them to the subject property. The courses were all similar in pricing to the subject property. Eighteen-hole equivalents were calculated to determine the number of rounds. The subject property is a premier golf course with a slope rating of 134. Typical or average golf courses slope ratings range from 110 to 155, thus, the subject's rating is significantly harder.

Rende indicated that the subject property is 233 acres with approximately 70 acres of regulated and unregulated wetlands. The undulating elevations vary up to 160 feet. The advertised rates were \$25 for seniors, \$50 weekdays and \$65 weekends. Rende determined the average revenue per round, the number of rounds, and gross revenue for green fee with cart.

2004	\$40.65	18,203 rounds ²	\$918,524
2005	\$37.84	24,276 rounds	\$918,524
2006	\$39.47	22,278 rounds	\$879,315

² 2004 was Petitioner's first partial year of ownership, and allocated same revenue as 2005.

2007	\$37.77	22,331 rounds	\$814,385
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Rende then calculated gross income including food, beverage, and pro shop. Expenses (2005 is used as an example) were then determined and deducted from the gross income. Expenses included: Utilities 5.25%, Payroll 32.5%, Maintenance Equipment \$40,515, Course Maintenance 12.5%, Administration 9.75%, Insurance 2.5%, Cart Expenses \$68,250. The actual expense for the subject property was compared with industry standards for market income and expenses.

Rende was questioned on the high expense ratio for the subject property and whether it was warranted. He stated:

Oh, yeah. It's a premier golf course. It's got 80-some sand traps, which are a nightmare to maintain and, you know, do what you need to do for a golf course. Not to mention rolling topography, which is another difficulty. I'm sorry. Tr. p 88.

Rende explained that he was able to extract some capitalization rates from sales of golf courses, as well as national indicators. National Golf Properties had a real estate investment trust and were buying golf courses at 9.75% capitalization rate in early 2000. Realtyrates.com has capitalization rates that range from 10.66% to 12.3%. Korpacz fourth quarter of 2008 had rates around 12.7%. He also utilized a band of investment that resulted in a 10.25% capitalization rate. Rende selected the higher end of the range at 10.5% and added the effective tax rate for an overall rate of 12.3481% for December 31, 2004. Rende concluded that the 2005 true cash value is \$1,550,000 (\$86,111 per hole), 2006 is the same \$1,550,000 (\$86,111 per hole), 2007 is \$1,325,000 (\$73,611 per hole), and 2008 is \$1,225,000 (\$68,055 per hole).

Rende stated the following when asked about the golf market:

It is certainly not healthy. There have been a number of golf courses that have closed because they simply are not financially solvent any longer. There have been some golf courses that have traded – that have sold at numbers that defy explanation in that they are so low.

The number of rounds certainly has flattened and in some courses, many courses, the number of rounds has declined. Green fees being charged are declining and more and more courses are discounting in an effort to get golfers to the course. So the outlook is not particularly good. Tr. pp 71, 72.

Rende was questioned on cross why a cost approach was not applicable for subject property he stated that the cost to replicate the improvements would have to be significantly discounted to reflect depreciation, to get the value to market that it would become meaningless. There is no good way to accurately measure depreciation.

The actual number of rounds played on the golf course has increased; however, the rounds have been heavily discounted, accounting for the dollar per round to decrease with the staggering economy. This makes the cost approach less applicable in determining market value.

Rende would not change any of the information presented in the appraisal and believes it indicates market value for the subject property as of the dates of valuation.

Respondent's Arguments

Bruce Little, Certified Michigan Assessment Evaluator IV, was the only witness for Respondent, as well as its representative. Little testified and explained his position.

Little stated that the May 2004 sale price of the subject property was \$3,650,000 exclusive of personal property. This was a foreclosure sale. He finds that in his experience the foreclosure sales typically sell for less than the open market transactions. The \$3,650,000 could be low for market value. He stated that the sale price per hole was \$202,778, while the range of sales in Petitioner's report was \$111,122 to \$267,000. Using the sale price per hole, Little stated that the subject property would fall in a range of \$2,000,196 to \$4,806,000.

Little calculated the gross rent multiplier for the subject using the income from the year after the sale. Little stated that the sale price per acre, again, falls within the assessment. Little stated the following:

When you look at the number of rounds, the number of rounds on this golf course, right up from 2003, which is the first numbers available to us, at 24,386 and through 2009 is 26,115. So there's not a decline in play on this course. There is a slight decline in revenue.

That decline in revenue, if I assume that the sale price is correct, which I think the sale price is correct, which I think the sale price is actually below market value, then that – the gross income – or excuse me, just the income by multiplying the 1.334134 in '03 and we assume that that's the income and the value of the course was 3.65 million at that time, that would indicate, then, if your income increased slightly for 2007 that would indicate a value of 3.773 million.

And then the income drops slightly for --'06 was the last at 3.773. '07 the income dropped slightly by about \$20,000 but that would indicate a value 3.7 million. And then our income dropped the next two years indicating a value of 3.26 and 3.16 million. Tr. p 100.

When questioned on cross, Little affirmed that he believed that the 2004 sale price for the subject property is appropriate. He believes that the appraisal by Petitioner substantiates the current assessment.

Tribunal's Findings of Fact

Petitioner has met the burden of proving that the market value of the subject property has declined since the purchase of the property in 2004. Petitioner presented an appraisal that indicates that the decline in the economy, lack of younger golfers, location and high maintenance for a "premier" golf course has taken its toll. Petitioner relied on the income approach, which the Tribunal finds appropriate for an income-producing property.

Petitioner's testimony, as outlined, explained the steps that were used to determine the market value of the subject property based on the income approach. The Tribunal finds Petitioner's use of market data to determine appropriate income and expenses using market percentages, considering the capitalization rates from the various sources, and applying the effective tax rate are appropriate steps for the income approach to value. Respondent calculated values using several different bases, i.e., dollar per acre, dollar per hole, dollar per round, attempting to convince the Tribunal that if Petitioner's values were adopted on a different basis that the assessment is appropriate. Petitioner's final value was determined on a total value of the entire golf course property excluding the personalty. The 2005 true cash value of \$1,550,000 equates to \$86,111 per hole.

Respondent failed to admit any evidence or testify to any inappropriate issues found in Petitioner's appraisal. Respondent was in pro per, but was familiar with the Tribunal Rules of Practice and Procedures.

Conclusions of Law

Pursuant to Section 3 of Article IX of the State Constitution, the assessment of real property in Michigan must not exceed 50% of its true cash value. 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 the assessment, being the price which could be obtained for the property at private sale, and not forced or auction sale. See MCL 211.27(1). The Michigan Supreme Court in *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450 (1974), has also held that true cash value is synonymous with fair market value.

In that regard, the Tribunal is charged in such cases with finding a property's true cash value to determine the property's lawful assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767 (1981). The determination of the lawful assessment will, in turn, facilitate the calculation of the property's taxable value as provided by MCL 211.27a. A petitioner does, however, have the burden of establishing the property's true cash value. See MCL 205.737(3) and *Kern v Pontiac Twp*, 93 Mich App 612 (1974).

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law...The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not...exceed 50%....; and for a system of equalization of assessments. For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred.

When ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value. Const 1963 Art IX , Sec 3.

The Michigan Supreme Court, in *Meadowlanes Limited Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 483-484; 473 NW2d 363 (1991), acknowledged that the goal of the assessment process is to determine “the usual selling price for a given piece of property.” In determining a property’s true cash value or fair market value, Michigan courts and the Tribunal recognize the three traditional valuation approaches as reliable evidence of value. See *Antisdale v City of Galesburg*, 420 Mich 265, 276; 362 NW2d 632 (1984)

“The petitioner has the burden of establishing the true cash value of the property” MCL 205.737(3); MCL 211.27(1); *Meadowlanes Limited Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 483-484; 473 NW2d 363 (1991). “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 v City of Warren*, 193 Mich App 348; 483 NW2d 416 (1992) at 354-355, citing: *Kar v Hogan*, 399 Mich 529, 539-540; 251 NW2d 77(1976); *Holy Spirit Ass'n for the Unification of World Christianity v Dept of Treasury*, 131 Mich App 743, 752; 347 NW2d 707(1984).

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; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968); *Antisdale*, at 276. 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.

Under MCL 205.737(1), the Tribunal must find a property's true cash value in determining a lawful property assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal may not automatically accept a respondent's assessment but must make its own finding of fact and arrive at a legally supportable true cash value. *Pinelake Housing Cooperative v Ann Arbor*, 159 Mich App 208, 220; 406 NW2d 832 (1987); *Consolidated Aluminum Corp v Richmond Twp*, 88 Mich App 229, 232-233; 276 NW2d 566 (1979). The Tribunal is not bound to accept either of the parties' theories of valuation. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 377 NW2d 908 (1985). The Tribunal may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination. *Meadowlanes*, at 485-486; *Wolverine Tower Associates v City of Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980); *Tatham v City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982).

In this case, the Tribunal concludes that the evidence, testimony, and law indicate that subject property is over assessed. An appraisal of fair market value requires a determination of the property's "highest and best use," which is "the reasonably

probable and legal use of vacant land or an improved property that is legally permissible, physically possible, financially feasible, and that results in the highest value.” Appraisal Institute, *Appraising Residential Properties*, (Chicago, 3rd ed., 1999), p 211.

The Tribunal is charged in a valuation appeal to determine the true cash value of the subject property as of each tax year at issue. Petitioner was able to prove by a preponderance of its evidence that the assessment of the subject property should be modified.

JUDGMENT

IT IS ORDERED that the property’s assessed and taxable values for the tax year at issue are MODIFIED as set forth in the *Introduction* section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property’s true cash and taxable values as finally shown in this Final Opinion and Judgment within 90 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

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

for calendar year 2003, (ix) after December 31, 2003 at the rate of 2.16% for calendar year 2004, (x) after December 31, 2004 at the rate of 2.07% for calendar year 2005, (xi) after December 31, 2005 at the rate of 3.66% for calendar year 2006, (xii) after December 31, 2006 at the rate of 5.42% for calendar year 2007, and (xiii) after December 31, 2007 at the rate of 5.81% for calendar year 2008, (xiv) after December 31, 2008, at the rate of 3.31% for calendar year 2009, and (xv) after December 31, 2009, at the rate of 1.23% for calendar year 2010.

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

MICHIGAN TAX TRIBUNAL

Entered: December 20, 2010

By: Victoria L. Enyart