REPRESENTATIVE FOR PETITIONER:
Michael D. Wilhelm, DeFur Voran LLP
David Shelton, DeFur Voran LLP

REPRESENTATIVE FOR RESPONDENT:
Brian Cusimano, Attorney

BEFORE THE INDIANA BOARD OF TAX REVIEW

Randy A. & Sara Ballinger	)	Petition Nos.: 27-020-12-1-4-00001
	)	27-020-12-1-4-00002
Petitioner,	)	27-020-12-1-4-00003
	)	
	)	Parcel Nos.: 27-08-29-400-012.000-020
v.	)	27-08-29-400-012.101-020
	)	27-08-29-300-011.000-020
	)	
Grant County Assessor	)	County: Grant
	)	
Respondent.	)	Township: Monroe
	)	
	)	Assess. Yr.: 2012

Appeal from the Final Determination of the
Grant County Property Tax Assessment Board of Appeals

FINAL DETERMINATION

The Indiana Board of Tax Review (the "Board") having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Introduction

1. The three properties under appeal are owned by the Petitioners and operated by Walnut Creek Golf Course, Inc. (the "Corporation"). Because the properties' March 1, 2012, assessments collectively increased by more than 5% over their assessments for the previous year, the Respondent has the burden of proof. The parties agree that the primary issue is the scope of the definition of a golf course in Ind. Code § 6-1.1-4-42. The Respondent admitted the value of $764,000 upheld by the PTABOA was in error, and asserts the assessed value should be $632,300. The Petitioners assert that the assessed value should be $128,000.

Procedural History

2. The three parcels consist of the following: Parcel #27-08-29-400-012.101-020 is 1.30 acres with a pole barn; Parcel #27-08-29-400-012.000-020 is 150.41 acres with an 18-hole golf course, single-family residence, two utility sheds, and a pole barn; Parcel #27-08-29-300-011.000-020 is 150 acres with an 18-hole golf course, two single-family residences, a pole barn, and what the parties refer to as the "clubhouse." The parcels are located at 7453 East 400 South, Marion, Indiana.

3. The Petitioners initiated the appeals by filing Form 130 petitions with the Grant County Assessor. The Grant County Property Tax Assessment Board of Appeals ("PTABOA") upheld the assessments. The Petitioners timely filed Form 131 petitions with the Board.

4. The Board's administrative law judge, Dalene McMillen ("ALJ"), held a hearing on February 13, 2014. Neither the Board nor the ALJ inspected the properties.

5. The following people testified under oath:[1]

For the Petitioners: Randy Ballinger, owner
Richard Brock, certified public accountant
Linda Rogers, witness for the Petitioner

For the Respondent: Anthony Garrison, property tax consultant for the Assessor

6. The Petitioners submitted the following exhibits:

Petitioner Exhibit 1: Position statement and summary information from the Ballingers,
Petitioner Exhibit 2: Notice of Assessment of Land and Structures – Form 11 for subject parcel #27-08-29-300-011.000-020,
Petitioner Exhibit 3: Notice of Assessment of Land and Structures – Form 11 for subject parcel #27-08-29-400-012.000-020,
Petitioner Exhibit 4: Notice of Assessment of Land and Structures – Form 11 for subject parcel #27-08-29-400-012.101-020,
Petitioner Exhibit 5: Property record card and aerial map for subject parcel #27-08-29-300-011.000-020,
Petitioner Exhibit 6: Property record card and aerial map for subject parcel #27-08-29-400-012.000-020,
Petitioner Exhibit 7: Property record card for subject parcel #27-08-29-400-012.101-020,
Petitioner Exhibit 8: Indiana Code §6-1.1-4-42, "Valuation of golf course property,"
Petitioner Exhibit 9: 50 IAC 29-1-1 through 29-3-8, "Procedures for the Assessment of Golf Courses,"
Petitioner Exhibit 10: Department of Local Government Finance ("DLGF") memo "Legislative Changes – Golf Course Assessments" prepared by Barry Wood, dated August 17, 2009,
Petitioner Exhibit 11: DLGF memo "Golf Course Valuation Guidance" prepared by Barry Wood, dated December 15, 2009,
Petitioner Exhibit 12: DLGF memo "Golf Course Guidance" prepared by Barry Wood, dated May 5, 2011,
Petitioner Exhibit 13: DLGF memo "Golf Course Guidance" prepared by Barry Wood, dated March 1, 2012,
Petitioner Exhibit 14: DLGF memo "Golf Course Guidance" prepared by Barry Wood, dated March 15, 2012,

[1] Mrs. Sara Ballinger was present but not sworn in to give testimony. Ms. Tamara Martin, Grant County Assessor, was sworn in but did not present any testimony.

Petitioner Exhibit 15: DLGF memo "Golf Course Guidance" prepared by Barry Wood, dated March 12, 2013,
Petitioner Exhibit 16: U.S. Income Tax Return for an S Corporation – Form 1120S, for tax year 2009 for Walnut Creek (Confidential),
Petitioner Exhibit 17: U.S. Income Tax Return for an S Corporation – Form 1120S, for tax year 2010 for Walnut Creek (Confidential),
Petitioner Exhibit 18: U.S. Income Tax Return for an S Corporation – Form 1120S, for tax year 2011 for Walnut Creek (Confidential),
Petitioner Exhibit 19: 2009 profit & loss statement for Walnut Creek (Confidential),
Petitioner Exhibit 20: 2010 profit & loss statement for Walnut Creek (Confidential),
Petitioner Exhibit 21: 2011 profit & loss statement for Walnut Creek (Confidential),
Petitioner Exhibit 22: Petitioners' income approach to property tax assessment using capitalization method,
Petitioner Exhibit 23: Petitioners' property tax due using income capitalization method for negative assessments,
Petitioner Exhibit 24: Assessor's spreadsheet of income approach for 2010 appeal,
Petitioner Exhibit 25: Assessor's explanation for not using the income approach,
Petitioner Exhibit 26: Property record card for parcel #27-03-25-403-022.000-021 (Shady Hills Golf Course),
Petitioner Exhibit 27: Property record card for parcel #35-04-12-400-036.800-004 (Norwood Golf Course),
Petitioner Exhibit 28: Property record card for parcel #1915050016002000 (Mud Creek Golf Course Inc.),
Petitioner Exhibit 29: Employment notices for Geneva Hills Golf Course, Elks Blue River Country Club, Connersville Country Club, Big Pine Golf Course, The Legends of Indiana Golf Course, Rolling Hills Country Club, Hazelden Country Club, Vincennes Elks Club, and Wolf Run Golf Club,
Petitioner Exhibit 30: Walnut Creek's "Condition of Employment" for Mindy Ballinger,
Petitioner Exhibit 31: Walnut Creek's terms of employment for Audrey Ballinger,
Petitioner Exhibit 32: Walnut Creek brochures,
Petitioner Exhibit 33: Twenty-three exterior photographs of Walnut Creek and Club Run,
Petitioner Exhibit 34: Email correspondence between Barry Wood, DLGF and Linda Rogers,
Petitioner Exhibit 35: Indiana Codes § 6-1.1-31-5, "True tax value; factors considered by assessing officials" and § 6-1.1-31-6, "Real property assessment; classification of land and improvements,"

Petitioner Exhibit 36: 50 IAC 29-1-1 through 29-3-8, Proposed Rule, Notice of Intent to Adopt a Rule and Notice of Public Hearing,
Petitioner Exhibit 37: Aerial map and property record card for parcel #27-02-30-100-005.000-032 (Meshingomesia Country Club).

7. The Respondent submitted the following exhibits:

Respondent Exhibit A: Indiana Code § 6-1.1-4-42,
Respondent Exhibit B: Administrative Rule 50 IAC 29,
Respondent Exhibit C: Property record cards for the subject properties,
Respondent Exhibit D: Page 37 and 38 of Appendix G from REAL PROPERTY ASSESSMENT GUIDELINE – Version A,
Respondent Exhibit E: Respondent's golf club income analysis (Confidential),
Respondent Exhibit F: 2009 and 2011 profit & loss statements for Walnut Creek (Confidential),
Respondent Exhibit G: Petitioners' golf course presentation to the PTABOA (Confidential),
Respondent Exhibit H: Respondent's sales comparison analysis for residences on the subject property,
Respondent Exhibit I: Sales disclosure form and property record card for 6882 East 100 South, Marion,
Respondent Exhibit J: Sales disclosure form and property record card for 94 North Kiley Drive, Marion,
Respondent Exhibit K: Sales disclosure form and property record card for 8988 East North 00 South, Marion,
Respondent Exhibit L: Sales disclosure form and property record card for 2247 South 700 East, Marion,
Respondent Exhibit M: Sales disclosure form and property record card for 2307 South 700 East, Marion,
Respondent Exhibit N: Respondent's assessment summary,
Respondent Exhibit O: Respondent's comparable assessment data,
Respondent Exhibit P: Three website articles from Indiana Golf Course Owners Association,
Respondent Exhibit Q: Golf course sales data from www.Loopnet.com,
Respondent Exhibit R: *Albert Hall, LTD v. Huntington County Assessor,* pet. nos. 35-004-10-1-4-00007 and 35-004-10-1-4-00008 (Ind. Bd. Tax Rev. Feb. 3, 2012).

8. The following additional items are officially recognized as part of the record of proceedings and labeled as Board Exhibits:

Board Exhibit A – Form 131 petitions with attachments,

Board Exhibit B – Notices of Hearing, dated October 25, 2013,
Board Exhibit C – Hearing sign-in sheet.

9. The Petitioners and the Respondent both filed post-hearing briefs.

10. For 2012, the PTABOA determined the following assessed values:

Parcel No.	Land	Improvements	Total
27-08-29-400-012.000-020	$260,000	$90,500	$350,500
27-08-29-400-012.101-020	$2,100	$12,100	$14,200
27-08-29-300-011.000-020	$204,900	$194,400	$399,300
Total Combined Assessment			$764,000

Objections

11. The parties made several objections that the ALJ took under advisement.

12. The Respondent objected, on the grounds of hearsay, to Petitioner Exhibits 10 through 15, memoranda issued by Barry Wood, Director of the DLGF assessment division, and Petitioner Exhibit 34, email correspondence between Barry Wood and Linda Rogers.

13. "Hearsay" is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Ind. R. Evid. 801(c). The Board's procedural rules specifically address hearsay evidence:

> Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If the hearsay evidence is not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting determination may not be based solely upon the hearsay evidence.

52 IAC 2-7-3. In other words, the Board may permit hearsay evidence to be admitted, but it cannot form the sole basis of the determination.

14. The DLGF memoranda fall under the public records and reports exception to the hearsay rule. Ind. R. Evid. 803(8). The objection to Petitioner Exhibits 10 through 15 is overruled.

15. The email correspondence between Mr. Wood and Ms. Rogers does not fall within an exception to the hearsay rule. Nonetheless, the objection to Petitioner Exhibit 34 is overruled, but the e-mail cannot form the sole basis of the Board's determination.

16. The Petitioners objected, also on the grounds of hearsay, to the Respondent's Exhibit Q, a print-out from the Loopnet.com website. Respondent Exhibit Q is admitted, but the determination may not be based solely on hearsay evidence.

Burden of Proof

17. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that his property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor,* 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs,* 694 N.E.2d 1230 (Ind. Tax Ct. 1998).

18. Indiana Code § 6-1.1-15-17.2 creates an exception to the general rule and shifts the burden of proof to the assessor. Where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, the assessor has the burden of proving that the assessment under appeal is correct. I.C. § 6-1.1-15-17.2(b).[2]

[2] An Assessor also has the burden when a property's gross assessed value was reduced in an appeal, and the assessment for the following assessment date represents an increase over "the gross assessed value of the real

19. The parties agree that the change between the 2011 assessment ($625,700) and the 2012 PTABOA determination ($764,000) is an increase of more than 5%. The Respondent therefore has the burden of proving that the 2012 assessment is correct. To the extent that the Petitioners seek an assessment below the previous year's level, however, they have the burden of proving a lower value.

Contentions

A. Respondent's Contentions

20. The subject property, consisting of 301.71 acres, has two 18-hole golf courses, two single-family residential homes, various structures to support the golf course, a clubhouse, and a historic residence.[3] *Garrison testimony; Respondent's Brief; Resp Ex. C.*

21. The Respondent contends that I.C. § 6-1.1-4-42 defines the term "golf course" as an area of land and yard improvements that consists of a series of holes, each consisting of a teeing area, fairway, rough and other hazards, and the green with the pin and cup. *Respondent's Brief; Respondent Exhibit A.*

22. Because I.C. § 6-1.1-4-42 has enumerated the specific features that make up a golf course, the statute does not include related buildings, land, or structures that support the maintenance or operation of a golf course. Therefore, the land off the course, the clubhouse, and the residences are not entitled to an assessment based on the "modified income approach" defined in the statute and 50 IAC 29. *Respondent's Brief; Respondent Exhibit A & B.*

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property for the latest assessment date covered by the appeal, regardless of the amount of the increase ...." I.C. § 6-1.1-15-17.2(d). However, that section "does not apply for an assessment date if the real property was valued using the income capitalization approach in the appeal." *Id.*

[3] The historic residence is referred to as the "Halfway House."

23. The Respondent contends that the DLGF memoranda interpreting the definition of a golf course do not have the "weight of law or judicial opinion." They are not subject to public hearing and comments, nor are they required to be reviewed by the Legislative Services Agency. The Respondent contends that since the passage of I.C. § 6-1.1-4-42 in 2009, the DLGF has issued six memoranda with changes in each iteration, but no changes have been made to the original statute. The Respondent argues that she has followed the guidance of the DLGF whenever possible, but she is under no obligation to follow that guidance when it directly conflicts with the plain meaning of the statute. *Respondent's Brief.*

24. The Respondent argues that the original assessment of the property at $764,000 was not correct due to data entry errors. To calculate the correct assessed value of the subject property, the Respondent assessed three separate areas; the golf courses at $128,000, the commercial area, which included the clubhouse and the commercial ground surrounding it, at $306,500, and the two single-family homes at $197,800. The property's correct value for March 1, 2012, is $632,300. *Garrison testimony; Respondent's Brief; Respondent Exhibit N.*

25. In arriving at the assessment, the Respondent used the Corporation's 2009 - 2011 profit and loss statements to develop an income approach. The three year average of the net income of the property was [redacted].[4] Application of a 12% capitalization rate to the average income resulted in a valuation of [redacted]. The Respondent relied on the Petitioners' golf course income calculation which showed a value of $128,000 for the year of 2012. The Respondent then subtracted the $128,000 golf course value from the total value of [redacted] to arrive at a clubhouse area value of [redacted]. *Garrison testimony; Respondent Exhibit E, F, G & N.*

[4] Mr. Garrison testified that the property taxes, interest, and depreciation were included in his adjusted net income. *Garrison testimony; Assessor Exhibit E.*

26. The Respondent contends that the two residential homes located on the property should be assessed like any other residential property. The Respondent analyzed each home using the three sales most comparable in the neighborhood. The properties all sold between March 15, 2011, and September 12, 2011. Mr. Garrison compared the homes in terms of size, quality grade, condition, year built, presence or absence of a garage, basement or crawl space, and type of exterior finish. The three comparable properties used for the 1,200 square foot home had adjusted sale prices from $52.88 per square foot to $61.81 per square foot, with an average of $56.57 per square foot and a median of $55.03 per square foot. Based off the median sale price and the average sale price, he estimated the 1200 square foot home value to be $66,900 (i.e. $55.75 per square foot). The second home was analyzed using the same criteria. The three comparable properties used for the Ballingers' 1,700 square foot home had adjusted sale prices from $72.27 per square foot to $83.27 per square foot, with an average of $77.78 per square foot and a median of $77.81 per square foot. Based on the median sale price and the average sale price, Mr. Garrison estimated the 1,700 square foot home value to be $130,900 (i.e. $77.00 per square foot). *Garrison testimony; Respondent Exhibits H, I, J, K, L, & M.*

27. To further support his residential property assessments, the Respondent also analyzed eleven residential sales from 2011 and 2012 in the neighborhood. For 2011, the five sale prices ranged from $87,100 to $171,500, with an average sale price of $116,340 and a median sale price of $100,600. For 2012, the six sale prices ranged from $60,000 to $163,000, with an average sale price of $122,000 and a median sale price of $119,500. The combined 2011 and 2012 average sale price was $119,427 and the median sale price was $119,000. *Garrison testimony; Respondent Exhibit H.*

28. For illustration purposes only, the Respondent compared the sale prices of four golf courses located in Indiana to his proposed assessed value of $632,300. The first golf course located in Camby, is a 200 acre property that sold for $1,100,000 on April 25, 2013. The second golf course located in Middlebury, is a 184.94 acre property that sold for $650,000 on June 30, 2011. The third golf course located in North Manchester, is a

100 acre property that sold for $960,000 on December 2, 2010. The fourth, located in New Albany, is a 9-hole golf course on 67.80 acres that sold for $325,000 on October 1, 2010. The Respondent argues that the sale prices show that golf courses sell for much higher on a per hole basis than when they are valued using the income approach. *Garrison testimony; Respondent Exhibit Q.*

29. Respondent also compared the subject property's proposed assessed value to the assessed values of three golf courses in the area. The three comparable golf courses had per hole assessed values of $20,233, $29,911, and $56,289, while the subject property would have a per hole assessed value of $17,564. The Respondent noted that the subject property's assessment would be $2,096 per acre, while the three comparable golf courses are assessed at $3,169, $3,519, and $8,572 per acre. The Respondent contends that the assessed value of $632,300 would make the Petitioners' course the lowest assessed golf course in the area. The Respondent argues that to reduce the property's assessed value to their requested amount of $128,000, or approximately $400 per acre, would cause the assessment of golf courses in the area to be "grossly inequitable." *Garrison testimony; Respondent Exhibit O.*

B. Petitioners' Contentions:

30. The Petitioners own 301.71 acres of real property and improvements used in the operation of two golf courses. The Petitioners lease the real property to the Corporation, which operates the golf courses. The Petitioners are the sole shareholders of the Corporation. *Petitioners' Brief.*

31. Mr. Ballinger is the president of the Corporation, which operates the Walnut Creek and Club Run courses. Walnut Creek opened in 1970. Club Run opened its first 9 holes in 1995 and the second 9 holes opened in 1998. The driving range opened in 1997. *Ballinger testimony.*

32. Mr. Ballinger testified that there are three houses located on the property. The first house is referred to as the "Halfway House." It is a historical house built in 1840 that has been restored. The second house is referred to as the superintendent's house and is occupied by the Ballingers. It provides security, houses the water controls and communication system, stores equipment, and serves as the winter office for the golf course. It shares a common driveway with the maintenance building. Mr. Ballinger estimated only 20% (just the bedroom) of the Ballingers' house is utilized for private use. The third house is referred to as the manager's house. It is occupied by the Ballingers' daughter, who manages the clubhouse and golf course.[5] It also provides security and houses water controls for the "backside" of the golf course. The subject property also has a clubhouse, maintenance facility, and three barns. All of the buildings are used in the operation of the golf course. *Ballinger testimony; Petitioner Exhibit 5.*

33. In response to questioning, Mr. Ballinger testified his house receives a homestead deduction. He also testified that a portion of the house has always been used in the operation of the golf courses. However, he thought the homestead deduction would be removed once the property was assessed using the income capitalization method. *Ballinger testimony.*

34. Also, in response to questioning, Mr. Ballinger testified that the golf course spent over [redacted] to restore the Halfway House. The Halfway House is on the national registry. *Ballinger testimony.*

35. The Petitioners argue that the definition of a golf course found in I.C. § 6-1.1-4-42 (b) includes all real property and improvements that make up a golf course enterprise. This includes the clubhouse, maintenance buildings, pump housing, driving range, and other improvements. Each of these items is predominately used to play the game of golf. None of these items have a function on a golf course other than to support the game of golf. Next, the statute provides that a golf course "consists of" a teeing area, fairway,

[5] The Ballingers' daughter is required to live in the manger's home as a condition of her employment. *Ballinger testimony; Petitioner Exhibit 30.*

rough and other hazards, and the green with the pin and cup, however, it does not say it is "limited to" the listed features, or that those features constitute an exhaustive list. For example, some additional features found on a golf course are cart paths, irrigation systems, yardage markers, hole signs, practice areas and driving ranges. *Petitioners' Brief.*

36. The Petitioners argue that assessing officials are required, under I.C. § 6-1.1-31-5, to comply with rules and directives adopted by the DLGF. The Petitioners cite six DLGF memoranda on golf courses from August 17, 2009 to March 12, 2013. Specifically, Mr. Wood's memorandum dated December 15, 2009, states "[a]ssessing officials should value the entire enterprise complex using the income approach." Mr. Wood's memorandum dated March 12, 2013, further clarifies the definition of a golf course, stating:

> Most but not all, golf courses have multiple parcels that make up the golf enterprise including multiple tracts of land, a club house, maintenance building, housing for irrigation pumps and/or control and a driving range. The income capitalization method of these parcels, when combined, contributes to the NOI of facility and generally cannot be separated out. The market value of the facility would therefore include all of the parcels.

Based on these memoranda, the Respondent's evidence of comparable golf course sales in Indiana is irrelevant because golf courses are to be valued using the income approach. *Petitioners' Brief; Petitioner Exhibits 10-15 & 35; Respondent Exhibit Q.*

37. The Petitioners contend that the Board's *Albert Hall* decision finding the clubhouse or pro shop not being part of the statutory definition of a golf course was reached in error. The Petitioners respectfully contend that the Board does not account for underlying legislative policies, and the interpretation renders portions of I.C. § 6-1.1-4-42 meaningless. The Board also failed to address the DLGF memo dated December 15, 2009, which states that assessing officials should value the entire enterprise complex using the income approach. *Petitioners' Brief.*

38. The Petitioners argue that Mr. Garrison's calculated value of the property is incorrect for two reasons. First, Mr. Garrison had no authority under the statutes, administrative code, or rules and directives of the DLGF to assess a "Golf Course" separately from a "Golf Club." Second, he used an income capitalization method to calculate the value of the golf course and golf club at [redacted]. The calculation is flawed because he used the net income from the Petitioners' profit & loss statements which included income from golf cart rentals and pro shop sales. According to the Petitioners, I.C. § 6-1.1-4-42(c) states that the true tax value of a golf course must "exclude the value of personal property, intangible property, and income derived from personal or intangible property." The administrative code, 50 IAC 29-3-2, expounds on this limitation, excluding the income derived from pro shop merchandise sales and the rental of golf carts. *Petitioners' Brief; Petitioner Exhibits 8-9 & 19-21; Respondent Exhibit E.*

39. Mr. Garrison was asked to explain why Respondent Exhibit O showed the 2012 assessed value of Shady Hills to be $364,200 when Shadow Hills' 2012 property record card showed an assessed value of $185,800, and the assessed value of Meshingomesia to be $1,013,200, when Meshingomesia's 2012 assessment detail report showed an assessed value of $799,200. Mr. Garrison stated that he could not explain the discrepancies. *Garrison testimony; Respondent Exhibit O; Petitioner Exhibits 26 & 37.*

40. Mr. Wilhelm questioned Mr. Garrison as to why he did not include in Respondent Exhibit Q (i.e. the sale prices of four golf courses) the sale of an 18-hole golf course with a clubhouse, restaurant and bar in Blackford County, which sold in 2012 for $150,000. Mr. Garrison stated that the Blackford County golf course sale was not a valid sale. *Garrison testimony; Respondent Exhibit Q.*

41. In response to questioning, Mr. Garrison testified that he did not make adjustments in his sales comparison approach for the proximity to a golf course and maintenance facility, or the presence of pump controls. *Garrison testimony; Respondent Exhibit H.*

42. Mr. Brock, a CPA, valued the Petitioners' property at $128,060 for 2012 by using the guidelines set forth by the statute, administrative code, and DLGF memos. *Brock testimony; Petitioner Exhibit 1.*

43. Mr. Brock testified that he started his calculation by following the instructions outlined in the DLGF memorandum, dated May 5, 2011. First, using the Corporation's income tax returns, he took the ordinary income for 2007 to 2011 minus the cart income and non-golf income. He added back in the cart expense, depreciation, interest expense, and entertainment expense to arrive at the negative operating income for 2007 to 2011. Next, he averaged the 2007 to 2011 [redacted] to arrive at an [redacted] of [redacted] (rounded). According to Mr. Brock, if a 12% capitalization rate were applied, the value of the property would be [redacted]. Mr. Brock testified that he prepared this calculation for illustrative purposes only. *Brock testimony; Petitioner Exhibits 12, 16-18 & 22.*

44. Mr. Brock explained that once he determined there was a negative operating income, he calculated the property's value using the steps outlined in 50 IAC 29-3-7, using the Corporation's tax returns and profit and loss statements. He determined the gross income derived from golf activities for 2011 was [redacted]. Next, he subtracted [redacted] in golf cart income, [redacted] in pro shop income, and [redacted] in non-golf income to arrive at an adjusted gross income of [redacted]. The adjusted gross income was multiplied by 5% for a value of [redacted]. Finally, the [redacted] was divided by the capitalization rate of 12% to reach an assessed value of [redacted] for the property. *Brock testimony; Petitioner Exhibits 9 & 23.*

45. From this, the correct assessed value is $128,060 for all of the land and improvements located on the property. *Petitioners' Brief.*

DISCUSSION

46. Real property is assessed at its "true tax value," which is "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." Ind. Code § 6-1.1-31-6 (c); 2011 REAL PROPERTY ASSESSMENT MANUAL 2 (incorporated by reference at 50 IAC 2.4-1-2). Three standard approaches are used to determine market value-in-use; the cost, sales-comparison, and income approaches. 2011 MANUAL at 2. Generally, any evidence relevant to a property's true tax value as of the assessment date, including an appraisal prepared in accordance with generally recognized appraisal principles, may be offered in an assessment appeal. *Id.* at 3.

47. However, there are exceptions to the rule. The Legislature has directed the DLGF to promulgate rules utilizing an income approach for determining the true tax value of a golf course. I.C. § 6-1.1-4-42(c). The parties disagree as to whether the statute applies to all real property and improvements associated with the golf course or just the real property and improvements constituting the course itself. Thus, the parties frame the issue before the Board as a question of the scope of the term "golf course." The statute defines a golf course as follows:

> "Golf course" means an area of land and yard improvements that are predominately used to play the game of golf. A golf course consists of the teeing area, fairway, rough and other hazards, and the green with the pin and cup.

I.C. § 6-1.1-4-42(b). In promulgating its rules on assessing golf courses, the DLGF did not elaborate on the definition of a golf course. Rather, 50 IAC 29-2-3 merely states that the term "'golf course' has the meaning set forth in I.C. 6-1.1-4-42(b)."

48. The DLGF has, however, issued 7 memoranda between August 17, 2009, and March 6, 2014, that address the assessment of golf courses under I.C. § 6-1.1-4-42. The memoranda of March 12, 2013, has two clauses that arguably interpret the definition of a golf course:

> Most, but not all, golf courses have multiple parcels that make up the golf enterprise including multiple tracts of land, a club house, maintenance building, housing for irrigation pumps and/or control, and a driving range. The income capitalization method of these parcels, when combined, contributes to the NOI of the facility and generally cannot be separated out. The market value of the facility would therefore include all of the parcels.
>
> . . .
>
> Finally, the income capitalization method for golf courses includes revenue from multiple sources such as greens fees, membership fees, food and beverage sales, and the driving range. Therefore, the clubhouse, banquet center, driving range, and (sic) maintenance building, housing for pumps and or (sic) controls are not to be assessed separately and are included in the assessment of the golf course also referred to as the golf facility or enterprise using the income capitalization method.

Petitioner Ex. 15. The Board notes that the memoranda reflect an evolution of thought on certain aspects of the statute, which may still be in flux. Had the DLGF interpreted the definition of "golf course" through the rule-making process, the DLGF would be entitled to due deference in regard to the interpretation of the statute. But the DLGF has declined to do so, and therefore the Board will look to the text of the statute.

49. The Board previously addressed the text of this statute in *Albert Hall, Ltd. v. Huntington Co. Assessor*, Pet. No. 35-004-10-1-4-00007, *et. seq.*, Ind. Bd. Tax Rev., February 3, 2012. Relying on the plain language of the statute, the Board noted that the land and improvements consisting of a club house and lodge cannot properly be described as "a teeing area, fairway, rough and other hazards, or the green." *Id.* at 6. The Board concluded that the "property must be divided into two portions for purposes of measuring its true tax value." *Id.* at 7. The true tax value of the portion "used as a golf course is the amount yielded by applying the income capitalization approach," and the true tax value of the remaining portion is "the property's market value-in use." *Id. Albert Hall* was decided by the Board prior to the promulgation of 50 IAC 29 (August 30, 2012) and the DLGF memorandum of March 12, 2013. The Petitioners argue *Albert Hall* was reached in error.

50. The Board finds direction in a review of the prior regimen for assessing golf courses. Under the 2002 Guidelines,[6] land used for golf courses was classified as commercial property--Class 4, which is "commercial taxable land and improvements used for general commercial and recreational purpose." Guidelines Ch. 2 at 32 (Table 2-1). Golf courses received further designation under subclass 4-63 "golf course or country club." *Id.* at 33 (Table 2-2).

51. The golf course improvements, as separate from the land, were assessed under Chapter 7 Commercial and Industrial Yard Structures. Guidelines Ch. 7 at 2. "The valuation of commercial and industrial yard structures" was recorded in the "Summary of Improvements" section of the property record card. *Id.* at 3. Yard improvements were assessed on a per-hole base rate. *Id.* at 20. The true tax value was determined by assigning grades and values in conformity with cost schedules. *See generally* Guidelines Ch. 7.

52. Under Appendix G, Schedule G, entitled "Yard Improvements" and subtitled "Golf Courses," the cost schedule includes both base costs per hole and component costs per course. Guidelines Appendix G at 37. Base costs include architectural fees, normal site preparation (grading, fairway seeding, and landscaping), sprinkler installation (water source, pumps, piping, and heads), roadway construction (base preparation, paving and bridging, service roads and cart paths), green construction, tee construction, and bunker construction. *Id.* Components include: tees, bunkers, greens, lakes, sprinkler systems, and site preparation and landscaping. *Id.*

53. "In construing statutes, words and phrases will be taken in their plain or ordinary and usual sense unless a different purpose is clearly manifest by the statute itself, but technical words and phrases having a peculiar and appropriate meaning in law shall be

[6] The 2002 Guidelines were in effect at the time of passage of the statute. The 2011 Guidelines, currently in effect, have the same provisions referenced.

understood according to their technical import." *Indiana Dep't of State Revenue v. Colpaert Realty Corp.*, 109 N.E.2d 415, 419 (Ind. 1952).

54. The statute clearly defines a golf course as "land" and "yard improvements." "Yard improvements" is a term of art in the context of assessing.[7] Under the cost approach, golf course yard improvements encompassed the costs of constructing the playing area, hazards, lakes, and sprinkler system. The Board presumes the Legislature chose the terms "land" and "yard improvements" with a knowledge of how golf courses were assessed under the Guidelines.[8] To remove any doubt, the legislature clarified that: "A golf course consists of the teeing area, fairway, rough and other hazards, and the green with the pin and cup." This definition is consistent with the items contained in the cost schedule for golf course yard improvements.

55. The Board finds that the statute is clearly intended to replace the provisions in the 2002 Guidelines relating to the valuation of golf course land and yard improvements. Furthermore, the statute is expressly limited to the land that consists of the playing areas of a golf course. Similarly, the selection of the term "yard improvements," rather than simply "improvements," indicates that the Legislature intended that its application would be limited to the types of improvements considered yard improvements under the 2002 Guidelines. It is no coincidence that the base and component items contemplated in the

[7] The nature of a "yard improvement" differs depending on the land classification. Residential yard improvements include structures like a detached garage, but not a dwelling. Guidelines Ch. 5 Appendix C Schedule G.1. Agricultural yard improvements include all structures like barns and silos. Guideline Ch. 5 Appendix C Schedule G.1. Commercial properties include various structures including towers, tanks, and grain elevators. Guidelines Ch. 6 Appendix G Schedule G. Yard improvements for utilities do not include buildings or structures. Guidelines Ch. 9.

[8] This understanding of yard improvements is also consistent with other outdoor commercial and recreational facilities: projection booths are excluded from drive-in theater yard improvements, building structures, parking, and fencing are excluded from miniature golf yard improvements, and building structures, parking, and fencing are excluded from golf driving range yard improvements.

"Yard Improvement" schedule are limited to those found in the playing areas of a golf course.[9]

56. The Board finds the Legislature took pains to specifically describe the playing area of a golf course and intentionally excluded from the definition clubhouses and similar improvements. Additionally, the statute requires that the DLGF rules "provide for the uniform and equal assessment of golf courses of similar grade quality and play length," reflecting a focus on the playing area rather than ancillary amenities. Thus, the Board concludes that an I.C. § 6-1.1-4-42 "golf course" consists only of the golf course playing area. The land and improvements that are ancillary to the playing area of a golf course are not entitled to an assessment under the statute's modified income approach.

57. This interpretation is consistent with another assessment provision requiring an income approach in determining the true tax value of real property: the assessment of agricultural property. Under I.C. § 6-1.1-4-13(c), the DLGF is directed to "provide for the method for determining the true tax value of *each parcel of agricultural land*." (Emphasis added). The term "agricultural land" is not specifically defined. The reference to "parcel" might be interpreted to include all real property, including improvements on the parcel, but it applies only to the land. Agricultural improvements are assessed separately and by any generally accepted appraisal approach. *See Grabbe v. Duff*, 1 N.E.3d 226, 227-28 (Ind. Tax Ct. 2013). The Legislature's omission of the term "yard improvements" in the agricultural assessment statute and inclusion in the golf course assessment statute supports the Board's conclusion that significance should be attached to that term.

58. Similarly, I.C. § 6-1.1-4-39, describes the process for determining the "true tax value of *real property* regularly used to rent or otherwise furnish residential accommodations."

[9] Petitioner argues that the Legislature's "throwing in the tees, fairways, roughs and hazards is just illustrative" so that someone who has ten acres and only hits balls there cannot claim to have a golf course. *Petitioners Closing Argument*. One might similarly interpret the clause as simply creating a distinction between golf courses and miniature golf or disc golf. These interpretations, however, require the Board to disregard the Legislature's decisions to (1) use the term "yard improvement" and (2) include a clause that expresses a definition nearly identical to the existing description of a golf course yard improvement.

(Emphasis added). This statute does not contain a more specific definition. The Board finds the Legislature would have simply used the term "real property," without a specific definition of a golf course, had the Legislature intended that the provision would cover all property "regularly used" as a golf course.

59. Separating the income associated with the playing area of a golf course from the clubhouse may or may not be necessary, difficult, or logically inconsistent. However, it is entirely consistent with the established assessing practice of applying an income approach to farmland and separately assessing the barns and silos. Whether a golf course can be sold without the clubhouse has no more relevance to determining the true tax value than whether a ranch can be sold without the stables.

60. The parties are in the unenviable position where the rule-making agency and adjudicatory agency have asserted facially conflicting interpretations of the statute.[10] Ultimately, however, the dispute between "land and yard improvements" and "golf course enterprise" is not reached in this case.

61. In determining the predominate use of property, "the relevant inquiry is the use of the property at issue rather than the nature of the taxpayer's business." *Carnahan Grain, Inc. v. Ind. Dep't of State Revenue*, 828 N.E.2d 465, 469 n. 6 (Ind. Tax Ct. 2005). "Intent does not establish predominate use." *6787 Steelworkers Hall, Inc. v. Scott*, 933 N.E.2d 591, 596 (Ind. Tax Ct. 2010).

62. The Board finds that the dwelling in which the Petitioners reside is not "predominately used to play the game of golf." Its predominate use is as a residence for which the Petitioners have claimed a homestead. The fact the residence is also used as a home-office with business storage and business utilities does not change the primary use of the property: the home where the Petitioners and their family have lived for nearly 40

[10] The findings and rationale in the Board's *Albert Hall* determination are not addressed in the DLGF's later memoranda.

years.[11] Similarly, the "Halfway House," a historic building in which the Petitioners have invested over [redacted] toward its upkeep,[12] has no evident use in the game of golf. The record is devoid of evidence regarding its actual use.[13] Additionally, the Board is not persuaded that the "manager's house" is predominately used for playing the game of golf. Mr. Ballinger testified that the manager's house was originally built as the residence for Mr. Ballinger's mother, then used as a bed and breakfast, and later a summer rental for "snowbirds." Currently it is the primary residence of the Petitioners' daughter who also holds the title of manager. These previous uses of the property persuade the Board that the manager's house would not be the manager's house if occupied by anyone other than a relative of the Petitioners, and the structure is not "integral to the golf course" (as argued by the Petitioners), or predominately used to play the game of golf.

63. The Board concludes that the land and improvements consisting of the residences are not entitled to an assessment through the modified income approach, even were the Board to adopt the Petitioners' interpretation of the statute.

64. The Board now turns to the evidence presented by the Respondent regarding the value of the residences. "The overarching goal of Indiana's new assessment scheme is to measure a property's value using objectively verifiable data." *Westfield Golf Practice Ctr., LLC v. Wash. Twp. Assessor*, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007) *citing Eckerling v. Wayne Twp. Assessor*, 841 N.E.2d 674, 677-78 (Ind. Tax Ct. 2006) (explaining that one cannot rebut the presumption that an assessment is correct without presenting evidence of the property's market value-in-use). As such, a party must focus not on the methodology used to determine its assessment, but rather its actual market value-in-use. *Id.* Mr. Garrison estimated the property's value based on sales involving properties he believed were comparable to the subject property. But he did not present objectively verifiable

[11] The Board finds Mr. Ballinger's estimates of the percentage of the house used as a residence not credible.
[12] The Board notes that the sum of that investment alone nearly doubles the entire assessed value claimed by the Petitioners.
[13] Mr. Ballinger testified only that "we felt like we needed some kind of facility over there," and the $200,000 was invested because "it was as much of an emotional tie as anything but it was a pride in the community." *Ballinger testimony.*

data in support of his adjustments for the differences in the properties. Consequently, the analysis does not suffice to make a prima facie case for the subject property's market value-in-use according to generally accepted appraisal practices. *See Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that taxpayers were responsible for their property's characteristics, how those characteristics compared to those of their purportedly comparable properties, and how any differences affected the properties' market values-in-use).

65. Because the Respondent has failed to make a prima facie case as to the correct value of the residences, the Board need not inquire into the income approach applied by the Respondent to the golf course and the clubhouse.[14]

66. The burden rests on the Petitioners to prove their requested valuation of $128,060. As previously discussed, the three residences are not predominately used to play the game of golf and are not entitled to an assessment under the modified income approach.[15] Because the Petitioners have failed to present any evidence as to the market value in use of the three residences, the Board cannot find that the Petitioners are entitled to the valuation requested.

SUMMARY OF FINAL DETERMINATION

Because neither the Petitioners nor the Respondent have made a prima facie case as to the correct assessed value, the assessment must revert to the 2011 value of $625,700.

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[14] The Board notes that the Respondent's income valuation renders the statutory modified income approach meaningless. The Respondent valued the entire golf enterprise with a standard income approach, and then allocated an amount equal to the valuation under the modified income approach to the playing area. Thus, the Respondent's calculations result in merely an *allocation* based on the statutory modified income approach, rather than a substantive assessment of the playing area in conformity with the statute.

[15] The Board also notes that the Petitioners' income valuation calculates the value of the land to the Corporation, a leaseholder, which may or may not reflect the true value of the property.

The Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review this date 9-27-14.

Ted J. Holaday
Chairman, Indiana Board of Tax Review

Betsy J. Brand
Commissioner, Indiana Board of Tax Review

Jonathan A. Eluet
Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.