STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

Catalyst Development Co., LLC,
Petitioner,

v

MTT Docket No. 364571

City of Kalamazoo,
Respondent.

Tribunal Judge Presiding
Victoria L. Enyart

OPINION AND JUDGMENT

Introduction

Petitioner, Catalyst Development Co. LLC, appeals the ad valorem real property tax assessment levied by Respondent, City of Kalamazoo, against the real property owned by Petitioner for the 2009, 2010, and 2011 tax years. Bernard Schaefer, attorney, appeared on behalf of Petitioner. John Kneas, assistant attorney for the City of Kalamazoo, appeared on behalf of Respondent. Petitioner's witnesses include Tim Rayman, General Manager of the Radisson Plaza Hotel ("Radisson"); Michael Oswald, Food and Beverage Director for the Radisson; Michael D. Elliston, CPA, Chief Financial Officer, Greenleaf Capital, Inc.; Annette Summerfield, CCIM; Patricia Owens, Vice President & Managing Director, Catalyst Development Co., LLC; and David J. Sangree, MAI. Respondent's witness was Hans Detlefsen, MAI.

The proceedings were brought before this Tribunal on January 30, 2012, to resolve the real property dispute.

Summary of Judgment

The City of Kalamazoo has assessed the property on the tax roll as follows:

Parcel No. 06-15-375-004

	Respondent		
Year	TCV	SEV	TV
2009	$37,836,000	$18,918,000	$15,908,360
2010	$28,288,400	$14,144,200	$14,144,200
2011	$22,550,600	$11,275,300	$11,275,300

Respondent's revised contentions are:

Parcel No. 06-15-375-004

	Respondent's Appraisal		
Year	TCV	SEV	TV
2009	$20,600,000	$10,300,000	$10,300,000
2010	$17,200,000	$8,600,000	$8,600,000
2011	$21,200,000	$10,600,000	$10,600,000

Petitioner's contentions are:

Parcel No. 06-15-375-004

Year	TCV	SEV	TV
2009	$7,600,000	$3,800,000	$3,800,000
2010	$7,800,000	$3,900,000	$3,900,000
2011	$7,900,000	$3,950,000	$3,950,000

The Tribunal finds the values are:

Parcel No. 06-15-375-004

Year	TCV	SEV	TV
2009	$14,125,000	$7,062,500	$7,062,500
2010	$11,440,550	$5,720,275	$5,720,275
2011	$14,000,000	$7,000,000	$5,817,519

Background

At issue is the true cash value for the Radisson located at 100 Michigan Avenue, downtown Kalamazoo, Michigan. The property includes a 392,000 square foot, 341-room, full-service hotel and banquet facilities. It also contains four restaurants, meeting space, spa, salon, indoor pool, health club, and some retail spaces. The parcel has a total of 2.0 acres.

Petitioner's Arguments

Petitioner believes that the true cash value of the subject property for the tax years at issue should be reduced based on Petitioner's appraisal.

Petitioner's admitted Exhibits:

P-1 Appraisal of subject property.
P-2 Historical Administrative/General Expenses.
P-3 GHC cost of selection calculation.
P-4 Greenleaf hospitality Year over Year Turnover Comparison.
P-5 Preliminary Product Improvement Plan "(PIP") report.
P-6 PIP product pricing information.
P-7 2011-2012 PIP costs.
P-8 Cost segregation study summary.
P-9 Map of Kalamazoo.
P-10 Relevant sections of codes.
P-11 Summary of Historic Fixed Asset Expenditures.

Petitioner's first witness was Tim Rayman, General Manager of the Radisson. He discussed in length the training and expense that each employee goes through for retention purposes and to enhance the guests' satisfaction when staying at the subject property. He explained that the owner's philosophy and unique perspective for employees may increase the investment in employees, but long term there is less turn around. The AAA has a diamond rating for hotels; the Radisson just went from four to three diamonds.

Rayman testified that the owner wants control of the entire property and leasing retail or restaurant space would not be considered. The revenue loss is less than a guest's experience if areas of the hotel were "dark," that is, empty of any business.

Rayman explained the Product Improvement Plan ("PIP"). In order to maintain the Carlson, Radisson flag, the subject property is required to upgrade and do improvements on an eight-year cycle. The owner selects the upgrade; it comes from a specific vendor that Carlson approves for the Radisson. This comes with a fixed price.

Rayman is familiar with the budget. Due to the philosophy of the owner termed as the "best of the best," all of the operations are kept in house. This includes the restaurants and retail spaces that operate at a loss. The restaurants and retail spaces are kept within the operation of Catalyst Development, instead of being leased out.

The Administrative and General Expenses are also part of the owner's philosophy as the investment in employees has a direct relationship to the ambience of the Radisson stay for the traveler. The average daily rate can be above the competition because the hotel guests will pay for the service, Rayman testified that the subject property is ranked 18th for service.

Michael Oswald, Food and Beverage Director for Greenleaf, discussed the option of leasing some of the restaurants as indicated by Respondent's appraisal. There is some economy of scale as the group purchases supplies for multiple properties. The restaurants are controlled by the owner. Old Burdick's restaurant does have a profit, as well as the banquets. The remaining three restaurants (Burdick's, Zazio's and Webster's) operate in the negative. The hotel absorbs some of the costs for the parking, accounting, credit cards, tax filing, and engineering. The revenue and expenses in Respondent's report are not correct. The restaurants are as efficient as possible. They are monitored and operate at a minimal negative operating income.

Michael D. Elliston, CPA, Chief Financial Officer, Greenleaf Capital, Inc., Catalyst Development, LLC, was Petitioner's next witness. He was responsible for providing the financials to both Petitioner's and Respondent's appraisers. Elliston stated that Greenleaf Capital charges costs for management fees, shared services, labor, and invoices, and charges the same back to the entities. The IT department provides services, audits, review, tax returns, and fixed assets.

The management fee charged is typical for Carlson Hotels. The credit card fees are negotiated; however, there is not a reduction that can be made. The controller for the Radisson prepared the financials for the appraisers; Elliston is responsible for facilitating the business records. The "shared expenses" is akin to a management fee.

Petitioner's Exhibit 11, the Summary of Historic Fixed Asset Expenditures, was discussed in length by Elliston. The document has five years of assets divided between the real and personal property. This is the historical expenditures for maintenance for the subject property. The real property expenses range from 0.77% to 8.58% and averages 4.55% over the five-year period. The amount spent decreases each year. The personal property ranged from 1.86% to 4.4% with the five year averaging 2.82%. Elliston indicated this would be reflective of an amount set aside for reserve for replacement.

David J. Sangree, MAI, prepared an appraisal for the three years at issue. He is the president of Hotel & Leisure Advisors, Inc. Sangree was admitted as an expert witness for valuation. He detailed the areas of his appraisal explaining each section and where the information was gathered and the reason why a specific conclusion was reached.

The historical information was considered as well as comparing the percentages for other similar full-service hotels. National trends were outlined, then statewide, and specific considerations for the general area. This laid the foundation for the use of determination of the lodging properties that the Radisson competes with for both occupancy and the average daily rate.

The Radisson is considered a full-service "upscale" hotel flag. A full-service hotel designation is required to offer, at minimum, one restaurant that serves three meals, room service, as well as extra amenities. The subject property offers retail, restaurants, salon, spa, fitness center, and banquet service for the conference break-out rooms. Sangree testified that the subject property contained more restaurants than is typically found in an upscale hotel.

Sangree stated that retail needs to make a profit, the lobby is too large, and the office space should be utilized better. The subject property has a plethora of square footage that is not needed or used to its fullest highest and best use.

Sangree explained that the subject's bottom line is a negative figure; most investors would investigate to determine the cause of the loss and determine if the property could be profitable. He compared other upper scale hotels' profit and loss statements with the subject properties to determine the sections that require an adjustment.

Most hotels do operate their own restaurant(s); however, typically, banquets are usually the profit center. An investor would require a business plan to determine how to make the property profitable overall. Sangree outlined some of the negative attributes that would influence the value of the subject property. They include:

1. Many of the corporate demand generators that historically supported the subject have moved out of downtown to suburban locations or are no longer in existence. While initiatives are being taken to revitalize the downtown market, the city's core has declined since the room tower addition was developed in the early 2000's.
2. The subject has no visibility or easy access to or from I-94. The property is approximately two miles from the Interstate and there is limited directional signage leading to the property.
3. The subject is in need of a major Radisson-required property improvement plan.
4. The subject is the largest hotel in the market. The market has experienced high unemployment and a declining commercial base that has less need for a large convention hotel. P-1, p D-3.

Sangree utilized a typical income approach for the subject property. He collected data from other upscale chain hotels, as well as hotels in the area that the Radisson competes with for hotel occupants. He considered the projected subject occupancy utilizing the competitor's penetration rate. He estimated that the subject property would continue to lose its share of the market. The occupancy level for the subject property was estimated at: 2009: 57.5%, 2010: 57.8% and 2011: 55.0%.

The average daily rate ("ADR") considered the historical ADRs for the subject property and competition, any discounts, the projected demand, and the appropriate rate for similar properties. An economic inflation rate of 3.0% per year was used. The ADR for the subject property is estimated as follows: $129 in 2009, $128 in 2010, and $135 in 2011.

Sangree relied on industry standards and actual hotel comparable data from his database. Industry standards were utilized from Host Report 2010 published by Smith Travel Research, and TRENDS in the Hotel Industry, published by PKF Consulting. The estimated RevPAR[1] was $72.50 for 2009, $74.01 for 2010, and 74.31 for 2011. The total room revenue was estimated. The remaining department's revenue was estimated including food and beverage, "other departments," rentals, and other income. After estimating incomes, the corresponding expenses were determined based upon actual, historical, and the industry standard, which included administrative and general,

[1] RevPAR is calculated by multiplying the occupancy by the average rate to provide a measure hotel performance.

management fee, marketing, franchise fee, property operations maintenance, energy, and fixed charge expenses. Sangree's income and expense statement for 2009 is:

		Petitioner
	2008 Historical	2009 TY
# Rooms	341	341
Occupancy	60.70%	57.50%
Average Rate	$127.68	$126.00
RevPAR	$77.50	$72.50
Rm Occupied	75,760	71,619
Revenues		
Rooms	$9,672,788	$9,024,000
Food/Bev	$13,612,433	$12,700,000
Other Depts	$19,236	$15,000
Rentals $	$525,100	$430,000
Retail	$2,253,066	$2,250,000
Total Revenue	$26,082,643	$24,419,000
Dept Exp		
Rooms	$2,857,757	$2,346,000
Food/Bev	$10,588,098	$9,652,000
Other Dept	$116,300	$60,000
Retail	$2,793,058	$1,913,000
Total Dept Exp	$16,355,213	$13,971,000
Total Dept Income	$9,727,430	$10,448,000
Undist Op Exp		
Adm General	$3,388,203	$2,387,000
Mgt Fees	$436,084	$609,000
Marketing	$2,325,612	$1,876,000
Franchise	$266,196	$248,000
Prop Op Maint	$1,331,332	$1,313,000
Energy Costs	$1,321,880	$1,262,000
Total Oper Exp	$9,069,307	$7,695,000
Income B/4 Fixed	$658,123	$2,753,000
Fixed charges		
Land Lease	$64,993	
Prop Tax	$1,765,158	$61,000
Insurance	$351,834	$239,000
Reserves		$1,462,000
Total Fixed Charges	$2,181,985	$1,762,000
net Income	-$1,523,862	$991,000

Selection of the capitalization rate was the next step in Sangree's income approach. A survey of various hotel investment surveys for full-service hotels indicated an increase in the overall national economic climate resulting in an increased risk in the market. The rates declined in 2011. Occupancy continues to be an issue at the subject property, as well as operating in the negative. The sales comparison approach also estimated overall capitalization rates, which ranged from 8.8% to 16.0%. Sangree indicated, based on investor surveys and interviews of brokers, that direct capitalization rates approximate to slightly below the average of the Korpacz Real Estate Survey result for full-service hotels. The overall capitalization rates[2] were then "tax loaded," that is, the effective tax rate was added to the rate to result in a percentage of property taxes. This results in the following calculation for tax year 2009:

	Petitioner
	2009 TY
Net Income	$991,000
Base Cap Rate	8.00%
Effective tax rate	3.55%
Loaded Cap Rate	11.55%
Indicated Value	$8,600,000
Less FF&E	$1,000,000
Market Value	$7,600,000

Sangree utilized the same technique for the subsequent years, which resulted in an indication of value as of December 31, 2008, of $7,600,000, for December 31, 2010, of $7,800,000, and December 31, 2011, of $7,900,000.

[2] Both appraisers used the same loaded cap rate for tax year 2009.

Sangree's sales comparison approach provided detailed information of six properties that sold from May 2007 to May 2011. The elements of comparison that Sangree considered were Sale Price, number of rooms, price per room, and date of sale. The date of sale was adjusted for differences in market conditions due to inflation and deflation. Sale 2 was adjusted in 2009 and 2010 to reflect the decline in hotel values since 2007. Sale 5 was adjusted upward for 2010 and 2011 because it occurred at the lowest point in property values. Sales 1, 3, 4, and 6 sold in late 2010 and 2011 and were not adjusted for market conditions.

The adjustment for location/market considered market area and access to demand generators. The subject property's location benefits from the business, entertainment, and cultural demand generators. Sales 2, 3, 4, and 6 are located in the suburban markets; therefore, they were adjusted for their inferior locations. Sale 1 required no adjustment as it was considered similar to the subject property.

The physical condition and facilities of the six sales reflect differences in effective age, condition, facilities, and size. The subject property received a quality performance review by the Radisson, and it was determined that the overall condition was declining. The property will undergo a major PIP in order to continue use of the Radisson brand. Sales 5 and 6 were renovated immediately after their sale, which resulted in a negative adjustment.

The following table reflects the sales as adjusted for 2008:

Sale #	Property	Location	Sale Date	Sale Price w Adj	Rooms	Adjusted SP/Room
1	Hyatt	Dearborn	Aug-10	$12,500,000	772	$16,192
2	Clarion	Kalamazoo	May-07	$3,250,000	156	$19,688
3	Hilton	Auburn Hills	Sep-10	$5,100,000	224	$23,906
4	Sheraton	Saginaw	May-11	$2,711,000	142	$20,050
5	Crowne Plaza	Grand Rapids	Jan-09	$11,300,000	320	$33,547
6	Sheraton	Romulus	Mar-11	$12,700,000	359	$35,376

Sangree used the same six comparable properties for the three years at issue; the only changes made to the subsequent years' sales were market conditions.

Upon cross-examination, Sangree was asked if using sales two years prior to the effective date was less reliable than sales during the appropriate time parameters. He stated that for the 2009 tax year the May 2011 sale of the Four Points by Sheraton in Saginaw was a bit on the edge. Sangree stated, however, that it is within a reasonable range for the 2010 and 2011 tax dates at issue. The 2011 sales were listed and on the market. He was aware that the Sheraton was sold in 2006 and had a sheriff's deed.

The value for the Sales Comparison Approach (after exclusion of personal property) is: $8,500,000 as of December 31, 2008; $8,600,000 as of December 31, 2009; and $8,900,000 as of December 31, 2010.

Annette Summerfield, CCIM, testified that the retail and restaurant comparable properties used in Respondent's appraisal were not appropriate. The rates stated are inflated.

Patricia Owens, Vice President and Managing Director for Catalyst Development Company, LLC, explained that she has not found any retail or restaurant that has made an inquiry to lease any of the space within the Radisson. She did lease office space, but did not find any interested tenants for the retail or restaurant space.

Respondent's Arguments

Respondent argues that the subject property is slightly over assessed based on its appraisal.

Respondent's Exhibits admitted:

R-1 Appraisal of subject property.
R-2 2006 Summary Income Statement.
R-3 2007 Summary Income Statement.
R-4 2007 Detailed Financial Statement.
R-5 2008 Summary Income Statement.
R-6 2008 Detailed Financial Statement.
R-7 2009 Summary Income Statement.
R-8 2009 Detailed Financial Statement.
R-9 2010 Summary Income Statement.
R-11Chart comparing historical income statements.
R-12 Multiple Photographs.
R-13 Radison Franchise fee.
R-16 Catalyst/CSM Group lease.

Respondent's only witness was Hans Detlefsen, MAI, who prepared an appraisal of the subject property. He is the managing director of CCG Holdings, which is under the umbrella of HVS, comprised of 30 individually owned businesses. HVC is the world's largest hotel consulting and valuation organization, specializing in the valuation of hotels, motels, resorts, and related hospitality properties.

Detlefsen was admitted as an expert witness. He went through the same valuation process as Sangree, beginning with the national forecast, state, and then local forecasts to determine the market value of the subject property. Although the subject property has an actual age for the majority of the building of forty (40) years, there was a tower constructed in 2002. Detlefsen found no major components of the subject property that would limit its profitability. He did comment that there were some $6.4 million in upgrades to the subject property between 2008 and 2010. The subject property is slated for $16 million in PIP that is scheduled to take place as a prerequisite to keeping the hotel under the Radisson name.

Detlefsen opined that the location in downtown Kalamazoo strengthens the market share as the only full-service hotel with 44,000 square feet of meeting space. He referenced Smith Travel Research (STR) for published data used by hotel buyers. The subject property is located in the East North Central region as an upscale, urban, upper upscale chain for the Radisson.

Detlefsen defined the market area as including the 239-room McCamly Hotel in Battle Creek and the 182-room Holiday Inn located in west Kalamazoo. Using the STR data for the historical supply and demand, he was able to see where the subject property fit for market occupancy, average rate, room revenue per room, and RevPAR. RevPAR is calculated by multiplying occupancy by average rate and provides an indication of how well room revenue is maximized. The competitive hotels were considered secondary location and inferior to the subject property.

The demand analysis increased slightly from the average market. The averages indicate 53.9% occupancy for 2008 with a $108.33 room rate, RevPAR $58.41; 51.33% occupancy for 2009 with $105.28 room rate, RevPAR %54.04; and for 2010 55.3% occupancy with $107.93 room rate, RevPAR $59.70.

The income approach was Detlefsen's initial method. The hotel demands in the area were considered, as well as existing and any proposed competition. Actual income and expenses are presented in a stabilized format altered for anticipated income trends. When a line item was inconsistent with operating statistics of comparable lodging facilities Detlefsen explained why the subject property's historical pro forma was stabilized to resemble benchmarks from similar hotels. This is to reflect how a typical buyer would capitalize the subject's income "as stabilized" into value. The result is the following:

	2009 TY
# Rooms	341
Occupancy	60%
Average Rate	$127.68
RevPAR	$76.61
Rm Occupied	74,884
Revenues	
Rooms	$9,561,000
Food/Bev	$7,395,000
Other Depts	$1,106,000
Rentals $	$1,300,000
Retail	
Total Revenue	$19,362,000
Dept Exp	
Rooms	$2,773,000
Food/Bev	$4,807,000
Other Dept	$1,297,000

Retail	
Total Dept Exp	$8,976,000
Total Dept Income	$10,386,000
Undist Op Exp	
Adm General	$1,569,000
Mgt Fees	$581,000
Marketing	$1,296,000
Franchise	$669,000
Prop Op Maint	$1,330,000
Energy Costs	$1,296,000
Total Oper Exp	$6,159,000
Income B/4 Fixed	$3,645,000
Fixed charges	
Land Lease	
Prop Tax	
Insurance	$352,000
Reserves	$774,000
Total Fixed Charges	$1,126,000
Net Income	$2,519,000

When the historical information was considered, Detlefsen found that some expenses were not typical for similar properties. The food and beverage department lost money except for The Old Burdick Restaurant and the banquets. He determined an investor would consider leasing three of the current restaurants, and keep the one that made a profit as well as the banquet center. The retail spaces utilized by the Radisson have also not shown a profit for the last five years. Detlefsen found comparable asking leases for retail space. He used the asking rents for both the restaurant and retail space and moved the income to “other departments” and rental, which resulted in a shift of income and expenses. The food and beverage income and the resulting expenses decreased. The shift resulted in an income gain prior to fixed expenses.

Detlefsen estimated a decrease in reserves for replacement and fixed charges. The reserves for replacement as explained were for the periodic replacement for the personal property. The capitalized expenditures do not appear in operating statements and he did not include it either. The estimate came from a study conducted by the International Society of Hospitality Consultants. He used 4% as a standard estimate for reserve for replacements.

The next step was to determine the capitalization rate. Detlefsen considered investor surveys from Korpacz, Real Estate Research Corporation, and USRC Hotel Investment Survey, as well as capitalization rates extracted from sales. He selected 8.00% for 2009, 9.00% for 2010, and 8.5% for 2011. The capitalization rates were then loaded with the effective tax rate to effectively remove property taxes from the valuation process. The result is 11.55% for 2009, 12.525% for 2010, and 12.06% for 2011. The 2009 tax year is selected to indicate the final value:

Base Cap Rate	8.00%
Effective tax rate	3.55%
Loaded Cap Rate	11.55%
Indicated Value	$21,811,572
Less FF&E	$1,200,000
Market Value	$20,600,000

The value via the income approach is $20,600,000 ($60,000 per room) as of December 31, 2008, $17,200,000 ($50,000 per room) as of December 31, 2009, and $21,200,000 ($62,000 per room) as of December 31, 2010.

The sales comparison approach is based on the principal of substitution. Detlefsen considered other properties that would be equally desirable to an investor and the price paid for a similar property. The lodging industry as evidenced by sales in 2009 indicated a 50% decline in sales. The slowing economy weakened the hotel industry also with fewer travelers at lower rates. Mortgages were hard to acquire in 2009 until early 2010. Optimism returned for the hotel sector with sale transactions tripling the 2009 slump. The average sale price per room increased for 2010.

Detlefsen considered twelve sales in the Midwest to be comparable properties. He narrowed the selection to six properties sold in Michigan. The only sale in Kalamazoo reflects an upscale, select-service Residence Inn, which sold in October 2009 for $55,400 per room. Detlefsen selected sales that would be reflective of the tax year at issue to determine the market value of the subject property as of each tax year at issue. He adjusted the sales for market conditions, location, physical condition, and other revenue sources. The sales used to determine the 2009 values are Sales 1, 2, 3, and 4. All of the sales that were included are:

Sale #	Property	Location	Sale Date	Sale Price w Adj.	Rooms	SP/Room
1	Hilton	Romulus	Jan-06	$7,100,000	151	$61,000
2	Four Points	Saginaw	Nov-06	$7,562,500	142	$53,000
3	Sheraton	Madison WI	Mar-07	$15,000,000	237	$67,000
4	Ramada	Hancock	Mar-08	$3,050,000	51	$57,000
5	Residence Inn	Kalamazoo	Oct-09	$4,600,000	83	$58,000
6	Four Points	Ann Arbor	Aug-10	$12,000,000	197	$73,000

The sales comparison approach resulted in the following range of values: $18,100,000 to $22,800,000 as of December 31, 2008; $17,100,000 to $21,500,000 as of December 31, 2009; and $20,800,000 to $25,000,000 as of December 31, 2010.

Detlefsen stated in conclusion that the local market was analyzed for transient accommodations, analyzed the occupancy and rate levels, income and expenses, and developed market income and expenses for the subject property. The net operating income was capitalized to result in value. The value of the personal property was deducted from the value to result in the market value of the real estate. The similar sales were considered, adjustments for differences in amenities were applied; however, they are subjective, diminishing the reliability of the sales comparison approach for use as a secondary check to the market value of the subject property.

Stipulated Facts

1. The subject property is located in the central portion of the downtown of the City of Kalamazoo with an address of 100 West Michigan Avenue and a Parcel No. of 06-15-375-004.
2. The size of the property is approximately 2 acres or 87,120 square feet and located in zoning district Commercial, Business, Research District and Technology (CBRT).
3. Petitioner operates a full-service hotel and banquet/convention facilities under the name of Radisson Plaza Hotel, in a structure with a gross building area of 392,000 square feet. The current use of the property is its highest and best use.
4. The property was developed in the earlier 1970s as a public-private venture between the City of Kalamazoo and Inland Steel Development Company, and first placed on the assessment roles in 1974. The City operated the convention center and Inland Steel operated the hotel, retail and office facilities; the hotel operated as a Hilton hotel from 1975 until it was purchased by Kalamazoo Center Holdings in 1990. Kalamazoo Holdings invested $20 million in renovations and improvements during the approximate 10 years it owned the property.
5. Catalyst Development Co., LLC purchased the real property for $6,900,000 in 2000. It changed the affiliation of the hotel to the Radisson brand. In 2002 Catalyst undertook a major remodeling and renovation project with the addition of a ten-story second tower for 60 additional guest rooms and other improvements to the hotel, restaurant and retail facilities. The total cost for these improvements was $59 million and additional renovations occurred between 2008 and 2010 at cost of approximately $6.4 million. Catalyst further plans to invest $16.5 million over the next 2 years in conjunction with the Radisson Property Improvement Program. The foregoing cost figures

include expenditures for both personal property and real property improvements.

6. The property has 341 rooms, four restaurants, 44,000 square feet of meeting space, a spa and salon, an indoor pool and whirlpool, health club, business center, gift shop, floral shop, clothier and vending.
7. Hotel has 97 King, 198 Double, 42 King Suites, and 4 Double Suites.
8. Burdick's Breakfast Express seats 120 with 2,786 square feet.
9. Old Burdick's Bar and Grill seats 300 plus private dining for 50 and an outdoor patio. It is 10,988 square feet.
10. Webster's Prime Steak House seats 100, and has 7,695 square feet.
11. Zazio's Restaurant seats 50 plus an outdoor patio, and has 8,577 square feet.
12. Meeting rooms are 44,000 square feet with 22 separate rooms ranging from 300 to 10,500 square feet.
13. Sydney is an upscale men's and women's apparel, shoes and gift store with 4,695 square feet.
14. Sofia is the floral and gift shop. It has 1,558 square feet.
15. Idun Spa is a premier full service spa and salon with 3,501 square feet.
16. Rio is the coffee, gift and newspaper retail with 1,859 square feet.
17. There are 24,819 square feet in office space with 3,600 square feet leased to Human Ex.
18. The Kalamazoo Athletic Club is a state-of-the-art 11,375 square foot full service fitness center with 21-yard pool, 12 person whirlpool.
19. In addition, the other amenities include a 65-seat theatre, Business Center, Valet parking, Airport Shuttle Service, and laundry and dry cleaning.

In addition to the parties' stipulated facts, which the Tribunal accepts and appreciates, the following additional facts are:

1. Subject property contains retail and restaurant spaces that have not been profitable for the last five years.
2. The subject property as a whole has not been profitable for five years.
3. The highest and best use determined by both parties is the continued use as a hotel.
4. Personnel expenditures for training are not reflective of the market.
5. Losses for the retail and restaurants are not typical of a for-profit business.

Applicable Law

Pursuant to Section 3 of Article IX of the State Constitution, the assessment of real property in Michigan must not exceed 50% of its true cash value. 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 the assessment, being the price which could be obtained for the property at private sale, and not forced or auction sale. See MCL 211.27(1). The Michigan Supreme Court in *CAF Investment Co v State Tax Commission*, 392 Mich 442, 450 (1974), has also held that true cash value is synonymous with fair market value.

In that regard, the Tribunal is charged in such cases with finding a property's true cash value to determine the property's lawful assessment. *Alhi Development Co v Orion Twp*, 110 Mich App 764, 767 (1981). The determination of the lawful assessment will, in turn, facilitate the calculation of the property's taxable value as provided by MCL 211.27a. A petitioner does, however, have the burden of establishing the property's true cash value. See MCL 205.737(3) and *Kern v Pontiac Twp*, 93 Mich App 612 (1974).

> 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%....; and for a system of equalization of assessments. For taxes levied in 1995 and each year thereafter, the legislature shall provide that the taxable value of each parcel of property adjusted for additions and losses, shall not increase each year by more than the increase in the immediately preceding year in the general price level, as defined in section 33 of this article, or 5 percent, whichever is less until ownership of the parcel of property is transferred. When ownership of the parcel of property is transferred as defined by law, the parcel shall be assessed at the applicable proportion of current true cash value. Const 1963 Art IX , Sec 3.

As used in the General Property Tax Act, “true cash value” means the usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale. MCL 211.27(1).

The Michigan Supreme Court, in *Meadowlanes Ltd Dividend Housing Ass’n v City of Holland*, 437 Mich 473; 473 NW2d 363 (1991), acknowledged that the goal of the assessment process is to determine “the usual selling price for a given piece of property.” In determining a property’s true cash value or fair market value, Michigan courts and the Tribunal recognize the three traditional valuation approaches as reliable evidence of value. See *Antisdale v Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984).

“The petitioner has the burden of establishing the true cash value of the property....” MCL 205.737(3); MCL 211.27(1); *Meadowlanes, supra*. “This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing; and (2) the burden of going forward with the evidence, which may shift to the opposing party.” *Jones & Laughlin Steel v City of Warren,* 193 Mich App 348, 483 NW2nd, 416 (1992), at 354-355, citing: *Kar v Hogan*, 399 Mich 529, 539-540; 251 NW2d 77(1976); *Holy Spirit Ass’n for the Unification of World Christianity v Dept of Treasury*, 131 Mich App 743, 752; 347 NW2d 707(1984).

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

The Tribunal may not automatically accept a respondent's assessment but must make its own finding of fact and arrive at a legally supportable true cash value. *Pinelake Housing Cooperative v Ann Arbor*, 159 Mich App 208, 220; 406 NW2d 832 (1987); *Consolidated Aluminum Corp v Richmond Twp*, 88 Mich App 229, 232-233; 276 NW2d 566 (1979). 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*, at 485-486; *Wolverine Tower Associates v City of Ann Arbor*, 96 Mich App 780; 293 NW2d 669 (1980); *Tatham v City of Birmingham*, 119 Mich App 583, 597; 326 NW2d 568 (1982).

Conclusions of Law

Both parties presented an income approach and a sales comparison approach that indicates a decrease in the true cash value of subject property.

The subject property's actual income and expenses were compared with national averages to determine if the historical income and expenses were typical for a hotel. The parties disagreed with the income and expenses for the subject property. The Human Ex[3] expenditures were considered above normal by Respondent. Petitioner's witnesses defended the expenditure by indicating that less turn-over of employees indicates a greater guest satisfaction.

The difference in the income is reflected in the following table:

		Petitioner	Respondent
	2008 Historical	2009 TY	2009 TY
# Rooms	341	341	341
Occupancy	60.70%	57.50%	60%
Average Rate	$127.68	$126.00	$127.68
RevPAR	$77.50	$72.50	$76.61
Room Occupied	75,760	71,619	74,884
Revenues			
Rooms	$9,672,788	$9,024,000	$9,561,000
Food/Bev	$13,612,433	$12,700,000	$7,395,000
Other Depts.	$19,236	$15,000	$1,106,000
Rentals $	$525,100	$430,000	$1,300,000
Retail	$2,253,066	$2,250,000	
Total Revenue	$26,082,643	$24,419,000	$19,362,000
Dept. Exp.			
Rooms	$2,857,757	$2,346,000	$2,773,000
Food/Bev	$10,588,098	$9,652,000	$4,807,000

[3] Human Ex was explained by Rayman as the company and methods used to retain and train employees. The expenditure assists in less employee turn-over and better guest satisfaction.

Other Dept.	$116,300	$60,000	$1,297,000
Retail	$2,793,058	$1,913,000	
Total Dept. Expense	$16,355,213	$13,971,000	$8,976,000
Total Dept. Income	$9,727,430	$10,448,000	$10,386,000
Undist. Operating Expense			
Adm. General	$3,388,203	$2,387,000	$1,569,000
Mgt. Fees	$436,084	$609,000	$581,000
Marketing	$2,325,612	$1,876,000	$1,296,000
Franchise	$266,196	$248,000	$669,000
Prop Op Maint.	$1,331,332	$1,313,000	$1,330,000
Energy Costs	$1,321,880	$1,262,000	$1,296,000
Total Operating Expenses	$9,069,307	$7,695,000	$6,159,000
Income B/4 Fixed	$658,123	$2,753,000	$3,645,000
Fixed charges			
Land Lease	$64,993		
Prop Tax	$1,765,158	$61,000	
Insurance	$351,834	$239,000	$352,000
Reserves for Replacements		$1,462,000	$774,000
Total Fixed Charges	$2,181,985	$1,762,000	$1,126,000
Net Income	-$1,523,862	$991,000	$2,519,000
Base Cap Rate		8.00%	8.00%
Efective tax rate		3.55%	3.55%
Loaded Cap Rate		11.55%	11.55%
Indicated Value		$8,600,000	$21,811,572
Less FF&E		$1,000,000	$1,200,000
Market Value		$7,600,000	$20,600,000

The differences in Respondent's report that results in a value lower than the assessment, but substantially higher than Petitioner's value, is due to management decisions. The first item is the overall decrease in income. Detlefsen assumed that three of the four restaurants, and the two retail spaces, would be more profitable or less of a loss if they were leased. Petitioner argued that the potential rental for the space would not be rented for the amounts estimated by Detlefsen. The interior space of the Radisson would not be leased at a premium rate. The subject property has not had any inquires to lease any of the spaces to an outside lessee. The owner prefers that the space is operated consistently with the Radisson quality and service. A space that is "dark" or vacant with no lights on does not promote a feeling of security within a hotel. Therefore, Petitioner successfully argued that the restaurant and retail space would not command the income as stated by Respondent in its appraisal. The Tribunal agrees with Respondent that an alternative should be considered for the areas of the hotel that generate a loss. The subject property is supposed to be a for-profit business.

The parties' next area of different methodologies is the Department Expense. Respondent's revenue estimate for food and beverage is less. This difference is due to transferring the income and expenses for food and beverage to three restaurant leases. The remaining Old Burdocks Restaurant and Banquet are profitable. The three other restaurants are assumed to be leased. The missing expenses from the retail are due to the two spaces also being leased; however, the total department income is slightly less than Petitioner's income.

Respondent failed to account for the property taxes for the personal property. The reserves for replacement estimated by Respondent appeared to be low for the subject property. It was not clear if it was assigned to the personal property.

The Tribunal finds that although Petitioner has requested a substantial reduction in the true cash value of the subject property, based upon its actual income and some management practices, the hotel has not been profitable. It appeared as if the owner of the hotel has made some management decisions that appear to make the hotel less than profitable but score high on guest satisfaction.

In addition to the income approach, both parties considered sales of similar hotel properties. The Tribunal has placed all of the sales on one grid for consideration and assistance with determining the true cash value of the subject property. For ease of understanding, Petitioner's sales are in italic. The sales are:

Sale #	Property	Location	Sale Date	Sale Price w Adj	Rooms	SP/Room
1	Hilton	Romulus	Jan-06	$7,100,000	151	$61,000
2	Four Points	Saginaw	Nov-06	$7,562,500	142	$53,000
3	Sheraton	Madison WI	Mar-07	$15,000,000	237	$67,000
2	*Clarion*	*Kalamazoo*	*May-07*	*$3,250,000*	*156*	*$19,688*
4	Ramada	Hancock	Mar-08	$3,050,000	51	$57,000
5	*Crowne Plaza*	*Grand Rapids*	*Jan-09*	*$11,300,000*	*320*	*$33,547*
5	Residence Inn	Kalamazoo	Oct-09	$4,600,000	83	$58,000
1	*Hyatt*	*Dearborn*	*Aug-10*	*$12,500,000*	*772*	*$16,192*
6	Four Points	Ann Arbor	Aug-10	$12,000,000	197	$73,000
3	*Hilton*	*Auburn Hills*	*Sep-10*	*$5,100,000*	*224*	*$23,906*
6	*Sheraton*	*Romulus*	*Mar-11*	*$12,700,000*	*359*	*$35,376*
4	*Sheraton*	*Saginaw*	*May-11*	*$2,711,000*	*142*	*$20,050*

The 2009 tax year had fewer sales and was the brunt of the 9-11 terrorist attack. The economic decline was also a large influence. One of the market influences of the 2008 recession is the loss of hotel rooms and banquet facility. Larger "conference" and corporate dependent hotels did not recoup from the loss of travel to group events due in part to the recession. Large events were cancelled or severely modified due to budget restraints. The subject property is located in a community that was influenced by the economic downturn. Sangree's negative attributes were all considered; however, when taking into consideration the PIP at $16,500,000, it is difficult to believe that any business would invest double the value of the property in upgrades. If the subject property is only worth $7.6 to $7.9 million as opined by Petitioner's appraiser Sangree, why would an investor put double the property value into the PIP? It is not this Tribunal's question to ponder.

The Tribunal finds, based on the income and sales comparison approaches, that the value for the subject property is reduced, not to the degree as proposed by Petitioner, but lower than Respondent's contentions. The Tribunal in recalculating the income approach includs the personal property taxes to Respondent's income approach and increased the reserves account. This is tempered with the sales of similar properties and results in the indicated reduction in market value for the subject property. The Tribunal agrees with Respondent that some management decisions may not result in a profitable business. The sales comparison approach in conjunction with the income approach indicates a value in the range of $41,400 per room for the 2009 tax year, $35,550 per room for tax year 2010, and $41,000 for the 2011 tax year. Both parties increased the value of the subject property for the 2011 tax year; however, the taxable value is limited by the CPI multiplier of 1.017.

The Tribunal finds that the summary appraisal reports prepared by both Petitioner's and Respondent's appraisers are credible and as testified to both meet Uniform Standards of Professional Appraisal Practice (USPAP). Neither appraisal report was misleading; both appraisers explained the process and techniques used to develop a sales comparison approach and an income approach. Both witnesses testified to the standards used by the appraisers and were found to be credible. The Tribunal finds that the valuation disclosures used typical techniques for the sales comparison approach and the income approach.

In this case, the Tribunal concludes that the evidence, testimony, and law indicate that the subject property is assessed in excess of 50% of market value. A reasoned combination of the sales comparison approach and the income approach was found to be appropriate in this specific instance.

The Tribunal is charged in a valuation appeal to determine the true cash value of the subject property as of each tax year at issue. Petitioner was able to prove by a preponderance of its evidence that the assessment of the subject property should be modified.

JUDGMENT

IT IS ORDERED that the property's assessed and taxable values for the tax year at issue shall be as set forth in the *Summary of Judgment* section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax year at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 90 days of the entry of the Final Opinion and Judgment, the subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by this Order within 28 days of the entry of this Order. 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 the Tribunal's order. As provided in 1994 PA 254, being MCL 205.737, as amended, interest shall accrue for periods after March 31, 1985, but before April 1, 1994, at a rate of 9% per year. After March 31, 1994, but before January 1, 1996, interest rate of the 94-day discount treasury bill rate for the first Monday in each month plus 1%. As provided in 1995 PA 232, being MCL 205.737, as amended, interest shall accrue for periods after January 1, 1996 at an interest rate set each year by the Department of Treasury. Pursuant to 1995 PA 232, interest shall accrue (i) after December 31, 1995 at the rate of 6.55% for calendar year 1996, (ii) after December 31, 1996 at the rate of 6.11% for calendar year 1997, (iii) after December 31, 1997 at the rate of 6.04% for calendar year 1998, (iv) after December 31, 1998 at the rate of 6.01% for calendar year 1999, (v) after December 31, 1999 at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000 at the rate of 6.56% for calendar year 2001, (vii) after December 31, 2001 at the rate of 5.56% for calendar year 2002, (viii) after December 31, 2002 at the rate of 2.78%

for calendar year 2003, (ix) after December 31, 2003 at the rate of 2.16% for calendar year 2004, (x) after December 31, 2004 at the rate of 2.07% for calendar year 2005, (xi) after December 31, 2005 at the rate of 3.66% for calendar year 2006, (xii) after December 31, 2006 at the rate of 5.42% for calendar year 2007, and (xiii) after December 31, 2007 at the rate of 5.81% for calendar year 2008, (xiv) after December 31, 2008, at the rate of 3.31% for calendar year 2009, (xv) after December 31, 2009, at the rate of 1.23% for calendar year 2010, (xvi) after December 31, 2010, at the rate of 1.12% for calendar year 2011, and (xvi) after December 31, 2011, at the rate of 1.09 for calendar year 2012.

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

MICHIGAN TAX TRIBUNAL

Entered: March 16, 2012 By: Victoria L. Enyart