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Guidelines for the Appraisal of Recreational, Park, and Scenic Land

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Deed Restrictions on Recreational, Park and Scenic Land

These guidelines describe the methods to apply and the procedures to use in appraising land under voluntary and enforceable deed restriction and used for recreational, park or scenic purposes. These revised guidelines supersede the *Guidelines for the Appraisal of Recreational, Park, & Scenic Land* as published by the State Property Tax Board, May 1987.

Owners of land subject to this type of restriction may apply to have their land appraised under provisions of Tax Code Chapter 23, Subchapter F. This subchapter sets out such appraisal qualifications and guidelines and establishes provisions for additional taxation with interest when the deed restriction expires or the land use is diverted; the use of the land changes before the deed restriction expires; or the property is not used exclusively for recreational, park or scenic purposes.[1]

Local tax administrators must be knowledgeable of the Subchapter F provisions in order to respond to inquiries received and to administer provisions of the law. Taxpayers are urged to study carefully all provisions of the law prior to applying, since failure to properly qualify or expiration of the deed restriction results in additional taxes plus interest—for five years in some cases—and/or a penalty being owed, depending on the circumstances.[2]

Tax Code Section 23.83(e) requires the Comptroller's office to promulgate rules that specify the methods to apply and the procedures to use in appraising land which qualifies under Subchapter F. This manual has been created under the rule-making authority of the Comptroller's office pursuant to Comptroller Rule 9.4009, Appraisal of Recreational, Park, and Scenic Land.[3]

1 Tex. Tax Code §§23.86(a), 23.87(a) and 23.83(d)
2 Tex. Tax Code §§23.83(d), 23.86(a) and 23.87(a)
3 34 Tex. Admin. Code §9.4009

Recreational, park or scenic use defined

Recreational, park or scenic use means use for the following purposes:

- sporting activities;
- park or camping activities;
- development of historical, archaeological or scientific sites; or
- conservation and preservation of scenic areas.[4]

No definitions exist in Tax Code Chapter 23, Subchapter F, that allow a listing of all potential uses which could be included. Because there may be disagreement as to whether characteristics of a specific parcel of land allow it to be considered a historical site or scenic area, the appraiser must use professional discretion in reviewing potential uses.

The following definitions may assist the appraiser:

Sporting activities are commonly considered to be physical activities engaged in for pleasure. Examples include, but are not limited to, hunting, fishing, golf and baseball.

Historical commonly refers to past occurrences of significant importance to certain groups of society.

Archaeological commonly refers to remains of past life and cultures. Examples include fossils, artifacts and relics.

Scientific site commonly refers to locations that provide examples or exhibit phenomena which increase understanding of the physical world.

It should be noted that no specific statutory language requires public use of the restricted land. Land could be restricted to

4 Tex. Tax Code §23.81(1)

use by specific individuals, families or groups or it could be open to the general public and be considered for appraisal under Subchapter F.[5]

Land and appurtenances subject to appraisal

Property subject to appraisal under Tax Code Chapter 23, Subchapter F, is land and appurtenances to the land that qualify as recreational, park or scenic restricted use. Improvements other than appurtenances to the land and the mineral estate are appraised separately at market value.[6] Appurtenances are "riparian water rights, private roads, dams, reservoirs, water wells, and canals, ditches, terraces, and similar reshapings of or additions to the soil."[7]

Establishment of restrictions on use of land

Tax Code Chapter 23, Subchapter F, entitles taxpayers to have land appraised as restricted to recreational, park or scenic use.[8] To accomplish this, the owner of a fee simple estate in land executes a written instrument in the form and manner of a deed.[9] The land must be at least five acres.[10] The executed instrument must:

- describe the land;
- name each owner of the land;
- state that the restriction on the land is for recreational, park or scenic use;
- state the term of the restriction, which must be for at least 10 years; and
- be filed with the county clerk of the county in which the land is located.[11]

A deed restriction is "a valid and enforceable provision that limits the use of the land and that is included in a written instrument filed and recorded in the deed records of the county in which the land is located."[12]

Exclusive recreational, park or scenic use and no private gain requirements

In addition to requiring a valid deed restriction on the property, Tax Code Section 23.83(a) requires that the land:

- must have been devoted exclusively to a recreational, park or scenic use in the preceding year;
- be used and be intended to be used exclusively for the restricted use in the current year; and
- be used in a way that does not result in
  - » accrual of distributable profits,
  - » realization of private gain resulting from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or
  - » realization of any other form of private gain.[13]

The use of the property in the preceding year need not have been by the current owner. In general, incidental uses associated with the restricted use would not be judged to violate the deed restriction or the use requirement of this section.

It is the owner's burden to establish the intended use of the land and to demonstrate that the land is used in a way that does not result in accrual of distributable profits or any other form of private gain.

5 Tarrant Appraisal Dist. v. Colonial Country Club, 767 S.W.2d 230, 1989 Tex. App. Lexis 945 (Tex. App. Fort Worth 1989)
6 Tex. Tax Code §23.83(c)
7 Tex. Tax Code §23.83(c)
8 Tex. Tax Code §23.83(a)
9 Tex. Tax Code §23.82(a)
10 Tex. Tax Code §23.82(a)
11 Tex. Tax Code §23.82(a) and (b)
12 Tex. Tax Code §23.81(2)
13 Tex. Tax Code §23.83(a)(1)-(4)

Additional Taxation, Penalties and Interest

Additional tax plus interest imposed for nonexclusive use

If land is appraised under Tax Code, Chapter 23, Subchapter F, for a year, the chief appraiser shall determine at the end of that year whether the land was used exclusively for recreational, park or scenic uses. If the land was **not** used exclusively for recreational, park or scenic uses, an additional tax is imposed equal to the difference in the amount of tax imposed and the amount that would have been imposed for that year if the restriction had not been considered, plus interest.[14] The assessor is to include the amount of additional tax plus interest on the next bill for taxes on the land.[15]

Expiration of deed restriction or diverted use triggers additional taxes plus interest for five years

Under Tax Code Section 23.86(a), land qualified for appraisal under Subchapter F is subject to additional tax plus 7 percent interest for five years if qualifications for the appraisal are not maintained. A rollback tax or recapture of taxes is triggered under Tax Code Section 23.86(a) if:

- the deed restriction expires; or
- the land is diverted to a use other than recreational, park or scenic uses.[16]

The amount of rollback tax due is measured by the difference between the taxes paid under the valuation procedures in Tax Code Chapter 23, Subchapter F, and the taxes that would have been paid if the land had not been restricted to recreational, park or scenic uses.[17]

[14] Tex. Tax Code §23.83(d)
[15] Tex. Tax Code §23.83(d)
[16] Tex. Tax Code §23.86(a)
[17] Tex. Tax Code §23.86(a)

The rollback period is for the ". . . five years preceding the year in which the change of use occurs or the deed restriction expires . . ."[18] If a determination is made that the land has been diverted in use or the deed restriction has expired, the additional tax would be for the five years prior to the year the qualification ends. Each of these prior five years would be reviewed to see whether the valuation was granted. Those years in which the valuation was granted would be used to calculate the rollback taxes. Rollback taxes incur interest at an annual rate of 7 percent to be calculated from the dates on which the differences would have become due.[19] A tax lien attaches to the land on the date the change of use occurs or the deed restriction expires to secure payment of the additional tax and interest imposed and any penalties incurred.[20]

Once it is determined that additional taxes are due, the assessor must deliver a tax statement for those additional taxes and interest as soon as practicable after the change of use occurs or the deed restriction expires.[21] The taxes become delinquent and incur penalties and interest as provided by law on the date when the taxing unit's taxes become delinquent so long as that is more than 10 days after the date the statement is delivered.[22]

Other use before deed restriction expires triggers penalty

In another provision of Subchapter F, a penalty is incurred under Tax Code Section 23.87(a) for any year in which the land is used for other than recreational, park or scenic uses before the term of the deed restriction expires.

[18] Tex. Tax Code §23.86(a)
[19] Tex. Tax Code §23.86(a)
[20] Tex. Tax Code §23.86(b)
[21] Tex. Tax Code §23.86(c)
[22] Tex. Tax Code §23.86(c)

The measure of the penalty for the year in which the violation occurs is the same measure for determining the amount of rollback tax due in one year. The penalty will be the difference between the taxes paid under the restricted use valuation procedures and the taxes that would have been paid if the land had not been restricted to recreational, park or scenic uses.[23] The tax assessor must include this on the taxing unit's next bill for the land.[24] The amount of the penalty constitutes a lien on the property and accrues penalties and interest in the same manner as a delinquent tax.[25]

The chief appraiser must send a written notice of the imposition of the penalty to the person who applied for this appraisal. The notice must include a brief explanation of the procedures for protesting the imposition of the penalty before the appraisal review board.[26]

23 Tex. Tax Code §23.87(a)
24 Tex. Tax Code §§23.87(c) and 31.01(d)
25 Tex. Tax Code §23.87(c)
26 Tex. Tax Code §23.87(b)

Applications

In order to be considered for qualification as recreational, park or scenic land as defined by Tax Code Section 23.81, the landowner or agent must file a sworn application the first year that he or she claims it. The property owner must use the application form provided by the appraisal office and file it with the chief appraiser of the appraisal district in which the land is located.[27]

The Comptroller's Property Tax Assistance Division (PTAD) prescribes the contents of the recreational, park or scenic land application in Form 50-168 *Application for Appraisal of Recreational, Park, and Scenic Land*. Although it is not mandatory for an appraisal office to use PTAD's form, an application submitted must substantially comply with the model form and contain all language required by statute.[28]

Application deadline

Completed applications must be timely filed with the chief appraiser before May 1. For good cause, the chief appraiser may extend the filing deadline for a single period of up to 60 days.[29]

If a claimant fails to timely file a completed application form, the land is ineligible that year for appraisal as recreational, park or scenic land under Subchapter F.[30] After an application has been filed and valuation as recreational, park or scenic land has been granted, the land is eligible for this special valuation in subsequent years without the need for a new application.[31] This is true during the term of the deed restriction for as long as the land's ownership remains the same and its eligibility remains intact.[32]

[27] 34 Tex. Admin. Code §9.402 and Tex. Tax Code §23.84(a)
[28] 34 Tex. Admin. Code §9.402
[29] Tex. Tax Code §23.84(b)
[30] Tex. Tax Code §23.84(c)
[31] Tex. Tax Code §23.84(c)
[32] Tex. Tax Code §23.84(c)

If the chief appraiser has good cause to believe the land's eligibility has ended, he or she may require a person allowed valuation for recreational, park or scenic land in a prior year to file an updated application to confirm that the land is currently eligible. The chief appraiser must deliver notice that a new application is required, along with an application, to the person allowed the special valuation in a prior year.[33]

Eligibility change

Persons who receive the recreational, park or scenic land appraisal must notify the appraisal district office in writing before May 1 after the eligibility of the land ends.[34]

If the chief appraiser discovers that this special appraisal was erroneously allowed in any one of the five preceding years that it was appraised as restricted, the chief appraiser determines the difference between the land's appraised value (as a recreational, park or scenic site) and the land's market value (non-restricted) and adds that amount to the appraisal roll for each year the land was erroneously allowed this special appraisal.[35]

Review of application forms

The application for appraisal of recreational, park and scenic land must contain the necessary information to determine the validity of the claim.[36] The information solicited on the application is sufficient if completed in full by the person claiming the exemption and if the land is eligible. If not completed in full, the chief appraiser has the authority to refuse to qualify the land. The better practice is to give the applicant a second opportunity to complete the application before the deadline runs out. Each application must identify the property owner, the land's legal description and the total acreage under

[33] Tex. Tax Code §23.84(c)
[34] Tex. Tax Code §23.84(d)
[35] Tex. Tax Code §23.84(e)
[36] Tex. Tax Code §23.84(f)

application and affirm that the land will be used exclusively for recreational, park or scenic uses in the current year.

Action on applications

The chief appraiser determines each claimant's right for valuation as recreational, park or scenic land. After considering the application and all relevant information, the chief appraiser:

1. approves the application and designates the land for appraisal as a recreational, park or scenic site;
2. disapproves the application and requests additional information from the claimant in support of the claim; or
3. denies the application.[37]

If the chief appraiser requests additional information from a claimant, the claimant must furnish the information within 30 days after the date of the request or the application is denied. The chief appraiser may extend the deadline for furnishing additional information for good cause by written order for a single period not to exceed 15 days.[38]

The chief appraiser determines the validity of each application for recreational, park or scenic land valuation filed before the appraisal records are submitted for review and determination of protests by the appraisal review board.[39]

Notification

If the chief appraiser denies an application, he or she must deliver by certified mail a written notice of the denial to the claimant within five days after the date of denial and include a brief explanation of the procedures for protesting the denial.[40] It is a good practice to include in the notice the reason for rejection.

If the application is approved, it may be advisable to notify the applicant. The appraisal record must reflect that the land is receiving this valuation.[41] In the event of a change in the use of the land or a lapse of the deed restriction, each taxing unit's assessor is to mail a statement to collect rollback taxes.

37 Tex. Tax Code §23.85(a)
38 Tex. Tax Code §23.85(b)
39 Tex. Tax Code §23.85(c)
40 Tex. Tax Code §§1.07(d) and 23.85(d)
41 Tex. Tax Code §25.011

Appraisal Guidelines

In verifying that land is eligible for appraisal under Tax Code Chapter 23, Subchapter F, an appraiser should review the deed restriction to ensure a valid and enforceable provision exists under the terms of Tax Code Section 23.82.

If restrictions contain provisions which allow the restriction to be voluntarily removed by the owner filing a request prior to the end of the term of the restriction, the restriction is not truly binding upon the property. Under such conditions, the restriction does *not* affect the market value of the property since the restriction may be voluntarily removed and the property sold without the restriction.

Appurtenances are appraised under Subchapter F. The value of appurtenances is measured by their effect on the value of the land in the restricted use area; appurtenances are not valued separately and apart from the land. For example, greens, tees and traps on a golf course; hiking trails in a designated scenic area; and a man-made pond used for recreational fishing on restricted land are normally considered appurtenances.

Under Subchapter F, improvements are appraised separately and valued at market value.[42] Land under certain improvements is eligible for the restricted use appraisal. For example, land on which tennis courts are built can qualify for appraisal under Subchapter F. The asphalt tennis court would be considered an improvement and valued at market value.

Subchapter F should be read in harmony with Texas Constitution, Article VIII, Section 1, which states in part:

> Taxation shall be equal and uniform. All real property and tangible personal property, in this state, unless exempt as required or permitted by this Constitution, whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value, which shall be ascertained as provided by law.

Tax Code Section 23.01(a) provides that all taxable property is appraised at market value except as otherwise provided by Tax Code Chapter 23. When valuing deed-restricted recreational, park and scenic land, the appraiser must take into consideration the effect of the use restriction on the market value of the land. The procedures discussed in this section are applicable to the market value appraisal of such restricted land, whether or not application for appraisal is made under Subchapter F.

Market value

Market value is defined in statute to be the price at which a property would transfer for cash or its equivalent under prevailing market conditions if:

- exposed for sale in the open market with a reasonable time for the seller to find a purchaser;
- both the seller and the purchaser know of all the uses and purposes to which the property is adapted and for which it is capable of being used and of the enforceable restrictions on its use; and
- both the seller and purchaser seek to maximize their gains and neither is in a position to take advantage of the exigencies of the other.[43]

Ownership in real estate is an ownership in a bundle of rights in the property. These rights are inherent in the ownership of real property and guaranteed by law. They include the right to use, sell, lease or rent, enter or leave and give away real property and the right to refuse to exercise any of these rights. These rights may be diminished by a deed restriction that limits the uses of the real property.[44] These factors must be considered

42 Tex. Tax Code §23.83(c)

43 Tex. Tax Code §1.04(7)

44 International Association of Assessing Officers (IAAO), *Property Assessment Valuation*, pp. 10 and 11 (3rd Ed. 2010)

by the appraiser when appraising the market value of deed-restricted recreational, park or scenic land.

Market value appraisals require application of the principle that property should be appraised on the basis of its highest and best use. Highest and best use is the use that generates the highest net return to the property over a reasonable period of time.[45] This use may be limited by a deed restriction.

Factors influencing value

Restrictions on the use of land, whether voluntary as by written instrument or governmental as by zoning, will affect the value of the property. The appraiser must carefully study the subject property and the area in which it is located to determine any other factors that might affect market value, such as location, climate, access, travel distance from the likely source of clientele, topography, soil conditions, timber cover and scenic beauty.

Effect of restrictions on value

The market value of land is determined by at least three distinct market influences:

1. The production market influence is based on the income generated from the land's use.
2. The investment market influence is based on the property's appreciation potential.
3. The consumption market influence is based on the satisfaction derived from land ownership.

When the owner of recreational, park or scenic land imposes a deed restriction upon that land, it affects the land's market value by limiting one or more of the aforementioned market influences.

The effect of the deed restriction may vary due to the type of property on which it is placed as well as the deed restriction itself. The placing of a deed restriction on recreational, park and scenic land does not normally affect the consumptive value of that property, but it can affect the potential appreciation from an investment point of view and could possibly limit the income stream that would be derived from the property's production.

[45] International Association of Assessing Officers (IAAO), *Property Assessment Valuation*, p. 29 (3rd Ed. 2010)

The appraiser may not consider any factor other than those relating to the value of the land, as restricted, and is prohibited from using comparable sales of property that are not similarly restricted in making the appraisal.[46]

The information needed to estimate the market value of deed-restricted recreational, park or scenic land is basically the same as for other types of property. In addition to general data regarding the region, city and neighborhood, specific data is required with respect to land size and characteristics and comparable land sales.

Approaches to value

There are three generally accepted approaches used to arrive at an opinion on the market value for a particular property: the market data (sales) approach, cost approach and income approach. In an ideal setting, all three approaches are used to develop three independent estimates of value that are correlated to find a final estimate of value. The appraiser must use his or her best effort and judgment to apply all three approaches, but the weight given to each approach in the final estimate of value will always depend on the amount and quality of the available data. In order to perform a good appraisal, it is critical that the appraiser have a good working knowledge of each approach. The arbitrary exclusion of one or two of the three approaches may invalidate the appraisal. The exclusion of an approach because of a lack of reliable data is not an arbitrary exclusion.

Market data (sales) approach

The market data (sales) approach may be defined as any approach that is based upon direct evidence of the opinion of buyers and sellers of the market value of property. Of the three approaches used to arrive at an indication of value, the market data (sales) approach relies most heavily upon the principle of substitution. The principle of substitution states that the value of any piece of property is governed by the cost of acquiring a substitute or comparable parcel of property.

Using the comparable sales method under the market data (sales) approach, the appraiser collects a sample of all available recently sold properties that are similar to the subject property (property being appraised) and makes any value adjustments necessary because of the differences between the sample properties and the subject property. The appraiser uses adjusted sample properties to arrive at a value for the subject property.

[46] Tex. Tax Code §23.83(b)

When valuing deed-restricted property, adjustment must be made in the market value of the sales property to reflect the effect of any significant differences in the restrictions. Tax Code Chapter 23, Subchapter F, strictly forbids using comparable land not deed restricted to determine the value of restricted land.

Certain factors tend to limit the usefulness of the comparable sales method:

- Certain types of properties are seldom sold. In order to secure enough sales to be useful, the appraiser may desire to obtain sales on property of similar use and circumstances without regard to location.
- In some cases the information as to the conditions of a sale may not be available. The sales price is not always the same as market value. Not knowing the conditions of a sale should result in the sale not being used for comparative purposes.
- In appraising a subject property at a given time, it is all but impossible to find sales data on property that is exactly the same and sold on the same date. As a general rule, the indicated value of the subject property becomes less reliable as the number of adjustments made increases.

The market data (sales) approach is the most common method used in the valuation of land and generally considered by appraisers to be the most applicable method, but its use is contingent upon obtaining a sufficient number of comparable sales and factors involved in such sales. The value of property restricted to specific recreational uses is often affected more by the economic nature of the use rather than by general land market conditions. Under certain conditions, it is possible to consider sales of similarly restricted properties from other locations as comparables.

The stock and debt method is another market data (sales) approach that may be used when attempting to appraise a type of property that rarely sells. This method is based on the theory that the market value of a unit may be obtained by computing the value of all the items that make up the liability and capital sections of the balance sheet. The problem with this method is that it produces an estimate of value for the whole property including improvements. It is then necessary to use the land residual method to remove the value of the improvements and ascertain the value of the land only.

Cost approach

The cost approach in a market value appraisal is similar to the market data (sales) approach in that it is based on the principle of substitution. This principle holds that a rational person would not pay more for a property than what it would cost for a satisfactory and timely substitute property.

In appraising land restricted to recreational, park and scenic use, the appraiser should keep in mind that the value of the cost of developing such property may not be realized in the property itself. For example, such a property may have been developed to enhance the value of other property in the vicinity. In urban areas, the inclusion of such property in planned developments may be required by the local government. Since such property usually is not developed for the purpose of providing a reasonable direct economic return on the investment and probably will be operated in competition with properties of similar utility whose owners do not intend to make a profit, it is not subject to the relationship between cost and value that normally exists in unrestricted property.

The historical cost is the most frequently used technique, especially in those instances where the property being appraised is relatively new and construction costs are still available, but it produces a progressively less reliable estimate of value as the property ages.

The replacement cost new is the cost of replacing the subject property with one that is comparable in terms of the utility which will be provided. This is used to some extent in the appraisal of recreational, park or scenic land.

The reproduction cost new is the cost of producing an exact replica of the subject property. It is not being widely used because most properties would not be reproduced exactly as they were developed originally.

One way in which deed-restricted recreational, park or scenic land can be valued using the replacement cost method is to consider the land as if it were vacant and available for development for recreational, park or scenic use. The appraiser analyzes recent sales and offerings of comparable sites and compares these with the subject site with respect to differences in location, size and shape, topography and other physical characteristics, zoning, deed restrictions and the demand for similar land in the local real estate market.

After estimating the base value for the land, the appraiser estimates the costs associated with the establishment of various appurtenances necessary for the recreational use. This approach assumes that the contributory value of the appurtenances to the land can be measured by their costs. Appurtenances should be itemized. The total cost should include cost of designing the facility; supervising its construction; and insurance, taxes, professional fees, maintenance and similar costs incurred during the construction phase. The base cost of the land and costs for establishment of appurtenances are added to obtain an initial indication of replacement costs for the property.

An important portion of the cost approach to value is depreciation. Depreciation in the appraisal sense is customarily defined as all losses of utility that result in loss of value. To appraisers, a more useful definition of depreciation is the difference between replacement or reproduction cost new (RCN) and the present value of improvements. Depreciation is the measure of the value inferiority of the subject improvement compared to a hypothetical new and similar improvement. It is desirable to verify depreciation estimates by sales and income analysis.

There are three generally recognized causes of depreciation: physical deterioration, functional obsolescence and economic obsolescence.

Physical deterioration is a lessening of value because of some physical change in the structure that lowers its utility. The actions of man, pests or elements cause this depreciation. Virtually all structures deteriorate with age. Physical factors set a maximum possible life for any structure.

It is often difficult to determine whether functional obsolescence is caused by change in tastes or innovations. Functional obsolescence has historically been the major factor in limiting the economic life of structures. As buildings age, they become out of style. All structures suffer some functional obsolescence with the passage of time.

Economic obsolescence is a lessening of value because of adverse factors outside the subject property that decrease the desirability of the neighborhood in which the property is located. It occurs because of the immobility of real estate. Losses in value that are called economic obsolescence are usually beyond the power of any one individual to influence. This cause of depreciation affects both land and improvements. Not all properties will suffer economic obsolescence during their economic lives.

The replacement cost estimate may require adjustment to reflect the current economic condition of the property and the effects of the deed restriction. The replacement cost approach estimate for certain recreational land uses may substantially exceed the value for which the restricted property would sell after its development. In the cases of certain golf courses, for example, the costs of development of the courses may exceed the value for which the property would sell after its completion.

Economic enhancements to surrounding properties occurred with the golf course development and the developer may recapture losses associated with the cost of developing the course through sales of other properties. To a certain extent, a portion of the cost of the course was transferred to these properties and directly influences their market value.

When using the cost approach in valuing deed-restricted recreational, park or scenic land, the appraiser must remember the effect of that restriction on the value of the property. Extreme care is necessary in the application of this approach.

Income approach

The income approach to value may be defined as any method of appraising that converts the income expected to be produced by a property into an estimate of property value. The income approach is sometimes referred to as the capitalization method because capitalizing is the process by which an income stream is converted into an indicated value.

The income approach to value is a useful, but sensitive appraisal approach. If used properly, this approach has the ability to detect the presence of physical depreciation as well as functional and economic obsolescence in a property because of its decreased earning ability. Since there are instances of recreational properties being operated with the intent of making a profit, the profit-making potential of a nonprofit property should be considered. The appraiser should consider only the income and expense streams associated with the uses that are permitted by the applicable restrictions and possible under the existing zoning and the physical characteristics of the property itself.

Economic data for the income approach should be obtained from the operations of other recreational properties, both profit and nonprofit; the subject property; and any other reliable source. Extreme care must be used in adjusting the data to account for the individual characteristics of the subject because a small error in net income will produce a large error in the appraisal.

The basic assumption of the income approach is that a person purchases property for the income it will yield. This may limit the usefulness of this approach in the appraisal of deed-restricted recreational, park and scenic land because it is not intended to make a profit.

Special considerations in appraisal of restricted land

Under certain conditions, the remaining term of the deed restriction can influence the market value of the property as restricted. This occurs when the restriction is to expire or can be voluntarily removed in the near future.

In this case, a buyer might be willing to purchase the property at a price exceeding its current restricted value with knowledge that the property can be resold as unrestricted property upon expiration of the restriction.

The procedure for the estimation of this potential value is commonly referred to as the valuation of a reversionary interest. The estimation of a reversionary value is appropriate when the reversionary value exceeds the current use value as restricted. The market value of the property is the highest of either the current use value as restricted or the value of the reversion to a nonrestricted use.

The current value of a reversion may be estimated by projecting the future value for which the property may be sold after the restriction is removed and discounting the value to its present value based upon an appropriate discount rate.

This procedure is referred to as measuring the present value of a future sum. The majority of appraisal and financial texts contain tables (annual compound interest tables) that can be used for this purpose.

The appraiser must determine the remaining term of the restriction. As a practical matter, if the remaining term of the restriction exceeds 10 years, the value associated with the reversion will probably not exceed the current restricted value. The current value of a future sum to be received 10 years or longer into the future is significantly reduced due to the discount factor. For example, the current value of one dollar to be received 10 years into the future based upon a 10 percent discount rate is only 39 cents. In most circumstances, the value of reversion on longer term restrictions will not exceed the current use value as restricted.

As the remaining term of the restriction becomes shorter, the value of the reversion increases and may exceed the current restricted value.

> **Example.** Assume that a specific property is subject to the expiration or voluntary removal of a deed restriction within two years. Further assume the current use value, as restricted, is estimated to be $100,000 and that it is projected that the property could be sold for $150,000 at the end of two years when the restriction is removed.
>
> If the discounted rate is estimated to be 10 percent, the current value of the reversion is $150,000 × 0.83 (factor from the 10.00% Annual Compound Interest Table) or $124,500.

In this example, the value of the reversion exceeds the value of the current use as restricted and provides a more accurate indication of the market value of the property.

Correlation and value conclusion

The cost, income and market data (sales) approaches each produce independent estimates of market value. For some types of property, all three approaches may apply. For other types, only one or two approaches may apply because of inappropriateness or lack of data. Since independent indicators seldom produce identical values, a correlation of values is normally made to reach the final estimate of market value.

The essence of the correlation is the appraiser's attempt to explain or reconcile the differences that may exist between the different indicators of value. It is an opportunity to review briefly each approach to value. The final procedure is to make a subject allowance for the value influences that are not already reflected in the indicators. At this point, the appraiser must come to a value conclusion. It need not be equal to any one of the value indicators, but it should not be outside of their range.

Summary

Market value is the required standard for the valuation of deed-restricted property. The appraiser must take into consideration the effect of the use restriction on the market value of the land. All three traditional approaches to value — market data (sales), cost and income — may be applicable in the appraisal of deed-restricted properties.

When valuing recreational, park and scenic land, the appraiser should begin with a description as complete as possible of the physical facts and of the general circumstances. All three approaches to value should be used to the extent allowed by quantity and accuracy of the available data.

1. The market data (sales) approach is dependent upon having an adequate number of sales. Since sales of recreational, park and scenic property are limited, it is necessary to consider a broad area. Appropriate adjustments should be made to account for the ways in which the subject property differs from the sales properties.
2. The cost approach is the summation of the cost of all the individual elements that constitute the property. As defined by Tax Code Chapter 23, Subchapter F, these elements are land and appurtenances.[47] Land value should be based on sales of comparable land whose use is similarly restricted. Appurtenances should be itemized and depreciation must be applied to reflect current conditions. Data should be sought from persons who are active as designers or builders of such facilities and from publications directed at them and at those who operate such facilities. *The Marshall and Swift Appraisal Manual* can be helpful.
3. The income approach is an effort to estimate the net profit that the property could produce and to convert this estimate to value by use of the standard capitalization techniques. Income and expenses should be obtained from the operations of comparable facilities and industry sources.

[47] Tex. Tax Code §23.83(a) and (c)

Appendix
Golf Course Appraisal Example

The following example is being included for demonstration purposes only. It should not be construed to be a benchmark appraisal. The values included are for illustrative purposes only.

Purpose of Appraisal:	To value a golf course subject to a valid recreational deed restriction.
Appraisal Date:	January 1, 2016
Property Description:	Land

The land included in this appraisal comprises the golf course proper containing 137.75 acres and the clubhouse site containing two acres.

Golf Course

The golf course is an 18-hole, 6,578-yard, par-71, championship course. The first nine holes are 3,291 yards, par 36; and the second nine holes are 3,142 yards, par 35. There are four par-3 holes ranging from 127 to 201 yards, eleven par-4 holes ranging from 307 to 478 yards, and three par-5 holes ranging from 483 to 581 yards. A putting green and driving range are included. For the most part, the course is long with narrow fairways over a rolling topography, and it is challenging and exacting to players.

Tees and greens are oversized and generous. The greens are hybrid Bermuda, tiff-328 grass and range from 7,000 to 13,000 square feet. The fairways are Bermuda grass.

The irrigation system consists of a private deep well supplied by three underground rivers, pumps, man-made reservoir lake, underground pipe and key-type sprinklers. Water outlets are flush mounted in the turf. For sprinkling, a key, consisting of a special connector and sprinkler, is inserted and locked into the water outlets. The supply of water has been abundant since the course was built. In a hot, dry climate, a private irrigation system is both functional and economical in comparison with the cost of obtaining large quantities of water at posted rates from a municipal system.

The greens were rebuilt and enlarged about two years ago. During the past year, the greens and fairways received standard care and maintenance, and the course is in good condition.

Market data (sales) approach

No two country clubs are identical, and factors motivating owners, developers, operators or lending institutions to buy or sell a facility are varied as is true with other types of property. Successful operations are seldom sold on the open market. Many of the sales that are made involve properties that are in financial difficulty for one reason or another.

Despite these limitations the investigation and analysis of a sufficient number of sales may provide a basis from which to draw general conclusions regarding a price range. **Exhibit 1** shows examples of such sales.

EXHIBIT 1

Comparable Sales

Property	Description	Total Sales Price (in dollars)	Land Net of Improvements (in dollars)
I	This transfer included 103.233 acres of land improved with an 18-hole golf course (6,578 yards); 12,580-square-foot clubhouse; swimming pool; cart storage building; snack shop and maintenance garage.	2,275,000	1,350,000
II	This is a private golf course located three miles east of State Road 91 off Arlington Avenue at 975 Country Club Drive. It is an 18-hole, 6,700-yard course. Property includes 152 acres of land; a clubhouse with locker rooms, pro shop, dining room, coffee shop, snack bar and cocktail lounge; and a driving range.	1,725,000	1,000,000
III	This property includes 150 acres of land, 18-hole championship course, 6,780-yard, par-71 golf course; two swimming pools; 15,000-square-foot clubhouse; illuminated tennis courts; putting green and driving range.	2,800,000	1,800,000
IV	This property includes 123 acres of land with an 18-hole, 6,481-yard, par-72 golf course laid out on surplus land adjoining producing oil wells. It includes a two-story, contemporary style clubhouse with locker rooms, pro shop, dining room, snack bar and cocktail lounge and driving range.	2,000,000	1,075,000
V	This is an 18-hole, 6,700-yard, par-72, course with clubhouse including locker rooms, pro shop, dining room, coffee shop, snack bar and cocktail lounge, driving range, swimming pool and tennis courts.	1,500,000	800,000

Upon further investigation, it was found that Property III was a very elite championship course that was in very good shape when sold. It was found that Property V was obtained through a foreclosure. After reviewing these sales, it was concluded that a fair and reasonable market value for this golf course would be between $1 million and $1.2 million.

Cost approach

In **Exhibit 2**, the appraiser determined the land value using sales of similar property for which the highest and best use would be golf course development. The remaining charges for cost items could be obtained from a golf course architect or other publications that give estimates for these costs on a by-hole basis. One such publication would be *Marshall and Swift*.

EXHIBIT 2

Cost Approach Valuation

Land Value				**Reproduction Cost**	
Section I	115.5 acres	@	**5,000**	**$577,500**	
Section II	22.25 acres	@	**7,000**	**155,750**	
Section III	2.0 acres	@	**20,000**	**40,000**	
	Total Land Value				**$773,250**
Golf Course Development Costs					
Fairways	**18**	@	**17,500**	**$315,000**	
Greens	**19**	@	**10,000**	**190,000**	
Tees	**25**	@	**1,500**	**37,500**	
Traps	**23**	@	**500**	**11,500**	
Cart paths*	**18 holes**	@	**1,000**	**18,000**	
Well and lake for irrigation system				**75,000**	
Maintenance during construction				**25,000**	
				$672,000	
Architect's Fees (10%)				**67,200**	
Total golf course development costs					**$739,200**
Physical deterioration on irrigation well, greens and traps					**(45,000)**
Indicated value					**$1,467,450**
				Say =	**$1,400,000**

*Reproduction cost less depreciation

Income approach

In this method of valuation, projections are made of the gross income that might be expected from memberships, dues, greens fees, golf cart rentals, clubhouse food and beverage sales and other revenue-producing sources, and of expenses that might be incurred in operating the business enterprise.

After considering the past operating history of club operations in relation to current economic factors that will favorably affect the future, **Exhibit 3** shows a pro forma operating statement projected on the basis of $60,000 per month revenues.

EXHIBIT 3

Pro Forma Operating Statement

Revenue	**$720,000**
Cost of sales	**290,000**
Gross profit	**$430,000**
Expenses	
Salaries and wages	130,000
Supplies	12,000
Equipment rental	2,000
Maintenance and repairs	25,000
Vehicles	6,000
Music and entertainment	6,000
Linen	4,000
Utilities	9,000
Advertising	7,000
Payroll taxes	11,000
Promotion	5,000
Taxes and licenses	10,000
Insurance	15,000
Telephone	5,000
Professional fees	3,000
Miscellaneous	10,000
Total expenses	**260,000**
Net operating profit*	**$170,000**
Net income before taxes and recapture	**$170,000**

Income Imputed to Improvements and Personal Property

Buildings	**$320,000 × 15%**	**$48,000**
Course structures	**10,000 × 17%**	**1,700**
Personal property	**40,000 × 20%**	**8,000**
	Total	**$57,700**
Net income attributable to golf course		**$112,300**

*Before interest, depreciation and federal income tax

A net operating profit of $112,300 before interest, depreciation and income tax provides an overall rate of return of 13 percent on $864,000 indicated value of the golf course. Since the golf course property would tend to appreciate in value, an overall rate of return of 13 percent is reasonable. There is a possibility of net operating profit exceeding projections.

Conclusion

The indicated value of the property by the cost approach is $1.4 million. This indication of value is reasonably well supported within a range of $1 million to $1.2 million indicated by sales of other country club properties. A projection of $112,300 net operating profit before interest, depreciation and taxes and an overall rate of return of 13 percent on the value of the golf course yield a value of $864,000.

Based upon the investigation and analysis as presented in this report, the fair market value of the golf course, appraised as of January 1, 2016, is **$1.15 million**.

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