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

Keith R. Kolfage
and
Suzette M. Hodges-Kolfage
Petitioners,

MTT Docket No. 297856

v

City of Ludington
Respondent.

Tribunal Judge Presiding
Richard A. Southern

FINAL OPINION AND JUDGMENT

Petitioners, Keith and Suzette Kolfage, are appealing the subject property's true cash value (TCV), state equalized value (SEV) and taxable value (TV) established by Respondent, City of Ludington, under the General Property Tax Act (GPTA). This appeal is for the 2003-2006 tax years. Petitioners own and operate the Four Seasons Lodging and Breakfast, the subject property. It was built in 1958 of concrete block construction. Petitioners purchased it in 1994 for $470,000 on a land contract from Mr. Gary Dance. The subject property is a one-story, limited-service motel, with a partial basement, located at 717 East Ludington Avenue, Ludington, Michigan, approximately one mile from the Lake Michigan beach; in Pere Marquette Township, Mason County. Subject contained 33 units before 2005 and 29 units thereafter, four rooms having been taken out of service.

The tax parcel identification number is 53-051-241-009-00 and the relevant school districts are as follows: Ludington Area School District and Mason-Lake Intermediate School District.

The Tribunal must determine the subject property's TCV, SEV and TV for the tax years at issue and the valuation method that should be used for determining the true cash value of the subject property. Based on reasons stated in this opinion, the Tribunal upholds Respondent's value conclusions for the tax years at issue and finds that the income approach as applied by Respondent is the most reliable and credible method for determining the values.

This Final Opinion and Judgment results from a two-day Entire Tribunal hearing in Lansing Michigan before Judge Richard A. Southern, commencing July 5, 2007. Documentation in the case file indicates Petitioners were initially represented by John M. Briggs, III (P11200), of the law firm Parmenter O'Toole on May 8, 2003 when the Petition was filed. Mr. Briggs' representation continued until May 20, 2005, when he filed a Notice to Withdraw as Agent with the Tribunal stating Petitioner "[h]ad terminated their representation" and indicating [Petitioner] "will handle this matter [thereafter] on an *in pro per* basis." For the remainder of the proceeding, including at the hearing, Keith R. Kolfage represented Petitioners as an *in propria persona* litigant. Further, Mr. Kolfage also acted as his own expert valuation witness on the basis of his ownership of the subject property. Respondent City was represented by James M. Marquardt (P32790) from the law firm of Lewis, Reed & Allen, P.C. Terrell R. Oetzel, MAI, CRA, SGA, of The Oetzel – Hartman Group, Real Property Appraisers and Counselors, acted as Respondent's expert valuation witness.

Petitioners' value contentions as determined by Mr. Kolfage for the tax years at issue are as follows:

Year	TCV	SEV	TV
2006	$143,600	$71,800	$71,800
2005	$143,600	$71,800	$71,800
2004	$143,600	$71,800	$71,800
2003*	$143,600	$71,800	$71,800

* Petitioner did not offer separate values across the tax years at issue.

Respondent's value contentions as determined by Mr. Oetzel for the tax years at issue are as follows:

Year	TCV	SEV	TV
2006	$498,000	$249,000	$249,000
2005	$681,000	$340,500	$340,500
2004	$680,000	$340,000	$340,000
2003	$723,000	$361,500	$361,500

FINAL VALUES

The Tribunal determined that the subject property's TCVs, SEVs, and TVs, are:

Year	TCV	SEV	TV
2006	$498,000	$249,000	$249,000
2005	$681,000	$340,500	$340,500
2004	$680,000	$340,000	$340,000
2003	$723,000	$361,500	$361,500

SUMMARY OF PETITIONERS' CASE

Petitioners contend that Respondent had assessed the subject property greater than 50% of the true cash value in violation of Michigan Law.

Petitioners called the following three witnesses to establish their contentions:

Witness Richard Dykstra:

Petitioners contend that Respondent should have reduced the true cash value of subject property and accounted for the damage caused by contamination. Petitioners believed that Respondent did not consider the effects of "Peladow" [1] on buildings, pipes, plumbing, and business operations. In support of this argument, Petitioners called Richard Dykstra, assessor for the City of Ludington. Petitioners were allowed to call Mr. Dykstra adversely and out of order over Respondent's objection that Mr. Dykstra was on Respondent's witness list rather than on Petitioners' witness list. (TI, p45)[2] This witness, the assessor of the unit, was on Respondent's Witness List, and present at the hearing, to be available in the event that questions arose concerning uniformity or level of assessment. Mr. Dykstra did not submit a valuation disclosure because he was intended to be called only in the event of need for an equalization witness. Petitioners sought to ask Mr. Dykstra valuation questions intending to explore whether the assessor had reduced subject property's true cash value because of "Peladow contamination." (TI, p48) Further, he was asked if he knew of the effects of such contamination on buildings and if he had considered such contamination when assessing a Dow Chemical Manufacturing Plant in his jurisdiction. Respondent objected to information concerning the Dow Manufacturing Plant, a property not at issue in this matter, which had no demonstrated relevance to the subject property. Petitioners, not being able to overcome objections, were unable to further develop this line of questioning. (TI, p65) Moreover,

[1] "Peladow" is a calcium chloride product manufactured by Dow Chemical Company and used *inter alia* for getting construction concrete to "cure" more rapidly during cold weather. Petitioners allege it was used during construction of subject in 1958, causing the hot water heating pipes in the floor to corrode and resulting in the loss of the original heat source and increased maintenance cost. (Petitioners' Post Hearing Brief, Appendix 9)

[2] Hereinafter, Petitioners' Exhibits will be denoted by "P," Respondent's Exhibits will be denoted by "R," and references to the transcripts will be denoted by "T."

Petitioners, failing to lay a proper foundation and answer subsequent relevance objections, were never able to develop a "Peladow" line of questioning.
As Petitioners had no further questions to ask this witness that were material to the matter of the true cash value of subject property, the witness was dismissed.

Witness Keith R. Kolfage:

Petitioners called Keith R. Kolfage to testify about the value of the subject property. Mr. Kolfage testified that he paid $470,000 in 1994 for the subject property. He testified that under his land contract, Petitioners were required to conform to AAA requirements and to make improvements to maintain the AAA status. Mr. Kolfage also testified that the Seller advised Petitioners of leaking due to Peladow. Despite this, Petitioners took the property and assumed responsibility for any repairs caused by Peladow. (TI, pp127-128) Mr. Kolfage also testified that in 2005 four rooms were taken out of service because the rooms were unsafe for occupancy due to water and mold damage. He further testified about the trends in the motel industry, the importance of having AAA status, and the subject property's operating cost being 90% of the gross revenue.

The subject property had AAA rating, but lost it because Petitioners have been unable to afford all the necessary repairs to regain the AAA status. While Petitioners were unable to make all the repairs, Petitioners did invest $84,000 in 2003 toward the following repairs: converted a living area into a lobby/check in area, installed air conditioning, added ADA entrance and bathroom, and purchased commercial appliances.

Mr. Kolfage, who testified as an owner of subject property, prepared Petitioners' valuation disclosure (P42), a four-page rendition of how he would apply the appraisal

process to this property. The following table, the only data contained in Petitioners' valuation disclosure, is simply asserted as Mr. Kolfage gave no written guidance and devoted no direct testimony to explaining his analysis or methods.

Petitioners' valuation disclosure was submitted to the opposing party and the Tribunal on December 23, 2005. It contained *inter alia* the following: (1) a single TCV estimate in the amount of $143,600 for all 5 tax years at issue and the assertion of a valuation method of direct Capitalization Income Approach; (2) the following paragraph indicating rooms, ADR, Occupancy Days Open and Gross per year;

[Tax Yr]	Year	AAA	ADR	Rooms	Occupancy	Days Open	Gross
[2002]	2001	**	$69.09	33	.658	180	$278,000
[2003]	2002	**	72.00	33	.70	173	293,000
[2004]	2003	**	71.50	33	.617	160	232,953
[2005]	2004	**	69.00	33	.64	153	225,606
[2006]	2005	*	67.00	29	.67	146	190,184
			*Diamond Rating				
[2006]	**2005**	*****	**67.00**	**33**	**.589**	**146**	**190,184**

(3) an obsolescence paragraph listing "...[i]tems in need of immediate repair, MTT 284080, to regain eligibility…"

1. Covered Entry
2. Coin Operated Guest Laundry Facilities
3. Swimming Pool
4. Resurface Walls
5. Clothes Closets
6. New Sinks & Toilets
7. Parking Lot & Sidewalks
8. New, Operable, Energy Efficient Windows/ Header Repair
9. Hardware AAA and ADA Compliant Fire/Smoke Alert System.

(4) some 13 general statements referring to "… [items] an informed investor would consider..." and

(5) a concluding statement that nothing of value existed except perhaps the land.

> [B]ased upon knowledge and the methods of MTT Docket 284080 Kolfage v City of Ludington – Final Opinion and Judgment, a knowledgeable investor in hotel/motel real estate would find on the date of valuation **nothing of value except possibly the land**. However, given the possible chemical contamination of the land and the availability of superior land with harbor and Lake Michigan views the value of the land is questionable. (Emphasis supplied.) (Petitioners' Valuation Disclosure P42, p2-4)

Perhaps more importantly, the valuation disclosure did not contain the development of the three principal valuation approaches, corresponding methodologies, and accompanying analysis applying those approaches and methodologies against researched relevant data, which one might expect to find in a real property appraisal assignment for a limited service motel. Further, there was no application of relevant data to the several approaches with an eye toward reconciliation of the strengths and weaknesses each presented in coming to a final conclusion of true cash value. Further still, there was no indication that the witness understood the circumstances under which the several approaches might reasonably be employed as is typically presented in an Entire Tribunal proceeding before the Michigan Tax Tribunal. Moreover, because Petitioners were familiar with competent expert appraisal work products they cannot now claim convincingly that they were ignorant of the type of information and analysis necessary to carry their burden of persuasion. This becomes more disturbing because the case file indicates Petitioners had examples of credible appraisal work product, and the type of information the Tribunal may find persuasive, available to them from their previous Tax Year 2001 appeal of subject property.[3]

[3] Tax Tribunal Judge Michael A. Stimpson's 9/23/04 Opinion and Judgment in MTT Docket No. 284080 *Keith R. Kolfage and Suzette M. Hodges-Kolfage* v *City of Ludington*, wherein both Petitioners' appraisal expert Steven R. Kelly, MAI and Respondent's appraisal expert Terrell R. Oetzel, MAI, CRE, SGA

Mr. Kolfage, again inquiring of himself, made other attempts to install in the record through testimony data, methodology and analysis which should have been present in his valuation disclosure. Respondent's objections to that testimony on the grounds that it was impermissible according to Tribunal Rule and previously rejected when Petitioners attempted unsuccessfully to amend their valuation disclosure were sustained.

Mr. Kolfage was allowed to testify as an expert as a result of his ownership of subject property, MCR 702.7 and *City of Grand Rapids* v *H R Terryberry Co*, 122 Mich App 755; 333 NW2d 126 (1983), and his authorship of Petitioners' four-page valuation disclosure. While the procedure of calling oneself as a witness and simultaneously acting as one's interlocutor was somewhat awkward, the trial judge allowed it to go forward explaining it in the record as follows:

> Judge Southern: Well, stay with why you think your valuation disclosure is correct. Let's do that.
>
> Mr. Kolfage: Okay.
>
> Judge Southern: I'm giving you wide latitude there to tell me why you think your valuation disclosure is correct.
>
> Mr. Kolfage: In 2005, the subject had twenty-nine rooms. The four rooms under building two were removed from service. Those rooms are water-damaged, and have mold damage, and are unsafe for occupation. The homestead is gone.
>
> Mr. Marquardt: Your Honor, and I don't - - this is odd. I don't know whether I'm to object or not, but I guess I will so I can stand and just ask. I didn't object to the discussion regarding [Petitioners'] Proposed Exhibits 2 and 3, but I want to follow up on the comments that the Court just made. Are we not to be looking at the proposed valuation disclosure? Is Mr. Kolfage to be leading us through this? Because I'm looking through here, and I did find, although we weren't turned to it, the reference to the

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produced competent valuation disclosure product and testimony, of the kind typically found credible in Entire Tribunal proceedings.

> twenty-nine rooms in one of the years is shown here on the second page. I found that on my own. The next statement that was made, I didn't find any reference to that at all. And so I think I'm – what I'm going to do is object to the introduction of matters not contained within the valuation disclosure.
>
> Judge Southern: Well, very well. Your objection is on the record and noted. The way it comes together in my mind, Counsel, in the awkwardness of the situation and not having - - not having counsel to inquire of him, wearing both hats simultaneously, it seems to me as if you [Mr. Marquardt] would have your witness on the stand and you were saying Mr. Oetzel, is this your work product, and he said yes. You said would you take me through your work product. And if I were of a mind to allow you latitude to do that, then he could tell you how it is he arrived at his product. That's sort of the way it appears to me. Admittedly, Mr. Kolfage, when you start telling me about (P42), and you [shift and] start bringing in other exhibits, that's problematic, because that doesn't allow Mr. Marquardt the opportunity to object. You know, you're sort of getting a greater advantage there than you're entitled to. And so what I'd like you to do, is confine your comments to why it is you did - - you did this work here in (P42). (TI, pp129-131)

Witness Kolfage testified subject property's gross income as reflected from his federal income tax returns for the respective years were as follows: $293,300 in 2002, $232,953 in 2003, $225,606 in 2004, and $190,184 in 2005. (TI, p158)

Mr. Kolfage's valuation disclosure did not conform, in any meaningful way, to a professional appraisal of a commercial real property limited service motel. That is to say, while it contained some representations of gross income and occupancy, there was no recognizable application of standard Income Approach, Cost Approach, or Sales Comparison Approach methodology or analysis. Further, there was no Reconciliation of Final Values discussing the strengths and weaknesses of the various approaches and their corresponding data inputs in concluding to a final estimate of true cash value for the tax years at issue. The information was indeed minimal and unconvincing to the tribunal as evidenced by the following from the hearing:

> Judge Southern: Well, I've listened for a while, and I think pretty patiently, Mr. Kolfage. I see - - I see in the valuation disclosure two sets of numbers. One number is the property's true cash value for - - well, it doesn't say what year, but it says $143,600.
>
> Mr. Kolfage: Yes.
>
> Judge Southern: That's the property's true cash value, $143,600. That's on Page 1
>
> Mr. Kolfage: Correct.
>
> Judge Southern: On Page 2, I see some data. The only one – the only column that appears to have any value numbered in it, is the column called gross. And it ranges I think in 2001 from $278,000 gross, 2002 it's $293,300 gross, 2003 it's $232,953 gross, 2004 it's $225,606 gross, 2005 it's $190,184 gross. And those are the only numbers in your valuation disclosure that – and it appears to me as though whatever gross is, your total valuation and true property – true cash value estimate is lower than the lowest of gross, if maybe gross is annual income. I don't know, but –
>
> Mr. Kolfage: (Interposing) That's correct, your Honor, Gross is annual income.
>
> Judge Southern: So your value, your value of the property, is less than one year's gross receipts –
>
> Mr. Kolfage: (Interposing) That's correct, your Honor. (TI, p158)

Witness Timothy Massie:

Petitioners called Mr. Timothy Massie, a Certified Public Accountant (CPA), as their third witness. Mr. Massie was qualified and accepted by the Tribunal as an expert "accountant" rather than an expert "appraiser"; thus his expertise did not bear directly or materially on the valuation matters at issue in these proceedings.

Having been sworn, Petitioners sought on direct examination to inquire of Mr. Massie concerning pages selected from a national hotel and motel publication entitled "PKF Hospitality" (Petitioners' Proposed Exhibit Nine, P9) and how he would analyze the benchmark numbers contained therein and make comparisons to the subject

property[4]. Petitioners had been admonished both *in camera* and on the record to refrain from directing questions concerning valuation to witness Massie because he had not timely submitted a valuation disclosure and thus would not be permitted to testify as to value.

> Mr. Marquardt: We had expected actually what Mr. Massie was going to speak to was the financial statement of Petitioner. It would be entirely logical and appropriate, not conceding the numbers on our part, that he would explain to the court what went into the financial statements that Mr. Kolfage has. That's not what we're hearing.
>
> Mr. Kolfage: Rebuttal your honor?
>
> Judge Southern: No, but you may respond to the objection. …
>
> Mr. Kolfage: PKF Hospitality Research is a bible for the lodging industry, it is also the source of information utilized in the Oetzel appraisal to document costs and expenses …Any reasonable, experienced person in the market would consult PKF hospitality when making an investment decision. In fact, they would consult PKF hospitality before they consulted an appraiser. And the reason you do that is that it gives you a very concise benchmark cost, so that you as a prospective buyer, could look at another property, and using the methods detailed in PKF, as well as their numbers, you could determine the performance of your potential investment, you could determine how it's performing against others in the market. … And you would be, from that document, able to make an informed decision. … [r]egarding the value of the subject. …
>
> Judge Southern: **If you recall our discussion *in camera* this morning, and where we were not with respect to your witness, … going to go to valuation questions, Okay? Now we'll put that on the record, if you want.**
>
> Mr. Kolfage: No, No.

[4] A nine-page excerpt [selection] was made from a larger national hotel and motel publication entitled "PKF Hospitality." This excerpt was designated as (Petitioners' Proposed Exhibit Nine, P9) and Petitioner Kolfage sought to question witness Massie about it when Respondent's counsel Marquardt objected on the grounds the exhibit clearly involved valuation methods and analysis and Mr. Massie had not been qualified as a valuation expert or filed a timely valuation disclosure. Further, the material itself was objectionable because the analysis and methods were not contained in the valuation disclosure which Petitioners did file. Witness Massie acknowledged Mr. Kolfage had made the page selection rather than himself. Objection was sustained.

> Judge Southern: But Mr. Massie has not filed a valuation disclosure … and the consequence of that is he may not deliver valuation testimony in this proceeding. … He's further indicated to me that he didn't have the total report and he didn't select what came from the total report. … If you …go to questions that are regarded to valuation, then you're going to be subject to an objection… (Emphasis supplied.) (TII, pp63-66)

Mr. Massie did not prepare a valuation disclosure with respect to this proceeding. Thus, there was not an analysis concerning appraisal techniques or methods regarding the Income Approach, the Cost Approach, the Sales Comparison Approach, or a Reconciliation of Final Values to consider with respect to his testimony. Mr. Massie confirmed that subject property had fiscal year expenses (rounded) from federal tax returns in the following amounts: "...$262,400, [in] 2000; $291,550 in 2001; [$]242,500 in 2002; $306,750 in 2003; and [$]243,00 in 2004." (TII, pp77-78) Mr. Massie was asked by Mr. Kolfage "...is ten percent cost [of annual gross income] for total salaries and wages enough to operate the subject if my wife and I left tomorrow, and decided to live someplace else, and operate the business as an arm's-length investment…?" The Witness: "It wouldn't – it would not be sufficient right now. The wages are at – run, on average, around ten percent per year right now with no wages being paid to either yourself or your wife…". (TII, pp79-80)

Petitioner having no further questions of Mr. Massie, and Respondent declining to cross examine, the witness was excused.

Thus, at the conclusion of their case-in-chief Petitioners contended that the true cash value for the subject property was $143,600 for all tax years at issue, and rested. (TII, p81) While Petitioners listed 50 proposed exhibits in their Pre-trial Exhibit lists, the record shows only one Petitioners' exhibit (P42) being advanced and admitted.

Exhibit	Description	Offered	Admitted
P42	Valuation Disclosure (Kolfage)	Yes	Yes (TI, p9)

SUMMARY OF RESPONDENT'S CASE[5]

Respondent contended that the assessed, state equalized and taxable values do not exceed the amounts permitted by Michigan Law.

First, Respondent addressed the matters of uniformity and level of assessment by claiming that the parties had effectively stipulated to these not being at issue.

> Mr. Marquardt: Your Honor, Thank you. If it please the court, one of the issues that needs to be addressed in a Tax Tribunal appeal is the level of assessment, and I simply just wanted to confirm, for the benefit of the court, that the parties have stipulated and agreed to that. I just wanted to draw to your attention evidence of that is contained in [the] petition – I beg your pardon.
>
> Judge Southern: That's both uniformity and level of assessment[?].
>
> Mr. Marquardt: Yes, Petitioner's amended prehearing statement, this is dated February 22, 2007. We can show you ours, but the 50 percent is indicated as the level of assessment.
>
> Judge Southern: Uh-Huh. Mr. Kolfage, if you have an objection, rise, and then I know that you have an objection to what was just said, and then I'll recognize you, and you can formulate your objection.
>
> Mr. Kolfage: Yeah. The only objection I have, your honor, is that I'm not qualified to determine whether that is correct or incorrect. And so I don't have knowledge that I can actually bring to the matter and whether agree or disagree. So – and that was the only issue.
>
> Judge Southern: But nevertheless, you have the responsibility for the pleading, and as we stand here today.

[5] The Tribunal notes that its opinion incorporates some relevant portions of the evidentiary and legal analysis contained in the various briefs filed by the parties that the Tribunal finds well supported by the record and Michigan law and adopts as its own.

> Mr. Kolfage: And that's how I pleaded it, that I didn't understand what the level of assessment actually means and how to determine whether it's accurate or not.
>
> Judge Southern: Indeed. But you have no proofs to offer [on] level of assessment or the uniformity of assessment is –
>
> Mr. Kolfage: No, I do not.
>
> Judge Southern: Indeed. Please proceed, counsel [Respondent]. (TII, pp82-84)

Mr. Dykstra, the Ludington City Assessor, was on Respondent's witness list, should the issues of level of uniformity and level of assessment require testimony at hearing. Mr. Dykstra was called adversely and out of order by Petitioners. Mr. Oetzel was the only witness called by Respondent.

Next, Respondent argued that the assessed, state equalized and taxable values were not erroneously determined nor did they exceed amounts permitted by Michigan Law. In support of its value contentions Respondent identified its single expert valuation witness.

Witness Terrell R. Oetzel:

Respondent called Mr. Terrell R. Oetzel, MAI, CRE, SGA, Michigan Certified General Real Estate Appraiser #1201000007 of The Oetzel- Hartman Group, real estate appraisers and consultants, to testify about information contained in Respondent's Valuation Disclosure. (R1 – also known as the Oetzel Appraisal) Mr. Oetzel's appraisal is a professionally researched and produced, 175-page, USPAP compliant, Complete Appraisal, using the Summary Report format. It employed all relevant appraisal approaches with explanations as to the strengths, weaknesses and applicability of the

analyses and methods applied and their relevance to the property under appraisal. The report also contained the typical supporting sections for maps, comparable sales and rentals, pictures and diagrams. The document included value conclusions and the basis for those value conclusions for all property and tax years at issue.

At trial, Mr. Oetzel was qualified and accepted by the Tribunal as an expert (TII, p87) and testified about how he determined the value conclusions. For his testimony, he discussed the various methods that he used to determine the value of the subject property. The methods that he discussed are as follows: market approach, income approach, cost approach, and the sales comparison approach. He testified that the highest and best use for the subject property is to continue as a limited-service motel and that the income approach would be the best approach for determining the value of the subject property.

Income Approach:

For the income approach, Mr. Oetzel analyzed the subject property's annual income and expenses for the tax years at issue. He found that the subject property had total revenue of $270,000 in 2003, 2004, 2005 and $238,000 in 2006. For the annual expenses of subject, Mr. Oetzel "reconstructed" "accounting expenses" to "appraisal expenses," from the income and expense figures he was supplied, considering the amounts by comparing expenses furnished by Petitioners to industry standards.

Mr. Oetzel used different occupancy times from that used by Mr. Kolfage. He explained his process in his testimony on direct examination as follows:

> I'm assuming about a 65 percent occupancy on six-month calendar. Now, I know that Mr. Kolfage does not operate it on a six-month calendar, but most of the hotels do.
>
> I am valuing it based upon the market, not based upon what Mr. Kolfage may be doing. And so there is 184 days in those six months

> where most of the hotels are open, and **120 days represents 65 percent, which is basically the occupancy of the area.** …and so basically, I had $270,000 of stabilized income for three years, and then the fourth year $238,000 of income … before taking out any of the expenses…. Then the expenses are explained … I tried to stabilize the expenses before depreciation, before interest on any mortgage, before any rent. Many times you'll see financial statements that have rent in them. Actually, they're mortgage payments most of the time. So I took out real estate taxes and interest, debt service, out of …the statement and stabilized the statement based upon how I think … the market would look at the expenses for this particular property. Now this property is bought by people that are different from the people who would buy the Best Western, the Holiday Inn or the Ramada Inn. I come from a farm background. … These motels of this type and this vintage, are run like the old farm. You plant your corn and soybeans and you sell it. Take out your expenses, and whatever is left over is what the owners got. And that's basically what is happening here. … **That is how these are bought and sold …That's how I have treated this. …. Two of my properties sales … were actually bought by husbands and wives.** The other one was bought by a gentleman who has another interest in cabins, and bought it for an oversupply. … So to say these are bought by your big institutional investors is incorrect. These are bought by a different category of individuals, shall we say, as the function of these hotels, quite frankly, have changed from a year-round hotel to a seasonal hotel that services the tourist trade in Ludington. And you can see that the hotel quite frankly, is getting to the end of its economic life. (Emphasis supplied.) (TII, p104)

He used the following expenses in his income approach calculations: (R1, p55)

> **Total Expenses:** Total Expenses have been estimated as follows:

Cost of Goods Sold	$15,000	5.6%
Salaries and Wages	$27,000	10.0%
Payroll Taxes	$ 2,700	1.0%
Employee Benefit Program	$10,000	3.7%
Repairs and Maintenance	$18,000	6.7%
Personal Property Tax & Licenses	$ 2,750	1.0%
Advertising	$ 6,725	2.5%
General Insurance	$ 4,000	1.5%
Utilities	$15,000	5.6%
Vehicle Expense	$ 5,000	1.9%
Miscellaneous	$31,000	11.5%
Management Fee	$ 8,070	3.0%
Reserves	$10,760	4.0%
	$156,005	57.8%

Mr. Oetzel determined, through his reconstruction of income and expenses from an appraisal perspective, that the total annual expenses were $156,005. He also determined the net operating income for a prospective buyer would have been $113,995 in tax years 2003, 2004, 2005, and $85,035 in tax year 2006. (R1, p55)

	[TY2003] 2002	[TY2004] 2003	[TY2005] 2004	[TY2006] 2005
Estimated Total Revenue	$270,000	$270,000	$270,000	$238,000
Est. Operating Expenses	$156,005	$156,005	$156,005	$152,965
Est. Net Operat. Income	$113,995	$113,995	$113,995	$85,035

In determining these amounts Mr. Oetzel considered the occupancy rates, surveying competing motels, and deducting appropriate expenses. The amount also included the subject property's performance from tax years 2001 through 2005. And Mr. Oetzel determined the direct capitalization and market-derived capitalization. For the direct capitalization, he determined the amounts were $712,000 in tax years 2003 and 2004, $760,000 in tax year 2005, and $567,000 in tax year 2006. He testified that in his application of the income approach to value he determined a direct capitalization rate in two ways, first by the mortgage equity or "band of investment" technique, and second by the "market-derived" technique. Selecting the second technique as the most applicable he determined the true cash values from the income approach were $760,000 in tax years 2003, 2004, 2005 and $567,000 in tax year 2006. (R1, p60)

	[TY2003] 2002	[TY2004] 2003	[TY2005] 2004	[TY2006] 2005
Direct Capital. [OAR]	$712,000	$712,000	$760,000	$567,000
Market Derived [OAR]	$760,000	$760,000	$760,000	$567,000

Further, witness Oetzel calculated an Overall Rate (OAR) using both a Direct Capitalization Band of Investment Technique and a Market Derived Overall Rate Technique,

which is the one he preferred, to yield the following results as his "Going Concern" values, from which he subtracts Personal Property Value and Business Value to obtain an Income Approach true cash value of the subject real estate for the tax years at issue. (R1, p81)

	[TY2003] 2002	[TY2004] 2003	[TY2005] 2004	[TY2006] 2005
Est. Going Concern Val.	$760,000	$760,000	$760,000	$567,000
Est. Pers. Prop Val.	$37,026	$79,942	$72,614	$68,572
Est. Business Val.	$0	$0	$5,900	$0
Est. Val. of Real Estate	$722,974	$680,058	$681,486	$498,428
Est. Val. of Real Estate	$723,000	$680,000	$681,000	$498,000

These are Respondent's reconciled final true cash value estimates, and are reflected in Respondent's value grid *supra*.

Cost Approach:

For the cost approach, Mr. Oetzel determined the land values for the subject property were $128,000 in 2003, $132,000 in 2004, and $136,000 in 2005 and $123,000 in 2006. He used the Marshall and Swift cost manual and determined the reproduction cost for a new building would be $1,072,234. Mr. Oetzel took the following factors into consideration: site improvement, costs and entrepreneurial profits, and land. Adding these factors, Mr. Oetzel determined that the total cost for a new subject was $1,561,601, which did not take into account depreciation. For the depreciation, Mr. Oetzel estimated, using the age life method, that the total economic life of the subject property would be 55 years. (TII, p122) Given this, he then determined that the depreciation rose from 58% in tax year 2003 to 65% in tax year 2004, 69% in tax year 2005, and 73% in tax year 2006. Mr. Oetzel's calculation resulted in a depreciation of 2.9% for each year of effective age. Based on his analysis, Mr. Oetzel determined that the true cash value estimates, using the

cost approach, were as follows: $716,000 in tax year 2003; $680,000 in tax year 2004; $640,000 in tax year 2005; and $584,000 in tax year 2006. (R1, p70)

Further, Mr. Oetzel also accounted for the expected life span of the plumbing system in his calculations concerning effective age and depreciation.

> Q: Mr. Marquardt: And the subject was built in 1958: was it not?
>
> A: Witness Oetzel: Yes, sir.
>
> Q: Can you tell the court, in your expert opinion, what the normal expected life span of the plumbing system would be in the best-case scenario?
>
> A: Well, it's not going to be more than 55 years, because the economic life of the building is, in my opinion, over for that time. So it's going to be something less than that. Now, the plumbing that – in certain areas are going to last longer than maybe the fixtures on the toilet, which are used, quite frequently, or quite often. So various forms of the plumbing are going to change or have different lives over the total economic life of the facility.
>
> Q: Mr. Oetzel, we've been hearing for the last day and a half from Mr. Kolfage his belief, if you will, that some environmental contamination from a chemical called peladow, or some other source, has affected the piping, the plumbing system, at the subject. But Mr. Oetzel, is it – is it reasonable to conclude that the plumbing system based on what you just told the court about the expected life of the plumbing system on the subject, that it would be nearing the end of its useful and actual life, irregardless of any alleged contamination?
>
> A: That is true.
>
> Q: And so would it be fair to say that, in a sense, you've baked into your cost analysis the expected life span of the plumbing system and the other components that go into the building?
>
> A: That is the intention of the age/life technique that I use: that is correct. (TII, pp127-128)

Sales Comparison (Market) Approach:

For the market approach, Mr. Oetzel conducted a survey of the motels in the Ludington area looking at the size, age, location, and room rates of these motels. He took the following factors into consideration: the subject property is a seasonal motel, the change in how the ferry operates between Ludington and Manitowoc, and the financial commitments required for Petitioners to maintain AAA rating. He also prepared an analysis of the subject property's occupancy and average daily rates for tax years 2003 through 2006. And he found that the subject property's neighborhood was in a stable period and that the average daily rate was $68.00.

For the sales comparison approach, Mr. Oetzel used three properties in the Ludington area. Mr. Oetzel testified that he analyzed the properties based on the number of rooms. He determined a range from $17,500 to $20,000 per unit. Mr. Oetzel reduced the per unit amount in 2006 because four rooms had been taken out of service in that year. Mr. Oetzel determined that the true cash value amounts (rounded) for the sales comparison approach for the tax years at issue were as follows: $627,000 in 2003; $650,000 in 2004; $660,000 in 2005; and $609,000 in 2006. (R1- p78)

Reconciliation of Final Values:

Mr. Oetzel concluded his testimony by explaining which approach was the best approach for valuing the subject property and by testifying about how he determined the final values. As far as explaining the best approach, Mr. Oetzel testified that the income approach was the most applicable to the subject property. Mr. Oetzel also testified that he rejected the cost approach because this approach did not reflect the "basic economics" of the subject property and because this approach would not be used by someone who would

be purchasing the subject property. And Mr. Oetzel testified that "[t]he sales comparison is considered supportive; however, is given less weight than the valuation derived from the income approach" because "[t]here was insufficient information from two of the comparable properties to develop an economic adjustment." (R1, p79)

	[TY2003] 2002	[TY2004] 2003	[TY2005] 2004	[TY2006] 2005
Income Approach	$760,000	$760,000	$760,000	$567,000
Cost Approach	$716,000	$680,000	$640,000	$584,000
Sales Approach	$627,000	$650,000	$660,000	$609,000

Petitioner did not formally develop a cost approach and Respondent, while he developed one, did not rely on it to any large degree. Nevertheless, the Tribunal observes some usefulness to analyzing Respondent's cost approach in the instant matter. First, the age life method of estimating accrued physical depreciation yielded estimates corresponding to effective ages of subject structures as follows: "…32years (2002) [TY 2003], 36 years (2003) [TY 2004], 38 years (2004) [TY 2005] , and 40 years (2005) [TY 2006], resulting in accrued deterioration [for subject] of 58% ... 65% … 69% … and 73%." (R1, p70) Second, motel rooms did continue to be constructed in the Ludington area throughout the tax years at issue. And Petitioner does state the following with regard to cost in his closing brief:

> In response to new national chain competition and a new AAA Affiliation Standards for Lodging, in **2003 the Petitioners invested approximately $84,000** to convert their former homestead into a lobby/check in area. The improvements were air conditioning, ADA compliant entrance, ADA compliant bathroom and breakfast area with fireplace. The investment also allowed the Petitioners to furnish the former homestead kitchen with commercial appliances suitable for preparing and serving an on site prepared hot breakfast. (Emphasis supplied.) (Petitioners' Post Hearing Brief, pp1-2)

Further, Petitioners contend in their valuation disclosure the overall true cash value of subject for tax year 2003 is:

> [N]othing of value except possibly the land. However, given the possible chemical contamination of the land and the availability of superior land with harbor and Lake Michigan views the value of the land is questionable. (P42, p3)

Taken together, it is hard to see how these two statements can be simultaneously true. The Tribunal finds the **$84,000 investment in 2003** credibly impeaches the **nothing of value** statement.

With respect to the sales comparison approach to value Respondent found and analyzed three comparable sales. While Respondent may not have been able to confirm as much economic data for those sales as one might have wished; the sales did tend to support Respondent's value contentions, particularly with respect to sales price per motel room as a unit of comparison, ranging "[f]rom $17,575 to $20,205 per motel unit, with an average of $19,071 per unit, rounded to $19,000." (R1, p78)

Finally, to obtain his reconciled final true cash values for the subject property for the tax years at issue, Mr. Oetzel estimated the going concern value, subtracted the estimated personal property values and the estimated business value, leaving as a remainder the estimated real estate value, which became his reconciled true cash values. The estimated "going concern" values per tax year are as follows: $760,000 in 2003, 2004, 2005 and $567,000 in 2006. The estimated personal property values per tax year are as follows: $37,026 in 2003, $79,942 in 2004, $72, 614 in 2005, and $68,572 in 2006. The remaining final true cash values (rounded) per tax year are as follows: $723,000 in 2003, $680,000 in 2004, $681,000 in 2005, and $498,000 in 2006. (R1, p81)

In support of its value contentions for subject property, Respondent listed the following proposed exhibit in its Pre-trial Exhibit list, which was offered and admitted at hearing.

Exhibit	Description	Offered	Admitted
R1	Valuation Disclosure (Oetzel)	Yes	Yes (TII, p141)

FINDINGS OF FACTS

The subject property is a one-story, seasonal motel, with a partial basement that was built in 1958. It is located in Ludington, Michigan, approximately one mile from the Lake Michigan beach.

Petitioners have the burden of proving the value of the subject property and the burden of going forward. The Tribunal finds that Petitioners did not meet their burden of persuasion because there was no credible or reliable evidentiary support for Petitioners' true cash value contention of $143,000 for the tax years at issue. Petitioners argued that Respondent's true cash value should have been reduced, speaking in generalities about declining revenues and deteriorating heating pipes in several units' floors. However, Petitioners failed to quantify their arguments through the proper application of a generally accepted appraisal approach. As a result, the Tribunal gives their arguments no credibility in coming to its determination concerning the true cash value of the subject property. There was no evidence to support the argument that the value should be reduced due to contamination. Mr. Dykstra testified that he had only general knowledge about Peladow because it was manufactured in a plant within his assessment jurisdiction. However, this general knowledge did not translate to direct knowledge about the effects,

if any, of Peladow on an individual subject property. Respondent objected that the large concentrations of a chemical on a site which might be suspected in a continuous manufacturing process over many years, bear no relation to the concentrations which might be suspected in a single site application where that chemical was used in construction. Nevertheless, that argument was of no effect, in that Witness Oetzel testified *supra* that he treated the pipes as essentially depreciated in any event, and thus regardless of the cause, both parties understood the heating pipes in the floor to contribute no value. Mr. Oetzel testified that given the age of the structure the "hot water" heating pipes embedded in the floor of subject during construction in 1958 were nearing the end, if not past, of their effective life anyway**.**

Mr. Oetzel was properly qualified by Respondent as an expert witness in Real Property Appraisal matters, with considerable experience in the lodging industry. He was offered and admitted as an expert regarding the types of property at issue in the proceeding and he testified about the valuation disclosure (R1, Appraisal of Subject Property) that he prepared. He further testified that he prepared his appraisal in accordance with the Uniform Standards of Professional Appraisal Practice USPAP as promulgated and in place at the time of the preparation of the report. In so doing he considered and applied all three traditional approaches to value the subject property, which were the income approach, the cost approach, and the sales comparison approach. For the income approach, Mr. Oetzel determined that the total annual expenses were $156,005. He also determined the net operating income per tax year for a prospective buyer would have been $113,995 in 2003, 2004, 2005, and $85,035 in 2006. And Mr. Oetzel determined the direct capitalization and market-derived capitalization. For direct

capitalization, he determined the amounts per tax year were $712,000 in 2003 and 2004, $276,000 in 2005, and $567,000 in 2006. He testified that he determined the direct capitalization analysis using the mortgage equity or "band of investment" method. For the market-derived capitalization and the income approach valuation, he determined the amounts per tax year were $760,000 in 2003, 2004, 2005 and $567,000 in 2006.

For the cost approach, Mr. Oetzel determined the land true cash values per tax year for the subject property were $128,000 in 2003, $132,000 in 2004, and $136,000 in 2005 and $123,000 in 2006.

For the sales comparison approach, Mr. Oetzel used three properties in the Ludington area. Mr. Oetzel testified that he analyzed the properties based on the number of rooms. Mr. Oetzel determined that the amounts for the sales approach were as follows: $627,000 in 2003, $650,000 in 2004, $660,000 in 2005 and $609,000 in 2006. Based on the evidence, the Tribunal finds Mr. Oetzel's testimony and the valuation disclosure that he prepared to be credible and reliable. Given this, the Tribunal finds that the subject property's TCVs, SEVs, and TVs, are as stated *supra* in the *Final Values* section of this Final Opinion and Judgment.

The Tribunal also finds that the highest and best use of the subject property is as a limited service seasonal motel.

Further, the Tribunal finds that the most credible and reliable method of estimating true cash value in the instant matter is the income approach with support from the sales comparison approach, as employed and explained by Respondent.

With regard to Petitioners' true cash value estimates, Mr. Kolfage testified about his understanding of various aspects of the hotel industry; however, his testimony did not

provide professionally reliable or credible valuation testimony with regard to consideration of and application of relevant factual material appropriately obtained and correctly employed in Petitioners' appraisal. Standard approaches such as the cost-less-depreciation approach, the income approach, and the sales comparison approach, applied in accordance with conventional appraisal methodology to reliable data, were hard to find in Petitioners' valuation disclosure.

CONCLUSIONS OF LAW

STANDARD OF REVIEW

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).

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 NW 2d 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 it determination. *Meadowlanes Limited Dividend Housing Association* v *City of Holland*, 437 Mich 473, 485-486; 473 NW2d 636 (1991).

A proceeding before the Tribunal is original, independent, and de novo. MCL 205.735(1); MSA 7.650(35)(1). The Tribunal's factual findings are to be supported by competent, material, and substantial evidence. *Antisdale* v *City of Galesburg*, 420 Mich 265, 277; 362 NW2d 632 (1984); *Dow Chemical Co* v *Department of Treasury*, 185 Mich App 458, 462-462; 452 NW2d 765 (1990). Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence. *Jones and Laughlin Steel Corp* v *City of Warren*, 193 Mich App 348, 352-353; 483 NW2d 416 (1992).

"The 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 forth with the evidence, which may shift to the opposing party. *Jones and Laughlin* at 354-355. However, "[t]he assessing agency has the burden of proof in establishing the ratio of the average level of assessment in relation to true cash value in

the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question." MCL 205.735(3).

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 (196), aff'd 380 Mich 390 (1968). The market approach is the only appraisal method that directly reflects the balance of supply and demand for property in marketplace trading. *Antisdale,* p. 278. "Variations of these approaches and entirely new methods may be useful if found to be accurate and reasonably related to the fair market value of the subject property." *Meadowlands, supra* at 485, citing *Antisdale, supra* at 277, n 1. The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the true cash value of the property, utilizing an approach that provides the most accurate valuation under the circumstances. *Antisdale,* p. 277. As previously discussed, the Tribunal finds that both the income capitalization approach and the sales comparison approach provide an accurate valuation of the subject property.

The concept of "highest and best use" is fundamental to the determination of a property's true cash value as 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).

Three criteria must be satisfied before expert testimony will be admitted: (1) the witness must be a qualified expert; (2) expert testimony must "assist the trier of fact to understand the evidence or to determine a fact in issue"; and (3) there must be recognized

scientific, technical, or other specialized knowledge in a particular are area that "belongs more to an expert than to the common man." MCR § 702. Rule 702 requires the trial judge to ensure that the expert's testimony rests on a reliable foundation and is relevant to the issues. *Daubert* v *Merrell Dow Pharmaceuticals, Inc,* 509 US 579; 113 S Ct 2786, (1993). The trial judge has the discretion to determine whether a witness is an "expert." The decision will not be reversed on an appeal absent an abuse of discretion. *Siirila* v *Barrios,* 398 Mich 576, 591, 248 NW2d 171, 176 (1976).

Several times prior to and during the hearing, Petitioners sought to introduce, by Motion to Amend *infra* and from the witness stand, exhibits and analysis that augmented or amended their original valuation disclosure. Respondent would object and be sustained. Consequently, the Tribunal admonished Petitioner Kolfage he would be constrained by tribunal rule from testifying outside the confines of his valuation disclosure (P42) and (TI, pp41-42)

> "Valuation disclosure" means documentary or other tangible evidence in a property tax appeal which a party relies upon in support of the party's contention as to the true cash value of the subject property or any portion thereof and **which contains the party's value conclusions and data, valuation methodology, analysis, or reasoning in support of the contention**. (Emphasis supplied.)
> (TTR 205.1101 (1) (m))

> Without leave of the tribunal, a witness may not testify as to the value of property without submission of a valuation disclosure containing that person's value conclusions **and the basis for the conclusions**. This does not, however, preclude an expert witness from rebutting another party's valuation evidence or testifying as to the value of the property in issue if the expert witness's value conclusions were adopted by the party and included in the party's valuation disclosure. (Emphasis supplied.)
> (TTR 205.1283 (3))

DISCUSSION AND ANALYSIS

Mr. Kolfage has shown throughout these proceedings that he is both intelligent and intrepid. He deals well with ad hoc information he has assembled to assist him with ownership of a limited service motel in Ludington, Michigan and to understand and adapt to activities of his competitors. However, the fact that he is not an attorney has not served him well in this proceeding, hindering him significantly in getting his exhibits and expert testimony in the record. Further, the fact that he is not an appraiser has not served him well either, hindering him significantly in using and describing appraisal concepts and methods established as reliable and credible in the market place and the courts. For example, consider the following:

Perhaps due to unfamiliarity with Michigan Court Rules MCR and procedures generally and Michigan Tax Tribunal Rules (TTR) and procedures specifically as they pertain to Entire Tribunal Division cases, Petitioners apparently did not recognize that they had to make a formal "offer" of exhibits at hearing, allowing the opposing party "objections," if any, and giving the Tribunal an opportunity "admit" them on the record, before they became evidence useful to their case and the Tribunal's judgment. For whatever reason, Petitioners failed to formally offer any of their exhibits, and failed to even mention most of them. This procedural failure tended to shield most of Petitioners' exhibits from initial attack by Respondent, but also effectively resulted in only four of them even being mentioned at trial (P42, P15, P24A, and P25A) and of those only (P42) was accepted. While Petitioners did not formally offer even a single exhibit, the hearing judge did in effect accept Petitioners' original valuation disclosure (TI, p41) signed December 23, 2005 and filed with the Tribunal in response to Judge Van Coevering's

May 26, 2005 Order requiring it. Two years later, Judge VanCoevering's June 26, 2007 Order, *inter alia*, denied Petitioners' Motion to amend their original valuation disclosure. At trial, Petitioners' filed a Motion for Reconsideration of Judge VanCoevering's June 26, 2007 Order. Judge Southern denied the motion on the record and upheld Judge VanCoevering's Order effectively limiting Petitioners to their original four-page valuation disclosure and testimony in support thereof.

Not only did Petitioners have procedural failures with regard to their proposed documentary evidence, they also had procedural failures with respect to qualifying and offering their witnesses as valuation experts who advanced and supported true cash value estimates contained in valuation disclosures properly filed in the instant matter. Further, no real link was established between Mr. Kolfage's expertise asserted and Petitioners' valuation disclosure. The consequence of this was most of Mr. Kolfage's testimony never really rose to the level of credible and reliable "expert witness" testimony useful to the Tribunal as envisioned in MRE 702 and 703.

> **MRE 702.1 The rationale of the rule.**
>
> Rule 702 sets forth guidelines for the admission of expert opinion testimony. The Rule was amended effective January 1, 2004 to conform it more closely with FRE 702. Prior to the amendment, there were three criteria that had to be satisfied before expert testimony would be admitted: (1) the witness had to be a qualified expert: (2) expert testimony had to "assist the trier of fact to understand the evidence or to determine a fact in issue;" and (3) there had to be recognized scientific, technical, or other specialized knowledge in a particular area that "belongs more to an expert than to the common man." Under the current rule, those three criteria must still be met, with the exception that the word "recognized" no longer appears as a qualifier to "scientific, technical or other specialized knowledge."
>
> In addition, there are now three further criteria that must be met:
> **(1) the testimony must be based on sufficient facts or data;**

> **(2) the testimony must be the product of reliable principles and methods; and**
> **(3) the witness must have applied the principles and methods reliably to the facts of the case.**
> These three criteria were added for the purpose of requiring trial judges to "act as gatekeepers who must exclude unreliable expert testimony." (Footnotes excluded) (Emphasis supplied.)
> (Courtroom Handbook on Michigan Evidence 702.1 (2006))

The Tribunal concludes that while witness Kolfage's testimony and valuation disclosure was admissible as a property owner under MRE 702.7; it failed to be credible and did not result in persuading the Tribunal concerning Petitioners' true cash value contentions.

Petitioners provided little if any appraisal analysis or methodological basis to justify the $143,600 true cash value estimate Petitioners asserted to be the subject property's true cash value for all tax years at issue. Mr. Kolfage, acting both as counsel and expert, failed to describe his valuation expertise on the record or offer himself as a valuation expert, thus the only way his testimony could be viewed was as that of an owner. Further, he failed to offer any of the other exhibits on his prehearing exhibit list; consequently, only his original valuation disclosure (P42) was accepted into the record. Petitioners' four-page appraisal was minimal in all respects, having no form, analysis or methods common to professional appraisals. While it asserted an income approach, in fact it contained no methodologically sound identifiable approaches, no adjustment grids, no comparable analysis, and was primarily composed of general statements regarding what a general investor would consider, and the owner's value contentions. The consequence of this is Petitioner Kolfage was unable to establish that he performed any of the standard appraisal approaches in coming to his true cash value contentions. The

further consequence of this is Petitioners were unable to carry their burden of proof with respect to persuasion concerning their contentions of value for subject property for the tax years at issue. Respondent, in his Post Hearing Brief, strongly contended that Petitioners' evidence and witness failings resulted in their having little, or even no, information on the record with which to carry their burdens of persuasion or going forward.

> [P]etitioner's Proposed Exhibits Were Not Offered Into Evidence, Are Not Part of The Record Of These Proceedings, And Therefore Cannot Be Considered By the Trier Of Fact. Submission to the trier of fact of documents not introduced into evidence constitutes reversible error, and even a waiver by opposing counsel does not necessarily cure the error. *People* v *Talley*, 56 Mich App 598, 601, 224 NW2d 660 (1974), citing *People* v *Page*, 41 Mich App 99, 199 NW2d 669 (1972). Also the record of a case is deemed by court rule to be comprised of : "the original papers filed in that court or a certified copy, the transcript of any testimony or other proceedings … and the exhibits introduced." MCR 7.210 [Emphasis added]." In this case, Petitioners never moved for the admission of any of their proposed exhibits, and for that reason, under applicable law, none of their proposed exhibits, including their proposed valuation disclosure (Petitioners' Proposed 42) can be considered by the trier of fact in this case. (Respondent's Post Hearing Brief, p15)

Even with the acceptance of P42 into the record, the minimal content of the exhibit, really only four pages of mostly general statements, resulted in the trier of fact according it no credibility or reliability with regard to establishing the true cash value of the subject property during the tax years at issue. On numerous instances throughout the trial, the Tribunal prompted Petitioners to be mindful as to the proper status of their exhibits, whether proposed or accepted, so as to have an accurate record made. Respondent observed as much:

> "[I]n keeping with established procedure, throughout these proceedings this Tribunal correctly and consistently referred to Petitioner's proposed exhibits as exactly that, proposed and not admitted [See, e.g., Vol. I, P

> 180, L 14, and Vol. II, P 52, L 14]. And Petitioners themselves consistently referred to exhibits as "proposed."
> (Respondent's Post Hearing Brief, pp15-16)

Further, the Tribunal finds that Mr. Oetzel complied with the relevant sections of the applicable years USPAP standard, while Mr. Kolfage did not. This is particularly true concerning requirements to "perform assignments with impartiality … without accommodation of personal interests" and "be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal" when preparing and reporting their respective valuations disclosures.

USPAP 2006

> ETHICS RULE
> Conduct:
>
> …An appraiser must perform assignments ethically and competently, in accordance with USPAP [the edition dated to be in effect at the date of appraisal] … **An appraiser must perform assignments with impartiality, objectivity, and independence, and without accommodation of personal interests**.
>
> In appraisal practice, an appraiser must not perform as an advocate of any party or issue.
>
> ***

USPAP [2006] Standards Rule 1-1

> **(This Standards Rule contains binding requirements from which departure is not permitted.)**
>
> **In developing a real property appraisal, an appraiser must:**
>
> **(a) be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal;**

> Comment: This Rule recognizes that the principle of change continues to affect the manner in which appraisers perform appraisal services. Changes and developments in the real estate field have a substantial impact on the appraisal profession. Important changes in the cost and manner of constructing and marketing commercial, industrial, and residential real estate as well as changes in the legal framework in which real property rights and interests are created, conveyed, and mortgaged have resulted in corresponding changes in appraisal theory and practice. Social change has also had an effect on appraisal theory and practice. To keep abreast of these changes and developments, the appraisal profession is constantly reviewing and revising appraisal methods and techniques and devising new methods and techniques to meet new circumstances. For this reason, it is not sufficient for appraisers to simply maintain the skills and the knowledge they possess when they become appraisers. Each appraiser must continuously improve his or her skills to remain proficient in real property appraisal.
>
> **(b) not commit a substantial error of omission or commission that significantly affects an appraisal; and**
>
> Comment: In performing appraisal services, an appraiser must be certain that the gathering of factual information is conducted in a manner that is sufficiently diligent, given the scope of work as identified according to Standards Rule 1-2(f), to ensure that the data that would have a material or significant effect on the resulting opinions or conclusions are identified and, where necessary, analyzed. Further, an appraiser must use sufficient care in analyzing such data to avoid errors that would significantly affect his or her opinions and conclusions. (Emphasis supplied.)
>
> (Uniform Standards of Professional Appraisal Practice (USPAP), Washington D.C.: The Appraisal Foundation, (2006), pp7, 17)

Further, Mr. Oetzel correctly analyzed the income and expenses in accordance with appraisal methodology, while Mr. Kolfage did not. Income and Expense Operating Statements typically furnished in an accounting setting usually require re-statement in order to be useful in an appraisal setting. This process is called “reconstructing” the operating statement.

EXCLUSIONS FROM RECONSTRUCTED OPERATING STATEMENTS

The operating statements prepared for real estate owners typically list all expenditures made during a specific year. An owner's statement may include nonrecurring items that should not be included in an expense estimate intended to reflect typical annual expenses. Such a statement may also include items of business expense or costs associated with the specific circumstances of ownership.

A reconstructed operating statement represents an opinion of the probable future net operating income of an investment. ***Certain items included in operating statements prepared for appraisal purposes. The items include**

Book Depreciation
Depletion allowances or other special tax considerations
Income tax
Special corporation costs
Additions to capital
Mortgage interest
Below the line tenant improvements or leasing costs

* …**In appraisal practice, a reconstructed operating statement is developed to conform to the appraiser's definition of net operating income, which generally differs from the definition of income used by accountants.** Thus, a reconstructed operating statement drawn up by an appraiser will usually differ from a typical pro forma income statement prepared by an accountant. (Emphasis supplied.)

The Appraisal of Real Estate, (Chicago: 12th Edition, Appraisal Institute, 2001), p521

The combination of Petitioners' witnesses, Mr. Massie and Mr. Kolfage, did deliver total estimates of revenue and expenses, but the totals were unsupported by exhibits or direct testimony as to how they were properly derived or employed with respect to appraisal purposes. By contrast, Mr. Oetzel put forth a chart of information he says Petitioners supplied to him and described in his appraisal report how the subject property's income and expenses should be "reconstructed." (R1, p47) An analysis of this information would conclude that Petitioners included a number of expenses

allowable in an accounting setting, which are not allowable in an appraisal setting. For example, in fiscal year 2003, Petitioners claimed these, and other, line items that are not allowable in an appraisal expense reconstruction: Real Property Tax $12,077, Depreciation $19,530, Professional Fees $32,009. These income and expense statement variances between the parties account for much of the differences in their income approach values for the subject property.

With respect to the parties' treatment of the Income Approach to value, the Tribunal finds that there is insufficient support for the numbers that Petitioners assert for true cash values. In the cases where Petitioners do offer some numbers, such as total gross income, total expenses, or total expense percentage, there is no credible information to indicate that the numbers were properly derived or analyzed in accordance with accepted appraisal methods and techniques. The Tribunal finds Respondent's Income Approach as employed using his "reconstructed" income and expense data the most persuasive.

Petitioners failed to discuss most of their exhibits at trial and their testimonial evidence failed on several grounds. Testimony from Mr. Massie was restricted to non-valuation issues pertaining to the subject property's financials and testimony from witness Keith Kolfage had little credibility or reliability as he was unable to demonstrate that he knew or followed any of the standard valuation approaches or methods set forth in the "body of appraisal knowledge" or case law on point. The evidence in the record to support Petitioners' true cash value, in so far as it existed, was completely unconvincing. Finding is for Respondent's true cash, state equalized and taxable value contentions for all tax years at issue.

JUDGMENT

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

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by the Final Opinion and Judgment within 90 days of the entry of the Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of

this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 1995, at a rate of 6.55% for calendar year 1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a 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.

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

MICHIGAN TAX TRIBUNAL

Entered: March 19, 2008 Judge: Richard A. Southern