

3. Analysis of Mr. Herman's Golf Course Valuation

248. For 2009, Mr. Herman appraised the Golf Course pursuant to the methodology in the GUIDELINES. He conceded that he would have valued the Golf Course under an income approach in the absence of the GUIDELINES. As established above, an assessment challenge cannot be based on mere methodology. In 2009, the legislature had not defined a special approach to valuing a golf course. The DLGF, at that time, only specifically defined the true tax value of golf course land.⁸⁴ The Board rejects Mr. Herman's valuation because he relied on GUIDELINES methodology rather than generally accepted appraisal practices.⁸⁵ Even if Mr. Herman could have relied on the GUIDELINES, he did not properly apply them.⁸⁶
249. For 2014, the true tax value of golf courses has been specifically defined by the legislature through a modified income approach under the Golf Course Statute, I.C. § 6-1.1-4-42. The Assessor did not challenge Mr. Herman's income valuation for 2014. The Board finds Mr. Herman has presented probative evidence of the Golf Course for 2014, and it should be assessed at \$3,000,000.

4. Analysis of Mr. Lennhoff's Hotel Valuation

250. The Board finds that Mr. Lennhoff answered the wrong question in his appraisal. He valued the Hotel as a full-service hotel rather than a resort. Mr. Lennhoff's report amounts to an opinion on the feasibility of a franchise hotel in rural southeastern Indiana, not a valuation of a luxury destination resort. Accordingly, Mr. Lennhoff's valuation of the Hotel fails to present probative evidence of the value of the Hotel.

⁸⁴ "The true tax value of golf course land is \$1,050 per acre." 2002 GUIDELINES, Appendix G, Schedule G at 37. The 2011 GUIDELINES contains the same quote, but are less clear because there is a blank for valuing golf course land. Appendix G Schedule G at 37.

⁸⁵ While Mr. Herman used *Marshall & Swift* cost tables to value certain buildings under a cost approach, he applied the GUIDELINES for the holes. Because the bulk of the cost of the Golf Course is found in the improvements constituting the holes (the course), he failed to present probative evidence of the value of the Golf Course.

⁸⁶ Mr. Herman testified he selected grade A as "the highest grade" and "the best course" because it is an "excellent quality course [with] professional championship play." *Tr.* at 227. The highest grade is in fact AA. GUIDELINES Appendix G at 38. Grade A is for courses with 160 acres, while Grade AA contemplates 180 acres with larger tiled tees and greens, which describes a facility more similar to the Resort's 203 acre course. GUIDELINES Appendix G at 38.

251. The APPRAISAL OF REAL ESTATE notes the great diversity in the different kinds of hotels and their amenities. APPRAISAL OF REAL ESTATE at 265. Critical to an appraisal of a hotel is an analysis of the facilities:

Because few hotels contain lodging facilities alone, appraisers must often consider multiple, mixed uses when analyzing the functional utility of the improvements.

Id. at 266. This is particularly true for a “resort hotel [which] must provide a variety of entertainment facilities for its guests . . .” *Id.* at 265. The APPRAISAL OF REAL ESTATE, however, does not contain a detailed discussion of hotel valuations. It directs the reader to two treatises by Stephen J. Rushmore. *See* APPRAISAL OF REAL ESTATE at 265 n.9.

252. Mr. Lennhoff also noted that “hospitality uses” include categories such as “resorts, hotels, motels, inns, and bed and breakfasts.” *Ex. P-5* at 60. Mr. Lennhoff repeatedly claimed that he valued the Hotel as a casino hotel. Mr. Lennhoff’s model for a casino hotel was based on the three Kansas, South Dakota, and Louisiana hotels located next to casinos. These hotels were not casino hotels because they did not have “on-site gaming facilities.” They also lacked the typical casino resort amenities: restaurants, lounges, retail outlets, and entertainment facilities. The Board finds that a hotel with a “casino demand driver” is not the same thing as a “casino hotel.” Mr. Lennhoff did not value the Hotel as a casino hotel. He valued the Hotel entirely independent of the casino operations under the premise that the Hotel could be sold separate from the casino. His claim that the Hotel might sell separate from the Riverboat is contrary to all of the evidence before the Board.⁸⁷

253. However, an examination of a casino hotel independent of the gaming facilities, for purposes of determining the value of the hotel real estate and avoiding difficulties in valuing intangibles, is not unreasonable. In light of the intangibles inherent in a casino operation, it is appropriate to consider methods that might isolate the real estate assets from the casino business. A somewhat fictional division of property may be a reasonable

⁸⁷ When asked whether it is unreasonable to presume the Hotel would sell separate from the casino, Mr. Lennhoff responded: “no, it’s not unreasonable. It happens. It might be more likely that the whole thing would sell . . .” *Tr.* at 621. The Board finds this hedging disingenuous, and it is unreasonable to believe that the hotel operations of this Resort would sell separate from the casino operations under normal market conditions.

appraisal technique if the valuation is supported and checked against other methods. The Board does not find this theory to be inconsistent with market value-in-use. The Hotel has always been used as a hotel. Nevertheless, Mr. Lennhoff's valuation must fail because of flaws in his execution.

254. Mr. Lennhoff's analysis is fundamentally flawed because he premised the Hotel as a full-service hotel rather than as a resort. Under his definition, a typical full-service hotel has limited amenities of one restaurant/bar, a coffee kiosk, and a small retail store. *Ex. P-5* at 42. The Hotel has multiple on-site restaurants and shops, a spa, convention and ballroom space, and a concert hall. He considered these to be "atypical of a full service hotel." *Ex. P-5* at 54. Therefore, he found them "super adequate compared with its market segment and business purpose." *Ex. P-5* at 30. Mr. Lennhoff concluded that a typical buyer would "shutter" these super-adequate amenities. *Ex. P-5* at 42-43. Thus, his appraisal premise values the Hotel based on data and business models for hotels with substantially different physical improvements and amenities. Mr. Lennhoff affirmed that the framing of the appraisal as a full-service hotel with super-adequate amenities formed the basis of his valuation. *Tr.* at 617.

255. This determination of super-adequacy is contrary to the evidence before the Board and many of Mr. Lennhoff's own conclusions. Mr. Lennhoff conceded that the Hotel had an "attractive design suitable for its immediate casino/resort environment." *Ex. P-5* at 30. He noted that the quality of the Hotel was "very, very high" and "much higher than its competitors" which was important for a resort "located in the middle of nowhere" in order to attract customers. *Tr.* at 642; *Ex. P-5* at 49. Likewise, he considered the primary competition to be "casino/hotel/resort properties." *Ex. P-5* at 44. Furthermore, "the hotel and its associated amenities (restaurants, retail, salon/spa)" functioned as the "primary marketing tool" for the casino, and the casino could not succeed without those amenities. *Ex. P-5* at 42.⁸⁸ The Board disregards Mr. Lennhoff's claims to the contrary and finds

⁸⁸ Furthermore, Mr. Lennhoff stated that "aggressive marketing efforts and continual facility upgrades will be necessary to remain competitive." *Ex. P-5* at 52. Mr. Lennhoff did not address how he could hold the conflicting propositions that (1) the Hotel was dependent on the success of the casino as a demand driver for the Hotel (2) the casino would fail without aggressively marketing the Hotel and its amenities, and yet (3) his valuation was premised on the Hotel shuttering those amenities.

that his own evidence establishes that the Hotel's amenities are not super-adequate as to its current use.⁸⁹

256. Because Mr. Lennhoff valued the Hotel as a full-service hotel and not as a resort, he chose his income and expense numbers based on survey data from full-service hotels. This aggregate data came primarily from non-luxury, cookie-cutter franchised hotels with substantially dissimilar amenities. His use of survey data for non-resort hotels was unreliable in valuing real estate that was indisputably superior due to enormous physical differences in room size, furnishings, restaurants, shops, and convention space. Mr. Lennhoff failed to present a probative valuation because he relied on income and expense data from full-service hotels with irreconcilably different physical attributes, amenities, and business models.
257. As noted above, the APPRAISAL OF REAL ESTATE emphasizes the importance of considering the amenities of a "resort hotel." Because the survey data is based on hotels dissimilar to the subject property in terms of the facilities they offer, the Board rejects Mr. Lennhoff's valuation.
258. In an attempt to justify the use of full-service hotel data, Mr. Lennhoff conducted a "preliminary analysis" of three hotels (Kansas Star Hampton Inn, and Louisiana and South Dakota Marriotts) that he evidently identified through happenstance rather than thorough research. None of these hotels were resorts, and all of them were inferior in quality and amenities. He testified that the Kansas casino determined there was insufficient demand for the casino to justify building a hotel. *Tr.* at 601-602. It defies logic that Mr. Lennhoff would base his "casino demand-driver" approach on a hotel where there was insufficient demand to build a hotel. Furthermore, Mr. Lennhoff claimed he compared these hotels to other hotels to determine whether there was a higher performance increment attributable to "casino hotels." However, he did not identify any of the "other hotels" he used in his comparison and presented no analysis in his appraisal

⁸⁹ As to the question of whether the Hotel's amenities would be super-adequate if the casino closed, that issue is not before the Board. There was no evidence that the casino demand was insufficient to support the Hotel's amenities during the years at issue. Mr. Lennhoff stated that "the business in the casino makes [the comping at the Hotel] okay." *Tr.* at 601.

or lengthy testimony to support that claim. The Board cannot find, based on the record, that these hotels were performing “just the way anybody else was” because the “anybody else” remains a mystery.⁹⁰ *Tr.* at 619. The Board finds that Mr. Lennhoff’s preliminary analysis is both theoretically and empirically deficient.

259. Mr. Lennhoff engaged in a tangential analysis where he compared the “casino-marketing” and “loss-leader” asking rates⁹¹ of the Hotel to the asking rates of the Sparta Ramada, to come up with projected rates for the Hotel:

	Weekday	Weekend	Suite Weekday	Suite Weekend	ADR
Actual Asking Hotel	\$99-109	\$169-\$199	\$139-\$149	\$219-\$239	\$130
Actual Asking Ramada Sparta	\$100	\$100	\$160	\$169-\$189	
Lennhoff Rates for Hotel	\$100	\$139	\$160	\$200	\$116

Ex. P-5 at 51.⁹² These conclusions are revealing. Mr. Lennhoff would have the Board accept that a patron would pay no more on a weeknight to stay at the Hotel, a vastly superior luxury hotel adjacent to a casino and fine dining, than the limited service Spartan hotel 5 miles away. Furthermore, he projected the Hotel’s market room rate (ADR) to be

⁹⁰ Neither Mr. Lennhoff’s testimony nor his appraisal report expressly indicated what systematic approach he took in his preliminary analysis. It is possible that Mr. Lennhoff compared these hotels to published regional data, but that is not in the record. Likewise there is no evidence of the other auto racetrack hotels to which he claimed he compared the Sparta Ramada.

⁹¹ The dates for these rates are not disclosed and likely do not correlate to the tax years at issue as Mr. Lennhoff compiled them at the time he did the appraisals. *Tr.* at 629.

⁹² Mr. Lennhoff did not calculate the ADR. The Board calculated ADR based on averaging each rate category and a presumption of proportional regular room and suite occupancy.

The Hotel has 608 rooms (557 rooms and 51 suites), and the Board presumes an average weekday rate of \$104 for rooms and \$144 for suites, and an average weekend rate of \$184 for rooms, and \$229 for suites. In a given week, that totals \$520 for weekday rooms ($\$104 \times 5 = \520) and \$288 for weekend rooms ($\$184 \times 2 = \368), which totals \$888 or \$126.86 a day ($\$888 / 7 = \126.86). For suites, in a given week that totals \$720 for weekday suites ($\$144 \times 5 = \720), and \$458 for weekend suites ($\$229 \times 2 = \458), which totals \$1,178 or \$168.29 a day ($\$1,178 / 7 = \168.29). Proportionately, there are 557 rooms at \$126.86 ($557 \times \$126.86 = \$70,661.02$), and 51 rooms at \$168.29 ($51 \times \$168.29 = \$8,582.79$), which results in a total ADR of \$150.22 ($(\$70,661.02 + \$8,582.79) = \$79,243.81 / 608 = \130.34).

At Mr. Lennhoff’s projected rates for the Hotel, in a given week, that totals \$500 for weekday rooms ($\$100 \times 5 = \500) and \$278 for weekend rooms ($\$139 \times 2 = \278), which totals \$778 a week or \$111.14 a day ($\$778 / 7 = \111.14). For suites, in a given week that totals \$800 for weekday suites ($\$160 \times 5 = \800) and \$400 for weekend suites ($\$200 \times 2 = \400), which totals \$1,200 or \$171.43 a day ($\$1,200 / 7 = \171.43). Proportionately, there are 557 rooms at \$111.14 ($557 \times \$111.14 = \$61,904.98$) and 51 rooms at \$171.43 a day ($51 \times \$171.43 = \$8,742.93$), which results in ADR of \$116.20 ($(\$61,904.98 + \$8,742.93) = 70,647.91 / 608 = \116.20).

As for the Sparta Ramada, the number of rooms and suites are not provided by Mr. Lennhoff in his report, and the ADR cannot be calculated.

10% lower than the current "below market" and "comp" asking rate for the Hotel. To emphasize, Mr. Lennhoff would have the Board believe that the current loss-leader asking room rate, used as a promotional rate to attract patrons into the casino, is *above* the market rate for the Hotel.

260. Whatever contradictory statements Mr. Lennhoff may have made in his testimony regarding the Hotel, he was direct in his appraisal report:

Absent the hotel/casino business structure, the subject hotel would likely be able to charge a room rate similar to the Sparta Ramada.

Ex. P-5 at 51. The Board finds that this sentence sums up Mr. Lennhoff's entire opinion of the value of the Hotel, and it is patently unsupportable.

261. As for Mr. Lennhoff's income approach, he valued the Hotel based on data from full-service hotels, limited service hotels, and suites. As established previously, the Hotel is a resort and must be compared to resorts with similar amenities. The Board is sympathetic that it is difficult to find reliable data because comparable casino-hotels all have the same issue with comping. However, the solution is to either find a reliable way to adjust the data to account for the differences between resorts and full-service hotels, or choose a different approach. Mr. Lennhoff noted, in another context, that he looked at PKF and STR data "under various different categories, such as convention hotels, resort hotels." *Tr.* at 688; *see also Ex. P-5* at 72, 73. He also suggested that resort hotels may have different or lower expenses. *Tr.* at 695. The Board finds that the aggregate survey data is not "all you can do." Because Mr. Lennhoff failed to credibly solve this appraisal problem, his valuation answers the wrong question.

262. Even if Mr. Lennhoff's use of full-service hotel data was sound, his projections of income and expenses were not credible. For purposes of illustration, the Board endeavors to compare Mr. Lennhoff's projections of income and expenses to the survey data. The Board finds the most reliable data is the PKF 300+ hotels.⁹³ The chart below

⁹³ PKF 300+ included hotels that averaged 439 rooms in 2008 and 444 rooms in 2013. *Ex. P-5* at 62-63. STR had categories that averaged significantly fewer rooms (283 for 2008, 306 for 2013) or significantly more (840 for 2008, no data for 2013). *Ex. P-5* at 62-63. Other surveys included all sizes of hotels.

roughly reflects how Mr. Lennhoff's conclusions compare to the PKF survey data as arranged in the "Operating Benchmarks" chart:⁹⁴

	PKF 300+ 2008	%	PKF 300+ 2013	%	Lennhoff '09	%	Lennhoff '14	%
<u>Occupancy</u>								
	71%		75%		60%		65%	
ADR	\$ 166.61		\$ 170.17		\$ 115.00		\$ 115.00	
RevPAR	\$ 118.13		\$ 127.59		\$ 69.00		\$ 74.75	
Average Rooms	439		444		608		608	
<u>Revenue</u>								
Room Revenue	\$ 43,237.00	65%	\$ 46,572.00	67%	\$ 25,185.00	89%	\$ 27,284.00	93%
Food & Beverage	\$ 19,118.00	29%	\$ 19,355.00	28%	\$ 756.00	3%	\$ 737.00	3%
Other Departments	\$ 2,270.00	3%	\$ 2,817.00	4%	\$ 1,027.00	4%	\$ 1,153.00	4%
Rentals and Other Income	\$ 1,435.00	2%	\$ 776.00	1%	\$ 1,259.00	5%	\$ 273.00	1%
	\$ 66,060.00		\$ 69,520.00		\$ 28,227.00		\$ 29,447.00	
<u>Departmental Expenses</u>								
Rooms	\$ 11,443.00	26%	\$ 12,794.00	27%	\$ 6,800.00	27%	\$ 7,367.00	27%
Food & Beverage	\$ 13,865.00	73%	\$ 14,352.00	74%				
Other Operated Departments	\$ 1,314.00	58%	\$ 1,913.00	68%				
Other Income Expense	\$ -	0%	\$ -	0%	\$ 630.00	50%	\$ 137.00	50%
	\$ 26,622.00	40%	\$ 29,059.00		\$ 7,430.00	26%	\$ 7,504.00	25%
Total (Net) Departmental Inc.	\$ 39,438.00	60%	\$ 40,461.00		\$ 20,797.00	74%	\$ 21,943.00	75%
<u>Undistributed Operating Exp.</u>								
Administrative & General	\$ 5,764.00	9%	\$ 5,950.00	9%	\$ 2,541.00	9%	\$ 2,503.00	9%
Sales & Marketing	\$ 4,969.00	8%	\$ 5,451.00	8%	\$ 2,258.00	8%	\$ 2,356.00	8%
Property Operations & Maint.	\$ 3,165.00	5%	\$ 3,044.00	4%	\$ 1,553.00	6%	\$ 1,472.00	5%
Utilities	\$ 2,564.00	4%	\$ 2,326.00	3%	\$ 1,129.00	4%	\$ 1,031.00	4%
	\$ 16,462.00	25%	\$ 16,771.00	24%	\$ 7,481.00	27%	\$ 7,362.00	25%
Gross Operating Profit (Room)	\$ 22,976.00		\$ 23,690.00		\$ 13,316.00		\$ 14,581.00	
Gross Oper. Profit 608 Rooms	\$ 13,969,408.00		\$ 14,403,520.00		\$ 8,096,128.00		\$ 8,865,248.00	

Ex. P-5 at 62-63; 66-72. Mr. Lennhoff selected occupancy rates that were lower than the average full-service hotel (15% and 13% lower).⁹⁵ He selected average daily room rates significantly lower than the average full-service hotel (30% and 32% lower). This resulted in significantly lower than average RevPAR (42% and 41% lower). Thus, prior

⁹⁴ Some numbers vary from the appraisal report due to differences in rounding. The Board notes that these side-by-side categories are not all directly comparable because the Hotel's non-room income and expenses reflect Mr. Lennhoff's proxy rent calculations. This data is based on the income and expenses per room or "per key."

⁹⁵ That is: 60% occupancy is relatively 15% lower than 71% occupancy ($11 / 71 = .15$).

to considering other sources of income, Mr. Lennhoff projected the Hotel's income stream at roughly 60% of the average full-service hotel in the region.⁹⁶

263. Mr. Lennhoff selected the same ADR (\$115) for both 2008 and 2014. The Board finds it compelling that the ADR under Mr. Lennhoff's income approach was \$115 and the ADR under his comparison of the asking rates with the Sparta Ramada was \$116. After all of his lengthy analysis of regional and local survey data, Mr. Lennhoff chose an ADR under the income approach that was within \$1 of his asking rate comparison with the Sparta Ramada. The Board notes that the Sparta Ramada's demand driver is the Kentucky Speedway, a likely seasonally dependent venue. Even if the Board agreed with Mr. Lennhoff's valuation of the Hotel based on full-service hotel data, the Board could not conclude that such a demonstrably superior facility is below the average full-service hotel and similar to the limited service Sparta Ramada. In Mr. Lennhoff's own testimony he stated that his reaction to viewing the Sparta Ramada compared to the Hotel was "oh, my goodness, this isn't anything like it." *Tr.* at 630. It is inconceivable that an appraiser could look at the Sparta Ramada as confirmation of this approach rather than a red flag that something must be seriously wrong with the analysis.

264. The Board similarly finds that Mr. Lennhoff underestimated other sources of income as well. He disregarded actual paid F&B sales, and chose a number based on a percentage of his estimated room revenue that was below historical prior year revenue (26% and 17% lower). These conclusions were more than "slightly under historical performance," *Tr.* at 668, particularly when considering that 50% of actual food served was comped. This is where Mr. Lennhoff's determination of super-adequacy impacts his valuation. A relation of F&B to room revenue for comparable resorts with more similar restaurants and banquet catering might have provided a credible measure of F&B income. This is particularly true because resort patrons tend to be captive and have no other option than to eat at the resort restaurants, while patrons of typical full-service hotels usually have alternative, and often superior, dining options nearby.

⁹⁶ Mr. Lennhoff admitted that his rates were "much lower than typical full-service hotels in the PKF and STR surveys." *Ex. P-5* at 51. His justification was that the Hotel was "not located in an area with a natural hotel demand." *Ex. P-5* at 51. This seems contrary to his proposition that the casino was the natural hotel demand driver.

265. Mr. Lennhoff's "proxy rent analysis" is also problematic. He offered very slim support for his percentage of revenue rent rates. *Tr.* at 662. Moreover, the triple-net nature of his "proxy rent analysis" suggests that taxes, both real and personal, would have to be adjusted to account for the portion presumably paid by the triple-net "proxy" tenants. Also, personal property presumably owned by the "proxy" tenants was not allocated. Thus Mr. Lennhoff deducted from Hotel income the taxes paid by the "proxy" tenants, and deducted personal property owned by the "proxy" tenants. These oversights distort the income and expenses, and the value of the going concern is necessarily deflated. As the "proxy rent analysis" was applied to multiple restaurants, shops, spa, salon, concert hall, and catering for the 50,000 s/f convention space, these are not an insignificant errors.

266. Another glaring problem is Mr. Lennhoff's "other income" expense. Mr. Lennhoff noted that the Hotel's operating statement did not account for "other income" expenses, and he believed an operating expense should still be applied. *Ex. P-5* at 70. The Board notes that the PKF and STR "Operating Benchmarks" likewise did not account for "other income" expenses. *Ex. P-5* at 62-63. PKF and STR have separate income categories for "Other Operated Departments" and "Rental and Other Income." They have an expense category for "Other Operated Departments" and no expense category for "Rental and Other Income." Mr. Lennhoff applies the "Other Operated Departments" expense category to the "other income" category. *Ex. P-5* at 70. This discrepancy appears to be an error, or perhaps indicates a failure of Mr. Lennhoff to understand an industry standard for a hotel business statement. A 50% expense for "other *operated* departments" seems reasonable. It is not reasonable to deduct 50% of income from a triple net lease, which is what Mr. Lennhoff did with the "other income" from the Jeff Ruby Steakhouse lease.⁹⁷

267. Turning to the last line of the chart above, the Board compared the average PKF 300+ regional hotel in terms of operating income for each year, based on 608 rooms. In both years, Mr. Lennhoff predicted the Hotel would have a gross operating profit roughly 60% below the average regional full-service hotel (58% and 62% lower). The Board finds it

⁹⁷ The Board also notes there is no basis to support Mr. Lennhoff's conclusion that the restaurant space could never be leased again, and eliminating all income from that space for 2014.

patently unreasonable to conclude that a high end luxury hotel would have well less than half the gross income of the average full-service hotel with substantially inferior quality and amenities.⁹⁸

268. As for the value of the Hotel as a going concern, Mr. Lennhoff equivocated in his characterization of the Hotel in choosing cap rates. His appraisal report suggests that he chose his cap rates based on the conclusion that “the subject is best described as a specialized full-service lodging property.” *Ex. P-5* at 84. But in testimony, he claimed that he “sort of zeroed in on what would be the most representative for what I have, which is a luxury quality casino hotel in between Louisville and Cincinnati.” *Tr.* at 730-31. While Mr. Lennhoff did not include the ranges for the RERC Cincinnati rates,⁹⁹ the other RERC and PWC rates showed a range of 400-450 basis points. *Ex. P-5* at 82. Mr. Lennhoff did not “zero in” on PWC national luxury hotels, which ranged substantially lower. *Ex. P-5* at 82. It is clear that Mr. Lennhoff chose cap rates for a full-service hotel and not for a luxury hotel or resort. Citing his own article, Mr. Lennhoff made the tautological declaration that “use of surveys can be quite valid and credible but they must be used properly.” *Ex. P-5* at 81. Because the capitalization rates are based on full-service hotels, which the surveys categorize separately from luxury and resort rates, the Board cannot accept his conclusions.

269. Because the Board rejects Mr. Lennhoff’s valuation based on his premise of valuing the Hotel as a full-service hotel, it is unnecessary to sift through Mr. Lennhoff’s intangible asset adjustments. The Board does note that some of these deductions have been rejected by other courts. *See Chesapeake Hotel LP v. Saddle Brook Tp.*, 22 N.J. Tax 525, 531-532 (N.J. Tax 2005).¹⁰⁰ Likewise, Mr. Lennhoff referenced an article he authored regarding these adjustments. *Tr.* at 702; David C. Lennhoff and Heather Reichardt, *Hotel*

⁹⁸ The Board realizes that this disparity is partially due to Mr. Lennhoff’s removal of intangible assets through the proxy rent process.

⁹⁹ Mr. Lennhoff placed the most reliance on these rates. *Tr.* at 729. The Board agrees they are the most relevant. The omission of the ranges of these rates is difficult to ignore.

¹⁰⁰ “In the present case, the adjustments proposed by Lennhoff to the Rushmore method have both theoretical and empirical aspects. In other words, they are made for stated reasons, and they rest on particular data. In order for any adjustment to have persuasive force in a factual finding of value, it should rest on cogent reasoning and be founded on reliable data. Lennhoff’s proposed adjustments, on the whole, are not persuasive either for theoretical or empirical reasons.” *Chesapeake Hotel LP v. Saddle Brook Tp.*, 22 N.J. Tax 525, 532

Valuation Myths and Misconceptions Revisited; INSIGHTS, Winter 2011. The article notes that an Appraisal Institute course that Mr. Lennhoff taught on this approach was withdrawn from the curriculum after three years. The Board finds that some of his intangible property adjustments are probably based on appraisal practices that are not yet, and may never be, generally accepted.

270. The Board further finds that Mr. Lennhoff's treatment of the excess land and parking is inconsistent with his valuation premise. If the multiple shops and restaurants, convention space, and concert hall are all super-adequate "loss-leaders" that benefit only the casino, the Board questions why the super-adequate parking should be treated any differently. It also creates an implied assemblage issue: the Board is asked to find that half a parking garage is worth \$6M, but the other half of the parking garage, and a 608 room hotel with multiple restaurants and shops and convention space is valued at only \$30M. The Board is not unaware that the decision to independently value the excess land and parking favors the Assessor. The fact that Mr. Lennhoff only considered these values at counsel's request casts further doubt on Mr. Lennhoff's opinions.

5. Assemblage and the Taxpayer's Evidence

271. The Assessor argues that the Taxpayer's piecemeal approach is unreliable because no appraiser considered the total value of the parcel. *Resp. Post-Hearing Br.* at 46-48. In particular, the Assessor argues that the appraisals submitted by the Taxpayer violate USPAP Standard 1-4(e), which requires an appraiser to consider the value of an assemblage, and notes that "an appraiser must refrain from valuing the whole by adding together the individual values of the various estates or component parts." USPAP at U-20.
272. Standard Rule 1-4 generally requires an appraiser to "collect, verify, and analyze all information necessary for credible assignment results." *Id.* at U-19. Standard Rule 1-4(e) states that:

When analyzing the assemblage of the various estates or component parts of a property, an appraiser must analyze the effect on value, if any, of the assemblage. An appraiser must refrain from valuing the whole solely by

adding together the individual values of the various estates or component parts.

Id. at U-20. The comments note that the “value of the whole may be equal to the sum of the separate estates or parts,” or, “it also may be greater or less than the sum of the estates or parts.” *Id.* Thus, “the value of the whole must be tested” through appropriate analysis. *Id.*

273. Assemblage refers to the “combining of two or more parcels” into one ownership or use. *DICTIONARY OF REAL ESTATE APPRAISAL*, 5th Ed., Appraisal Institute, at 12. This may result in “plottage,” or an “increment of value” created when sites are combined to create greater utility.¹⁰¹ *Id.* at 147. A related concept, “synergy,” results from an integration of uses, particularly in regard to multiuse properties where “the value of the total development is greater than the sum of the individual parts.” *Id.* at 192.

274. It is undisputed that Mr. Herman merely valued the Riverboat and Golf Course separately and without regard to the Hotel or the entire value of the Resort. We agree with Mr. Herman that USPAP allows an appraiser to value a portion of a larger property and “certainly a separate portion of a property.” *Tr.* at 350. Mr. Herman did not violate USPAP rules on assemblage.

275. Mr. Lennhoff stated that “if you value the casino, casino hotel properly, that is recognizing that you’re valuing as it contributes to the whole, not as an isolated piece of real estate, you’ve absolutely covered any synergy among the real estate pieces that might exist.” *Tr.* at 569. He admitted that he “valued the casino hotel in the context of a larger property.” *Tr.* at 571. Because Mr. Lennhoff did not merely measure a part, but considered the value of a part in relation to its contribution to the whole, the Board finds that Mr. Lennhoff’s approach raises a genuine question of whether he should have checked his value against the whole.

276. The absence of an expert opinion of the value of the Resort as a whole would not necessarily cause the Board to find the Taxpayer’s piecemeal approach to valuation

¹⁰¹ Plottage and subdivision are opposite concepts. Sometimes land is more valuable when subdivided, and at other times land may be more valuable when combined. *See APPRAISAL OF REAL ESTATE* at 76, 199.

unreliable. Not all circumstances require an assemblage to be tested as a whole. This is particularly true when special assessment statutes must be applied. The Board declines the Assessor's invitation to find that any appeal with multiple parcels, improvements, or land types must be tested for assemblage. The question is whether the facts and approaches employed in this matter require an appraiser to consider the value as a whole.

277. It is entirely reasonable to employ multiple appraisers, and particularly appraisers with specialized expertise, to value a property. But the most practical reason to employ an appraiser to consider the value of the entire assemblage is to ensure that nothing is omitted from the valuation. The Board finds that the evidence presented by the Taxpayer is incomplete and fails to account for all of the property.
278. Mr. Lennhoff valued the Hotel and a 29 acre site. *Ex. P-5* at 2. Mr. Herman valued the 206 acre Golf Course. *Ex. P-3* at 38. The property record card shows that three other tracts of 9.3 acres, 3.293 acres, and 2.626 acres, totaling roughly 15 acres, are also on the parcel on appeal. *Ex. R-2*. It appears that the Taxpayer has failed to task an appraiser with valuing that portion of the property. The Board cannot find that 15 acres located adjacent to a casino resort can have no value, particularly when Mr. Lennhoff has valued other excess acreage at over \$100,000 an acre.
279. There are also casino facilities inside the Hotel that are not valued under Mr. Lennhoff's income approach. Gaming facility amenities, including the membership rewards center, were located in the Hotel at the player entrance to the Riverboat. *Ex. R-3* at 37, 140. Casino employees must enter through the Hotel and utilize back-of-house space like the tunnel. Mr. Herman's analysis did not value the shoreside development such as the passageways and improvements for mooring the Riverboat to the Hotel. This is not a question of synergy. It is a question of whether the portions of the physical Hotel that were utilized for casino operations were assigned a value. Because the casino operation used some portions of the Hotel in ways not accounted for in either appraiser's valuation, the Taxpayer has omitted real property assets in its valuation.

280. Under these circumstances, the Board finds there is an assemblage issue that seriously undermines the credibility of the Taxpayer's evidence of the value of the Resort. Because the Taxpayer's approach failed to value all improvements and failed to task an appraiser with considering the value of the entire Resort to ensure proper allocation and consistency of approach, the Board finds that the Taxpayer's evidence is unreliable under the USPAP concept of assemblage. Even if each conclusion of value by the Taxpayer's experts were probative and consistent with the law, the Board finds the evidence presented does not credibly value the entire Resort.

6. Analysis of Mr. Cahill's Resort Valuation

281. The Board is persuaded by Mr. Cahill's testimony that casinos are typically valued in the gaming market under the income approach, and more specifically through a DCF analysis. This is also supported by the testimony of the Taxpayer's witness, Mr. Goodman. Mr. Cahill's TAB extraction approach was not fundamentally different, in theory, from Mr. Lennhoff's hotel valuation. Because nearly every argument Mr. Lennhoff asserted as grounds for a TAB income approach for a hotel also applies to a casino, the Board finds Mr. Cahill chose an appropriate valuation approach.

282. The reliability of Mr. Cahill's valuation hinges on his projections of income and expenses for the Resort. Below is a chart reflecting actual and projected WPUPD for the Resort and the competitive set in the 2009 report.

Year	Competitive Set				Resort				
	Slots	Tables	AGR	% Change	Slots	Tables	AGR	% Change	
2006/2007 (actual)	\$ 332.62	\$ 1,550.16	\$ 380.94		\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]		
2007/2008 (actual)	\$ 334.88	\$ 1,545.25	\$ 380.25	0.2%	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]		-3.05%
2008/2009 (actual)	\$ 287.03	\$ 1,467.34	\$ 317.72	-16.4%	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]		-3.50%
2009/2010 (proj.)	\$ 274.53	\$ 1,388.85	\$ 303.64	-4.4%	\$ 225.12	\$ 1,111.08	\$ 254.04		-0.15%
2010/2011 (proj.)	\$ 277.80	\$ 1,370.66	\$ 307.14	1.2%	\$ 236.13	\$ 1,123.94	\$ 265.12		4.36%
2011/2012 (proj.)	\$ 290.35	\$ 1,421.59	\$ 320.95	4.5%	\$ 246.80	\$ 1,165.71	\$ 276.80		4.41%

It is evident that increased competition from the racinos and the recession had a much greater impact on the competitive set than the Resort (a collective loss of -16.2% versus -6.55%). Mr. Cahill's prediction that the Resort would continue to "weather the storm"

due to its amenities as a destination resort was reasonable and supported by historical trends.

283. The Board is concerned that focusing on WPUPD is misleading because taking machines and tables in or out of service does not change overall demand. In 2007/2008, Horseshoe SI had a 15% increase in WPUPD but less than a 1% increase in revenue. Gross gaming revenue is a more reliable gauge. In terms of AGR, the Resort clearly fared better than its competitors going into the recession:

Casino	WPUPD	% Change	AGR	% Change
<i>Argosy</i>				
06/'07	519		\$ 474,489,334.00	
07/'08	519	0.00%	\$ 475,987,107.00	0.32%
08/'09	456	-12.13%	\$ 428,155,773.00	-10.05%
<i>Grand Victoria</i>				
06/'07	283		\$ 149,917,318.00	
07/'08	272	-3.88%	\$ 147,556,184.00	-1.57%
08/'09	244	-10.29%	\$ 128,104,490.00	-13.18%
<i>Horseshoe SI</i>				
06/'07	420		\$ 336,170,948.00	
07/'08	484	15.24%	\$ 338,162,874.00	0.59%
08/'09	429	-11.36%	\$ 307,039,719.00	-9.20%
<i>Resort</i>				
06/'07	█		\$ █	
07/'08	█	-2.94%	\$ █	-0.60%
08/'09	█	-3.79%	\$ █	-5.28%

Ex. R-3 at 82 (changes in total WPUPD and AGR calculated by the Board). The Board finds that an investor would predict that the Resort would continue to perform better than the competitive set.

284. As for 2014, it is clear that the expansion of gaming hit the Hollywood and Rising Star casinos the hardest, and had the least impact on the casinos farther away from the Cincinnati feeder market:

Casino	WPUPD	% Change	AGR	% Change
Hollywood				
11/'12	358		\$ 438,040,175.00	
12/'13	332	-7.26%	\$ 381,198,298.00	-12.98%
13/'14	262	-21.08%	\$ 244,347,985.00	-35.90%
Rising Star				
11/'12	192		\$ 92,990,431.00	
12/'13	181	-5.73%	\$ 86,935,231.00	-6.51%
13/'14	141	-22.10%	\$ 65,195,740.00	-25.01%
Horseshoe Sl				
11/'12	361		\$ 249,371,532.00	
12/'13	402	11.36%	\$ 272,482,462.00	9.27%
13/'14	281	-2.24%	\$ 263,543,292.00	-3.28%
French Lick				
11/'12	182		\$ 86,882,778.00	
12/'13	202	10.99%	\$ 85,394,443.00	-1.71%
13/'14	193	-4.46%	\$ 77,107,111.00	-9.70%
Resort				
11/'12	█		\$ █	
12/'13	█	0.38%	\$ █	-1.66%
13/'14	█	-5.64%	\$ █	-14.14%

Ex. R-4 at 84 (changes in total WPUPD and AGR calculated by the Board). Historical numbers suggest the Resort would stabilize at a “new normal” of less revenue due to increased competition, but the “new normal” would be much more optimistic than for the Hollywood or Rising Star, perhaps even improving market share. The Board finds that Mr. Cahill’s revenue predictions are reasonable, particularly in the absence of contradictory expert testimony.

285. The Board is not persuaded by Mr. Cahill’s supposition that an investor would anticipate greater market share through promotional efforts. Rather, it is expected that all of the casinos would engage in similar promotional efforts that would tend to cancel out such efforts. However, the Resort has weathered the storm better than the other casinos due to its niche as a destination resort, and the Board finds an investor might well anticipate an increase in market share.

286. As for the 3% growth for the stabilized years, it is clear that Mr. Cahill intended to include it as an industry standard. He noted that he has applied it in all of his valuations.

Tr. at 1642. Mr. Cahill stated unequivocally that the 3% increases in revenue were applied as a “compounding 3% base rate, of which you’re pulling out mathematically from adding it to the discount rate.” *Tr.* at 1641. He also referred to it as an inflation rate or constant rate of change. *Tr.* at 1168. This appears to be consistent with appraisal theory:

It is common for appraisers to develop a “stabilized” income stream, which may be level or exhibit some consistent rate of change, to represent a property’s income for yield capitalization purposes. This practice follows procedures commonly applied by buyers and sellers, and the application of the technique should mirror the reasoning and behavior of market participants.

APPRAISAL OF REAL ESTATE at 531. Mr. Goodman, the Taxpayer’s rebuttal witness, testified that he based his DCF net revenue (EBITDA) on “flat growth assumptions” which means he did not project them to fluctuate with market expectations. *Tr.* at 1686. This is what Mr. Cahill intended to do after year 3 as well. While Mr. Cahill did not make an exemplary effort to explain the effect of the compounding 3% base rate and 3 percentage point addition to the discount rate, there is no evidence to contradict his testimony that the increases in income are an industry standard and negated by the adjustment to the discount rate. The Board finds that the Taxpayer has failed to rebut Mr. Cahill’s projection of income, and the Board concludes that Mr. Cahill’s estimates are credible.

287. As for expenses, Mr. Cahill’s projections are largely based on historical percentages of revenue, and their credibility depend on his income projections. The Board agrees that some of his projections in dollar terms are inconsistent with his theory of a potential investor, as exemplified by his promotional expenditures. *See Tr.* at 1510. Also, a projected increase in comping rooms cannot logically result in an increase in room revenues. *See Tr.* at 1535. Some fixed costs may be understated because they are unlikely to fall proportionate to revenue. But overall, the Board finds Mr. Cahill’s expense projections to be reasonable, if not entirely consistent. As for the Taxpayer’s arguments about how recurring capital expenses and anticipated major refreshes should be calculated, “net income to be capitalized may be capitalized before or after an

allowance for specific replacement categories.”¹⁰² APPRAISAL OF REAL ESTATE at 494. The Board is not presented with contrary expert testimony in this regard.

288. The Taxpayer took general issue with Mr. Cahill’s calculation of EBITDA. The Taxpayer’s rebuttal witness, Mr. Goodman, did not dispute the calculation of EBITDA, only the calculation (or definition) of cash flow. *Tr.* at 1296-97. The Board is not presented with any treatise or expert testimony to the contrary.
289. Mr. Cahill does little to explain how he chose his EBITDA multipliers. While the Board accepts that casino transactions are rare and often very dissimilar in terms of market and physical location, Mr. Cahill does little to explain how he resolves this conundrum. The Board agrees with the Taxpayer that Mr. Cahill has done a poor job of explaining which casino sales should be considered similar, and more importantly, why. Ideally, Mr. Cahill would have examined more in depth the tax structure, amenities, and any transactional issues of the comps. On the other hand, the “suitability of a particular rate of return cannot be proven with market evidence,” and the selection of a rate necessarily depends on “appraisal judgment and knowledge of prevailing market attitudes and economic indicators.” APPRAISAL OF REAL ESTATE at 458. The Board is persuaded that Mr. Cahill does have deep knowledge of the gaming industry.
290. On cross-examination, the Taxpayer took strong issue with the inclusion of large, billion-dollar portfolio transactions. *See Tr.* 1402-7. The Board agrees that these are of limited use in determining the EBITDA for the Resort. However, the Board notes that the data is relevant, and other courts have considered it probative evidence in establishing a multiplier. *See Marina Dev. Dist.*, 27 N.J. Tax at 501-2. This is diminished by Mr. Cahill’s ignorance as to how the gaming companies referenced were selected, and is indicative of a pervasive level of carelessness and inattention to detail throughout his

¹⁰² Generally speaking, “expenditures for capital improvements usually do not recur annually and therefore should not be included” as a periodic operating expense. APPRAISAL OF REAL ESTATE at 487. However, an “average annual expectation may be included in the replacement reserve.” *Id.* Under a DCF analysis, “capital expenses may be deducted from the net operating income in the year the expenditure is expected to occur and not averaged on an annual basis.” *Id.* Errors regarding capital improvements may result in “overstatement of value” by excluding costs, or may result in an understatement if the “contribution of value” of the improvement is not appropriately considered. *Id.* The Taxpayer has failed to present expert testimony that the omission of capital improvements overstated the value, and the Board does not find that Mr. Cahill has erred in his approach in this regard.

appraisal report. *Tr.* at 1440-41; 1444-45. On the other hand, the Taxpayer's rebuttal witness, Mr. Goodman, did not dispute the discount rate selected by Mr. Cahill. *Tr.* at 1704.

291. The Board is concerned that comparing price per position has limited reliability because, as Mr. Cahill noted, some jurisdictions measure by table position, and others, like Indiana, by the table. It also seems that a riverboat casino price per square foot, due to the constraints of a riverboat, might tend to be higher than land-based casinos. Mr. Cahill gave the Board very thin confidence that he chose a range through a consistent, detailed, and thorough analysis. However, the Board finds that there is sufficient evidence to support his multipliers.
292. The testimony was clear that there is a national market for casino sales, and that the return on investment is the most important factor for an investor. For 2009, the Board notes that the Resort had historical EBITDA that ranged from roughly \$█████ to ██████. Outside of Las Vegas, four casinos sold in that EBITDA range:

Casino Transaction	EBITDA	Price per s/f	Price per position	EBITDA multiplier	Date
Grace Entertainment	\$ 40,500,000	\$ 3,161	\$ 118,089	6.6	2005
Trump Indiana	\$ 31,600,000	\$ 6,284	\$ 174,724	8	2005
Isle Bossier/ Isle Vicksburg	\$ 33,300,000			7.2	2006
Primm Valley Resorts	\$ 40,000,000	\$ 2,920	\$ 137,504	10	2007
Sum	\$ 145,400,000	\$ 12,365	\$ 430,317	31.8	
Average	\$ 36,350,000	\$ 4,121.67	\$ 143,439	7.95	
Resort (Cahill) Projection)	\$ 28,240,000	\$ 5,500	\$ 133,000	7.1	

Ex. R-3 at 104. The Board finds that this is persuasive evidence regarding the risk and return an average investor would expect for a gaming enterprise (or portfolio of enterprises), in a location outside of Las Vegas, with EBITDA in the range of \$████-\$████. This removes the Taxpayer's argument that Mr. Cahill, in effect, compared a suburban

office building to the Sears Tower.¹⁰³ Without a competing expert opinion, the Board accepts Mr. Cahill's EBITDA multiplier.

293. For 2014, the Board notes that the Resort had historical EBITDA of \$[REDACTED]-\$[REDACTED].

Outside of Las Vegas, five casinos were sold in the EBITDA range of \$18M-\$41M:

Casino Transaction	EBITDA	Price per s/f	Price per position	EBITDA multiplier	Date
Tropicana (Atlantic City)	\$ 32,700,000	\$ 1,351	\$ 66,578	6.1	2010
Harlow's	\$ 17,500,000	\$ 4,182	\$ 159,722	7.9	2010
IP Casino Biloxi	\$ 41,300,000	\$ 4,009	\$ 143,017	6.8	2011
Riverwalk	\$ 19,000,000	\$ 5,222	\$ 184,797	7.4	2012
Oxford Casino	\$ 21,100,000	\$ 6,400	\$ 197,044	7.5	2013
Sum	\$ 131,600,000	\$ 21,164	\$ 751,158	35.8	
Average	\$ 26,320,000	\$ 4,233	\$ 150,232	7.16	
Resort (Cahill Projection)	\$ 22,126,000	\$ 4,850	\$ 185,573	8	

Ex. R-4 at 108-9. The Board finds that this is persuasive evidence regarding the risk and return an average investor would expect for a gaming enterprise (or portfolio of enterprises), in a location outside of Las Vegas, with EBITDA in the range of \$18M-\$41M. Mr. Cahill selected a multiplier of 8, which is above this range. However, considering that 3 of the 8 sales in 2010 were bankruptcies, it is not unreasonable for the Board to accept that the sales of casinos in 2011 and 2012 reflected a nadir of casino values and that the improved economic conditions in 2014 would have resulted in higher EBITDA multipliers. "Historical yield rates from comparable sales" may not be reliable indicators, and "there may be reason to select a yield rate above or below the indicated range." APPRAISAL OF REAL ESTATE at 513. As for the Grand Victoria sale at a 5.1 multiplier, its EBITDA was significantly lower at \$8.4M and well outside the range of the Resort. Without contrary expert testimony, the Board accepts Mr. Cahill's multiplier.

¹⁰³ The Board notes that the Taxpayer's appraiser, Mr. Herman, made a similar qualitative analysis based on sales of boats he freely admitted were not directly comparable. For 2014, the Riverboat was 8 times the size of his smallest comp in gaming area, the ages ranged from 9 to 38 years, and the sale dates ranged from 2003-2012. A significant portion of the comps were ocean-going, denoting both a different gaming model (legal and business) and substantial physical (hull) differences. It is the nature of valuing property in limited markets that an appraiser must make speculative judgments. While Mr. Herman made a more exemplary effort to explain his process, the Taxpayer's criticisms of Mr. Cahill, if adopted, would apply equally to Mr. Herman.

294. As for the DCF calculations, the Taxpayer challenges the 1% deduction for closing costs. The Board agrees that Mr. Cahill once again provided a very thin level of confidence in how he arrived at that number. Mr. Goodman was not more helpful, placing brokerage costs somewhere in the range of 6% for a house and less than 1% for a multi-billion dollar transaction. *Tr.* at 1695. The Board finds that the Taxpayer has not refuted this aspect of the calculation. The Taxpayer also disputes Mr. Cahill's use of the same rate for the overall capitalization rate and the residual capitalization rate. The Board is not directed to any treatise or expert testimony to conclude this was in error. Similarly, the Taxpayer challenges Mr. Cahill's decision not to load the discount rates for property taxes. Mr. Cahill testified that a loaded discount rate or his iterative approach should have the same result. *Tr.* at 1644. The Taxpayer has not referenced any treatise or expert testimony to controvert this statement, nor calculated how the valuation would change with a loaded cap rate.
295. Though Mr. Cahill relies more on gut instinct than the Board would prefer, the Board finds that Mr. Cahill has presented a sufficiently probative value of the Resort as a going concern for 2009 and 2014. The Board now moves to Mr. Cahill's business extraction techniques.
296. As for the casino license, Mr. Cahill argued that most of the monopolistic value of a gaming license was offset by the higher tax rate in limited license states such as Indiana. *Ex. R-3* at 133-34. He then concluded that there was "no definitive evidence showing that casinos in restricted markets sell for any recognizable premium." *Ex. R-3* at 135. But, contradicting his own conclusion, he subtracted a value for the casino license premised on the theory that absent a licensing law, an Indiana casino would sell for 1 EBITDA multiplier less. The record is devoid of any data or methodology revealing how Mr. Cahill arrived at his 1 EBITDA multiplier gap between open and restricted gaming markets.
297. The Board notes that there is no evidence of an original payment charged by the state for a casino license. Thus the Board is asked to value an asset that was not purchased. Other courts have noted that the value of a license, like the value of a casino, depends on the

location. See *Gecker v. Flynn (In re Emerald Casino, Inc.)*, 538 B.R. 417, 431 (Bankr. N.D. Ill. 2015). Arguably, the value of a casino license in a particular location is merely a reflection of the demand for a casino generally. See *Snider v. Casino Aztar/Aztar Mo. Gaming Corp.*, 156 S.W.3d 341, 350 (Mo. 2005).¹⁰⁴ This concept explains why the two racinos in the Indianapolis market spent \$250M each on licenses alone, *Tr.* at 95, and yet only a few years later the Grand Victoria, in the saturated Cincinnati market, would sell in its entirety for just \$43M. *Ex. R-4* at 108. Mr. Herman testified that during this period Ohio charged a \$50M casino license fee and Pennsylvania charged a “similar type fee.” *Tr.* at 363-64.

298. The Board finds that valuing a casino license is necessarily speculative. Mr. Cahill’s projections of \$30M and \$23M are not too distant from the going rate for other Midwestern casinos. The Board is once again presented with only one expert opinion of value for the casino license. Mr. Cahill’s valuation may not be compelling, but he offers it as a concession to counter-arguments against his theory of limited and free gaming markets.¹⁰⁵ Considering the speculative nature of valuing a casino license, the disparity in values of Indiana licenses evidenced by the racino purchases and the Grand Victoria sale, and the contemporary fees in nearby states, the Board accepts Mr. Cahill’s methodology for valuing the casino license.¹⁰⁶

299. The Taxpayer also criticizes Mr. Cahill for not independently valuing the personal property and relying on the county tax returns. Because both of Taxpayer’s experts also made deductions based on property tax returns, the Board finds the Taxpayer’s criticism to be disingenuous. *Tr.* at 249, 1567; *Ex. P-5* at 74.

¹⁰⁴ “It is not possession of the gaming license that imbues Aztar’s property with its highest and best use, it is the demand for a casino in the community and the physical attributes of the property that make it suitable to being developed for that use.” *Snider*, 156 S.W.3d at 350.

¹⁰⁵ The Taxpayer’s experts’ bleak projections regarding the saturated Southeastern Indiana gaming market in 2014 tend to support the conclusion that the license had little value due to the disappearing monopolistic edge from increasing Ohio gaming competition.

¹⁰⁶ The Board finds Mr. Lennhoff’s testimony regarding casino licenses to be unreliable. He stated he considered “a paper” by Dr. William Kinnard that concluded that generally “real property represented 20 percent of the total assets of a casino going concern, and that the other 80 percent was almost all the license.” *Tr.* at 750. This conflicts with the testimony of both Mr. Herman and Mr. Cahill, and the Board is not presented with this “paper.” The Board likewise finds that it is not “obvious” that his anecdotal knowledge of auto racetracks’ intangible assets has any bearing on the allocation of casino intangibles. *Tr.* at 752.

300. Turning to Mr. Cahill's Dark Casino Theory, the Board is not persuaded that his approach appropriately deducted the enterprise value of the casino. He cited to no treatises or other practitioners who follow this appraisal practice. He failed to provide the Board with any data to support the projected loss in income and time for rebound. He provided no data to support his estimate of pre-opening expenses. The Board finds it unlikely that a thorough analysis would determine that the pre-opening expenses in 2009 and 2014 would be exactly the same. For this reason, the Board finds a counter-check to be critical to the reliability of Mr. Cahill's valuation.¹⁰⁷

301. The Board finds that the New Jersey Tax Court has persuasively explained why the Rushmore approach, conceptually, is an appropriate methodology for calculating the enterprise value of the casino:

The appraisal theory is that by hypothesizing that the property owner employs a professional management agent to take over the day-to-day operations of the business enterprise, the property owner is in the position of a passive investor in real property who makes no profit from the business operation at the property. The business value — deducted in the form of a hypothetical market rate management fee — represents the value of the business enterprise.

Marina Dev. Dist., 27 N.J. Tax at 528. As a counter-check, Mr. Cahill considered a version of this approach.

302. Mr. Cahill relied on three calculations of a management fee: 4% of gross revenue, 4% of net revenue plus a 2% replacement reserve (totaling 6% of net revenue), and 24% of EBITDA.¹⁰⁸ *Ex. R-3* at 138; *Ex. R-4* at 148. Mr. Cahill testified it was his intention to

¹⁰⁷ The Board does not question Mr. Cahill's claim that he includes this analysis in all of his brokerage and underwriting work on gaming facilities. It is probably a helpful aid for buyers and banks in considering the risk of loss that might be anticipated in a change of ownership or management. But it cannot be described as a generally accepted appraisal theory for extracting intangible business value.

¹⁰⁸ Mr. Cahill's other two management fee calculations (4% of gross and 24% of EBITDA), did not have a deduction for a replacement reserve. Mr. Cahill seemed to state in his testimony that he did not deduct a reserve replacement, which is true for two of the management fee counter-checks, but not in the one that replicated Ms. Mellen's approach. *See Tr.* at 925-26; 1640. In *Marina*, "plaintiff's first appraiser" who considered 6% of gross revenues did not deduct an express replacement reserve. *Marina Dev. Dist.*, 27 N.J. Tax at 493-94. There is no dispute that the Mellen method included a 2% replacement reserve in addition to the 4% of net revenue management fee.

replicate the Mellen method as reflected in the *Marina* case.¹⁰⁹ In *Marina*, Ms. Mellen used a 4% of net revenue management fee. *Marina Dev. Dist.*, 27 N.J. Tax at 500. She also deducted a 2% replacement reserve. *Id.* Mr. Cahill deviated from the Mellen method because he applied the adjusted revenue to a discount rate lower than his DCF rate, based on a theory of less risk in a managed casino. *Ex. R-3* at 138; *Ex. R-4* at 148.

303. It does not appear that either of the appraisers in *Marina* made an adjustment to the discount rate. It is not clear how Mr. Cahill's reference to "variances between operating hotels and the national net lease market" has any relevance to a casino. *Ex. R-4* at 138. Mr. Cahill admitted on cross-examination that "he tried to follow" the Mellen method, and if he did not, including in regard to the adjusted discount rate, it would have been in error. *Tr.* at 1597. The Taxpayer noted this error and walked Mr. Cahill through a direct income capitalization at Mr. Cahill's original rate, which the Taxpayer argued would result in an enterprise valuation of \$73.2M.¹¹⁰ *Tr.* at 1599-1601. The Board agrees with the Taxpayer's argument that it was in error to use an adjusted discount rate in the Mellen method counter-check.
304. When the Board finds a flaw or error in an appraisal, "the entire appraisal is not rendered per se invalid." *Marion County Assessor v. Wash. Square Mall, LLC*, 46 N.E.3d 1, 25 (Ind. Tax Ct. 2015). The Board must determine a value "based on, and supported by, the record evidence." *Marion Cnty. Assessor v. Gateway Arthur, Inc.*, 43 N.E.3d 279, 285

¹⁰⁹ In *Marina*, which considered the value of the Borgata Casino in Atlantic City, the identity of Suzanne Mellen is not actually disclosed. *Marina Dev. Dist.*, 27 N.J. Tax at 486. The *Marina* Court identified the appraisers as "plaintiff's first appraiser" and "plaintiff's second appraiser." *Id.* It is clear from the record before the Board that Ms. Mellen used a 4% of net revenue management fee and 2% replacement reserve, which corresponds to the "plaintiff's second appraiser." In contrast, the "plaintiff's first appraiser" considered management fees of 5% and 6% of gross revenue and did not deduct a replacement reserve. *Id.* at 494-95. The *Marina* Court adopted Ms. Mellen's valuation. *Id.* at 524.

¹¹⁰ Ms. Mellen's process in *Marina* was slightly different from Mr. Cahill's appraisal. She adjusted her EBITDA to reflect the management and replacement reserves as part of her initial going concern valuation, and then deducted only personal property to arrive at her real estate value. *Marina Dev. Dist.*, 27 N.J. Tax at 500-503. She did not consider the value of the "going concern" prior to deducting a management fee. Ms. Mellen also applied her adjusted EBITDA numbers to both a direct capitalization and a DCF analysis. *Id.* at 502. The approaches resulted in \$1,001,000,000 under direct capitalization, and \$1,014,000,000 under DCF, a \$13M difference. *Id.* She reconciled them closer to the DCF result, at \$1,010,000,000. *Id.* at 502-503. The Taxpayer was mistaken in its proposed findings when it asserted that Ms. Mellen "did not perform a discounted cash flow analysis at all." The Board finds it immaterial whether the 6% of net revenue EBITDA adjustment is calculated in an initial value or deducted as an extracted value. The Board prefers Mr. Cahill's process because it shows the value of the TAB before extracting non-realty assets.

(Ind. Tax Ct. 2015). When supported by the record, the Tax Court has affirmed the Board when it has applied the proper capitalization rate to the proper income figure to adjust an appraiser's valuation. *Id.*

305. While the Board agrees with the Taxpayer that Mr. Cahill used the wrong capitalization rate, the Taxpayer is incorrect in his argument that the enterprise value should have been calculated through direct capitalization. The Board finds that Mr. Cahill should have based his Mellen counter-check on adjusted EBITDA at the original discount rate. The enterprise value is properly determined by applying Mr. Cahill's adjusted EBITDA to the original DCF formula.

DCF

Adjusted EBITDA	17%	PV
\$ 18,854,000	0.8547	\$ 16,114,514
\$ 19,914,000	0.7305	\$ 14,547,177
\$ 23,403,000	0.6244	\$ 14,612,833
\$ 24,068,000	0.5337	\$ 12,845,092
\$ 24,790,000	0.4561	\$ 11,306,719
\$ 25,533,000	0.3898	\$ 9,952,763
\$ 26,299,000	0.3332	\$ 8,762,827
\$ 27,088,000	0.2848	\$ 7,714,662
\$ 27,901,000	0.2434	\$ 6,791,103
\$ 28,738,000	0.2080	\$ 5,977,504
		\$ 108,625,195

Residual	17%
Year 10 Trailing NOI	\$ 28,738,000
Inflation	1.03
Year 11 NOI	\$ 29,600,140
Forecasted Year 11 Tax	\$ 2,253,000
Year 11 NOI before Tax	\$ 31,853,140
Property Tax Rate	1.10%
Residual Cap Rate	14.00%
Loaded Residual Cap Rate	15.10%
Gross Residual Proceeds	\$ 210,947,947
Less Brokerage/Legal Fees	\$ 2,109,479
Adjusted Residual	\$ 208,838,468
PV Factor 17% (.2080)	\$ 43,438,401

Sum of Discounted Cash Flows	\$ 108,625,195
PV of Residual	\$ 43,438,401
Estimated Going Concern Value after 6%	\$ 152,063,596
Going Concern Total	\$ 219,424,381
Going Concern After 6%	\$ (152,063,596)
Business Value	\$ 67,360,785

Thus, if Mr. Cahill had mirrored the Mellen method, the extracted enterprise value would have been \$67M compared to Mr. Cahill's Dark Casino Theory that resulted in only

\$29M.¹¹¹ The Board finds that this calculation, applied at the appropriate discount rate, sufficiently removes the enterprise value and other intangibles of the Resort.

306. The Board finds the extracted value of the real property of the Resort is as follows.

Going Concern Value	\$	219,000,000
Personal Property	\$	(15,000,000)
Gaming License	\$	(30,000,000)
Business Enterprise	\$	(67,000,000)
Real Estate Value	\$	107,000,000

Additionally, Mr. Cahill discounted the real estate at 8% to trend from March 1, 2009 back to January 1, 2008. As applied, this results in valuation of \$98,440,000, which the Board rounds to \$98,500,000.¹¹² Prior to trending, this results in 49% of the going concern being allocated to real property.

307. For 2014, the Board finds that Mr. Cahill should have based his Mellen counter-check on adjusted EBITDA at the original discount rate. The enterprise value is properly determined by applying Mr. Cahill's adjusted EBITDA to the original DCF formula.

¹¹¹ The "Adjusted EBITDA" is the column for "Adj. Cash Flow" found on the second page following Dark Casino Theory Reconciliation found in the Appendix of Ex. R-3. The discount factor PVs are from Ex. R-3 at 127. Mr. Cahill did not adjust the tax liability in his counter-check.

¹¹² That is: \$107,000,000 X .92 = \$98,440,000.

DCF

Adjusted EBITDA	15.5%	PV
\$ 15,110,000	0.8658	\$ 13,082,238
\$ 16,363,000	0.7496	\$ 12,265,705
\$ 18,486,000	0.6490	\$ 11,997,414
\$ 19,009,000	0.5619	\$ 10,681,157
\$ 19,579,000	0.4865	\$ 9,525,184
\$ 20,166,000	0.4212	\$ 8,493,919
\$ 20,771,000	0.3647	\$ 7,575,184
\$ 21,394,000	0.3158	\$ 6,756,225
\$ 22,036,000	0.2734	\$ 6,024,642
\$ 22,697,000	0.2367	\$ 5,372,380
		\$ 91,774,048

Residual		15.5%
Year 10 Trailing NOI	\$	22,697,000
Inflation		1.03
Year 11 NOI	\$	23,377,910
Forecasted Year 11 Tax	\$	2,270,000
Year 11 NOI before Tax	\$	25,647,910
Property Tax Rate		1.16%
Residual Cap Rate		12.50%
Loaded Residual Cap Rate		13.66%
Gross Residual Proceeds	\$	187,759,224
Less Brokerage/Legal Fees	\$	1,877,592
Adjusted Residual	\$	185,881,632
PV Factor 15.5% (.2367)	\$	43,998,182

Sum of Discounted Cash Flows	\$	91,774,048
PV of Residual	\$	<u>43,998,182</u>
Estimated Going Concern Value after 6%	\$	135,772,230
Going Concern Total	\$	191,047,285
Going Concern After 6%	\$	<u>(135,772,230)</u>
Business Value	\$	55,275,055

Thus, if Mr. Cahill had mirrored the Mellen approach, the counter-check would have shown \$55M in business value compared to the \$25M under Mr. Cahill's Dark Casino

theory.¹¹³ The Board finds that this calculation, applied at the appropriate discount rate, sufficiently removes the enterprise value and other intangibles of the Resort.

308. Likewise for 2014, the Board finds the extracted value of the real property of the Resort is as follows:

Going Concern Value	\$	191,000,000
Personal Property	\$	(15,000,000)
Gaming License	\$	(23,000,000)
Business Enterprise	\$	(55,000,000)
Real Estate Value	\$	98,000,000

309. The Board disregards Mr. Cahill's REIT counter-check to business valuation. Mr. Goodman testified that these transactions are based on negotiations of risk, not inquiries into real property values.¹¹⁴ Furthermore, Mr. Cahill noted that hotel REITs have been common since the late 1990s. Yet, there is no suggestion that it has become standard practice for appraisers to consider hotel REIT transactions as a check on hotel valuations. The Board finds this is neither a generally accepted appraisal theory nor a reliable counter-check on Mr. Cahill's Dark Casino Theory.

310. For 2014, the Board must also consider the value of the Golf Course under the Golf Course Statute.¹¹⁵ Based on Mr. Cahill's first year projections, departmentally, the Golf Course had roughly \$ [REDACTED] in revenue and \$ [REDACTED] in expenses, which nets to \$ [REDACTED]. *Ex. R-4* at 116. At the 12.5% cap rate, Mr. Cahill implicitly valued that income at roughly \$ [REDACTED].¹¹⁶ Mr. Herman determined there was \$ [REDACTED] in net operating income for purposes of the Golf Course Statute. *Ex. P-4 (Ex. 6.A.1)*. The base capitalization rate, pursuant to DLGF guidelines for Switzerland County is 11.91%, and when loaded with the effective tax rate of 1.16%, becomes 13.07%. *Tr.* at 247. The

¹¹³ The "Adjusted EBITDA" is the column for "Adj. Cash Flow" found on the second page following Dark Casino Theory Reconciliation found in the Appendix of *Ex. R-4*. The discount factor PVs are from page *Ex. R-4* at 134. Mr. Cahill did not adjust the tax liability in his counter-check.

¹¹⁴ When asked to explain the process of entering into a REIT arrangement, Mr. Goodman testified that the transactions are heavily negotiated in terms of risk and the size of immediate cash disbursement from the buyer relative to the rent obligation incurred by the seller. *Tr.* at 1712-14. The value of the real estate is not a controlling factor. *Tr.* at 1712-14.

¹¹⁵ Because the Golf Course Statute mandates an income approach with a particular capitalization rate, the Board finds that the income for the Golf Course must be treated and valued independently.

¹¹⁶ That is: $\$369,000 / .125 = \$2,952,000$.

entire enterprise value is \$[REDACTED] and, after personal property of \$[REDACTED] is deducted, results in a valuation rounded to \$3,000,000. *Tr.* at 347; *Ex. P-4 (Ex. 6.A.1)*. The Board finds that Mr. Cahill's approach fails to include approximately \$500,000 in value under the Golf Course Statute.¹¹⁷ Thus the inclusion of Mr. Herman's Golf Course approach increases the Resort value to \$98,500,000.¹¹⁸ This results in 51% of the going concern allocated to real property.

7. Conclusions of Value

311. The Board finds that the Resort is heavily dependent on its real property assets to draw patrons to the casino. This dependence is reflected in where the Resort and other casino resorts have spent their capital: on the hotels.¹¹⁹ It is also reflected in room occupancy: at the Resort, [REDACTED] rooms were rented in 2009. *Ex. R-3* at 140. While [REDACTED]% of the Resort's income comes from the business of gaming, it is clear the casino is dependent on the operation of its substantial real estate amenities to get the gamblers on the Riverboat.
312. Patrons are drawn to the Resort's luxury hotel rooms, dining, convention space, concert hall, golf course, and spa. Because the Resort is a real estate intensive operation, it is reasonable to conclude that the proportion of tangibles would be at the higher end of the casino tangible property ranges suggested by Mr. Herman (26%-51% for real and personal) and Mr. Cahill (66% for real only).¹²⁰ This is also supported by the sale of the Grand Victoria where 58% was attributed to real property.¹²¹ As a check on Mr. Cahill's

¹¹⁷ When the personal property (\$[REDACTED]) is deducted from golf course value under Cahill's income and capitalization rate (\$[REDACTED]), the result (\$[REDACTED]) is roughly \$500,000 below Mr. Herman's value.

¹¹⁸ This addition to the value of the Resort in compliance with the Golf Course Statute is not entirely satisfactory. The Board notes that the statute is easily applied to a stand-alone course, but not to an integrated Resort. The Board also notes that the revenue of the golf course is skewed by the comping of green fees, and does not reflect the market conditions of a typical stand-alone golf course. As precision is impossible under these circumstances, the Board finds this result sufficiently complies with the Golf Course Statute.

¹¹⁹ The Hotel was constructed in 2000 and the second tower added in 2004. Suite upgrades were made in 2008 and a major refresh was completed in 2014. *Ex. P-5* at 29. In contrast, there were no major renovations of the Riverboat. The purchasers of the Grand Victoria (Rising Star) invested capital in a new, second hotel, rather than upgrading to a barge casino. *Ex. P-5* at 46. When the Blue Chip Casino upgraded to a barge facility, it also built a second hotel tower with 300 rooms, additional meeting space, dining/nightlife, and spa. *Ex. R-3* at 21.

¹²⁰ Mr. Cahill testified that 66% would be "pretty conservative." *Tr.* at 933. In contrast, Mr. Herman's review of casino sales suggested the value would be in the neighborhood of 26% to 51% for real and personal property. *Ex. P-1* at 16; *Ex. P-3* at 16.

¹²¹ The Grand Victoria sold for \$42.4M and \$24.8M was allocated to land/buildings. *Ex. P-5* at 90; *Tr.* at 749.

appraisal and the Mellen method, the Board finds that it is reasonable to conclude that the real estate forms roughly 50% of the value of the Resort as a business.

313. The Board does not typically make allocations among a property that forms a single economic unit. However, due to the unique circumstances presented by the Casino Assessment Statute and the Golf Course Statute, the Board finds that further allocation is appropriate.
314. Mr. Cahill made a couple of attempts at allocating value between the Hotel and the Riverboat.¹²² The Board finds them half-hearted at best, and certainly not more persuasive than Mr. Herman's valuation. The Board does not have a credible, independent value for the real property constituting the Hotel, in isolation, for 2009 or 2014. The Board does have a credible valuation of the entire Resort and a credible valuation of the Riverboat individually. Thus, under the evidence for this appeal, any determination of value between the Hotel and the Riverboat can only be an allocation of the Resort's overall real property value.
315. The Riverboat makes up a relatively small portion of the Resort's real estate assets. As a component of the total 690,000 s/f of hotel and gaming space, the casino floor comprises 5.8% of the improvements.¹²³ Thus, it is reasonable that the value of the Riverboat, as real estate, would be roughly proportionate.
316. For 2009, the Board finds that Mr. Herman's reconciled value of \$4,327,000 under the sales approach is the lowest probative value of the Riverboat under the three approaches. The total valuation for 2009 is \$98,500,000. The Board allocates \$4,327,000 to the Riverboat and \$94,173,000 to the remainder of the Resort. This reasonably places the Riverboat at 4% of the total Resort real property assets.

¹²² In addition to an allocation under the GUIDELINES cost schedules, Mr. Cahill also made a rough allocation between the Hotel and the Riverboat based on averaging capital costs and revenue sources. *Ex. R-3* at 141. Mr. Cahill admitted that neither allocation to the Riverboat reflected what the Riverboat would likely sell for individually. *Tr.* at 1618. He also stated that his allocations were made at the request of counsel and were not part of a typical valuation. *Tr.* at 938-39.

¹²³ This estimate, 5.8%, overstates the proportion of the casino floor because it does not account for acreage, parking, the Golf Course, or the back-office areas of the Riverboat.

317. For 2014, the Board finds that Mr. Herman's reconciled value of \$3,500,000 under the sales approach is the lowest probative value of the Riverboat under the three approaches. The Board finds that Mr. Herman has also established the value of the Golf Course under the Golf Course Statute at \$3,000,000. The total valuation for 2014 is \$98,500,000. The Board allocates \$3,500,000 to the Riverboat, \$3,000,000 to the Golf Course, and \$92,000,000 to the remainder of the Resort. This reasonably places the Riverboat at 3.6% of the total Resort real property assets.
318. The Board finds that these conclusions of value are reasonable and proportionate. They comply with the Casino Assessment Statute's requirement of assessing casinos at the lowest value of the three approaches. The Board need not decide whether the Assessor's valuation, which lacked a credible valuation of the Riverboat independently, would have been sufficient under the Casino Assessment Statute.¹²⁴
319. The Board finds no "synergy" in valuing the Resort under the income approach. There is no credible evidence of each of its parts, and the Board cannot determine whether the sum is greater (or less) than the parts. As noted above, we find the New Jersey Tax Court's decision in *Marina* to be persuasive that a management fee can be used to properly account for enterprise value. *Marina Dist. Dev. Co., LLC*, 27 N.J. Tax at 522. Because we find the Mellen method appropriately deducted the business enterprise value of the casino, and reasonable amounts are deducted for personal property and the casino license, we find that this valuation considers only the "bricks and sticks" of the Resort and nothing more.
320. Pursuant to the Appeal Management Plan, the parties have stipulated to establishing the assessments for tax years 2010-2013 as a sum equal to the difference between the determinations for 2014 and 2009, divided by 5, and added to each prior determined assessment year. Because the assessed values for 2009 and 2014 are coincidentally the

¹²⁴ The Board is cognizant that a future appeal may require the application of the Casino Assessment Statute to a property where the gaming floor is not located on a riverboat. For this reason, the Board has endeavored to avoid interpreting the Casino Assessment Statute in such a way that would result in different rules for land-based, racetrack, barge, or riverboat casinos.


same, the difference is 0. Thus the assessed value is \$98,500,000 for all of the years on appeal.

FINAL DETERMINATION

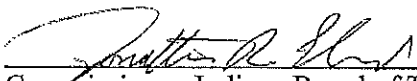
In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the correct assessed value is \$98,500,000 for the tax years 2009, 2010, 2011, 2012, 2013, and 2014.

ISSUED: _____

3-30-17


Chairman, Indiana Board of Tax Review


Commissioner, Indiana Board of Tax Review


Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.