

Agree  
801.10  
802.2



**From:** [Redacted]  
**Sent:** December 12, 2007  
**To:** Kathryn Walsh (FTC)  
**cc:** [Redacted]  
**Subject:** HSR Question on Valuation -- Size of Transaction

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In general, the transaction involves the sale and purchase of a private residential resort/recreational community.

Here is a statement of facts.

1. The facilities at the community consist of the following:
  - A. Residential Building Lots. Some of the lots have been sold; others have yet to be sold. The land on which the already-sold and soon-to-be-sold lots are sited is platted. The land identified for subsequent development has yet to be platted. Some of the sold lots have already had single family homes or multiple-unit residential condominiums constructed on them, other lots contain residences under construction and others are vacant.
  - B. Infrastructure. The community contains roadways, sewers, drinking water wells and common space that are owned and maintained by the "Club" or related property owner associations and not by the lot owners. Utilities (such as electricity, phone and some water) are provided by third-party suppliers.
  - C. Amenities. Members of the Club have, or upon completion of construction will have, access (subject to the payment of any applicable fees or charges) to the following, all of which are located on the grounds of the Club:
    - (1) Golf Course
    - (2) Ski Area – some residences are built adjacent to and around ski area
    - (3) Base Lodge – contains health/spa facilities (which ultimately may not be constructed) and a restaurant
    - (4) Lodge on Ski Slope – contains restaurant and swimming facilities and has adjacent to it stand-alone cabins containing hotel rooms for use by Club members and their guests but not the general public
    - (5) Equestrian Facility consisting of a paddock and related "barn"



(6) Tennis Courts (which ultimately may not be constructed)

2. Only members of the Club or their guests have access to its amenities. There are two basic types of members: resident members, who own building lots in the gated community of which the Club is a part and who pay a refundable deposit and annual dues, and non-residents, who also pay a refundable deposit (generally higher than the resident member deposit) and annual dues for access to the amenities. The Club does not include any time share component. The owners of the Club can also grant Club privileges as a courtesy to "company" members, who are employees, and "honorary" members, who are individuals involved in marketing the Club.
3. The acquisition will be effected by a purchase of assets from various entities (all part of the same person), including the entities that perform the management, development and broker/sales functions of the Club. After the acquisition, the buyer proposes to engage independent contractors to perform the bulk of these three functions.
4. The acquisition will include some intellectual property, primarily trademarks relating to the name of the Club.
5. The buyer has previously purchased some of the lots from the same seller and, for purposes of analysis, we have assumed that those purchases would be included in the overall transaction.
6. The residents and non-residents pay an initial refundable deposit when they become members. Generally, each member's deposit is refundable (a) in full on the 30<sup>th</sup> anniversary of the commencement of a resident's membership or (b) upon re-issuance of the membership to a new member. The buyer will assume this contingent obligation as part of the transaction, except with respect to certain "founding" members.
7. The purchase agreement only determines the consideration to be paid for all the assets to be acquired as a whole (although the parties may decide to designate certain amounts to different categories of assets for tax reporting purposes).
8. We have assumed that the size-of-the-parties-test will be met.

We would be grateful if you would confirm to us your conclusion that for purposes of calculating the size-of-the-transaction test (a) only the ski area, the equestrian facility and the intellectual property and a portion of any assumed obligations would be included, (b) that the value of the non-exempt assets would be their fair market value and (c) that if none of any assumed obligations relates to a specific asset, then the portion of the fair market value of any obligations assumed to be attributed to the non-exempt assets would be in the same proportion as the fair market value of the non-exempt assets bears to cash consideration to be paid for all of the acquired assets.

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