

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

Pontiac Country Club,
Lloyd & Fran Syron,
Petitioners,

v

MTT Docket No. 310166

Township of Waterford,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

ORDER DENYING RESPONDENT'S REQUEST FOR COSTS

This case is an appeal of the true cash, assessed and taxable values established for the 2004, 2005, and 2006¹ tax years by the Township of Waterford ("Respondent") under the general property tax act (GPTA) for nine parcels of real property (the "subject property") owned by Lloyd & Fran Syron, ("Petitioners"). The subject property is known as "The Pontiac Country Club" and is located on 4335 Elizabeth Lake Road, in Waterford Township, Oakland County, Michigan.

A hearing was held on January 28, 29, and 30, 2008 before then Tribunal Member Patricia Halm. Petitioners were represented by attorney Fred Gordon, from the law firm of Fred Gordon, P.C, and attorney William R. Connolly from the law firm of William R. Connolly & Associates; Respondent was represented by attorney Stephanie Simon Morita from the law firm of Secret, Wardle, Lynch, et al. Ms. Halm's term as a

¹ Value as of tax day, December 31, 2003, December 31, 2004, and December 31, 2005.

member of the Michigan Tax Tribunal ended on July 31, 2011. Pursuant to TTR 140, this matter was, on August 1, 2011, assigned to this member for decision.

The subject property's 2004, 2005 and 2006 True Cash Values (TCVs), Assessed Values (AVs) and Taxable Values (TVs) as determined by Respondent's assessor and as set forth in Respondent's Prehearing Statement are:

13-27-303-001 Respondent

Year	TCV	SEV	TV
2004	\$16,500	\$8,250	\$5,610
2005	\$16,500	\$8,250	\$5,730
2006	\$16,500	\$8,250	\$5,910

13-27-326-003 Respondent

Year	TCV	SEV	TV
2004	\$177,940	\$88,970	\$86,700
2005	\$185,260	\$92,630	\$88,690
2006	\$188,940	\$94,470	\$91,610

13-27-326-005 Respondent

Year	TCV	SEV	TV
2004	\$2,904,240	\$1,452,120	\$806,960
2005	\$2,847,000	\$1,423,500	\$825,520
2006	\$2,902,060	\$1,451,030	\$852,760

13-27-326-006 Respondent

Year	TCV	SEV	TV
2004	\$172,180	\$86,090	\$56,520
2005	\$173,740	\$86,870	\$57,810
2006	\$175,940	\$87,970	\$59,710

13-27-326-007 Respondent

Year	TCV	SEV	TV
2004	\$496,100	\$248,050	\$148,050
2005	\$487,660	\$243,830	\$243,830
2006	\$496,700	\$248,350	\$248,350

13-27-378-002 Respondent

Year	TCV	SEV	TV
2004	\$50,240	\$25,120	\$16,240
2005	\$52,480	\$26,240	\$16,610
2006	\$57,600	\$28,800	\$17,150

13-27-378-004 Respondent

Year	TCV	SEV	TV
2004	\$96,800	\$48,400	\$32,870
2005	\$96,820	\$48,410	\$33,620
2006	\$380,300	\$190,150	\$34,720

13-27-451-007 Respondent

Year	TCV	SEV	TV
2004	\$2,680	\$1,340	\$830
2005	\$2,700	\$1,350	\$840
2006	\$2,700	\$1,350	\$860

13-27-451-008 Respondent

Year	TCV	SEV	TV
2004	\$2,680	\$1,340	\$830
2005	\$2,700	\$1,350	\$840
2006	\$2,700	\$1,350	\$860

Respondent's revised contentions of true cash value based on the appraisal are:

Parcel #	Tax Id #	12/31/2003	12/31/2004	12/31/2005
1	13-27-326-005	\$5,780,000	\$6,080,000	\$5,100,000
2	13-27-326-007	\$1,050,000	\$1,100,000	\$930,000
3	13-27-326-006	\$253,000	\$261,000	\$261,000
4	13-27-451-007	\$46,000	\$51,000	\$57,000
5	13-27-451-008	\$54,000	\$60,000	\$67,000
6	13-27-378-004	\$202,000	\$225,000	\$250,000
7	13-27-378-002	\$30,000	\$31,000	\$32,000
8	13-27-303-001	\$54,000	\$60,000	\$67,000
9	13-27-326-003	\$138,000	\$142,000	\$146,000
Total combined		\$7,607,000	\$8,010,000	\$6,910,000

Petitioners contend that the value of subject property is:²

Year	TCV	SEV	TV
2004	\$700,000	\$350,000	\$350,000
2005	\$700,000	\$350,000	\$350,000
2006	\$700,000	\$350,000	\$350,000

Petitioners did not allocate the \$700,000 value for the eight individual parcels that were included in the appraisal. Respondent requests an increase for subject property's 2004, 2005 and 2006 values.

FINAL VALUES

The Tribunal finds that the true cash, state equalized and taxable values as placed on the roll by the assessor, and as set forth above, are AFFIRMED.

13-27-303-001 Respondent

Year	TCV	SEV	TV
2004	\$16,500	\$8,250	\$5,610
2005	\$16,500	\$8,250	\$5,730
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2005	\$2,847,000	\$1,423,500	\$825,520
2006	\$2,902,060	\$1,451,030	\$852,760

² Petitioner did not allocate the property values in contention. The amount shown is the aggregate value for all parcels.

13-27-326-006

Respondent

Year	TCV	SEV	TV
2004	\$172,180	\$86,090	\$56,520
2005	\$173,740	\$86,870	\$57,810
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13-27-326-007

Respondent

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13-27-378-002

Respondent

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13-27-378-004

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13-27-451-008

Respondent

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PROCEDURAL ISSUES

Respondent stated that Petitioners appear to have abandoned the appeal for parcel 13-27-326-003 (referred to as parcel 9 by Petitioners), as they did not include that parcel number in their appraisal and no proofs were presented regarding that parcel number. Respondent's motion a directed verdict as to parcel 13-27-326-003 was granted at the hearing. The Tribunal adopts the values that are on the assessment roll for Parcel 13-27-326-003. However, Respondent also requested costs for having to litigate and prepare for trial when Petitioners had no intention of presenting testimony or evidence of true cash value. Respondent claims Petitioners' failure to withdraw this parcel number has increased the cost to litigate and the cost to prepare the appraisal. Respondent stated that this parcel was not part of the golf course and had to be appraised separately. There was no notice that Petitioners were not going to pursue all of the parcels appealed, and they could have withdrawn it prior to Respondent's preparation of an appraisal.

Petitioners stated that they did not come to a conclusion of the value of parcel no. 13-27-326-003 until October 2006. At that time it was determined that the fair market value of parcel no. 13-27-326-003 was equal to or less than the assessment.

The Tribunal took Respondent's request for costs under advisement. Having considered the motion for one-ninth of Respondent's costs, the Tribunal finds that Respondent shall not be awarded costs for preparation of the appraisal or time spent preparing for litigation for parcel no. 13-27-326-003. Respondent's Motion for Costs is DENIED.

GENERAL PROPERTY DESCRIPTION

The subject property is known as the Pontiac Country Club addressed as 4335 Elizabeth Lake Road, Waterford, Michigan.

Respondent's appraisal included this description of the subject property:

Nine tax parcels, eight of which are currently used to house the Pontiac Country Club golf course. The ninth parcel is being operated as a used car lot. The parcels have a combined area of 107.52 acres. Exhibit R-1, p 1.

The golf course is an 18-hole, par 72 golf course built in the early 1940's. The golf course has 4 par 3's, 10 par 4's, and 4 par 5's. Exhibit R-1, p 20.

Petitioners' property consists of the existing 8,172 square foot clubhouse, 4,000 square foot equipment storage barn, 2,880 square foot cart storage barn and public 18-hole golf course located upon a 107.05-acre site. Exhibit P-1, p 1.

SUMMARY OF PETITIONER'S CASE

Petitioners presented testimony from their appraiser, Michael Rende. Mr. Rende holds the MAI designation since 1994, and is a partner in Wieme, Rende & Associates, P.C. Based on his experience and training, the Tribunal accepted Mr. Rende as an expert appraiser. (Tr. 1, p11).

In support of their value contentions, Petitioners offered the following exhibit, which was admitted into evidence:

P1: An Appraisal of the subject property, prepared by Michael Rende, MAI.

Mr. Rende's testimony:

Mr. Rende relied on the income approach to value. The subject property was described as not a difficult class 2 golf course. It has typical tee boxes, greens, gravel cart paths, irrigation system, with substantial parking. The subject property is zoned RA-2, which he believed is commercial recreational zoning. There are a couple of residential parcels that are part of the appraisal.

Mr. Rende testified that the RA-2 zoning does not permit residential development. He investigated the possibilities of an alternative use, but was advised that the subject site would remain unchanged. He determined that the subject property's existing use would remain its most probable use.

The income of the golf course was determined by meeting with the owner, inspecting subject property, and reviewing some financial documentation. The actual greens fees were looked at, and compared to competing golf courses. The probable number of rounds was estimated with the cart usage as well as miscellaneous revenue. Greens fees would total \$626,803, carts are \$247,000, and membership fees add an additional \$141,435. The pro shop was estimated to have revenue that equaled \$5.00 per round. Food and beverage revenues were compared with other golf courses and determined to be typical and normal. Operating statements show revenues of \$1,593,566 for 2003, \$1,584,596 for 2004, and \$1,609,855 for 2005. The operating statements show expenses of 96.7% for 2003, 101.8% for 2004, and 95.6% for 2005. (Exhibit P-1, p 51).

The number of rounds played were compared with competing golf courses within a ten mile radius to determine reasonable greens fees and cart rental rates. Mr.

Rende estimated that the subject property has 26,200 rounds of golf in 2003, 25,600 in 2004, and 25,400 in 2005. The subject property is near or slightly below the overall rates charged for rounds of golf. Mr. Rende was not provided the total number of rounds played, but estimated based on average revenue per round, including the \$1,000 memberships that allowed a member to play unlimited golf (excluding cart fees). The gross revenue was estimated to be \$25 per round during the week and \$35 per round on weekends and holidays excluding cart fees.

Cart revenue is significant in the golf course operation. The rates for a round of golf include cart rent of \$14.00 a round for 2004 and 2005; the rate went to \$15.00 in 2006. Mr. Rende estimated that cart revenue in 2003 was 23.4% of the revenue. The remainder of revenue sources includes the pro shop, merchandise sales, food and beverage, as well as income from the driving range.

The median operating expenses from the National Golf Foundation is estimated at 26%. Mr. Rende estimates that in lieu of expenditure for officers' wages a \$60,000 expense for general manager was estimated. The golf course requires equipment maintenance. Mr. Rende states that the useful life of maintenance equipment should range between 7 and 15 years. Based on a review of a new golf course the maintenance equipment was in excess of \$250,000 with a useful life of 10 years. Mr. Rende uses reserves for replacement at 2.5% in a 4.0% sinking fund for an annual payment of \$26,655 for replacement of the maintenance equipment. The golf carts also have to be replaced as their life is estimated at five years. The 78-cart inventory is approximately \$3,500 to \$4,000 per cart. A reserve for replacement for golf carts was

also estimated by Mr. Rende. \$4,000 per cart at 5 years replaced at 2.5% of cost and sinking fund payments at 4.0% safe rate equals \$835 annual reserve per cart.

The pro forma income expense statement for 2004 is:

Greens Fees		\$626,803
Cart Revenue		\$247,906
Memberships		\$141,435
Pro shop		\$110,720
Food & Beverage		\$447,402
Range/Misc		\$ 10,330
Gross Income		\$1,684,596
Cost of Goods Sold		
Gross Margin		
Expenses:		
General Manager	\$60,000	
Payroll	\$554,609	
Maint Equip fund	\$ 26,656	
Admin Gen Exp.	\$100,000	
Insurance	\$118,845	
Carts (78 @\$850)	\$ 86,300	
Total Expenses		<u>\$1,151,408</u>
Projected Net Operating Income		\$ 182,485

Mr. Rende then estimated the portion of expenses that are related to cart maintenance by surveying other golf courses. The subject property indicates a total maintenance expense at \$286 per cart including fuel cost. Mr. Rende concludes to an annual maintenance and fuel expense at \$300 per cart, then using information from golf courses that lease carts, determined that the "purchase reserve" is \$850 per cart (an annual expense of \$66,300). The \$850 includes the lease and maintenance and fuel. Mr. Rende determined that the \$850 purchase reserve is added to the \$300 per cart. This results in a total annual expense per cart of \$1,150. The \$1,150 is multiplied by the 78 carts for an annual expenditure of \$89,700. This amount is deducted from

the gross cart revenue for an indication of the net operating income attributable solely to the cart rental operation.

The last step in determining the real estate value only is to remove the contributory net income from the cart rental operation from the net income previously concluded for the golf course as a going concern (which is inclusive of all income and expenses attributable to the cart rentals). Within the previous pages, an estimate of net operating expenses for tax year ended 12/31/03, for the going concern referenced as The Pontiac Country Club was formulated at \$182,485. It is this amount of net income which must be reduced by the net income attributable solely to the personal property comprised of 78 golf carts. The net income estimated to be generated by this personal property emerged at \$158,206. Reducing the net operating income from the going concern by this amount results in a net income attributable to the real estate only of:

Year	Cart Revenue	Cart NOI	NOI Attributable to Real Estate
12/31/2003	\$182,485	\$158,206	\$24,279
12/31/2004	\$166,084	\$150,811	\$15,273
12/31/2005	\$166,023	\$154,219	\$11,604

Exhibit P-1, p 77.

Mr. Rende's next step in the income approach was to select an appropriate capitalization rate. He considered extraction of the overall rate from some sales, which he discounted based on terms of the sales. CB Richard Ellis- Golf Appraisal Group surveys owner/operators who are investors in golf course/club acquisition business and commercial bank/lenders who are active in financing to reflect investment rates for golf course properties. The range of going in capitalization rates are 10.0% to 13.0%. The weighted mortgage equity method resulted in an overall rate of 10.25%. Because market value is the object the effective tax rate (2.3796) is added to the overall rate for a tax neutral overall rate. The \$24,279 net operating income attributable to the real estate is divided by the overall rate of 12.6296 to equal the true cash value of \$190,000 true cash value as of December 31, 2003.

Mr. Rende followed the same technique for each year and reached a conclusion of market value of \$120,000 as of December 31, 2004 and \$90,000 as of December 31, 2005 via the income approach.

Mr. Rende calculates a Gross Income Multiplier ("GIM") to determine the value of subject property. He uses eight sales of golf courses within a seven-year period. He uses the GIM in the Sales Comparison Approach because the sales have too many variables within each sale, which prohibits an effective analysis based on physical units of comparison. The GIM is the relationship between the sale price of a property and its gross income from all sources. The sale price is divided by the gross income. No adjustments are required. The sales range in operating expense ratios from 50% to 81%. The GIM ranges from 1.67 to 3.20. Mr. Rende indicated that he would select a sale that indicates a higher operating ratio closer to the subject's 90%.

Mr. Rende states the multipliers extracted from the eight sales relate to transactions wherein operating golf courses were purchased as going concerns. Therefore, the purchase prices are inclusive of real estate as well as any contributing value for the going concern, which might include business, good will, and revenues from cart rentals.

Any other comparison utilizing the direct sales comparison approach is highly subjective and speculative at best. It is this appraiser's conclusion after interviewing many sellers and buyers of golf course facilities that the price is predominantly determined based upon the projected net income capabilities rather than a predetermined value per acre, or per hole. This prevents a highly reliable direct sales comparison approach utilizing physical units of comparison rather than economic units of comparison. Exhibit P-1, p 85.

Given this discussion, it is concluded that all of the comparables identified represent the sale of "going concerns". Consequently, no indication of the value of the real estate only is provided by these sale comparables and,

because information relating to income attributable specifically to cart rentals was not available, adjusting these comparables so as to provide an indication as to the value of the subject real estate is not possible. As such, the Direct Sales Comparison Approach has not been relied upon in formulating a value estimate for the subject real estate. Exhibit P-1, p 86.

Mr. Rende attempts to value the 107.5 acres as vacant. He finds that there are not similarly zoned vacant parcels that have the same limited uses. Under the zoning classification, development of single-family or multi-family dwelling units is not permitted thus limiting the subject property's alternate uses. Absence of demand for similar properties indicates that a lower price per acre would be appropriate. Mr. Rende considers old sales, extracts land value from golf course sales, and concludes that demand for land available for development of a golf course is virtually non-existent. Declining profitability resulting from revenues that are decreasing and expenses increasing resulted in multiple foreclosures of recently developed golf courses and the subsequent resales are priced below the original development cost. He found no market support for a specific price or value per acre. He concluded that the most probable price per acre is \$6,500. This results in a true cash value of \$700,000 for the 107.05 acres.

A cursory land value analysis was included. Based upon this analysis and assuming the subject site were vacant and available for sale/development, a value estimate at \$6,500 per acre, or \$700,000 was concluded. Inasmuch as this value estimate for the land as vacant significantly exceeds the value of the subject as currently improved for golf course use, it is concluded that its highest and best use given current economic conditions as it relates to the golf course industry, is as vacant land such that its value is concluded at \$700,000. Exhibit P-1, p 93.

Mr. Rende testified that, after some investigation, it was determined that:

Well, as an alternate analysis I looked at the property as if vacant land; the reason being that if in fact it were more valuable as vacant land

than the value we concluded as an operating golf course, then rightfully so, it should be valued as if vacant. And that's the course of action I took. I researched sales of other vacant sites. We looked at a variety of properties, some of which were used ultimately for golf course use. Some were just acreage parcels devoted – or purchased to accommodate part golf course, part residential. But through that analysis we came up with what I believe to be an appropriate price per acre at \$6,500. And we applied that to the subject's 107 acres to conclude a rounded value of \$700,000. (Tr 1, p 50.)

According to Mr. Rende, he appraised the property as improved and as vacant. The highest and best use states that if the property were vacant the highest and best use “would be to remain as vacant land available for development when demand warrants such development in accordance with its zoning restriction.” Mr. Rende stated “In conclusion, the highest and best use of the subject as improved is continued utilization as a daily-fee golf course.” (Tr 1, p 54)

Mr. Rende then states “Inasmuch as this value estimate for the land as vacant significantly exceeds the value of the subject as currently improved for golf course use, it is concluded that its highest and best use, given current economic conditions as it relates to the golf course industry, is as vacant land such that its value is concluded at \$700,000.” (Tr 1, p 55)

On cross-examination Mr. Rende was asked if he would have the Tribunal believe that only the land value of this property should be applied, the \$700,000 value for land, even though the property is already improved with 18 holes, a clubhouse, barn and other facilities. He responded “Yes.” (Tr 1, p 57)

Mr. Rende did not come to a conclusion in the sales comparison approach and disregards the income approach and did calculate a cost approach. The only approach

considered was a land analysis because it represents the highest and best use of the subject property.

If a golf course use is not the highest and best use and if this land were vacant and unimproved and there is no market currently for golf course development a property owner would have few options available, other than holding the land until some point in the future when demand might increase sufficiently to warrant development for golf course use. (Tr 1, p 57)

Mr. Rende testified that the lack of available land was a contributing factor to a decrease in residential building permits for 2005 and 2006. He agreed that it is anticipated that the area will remain desirable into the foreseeable future. (Tr. 1, p 65) However, there is no analysis for residential property in the land value analysis.

Respondent questioned Mr. Rende on cross:

“Q. Is it true that the golf course market is saturated?”

“A. Yes.”

“Q. Is it true that during the tax years at issue there has been a trend towards golf courses being closed and sold?”

“A. Yes.”

“Q. Was the trend that they were also being closed and sold for residential development?”

“A. In those areas where zoning permitted, yes.” (Tr. 1, p 68)

Mr. Rende has in his appraisal (Exhibit P-1, p 43), six golf courses that were redeveloped for alternative uses. He stated that he thought the redeveloped golf courses required rezoning but was not sure.

Mr. Syron's testimony:

Petitioner's next witness is the property owner, Edward Lloyd Syron. Mr. Syron testified that his family has owned the subject property since 1940. He has been operating the golf course since 1958. There are two homes on the property. His sister has a life estate on one and he resides in the other house. Mr. Syron explained that

the lake lot is essential to the golf course because that is where the water supply for the course comes from. The big residential lot is next to his home. It has the six-inch main that goes from the lake and across the golf course into reservoirs.

Mr. Syron estimated that approximately 25% of the golfers use a cart. The actual fees charged are \$35 during the weekends and \$25 per round for the weekdays. The fees charged do not include a \$14.00 or \$15.00 fee for the golf cart rental. The rounds were calculated using income and allocating it to number of rounds. In 2002 total golf rounds were 27,071; in 2003 golf rounds were 28,274; in 2004 golf rounds were 27,594; and in 2005 golf rounds were 27,442. Mr. Syron stated that nobody could be sure of the actual number of rounds because if it rained a party can come back later and finish the round.

Pontiac Country Club Golf course is family owned and operated. Mr. Syron's nephew is the general manager, another nephew is the assistant golf pro, one daughter runs the kitchen, and another daughter works part-time as a waitress.

Mr. Syron testified that Mr. Hughes offered a deposit to purchase the subject property around 2000, but Mr. Syron had to stay and get the rezoning done. The deposit check was discarded. Mr. Syron stated that Pulte Homes offered \$6,000,000 for the property, but he did not accept Pulte's offer either, indicating that if another owner wanted to keep the golf course in place Mr. Syron may have considered an offer, but he wasn't interested in watching his life's work being bulldozed into housing. He stated he did not want to sell the property that has been in the family his whole life to have someone bulldoze the golf course down.

SUMMARY OF RESPONDENT'S CASE

Respondent presented the following three witnesses: Donald Wood, Chief Assessor for the last eighteen years; Larry Lockwood, Waterford's Planning Division Head; and Raymond V. Bologna, MAI. Respondent states that Petitioners have had offers to purchase subject property for \$11,000,000 and \$6,000,000 and did not sell. Respondent believes that subject property is slightly under assessed based upon Respondent's appraisal.

Based on recommendations from Mr. Lockwood, Respondent found that rezoning the subject property would not be an issue. If the subject property ceased operating as a golf course the likelihood of rezoning is good.

Respondent's appraiser found that the highest and best use of the subject property is for residential/commercial redevelopment, not the current golf course. The Assessor for the township did explain the strong demand for vacant land.

In support of its value contentions, Respondent offered the following exhibits, which were admitted into evidence:

- R1: An Appraisal of the subject property, prepared by Raymond V. Bologna, MAI.
- R2: Petitioners' Responses to discovery.
- R3: Requests to Admit to Petitioners.
- R4: September 1, 2006 Tribunal Order.
- R5: Correction to appraisal.

Mr. Wood's testimony

Respondent's first witness was Donald Wood, Chief Assessor for the township. He testified that the level of assessment was the statutory 50%. He explained that a lake front lot approximately four lots southeast of the subject property sold in 2005 for

\$470,000, which did not include the additional cost of razing the existing home. He indicated that lake front lots sell at a substantial premium. Mr. Wood testified that the township is 90% to 92% built-up with no vacant lots for expansion of residential subdivisions. He expects that a residential development would replace the golf course with some commercial on Elizabeth Lake Road. He did not know the value for the personal property assessment.

Mr. Lockwood's testimony

Larry Lockwood, Waterford's Planning Division Head, was Respondent's second witness. Mr. Lockwood's job is to oversee any new development reviews, site plan submittals, rezoning applications, special land use applications, lot split applications, and a variety of land use related activities and applications. He has worked at the township for over twenty years. He testified that in 2003 close to 93% of the land was built out and that there is a demand for vacant land.

Mr. Lockwood stated that if the subject property sold it would be for redevelopment purposes. The subject property is surrounded by residential land development, close to Elizabeth Lake, which makes it attractive and one of the largest parcels of land in the township.

Mr. Lockwood testified that the master plan serves as a guide for development potential for a community. If the master plan indicates that the subject parcel's continued use should be recreational purposes, it does not mean that the township would not allow another use. This would result in a good possibility of a rezoning given

the economic climate. The township received a total of 75 rezoning requests from 2000 to the present date and 55 were approved, indicating an approval rating of 80%. The ones that were not approved were withdrawn, denied for health, safety and welfare reasons, or because rezoning would not be in character with the surrounding neighborhood.

Mr. Bologna's testimony

Raymond V. Bologna, MAI, prepared an appraisal of the subject property for the years at issue. He was designated as an expert witness and proffered his opinion as to the highest and best use of the subject property.

When questioned as to why he did not use a cost approach, Mr. Bologna testified:

In this case I only applied the income approach, although I did extract capitalization rates from sales. So from that perspective I looked at sales. I looked at the subject's operating history in order to determine the value of the going concern. Because the value of the going concern was so substantially lower than the value of the property for development land, there was no need to go through a cost approach because it was kind of a no-brainer that there's no business value to the operation. TR pp 313-314.

Mr. Bologna described the general area of the subject property as commercial developments on the north side of the road, with the subject property on the south side of the road. An old gas station has been converted into a used car lot. To the north of the subject property is a condo development with the south end of the area residential development. He described the subject's nice parcels. Parcel No. 1 is identified as 13-27-326-005, having 87 acres with the bulk of it being the golf course, main clubhouse,

cart barn and starter shed. Parcel No. 2 is identified as 13-27-326-007 with 15.86 acres containing more golf holes, restrooms, and the maintenance barn. Parcel No. 3 is identified as 13-27-326-006, 2.16 acres with a 2,150 square foot house with a separate garage. Parcel No. 3 is identified as 13-27-451-007, which is a 0.51 acre lot. Parcel No. 5 is identified as 13-27-451-008 with 0.44 acre, which is part of the golf course. Parcel No. 6 is identified as 13-27-378-004 with 0.33 acres with 60 feet of frontage on Elizabeth Lake and zoned single family residential. There appears to be a dock and a pumping station on this parcel. Parcel No. 7 is identified as 13-27-378-002 having 0.07 acres, single-family residential zoning. It contains a 1,100 square foot storage building. Parcel No. 8 is identified as 13-27-303-001, with 0.35 acres, also zoned single-family residential. Parcel No. 9 is identified as 13-27-326-003, currently a used car lot, and is zoned Restricted Office.³

Mr. Bologna's appraisal determined that the current use of the subject property as a golf course was not the most profitable or the highest and best use of the subject property. Bologna first used an income approach and found the true cash value of the subject property as it is currently being used. Using the sales comparison approach he found that the most profitable use of the subject property as determined by the market was not as a golf course. Details of each of the two methods, income and sales comparison approach, follow.

The highest and best use of the subject parcels as improved for Parcels 1, 2, 3, and 9 was as cohesive residential development with some commercial along Elizabeth Lake Road frontage; separate development of platted residential lots for Parcels 4, 5,

³ The appeal on this specific parcel was not included in Petitioners' appraisal and was withdrawn during the hearing. Respondent did include the value of Parcel No. 9.

6, and 8; Parcel 7 was the accessory use of the shed. Mr. Bologna states in the highest and best use section of his appraisal that

It is to be recognized that in cases where a site has existing improvements to it, the highest and best use could conceivably be different from the existing use of the property. The existing use will continue, however, unless and until land value in its highest and best use exceeds the total value of the property in its existing use.” Exhibit R-1, p 74.

He considered whether the individual parcels were individually platted, contiguous parcels, current zoning designation and logical development. He indicated that the current use as a golf course does not constitute the highest and best use; however, due to slow residential development because of overbuilding, it would take several years for the property to be marketed to an appropriate buyer. Mr. Bologna, utilizing Parcels 1 through 8 as part of the golf course, analyzes whether the current use is the most profitable. In analyzing the Total Assets of the Business (“TAB”), he found that the current use as a golf course is not the highest and best use or the one that is most profitable.

Mr. Bologna also did an income analysis, where he also determined that the existing use was not the highest and best use. Using a sales comparison approach, he found that the use of 105.82 acres as a cohesive residential/commercial development parcel for Parcels 1, 2, 3 and 9 was the highest and best use. The remaining parcels will maximize their utility as they are already split. The last step is to then allocate value to the nine parcels.

Mr. Bologna considered the historic revenues for the subject property as a golf course. He compared them with five other golf courses and found that revenue for the subject property was considered reasonable in the market. The next step compared

percentage of expenses to the revenue produced. This resulted in a proforma operating statement that, after determining the gross revenue and deducting operating expenses, equaled the net operating income. Mr. Bologna extracted capitalization rates from five sales of golf courses and he considered RealtyRates.com to determine that 10.7% was appropriate for 2004, 10.9% for 2005 and 11.1% for 2006. He applied the effective tax rate for overall rates of 13.08% for 2004, 13.28% for 2005 and 13.48% for 2006. The net operating income was divided by the overall capitalization rate for a preliminary value by direct capitalization method. He individually determined the value of Parcel 9 because it was an existing commercial property. The value for Parcel 9 for the tax years 2004, 2005 and 2006 are: \$138,000, \$142,000, and \$146,000, respectively.

Mr. Bologna combined the value for the golf course and parcel 9, the result is a true cash value via the income approach of: 2004 \$1,678,000; 2005 \$2,062,000; and 2006 \$2,676,000.

Mr. Bologna continues with the highest and best use analysis and determines that the highest and best uses of the nine parcels is to be considered individually and as an assemblage. Parcels 1, 2, 3, and 9 should be combined as a developmental parcel for a cohesive residential/commercial development and the remaining individual parcels, which are already split, would be to maximize their utility. He considered five sales of large tracts of land that were sold for residential development. The sales comparison approach was used to determine the percentage adjustments for differences in time of sale, location, utilities, density, and commercial potential. Sales 4 and 5 resulted in adjustments that exceeded 50% and were not considered

comparable. Sales 1, 2 and 3 had unadjusted sale prices per acre of \$49,077 to \$57,777 and were adjusted to \$64,938 to \$72,857. He concluded to \$69,000 per acre for 2004, \$72,500 an acre for 2005, and \$61,600 per acre for 2006.

The value for Parcels 1, 2, 3 and 9 are: 2004 \$7,300,000; 2005 \$7,670,000 and 2006 \$6,520,000. Mr. Bologna then made the following adjustments to the value before allocating to the parcels:

Parcel 3 has a residence to which the contributory value is acknowledged; Parcel 1, the largest acreage, and Parcel 2, the second largest parcel, both have the golf course improvements. If sold separately the improvements would need the cost of demolition deducted.

The process for allocation of the values begins with the value of the development parcel to its highest and best use, calculate and deduct the value of Parcels 9 and 3, deduct demolition required for Parcels 1 and 2, then divide the remaining value based on acreage. Parcels 4, 5, 6, 7, and 9 were all valued separately because the parcels were already individually separated and would be sold individually.

Mr. Bologna determined that the combined value of all of the parcels for 2004 is \$7,607,000; 2005 \$8,010,000, and 2006 \$6,910,000. The true cash value was allocated per parcel as follows:

Parcel #	Tax Id #	12/31/2003	12/31/2004	12/31/2005
1	13-27-326-005	\$5,780,000	\$6,080,000	\$5,100,000
2	13-27-326-007	\$1,050,000	\$1,100,000	\$930,000
3	13-27-326-006	\$253,000	\$261,000	\$261,000
4	13-27-451-007	\$46,000	\$51,000	\$57,000
5	13-27-451-008	\$54,000	\$60,000	\$67,000
6	13-27-378-004	\$202,000	\$225,000	\$250,000

7	13-27-378-002	\$30,000	\$31,000	\$32,000
8	13-27-303-001	\$54,000	\$60,000	\$67,000
9	13-27-326-003	\$138,000	\$142,000	\$146,000
	Total combined	\$7,607,000	\$8,010,000	\$6,910,000

Mr. Bologna did have a conversation with the Planning Director, because the current master plan left the subject property zoned as recreational property. The Planning Director was aware that if there was a change in ownership or use of the subject property, the township would have to take into consideration the same use as Mr. Bologna and what would reasonably be allowed.

Mr. Bologna was questioned extensively on cross-examination on rezoning and changing of Master Plans. The questioning was somewhat confusing, but the end result was that a rezoning does not require a change in the Master Plan for a community.

Mr. Bologna included two offers that occurred: one in 2002 for \$10,000,000 that was not accepted, and a verbal offer from Pulte for \$6,000,000. (Exhibit R-3, p A). He also discussed that, as a requirement of USPAP, the offers should be part of the report.

FINDINGS OF FACT

The Tribunal finds that the subject property's highest and best use as unimproved and improved is not its current use as a golf course; however, the interim use is the continued use as a golf course. The Tribunal further finds that the subject property is commonly known as "Pontiac Country Club" and is located within Waterford Township, Oakland County, Michigan. The initial appeal filed in this matter included nine parcels of real property. At the hearing in this matter, Petitioners abandoned their

appeal for Parcel 9 identified as 13-27-326-003. The commercial property was excluded in Petitioner's valuation.

The Tribunal further finds that Petitioners have had offers to purchase the subject property in the past few years for substantially more value than Respondent's appraisal; however, for sentimental, not monetary, reasons, Petitioners chose to own and operate the subject property as a golf course.

Mr. Rende determined that the highest and best use of the subject property as vacant would be to remain as vacant land available for future development if and when demand warrants such development. The highest and best use of the subject property as improved is its continued use as a daily fee golf course. The Tribunal finds that this conflicts with the actual result of Mr. Rende's report. His final value was for vacant land; he also testified that the highest and best use after estimating land value was for the land to be held for future development of a golf course, which the Tribunal finds strange since the subject property actually is developed as a golf course. The land value did not include any addition for the existing 18-hole golf course and amenities.

Mr. Rende's appraisal is troublesome to this Tribunal. He calculated a less than stellar income approach using estimates of income and expenses. He testified that he did not have the subject's actual number of rounds at the time of the appraisal. This led to an understatement of the rounds multiplied by the cost per round and resulted in inadequate income.

In addition, Mr. Rende, in accounting for the cart rentals included the income and expenses in the income approach, applied the capitalization rate. He again

considered the cart revenue and then deducted annual expenses for the 78 golf carts. The annual maintenance and fuel expense was estimated at \$300. Mr. Rende included an additional \$850 per cart for "purchase reserve." The basis for the purchase reserve was estimates from other golf courses. The \$850 purchase reserve includes cost for the lease rate as well as fuel per cart. Petitioner then deducts the annual expense from the cart revenue for its net operating income. The cart's net operating income is deducted from the going concern net operating income and the result is "net operating income attributable to real estate." This is clearly "double dipping" for expenses. The cart revenue and expenses were already part of the income approach. A more appropriate deduction would be the personal property as reported by Petitioner that accounts for the value of the golf carts after the income is capitalized.

Mr. Rende's values of \$190,000, \$120,000 and \$90,000 using his income approach are considerably less than the value of the vacant 107.5 acres. The value was estimated at \$6,500 an acre or \$700,000. Mr. Rende concluded to the \$700,000 true cash value for all three years at issue. The Tribunal finds that he stopped at the value of the land as he determined that the best use was to hold the property for future development of a golf course. He did not include any value for the existing golf course, any of the structures, or the individual parcels that could be sold separately. His appraisal is given no weight, no credibility and no consideration.

The Tribunal finds that Mr. Rende's appraisal of the subject stops short of a full report. Mr. Rende states on the unnumbered cover page of the appraisal report that

the report is intended to comply with the Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Institute:

After a careful consideration of all pertinent facts and information, it is our opinion that the "as is" market value of the fee simple interest in the real estate that constitutes The Pontiac Country Club, inclusive of the existing clubhouse, 18-hole golf course, ancillary amenities, and 107.5 +/- acre site, as of December 31, 2003, was

The \$700,000 value placed on the land does not include the golf course itself, any of the ancillary amenities, or the clubhouse. The appraisal falls short of meeting any USPAP or appraisal standard. The income approach was fully applied albeit with errors. The sales comparison approach was considered and not used. The cost less depreciation approach was considered, but due to the age and difficulty of determining depreciation of the improvements to the land, it was concluded to be inappropriate in formulating a value estimate for subject property. Petitioners then consider a range of sales discarding residential acreage as subject was not currently zoned for it. The sales comparison approach does include some sales that indicate some value but as Mr. Rende states in his report:

In concluding a final price per acre for the subject, there is no market support for a specific price per acre. Rather, based upon the information summarized within the preceding pages, the appraiser has concluded that the subject's 107.5 acres can most probably achieve a price per acre in the range of \$6,500. Exhibit P-1 p 91.

The 107.5 acres multiplied by the \$6,500 per acre results in Petitioners' true cash value contention of \$700,000. This conclusion does not match Petitioners' highest and best use as improved and definitely forgets to include any value for the golf course itself. The final value appears to be based on experience rather than an analysis of sales.

The Rende report is given no weight or credibility in the final analysis. It is fraught with errors, misapplications of value concepts, and is not reliable in the determination of the true cash value of subject property.

The Tribunal considers Respondent's report, which was based on facts, proper appraisal techniques, and makes sense. Mr. Bologna clearly explains each step of the appraisal, which was in large part determinative of the final highest and best use of subject property. Mr. Bologna's appraisal should have included a deduction for the golf carts as they are not considered real estate but are part of the golf course operation. There should be a deduction for golf carts in the income approach. It was, however, not market value, because the continued use as a golf course was not the highest and best use of the subject property. Mr. Bologna did not deduct the personalty from the income approach as he determined that the continued use as a golf course would not result in the most probable value.

Highest and best use was agreed by both parties that the use as a golf course is not proper. Highest and best use is described as:

The reasonable, probable, and legal use of vacant land or an improved property that is physically possible, appropriately supported, and financially feasible and that results in the highest value. Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 12th ed, 2001), p 305

The criteria in determining the highest and best use of a property is: physically possible, legally permissible, financially feasible and maximally productive. The test of legal permissibility of vacant land has to include whether there is a reasonable possibility that the zoning could be changed. The probability includes the community's master plan, the history of the municipal actions in allowing rezoning, interviewing

officials, and discussions of the zoning practices to determine if a rezoning is probable.

The Appraisal of Real Estate, (Chicago: 12th ed, 2001), discusses the variety of ways to test the legal permissibility to change zoning. The Tribunal finds that Mr. Bologna did talk to the local officials, and did find that subject property rezoned some of its property to residential a few years earlier. There was no discussion that rezoning for a residential use would not be an appropriate use of the subject property except in Petitioners' post-hearing brief. Petitioners' valuation disclosure gave a brief statement indicating that "rezoning the site to an alternate use was considered, however, communities typically do not deviate from current zoning such that a change in zoning for the subject was not considered to be a logical alternative." Exhibit P-1, p 36.

Respondent went into greater detail as Mr. Bologna interviewed the planner. Larry Lockwood, Waterford's Planning Division Head, testified that when the current master plan was considered the subject property was currently used for a recreational purpose. The township is 93% built up. He stated that the likelihood that an alternative use that would include residential development, a buffer and commercial use of the Elizabeth Lake Road frontage was considered highly likely. He stated that approximately 80% of requests for rezoning are approved giving the rezoning a high probability. Mr. Lockwood stated that if the subject property sold it would be for redevelopment purposes. The subject property is surrounded by residential land development, close to Elizabeth Lake, which makes it attractive and one of the largest parcels of land in the township.

Petitioners' specific use of the subject property as a golf course that is held in the family with much of it staffed by family members makes the sentimental use to

Petitioners different than the highest and best use as determined by the market. The fact that Petitioners had (in better economic times) been offered \$6,000,000 to \$10,000,000 to develop the subject property indicates that the value of the subject property as a golf course is of explicit value to its owner. The Tribunal is charged with determining in a valuation appeal the true cash value of the subject property. This value may be quite different than the value-in-use to Petitioners. Mr. Syron and his family have been affiliated with the golf course since his parents purchased it in 1940. Mr. Syron is the full-time manager of the golf course. Mr. Syron is a member of the Golf Hall of Fame and has devoted his whole life to building up the golf course. He has seen other golf courses bulldozed. The Tribunal finds that the owner's interest in the subject property would not meet the standard definition of highest and best use. The value to Mr. Syron is clearly not market value.

The subject property did have some property rezoned and used for single family condominiums in the late 1990's. A part of parcel 9 was recently rezoned to commercial. This indicates to the Tribunal that rezoning to meet the highest and best use is probable in the future.

The highest and best use of a golf course is explained briefly as:

A golf facility must be valued at the most profitable competitive use to which it can be put. Virtually all golf courses have greater value than the land value alone. Sometimes, however, a greater value could be realized by changing the tangible or intangible characteristics of the enterprise such as course size, condition, improvements, fee structure, or services. The appraiser should advise the owner if this is the case. Appraisal Institute, *Analysis and Valuation of Golf Courses and Country Clubs*, (Chicago: 2003), p 49.

The Appraisal Institute goes on to explain the pitfalls of each approach when determining which approach to value to use. The cost approach is difficult to determine

for a golf course because estimation of external obsolescence is difficult. The income approach when used to determine value of a golf course has to consider the financial consideration that is driving the prices and that is that the golf revenues are not going to increase forever and those markets can be overbuilt. In this instance neither party considered whether management could change the performance of the subject property. The sales comparison approach contains many variables, without carefully discerning the performance differences between sales and subject properties, the result would be skewed.

The subject property is self-managed by family members. The actual performance and management of the golf course was not discussed but alluded to by Mr. Bologna. The highest and best use was discussed by both parties. Mr. Bologna determined that with a change in zoning, which was probable but not guaranteed, a more profitable use of the property would be for development. The lack of consideration for the time aspect of the length of time to rezone the property and develop the parcels for residential and some commercial use was not discussed. The continued use of the property as a golf course as an interim use was not discussed.

Respondent in its post-hearing brief agreed that the value of the personal property should be removed from the value of the on-going concern. Petitioners did include a going-concern calculation and adjusted for the net operating income attributable to the rental of golf carts. Respondent was concerned with Petitioners' treatment of the maintenance reserve and cart expense.

Respondent did not present any evidence of the personal or intangible property and made no determinations of the value of the real property. The principal purpose of Respondent's going concern valuation is to demonstrate the true cash value of the golf course real, personal and

intangible property is less than the value of the property as a residential/commercial development. Respondent's Post Hearing Brief page 14 and TR, p 444.

Therefore, based upon the above analysis, the Tribunal finds that the true cash value of the subject property is affirmed. The subject property does not have an increased value for the potential of a different use without a zoning change, which the property owner refuses to consider.

In conclusion, the Tribunal finds that Petitioners have not met their burden of proof in persuading the Tribunal that the subject property's true cash value may be excessive. Due to the Tribunal's lack of confidence in Petitioners' appraisal, the Tribunal finds that Petitioners have not met their burden of proof in establishing the subject property's true cash value.

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.

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not...exceed 50%.... Const 1963, art 9, sec 3.

The Michigan Legislature has defined "true cash value" to mean:

...the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as

otherwise provided in this section, or at forced sale. MCL 211.27(1); MSA 7.27(1).

The Michigan Supreme Court has determined that “true cash value” is synonymous with “fair market value.” See *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450; 221 NW2d 588 (1974).

A proceeding before the Tax Tribunal is original, independent and de novo. MCL 205.735(1); MSA 7.650(35)(1). The Tribunal's factual findings must be supported by competent, material and substantial evidence. *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Department of Treasury*, 185 Mich App 458, 462-463; 452 NW2d 765 (1990). Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence. *Jones & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

“The petitioner has the burden of establishing the true cash value of the property....” MCL 205.737(3). This burden encompasses two separate concepts: (1) the risk of persuasion, which does not shift during the course of the hearing; and (2) the burden of going forward with the evidence, which may shift to the opposing party. *Jones & Laughlin* at 354-355.

Under MCL 205.737(1); MSA 7.650(37)(1), the Tribunal must find a property's true cash value in determining a lawful property assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal is not bound to accept either of the parties' theories of valuation. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 377 NW2d 908 (1985). The Tribunal may

accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination. *Meadowlanes Limited Dividend Housing Association v City of Holland*, 437 Mich 473, 485- 486; 473 NW2d 636 (1991).

The Tribunal finds that neither appraisal established the true cash value of subject property.

The three most common approaches to valuation are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach. *Meadowlanes*, at 484-485; *Pantlind Hotel Co v State Tax Commission*, 3 Mich App 170; 141 NW2d 699 (1966), *aff'd* 380 Mich 390 (1968). The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale*, p277. Pursuant to MCL 211.27(5), “the purchase price paid in a transfer of property is not the presumptive true cash value of the property transferred.”

Fundamental to the determination of a property’s true cash value is the concept of “highest and best use.” This concept recognizes that the use to which a prospective buyer would put the property will influence the price that the buyer would be willing to pay. *Rose Bldg Co v Independence Twp*, 436 Mich 620, 623; 426 NW2d 325 (1990). The highest and best use was an important factor in determining the true cash value of this property by both parties. However, Petitioners’ highest and best use was the continued use of the property based on a very cursory statement that the current zoning would only allow a recreational use for subject property and it should therefore remain as a golf course. Petitioners’ appraisal excluded the cost of the golf course

improvements, which are a large portion of any golf course, and valued the land only without specific sales adjusted for differences in amenities. Petitioners' land value appeared to be more based on his experience. This simply is not good appraisal technique and was not accepted. Respondent's analysis of a possible zoning change and the use of the property as a development was the most profitable use, but the Tribunal is reluctant to increase the market value of the property based on a hypothetical property that does not exist under current zoning. Respondent did an outstanding presentation of the possibility, the planning administrator, discussions with the community the highest and best use predicated on a zoning change and the change in use is still unlikely at the time of the appeal.

To summarize the salient findings of fact relative to the conclusions of law, the Tribunal finds that the highest and best use of the subject property may be different in the future, but without a change in zoning, the current use of the property as a golf course in the interim is appropriate. While the income capitalization and sales comparison approaches to value are approaches that could be used to determine the subject property's true cash value, these approaches, as set forth in Petitioners' appraisal, do not provide a reliable indicator of the property's value. Respondent's appraisal does indicate that the property with a current use as a golf course is less valuable than it would be with a zoning change and then used for development.

For the reasons set forth herein, the Tribunal finds that the subject property's true cash, state equalized and taxable values are those stated in the "Final Values" section of this Opinion and Judgment.

JUDGMENT

IT IS ORDERED that Respondent's request for costs is DENIED.

IT IS FURTHER ORDERED that the subject property's true cash, assessed and taxable values for the 2004, 2005 and 2006 tax years are those shown in the "Final Values" section of this 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 assessed and taxable values in the amounts as finally shown in the "Final Values" section of this Opinion and Judgment, subject to the processes of equalization, within 20 days of the entry of this Opinion and Judgment. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Opinion and Judgment within 20 days of the entry of this Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and

the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Order. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (ii) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (iii) after December 31, 2005, at the rate of 3.66% for the calendar year 2006, (iv) after December 31, 2006, at the rate of 5.42% for the calendar year 2007, and (v) after December 31, 2007, at the rate of 5.81% for the calendar year 2008, (xiv) after December 31, 2008, at the rate of 3.31% for calendar year 2009, and (xv) after December 31, 2009, at the rate of 1.23% for calendar year 2010 (xvi) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (xvii) after December 31, 2010 at the rate of 1.12% for calendar year 2011.

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

MICHIGAN TAX TRIBUNAL

Entered: August 17, 2011

By: Victoria L. Enyart