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

Treetops Acquisition Company, LLC,
Petitioner,

v

MTT Docket No. 310043

Township of Dover,
Respondent.

Tribunal Judge Presiding
Patricia L. Halm

OPINION AND JUDGMENT

This case is an appeal of the true cash, assessed and taxable values established for the 2004[1] tax year by the Township of Dover ("Respondent") under the general property tax act (GPTA) for eight parcels of real property and one parcel of personal property (the "subject property"[2]) owned by Treetops Acquisition Company, LLC (TAC-LLC) ("Petitioner"). The subject property is known as "The Treetops Resort" and is located on Wilkerson Road, in Dover Township, Otsego County, Gaylord, Michigan.

A default hearing was held on October 19, 2006. Petitioner was represented by attorney Laura M. Hallahan, from the law firm of Hafeli, Staran, Hallahan, Christ & Dudek, P.C.; Respondent was represented by Sally Nowak, assessor for the Township of Dover.

The subject property's 2004 True Cash Values (TCVs), Assessed Values (AVs) and Taxable Values (TVs) as determined by Respondent's assessor and as set forth in Petitioner's Prehearing Statement are:

[1] Value as of tax day, December 31, 2003.
[2] This is the third time in nine years that the subject property, or portions thereof, has been under appeal. See MTT Docket Nos. 228620 and 276563.

Parcel No. 69-050-006-100-020-02

R's TCV	P's TCV	R's SEV	P's SEV	R's TV	P's TV
$446,600	$1,137,714	$223,300	$568,857	$156,314	$156,314

Parcel No. 69-050-007-100-005-00

R's TCV	P's TCV	R's SEV	P's SEV	R's TV	P's TV
$535,200	$1,716,843	$267,600	$858,421	$188,948	$188,948

Parcel No. 69-050-007-400-005-00

R's TCV	P's TCV	R's SEV	P's SEV	R's TV	P's TV
$74,400	$377,150	$37,200	$188,575	$13,664	$13,664

Parcel No. 69-050-008-100-005-03

R's TCV	P's TCV	R's SEV	P's SEV	R's TV	P's TV
$9,249,000	$1,698,027	$4,624,500	$849,013	$4,465,292	$849,013

Parcel No. 69-050-018-100-010-02

R's TCV	P's TCV	R's SEV	P's SEV	R's TV	P's TV
$55,400	$28,711	$27,700	$14,355	$22,812	$14,355

Parcel No. 69-050-031-100-005-03

R's TCV	P's TCV	R's SEV	P's SEV	R's TV	P's TV
$1,629,200	$315,077	$814,600	$157,538	$713,747	$157,538

Parcel No. 69-050-031-100-005-04

R's TCV	P's TCV	R's SEV	P's SEV	R's TV	P's TV
$1,452,400	$157,539	$726,200	$78,769	$679,783	$78,769

Parcel No. 69-050-032-200-010-00

R's TCV	P's TCV	R's SEV	P's SEV	R's TV	P's TV
$8,132,600	$4,901,940	$4,066,300	$2,450,970	$4,047,806	$2,450,970

Parcel No. 69-052-900-019-020-00 (Commercial Personal Property)

R's TCV	P's TCV	R's SEV	P's SEV	R's TV	P's TV
$4,777,300	$1,750,000	$2,388,650	$875,000	$2,388,650	$875,000

Total:

R's TCV	P's TCV	R's SEV	P's SEV	R's TV	P's TV
$26,352,100	$12,100,000	$13,176,050	$6,050,000	$12,677,016	$4,784,571

FINAL VALUES

The subject property's 2004 TCVs, AVs and TVs, as determined by the Tribunal, are:

Parcel No. 69-050-006-100-020-02

TCV	SEV	TV
$309,812	$154,906	$154,906

Parcel No. 69-050-007-100-005-00

TCV	SEV	TV
$371,176	$185,588	$185,588

Parcel No. 69-050-007-400-005-00

TCV	SEV	TV
$50,888	$25,444	$13,644

Parcel No. 69-050-008-100-005-03

TCV	SEV	TV
$6,416,260	$3,208,130	$3,208,130

Parcel No. 69-050-018-100-010-02

TCV	SEV	TV
$38,914	$19,457	$19,457

Parcel No. 69-050-031-100-005-03

TCV	SEV	TV
$1,129,992	$564,996	$564,996

Parcel No. 69-050-031-100-005-04

TCV	SEV	TV
$1,007,264	$503,632	$503,632

Parcel No. 69-050-032-200-010-00

TCV	SEV	TV
$5,642,478	$2,821,239	$2,821,239

Parcel No. 69-052-900-019-020-00 (Commercial Personal Property)

TCV	SEV	TV
$4,777,300	$2,388,650	$2,388,650

Total:

TCV	SEV	TV
$19,744,084	$9,872,042	$9,860,242

PROCEDURAL ISSUES

A Prehearing Conference was held in this matter on June 20, 2006. Petitioner attended the Conference; Respondent did not. On June 22, 2006, the Tribunal entered an Order placing Respondent in default. Pursuant to this Order, Respondent was required to file a motion to set aside the default, with the appropriate filing fee, within 21 days of entry of the Order. On July 13, 2006, Respondent filed a motion to set aside the default but failed to remit the requisite motion fee. On July 21, 2006, Respondent withdrew its motion to set aside the default without explanation. On August 22, 2006, the Tribunal granted Respondent's request to withdraw its motion, stating:

> [T]he Tribunal does not understand Respondent's motives in not curing the default and in asking that its Motion to Set Aside Default be withdrawn. The Tribunal is at a complete and utter loss as to why Respondent would purposefully take an action that prohibits it from participating in a hearing at which it would be able to defend its assessment, provide evidence of the subject property's value and question Petitioner regarding its valuation.

In the August 22, 2006 Order, the Tribunal also partially granted Petitioner's request for costs and ordered Respondent to pay the costs and provide notice of payment to the Tribunal within 21 days of entry of the Order. Respondent has not done so.

The Tribunal notes that, by all accounts, Petitioner has not paid the property taxes at issue. Pursuant to MCL 205.743(1), "[i]f the date set by law for the payment of taxes has passed, the tribunal **shall not** make a final decision on the entire proceeding until the taxes are paid. This requirement may be waived at the tribunal's discretion." (Emphasis added.) The Tribunal does not take this requirement lightly. However, in this case, Petitioner and local units of government impacted by this appeal have presented good cause to waive this requirement and this Opinion and Judgment is being issued prior to payment of the requisite property taxes.

GENERAL PROPERTY DESCRIPTION

The subject property is known as the Treetops Resort and is located on Wilkerson Road, in Dover Township, Otsego County, Gaylord, Michigan. According to Petitioner:

> The Treetops Resort property owned by the TAC-LLC encompasses nearly ±**3,330 acres** of land spread out over two townships. The various parcels include land that is cleared open and level, heavily wooded, and moderately rolling areas. The resort actually operates in two separate areas. **Treetops South** is comprised of the lodging facilities, restaurants, convention center, administrative offices and The Jones "Masterpiece" golf course. Treetops South encompasses **±614 acres** *according to the assessors record cards*. **Treetops North** includes three regulation length golf courses, a Par-3 golf course, a clubhouse, and a residential development all built over approximately **±1,210 acres**. (Emphasis in original). (Petitioner's Exhibit P7, p83[3])

Of the ±3,330 acres owned by TAC-LLC, approximately 2,830 acres are located within Dover Township; the remaining acreage is located within Corwith Township.

Petitioner's appraisal included this history of the subject property:

> When Harry Melling bought the property in 1984, the Treetops resort originally operated as Sylvan Knob ski area consisting of 19 groomed trails and four chalets. By 1987, the Robert Trent Jones "Masterpiece" course was completed and opened, followed by the Fazio "Premier" course in 1992, then the Smith "Signature" in 1994, and the Smith "Tradition" and Threetops in 1997. During this period, a 97-unit lodge, and a 94-[unit] lodge were built. By early 2001, a partnership was formed, known as the Treetops Acquisition Co. LLC (TAC-

[3] Hereinafter, Petitioner's exhibits will be denoted simply with a P and the exhibit number.

> LLC), to acquire the majority interests in the resort for a reported amount of $30,000,000. After a period of due diligence and analysis, the price was reduced to $21,000,000. The transfer of assets was completed in 2002, according to the purchase documents. (P7, p10)

The golf-specific site improvements under appeal include four regulation length golf courses, one par 3 short course, two proshops and a clubhouse. According to Petitioner, "[a]ll four of the regulation length golf courses as well as the Par 3 Threetops course at the Treetops Resort, are considered to be among the best well designed and constructed layouts in the state." (P7, p28)

On page 26 of its appraisal, Petitioner described the state of Michigan's golf industry.

> According to the most recent NGF [National Golf Foundation] data, each course in the state has a market share of about 25,500 rounds. Obviously, the length of the season – and a golf course's location relative to population centers – affects the number of rounds. In our surveys of Michigan golf courses, most of the rounds occur on the courses located in the southeastern part of the state where there is a greater population density, and a longer season. The southern daily fee courses situated near the major population centers typically report from 30,000 to 40,000 rounds played each year. The northern resort courses typically report from 10,000 to 20,000 rounds with a very few resort courses reporting more than 20,000 rounds. Some of the metropolitan public courses have reported as many as 50,000 18-hole equivalent rounds, but that number has probably gone down due to the slowdown in the local economy. (P7, p26)

> Standard regulation-length 18-hole golf courses can comfortably handle, at most, about 300 golfers per day. If the season in the southern part of the state totals 180 days (May 15 thru Oct. 15), then 100% optimal utilization would be about 54,000 rounds per year (300 players x 180 days). Our surveys of golf courses near the population centers in southern Michigan indicate that most of the courses generate between 25,000 to 35,000 eighteen-hole equivalent rounds per year. The courses further away from the major population centers usually generate between 20,000 and 25,000 rounds. The desired utilization outside of the major urban areas averages between 75% and 80% - similar to the national average of 80%. (P7, p27)

According to Petitioner, the five courses at Treetops generated a total of 60,629 golf rounds in 2003 and 72,994 rounds in 2004. (P7, p91)

Also under appeal are site improvements for winter skiing. According to Petitioner:

> The ski area at Treetops constitutes a comparatively minor part of the entire resort operations, although it contributes about 7% to total gross revenue in addition to being the sole provider to the winter lodging revenue. The ski area covers about 50 acres, is serviced by three triple chair lifts and two rope tows providing access to 25 groomed runs, a terrain park and half-pipe, and tubing hill. (P7, p14)

Of the 50 acres, 25 acres are groomed. The ski area is 100% lighted and there is snowmaking ability for five of the 50 acres. (P7, p49) There are three chair lifts and three rope pulls, and enclosures for lift operators and engines. (P7, p49) There is also a warming hut and sales office. In 2003, Petitioner sold 19,292 downhill tickets; in 2004, sales were up to 25,609. During those years, Petitioner also sold 5,071 and 6,033 tubing tickets, respectively.

As previously mentioned, a 94-room lodge with a lounge and a pool, and a 97-room lodge with pools are under appeal, as are 10 chalets containing 34 lodging units, training centers, tennis courts, restaurant building and conference center located on the subject property. "Although the quality of the lodging and services at the Treetops Resort is serviceable, guests do not visit the resort for the quality of the lodging. Guests stay in the resort lodging because they are participating in the other amenities that the resort has to offer: skiing and most important, the reputation and quality of its golf courses." (P7, p29) Petitioner also operates a condominium rental business "in which the resort operators rent out non-Treetops owned condo's and splits the fees with the condo owners." (P7, p90) For the tax year at issue, there were 20 condominium units rented in this manner. (T7, p95)

Finally, included in this case "...are 342 acres of residual land adjoining the golf course holes situated in Sections 6, 7, and 8 of Dover Township." (P7, p11) The personal property located at the resort is also under appeal.

SUMMARY OF PETITIONER'S CASE

Petitioner presented testimony from one witness, its appraiser, Mr. Thomas D. Kitz. Mr. Kitz holds the MAI designation, having first acquired this designation in 1991. Mr. Kitz is also a licensed appraiser in Michigan and Ohio. Mr. Kitz is employed by American Property Analysts, Inc., located in Toledo, Ohio. Mr. Kitz testified that he has performed mortgage appraisals for several "full-service destination resorts" similar to that of the subject property, a few of which are located in Michigan. (Transcript[4], p18) According to Mr. Kitz, a "full-service resort" is defined as:

> ...a business comprised of several profit centers, some of which do not directly relate to real estate. Examples of non-real estate profit centers would be food and beverage sales, equipment rentals, merchandise sales, and management contracts. In effect, the valuation of a resort enterprise is effectively the valuation of the going concern, which includes business, furniture, fixtures, equipment, licenses and real estate. (P7, transmittal letter)

Mr. Kitz has also testified before the Ohio State Tax Hearing Board and was qualified as an expert witness by that Board. Based on his experience and training, the Tribunal accepted Mr. Kitz as an expert appraiser. (T, p21)

In support of its value contentions, Petitioner offered the following exhibits, which were admitted into evidence:

P1: A copy of the Purchase Agreement for Treetops Resort, dated July 10, 2001.

P2: A copy of the First Amendment to the Asset Purchase Agreement, dated October 4, 2001.

P3: A copy of the Second Amendment to the Asset Purchase Agreement, dated June 26, 2002.

[4] Hereinafter, references to the transcript will be denoted by a "T".

P4: A copy of the Third Amendment to the Asset Purchase Agreement, dated July 24, 2002.

P5: A copy of the Assignment of the Purchase Agreement, dated July 24, 2002.

P6: A copy of the Liquor License and Alcoholic Beverage Inventory Purchase Agreement, dated June 26, 2002.

P7: An Appraisal of the subject property, prepared by Thomas D. Kitz, MAI.

Mr. Kitz's testimony:

Mr. Kitz testified that, after some investigation, it was determined that:

> . . . there were some parcels that we believed were reasonably valued by the Township Assessors, we concluded that there were certain portions of the resort that were over-valued, and those portions tended to be around the core resort operations, specifically the golf courses, the lodging components, the food and beverage components and the ski area. (T, pp21-22)

Thus, not all of the property typically thought of as the Treetops Resort was appealed to the Tribunal. Additionally, 12 parcels of property that had been included in the initial appeal either were subject to a consent judgment or dismissed by the Tribunal. Ultimately, eight parcels of real property and one parcel of personal property were included in this appeal.

In concluding to the subject property's highest and best use, Mr. Kitz considered the property as unimproved and as improved. According to Mr. Kitz:

> If the properties included in Treetops were not already improved with a full-service destination resort, it could certainly be considered a highly desirable location for one. The rolling terrain with some parts having sudden vertical drop in elevation suitable for ski terrain, good access provided from public highways, and the growing popularity of second homes and vacation properties make this area ideally suited for a golf and ski resort. (P7, p84)

Thus, as unimproved, Mr. Kitz concluded that the highest and best use of the subject property "...would probably be for some type of steady, but measured residential development centered

around golf, skiing, and second homes." (P7, p85) As improved, Mr. Kitz concluded "...that the current use is the highest and best use of the Treetops resort property." (P7, pp85-86)

Mr. Kitz testified that, in valuing the subject property, he considered three approaches to value: the cost approach, the sales comparison approach and the income capitalization approach. However, Mr. Kitz testified that while he considered the cost approach, he did not utilize this approach because "...the market doesn't really use the cost approach when looking at properties like this in order to determine value. They primarily focus in on the income approach." (T, p30) Mr. Kitz also explained this reasoning in his appraisal, stating that:

> Although we considered a full development of the cost approach, the amount of accrued depreciation was so great that the reliability of the approach is questionable. The difference between the cost to construct a full service golf and ski resort, versus the eventual value, was too great to provide a meaningful indication of value. (P7, p9)

Thus, while Mr. Kitz considered the cost approach, this approach was not included in his appraisal.

Mr. Kitz also considered the sales comparison approach; however, Mr. Kitz utilized this approach only as a check on the income capitalization approach. According to Mr. Kitz, when valuing a full-service resort, the sales comparison approach is not the most accurate indication of value because:

> ...these properties are unique, no two are exactly alike. They have different profit centers. These resorts are marketed to different types of individuals or markets. They are situated in different areas, and it is not as if we are looking at an apartment complex where there are apartment complexes all over a metropolitan area. In that instance, a sales comparison approach can be useful when valuing something where there are a number of properties. (T, p31)

According to Mr. Kitz, the income approach to value is the most appropriate method to use in determining the value of a resort property because these properties "...are bought and sold and their prices and their values are based upon their ability to generate income...." (T, p32)

However, it does not appear that the subject property was acquired for this reason. According to Mr. Kitz:

> The buyers were looking at this acquisition for its real estate development potential versus a return or yield from resort operations. This is confirmed by the fact that the resort was operated with a net loss in 2003, and was only slightly profitable in 2004 . . . Historically, the resort operations generated a long-term average of about $850,000 in net income. Because this was viewed by the grantees as a real estate development deal, the economic return from resort operations was not viewed as a primary factor in the acquisition. (P7, pIV)

Mr. Kitz utilized the income approach to determine the true cash value of the subject property's "core resort operations." Mr. Kitz began his income approach by reviewing several years of operating statements, then summarizing Petitioner's income and expense reports for 2003 and 2004. From this data, Mr. Kitz identified the subject property's "profit centers," which are the ski area, lodging revenues, golf revenues, food and beverage, other sales/service and miscellaneous. (P7, p91) Mr. Kitz testified that approximately 34 to 35 percent of the subject property's gross revenue is derived from its golfing operations, 33 percent is derived from lodging, 21 percent is derived from food and beverage sales and 8 percent is derived from skiing. (T, p39)

Mr. Kitz then allocated the resort's "potential gross income" to each profit center based on the subject property's historical data and "...from other resort operations that [he] appraised in the past." (T, p88) Mr. Kitz concluded this part of his analysis by projecting that the resort would generate approximately $12.76 million in revenue in FY2004. (P7, p103) After cost of sales, the subject property's gross profit for 2004 was projected to be $11,728,925. (P7, p121)

The next step in Mr. Kitz's analysis was to project the subject property's 2004 operating expenses. Mr. Kitz testified that he made this projection "[b]ased upon the historical statements for 2003 and 2004 and also based upon comparisons with the other resorts in northern Michigan

that I looked at or that I appraised for mortgage financing." (T, p111) After concluding this analysis, Mr. Kitz projected 2004 operating expenses to be $10,439,000, absent real estate taxes. (T, p124) These expenses were then allocated to each of the profit centers. Having determined the subject property's 2004 gross profit and operating expenses, Mr. Kitz concluded that the subject property's 2004 net operating income was $1,289,491. (P7, p122)

Mr. Kitz determined that the direct capitalization method was the appropriate technique to use in his income capitalization approach. By way of explanation, Mr. Kitz cited the definition of direct capitalization found in *The Dictionary of Real Estate Appraisal* (Chicago: Appraisal Institute, 3rd ed, 1993).

> Direct Capitalization is defined as: "A method used to convert an estimate of a single year's income expectancy into an indication of value in one direct step, either by dividing the income estimate by an appropriate rate or by multiplying the income estimate by an appropriate factor." *Id*. p100.

To determine an overall capitalization rate, Mr. Kitz obtained information from sales of similar resorts throughout Northern America. Using this information, Mr. Kitz first derived a projected net operating income for the resorts and then derived overall capitalization rates (percentage of net revenue to sale price). (T, p126) The result of this process was a range of capitalization rates from 8.8% to 16%. Mr. Kitz concluded that, for the subject property, a capitalization rate of 12% to 12.5% would be appropriate. (T, pp126-127) Because real estate taxes were not included in operating expenses, Mr. Kitz determined that a tax additur of 2.02% was appropriate, resulting in a total capitalization rate of 14.02% to 14.52%. (T, p128) Using these rates, Mr. Kitz concluded that the value of the "core resort operations" for the 2004 tax year was between $8.9 and $9.2 million. After considering the sales comparison approach, summarized below, Mr. Kitz concluded to a final value of $9 million.

Because the $9 million represented the value of the core resort operations[5], a reduction in value for the furniture, fixtures and equipment (FF&E), Parcel No. 69-052-900-019-020-00, was required. On page 87 of his appraisal, Mr. Kitz described how the value of personal property is arrived at when a business is sold as a "going concern."

> In analyzing a sale, it is unusual to find an instance where there has been a separate purchase price established for the equipment based on actual "market value". The actual "market value" could be defined as the salvageable, or liquidation value of each item. Generally, when a going concern, such as a destination resort, is sold the F.F.&E. will transfer with the property, but a separate allocation of value made only for the purpose of establishing a depreciable basis for the new operator. (P7, p87)
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> When Treetops was acquired by the TAC-LLC in 2002, the buyer *arbitrarily* allocated $1,750,000 of the original $21 million purchase price to F.F.&E. Apparently, the allocated price was reflective of the true contributory value-in-place of the lodging, restaurant, golf and ski maintenance equipment necessary to continue operation of the resort; *it could be more, or less*. (Emphasis added.) (P7, p88)

Mr. Kitz agreed with the buyer's determination of value and estimated the personal property's total value in place to be $1,750,000. (P7, p88) Thus, Mr. Kitz valued the real property at $7.25 million ($9 million minus $1.75 million).

As previously explained, Mr. Kitz utilized the sales comparison approach as a check on his income capitalization approach. In other words, Mr. Kitz utilized this approach to value the subject property's core resort operations, or the value of the going concern. Mr. Kitz also utilized this approach to determine the true cash value of the residual undevelopable land.

In his sales comparison approach, Mr. Kitz confirmed that thirteen North American destination resorts, including the subject property, had been sold in the last ten years. (P7, p125)

[5] Exclusive of the value of the excess land.

Of these thirteen sales, two were of property located in Michigan and one was of property located in Canada. (P7, p125) Four of the sales occurred in 1997 and 1998.

Because these resorts are so unique, Mr. Kitz determined that the unit of comparison that seemed to have the most consistency was the gross revenue multiplier, or GRM[6]. (T, pp35-36)

> The gross revenue multipliers are taken at face value and not adjusted for time or any other units of comparison. The gross revenue multiplier is simply the sales price divided by the anticipated gross revenues. Factors such as expected changes in revenue stream, operating expenses, and market conditions affect the multipliers. It has been our observation, that the GRM number – in all income producing properties – is a function of the operating expenses regardless of the type of property. In other words – the higher the operating expenses as a percentage of the gross revenues, the lower the multiplier will be...Low multipliers reflect the perceived risk to the income stream. (P7, p126)

"Using a gross income multiplier is essentially another form of an income approach to value. We are not comparing the subject property by physical units of comparison but with economic units of comparison." (T, p42)

To derive a gross income multiplier (GIM) for the subject property's core resort operations, Mr. Kitz considered the subject property's actual 1999, 2000 and 2003 income statements, as well as the projected 2004 income statement. (T, p49 and P7, pIV). The result was a GIM for 1999/2000 of .77, a GIM for 2003 of .87, and a projected GIM for 2004 of 1.5. (P7, pIV) After taking into account projected operating expenses, Mr. Kitz concluded to a GIM of .7 to .75. These GIMs were then applied to the projected gross income of $12,760,000, derived under the income approach, for a value conclusion for the core resort operation of between $8.93 and $9.57 million. (T, pp51-52 and P7, p127)

Mr. Kitz then valued what he referred to as "excess land." According to Mr. Kitz, Treetops Resort contains 3,206 acres of land[7]. Within Dover Township, there are 1,000.4 acres

[6] Also referred to as the gross income multiplier, or GIM.

of undeveloped land. Of this, 39.7 acres are identified as Parcel No. 050-007-400-005-00; the remaining land does not have separate tax identification numbers. In his appraisal, Mr. Kitz "addressed only the land that we can determine is residual developable land situated within the Treetops South and Treetops North areas of Treetops Resort." (P7, p128) According to Mr. Kitz: "Estimating the contributory value of these tracts is difficult because the precise areas of these tracts is not certain and the likelihood of eminent development is questionable. Some of these tracts will remain as green space within the resort properties." (P7, p128)

According to an engineering report, there are 342.7 acres of developable land within Treetops North. (P7, p129)

> These areas have been approved for development with over 1,500 residential units, however the demand for such units is presently difficult to measure. Based on the rate of sales in the first phase of the condominium projects in Treetops North, the level of demand is weak. Although each individual site has its own individual value, collectively the value of each site would have to be discounted in order to account for the holding time required until each site could be developed. It is for that reason we have estimated the total collective value of all of the sites together rather than individually. (P7, p129)

To arrive at a value for the developable land, Mr. Kitz considered twenty land sales, but ultimately relied upon eight transactions. (T, p57) These sales were adjusted to account for appreciation in value due to time of sale, differences in the size of parcels and "entitlements." According to Mr. Kitz, entitlements increase a property's value and include such things as zoning for higher intensity development and access to existing public utilities or on-site utilities. (T, p62) After making the necessary adjustments, Mr. Kitz concluded to a per acre value for developable land of $8,945. Given the estimate of 342.7 acres of developable land, Mr. Kitz concluded that the total value of the residual undeveloped land was $3.1 million. (P7, p143)

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[7] This land is located in both Dover and Corwith Townships.

To determine the true cash value of each parcel of real property, Mr. Kitz subtracted the value of the FF&E ($1.75 million) from the value of the core resort operations ($9 million) to arrive at a total value of the real estate of $7.25 million. To this, Mr. Kitz added the value of the residual developable land ($3.1 million) and then allocated a portion of this amount to each tax parcel based on "the relative economic contribution of each parcel to the whole as expressed in a pro-rata share of gross revenue." (P7, p147)

FINDINGS OF FACT

The Tribunal finds that the subject property's highest and best use as unimproved and improved is its current use as a full-service destination resort. The Tribunal further finds that the subject property is commonly known as "Treetops" and is located within Dover and Corwith Townships, in Otsego County, Michigan. The initial appeal filed in this matter included 21 parcels of real property and one parcel of personal property, all located within Dover Township. Prior to the hearing in this matter, the parties entered into a consent judgment wherein the true cash and taxable values of 12 parcels of real property were resolved.

The Tribunal further finds that Treetops Holding Company initially offered to purchase the subject property from Melling Resorts International, Inc. for $30,000,000. Pursuant to the Asset Purchase Agreement dated July 10, 2001, Melling Resorts retained the property's mineral rights and received a 5% equity ownership in the Buyer. Included in the purchase price were all liquor licenses held by Melling Resorts. (P1)

On June 26, 2002, the parties entered into a Second Amendment to the Asset Purchase Agreement. Pursuant to the Amended Agreement, the purchase price was reduced to $20,900,000. Additionally, the liquor licenses were removed and made subject to a separate agreement. (P3) A purchase price of $100,000 was established for the licenses. (P6) On July

24, 2002, Treetops Holding Company assigned the Purchase Agreement to Treetops Acquisition Company, LLC. (P5) The assets were transferred in 2002. (P7, p10)

The Tribunal finds that the subject property includes:

1. **The Jones "Masterpiece" Golf Course**: This 18-hole course was designed by Robert Trent Jones, Sr. and was built in 1987. Located in Treetops South, this course is fully irrigated and contains ±160 acres, including wetlands. The course is 7,060 yards in length, par 71, and rated 75.5. The course is spread over three parcels of property: Parcel No. 050-032-200-010-00, which contains three holes, the Jones Proshop and a golfers' grill; Parcel No. 050-031-100-005-04, which contains five holes and a ±10-acre driving range; and Parcel No. 050-031-100-005-03, which contains ten holes. This course also includes a maintenance barn, although it is unclear on which parcel of property it is located. (P7, pp51-52, 148).

2. **Treetops North**: There are four golf courses in Treetops North, all of which are fully irrigated. The area contains ±1,140 acres, a ±20-acre driving range, intermittent paved cart paths, a ±5,000 square foot clubhouse, the North Proshop and maintenance barns. The golf courses are:

A. **The "Premier" Golf Course**: This 18-hole course was designed by Tom Fazio and was built in 1992. The course is 6,832 yards in length and has a 73.6 rating. The course is spread over two parcels: Parcel No. 050-007-100-005-00, which contains five holes; and Parcel No. 050-008-100-005-03, which contains 13 holes.

B. **The "Tradition" Golf Course**: This 18-hole course was designed by Rick Smith and was built in 1998-1996. The course is 6,467 yards in length and has a 70.3 rating. This course is also located on Parcel No. 050-008-100-005-03.

C. **The "Signature" Golf Course**: This course was designed by Rick Smith and was built in 1992. The course is 6,653 yards and has a 72.8 rating. This course is spread over two parcels: Parcel No. 050-006-100-020-02, which contains eight holes; and Parcel No. 050-007-100-005-00, which contains ten holes.

D. "**Threetops" Golf Course**: This Par 3, nine-hole course was designed by Rick Smith and was built in 1992. The course is spread over two parcels: Parcel No. 050-008-100-005-03, which has four holes; and Parcel No. 050-007-100-005-00, which has five holes.

3. **The Treetops Suites, aka "Lodge Building"**: This three-story frame lodging facility was built in 1988 and expanded in 1994. The facility contains 94 lodging units (69 double queens, 25 kings), offices, a dining room, a bar, a kitchen, elevators, a lobby, six meeting rooms, a fitness room, and an indoor/outdoor swimming pool. While the exact size is uncertain, the number of square feet is between 92,580 and 96,018. (P7, pp55-58)

4. **The Treetops Inn**: This two-story frame lodging facility was built in 1984-1988. The facility contains 97 lodging units (33 double queens, 64 double standard), three meeting rooms, offices, a dining room, a bar, a kitchen, elevators, a lobby, a lounge, a daycare, and indoor and outdoor swimming pools. Again, the exact size of the structure is uncertain; however, it contains between 72,000 and 73,956 square feet. (P7, pp58-59)

5. **Chalets**: Four of these two-story frame-lodging facilities were built in 1974, with the remaining six being built in 1984. There are three chalet styles: (1) one unit per chalet, with 800 square feet each; (2) four units per chalet, with 2,131 square feet each; and (3) six units per chalet, with 3,020 square feet each. There are four one unit chalets, three four unit chalets, and three six unit chalets, for a total of 10 chalets and 34 lodging units. (P7, p60)

6. **Convention Center and Resort Offices**: This one-story metal frame structure contains administrative offices, banquet rooms, kitchen and restrooms. The structure was built in 1992 and contains between 22,110 and 22,400 total square feet, with 14,740 square feet of convention space. (P7, p62)

7. **Top O the Hill Restaurant**: This two-story concrete block and wood frame structure was built in 1984 and expanded in 1986. The structure contains two restaurants, the Legends Grille and the Hunters Dining Room, and one lounge, the Broken Club Pub Sports Bar. There are also four restrooms and at least one kitchen. The structure contains between 15,050 and 17,900 square feet. (P7, pp63-64)

8. **Pro Shop (Jones Course)**: This is a one-story frame structure that has an upper and lower level and a deck. The structure contains a pro shop, an office, restrooms, a "snack restaurant" and a lounge. The lower level is used to store golf carts overnight. The structure was built in 1988 and contains between 2,880 and 3,000 square feet. (P7, p65)

9. **Maintenance Shop Building (Jones Course)**: This one-story wood and metal frame structure includes a loft that contains an oil storage room, a break room and offices. The structure was built in 1987 and contains ±8,168 square feet. (P7, p67)

10. **Eleventh Hole Halfway House (Jones Course)**: This one-story wood and frame structure includes a large porch overhang, a full snack bar and restrooms. The structure was built in 1987 and contains ±344 square feet. (P7, p68)

11. **Large Warming House**: This one-story metal frame structure contains restrooms, a snack restaurant, a lounge, a limited service kitchen, a 1,800 sq ft deck and a 15 x 20 lean-to. The structure was built in 1992-93, contains ±6,400 square feet and is both heated and air

conditioned. (P7, p69) The ski operations are all located on Parcel No. 050-032-200-010-00. (P7, p148)

12. **Clubhouse (Treetops North)**: This one-story, multi-level, wood frame structure was built in 1999. The upper level contains banquet rooms, restrooms, a kitchen, an office, restrooms, a snack restaurant and a lounge. The lower level contains a golfers' grill, a pro shop, restrooms and lockers. The structure contains ±20,000 square feet and has a central heating and cooling system. (P7, pp70-71)

13. **Maintenance Facility Buildings (Treetops North)**: The maintenance complex for the North Course was built 1992-93 and includes two covered equipment storage pole barns, a materials/supplies storage pole barn, and a one-story office building. The office building includes two restrooms and a break room. The office building is heated and cooled; the storage buildings are not. The total square footage for all buildings is ±18,000. (P7, pp72-73)

14. **Warming Hut (at base of ski hill)**: The warming hut is a one-story wood structure that was built in 1992. The structure is heated and contains one restroom. The structure contains between 816 and 1,792 square feet. (P7, p74)

15. **Lift Ticket and Rental**: This one-story wood and frame metal structure was built in 1974 and contains restrooms, a ski rental fitting area and ticket sale booths. The structure contains ±3,072 square feet and is heated. (P7, p75)

16. **Ski Shop**: This one-story metal frame structure was built in 1999 and contains shelving, cabinets, show cases, racks necessary for the sale of skis and accessories, and one restroom. The structure contains ±1,805 square feet and is heated. (P7, p76)

17. **Two residences for employees**: The subject property contains two residences that are used as employee housing. The first home is a one-story frame building that was built in 1975.

This home contains 4,000 square feet. The second home is a 1,500 square foot farmhouse, known as the Robinson farmhouse. This home is located at Sparr and Wilkerson Roads and was built in 1920. (P7, p77)

18. **Laundry Building**: This one story, wood frame structure was built in 1995 and contains 2,000 square feet. The structure contains laundry equipment and two restrooms. (P7, p77)

19. **Sewage Treatment Plants**: There are two sewage treatment plants located on the subject property. The first plant is located at Treetops North. This plant processes 125,000 gallons per day. The structure contains office and lab space. The plant located at Treetops South also processes 125,000 gallons per day and contains office and lab space. (P7, p77)

20. **Personal Property**: This property is assessed under Parcel No. 69-052-900-019-020-00. Mr. Kitz stated that he was "...provided with the depreciation schedules for equipment purchased since acquired by the TAC LLC." (P7, p87) Included in the Exhibit section of his appraisal is a document titled "Treetops Acquisition Company LLC, Depreciation Expense Report, As of December 31, 2005." The Tribunal notes that the date of this document is December 31, 2005, two years after the tax day at issue. Given this, the Tribunal finds that this document does not accurately reflect the value of the personal property, and may not reflect the personal property actually owned by Petitioner, as of December 31, 2003. Moreover, the record indicates that Mr. Kitz merely accepted Petitioner's "arbitrary" allocation of the FF& E purchase price of $1,750,000.

The Tribunal notes that, pursuant to the Asset Purchase Agreement, the $30,000,000 purchase price was allocated among the assets based on Schedule 3(c) to the Agreement. (P1, p5) According to Schedule 3(c), $6,000,864.76 of the purchase price was allocated to FF&E. (P1, p59) Subsequently, the parties entered into a Second Amendment to the Purchase

Agreement wherein the purchase price was reduced from $30,000,000 to $20,900,000. (P3, p2) However, the Second Amendment did not revise the purchase price allocation. The Tribunal finds that while some of the reduction in the purchase price must be allocated to the FF&E, there is no evidence to support a reduction in value from $6,000,864.76 to $1,750,000. Moreover, because Mr. Kitz did not complete any market research or make an independent decision regarding the value of this property, the Tribunal finds that Petitioner did not meet its burden of proof as to the true cash value of the personal property. Given this, the Tribunal finds that the true cash value of Parcel No. 69-052-900-019-020-00 equals the value determined by Respondent, $4,777,300.

21. **Residual Land**: In his appraisal, Mr. Kitz states that he has addressed "only the land that we can determine is residual developable land situated within the Treetops South and Treetops North areas of Treetops Resort." (P7, p128) However, Mr. Kitz only valued 342.7 acres of land located within Treetops North. (P7, pp129, 142) It is unclear how many acres of developable land are located within Treetops South and to what extent this land would affect the subject property's true cash value. Moreover, Mr. Kitz never articulated why he only valued the developable land. It is possible that some of the undevelopable land was adjacent to the golf courses or the housing units, thereby adding value to these properties. It is also possible that the land, though undevelopable, may be valuable because of its timber. For these reasons, the Tribunal does not accept Mr. Kitz's conclusion as to the value of the residual undeveloped land.

The Tribunal also finds Mr. Kitz's income capitalization approach troublesome. Mr. Kitz considered the subject property's gross revenues for select years. For example, Mr. Kitz included information as to gross revenues and operating expenses for 1999-2000, but failed to

include information from 2001 or 2002[8]. Given that the Asset Purchase Agreement was signed in 2001, and the transaction was actually consummated in 2002, the Tribunal finds it odd that information from this period was not included. Petitioner must have considered this information in negotiating the purchase price. Even if it is assumed that information from 2001 was not available, this assumption cannot be made for 2002, as Petitioner actually owned the property that year.

Mr. Kitz states "Treetops has experienced somewhat erratic operating expenses and net income streams." (P7, p115) At the same time, Mr. Kitz states that "total gross operating revenues at *Treetops* have been very stable, even increasing since 2001, and averaging $12.5 million over a 5-year period." (P7, p104) Given these statements, it is clear that the subject property's operating expenses are an issue and may not be reliable in valuing the subject property under the income capitalization approach.

This assumption is bolstered by Mr. Kitz's comparison of the subject property's expenses to those of comparable properties. One example is that of lodging expenses. According to Mr. Kitz:

> Smith Travel Research, a Tennessee based consulting firm to the lodging industry, reported that the national average total distributed lodging operating expense is only 22%. PKF Consulting data suggests that resort lodging (rooms) expense is only 15.3%. Both of these figures are low compared to the 39% lodging operating expense ratio expressed at Treetops, and even low compared to other northern Michigan resorts. (P7, pp105-106)

Included in the appraisal is a chart in support of this contention; however, the names of the other resorts are blacked out and no further information is provided. Moreover, in addition to northern Michigan resorts, the chart references a West New York resort. If the West New York resort is

[8] The Appraisal references gross revenues for 2001 and 2002 on page 111; however, because the amounts stated are equal to the gross revenue figures for 2003 and 2004, the Tribunal must assume that this is a typographical error.

not included, the average lodging expense is 38%. In spite of the fact that the subject property's operating expense is 39%, and the average is 38%, Mr. Kitz chose to utilize a rate of 41%, "based on the actual average historical expenses" for the subject property. (P7, p106)

Other examples of the subject property's problematic expenses can found in its golf expenses. Mr. Kitz stated that golf course operations expenses are 65% of golf revenue. Of this, labor costs are 43%. According to the chart located on page 107 of the appraisal, labor expenses at three northern Michigan resorts averaged 38%. Recognizing that Petitioner's golf labor expenses are high, Mr. Kitz "adjusted the golf course labor costs to be in line with the labor costs associated with operating other resort golf courses." (P7, p108) Mr. Kitz projected golf labor costs to be 35% of golf gross revenues, but did not explain why the figure he chose is less than the average of the resorts in his chart or how he arrived at this figure.

On page 108 of his appraisal, Mr. Kitz discussed costs associated with golf carts. Mr. Kitz estimated a need for 40 golf carts and 2 beverage carts per course, 168 carts total, at $1,000 per cart. However, in the operating expenses, Mr. Kitz expensed 180 carts, for a total expense of $180,000. (P7, p122)

The Tribunal also has concerns regarding the ski operation. According to Mr. Kitz, the ski area is one of the most profitable revenue centers. (P7, p110) However, the labor costs, at 34%, are substantially higher than the national average of 26% and the 13% rate reported for two unidentified Michigan ski resorts. Mr. Kitz determined that the difference was due to economies of scale in that the subject property's ski operations are smaller than larger ski areas. (P7, p109) Ultimately, without any explanation, Mr. Kitz concluded to a ski labor cost of 30%. Mr. Kitz accepted a ski operating cost of 7%, following the subject property's historical trend; however,

Mr. Kitz did not provide any information as to whether this expense rate was in line with other ski resorts.

In and of themselves, each of these inconsistencies or unexplained figures do not substantially impact Mr. Kitz's value conclusions under his income capitalization approach; however, taken as a whole, they are more than sufficient for the Tribunal to find that the expenses listed in the appraisal are not reliable.

The Tribunal finds Mr. Kitz's conclusion as to the overall capitalization rate equally troublesome. To arrive at this rate, Mr. Kitz considered the sale of six resort properties: Heavenly Valley, California (2002); Crested Butte, Colorado (2004); Cypress Bowl, British Columbia (2001); Grand Traverse, Michigan (2003); Crystal Mountain, Washington (1997); and Snoqualmie Pass, Washington (1997). (P7, p117) Of these sales, it appears as though five were of ski-only resorts and one was of a golf-only resort. Thus, while these may have been sales of "resorts," they are not comparable to the subject property. Moreover, two sales occurred in 1997. The Tribunal finds that these sales are simply too old to be of use. Additionally, Mr. Kitz noted that at least two of the sales involved highly motivated sellers. (P7, p118) Only one sale, that of the Grand Traverse Resort, was of property located in Michigan. While this sale occurred in 2003, the fact remains that this property does not offer ski facilities. It is interesting to note that, of the sales that occurred this decade, the golf course resort's overall capitalization rate was 12.16%, while the ski resorts' capitalization rates ranged between 15% and 22%. Clearly, there is a significant difference between golf course and ski resort rates and it is unclear if this is due to the difference in type of resort, location of resort, or both. Regardless, the Tribunal finds that Mr. Kitz's use of these ski resorts' capitalization rates upwardly skews his capitalization rate for the subject property.

For similar reasons, the Tribunal finds Mr. Kitz's GRM unreliable. While Mr. Kitz considered thirteen resort sales, he ultimately relied upon five of the six properties used to determine the capitalization rate in concluding to his GRM of .7 to .75. (P7, p125) According to the Appraisal Institute, *The Appraisal of Real Estate,* (Chicago: 12th ed, 2001):

> 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. *Id*., pp546-547.

Clearly, the properties considered by Mr. Kitz are not physically similar and only one is similar in location.

The Appraisal of Real Estate also states, "[t]he timing of income also must be comparable." *Id*. at 547. However, Mr. Kitz takes an opposing position, stating "[t]he gross revenue multipliers are taken at face value and not adjusted for time or any other units of comparison." (P7, p126) Mr. Kitz did not explain why he deviated from standard procedure.

On page III of his appraisal, Mr. Kitz noted that "[t]he lending bank required the buyers to spend about $3,180,000 on repairing deferred maintenance to the facilities after closing." According to *The Appraisal of Real Estate,* these costs should have been considered by Mr. Kitz in his sales comparison approach.

> A knowledgeable buyer considers expenditures that will have to be made upon purchase of a property because these costs affect the price the buyer agrees to pay. Such expenditures may include
>
> - Cost to cure deferred maintenance.
>
> ...
>
> These costs are often quantified in price negotiations and can be discovered through verification of transaction data. The relevant figure is not the actual cost that was incurred but the cost that was anticipated by the buyer and seller. (*Id*., p434)

Mr. Kitz's failure to include these costs in his sales comparison approach severely impacts Mr. Kitz's credibility in this case. Clearly, these costs were known by Petitioner and considered when determining the price Petitioner was willing to pay. For this reason, the Tribunal finds that the true purchase price was not $20,900,000, but $24,080,000.

The Tribunal also has concerns regarding the subject property's "cash equivalent" price of $10,160,000, as determined by Mr. Kitz. To determine the cash equivalent price, Mr. Kitz deducted various amounts from the purchase price. For example, Mr. Kitz deducted $2 million for "Class-A memberships in TAC purchased by seller." (P7, pII) It is true that these memberships are intangible property, not real property; however, it is not clear how the $2 million relates, if at all, to the purchase price. In this instance, the Seller paid Petitioner $2 million, not vice versa.

According to the Second Amendment to Asset Purchase Agreement, "[i]n addition to the two additional benefits Seller will be receiving as an equity member of TAC, Buyer will provide at no cost to Seller three 'benefit' packages...." (P3, p4) Mr. Kitz provided no information as to the value of these packages or how this provision affects the cash equivalent price. Similarly, the Second Amendment to Asset Purchase Agreement provides that the Seller retains all property mineral rights and that Buyer assumes a contract referred to as the "Palace Contract." (P3, p5) Mr. Kitz provided no information as to the value of the mineral rights or the Palace Contract and did not explain whether these provisions affect the cash equivalent price.

Additionally, Mr. Kitz stated that the $100,000 paid for the liquor licenses should be deducted from the purchase price. According to the Second Amendment to the Asset Purchase Agreement (P3), the provisions relating to the sale of the liquor licenses, including the sale price, were removed from the Agreement and included in a separate agreement. At the same time, the

purchase price was reduced to $20,900,000. Mr. Kitz stated that he made the $100,000 deduction pursuant to the closing statements. (T, p48) However, these documents were not provided to the Tribunal. Thus, the Tribunal must assume that Mr. Kitz is incorrect in maintaining a deduction from the purchase price for the cost of the liquor license.

As previously discussed, Mr. Kitz accepted Petitioner's allocation of $1,750,000 of the purchase price to FF&E. Because the Tribunal finds this allocation to be arbitrary, its inclusion in the calculation taints Mr. Kitz's cash equivalent price. For this reason, and the concerns previously discussed, the Tribunal finds Mr. Kitz's cash equivalent price unreliable.

Finally, the Tribunal does not accept Mr. Kitz's method of allocating value to each of the individual parcels. To arrive at a value for each parcel, Mr. Kitz began by allocating revenues to each of the courses, the pro shops, the ski shops, etc. Four of the golf courses contain land located in more than one parcel of property. For these parcels, Mr. Kitz allocated a percent of value depending on the improvements made to that parcel. For example, the Fazio course is located on two parcels of property; one parcel contains five holes, while the other contains 13 holes. Mr. Kitz allocated 27.8% of the value of the course to the first parcel and 72.2% of value to the second parcel.

The problem with allocating value in this manner is that it runs contrary to Mr. Kitz's conclusion as to the subject property's highest and best use. Mr. Kitz determined that the subject property's highest and best use was as a full-service destination resort. To conclude to a value for a full-service destination resort based upon the income approach, and then attempt to divvy up the value of the resort based upon profit centers produces absurd results. To conclude that lodging, food and beverage services equates to 51.7% of total revenues, and then allocate value based on that conclusion, ignores the fact that "most of the stays are included as part of golf and

ski packages." (P7, p34) As Mr. Kitz stated: "Although the quality of the lodging and services at the Treetops Resort is serviceable, guests do not visit the resort for the quality of the lodging. Guests stay in the resort lodging because they are participating in the other amenities that the resort has to offer: skiing and most important, the reputation and quality of its golf courses." (P7, p29) In other words, those that stay at Treetops lodging facilities do so primarily because of the golf courses and ski facilities. To assume that the lodging, food and beverage services would bring in the same total revenue as a stand-alone facility, without the golf courses and ski facilities, is nonsensical. Moreover, pursuant to Mr. Kitz's allocation, 67.6%, or well over two-thirds, of the total value of the eight parcels of real estate is assigned to one parcel.

Even if the Tribunal accepted Mr. Kitz's allocation of value, the Tribunal finds that Mr. Kitz made several mathematical errors in his calculations[9]. For example, Mr. Kitz allocated 7.8% of revenue to the Jones Course. However, the column titled "Percent of Total Rev." sums to 7.4%. Additionally, the allocation of revenue for the Jones Course, indicated in the column titled "Allocation Revenue," does not equal the total 2004 revenue indicated for the course of $1,005,000. The Tribunal finds that Mr. Kitz's mathematical errors substantially reduce the credibility of his allocation of value. For these reasons, the Tribunal finds that the most appropriate method of allocating value among the eight parcels of real estate is to assign value to each parcel in proportion to its assessed value.

In conclusion, the Tribunal finds that Petitioner met its burden of proof in persuading the Tribunal that the subject property's true cash value is excessive. Nevertheless, due to the Tribunal's lack of confidence in Petitioner's appraisal, the Tribunal finds that Petitioner has not met its burden of proof in establishing the subject property's true cash value. Given this, and

[9] The chart containing these allocations is located at page 148 of P7. All of the figures referenced in this paragraph are obtained from this chart.

Respondent's lack of participation in this proceeding, the only evidence of value left to consider is the purchase price. While there are issues with the purchase price, the Tribunal finds that it is the most reliable indicator of the subject property's true cash value presented in this case. To determine the true cash value of the eight parcels of real property, the true cash value of the property located within Corwith Township ($1,673,600), the true cash value of the property subject to the Consent Judgment ($2,662,316), and the true cash value of the FF&E ($4,777,300, as based on Respondent's assessment) are subtracted from the true sale price of $24,080,000 (purchase price of $20,900,000 plus cost of deferred maintenance $3,180,000). The result is a true cash value for the eight parcels of real property of $14,966,784. As previously stated, the true cash value is then assigned to each of the eight parcels based upon its percentage of the subject property's total true cash value, as determined by Respondent.

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 determined that "true cash value" is synonymous with "fair market value." See *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450; 221 NW2d 588 (1974).

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 must 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 & Laughlin Steel Corp v City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

"The petitioner has the burden of establishing the true cash value of the property...." MCL 205.737(3). This burden encompasses two separate concepts: (1) the risk 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 & Laughlin* at 354-355.

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).

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*, p277. Pursuant to MCL 211.27(5), "the purchase price paid in a transfer of property is not the presumptive true cash value of the property transferred."

Fundamental to the determination of a property's true cash value is the concept of "highest and best use." This concept recognizes that the use to which a prospective buyer would put the property will influence the price that the buyer would be willing to pay. *Rose Bldg Co v Independence Twp*, 436 Mich 620, 623; 426 NW2d 325 (1990).

To summarize the salient findings of fact relative to the conclusions of law, the Tribunal finds that the highest and best use of the subject property is as a full-service destination resort. While the income capitalization and sales comparison approaches to value are approaches that could be used to determine the subject property's true cash value, these approaches, as set forth in Petitioner's appraisal, do not provide a reliable indicator of the property's value. On the other hand, Petitioner's appraisal, coupled with the subject property's purchase price, provide a reliable indication that the subject property is assessed in excess of 50% of true cash value. Thus, Petitioner met its burden of proof in that regard. However, Petitioner did not meet its burden of establishing the subject property's true cash value. While the purchase price is not presumed to equal the subject property's true cash value, in this case it is the most reliable indicator of value. The Tribunal realizes that there are components of the purchase price that, if

properly substantiated and explained, could possibly have increased or decreased the Tribunal's finding of the subject property's true cash value. Because this information was not provided (i.e., the value of the subject property's mineral rights), the Tribunal will not hazard a guess as to the impact on the subject property's true cash value. Finally, Mr. Kitz's method of concluding to a true cash value for each parcel of real property runs contrary to his conclusion of highest and best use. Given this, the Tribunal finds that the purchase price, plus the cost of deferred maintenance,[10] should be allocated among the parcels of real property in the same proportion as each parcel's true cash value is to the total true cash value of the eight parcels, as determined by Respondent.

For the reasons set forth herein, the Tribunal finds that the subject property's true cash, state equalized and taxable values are those stated in the "Final Values" section of this Opinion and Judgment.

JUDGMENT

IT IS ORDERED that the subject property's true cash, assessed and taxable values for the 2004 tax year 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

[10] With reductions for the true cash value of property located in Corwith Township, the true cash value of property included in the Consent Judgment, and the true cash value of the personal property, as determined by Respondent.

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, 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 the calendar year 2006, (iv) after December 31, 2006, at the rate of 5.42% for the calendar year 2007, and (v) after December 31, 2007, at the rate of 5.81% for the calendar year 2008.

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

MICHIGAN TAX TRIBUNAL

Entered: October 2, 2008

By: Patricia L. Halm