TAX COURT OF NEW JERSEY

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NOT FOR PUBLICATION WITHOUT APPROVAL OF
THE TAX COURT COMMITTEE ON OPINIONS

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RE: Forest Hill Golf Club v. Township of Belleville
Docket Nos. 007841-2009, 006394-2010, 004476-2011, 000610-2012,
000207-2013 & 003198-2014
Forest Hill Golf Club v. Township of Bloomfield
Docket Nos. 007196-2008, 003051-2009, 011219-2010, 004166-2011
002115-2012, 000192-2013 & 001769-2014

Counsel:

This letter constitutes the court's opinion after trial in the above-referenced matter challenging the 2008 through 2014 tax year assessments on plaintiff's property.

The court finds that plaintiff ultimately failed to overcome the presumption of correctness of the assessment. Plaintiff's expert's application of the income approach to the subject property was fatally flawed because of his failure to appropriately determine economic income for the subject property. Three of the four comparable sales utilized by him to support his conclusion

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under the sales approach were not credible representations of true value and the adjustments made to all of the comparable sales were not supported by objective data. His value conclusions were, therefore rejected. Similarly, defendants' expert's conclusion as to the highest and best use of the subject property, as well as his valuation under the income approach, were rejected as a result of his failure to properly support his assumptions. The adjustments made by defendants' expert to his comparable sales were not supported by objective data and his conclusion based on those sales was rejected.

Accordingly, the original assessments for the tax years in question are affirmed.

I. <u>Procedural History and Factual Findings</u>

The court makes the following findings of fact based on the evidence and testimony offered at trial in this matter.

The property at issue consists of a total of 109.12 acres of land, located in both the Township of Belleville and the Township of Bloomfield (the "subject property" or "subject") on which the Forest Hill Field Club (the "Club") is located. The Club is a private, member-owned golf and country club, which has been operated as a private, not-for-profit facility for approximately 100 years. The Club offers eight levels of membership, ranging from Pool Membership to Master Golf Membership, each of which requires the payment of initiation fees in varying amounts. During the years in question, the Club experienced a decline in membership. Rounds played for the calendar years 2007 through 2013 were as follows: 2007 – 18,389; 2008 – 17,664; 2009 – 15,576; 2010 – 13,827; 2011 – 13,260; 2012 – 13,971; and 2013 – 14,471.

Club members pay an initiation fee upon acceptance into the Club, and annual membership dues, entitling them to play the golf course and utilize the amenities at the Club. Members are required to spend a minimum amount for food and beverage at the Club House annually. When using the golf course, members also pay greens fees, cart rental fees and range fees, where

applicable. The members were also assessed aggregate operating assessments of $355,539 and $260,520 for the years 2012 and 2013, respectively. But for the operating assessment, total revenue at the Club decreased steadily through 2012, with a slight increase realized in 2013.

The subject property is improved with an 18-hole, par 71, "signature" golf course with associated amenities, including a clubhouse, locker rooms, a pro shop, support and maintenance buildings, practice greens, a driving range and an Olympic-size swimming pool. The golf course was designed by renowned golf course designer A.W. Tillinghast.[1] During the 1930's and 1940's, the greens became somewhat smaller, but were subsequently returned to the original Tillinghast design, so that the course currently reflects the initial design in every way.

The course is a traditional "core" layout with returning nines and is in good condition with well-groomed greens, tees, fairways and roughs. There are several water hazards throughout the course and multiple sand traps are strategically located along the fairways and/or greens of each hole. There are partial asphalt cart paths throughout in good condition.

The portion of the subject property within Bloomfield consists of approximately 73 acres (approximately 70%) and contains the majority of the improvements. The Belleville portion of the subject property consists of approximately 36.12 acres of land (approximately 30%) and contains 5 of the 18 holes of the total golf course, and none of the major amenities.

The portion of the subject property located within Bloomfield is zoned PR, which allows for public uses, open spaces, schools, senior citizen centers, libraries, parks and private recreational facilities. The portion located within Belleville is zoned A2, allowing for single-family homes and home occupations; however, the subject is a pre-existing non-conforming legal use.

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[1] Tillinghast is a highly regarded golf architect who also designed the courses at Baltusrol, Winged Foot, Ridgewood, Alpine and Bethpage Black, among others.

For the tax years under appeal, the assessed value, equalization ratio and implied fair market value of the subject property were as follows:

Bloomfield Portion of the Subject Property

Tax Year	Assessment	Ratio	Equalized Value
2008	$4,300,000	39.81%	$10,801,306
2009	$4,300,000	39.57%	$10,866,818
2010	$10,043,100	100%	$10,043,100
2011	$10,043,100	89.35%	$11,240,179
2012	$10,043,100	93.37%	$10,756,239
2013	$10,043,100	96.14%	$10,446,328
2014	$10,043,100	95.74%	$10,498,973

Belleville Portion of the Subject Property

Tax Year	Assessment	Ratio	Equalized Value
2008	$4,100,000	94.40%	$4,343,220
2009	$4,100,000	92.38%	$4,438,190
2010	$4,100,000	93.10%	$4,403,867
2011	$4,100,000	81.88%	$5,007,328
2012	$4,100,000	93.21%	$4,398,670
2013	$4,100,000	93.01%	$4,408,128
2014	$4,100,000	95.11%	$4,310,798

Aggregate Equalized Value

Tax Year	Bloomfield	Belleville	Aggregate Value
2008	$10,801,306	$4,343,220	$15,144,527
2009	$10,866,818	$4,438,190	$15,305,008
2010	$10,043,100	$4,403,867	$14,446,967
2011	$11,240,179	$5,007,328	$16,247,507
2012	$10,756,239	$4,398,670	$15,154,908
2013	$10,446,328	$4,408,128	$14,854,456
2014	$10,489,973	$4,310,798	$14,800,771

Plaintiff timely filed complaints in the Tax Court contesting the assessment for tax years 2008 through 2014 for the portion of the subject property located in Bloomfield and for tax years

2009 through 2014 for the portion located in Belleville. An appeal of the 2008 tax year for Belleville was not filed, however, the assessment and equalized value information is provided for clarity and consistency.

All of the matters were consolidated for the purposes of trial. At trial plaintiff and defendants each presented a State of New Jersey certified general appraiser as their sole witnesses.[2] Both experts were accepted without objection and concluded that the highest and best use of the subject property was as improved as a golf facility.[3] However, the defendants' expert maintained that "based on local demand of facilities such as the subject, the most financially feasible" and maximally productive use would be to operate as a daily fee, for-profit golf facility and that the subject's highest and best use was, therefore, "its continued use as a golf facility, however, with a daily fee, for-profit operating structure opposed (sic) to the current private, non-profit operating structure." Plaintiff maintained that the subject's highest and best use was its "continued use as an 18-hole golf club facility" and did not distinguish its method of operation as private, not-for-profit, or otherwise.

Both experts agreed that the subject property should be valued utilizing the income approach and the sales comparison approach. Neither appraiser utilized the cost approach to valuation.

Plaintiff's expert concluded that the value of the subject property for each of the years in question was as follows:

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[2] Both defendants presented the same appraiser who appraised the property as a single economic unit.

[3] Counsel for Belleville argues that the residential zoning of the subject property's Belleville portion should have been taken into account in determining its highest and best use. Both experts determined, however, that the subject property was a single economic unit and the elimination of the five holes on the Belleville portion of the subject property would diminish the golf course. Counsel's argument is therefore rejected as unsupported by the weight of the evidence.

Tax Year	Total Value	Bloomfield Portion (70%)	Belleville Portion (30%)
2008	$4,800,000	$3,360,000	$1,440,000
2009	$4,800,000	$3,360,000	$1,440,000
2010	$5,400,000	$3,780,000	$1,620,000
2011	$4,700,000	$3,290,000	$1,410,000
2012	$4,500,000	$3,150,000	$1,350,000
2013	$4,400,000	$3,080,000	$1,320,000
2014	$4,300,000	$3,010,000	$1,290,000

The Township's expert concluded that the value of the subject property was as follows:

Tax Year	Total Value	Bloomfield Portion (70%)	Belleville Portion (30%)
2008	$15,750,000	$11,025,000	$4,725,000
2009	$16,000,000	$11,200,000	$4,800,000
2010	$15,500,000	$10,850,000	$4,650,000
2011	$15,400,000	$10,780,000	$4,620,000
2012	$15,400,000	$10,780,000	$4,620,000
2013	$15,500,000	$10,850,000	$4,650,000
2014	$15,500,000	$10,850,000	$4,650,000

II. Conclusions of Law

A. Presumption of Validity

The court's analysis begins with the well-established principle that "[o]riginal assessments and judgments of county boards of taxation are entitled to a presumption of validity." MSGW Real Estate Fund, LLC v. Borough of Mountain Lakes, 18 N.J. Tax 364, 373 (Tax 1998). As Judge Kuskin explained, our Supreme Court has defined the parameters of the presumption as follows:

> The presumption attaches to the quantum of the tax assessment. Based on this presumption the appealing taxpayer has the burden of proving that the assessment is erroneous. The presumption in favor of the taxing authority can be rebutted only by cogent evidence, a proposition that has long been settled. The strength of the presumption is exemplified by the nature of the evidence that is required to overcome it. That evidence must be "definite, positive and certain in quality and quantity to overcome the presumption."
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> [Ibid. (quoting Pantasote Co. v. City of Passaic, 100 N.J. 408, 413 (1985) (citations omitted)).]

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The presumption of correctness arises from the view "that in tax matters it is to be presumed that governmental authority has been exercised correctly and in accordance with law." Pantasote Co. v. City of Passaic, supra, 100 N.J. at 413 (citing Powder Mill, I Assocs. v. Township of Hamilton, 3 N.J. Tax 439 (Tax 1981)); see also Byram Twp. v. Western World, Inc., 111 N.J. 222 (1988). The presumption remains "in place even if the municipality utilized a flawed valuation methodology, so long as the quantum of the assessment is not so far removed from the true value of the property or the method of assessment itself is so patently defective as to justify removal of the presumption of validity." Transcontinental Gas Pipe Line Corp. v. Township of Bernards, 111 N.J. 507, 517 (1988) (citation omitted).

"In the absence of a R. 4:37-2(b) motion . . . the presumption of validity remains in the case through the close of all proofs." MSGW Real Estate Fund, LLC v. Borough of Mountain Lakes, supra, 18 N.J. Tax at 377. In making the determination of whether the presumption has been overcome, the court should weigh and analyze the evidence "as if a motion for judgment at the close of all the evidence had been made pursuant to R. 4:40-1 (whether or not the defendant or plaintiff actually so moves), employing the evidentiary standard applicable to such a motion." Ibid. The court must accept as true the proofs of the party challenging the assessment and accord that party all legitimate favorable inferences from that evidence. Id. at 376 (citing Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 535 (1995)). In order to overcome the presumption, the evidence "must be 'sufficient to determine the value of the property under appeal, thereby establishing the existence of a debatable question as to the correctness of the assessment.'" West Colonial Enters, LLC v. City of East Orange, 20 N.J. Tax 576, 579 (Tax 2003) (quoting Lenal Props., Inc. v. City of Jersey City, 18 N.J. Tax 405, 408 (Tax 1999), aff'd, 18 N.J. Tax 658 (App. Div.), certif. denied, 165 N.J. 488 (2000)).

The defendants made a motion to dismiss for failure to overcome the presumption of correctness at the end of the plaintiff's case. The court ruled that plaintiff produced sufficient credible evidence to overcome the presumption of validity at that stage of the proceedings. If taken as true, the opinion of plaintiff's expert and the facts upon which he relied created a debatable question regarding the correctness of the assessments in each tax year sufficient to allow the court to make an independent determination of the value of the subject property.

The court's inquiry, however, does not end there. Concluding that the presumption of validity has been overcome does not equate to a finding by the court that the assessment is erroneous. Once the presumption has been overcome, "the court must then turn to a consideration of the evidence adduced on behalf of both parties and conclude the matter based on a fair preponderance of the evidence." Ford Motor Co. v. Township of Edison, 127 N.J. 290, 312 (1992). The court must be mindful that "although there may have been enough evidence [presented] to overcome the presumption of correctness at the close of plaintiff's case-in-chief, the burden of proof remain[s] on the taxpayer throughout the entire case . . . to demonstrate that the judgment under review was incorrect." Id. at 314–15 (citing Pantasote Co. v. City of Passaic, supra, 100 N.J. at 413). Only after the presumption is overcome with sufficient evidence at the close of trial must the court "appraise the testimony, make a determination of true value and fix the assessment." Rodwood Gardens, Inc. v. City of Summit, 188 N.J. Super. 34, 38–39 (App. Div. 1982) (citations omitted).

Accordingly, the court will evaluate and weigh the evidence presented to determine if plaintiff has met the requisite burden of proof.

B. Highest and Best Use

As explained in Clemente v. Township of South Hackensack, 27 N.J. Tax 255, 267–269 (Tax 2013), aff'd o.b. 28 N.J. Tax 337 (App. Div. 2015):

For property tax assessment purposes, property must be valued at its highest and best use. Ford Motor Co. v. Township of Edison, 127 N.J. 290, 300–01, 604 A.2d 580 (1992). "Any parcel of land should be examined for all possible uses and that use which will yield the highest return should be selected." Inmar Associates, Inc. v. Township of Edison, 2 N.J. Tax 59, 64 (Tax 1980). Accordingly, the first step in the valuation process is the determination of the highest and best use for the subject property. American Cyanamid Co. v. Township of Wayne, 17 N.J. Tax 542, 550 (Tax 1998), aff'd 19 N.J. Tax 46 (App. Div. 2000). "The concept of highest and best use is not only fundamental to valuation but is a crucial determination of market value. This is why it is the first and most important step in the valuation process." Ford Motor Co. v. Township of Edison, 10 N.J. Tax 153, 161 (Tax 1988), aff'd o.b. per curiam, 12 N.J. 290, 604 A.2d 580 (1992); see also Gen. Motors Corp. v. City of Linden, 22 N.J. Tax 95, 107 (Tax 2005).

The definition of highest and best use contained in The Appraisal of Real Estate, a text frequently used by this court as a source of basic appraisal principles, has remained relatively constant for all of the years under appeal. Highest and best use is defined as:

> The reasonably probable and legal use of vacant land or improved property that is physically possible, appropriately supported, and financially feasible and that results in the highest value.
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> [The Appraisal of Real Estate, supra, at 22 (13th ed. 2008).]

The highest and best use analysis requires sequential consideration of the following four criteria, determining whether the use of the subject property is: 1) legally permissible; 2) physically possible; 3) financially feasible; and 4) maximally productive. Ford Motor Co. v. Township of Edison, supra, 10 N.J. Tax at 161; see also The Appraisal of Real Estate at 279 (13th ed. 2008). Implicit in this analysis is the assumption that the proposed use is market-driven; in other words, that it is determined in a value-in-exchange context and that there is a market for such use. WCI-Westinghouse v. township of Edison, 7 N.J. Tax 610, 616–617 (Tax 1985), aff'd o.b. per curiam, 9 N.J. Tax 86 (App. Div. 1986). A highest and best use determination is not based on value-in-use because the determination is a function of property use and not a function of a particular owner's use or subjective judgment as to how a property should be used. See Entenmann's Inc. v. Borough of Totowa, 18 N.J. Tax 540, 545 (Tax 2000). The highest and best use of an improved property is the "use that maximizes an investment property's value, consistent with the rate of return and associated risk." Ford Motor Co. v. Township of Edison, supra, 127 N.J. at 301, 604 A.2d 580. Further, the "actual use is a strong consideration in the analysis. Ford Motor Co. v. Township of Edison, supra, 10 N.J. Tax at 167.

The proper highest and best use requires a comprehensive market analysis to ascertain the supply and demand characteristics of alternative uses. See Cherry Hill, Inc. v. Township of Chery Hill, 7 N.J. Tax 120, 131 (Tax 1984), aff'd, 8 N.J. Tax 334 (App. Div. 1986). Additionally, the proposed use must not be remote,

> speculative or conjectural. Id. If a party seeks to demonstrate that a property's highest and best use is other than its current use, it is incumbent upon that party to establish that proposition by a fair preponderance of the evidence. Penn's Grove Gardens, Ltd. v. Borough of Penns Grove, 18 N.J. Tax 253, 263 (Tax 1999); Ford Motor Co v. Township of Edison, supra 10 N.J. Tax at 167. *Property should be assessed in the condition in which it is utilized and the burden is on the person claiming otherwise to establish differently*. Highview Estates v. Borough of Englewood Cliffs, 6 N.J. Tax 194, 200 (Tax 1983) (emphasis provided).

While at first blush it would appear that the experts are in agreement on the highest and best use of the subject property, a closer analysis reveals that their opinions are not identical. Plaintiff's expert concluded that the highest and best use of the subject was as improved and made comparisons to private not-for-profit facilities. Defendants' expert instead explicitly concluded that the highest and best use of the subject was as a daily fee facility.

The difference in operation between a private not-for-profit golf facility such as the subject property and one operated on a daily fee, for-profit basis is significant.[4] "Analysis of the operations of nonprofit private golf clubs owned and operated solely to benefit members differs from analysis of profit-making private, semiprivate, or public courses owned by individual investors, hotels, or motels." Karen L. Heuer, Golf Courses: A Guide to Analysis and Valuation 57 (1980).

Furthermore, the method of operation of such facilities may impact the appropriate method of valuation. While the income capitalization approach may be appropriate in valuing daily fee facilities due to their income producing potential, it has been held that "private nonprofit and municipal courses . . . usually do not generate sufficient income for return on investment, [and therefore, the] application of income approach [to value] is often precluded." Gale & Kitson Fredon Golf, LLC v. Township of Fredon, 26 N.J. Tax 268, 282 (2011) (citing Heuer, supra, at 102); see also Gimmy & Johnson, supra, n5. (valuation of non-profit private clubs using an income

[4] For a discussion of the differences between private, daily fee and municipal courses see Arthur E. Gimmy, MAI & Buddie A. Johnson, Analysis and Valuation of Golf Courses and Country Clubs 119 (2003).

capitalization basis is based on extraordinary assumptions and should be utilized for informational purposes or to assess feasibility); But see Matter of Mill River Club v. Board of Assessors, 48 A.D.3d 169, 847 N.Y.S.d 670 (2007) (valuation of private, not-for-profit golf courses using the income approach assuming the course would be operated as a public or semi-private, for-profit golf course approved.)

The subject has been operated as a private not-for-profit golf facility for approximately one hundred years. However, defendants' expert contended that the highest and best use of the subject was as a daily fee facility[5]. The burden was therefore on defendant to establish that alternate use by a fair preponderance of the evidence. Penn's Grove Gardens, Ltd. v. Borough of Penns Grove, supra, 18 N.J. Tax at 263.

In making the determination of highest and best use, defendants' expert maintained that "based on local demand of facilities such as the subject," the most financially feasible use of the property would be "its continued use as a golf facility, however, with a daily fee, for-profit operating structure." On cross-examination, defendants' expert supported his conclusion that local demand existed for the subject to operate as a for-profit, daily fee course by referencing the rounds played at seven golf courses — three in Essex County, three in Bergen County and one in Sussex County, as follows:

Year	Course	Rounds played
2008	Francis Byrne Golf Course, West Orange, NJ	42,297
2008	Hendricks Field, Belleville, NJ	37,520
2008	Weequahic, Newark, NJ	20,921
2010	Overpeck, Teaneck, NJ	54,154
2010	Valley Brook, River Vale, NJ	34,996
2009	River Vale, River Vale, NJ	34,700
2011	Farmstead, Andover, NJ	39,552
2012	Farmstead, Andover, NJ	46,018

[5] Defendant did not argue the application of the income approach as approved in Mill River Club, supra, but instead concluded the highest and best use of the subject Club was as a daily fee facility.

Based on the foregoing information, the conclusion that operating the subject as a daily fee course has great appeal. The astronomical increase in the number of rounds played at the daily fee courses noted over those played at the subject would seem to dictate such a result. Simply concluding, however, that there appears to be local demand for a product does not complete the equation. For example, the observation that a local fast food restaurant sells a certain number of burgers does not necessarily support a conclusion that a restaurant selling high end (and high-priced) hamburgers would enjoy the same result. Instead to complete the analysis it is also necessary to observe the demand based on the cost per burger, or here, based on the cost per play/greens fee.

It is here that the flaws in defendants' expert's analysis become observable. It appears logical that having utilized the above seven courses as comparable daily fee courses for the rounds played analysis that defendants' expert would have also used them in calculating a cost per play analysis. As discussed below, however, that did not occur.

Of the seven courses listed, the first five—Francis Byrne, Hendricks Field, Weequahic, Overpeck and Valley Brook—were all county-owned courses. While defendants' expert's table reflects River Vale as privately owned, he testified that the course had been sold to the Township of River Vale in 2006 and was therefore a public course which may have been privately operated. Farmstead's designation was as a 27-hole, privately-owned facility.[6]

During the years shown, Francis Byrne, Hendricks Field and Weequahic were all operated by the County of Essex. The only financial information provided by defendants' expert for these courses was contained in a press release that indicated that on a Friday in 2010 the greens fees for

[6] Defendants' expert did not indicate how he determined the number of rounds played, if the rounds were based on nine or eighteen holes, or if it mattered how many holes were played. Thus it is unknown whether any adjustment was made, or should have been made, due to the fact that Farmstead is operated as three nine-hole courses. The credibility of Farmstead as a comparable is therefore compromised.

these three courses ranged from $21 to $25 and that the revenue at all three courses through August 15, 2010 had increased by $426,068 over the same period during 2009.[7] Thus, no information was provided with respect to the greens fees charged in 2008, the year for which the rounds played information was provided by defendants' expert. Similarly, no such information was provided for any of the referenced courses for the years that rounds played information was provided.[8]

Instead, in establishing a stabilized greens fee, defendants' expert provided information regarding the 2011 greens fees charged at Balleyowen, a golf course located in Sussex County, New Jersey. Defendants' expert testified that he chose Balleyowen because it was "similar in difficulty, attractiveness, and available facilities, and it appears that the same clientele would frequent the subject property that would frequent Balleyowen Golf Course." Other than this testimony, the expert provided no documentation or study to support that conclusion.

Defendants' expert did not provide the court with any information as to the number of rounds played at Balleyowen in 2011, or any other year, and he testified that he did not know how many rounds were played at Balleyowen during any year. The only documentation supplied by defendants' expert for Balleyowen was a score card and the greens fees charged during 2012 which showed that there were 36 different categories of greens fee charges, ranging from a high of $139 for prime weekend peak play to a low of $32 for off-peak weekday play by a "rewards member super twilight." Peak weekend play ranged from a high of $139 to a low of $36. No documentation was provided to substantiate the actual fees charged at Balleyowen for 2011,[9] the year from which the expert extracted his stabilized greens fee information, however, the expert testified that the

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[7] The press release appears to have been issued by the Essex County Executive Joseph DiVincenzo, Jr. on August 20, 2010.

[8] The expert did provide the 2013 greens fees information for River Vale, which ranged from $20 for a River Vale resident to $99 for a non-resident, but he did not provide the number of rounds played during that year.

[9] Defendants' expert report contains a "Comparable Fee Schedule" listing eighteen levels of greens fees charged for Balleyowen as of "2011±."

"average" greens fees charged during 2011 ranged from a high of $137 to a low of $36.[10] No breakdown of the number of rounds played or revenue earned at the different categories of play was provided nor was any other financial data for Balleyowen provided.

Defendants' expert concluded an average rate/stabilized greens fee for the subject at $115 per round. He did not provide the methodology by which he calculated the average fee, but testified that based upon "comparables," and after taking into account the different rates at Balleyowen for weekday and weekend he came up with a blended rate of $115 per round. While acknowledging that he did not have the amount of income earned at each of the different rates, he believed that an average fee of $115 per round of play was "reasonable." Defendants' expert also referenced other comparable courses for which he supplied score cards and greens fees, but he did not expound on how the comparables were taken into account in arriving at his average fee and a review of those fees does not reveal how they were used to support the conclusion.[11]

Defendants' expert's final conclusion was that "[w]ithout overburdening the subject course and without becoming unattractive in terms of rounds played and fees, we have projected stabilized rounds played [at 40,000 per year] and average greens and cart fees[12] [at $115 per round and $15 per round respectively]."

Although defendants' expert based his conclusion that the subject, if operated as a daily fee golf course, would increase its rounds played to 40,000 played at an average of $115 per round, no study or other documentation was provided to support the conclusion that the same number of

[10] Although the expert testified that the 2011 fees set forth in his report were an "average," they appear to be the actual greens fees charged per category and not an average.

[11] The "comparables" were the Architect's Golf Club in Lopatcong, NJ whose 2011 greens fees ranged from $60 to $25; River Vale Country Club whose 2013 rates ranged from $99 to $20; and Skyview Golf Course whose 2013 rates ranged from $60 to $30. Information about the 2012 greens fees at the other six courses at Crystal Springs Resort (where Balleyowen is located) was also provided.

[12] There was no testimony on average cart fees, nor were such fees referenced in defendants' expert report.

rounds played at the public courses referenced in the rounds played analysis at unknown rates of play would be played at $115 per round.

The sparse financial data that was provided for the courses in the rounds played analysis demonstrates that the greens fees charged at these courses appear to be well below the concluded average of $115 per round. While there does appear that there may be a connection between rounds played and cost of play somewhat surprisingly on cross-examination the defendants' expert testified that he had no opinion on whether there was a relationship between the amount of the greens fees charged and the number of rounds played. He provided no documentation to suggest that it did not.

Similarly, defendants' expert provided nothing to demonstrate that Balleyowen, upon which defendants' expert based his average greens fee, ever achieved 40,000 rounds of play in any year. No information regarding the number of rounds played at Balleyowen in any year was provided. In fact, defendants' expert failed to provide any documentation to support his supposition that the same golfers who would play Balleyowen would play the subject golf course.

The "probative value of an expert's opinion depends entirely upon the facts and reasoning adduced in support of it." Kearny Leasing Corp. v. Town of Kearny, 6 N.J. Tax 363, 376 (Tax 1981), aff'd, 7 N.J. Tax 665(App. Div. 1985), certif. denied, 102 N.J. 340 (1985). "[A] proper highest and best use analysis requires a comprehensive market analysis to ascertain supply and demand characteristics of alternative uses." Six Cherry Hill, Inc. v. Cherry Hill, supra, 7 N.J. Tax at 131.

The evidence provided by defendants' expert is not sufficient to constitute a comprehensive market analysis and does not support his conclusion that the highest and best use of the subject property is as a for-profit, daily fee golf course. His conclusion is therefore rejected, as is his

income approach which utilizes the concluded stabilized rounds played and stabilized greens fees as the basis in arriving at value.

C. Valuation Methodology

"There are three traditional appraisal methods utilized to predict what a willing buyer would pay a willing seller on a given date, applicable to different types of properties: the comparable sales method, capitalization of income and cost." Brown v. Borough of Glen Rock, 19 N.J. Tax 366, 376 (App. Div. 2001) (citing The Appraisal of Real Estate, supra, 81 (11th ed. 1996)); certif. denied, 168 N.J. 291 (2001). "[T]he answer as to which approach should predominate depends upon the facts in the particular case." WCI-Westinghouse, Inc. v. Township of Edison, 7 N.J. Tax 610, 619 (Tax 1985), aff'd, 9 N.J. Tax 86 (App. Div. 1986).

"[G]olf courses are 'usually considered special purpose properties; they are not so regularly sold or exchanged in the marketplace as most other properties.'" Gale & Kitson Fredon Golf, LLC v. Township of Fredon, supra, 26 N.J. Tax at 282. "Traditionally, the cost approach has been accorded great weight in the valuation of a golf course because [they] are considered special-purpose property that were not frequently exchanged in the market." Heuer, supra, 98. Neither expert utilized the cost approach as a methodology in valuing the subject property.[13]

The sales comparison approach derives an opinion of market value "by comparing properties similar to the subject property that have recently sold, are listed for sale, or are under contract." The Appraisal of Real Estate, supra, 377 (14th ed. 2013). The sales comparison approach involves a "comparative analysis of properties" and requires the expert to focus on the "similarities and differences that affect value . . . which may include variations in property rights,

[13] Although plaintiff's expert indicated that "all three approaches to value have been considered," he discussed only the income approach and the sales approach at trial. Defendants' expert indicated that he did not utilize the cost approach because there was a lack of comparable sales of approved golf course sites located reasonably within the subject's market area which would be necessary to determine the cost of the land.

financing, terms, market conditions and physical characteristics." Id. at 378. "When data is available, this [approach] is the most straightforward and simple way to explain and support an opinion of market value." Greenblatt v. Englewood City, 26 N.J. Tax 41 (Tax 2011) (citing The Appraisal of Real Estate, supra, 300 (13th ed. 2008)). Each of the experts used the sales comparison approach to corroborate their conclusions of value determined under the income capitalization approach.

The income capitalization approach is the preferred method of estimating the value of income producing property. Parkway Village Apartments Co. v. Township of Cranford, 108 N.J. 266, 270 (1987); Hull Junction Holding Corp. v. Borough of Princeton, 16 N.J. Tax 68, 79 (1996). "The income capitalization approach to value consists of . . . procedures that an appraiser uses to analyze a property's capacity to generate benefits (i.e., usually the monetary benefits of income and reversion) and convert these benefits into an indication of present value." The Appraisal of Real Estate, supra, 439 (14th ed 2013). Each of the experts employed the income capitalization approach in arriving at their conclusions of value.

1) The Income Approach

As an initial matter, the court acknowledges that the income approach to value a semi-private golf course was rejected by the court in Gale & Kitson v. Fredon, supra, 26 N.J. Tax at 282. Because the court finds that the methodology employed by both experts in their application of the income approach was fatally flawed, the court has not determined whether the approach is inappropriate in this matter. As discussed below, the issue of whether the Club in this matter generated sufficient income for return on investment, such that the application of the approach would have been appropriate, was not explored and therefore the court makes no ruling in that regard.

a) Plaintiff's Expert

In his income analysis, plaintiff's expert used the subject's actual income as the sole basis of determining stabilized income. He made no market comparisons of income of any other golf course to demonstrate that the subject's actual income supported his conclusion of economic income. Plaintiff's expert concluded that the subject "was operating at a stabilized amount" because "it had been operated for decades and decades."

In further support of utilizing actual income plaintiff's expert concluded that the subject which was self-managed during the years under review had "competent management." Yet plaintiff's expert also testified that in December 2014 a nationally recognized golf management company was retained to manage the subject golf course. An explanation as to why it was decided to retain an outside management firm when the prior management was "competent" was not provided. It is not unreasonable to assume that management was replaced due to the need for better management, thus contradicting the assumption of competent management.

Plaintiff did not provide any evidence to support the contention that the management in place during the years under review had the same level of experience or professionalism as the management in Glenpointe Associates v. Teaneck, 10 N.J. Tax 380 (Tax 1989). In that case, the hotel under review was managed by an experienced hotel management concern and actual income was approved for use as economic rent. During the years under review the subject was "self-managed" and there was no testimony that would support the conclusion that the level of management was similar to that demonstrated in Glenpointe. The simple observation that the subject had been self-managed for decades and decades does not support the conclusion that it was well-managed during the years under review.

"It is of course settled that gross rental income for purposes of applying the capitalized income approach to valuation of property is to be taken at 'fair rental value,' professionally termed

‘economic’ rent or income, if that differs from current actual rental.” Parkview Village. Assocs. v. Collingswood, 62 N.J. 21, 29 (1972). While actual rent may form the basis for determining economic rent, the market data that forms the basis of the expert’s opinion must be in evidence. Glen Wall Assocs. v. Township of Wall, 99 N.J. 265, 275 (1985). “Checking actual income to determine whether it reflects economic income is a process of sound appraisal judgment applied to rentals currently being charged for comparable facilities in the competitive area.” Parkview Village Assoc. v. Collingswood, supra, 62 N.J. at 30.

Plaintiff’s expert failed to provide the court with reliable market data supporting his conclusion that the actual income at the subject property was equal to economic rent. As a result this court is without any basis to evaluate his opinion. See Glen Wall Assoc. v. Township of Wall, supra, 99 N.J. at 279–280. Plaintiff’s expert’s conclusion based on the income approach is therefore rejected.

b) Defendants’ Expert

As set forth above, the court determined that defendants’ expert’s conclusions as to stabilized rounds played and stabilized greens fees were without adequate foundation and his conclusion of value based on the income approach is rejected.

2) Sales Approach

Both experts employed the sales comparison approach as a check on their conclusions under the income approach.

Procedurally, the two experts employed vastly different methodologies in their approach to the sales comparisons. Plaintiff’s expert first identified the sales of four golf courses he deemed comparable to the subject property. He applied certain adjustments for location, age/condition, physical characteristics and club type. From those adjustments he determined a concluded value per hole for the subject property, which he multiplied by eighteen to conclude a value of the subject

as a going concern. Thereafter, he deducted amounts he determined represented the value of the *subject's* furniture, fixtures and equipment ("FF&E"), liquor license and goodwill.[14] The result constituted his conclusion of value for the real property.

Defendants' expert identified three sales which he identified as comparable (none of which were the same as plaintiff's expert) and made adjustments for market conditions (time), location, size (number of holes) and facilities/improvements. The adjusted price per hole was then applied to the eighteen holes at the subject property to conclude a value. No adjustments for the going concern value of the subject were made by defendants' expert.

As discussed below, both experts' conclusions are rejected.

a) Plaintiff's Expert

Plaintiff's expert identified four sales of comparable golf courses, as follows:

Comparable Sale One was the sale of Old York Country Club located in Chesterfield Township, Burlington County. This course was a par 71, 18-hole course on 159.78 acres, which sold for $2,700,000, or $150,000 per hole, on January 22, 2013. The course was designed by Gary Player and can accommodate weddings/banquets up to 150 guests. The expert made net adjustments of 25% to this sale solely for location, which the expert determined was "more remote" than the subject property. The final adjusted price per hole was $187,500.

Comparable Sale Two was the sale of Ballamore Golf Club, a par 72, 18-hole course on 357 acres located in Egg Harbor Township, Atlantic County. The sale occurred on May 20, 2009 for "deed stated consideration" of $2,775,000 and "actual consideration" of $3,500,000, or $194,444 per hole. The expert did not explain how he determined the amount of the "actual consideration" or what was included in this amount. There was a pro shop and restaurant on

[14] Since the court rejects the comparable sales as credible evidence of value, the court does not reach the propriety of deducting from comparable sales' the computed value of the *subject's* assets. The court notes that this methodology is problematic at best.

premises. The expert made total adjustments of 30%, which included a 25% adjustment for location and 5% for physical characteristics. The final adjusted sales price was $252,778 per hole.

Comparable Sale Three was for Holly Hills Golf Club, located in Alloway Township, Salem County. This course was a par 71, 18-hole course on 250.83 acres, which sold to the New Jersey Department of Environmental Protection ("NJ DEP") for open space on July 15, 2008 for $3,515,000, or $195,278 per hole. The improvements on the land were demolished after the sale. Total adjustments of 50% were made to this sale: 25% for location, 10% for age/condition, 5% for physical characteristics and 10% for "club type." The final adjusted price per hole was $292,917. Although in operation as a golf course at the time of sale, the property had been approved for the development of twenty-five residential dwellings.

Comparable Sale Four was the Skyview Golf Club, located in Sparta Township, Sussex County. The course was a par 71, 18-hole course on 194.41 acres and sold on April 5, 2007 for the "deed stated consideration" of $2,000,000 and "actual consideration" of $5,000,000. Total adjustments of 20% were made to this sale, including 10% for location and 10% for club type, for a final adjusted sales price of $333,333 per hole.

Plaintiff's expert testified that he determined that Comparable Sale One was an arm's-length transaction by confirming the sale with one of the principals of the purchaser and by reviewing the recorded deed.[15] On cross-examination he acknowledged that the sale was "somewhat under duress." He maintained that despite the fact that the operator of the course had died, the property had not been foreclosed in the "legal sense" and that instead the course was sold to some of its "investors." Plaintiff's expert did not expound on what interest the investors had in Comparable Sale One or whether those interests may have impacted the purchase price or how. He testified that he determined that it was an arm's-length transaction because in a conversation

[15] The deed reflects a purchase price of $900,000.

with a representative of the purchaser, he was advised that parties had "negotiated" the purchase price. He provided no further information regarding those negotiations.

As to Comparable Sale Two, plaintiff's expert testified that he confirmed the details of the transaction by reviewing the public records and speaking with a representative of the purchaser. On cross-examination, plaintiff's expert testified that Comparable Sale Two occurred "under threat of bankruptcy," but that the "investors" had purchased the property prior to formal bankruptcy proceedings. When presented with documentation of the sale's approval by the bankruptcy court, he conceded that it appeared that the sale was indeed a part of a bankruptcy. He stated that he would not usually utilize a bankruptcy sale as a comparable sale, but in this case the "information that [he] verified at the time seemed to indicate that it was a usable sale." However, the expert did not provide the information upon which he relied in making that determination.

Comparable Sale Three was a sale to the NJ DEP for open space. At the time of closing, the property had approval for development of twenty-five residential lots. Plaintiff's expert first testified that it was his opinion that the purchase price for this comparable would be determined with reference to the value of the property as a golf course, including going concern value. He later testified that the value would be based on the highest and best use of the property. Plaintiff's expert did not indicate that he had specific knowledge of the use for which the purchase price had been determined.

Plaintiff's expert testified that he confirmed the sale by contacting a representative at the DEP and by reviewing the deed. The only documentation submitted was a copy of the recorded deed which reflected a purchase price for the real property of $3,515,000.

As to comparable Sale Four, plaintiff's expert testified that he confirmed the sale through a review of the public records and from speaking with a representative of the purchaser. From those sources he determined that the sale represented an arm's-length transaction. Plaintiff's

expert did not explain how he determined the "actual" consideration of $5,000,000 when the "deed stated consideration" was $2,000,000.

> In the valuation of real property for local taxation, "[t]he search, of course, is for the fair value of the property, the price a willing buyer would pay a willing seller." New Brunswick v. State of N.J. Div. of Tax Appeals, 39 N.J. 537, 543 (1963). The focus is on the market value of the property, without regard to the particular circumstances of the owner. Fort Lee v. Hudson Terrace Apartments, 175 N.J. Super. 221, 226 (App. Div. 1980). A current definition of market value is
>
> > [t]he most probable price in cash, terms equivalent to cash, or in other precisely revealed terms, for which the appraised property will sell in a competitive market under all conditions requisite to fair sale, with the buyer and seller each acting prudently, knowledgeably, and for self-interest, and assuming that neither is under undue duress.
> >
> > [The Appraisal of Real Estate, supra, 33 (8th ed. 1983).]
>
> [Glen Wall Assocs. v. Twp. of Wall, 99 N.J. 265, 281–82 (1985).]

Comparable Sales One and Two, on their face, do not satisfy the requirement of market value. In both transactions, an element of duress is evident. While plaintiff's expert testified that he believed Comparable Sale One was arm's length because he was advised that the parties had "negotiated," he did not expand upon that or provide any further indication of what the negotiations entailed. Plaintiff's expert eventually acknowledged that Comparable Sale Two was a sale in bankruptcy and although he concluded that it was nonetheless usable, he did not provide the court with the facts underlying that determination. "[I]t is for the court to appraise the circumstances surrounding a sale to determine if there were special factors which affected the sale price without affecting the true value." Id. at 282. Here, those circumstances were not provided and the court is unable to gauge if Comparable Sales One and Two were arm's-length, bona fide sales and indicators of true market value. As a result, the court finds that both Comparable Sale One and Comparable Sale Two lack credibility as evidence of the true market value of the subject property.

The court finds Comparable Sale Three similarly lacking in credibility. As noted, significant questions exist as to whether the sales price reflects the value of Comparable Sale Three as a golf course or as a residential development. In light of the approvals for residential development, it is highly questionable that the highest and best uses of the properties are the same. Furthermore, while plaintiff's expert opined that the purchase price paid by the NJ DEP would be calculated at the going concern value of the golf course, the court has doubts that the NJ DEP would purchase or pay for the comparable's liquor license.

As a result, the only sale with any credibility is Comparable Sale Four to which plaintiff's expert made an adjustment of 10% for the superior location of the subject. The support provided by plaintiff's expert for this location adjustment was that

> [t]he subject property is located in Belleville and Bloomfield Townships, Essex County, New Jersey. It has good access to the Garden State Parkway, and is in close proximity to several nearby communities. Its location can best be described as semi-rural. All of the sales are in inferior locations, Sales One, Two and Three are located in southern New Jersey and were, therefore, adjusted upward to varying degrees. Sale Four is in a more remote location and was adjusted upward to a lesser degree.

Plaintiff's expert provided no quantifiable data for his adjustments of 10% for the "more remote" location of Comparable Sale Four. In fact, plaintiff's expert did not provide any explanation as to how he quantified the adjustment.

Similarly, in adjusting for the semi-private nature of Comparable Sale Four, plaintiff's expert justified the 10% upward adjustment by stating that "[t]he subject is a private club. Private clubs generally have annual dues, charge higher daily rates than public or semi-public clubs, and, in most instances, have initiation fees." He did not explain why such differences would result in any adjustment nor did he provide any support for his adjustment of 10%.

> It is well settled in the realm of tax appeals that an expert's reliance on subjective measures for calculation and application of adjustments is unacceptable. Greenblatt v. Township of Englewood, 26 N.J. Tax 41, 55 (Tax 2012) ("adjustments must have a foundation obtained from the market" with an

> "explanation of the methodology and assumptions used in arriving at the [] adjustments []" otherwise they are entitled to little weight). In Dworman v. Borough of Tinton Falls, 1 N.J. Tax 445, 458, this court established that "[t]he opinion of an expert depends upon the facts and reasoning which form the basis of the opinion. Without explanation as to the basis, the opinion of the expert is entitled to little weight in this regard." Thus an expert's opinion is only as good as the data upon which the expert relied. See Congoleum Corp. v. Township of Hamilton, 7 N.J. Tax 436, 451 (Tax 1985) (Adjustments must be adequately supported by objective data); Kearny Leasing Corp. v. Township of Kearny, 6 N.J. Tax 363, 376 (Tax 1984), aff'd o.b., 7 N.J. Tax 665 (App. Div. 1985), certif. denied, 102 N.J. 340, 508 A.2d 215 (1985). "An expert's conclusion rises no higher than the data which provide the foundation." City of West Orange v. Goldman, 2 N.J. Tax 582, 588 (Tax 1981) (citations omitted). "Expert opinion unsupported by adequate facts has consistently been rejected by the Tax Court." Hull Junction Holding Corp. v. Princeton Borough, supra, 16 N.J. Tax at 98 (citing Willow/Leonia Assocs. v. Borough of Leonia, 12 N.J. Tax 338, 344 (1992)).
>
> [TD Bank v. City of Hackensack, 28 N.J. Tax 363, 382–83 (2015).]

Plaintiff's expert failed to supply adequate facts upon which this court can determine the weight to be given to the adjustments made. His adjustments, and therefore his opinion as to value based on the sales approach, are rejected[16].

b) Defendants' Expert

Defendants' expert's report identified three comparable sales, as follows:

Comparable Sale One was the sale of Bamm Hollow Country Club, in Middletown, Middlesex County, a 27-hole, 269.07 acre golf course, improved with a clubhouse that hosts weddings and other functions. The sale at $22,840,000, or $845,925 per hole, was a bankruptcy sale occurring on January 31, 2005. Defendants' expert made gross adjustments of 55%, including a negative 25% adjustment for market conditions/time and positive adjustments of 10% for location, 5% for size (number of holes) and 15% for facilities/improvements. The net adjustments of 30% resulted in an adjusted price per hole of $824,777.

[16] The court also notes that while Comparable Sale Four took place in 2007, plaintiff's expert made no adjustments for market condition despite the general economic downturn occurring in the United States in 2008 and following years. Utilizing this sale without any market condition adjustment to support conclusions of value for tax years 2008 through 2013 is questionable.

Comparable Sale Two was the sale of Cream Ridge Golf Course in Upper Freehold, Monmouth County, an 18-hole golf course located on 183.05 acres. This course sold to the NJ DEP on May 12, 2006 for $13,999,999, or $777,777 per hole. It was indicated that the sale was pursuant to the DEP's Green Acres program, subject to an agreement that the operator would continue the operations as a golf course for the ensuing five years. The property includes a 3,500 square foot restaurant and an 8,000 square foot clubhouse. Defendants' expert made gross adjustments of 65% to this comparable, including a negative adjustment of 25% for market conditions (time), and positive adjustments of 10% for location and 30% for facilities/improvements, resulting in a net adjustment of 40% and an adjusted price per hole of $816,666.

Comparable Sale Three was the sale of Bergen Hills Country Club (now River Vale Country Club), an 18-hole golf course on 132.02 acres in River Vale, Bergen County. The course sold on November 1, 2006 for $17,800,000, or $988,888 per hole. Defendants' expert made gross adjustments of 40% including a negative adjustment of 25% for market conditions (time) and a positive adjustment of 15% for facilities/improvements, resulting in an adjusted sales price per hole of $852,916.

Defendants' expert indicated that with respect to Comparable Sales One, Two and Three, there were separate "bills of sale" for the going concern value and the prices shown represented the value of the real estate.

The expert initially testified that he made no adjustment for time. However, his report states that

> [a]ll the sales occurred in 2005–2006 which was a better market, before the recent recession. As no sales could be uncovered after the commencement of the recession, we could not perform a paired-sales analysis to determine a time adjustment. Therefore, we are required to use our judgement, and we have applied a 30% downward adjustment to each sale as of each date in question.

The expert later testified that after reviewing his report, he realized that he had made a misstatement and that a 25% adjustment for time had been made.

In support of his adjustment for time, however, the expert provided no basis other than "our judgment." He provided no study as to the general downturn in the market, or any other documentation upon which the 25% adjustment was based. While the court is mindful that non-distressed sales of golf courses are at best occasional and that a paired sales analysis may not have been possible, without any testimony to support a 25% adjustment for time, it is impossible for the court to assess the competency of the amount of the adjustment taken.

Similarly, defendants' expert made a 5% adjustment to Comparable Sale One to account for the fact that the course contained 27 holes. Neither the report nor the expert's testimony explains the basis for this adjustment. The method by which the expert determined a 5% adjustment is not discernible from the report nor was any testimony provided. Additionally, there was no testimony, or explanation in the report, about how the expert determined the adjustment for the facilities and the court has no basis upon which to assess that adjustment.

Thus, defendants' expert's adjustments are unsupported by adequate facts and his ultimate conclusion of value based on the comparable sales is rejected.

III. Conclusion

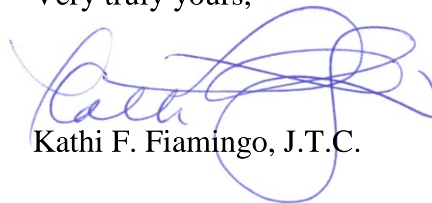
The court is mindful of its obligation "to apply its own judgment to valuation data submitted by experts in order to arrive at a true value and find an assessment for the years in question." Glen Wall Associates v. Township of Wall, supra, 99 N.J. at 280. However, that determination must be based "on the evidence before [the court] and the data that are properly at

its disposal." F.M.C. Stores Co. v. Morris Plains, 100 N.J. 418, 430 (1985). Neither party supplied the court with reliable data from which a determination of value could be made.

The court finds that plaintiff has failed to sustain the requisite burden of proof to alter the assessments for the years under review and that neither party has provided sufficient evidence to support revising the original assessments. Based on the information put before this court in this matter, the court finds that it has insufficient data upon which to base a determination of true value.

As a result, judgment is entered affirming the assessments.

Very truly yours,



Kathi F. Fiamingo, J.T.C.