

STATE OF MICHIGAN  
DEPARTMENT OF LABOR AND ECONOMIC GROWTH  
MICHIGAN TAX TRIBUNAL

Golf Course Properties, LLC,  
Petitioner,

v

MTT Docket No. 301974

Tyrone Township,  
Respondent.

Tribunal Judge Presiding  
Patricia L. Halm

**OPINION AND JUDGMENT**

**INTRODUCTION**

This case is an appeal of the 2003 and 2004 true cash and taxable values established by Tyrone Township (“Respondent”) under the general property tax act (GPTA) for real property (the “subject property”) owned by Golf Course Properties, LLC (“Petitioner”). The subject property consists of 34.6 acres of vacant land and an 18-hole public golf course known during the tax years at issue as “The Preserve Golf Course.”<sup>1</sup> The subject property is located at 9218 Preserve Drive in Tyrone Township, Livingston County. The property’s parcel number is 4704-08-101-073.

The hearing in this matter was held on July 5, 2005. Fred Gordon, attorney at law, represented Petitioner; Bruce Little, assessor for Tyrone Township, represented Respondent.

The parties’ assertion as to the subject property’s 2003 and 2004 true cash values (TCV), state equalized values (SEV) and taxable values (TV) are as follows:

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<sup>1</sup> The golf course is now known as The Coyote Preserve Golf Club.

Year	R's TCV	P's TCV	R's SEV	P's SEV	R's TV	P's TV
2003	\$6,309,070	\$1,575,000*	\$3,154,535	\$687,500	\$3,154,535	\$687,500
2004	\$6,702,500	\$1,775,000	\$3,351,250	\$787,500	\$3,254,216	\$787,500

\* Although the transmittal letter for the appraisal of The Preserve indicates a 2003 TCV of \$1,575,000, page one of the appraisal indicates a 2003 TCV of \$1,375,000. Petitioner's Prehearing Statement indicates a 2003 value for the subject property of \$1,375,000, apparently omitting the value of the 34.6 acres of vacant land.

**FINAL VALUES**

The subject property's 2003 and 2004 true cash values (TCV), assessed values (AV) and taxable values (TV), as determined by the Tribunal are:

Year	TCV	AV	TV
2003	\$4,065,200	\$2,032,600	\$2,032,600
2004	\$4,065,200	\$2,032,600	\$2,032,600

**PROPERTY DESCRIPTION**

The subject property contains approximately 268.8 acres of land. Of this, 34.6 acres are undeveloped. The remaining 234.2 acres are utilized as an 18-hole public golf course known as The Preserve Golf Course (the "Preserve"). The Preserve is an Arnold Palmer Signature Course. The Preserve's first full year of operation was 2002. The structures on the golf course include a one-story, 8,902 square foot clubhouse, a 6,000 square foot equipment storage barn, a 3,180 square foot cart storage barn and a parking lot. The clubhouse contains a pro shop, a golfers' grill, a kitchen, restrooms and offices. (P-1, p1)<sup>2</sup> The clubhouse and parking lot were completed

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<sup>2</sup> In this Opinion and Judgment, "P" denotes Petitioner's exhibits and "R" denotes Respondent's exhibits.

in 2002 at a cost of approximately \$1,050,000. (P-1, p14)

The Preserve Corporation was the original owner and developer of The Preserve. In 1997, The Preserve Corporation purchased the excess 34.6 acres of land for \$242,200, or \$7,020 per acre. (P-1, p2) In that same year, The Preserve Corporation also purchased the land that was to become The Preserve, and an additional 144 acres. The purchase price was \$2,442,200, or \$5,907 per acre. (P-1, p87) In August 2001, TCF National Bank, The Preserve Corporation's largest and only secured creditor, began foreclosure proceedings. (T<sup>3</sup>, pp51-52) Prior to the date of the foreclosure sale, The Preserve Corporation filed for bankruptcy. On April 30, 2002, the bankruptcy case was dismissed and on July 15, 2002, TCF National Bank acquired title to the subject property via a sheriff's deed. (P-1, p2 and T, p52) TCF National Bank paid approximately \$6,000,000 for the property, which was an amount equal to the debt that encumbered the subject property. (T, p52) Thereafter, TCF National Bank placed the subject property "...into a wholly owned subsidiary, that being Golf Course Properties, LLC." (T, p52) On May 26, 2004, Petitioner sold The Preserve Golf Club, but not the vacant property, to Coyote II, LLC, for \$3,650,000. (R-1) This purchase price is also reflected in the property transfer affidavit, dated May 27, 2004. (R-2)

### **PETITIONER'S CASE**

Petitioner argues that the subject property's true cash value, as determined by Respondent, exceeds the property's actual true cash value. In support of this contention, Petitioner offered the following exhibits, which were admitted into evidence:

- P-1 A complete appraisal of The Preserve.

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<sup>3</sup> "T" denotes transcript.

- P-2 A supplemental appraisal of the “excess” 34.6 acres of vacant property.
- P-3 A copy of the subject property’s property record card.

Two witnesses testified on Petitioner’s behalf. The first witness was Mr. Donald D. Weime. Mr. Weime is an appraiser who has been in the appraisal business since 1964. Mr. Weime has held the MAI designation since 1974 (T, p11); he also holds the SRA, senior residential appraiser, designation. (T, p12) Given these qualifications, the Tribunal determined Mr. Weime to be an expert witness.

The appraisals of the subject property that were admitted into evidence were prepared by Mr. Weime. These appraisals were for the 2003 and 2004 tax years.

Mr. Weime described The Preserve as “...an upscale, very high quality golf course with a nice clubhouse and very challenging Class A type of golf course championship caliber.” (T, p22) The Preserve

...is located east off Linden Road and west of US-23 in the community of Tyrone Township, Livingston County, Michigan. This 18-hole daily fee course is built over approximately 160 acres with the balance of the site categorized as being environmentally sensitive and under state control. The golf course was developed in conjunction with a single-family residential subdivision that includes 73 home sites, the majority of which remain undeveloped and available. A road has been constructed between Linden Road to the west and the US-23 service drive to the east that provides access to this residential development as well as the subject golf course.

The site is extremely irregular in shape and includes both level terrain as well as areas with significant elevation changes.

...

Water for the golf course is provided by onsite wells. There is a community onsite sanitary sewage treatment system for the subdivision lots and the golf course clubhouse. The site also has access to electricity and telephone service.

...

All of the 18 holes are fully irrigated by an automatic irrigation system with as many as three lines running through the fairways.

...

Each hole has at least four sets of tees with an overall length of 6,700 yards which plays to a par 72 from the back tees...The practice facility lays out over 15 acres

and is also irrigated. (P-1, pp6-7)

Mr. Weime stated that The Preserve's first full year of operation was 2002 and that the clubhouse was built in 2002. (T, p18) Because 2002 was The Preserve's first full year, "...it was not a good year...." (T, p19) Mr. Weime stated that "2004 is really a little more meaningful in that it more closely parallels the actual experience of the subject property in terms of number of rounds...." (T, p15)

In appraising The Preserve, Mr. Weime considered the cost approach, the sales comparison approach and the income capitalization approach to value. Mr. Weime asserted that the cost approach is useless in valuing this type of property. (T, p37) In support of this contention, Mr. Weime stated that The Preserve cost almost \$10 million to construct and that it sold for only \$3.9 million a couple of years after it was completed. (T, p37)

Similarly, Mr. Weime did not rely on the sales comparison approach "...because when golf courses sell, they sell as a going concern...what they're purchasing is much more than real estate. They are purchasing a going concern, a business. Real estate, non-real estate, business, inventory, cart revenue, et cetera, et cetera." (T, p38) In the appraisal, Mr. Weime also described his logic for not using a sales comparison approach.

It is this appraiser's conclusion after interviewing many sellers and buyers of golf course facilities that the price is predominantly determined based upon the projected net income capabilities rather than a predetermined value per acre, or per hole. This prevents a highly reliable direct sales comparison approach utilizing physical units of comparison rather than economic units of comparison. (P-1, p78)

Thus, in formulating an estimate of value for The Preserve, Mr. Weime relied primarily upon the income capitalization approach to value. More specifically, Mr. Weime determined "...that the 'direct capitalization' technique would be most applicable to estimate the 'as is' value." (P-1, p51)

Mr. Weime applied the direct capitalization approach for both the 2003 and 2004 tax years. To arrive at The Preserve's 2004 income, Mr. Weime first estimated the number of golf rounds played. To do this, Mr. Weime "...conducted a fairly extensive survey of competing golf courses...." (T, p22 and P-1, pp55-62) Given this information, Mr. Weime estimated that a total of 25,000 rounds of golf (18-hole equivalents) will be played at The Preserve each year. (T, p27) Of this, 45% of the rounds will be played on the weekends and 55% will be played during the week. (T, p16) Mr. Weime estimated that The Preserve would charge \$65 per 18-hole round played on the weekend and \$60 for a round played on a weekday. (T, p16 and P-1, p61) Given the estimates of number of rounds played and charges per round, Mr. Weime projected annual income for weekend rounds to be \$731,250, while income from weekday rounds was \$825,000. Mr. Weime reduced the income from weekday rounds by ½ due to discounts for spring and fall play, senior play, twilight rates, etc. (P-1, p61) Thus, Mr. Weime estimated total 2004 revenue to be \$1,144,000. (P-1, p61)

The charges per round of golf include the use of a golf cart, which is mandatory at The Preserve. (T, p34) Of the charge per round, Mr. Weime allocated \$16 per round to use of a golf cart. (T, p27) Given these estimates, green fees were estimated to produce \$744,000 in revenue in 2004, with cart fees producing \$400,000. (T, pp15 and 16, P-1, p68) Revenue generated from other sources, such as from pro shop sales, was added to arrive at a gross income for 2004 of \$1,619,000. (T, pp16 and 17, P-1, p68) From this, Mr. Weime deducted the cost of goods sold to arrive at a gross margin of \$1,427,125. (T, p17 and 17, P-1, p68) Mr. Weime then deducted expenses, including \$70,200 in golf cart expenses, to arrive at a net operating income (NOI) of \$497,111. (T, pp17 and 18, P-1, p68)

Mr. Weime described the \$497,111 as the "...net income generated by the golf course

going concern....” (T, p25) In other words, “...a substantial portion of that net operating income is generated by personal properties, specifically golf cart rental...And golf cart rental is a huge number in the operation of golf courses. I mean, in our experience, it can range anywhere from 15 to 40 percent of the revenues...And we know that golf carts are not real property, they are personal property.” (T, p25) For this reason, Mr. Weime asserted that the income generated by golf cart rentals should not be attributed to the real estate. In support of this assertion, Mr. Weime cited the case of *Amway Grand Plaza Hotel v City of Grand Rapids*, (Docket No. 237807, November 26, 2001). According to Mr. Weime,

“...the key issue in that case is that the tribunal ruled that it’s entirely appropriate to either deduct a contributing value of the personal property from the value of the going concern or to deduct the income that is generated by the personal property before capitalizing the net operating income to identify the value of the real estate...And the *Amway* case says yes, it’s appropriate to deduct income attributable to the personal property if it’s identifiable.” (T, p33)

When asked whether the fact that use of a golf cart is required at The Preserve makes a difference in his analysis, Mr. Weime stated that it did not. (T, p36)

Therefore, before capitalizing The Preserve’s NOI of \$497,111, Mr. Weime subtracted the cart NOI (\$306,400) to arrive at an NOI for the real estate. (T, p26) Mr. Weime explained that to determine the cart NOI, cart expenses must be deducted from cart revenue. In the instant case, cart expenses are made up of the cart lease fee, as The Preserve leases its carts, and cart maintenance costs. According to Mr. Weime, The Preserve leases 78 carts at \$900 per cart. (T, p28 and P-1, p68) Cart maintenance costs are estimated at \$300 per cart per year, for an annual per cart expense of \$1,200. (T, p28) At 78 carts, total annual cart expenses equal \$93,600. (T, p28) By deducting this amount from total cart revenue of \$400,000, Mr. Weime arrived at an NOI attributable to carts of \$306,400. (T, p28) Finally, Mr. Weime subtracted the cart NOI (\$306,400) from the overall NOI (\$497,111) to arrive at an NOI attributable to the real estate of

\$190,711. (T, p29 and P-1, p71)

The final step in determining The Preserve's 2004 true cash value was to apply the appropriate overall capitalization rate to NOI attributable to real estate. Mr. Weime determined that a base cap rate of 10.25% was appropriate. (T, p29 and P-1, p75) Mr. Weime then "...added the loading effect of one-half of the tax rate per 1,000 and that got us to an overall capitalization rate of 12.0747." (T, p29 and P-1, p75) Application of this cap rate to the NOI attributable to the real estate resulted in a 2004 true cash value for The Preserve of \$1,579,426, which was rounded to \$1,575,000. If the cart income and expenses had not been deducted, Mr. Weime's estimation of The Preserve's "going concern" value would have been in excess of \$4,100,000. (T, p46)

When asked how he determined The Preserve's 2003 true cash value, Mr. Weime stated:

...that was an extremely unstable time in this golf course's history, and yet we felt that a knowledgeable purchaser/operator would recognize that it's in a transitional period, a period when it's trying to get to a stabilized situation. So what we did is we took the 2004 valuation or December 31<sup>st</sup>, 2003, and we simply discounted it back to a present value using a range of yield rates or discount rates between 13 and 16 percent, and we said that's a reflection of the risk that might be associated or considered appropriate by a purchaser as of December 31<sup>st</sup>, 2002, and when we applied that discount, we came with a range of 1,360,000 to 1,395,000, which we simply rounded to 1,375,000 for that time period. (T, p31)

Mr. Weime was then asked if "...the 13 to 16 percent discount was predicated upon what you would expect that a purchaser would have paid as of that time based upon a future income?" Mr. Weime replied "[y]es...I think that's what he would have paid for the real estate component recognizing that it would become more valuable in the future as the operations within this facility stabilize." (T, p31) To summarize, Mr. Weime's conclusion as to the value of The Preserve was \$1,375,000 for the 2003 tax year and \$1,575,000 for the 2004 tax year.

Having completed the explanation of his appraisal of The Preserve, Mr. Weime was

questioned about the contributing value of the 34.6 acre parcel of land. In his appraisal, Mr.

Weime describes this land as having

...no improvements upon it, other than the asphalt surface access road which has been named Lee Jones Road and a sign for The Preserve golf course. The site had been left vacant by the developer of the golf course with the intent being that it would be utilized to satisfy the Township's 'open space' requirements for some of the residential lots that were proposed elsewhere on the property. Inasmuch as the master deed for these lots has not been filed (although the roads and underground utilities have been installed), the theory is that these 34.6 acres could be developed separately and independently of The Preserve golf course. (P-2, p1)

Mr. Weime discussed the property with Respondent's planner and learned that the property is zoned Rural Estate. This zoning classification requires a minimum of 90,000 square feet, or 2.06 acres, per lot. (P-2, p2) Given this requirement, and the "severe topography of the site," Mr. Weime estimated that 16 home sites could be developed on the property. (P-2, p2)

To value this property, Mr. Weime used the sales comparison approach. Mr. Weime considered "...sales of other similarly zoned acreage parcels located throughout Livingston County as well as nearby Genesee County." (P-2, p2) Of these sales, Mr. Weime found two sales in Genesee County and four in Livingston County to be the most comparable. Using these sales, Mr. Weime concluded to a value of \$12,000 per acre for the undeveloped land. (P-2, p4)

However, Mr. Weime stated that the property's extremely irregular topography and extensive wetland areas must be considered when valuing the property. Mr. Weime discussed the property with a local real estate broker and was told that:

...whatever premium might be commanded by sites that enjoy unusual vistas as a result of these topographical changes would be more than offset by the difficulties of development and the additional expense that would be incurred to properly balance the site so as to maximize its development potential. In other words, there is little justification to purchase a site that, because of these difficulties, offers a much greater level of risk when there are so many other parcels available that could be developed with far less risk. (P-2, p5)

Because of these disadvantages, Mr. Weime believes that a 50% reduction in the per acre

value of the land is appropriate. Given this, Mr. Weime's final conclusion of value is \$6,000 per acre. At 34.6 acres, the parcel of property is worth \$207,600, which was rounded down to \$200,000. Mr. Weime stated that "[g]iven the limited market activity along with no evidence to the contrary, it is concluded that this value is equally appropriate..." for both the 2003 and 2004 tax year. (P-2, p5) Adding the value of the vacant land to the value of The Preserve, Mr. Weime's final conclusion of the subject property's 2003 true cash value is \$1,575,000 for the 2003 tax year and \$1,775,000 for the 2004 tax year.

Petitioner's next witness was Larry Czekaj. Mr. Czekaj is president of Golf Course Properties, LLC and senior vice president of TCF Bank. Mr. Czekaj testified as to the history of the subject property and how Golf Course Properties, LLC came to be the owner. Mr. Czekaj's testimony is summarized above in the "Property Description" section of this Opinion.

### **RESPONDENT'S CASE**

At the hearing, Respondent informed the Tribunal that it was in the unenviable position of having no money to defend its valuation of the subject property. (T, p3) Respondent had obtained the services of attorney Peter Goodstein. However, shortly before the hearing, Mr. Goodstein informed the Tribunal that he had been replaced by Respondent's assessor, Bruce A. Little. Respondent had also contracted with appraiser Terrell R. Oetzel and had, in fact, obtained an appraisal of the subject property. But because Respondent was unable to pay Mr. Oetzel for his testimony, Mr. Oetzel did not appear at the hearing and his appraisal was not admitted into evidence. Instead, Mr. Little was Respondent's sole witness. Mr. Little's testimony was limited to a discussion of the purchase agreement for The Preserve (R-1) and the property's transfer affidavit (R-2). According to both documents, the real estate known as The Preserve was sold on

or about May 27, 2004, for \$3,650,000. The Preserve's personal property was sold for an additional \$250,000. (R-1)

At the hearing, Respondent offered the following exhibits, which were admitted into evidence:

- R-1 First Addendum to Real Estate Purchase and Sale Agreement, dated May 26, 2004.
- R-2 Subject property's Property Transfer Affidavit, dated May 27, 2004.

### **FINDINGS OF FACT**

1. General findings of fact.

The subject property is located at 9218 Preserve Drive in Tyrone Township, Livingston County. The property's parcel number is 4704-08-101-073. The subject property contains 268.87 acres. Of this, 34.6 acres are undeveloped land, purchased by the previous owner in 1997 for \$242,200, or \$7,020 per acre. Also in 1997, the previous owner purchased approximately 413 acres for \$2,442,200, or \$5,907 per acre. This purchase included the 234.2 acres eventually devoted to The Preserve.

The Preserve is an 18-hole public golf course, developed in conjunction with a single-family residential subdivision that includes 73 home sites, the majority of which remain undeveloped and available. The golf course is an Arnold Palmer Signature Course, known as The Preserve Golf Club. 2002 was The Preserve's first full year in operation. The Preserve's facilities include a one-story, 8,902 square foot clubhouse, a 6,000 square foot equipment storage barn, a 3,180 square foot cart storage barn and a parking lot. The clubhouse contains a pro shop, a golfers' grill, a kitchen, restrooms and offices. The original cost of the clubhouse and parking

lot was approximately \$1,050,000.

The Preserve Corporation was the original owner and developer of The Preserve. In August 2001, TCF National Bank, The Preserve Corporation's largest and only secured creditor, began foreclosure proceedings. Prior to the date of the foreclosure sale, The Preserve Corporation filed for bankruptcy. On April 30, 2002, the bankruptcy case was dismissed and on July 15, 2002, TCF National Bank acquired title to the subject property via a sheriff's deed. TCF National Bank paid approximately \$6,000,000 for the property, which was an amount equal to the debt that encumbered the subject property. Thereafter, TCF National Bank placed the subject property "...into a wholly owned subsidiary, that being Golf Course Properties, LLC." On May 26, 2004, Petitioner sold The Preserve Golf Club, but not the undeveloped property, to Coyote II, LLC, for \$3,650,000. This purchase price is set forth in the property transfer affidavit, dated May 27, 2004. (R-2) The Preserve's personal property was sold for an additional \$250,000.

Use of golf carts is mandatory at The Preserve. The Preserve does not own its golf carts; instead, it leases 78 carts at a cost of \$900 per cart. There are also maintenance costs associated with use of the carts. These costs are estimated at \$300 per cart per year, for an annual per cart expense of \$1,200. At 78 carts, total annual cart expenses equal \$93,600.

2. Findings of fact pertaining to the valuation of the 34.6 acres of undeveloped land.

The Tribunal finds that the highest and best use of the 34.6 acres of undeveloped land is residential use, specifically single-family housing. The Tribunal further finds that the valuation methodology that is the most reliable indicator of the 34.6 acres of undeveloped land's true cash value for the tax years at issue is the method utilized by Mr. Weime, the sales comparison approach. While there were not a lot of comparable sales to consider in Tyrone Township, the ones that Mr. Weime found "...generally suggested overall prices of 9 to near \$20,000 per acre."

(T, p47) In arriving at a final value, Mr. Weime considered only those sales located within Livingston County and reasonably close to the US-23 corridor, as is the undeveloped land. These sales indicated a range in value of \$10,256 to \$13,879 per acre. Mr. Weime concluded to a per acre value for this property near the midpoint of the range, or \$12,000. The Tribunal finds this conclusion credible.

The only adjustment Mr. Weime made to account for the differences between the comparable properties and the undeveloped land was a 50% reduction for “extremely irregular topography.” (P-2, p5) Mr. Weime considered the property’s topography to be a risk to a potential developer and discounted the property’s value by 50%. Mr. Weime acknowledged that “...quantifying a loss in value attributable to the perceived risks associated with development of the subject is difficult at best.” (P-2, p5) This may be true; however, Mr. Weime provided no support or explanation as to how he determined that a 50% discount rate was appropriate.

While Mr. Weime considered the property’s topography to be a disadvantage to development, he also seemed to recognize that the property’s unusual topography could be an asset. Mr. Weime discussed the property’s topography with a “broker active in this market” and learned that “whatever premium might be commanded by sites that enjoy unusual vistas as a result of these topographical changes would be more than offset by the difficulties of development and the additional expense that would be incurred to properly balance the site so as to maximize its development potential.” (P-2, p5) Thus, while recognizing that the property might command a premium due to the topography, Mr. Weime made no adjustments to the comparable sales. As a result, Mr. Weime did not “offset” the additional development expense. Instead, he merely cut the price per acre in half.

Additionally, while Mr. Weime acknowledged that the property has access to the public

sewer system, he made no adjustments to the comparables' sale prices to account for their lack of such access. "Admittedly, none of these comparables has public utilities available; however, the density of development permitted upon these parcels is very similar to the subject such that little adjustment is required." (P-2, p4) The Tribunal does not agree and finds no merit in this statement. Moreover, this is inconsistent with Mr. Weime's testimony during cross-examination wherein he agreed that a sewer system adds value to these potential "lots." (T, p48)

The Tribunal finds the fact that Mr. Weime made no other adjustments to the comparables' sale prices troubling. Several of Mr. Weime's comparable sales occurred in 2000, yet he made no adjustment for date of sale. It appears to the Tribunal that Mr. Weime made the only adjustment, albeit unsupported, that would negatively impact the property's value while ignoring the adjustments that would enhance the property's value.

Another area of concern is that, according to Mr. Weime, The Preserve Corporation acquired this property in 1997 for \$242,200, or \$7,020 per acre. (P-1, p2) Mr. Weime did not explain why, six years later, this property would have decreased in value by \$1,020 per acre, or 11.6%.

For these reasons, the Tribunal does not find Mr. Weime's 50% reduction in the price per acre credible. Indeed, giving consideration to the adjustments that enhance the property's value, the Tribunal finds the midpoint value, \$12,000, a reasonable per acre value. Support for this conclusion is found in Mr. Weime's first comparable sale. This sale occurred in June 2004 and resulted in a sale price of \$19,318 per acre. The property that was the subject of this sale is in close proximity to the subject property, albeit in Genesee County, and is also serviced by public sewers. Unlike Mr. Weime's other comparable sales, this property's topography is similar to that of the subject property: undulating with some wetlands. This comparable sale only differs

from the subject property in that its zoning permits a maximum density of 1.25 units per acre, about 2.5 times the density of the subject property. Given that this is the only reported difference, Mr. Weime's 50% reduction means that the density restrictions account for the entire \$13,318 difference between the sales price and Mr. Weime's per acre value conclusion. Put another way, Mr. Weime would have one believe that the ability to place 2.5 units on a 2-acre parcel makes that property three times more valuable than the subject property. The Tribunal does not find this conclusion credible.

The Tribunal concludes that the 2003 and 2004 true cash value of the 34.6 acres of undeveloped land is \$415,200.

3. Findings of fact pertaining to the valuation of The Preserve.

The Tribunal finds that the highest and best use of the real estate known as The Preserve is as a golf course. According to the Appraisal Institute's publication, Analysis and Valuation of Golf Courses and Country Clubs, "[t]he income capitalization approach to value is based on the economic principal that the value of an income-producing property is the present worth of anticipated future benefits." *Id.* at p117. Because "[a] golf course is typically acquired for its income-producing capacity," the Tribunal finds the income capitalization approach to be the valuation methodology that is the most reliable indicator of The Preserve's true cash value. *Id.* at p119. However, for the reasons set forth below, the Tribunal finds that the income capitalization approach, as presented by Mr. Weime, is flawed and does not accurately represent The Preserve's true cash value. Therefore, the Tribunal finds that the most reliable indication of The Preserve's true cash value is the purchase price paid for the property in the transfer of ownership completed on May 26, 2004.

As Mr. Weime recognized, there are two basic techniques that may be employed in the

income capitalization approach. (P-1, p51)

Depending on the circumstances, appraisers apply direct capitalization or yield capitalization techniques such as discounted cash flow analysis.

Direct capitalization is performed by applying an overall capitalization rate to a single year's net operating income. This technique is appropriate for valuing an existing property when it's current revenue and income equal or approximate the stabilized income level at market rates.

Sometimes the pattern of projected income is irregular, as it is during the absorption period of a new or modified facility. An existing facility that has not reached stabilization or is not stable due to internal or external causes may also have an irregular income pattern. In these cases a yield capitalization technique like discounted cash flow (DCF) analysis **is most appropriate**. (Emphasis added.) Analysis and Valuation of Golf Courses and Country Clubs, at 117.

Mr. Weime appeared to agree that a DCF analysis was most appropriate in the instant case. In that regard, Mr. Weime stated:

It is anticipated that a knowledgeable purchaser as of 12/31/02 would recognize that although the subject was not operating at stabilized levels, given proper management, it would achieve stabilized levels and corresponding stabilized income in the foreseeable future. Consequently, concluding a value for the subject based upon actual revenues generated as of 12/31/02 is considered inappropriate in that these are not reflective of stabilized income. Rather, it is anticipated that a purchaser would look to the future in anticipation of the revenue that this facility would generate once it did reach stabilized levels and, based upon this projection, a future value would be estimated which would be discounted to a present value as of December 31, 2002, to reflect the risk and expense associated with purchasing a golf course that was not yet operating at stabilized levels. (P-1, p70)

Mr. Weime also stated that “[a]lthough the number of rounds in the subject has increased steadily over the past three years, this reflects the fact that the subject is of new construction having opened in 2001. Given the subject’s age and market conditions, it is concluded that it has not yet reached stabilized levels of operation particularly as it relates to income.” (Emphasis added.) (P-1, p58) And, “[b]ased upon actual historical performance with support provided by competing developments and industry standards, it would appear that the number of rounds

played in the subject for 2003 represents a stabilized level of play for this facility. Nevertheless, to generate this volume of play, significant discounts were offered such that income reported for 2003 is not considered to be at stabilized levels.” (Emphasis added.) (P-1, p59) And finally, in discussing average revenue per round, Mr. Weime states that “[i]n short, although the revenue per rounds being generated by the subject favors the lower end of the range, it is anticipated that these lower revenues are a result of the relatively new age of the subject and the fact that this has not yet achieved stabilized levels of operation.” (P-1, p61) The Tribunal notes that the date of Mr. Weime’s appraisal was May 26, 2004. Thus, given Mr. Weime’s statements, the Tribunal cannot help but conclude that The Preserve had not yet achieved stabilized levels of operation in 2004.

In completing his income capitalization approach, Mr. Weime ignored the fact that The Preserve’s income had not reached stabilization and utilized the direct capitalization approach based upon estimated income and expenses for 2004. “Given that it appears that the subject has achieved stabilized levels of play, it is concluded that for 2004 stabilized income will be achieved.” (P-1, p62) (Emphasis added.) The Tribunal finds this analysis to be flawed and internally inconsistent. The Tribunal further finds that the appropriate income capitalization technique to utilize was the discounted cash flow technique.

Moreover, the Tribunal is troubled by several statements and assumptions made by Mr. Weime. For example, during direct examination, Mr. Weime was asked “...were the green fees higher or lower than the actuals... Were they higher than the actual revenues experienced in prior years?” (T, p21) Mr. Weime responded that the stabilized estimate was higher than the actual. (T, p21) Yet, a review of the appraisal indicates actual 2003 revenues of \$1,284,345 (P-1, p52) and estimated revenues of \$1,269,065. Thus, while it may be true that actual green fees

were less than estimated in 2003, just the opposite is true for gross revenue. This exchange was, at best, confusing.

In estimating expenses, Mr. Weime discussed pro shop sales, stating that “[f]ull service ‘upscale’ pro shops generate as much as \$6.00 to \$8.00 per round.” In 2003, sales at The Preserve generated \$4.08 per round. Mr. Weime stated that:

It is assumed that this lower than expected performance is a result of management limiting inventory which is a prudent move given the financial history of the subject for the past few years. Although it might be argued that sales from the pro shop could be increased significantly, as indicated, this does not represent a significant profit center because the cost of sales falls very near the revenue generated. (P-1, pp62-63)

As such, Mr. Weime estimated 2004 pro shop sales at \$4.00 per round. The Tribunal finds this inconsistent. Even though limiting inventory may have been a prudent move, this is not something that would have occurred at a stabilized facility. Mr. Weime cannot assume that the facility is stabilized in 2004 and, at the same time, base his sales estimates on the sales from a clearly troubled, unsettled year. Mr. Weime’s decision in this area is even more confusing given that he repeatedly referred to The Preserve as an upscale facility, yet settled on a sales figure more representative of a less prestigious course.

Mr. Weime’s analysis as to food and beverage sales is even less credible. Mr. Weime

...was advised by a number of sources that in high-end courses, food and beverage cost of sales can be as low as 30%, however, this percentage is related to the end sale price. The higher the prices, the lower the cost of sales. For upscale facilities, a cost of sales in the range of 30% appears typical while a cost of sales ranging from 40% to 45% in less prestigious courses is also typical. The cost of sales reported in the subject for 2003 at 42.5% is considered a stabilized indication as to this expense in the subject. (P-1, p63)

Again, while recognizing that The Preserve is an upscale facility, Mr. Weime chose to use cost of food and beverage sales that would be typical of a less prestigious course.

In determining total green fee and golf cart revenues, the Tribunal finds that Mr. Weime

made two critical errors. First, Mr. Weime reduced the revenue generated from weekday play by 50% "...to reflect reduced revenues resulting from continued discounts for spring and fall play, senior play, twilight rates, etc." (P-1, p61) Mr. Weime did not explain how he arrived at this percentage. Instead, Mr. Weime discussed spring and fall rates, which are in the range of 25%, and senior and junior rates, which frequently approach 50%. Importantly, Mr. Weime stated that "[f]or 2004, the average revenue per round should increase significantly due to an increase in green fees and a drastic reduction in available discounts." (Emphasis added.) (P-1, p60) Thus, the Tribunal finds Mr. Weime's 50% reduction in revenues from continued discounts unsupported and not credible.

Mr. Weime's other critical mistake was "...to remove the contributory net income from the cart rental operation from the net income previously concluded for the golf course as a going concern...." (P-1, p70) Mr. Weime's reliance on *Amway Grand* in this decision is misplaced. The Tribunal notes that Mr. Weime was the appraiser in *Novi Golf Associates v City of Novi*, (Docket No. 260722, May 30, 2001). In that case, Mr. Weime took the same approach to golf cart revenue and it was rejected by the Tribunal. The Tribunal held that "[c]art rental revenue and income from the restaurant/banquet and pro shop businesses is to be *included* in estimated gross revenues, from which net operating income (NOI) is derived for capitalizing into a value for the real property." The Tribunal also held that "[t]he undersigned concurs in the City's argument that 'where the true cash value of the underlying real property is increased by the business conducted on the real property, all such income generating activities must be considered in evaluating true cash value.'" It is further noted that Judge Michael Stimpson signed the final Opinion and Judgment in *Novi Golf Associates* and was also the presiding judge in *Amway Grand*.

Support for including golf cart revenue in the income capitalization approach to valuation is found in the Appraisal Institute's publication, Analysis and Valuation of Golf Courses and Country Clubs. According to this publication, "[g]ross revenue can be derived from a number of sources depending on the services and products offered by the specific facility. These sources can be grouped into two general categories: course utilization and ancillary income." *Id.* at p 123. "Ancillary revenues may come from all or some of the following sources: golf car rental, driving range, food and beverage sales, and other sources - e.g. tournament fees, instruction, locker and equipment rental, miscellaneous." *Id.* at p127.

The Tribunal notes that Mr. Weime concluded that if the golf cart revenue were considered, the value of The Preserve would be in excess of \$4,100,000.

At the hearing, Respondent presented evidence, through a Property Transfer Affidavit (R-1) and a First Addendum to a Real Estate Purchase and Sale Agreement (R-2), that The Preserve was sold on May 27, 2004 for \$3,650,000. This Agreement states, in paragraph 3, that this purchase price is attributable to the purchase of the real property. Petitioner offered no explanation as to why The Preserve sold for this amount when the sworn testimony of its appraiser was that The Preserve was worth only \$1,575,000 as of the 2004 tax day, barely six months earlier.

Finally, in his cost approach, Mr. Weime determined that the value of the subject property's land is \$6,000 per acre. (P-1, p89) If this value is applied to the 234.2 acres of The Preserve, the result is \$1,405,200. This exceeds The Preserve's 2003 true cash value, as determined by Mr. Weime, and is only slightly less than The Preserve's 2004 true cash value. In other words, Mr. Weime's value conclusions would lead one to believe that the structures, particularly the clubhouse, are worthless. The Tribunal does not find this credible given the fact

that the clubhouse was completed in 2002 at a cost of a little more than a million dollars.

Additionally, on page 87 of his appraisal, Mr. Weime states that “[i]t is interesting to note that the subject was originally acquired in 1997. The acquisition included a total of 413 (plus or minus) acres acquired at a total reported price of \$2,442,200. This equates to an overall average purchase price per acre of \$5,907.” (P-1, p87) According to the purchase price, the value of The Preserve’s land in 1997 was \$1,588,983. To put this in perspective, it is important to note that Mr. Weime’s conclusion of true cash value for The Preserve, with all of its improvements, was \$1,375,000 in 2003 and \$1,575,000 in 2004. Again, if one were to believe Mr. Weime, The Preserve’s improvements are worthless and the land is worth substantially less in 2003 and 2004 than it was in 1997. This is implausible and totally lacking in credibility and common sense.

The Tribunal further finds Mr. Weime’s 13 to 16 percent discount rate, used to determine The Preserve’s 2003 value, not credible. This discount rate was determined to be “...a reflection of the risk that might be associated or considered appropriate by a purchaser as of December 31<sup>st</sup>, 2002....” (T, p31) Yet, at the same time, Mr. Weime states that “...we felt that a knowledgeable purchaser/operator would recognize that it’s in a transitional period, a period when it’s trying to get to a stabilized situation...I think that’s what he would have paid for the real estate component recognizing that it would become more valuable in the future as the operations within this facility stabilize.” (T, p31) According to Mr. Weime, the facility stabilized the following year, in 2004. Thus, the 13 to 16 percent discount rate is excessive.

Moreover, when asked about The Preserve’s 2005 true cash value, Mr. Weime stated that “...I can’t imagine there would have been a significant change in value a year later.” (T, p32) When asked whether “...your opinion would be that a value as of December 31<sup>st</sup>, 2005 would be comparable to the value as of December 31<sup>st</sup>, 2003 and 4,” Mr. Weime replied that that was

reasonable. This indicates to the Tribunal that Mr. Weime believed that the value of The Preserve was fairly constant throughout 2003, 2004 and 2005, and that, in spite of his assertions, a 13 to 16% discount for 2003 is unjustified. Lacking credible evidence as to an appropriate reduction in value for the 2003 tax year, the Tribunal must find that The Preserve's 2003 true cash value is the same as its 2004 value, \$3,650,000.

For these reasons, the Tribunal finds that Petitioner has not met its burden of proof in establishing the subject property's 2003 and 2004 true cash value. The Tribunal stresses that even though Mr. Weime's exclusion of the golf cart revenue is erroneous, this was only one of several reasons why Petitioner failed in its burden of proof. Even if the Tribunal had determined that Mr. Weime's approach to golf cart income was correct, Petitioner still would not have met its burden of proof.

In conclusion, the Tribunal finds that the \$3,650,000 purchase price is the best indicator of The Preserve's 2003 and 2004 true cash value. As previously stated, the Tribunal finds that the 2003 and 2004 true cash value of the 34.6 acres of undeveloped land is \$415,200. Therefore, the 2003 and 2004 true cash value of the subject property is \$4,065,200.

### **CONCLUSIONS OF LAW**

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its true cash value.

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not...exceed 50%.... Const 1963, art 9, sec 3.

The Michigan Legislature has defined "true cash value" to mean

...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, and not at auction sale except as otherwise provided in this section, or at forced sale. MCL 211.27(1); MSA 7.27(1).

The Michigan Supreme Court has held that "[t]rue cash value" is synonymous with "fair market value." *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450; 221 NW2d 588 (1974).

Under MCL 205.737(1); MSA 7.650 (37)(1), the Tribunal must find a property's true cash value in determining a lawful property assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981). The Tribunal is not bound to accept either of the parties' theories of valuation. *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 377 NW2d 908 (1985). The Tribunal may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination. *Meadowlanes Limited Dividend Housing Association v City of Holland*, 437 Mich 473, 485- 486, 473 NW2d 636 (1991). A similar position is stated in *Tatham v City of Birmingham*, 119 Mich App 583; 326 NW2d 568 (1982):

The Tax Tribunal is not required to accept the valuation figure advanced by the taxpayer, the valuation figure advanced by the assessing unit, or some figure in between these two. It may reject both the taxpayer's and assessing unit's approaches.

A proceeding before the Tax Tribunal is original, independent, and de novo. MCL 205.735(1); MSA 7.650 (35)(1). The Tribunal's factual findings are to be supported by competent, material, and substantial evidence. *Antisdale v City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co v Department of Treasury*, 185 Mich App 458, 462-463; 452 NW2d 765 (1990). Substantial evidence must be more than a scintilla of evidence,

although it may be substantially less than a preponderance of the evidence. *Jones and Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

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 Commission*, 3 Mich App 170; 141 NW2d 699 (1966), aff'd 380 Mich 390 (1968). 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*, p 277.

In the Findings of Fact section of this Opinion and Judgment, the Tribunal found that the income capitalization approach to valuation is the approach that would most accurately determine The Preserve's true cash value. However, this approach, as performed by Mr. Weime, was flawed to the extent that the Tribunal found Mr. Weime's conclusions as to The Preserve's true cash value unreliable and not credible. As previously stated, the Tribunal would have drawn this same conclusion even if Mr. Weime had included the income generated from golf cart rentals in The Preserve's NOI. For this reason, the Tribunal will not expand upon its position that Petitioner's reliance on *Amway Grand* is misplaced.

In the instant case, Petitioner argues that:

The Respondent in this case failed to meet its burden of proof by failing to establish by a quantum of proof equal to that of Petitioner that any of the assessments are less than 50% of the true cash value of the subject property. Therefore, the Tribunal should find Respondent's evidence inadequate in satisfying its burden of proof as the Tribunal found in *Eversdyk v City of Wyoming*, 10 MTT 664 (1994, MTT Docket No. 199925 (April 21, 1999), stating at page 675:

Respondent's valuation work was found to be inadequate and unable to stand on its own.

Respondent failed to meet its burden of proof that the assessments are 50% of the true cash value. The only evidence presented by Respondent is the Transfer Affidavit indicating a sale of the going concern of \$3,650,000. There is no evidence as to the TCV component of the real property to support its assessment or rebut Petitioner's TCV contention. (Petitioner's Post Hearing Brief, p8)

The Tribunal finds Petitioner's arguments wrong on several counts. First, Petitioner has misconstrued the burden of proof. "The petitioner has the burden of establishing the true cash value of the property...." MCL 205.737(3). In *Kar v Hogan*, 399 Mich 529, 251 NW2d 77 (1975), the Michigan Supreme Court discussed the definition of "burden of proof."

There are two separate meanings. One of these meanings is the **burden of persuasion** or the risk of nonpersuasion. The other is the **burden of going forward** or the risk of nonproduction.

Generally the **burden of persuasion** is allocated between the parties on the basis of the pleadings. The party alleging a fact to be true should suffer the consequences of a failure to prove the truth of that allegation. A plaintiff has the **burden of proof** (risk of nonpersuasion) for all elements necessary to establish the case. This burden never shifts during trial. Therefore, plaintiffs, who alleged the existence of undue influence, bore the ultimate burden of persuading the trier of fact that undue influence was used to procure the deed.

Initially, the **burden of going forward** with evidence (the risk of nonproduction) is upon the party charged with the burden of persuasion. However, the **burden of going forward** may be shifted to the opposing party.

"We have seen something of the mechanics of the process of 'proceeding' or 'going forward' with evidence, viewed from the point of view of the first party who is stimulated to produce proof under threat of a ruling foreclosing a finding in his favor. He may in respect to a particular issue pass through three states of judicial hospitality; (a) where if he stops he will be thrown out of court; (b) where if he stops and his adversary does nothing, his reception will be left to the jury; and (c) where if he stops and his adversary does nothing, his victory (so far as it depends on having the inference he desires drawn) is at once proclaimed.

Whenever the first producer has presented evidence sufficient to get him to the third stage and the burden of producing evidence can truly be said to have shifted, his adversary may in turn pass through the same three stages. His evidence again may be (a) insufficient to warrant a finding in his favor, (b) sufficient to warrant a finding, or (c) irresistible, if unrebutted."

The immediate legal effect of a presumption is procedural; it shifts the **burden of going forward** with the evidence relating to the presumed fact. Once there is a

presumption that fact C is true, the opposing party must produce evidence tending to disprove either facts A and B or presumed fact C; if he fails to do so, he risks jury instruction that they must presume fact C to have been established. *Id.* at 540-541. (Citations omitted.) (Emphasis added.)

In the instant case, Petitioner had the burden of persuasion in establishing the subject property's true cash value. Petitioner did not meet this burden because Petitioner's appraisal was found to be unreliable and not credible. Petitioner also had the burden of going forward.

Petitioner met this burden in that the Tribunal found the subject property's assessment to be excessive. As a result, the Tribunal considered Respondent's evidence and found it to be credible and reliable. As previously stated, the Tribunal finds that the Transfer Affidavit and the purchase agreement are the most reliable evidence of The Preserve's true cash value.

Contrary to Petitioner's assertion, Respondent did **not** have a burden of proof to establish that the assessments are 50% of true cash value. Respondent has consistently acknowledged that the subject property is over assessed and, at the hearing, submitted evidence of The Preserve's true cash value, which was substantially less than that indicated by the property's assessments. Moreover, the Transfer Affidavit was not the only evidence of value submitted by Respondent (R-2); Respondent also submitted a copy of the purchase agreement for The Preserve (R-1).

Petitioner's assertion that the Transfer Affidavit and the purchase agreement represent the purchase price of the "going concern" of The Preserve is simply incorrect. The Transfer Affidavit clearly states that the "purchase price of the real estate" is \$3,650,000 (R-2) The purchase agreement is even more definitive, stating that "[t]he Purchase Price shall be Three Million Nine Hundred Thousand and 00/100 Dollars (U.S. \$3,900,000.00) of which \$3,650,000 shall be attributable to the purchase of the real property and buildings by Coyote II, LLC and \$250,000.00 shall be attributable to the purchase of the personal property and license used to operate the clubhouse, restaurant, and bar." (Emphasis added.) (R-1, p1) There is no indication

that the \$3,650,000 purchase price was for anything other than the real property and buildings.

Petitioner had an opportunity to provide evidence to the contrary and was unable to do so.

Petitioner may not now claim that this price was for the “going concern.” Petitioner argues that its evidence “...is the only probative evidence of TCV proffered at the hearing.” (Petitioner’s Post Hearing Brief, p9) This is simply not true.

In making the finding as to the subject property’s true cash value, the Tribunal recognizes that MCL 211.27 states that, “[b]eginning December 31, 1994, the purchase price paid in a transfer of property is not the presumptive true cash value of the property transferred.”

However, in the instant case, the Tribunal finds that the price paid for The Preserve in the May 26, 2004 transfer of ownership is the best indication of The Preserve’s 2003 and 2004 true cash value and that no credible evidence has been provided to the contrary.

Finally, the Tribunal is compelled to address a statement made by Petitioner in its Post Hearing Brief. In discussing the necessity of excluding golf cart income, Petitioner stated:

In short, it is crystal clear, income specifically generated from the rental of golf carts net of any related expenses is not capitalized in determining the TCV of the real property. Should the Tribunal decide otherwise, it is a disservice to the Respondent as the issue will be appealed to the Court of Appeals which, without question, will reverse and remand. The Respondent dismissed its attorney and appraiser in connection with the prosecution of this appeal because of the lack of available funding. The appeal of a Tribunal decision will require the Respondent to incur substantially more expense than the Tribunal hearing with no benefit in the final analysis. (Petitioner’s Post Hearing Brief, p7)

First, the Tribunal wants to stress the fact that it is cognizant of the cost to both Petitioner and Respondent of an appeal to the Tribunal and, if necessary, the subsequent appeal to the Court of Appeals. While it is unfortunate that Respondent was in a position that it was unable to fund its defense of this appeal, the Tribunal may not consider this fact. The Tax Tribunal Act requires the Tribunal to determine a property's true cash value. MCL 205.737(1). True cash value is

defined by law. MCL 211.27(1) Contrary to Petitioner's suggestion, the Tribunal cannot merely pick a number out of the air that it thinks will satisfy each party's needs as to true cash value so that no further appeal is undertaken. Moreover, the Tribunal cannot make a conclusion of law that it does not believe is correct simply to appease a party and deter a further appeal. While it may be true that Petitioner is in a better position to fund an appeal, the Tribunal finds the suggestion that this should influence the Tribunal's decision inappropriate.

### ***JUDGMENT***

IT IS ORDERED that the subject property's true cash, assessed and taxable values for the 2003 and 2004 tax years are those shown in the "Final Values" section of this Opinion and Judgment.

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 assessed and taxable values in the amounts as finally shown in the "Final Values" section of this Opinion and Judgment, subject to the processes of equalization, within 20 days of the entry of this Opinion and Judgment. 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 this Opinion and Judgment within 20 days of the entry of this 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 Order. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ii) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (iii) after December 31, 2004, at the rate of 2.07% for calendar year 2005, and (iv) after December 31, 2005, at the rate of 3.66% for the calendar year 2006.

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

MICHIGAN TAX TRIBUNAL

Entered: November 17, 2006

By: Patricia L. Halm, Tribunal Judge