

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

President Inn Properties, LLC,
Petitioner,

v

MTT Docket No. 310739

City of Grand Rapids,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

FINAL OPINION AND JUDGMENT

ORDER DENYING PETITIONER'S MOTION FOR COSTS

ORDER DENYING PETITIONER'S MOTION FOR PERMISSION TO FILE A REPLY TO
RESPONDENT'S EXCEPTION

Administrative Law Judge (ALJ) John S. Gilbreath conducted a hearing in this case on June 19, 20, and 21, 2007, and issued a Proposed Opinion and Judgment (POJ) on April 8, 2009. The POJ provides, in pertinent part, “[t]he parties have 20 days from the date of entry of this Proposed Opinion to notify the Tribunal in writing if they do not agree with the Proposed Opinion and why they do not agree. The exceptions are limited to the evidence submitted prior to or at the hearing and any matter addressed in the Proposed Opinion.”

On April 27, 2009, Petitioner filed a Motion for Costs. In its Motion, Petitioner states:

- a. “As a result of the Tribunal’s Proposed Opinion and Judgment dated April 8, 2009, the Petitioner has prevailed in its Petition in the above-captioned matter, as amended, for reduction of the assessed and taxable values for the years 2004, 2005, and 2006. It should be noted that Judge Gilbreath adopted the Petitioner’s valuations exactly as presented for the three years at issue.”
- b. “Petitioner asked to meet with the Respondent’s assessor, attorney, and the assistant assessor who was doing the appraisal for Respondent. . . . The purpose of the meeting was to discuss the appraisals and see if the parties could reach an amicable resolution. This proved to be impossible because the Respondent through its attorney took the position that Petitioner’s appraiser was using the wrong methodology and there was no room for discussion.”
- c. “The Respondent’s refusal to entertain discussion and insistence upon taking cases to trial that should be settled has a chilling effect on property owners’ rights. The fact that in order to be successful, a Petitioner must spend 2 ½ - 3 times more than the Petitioner will recover discourages legitimate challenges to valuations by the

assessor's office.”

- d. “Respondent’s refusal to negotiate in good faith for a settlement of this matter necessitated the filing of this action by Petitioner and caused Petitioner to incur significant and extensive costs. This litigious approach by Respondent impacted the costs incurred by Petitioner, which the Tribunal should carefully consider and award if appropriate.”

On May 11, 2009, Respondent filed a reply to Petitioner’s Motion. In its response, Respondent stated:

- a. “Without any legal authority or factual basis, Petitioner asserts that because the city of Grand Rapids has ‘approximately 585 cases currently pending before the Michigan Tax Tribunal’ that costs to Petitioner are warranted. Petitioner’s reasoning is absurd.”
- b. “A review of this file demonstrates Petitioner’s repeated pattern of filing frivolous pleadings, including its present Motion for Costs.”
- c. “Petitioner fails to address any standard by which costs may be awarded in this matter, and fails to raise any point of fact in support of its contention that costs should be awarded. Petitioner merely implies that because the parties failed to reach a settlement in advance of hearing, the City must have been exercising bad faith.”
- d. “It is Respondent’s position that Respondent is the only party to this matter that has proceeded within the Tribunal Rules, Court Rules, Tribunal statutory provisions, and Rules of Professional Conduct. The merit behind the City’s position regarding the value of the subject property is found not only in the City’s appraisal, but also in the appraisal presented by Petitioner’s own expert, and admitted at trial. . . . The City’s position can hardly be called meritless when supported by Petitioner’s own expert.”

On April 28, 2009, Respondent filed exceptions to the Proposed Opinion and Judgment. In support of its exceptions, Respondent states:

- a. “Respondent submitted **three (3)** appraisals into evidence. On the first and second page of its Proposed Opinion . . . , the Tribunal lists all exhibits that were admitted for both Respondent and Petitioner. That list includes Respondent’s Exhibit A . . . , Respondent’s Exhibit B . . . and Respondent’s **Exhibit E**”
- b. “On page 11 of its Opinion however, the Tribunal states that ‘Respondent submitted **two** appraisals, one as of December 31, 2003 and December 2004, and another as of December 31, 2005.’ . . . The Tribunal misstates the number of appraisals that were admitted into evidence for the Respondent, and references by date only Respondent’s Exhibits A and B. In fact, the Respondent submitted three (3) appraisals, all of which were admitted into evidence. The third appraisal is Respondent’s **Exhibit E** which was the appraisal prepared by Petitioner’s expert in 2002 for financing purposes.”

- c. “Respondent’s **Exhibit E** is a financing appraisal prepared by Petitioner’s same expert for the same subject property. In 2002, Petitioner’s expert concluded a true cash value (TCV) for the subject property of \$2,200,000. . . . In 2003, however, in an appraisal prepared for tax purposes, the same expert concluded a TCV of \$898,600. In addition to the disparate value conclusions, a comparison of the 2002 and 2003 appraisals at trial revealed inconsistent highest and best use analysis, adjustments, comp selections, and other conflicting methodologies.”
- d. “The City’s **Exhibit E** was admitted at the hearing, and was used to cross examine and impeach the Petitioner’s expert. Although it was deemed both relevant and material at trial, it was inexplicably ignored in the Tribunal’s Proposed Opinion.”
- e. “Petitioner’s financing appraisal included not only inconsistencies in the conclusion of value, it also included inconsistencies in the highest and best use analysis, as well as the selection of comparables and other methodologies, as compared to the appraisal that was submitted for tax purposes. The Tribunal committed a significant error of law by failing to follow the binding case law of *Meadowlanes*, *Marsman*, and *Peninsular Club*.”
- f. “The Tribunal may not automatically accept an assessment, but **must** make its own findings of fact and arrive at a legally supportable true cash value. . . . The Tribunal therefore applies an approach that was discarded by both the Petitioner and Respondent as unreliable and inappropriate, given the age of the building. . . . The Petitioner however, did not apply the cost-less-depreciation method. It is impossible to discern the origin of the valuation figures concluded by the Tribunal, or the methodology applied.”
- g. “Both parties concluded that the highest and best use for the property as improved is as a **hotel**. In its appraisal, Petitioner’s expert specifically and unequivocally identifies the subject as a **limited service** hotel. . . . However, all of the sales comparables selected by Petitioner are **full service** hotels. . . . Either Petitioner has made a fatal error by failing to identify the subject’s correct highest and best use, or it has made a fatal error by failing to identify the subject’s correct highest and best use, or it has made a fatal error by selecting comparables with a different highest and best use from that of the subject property.”
- h. “Realizing its mistake, Petitioner for the first time at hearing raised the argument that the subject was in fact NOT a limited service hotel, but instead was some sort of ‘blend’ of limited and full service. This ‘blended’ theory is not mentioned anywhere in Petitioner’s appraisal, but was erroneously accepted by the Tribunal.”
- i. “The owner of the subject property, also acting as Petitioner’s attorney at hearing, Peter N. Rigas . . . made it known to Respondent prior to hearing in this matter that his brother, James N. Rigas . . . serves as an Administrative Law Judge for the State Office of Administrative Hearings and Rules . . . , the same agency charged with issuing the final decision in this matter.”

On May 1, 2009, Petitioner filed a Motion for Permission to File a Reply to Respondent's Exception to Proposed Opinion and Judgment and Request for a Modified Opinion and Judgment. In support of its Motion, Petitioner contends that:

- a. "The Exception filed herein contains misstatements of facts and false allegations regarding the Proposed Opinion and Judgment and Petitioner."

On May 1, 2009, Petitioner filed its reply to Respondent's exceptions. In response, Petitioner contends that:

- a. "The Proposed Opinion was dated April 8, 2009 and in order to file a timely exception it would have had to be postmarked on or before April 28, 2009. The Respondent's filing was sent in an envelope, a copy of which is attached. . . . It appears from the mailing sticker that the envelope was mailed on April 29, 2009, which would make the filing dilatory."
- b. "The Petitioner's **Exhibit E**, 2002 Appraisal for Tax Purposes, was admitted only for impeachment purposes. . . . The Respondent's Exception is clearly misplaced. The purpose of **Exhibit E**'s introduction was for impeachment and not as to the value."
- c. "[T]he Respondent is trying to bootstrap the 2002 appraisal as a valuation disclosure in this matter. The Tribunal was clear that it was just for purposes of impeachment. The Tribunal correctly did not use it for valuation purposes, particularly since it was not prepared for any of the years at issue."
- d. "It appears that the Tribunal's Opinion erroneously states it relied on the cost approach."
- e. "Mr. Rigas's brother, James N. Rigas, Administrative Judge, did not attend the hearings at any time during the trial. He did come over on one occasion during a lunch break with his wife and had lunch with Mr. Rigas and Susan Rigas. Mr. Genzink was testifying that day and he ate lunch with them as well."
- f. "John N. Rigas does not personally know Judge Gilbreath and believes that Judge Gilbreath does not know him. The insinuation that something inappropriate occurred and that the Tribunal has an obligation to address the appearance of such impropriety is not only ridiculous but libelous."

The Tribunal, having given due consideration to the file, exceptions, motions, and responses, in the above-captioned case, finds:

1. TTR 145(1) allows the Tribunal to order costs be remunerated to a prevailing party in an appeal before the Tribunal. The rule itself, however, provides no guidelines or criteria by which the Tribunal is to measure whether costs should be awarded. As such, the requesting party must show good cause justifying an award of costs and

fees. Here, Petitioner has failed to show good cause, given the current circumstances of the case, to justify an award of costs.

Further, while MCR 2.625 provides courts with some criteria in determining whether an award of costs is appropriate, such direction is only applicable where an action or defense was frivolous, as provided by MCL 600.2591. MCR 2.625(A)(2). Thus, the decision to award costs is solely within the discretion of the Tribunal Member. After reviewing Petitioner's Motion, the relevant law, and the case file, the Tribunal finds that Petitioner's Motion for Costs is not warranted, considering the circumstances surrounding this appeal. Specifically, the facts of this case do not indicate that the current action or any defenses asserted by Respondent were frivolous in nature.

2. A party filing a response to exceptions is not required to file a Motion for Permission to file a Reply as long as the response is submitted with 14 days after service of the exception. See TTR 348. As such, Petitioner's Motion is unnecessary. Therefore, Petitioner's Response to Respondent's Exceptions is considered properly filed and will be taken into consideration in the determination of this Final Opinion and Judgment.
3. The postmark date represents the date a pleading is filed with the Tribunal. However, when the postmark date is absent, the Tribunal will consider whether the corresponding proof of service is representative of the postmark date of the document. Here, the Tribunal finds that the envelope containing Respondent's exception is not postmarked. However, Respondent submitted a proof of service indicating the exception was sent to the Tribunal and opposing party on April 28, 2009. April 28, 2009 is the constructive postmark date of Respondent's exceptions. As such, Respondent's exceptions are timely and will be taken into consideration.
4. The ALJ erroneously stated that "[b]ased on the findings of fact and conclusions of law, the Tribunal relies on the cost-less-depreciation method." Proposed Opinion and Judgment, p 3. The ALJ found that ". . . Petitioner's value conclusions are most persuasive." *Id.* at 24. As such, the ALJ merely misstated the cost-less-depreciation method as the most reliable valuation method. In fact, the ALJ adopted Petitioner's values derived from its income approach.
5. Respondent's Exhibit E (Petitioner's 2002 Appraisal for Finance Purposes with Exhibits) was properly admitted into evidence. However, the POJ failed to state that Exhibit E was admitted solely for impeachment purposes. Although Exhibit E was not admitted for valuation purposes, the ALJ still failed to take the appraisal into consideration in the rendering of its decision.
6. The Tribunal finds that Respondent's Exhibit E and Petitioner's appraisals, completed for purposes of this litigation, were prepared by the same appraiser. The fact that the same appraiser completed two separate appraisals that resulted in egregiously disparate values of \$2,200,000 (Exhibit E) and \$898,600 for Petitioner's appraisal is not in and of itself an error of law. The fact that the POJ did not discuss the

differences in value is not an error of law for failing to consider relevant and material evidence. However, these discrepancies do indicate that the valuation approach may be flawed. The Tribunal finds that the ALJ committed an error of law by failing to follow applicable laws regarding inconsistent appraisals prepared by the same appraiser for the same property.

A “valuation approach is flawed because it derives a value for ad valorem tax purposes that fails to parallel a likely valuation estimate derived for other purposes, i.e., financing...” *Meadowlanes Limited Dividend Housing Association v City of Holland*, 437 Mich 473, 493; 473 NW2d 636 (1991).

An appraisal is fatally flawed in a case where, as here, two inconsistent appraisals are introduced, one by Petitioner, and an earlier appraisal by the same expert of the same property, by Respondent. The Tribunal finds that the apparent lack of continuity and inconsistencies between the two appraisals discredits Petitioner’s conclusion of value. *Marsman v Cascade Twp*, 7 MTT 879.

Although Petitioner believes that Respondent’s Exhibit E, completed for financing purposes, and its December 31, 2003 appraisal, executed for litigation purposes, are too far removed to determine the subject property’s value, the Tribunal finds that the inconsistencies found in the two appraisals, although accepted by the ALJ, were incorrectly given little or no weight and not properly considered.

The fact that the 2002 true cash value was \$2,200,000 and the December 31, 2003 true cash value was \$898,600, in and of itself, is insufficient evidence to impeach the appraiser and its assertion of the subject property’s value. However, there are glaring inconsistencies between the two appraisals including the appraisals’ descriptions of hotel conditions and the various amenities that exist.

Further, Petitioner’s 2002 appraisal used the RevPar for limited service hotels; the 2003 report uses full service hotels. The difference is that full service hotels have a higher expense for the services offered. Petitioner’s 2003 report indicates that the subject property is a “blend” because it was originally constructed as a full service hotel and is overbuilt for a limited service hotel. The Tribunal finds that this is generally found to be a superadequacy¹ and appropriate adjustments are required. However, this was not mentioned in either report.

One of the glaring differences between Petitioner’s 2002 and 2003 appraisal was the use of the same Harley Hotel sale, located in East Lansing, for both years. The 2002 report stated that the hotel was in fair condition at the time of the sale, but the 2003 report states that it was in average condition. The economic adjustment in 2002 was -5% and in 2003 was -59%. The treatment of the same sale for the two years is an issue that the Tribunal finds was not successfully explained by the appraiser. The

¹ Superadequacy in an existing improvement would not be installed in a replacement structure. It is difficult to cure, adds no additional value to the property, and may have additional expenses.

impact of 9/11 on the service industry was considered, but for a comparable sale to decrease 54% without sufficient explanation is unimaginable.

The Tribunal finds that Respondent's issue of inconsistent appraisals prepared by the same appraiser for the same property is appropriate. The Tribunal will consider the glaring differences between the two appraisals.

7. Both parties identified the subject property's highest and best use as a hotel. Petitioner's expert specifically identified the subject property as a "limited service hotel." Petitioner's Exhibit R-C, p 39. All of Petitioner's sales selected by its expert are full service hotels. Respondent asserts that Petitioner has made a fatal error by failing to identify the subject's correct highest and best use and by selecting comparables with a different highest and best use from the subject property. The Tribunal finds that both errors are fatal to the analysis.

Respondent believes that Petitioner raised the argument at the hearing that the subject was not a limited service hotel, but instead was a "blend" of limited and full service. This "blended" theory was not found in Petitioner's appraisal; however, the Tribunal erroneously accepted it in the POJ.

Respondent points out the fact that Exhibit E presents dozens of separate factors that support a highest and best use as a limited service hotel. However, despite the evidence, the POJ concluded that "the property is characterized as a full service hotel." Proposed Opinion and Judgment, p 15. This conclusion is contrary to the conclusions reached by both parties. The assignment of a highest and best use that is opposite to that agreed upon by the appraisals of both parties, and that fails to recognize the inherent flaw in Petitioner's selection of full service hotels, as compared to the subject's limited service hotel, is erroneous.

Respondent's contention that the Tribunal failed to make its own finding of fact to arrive at a legally supportable highest and best use is unsupported. The Tribunal's responsibility is to determine what the true cash value of a property should be after taking into consideration the facts, testimony, evidence and documentation. The Tribunal may decide that a party's highest and best use is not supportable or improper and determine that the remainder of the appraisal is flawed.

The Tribunal is aware that the highest and best use determination in an appraisal is critical to the remainder of the report. Determining a highest and best use and then using sales comparables or income comparables that do not support the stated highest and best use is a fatal flaw to an appraisal. In the instant case, Petitioner determined the highest and best use of subject property as improved to be its use as a limited service hotel. In Petitioner's 2003 appraisal eight sales in the sales comparison approach utilized full service hotels. Petitioner's income comparables in the income approach utilized the same eight full service hotel comparables. The subject's RevPar is \$11.56. Seven out of the eight comparables have a RevPar of \$25.39 to \$41.44. This may account for the net adjustments for economic characteristics

(RevPar) that range from -34% to -72%. The Tribunal finds that either the selection of sales comparables is inappropriate or the adjustments are exaggerated.

Petitioner's 2003 appraisal discusses the subject property as a blend of limited and full service hotels. However, the prior 2002 appraisal utilizes comparable properties in which half are full service and the other half are limited service hotels for both the sales comparison and income approaches. The Tribunal notes that the adjustments for the sales comparison approach ranges from 0% to -25%. The Harley Hotel in Lansing had a net adjustment at 0% in 2002 and in 2003 it received a -59% net adjustment.

When the sales are flawed because adjustments exceed a reasonable amount this skews the final determination of the subject's fair market value as an indicator of true cash value. When using a RevPar based on full service hotels as a basis for the sales and income approaches, the multipliers appear to be indicative of higher revenue generators. However, it is apparent that the subject property is not a high revenue generator.

The Tribunal finds that the highest and best use determination in the POJ lacks the detailed analysis that the highest and best use of subject property although originally constructed as a full service hotel is no longer able to operate competitively as a full service hotel but now competes in the marketplace with limited service hotels with recognized franchise names. Petitioner's 2002 appraisal, which used half limited service and half full service hotels, had maximum adjustments of 25% while the use of only full service comparables resulted in adjustments of up to 72%. When adjustments are -72% it indicates that there is an issue with either the selection of comparable properties that are not actually comparable or the appraiser made adjustments to come up with a predetermined value.

8. Respondent's last issue regarding an appearance of impropriety is frivolous. The Tribunal finds no evidence of impropriety on any party's behalf.
9. Ultimately, Petitioner's appraiser should have been awarded little credibility for the large differences in the two appraisals. The disparity in the two reports is not explained by the September 11th bombing of New York, the unemployment, the location or the factors that were not cited in the original appraisal that would not have changed given the short time span between the reports as asserted by Petitioner. The inconsistencies between the reports cast enough uncertainty that the Tribunal finds that Petitioner's December 31, 2003 appraisal is given very minimal weight.
10. The ALJs analysis of why Respondent's appraisal was given little weight is adopted. As such, the Tribunal finds that Respondent's assessments for the subject property for the tax years at issue are affirmed. Petitioner failed to carry the burden of establishing the true cash value of the property. Conversely, Respondent failed to meet its burden of proving the subject property's assessments should be changed from

that reflected on the tax rolls. Therefore, the true cash, state equalized, and taxable values for the subject property are as follows:

Parcel Number: 41-14-05-276-011

Year	TCV	SEV	TV
2004	\$ 1,528,400	\$ 764,200	\$ 642,403
2005	\$ 1,595,600	\$ 797,800	\$ 657,178
2006	\$ 1,595,600	\$ 797,800	\$ 672,293

Parcel Number: 41-14-05-276-001

Year	TCV	SEV	TV
2004	\$ 116,400	\$ 58,200	\$ 48,998
2005	\$ 121,600	\$ 60,800	\$ 50,124
2006	\$ 146,000	\$ 73,000	\$ 51,778

11. Given the above, the Tribunal modifies the Proposed Opinion and Judgment, as indicated herein, and adopts the modified Proposed Opinion and Judgment as the Tribunal's final decision in this case. *See* MCL 205.726. The Tribunal also incorporates by reference the Findings of Fact and Conclusions of Law contained in the modified Proposed Opinion and Judgment in this Final Opinion and Judgment.

Therefore,

IT IS ORDERED that the property's values for the 2004, 2005 and 2006 tax years shall be as set forth in this Final Opinion and Judgment.

IT IS FURTHER ORDERED that Petitioner's Motion for Costs is DENIED.

IT IS FURTHER ORDERED that Petitioner's Motion for Permission to File a Reply to Respondent's Exception to Proposed Opinion and Judgment is DENIED.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. *See* MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by the Final Opinion and Judgment within 28 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately

indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (ii) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (iii) after December 31, 2005, at the rate of 3.66% for calendar year 2006.

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

MICHIGAN TAX TRIBUNAL

Entered: September 17, 2009
sms

By: Victoria L. Enyart

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STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
MICHIGAN TAX TRIBUNAL
PROPERTY TAX APPEAL

President Inn Properties, LLC,
Petitioner,

MTT Docket No. 310739

v

City of Grand Rapids,
Respondent.

Administrative Law Judge Presiding
John S. Gilbreath, Jr.

PROPOSED OPINION AND JUDGMENT

INTRODUCTION

This is a real property tax valuation case. A hearing before the Michigan Tax Tribunal was conducted on June 19, 20 and 21, 2007, in Lansing, Michigan. Peter N. Rigas, Attorney at Law, represented Petitioner, President Inn Properties, LLC. Elizabeth R. White, Attorney at Law, represented Respondent, City of Grand Rapids.

At issue is the true cash value of the subject property, known as the Grand Inn & Conference Center (hereinafter referred to as “Grand Inn”), a 144-unit hotel building in the City of Grand Rapids. The real property is identified as parcel numbers 41-14-05-276-009 and 41-14-05-276-011. The tax years at issue are 2004, 2005, and 2006. Tax year 2007 was added to this appeal, but has been severed and assigned a new docket number by separate order. In this proceeding, AV refers to assessed value, SEV refers to state equalized value, TV refers to taxable value, and TCV refers to true cash value. The property is classified for taxation purposes as commercial real property. The average level of assessment in effect for the subject property’s classification for each tax year in question is 50%.

Each party offered testimony and documentary evidence. Petitioner’s Exhibits P-1 through P-15 were admitted into evidence.² Respondent’s Exhibits R-A through R-Y were admitted into evidence.³ Each party filed a post-hearing brief and Respondent filed a reply brief.

² Petitioner’s exhibits consisted of the following:

- Exhibit 1 Appraisal by Genzink Appraisal Company dated September 23, 2005 with values as of December 31, 2003 and December 31, 2004.
- Exhibit 2 Appraisal by Genzink Appraisal Company dated March 9, 2007 with values as of December 31, 2005.
- Exhibit 3 Hotel/Motel Income and Expense Proforma – Adjusted.
- Exhibit 3A Hotel/Motel Income and Expense Proforma – Adjusted.
- Exhibit 4 Historical Occupancy 2001 – 2006.
- Exhibit 5 Historical ADR 2001 – 2006.
- Exhibit 6 Historical RevPAR 2001 – 2006.
- Exhibit 7 Hotel Sales – Price/Rm to RevPAR.
- Exhibit 8 Aerial View of Property and Location Photographs.
- Exhibit 9 Selected page and note titled **Independent Hotels and Motels** from Rushmore & Baum, *Hotels & Motels: Valuations and Market Studies*, (Chicago, Ill: Appraisal Institute, 2001).
- Exhibit 10 Newspaper Articles Regarding Local Hotels and Plainfield Avenue Area.
- Exhibit 11 Total Revenue and Assessed Value by Year (1998 – 2006).
- Exhibit 12 Statement of Operations and Members’ Equity (Deficit).
- Exhibit 13 Photographs.
- Exhibit 14 Sales History – Amerihost Inn.
- Exhibit 15 Article from Grand Rapids Business Journal May 21, 2007.
- Exhibit 16 Pages 316, 317 and 319 of from Rushmore & Baum, *Hotels & Motels: Valuations and Market Studies*, (Chicago, Ill: Appraisal Institute, 2001).

³ Respondent’s exhibits consisted of the following:

- Exhibit A Respondent’s 2004 and 2005 Valuation Disclosure with Exhibits.
- Exhibit B Respondent’s Supplemental Valuation Disclosure for 2006 with Exhibits.
- Exhibit C Petitioner’s 2004 and 2005 Valuation Disclosure with Exhibits.
- Exhibit D Petitioner’s Supplemental Valuation Disclosure for 2006 with Exhibits.
- Exhibit E Petitioner’s 2002 Appraisal for Finance Purposes with Exhibits.

SUMMARY OF JUDGMENT

Based on the findings of fact and conclusions of law, the Tribunal relies on the cost-less-depreciation method. The Tribunal concludes that the true cash value and revised assessments of the subject property are as follows⁴:

2004

<u>ID Numbers</u>	<u>TCV</u>	<u>SEV</u>	<u>AV</u>	<u>TV</u>
41-14-05-276-011	\$930,000	\$465,000	\$465,000	\$465,000
41-14-05-276-009	\$ 70,000	\$ 35,000	\$ 35,000	\$ 35,000

2005

<u>ID Numbers</u>	<u>TCV</u>	<u>SEV</u>	<u>AV</u>	<u>TV</u>
41-14-05-276-011	\$877,800	\$438,900	\$438,900	\$438,000
41-14-05-276-009	\$ 72,200	\$ 36,100	\$ 36,100	\$ 36,100

2006

<u>ID Numbers</u>	<u>TCV</u>	<u>SEV</u>	<u>AV</u>	<u>TV</u>
41-14-05-276-011	\$920,000	\$460,000	\$460,000	\$460,000
41-14-05-276-009	\$ 80,000	\$ 40,000	\$ 40,000	\$ 40,000

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- Exhibit F Chart of Parties' Contentions of Value.
Exhibit G Assessment Records for Land and Sales Comparables.
Exhibit H Grand Rapids Business Journal, Chart.
Exhibit I Assessor's Office Review of Personal Property and Supporting Data.
Exhibit J 2005 Buy Sell Agreement, Amerihost Hotel, Hudsonville.
Exhibit K Response to FOIA Request from Kent County Health Dept.
Exhibit L Appraisal of the Shoreline Inn in Muskegon with Exhibits.
Exhibit M Appraisal of Hotel at 3333 28th Street in Kentwood with Exhibits.
Exhibit N Appraisal of a Hotel in the City of Hudsonville with Exhibits.
Exhibit P Appraisal of the Cherry Tree Inn on the Beach, Traverse City with Exhibits as of February 14, 2002.
Exhibit Q Appraisal of the Cherry Tree Inn on the Beach, Traverse City with Exhibits submitted March 4, 1999.
Exhibit R Petitioner's Answers to Respondent's Interrogatories.
Exhibit S Appraisal of Real Estate, 11th Edition (1996).
Exhibit T Property Appraisal and Assessment Administration, IAAO (1990).
Exhibit U Smith Travel Data on Occupancy and Average Daily Rates.
Exhibit V Hospitality Advisor's Lodging Commentary Data.
Exhibit W Capitalization rates published by Korpacz.
Exhibit X Seminar materials, "Small Hotel/Motel Valuation," Appraisal Institute.
Exhibit AA Petitioner's Selection of Comps.
Exhibit AB Demonstrative chart.

⁴ The parties provided their respective value conclusions as one total value for both parcels. The Tribunal's values are based upon the percentage of value contributed by the parcel number 41-14-05-276-001 to the total value. This percentage is based upon the ratio of this parcel's TCV to the total of the two parcels TCV with the resulting percentages being 7% for 2004, 7.6% for 2005 and 8% for 2006.

PROCEDURAL HISTORY

The 2004 property tax assessments were based on Respondent's estimate of the TCV of the subject property as of December 31, 2003. Petitioner appeared before the March 2004 Board of Review for the City of Grand Rapids to protest the TCV, SEV, AV, and TV of the subject property. The Board of Review denied the relief requested and affirmed the tax assessments. On June 28, 2004, Petitioner filed a Petition with the Tribunal alleging that Respondent erred in its assessment of True Cash Value, State Equalized Value, Assessed Value, and Taxable Value for the 2004 tax year. Respondent filed a timely answer.

Motions to Amend the Petition to add subsequent tax years were filed for the 2005, 2006, and 2007 tax years. Respective Orders granted the motions and the tax years at issue became 2004, 2005, 2006, and 2007. As noted above, the 2007 tax year has been severed from this appeal.

The TCV, SEV, AV and TV on the roll are as follows:

2004

<u>ID Number</u>	<u>TCV</u>	<u>SEV</u>	<u>AV</u>	<u>TV</u>
41-14-05-276-011	\$1,528,400	\$764,200	\$764,200	\$642,403
41-14-05-276-001	\$116,400	\$58,200	\$58,200	\$48,998

2005

<u>ID Number</u>	<u>TCV</u>	<u>SEV</u>	<u>AV</u>	<u>TV</u>
41-14-05-276-011	\$1,595,600	\$797,800	\$797,800	\$642,403
41-14-05-276-009	\$121,600	\$60,800	\$60,800	\$50,124

2006

<u>ID Number</u>	<u>TCV</u>	<u>SEV</u>	<u>AV</u>	<u>TV</u>
41-14-05-276-011	\$1,595,600	\$797,800	\$797,800	\$642,403
41-14-05-276-009	\$146,000	\$73,000	\$73,000	\$51,778

PARTIES' CONTENTIONS OF ASSESSED AND TRUE CASH VALUE

Petitioner contends that the property is assessed in excess of 50% of its true cash value and that the aggregate true cash value, state equalized value, assessed value, and taxable value for the tax years 2004, 2005, and 2006 are as follows:

2004

<u>ID Numbers</u>	<u>TCV</u>	<u>SEV</u>	<u>AV</u>	<u>TV</u>
41-14-05-276-011 & 41-14-05-276-009	\$1,000,000	\$500,000	\$500,000	\$500,000

<u>2005</u>				
<u>ID Numbers</u>	<u>TCV</u>	<u>SEV</u>	<u>AV</u>	<u>TV</u>
41-14-05-276-011 & 41-14-05-276-009	\$950,000	\$475,000	\$475,000	\$475,000

<u>2006</u>				
<u>ID Numbers</u>	<u>TCV</u>	<u>SEV</u>	<u>AV</u>	<u>TV</u>
41-14-05-276-011 & 41-14-05-276-009	\$1,000,000	\$500,000	\$500,000	\$500,000

Respondent contends that the property is assessed at 50% of its true cash value and that the aggregate true cash value, state equalized value, assessed value, and taxable value for tax years 2004, 2005, and 2006 as supported by its evidence are as follows:

<u>2004</u>				
<u>ID Numbers</u>	<u>TCV</u>	<u>SEV</u>	<u>AV</u>	<u>TV</u>
41-14-05-276-011 & 41-14-05-276-001	\$2,000,000	\$1,000,000	\$1,000,000	\$1,000,000

<u>2005</u>				
<u>ID Numbers</u>	<u>TCV</u>	<u>SEV</u>	<u>AV</u>	<u>TV</u>
41-14-05-276-011 & 41-14-05-276-001	\$2,040,000	\$1,020,000	\$1,020,000	\$1,020,000

<u>2006</u>				
<u>ID Numbers</u>	<u>TCV</u>	<u>SEV</u>	<u>AV</u>	<u>TV</u>
41-14-05-276-011 & 41-14-05-276-001	\$2,000,000	\$1,000,000	\$1,000,000	\$1,000,000

PETITIONER’S EVIDENCE, APPRAISAL AND EXPERT TESTIMONY

Appraisal Evidence

Petitioner submitted two appraisals, one for the 2004 and 2005 tax years, and another for the 2006 tax year. Both appraisals were prepared by Jeffery Genzink, MAI. In the appraisals, Mr. Genzink accounted for the three basic appraisal approaches used to value real property: the cost approach, the sales comparison approach, and the income approach.

Trial Testimony

Four witnesses were sworn and testified for Petitioner: Marc H. Gilbert, Mary Mastiglio, Susan Regis, and Jeffrey Genzink, MAI.

Marc H. Gilbert testified that he is a partner in the accounting firm of Dean Carter, LLP. He is a certified public accountant. He graduated from Michigan State University and ultimately from the University of Michigan with an MBA with a concentration in taxation. He is licensed as a certified public accountant. He prepares the tax returns for the subject entity; as such, he is familiar with the financial information, including the income and disbursements. He provided to Respondent the income information relative to the subject property.

Mr. Gilbert testified that the room revenue dropped from 1999 through 2006 from \$1,000,000 in 1998 to \$545,000 in 2006. (*Trial Transcript*, Volume 2, p 418)

As to the expense history, Mr. Gilbert testified that he has known management personnel for a substantial period of time. He is aware that they tried to improve the property's balance sheet by cutting variable costs; in fact, they had been able to reduce expenses. He testified that in spite of cost reductions there are fixed costs that vary little from year to year. The fixed costs are those that are required to keep the facility operable, such as heat and light. Other fixed costs are property taxes and various licensing fees for software. (*Trial Transcript*, Volume 2, p 418)

Mr. Gilbert testified that Petitioner in spite of efforts to reduce costs some costs were reduced merely because fewer rooms were being rented. Nevertheless, there were greater utility costs associated with the long term rentals. (*Trial Transcript*, Volume 2, p 419)

Mary Mastiglio testified that she has been employed at the subject property for the last five and one half years. She is the general manager. Her activities include taking reservations and handling customer complaints. She also orders supplies and is involved in sales, marketing, advertising, and scheduling. She also helps with bookkeeping activities. She has had similar management experience working for nine years in a restaurant in Traverse City. (*Trial Transcript*, Volume 2, p 434)

When she began working at the property, she revamped the property brochure to attract certain activities, such as bridal shows. They have also started to do more internet marketing. (*Trial Transcript*, Volume 2, p 436)

With respect to expenses, she testified that they have kept expenses down. Currently, the occupancy is up significantly, but the room rate is down because they have more extended-stay guests who pay at a lesser room rate. (*Trial Transcript*, Volume 2, p 439)

Ms. Mastiglio stated that the facility generates additional income through banquets, which use the conference area. They also receive additional income from the game room and

pop machines. The annual gross income has not remained the same because of September 11, 2001. Also, numerous full-service hotels have been built in the area, which has impacted business. She testified that the kitchen facilities are not being used but are available for caterers who cater wedding receptions. The kitchen in that case really becomes a food preparation area instead of a traditional kitchen. (*Trial Transcript*, Volume 2, p 442)

Susan Regis testified that she is the owner of the property. She is active in the day-to-day operations of the property and has been since 1998. (*Trial Transcript*, Volume 2, p 517) She helps with the laundry. She is on call for the weekends, and she is actively involved for 20-30 hours a week. She does not collect a salary. (*Trial Transcript*, Volume 2, p 518)

She testified that, while she is trying to develop programs to increase occupancy, the business climate on the Plainfield Avenue corridor is very poor. Plainfield Avenue has a number of auto dealerships and is noted as being the “motor mile.” She testified that there are hotels in direct competition with the subject that are on Alpine Avenue. There are also others in the Walker area of Kent County. Most of these hotels were built since 2000, while the subject is much older. (*Trial Transcript*, Volume 3, pp 524)

Jeffrey Genzink, MAI, testified that he is a college graduate and he has an MAI (Member of the Appraisal Institute) certification from the Appraisal Institute. He is a state certified general appraiser. He testified that he has appraised hotels and motels in the past. He appraised the subject property for this appeal. (*Trial Transcript*, Volume 1, pp 202-205)

In preparation of the appraisal, Mr. Genzink toured the subject property, and determined that the hotel was in “fair condition.” He found that some stairwells are not ADA compliant and that the bathrooms have older configurations. There is the need for deferred maintenance relative to the parking lot and some of the air conditioning units. He found that the carpeting throughout is in poor condition. (*Trial Transcript*, Volume 1, p 215)

In collecting income data about hotels generally, Mr. Genzink was able to compare the Grand Rapids market to the national market. This data showed a downward trend starting in 2001 and continuing through 2003. Income finally stabilized in 2004. In 2004, the national market rebounded, but the Grand Rapids market stayed flat. In the Grand Rapids area, three new hotels were built, two of those in 2002, creating an imbalance of supply and demand. The hotel market has continued to soften and yet there are still new properties being built. (*Trial Transcript*, Volume 1, p 220)

Mr. Genzink stated that the Plainfield Ave/I-96 market area, within which the subject property is located, does not have a “demand generator” that brings the type of clientele to the area for which a hotel is needed. He stated that commercial development is occurring a few miles to the west of the subject where highway visibility is better. He also found that there are no table service restaurants near the subject property.

Mr. Genzink testified that Grubb & Ellis, a commercial real estate advisory firm, reported that the retail market trend showed that in the second quarter of 2004, the vacancy for the Plainfield corridor was 12.2 %, and then advancing to the first quarter 2007, the vacancy increased to 14%. Mr. Genzink stated that “what we are seeing is above-average vacancy for retail; we are seeing above-average vacancy for office space in the Plainfield corridor.” (*Trial Transcript*, Volume 1, pp 221-222)

As to appraisal methodology, Mr. Genzink first testified as to the highest and best use of the property. He concluded, as stated in his appraisal, that the highest and best use as vacant was general commercial use, and as improved was as a hotel. (*Trial Transcript*, Volume 2, p 250) Thereafter, he described how the subject is physically similar to a “full service hotel” which he stated as having a full-service restaurant and conference meeting space. (*Trial Transcript*, Volume 2, p 250)

He explained that because the restaurant at the subject is not open, most of the income from the property is generated from room rentals. There is some limited income from the conference rooms. The result is that the subject is operating more as a limited-service hotel than as a full-service hotel. He concluded that ultimately the subject is “a blend of full-service and limited-service.” (*Trial Transcript*, Volume 2, pp 251- 252)

As for the operating expenses, the interior layout consists of interior corridors, which have to be maintained, insured, and taxed, as are the conference spaces and the kitchen space. In the typical limited-service hotel the corridors and entrances are on the exterior. Typically, these do not have meeting spaces and kitchens, and because of these features the expenses are different from those associated with a full-service hotel. Therefore, according to Mr. Genzink, limited-service hotels do not constitute a good unit of comparison to the subject. (*Trial Transcript*, Volume 2, pp 251- 252)

Mr. Genzink testified that he prepared an income capitalization approach. He used the concept of RevPAR⁵ because, in his opinion, it is a common and industry-wide standard of how to identify the profitability of a hotel. In so doing, he explained that the RevPAR is an important diagnostic tool because it associates occupancy with average daily rate or ADR. From 2000 to 2004, occupancy rate at the subject declined from 33.57% to 20.41%. The average daily rate (ADR) increased from 2000 to 2002 from \$53.90 to \$56.61 and then stabilizes in the \$56 range for 2003 and 2004. By multiplying the occupancy rate by ADR, a RevPAR is determined, which is a “more complete diagnostic test for how a property is doing.” Mr. Genzink calculated the 2000 RevPAR to be \$18.10. The RevPAR from 2000 to 2004 declined from \$18.10 to \$11.56. (*Trial Transcript*, Volume 2, p 260)

Ultimately, Mr. Genzink’s income capitalization approach⁶ is based on the use of a gross revenue or income multiplier (hereinafter referred to as GIM). In his opinion, this method is used by investors in the business because it is a value directly associated with all of the revenues generated by the property. A GIM is obtained by dividing the sales price of a given comparable property by the gross income. Using this formula, a range of GIMs can be determined. (*Trial Transcript*, Volume 2, pp 261-262)

Mr. Genzink started his market value determination involving this method by selecting eight comparables. This was the foundation for determining his gross income multiplier. In analyzing these sales, he concluded that he could not prepare a direct capitalization valuation because the range of capitalization rates extracted from these sales was too wide. The overall capitalization rates ranged from .49% to 8.38%. In his judgment, buyers would not buy properties based upon this range. When he looked at gross revenue multiplier, again extracted from these comparable sales, the range was .95 to 2.4, a much narrower range. He concluded,

⁵ RevPAR is described in Rushmore & Baum, *Hotels & Motels: Valuations and Market Studies*, (Chicago, Ill: Appraisal Institute, 2001) p 148, as equating “to revenue per available room and is calculated as the product of occupancy and average rate. Because it accounts for both occupancy and average rate together, this figure provides the best overall measure of revenue generating results for a single property or group of hotels.”

⁶ The income capitalization approach is defined in *The Dictionary of Real Estate Appraisal*, 4th ed, as “[a] set of procedures through which an appraiser derives a value indication for an income-producing property by converting its anticipated benefits (cash flows and reversion) into property value.” Direct capitalization, discounted cash flow, and the use of a gross income multiplier are all forms of income capitalization.

after consulting with buyers, sellers, and brokers of these types of properties, that the use of the GIM was the method most relied upon to determine value for these types of properties. (*Trial Transcript*, Volume 2, p 269)

Mr. Genzink testified that appraisers who appraise hotels commonly reconstruct the hotel's operating data to conform to the Uniform System of Accounts. With this premise in mind he was able to use actual information from the subject property from years 1998 through 2006. He further testified that a typical buyer of a hotel would "not analyze the existing expenses and primarily looked at the gross revenue that is generated." (*Trial Transcript*, Volume 2, p 269)

As stated, in developing his GIM, Mr. Genzink started with comparative sales. He gave primary emphasis to four of those comparables, Nos. 3, 5, 7, and 8, because they were the most comparable. They all had higher RevPARs than the subject property and all were franchises. The derived GIM range was .95 to 1.7 with a mean of 1.4. A GIM of 1.3 was selected because of the lesser quality of the subject. For December 31, 2005, he used a multiplier of 1.5 because he had a new comparable sale that altered the range. (*Trial Transcript*, Volume 2, p 269)

The GIM was multiplied by the actual gross income for the subject property for the years at issue and this resulted in a market value upon which Mr. Genzink relied for the valuation of this property.

With respect to the sales comparison approach, Mr. Genzink testified that the approach is not primarily emphasized because, as he has found by attending seminars associated with appraising hotels, emphasis is placed on the income approach with the sales comparison approach used as a secondary methodology. (*Trial Transcript*, Volume 2, p 270)

When asked why he did not use limited-service hotels as comparable properties, Mr. Genzink stated that the subject was originally constructed as a full-service hotel. He noted that the subject property has 95,910 square feet of gross building area, which is closer to a full-service hotel. (*Trial Transcript*, Volume 2, p 276)

In contrasting a franchise hotel from an independent, such as the subject, Mr. Genzink read from the Appraisal Institute's textbook, *Hotel and Motels: Valuations and Market Studies*⁷

⁷ It should be noted that the treatise Rushmore & Baum, *Hotels & Motels: Valuations and Market Studies*, (Chicago, Ill: Appraisal Institute, 2001) is a comprehensive resource used for valuing hotels and motels, but the authors refer throughout the publication to a number of the sources reviewed by each

by Steven Rushmore and Erich Baum. It states that “when valuing an independent hotel or motel, the appraiser should know the risk factors involved. Unless circumstances clearly indicate that the independent can overcome the competitive disadvantages, the market will usually reflect a lower stabilized net income or a higher capitalization rate for an independent hotel property.” (*Trial Transcript*, Volume 2, p 279)

He testified, paraphrasing from *Hotel and Motels: Valuations and Market Studies*, that in valuing hotels, the sales comparison approach often requires numerous adjustments and the adjustment process is often difficult and unsubstantiated by market data. (*Trial Transcript*, Volume 2, p 284)

The cost approach was not used, according to Mr. Genzink, because of the age of the property and the difficulty in estimating accrued depreciation for a property that is approximately 40 years old. In his opinion, a buyer would give primary emphasis to the income approach. (*Trial Transcript*, Volume 2, p 280)

On cross-examination, Mr. Genzink testified that there is no good way of characterizing the way the subject property is operating because of its physical characteristics: the size, interior corridors, the meeting rooms, full kitchen, and the conference rooms. (*Trial Transcript*, Volume 2, p 324)

Petitioner’s Post-Hearing Brief

Petitioner emphasized in its post-hearing brief the external factors that have had an effect on the subject property. One factor is the depressing effects that the September 11, 2001, attacks have had on the hotel industry generally. Another is the economic decline with a high unemployment rate and loss of many manufacturing jobs throughout Michigan and in the Grand Rapids area. Other factors are the lack of growth and development on the Plainview Avenue neighborhood, the subject’s lack of visibility from the highway (I-96), the subject’s lack of a national franchise, and the market increase in national franchise hotel rooms in the Grand Rapids area. Also noted is the decrease in income from 1998 to 2006. Occupancy showed a decline from 2002 through 2005 with a slight increase in 2006.

The average daily rate per room decreased from \$55.87 in 2001 to \$31.85 in 2006. The RevPAR likewise decreased over that period of time.

appraiser, such as Smith Travel Research, Lodging Outlook, American Hotel & Lodging Association and Hospitality Services.

Petitioner's appraiser relied on a capitalization approach specifically using a gross income multiplier to determine the values of the subject property to be \$1 million as of December 31, 2003, and \$950,000 as of December 31, 2004. For December 31, 2005, Petitioner's appraiser valued the property at \$1 million.

RESPONDENT'S EVIDENCE, APPRAISAL AND EXPERT TESTIMONY

Appraisal Evidence

Respondent submitted two appraisals, one as of December 31, 2003 and December 31, 2004, and another as of December 31, 2005. Both appraisals were prepared by Donna Beth Stokes, CMAE IV. In the appraisals, Ms. Stokes accounted for the three basic appraisal approaches used to value real property: the cost approach, the sales comparison approach, and the income approach.

Trial Testimony

Two witnesses were sworn and testified for Petitioner: Thomas Truskowski and Donna Beth Stokes, CMAE IV.

Thomas Truskowski testified that he is employed by the City of Grand Rapids as a property tax auditor. He has held this position for six and one half years. He is a certified personal property examiner and a level two assessor. He is familiar with accounting practices. (*Trial Transcript*, Volume 3, p 528)

Mr. Truskowski reviewed the fixed asset schedules for the property. He stated that he believes the personal property was under-reported for the subject. (*Trial Transcript*, Volume 3, p 538)

Donna Beth Stokes testified that she is a certified public account (CPA) and a level IV Michigan assessor. She is also an attorney and a member of the Michigan State Bar. (*Trial Transcript*, Volume 3, p 573)

Generally, Ms. Stokes obtained information about the Michigan hotel market from a periodical known as *Hospitality Advisors' Lodging Commentary*. (*Trial Transcript*, Volume 3, p 580) She learned that the September 11 attack on the World Trade Center in New York had a negative impact on the lodging industry. In the Michigan market there was a slight increase in the average rate while the occupancy decreased by 5% for full-service hotels. Limited-service

and economy hotels without food and beverage had flat daily rates with a decline in occupancy. (*Trial Transcript*, Volume 3, p 581)

For statistics regarding expenses relative to limited-service hotels, she relied upon *Smith Travel Research* for a national perspective. *Smith* publishes data specifically for limited-service hotels. It expresses the expenses in percentages that are typical for this type of hotel. The information for independent hotels concludes that the cash flow should have a deduction of 30.2% for expenses. (*Trial Transcript*, Volume 3, pp 583-584)

Ms. Stokes testified that typically as occupancy drops, a hotel operator begins to negotiate the rates more aggressively. Essentially, this means that a hotel manager drops the room rates to reflect the drop in occupancy. She felt that is not what happened in this case. (*Trial Transcript*, Volume 3, p 589)

Ms. Stokes testified that she analyzed the Grand Rapids metropolitan area and not a local area. She used this larger area because she opined that hotel customers are not drawn to a specific area, but rather are drawn to attractions associated with a larger geographical area. (*Trial Transcript*, Volume 3, p 590)

As for the subject property, Ms. Stokes inspected the property on a number of occasions. She described the subject property as being in need of some work, but basically, she found the property to be in average condition. (*Trial Transcript*, Volume 3, p 595)

She testified that she determined a highest and best use of the property as vacant to be commercial and as improved to be a limited-service hotel. (*Trial Transcript*, Volume 3, p 576)

Ms. Stokes testified that she prepared a cost approach in the first appraisal, but not in the second. She did not rely upon this approach because of the “inherent difficulties” associated with this property due to its age and the degree of depreciation. (*Trial Transcript*, Volume 3, p 595)

Ms. Stokes prepared an income capitalization approach. She reviewed the subject’s actual income and expense data for the years at issue. She did not have actual data on other comparable properties. From this review, she noticed that, as compared to published materials, that something was wrong with the expenses. She concluded that the expenses were too high. She saw items such as marketing that seemed low and other aspects of the expenses that did not compare to some of the published data she had reviewed. She concluded that “[i]t just seemed like things weren’t being managed the way they should.” (*Trial Transcript*, Volume 3, p 598)

Using her data regarding limited-service hotels in Michigan for 2003, she came up with an expense ratio of 56.8% based on expenses being between 40%-43.2%. This is significantly different from a ratio based on expenses at 73.56% of the gross income as shown in the actual figures for the subject property. (*Trial Transcript*, Volume 3, p 610)

In preparing her income capitalization value, Ms. Stokes testified that she reduced the actual gross income by 56.8% to account for expenses. From this income she excluded business value and personal property value. (*Trial Transcript*, Volume 3, p 612)

With regard to the capitalization rate, she reviewed *Korpacz Real Estate Investor Survey* data and found that there was a range of 9.5% to 14% for rates from between 2003 to 2005 with the average range of 11.17% to 12.25%. She ultimately decided on an 11% capitalization rate. She then “loaded” that rate with the tax rate to arrive at a final capitalization rate of 13.37%. This rate, divided into a net operating income of \$191,735 resulted in a value of \$1,434,000. (*Trial Transcript*, Volume 3, pp 613-614)

With regard to the sales comparison approach, Ms. Stokes’ priority was to use comparable sales in the Grand Rapids area for limited-service properties. She arranged them according to the price per room indicating that it is the best unit of comparison. She then selected four comparables for the property. She made adjustments for various features to the subject property. She looked at the revenue for RevPAR as a method of making an adjustment or describing the comparability of the specific sales. (*Trial Transcript*, Volume 3, Page 629) She ultimately determined the value per room to be \$14,400. She multiplied this figure by the number of rooms at the subject, 144, which resulted in a value of \$2,000,773.

Ms. Stokes’ ultimate value conclusion was \$2,040,000 for the first year at issue, based on the sales comparison approach. She said that the income capitalization approaches done in her appraisals showed that the business was not performing compared to the other properties; she therefore gave less weight to this method. (*Trial Transcript*, Volume 3, Page 637) For subsequent years she used the same processes, ultimately giving the greatest weight to the sales comparison approach.

Respondent’s Post-Hearing Brief

In its post-hearing brief, Respondent emphasizes the highest and best use distinction between the parties: Respondent’s limited-service hotel as compared to the current or full-

service classification used by Petitioner. Respondent argues that its use designation is more focused and appropriate for the actual use of the property. Respondent indicates that Petitioner's use of eight comparable sales that are full-service hotels constitutes a serious flaw in Petitioner's methodology. By failing to present comparables that are consistent with the actual use of the property, Respondent contends that an error is committed.

Respondent argues that the subject property does not generate the same income as the comparables and as a consequence using the higher income levels in these comparable properties results in a lower revenue multiplier for each comparable.

FINDINGS OF FACT⁸

The subject property is called Grand Inn & Conference Center (hereinafter referred to as "Grand Inn"). The subject property is owned by Petitioner, President's Inn Properties, LLC. Grand Inn is described as having attributes of a full-service hotel because it has guest rooms, a swimming pool, and a conference center.

The real property consists of two rolling, irregularly shaped parcels with 168 feet of frontage on Plainfield Avenue, Grand Rapids, Michigan. Parcel Number 41-14-05-276-011 consists of 3.54 acres with a street address of 3221 Plainfield Avenue, Grand Rapids, Michigan. Grand Inn is located on this parcel. Parcel Number 41-14-05-276-009 consists of .53 acres with a street address of 3205 Plainfield Avenue, Grand Rapids, Michigan. The property is zoned C2, Community/Commercial. The size of the property is adequate for its current use. All public utilities service the site. The City of Grand Rapids provides police and fire protection. Public transportation is supplied to the site. Sidewalks, curbs, and gutters are present. The subject is not in a flood zone.

Grand Inn is a three-story hotel. It was built in 1965, with additions made to it in 1967 and 1969. The hotel portion consists of two stories and a lower level. There are 144 guest rooms. The property has over 10,000 square feet of banquet facilities consisting of three rooms. The largest banquet room can seat up to 500 guests. There is an adjoining kitchen. The kitchen was once a restaurant/kitchen that is no longer operational. The property has a swimming pool.

⁸ This section is a "concise, separate, statement of facts" within the meaning of MCL 205.751; and, unless stated otherwise, the matters stated or summarized are "findings of fact" within the meaning of 1969 PA 306, MCL 24.285.

Interior corridors provide access to the guest rooms, an elevator, indoor pool, and game room. With these amenities, the property is characterized as a “full service hotel.” Because of the lack of current utility of some of these attributes, such as the kitchen, the subject property functions as a facility providing more limited services than a full-service hotel.

External factors having an adverse effect on the subject property include the negative effect on the hospitality industry in general from the September 11th bombings in New York City. Also, factors affecting the subject property include the lack of growth in the immediate area of the subject property of attractions such as restaurants, shopping and entertainment facilities. Additionally, the subject property does not have a national franchise associated with it. More recently there has been an increased in full-service franchise hotel development in the greater Grand Rapids area.

Both parties provided appraisals. The appraisers, Mr. Genzink for Petitioner and Ms. Stokes for Respondent, are both state licensed appraisers. Mr. Genzink has an MAI designation from the Appraisal Institute. Ms. Stokes is a certified public account and a level IV Michigan assessor. In developing their appraisals, both appraisers relied upon conversations with brokers, buyers, sellers, outside source materials, and the public record.

Both appraisers concluded that the highest and best use of the property as vacant is as commercial. Mr. Genzink concluded that the highest and best as improved was as a hotel/motel, and Ms. Stokes concluded that the highest and best use as improved was as a hotel.

Both appraisers developed income and sales comparison approaches. Ms. Stokes also prepared a cost approach.

Ms. Stokes relied primarily upon her sales comparison approach, having selected sales from a market of limited-service motels. In her analysis for her income approach, she distinguished the actual expenses on the basis that they were too high and indicative of mismanagement. She acknowledged that the actual income generated by the subject property had merit.

Mr. Genzink also prepared a sales comparison approach relying upon sales of full-service hotels. Additionally, he prepared a variation of the traditional income capitalization approach developed by Ms. Stokes. This approach relied upon the development of gross income multipliers. This approach does not consider expenses as is done in a traditional income capitalization approach. Mr. Genzink also relied upon a diagnostic tool known as RevPAR or

revenue per available room in helping to determine the gross revenue multiplier once a range of gross revenue multipliers was determined through extraction from comparable sales. The RevPAR for the subject was compared to the RevPARs for the comparable properties in his sales comparison approach. Those closest to the subject were selected and a range of gross income multipliers was taken from that group. From this range an average was determined and applied to the gross revenue for the subject for the specific years at issue to determine its market value.

The Tribunal finds the valuation methodology that is the most reliable indicator of the property's true cash value for the tax years at issue is Petitioner's income approach.

CONCLUSIONS OF LAW

Valuation Issues

The assessment of real and personal property in Michigan is governed by the constitutional standard that property shall not be assessed in excess of 50% of its true cash value, as equalized, and that increases in the taxable value are limited by statutorily determined general price increases, adjusted for additions and losses. Michigan Constitution of 1963, Article IX, Sec. 3.

In the case at hand the Tribunal has been asked to determine the true cash value of a commercial property. As used in the General Property Tax Act, and reiterated by the Michigan Supreme Court⁹, "true cash value" means the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale. MCL 211.27(1).

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735(1). In a tax appeal, "[t]he petitioner has the burden of establishing the true cash value of the property." MCL 205.737(3); MCL 211.27(1); *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473, 483-484; 473 NW2d 636 (Mich. 1991). "This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing; and (2) the burden of going forward with the evidence, which may shift to the opposing party." *Jones and Laughlin Steel Corp v City of Warren*, 193 Mich App 348; 483 NW2d 416 (1992), citing: *Kar v Hogan*, 399 Mich 529, 539-540; 251 NW2d 77 (1976); *Holy*

⁹ True cash value is "the usual selling price for a given piece of property." *Meadowlanes Ltd Dividend Housing Ass'n v City of Holland*, 437 Mich 473; 473 NW2d 636 (1991).

Spirit Ass'n for the Unification of World Christianity v Dept of Treasury, 131 Mich App 743, 752; 347 NW2d 707 (1984).

The three most common approaches to valuation are the capitalization of income approach, the sales comparison or market approach, and the cost-less-depreciation approach. *Meadowlanes*, at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968); *Antisdale*, at 276. The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale*, at 277.

The seminal issue in this case centers on the undisputed fact that the subject property is an income-producing property with attributes typically associated with full-service hotels which nevertheless functions as a limited-service hotel. The subject has a swimming pool and a dining area. It also has a kitchen and conference facilities. It is designed so that room access is obtained through interior corridors. Yet the evidence shows that these attributes are not being used to the extent that they are with newer competitors.

There are a number of reasons why this may be the case. The subject is an older facility; it was built in 1965. It is an independent hotel. It has had fierce competition from newer franchise owned competitive properties. The older neighborhood within which it is located has an impact on the property since there are no apparent draws such as a malls and restaurants to bring people to the area. Finally, the whole industry has been impacted by the September 11, 2001 World Trade Center bombings.

As to the issue of independent hotels as compared to franchise hotels, the following comment is found in Rushmore & Baum, *Hotels & Motels: Valuations and Market Studies* (Chicago, Ill: Appraisal Institute, 2001) p 187:

The number of nonaffiliated hotels and motels has been declining rapidly. Most of these properties are small "mom-and-pop" motels constructed during the 1950s and 1960s that are now on the brink of functional and external obsolescence due to the proliferation of larger, more modern chain operations. New budget chains have hurt independent lodging facilities deeply. . . .

Most independent hostelrys lack a solid identity, and as a result, travelers pass them by, opting instead for a known product that offers services, accommodations, and rates within an expected range. An independent can, however, create its own identity with a massive advertising campaign, a highly

visible and convenient location, a large clientele, or superior facilities and services.

When valuing an independent hotel or motel, the appraiser should know the risk factors involved. Unless circumstances clearly indicate that the independent can overcome the competitive disadvantages, the market will usually reflect either a lower stabilized net income or a higher capitalization rate¹⁰ for an independent hotel property.

Starting with this background, the first determination, as provided by both parties, was the highest and best use of the property both as vacant and as improved. In this regard, the following commentary is found in Chapter 12 of *The Appraisal of Real Estate*, 12th ed (Chicago: Appraisal Institute, 2001) p 305:

Market forces create market value, so the analysis of market forces that have a bearing on the determination of highest and best use is crucial to the valuation process. When the purpose of an appraisal is to develop an opinion of market value, highest and best use analysis identifies the most profitable, competitive use to which the property can be put.

The highest and best use of a specific parcel of land is not determined through subjective analysis by the property owner, the developer, or the appraiser; rather, highest and best use is shaped by the competitive forces within the market where the property is located. Therefore, the analysis and interpretation of the highest and best use is an economic study and a financial analysis focused on the subject property.

In all valuation assignments, opinions of value are based on use. The highest and best use of a property to be appraised provides the foundation for a thorough investigation of the competitive position of the property in the minds of market participants. Consequently, highest and best use can be described as the foundation on which market value rests. (Emphasis added)

Each party has analyzed the highest and best use of the subject. Mr. Genzink determined the highest and best use as vacant to be commercial property. His conclusion as improved property was its existing use as a “Motel/Hotel.” Ms. Stokes determined the highest and best use of the subject as vacant is as commercial use. She determined the highest and best use of the property as improved is as a “Hotel.” So the consensus is that as vacant the highest and best use is commercial. And while there is agreement that the highest and best use as improved is as a

¹⁰ A higher capitalization rate typically results in a lower market value.

hotel, Mr. Genzink in his testimony specifically discussed the difficulty of making that determination with regard to the subject property. In answering a specific question about the highest and best use he testified that:

The difficulty as to how to classify this, because we say it's a limited-service hotel, so I want to be very clear about what we're trying to accomplish in saying that. The building was originally constructed as a full-service hotel, and when you look at the definitions of what is a full-service hotel, it will have hotel rooms, it will have a full-service restaurant, conference, meeting space. . . . we have interior corridors, we have an indoor pool, we have meeting space, we have kitchen, full kitchen for restaurant, we have a breakfast area, conference rooms. . . . And it's important that we understand that, that physically we are similar to those type of hotels. . . . So when you look at full-service hotels that are operating efficiently, they're going to get more other income; our hotel is not getting that. So it's operating more as a limited-service hotel. . . . So this is a blend, if you want to call it –and I don't have the right term – it is a blend of full-service and limited-service. So it's operating more as a limited-service, but the physical plant represents full-service. . . . If I strictly used limited-service hotels with exterior corridors, no meeting space, no kitchens, I don't have to insure that, I don't have to have expenses for those items, it's a very different property, so I don't think that would be of good comparison. (*Trial Transcript*, Volume 2, pp 250-252)

This characterization deliberately distinguishes the subject from properties within the same general category and it begs the question from a valuation perspective as to how to deal with full-service attributes when the property is used in a limited-service capacity. This discrepancy results in a high income-to-expense ratio when analyzing the actual income and expense of the subject and ultimately results in lower net income.

While not one of the factors listed above alone may account for a purported loss of income, collectively, the same cannot be said. This means that the purchaser of this property is going to consider all these external and internal factors. In order to account for these factors, a potential purchaser will look to an appraisal methodology that best addresses these issues. In this case, four values were developed. Two of those are based on a sales comparison approach, while the other two are based on an income capitalization approach.

Respondent's sales comparison approach is based on the sales of limited-service hotels. The theory applied is that the subject is used as a limited-service hotel and while it may have the physical attributes to provide a full array of services, it does not provide these services. The property functions like a limited-service motel.

Petitioner's sales comparison approach is based on the sales of full-service hotels. The theory is that because the subject has all the physical attributes of a full-service hotel and many of the fixed expenses of a full-service hotel, it should be compared to full-service hotels. But the actual revenue generated by the subject property is significantly less than the comparable properties, ostensibly due to the deficiencies cited above. This revenue discrepancy when quantified in the RevPAR is used as one important adjustment in the sales comparison study. This process then accounts for the similarities between the subject property and the other full-service facilities while also accounting for the dissimilarities.

Both parties had prepared income capitalization approaches. Respondent relied upon a direct capitalization method. This method analyzed and adjusted the actual income but relied on market expenses. Respondent ignored actual expenses because when these were compared to market expenses they constituted what was felt to be an excessively higher expense-to-income ratio. In the opinion of Respondent this was due in part to poor management. The net income conclusions were capitalized using a rate derived from the sales of limited-service hotels.

Petitioner employed a variation of the direct capitalization methodology. Petitioner utilized a gross income multiplier. By capitalizing the gross revenue, the expenses are not as great a factor. But by using a multiplier extracted from sales, the actual income stream is compared to other income streams. Through the use of RevPAR as a unit of comparison, the multipliers are narrowed to fit the subject property. This accounts for the lack of income generation in the subject as compared to properties with like attributes.

The distinguishing factor between the approaches of both parties is Petitioner's heavy reliance on the revenue stream generated by the subject property in both its sales comparison and its income capitalization approaches.

Both parties relied on a publication generated by Rushmore & Baum, *Hotels & Motels: Valuations and Market Studies*, (Chicago, Ill: Appraisal Institute, 2001), which states regarding the use of the sales comparison approach with regard to hotels:

The sales comparison approach often provides highly supportable value estimates for homogeneous properties such as vacant land and single-family homes when the adjustments are few and relatively simple to compute. For larger, more complex properties such as office buildings, shopping centers, and hotels, the required adjustments are often numerous and difficult to estimate.

For example, assume an appraiser is valuing a motel property by comparing it with a similar motel across the street that was sold last year. In this case the subject differs from the comparable in the following ways:

- Seller will take back purchase-money financing
- Different franchise affiliation
- Better visibility
- More parking facilities
- Larger restaurant and smaller lounge
- Enclosed swimming pool
- Higher-grade furnishings
- Two vanity sinks per guest room

These are just a few of the many potential differences for which adjustments will be needed to make the comparable's indicated sale price reflect the subject's market value. In appraising lodging facilities, the adjustment process is often difficult and unsubstantiated by market data. . . .

Although the sales comparison approach seldom is given substantial weight in the hotel appraisal, it can be used to bracket a value or to check the value derived by the income capitalization approach. *Hotels & Motels, supra* at pp 316, 317

Again from *Hotels & Motels, supra* at p 319, the following is found regarding the income approach:

The income capitalization approach is generally the preferred technique for appraising income-producing properties because it closely simulates the investment rationale and strategies of knowledgeable buyers. The approach relates to most hotel and motel properties, which involve relatively high risks and are bought for investment purposes only. Most of the data used in the income capitalization approach is derived from the market, which reduces the need for unsubstantiated, subjective judgments.

As stated, as compared to Respondent, Petitioner places greater emphasis on the income approach with reliance upon the development of a gross income multiplier. With respect to the use of gross income multipliers the following discussion is found in the *The Appraisal of Real Estate* (Chicago, Ill: 12th ed, 2001) pp 546, 547:

Gross income multipliers (*GIMs*) are used to compare the income-producing characteristics of properties. Potential or effective gross income may be converted into an opinion of value by applying the relevant gross income multiplier. This method of capitalization is mathematically related to direct capitalization because rates are the reciprocals of multipliers or factors. Therefore, it is appropriate to discuss the derivation and use of multipliers under direct capitalization.

To derive a gross income multiplier for market data, sales of properties that were rented at the time of sale or were anticipated to be rented within a short time must be available. The ratio of the sale price of a property to its annual gross income at the time of sale or projected over the first year of ownership is the gross income multiplier.

Appraisers who attempt to derive and apply gross income multipliers for valuation purposes must be careful for several reasons. First, the properties analyzed must be comparable to the subject property and to one another in terms of physical, locational, and investment characteristics. Properties with similar or even identical multipliers can have very different operating expense ratios and, therefore, may not be comparable for valuation purposes.

Second, the term *gross income multiplier* is used because some of the gross income from a property or type of property may come from sources other than rent. A *gross rent multiplier* applies to rental income only.

Third, the appraiser must use similar income data to derive the multiplier for each transaction. For example, *GIMs* extracted from full-service rentals would not be applied to a subject property leased on a net basis. The sale price can be divided by either the potential or effective gross income, but the data and measure must be used consistently throughout the analysis to produce reliable results. Different income measures may be used in different valuation studies and appraisals, however. The income measure selected is dictated by the availability of market data and the purpose of the analysis. . . .

After the gross income multiplier is derived from comparable market data, it must be applied on the same basis it was derived. In other words, an income multiplier based on effective gross income can only be applied to the effective gross income of the subject property; and income multiplier based on potential gross income can only be applied to the potential gross income of the subject property. The timing of income also must be compared. If sales are analyzed using next year's income expectation, the multiplier derived must be applied to next year's income expectation for the subject property.

Petitioner's GIM evolves from comparable sales. As stated, that pool of sales exclusively included full-service hotels. While it is acknowledged that the income derived from the subject was at a level per room associated with a limited-service hotel, the comparable sales had attributes similar to the subject. Those attributes, while plausibly generating more income, generate more expenses as well. As to the subject property, the anticipated excess income has not been realized but the expenses remain fixed and attributable to the whole, used or unused, portions of the structure. To neutralize this impact, the only factor considered is the revenue.

Since there is this discrepancy between the revenue between the full-service hotel and the limited income of the subject, by using the full-service hotel data to adjust and develop the gross income multiplier, the uniqueness and similarities between the subject property and the comparable properties is being considered.

Conversely, when Respondent relies exclusively on limited-service hotels, attributes of the subject are not being accounted for when in fact they exist and impact value. By saying the subject is being used as a limited-service hotel and therefore the property must be compared to limited-service hotels ignores the unused space, unused attributes, and full service architectural features, and the impact that all of these have on revenue and expenses.

Petitioner at least acknowledges all the space and attributes at the outset and thereafter adjusts for the lack of use accordingly as described through the analysis of the revenue generation and with the ultimate development of a GIM adjusted through the use of the RevPAR. The Tribunal concludes that for these reasons, Petitioner's value conclusions are most persuasive.

Evidentiary Issues

Tax Tribunal Rule (TTR) 205.1252 requires that in entire tribunal cases each party must file a valuation disclosure. A valuation disclosure is defined in TTR 205.1101(m) as "documentary or other tangible evidence in a property tax appeal which a party relies upon in support of the party's contention as to the true cash value of the subject property." Both parties complied with these rules.

It should be noted that both parties raised numerous evidentiary issues at the hearing, addressing such concerns as hearsay evidence or the processes used in developing a party's respective valuation disclosure or the use of source materials. While there is a question as to whether the strict application of the Rules of Evidence applies to a Tribunal hearing, nevertheless it should be noted that both appraisers provided a "scope of work" in their appraisal. The "scope of work"¹¹ defines the extent of the research that goes into the preparation of the appraisal. Both

¹¹ Scope of work is defined in *The Dictionary of Real Estate Appraisal, 4th ed*, as:
The amount and type of information researched and the analysis applied in an assignment. Scope of work includes, but is not limited to, the following:

- o The degree to which the property is inspected or identified;
- o The extent of research into physical or economic factors that could affect the property;
- o The extent of data research; and
- o The type and extent of analysis applied to arrive at opinions or conclusions.

valuation experts, out of necessity, have exposure to a variety of source materials and custodians of source materials including other assessors, real estate agents and appraisers as supported by their testimony. To preclude reference to the professional conversations that naturally evolve, because of a best evidence theory, would greatly inhibit the flow of evidence during a hearing, particularly when the conversations and the sharing of information has naturally occurred out of the business of each expert and had been solicited to help each refine their opinions. For that reason, throughout the hearing, objections were dealt with as they arose so as to not inhibit the flow of relevant information. After a review of the transcripts, the Tribunal finds that the exclusion or acceptance of evidence has not materially affected the opinions of the experts or the Tribunal in rendering this decision.

Finally, much is made by both parties particularly as to the various decisions, assumptions and opinions made by each party's valuation expert, and bases, and the competence of these conclusions. The issues stem from professional standards requirements. Both Mr. Genzink and Ms. Stokes are well credentialed. Mr. Genzink has obtained an MAI designation and Ms. Stokes has obtained a level 4 assessor designation. Within their various professional organizations these designations show that each has put in the requisite time needed to obtain the highest designation. In the Tribunal's opinion each is competent and each understands the nuances associated with appraisal methodology. The work product of each is competent and well thought out. The difference between the two is not in what they are trying to achieve and the methods employed; rather, the difference lies in how each chooses to characterize the subject property and the assumptions used in reaching an end result. To this end they both complied with the Michigan Tax Tribunal rules 205.1101(m) and 205.1252. And they both in earnest provided "documentary or other tangible evidence," which, coupled with their professional judgment, assisted the Tribunal in determining the true cash value of the subject property.

In conclusion, both parties complied with the appropriate Tribunal, court and professional rules necessary to present a case. Both parties advocated strongly, and the result rested ultimately on the persuasiveness of one argument as opposed to another.

Conclusion

Based upon the above findings of fact and the applicable statutory and case law the values are as listed below:

2004

<u>ID Numbers</u>	<u>TCV</u>	<u>SEV</u>	<u>AV</u>	<u>TV</u>
41-14-05-276-011	\$930,000	\$465,000	\$465,000	\$465,000
41-14-05-276-009	\$ 70,000	\$ 35,000	\$ 35,000	\$ 35,000

2005

<u>ID Numbers</u>	<u>TCV</u>	<u>SEV</u>	<u>AV</u>	<u>TV</u>
41-14-05-276-011	\$877,800	\$438,900	\$438,900	\$438,000
41-14-05-276-009	\$ 72,200	\$ 36,100	\$ 36,100	\$ 36,100

2006

<u>ID Numbers</u>	<u>TCV</u>	<u>SEV</u>	<u>AV</u>	<u>TV</u>
41-14-05-276-011	\$920,000	\$460,000	\$460,000	\$460,000
41-14-05-276-009	\$ 80,000	\$ 40,000	\$ 40,000	\$ 40,000

JUDGMENT

IT IS ORDERED that the property's assessed and taxable values for the tax years at issue are as set forth in the *Summary of Judgment* and *Conclusions of Law* sections of this Proposed Opinion and Judgment unless modified by the Tribunal in the Final Opinion and Judgment.

Entered by Chief Clerk: April 8, 2009

Date Signed: April 8, 2009

By: John S. Gilbreath, Jr., Administrative Law Judge

This Proposed Opinion and Judgment ("Proposed Opinion") was prepared by the State Office of Administrative Hearings and Rules. The parties have 20 days from date of entry of this Proposed Opinion to notify the Tribunal in writing if they do not agree with the Proposed Opinion and why they do not agree (i.e., exceptions). After the expiration of the 20-day time period, the Tribunal will review the Proposed Opinion and consider the exceptions, if any, and:

- a. Adopt the Proposed Opinion as a Final Decision.
- b. Modify the Proposed Opinion and adopt it as a Final Decision.
- c. Order a rehearing or take such other action as is necessary and appropriate.

The exceptions are limited to the evidence submitted prior to or at the hearing and any matter addressed in the Proposed Opinion. There is no fee for the filing of exceptions. A copy of a party's written exceptions must be sent to the opposing party.