Supreme Court of the State of New York

County of Suffolk

TRADITIONAL LINKS, LLC

-v-

TOWN of RIVERHEAD, et al

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The Court notes as a preliminary matter that trial commenced in August, 2015 with intervening adjournments for scheduled vacations and conferences to which counsel for the litigants were previously committed. Thereafter, further adjournments were granted to accommodate medical conditions afflicting one of the attorneys. All parties were aware that this Court was compelled to retire December 30, 2015 due to age, a constitutional mandate.

In the month of December, 2015, this Court drafted its decision, its findings

and conclusions as well as its opinion when informed that the State supplied computer would be removed on December 30, 2015. The Court, further, was denied access to computer search databases as of January 4, 2016. The parties had previously provided the Court with citation, to prevailing decisional authorities, governing golf course valuation analysis. But for this introductory paragraph in part, the decision was written before the end of business December 30, 2015.

This is a purportedly complex valuation proceeding instituted pursuant to Article 7 RPTL[1], and litigated on the dates in Annex A, attached. For the years under review, the subject property is presently and actually used as a golf course, consisting of approximately 350 (+/-) acres. There is a dispute regarding part of the approximately 85 (+/-) acres, vacant as part of the overall ownership. The issue is whether this acreage is excess land with the potential to be a developed residential subdivision parcel or does it contribute to the uniqueness of the golf course as an open space enhancement and a visual presentation of a picturesque golf course.

The property is improved with three insulated cabins, each containing 3,000 sq. ft. (+/-) of space, and maintenance improvements.

The subject property is located in the Town of Riverhead, the county seat of Suffolk County government, and in the nearby vicinity of the Tanger outlets, a concentration of automobile dealerships, a Central Business District bordered by Peconic Bay, the County Court Complex, the county center, the Riverhead

[1] Real Property Tax Law

historical Society, rest homes, and restaurants. Though located in the Township of Riverhead, the subject property has been referenced as a destination golf course, catering to a well-to-do golf community. Apparently, key to the appraisal philosophy of Petitioner's expert real property appraiser, the subject property appeals to the well-to-do.

The subject property is a private membership club only. Its facilities are not accessible for public use. It does not include a clubhouse of marked significance, or a restaurant facility of substantial size or particular character. Rooming facilities for the players and guests are limited to a collection of four rooms per cottage with a total of three cottages. The subject property is not located on a major highway; nor is it easily accessible from New York City. The subject property, however, does have an approved helicopter approach and landing facility (**Exhibit JJ in evidence**). It has an Airport Identifier Code (03NY) and purportedly is serviced by an uncontrolled private 2,000 foot grass landing strip, featuring runways 16 and 34.

During the several days of trial, the Court has learned from the testimony and documents in evidence that the subject property in its natural state is a habitat for deer, Norway Brown Rats and other residential animal life. The property is bordered on the north by the Long Island Sound with access to the waterfront beach by wooden stairways, descending from the top of the bluffs to the rocky sand beachfront.

The real property is assessed or appraised in its actual state of use and

condition on the taxable status date for each of the years under review. (See Suffolk County Tax Act and the Real Property Tax Law.) [2007/08, 2008/09, 2009/10, 2010/11, 2011/12, 2012/13, and 2013/14].

Petitioner produced Dr. Abrams, a qualified expert ecologist employed by Dru Associates. He has been involved with the subject property since before 2003. He studied conservation issues on the subject property for more than a decade, provided special services securing permits and assisting in the permitting process, and has assisted in the design of the subject property as a golf course. He created wetland ponds on the subject property without mosquitoes. He concluded that approximately 45% of the natural habitat would remain suitable, if the owner of the property employed a holistic approach for conservation purposes. He opined that any further development of the subject will disrupt the wildlife habitat, and incur the ire of environmental groups who were and are opposed to the project. It is noted that the Petitioner has granted a wildlife easement. Dr. Abrams testified that the wetlands and the ponds must be maintained in order to avoid "yuckiness". He further testified that there was much concern for the wildlife due to the presence of golf carts. This in turn negatively impacts the number of rounds played per year on the subject property.

Dr. Abrams testified that all parts of the subject property are environmentally sensitive, and great care in the development of the golf course as well as intervening litigation, addressing the environmental concerns, were adequately addressed not only for the golf course in question, but the additional

acreage acquired, referenced in the record as the Malibu acquisition by Respondent's recognized real estate expert.

As argued by Respondents this extra parcel was excess land, not necessary for the operation of the golf course and as excess land had a separate value with a projected yield of 55 residential lots, contributing additional value to the subject property.

In the opinion of Respondents appraiser, Mr. Di Geronimo, the subject property yielded a total value ranging from $27 million to $32 million approximately for the years under review. On focused cross-examination, several inconsistencies appeared, contradicting his overall estimates of value.

Petitioner also called Mr. Dugas, a qualified expert golf course real estate appraiser. His instructions were to value the real estate as a golf course - an existing use. The highest and best use of the property was not considered. He did not apply going concern value considerations to the subject property.

The property was developed pursuant to PGA standards. His report was placed in evidence as Exhibit #2, covering the years 2008 through 2013/14.

In his opinion the property is a high-end golf course. He further concluded that the subject property enjoyed the presence of non-essential land on the west side of the subject property which does not impact the golf course. As it appears on the tax map of Suffolk County, the property is a single tax parcel, and it is appraised as such. It has no residential use or approvals. Hypothetically, if it had residential development potential it could yield 55 or more residential lots; but, the

owners never filed with the Town Board or County Health Department for such use.

Mr. Dugas testified that he relied solely on the income approach to value. Neither the comparable sales methodology, nor the cost approach was suitable. He testified that golf courses have a unique appeal to investors. The valuation concern focuses on the number of rounds played per year, generating an income stream not only from greens fees, but related services including food, beverage, sale of golf related items, golf cart rentals, availability of golf pros for instruction, and a golf school. At nationally recognized golf spas such services would include hotels, swimming pools, Jacuzzis, escort services, and tennis courts. The subject property does not enjoy those supplemental amenities. Mr. Dugas relied upon the rental value approach and capitalized it. He further refined his capitalization rate with an appropriate tax factor.

The subject property is a private membership-only club. It is not open to the public. However, for analysis purposes, he compared the subject property to a public access, for-profit golf course, offering clubhouse features, Pro shop services, greens fees and cottages. He noted that rent is a function of revenue. Some rents are treated as percentages. A capitalization rate represents a return on investment. He noted in passing that restaurants, Pro shops and cottages are loss leaders. Golf and its greens fees are the primary revenue generators. In considering income, it may be approached as either gross income or departmental percentages.

In reviewing the economic environment on a national basis, Mr. Dugas concluded that the golf industry suffered from overexposure, noting that an excess of courses were opened, and the impact of the New York Trade Center attack in 2001 and the financial crisis in the calendar year 2008 effectively demolished the economic vitality of the golf industry. Many golf courses have suffered bankruptcy. Many courses have sold after development for less than purchased.

The subject property suffers from financial obsolescence. This is a result of the overbuilding and the credit crunch of 2008. The subject property is located in close proximity to 10 golf courses. Golf courses on Long Island suffer stiff competition. He noted that private courses rely upon membership fees only. He further noted that the average price of the public access course reflect greens fees charged in the area from $35.00 to $75.00, depending upon season, time of day with fees higher on weekends. Greens fees are higher in summer than in the other three seasons in the Northeast. In considering the demographics within 10 miles of the golf course he concluded that the subject property enjoys demographics of about 160,000 people. He noted that the subject, course quality is great. In the first year of operation, the subject property did not have a club house.

The venue is a walking course. He noted that the clubhouse suffered physical and economic obsolescence. It does not have a banquet room. He noted that the subject could generate about 20,000 rounds annually. He further noted that golf activity has been declining precipitously since 2008/2009. Further, lending institutions are no longer lending on golf courses. His selected equalization rate

prior to the financial crisis is 10%. Subsequent to the economic crisis, he noted an increase in his selected rate to 10.25%, reflecting higher risk.

In his opinion, the subject property is a destination golf course; people go out of their way to play the subject property. It is ranked in the top 100 courses on the planet. His golf yield rate is calculated by the number of rounds played as indicated by the revenue generated.

In evidence is Plaintiff's exhibit #2 with effective dates of July 1, 2007, 2008, 2009, 2010, 2011, 2012, 2013. Taxable status date is March of each year under review with assessment valuation dates, for each tax year valuation date as of July 1 yearly, beginning July 1, 2007, 2008, 2009, 2010, 2011, 2012, and 2013.

Trial commenced August 3, 2015 with testimony continuing August 5, 6, 10, 11, 24, and 25. Due to medical issues, suffered by Respondent's counsel, trial next continued October 6, 13 and 21; December 2, 3, 4, 7, 8, 9, 10, 14, 16, 17, 18, 21, 22, 23, and 28 in calendar year 2015.

There was a motion to quash a subpoena. The motion was addressed and decided on the Record. There is no prejudice to the Petitioner. It retained experts. It requested information referenced in Petitioner's real estate appraisal. At page 42-there are 10 golf clubs listed both out-of-state or out-of-country. It requested of Dr. Abrams his notes from 2004 forward under -**§§3101(d)(1)(I) CPLR**. **See Xerox v. Webster** 206 A.D. 2d 935 (A.D. 4-1994), **§2303(a) CPLR, §2103(b)**

CPLR.

Mr. Dugas' practice is limited to appraising golf courses. In the last five years he has made several appraisals in Nassau County. In the last 15 years in Suffolk County he generated about 12 reports. In the past five years, he generated approximately six reports. In Southampton he authored approximately five preliminary reports. These were all for assessment review proceedings. His resume includes appraising The Bridge – a golf course referenced at page 106. He prepared a report and testified in a divorce action in New York County. He has testified in New Jersey, Rhode Island and in a bankruptcy case in Massachusetts. He testified in (1) the New Garden City Country Club litigation, (2) the Mill River Club, and (3) the West Hempstead Country Club. He reviewed several judicial decisions.

He valued these properties as public, for-profit properties, not as private membership clubs. He used rental income, not operating income, for his income approach. He tax loaded the capitalization rates. He referred to the Rockville Links and the Colonial Springs decisions.

He walked the property, he played the course, he reviewed sales, rents, demographics, highway plans, soils analysis, playability; he inspected the buildings and public records. He did at least 12 site inspections in 2007 through 2015. In the last 15 years he has been on site at least twice annually. He has

reviewed town records-tax bills, tax rates, assessments. He has reviewed financial statements, site plans, (referenced at page 18 of Exhibit 2 in evidence), zoning information, and a map on page 33 of Exhibit 2 in evidence. He has membership information and the rounds played as provided by the owner. He did not review deeds or easements.

The golf course opened in 2002. There are about 14,000 golf courses nationally. A course requires approximately a minimum of 200 acres to construct an 18-hole course.

He disagrees with Mr. Di Geronimo, Respondent's expert appraiser. In his report he references "non-essential" areas on page 18. He did not adopt the definition or concept of excess land.

The subject property consists of 349 acres of land in the Baiting Hollow hamlet of the town of Riverhead. It contains an 18 hole, par 71 golf course, measuring approximately 7000 yards from the back tee. The clubhouse was completed in August 2008. In 2009 three guest cottages were completed. Only the real estate component of the golf course operation is appraised.

The appraiser's methodology for the valuation problem was to treat the property as a public access course which generated gross sales from which the value for the real estate was calculated on an appropriate percentage of the gross sales or revenue. The fair market rent was then converted into a market value

estimate of the real estate, corresponding to the date of valuation. In his opinion, this method of valuation is consistent with the accepted practice in valuation methodology, as with other types of commercial property located in New York State for real property taxation purposes. He testified that this approach has been recognized by the trial and appellate courts of New York as to the methodology to be employed in valuing golf courses in tax certiorari proceedings. He is of the opinion that this methodology is consistent with that used to value real estate for other valuation purposes.

Presently, the property operates as an exclusive private members-only club. It is not open to the public. The appraiser assumes that the subject will be operated as a for-profit, public access facility, which generates its revenue from the daily play as opposed to the membership fees. Since it is located in the north east of the United States, it is subject to seasonal factors as well. His conclusions are as follows:

YEAR	**VALUE**
2007	$9,200,000
2008	$10,350,000
2009	$10,300,000
2010	$10,350,000
2011	$10,450,000

2012	$10,450,000
2013	$10,700,000

The foregoing conclusions of value for the subject property, including the Malibu acquisition, referenced as “non-essential” land, were based on the Petitioner’s following estimates of gross revenue:

YEAR	**GROSS REVENUE**
2007	$4,950,000
2008	$6,937,500
2009	$7,315,404
2010	$7,423,712
2011	$7,534,186
2012	$7,646,870
2013	$7,761,870

He calculated net rental to the real estate as follows:

YEAR	**NET RENTAL**
2007	$1,067,220
2008	$1,223,775
2009	$1,290,438
2010	$1,309,543
2011	$1,329,030

2012	$1,348,908
2013	$1,369,182

He calculated and concluded that his net operating income was as follows:

YEAR	**NET OPERATING INCOME**
2007	$1,067,220
2008	$1,223,775
2009	$1,290,438
2010	$1,309,543
2011	$1,329,030
2012	$1,348,908
2013	$1,369,182

The parameters of the report in evidence are reflected at page 1 of the letter of transmittal, dated May 7, 2015 and recited in his testimony. In addition to the aforementioned description, the property is improved with practice areas, a driving range, employee housing, maintenance buildings, and a basic clubhouse as well as a halfway house. The course opened for use in 2002. The clubhouse and the golf house (lockers, etc.) were completed in August 2008. The three guest cottages were opened in July 2009.

In the opinion of the Petitioner's expert with the application of his market based data, he concluded that the value of the subject property is as recited above.

He selected for calendar year 2007 and 2008 as of July 1, a capitalization rate of 10%. For the calendar years 2009, 2010, 2011, 2012 and 2013, he selected a capitalization rate of 10.25% as of July 1 of each year. He added a tax load factor representing real property taxes paid by Petitioner to develop net operating income as follows:

YEAR	TAX LOAD FACTOR
July 1, 2007	1.63%
July 1, 2008	1.84%
July 1, 2009	2.29%
July 1, 2010	2.42%
July 1, 2011	2.46%
July 1, 2012	2.67%
July 1, 2013	2.57%

His tax loaded capitalization rates for each year as of July 1 were as follows: 11.63%, 11.84%, 12.54%, 12.67%, 12.71%, 12.92%, and 12.82%. As recited above his conclusions of value as rounded by the Court were $9,200,000, $10,500,000, $10,500,000, $10,500,000, $10,500,000, $10,500,000, and $11,000,000 for each of the years above-described. These numbers are not adopted by the Court for the reasons recited herein.

The methodology employed as applied in golf course valuation tax certiorari

special proceeding have been analyzed, scrutinized and discussed in several decisions by the Appellate Division of the Supreme Court: Second Department. A leading treatise on the topic of golf course valuation, cited as an industry authority, is a monograph entitled **"Analysis and Valuation of Golf Courses and Country Club,"** 2005, Gimmy and Johnson, Appraisal Institute.

In addition to Mr. DiGeronimo, Respondents offered the testimony of Mr. Shiff, a recognized professional planner whose expertise was accepted by the Court. Mr. Schiff viewed all records and plans filed both with the several town agencies as well and the New York State Department of Environmental Conservation (DEC). The petition filed with DEC for approval, included a yield map of 77 proposed residential locations and four stairways from the bluffs, fronting Long Island Sound to the beach below. After prolonged discussions and amended filings with DEC, approval was given for a yield of 55 plots and the stairways to the beach. It would appear that none of the proposed 55 plots would physically intrude the golf course area, nor impact the design of the course.

Of significant note is that at no time has the Petitioner filed for subdivision review and approval by the Riverhead planning department, the planning Board, the building department, any architectural review board or the Riverhead Town Board, the final approving authority, addressing approvals for zoning changes, site plan approvals and other departmental approvals. Furthermore, the Petitioner

would be required to seek planning approval from the Suffolk County Department of Health. The extent of the county departmental review and its approvals, and the impact on the design and yield were not explored or developed, except that Health Department approvals and permits were also required before commencement of any residential development, if permitted, or determination of a possible yield to be determined by the town board. These are significant bureaucratic obstacles to overcome. Nor, as argued by Respondents, does the town merely rubberstamp any approval of the DEC, a state agency.

Thus, the Court is called upon to determine an "as-is going concern" golf course value with DEC approval. It was noted through Mr. Schiff's testimony that once granted, DEC approval is without time limitation unless there are significant or substantial environmental changes suffered by the subject property.

Respondent, at the conclusion of Petitioner's case in chief, moved to strike the reports in evidence of Petitioner's experts and their testimony. The motion was submitted in writing and briefed by both parties. The motion is, in all respects, denied.

Richard DiGeronimo was called and recognized in Respondent's case in chief, as an expert qualified to render opinions of value, addressing real property and its uses including the analysis of golf courses.

Contrary to Mr. Dugas, Mr. DiGeronimo relied upon the three traditional

approaches to value: income and cost, reproduction or replacement, and comparable sales. Having used the three methodologies, he then reconciled his values, reflecting his opinion of value of the total property for each of the years under review.

In the market or comparable sales approach to value, he offered several sales, which he deemed comparable with clearly explained adjustments and analysis.

He also utilized the income approach to value, as did Mr. Dugas. Respondent developed a different and significantly higher value utilizing Net Operating Income (NOI), and a tax loaded equalization rate.

As a further check on his analysis, Mr. DiGeronimo utilized the cost approach to value. It is without argument that implementing the income approach, the evaluator must estimate the number of rounds played or estimated to be played, multiplied by greens fees, to generate revenue adding supplemental revenue from other revenue sources including cart rentals, if any, dues, if any, clubhouse and golf house revenues, and any other sources of revenue which the market will bear.

Respondents also developed a safe rate capitalization rate and tax impacted it with a tax load factor.

The subject property as a private membership course generates about 4,000 rounds annually. Given its environmental sensitivity, the Court adopts eight

thousand rounds.

In the opinion of the Respondents this environmentally-sensitive property could sustain 20,000 rounds annually, imposing further stress on the fauna and flora of the subject property. The Court rejects this conclusion given the environmental review history and opposition encountered by Petitioner.

Dr. Abrams discussed at length the study and design of airways to accommodate the transiting as well as the residential flying wildlife. He also participated in the design of the golf course to minimize its impact and usage and maintenance on the other forms of wildlife including deer, squirrels, turtles and a residential Norway Brown Rat colony in permanent residence in the vicinity of a government maintained water tower.

Petitioner appraised the subject property in an “as is” use for each year under review with no recognized residential development potential. Respondents appraised it as an “in use” golf course with a development yield potential of approximately 55 residential lots as a yield on the alleged excess land-the Malibu property.

The Court concludes that the perceived residential yield potential of the subject property was highly speculative since no application was ever made to the town of Riverhead. There is no proof in the record that the town of Riverhead subordinates its home rule powers and authority to a state agency, by simply

rubberstamping whatever a state agency approves or dictates. There is testimony through Mr. Schiff and documents in evidence, including DEC findings, which recognize the limitations imposed on the agency's jurisdiction, namely environmental impact only and limiting its review from the beach front to the top of the bluffs.

Thus, without more, the Court cannot reach a determination on residential yield on the nonessential or excess land portion of the premises, and rejects as opinion a conclusion offered as to the alleged inherent residential yield potential.

Mr. Dugas did not adjust his data for that potential. The Respondent treated the residential unit yield as at least 55 units as filed and approved by the state DEC for environmental purposes only, appropriate for its limited jurisdiction with no town review of approvals.

The subject as a private membership entity reflects the overall concerns of its environmental sensitivity. To treat it as a public access course, with the greens fees ranging from $35-$75 per round with income from cart rentals when the subject golf course is a walk-only course serviced by its own helicopter approach and landing pad, all as approved by the FAA[2], is akin to applying lipstick to a pig.

Since both parties use the public use access course model, the Court is limited in its analysis and must ignore its actual use as a private members only

[2]. Federal Aviation Administration

facility. The Court does note that in several golf course tax certiorari reported decisions some courses were appraised as private membership only courses.

In considering the remoteness of location in Suffolk County, the abundance of other public access courses with which it must compete, if a public access course, the overabundance of golf courses on Long Island, which includes the counties of Kings, Queens and competition from Richmond County, Westchester County, and the state of New Jersey, the Court is hard-pressed to treat the subject for such valuation purposes.

Certainly, it is not competitive with the Ko' Olina Marriott Golf Spa on the island of Oahu, State of Hawaii which course features a number of swans including a pair of black swans which continuously pollute the ponds in which they float.

Since the subject property never received residential subdivision approval from the town of Riverhead, the Court rejects a yield component to the valuation analysis. Contrary to the conclusion of Mr. Dugas, not recognizing a residential potential, such a potential may be recognized as a premium for the property. Respondents recognized such potential, but carried it to the extreme, as if the town of Riverhead would readily rubberstamp a yield of 55 residential plots.

Within the range of evidence provided, the Court selects a 28% gross adjustment for years 2007 and 2008, and a 32% gross adjustment for the years 2009, 2010, 2011, 2012, and 2013, all as of July 1 (RPTL §301) applied to

Petitioner's conclusion of market value.

Therefore, the assessments for the subject property are as follows in rounded numbers:

YEAR	COURT ASSESSMENT
July 1, 2007	$11,776,000
July 1, 2008	$13,248,000
July 1, 2009	$13,596,000
July 1, 2010	$13,662,000
July 1, 2011	$13,794,000
July 1, 2012	$13,794,000
July 1, 2013	$14,124,000.

Final Judgment and Order shall be submitted by March 31, 2016. This constitutes the findings, conclusions and Order of the Court.

ENTER

John C. Bivona, JSC

ANNEX A

Traditional Links v Town of Riverhead Index #20496/12

Trial Dates:

August 3, 5, 6, 10, 11, 24, 25

October 6, 13, 21

December 2, 3, 4, 7, 8, 9, 10, 14, 16, 17, 18, 21, 22, 23, 28, 29.

ANNEX B

Final assessment for the listed years:

Year	Petitioner's Conclusion of Market Value	Gross Adjustment	Court Assessment
2007	$ 9,200,000	28%	$ 11,776,000
2008	$ 10,350,000	28%	$ 13,248,000
2009	$ 10,300,000	32%	$ 13,596,000
2010	$ 10,350,000	32%	$ 13,662,000
2011	$ 10,450,000	32%	$ 13,794,000
2012	$ 10,450,000	32%	$ 13,794,000
2013	$ 10,700,000	32%	$ 14,124,000