Walnut Creek Country Club,
Petitioner,

v

Lyon Township,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 17-002531

Presiding Judge
Preeti P Gadola

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Walnut Creek Country Club, appeals ad valorem property tax assessments levied by Respondent, Lyon Township, against Parcel Nos. 21-24-100-001, 21-13-300-006, 21-13-300-005**,** and 21-23-200-003 for the 2017 tax year.[1] Brian Etzel, Attorney, represented Petitioner, and Stephanie Simon Morita, Attorney, represented Respondent.

A hearing on this matter was held on June 11-14 and July 24-25 and July 31, 2019. Petitioner's witness was Michael Rende, Appraiser. Respondent's witnesses were Brian Keesey, Municipal Planner and Michael Williams, Appraiser.

Based on the evidence, testimony, and case file, the Tribunal finds that the true cash values ("TCV"), state equalized values ("SEV"), and taxable values ("TV") of the subject property for the 2017 tax year are as follows:

Parcel Number: 21-24-100-001

Year	TCV	AV	TV
2017	$3,845,000	$1,922,500	$1,551,820

[1] Although there are four parcels under appeal in this matter, the Tribunal refers to them in this opinion, as "the subject property," as all four parcels are contiguous and part of the same golf course.

Parcel Number: 21-13-300-006

Year	TCV	AV	TV
2017	$640,000	$320,000	$254,670

Parcel Number: 21-13-300-005

Year	TCV	AV	TV
2017	$231,000	$115,500	$105,910

Parcel Number: 21-23-200-003

Year	TCV	AV	TV
2017	$134,000	$67,000	$61,620

The subject property is a non-profit, non-equity, member-owned, private country club[2] with a 27-hole golf course, club house with dining room, banquet room, members' dining room, pub grill, two commercial kitchens, men's and women's locker rooms, and administration offices. It also includes a pro shop with office and concession counter, kitchen area, two restrooms and storage rooms. There is a cart building, cart and bag storage building, maintenance storage building, and chemical/fertilizer storage building. There is also a pool, pool house and tennis courts. The property consists of approximately 250 acres. There are also 88.52 acres of excess land contiguous to the property that are not part of this appeal. The clubhouse was originally constructed in 1989, but a renovation was completed in 2016 which included an addition to the locker rooms of about 1,536 square feet, enhancement of the member dining room and construction of a large outdoor patio area.[3]

[2] The subject property is member owned, but there is no stock the members can independently sell to whomever they wish, as such it is "non-equity." See Tr. Vol 6 at 25-26, 200.
[3] Tr. Vol 5 at 183. See R-1 at 90.

PETITIONER'S CONTENTIONS

Petitioner contends that its appraiser, Mr. Rende, properly valued the subject property at its highest and best use, a public daily fee golf course (PDFC). Petitioner contends Mr. Rende is a very experienced, unbiased appraiser who has appeared before the Tribunal numerous times.

Mr. Rende's conclusion of the highest and best use of the property as a PDFC is legally permissible in the subject property R-1.0, zoning, which is disputed by Respondent. Respondent also criticized Mr. Rende for utilizing as his FF&E[4] deduction, information from Respondent's private club, personal property statements, but Mr. Williams did not suggest that FF&E from a private club would be significantly different from FF&E for a PDFC. Further, Mr. Rende primarily utilized data from 2015-2017 for his comparable sales, number of rounds, comparable income/expenses, expense ratios and cap rates and as such, the data is not stale, as alleged by Respondent.

With regard to Mr. Williams' report, Petitioner contends he anticipates a third-party investor will purchase the property and its conversion will increase revenues in part, because there will be no attrition. However, he failed to consider that after conversion, members will no longer have the ability to recoup their initiation fees. Further, members may leave because they currently enjoy a say in who becomes a member and what amenities are offered to all members.

Petitioner contends Mr. Williams' revenue assumptions are improper given they are greater than actual member dues collected from 2014 to 2017. He also utilized unidentified data from clients, because they wanted to remain anonymous, but failed to

[4] Furniture, Fixture and Equipment (personal property not included in the value of the real estate).

provide even the most generic information about them, including the year of data collection. Petitioner contends Respondent's appraiser, Mr. Williams, includes private club dues in his analysis that are not related to the real estate. However, if a property is valued as a PDFC, no intangibles related to dues need be calculated because revenues are generated through greens fees, cart fees and to a lesser extent, food and beverage. With regard to Mr. Williams' sales approach, his comparables were not arm's length transactions.

PETITIONER'S ADMITTED EXHIBITS

P-1: Petitioner's Valuation Disclosure

P-3: Wall Street Journal Article, Tiger Woods Can't Keep Golf Out of the Bunker, April 19, 2019

P-5: Final Opinion and Judgment, *Plum Hollow Golf Club v City of Southfield*. Docket No. 17-002072

P-6: Final Opinion and Judgment, *Scott Lake Golf and Practice Center v Plainfield Township.* Docket No. 17-002609.

P-12: Property Transfer Affidavit, Wabeek County Club LLC

P-13: Club Bylaws

P-14: Responses to Pre-Valuation Disclosure Discovery Requests, admitted as R-4A.

P15: 2018 Dues, Fees and Other Charges from Mr. Williams' work file

P-16: 2019 Color Brochure, Dues, Fees and Other Charges

P-18: Amended Affidavit as to amounts needed for redemption

P-19: Sheriff's Deed on Mortgage Sale

P-20: Excerpt from Appraisal of Real Estate

P-21: PTA, TPC Dearborn

PETITIONER'S WITNESS

Michael Rende

Petitioner's expert, Mr. Rende, was admitted as an expert in real estate appraisal by the Tribunal.[5] He prepared an appraisal of the subject property concluding in its fee simple interest. In the appraisal, he determined the highest and best use of the subject property was as a PDFC with multiple amenities such as a banquet center, swimming pool and tennis courts.

Mr. Rende contends that private country clubs in Southeast Michigan have suffered a decline in membership in recent years as, among other reasons, the younger generation is generally not interested in joining a country club due to lack of time, preferring to spend time with family, and having less discretionary income.[6] This is illustrated by the drop in membership fees to attract new members. Mr. Rende contends that per the National Golf Foundation (NGF), from 2013-2017, 57.5 courses have closed in Michigan. Further, another source, Michigan Golfer News, indicates 83, plus or minus, courses closed in Michigan; however, a closure date range was not provided.[7] Mr. Rende contends that in the past 10 years, nationwide, 400 private clubs have converted to semi-private or daily fee, and an additional 38 clubs have closed.[8]

Mr. Rende contends that there are three daily fee courses within a two-mile radius of the subject, including Riverbank Golf, Links of Novi, and Tanglewood Golf.

[5] Tr. Vol 1 at 30.
[6] Tr. Vol 1 at 64.
[7] See P-1 at 70-72. See Tr. Vol 1 at 70.
[8] See P-1 at 65.

Expanding the radius to four miles will include Cattails Golf Course, Lyon Oaks Golf Course and Downing Farms Golf, providing competition.[9] Additionally, there are more than 30 courses within a ten mile radius of the subject and 70 additional courses within a twenty mile radius, totaling in excess of 100 courses.[10] Mr. Rende admits that not all of the courses are comparable to the subject, given they may include nine or eighteen holes, the quality might be poorer, and some are private member only, courses.

Mr. Rende prepared an income approach to value the subject property. He considered rounds, annual golf revenue, golf revenue per round and rounds per hole from golf course comparables. He admits that the majority of the information is from 2015 and 2016, but he did consider information from 2017, and placed the greatest relevance on the latest data.

Mr. Rende commenced his income approach by estimating revenues generated by different profit areas. As a part of the analysis, Mr. Rende considered fourteen of the most prestigious, competing public golf courses in proximity to the subject, to determine reasonable cart rental rates and green fees. Mr. Rende considered fourteen golf course comparables, but concentrated his analysis on seven courses within a few miles radius of the subject, concluding that rack rates[11] in excess of $65 per round are achievable on weekends and $55 dollars per round on weekdays, for 18-holes of golf.[12] He testified he appraised six of his seven comparables and did an abbreviated analysis of the

[9] See P-1 at 56.
[10] P-1 at 83.
[11] Rack rates are maximum rates during prime time. See P-1 at 85.
[12] See P-1 at 87.

seventh; therefore, the expense statements were obtained directly from club management.[13]

Mr. Rende next concluded in a projection of future rounds, giving consideration to historical performance at the subject property, and also to the volume of play generated by competing courses. He considered twenty-two courses, providing information from 2015 to 2017, but concentrated his analysis on the more recent data. He also noted the overall average annual change in volume of play is less than 1%, which would support a conclusion that there is a relatively flat market between 2015 and 2017.[14] Concluded from his review of rounds generated by competing courses, Mr. Rende projected 1250 rounds per hole, or 33,750, 18 hole equivalent rounds per year. However, rack rates should be discounted based on the season, time of day, senior and junior golf rates, league play and replay discounts, among other considerations. After consultation with the manager of three upscale daily fee golf courses, and the owner of four golf courses in southeast Michigan, he determined an appropriate discount to be $33.3%.[15]

Mr. Rende determined 35% of starts would include 9-hole play and 65% of starts would include 18-hole play. "Mathematically, this results in total starts of 40,925 comprised of 14,350 nine hole starts and 26,575 eighteen hole starts. The 9 hole starts at 14,350 equals (14,350/40,925) 35% of all starts."[16]

Cart revenue has been included as part of the greens fee and considers that 100% of golfers will use a power cart. Pro shop sales were estimated at $2.00 per round and miscellaneous revenues, including merchandise sales, food and beverage

[13] See Tr. Vol 4 at 4.
[14] See P-1 at 90.
[15] See P-1 at 91-92. Tr. Vol 1 at 106, 113.
[16] See P-1 at 93.

income, range sales, and tournament fees also estimated at $2.00 per round. Food and beverage revenue were stabilized at $421,875, or $12.50 per round.[17] This information was extracted from income and expense statements reviewed, industry publications as well, and information Mr. Rende has assembled himself.[18] Banquet revenue was determined from a review of fourteen established banquet facilities located in the southeast Michigan metropolitan area; however, Mr. Rende admitted "that the comparable sales data summarized above [regarding banquet facilities] is somewhat dated but this represents the most current information available."[19] Revenue was determined per square foot and per seat for a conclusion of banquet revenues for the subject 250 seats at $3,000, or $750,000, total. Adding banquet revenue and food and beverage at 33,750 rounds, indicates total food and beverage revenues per round of $34.72.

Mr. Rende considered swim revenue, including pool and tennis courts, and noted most PDFCs do not offer these amenities. Considering Twin Lakes Golf Course, a 27-hole PDFC, he determined cash flow from swim and tennis do not provide adequate revenue, and as such, he concluded that these amenities provide no contributing value. He testified, "whatever revenue might be generated by these facilities would effectively be offset by expenses incurred in the operation and/or management of those facilities."[20] During cross-examination, Mr. Rende testified that the Twin Lakes Golf

[17] See Tr. Vol 1 at 116.
[18] See Tr. Vol 1 at 115.
[19] See P-1 at 96.
[20] See P-1 at 97. See Tr. Vol 1 at 121.

Course revenue information was from 2009-2011, and was admittedly dated, per Mr. Rende.[21]

Mr. Rende's operating expenses deduction is based on consideration of other PDFCs and NGF data. The data is from 2004-2005 and 2008-2009, and is admittedly somewhat dated, but has not been updated by the NGF. Payroll, which Mr. Rende contends is typically the largest single expense incurred by a golf course, was calculated from comparable data in the addenda of his appraisal. From the data, he concluded in a stabilized expenditure of 40% of gross margin, which included the cost of a general manager, such that a separate allocation for course management is not necessary. [22]

Equipment and maintenance costs, "which relates to the purchase or replacement of that equipment,"[23] were estimated "from knowledgeable and experienced golf course operators in the region,"[24] at $400,000. Mr. Rende contends that the best way to represent these expenses is through a sinking fund, which identified the amount required to be set aside to replace equipment utilized to groom and maintain the golf course, equipment for food and beverage operation and lounge which requires specialized equipment and appliances, as well as chairs, tables, dishes, silverware, etc. Mr. Rende contends these costs could easily exceed an additional $100,000. He prepared a calculation assuming a present cost of $500,000 for equipment, a 10-year

[21] See Tr. Vol 2 at 9-10.
[22] See P-1 at 101.
[23] Tr. Vol 1 at 133.
[24] See P-1 at 101.

remaining life, future replacement costs at 2.5% and a sinking fund payment of 2% or $58,453.[25]

Mr. Rende added additional maintenance expenses for supplies, maintenance and repair to the clubhouse, fertilizer and chemical supplies, and other miscellaneous items which will occur on a regular basis. He looked to other comparable golf course facilities in stabilizing this expenditure at 15% of gross margin. Utilities for clubhouse heat and air, pumps for the sprinkler system, fuel powered maintenance equipment, and rubbish removal were considered, and the stabilized expense extracted from comparables and actual expenses, was $150,000.[26]

Administrative and general expenses, including office expenses, professional fees, dues, subscriptions, payroll taxes, etc. were stabilized at 8% of gross margin, based on comparables and the premise of the subject property consisting of multiple business operations such as golf and banquet. Insurance and other significant expenditures included golf cart replacement reserve at $852 per cart, or $78,840. Insurance was estimated at a $70,000, stabilized expense. Finally, replacement reserves of 2% of gross revenues were included to represent building and site improvements.

Mr. Rende's pro forma statement considered projected 18-hole equivalent rounds, 35% starts at 9-hole, 65% starts at 18-hole, projected starts at 9 and 18 holes rounds, stabilized revenue for a 9-hole round and 18-hole round, including greens fees, tournament revenue and cart revenue, for a total course revenue of $1,266,820. Pro

[25] See P-1 at 101.
[26] See P-1 at 102.

shop, miscellaneous, food and beverage and banquet sales increase gross revenue to $2,573,695. Cost of goods sold was subtracted, for a gross margin of $2,019,164, and expenses for payroll including benefits and management, maintenance and equipment reserve, course maintenance, utilities, administrative expenses, cart reserve fees, insurance, and replacement reserves, were subtracted for total operating expenses of $1,669,670. Gross margin minus total operating expenses concluded in net operating income (NOI) of $349,414.[27]

Mr. Rende's next step was the selection of the overall capitalization rate. 15 sales of golf courses: in Michigan (10), Wisconsin (1), Ohio (3), and Indiana (1) which occurred between April 2011 to June 2017 were considered with a wide range of overall rates of 9.75% to 25.89%. Most reliance was placed on the most recent sales with a range of 9.75% to 16%. Mr. Rende also consulted RealtyRates.com Investor's Survey which put forth rates from 7.59% to 18.36% and concluded to an overall rate based on these sources, the NGF Dashboard newsletter, band of investment method, among other sources, of 12%.[28]

The last component Mr. Rende considered under the income approach was to compute a tax loaded capitalization rate, given the proper analysis is tax neutral, and property taxes are not included as an expense. The effective tax rate was applied to the overall rate. Lyon Township's 49.8376 mills multiplied by 50% = $24.9188 or 2.4919% must be added. "This results in an adjusted overall rate of 14.4919%, rounded to 14.5%. Applying the 'loaded' capitalization rate to the stabilized net operating

[27] See P-1 at 105. The Tribunal notes that $2,019,164 (-) $1,669,670 = $349,494.
[28] See P-1 at 107.

income,"[29] (net operating income/overall capitalization rate) results in a value of the going concern or $2,407,862 or $2,410,000, rounded.[30]

From the $2,410,000 going concern value, FF&E from the subject personal property statements, of $1,132,140, was utilized as a deduction to determine the value of the real estate. Also, business assets including, among other assets, inventories for food and beverages and cleaning supplies were estimated at $25,000, and liquor license at $20,000. Finally, startup costs and working capital were estimated at $62,166, for total non-real estate costs of $1,239,306, or $1,240,000, rounded. Deducting this value from the previously concluded going concern value of $2,410,000, yields a value of the real estate, only, of $1,170,000, under the income approach.[31]

Mr. Rende was requested to compare his pro forma statement of a PDFC, to the one Mr. Williams' created in his highest and best use analysis, which he noted is similar to his. Mr. Rende testified that he concluded in 33,750 18-hole equivalent rounds, and Mr. Williams', 33,600. Mr. Rende determined golf course revenue to be $1,266,820 and Mr. Williams' golf course revenue determination was $1,400,000. Mr. Williams' dollar value per start is $33.33, and Mr. Rende's $37.54. Mr. Rende's total operating expenses were $1,669,670, and Mr. Williams' $2,544,000 and Mr. Rende's projected NOI is $349,414 and Mr. Williams' $417,800.[32] Mr. Rende's calculated cap rate is close to Williams,' and Mr. Williams' determination of the going concern value of a PDFC is $2,910,000, as compared to Mr. Rende's $2,410,000.[33] From this comparison,

[29] See P-1 at 113.
[30] *Id.*
[31] Tr. Vol 1 at 153.
[32] Tr. Vol 1 at 144-146.
[33] Tr. Vol 1 at 154.

Petitioner contends if the Tribunal determines the highest and best use of the subject property to be a PDFC, both appraisers are very close in their conclusions.

In terms of deductions for the calculation of the real estate value, Mr. Rende testified that both appraisers utilize essentially the same FF&E; Mr. Williams' business assets are a bit higher, and after subtracting those items from his going concern value, the value of the real estate is $1,060,000, which is lower than Mr. Rende's.[34] In sum, Mr. Rende confirmed that Mr. Williams' PDFC analysis concluded in a value of the real estate at a very similar number to his.

Mr. Rende also provided a sales approach to value. He put forth 36 sales and resales of golf courses which occurred between December 2000 and January 2018. Mr. Rende included admittedly older sales comparables, some which may be distressed sales, to demonstrate the downward trend in the local golf industry.[35] For example, Liberty Golf Club (comparable one) sold in December 2000 for $5,000,000; then again in May 2008, for $1,700,000, which represents a 57.5% reduction from the prior sale price. Further Brentwood Golf Course (comparable two) sold in March 2001 for $2,600,000, and in March 2009, the property resold for $850,000, which represents a 67.3% reduction from the prior sale price. Comparable 9, Burning Tree Country Club sold in January 2005 for $6,000,000, and was redeemed after foreclosure for $1,500,000 in February 2011, which represents a 75% reduction from the prior sale price.[36] Mr. Rende did not include the amenities related to property comparables for comparison to the subject.[37]

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[34] Tr. Vol 1 at 156.
[35] Tr. Vol 1 at 157, Vol 2 at 75-80.
[36] See P-1 at 118.
[37] Tr. Vol 2 at 81.

In the end, Mr. Rende placed the most emphasis of his analysis on six sales, and an additional resale, that occurred during or after 2014. The range of price paid per hole was between $28,333 to $160,667 with an average of $70,745. Mr. Rende reconciled at $90,000 per hole based on substantial improvements made to the subject which occurred in 2016. The dollar per hole was multiplied by the subject 27 holes for a conclusion of value of the going concern, of $2,430,000.[38]

Mr. Rende contends that the individuality of the different golf course comparables make comparison of size, quality and age, difficult, and an estimated dollar amount or a percentage for adjustments could be substantial and do not lend themselves to be quantified. As a result, Mr. Rende did not prepare a sales comparison grid with adjustments. He testified, "The number of variables that exist between these courses, from one course to another, it is quite literally impossible to quantify. The best you could do is come up with two, three, four, five characteristics, primary major characteristics, and subjectively adjust based on what you think an appropriate adjustment might be."[39]

Mr. Rende also completed a gross income multiplier analysis based on the 36 sales, and again acknowledges that some of the information is dated but is included to demonstrate the downward trend in the industry. From the most recent data presented, Mr. Rende determined a GIM of 1.0 and applied the multiplier to the stabilized gross revenue determined in the income approach. As such, the value indication is $2,575,000, rounded for the going concern. Reconciling the GIM approach with the traditional sales approach puts forth a value of $2,500,000. FF&E and the value of the

[38] See P-1 at 118; Tr. Vol 1 at 160.
[39] Tr. Vol 1 at 161.

business assets, start-up costs and working capital, are subtracted which results in a deduction of $1,240,000 and a real estate value of $1,260,000. The sales approach to value was not Mr. Rende's primary approach, but was a second, independent approach and supported his income approach. He testified given the limitations of the sales approach, he "primarily focused on the income that the course can generate, so that is my primary approach to value."[40]

Mr. Rende also considered a cost approach to value with a vacant land analysis and demolition costs for the improvements. His conclusion of the value of the subject site was $625,000. From that value, he subtracted demolition costs of $310,000 for an adjusted conclusion of land value of $315,000. Mr. Rende did not place much weight on his vacant land analysis given he was unable to identify sales that were truly similar to the subject property, which consists of 250 acres, requires lot sizes of 35,000 square feet and has no public utilities.[41] Further, the cost approach was not Mr. Rende's primary approach to value because, "it's very difficult to accurately identify cost, reproduction or replacement cost, and then even more difficult to quantify depreciation, which are both a requirement of this methodology."[42] He also testified regarding the cost approach "most importantly, people who are buying and selling these types of properties, income producing properties, are not relying on this methodology either."[43]

Mr. Rende reconciled his conclusions of value, considering all approaches, but relying on the income approach with support from the sales approach, at $2,425,000, for the going concern. The same deductions were made as put forth above in the

[40] Tr. Vol 1 at 162.
[41] Tr. Vol 1 at 164.
[42] Tr. Vol 1 at 94-95.
[43] Tr. Vol 1 at 95.

income and sales approaches to value (FF&E, business assets, start-up costs and working capital) to conclude in the value of the real estate, only, of $1,185,000.

RESPONDENT'S CONTENTIONS

Respondent's expert, Mr. Williams, contends that the highest and best use of the subject property is continued use as a private country club. Respondent contends that ownership will likely change from a non-profit, non-equity, member-controlled club to a for-profit, non-equity, non-member controlled club, but the use of the property will remain the same.

Respondent contends there are sufficient comparables to accurately value the subject property as a for-profit golf course, which is its maximally productive use. Mr. Williams determined the highest and best use of the property by considering historic income and expenses and private country club comparables, but also prepared an analysis of the property as a PDFC. However, when he determined public daily fee was not the property's maximally productive use, he abandoned the approach, as it was not the property's highest and best use. He also never considered whether a PDFC was permissible in the subject property zoning, again, because PDFC was not the property's highest and best use.

Respondent contends that Mr. Rende's highest and best use determination for the subject property is not legally permissible as of Tax Day. Further, it contends Mr. Rende deducted the value of "country club" FF&E, instead of lower FF&E attributable to a public daily fee course in determining real estate only, value. Further, he double-dips relative to deductions for golf carts and equipment by deducting them from the going concern value and deducting them above the line to determine net operating income.

Respondent claims, Mr. Rende's sales comparable approach uses stale data and properties that are not comparable to the subject, private country club. Finally, Respondent alleges Mr. Rende is not an independent fee appraiser but is financially attached to counsel and considers counsel his client.

RESPONDENT'S ADMITTED EXHIBITS

R-1: Respondent's Valuation Disclosure

R-3: Petitioner's January 16, 2019 Valuation Disclosure

R-4A: Responses to Pre-Valuation Discovery Requests

R-6: January 8, 2018 Property Transfer Affidavit

R-7: March 1, 2018 Property Transfer Affidavit

R-9: Oakridge PDA

R-12: Petitioner's Appraisal in Plum Hollow v Southfield

R-14: Assessment Records

R-20 Zoning Analysis Letter

R-21 Crain's and Free Press Articles regarding Wabeek

RESPONDENT'S WITNESSES

Brian Keesey

Mr. Keesey is a municipal planner and works with Lyon Township on zoning and planning issues. He is certified as a planner with the American Institute of Certified Planners which signifies, "a technical competency in the field, a threshold for educational background, work experience, knowledge of planning and zoning law, as

well as ongoing training and involvement within a planning profession. It's an ongoing certification that is maintained every two years through accreditation."[44]

As part of his consulting contract, Mr. Keesey aids developers, residents and professionals, such as surveyors, engineers and architects, with their applications to a municipality, in order to help them understand the best process "to get a plan formally reviewed and approved by a municipality."[45] He then reviews applications for the municipality, and as part of his consultancy, reviews zoning ordinances and makes recommendations as "whether or not a proposed use is acceptable under the zoning ordinances." Mr. Keesey testified he's been involved in several hundred planning assignments.

Mr. Keesey testified he is familiar with the Walnut Creek Country Club property which is located north of 10 Mile Road and on the west side of Johns Road in Lyon Township; zoned R-1.0, residential agricultural zoning. He testified, "[t]he intent of that district is to keep a rural feel to the community, low traffic impacts, low noise, low significant setbacks from neighbors. To keep a large rural feel is the intent of that district."[46] Mr. Keesey reviewed a 1987 letter related to the club site plan in which a recommendation was made "that [ ] expansion of the membership of the facility [ ] would require additional parking facilities to be constructed."[47] There was also a July 7, 2015 letter in his firm files related to the Walnut Creek Clubhouse expansion that occurred in 2016, which states, "[t]he proposed improvements will not result in a change in

[44] Tr. Vol 5 at 21.
[45] Tr. Vol 5 at 21.
[46] See Tr. Vol 5 at 24.
[47] See Tr. Vol 5 at 25.

membership. Consequently, there will be need for additional parking. Also, there will be no change in traffic circulation on the site."[48]

Mr. Keesey testified that the first formal step in applying for a private golf course to be changed into a PDFC, would be file for a site plan application, coupled with a special land use application, pursuant to the zoning ordinance. This is because, "the approvals that have been given to this facility in the past were based on membership. When you move to a public - - for public course, you end up getting a lot of effects that are not typical of a membership facility."[49]

> You end up getting additional traffic because typically the spacing on the course is much tighter on a public course than a membership course. And a facility as substantial as this where there is a clubhouse and there are other facilities as well, when that gets opened to the public, you're not capped at a membership limit. You are opening yourself up to have a full golf course and a full tennis [court] and full swimming pool and full clubhouse. That's a lot of additional cars, a lot of additional impact, a lot of additional people on this site. And a special land use, especially in R-1.0, where our goals are to protect and preserve a rural character and a rural feel, that's not mine. So we would expect that they would come in, and if the bodies were to decide one way or the other, they'd have a process -- they've gone through the process to do that appropriately.[50]

From viewing the R-1.0 zoning document at the hearing, Mr. Keesey acknowledged that under section 23.02, "Permitted uses and structures," "Special Land Uses B(11)," it does state, "Public or private golf courses…."[51] It also states, under "Special Land Uses," "[t]he following uses (including public golf courses) may be permitted by the township board, subject to: the conditions specified for each use; review and approval of the site plan by the planning commission and township board; any special conditions

[48] See Tr. Vol 5 at 30.
[49] Tr. Vol 5 at 32-33.
[50] Tr. Vol 5 at 33.
[51] See R-1 at 162-163.

imposed by the planning commission or township board that are necessary to fulfill the purposes of this Ordinance . . . ."[52]

Michael Williams

Mr. Williams was designated as an expert in real estate appraisal by the Tribunal. He prepared an appraisal with both sales and income approaches to value, and considered, but rejected, the cost approach.[53] Mr. Williams contends that golf courses are primarily bought and sold on the basis of their income producing potential. As such, the income approach to value is a valuable tool to utilize in determining the market value of a golf course.

Mr. Williams determined the highest and best use of the property to be as a private, for-profit, non-equity country club.[54] This conclusion was made based on "two income approaches, one as a private country club, one we examined the public daily fee course, and then we also looked at land value as well."[55] He testified, "use as a private country club yielded the highest value, overall value, higher than likely land value, higher than possible use as public daily fee golf course. So, the highest value is maximally productive and ultimately the decision of highest and best use."[56]

Mr. Williams explained the four tests to consider when determining the highest and best use of a property. The appraiser must consider four criteria, "legally

[52] See R-1 at 162-163.
[53] Mr. Williams testified, "[t]he buyers and sellers of golf courses don't typically use the cost approach. It's difficult to estimate depreciation as well." Tr. Vol. 6 at 3.
[54] The club will no longer be owned by the members, but "somebody else will own the club: management company, one investor, a group of 5,10,20,100 investors, whatever it is. The members will no longer own the club." See Tr. Vol 6 at 203.
[55] Tr. Vol 5 at 186. Land value was determined using comparables from Mr. Williams' analysis of parcel 008, which was originally part of the appeal and appraised by Mr. Williams. See Tr. Vol 5 at 198.
[56] Tr. Vol 5 at 186-187.

permissible, physically possible, financially feasible, and whichever use is, the highest value would be the maximally productive use and ultimately the highest and best use."[57] He also testified, there is no requirement to consider the categories in any particular order.[58]

With regard to the legal permissibility of a PDFC on this property, Mr. Williams testified that he jumped ahead to financial feasibility and maximally productive value, "looking at the income approach, and once we saw that that was quite a bit lower, we stopped and didn't do any further investigation."[59] As such, Mr. Williams did not consider the legal permissibility of the property as a PDFC.

Mr. Williams testified that the subject property is physically set up ideally for a private country club and that is the way it has been used for years. It is located in a growing community with high income levels and has a solid membership. There are also no other private country clubs within nine miles of the subject property, "so this is kind of physically ideally set up for a private country club."[60] Additionally, Mr. Williams testified that the members would not "see any changes in terms of service or what they are enjoying at the club; they just simply would no longer be owners of the club."[61]

Pursuant to the income approach, Mr. Williams' Pro Forma statement was composed from "historical operating statements, competitive fee structures in the local market and comparable operating expenses from comparable private country clubs, three of which are operated for profit."[62] Mr. Williams testified that he was provided with

[57] Tr. Vol 5 at 185.
[58] Tr. Vol 5 at 188-189.
[59] Tr. Vol 5 at 188.
[60] Tr. Vol 5 at 189-190.
[61] Tr. Vol 6 at 27.
[62] See R-1 at 88.

four years of historical operating statements from the club's controller, but some of the data was limited to audited statements without a full breakdown of some expenses. As such, he reconstructed the operating statements from expense comparables.[63]

In completing his pro forma statements, concluding in net operating income, Mr. Williams assumed that club members would remain after a potential sale because the property has experienced relatively stable membership in recent years. This assumption was made because there are no other private country clubs in the immediate area.[64] Further, the club renovation in 2016 caused revenue to increase slightly because dues were increased.[65]

Mr. Williams acknowledges that many private clubs within the region suffered from declines in membership challenging their feasibility to continue to operate as private clubs; however, this particular club has stable to increasing membership counts approaching the maximum number of full golf memberships, allowed, of 399.[66] As of September 2016, there were 570 total members, of which 384 were full golf members (paying the highest dues) Junior, Interim, social and senior memberships are charged varying discounts from regular membership. Mr. Williams applied the 2017 membership dues schedule to the membership breakdown resulting in a projected revenue of $3,210,000. This is higher than the $2,572,000 reported during fiscal year 2016, though scheduled dues increased 20% starting in calendar year 2017.[67] This number was also

[63] See R-1 at 86-87. See Tr. Vol 5 at 216.
[64] See R-1 at 88.
[65] Tr. Vol 6 at 23.
[66] See R-1 at 76.
[67] See R-1 at 89.

confirmed by considering the regular golf membership dues, including all annual costs, at six other private country clubs in the area.[68]

Mr. Williams contends that for-profit, non-equity ownership clubs typically have lower initiation fees. By looking at two for-profit golf course comparables, Oak Pointe and Wabeek, he concluded in an initiation fee of $5,000 and the addition of 20 new members annually for a total of $100,000.[69]

Cart fees were estimated at $390,000 or $684 per member, because historical revenue increased from $330,000 to $398,800 from 2014 to 2016. Guest fees were calculated at $280,000 or $495 per member because historical performance increased from $479 to $495 per member with an increasing pattern from about $264,000 to $286,000 from 2014 to 2016. Practice range revenue has ranged from $58,110 to $63,819, or $107 to $110 per member and projected revenue was reconciled at $60,000 or $105 per member.

Food and beverage from club's bar, restaurant and banquet operations increased from $1,916,000 to $2,032,000 from 2014 to 2016 and revenue ranged from $3,484 to $3,684 per member from 2014 to 2016. "The clubhouse renovation which includes enhancement of the members dining room and construction of a large outdoor patio area was completed in 2016."[70] As a result of the renovation, Mr. Williams projected a higher revenue of $2,200,000, which equates to $3,860 per member. Mr. Williams was questioned about Mr. Rende's lower conclusion of banquet and food and beverage revenue of $750,000 and $421,875. He testified that greater banquet revenue can be

[68] Tr. Vol 6 at 27-28. R-1 at 75.
[69] Tr. Vol 6 at 36.
[70] See R-1 at 90.

obtained here because the facility is large, in good condition, and has "multiple profit centers within the clubhouse, banquet center, the - - the swim building, and the halfway house."[71] He testified that if the club goes public, the present members would most likely come back, as well as others, $2,000,000, plus has been spent at the subject property over the last several years and the comparables presented have similar revenues.[72]

Lockers/bag storage combined revenue (about 2% of total revenue) has decreased from $112,079 to $104,122.[73] As such, Mr. Williams projected $110,000 in revenue or $193 per member. Finally, miscellaneous income increased from $75,062 to $109,340 from 2014 to 2016. As such, for the 2017 tax year, $110,000 was estimated or $193 per member. Mr. Williams' total revenue projection for the 2017 tax year was $6,460,000 or $11,333 per member. He contends this number continues the increasing trend from $5,777,000 to $5,912,000 from 2014-2016, excluding assessments and capital dues.[74]

Cost of sales (cost of goods sold) for food and beverage operations is subtracted from total revenues to determine gross profit. Mr. Williams excluded golf shop merchandise because the club professional owns this concession. He contends food and beverage costs generally range from 30-60% of sales exclusive of labor and the subject shows an increasing trend from 38% to 39% of sales from 2014 to 2016. Cost

[71] Tr. Vol 6 at 86.
[72] Tr. Vol 6 at 86-87.
[73] On R-1 at 90, it states, locker/bag storage revenue *decreased from $104,122 to $112,079*. The Tribunal opines this was an error.
[74] See R-1 at 90- 91. See Tr. Vo 6 at 39-50.

at the comparable facilities[75] show a range from 34% to 42% with an average of 38%. As such, he utilized 40% of total sales for food and beverage, or $880,000.[76]

With regard to operating expenses, Mr. Williams contends, "[p]rivate country clubs generally have higher operating costs than public daily fee courses."[77] In determining operating expenses, Mr. Williams considered historical expenses, and income and expenses from other private county clubs, put forth in this appraisal[78] He contends comparables one, two and three are non-equity, for-profit, like the subject, though the subject has a higher membership. "The remaining [four] comps are equity or non-equity clubs operated as non-profits, yet they generate healthy net income figures with no or limited assessments."[79] During cross examination, Mr. Williams testified that of the three for-profit comparables, two are located in Michigan and one in Northern Ohio and he has visited each of the comparables. He also testified he did not include items such as size of clubhouse, amenities including tennis court, swimming pool, banquet facilities, or restaurants, so the Tribunal could make a comparison regarding the suitability of the comparable in this case.[80] Mr. Williams testified that he did not find it necessary to put forth these characteristics, because he found comparable clubs that are truly comparable to the subject property.

Payroll expenses, the largest category for a private country club, include salaries, wages, benefits and employer taxes for the general manager, golf professionals, course

[75] See R-1 at 92. No country club names were provided because the information was given to the appraiser, confidentially. See Tr. Vol 6 at 51. The expenses compiled were from 2011-2015. See Tr. Vol 6 at 52.
[76] Tr. Vol 6 at 51.
[77] See R-1 at 91.
[78] See R-1 at 92.
[79] See R-1 at 92.
[80] Tr. Vol 7 at 15-16.

superintendent, as well as hourly wages for the clubhouse, maintenance and restaurant staff. Payroll expenditures at the subject property increased from about $2,779,000 to about $3,291,000 from 2014 to 2016, with the percentage increasing from 48% to 56% of total revenue. Public daily fee facilities generally indicate a range of 24% to 34% of total revenue with an average of 30%. However, private facilities generally have much larger clubhouses, employ more staff members, and consequently have significantly higher payroll costs."[81] Mr. Williams predicts payroll costs of 45% of revenue of $2,907,000, which falls at the low end of the historical range.

Administration and general expenses include advertising, marketing, dues to various associations, subscriptions, bank charges and professional fees for accounting and legal services. Mr. Williams contends, the subject's financials do not provide a break-down of all categories and as such, these figures were extracted from historical information of the comparables. Those indicate a wide range from 4% to 15% of total revenue with an average of about 9%. As such, administration and general expenses were projected at 9% or $581,000.[82]

Walnut Creek Golf Course leases a 100-golf cart fleet and the reported expense for fiscal year ending September 2016 was about $73,000. The club also leases some of its greens' equipment and office equipment with a total expense for fiscal year 2016 reported at roughly $99,000. This results in an expense of all leases at $173,000, rounded. As such, in the calculation of NOI, Mr. Williams utilized a similar total expense for the carts and equipment at an annual amount of $175,000.[83]

[81] See R-1 at 92. See Tr. Vol 6 at 32.
[82] See R-1 at 93. See Tr. Vol 6 at 54-55.
[83] Tr. Vol 6 at 55-56.

Repairs and maintenance include general expenses for the "clubhouse, parking lot, grounds, maintenance building, the pool, fertilizer costs, chemicals, anything related to the golf course itself. All maintenance costs for the property, inside and out."[84] Because this figure was not broken out in the subject historical expenses, the comparable private country club expense comparables were utilized, and they indicate a range from 6% to 13% with an average of 9%. As such, Mr. Williams projects typical repairs and maintenance at $500,000 or 8% of revenue.[85]

The supply expense category includes supplies for the golf service operation, clubhouse, restaurant, and banquet. The subject's historical expense increased from about $134,000 to $172,000 from 2014 to 2016, representing 2% to 3% of total revenue. The comparables range from 1% to 5%. As a result of historical and comparable ranges, Mr. Williams projects a supply expense of 3% of revenue, or $175,000.[86] Replacement reserves, for short-lived items such a structural items, FF&E, greens, tees, and irrigation systems, was estimated from national investment surveys, Korpacz and the Society of Golf Course Appraisers at 1% or $65,000, which is slightly less than the surveys put forth because the golf carts and the subject property are leased.[87]

Mr. Williams utilized utility expenses from the comparables which range from 3% to 6% of gross revenue or about $67,000 to $207,000 with an average of $145,000. As such, he projected utilities at about 2% of revenue, or $150,000. Insurance expenses cover general liability and property insurance. The comparable private country clubs

[84] Tr. Vol 6 at 57.
[85] Tr. Vol 6 at 57.
[86] See R-1 at 93. Tr. Vol 6 at 58.
[87] Tr. Vol 6 at 59. See R-1 at 94.

indicate a range equal to 1% to 2% of gross revenue, ranging from about $14,000 to $80,000 with an average of about $43,000. “Comp 1 sets the low end by a wide margin and has the smallest clubhouse. Given this data and the subject’s significant improvements, we project insurance costs to be $75,000.”[88]

Mr. Williams acknowledged that his analysis is tax neutral and the effect of the real estate tax liability is incorporated into the capitalization rate that will be applied to the concluded net operating income.

In summary, total cost of sales and operating expenses for the subject are projected at 85% of total gross revenue, including a 1% replacement reserve, before taxes, which add about 1% to 4% to the comparables. “This is within the range for the expense comparables and national survey for private country clubs which indicate a wide range from 77% to 88% with an average of 86% before reserves.”[89]

Adding the projected revenues detailed above, minus cost of sales, to conclude in gross profit of $5,580,000 and subtracting operating expenses, detailed above, of $4,628,000 from that number, results in a conclusion of NOI of $952,000.[90]

Next, Mr. Williams determined a market derived capitalization rate[91] from thirteen sales including nine public daily fee courses and four private clubs. The properties sold from January 2012 to April 2017, and six were in Michigan. The capitalization rate extracted from the market survey was 12.12%. Mr. Williams also considered the national investor survey, RealtyRates, which put forth an overall capitalization rate of

[88] See R-1 at 94.
[89] See R-1 at 94.
[90] See R-1 at 95. See Tr. Vol 6 at 60-61.
[91] A capitalization rate, or cap rate, “is the relationship of net income to value, so it’s extracted from the market by simply taking net income of a comparable sale divided by the sale price equals the cap rate. We apply that to our net income to derive value.” See Tr. Vol 6 at 61.

11.75% for 2016. He additionally consulted a 2017 survey conducted by members of the Society of Golf Appraisers which concluded in an overall capitalization rate, based on an average of 10.3%. Mr. Williams considered the three capitalization rates and reconciled on a cap rate of 12%.[92] In order to complete his tax neutral analysis, he blended the Lyon Township non-homestead and personal property millage rates because the analysis here includes real estate and personal property. "The blended millage rate reflects the average rate for the real and personal property based on the current taxable value allocations."[93] The blended millage rate (.0474048) is added to the previous cap rate of 12%, excluding property taxes from the operating expenses. Market value was determined by dividing net operating income by the tax loaded cap rate of 14.37%, or $6,625,000, rounded.[94]

Mr. Williams also performed an additional income approach, as part of his highest and best use analysis, assuming the subject property was converted into a PDFC.[95] However, as noted above, when he reached his conclusion of true cash value of the going concern, of $2,910,000, as a public daily fee course, he concluded that the property's maximally productive use was as a private course. He testified, that as a result, he terminated his analysis.[96]

Mr. Williams prepared a sales approach to value the subject property for the 2017 tax year. He acknowledged that the sales approach is somewhat difficult to prepare given the many variations from one golf facility to another.[97] He also contends,

[92] See R-1 at 96-97. See Tr. Vol 6 at 61-62.
[93] See R-1 at 97.
[94] See R-1 at 97.
[95] See R-1 at 97, 106.
[96] See Tr. Vol 6 at 75.
[97] See R-1 at 106.

however, relative to Mr. Rende's testimony about lack of sales, "there are sales in the market, and they can be adjusted. There are sales of private country clubs and they're relevant, therefore, they can be used."[98]

In completing his sales approach, Mr. Williams chose six sales of golf facilities, similar to the subject, that sold in 2012 to 2017. They are located in Independence Township (comparable one, Oakhurst Golf and Country Club - private club), Hilliard, Ohio (comparable two, Heritage Golf Club - private club), Saukville, Wisconsin (comparable three, The Bog Golf Course), Dearborn (comparable four, TPC Michigan), Dublin, Ohio (comparable five, Tartan Fields Golf Club - private club), and Northville Township (comparable six, Northville Hills Golf Club). He testified that not all the comparables are located in Michigan, because "[p]rivate country clubs and golf courses that are of this quality, sell infrequently within our immediate market, so we expand our geographic area. We want to stay in a geographic area that we deem is at least a similar climate."[99]

Mr. Williams made adjustments to his comparables, to make them consistent with the characteristics of the subject property, considering the following items: buyer expenditures, property rights, financing terms, conditions of sale, market conditions, site size, location, age and condition, clubhouse size and quality and amenities. After consideration, he did not make adjustments for location, conditions of sale or market conditions, among other factors, because, "[a]ll of the comparables are located in viable golf markets in Michigan, Ohio, and Wisconsin and no adjustments are applied."[100]

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[98] Tr. Vol 5 at 213.
[99] Tr. Vol 6 at 5.
[100] See R-1 at 116.

Further, "[a]ll sales appear to be arm's length transaction[s] and [ ] do not require adjustments."[101] Also, "[t]he golf market has remained generally stable during this period and no adjustments are applied."[102] Mr. Williams utilized the adjusted comparable information to conclude in a dollar value per hole of $250,000 or $6,750,000 for the going concern.

Mr. Williams also computed a gross income multiplier because gross income was available from the same six comparable sales and a multiplier was extracted by dividing sale price by gross income. The extracted multipliers ranged from .64 to 1.75 and he concluded to a GIM of 1.10. Multiplying the subject's gross income, from the income approach ($6,460,000) by the GIM, puts forth a value of $7,110,000.[103]

Mr. Williams' reconciliation of value for the subject property under the two sales approaches is $6,930,000. His final reconciliation of value, of the going concern, considering both the sales and income approaches is $6,700,000. He testified, "We put most weight on the income approach as the primary valuation method for golf course properties . . . ."[104]

From the going concern value, real estate only value was calculated by subtracting the value of FF&E, obtained from "[t]he club's most recent personal property filing with the local assessor."[105] The amount of FF&E in the personal property filing was $1,132,140, rounded to $1,130,000.

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[101] See R-1 at 116.
[102] See R-1 at 116.
[103] See R-1 at 107-114. See Tr. Vol 6 at 16-17.
[104] See Tr. Vol 6 at 77.
[105] See R-1 at 120.

Also subtracted from the going concern value were business assets, "taken from actual costs and interviews with operators of special purpose properties."[106] These included reserves and inventory not covered within FF&E. "[T]hey're not movable personal property, but we know they exist to operate the property as a going concern."[107] Reserves and inventory include food, beverage, cleaning supplies, and toiletries, and a minor allowance of $10,000 is made. Also included were start-up costs of $385,000 "for assembling and training staff and management in addition to advertising, web/social media, and internet presence."[108] Liquor license is estimated at $50,000, but no deduction was made for goodwill. There is also a subtraction for working capital, estimated at a one-month reserve at $275,000, taken from 50% of variable expenses and 100% of fixed expenses from the pro forma.[109] As a result, $1,130,000 in FF&E and $720,000 in business assets were deducted from the going concern value of $6,700,000, for a real estate value of $4,850,000, rounded.[110]

FINDINGS OF FACT

1. The subject property is a non-profit, member-owned, non-equity, private country club with a 27-hole golf course. It includes a club house with dining room, banquet room, members' dining room, pub grill, locker rooms, and administration offices. It also includes a pro shop with office and concession counter. There is a cart building, cart and bag storage building, maintenance storage building, and

[106] See R-1 at 120.
[107] Tr. Vol 6 at 77.
[108] See R-1 at 120.
[109] See R-1 at 120.
[110] See R-1 at 121. See Tr. Vol 6 at 77-78.

chemical/fertilizer storage building. There is also a pool, pool house with locker rooms, and tennis courts. The property consists of approximately 250 acres.

2. The clubhouse was originally constructed in 1989, but a renovation was completed in 2016 which included an addition to the locker rooms of about 1,536 square feet, enhancement of the member dining room and construction of a large outdoor patio area.
3. The subject property is located in R-1.0, residential-agricultural zoning.
4. In order to open a PDFC in the subject property, a special land use application must be approved.
5. Petitioner presented the Tribunal with an appraisal of the subject property, prepared by Mr. Rende, considering the cost, sales and income approaches to value, but the final conclusion of value was based on the income approach, with support from the sales approach.
6. Respondent presented the Tribunal with an appraisal, prepared by Mr. Williams, considering the cost, sales and income approaches to value, but the final conclusion of value was based on the income approach, with support from the sales approach.
7. Mr. Rende found the highest and best of the property to be a PDFC.
8. Mr. Williams found the highest and best of the property to be a private, for-profit, non-member owned, non-equity, country club. One consideration in Mr. Williams' highest and best use analysis was to consider the subject property as a PDFC and determine its maximally productive value as such.

9. Both Mr. Rende and Mr. Williams presented the Tribunal with sales and income comparables. Quantified adjustments, on a sales grid, were not applied to Mr. Rende's sales comparables.
10. In his income approach, Mr. Rende subtracted FF&E obtained from the subject property's private club, personal property statement.
11. Mr. Rende's operating expenses are based, in part, on NGF data from 2004, 2005, 2008 and 2009.
12. Mr. Rende's banquet comparable data put forth "somewhat dated," reported sales. $2,000,000, plus has been spent at the subject property over the last several years from the club's bar, restaurant and banquet operations.
13. Mr. Rende based his swim revenue calculation on 2009-2011 revenue from Twin Lakes Golf Course in Oakland Township.
14. Both appraisers' income approaches base projected income and expenses for the subject property on historical and comparable data.
15. Both appraisers use several sources in the determination of their applied capitalization rate.
16. Mr. Williams concluded to his tax loaded cap rate based on the blended Lyon Township non-homestead and personal property millage rates.

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.[111]

[111] See MCL 211.27a.

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not . . . exceed 50 percent. . . .[112]

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.[113]

The Michigan Supreme Court has determined that "[t]he concepts of 'true cash value' and 'fair market value' . . . are synonymous."[114]

"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."[115] The Tribunal is not bound to accept either of the parties' theories of valuation.[116] "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."[117] 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."[118]

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[112] Const 1963, art 9, sec 3.
[113] MCL 211.27(1).
[114] *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).
[115] *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).
[116] *Teledyne Continental Motors v Muskegon Twp,* 145 Mich App 749, 754; 378 NW2d 590 (1985).
[117] *Meadowlanes Ltd Dividend Housing Ass'n v Holland,* 437 Mich 473, 485; 473 NW2d 636 (1991).
[118] *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.[119] The Tribunal's factual findings must be supported "by competent, material, and substantial evidence."[120] "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence."[121]

"The petitioner has the burden of proof in establishing the true cash value of the property."[122] "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."[123] 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."[124]

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.[125] "The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading."[126] The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the

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[119] MCL 205.735a(2).
[120] *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).
[121] *Jones & Laughlin Steel Corp, supra* at 352-353.
[122] MCL 205.737(3).
[123] *Jones & Laughlin Steel Corp, supra* at 354-355.
[124] MCL 205.737(3).
[125] *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).
[126] *Jones & Laughlin Steel Corp, supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances.[127] Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.[128]

Highest and Best Use

Highest and best use is the crux to determining the market value of a property. As noted in the *Appraisal of Real Estate*,[129] "[t]he essential components of the analysis of highest and best use are contained in the following definition of the term: The reasonably probable use of the property that results in the highest value."[130] In other words, in determining the true cash or fair market value of a property, it is the use that results in maximum productivity that is aimed for. Highest and best use "recognizes that the use to which a prospective buyer would put the property will influence the price which the buyer would be willing to pay."[131] In determining highest and best use, the appraiser must consider whether the use is *legally permissible*, physically possible, financially feasible and the maximally productive use of the property.

"The highest and best use [of property] is shaped by the competitive forces within the market where the property is located, and it provides the support for a thorough

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[127] *Antisdale, supra* at 277.
[128] See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).
[129] Appraisal Institute, *The Appraisal of Real Estate* (Chicago: Appraisal Institute, 14th ed, 2013), p 332.

The Appraisal of Real Estate is the appraisal profession's "flagship text, reflects this recommitment to the essential principles of appraisal and the sound applications of recognized valuation methodology." Further, "both appraisers and users of their services can be assured that this volume builds on time-tested foundational knowledge and contains the most up-to-date information and learning on valuation available anywhere." *Appraisal of Real Estate,* Forward, written by Richard L. Borges II, MAI, SRA, 2013 President, Appraisal Institute.

[130] *The Appraisal of Real Estate* at 332.
[131] *Edward Rose Building Co v Independence Twp,* 436 Mich 620, 633; 462 NW2d 325 (1990).

investigation of the competitive position of the property in the minds of market participants."[132] Both appraisers, Mr. Rende and Mr. Williams commence with "an investigation of the competitive position of the property in the minds of market participants," by considering, among other analyses,[133] several approaches to value. Mr. Rende considered the cost approach, two sales approaches, and an income approach concluding the subject property's highest and best use is as a PDFC. Mr. Williams considered the cost approach, two sales approaches and two income approaches, one hypothesizing the subject property as a PDFC and the second, as a private course, for-profit. The Tribunal finds both appraisers properly commenced their analyses, however, Mr. Rende failed to consider the legal permissibility of the subject property as a PDFC under the existing zoning on the date of value of December 31, 2016, which was necessary given his analysis and determination of highest and best use.[134]

Respondent put forth Mr. Keesey, who contracts with Lyon Township on zoning and planning issues and he testified that the subject property's approvals in the past have been based on membership. As such, if the property becomes a PDFC, additional consideration of increased traffic and sufficiency of parking must be explored, as a result of increased customers utilizing the property. The subject property is in a R-1.0 zoning district, which permits PDFCs with the approval of a special land use application. However, as of Tax Day, the property did not have a special land use approval for a

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[132] *The Appraisal of Real Estate* at 331.
[133] Examples would include considering supply and demand of golf courses, physical attributes and market delineation. See *The Appraisal of Real Estate* at 317.
[134] MCL 211.2(2) states: "The taxable status of persons and real and personal property for a tax year shall be determined as of each December 31 of the immediately preceding year, which is considered the tax day, any provisions in the charter of any city or village to the contrary notwithstanding."

PDFC, nor did Mr. Rende explore whether one would be available, what the process for approval might be, or how much it would cost, among other factors. He testified,

> Q: And as you sit here today, you don't know if another special land use approval process would have to be gone through to transition this property from a private country club to a public daily fee course, do you?
> A: I don't know the specifics of what would need to be done.[135]
>
> Q: Okay. And honestly, I mean, have you ever called a township to ask them, you know, whether or not they would grant a special land use under certain circumstances?
> A: Many times.
> Q: Right. And the off -- and my guess is, Mr. Rende, correct me if I'm wrong, that the answers you've gotten have been all over the board?
> A: The most consistent answer is, I don't know, submit what you want to do, and we'll look at it.[136]

Mr. Williams considered whether the property would be maximally productive as a PDFC but stopped his analysis when he determined the property would provide more profit as a for-profit, private, non-member owned club, and as a result, he did not consider the legal permissibility of the subject property as a PDFC. Mr. Williams testified, "well, we -- we did the pro forma as a public. We capitalized that and we had a value, so that's testing financial feasibility because it's more income to cover expenses. But we compared maximally productive, that number 2.9, to our maximally productive private; it was lower, so we stopped further investigation into other aspects legally permissible. We didn't investigate the potential for needing approvals for special land use."[137]

[135] Tr. Vol 4 at 114.
[136] Tr. Vol 4 at 121.
[137] Tr. Vol 7 at 232.

As noted above, the four tests that must be considered to determine the highest and best use of a property are, legal permissibility, physical possibility, financial feasibility and the maximally productive use of the property. In *The Appraisal of Real Estate*, it states, "[i]n practice, the tests of physical possibility and legal permissibility can be applied in either order, but they both must be applied before the tests of financial feasibility and maximum productivity. A use may be financially feasible, but this is irrelevant if it is legally prohibited or physically impossible."[138] Mr. Williams was questioned as to why he started with the tests of financial feasibility and maximally productive value, rather than going through the tests point by point as listed above, "Q: Is there any requirement for you to do that?" "A: No, I don't think so. There is a requirement for our ultimate highest and best use." "Q: So, had you determined that the public daily fee course income analysis resulted in a value that was higher than the private for-profit analysis, would you then have looked at whether it was legally permissible?" "A: We would have probably dug a little deeper."[139]

The Tribunal finds that there is instruction in *The Appraisal of Real Estate* that Mr. Williams should have considered the legal permissibility of a PDFC before preparing his pro forma to determine its maximum productivity; nevertheless, the Tribunal is persuaded that the highest and best use of the property is not as a PDFC based on Mr. Williams' overall analysis. Mr. Williams further testified that he did not consider there to be a legal issue with the continued use of the course as a private club, because "[t]he subject as a private country club is its existing use and we're not changing the use."[140]

[138] *The Appraisal of Real Estate* at 335.
[139] Tr. Vol 5 at 188-189.
[140] Tr. Vol 7 at 234.

Because Mr. Rende determined the highest and best use of the property to be a PDFC, his lack of consideration of the legal permissibility of this proposition is telling, with regard to the appropriateness of his appraisal report.

Value – Cost Approach

Both Mr. Rende and Mr. Williams considered, but rejected the cost approach to value. Mr. Rende testified, "it's very difficult to accurately identify cost, reproduction or replacement cost, and then even more difficult to quantify depreciation, which are both a requirement of this methodology."[141] He also testified, "most importantly, people who are buying and selling these types of properties, income producing properties, are not relying on this methodology either."[142] Mr. Williams testified, "[t]he buyers and sellers of golf courses don't typically use the cost approach. It's difficult to estimate depreciation, as well."[143] The Tribunal is in agreement with both appraisers that the cost approach is not the appropriate approach to utilize in determining the true cash value of the subject property for the 2017 tax year for the reasons stated above by both appraisers: depreciation is difficult to quantify and buyers and sellers of golf courses do not consider the cost approach.

Sales Approach

Both Mr. Rende and Mr. Williams prepared sales approaches to value the subject property and both determined it provided support for the income approach, but the income approach was their primary approach to value. The Tribunal agrees that the sales approach is not the best approach to utilize in valuing the subject property and the

[141] Tr. Vol 1 at 94-95.
[142] Tr. Vol 1 at 95.
[143] Tr. Vol. 6 at 3.

primary approach should be the income approach. Nevertheless, it will go through a brief analysis of both parties' market approach.

Proper application of the sales comparison approach involves "comparing similar properties that have recently sold . . . identifying appropriate units of comparison and *making adjustments* to the sale prices . . . of the comparable properties based on relevant, market-derived elements of comparison."[144]

Mr. Rende primarily compared the subject property to six Michigan golf course sales, and one resale that occurred during or after 2014; however, he did not make quantitative adjustments for differences in amenities like pool, tennis courts or banquet facility, age, location, number of holes, among other adjustments.[145] He testified, with regard to his lack of adjustments, "[t]he number of variables that exist between these courses, from one course to another, it is quite literally impossible to quantify. The best you could do is come up with two, three, four, five characteristics, primary major characteristics, and subjectively adjust based on what you think an appropriate adjustment might be."[146] As such, Mr. Rende did not put his sales comparables on a grid, as is sometimes customary, to quantify adjustments. He testified, "[a]gain, to list them on a grid and attempt to adjust them, I think it is -- it's admirable, but it doesn't provide any reliable indications."[147] Mr. Rende also prepared a GIM analysis, but testified, "I'm primarily focused on the income that that course can generate, so that is my primary approach to value."[148]

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[144] *The Appraisal of Real Estate* at 377. (Emphasis added)

[145] Tr. Vol 2 at 81-83.
[146] Tr. Vol 1 at 161.
[147] Tr. Vol 1 at 162.
[148] Tr. Vol 1 at 162.

Mr. Williams also prepared a sales approach to value the subject property, but the Tribunal is not persuaded by the analysis, based on the quality of the sales chosen. Mr. Williams chose six sales of golf courses, only three located in Michigan, and only three, private clubs. He testified, "[p]rivate country clubs and golf courses that are of this quality, sell infrequently within our immediate market, so we expand our geographic area. We want to stay in a geographic area that we deem is at least a similar climate."[149]

MCL 211.27(1) states, "'true cash' value means 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." Mr. Williams' sales comparable one, Oakhurst Country Club, sold in 2017 and was a foreclosure sale for redemption after a mortgage. Mr. Williams testified, "[t]he sale sold, but before the sale could close, they actually had to go through a foreclosure process because of the - - the members were owed more than the club was worth."[150] His sales comparable four, TPC Michigan, sold in 2014, is not a private club and sold as a going concern by a court appointed receiver at the request of the bank who held the property. It states in Mr. Williams' appraisal, "[t]his is a receivership sale and due to the possibility of foreclosure, management has been unable to grow membership and banquet bookings have suffered."[151]

[149] Tr. Vol 6 at 5.
[150] Tr. Vol 7 at 109, R- 1 at 108.
[151] See R-1 at 111.

Comparable five, Tartan Fields Golf Club, sold in 2013, is described as, "a lender owned property and receiver-appointed management has been unable to grow membership due to the future uncertainty and banquet bookings have suffered."[152] Comparable six, Northville Hills Golf Club sold in 2012, is not a private club and "was a lender-owned REO sale . . . ."[153] Sales comparable two is located in Ohio and, is approved for a PUD and comparable three is not a private club, sold in 2015, and is located in Wisconsin.[154] Mr. Williams utilized the same sales in his GIM analysis, and the Tribunal finds Mr. Williams should have considered a market conditions adjustment given the sales occurred from 2012 to 2017, a conditions of sale adjustment and possibly a location adjustment. Relative to conditions of sale, Mr. Williams contends, "[a]ll sales appear to be arms' length transaction[s] and [ ] do not require adjustments."[155] The Tribunal finds, however, that sales one, four, five and six were not subject to normal market pressures, and as such, not indicative of "the usual selling price."

After considering both Mr. Rende's and Mr. Williams' sales approaches to value, the Tribunal is not persuaded that the approach leads to an accurate determination of the market value of the subject property, but instead finds the income approach to be the proper technique to utilize in determining the true cash value of the subject property for the 2017 tax year.

[152] See R-1 at 112.
[153] See R-1 at 113.
[154] See R-1 at 109, 110.
[155] See R-1 at 116.

Income Approach

Both appraisers prepared income approaches to value the subject property. Mr. Rende prepared an income approach that included a pro forma putting forth the NOI for a PDFC, only. Mr. Williams, however, prepared two pro forma statements to compute the NOI for both a PDFC and a private, for-profit course, in order, as noted above, to determine the highest and best use of the property.

Mr. Rende determined continued use as a private course was not feasible on the date of value. He testified, that the 36 sales, some distressed, he put forward in his sales approach demonstrated the decline in the golf industry. The courses he testified sold twice, Liberty Golf Club, Brentwood Golf Course and Burning Tree Country Club, sold for significantly less in their later sales, demonstrating reductions in sale price from 57.5% to 75%. Of course, it should also be noted the second sales of Liberty and Brentwood occurred in 2008 and 2009, in the height of the recession. The sale of Burning Tree occurred in February 2011, almost six years before the date of value in this matter and was redeemed after foreclosure.[156]

Mr. Rende also testified that private clubs in Southeast Michigan have suffered a decline in membership, illustrated in the drop in price of membership fees. Further, NGF indicated that from 2013-2017, 57.5 courses have closed in Michigan.[157] Mr. Rende contends that in the past 10 years, nationwide, 400 private clubs have converted to semi-private or daily fee, and an additional 38 clubs have closed.[158] He also testified that the subject property has a lot of competition, with over 100 courses within a 20-mile

[156] See P-1 at 118.
[157] See P-1 at 70-72. See Tr. Vol 1 at 70.
[158] See P-1 at 65.

radius of the subject property.[159] Mr. Rende did admit that not all of the 100 courses are comparable to the subject, given they may include nine or eighteen holes, the quality might be poorer, and some are private member only, courses. Nevertheless, as a result of his analysis, Mr. Rende testified that the maximally productive use of the property is as a PDFC.

The Tribunal, however, is convinced by Mr. William's income approach to value, that the highest and best use of the subject property is as a private, for-profit, non-member owned club. In *Golf Course Analysis and Valuation*, it states,[160]

> Contrary to popular belief, many private clubs are operated as *for-profit* and many *nonprofit* member-owned clubs trade in the marketplace. In almost all cases, the nonprofit clubs that trade are sold to buyers who will operate them seeking profit. Accordingly, the perspective of estimating market value (when a sale is assumed) is usually based on economics, assuming the club would be purchased and operated for profit by one of the many investors and/or management firms that specialize in operating private clubs. This is true even up in appraisal assignments for ad valorem tax assessment, which should reflect market conditions and typically motivated buyers.[161]

Mr. Williams testified that the subject property is physically set up ideally for a private country club and has been successfully operating as one, for years. In fact, 399 full golf members are the maximum allowed, and as of September 2016, there were 384 members. Mr. Williams acknowledged that many private country clubs have suffered from declines in membership challenging their feasibility to continue to operate as private clubs, but this club is not one of them. Mr. Williams noted that revenue from cart fees, guest fees, food and beverage from the club's bar, restaurant and banquet

[159] See P-1 at 83.
[160] Appraisal Institute, *Golf Property Analysis and Valuation* (Chicago: Appraisal Institute, 2016).
[161] *Golf Property Analysis and Valuation* at 15.

operation, as well as miscellaneous revenue, have increased at the subject property between 2014 and 2016. Mr. Williams applied the 2017 membership dues schedule to the membership breakdown, resulting in a projected revenue of $3,210,000 in his pro forma, which is higher than the $2,572,000 reported during fiscal year 2016. The Tribunal, however, finds this acceptable as the number was also confirmed by consideration of regular golf membership dues, including all annual costs at six other private country clubs.[162] Further, the club renovation in 2016 caused revenue to increase slightly because dues were increased.[163]

In his income approach, Mr. Williams considered dues, costs of goods sold and operating expenses from historical numbers as well as income and expenses from other private country club comparables put forth in his appraisal. While not all of the comparable clubs were for-profit or located in Michigan, Mr. Williams persuasively testified that they were good comparables, including the fact that he had personally visited each of them.

Mr. Williams appropriately determined revenues from dues/assessments, initiation fees, and the revenue sources listed above in his testimony, described above.[164] He properly determined and subtracted cost of sales and operating expenses, to conclude in NOI of $952,000. The Tribunal is persuaded that Mr. Williams' NOI was capitalized with the correct capitalization rate as Mr. Williams determined a market derived capitalization rate from thirteen sales, six in the state of Michigan. He also

[162] Tr. Vol 6 at 27-28. R-1 at 75.
[163] Tr. Vol 6 at 23.
[164] Locker and bag storage fees were the only revenue source that historically decreased from 2014 to 2016 from $112,079 to $104,122. Practice range revenue ranged from $58,110 to $63,819, but there was no testimony that it increased. See R-1 at 90.

extracted a rate from RealtyRates and the Society of Golf Appraisers and reconciled them at 12%.[165] He blended the Lyon Township non-homestead and personal property millage rates, which the Tribunal finds is appropriate given the analysis includes real estate and personal property, and applied that to the previously determined, 12% cap rate. Mr. Williams concluded tax loaded cap rate was 14.37%, which the Tribunal finds is appropriate in a tax-neutral analysis.

The market value, of the going concern, was properly determined by dividing NOI by the tax loaded cap rate, for a conclusion of value of $6,625,000, rounded. Mr. Williams reconciled this value conclusion with his conclusion pursuant to the sales approach of $6,930,000, but placing most emphasis on the income approach, concluded in a going concern value for the subject property for the 2017 tax year of $6,700,000.

To conclude in the value of the real estate only, Mr. Williams subtracted the value of private club FF&E, obtained from the club's most recent filing with the local assessor. Also properly subtracted from the going concern value were business assets, "taken from actual costs and interviews with operators of special purpose properties."[166] These included working capital, liquor and other licenses, inventories, and start-up costs, for a total of $720,000, which the Tribunal finds is appropriate. To conclude in the value of the real estate only, Mr. Williams subtracted FF&E of $1,130,000 and business assets of $720,000 from the going concern value of $6,700,000, for a determination of value of $4,850,000.

[165] See R-1 at 96-97. See Tr. Vol 6 at 61-62.
[166] See R-1 at 120.

There are issues that bring pause to the Tribunal's consideration of Mr. Rende's income approach, including his deduction of FF&E taken from the subject property personal property statements, which represents the personal property of a private country club. Further, the Tribunal finds replacement reserves should be lower for a PDFC. Mr. Williams persuasively testified that if he continued his PDFC analysis, he would not deduct private club FF&E from the going concern value to reveal real estate value. He testified, "that personal property pertains to a highest and best use as a private country club, and we would consider what FF&E personal property would be under operation as a daily fee."[167] Further, Mr. Williams contends that in a PDFC, replacement reserves are lower because there is less personal property with a PDFC. For example, considering the size and use of a private facility, there would be, "more kitchen equipment, more linen, dining, tables, chairs. A private club that is utilizing the swimming pool and tennis facilities will have equipment for those facilities as well."[168]

Mr. Williams was peppered with questions during cross examination, regarding his assumption that membership numbers at the club after its transition from non-profit, member-owned, to for-profit, non-member owned, would remain the same. He acknowledged that members would no longer have voting control over what happens to the club, and there is no opportunity to receive reimbursement of initiation fees, which under the structure that exists now, is a possibility when the maximum number of full golf members is reached. [169]

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[167] Tr. Vol 6 at 75-76.
[168] Tr. Vol 5 at 214-215. Mr. Rende's PDFC replacement reserves are 2% and Mr. William's private club replacement reserves are 1%. See P-1 at 105, R-1 at 95.
[169] Tr. Vol 6 at 37-38.

As noted above, Mr. Williams testified that the subject property is physically set up ideally for a private country club and that is the way it has been used for years. Further, it is located in a growing community[170] with high income levels and has a solid membership. There are also no other private country clubs within nine miles of the subject property and the subject property received a large addition and renovation in 2016. Additionally, Mr. Williams testified that the members would not "see any changes in terms of service or what they are enjoying at the club; they just simply would no longer be owners of the club."[171]

Mr. Williams testified, that the new owner "would be concerned about profit, and the way they achieve profit is by taking care of their membership and the property and services. So they'd be motivated for profit, and the only way you're going to get that is to keep the membership happy."[172] Further, when the club sells, the members will "get whatever net proceeds there are."[173] Also, the members "don't have to worry about renovations; someone else is going to handle that. They are also not going to worry about capital dues or assessments that they will no longer have to pay, so their overall costs may be lower."[174] "They wouldn't have the responsibility of appointing a board, appointing management, hiring employees. They wouldn't have the responsibility to screen potential new members, or in the unlikely event, have to remove a member that

[170] Mr. Rende agreed that 290 residential building permits were issued in Lyon Township in 2016 which is 14.8 percent of all the permits issued in Oakland County. See Tr. Vol 2 at 34-35. Also, the adjacent parcel to the subject consisting of 88.52 acres, originally part of this appeal, sold for development as single family residential, for $2,600,000 in January 2018. See P-1 at 124. Mr. Rende was also shown a PTA indicating the parcel sold again for 3.1 million in March 2018.
[171] See Tr. Vol 6 at 27.
[172] Tr. Vol 7 at 46-47.
[173] Tr. Vol 7 at 67.
[174] Tr. Vol 7 at 84.

might be their, you know, relative of neighbor or schoolteacher or whatever."[175] Based on Mr. Williams' testimony, the Tribunal is persuaded of the accuracy of his membership projection.

Another issue with Mr. Rende's income approach is the "staleness" of his data. While Mr. Rende suggested he used newer sales and income comparables, he also contends that the information in his operating expenses are, in part, based on NGF data from 2004, 2005, 2008 and 2009, which "is dated."[176] Further with regard to his banquet revenue he contends, "[t]he appraiser acknowledges that the comparable sales data summarized above is somewhat dated . . . ."[177] In fact, Mr. Williams contends greater revenue, than that put forth by Mr. Rende, can be obtained at the subject property because the facility is large, in good condition, and has "multiple profit centers within the clubhouse, banquet center, the - - swim building, and the halfway house."[178] Further, if it goes public, Mr. Williams contends, the present members would most likely come back, as well as others, and $2,000,000, plus has been spent at the subject property over the last several years. Finally, relative to his swim data, Mr. Rende confirmed in his testimony, "that since 2011, [he] has not looked at any single comparable data for a private swim club that's reported in [his] report."[179]

Petitioner contends that the specific source (name of golf club) of Mr. Williams' income comparable data is not given, and Mr. Williams admits that is so, because the golf club client data must remain confidential. Petitioner contends Mr. Williams did not

[175] Tr. Vol 7 at 192-193.
[176] See P-1 at 99.
[177] See P-1 at 96.
[178] Tr. Vol 6 at 86.
[179] Tr. Vol 2 at 9.

put forth even generic information about his income comparables, like year of data collection, location, non-profit or for-profit and club amenities. The Tribunal acknowledges that this data would be helpful to it in determining whether Mr. Williams' income comparables are appropriate, but the lack of data is not fatal. Mr. Williams did reveal the data dates, profit or non-profit status, and location in his testimony and he visited all the comparables.[180] As a result, the Tribunal was persuaded that the comparables are truly comparable to the subject property; therefore, additional adjustments were not necessary.

Petitioner spent a great deal of time questioning Mr. Williams about the value of private country club "intangibles," and how their worth was separated out in dues revenue. For example, a private club provides "white-glove" service, a high echelon of members, status, numerous special social events, golf leagues, swim leagues, tennis leagues, a golf pro available to the members, and possibly a world-class chef, as examples. However, as noted above, Mr. Williams' expense comparables were all from private country clubs, which logically, would have some similar amenities as the subject property. Further, the subject, private club, historical income and expenses were considered. Finally, separating non-real estate items from the going-concern value would properly occur below the line, and not in the revenue line item. Mr. Williams was questioned: "do you make an attempt to strip out from this due[s] number those elements of a private club that you can't tie to the real estate? A: Within the dues amount - - Q: Right. A: --right here? Q: Right."[181] Mr. William's replied, "[i]t's all

[180] Tr. Vol 7 at 6.
[181] Tr. Vol 6 at 226.

together."[182] Mr. Williams further testified, "Intangible business assets are accounted for at the end of the appraisal in the reconciliation where we make our allocation to personal property and business assets."[183] For example, Mr. Williams testified, "[w]ithin the operating expenses, we are estimating a variety of expenses, and one of them is payroll, which is relatively large because of all of the services that are provided [at a private club]"[184] The Tribunal finds Mr. Williams properly gave consideration to private club "intangibles."

The Tribunal declines to consider Respondent's allegations about Mr. Rende's alleged bias, because there is no proof of the same, and the Tribunal is not relying on his appraisal report.

Mr. Williams testified, "[w]e put most weight on the income approach as the primary valuation method for golf course properties . . . ."[185] Mr. Williams also contends, "[t]he income approach is a very important method for valuing any income producing property and particularly golf course properties, which are bought and sold based on income generating characteristics. This approach is most applicable to the analysis of the subject property."[186] Mr. Rende testified, given the limitations of the sales approach, he "primarily focused on the income that the course can generate, so that is my primary approach to value."[187] The Tribunal agrees with both appraisers that the income approach is the proper technique to utilize in determining the fair market value of the subject property. However, in its independent analysis of the evidence, testimony

[182] Tr. Vol 6 at 226.
[183] Tr. Vol 6 at 229.
[184] Tr. Vol 6 at 227.
[185] Tr. Vol 6 at 77.
[186] See R-1 at 118.
[187] Tr. Vol 1 at 162.

and case file, the Tribunal finds Mr. Rende determined the incorrect highest and best use of the subject property, which is immediately revealing relative to the accuracy of his report. Mr. Williams testified,

> Q: And how important is the determination of highest and best use in the appraisal process?
>
> A: It's critical.
>
> Q: So what happens if you get highest and best use wrong?
>
> A: You likely get your valuation wrong.[188]

Mr. Rende failed to consider the legal permissibility of a PDFC situated on the subject property, on the date of value. He did not speak to anyone in the planning or zoning department, failed to determine how to get special land use approval, and provided no breakdown of costs to be incurred in the process. In fact, relative to zoning changes, in *The Appraisal of Real Estate*, it states, "[m]any pending sales never close because they are subject to rezoning that could not be obtained within the developer's desired timeframe or not obtained at all."[189] Further, Mr. Rende utilized dated revenue and operating expense data, and the incorrect FF&E deduction. The Tribunal also prefers Mr. Williams' tax loaded cap rate based on the blended Lyon Township non-homestead and personal property millage rates, given the analysis includes real estate and personal property.[190]

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[188] Tr. Vol 5 at 186.
[189] *The Appraisal of Real Estate* at 339.
[190] An additional allegation was made by Respondent that Mr. Rende "double dipped" as he allegedly took reserves out for leased golf carts and equipment as well as expensing the lease amount. The Tribunal finds it is unnecessary to consider this allegation as it has already concluded it will not rely on Mr. Rende's appraisal.

A great deal of time was spent by both parties, comparing this case to the Tribunal's determination of value in other, previously tried, golf course cases, including some where Mr. Rende prepared Petitioner's appraisal. The Tribunal finds and reminds the parties, that every case has different facts, evidence and testimony, and the properties have different characteristics. As such, it is inappropriate to compare one Tribunal conclusion based on different facts, evidence and testimony, to another.

In closing, pursuant to its careful and independent consideration of the evidence, testimony and case file in this matter, the Tribunal is persuaded by Mr. Williams' income approach to value, that the true cash value of the subject property for the 2017 tax year is $4,850,000.

The Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that the subject property's TCV, SEV, and TV for the tax year at issue are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that the properties' state equalized 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 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, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%, (viii) after December 31, 2017, through June 30, 2018, at the rate of 5.15%, (ix) after June 30, 2018, through December 31, 2018, at the rate of 5.41%, (x) after December 31, 2018 through June 30, 2019, at the rate of 5.9%, and (xi) after June 30, 2019 through December 31, 2019, at the rate of 6.39%.

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

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.[191] Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is $50.00 in the Entire Tribunal and $25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.[192] A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.[193] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[194]

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is

[191] See TTR 261 and 257.
[192] See TTR 217 and 267.
[193] See TTR 261 and 225.
[194] See TTR 261 and 257.

filed more than 21 days after the entry of the final decision, it is an "appeal by leave."[195] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[196] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[197]

By Preeti Gadola

Entered: October 18, 2019

[195] See MCL 205.753 and MCR 7.204.
[196] See TTR 213.
[197] See TTR 217 and 267.