

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

Boyd S. Aldridge,
Petitioner,

MTT Docket No. 316677

v

Township of Greenbush,
Respondent.

Tribunal Judge Presiding
Patricia L. Halm

OPINION & JUDGMENT

This case is an appeal of the 2005 true cash and taxable values established by the Township of Greenbush (Respondent) under the general property tax act (GPTA) for one parcel of real property (the subject property) owned by Boyd S. Aldridge (Petitioner). The subject property is an 18-hole public golf course, known as the Blackshire Golf Course, one of three golf courses in the Lakewood Shores Resort. The subject property is located in northeastern Michigan and is known as Parcel No. 040-032-300-005-00. For the reasons set forth herein, the Tribunal finds that Petitioner has not met his burden of proof in establishing the subject property's true cash value.

The subject property's 2005 true cash value (TCV), assessed value (AV) and taxable value (TV), as originally established by Respondent are:

Year	TCV	SEV/AV	TV
2005	\$1,320,600	\$660,300	\$595,843

Respondent's revised values are:

Year	TCV	SE/AV	TV
2005	\$1,595,000	\$797,500	\$595,843

Petitioner's contentions of value are:

Year	TCV	SEV/AV	TV
2005	\$750,000	\$375,000	\$375,000

FINAL VALUES

The subject property's 2005 true cash value (TCV), assessed value (AV) and taxable value (TV), as determined by the Tribunal are:

Year	TCV	SEV/AV	TV
2005	\$1,618,000	\$809,000	\$595,843

PROPERTY DESCRIPTION

The property at issue is an 18-hole public golf course known as Blackshire Golf Course. The property is located at 7751 Cedar Lake Road in Greenbush Township, Alcona County, Michigan, and is identified as Parcel No. 001-040-032-300-005-00. The property contains 160 acres of land classified as commercial property for taxation purposes. While the subject property does not have its own clubhouse, it has an 864 square foot starters building that contains restrooms and a snack bar. The subject property also contains a 4,000 square foot building that stores golf carts and maintenance equipment.

The subject property is part of a resort complex called Lakewood Shores Resort and is one of three courses located at the Resort. Blackshire Golf Course is the shortest of the three golf courses and does not contain cart paths. The course was open for play in 2001, the year it was completed.

PETITIONER'S CASE

Petitioner was the first witness called to testify in his case in chief. Petitioner testified as to his extensive experience in constructing golf courses, having constructed 35 courses in the United States and Canada. Three of these courses are located in the northeastern Michigan resort known as Lakewood Shores Resort, which Petitioner also owns. These courses are the

Serradella, which Petitioner described as a “parkland” course, the Gales, which is a “links” course, and the Blackshire, the subject property, which Petitioner described as a “turn of the century” course. Petitioner testified that because there are two other golf courses in the Lakewood Shores Resort, the subject property was constructed in such a manner as to give it a different style.

According to Petitioner, the turn of the century style gets its name because these type of courses are constructed using the same design or techniques that were used in the late 1800s, early 1900s. (Transcript¹, p10) In other words, additional dirt was not brought in and sand was not added to the sand traps. Approximately 20,000 yards of dirt were moved. Petitioner contrasted the subject property’s construction with another course he recently built. In that course, he brought in between 6,000 and 8,000 yards of soil and moved approximately 800,000 yards of soil. Petitioner testified that there are no drainage systems on the subject property and that the irrigation system is very basic. For these reasons, Petitioner testified that the subject property would be a rated as a class one course if one were to perform a cost approach utilizing data from Marshall Swift.

Petitioner testified as to the first exhibit, P1. This exhibit indicates that the subject property was primarily built over a two-year period, specifically 2000 and 2001, and that the final construction cost was \$566,657.57. Petitioner testified that he could not build this course at that cost today.

On cross-examination, Petitioner was questioned as to the subject property’s design costs. In response, Petitioner testified that his son, Mr. Kevin Aldridge, designed the course. Further,

¹ Hereafter, citations to transcripts will be denoted by a “T.”

Mr. Aldridge was not paid anything in addition to his normal compensation for this work and there were no design costs included in the construction costs outlined in P1.

When asked about costs to clear the land in anticipation of constructing the golf course, Petitioner stated that no such costs were incurred. Instead, it was arranged for an unrelated party to clear the land; Petitioner was paid \$8,000 for the trees. When questioned regarding the equipment necessary to construct the subject property, Petitioner testified that he owns all of the equipment required and that he incurred no costs in renting equipment or hiring outside construction people.

Recognizing that there had been no testimony or evidence as to the cost of the land, Petitioner was asked on redirect as to his belief as to the land value. It was concluded that Petitioner did not contest the land value determined by the assessor, being \$288,000, or \$1,800 per acre. With this, Petitioner's estimation of the subject property's true cash value became \$854,657.57.

Petitioner's next witness was Mr. Larry Allen of Allen & Associates Appraisal Group. Mr. Allen testified that he has been a licensed appraiser for 36 years, that he is a member of the Appraisal Institute, a licensed real estate broker and a chartered financial analyst. Mr. Allen also testified that he has appraised numerous golf courses, including the two other courses that are part of the Lakewood Shores Resort. Given this, Mr. Allen was accepted as an expert in appraising golf courses.

Pursuant to his appraisal report, it is Mr. Allen's opinion that the subject property's highest and best use as vacant is for recreational purposes; as improved, the highest and best use is as a golf course. According to Mr. Allen, the course is open approximately six months of the year, from May 1 through October 31. In determining how to best value the subject property,

Mr. Allen testified that he considered the sales comparison, the income, and the cost approach. Of these three, he only utilized the sales comparison and income approaches. He explained that the income approach is usually the best method to use in valuing a golf course, but that the sales comparison approach may also be utilized if there are comparable sales. Mr. Allen did not explain why he did not use the cost approach. In addition, he utilized a “quality point methodology” to value the subject property.

Mr. Allen began his assignment by first determining the subject property’s going concern value. He then subtracted the subject’s intangible business value and the value of the subject’s personal property to arrive at the “market value of the fee simple interest in the real property.” (P3, p8)

Mr. Allen was first asked to testify as to his sales comparison approach. For this appraisal, he selected sales of three Michigan golf courses: the Tawas Creek Golf Club in Tawas City, Michigan, the Rivers Edge Golf Club in Alpena, Michigan, and the Greenbush Golf Course in Greenbush, Michigan. Mr. Allen testified that two of these sales occurred several years after the tax day at issue, being December 31, 2004, and one sale occurred two years prior to tax day. Given this, Mr. Allen made a market adjustment for date of sale of 2.5% per year, based on average rate of inflation. One of his comparable sales was that of a nine hole golf course. When asked if the per hole value of an 18 hole course is comparable to that of a nine hole course, Mr. Allen testified that they are “equal units of comparison.” (T, p60) Under the sales comparison approach, he concluded to going concern value for the subject property of \$760,000.

Mr. Allen then testified as to his income approach. According to Mr. Allen, his assignment was to value the subject property without consideration of the remainder of the resort; in other words as a stand-alone golf course. However:

In this case it was a little more difficult because the golf course is not operated as a stand-alone package, rather, it's operated as part of the Lakewood Shores Resort. And . . .it doesn't actually have individual sales because most of the business at the resort is done in packages, where you'll pay, like, say fifteen hundred dollars and it would include your lodging, your food and your ability to play at any of the three golf courses, as well as the little golf course, as much as you want. So . . .the revenue for Blackshire cannot be determined and it is not accounted for separately because it's . . .all in packages. And if you want to determine the revenue, you have to say, well, what portion of this package is food, what portion of this package is lodging, what portion of this package is for playing the Gailes, what portion is for play Blackshire. That's almost impossible to do accurately. (T, pp36-37)

To perform the income analysis, Mr. Allen testified that he needed to estimate the number of rounds of golf to be played annually at the subject property, the revenue collected from these rounds, any other income that could be earned, and operating expenses. To estimate the number of golf rounds, Mr. Allen interviewed the subject property's manager. According to the manager, approximately 10,000 rounds are played at the subject property each year. Mr. Allen also interviewed the head of the Gaylord Convention Bureau who, according to Mr. Allen, "tracks about twenty-one golf courses in northern Michigan, thirteen of which are resort courses and . . .eight are public courses." (T, pp39-40) The average number of rounds for these courses was 14,000. After being provided a description of the subject property, this person opined that about 10,000 rounds would be played at the subject property each year. Mr. Allen also contacted the Alpena Country Club and was told that they average 11,000 rounds per year. With this information, he concluded that 10,000 rounds per year would be a reasonable estimate for the subject property. Green fees were estimated to be 63.5% of gross operating revenue, with all other revenue generating 36.5% of revenue. 2005 gross operating revenue was estimated at \$551,340, or \$55.13 per round.

In determining operating expenses, Mr. Allen testified that he could not utilize actual expenses for the subject property because the resort does not account for expenses for each of the

three golf courses separately. However, the subject property's manager was able to provide Mr. Allen his opinion of what the subject property's expenses would be. Mr. Allen considered this information and the expense information he obtained from other courses to estimate the average expenses for the subject property. With this, operating expenses totaled \$392,888 and fixed charges totaled \$59,750, resulting in "cash flow available for debt service" of \$98,702. (P3, p25) According to his report, Mr. Allen utilized a 12% overall cap rate. With this information, he concluded to a going concern value under the income approach of \$820,000.

Mr. Allen reconciled the subject property's going concern value under the income approach and the sales comparison approach, concluding to a value of \$800,000. From this, he deducted \$42,000 for intangible business value and \$8,000 for the value of the tangible personal property. With this, Mr. Allen concluded to a true cash value for the subject property of \$750,000.

On cross-examination, Mr. Allen conceded that he had included a description of a building not located on the subject property, but on another part of the Resort. He testified that this page was "left over" from the appraisal that he did for the Resort, presumably under "Hospitality Advisors Valuation Group." (P3, p17)

At this time, Mr. Allen also provided additional testimony as to his sales comparison approach. He explained that instead of the typical quantitative or qualitative adjustments used to relate the subject property to comparable sales, he utilized the "quality point methodology" wherein he assigned a relative point rating to the subject property and to the comparable sales for location and amenities. The rating scale ranged from 1 point for fair to 7 points for excellent. When asked if this is an accepted method of appraisal, Mr. Allen testified that it is widely used in Canada and Australia, and is used by some appraisers in the United States. Mr. Allen further

testified that he presented this methodology to the Tribunal in a previous case, but that the case settled before a decision was rendered.

Upon conclusion of Respondent's case, Mr. Allen was called to testify as a rebuttal witness. Mr. Allen testified that the capitalization rate utilized by Respondent's appraiser was too low and should have been 12.41%. Mr. Allen also testified that the equity dividend rate and debt coverage ratio utilized in the appraisal were "not sufficient to attract investment capital."

(T, p114)

RESPONDENT'S CASE

Respondent's only witness was its appraiser, Mr. Jeffrey S. Samotis. Mr. Samotis testified that he is a licensed general appraiser and that he has been appraising property since 1990. In addition to also being a real estate broker, Mr. Samotis holds a variety of licenses and certifications, such as a master plumber's license. Mr. Samotis testified that he has appraised golf courses in Michigan, in particular courses located in the west, center and northeast parts of the state. Given this, Mr. Samotis was accepted as an appraisal expert.

Similar to Mr. Allen, Mr. Samotis's opinion as to the subject property's highest and best use was as commercial recreational if vacant and as a golf course if improved. Mr. Samotis, like Mr. Allen, also determined a going concern value under the income approach and concluded to a true cash value for the subject property by subtracting the value of the tangible personal property and any intangibles.

In addition to the property description set forth in Petitioner's case, Mr. Samotis's appraisal indicates that there is approximately 31,000 square feet of paved parking on the subject property. Moreover, "[t]here is approximately 50 acres of excess land as it relates to the existing

improved golf course.” (R8, p13) According to Mr. Samotis, the subject property is open April 1 through October 31.

In valuing the subject property, Mr. Samotis considered the replacement cost approach, the sales comparison approach and the income approach. In his appraisal, Mr. Samotis provided a basic description of the cost approach.

The cost approach is based on the principle that a typical purchaser would pay no more for a property [than] it would cost to acquire a similar property and construct similar improvements. . .In the case of the subject golf course, due to its relative age of 3 or 4 years, the cost approach was considered and utilized in the appraisal approach. (R8, p17)

As for the sales comparison approach, Mr. Samotis states:

In northeast Michigan it is unusually difficult to find sufficient similar comparable sales and therefore though this approach may be considered it is seldom utilized. In the case of the subject property, comparable sales of golf courses could not be found and therefore the sales comparison approach was not considered appropriate and was not used. (R8, p17)

Finally, Mr. Samotis states that the income approach was utilized and given the most weight in determining the subject property’s true cash value.

Mr. Samotis began his testimony by providing a brief critique of Mr. Aldridge’s cost approach.

In the case of the cost approach, we consider such things as architect’s fees or design fees. In the case of a golf course, that’s anywhere from eight to twelve percent. We look at builder’s profit. We look at the cost of money. The cost of money would be included. I didn’t see those things added into that sheet. . .I also did not see appropriate labor cost as it relates to owning your own equipment. A typical person who’s building a golf course doesn’t own their own equipment, so they hire an excavator. . .I did not see architectural design cost, I did not see builder’s profit, constructing financing costs. . .I did not see an allocation for the starters building or the patio work and stuff that was out there. I also did not see a cost for the actual parking lot. (T, pp73-74)

Mr. Samotis was then questioned as to the subject property’s rating under Marshall Swift.

Mr. Samotis testified that he disagreed with Mr. Aldridge’s conclusion that the subject property

would be rated a class one course and opined that the property would be rated at the higher end of a class two.

I should probably first describe class one: minimal quality, simply developed, budget course, on open natural or flat terrain, few bunkers, small trees and greens. That's class one. In my opinion, Blackshire far exceeds that description, and I believe that anyone who has been on the course, including Mr. Aldridge, would agree with me in that case. . . .

Class two is a simply-designed course on relatively flat terrain. Natural rough, few bunkers, small built-up tees and greens, some small trees. The exception, of course, is the large trees, the large forested areas. But that more closely describes – in fact, it was probably hovering on the top side of class two. (T, p75)

As a class two golf course, the 18 holes are valued at \$1,165,500. The buildings, the parking lot and the site improvements add another \$247,539 in value. To determine the land value, Mr. Samotis researched vacant land sales of 40+ acres in Alcona and Iosco County. Mr. Samotis concluded to a land value of \$1,500 per acre. From the total cost of \$1,653,039, Mr. Samotis deducted an amount for startup costs, reasoning that this would “better indicate what a typical investor would be willing to pay.” (R8, 26) With this, Mr. Samotis concluded to a value under the cost approach of \$1,618,000.

Mr. Samotis also provided a brief critique as to Mr. Allen's appraisal. First, Mr. Samotis stated that he disagreed with Mr. Allen's adjustment for inflation.

[I]f you are decreasing in value, then a time adjustment would not have been based on an inflation rate or an appreciation rate. . . It would have been on a rate of loss in value. So if a comp is going to be inferior in 2007, we would actually have added to the value of that comparable sale to adjust for the decrease in value.

In this particular case, they were talking perhaps deducting from the value of a 2007 sale to make up for appreciation or inflation. So you actually have a duplication of errors. Instead of going two and a half percent down, you should have been going two and a half up, so you have a variance of five percent there. (T, p85)

Concerning Mr. Allen's sales comparison approach, Mr. Samotis testified that, in his experience as a real estate agent, in addition to a deed for the real estate, there is typically a bill of sale for the tangible personal and intangible property. Mr. Samotis cautioned that since it is unclear as to where Mr. Allen obtained the sales prices for his comparable sales, Mr. Allen may have deducted costs that were not included in the sales price, thereby having a duplication of deductions.

For his income approach, Mr. Samotis obtained information as to the number of rounds played primarily from information published on the internet. This information pertained to 13 public and semi-private golf courses located in northern and northeastern Michigan. From this information Mr. Samotis concluded the following: the mean number of rounds was 20,900, the median was 22,000 and the mode was 15,000. Because, as a stand alone golf course, the subject property does not have the amenities that many of these 13 courses have, Mr. Samotis concluded that 14,000 rounds would be representative of the property. Mr. Samotis testified that he was confident of this number because "the cart rental was averaging about twenty-five thousand dollars a year and they had published rates of twelve dollars. Based on two golfers at twelve dollars. . .that amounts to thirteen thousand and change as far as rounds played. . . ." (T, p83) Mr. Samotis assumed that 50% of the 14,000 rounds would be played during the week and 50% would be played on the weekend.

Mr. Samotis estimated the cost per round by first obtaining information as to the cost per round for the three courses in the Lakewood Shores Resort and costs from the internet for ten courses in the northern and northeastern Michigan area. The mean costs for these courses for rounds played on the weekend were \$43.77, while the mean weekday cost was \$36.77. The medium cost for the weekend was \$45.00, while the mean weekday cost was \$29.00. Finally,

the mode cost for the weekend was \$62.00, while the mode weekday cost was \$55.00. Because these rates were 2008 rates, Mr. Samotis adjusted for inflation by deducting 3.5% from the 2008 rates. Ultimately, Mr. Samotis concluded to a rate of \$32.00 per round, citing the number of competing courses for the lower rate. With this, Mr. Samotis estimated that the income from golf rounds would be \$448,000.

As for other sources of income, Mr. Samotis assumed that half of the golfers would opt for a golf cart. At \$10 per round, golf cart rental added \$70,000 in income. Mr. Samotis stated that when he toured the subject property, the starters building did not appear to accommodate sales of food and beverages. For this reason, he did not include any income from other sources. Thus, Mr. Samotis determined that the subject property's total income would be \$518,000.

Expenses were determined by averaging the subject property's expenses for the 2002, 2003 and 2004 tax years. Mr. Samotis testified that he reviewed expense information "reported for a daily fee course by the National Golf Association for the upper Midwest," and adjusted the reported expenses to "more closely mirror the typical expense percentages. . . ." (R8, p21) Deducting operating expenses from income from all sources resulted in a net income of \$165,905.00. To this, Mr. Samotis applied a cap rate of 10.0193 and concluded to a value under the income approach of \$1,655,810.

Because this value was considered a going concern value, Mr. Samotis was required to subtract the value of the tangible personal property and any intangibles. Mr. Samotis estimated the value of the personal property at \$31,000 and the intangible property at \$35,000. After subtracting this from his value conclusion, Mr. Samotis arrived at an estimate of value for the subject property of \$1,589,800.

After considering his value conclusions under the cost approach and the income approach, Mr. Samotis concluded to a final value of \$1,595,000.

FINDINGS OF FACT

The subject property is located at 7751 Cedar Lake Road in Greenbush Township, Alcona County, Michigan. The subject property's parcel number is 040-032-300-005-00 and is classified as commercial real property for taxation purposes. The property is zoned as Forestry. The highest and best use of the property, if vacant, is recreational.

Petitioner owns the subject property, which consists of 160 acres of land. On this land, Petitioner constructed an 18-hole, public golf course known as the Blackshire Golf Course. The course opened for business in 2001. The subject property also contains a starters building, a maintenance building, and a paved parking lot. The subject property is part of a golf resort known as the Lakewood Shores Resort. The highest and best use of the property, as improved, is as a golf course.

At issue are the subject property's 2005 true cash and taxable values. For the 2005 tax year, Respondent determined that the subject property's true cash, state equalized and taxable values were \$1,320,600, \$660,300 and \$595,843, respectively. Respondent's appraiser, Mr. Samotis, concluded that the subject property's 2005 true cash value was \$1,595,000. Petitioner submitted his own conclusion of the property's value. Using the cost approach, Petitioner asserts that the property's 2005 true cash value is \$854,657.57. After valuing the subject property under the sales comparison and income approaches, Petitioner's appraiser, Mr. Allen, concluded to a 2005 true cash value of \$750,000.

Pursuant to MCL 205.737, Petitioner has the burden of proof in establishing the subject property's true cash value. For the reasons set forth below, the Tribunal finds that Petitioner did

not meet this burden. The Tribunal finds that subject property's 2005 true cash value, as determined by Mr. Samotis's cost approach, is the best indication of the property's 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:

[T]he 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 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.

In this case, the Tribunal finds that the value conclusion put forth by Petitioner does not accurately reflect the subject property’s true cash value. To begin, in MTT Docket No. 310158, Petitioner testified that it cost him \$972,659.57 to construct the subject property, while in this case, Petitioner testified that it cost him \$854,657.57. At no time did Petitioner attempt to

explain this discrepancy. Moreover, in MTT Docket 310158², the Tribunal expressed its concern that Petitioner's cost approach did not include the cost of course design. While the Tribunal understands that Petitioner's son designed the course and, as such, no additional costs were incurred, Petitioner must understand that these services add value to the property. The value of a home built by a person who is a carpenter by trade does not consist solely of the cost of the materials and the land. By constructing the home, the carpenter has added value even though he was not required to pay someone for the service.

While Petitioner's version of the cost approach is not correct, the Tribunal finds that the cost approach, correctly utilized, provides an accurate measure of the subject property's true cash value. According to the Appraisal Institute, *The Appraisal of Real Estate*, (Chicago: 13th ed, 2008), "[t]he cost approach is most applicable in valuing new or proposed construction when the improvements represent the highest and best use of the land and land value is well supported." (*Id.*, p382) As of the valuation date, December 31, 2004, the subject property was only four years old. Additionally, the parties agree and the Tribunal concurs that the highest and best use of the subject property as improved is as a golf course.

The Tribunal further finds that Respondent's appraiser's reliance on the *replacement* cost approach, as opposed to the *reproduction* cost approach, is correct. The Appraisal Institute defines *replacement* cost as "[t]he estimated cost to construct, at current prices as of the effective appraisal date, a substitute for the building being appraised using modern materials and current standards, design, and layout." (*Id.*, p385) On the other hand, *reproduction* cost is defined as:

² Petitioner's appeal of the subject property's 2004 values was assigned MTT Docket No. 310158. The Tribunal's April 11, 2007 decision was affirmed by the Michigan Court of Appeals on July 22, 2008. See *Boyd S. Aldridge and Loretta S. Aldridge*, unpublished opinion per curiam of the Court of Appeals, decided July 22, 2008, (Docket No. 278913).

The estimated cost to construct, at current prices as of the effective date of the appraisal, an exact duplicate or replica of the building being appraised, using the same materials, construction standards, design, layout, and quality of workmanship and embodying all the deficiencies, superadequacies, and obsolescence of the subject building. (*Id.*, p385)

While Petitioner testified that the course was built in the “turn of the century style” because they wanted a style different from the other two courses located at the resort, Petitioner did not put forth any evidence that this style course was necessary. In other words, Petitioner did not show that if the course were to be constructed as new in 2005 it would have to be an exact replica of the subject property.

As Respondent’s appraiser testified:

When we do the replacement cost. . .we do a cost to replace the. . .property [with property] that offers the same functional utility to the end user. So, in the case of [a] three-bedroom house, I’m not going to give you the same brick house with the same carpet, the same hardwood flooring. I would give you perhaps the same quality of construction. . .so replacing the functional use in the case of the golf course, you arrive at a cost to reconstruct a golf course that provides the same benefit to the end user. It’s a replacement, not a reproduction. So the replacement is what the typical person would have to pay. Joe Dirt off the street who doesn’t own a bulldozer or have their own crew, and actually hires an architect, et cetera, et cetera, et cetera. That’s how we arrive at a value – estimate of value using the cost approach. (T, pp101-102)

The Tribunal further finds that the appraisal prepared by Mr. Allen does not provide a valid indication of the subject property’s true cash value. First, the credibility of the report was weakened by the many misstatements in the report that appear to be the result of the fact that Mr. Allen also appraised the Lakewood Shores Resort. For example, when questioned about a building he listed on page 17 of his report, Mr. Allen testified that it is not located on the subject property and that this was “left over from our Lakewood appraisal. . . .” (T, p45) In addition to the several instances in which the report references “rooms,” which are clearly not located on the subject property, the bottom of the report indicates that it was prepared by the Hospitality

Advisors Valuation Group, not the Allen & Associates Appraisal Group as stated on the cover page.

As for the report itself, the Tribunal finds that Mr. Allen's conclusion as to the number of rounds played each year lacks credibility. On page 19 of his appraisal, Mr. Allen states that the subject property is "open for approximately six months from the first of May until the end of October." (P3, p19) On the other hand, Mr. Samotis indicated that the property is open from the first of April until the end of October. While the ability to play a round of golf in Michigan is always questionable at the beginning and ending of a season, the Tribunal finds that typically golf courses are open in April. Moreover, the Tribunal takes judicial notice of the fact that Petitioner's own website for Lakewood Shores Resort indicates that it was open for play in April. This being the case, Mr. Allen underestimated the number of rounds played.

Furthermore, Mr. Allen obtained information as to the average number of rounds played from three sources. The local convention bureau estimated that approximately 14,450 rounds were played each year at each of the 21 local courses surveyed, the management of a local course indicated that 10,000 rounds were played during their season, and the manager of Lakewood Shores Resort indicated that between 9,000 and 14,000 rounds were played each year at the subject property. With little discussion, Mr. Allen determined that the subject property, as a stand alone course, would average 10,000 rounds per year. This conclusion defies the law of averages and is not accepted.

Mr. Allen's conclusions as to the subject property's average green fees for 2005 also raise concern. In his appraisal report, Mr. Allen states that for the 21 courses surveyed, the average green fee in 2006 was \$38.50. In 2007, this fee decreased to \$37.90. Mr. Allen also reports that "[t]he subject Blackshire course generated total green fees. . .of \$356,855.24 in

2007.” (P3, p19) Thus, not only did Mr. Allen did not consider green fees for the tax year at issue, he did not explain how he arrived at an average fee of \$34.99 for 2005. (P3, p19)

While this does not negate Mr. Allen’s conclusion as to an overall capitalization rate, the Tribunal finds that the following statement contains a mistake that, in addition to the other mistakes, discredits the report. Specifically, the report states: “The following chart exhibits golf resorts in the Midwest that have sold and their respective capitalization rates. . . .” (P3, p26) Included in this chart is the sale of the Sawgrass Resort in Ponte Verda Beach, Florida, hardly a Midwest community.

Turning to his sales comparison approach, the Tribunal agrees with Mr. Samotis’s analysis of the adjustments made by Mr. Allen for market conditions, or date of sale. According to the Appraisal Institute:

Comparable sales that occurred under market conditions different from those applicable to the subject on the effective date of value require adjustment for any differences that affect their values. An adjustment for market conditions is made if general property values have increased or decreased since the transaction dates.

Although the adjustment for market conditions is often referred to as a “time” adjustment, time is not the cause of the adjustment. Market conditions that change over time create the need for an adjustment, not time itself. In other words, increases or decreases in property values in the market is the cause of the adjustment and time is the measure of the adjustment. If market conditions have not changed, no adjustment is required even though considerable time may have elapsed. (*Id.*, p333)

It is clear that, overall, property values decreased from December 31, 2004, through February 18, 2008, being the valuation date and the latest sale date of Mr. Allen’s comparable sales. It is probable that property values increased from November 2002, through December 31, 2004, however, this is not as clear. On the other hand, inflation increased from year to year from 2002 to 2008. Given this, it is nonsensical to base the change in property value on the rate of inflation. According to the Appraisal Institute:

An adjustment for changes in market conditions is usually measured as a percentage of previous prices. While change is continuous, it is typically measured and quoted in discrete intervals. If the physical and economic characteristics of a property remain unchanged, analyzing two or more sales of the same property over a period of time will indicate the percentage of price change. In other words, an appraiser can measure the difference in sale prices of the same or similar properties over time to extract the rate of change, which can be used as the basis for adjustment in the sales comparison analysis. An appraiser should always attempt to examine several sets of sales to arrive at an appropriate adjustment. An adjustment supported by just one set of sales may be unreliable. (*Id.*, p334)

Even if this were an accepted means of adjustment, Mr. Samotis is correct in that Mr. Allen decreased when he should have increased and increased when he should have decreased.

The Tribunal is also bothered by the fact that the only adjustment made by Mr. Allen was for market conditions. Without further explanation, Mr. Allen's opinion that the adjusted price per hole for a 9 hole course is comparable to that of an 18 hole course cannot be deemed reliable.

Finally, the Tribunal simply cannot accept Mr. Allen's "quality point methodology." Mr. Allen was unable to provide the Tribunal with an indication that this methodology had been determined to be an acceptable appraisal method by any U.S. court or by any appraisal institution. While this method may someday be recognized as valid, the Tribunal cannot accept an untested and unaccepted valuation theory.

Even if the Tribunal were open to this methodology, Mr. Allen provided almost no explanation of it in his appraisal report. The entire explanation, including seven charts, was presented in two pages. Only two adjustments were made, that being for location and amenities. Oddly enough, even though Mr. Allen utilized the same three comparable sales in this analysis as he did in his sales comparison approach, these adjustments were not made in his sales comparison approach. Similarly, in this analysis, no adjustment was made for market condition.

Finally, in assigning quality points for location, Mr. Allen states that “[t]he first two comparables were rated above average since they were located outside their respective towns, but not located along a main road.” (P3, p38) These comparables were given a rating of 4 for location. At the same time, Mr. Allen states that “[t]he subject has been rated a 3 since it is outside of Oscoda and not along a main road.” (P3, p38) Mr. Allen leaves the Tribunal questioning what the difference is between these statements such that it justifies a lower rating for the subject property. Unfortunately, the aggregate of Mr. Allen’s errors and omissions significantly impact the credibility of his report.

By comparison, Mr. Samotis’s appraisal report was well written and provided sufficient information so that the Tribunal was not left questioning the appraisal process. Mr. Samotis also provided much of the information utilized to form his conclusions in the addendum to his report.

Having said that, the Tribunal is bothered by the fact that both Mr. Samotis and Mr. Allen valued the subject property, in at least one appraisal method, as a going concern. This adds an unnecessary level of complexity and uncertainty, as the appraisers are now required to estimate the value of something other than the subject property. While the Tribunal understands why appraisers may choose to utilize this methodology, it is not accepted in this case. For this reason, the value reached under Mr. Samotis’s income approach will not be considered in this decision and, in addition to the reasons previously discussed, Mr. Allen’s values will not be considered.

Given this, the Tribunal is left with Mr. Samotis’s cost approach. Because the golf course had been in existence for only a few years as of the tax day, the Tribunal finds this valuation approach to be a reliable approach in this case. Mr. Samotis valued the subject property’s land at \$1,500 per acre, while Petitioner valued it at \$1,800 per acre. Mr. Samotis concluded to a value by utilizing sales of vacant properties large enough to support a golf course.

Mr. Aldridge utilized the per acre value established by Respondent's assessor; however, there was no testimony as to how this value was determined. Because Mr. Samotis's value is clearly tailored to sales of larger parcels of property, the Tribunal finds his value of \$1,500 per acre, \$240,000 total, to be most credible.

The Tribunal further finds credible Mr. Samotis's conclusion that the subject property is a Class II course, as opposed to Petitioner's conclusion that the subject property is a Class I course. Pursuant to Marshall Swift, the cost per hole for a Class II courses range from \$64,750 to \$89,000. In spite of the fact that Mr. Samotis believed that the subject property was at the higher end of a Class II course, he utilized the lowest value per hole to conclude to a value of \$1,165,500. While this seems inconsistent, the Tribunal concludes that this value represents the minimum and most conservative conclusion of value for the subject property. The Tribunal finds credible the remaining costs for various buildings, etc., valued using Marshall Swift, and Mr. Samotis's estimate of startup costs. Given this, the Tribunal concludes that the subject property's 2005 true cash value is \$1,618,000.00.

JUDGMENT

IT IS ORDERED that the subject property's true cash, assessed and taxable values for the 2005 tax year 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 90 days of 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 Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (ii) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (iii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (iv) after December 31, 2007, at the rate of 5.81% for calendar year 2008, (v) after December 31, 2008, at the rate of 3.315% for calendar year 2009, (vi) after December 31, 2009, at the rate of 1.23% for calendar year 2010, and (vii) after December 31, 2010 at the rate of 1.12% for calendar year 2011.

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

MICHIGAN TAX TRIBUNAL

By: Patricia L. Halm

Entered: May 11, 2011