c. Mr. Lennhoff's Hotel Excess Land and Parking Analysis

111. Mr. Lennhoff next addressed excess land and excess parking.[48] Based on typical hotel acreage and parking ratios, he determined the Hotel had 11.69 acres of excess land, 616 excess garage parking spaces, and 1,304 excess surface lot parking spaces.[49] *Ex. P-5* at 88. He valued the land value based on the assessment rate "because the numbers on the actual assessment seemed reasonable enough." *Ex. P-5* at 88; *Tr.* at 745. He estimated parking space values using *Marshall & Swift* cost schedules. *Ex. P-5* at 88-89. For 2009 he valued the excess land at $1,075,000, the excess garage at $6,325,000, and the excess surface parking at $550,000. *Ex. P-5* at 88-89. For 2014, he valued the excess land at $1,225,000, the excess garage at $5,650,000, and the excess surface parking at $600,000. *Ex. P-5* at 88-89.

112. After adding in the other improvements, Mr. Lennhoff's final conclusions of value for the Hotel were $37,575,000 for 2009 and $42,175,000 for 2014.

d. Mr. Lennhoff's Sales Comparison Check

113. Mr. Lennhoff used a sales comparison approach to check his conclusions. He identified seven comps in the Greater Cincinnati and Northern Kentucky area. *Ex. P-5* at 90. Five comps had less than 100 rooms, none exceeded 250 rooms, and only two were full-service hotels. *Ex. P-5* at 90. Mr. Lennhoff found it "readily apparent" that his check added "little substantial clarity as to the value of the subject real property." *Ex. P-5* at 90. Mr. Lennhoff also considered the sale of the Grand Victoria casino in 2011. *Ex. P-5* at 90; *Tr.* at 749. Of the total sale price, $24,800,000 was attributable to the land and improvements. *Ex. P-5* at 90; *Tr.* at 749. Mr. Lennhoff found this data "meaningful" in that "it's very, very low." *Tr.* at 749. Neither of these counter-checks provided support for his valuations.

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[48] As for the purpose of this valuation, the report notes that "*at the request of counsel*, we valued a portion of the garage not utilized for the hotel operation, the surface parking lots, and the excess land that wouldn't be necessary for the hotel operation." *Ex. P-5* at 87 (emphasis added).

[49] This is partially based on data from *Hotel Design, Planning, and Development*. *Ex. P-5* at 87. Mr. Lennhoff also based some portion of this section on a conversation with a "senior guy" at Marriott with whom he golfs. *Tr.* at 743.

3. Mr. Goodman's Testimony

114. Mr. Goodman is Vice President of Strategic Planning, Analytics, and Development at the parent company of the Resort. *Tr.* at 1673. He is responsible for business development including mergers and acquisitions, divestitures, new casinos, finance strategies, and equity matters. *Tr.* at 1673-74. He routinely constructs discount cash flows. *Tr.* at 1674-75. Without objection, Mr. Goodman was admitted as an expert in valuing a casino business and overall enterprise. *Tr.* at 1678. The Board finds that Mr. Goodman is inherently biased because discrediting Mr. Cahill's opinion of value would directly benefit his company. For this reason, the Board finds his testimony of little value and will not further recite his testimony. The Board will note Mr. Goodman's testimony, where relevant, in the Analysis.

C. The Assessor's Evidence

115. The Assessor offered the testimony of two appraisers. Michael Cahill appraised the Resort. Mark Lukens reviewed the appraisals by Mr. Herman and Mr. Lennhoff. Joan Armstrong offered background information on the assessment of the Resort.

1. Mr. Cahill's Resort Valuation

116. Mr. Cahill is a licensed appraiser and MAI with a bachelor in science from the School of Hotel Administration at Cornell University. *Ex. R-3* (Appendix, Cahill C.V., non-paginated). His firm specializes in gaming and hospitality appraisal, consulting, and brokerage. *Ex. R-3*. He started the gaming practice at a prior firm, HVS, in 1992. *Tr.* at 882. Mr. Cahill performs gaming valuation work for Deutsche Bank. *Tr.* at 885. He has provided litigation appraisal services for property tax appeals in Indiana and Missouri. *Tr.* at 892. Mr. Cahill began writing articles on riverboat gaming in the early '90s and has been collecting casino sales data since that time. *Tr.* at 1625. He inspected the property. *Ex. R-3* at 19. He considered his valuation to be USPAP compliant. *Tr.* at 917.

117. Mr. Cahill described the Resort as an "attractive, upper-upscale gaming property" with a high quality and well-maintained exterior. *Ex. R-3* at 36-37. Mr. Cahill described the Hotel as a full-service hotel with 51 luxurious suites and "one of the area's most upscale

accommodations." *Ex. R-3* at 39. The number of rooms and size of meeting space were sufficient for a "midsize convention group hotel," and a significant competitive advantage for the Resort. *Ex. R-3* at 42; *Tr.* at 1012. As an "integrated resort," each amenity "synergistically feeds off each other" and enables it to generate value. *Tr.* at 953.

118. Mr. Cahill considered the "multiple floor layout" of the Riverboat less desirable than the single floor design of land and barge casinos, but adequate overall. *Ex. R-3* at 37. For 2009, he considered the design average compared to competitive casino properties in the southern Indiana gaming market. *Ex. R-3* at 39. For 2014, he considered the design below average. *Ex. R-4* at 38. Mr. Cahill concluded that Resort was above average in quality and functionality in 2009 and 2014. *Ex. R-3* at 43; *Ex. R-4* at 42. In both years an investor would view the improvements positively in spite of the less desirable casino floor space. *Ex. R-3* at 43; *Ex. R-4* at 42.

119. Mr. Cahill believed that the Casino Assessment Statute and USPAP required an appraiser to consider all three approaches, but an appraiser should rely only on those approaches that are most applicable. *Tr.* at 959-60. Because casinos are "very seldom" sold in "bits and pieces," valuing the casino as a going concern reflects how market participants operate. *Tr.* at 914. Casino complexes are bought and sold "based on how much money people can make" from their operations, and buyers rely on the income approach to value them. *Tr.* at 915. The income approach was utilized because it was preferred by casino investors and would produce the most reliable estimate of value. *Ex. R-3* at 96.

120. Mr. Cahill did not apply the cost approach because estimates of physical deterioration, functional obsolescence, and replacement costs would "vary considerably between different areas of the property and would be too subjective to be considered reliable." *Ex. R-3* at 19. He only considered the historic capital costs of development and expansion as a check on whether a buyer would consider building a new one instead. *Tr.* at 944-45. A buyer would not consider depreciated costs. *Tr.* at 946. However, a buyer would consider overall capital outlays to determine the relation of costs to the purchase price. *Tr.* at 1094. On cross, Mr. Cahill conceded that the overall sum for historic outlays

included undepreciated personal property, fixtures, furnishings, carpet, and many items that would likely have been replaced over the years. *Tr.* at 1362-64.

121. Mr. Cahill did not apply the sales comparison approach because the sales varied "significantly in condition, use, size, quality, amenity levels, and tax environments" and adjustments would have been too subjective and unreliable.[50] *Ex. R-3* at 20. He noted that even casinos with comparable physical improvements may sell at substantially different prices. *Tr.* at 1101.

122. Mr. Cahill presented a cost approach for the Riverboat based on the GUIDELINES cost schedule. *Ex. R-3* at 101; *Ex. R-4* at 106. However, he did not believe that any allocation of value to the Riverboat would affect the overall value of the property, and any reduction in the allocation to the Riverboat would "increase dollar-for-dollar" the value of the other real property improvements (Hotel and Golf Course). *Ex. R-3* at 101; *Ex. R-4* at 106. Mr. Cahill's allocation of value between the Hotel and the Riverboat was based on counsel's request and Indiana law. *Tr.* at 938. It was not a typical allocation for property tax valuations of casinos in other jurisdictions. *Tr.* at 938-39.

123. Casinos consider two base measures of value: by gaming unit and by square footage of gaming space. *Tr.* at 920. Gaming units are not uniformly measured in all jurisdictions. The Indiana Gaming Commission measures table games by the table, not the playing position, and Mr. Cahill's appraisal followed the local convention. *Tr.* at 920-21.

a. Mr. Cahill's 2009 Resort Valuation

124. Mr. Cahill reviewed economic indicators, including population, employment, and retail sales, and concluded that a typical investor would be uncertain regarding the magnitude and length of the negative economic pressures. *Ex. R-3* at 55.

125. Mr. Cahill looked to seven casinos as its competitive set, including the Resort, Argosy (Hollywood), Horseshoe (Southern Indiana), Grand Victoria (Rising Star), French Lick, Hoosier Park, and Indiana Live. *Ex. R-3* at 56. He concluded that casinos located

[50] Mr. Cahill used the sales comparison approach in determining typical units of comparison, such as income multipliers and capitalization rates. *Ex. R-3* at 96.

relatively proximate to population centers and casinos that offered the most complete package of ancillary amenities were able to "greater penetrate the overall gaming market." *Ex. R-3* at 56.

126. Mr. Cahill considered the number of tables, revenue, and "wins per unit per day" ("WPUPD") for the competitive set for 2006/2007[51] through 2008/2009. *Ex. R-3* at 58-61. He individually compared the competitive set in terms of location and amenities. *Ex. R-3* at 64-75. He also looked at slot machine and table game trends. *Ex. R-3* at 76-77. He considered the entry of the racinos into the market and the expansion of the Argosy (Hollywood). The Resort achieved an overall 80% market penetration, which would suggest greater earning potential to an investor. *Ex. R-3* at 77-78. Mr. Cahill also looked at adjusted gross revenue ("AGR") which is the "gaming handle" for slots and "gaming drop" for table games less payouts. *Ex. R-3* at 79. During this time period, market-wide AGR increased, but WPUPD decreased because the new patrons were drawn to the racinos. *Ex. R-3* at 81.

127. Based on the historical data and expectations regarding economic and gaming conditions, Mr. Cahill projected gaming revenue for the competitive set. *Ex. R-3* at 84, 86. He also projected gaming revenue for the Resort. *Ex. R-3* at 89. These projections considered the property's advantages (the quality of the Hotel and its amenities), and disadvantages (location, casino floor design, and anticipated increased competition from the Argosy renovation). *Ex. R-3* at 88. Mr. Cahill's projections were optimistic, and suggested the Resort would fare better than the market. His projections had many components: number of tables and slot machines, promotional expenditures, and increases in market share.[52] *Ex. R-3* at 89. Overall, Mr. Cahill concluded that a conservative investor would predict a rebound from the recession and increased competition, and stabilized revenues similar to 2008/2009 but well below the boon year of 2006/2007. *Tr.* at 1072-74.

128. Mr. Cahill predicted AGR of $153,367,182 in 2009/2010, $160,052,847 in 2010/2011, and $167,562,420 for 2011/2012. *Ex. R-3* at 90.

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[51] Mr. Cahill's years are fiscal years based on the March assessment date and straddle two calendar years.
[52] Mr. Cahill provided little insight into how he weighed these advantages and disadvantages.

129. Mr. Cahill surveyed casino sales to derive baselines for the value of the casino relative to gaming positions, square footage of gaming area, and EBITDA (earnings before interest, taxes, depreciation, and amortization). *Ex. R-3* at 103. EBITDA is a measure of cash flow that is typically considered in valuing hotels and casinos. *Tr.* at 943. Casino EBITDA is derived from net operating income prior to a management fee and a reserve replacement number.[53] *Tr.* at 943.

130. Mr. Cahill's report included 30 sales across the country between 2005 and 2009. *Ex. R-3* at 104. The data was incomplete for nearly half of those transactions. The EBITDA multipliers (sale price divided by EBITDA) ranged from 4.1 to 24. *Ex. R-3* at 105. None of the sales was considered directly comparable. *Ex. R-3* at 105. He noted that the rates were "all over the board." *Tr.* at 1110. The price per square foot of gaming area ranged from $368 to $14,033, and the "aggregate" was roughly $4,000. *Ex. R-3* at 105. The price per gaming position ranged from $19,185 to $675,813 and the aggregate was roughly $171,000. *Ex. R-3* at 105. The Resort's concluded value per square foot of gaming space was $5,500 and price per gaming position was $133,000. *Ex. R-3* at 105.

131. Mr. Cahill considered the most relevant sales to be Trump Indiana (8), Ameristar East Chicago (12.4), Primm Valley Nevada (10), and Colorado Belle and Edgewater (11). *Ex. R-3* at 105. He believed an appropriate range would be lower due to the economic recession on the assessment date. *Ex. R-3* at 105. Mr. Cahill believed the Treasure Island sale best reflected the "economic climate," but that it would have a higher multiplier as a major property on the Las Vegas "Strip." *Tr.* at 1112-13.

132. Mr. Cahill examined more particularly the EBITDA multipliers for sales of the Treasure Island (7.5 to 9), Horseshoe portfolio (which included Horseshoe Hammond, IN) (8.5), Harrah's portfolio (which included Harrah's East Chicago) (8.5), Argosy portfolio (which included Argosy Lawrenceburg) (8.1), Trump Indiana (8), Aztar portfolio (including Aztar Evansville) (12), and Ameristar East Chicago (12.4). *Ex. R-3* at 106-7.

[53] In contrast to casinos, Mr. Cahill explained that hotel EBITDA is capitalized as a "fully loaded net operating income," which is gross operating profit "minus fixed charges, minus a management fee, minus reserve." *Tr.* at 943.

133. Finally, Mr. Cahill reviewed the 2008 estimated enterprise value and EBITDA multipliers for eight publicly traded gaming companies which averaged 12. *Ex. R-3* at 108. Two of those companies, Penn National and Pinnacle, owned Indiana gaming properties, and those had EBITDA multipliers of 6.6 and 7.6. *Ex. R-3* at 108. Generally, he felt multipliers for a gaming company would be higher than an individual property. *Tr.* at 1115. He reviewed those as a countercheck. *Tr.* at 1116.

134. The selection of an EBITDA multiplier was also a selection of a cap rate for his Discounted Cash Flow ("DCF") income analysis. Mr. Cahill noted that the selection of a DCF cap rate was always specific to the property being appraised. *Tr.* at 1384. However, he noted it was possible to have "similar capitalization rates on dissimilar assets in dissimilar market areas." *Tr.* at 1387. Generally, cap rates tend to "cluster around certain levels" and then must be adjusted to the particular market area. *Tr.* at 1388. Based on this review, Mr. Cahill selected a range of 6.5 to 9, and settled on 7.1 for the Resort. *Ex. R-3* at 108. Mr. Cahill believed the quality of the Resort would put the Resort at the higher end of the range, but negative market conditions on the assessment date would offset that placement. *Ex. R-3* at 105.

135. In determining the cash flow (EBITDA) of the Resort, Mr. Cahill primarily relied on the operating statements of the Resort because variances in "size, amenities, brand, and location" diminished the reliability of using comparables. *Ex. R-3* at 109. Mr. Cahill believed an investor would primarily rely on the historical performance of the Resort, the predicted budget, and the competitive market's performance, staffing, and market position. *Ex. R-3* at 109. Mr. Cahill determined the historical EBITDA for the Resort to be $[redacted] for 2005, $[redacted] for 2006, $[redacted] for 2007, $[redacted] for 2008, and $[redacted] for 2009 budget. *Ex. R-3* at 110-14. Mr. Cahill generally predicted that an investor would forecast a significant drop in revenue in 2009 due to the recession with marginal gains in the two years following. *Tr.* at 1145.

136. Mr. Cahill made a number of assumptions in predicting future income and expenses based on his opinion of what a typical investor would assume in purchasing the Resort.

Ex. R-3 at 115. He based revenue on inflated dollars at a presumed 3% inflation rate.[54] *Ex. R-3* at 116. He projected room, food and beverage, golf, retail, and other departmental revenue to be somewhat higher than historical numbers based on the expectation an investor would increase promotional expenditures and thereby increase revenue. *Ex. R-3* at 116-17. These increases in revenue were somewhat off-set by the projected increased promotional expenditures. *Ex. R-3* at 117.

137. Mr. Cahill projected gaming expenses within the historical range. *Ex. R-3* at 117-18. He projected room, food and beverage, golf, retail, and other departmental expenses within historical ranges as a percentage of income. *Ex. R-3* at 118-19. Likewise, he projected administrative and general expenses, property operations expenses, and insurance at historical levels or slightly above. *Ex. R-3* at 119-20. He rounded property taxes to $1.6M and adjusted for inflation. *Ex. R-3* at 120. The tax burden was based on the anticipated valuation of $134,000,000.[55] *Ex. R-3* at 35, 121; *Tr.* at 990.

138. Mr. Cahill made a 5-year forecast of income and expenses organized on a typical casino gaming format and in accordance with the Uniform System of Accounts for the Lodging Industry. *Ex. R-3* at 120-21. The first three years were forecasted, but the fourth and fifth years were based on the stabilized 3% rate. *Ex. R-3* at 122-23. He projected EBITDA of $28,240,000 for 2009/2010, $29,680,000 for 2010/2011, $33,712,000 for 2011/2012, $34,682,000 for 2012/2013, and $35,722,000 for 2013/2014. *Ex. R-3* at 121. These projections were based on Mr. Cahill's knowledge and experience. *Ex. R-3* at 122. He concluded that an investor would anticipate a "new reality" of lower revenues than in 2005 and 2006 for the foreseeable future. *Tr.* at 1152. Mr. Cahill's numbers were significantly lower than the Taxpayer's 2009 budget. *Tr.* at 1155.

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[54] Mr. Cahill considered this a typical convention used in brokerage opinions and casino evaluations for banks. *Tr.* at 1135. He noted that to the extent it should be adjusted to account for market conditions, the cap rate would be adjusted. *Tr.* at 1135.

[55] Unlike direct capitalization where the cap rate is loaded with taxes, a DCF must deduct taxes as an expense for each year. *Tr.* at 1153. Mr. Cahill used an "iterative process" by "spreadsheet modeling" to base taxes on the overall conclusion of value, and then changed the property "tax input" until it matched overall value "output." *Tr.* at 1152-53.

139. In order to value the Resort, Mr. Cahill utilized a DCF analysis. *Ex. R-3* at 123. In this process, the estimated cash flow and reversion value was discounted at a selected rate to determine a present value. *Ex. R-3* at 123. In this context, "an overall discount rate reflects the relationship between future cash flows and the casino's estimated market value (estimated cash out-flows) over an assumed ten-year holding period."[56] *Ex. R-3* at 123. Mr. Cahill explained that a DCF analysis was an alternative to a one year stabilized approach, and investors use DCF when the cash flow was expected to fluctuate. *Tr.* at 948-49. He stated that DCF analysis was "almost always" used for hotels and casinos because those markets tend to trend up and down. *Tr.* at 949. Mr. Cahill noted he probably would have used a direct capitalization rate if valuing the resort in 2007 based on the stability of the historical operating statements, but the years leading to 2009 greatly fluctuated due to the Great Recession. *Tr.* at 1128-29.

140. In choosing a capitalization rate, Mr. Cahill relied on the same analysis of casino sales in considering EBITDA multipliers. *Ex. R-3* at 123-24. The previously selected multiplier of 7.1 was equal to an "overall capitalization rate" of 14%. Mr. Cahill added to the overall capitalization rate "a three percent mathematical adjustment" to reflect the desired "return on investment and return of capital."[57] *Ex. R-3* at 124. Thus, the addition of 3% to the 14% overall capitalization rate resulted in the "discount rate" of 17%. *Ex. R-3* at 125.

141. Mr. Cahill chose the same 14% rate for the "residual capitalization rate" which was applied to year 11 to estimate the value at the end of the assumed 10-year holding period. *Ex. R-3* at 125. He also loaded the residual capitalization rate to include the property taxes, which increased the rate by 1.1, and resulted in the "loaded residual capitalization rate" of 15.1%. *Ex. R-3* at 126. He deducted 1% for legal and brokerage fees. *Ex. R-3* at 126. Lastly, he discounted the residual to a present value by applying the 17% discount rate. *Tr.* at 1171.

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[56] Mr. Cahill indicated that 10 years was standard in the industry. *Tr.* at 1161.
[57] He testified that this was an inflation rate or constant rate of change. *Tr.* at 1168.

142. Mr. Cahill noted in his report that there were no published investor surveys to support his calculations of the estimated discount, residual calculation, or brokerage and legal fee expenses. *Ex. R-3* at 126. He explained that brokerage and legal fees were typically based on a sliding scale, and he felt that 1%, which equated to roughly $2,000,000, was reasonable. *Tr.* at 1171. A broker might receive 6% on a $2,000,000 hotel but only .75% on a $100,000,000 hotel. *Tr.* at 1173-74.

143. Under his DCF analysis, the present value of income over 10 years was $158,157,748, the present value of the residual was $61,266,633, and the value of the Resort as a going concern was $219,424,381. *Ex. R-3* at 127. This resulted in a year 1 EBITDA multiple of 7.8. *Ex. R-3* at 127. Rounding up, Mr. Cahill concluded a going concern value of $220,000,000. *Tr.* at 947.

144. At this point, Mr. Cahill commenced the deductive process of determining the value of the real estate. The value of personal property was based on the depreciated property tax schedules. *Ex. R-3* at 131. Mr. Cahill disregarded the Taxpayer's depreciation schedules as too specific to the owner, and the cost of retaining a personal property appraiser was not justified in his opinion. *Tr.* at 1181-82.

145. In valuing the gaming license, Mr. Cahill noted that under Indiana law, the license was transferrable but could not be moved from the county. *Ex. R-3* at 132. Accordingly, Mr. Cahill believed that the license tended to "run with the land" and was a "form of 'super zoning.'" *Ex. R-3* at 132. Mr. Cahill posited a theory that because restricted market states tend to have significantly higher gaming taxes than open market states, most of the monopolistic value of a gaming license in a restricted state was offset by the lost revenue under the higher tax rate. *Ex. R-3* at 133-34. Under his analysis, he could find "no definitive evidence showing that casinos in restricted markets sell for any recognizable premium." *Ex. R-3* at 135. Nonetheless, Mr. Cahill concluded that there was a monopolistic value associated with restricted market casinos over unrestricted market casinos that he pegged as an EBITDA multiplier of 8 versus 7 for Indiana, and in

particular to the Resort, 7.1 versus 6.1.[58] *Ex. R-3* at 134. Based on this, Mr. Cahill calculated a gaming license value of $30,000,000. *Ex. R-3* at 134-35. He testified that his estimate was based on his judgment and experience. *Tr.* at 1192. He stated that he "pulled out a little more gaming license value" than he normally would. *Tr.* at 932.

146. Mr. Cahill utilized what he described as the "Dark Casino Theory" to deduct the business enterprise value.[59] *Ex. R-3* at 136. He considered a theoretical closing and reopening of the Resort, and then forecasted the cash flow of the reopened Resort. *Ex. R-3* at 136. The business enterprise value was based on the difference between the appraised and reopened values which equated to the capitalized cash flow lost from closing. *Ex. R-3* at 136. The difference was reflected in adjustments to projected income for the first two years. *Ex. R-3* at 137; *Ex. R-3* at Appendix (entitled Income & Expense and Calculation, Dark Casino Theory, nonpaginated). He calculated a reopening income loss of $14,206,449.[60] *Ex. R-3* at 137. Additionally, Mr. Cahill considered pre-opening costs such as hiring and marketing. *Tr.* at 1201-2. He estimated pre-opening expenses of $15,000,000.[61] *Ex. R-3* at 137. In sum, Mr. Cahill calculated a business enterprise value of $29,206,449. *Ex. R-3* at 137. He noted that he performed this analysis in all of his casino work. *Tr.* at 1197.

147. As a check on his Dark Casino Theory approach, Mr. Cahill considered a version of the Rushmore[62] approach by deducting a management fee. *Ex. R-3* at 137. Mr. Cahill looked to the work of Suzanne Mellen and the method she utilized in the New Jersey casino case *Marina Dist. Development Co., LLC v. Atlantic City*, 27 N.J. Tax 469 (N.J.

[58] Mr. Cahill's report contained no data nor calculations in support of this conclusion.
[59] Mr. Cahill did not cite to any treatise or article in support of his "Dark Casino Theory."
[60] Mr. Cahill's report contained no data nor calculations to support his adjustments to income under his Dark Casino Theory.
[61] Mr. Cahill stated that pre-opening expenses were derived from "certain SEC filings of other property openings" and the subject property. *Ex. R-3* at 137. No source data nor calculations were included in the report. In his testimony, he stated that the information was based on published information on the pre-opening costs of other casinos. *Tr.* at 1201.
[62] Mr. Cahill noted that the version of the Rushmore method considered here in the context of a casino is based on Suzanne Mellen's work, and Mr. Cahill suggested it should be called the Mellen method. Ms. Mellen's firm, HVS, was founded by Mr. Rushmore. The Board will refer to this version of the Rushmore method as the Mellen method.

Ct. 2013).[63] *Tr.* at 933-34, 1205-1206. Mr. Cahill endeavored to use the Mellen method to see "how the numbers would have worked." *Tr.* at 934.

148. Mr. Cahill actually considered three measures of a management fee: 4% of gross revenue, 6% of net revenue,[64] and 24% of EBITDA. *Ex. R-3* at 138. Mr. Cahill deducted those amounts from his EBITDA, which resulted in an adjusted EBITDA for each category. *Ex. R-3* at Appendix (after the title page Dark Casino Theory Reconciliation). Mr. Cahill then re-ran his DCF analysis based on the adjusted EBITDA and determined the going concern value under each management fee. *Ex. R-3* at Appendix. The enterprise value equaled the difference between the original and adjusted EBITDA going concern values: $27,424,381 (4% of gross), $42,424,381 (6% of net revenue), and $24,424,381 (24% of EBITDA). *Ex. R-3* at 138. However, Mr. Cahill did not apply the same discount and capitalization rates to his adjusted EBITDA management fee DCFs. He applied a "2.0% point deduction from the discount rate and residual cap rate." *Ex. R-3* at 138. He premised the lower rate on the theory that less risk would be inherent in managed casinos. *Ex. R-3* at 138.

149. Mr. Cahill admitted that Ms. Mellen believed a replacement reserve should be deducted. *Tr.* at 925. He stated "my personal philosophy is that you do not" because "investors that we work with don't deduct a reserve for replacement." *Tr.* at 925. He suggested that doing so would cause "problems with adjusting your comparables." *Tr.* at 925. Mr. Cahill noted a distinction between hotels and casinos because hotels are required by most lenders to maintain a separate replacement reserve fund. *Tr.* at 926. However, in the final analysis, he claimed that he presented the Mellen method "in the way she would approach it also," and that he pulled out "a hair more business value than [Ms. Mellen and her firm] HVS" would have.[65] *Tr.* at 925, 931.

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[63] In his testimony, Mr. Cahill repeatedly misstated that Ms. Mellen used an amount equal to 4% of *gross* revenues rather than *net* revenues in *Marina*. *Tr.* at 1206-1207, 1209.

[64] The 6% of net figure is actually "4% of net revenue plus 2% net revenue reserve for replacement." *Ex. R-3* at 138.

[65] For 2009, Mr. Cahill disregarded as an outlier the method that most closely aligned with Ms. Mellen's approach in *Marina* (4% of net management fee plus 2% of net replacement reserve), which was $12M greater than his Dark Casino Theory estimate of business enterprise value. *Ex. R-3* at 138.

150. After deducting the personal property, gaming license, and business enterprise values from the going concern value, Mr. Cahill valued the real property at $146,000,000. *Ex. R-3* at 139. As for the big picture, Mr. Cahill considered: "if this going concern casino sold for $220 million, is it reasonable that 66% of that whole complex would be real property?" *Tr.* at 933. "That's really the number that's your gut check. And I think it's really pretty conservative." *Tr.* at 933.

151. Mr. Cahill next made a second rough allocation between the Hotel and the Riverboat. He noted that, from the perspective of departmental income, [illegible]% of income came from the Riverboat (casino operations) and [illegible]% was from the Hotel and amenities. *Ex. R-3* at 141. From the perspective of development costs, [illegible]% was spent on the Riverboat and [illegible]% was on the Hotel and amenities. *Ex. R-3* at 141. Mr. Cahill averaged out the allocations and assigned $82,800,000 of the extracted real estate value to the Riverboat and $63,200,000 to the Hotel and amenities. *Ex. R-3* at 141.

152. Mr. Cahill trended the improvements back from March 1, 2009 to January 1, 2008, using common cost indices from *Marshall Valuation Service*, which he averaged to 8%.[66] *Ex. R-3* at 141. The final opinion of value was $134,300,000 with $76,200,000 allocated to the Riverboat and $58,100,000 allocated to the Hotel and amenities. *Ex. R-3* at 141.

b. Mr. Cahill's 2014 Resort Valuation

153. Mr. Cahill generally used the same approaches and methods for 2014. Mr. Cahill again reviewed the economic indicators, including population, employment, and retail sales, and concluded that a typical investor would see moderate economic indicators with a potential of stagnation in the following years. *Ex. R-4* at 53.

154. For 2014, Mr. Cahill looked to nine casinos as its competitive set, which included the additions of the Horseshoe Cincinnati and Miami Valley Gaming. *Ex. R-4* at 54. As in 2009, he concluded that the casinos closest to population centers and the casinos offering the most amenities had an edge in the overall gaming market. *Ex. R-3* at 54.

[66] Mr. Cahill noted that he considered adjusting based on inflation alone, but decided that would not be a sufficient discount. *Tr.* at 1217.

155. Mr. Cahill again considered the number of tables, revenues, and WPUPD for the competitive set for 2011/2012 through 2013/2014. *Ex. R-4* at 55-60. He also individually compared the competitive set in terms of location and amenities relative to the Resort. *Ex. R-4* at 62-77. He looked at slot machine and table game trends. *Ex. R-3* at 78-80. He considered the entry of the Horseshoe and Miami Valley Gaming and noted that the Resort achieved an overall 91% market penetration, which would suggest greater earning potential to an investor. *Ex. R-4* at 80. Mr. Cahill noted that during this time period both market-wide AGR and WPUPD decreased. *Ex. R-4* at 83.

156. Based on the historical data and expectations regarding economic and gaming conditions, Mr. Cahill again projected gaming revenue for the competitive set. *Ex. R-4* at 86, 89. He also projected gaming revenue for the Resort. *Ex. R-4* at 92-93. These projections considered the property's advantages (the quality of the Hotel and its amenities), and disadvantages (casino floor design, and anticipated increased competition from Ohio gaming, and expansions in Ohio gaming). *Ex. R-4* at 91. Mr. Cahill's projections were optimistic, and suggested the Resort would fare better than the market generally. The projections have many components, including number of tables and slot machines, promotional expenditures, and increases in market share. *Ex. R-4* at 92-93. Overall, Mr. Cahill concluded that the Resort would maintain market share, but still reduce the number of gaming units. *Ex. R-4* at 92-93.

157. Mr. Cahill projected AGR of $113,013,937 for 2011/2012, $113,932,118 for 2012/2013, and $117,898,857 for 2013/2014. *Ex. R-4* at 94.

158. As in 2009, Mr. Cahill followed the same process in projecting EBITDA. *Ex. R-4* at 107. He reviewed over 30 sales across the country between 2010 and 2014. *Ex. R-4* at 108-9. The data was incomplete for more than half of those transactions. The EBITDA multipliers ranged from 4.8 to 25.8. *Ex. R-4* at 110. None of the sales was considered directly comparable. *Ex. R-4* at 114. The price per square foot of gaming area ranged from $310 to $8,678, and the "aggregate" was $3,027. *Ex. R-3* at 105. The price per gaming position ranged from $12,137 to $491,094 and the aggregate was $133,510. *Ex.*

R-3 at 105. The Resort's concluded value per square foot of gaming space was $4,850 and price per gaming position was $185,573. *Ex. R-3* at 105.

159. In terms of EBITDA multipliers, he found most relevant the IP Casino Biloxi (6.8 adjusted to 7.9), Riviera Black Hawk (7.4), Riverwalk Casino (7.4), and Oxford Casino (7.6). *Ex. R-4* at 110-12. He noted that the Grand Victoria sold for $43,000,000 in 2011 and had a multiplier of 5.1. *Ex. R-4* at 113. Mr. Cahill also examined the EBITDA multipliers of the market value of publicly traded gaming companies, including three that owned properties in the competitive set (2.1, 8.2, 9.5). *Ex. R-4* at 113-14. He acknowledged that many of the sales were in the 7 to 8 range. *Tr.* at 1266. Based on this review, Mr. Cahill believed the Resort would fall in the range of 8 to 10.1, and would trade on the lower end due to increased Ohio competition. *Ex. R-4* at 114. He selected the EBITDA multiplier of 8 for the Resort. *Ex. R-4* at 114.

160. In determining the cash flow (EBITDA) of the Resort, Mr. Cahill relied on the same factors as in 2009. *Ex. R-4* at 115. Mr. Cahill determined the historical EBITDA for the Resort was $[redacted] for 2010, $[redacted] for 2011, $[redacted] for 2012, $[redacted] for 2013, and $[redacted] for the 2014 budget. *Ex. R-4* at 116-20. Mr. Cahill noted that 2013 reflected a significant (nearly $[redacted]) decline in gaming revenues due to the arrival of the Horseshoe Casino in Cincinnati. *Ex. R-4* at 121. However, operating efficiencies resulted in an increase in EBITDA as a percent of net revenues. *Ex. R-4* at 121. He projected a large drop in income for 2014, flat income in 2015, and a small increase in 2016. *Tr.* at 1279-80. Overall, Mr. Cahill concluded the casino value dropped, but not directly proportionate to the cash flow because the EBITDA multipliers were generally rising in a better market with more buyers. *Tr.* at 1286, 1288.

161. As in 2009, Mr. Cahill made a number of assumptions in predicting future income and expenses based on his opinion of what a typical investor would assume in purchasing the Resort. *Ex. R-4* at 122. The projections were again based on inflated dollars at a presumed 3% inflation rate. *Ex. R-4* at 122. He projected casino revenue to be below the 2014 budget. *Ex. R-4* at 122. He projected room rates to remain stable while occupancy would continue to fall. *Ex. R-4* at 122. He projected food and beverage to increase while

golf, retail, and other departmental revenue were projected to be largely static. *Ex. R-4* at 123.

162. Mr. Cahill predicted gaming expenses to continue on a historical downward trend roughly proportionate to declining income. *Ex. R-4* at 123. He projected room, food and beverage, golf, retail, and other departmental expenses to be generally within historical ranges as a percentage of income. *Ex. R-4* at 125. Likewise, he projected administrative and general expenses, property operations expenses, and insurance to be at historical levels or slightly above. *Ex. R-4* at 125. Property taxes were rounded to $1.6M and adjusted for inflation. *Ex. R-4* at 126. The tax burden was based on the anticipated valuation of $127,000,000.[67] *Ex. R-4* at 126.

163. Mr. Cahill made a 5-year forecast of income and expense. *Ex. R-4* at 126. He forecasted the first three years, but the fourth and fifth years were based on the stabilized 3% rate: $22,126,000 for 2014/2015, $23,609,000 for 2015/2016, $26,071,000 for 2016/2017, $26,817,000 for 2017/2018, and $27,622,000 for 2018/2019. *Ex. R-4* at 127. Mr. Cahill noted the 2014/2015 numbers were more conservative than projected in the 2014 budget. *Ex. R-4* at 129. He predicted stabilization and marginal increases for the following two years. *Ex. R-4* at 129. Mr. Cahill concluded that an investor, as of the assessment date, would predict that the southern Indiana/Ohio market had hit bottom and was likely to rebound, and it would be an advantageous time to buy. *Tr.* at 1638-39.

164. As in 2009, Mr. Cahill utilized a DCF analysis to value the casino. *Ex. R-4* at 129. In choosing a capitalization rate, Mr. Cahill relied on the same analysis of casino sales in considering EBITDA multipliers. *Ex. R-4* at 130-32. The previously selected multiplier of 8 equaled an "overall capitalization rate" of 12.5%. *Ex. R-4* at 132. He again added to the overall capitalization rate "a three percent mathematical adjustment" to reflect the desired "return on investment and return of capital." *Ex. R-4* at 132. Thus, the addition of 3% to the 12.5% overall capitalization rate resulted in the "discount rate" of 15.5%. *Ex. R-4* at 132.

[67] Mr. Cahill used the same iterative process for property taxes as in 2009.

165. Mr. Cahill again chose the same discount rate for the "residual capitalization rate." *Ex. R-4* at 132. Mr. Cahill again loaded the residual capitalization rate to include the property taxes, which increased the rate by 1.16 to 13.66%. *Ex. R-4* at 132-33. He again deducted 1% for legal and brokerage fees. *Ex. R-4* at 133. Finally, he discounted the residual to its present value by applying the 15.5% cap rate. *Ex. R-4* at 134.

166. Under his DCF analysis, the present value of income over 10 years was $130,560,566, the present value of the residual was $60,486,719, and the value of the Resort as a going concern was $191,047,285. *Ex. R-4* at 134. This resulted in a year 1 EBITDA multiplier of 8.6. *Ex. R-4* at 134. Mr. Cahill concluded a going concern value of $191,000,000.

167. Mr. Cahill again deducted the business assets from the going concern. As in 2009, the value of personal property was based on the depreciated property tax schedules, which was $15,000,000. *Ex. R-4* at 140.

168. Based on the same analysis as in 2009, Mr. Cahill concluded that there was a monopolistic value associated with restricted market casinos over unrestricted market casinos, which in Indiana he pegged as an EBITDA multiplier of 9 versus 8, and in particular to the Resort, 8 versus 7. *Ex. R-4* at 144-45. This resulted in a license value of $23,000,000. *Ex. R-3* at 145.

169. As in 2009, Mr. Cahill used his "Dark Casino Theory" to deduct the business enterprise value. *Ex. R-4* at 146. He calculated the reopening loss at $10,492,400. *Ex. R-4* at 147; *Ex. R-4* at Appendix. He estimated the pre-opening expenses to be $15,000,000. *Ex. R-4* at 147-48. In sum, the Dark Casino Theory analysis resulted in a business enterprise value of $25,492,940. *Ex. R-4* at 147.

170. Once again, Mr. Cahill considered the Mellen method as a check on his Dark Casino Theory. *Ex. R-4* at 148. Mr. Cahill considered the same three measures of management fees. *Ex. R-4* at 148. After calculating the adjusted EBITDA and re-running the DCF, Mr. Cahill determined the enterprise values to be $18,047,285 (4% of gross revenue), $30,047,285 (6% of net revenue), and $18,047,285 (24% of EBITDA). *Ex. R-4* at 148. Again, he applied the adjusted EBITDA to a "2.0% point" lower discount rate and

residual cap rate. *Ex. R-4* at 148. Mr. Cahill believed his Dark Casino Theory was supported by the Mellen method countercheck. *Ex. R-4* at 149.

171. After deducting personal property, gaming license, and business enterprise value from the going concern value, Mr. Cahill valued the property at $127,000,000. *Ex. R-4* at 149-50. This equated to 67% of the going concern value and, Mr. Cahill believed it was commiserate with the "expansive real property components of the complex." *Tr.* at 1292.

172. Mr. Cahill again made a second rough allocation between the Hotel and the Riverboat. For departmental income, [redacted]% came from the Riverboat and [redacted]% from the Hotel and amenities.[68] *Ex. R-4* at 151. From the perspective of development costs, [redacted]% was spent on the Riverboat and [redacted]% on the Hotel and amenities. *Ex. R-4* at 151. Mr. Cahill averaged out the allocations under both perspectives and assigned $68,100,000 of the extracted real estate value to the Riverboat and $58,400,000 to the Hotel and amenities. *Ex. R-4* at 151.

173. As an additional check on the value of the real estate, Mr. Cahill reviewed the use of a real estate investment trust ("REIT") in casino transactions. *Ex. R-4* at 152. Casino companies have begun "spinning off the real property" to a separate REIT. *Tr.* at 934-35. The casino owner transfers ownership of the real estate to the REIT, and the REIT then leases the property to the owner-operating company. *Ex. R-4* at 152-53. Conceptually, this would permit a determination of value based on capitalized rent. *Tr.* at 935. Hotel REITs have been commonplace since the late 1990s, but casino REITs are a recent development. *Tr.* at 1294. Mr. Cahill opined that REIT analysis may become the primary approach to casino real estate valuation. *Tr.* at 1296.

174. Mr. Cahill looked to Penn National Gaming. It entered into REIT transactions for its portfolio of casinos, and Mr. Cahill has projected that rent would be 50% of EBITDA. *Ex. R-4* at 153. Based on a review of PWC surveys of triple net leased properties, the Penn National REIT transaction with Gaming and Leisure Properties, and in particular the Casino Queen component of the Penn National REIT transaction, Mr. Cahill chose an

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[68] He actually assigned [redacted]% to the Riverboat and [redacted]% to the casino. It is unclear why .7% was not allocated.

8% capitalization rate. *Ex. R-4* at 154. He chose a cap rate reflecting real estate rather than casino risk. *Tr.* at 1299-1300. Mr. Cahill applied the cap rate to 50% of the year 1 projected EBITDA, and arrived at a counter-check real estate valuation of $138,000,000. *Ex. R-4* at 154. He believed this supported his appraisal because "it's in the ballpark" of $127,000,000. *Tr.* at 1301.

175. Mr. Cahill also noted the Golf Course statute in valuing the property for 2014. *Ex. R-4* at 98-99. He applied the state-mandated capitalization rate to the net golf course income of $[redacted], resulting in a value of $3,654,089. *Ex. R-4* at 136. However, he considered it merely an allocation that would result in a dollar-for-dollar change in the other Resort assets. *Ex. R-4* at 136. The Golf Course value was not allocated in his summary of valuation. *Ex. R-4* at 11.

2. Mr. Lukens' Review Appraisal

176. Mark Lukens is an appraiser and MAI licensed in California, Washington, Arizona, and Indiana. *Ex. R-6*. He was qualified as an expert. *Tr.* at 1724.

177. Mr. Lukens presented a review of the appraisals of Mr. Herman and Mr. Lennhoff. *Ex. R-6*. As for substance, his report was brief and summary in form. It provided the Board with no original research or data confirmation that would assist the Board in reviewing the appraisals of Mr. Herman and Mr. Lennhoff.[69] Most of his criticism revolved around alleged USPAP violations of varying significance. To the extent he presented independent evidence relating to the market for casinos and casino properties, his testimony was cumulative of Mr. Cahill's and need not be recited.

178. Mr. Lukens was a co-signing appraiser on Mr. Cahill's 2009 appraisal. *Ex. R-3* at 7; *Ex. R-3* at 146. Consequently, the Board finds that Mr. Lukens cannot provide a neutral or open-minded review of the appraisals by Mr. Herman and Mr. Lennhoff because he clearly decided the "correct" approach prior to his review. Were he to conclude

[69] Mr. Lukens testified that "no verification of the various market data in the appraisals was completed." *Tr.* at 1765.

otherwise, he would disavow his own appraisal. For these reasons, the Board places no weight on his testimony or review appraisal.

3. Joan Armstrong's Testimony

179. The elected assessor, Joan Armstrong, testified as to background matters. Her testimony was cumulative and need not be recited. The Assessor's prior assessments and assessment methods are generally irrelevant. Before the Board, the Assessor has relied upon counsel and expert advice to establish the value of the Resort. No one has challenged Ms. Armstrong's integrity or her right to rely on the expertise of consultants and experts in valuing the Resort. To the extent that Ms. Armstrong's testimony showed an unfamiliarity with some of the complicated legal and technical theories of her counsel and expert witness, the Board will rely on the evidence of her expert witness and the arguments of her counsel.

D. Conclusions of Law

180. Pursuant to I.C. § 6-1.5-4-1, the Board is charged with conducting impartial reviews of all appeals from the county property tax assessment board of appeals concerning the assessed valuation of tangible property.

181. Real property is assessed based on its "true tax value," which means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 MANUAL[70] at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* I.C. § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.

[70] The 2011 MANUAL is applicable to the 2014 tax year. The 2002 MANUAL is applicable to the 2009 tax year. Except as noted, the versions do not materially differ. The Board will generally reference the 2011 MANUAL.

182. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for a 2009 assessment was January 1, 2008. 50 IAC 21-3-3 (2009). The valuation date for a 2014 assessment was March 1, 2014. I.C. § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).

183. Generally, a taxpayer seeking review of an assessment must prove the assessment is wrong and what the correct value should be. However, I.C. § 6-1.1-15-17.2 creates an exception to the general rule and assigns the burden of proof to the assessor where (1) the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the same property, or (2) the taxpayer successfully appealed the prior year's assessment, and the current assessment represents an increase over what was determined in the appeal, regardless of the level of that increase. *See* I.C. § 6-1.1-15-17.2(a), (b) and (d). If an assessor has the burden and fails to prove the assessment is correct, it reverts to the previous year's level (as last corrected by an assessing official, stipulated to, or determined by a reviewing authority) or to another amount shown by probative evidence. *See* I.C. § 6-1.1-15-17.2(b).

184. The parties stipulated that the Assessor had the burden of proof for 2009. *Tr.* at 7. The ALJ did not make a preliminary determination regarding the later years. In the final analysis, the Board finds there is probative evidence of the value of the Resort.

1. Summary of the Dispute

185. The Taxpayer and the Assessor offer appraisals of the Resort based on fundamentally different approaches. The Taxpayer presents a piecemeal summation of the real estate, independently valuing the Riverboat, Hotel, and Golf Course. The Assessor presents an income valuation based on the entire Resort, which includes gaming revenue. Each party believes the opposing approach is fundamentally flawed as a matter of law. The Taxpayer argues that valuing the Resort in its entirety is contrary to the "riverboat statute" and impermissibly adds a "synergistic" intangible business value above the

"bricks and sticks." The Assessor argues that valuing the Resort piecemeal fails to value the Resort based on its current use.

186. Based on the following analysis, the Board concludes that Indiana law neither compels nor forbids a piecemeal approach to valuing a casino resort. Indiana law authorizes the utilization of any of the three generally recognized approaches to valuation that might reliably indicate the market value-in-use of a casino property; however, the casino property must be assessed under the approach that results in the lowest value.

2. True Tax Value and the Casino Assessment Statute

187. Indiana uses the phrase "true tax value" as its standard for assessing property. Generally, the legislature has delegated to the DLGF the authority to define "true tax value" through the adoption of rules. I.C. § 6-1.1-31-1(a). The DLGF has defined "true tax value" as the "market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." MANUAL p. 2.

188. Additionally, the legislature has specifically addressed the "true tax value" of casinos. Casinos are statutorily labeled as "qualified real property" under the Casino Assessment Statute. I.C. § 6-1.1-4-39.5. Under this statute, "'qualified real property' means a riverboat (as defined in I.C. § 4-33-2-17)." *Id.* However, the definition of "riverboat" under I.C. § 4-33-2-17 is not limited to riverboats. It describes several types of gaming facilities "on which lawful gambling is authorized." *Id.* These facilities include a self-propelled excursion boat, a casino located in a historic hotel district, a permanently moored craft, and an inland casino. *Id.* Therefore, I.C. § 6-1.1-4-39.5 is intended to apply to all casino properties, and not solely riverboats. For this reason, the Board has described this statute as the Casino Assessment Statute.

189. It should also be noted that Article 33 riverboats are considered "real property." I.C. § 6-1.1-1-15(5). Consequently, "for purposes of taxation, a riverboat is classified as 'real property' and therefore taxable as such." *Majestic Star Casino*, 817 N.E.2d at 325. A riverboat is not considered personal property for ad valorem tax purposes, and all casinos, whether boat, barge, or building, are uniformly taxed as real property under Indiana law.

190. The Casino Assessment Statute does not contain a definition of "true tax value" for casinos. It merely directs that:

> The true tax value of qualified real property is the lowest valuation determined by applying each of [three] appraisal approaches . . . .

I.C. § 6-1.1-4-39.5. While the Casino Assessment Statute incorporates DLGF rule-making in applying the three appraisal approaches, it does not direct the DLGF to adopt a specific standard for casinos. The parties all agree that "market value-in-use" is the standard for valuing the Resort and its assets. The dispute is over how the Casino Assessment Statute requires that standard to be applied. The Board first looks to similar special assessment statutes.

a. Harmonizing the Casino Assessment Statute with Similar Statutes

191. In addition to the Casino Assessment Statute, there are specific statutes defining true tax value for agricultural land, residential rentals, low-income housing, and golf courses. None of these provisions adopt an alternative or competing theoretical definition of true tax value. A review of these statutes suggests that the legislature, in adopting specific approaches, has endeavored to emphasize and simplify certain facets of the "market value-in-use for its current use" standard rather than creating a different definition of true tax value. Moreover, the statutes tend to emphasize a particular valuation approach rather than create a particular standard. This is consistent with the MANUAL in noting that:

> Not all models can be used for every type of property or in every jurisdiction nor do they all offer ease in administration. The market dictates what type of models should be used and administrative constraints, such as knowledge of the user and budget concerns, dictate what models can be used.

MANUAL at 20. The Board views these special assessment statutes in light of the need to consider both the *market* and the *model* in valuing particular types of properties.

192. The statute for agricultural land emphasizes the "current use" of farmland by adopting an income approach based on soil productivity factors rather than comparable sales. I.C. § 6-1.1-4-13. Likewise, the statute for golf courses adopts a simplified income approach

that has the same emphasis on income over comparable sales. I.C. § 6-1.1-4-42. Additionally, the statutory provision for small rental properties emphasizes the "current use" as income-producing investments by adopting a simplified income approach as the preferred approach. I.C. § 6-1.1-4-39(b).

193. For larger rental properties, the legislature has adopted very similar language as that found in the Casino Assessment Statute. I.C. § 6-1.1-4-39(a). It contemplates valuing rentals under the cost, sales comparison, and income approaches, but requires the property to be valued under the lowest of the three approaches. *Id.* Consonant with the other statutes, the legislature has recognized that some approaches might unreliably over-value the property. For this reason, owners of large rental properties are entitled to the "benefit of the doubt" in regard to competing approaches. In contrast, the low-income rental property statute requires the greater of the income approach or "5% of total gross rent." I.C. § 6-1.1-4-41. This reflects the legislature's determination that the income approach, in light of the exclusion of income tax credits under I.C. § 6-1.1-4-40, might be unreliable if not checked against gross revenues.

194. Based on this understanding of legislative intent, the Board finds that the legislature recognized that certain valuation approaches, as applied, might unreliably over-value a casino. Casinos are entitled to the "benefit of the doubt" in regard to competing valuation approaches and should be valued under the approach that reaches the lowest value.

b. Applying the Three Approaches and the Lowest Value

195. In presenting evidence before the Board, the Casino Assessment Statute has no requirement for a party to apply all three approaches. Indiana has long recognized that the three general appraisal approaches are not equally relevant to every property. "Some valuation methods are inappropriate for some types of property." *State Bd. of Tax Comm'rs v. Town of St. John*, 702 N.E.2d 1034, 1041 (Ind. 1998). It would be contradictory to interpret the Casino Assessment Statute to require the presentation of all

three approaches if an expert considers an approach to be inappropriate or unreliable.[71] The Board finds that a party is not required to present all three approaches. However, if multiple approaches are credibly presented, the Board must apply the lowest probative value.

c. The Cost Approach under the Casino Assessment Statute

196. Based on the Casino Assessment Statute's cost approach, the Taxpayer claims that the cost schedules under the Guidelines must be the starting point in valuing "qualified real property." The statute considers the cost approach as follows:

> (1) Cost approach that includes an estimated reproduction or replacement cost of buildings and land improvements as of the date of valuation together with estimates of the losses in value that have taken place due to wear and tear, design and plan, or neighborhood influences using base prices determined under 50 IAC 2.3 and associated guidelines published by the department.

I.C. § 6-1.1-4-39.5(b)(1). Restated, the cost approach "includes an estimated reproduction cost . . . using base prices determined under 50 IAC 2.3 and associated guidelines published by [DLGF]." *Id.*

197. The rule referenced in the statute, 50 IAC 2.3, merely adopts the original 2002 MANUAL and 2002 GUIDELINES.[72] The MANUAL itself has only one reference to riverboats: a code classification under Table A-2 that establishes "riverboat gaming resort" as C4-69. MANUAL at 24. The GUIDELINES reference riverboats as "yard improvements," and riverboats are treated like any other commercial yard improvements. GUIDELINES, Ch. 7 at 2, 20. The GUIDELINES also contain cost and depreciation tables. Absent in the description of the cost approach under I .C. § 6-1.1-4-39.5(b)(1) is a reference to the specific cost schedule for riverboats found in GUIDELINES Appendix G, Schedule G. Neither party directs the Board to any other "associated guidelines published by the [DLGF]." I.C. § 6-1.1-4-39.5(b)(1).

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[71] The Board notes that the Casino Assessment Statute contemplates an assessor applying all three approaches prior to making an assessment, but the Board does not find that requirement binding on either party on appeal before the Board.

[72] The 2002 MANUAL and GUIDELINES have been repealed along with 50 IAC 2.3, but were in effect for the 2009 appeal. For the 2014 appeal, the Casino Assessment Statute still references 50 IAC 2.3, and not the rules adopting the 2011 MANUAL and GUIDELINES.

198. The dispute is over the meaning of the term "base prices," which is not elsewhere defined. The Taxpayer essentially argues that "base prices" is synonymous with "cost schedules," and the cost schedules must be the source of data for determining the reproduction cost of a casino. Based on the history and construction of the statute and regulations, the Board finds that the Taxpayer is incorrect.

199. Since the *St. John* cases, property tax appeals have generally been resolved through objective evidence of value rather than application of cost schedules.

> Beginning in 2002, however, Indiana's overhauled property tax assessment system incorporates an external, objectively verifiable benchmark -- market value-in-use. As a result, the new system shifts the focus from examining how the regulations were applied (i.e., mere methodology) to examining whether a property's assessed value actually reflects the external benchmark of market value-in-use.

Westfield Golf Practice Ctr., LLC v. Wash. Twp. Assessor, 859 N.E.2d 396, 399 (Ind. Tax Ct. 2007). Under this regimen, "a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date." *O'Donnell*, 854 N.E.2d at 95; *see also Long*, 821 N.E.2d at 471. Consequently:

> Indiana law makes clear that the probative value of an opinion depends on whether the proponent of that opinion has shown that he adhered to *generally recognized appraisal principles* in formulating the opinion. This requirement remains the same whether an assessing official, an appraiser, or a taxpayer is the proponent of the opinion.

Grabbe v. Duff, 1 N.E.3d 226, 231 (Ind. Tax Ct. 2013) (internal citations omitted) (emphasis added).

200. It was the arbitrary nature of cost schedules that caused the Supreme Court to find the old system unconstitutional:

> Existing cost schedules, lacking meaningful reference to property wealth and resulting in significant deviations from substantial uniformity and equality, violate the Property Taxation Clause of the Indiana Constitution.

St. John, 702 N.E.2d at 1043. The Supreme Court affirmed the Tax Court's finding that the "cost schedules 'are arbitrary figures and formulas, determined by the State Board

and applied to property by local assessors with little or no reference to actual value or worth.'" *Id.* at 1042.

201. In this context, the Board presumes the legislature weighed all of this in drafting the Casino Assessment Statute, as added by P.L.233-2007 and as amended by P.L.146-2008. It generally provides that casinos are to be assessed based on data from the cost, sales comparison, or income approaches, which is consonant with the general approach to valuing property under the MANUAL and case law. Conceptually, the Board is skeptical that the legislature intended that objective criteria should be considered under the income and sales comparison approaches, but not under the cost approach. Likewise, the Board is skeptical that other aspects of the cost approach, including obsolescence or depreciation, should be based on objective criteria, but the base costs should not.

202. This point is further supported by a review of the cost schedules. The "reproduction cost of a riverboat licensed under IC 4-33" is based on the "maximum persons capacity as prescribed by the regulations of the Coast Guard, Department of Transportation," including passengers and crew. GUIDELINES, Appendix G, Schedule G. The schedules still reflect the gaming laws when all Indiana riverboats were required to be self-propelled excursion vessels subject to the occupancy and certification requirements of the United States Coast Guard. It is not apparent that any casino in the state maintains a certified capacity "as prescribed by the regulations of the Coast Guard." GUIDELINES, Appendix G, Schedule G. The Board also finds the application of the cost schedule to an "inland casino" would be absurd. I.C. § 4-33-2-17. Likewise it seems self-evident that the application of the cost schedule to "permanently moored" barges would be absurd in light of the structural differences. *Id.*

203. Furthermore, the cost approach, as described in the Casino Assessment Statute, contemplates the assessment of "buildings and land improvements." I.C. § 6-1.1-4-39.5. The statute contemplates a cost approach that values more than just the vessel, but the cost schedule only contemplates the reproduction cost of the vessel.

204. In light of the foregoing, the Board finds as a matter of law that, to present a probative valuation under the cost approach, the parties must present objectively verifiable evidence of the value of the casino under the cost approach, and, like any other case before the Board, may not succeed by merely relying on the methodology of the GUIDELINES.

d. Valuing the Riverboat Independent of Other Real Property under the Casino Assessment Statute

205. The Taxpayer also argues that the Casino Assessment Statute should be interpreted to require the valuation of the riverboat independent of other real property. The Assessor concedes that the Casino Assessment Statute applies only to the Riverboat, but also argues that general appraisal principles should prohibit piecemeal approaches.

206. Under the definition of True Tax Value, the Board considers the current use of a property. When multiple parcels or improvements form a single economic unit, the Board will value the property consistent with that use. Consequently, the Board has disregarded piecemeal strategies that might result in an unreliable assessment. *See Vern R. Grabbe v. Carroll Co. Ass'r*, Ind. Bd. of Tax Rev. Pet. Nos. 08-002-10-1-1-00001, et al. (May 10, 2012); *Rebecca Budreau v. White Co. Ass'r*, Ind. Bd. of Tax Rev. Pet. Nos. 91-020-08-1-5-00058, et al. (July 30, 2012); *Waterford Dev. Corp. v. Elkhart Co. Ass'r*, Ind. Bd. of Tax Rev. Pet. Nos. 20-015-08-1-4-00241, et al. (September 25, 2012); *Mac's Convenience Stores, LLC v. Hamilton Co. Ass'r*, Ind. Bd. of Tax Rev. Pet. No. 29-006-12-1-4-02050 (November 14, 2014). This is consistent with the Tax Court's holding that how a property is "delimited (i.e., they are separate parcels with distinct key numbers)" does not determine the use of the property because "a 'key number' is merely a tool used by assessing officials to distinguish properties from one another for various administrative purposes." *Cedar Lake Conf. Ass'n v. Lake County Prop. Tax Assessment Bd.*, 887 N.E.2d 205, 208-209 (Ind. Tax. Ct. 2008). However, the Board also recognizes that special assessment statutes may require piecemeal approaches.

207. It is not clear that the Casino Assessment Statute requires a piecemeal approach. The statute's description of the cost approach contemplates the valuation of the "buildings and

land improvements." I.C. § 6-1.1-4-39.5(b)(1). This suggests that the Riverboat may be valued collectively with land and buildings. Also of note is the fact that the MANUAL classifies a casino as a "riverboat gaming resort."

208. The Casino Assessment Statute's description of the sales comparison approach only references "generally comparable property." I.C. § 6-1.1-4-39.5(b)(2). It does not reference comparable vessels. Similarly, the description of the income approach references a "value commensurate with the risks for the subject property use," and has no reference to specific sources of income. I.C. § 6-1.1-4-39.5(b)(3).

209. The Board finds no statutory requirement that riverboats must be valued independent of other property. Keeping in mind that the Casino Assessment Statute also applies to barges and land-based casinos, the Board finds that the statute is worded broadly to allow appraisers wide latitude in fashioning credible measures of value.

3. The Board's Interpretation of the Casino Statute in Light of *Majestic Star*

210. The Taxpayer relies heavily on an opinion by the US Bankruptcy Court for the District of Delaware: *In Re Majestic Star Casino*, LLC, 457 B.R. 327 (Bankr. D. Del. 2011) *aff'd by In re Majestic Star Casino*, LLC, 2013 U.S. Dist. LEXIS 174894 (D. Del. 2013). As the only opinion that thoroughly analyzes the valuation of casinos under Indiana property tax law, the Board finds it worthwhile to consider its conclusions. However, the Board finds that the *Majestic Star* opinion must be largely distinguished from the facts at bar.

211. In *Majestic Star*, the Majestic Star Casino filed for bankruptcy and the Lake County Assessor filed for a determination of tax liability for several years on ten real property parcels, including two riverboat gaming vessels. *Id.* at 329. For reasons unclear, the trial determined only the value of the vessels and none of the other real property (which included a hotel, pavilion, and parking). *Id.* Both the assessor and the taxpayer retained experts to value the vessels. The experts reached vastly disparate values. The taxpayer's combined values were in the range of $8.8M to $9.8M. *Id.* at 340. The assessor's values were in the range of $190M to $292M. *Id.* at 350.

212. The stark difference in value was largely due to the competing methods of valuation. The Assessor's expert valued the vessels as "going concerns" under the cost, sales comparison, and income approaches. *Id.* at 350. The taxpayer's expert valued the vessels under the cost and sales comparison approaches. *Id.* at 341. Overall, the *Majestic Star* court concluded that the taxpayer's experts were reliable and the assessor's experts were not. *Id.* at 371-72.

213. The Board finds that many of the *Majestic Star* conclusions of law are based on the unique circumstance that only the value of the vessels was tried. The Board is not convinced that the *Majestic Star* court would have reached the same conclusions of law if the matter involved the valuation of the vessels, hotel, and pavilion. The conclusions in *Majestic Star* turn largely on the record before it, and the credibility of the witnesses' testimony. As for *Majestic Star*'s conclusions of law, the Board considers its interpretations of Indiana law regarding the income and cost approaches.

a. Majestic Star's Rejection of the Income Approach

214. In *Majestic Star*, the court concluded that the income approach was not appropriate when there was not an established rental market. *Id.* at 358 (noting the task was to value "the Vessels alone and there was not an established rental market for gaming vessels."). The court bases this holding on *Stinson v. Trimas Fasteners, Inc.*, 923 N.E.2d 496, 499 n.4 (Ind. Tax Ct. 2010). This footnote in *Trimas* merely recounts an expert's rationale for not including an income approach in addition to the sales comparison approach. It is not a statement of Indiana law holding that the income approach may only be applied to properties with an established rental market. The Casino Assessment Statute specifically contemplates valuing the property under the income approach in order to determine "a value commensurate with the risks for the subject property use." I.C. 6-1.1-4-39.5(b)(3). The Board finds there must be some circumstances under which an Indiana casino property could be valued under the income approach.

215. The taxpayer's expert in *Majestic Star* declined to use the income approach because he found the income approach was not a valid method to "measure the value of the vessels alone." *Majestic Star*, 457 B.R. at 341. He testified that business revenues, rather than

rent, could be utilized to value the business if properly allocated to "the intangible assets, tangible personal property, and the real property (including the Vessels, hotel, pavilion, parking garage, etc.)." *Id.* However, he believed it was an "error-prone methodology" particularly because intangibles are a significant part of the overall casino business. *Id.* The testimony overall suggests that the income approach, while "imperfect," might be appropriate to value a riverboat gaming facility as a whole.

216. The *Majestic Star* court's concern with the income approach was that an income approach might value intangible assets of the casino. The court explained that:

> When valuing real property, the market value-in-use standard does not permit assessors to tax non-realty income from the business operations, from intangibles, or from personal property and attribute such value to the real property. Net income and gaming revenue are taxed under the state's income tax and gaming laws, not its real property tax laws.

Id. at 371. If this is merely a statement emphasizing that the task at hand is to value the real property, not the intangibles or the business enterprise, it correctly states the law. But it is incorrect to the extent it implies the income approach cannot be applied to value a casino resort as a matter of law. Once again, the Casino Assessment Statute specifically contemplates the income approach. I.C. § 6-1.1-4-39.5(b)(3).

b. Majestic Star and the Cost Approach

217. The *Majestic Star* court also determined that it was "not reasonable" to "disregard entirely the base costs from the Guidelines," *Majestic Star*, 457 B.R. at 350, and held that the cost schedules "must be used to determine the value of the riverboats under the cost approach," *id.* at 366. As discussed above, the Board concludes this is not a correct statement of the law. Under Indiana law, the justification of the classification of riverboats as real property is based on the fact that "all taxpayers within this classification are treated equally" and that there is "no artificial distinction between certain members of the class." *Majestic Star Casino*, 817 N.E.2d at 328. As noted above, a determination that cost schedules must be applied to riverboats, but that objective evidence of costs may be considered for all other casinos (such as barges, historic hotels, or land-based casinos), would be an artificial and unjustifiable distinction within the class.

4. Casino Valuations in Other Jurisdictions

218. Despite the massive proliferation of casinos over the last few decades, there is sparse case law on valuing casinos for property tax purposes. In 2006, the tax appeal of "The Sands" casino was a matter of first impression because "since the inception of legalized casino gambling in Atlantic City in 1978, no published opinion of any New Jersey court has addressed the issue of how to value a casino hotel for tax assessment purposes." *City of Atlantic City v. Ace Gaming, LLC*, 23 N.J. Tax 70, 81 (N.J. Tax 2006). The *Ace Gaming* court could find only "a handful of reported cases throughout the country" on casino property tax valuations. *Id.* at 82.

219. In *Ace Gaming*, the taxpayer presented an income approach, and the assessor presented an income approach with a sales comparison check. *Id.* at 79. The income approaches applied the "Rushmore methodology" to "extract business value and isolate the value of real property in a going concern." *Id.* at 102. Neither party presented a cost approach. *Id.* at 79. The court noted that it would have preferred evidence under all three approaches. *Id.* at 103. But the court was persuaded that the "best way to proceed is to apply the Rushmore methodology . . . even though it will be the first time known to this court that the methodology will be applied to a casino hotel as opposed to a conventional hotel." *Id.*

220. The New Jersey Tax Court revisited this issue in 2013, and noted that "New Jersey law is not settled with respect to the best approach for determining the true market value of a casino-hotel and related facilities." *Marina Dist. Dev, Co., LLC*, 27 N.J. Tax at 519. The court rejected the cost approach to value a casino because it "necessarily requires the difficult task of accurately measuring economic obsolescence." *Id.* at 523. It concluded that:

> Given that so much of the value of a casino-hotel's real property is tied to the earning potential of gaming operations, a credible analysis of economic conditions and the translation of those conditions into an appropriate measure of economic obsolescence are essential to reaching a reliable value under the cost approach.

Id. It found that "the best approach to determine the value of the subject property in these appeals is the income approach" because "the record contains uncontradicted credible evidence from three of plaintiff's experts that buyers, sellers and lenders in the marketplace determine the value of casino-hotels based on the income generating potential of the property." *Id.* at 521-22. The court fully recognized that the majority of revenue from casino-hotels "is derived from gaming and not from the rental of hotel rooms." *Id.* at 522. But "each expert expressed confidence that he or she had made adequate adjustments to account for the value of personal property and business operations in order to derive an opinion of the value of real property only," and the court accepted that testimony. *Id.* The Court was presented with evidence under the cost approach, but relied entirely on the income approach as the most persuasive evidence.

221. The Board finds the New Jersey cases to be instructive. The Board concludes that an income approach considering casino revenues may be applied, if the opinion of the value of the enterprise is credible and the business and other assets are properly extracted.

5. USPAP and Appraisal Reports

222. Many of the parties' arguments revolve around the issue of USPAP compliance. The purpose of the Uniform Standards of Professional Appraisal Practice ("USPAP") is "to promote and maintain a high level of trust in appraisal practice." UNIFORM STANDARDS OF PROFESSIONAL APPRAISAL PRACTICE, 2014-15, Appraisal Standards Board, The Appraisal Foundation; preamble U-5. It "reflects the current standards of the appraisal profession." *Id.* The USPAP rules are focused on ethics. Consequently, some courts do not "view [an appraiser's] compliance with USPAP standards as a determining factor as to the admissibility or reliability of his testimony." *Henderson v. Cmty. Bank (In re Evans)*, 492 B.R. 480, 506 (Bankr. S.D. Miss. 2013) (*citing Whitehouse Hotel Ltd. P'ship v. Comm'r*, 615 F.3d 321, 332 (5th Cir. 2010)). "Compliance with USPAP Standards is not a substitute for a *Daubert* analysis." *Id.* Rather, the "nature and extent of [an appraiser's] deviations from the USPAP standards [may be] weighed heavily against the credibility of his opinions." *Id.*

223. In other jurisdictions, like Kansas, "the USPAP Standards are embodied in the statutory scheme of valuation," and "an erroneous determination that an appraisal adhered to USPAP would be considered an error of law." *In re Equalization Appeal of Kan. Star Casino, L.L.C.*, 362 P.3d 1109, 1120 (Kan. Ct. App. 2015). However, even in Kansas, "USPAP violations that are not 'materially detrimental' to an appraiser's overall opinion of value are not fatal." *Id.*

224. The Assessor cites to the incorporation of USPAP in the Indiana Administrative Code at 876 IAC 3-6-2. This rule relates to the regulation of appraisers by the Real Estate Appraiser Licensure and Certification Board under I.C. § 25-34.1-8-11. Indiana has not incorporated USPAP into a valuation statute in a manner similar to Kansas. When the Indiana Tax Court had occasion to address violations of USPAP by an appraiser, the Court did not reference 876 IAC 3-6-2. *See French Lick Twp. Tr. Assessor v. Kimball Int'l, Inc.*, 865 N.E.2d 732, 738 n.9 (Ind. Tax Ct. 2007). Rather, the Court deferred to the Board's weighing of the impact of a USPAP violation. *Id.*

225. The Board will consider allegations of violations of USPAP standards in relation to the credibility of the appraiser's opinion. The Board declines the invitation of the parties to nitpick USPAP rules when it amounts to a dispute of form over substance. The Board is concerned with how well an appraiser researches the matter, applies appraisal concepts, and supports the conclusions. For this reason, the Board will not address the sparring of the parties over jurisdictional exceptions, hypothetical conditions, signature requirements, and other matters, except where the Board finds a substantive appraisal error is raised.[73]

6. The Discounted Cash Flow (DCF) Method

226. In opening arguments, the Taxpayer argued that Mr. Cahill's DCF method was found to be inaccurate and unreliable in a decision by the Missouri State Tax Commission. *Harrah's Maryland Heights v. Zimmerman*, State Tax Commission of Missouri, March 3,

[73] The Board's finding that the disputes over jurisdictional exceptions, hypothetical conditions, signature requirements and other matters were not substantive in this case does not necessarily mean these issues would not be substantive in a different case.

2014.[74] The Commission, quoting a New Jersey case, concluded the DCF approach to valuation was unreliable, and memorably, an "exercise in financial haruspication."[75] *Id.*

227. The term "financial haruspication" was coined in *University Plaza Realty Corp. v. Hackensack City*, 12 N.J. Tax 354 367-68 (N.J. Tax 1992). Based to some degree on an article in *Banker & Tradesman*, the court held that "the DCF method, as applied to tax valuation proceedings, is an amalgam of interdependent, attenuated assumptions of limited probative value." *Id.* In that case, the court decided in favor of a direct capitalization approach over a DCF approach. *Id.* However, just four years later, the New Jersey Tax Court revisited the issue and found the DCF approach appropriate under different circumstances. *Tamburelli Properties Ass'n v. Cresskill Borough*, 15 N.J. Tax 629, 643-44 (N.J. Tax 1996). It adopted a DCF approach over a competing direct capitalization approach. *Id.*

228. Recently DCF haruspication was considered by the Supreme Court of Connecticut in a property tax case. *Wheelabrator Bridgeport, L.P. v. City of Bridgeport*, 133 A.3d 402 (Conn. 2016). The trial court had rejected the DCF approach as unreliable. *Id.* at 413. It reasoned that if the DCF method was reliable, then "two experienced and knowledgeable appraisers who are given the same basic facts and who use the same income approach would not be over $200,000,000 apart in their valuation of the subject property." *Id.* at 413. But the Connecticut Supreme Court reversed, holding that "the trial court improperly rejected the discounted cash flow approach to valuing the property for tax assessment purposes as a matter of law" and remanded for consideration as to which appraiser was more credible. *Id.* at 418. The Court noted that:

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[74] This case, like *Majestic Star*, considered the value of only a casino vessel. *Harrah's Maryland Heights v. Zimmerman*, State Tax Commission of Missouri, March 3, 2014. The Commission held that "neither party presented substantial and persuasive evidence to rebut the presumption in favor of the Board of Equalization." *Id.* The Board finds the *Zimmerman* case has little relevance because it has no precedential value and offers no detailed analysis of DCF concepts. The Board also notes that the reason the casino lost in *Zimmerman* was because the casino's appraiser failed to "recognize any added value to the barge because of its location and integration into the larger casino property." *Id.* Were the Board to follow *Zimmerman*, the Board would be compelled to reject the Taxpayer's appraisals.

[75] "Haruspex is 'a diviner in ancient Rome basing his predictions on inspection of the entrails of sacrificial animals . . . .' Webster's Collegiate Dictionary (11th Ed. 2003); *see also* The Free Dictionary, available at http:// www.thefreedictionary.com/haruspication (last visited January 15, 2016) (defining haruspication as 'a form of divination from lightning and other natural phenomena, but especially from inspection of the entrails of animal sacrifices')." *Wheelabrator Bridgeport, L.P. v. City of Bridgeport*, 133 A.3d 402, 414 n.20 (Conn. 2016).

> We can perceive no reason why [income and DCF] approaches should be categorically barred. Indeed, in the present case, expert witnesses for both sides, whom the trial court characterized as "experienced and knowledgeable," testified that the income approach, and, more specifically, the discounted cash flow approach, was the best method for valuing the property, because that is the method that market participants would use to determine the price that they would pay for the property.

Id. Thus, DCF has become largely accepted, particularly in circumstances where market participants regularly consider a DCF approach in valuation.

229. In *Marina Dist. Dev. Co., LLC*, 27 N.J. Tax at 521, the New Jersey Tax Court adopted a final value that was based on reconciled direct capitalization and DCF approaches. *Id.* at 502-506. The *Majestic Star* decision rejected a DCF approach based on flaws in its methodology and doubts about the appropriateness of valuing the vessels as a going concern. *Majestic Star*, 457 B.R. at 353-54. It did not find the DCF approach categorically unreliable. The DCF method, among others, has been used to value casinos without controversy in bankruptcy plan confirmation proceedings. *See In re TCI 2 Holdings, LLC*, 428 B.R. 117, 160-61 (Bankr. D. N.J. 2010); *In re Treasure Bay Corp.*, 212 B.R. 520, 532 (Bankr. S.D. Miss. 1997). The State of Nevada specifically contemplates the DCF method in its assessment statute. Nev. Rev. Stat. Ann. 361.227(5) ("A person determining whether taxable value exceeds [] full cash value or whether obsolescence is a factor in valuation may consider . . . an analysis of the discounted cash flow.").

230. The Appraisal of Real Estate recognizes the DCF method and devotes an entire chapter to its concepts. APPRAISAL OF REAL ESTATE 14th Ed. 2013, Appraisal Institute, 509-528. Likewise, the Appraisal Standards Board has addressed the DCF method and special considerations ensuring accuracy in the Uniform Standards of Professional Appraisal. USPAP, U-71 ("Discounted cash flow (DCF) analysis is an accepted analytical tool and method of valuation within the income capitalization approach to value.").

231. Moreover, the Taxpayer's own expert witnesses support the DCF method. Mr. Lennhoff stated:

By the way, if you were to do discounted cash flow analysis instead of direct capitalization, it should not have any influence on the outcome. Because if you're seeking the same value, the method should never cause a difference in the value, unless you don't do it right.

Tr. at 645. Mr. Goodman testified that DCF valuations are a core element of evaluating any casino project. *Tr.* at 1675. The Board concludes that DCF analysis is a generally accepted methodology for appraising property generally and casinos specifically.

E. Analysis

232. The Board must determine the value of the real estate of a casino: a type of property that is not rented, not sold separate from business assets except in distress, and where there is sparse law on how it should be valued. There is no rental income, there are no comparable sales, and the market never considers the value of the real property separate from the business assets. Highly credentialed experts disagree on the most basic points of approach, method, and technique, and reach values nearly $100M apart. Experienced and specialized lawyers disagree on the most basic meaning of the statute. In the task at hand, the Board finds a certain affinity with the Roman haruspex as we must divine a true tax value for the Resort.

233. The Board notes that the experts were in agreement on several key issues. None of the experts interpreted the Casino Assessment Statute to require an appraiser to apply all three approaches if an approach would not be credible, and likewise no appraiser applied all three approaches. All of the experts conceded that at least a portion of the Resort could be valued under the income approach, though with the caveat that removing non-realty items may be difficult or speculative.[76] Both parties endorsed some version of the Rushmore approach to extracting business value. All of the experts agreed that the Resort's real estate amenities are critical to the success of the casino. All of the experts presented similar analyses of the economic factors and gaming market for both years.

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[76] Mr. Lennhoff noted that the income approach is the proper approach for buildings where the value depends on the business conducted in them: "casino hotels, senior housing, regional malls, all of them are the same thing." *Tr.* at 584-85. Mr. Herman conceded that appraisers of casinos for property tax cases have used the income approach to value the whole enterprise and the approach has been "accepted somewhat on a limited basis" by taxing authorities. *Tr.* at 382. But he noted an income approach for a hotel is much more generally accepted because there are less intangibles and no gaming license. *Tr.* at 391.

234. While the parties frame the main issue in terms of synergy between the Riverboat and the Hotel, the Board finds this issue is misplaced. The vast majority of the real estate, land and improvements, is the Hotel. Both parties rely on the income approach to value the Hotel. The crux of this case is this question: how should the Hotel's contribution to the value of the Resort be measured in light of the fact that it is utilized as a marketing tool for the casino? Answering that question requires speculative approaches because the Resort's income overwhelmingly comes from the intangible gaming business, and the Hotel's income (rooms, restaurants, golf), is below market due to comping. The parties present two competing approaches that are theoretically sound. One expert measures the value of the Hotel based on projected income for typical hotels. Another expert extracts the business value from the casino. In the final analysis, this case comes down to which expert more credibly projected income and expenses, selected capitalization rates, and deducted intangibles.

1. Analysis of Mr. Herman's Riverboat Valuation under the Sales Comparison Approach

235. Under both approaches, Mr. Herman's analysis is based largely upon the proposition that riverboats have been legislated into obsolescence. The Board agrees that the legislation rendered the propulsion/navigation systems super-adequate and permitted barge casinos as a superior facility. But Mr. Herman testified that half of the original riverboats were still in operation in 2014. *Tr.* at 105; *Ex. P-4 (Ex. 3.A).* While in some states nearly all casinos replaced their riverboats with barges, in others, like Indiana, most casinos did not.[77] This leads the Board to question the degree of obsolescence, and in particular its effect in jurisdictions like Indiana where only a few casinos upgraded to barges.

236. Turning to the sales comparisons, Mr. Herman testified that roughly 30 Midwestern riverboats had been taken out of service. Mr. Herman identified 12 sales, but only 9 boats. Just 6 of the 9 hailed from Midwestern casino operations. The other 3 were

[77] By 2009, in Illinois (1999 legislation), 6 out of 9 riverboats were replaced with barges or land-based, in Missouri (1998 legislation) where 10 of 12 facilities were replaced with barges, in Iowa (2004 legislation), 8 of 14 were replaced with barges, in Louisiana (2001 legislation), 2 out of 13 were replaced with barges, and in Indiana (2002 legislation), 2 out of 11 were with barges. *Ex. P-2 (Ex. 3.A).* By 2014, Iowa still had 6 riverboats, Illinois had 3 riverboats, Indiana had 7 riverboats, Louisiana had 13 riverboats, and Missouri had 1 riverboat. *Ex. P-2 (Ex. 3.A).*

offshore boats from Florida and Georgia. Mr. Herman considered sales over a significant period of time (2003-2012) that would have encompassed most of the riverboats taken out of service. The Board is left with doubts that Mr. Herman's selection of 6 out of 30 was representative of the market. But the Board is limited to the record before it.

237. The following table identifies the name, comp numbers correlating to Mr. Herman's 2009 and 2014 reports, the year of sale, ocean hull, bankruptcy transaction, yacht design, and buyer's uses:

Boat	2009	2014	Ocean	Br.	Yacht	Buyer Use(s)
Empress I	#1 (2005)	#2 (2005)	N	N	Y	?
Empress II/Big Easy	#2 (2004)	#3 (2004), #7 (2010)	N/Y	N/Y	Y	Off-shore (conv.), MS dockside (never used)
Harrah's Southern Star II	#3 (2007)	#4 (2007)	N	Y	N	Riverboat gaming in India (dockside?)
Opus/Liquid Vegas/Royal Star	#4 (2007)	#5 (2007), #9 (2009)	Y	Y/Y	Y	Off-shore gaming in NY (never used)
Surfside Princess	#5 (2003)	#8 (2003), #6 (2010)	Y	Y/Y	Y	Off-shore gaming in FL
Casino Queen	#6 (2008)	#12 (2008)	N	N	N	Museum (dockside)
Harrah's Northern Star	#7 (2004)	#11 (2004)	N	N	Y	Dinner cruise NJ (not dockside)
Empress III/Horseshoe		#1 (2010)	N	N	Y	Riverboat gaming in India (dockside?)
Escapade		#10 (2012)	Y	N	Y	Off-shore gaming in FL

The comps reveal a rather bleak market for used riverboats. Two were never actually put in service. Two were used for non-gaming purposes. Two were sold to gaming companies in India. One was converted for off-shore gaming use. The disposition of another is uncertain.[78] Five of the comps were bankruptcy sales. The Board notes that the distinct paddle-wheel steamboat replica design might have less of a market than a modern yacht design. It seems clear that the buyers in this market are fairly speculative and just as likely to put the facility to an alternative (non-gaming) use as a gaming use. Not one of the sales went from one Midwestern operation to another. Only one of the buyers intended to use the boat for state-licensed gaming, and that boat was never placed in service.

[78] Mr. Herman asserted in passing that the Empress I was purchased for gaming purposes, but unlike the remaining boats, he never addresses the purchaser or its end use. Under the Coast Guard Vessel Documentation, the only previous vessel owner was Empress Casino Joliet and the current owner was Inspiration Hornblower. *Ex. P-4 (Ex. 4.B)*. An online search reveals that "Inspiration Hornblower" is a dinner cruise and catering facility in San Diego. *See* http://www.hornblower.com.

238. The Assessor takes exception to many aspects of the comps: the number of bankruptcies, the lack of sales in Indiana, the absence of ongoing gaming at the time of sale, the length of listings, and the purchases for alternative uses. The Board finds that Mr. Herman reasonably concluded that bankruptcies were a significant portion of the market, and bankruptcy and alternative use sales did not materially differ in price from arm's length transactions for gaming use sales.[79] The Board agrees with Mr. Herman that the place of sale is irrelevant in a national and international market. The criticism of the absence of ongoing casino operations is a challenge to the Taxpayer's piecemeal approach rather than the selection of comps.

239. The Board does find that Mr. Herman's conclusion that the Riverboat is inferior due to its size is unsupported. The Board agrees that smaller boats should command a higher unit price based on the typical inverse relationship of size to unit value. *Tr.* at 419. But he also stated that buyers "don't require extremely large boats." *Tr.* at 166-67. He believed that smaller boats, and "smaller gaming areas" were more preferable generally, and "ideal" for Iowa, off-shore, or alternative use markets. *Ex. P-1 at 79.*

240. Mr. Herman's entire premise is that multi-level boats, which tend to be smaller in terms of total gaming area, are obsolete compared to larger single-level barges.[80] It is contradictory to consider the bigger vessels less suited for gaming due to their size. As for alternative uses, the biggest comp, based on capacity, was converted to a museum. The boat converted to a cruise ship had 27,500 s/f of gaming area, an amount he considered similar to the Riverboat's 40,200 s/f. This suggests that big boats were well-suited for alternative uses. Since Mr. Herman presented no evidence of any comp going to Iowa, the Board is baffled by the reference to that market. Finally, there is insufficient evidence to conclude that smaller boats were more suited for conversion to off-shore use.

241. Overall, the Board finds that Mr. Herman has presented probative evidence of the value of the Riverboat. This is clearly a market value of the Riverboat: the likely sale price if

[79] The Board finds Mr. Herman's argument that a bankruptcy trustee has the same motivation to maximize profits as a typical owner to be dubious at best.

[80] Mr. Herman noted that "many casinos expanded their dockside facilities and converted their boats to allow greater gaming space." *Ex. P-2 (Ex. 3.A).*

the boat were sold in 2009 or 2014. This is clearly a limited market. Even prior to dockside gaming legislation, there is no evidence that Midwestern riverboat gaming facilities considered buying used facilities rather than built-to-suit. Mr. Herman asserts, in perhaps a different context, that "when [riverboats] are acquired for continued use of gaming, they'll be used in conjunction with [] a land-based facility with improvements similar to what you find at Belterra, meaning types of hotels, parking garages, and potential golf courses." *Tr.* at 459. There is no evidence that any of Mr. Herman's Comp's went to a similar facility with similar amenities as the Resort.

242. In this vein, the Assessor argues that the Taxpayer was required to accompany its sales comparison approach with a market segmentation analysis. *See Resp.'s. Post-Hearing Br.* at 59-60. This is incorrect. I.C. § 6-1.1-31-6 does not require an express "market segmentation analysis" to be presented as part of a sales comparison valuation. Rather, a valuation may not reflect "true tax value" if there is evidence that the "purportedly comparable sale properties" reflect a different market. *Id.* If the Assessor believed the market value established by the Taxpayer's comps was inaccurate because it valued a different market or submarket of gaming vessels, the burden was on the Assessor to present a market segmentation analysis. The Assessor failed to do so. Mr. Herman testified that his comps were generally intended for gaming use and that there was no "premium" paid for non-gaming uses for similar vessels. The Assessor has failed to rebut Mr. Herman's valuation of the Riverboat under the sales approach.[81]

243. The Board agrees that the qualitative analysis of using pluses and minuses is opaque. In the absence of quantitatively similar comps, valuing a riverboat is by nature speculative and must be based on the appraiser's expertise. Mr. Herman has presented probative evidence of the value of the Riverboat.

244. The Board finds Mr. Herman's testimony persuasive that the Riverboat should be assessed at $4,327,000 for 2009 and $3,500,000 for 2014.

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[81] To the extent that Mr. Lukens provided rebuttal testimony on this subject, the Board notes that the Assessor argued that the *Taxpayer* failed to present a market segmentation analysis. The Assessor did not argue that *Mr. Lukens* presented a market segmentation analysis, and the Board will not develop an argument for the Assessor in this regard.

2. Analysis of Mr. Herman's Valuation of the Riverboat under the Cost Approach

245. Mr. Herman believed he was compelled to follow the GUIDELINES in valuing the Riverboat under the cost approach. As indicated in the analysis above, he was incorrect. Mr. Herman was required to provide an opinion based on generally accepted appraisal practices, and could not rely solely on the GUIDELINES. Mr. Herman stated that in the absence of the statute, he would *not* have done a "cost approach like I have here." *Tr.* at 469.

246. Because he admitted that he valued the Riverboat under a cost approach based on the methodology of the GUIDELINES rather than generally accepted appraisal practices, the Board rejects Mr. Herman's cost approach. *See O'Donnell*, 854 N.E.2d at 95; *see also Long*, 821 N.E.2d at 471. Mr. Herman's adjustments to try to inject a market element into the Guidelines was not persuasive.[82] The Board notes that Mr. Herman's obsolescence adjustments were fundamentally flawed as well.[83]

247. Nonetheless, the Board's rejection of Mr. Herman's sales comparison approach is inconsequential because Mr. Herman based his final values on the sales comparison approach, as the lowest of the approaches, for both years.

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[82] The cost approach considers the cost new of the improvements based on "current prices as of the effective appraisal date." APPRAISAL OF REAL ESTATE at 570. Mr. Herman based his costs on undisclosed calculations of 1995 data trended to 1999 by the DLGF, which he in turn trended to 2009 and 2014. Estimated original costs trended under price indices for nearly 20 years is not a reliable approach.

[83] As for his market extraction approach, he used the same flawed cost approach for his comps. He failed to apply the Lake Michigan cost schedule to the Lake Michigan comps. It is not clear the Ohio River cost schedule should be applied to comps on the Mississippi River or the Des Plaines River, and certainly not to vessels with ocean-faring hulls. Key to a market extraction analysis is a "defensible estimate of replacement cost for each comparable property." APPRAISAL OF REAL ESTATE at 610. As for his economic life calculation, Mr. Herman's analysis is in conflict with his sales comparison approach. For 2009, three of the comps (ages 31, 22, and 16) were sold after their economic life expired, and two others (13 years at sale) had only two years of economic life remaining. If the Board were to accept that the Riverboat had only a 15 year economic life, the Board would be compelled to reject Mr. Herman's sales comparison approach as fundamentally flawed because he relied on sales of vessels beyond their economic life. An improvement's economic life "ends when the improvement no longer contributes value for the use for which it was originally intended and is no longer the highest and best use of the underlying land." APPRAISAL OF REAL ESTATE at 601. This does not describe the Riverboat.