

APPEAL # : 20-712

TAX TYPE: PROPERTY TAX

TAX YEAR: 2019

DATE SIGNED: 3/30/2023

COMMISSIONERS: J.VALENTINE, M.CRAGUN, R.ROCKWELL, AND J.FRESQUES

BEFORE THE UTAH STATE TAX COMMISSION

TAXPAYER,

Petitioner,

v.

BOARD OF EQUALIZATION OF
COUNTY-1, STATE OF UTAH,

Respondent.

**FINDINGS OF FACT, CONCLUSIONS
OF LAW, AND FINAL DECISION**

Appeal No. 20-712

Parcel No: #####

Tax Type: Property Tax

Tax Year: 2019

Judge: Marshall

This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must send the response via email to taxredact@utah.gov, or via mail to Utah State Tax Commission, Appeals Division, 210 North 1950 West, Salt Lake City, Utah 84134.

Presiding:

Michael J. Cragun, Commissioner

Jan Marshall, Administrative Law Judge

Appearances:

For Petitioner: PETITIONER'S REP-1, BUSINESS-3

PETITIONER'S REP-2, BUSINESS-3

PETITIONER'S REP-3, Appraiser

PETITIONER'S REP-4, BUSINESS-2

For Respondent: RESPONDENT'S REP-1, Deputy County Attorney

RESPONDENT'S REP-2, Appraiser for COUNTY-1

STATEMENT OF THE CASE

This matter came before the Utah State Tax Commission for a Formal Hearing on June 7, 2022, in accordance with Utah Code Ann. §59-2-1006 and §63G-4-201 et seq. Based upon the evidence and testimony presented at the hearing, the Tax Commission hereby makes its:

FINDINGS OF FACT

1. Petitioner (“Taxpayer”) timely appealed the assessed value of the subject property located in COUNTY-1.
2. The subject property is parcel no. #####, located at ADDRESS-1. It is a #####-acre parcel improved with a hotel with ##### rooms in ##### square feet. The hotel was built in DATE, and is operated as a BUSINESS-1. (Exhibit R-1).
3. The subject property sold for \$\$\$\$ on DATE. The subject property was not listed on the open market. (Exhibit R-1).
4. The COUNTY-1 Assessor’s Office valued the subject property at \$\$\$\$ as of the January 1, 2019 lien date. (BOE Record).
5. The COUNTY-1 Board of Equalization (“County”) upheld the original assessed value of \$\$\$\$ (BOE Record).
6. The Taxpayer asked the Commission to reduce the value of the subject property to \$\$\$\$ (Exhibit D).
7. The County asked the Commission to reduce the value of the subject property to \$\$\$\$ (RESPONDENT'S REP-2 Testimony).
8. The value of the subject property was not appealed in 2016 or 2017. (Exhibit R-1).
9. The value of the subject property was appealed in 2018, and was reduced from \$\$\$\$ to \$\$\$\$ (Exhibit R-1 and R-3).
10. The inflation adjusted value is \$\$\$\$ (RESPONDENT'S REP-2 Testimony).
11. Neither party indicated that there were any improvements or changes to the subject property between the January 1, 2018 and January 1, 2019 lien dates. (PETITIONER'S REP-4 Testimony, PETITIONER'S REP-3 Testimony, and RESPONDENT'S REP-2 Testimony).
12. PETITIONER'S REP-4 testified on behalf of the Taxpayer. He is a national hotel property tax consultant with BUSINESS-2, a national consulting firm. PETITIONER'S REP-4 has worked with commercial real estate for four years, and specifically in the hotel division for three years. He stated that the hotel division represents over 5,000 hotels nationwide, consulting with owners on property tax issues. (PETITIONER'S REP-4 testimony).

13. PETITIONER'S REP-4 stated that he is familiar with the three valuation methods (cost, sales, and income) and stated that assessors will use all three methods. He testified that the income approach is the most common because hotels are income producing properties. PETITIONER'S REP-4 stated that an investor will determine what they are willing to pay based on how much revenue a hotel can produce. (PETITIONER'S REP-4 Testimony).
14. PETITIONER'S REP-4 stated that in most jurisdictions, intangibles are not taxable. He stated that includes business enterprise value. (PETITIONER'S REP-4 Testimony).
15. The Appraisal Institute Dictionary of Real Estate Appraising, 5th Edition, defines "business enterprise value" as "[t]he value contribution of the total intangible assets of a continuing business enterprise such as marketing and management skill, an assembled workforce, working capital, trade names, franchises, patents, trademarks, contracts, leases, customer base, and operating agreements." (Exhibit B).
16. PETITIONER'S REP-4 testified that the majority of value for a hotel lies within its flag. He stated that there is value associated with the franchise, and identified national marketing campaigns, brand recognition, loyalty programs, and reservation systems as part of the franchise. (PETITIONER'S REP-4 Testimony).
17. The flag (or brand name), is owned by a parent company that licenses the name with the franchisee. Franchises, like the subject, are independently owned and operated, and pay a franchise fee to the parent company to use the name. The parent company does the marketing for the brand name as part of the franchise fee. (PETITIONER'S REP-4 Testimony).
18. PETITIONER'S REP-4 testified that if a franchised hotel were to remove its flag, the occupancy and revenue would drop. (PETITIONER'S REP-4 testimony).
19. BUSINESS-2 prepared a table categorizing hotel brands based on hotel class, flag, type of hotel, franchise fee, and capitalization rates. The data used in the table was taken from CBRE (a global commercial real estate firm that provides analysis), HVS (a global real estate firm specializing in hospitality), and STR (used by franchise hotels to track occupancy, daily rate and REVPAR). (PETITIONER'S REP-4 testimony).
20. The subject property is operated as a BUSINESS-1, which is classified as an upscale, full service, hotel. The national average daily rate is \$\$\$\$\$. The franchise hotel group is BUSINESS-1, and franchise fees are %%%%. BUSINESS-2 reported there is %%%% intangible business value, and a capitalization rate of 8.5% for this type of property. (Exhibit A).
21. PETITIONER'S REP-4 testified that the most common approach to measure intangible value is the "Rushmore approach." He stated that the Rushmore approach deducts management and

- franchise fees from expenses, and then capitalizes the income. (PETITIONER'S REP-4 testimony).
22. PETITIONER'S REP-4 testified that the “net-gain approach” can also be used to measure intangible value. He explained that the net-gain approach looks at a franchise hotel compared to a non-branded hotel, calculates the REVPAR difference, deducts the net gain from revenue, and then capitalizes the income. (PETITIONER'S REP-4 testimony).
 23. PETITIONER'S REP-4 stated that the Rushmore approach was recently criticized in *Singh v. Walt Disney Parks & Resorts US, Inc.*, 325 So. 3d 124 (Fla. Dist. Ct. App. 2020). He stated that in *Singh* the Court determined that the Rushmore approach failed to deduct intangible value from revenue. (PETITIONER'S REP-4 Testimony, Exhibit C).
 24. PETITIONER'S REP-4 testified that both the Rushmore and net-gain approaches are used in the hotel valuation industry, but that the Rushmore approach is more common. In his opinion, the Rushmore approach does not adequately address intangibles. PETITIONER'S REP-4 specifically identified marketing, rewards points, and reservation systems as intangibles. He stated that the Rushmore approach does not account for a return on investment. (PETITIONER'S REP-4 Testimony).
 25. PETITIONER'S REP-4 stated that the Rushmore method is commonly recognized for acquisitions between a willing buyer and willing seller. He stated that an investor would not use the net-gain method, because the intended use is different. PETITIONER'S REP-4 stated that the net-gain method is used for property tax purposes because intangible assets are not taxable. He stated that the intangible value is included in an acquisition transaction, as the seller expects payment for that business value. (PETITIONER'S REP-4 Testimony).
 26. PETITIONER'S REP-3 testified on behalf of the Taxpayer. PETITIONER'S REP-3 has worked as a commercial real estate appraiser for seventeen years, and is licensed in Utah. He stated that he has valued all types of commercial property, going concern properties, land, and acquisitions. PETITIONER'S REP-3 estimated that he has valued close to 100 hotel properties, and has assisted on the appraisal of hundreds more. In 2014 he started doing expert testimony work, and testified in Utah previously. (PETITIONER'S REP-3 Testimony).
 27. PETITIONER'S REP-3 is part owner of BUSINESS-4, the appraisal company that was selected by BUSINESS-2 to appraise the subject property. PETITIONER'S REP-3 is paid a flat fee for each appraisal, and is paid an hourly rate and a per diem for testimony. (PETITIONER'S REP-4 Testimony and PETITIONER'S REP-3 Testimony).
 28. PETITIONER'S REP-3 prepared a retrospective appraisal and determined a value for the subject property of \$\$\$\$ as of the January 1, 2019 lien date. He determined a going concern value of

\$\$\$\$\$ and subtracted from that a business enterprise value of \$\$\$\$\$, and an FF&E value of \$\$\$\$\$ to arrive at his opinion of value. (Exhibit D).

29. PETITIONER'S REP-3 testified that as part of his assignment, he had to deduct the value of tangible personal property and the intangible value of the franchise. He stated that for a property tax valuation, it is important to exclude other types of value, because it is the real estate that is being taxed. (PETITIONER'S REP-3 Testimony).
30. PETITIONER'S REP-3 identified the following "value enhancements" from a franchise: 1) trade name recognition, 2) reservation system, 3) national marketing campaign, 4) customer base, 5) travel awards loyalty program, 6) management skill, 7) territory restrictions, 8) an assembled workforce, 9) market updates 10) enforced quality control, 11) an operating manual, and 12) training. (PETITIONER'S REP-3 Testimony and Exhibit D).
31. PETITIONER'S REP-3 determined that developing a cost approach was not necessary for the subject property, and prepared the appraisal relying upon the income approach and sales comparison approach. He used the cost approach for the FF&E, based upon developed opinions of a depreciated market value survey and information from third party industry publications regarding FF&E cost allocations. (Exhibit D).
32. For full-service hotels the average cost of FF&E is \$\$\$\$\$ per room, according to the HVS Hotel Development Cost Survey, dated November 20, 2018. PETITIONER'S REP-3 determined that the depreciated value of FF&E is approximately %%% of the cost new. However, the appraisal used an FF&E value of \$\$\$\$\$, based on the Taxpayer's 2019 personal property amount. (Exhibits D and E).
33. PETITIONER'S REP-3 developed a sales comparison approach, and determined a value of \$\$\$\$\$ per square foot, or \$\$\$\$\$ for the subject property. He subtracted from that \$\$\$\$\$ for the "hotel brand premium" and concluded a rounded value of \$\$\$\$\$ for the subject property. (Exhibit D).
34. PETITIONER'S REP-3 stated that because Utah is a non-disclosure state, it is difficult to get quality hotel sales data. He stated that the market looks at the investment potential, and noted that the sales did not separate out the intangible value. PETITIONER'S REP-3 stated that the sales comparison approach was included to be supportive of the income approach. (PETITIONER'S REP-3 Testimony).
35. Following are the comparable sales used in PETITIONER'S REP-3' appraisal (Exhibit D):
REDACTED TABLE
36. PETITIONER'S REP-3 testified that deducting the cost of the franchise fees (Rushmore approach) is not sufficient to account for the intangible value. He argued that the franchise fee does not represent an investor's business incentive. PETITIONER'S REP-3 stated that the *Singh*

case is significant, in that it addressed whether the Rushmore approach was sufficient to account for intangibles, and identifies weaknesses in that approach. (PETITIONER'S REP-3 Testimony).

37. PETITIONER'S REP-3 testified that after the decision in the *Singh* case was issued, he revised his income approach for hotel properties. He stated that the issue in the *Singh* case was not who owns the property, but whether the Rushmore approach was sufficient to account for intangible property, and noted that the decision identifies weaknesses of the Rushmore approach. PETITIONER'S REP-3 explained that the approach he used looks at the difference in revenue between branded and unbranded hotels, not just the difference in expenses. (PETITIONER'S REP-3 Testimony).

38. PETITIONER'S REP-3 concluded a value of \$\$\$\$ for the subject property using the income approach, summarized as follows (Exhibit D):

REDACTED TABLE

39. PETITIONER'S REP-3 used data from the 2018 profit and loss statement for the subject property as well as reported expenses published by CBRE in the development of a pro forma income analysis. (Exhibit D).

40. Following is a summary of the subject's profit and loss for January 1, 2018 through December 31, 2018 (Exhibit D):

REDACTED TABLE

41. PETITIONER'S REP-3 stated that the expense categories can vary, depending on the class of hotel. Further, he noted that the costs of the flag can be structured differently, and may include five or six categories of expenses for the flag. (PETITIONER'S REP-3 Testimony).

42. In order to estimate market rent, PETITIONER'S REP-3 looked at the rental rates for both branded and unbranded hotels. Following is a summary of the comparable hotels used in PETITIONER'S REP-3' analysis (Exhibit D):

REDACTED TABLE

43. PETITIONER'S REP-3 acknowledged that the non-branded hotels selected were not the most ideal comparables. He stated that he tried to temper the difference in income between the branded and non-branded hotels. PETITIONER'S REP-3 stated that the difference in income was over %%%%, but he used %%%% to %%%% in his analysis. (PETITIONER'S REP-3 Testimony).

44. Following is a summary of the 2018 CBRE operating expenses for the Mountain and Pacific Region (Exhibit D):

	2018 Dollars per Available	Change from	2018 Percent of Revenue	2018 Dollars per

	Room	Prior Year		Occupied Room
REVENUES				
Rooms	\$34,844	4.4%	96.8%	\$125.63
Other Departments	\$815	22.5%	23%	\$2.94
Miscellaneous	\$328	6.9%	0.9%	\$1.18
Total Operating Revenue	\$35,987	4.7%	100.0%	\$129.76
DEPARTMENTAL EXPENSES				
Rooms	\$9,558	7.3%	27.4%	\$34.46
Other Departments	\$375	7.0%	46.0%	\$1.35
Total Departmental Expenses	\$9,934	7.3%	27.6%	\$35.82
Total Departmental Profit	\$26,053	3.8%	72.4%	\$93.94
Undistributed Operating Expenses				
Administrative and General	\$3,193	68%	8.9%	\$11.51
Information and Telecommunications	\$382	-0.2%	1.1%	\$1.38
Sales and Marketing	\$3,811	6.4%	10.6%	\$13.74
Property Operation and Maintenance	\$1,519	5.3%	4.2%	\$5.48
Utilities	\$1,183	1.8%	3.3%	\$4.27
Total Undistributed Expenses	\$10,089	5.6%	28.0%	\$36.38
Gross Operating Profit	\$15,964	2.7%	44.4%	\$57.56
Management Fees	\$1,369	5.1%	3.8%	\$4.94
Income Before Non-Operating Income	\$14,595	2.5%	40.6%	\$52.62
Non-Operating Income and Expenses				
Income	\$78	-5.7%	0.2%	\$0.28
Rent	\$1,930	7.2%	5.4%	\$6.96
Property and Other Taxes	\$1,121	8.6%	3.1%	\$4.04
Insurance	\$419	6.2%	1.2%	\$1.51
Other	\$183	-16.7%	0.5%	\$0.66
Total Non-Operating Income and Expenses	\$3,575	6.2%	9.9%	\$12.89

EBITDA	\$11,020	1.3%	30.6%	\$39.73
Percent of Occupancy	76%	1.8%		
Average Daily Rate	\$125.63	2.5%		
RevPar	\$95.45	4.4%		
Average Size (Rooms)	114	0.0%		

45. Following is a summary of the pro forma income and expense projections determined by PETITIONER'S REP-3 (Exhibit D):

REDACTED TABLE

46. PETITIONER'S REP-3 concluded that an % capitalization rate was appropriate for the subject property, to which he added the effective tax rate of %, for an overall capitalization rate of %. The capitalization rate was based on published rates by RERC for the 4th quarter of 2018, as well as data compiled by BUSINESS-2 for midscale hotels. The RERC capitalization rates for third tier hotel properties ranged from % to %, with an average of %. The data compiled by BUSINESS-2 indicates a capitalization rate of % for BUSINESS-1. (Exhibit D):

REDACTED TABLE

47. PETITIONER'S REP-3 calculated the business enterprise value by averaging the capitalized management fee and the net decrease in revenue for branded versus non-branded hotels, summarized as follows (Exhibit D):

Capitalized Management Fee/Rushmore:

REDACTED TABLE

Net Decrease In Revenue:

REDACTED TABLE

48. PETITIONER'S REP-3 testified that he believes the County's assessed value includes the value for intangible property. He stated that he was not engaged to do a full appraisal review, but did review the County's analysis submitted to the Board of Equalization. PETITIONER'S REP-3 stated that there is no clear allocation or methodology provided by the County. He stated that he does not see a deduction for franchise and management fees, the expenses are not consistent with his conclusions, and the County used upscale comparables to derive a capitalization rate, and the subject is a midscale hotel. (PETITIONER'S REP-3 Testimony and Exhibit F).

49. RESPONDENT'S REP-2 testified on behalf of the County. He is a certified general appraiser. RESPONDENT'S REP-2 has been a licensed appraiser for fifteen years, and the last nine to ten years have been focused on commercial property. He stated that he values a lot of the larger commercial properties for the County, including hotel properties. (RESPONDENT'S REP-2 Testimony).
50. RESPONDENT'S REP-2 explained that for most commercial properties in the county, they gather lease and sales information and build a statistical model. He stated that for hotel properties, the County does not have enough data to do a statistical model. RESPONDENT'S REP-2 explained that he keeps a spreadsheet with all of the hotels in the county, and classifies the hotels by location and grade. He stated that he calls each hotel every year for ADR and occupancy information. RESPONDENT'S REP-2 stated that personal property values are not always finalized by the time the assessment roll closes, so the County uses the prior year's personal property value in its analysis. He stated that the County also looks at market REVPAR, as well as the Rocky Mountain Lodging Report. RESPONDENT'S REP-2 said that the County allows for expenses and reserves, uses a higher capitalization rate to account for intangibles, and loads the capitalization rate. He stated that the County looks at its cost approach, compared to an income approach, and then compares the value to a sales comparison approach. (RESPONDENT'S REP-2 Testimony).
51. RESPONDENT'S REP-2 stated that the County does not do a specific breakout of a value for intangibles. However, he maintained that the County removes intangibles from the income stream in its analysis, and is conservative in its valuation of hotel properties. He explained that for those sales for which they have a capitalization rate, they increase the capitalization rate by %%%%. The County also looks at sales, and tries to make sure that the assessed value is between %%%% and %%%% lower than the sales price. RESPONDENT'S REP-2 stated that for the last few years, he has also prepared a discounted cash flow analysis as a back-up. (RESPONDENT'S REP-2 Testimony).
52. RESPONDENT'S REP-2 stated that the capitalization rate was higher for hotel properties than other commercial and retail properties. He explained that hotels are generally higher due to ongoing expenses, having a nightly turnover, and repeated marketing. RESPONDENT'S REP-2 stated that the capitalization rate is an indication of the risk to an investor. (RESPONDENT'S REP-2 Testimony).
53. In support of the inflation adjusted value, the County submitted the following income approach (Exhibit R-1):
- REDACTED TABLE

54. The County's income approach was based on the subject's REVPAR reported by the Taxpayer for 2018. The County noted that the room revenue divided by ##### rooms divided by 365 days indicates REVPAR of \$\$\$\$\$, not the \$\$\$\$\$ initially reported by the Taxpayer. (Exhibit R-1).
55. The County used an expense rate of %%%%%%%%% for all limited-service hotel properties, and %%%%%%%%% for all full-service hotels, which includes franchise and management fees. RESPONDENT'S REP-2 stated that because it is doing mass appraisal, the County reviews all available information and tries to come up with an expense percentage that can be applied to all hotels. He stated that there is a difference in rates between limited and full service hotels, as full service hotels have higher expenses. (RESPONDENT'S REP-2 Testimony).
56. The reported expenses for the subject were \$\$\$\$\$ for 2018. The County did not rely upon this expense amount as it appeared to be higher than typical. The income analysis based on industry numbers has \$\$\$\$\$ reported for expenses. The County's %%%%%%%%% expense ratio indicates an amount of \$\$\$\$\$, which was used in the County's income analysis. (Exhibit R-1).
57. In support of its %%%%%%%%% capitalization rate, the County relied on market publications from CBRE, IRR Viewpoint, Situs PERC Real Estate Report, and USRC Hotel Investment Survey. The published capitalization rates ranged from %%%%%%%%% to %%%%%%%%%. (Exhibit R-1).
58. In addition to the published capitalization rates, the County relied upon local sales, with an average capitalization rate of %%%%%%%%%, and a median capitalization rate of %%%%%%%%%. Following are the local sales relied upon by the County (Exhibit R-1):
- REDACTED TABLE
59. RESPONDENT'S REP-2 stated that the County uses the higher end of the range for capitalization rates, noting that the capitalization rates used by the County are higher than actual capitalization rates for local sales. (RESPONDENT'S REP-2 Testimony).
60. The County provided the following comparable sales (Exhibit R-1):
- REDACTED TABLE
61. The County values hotels by, and places the most weight on, the income approach. Comparable sales are considered to help establish a value. The assessed value is typically adjusted to %%%%%%%%% less than the sales price because hotel sales include personal property and intangible value. (RESPONDENT'S REP-2 Testimony and Exhibit R-1).
62. The County provided information on the sales of hotel properties between 2016 and 2018 and the assessed value of each property for the tax year following the sale. RESPONDENT'S REP-2 noted that the assessed value is an average of %%%%%%%%% lower than the sales price for the following properties (Exhibit R-1, RESPONDENT'S REP-2 Testimony):

REDACTED TABLE

63. The County provided the following sales of unbranded hotels (Exhibit R-1):

REDACTED TABLE

64. RESPONDENT'S REP-2 pointed out that the unbranded sales were sold for higher than the assessed value of the subject property, on a price per room basis. (RESPONDENT'S REP-2 Testimony).

65. RESPONDENT'S REP-2 stated that a cost approach is “built-in” to the data collection software used by the County. He noted that the hotel characteristics are updated in the data collection software every five years, and so the cost approach may not be as accurate. The County’s cost approach arrived at a rounded value of \$\$\$\$\$ for the subject property, as follows (Exhibit R-1):

REDACTED TABLE

66. RESPONDENT'S REP-2 testified that he prepared a discounted cash flow, as a check on the assessed value, but did not include the analysis in his write-up. He provided an article dated October 5, 2020 by Akish Ditta, indicating that the discounted cash flow is the most appropriate method for valuing hotels. Mr. Ditta’s article specifically addressed the hotel market in India during COVID. RESPONDENT'S REP-2 stated that the purpose of including the article was to show that there are other ways to value hotel properties, and noted that each of the approaches should be able to be reconciled into one value. (Exhibit R-1 and RESPONDENT'S REP-2 Testimony).

67. RESPONDENT'S REP-2 included in his write-up a December 18, 2005 article from hotelnewsresource.com, “The Rushmore Approach vs. the Business Enterprise Approach the Judge Renders His Decision.” RESPONDENT'S REP-2 noted that the article discusses a New Jersey tax appeal in which the Rushmore approach prevailed. He stated that the property owner’s approach was shown to be double counting, and that the Rushmore approach, which relied on comparable properties, was more reliable. (Exhibit P-1 and RESPONDENT'S REP-2 Testimony).

68. RESPONDENT'S REP-2 included in his write-up an article from ablawfl.com that discusses the *Singh* case. RESPONDENT'S REP-2 noted that the decision did not reject the Rushmore approach outright, but the way it was applied in that specific case. (Exhibit P-1 and RESPONDENT'S REP-2 Testimony).

69. RESPONDENT'S REP-2 testified that he has a lot of contacts in the hotel valuation industry, and that most have never heard of the net-gain approach the Taxpayer has used. He stated that for lending purposes, the net-gain approach is not used, but the Rushmore approach is. He argued that it would be inappropriate to use a methodology not used in the market. (RESPONDENT'S REP-2 Testimony).

70. In rebuttal, the County submitted a paper by Stephen Rushmore titled “In Defence of the ‘Rushmore Approach’ for Valuing the Real Property Component of a Hotel.” Mr. Rushmore wrote, “[t]he deduction for a return on a hotel’s working capital is another ploy some property tax appraisers used to decrease the income attributed to the real property component. This deduction has no basis in reality because hotels do not usually have positive working capital...” Mr. Rushmore also suggested that a check of the reasonableness of the conclusions derived from the business enterprise and the Rushmore approaches is to look at how the cost approach might be applied. He wrote, “[t]he theory behind the cost approach is that the value of the real property component of a new hotel is the cost to acquire land and construct the improvements. The value of the business component would therefore be the difference in the value derived by capitalizing net income using the income approach and the value derived by the cost approach.”
71. RESPONDENT'S REP-2 stated that he has concerns with the Taxpayer’s appraisal methodology. Specifically, he noted that the two unbranded hotels are inferior to the subject property. RESPONDENT'S REP-2 argued that there is a difference in location, amenities, and quality that should be accounted for. Additionally, he noted that branded hotels will typically have expenses, such as franchise fees and reservation fees, that unbranded hotels do not.
72. As part of its rebuttal to the Taxpayer’s appraisal, the County submitted photographs and information on the unbranded comparables used in the Taxpayer’s appraisal. BUSINESS-5 is a motel-like property. It is located next to a homeless shelter on STREET-1, and is in an inferior area with little visibility from STREET-1. BUSINESS-5 has few amenities when compared to other hotel properties. BUSINESS-6 is a hostel. Guests pay per bed, not per room, and there are no private bathrooms. The location, quality of construction, and condition are inferior to the subject. The property has no amenities, such as a swimming pool, hot tub, or business center. (Exhibit RR-2).
73. The County indicated that the Assessor’s Office verified the sales price of the Taxpayer’s first comparable sale, and that it sold for \$\$\$\$\$, not the \$\$\$\$\$ reported by the Taxpayer. (Exhibit RR-2).
74. The County provided additional information on the Taxpayer’s third comparable sale. The Taxpayer reported that the property sold in DATE for \$\$\$\$\$. The County noted that the property sold in DATE for \$\$\$\$\$ and no longer operates as a hotel. The property has been converted to studio apartments. (Exhibit RR-2).
75. In rebuttal, PETITIONER'S REP-3 testified that he does not believe the County followed the Rushmore approach, as the fees were not separated out. Further, he noted that the County’s

write-up does not contain specific allocations of value between real, personal, and intangible property. (PETITIONER'S REP-3 Testimony).

76. PETITIONER'S REP-3 stated he believes the County erred in using the same expense rate for all hotels of the same class. He stated that the fees differ so much by hotel, and non-branded hotels do not have franchise fees. (PETITIONER'S REP-3 Testimony).
77. PETITIONER'S REP-3 stated that the County's adjustment of the capitalization rate is not used in Rushmore, or any appraisal guide that he is aware of to account for intangible property. (PETITIONER'S REP-3 Testimony).

Commission Factual Analysis

78. The County's capitalization rate of %%% is better supported. The County provided capitalization rates from local sales that had an average capitalization rate of %%% and a median capitalization rate of %%%, supported by published rates ranging from %%% to %%%. The Taxpayer used an %%% capitalization rate that was in excess of the %%% brand specific capitalization rate provided by BUSINESS-2. Additionally, there was no explanation as to why the subject property would be at the high end of the range. The effective tax rate of %%% should be added to the %%% capitalization rate, for an overall rate of %%%.
79. The non-branded hotels used in the Taxpayer's appraisal to determine the difference in revenue between a branded and non-branded hotel are inferior to the subject property. The Taxpayer has not shown that the difference in revenue is solely due to the brand of the hotel flag, and not due to physical differences in the size, location, and amenities. Thus, the Taxpayer's net decrease in revenue method of determining the business enterprise value is not reliable.
80. The Taxpayer's methodology effectively double counts the management fees. In its calculation of the business enterprise value, the Taxpayer capitalized the management fee of \$\$\$\$ (%% of revenue) to arrive at the business enterprise value of \$\$\$\$\$. In its determination of value, the Taxpayer's income approach deducted the management fee expense of \$\$\$\$\$, resulting in a net operating income of \$\$\$\$\$. The Taxpayer's appraisal capitalizes the net income, and then makes a deduction for "business enterprise value," removing the value indicated by capitalizing the management fee, which effectively removes the income a second time.
81. The indicated value of the subject property contains personal property. Thus, it is necessary to remove the value of the personal property to arrive at the real property value for taxation purposes. The Taxpayer had declared the value of its personal property used at the subject property to be \$\$\$\$ for the 2018 tax year, according to the County records. The Taxpayer used a figure of \$\$\$\$\$, which was the amount of personal property reported to the County for the 2019

tax year. The Commission finds there is good cause to deduct the personal property value of \$\$\$\$ from the indicated value for the subject property, as the 2019 personal property values had not been finalized as of the January 1, 2019 lien date.

82. The Commission acknowledges that it is necessary to address intangible value for purposes of ad valorem taxation. The Taxpayer has argued that the assessed value of the subject property improperly captures intangible “business enterprise value.” The Taxpayer has not sustained its burden of proof to establish the value of intangible property in this matter. The Taxpayer attempted to value the business enterprise value, but as previously noted double counted the management fees in doing so.
83. The County’s income approach starts with the same potential revenue as the Taxpayer’s branded income approach, \$\$\$\$\$. The County then included \$\$\$\$ of miscellaneous income, taken from the Taxpayer’s profit and loss statement submitted to the Board of Equalization, for a total revenue of \$\$\$\$\$. The Taxpayer included miscellaneous income of \$\$\$\$\$, for a total revenue of \$\$\$\$\$. It is unclear how the Taxpayer arrived at the miscellaneous income amount used in its analysis, and thus, the Commission finds the miscellaneous income reported on the Taxpayer’s profit and loss statement, and used by the County, to be more persuasive. The County’s total expenses, excluding tax and including reserves were \$\$\$\$\$, while the Taxpayer’s total expenses were \$\$\$\$\$. After capitalizing the effective income at %%%%, the County’s indicated value is \$\$\$\$\$, after removing the value of personal property.
84. The sales comparison approach is not convincing. As noted by the parties, the market relies primarily on the income approach. Further, Utah is a non-disclosure state. It is not known whether the sales were of the business and the underlying property together or whether they were sales of property only. The Taxpayer’s comparable sales ranged from \$\$\$\$ to \$\$\$\$ per square foot, and the assessed value of the subject property was \$\$\$\$ per square foot. The County’s comparable sales ranged from \$\$\$\$ per room to \$\$\$\$ per room, and the assessed value of the subject was \$\$\$\$ per room. Without more information about what was sold in each instance, the Taxpayer’s sales comparison approach is suspect.
85. The Commission finds the value of the subject property to be the Board of Equalization value of \$\$\$\$.

APPLICABLE LAW

Utah Code Ann. §59-2-103(1) provides for the assessment of property, as follows:

All tangible taxable property located within the state shall be assessed and taxed at a uniform and equal rate on the basis of its fair market value, as valued on January 1, unless otherwise provided by law.

For property tax purposes, "fair market value" is defined in Utah Code Ann. §59-2-102(13), as follows:

"Fair market value" means the amount at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts. For purposes of taxation, "fair market value" shall be determined using the current zoning laws applicable to the property in question, except in cases where there is a reasonable probability of a change in the zoning laws affecting that property in the tax year in question and the change would have an appreciable influence upon the value.

A person may appeal a decision of a county board of equalization, as provided in Utah Code Ann. §59-2-1006, in pertinent part, below:

- (1) Any person dissatisfied with the decision of the county board of equalization concerning the assessment and equalization of any property, or the determination of any exemption in which the person has an interest, may appeal that decision to the commission by filing a notice of appeal specifying the grounds for the appeal with the county auditor within 30 days after the final action of the county board...
- (3) In reviewing the county board's decision, the commission may:
 - (a) admit additional evidence;
 - (b) issue orders that it considers to be just and proper; and
 - (c) make any correction or change in the assessment or order of the county board of equalization.
- (4) In reviewing evidence submitted to the commission by or on behalf of an owner or a county, the commission shall consider and weigh:
 - (a) the accuracy, reliability, and comparability of the evidence presented by the owner or the county;
 - (b) if submitted, the sales price of relevant property that was under contract for sale as of the lien date but sold after the lien date;
 - (c) if submitted, the sales offering price of property that was offered for sale as of the lien date but did not sell, including considering and weighing the amount of time for which, and manner in which, the property was offered for sale; and
 - (d) if submitted, other evidence that is relevant to determining the fair market value of the property.
- (5) In reviewing the county board's decision, the commission shall adjust property valuations to reflect a value equalized with the assessed value of other comparable properties if:
 - (a) the issue of equalization of property values is raised; and
 - (b) the commission determines that the property that is the subject of the appeal deviates in value plus or minus 5% from the assessed value of comparable properties.

The assessment of property after there has been a reduction in value is addressed in Utah Code Ann. §59-2-301.4, below, in pertinent part:

- (1) As used in this section, "valuation reduction" means a reduction in the value of property on appeal if that reduction was made:
 - (a) within the three years before the January 1 of the year in which the property is being assessed; and

- (b) by a:
 - (i) county board of equalization in a final decision;
 - (ii) the commission in a final unappealable administrative order; or
 - (iii) a court of competent jurisdiction in a final unappealable judgment or order.
- (2) In assessing the fair market value of property subject to a valuation reduction, a county assessor shall consider in the assessor's determination of fair market value:
 - (a) any additional information about the property that was previously unknown or unaccounted for by the assessor that is made known on appeal; and
 - (b) whether the reasons for the valuation reduction continue to influence the fair market value of the property.
- (3) This section does not prohibit a county assessor from including as part of a determination of the fair market value of property any other factor affecting the fair market value of the property...

Utah Code Ann. §59-2-109 addresses the burden of proof in certain circumstances, as follows:

- (1) As used in this section:
 - (a) "Final assessed value" means:
 - (i) for real property for which the taxpayer appealed the valuation or equalization to the county board of equalization in accordance with Section 59-2-1004, the value given to the real property by a county board of equalization after the appeal;
 - (ii) for real property for which the taxpayer or a county assessor appealed the valuation or equalization to the commission in accordance with Section 59-2-1006, the value given to the real property by:
 - (A) the commission, if the commission has issued a decision in the appeal; or
 - (B) a county board of equalization, if the commission has not yet issued a decision in the appeal; or
 - (iii) for real property for which the taxpayer or a county assessor sought judicial review of the valuation or equalization in accordance with Section 59-1-602 or Title 63G, Chapter 4, Part 4, Judicial Review, the value given the real property by the commission.
 - (b) "Inflation adjusted value" means the value of the real property that is the subject of the appeal as calculated by the county assessor in accordance with Subsection 59-2-1004(2)(c).
 - (c) "Qualified real property" means real property:
 - (i) that is assessed by a county assessor in accordance with Part 3, County Assessment;
 - (ii) for which:
 - (A) the taxpayer or a county assessor appealed the valuation or equalization for the previous taxable year to the county board of equalization in accordance with Section 59-2-1004 or the commission in accordance with Section 59-2-1006;
 - (B) as a result of the appeal described in Subsection (1)(c)(ii)(A), a county board of equalization or the commission gave a final assessed value that was lower than the assessed value; and
 - (C) the assessed value for the current taxable year is higher than the inflation adjusted value; and
 - (iii) that, between January 1 of the previous taxable year and January 1 of the current taxable year, has not been improved or changed beyond the improvements in place on January 1 of the previous taxable year.

- (2) For an appeal involving the valuation of real property to the county board of equalization or the commission, the party carrying the burden of proof shall demonstrate:
 - (a) substantial error in:
 - (i) for an appeal not involving qualified real property:
 - (A) if Subsection (3) does not apply and the appeal is to the county board of equalization, the original assessed value;
 - (B) if Subsection (3) does not apply and the appeal is to the commission, the value given to the property by the county board of equalization; or
 - (C) if Subsection (3) applies, the original assessed value; or
 - (ii) for an appeal involving qualified real property, the inflation adjusted value; and
 - (b) a sound evidentiary basis upon which the county board of equalization or the commission could adopt a different valuation.
- (3)
 - (a) The party described in Subsection (3)(b) shall carry the burden of proof before a county board of equalization or the commission, in an action appealing the value of property:
 - (i) that is not qualified real property; and
 - (ii) for which a county assessor, a county board of equalization, or the commission asserts that the fair market value of the assessed property is greater than the original assessed value for that calendar year.
 - (b) For purposes of Subsection (3)(a), the following have the burden of proof:
 - (i) for property assessed under Part 3, County Assessment:
 - (A) the county assessor, if the county assessor is a party to the appeal that asserts that the fair market value of the assessed property is greater than the original assessed value for that calendar year; or
 - (B) the county board of equalization, if the county board of equalization is a party to the appeal that asserts that the fair market value of the assessed property is greater than the original assessed value for that calendar year; or
 - (ii) for property assessed under Part 2, Assessment of Property, the commission, if the commission is a party to the appeal that asserts that the fair market value of the assessed property is greater than the original assessed value for that calendar year.
 - (c) For purposes of this Subsection (3) only, if a county assessor, county board of equalization, or the commission asserts that the fair market value of the assessed property is greater than the original assessed value for that calendar year:
 - (i) the original assessed value shall lose the presumption of correctness;
 - (ii) a preponderance of the evidence shall suffice to sustain the burden for all parties; and
 - (iii) the county board of equalization or the commission shall be free to consider all evidence allowed by law in determining fair market value, including the original assessed value.
- (4)
 - (a) The party described in Subsection (4)(b) shall carry the burden of proof before a county board of equalization or the commission in an action appealing the value of qualified real property if at least one party presents evidence of or otherwise asserts a value other than inflation adjusted value.
 - (b) For purposes of Subsection (4)(a):

- (i) the county assessor or the county board of equalization that is a party to the appeal has the burden of proof if the county assessor or county board of equalization presents evidence of or otherwise asserts a value that is greater than or equal to the inflation adjusted value; or
 - (ii) the taxpayer that is a party to the appeal has the burden of proof if the taxpayer presents evidence of or otherwise asserts a value that is less than the inflation adjusted value.
- (c) The burdens of proof described in Subsection (4)(b) apply before a county board of equalization or the commission even if the previous year's valuation is:
- (i) pending an appeal requested in accordance with Section 59-2-1006 or judicial review requested in accordance with Section 59-1-602 or Title 63G, Chapter 4, Part 4, Judicial Review; or
 - (ii) overturned by the commission as a result of an appeal requested in accordance with Section 59-2-1006 or by a court of competent jurisdiction as a result of judicial review requested in accordance with Section 59-1-602 or Title 63G, Chapter 4, Part 4, Judicial Review.

For a qualified real property proceeding before the Tax Commission, Utah Code Ann. §59-2-109(4)(b) provides that the burden of proof is not only on the county where the county proposes a value that is greater than or equal to the subject property's inflation adjusted value, but that the burden of proof is also on the taxpayer where the taxpayer proposes a value that is less than the property's inflation adjusted value. To prevail in this case, Subsection 59-2-109(2) provides that each of the parties must: 1) demonstrate substantial error in the inflation adjusted value; and 2) provide a sound evidentiary basis upon which the party's proposed value could be adopted.

CONCLUSIONS OF LAW

- A. The Utah Constitution, Article XIII, Sec. 2 provides, "So that each person and corporation pays a tax in proportion to the fair market value of his, her or its tangible property, all tangible property in the state that is not exempt under the laws of the United States or under this Constitution shall be: (a) assessed at a uniform and equal rate in proportion to its fair market value, to be ascertained as provided by law; and (b) taxed at a uniform and equal rate."
- B. Utah statutes implement the constitutional provision and provide that property tax is assessed on the basis of the property's "fair market value" as of January 1 of the tax year at issue pursuant to Utah Code Ann. §59-2-103. "Fair market value" is defined by statute as the "amount for which property would exchange hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts." *See* Utah Code Ann. §59-2-102.
- C. The subject property is a "qualified real property" as that term is defined in Utah Code Ann. § 59-2-109(1)(c) for the 2019 tax year. Subsections 59-2-109(1)(c) and 59-2-1004(1)(e) provide that a property is a "qualified real property" if the following requirements are met: the property's value was reduced in the appeal process for the prior tax year; the property's current year's

assessed value was higher than its inflation adjusted value; and between the prior year's lien date and the current year's lien date, the property has not been "improved" or "changed." In this appeal, the Taxpayer appealed the valuation for the 2018 tax year to the County Board of Equalization in accordance with Section 59-2-1006, as a result of that appeal the final assessed value was lower than the 2018 original assessed value, the original assessed value for the 2019 tax year was higher than the inflation adjusted value, and neither party asserted that between January 1, 2018 and January 1, 2019 the property had been improved or changed beyond the improvements in place on January 1, 2018. The subject property's original assessed value for the 2018 tax year was \$\$\$\$\$. The Taxpayer appealed to the County Board of Equalization and the subject property's 2018 assessed value was reduced to \$\$\$\$\$ by the COUNTY-1 Board of Equalization. The County computed the subject property's inflation adjusted value for the 2019 tax year as \$\$\$\$\$ in accordance with Utah Code Ann. §59-2-1004(2)(c). The subject property's original assessed value for the 2019 tax year was \$\$\$\$\$, which is greater than the 2019 inflation adjusted value of \$\$\$\$\$. The subject property has not been improved or changed between January 1, 2018 and January 1, 2019. Thus, the Commission finds that the subject property is a qualified real property under Utah Code Ann. §59-2-109 for the 2019 tax year.

- D. The subject property was the subject of a "valuation reduction" resulting from an appeal for the 2018 tax year. Thus, the "valuation reduction" provisions described in Utah Code Ann. §59-2-301.4 apply in this matter. The original assessed value for the 2018 tax year was \$\$\$\$\$ and was reduced to \$\$\$\$\$ by the COUNTY-1 Board of Equalization. If a valuation reduction occurs within three years before the lien date at issue, the county assessor is required to consider the valuation reduction in assessing the fair market value of the property. In accordance with Utah Code Ann. §59-2-301.4(2), the County shall consider "(a) any additional information about the property that was previously unknown or unaccounted for by the assessor that is made known on appeal; and (b) whether the reasons for the valuation reduction continue to influence the fair market value of the property" when determining the property's fair market value. The 2018 valuation reduction was based on market conditions. The Commission finds that the market conditions that supported a valuation reduction in 2018 have changed for the 2019 tax year. The Commission finds that the income, expenses, and capitalization rate used in 2018 do not reflect current market trends as indicated by the County's submitted information showing the market data for lease rates, vacancy rates, and capitalization rates. The Commission finds that the County took into consideration the market conditions influencing the value of the subject property for the 2019 tax year.

- E. The burden of proof in this case is on both the Taxpayer and the County. For a qualified real property proceeding before the Tax Commission, Utah Code Ann. §59-2-109(4)(b) provides that the burden of proof is not only on the county where the county proposes a value that is greater than or equal to the subject property's inflation adjusted value, but that the burden of proof is also on the taxpayer where the taxpayer proposes a value that is less than the property's inflation adjusted value. In this appeal, the County is proposing a value of \$\$\$\$\$, which is equal to the inflation adjusted value, and the Taxpayer is proposing a value of \$\$\$\$\$ which is less than the inflation adjusted value. Thus to prevail in this case, Subsection 59-2-109(2) provides that each of the parties must meet a two fold burden of proof and demonstrate both a substantial error in the inflation adjusted value and provide a sound evidentiary basis upon which the party's proposed value could be adopted.
- F. The Commission concludes that the parties have shown that there may be error in the inflation adjusted value. The County's appraiser explained that he was conservative with his valuation, he had adjusted capitalization rates upward, excluded value based on personal property amounts, and ensured the assessed value of hotels that sold was approximately %%% less than the sales price of the hotel to account for intangible value. However, the County's valuation methodology did not separately state the amount of intangible property that was removed from the going concern value of the hotel, which calls into question whether there is an error in the inflation adjusted value.
- G. The Commission concludes, based on the factual analysis above, that the Taxpayer has not met its burden of proof to provide a sound evidentiary basis to support its requested value of \$\$\$\$\$. The Taxpayer has not established the value of intangible property. The Taxpayer's net decrease in revenue method was found to be unreliable, the Taxpayer's branded income approach effectively removes management fees twice, and the Taxpayer's capitalization rate was unpersuasive. The Commission further notes that the Taxpayer's methodology has previously been presented to the Commission, and the Commission noted, "[t]his decision should not be viewed as an endorsement of any of the methods employed by the Taxpayer's appraiser to value intangible property."¹ That same observation applies equally to the facts presented in this case.
- H. The Commission concludes, based on the factual analysis above, that the County's evidence supports a value that is higher than the inflation adjusted value of \$\$\$\$\$. The County's income approach was found to be the most persuasive evidence of value. The County's income approach was based on the income from the Taxpayer's profit and loss statements, the expense rate was

¹ See Appeal No. 19-2340. Prior Commission decisions are available in redacted format online at tax.utah.gov/commission-office/decisions.

more favorable to the Taxpayer, and the capitalization rate used was better supported. The County also removed the value of the personal property. The County's income approach provided a sound evidentiary basis to support the Board of Equalization value of \$\$\$\$\$.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the value of the subject property was \$\$\$\$\$ as of the January 1, 2019 lien date, and sustains the Board of Equalization value. It is so ordered.

DATED this ____ day of ____, 2023.

John L. Valentine
Commission Chair

Michael J. Cragun
Commissioner

Rebecca L. Rockwell
Commissioner

Jennifer N. Fresques
Commissioner

Notice of Appeal Rights: You have twenty (20) days after the date of this order to file a Request for Reconsideration with the Tax Commission Appeals Unit pursuant to Utah Code Ann. §63G-4-302. A Request for Reconsideration must allege newly discovered evidence or a mistake of law or fact. If you do not file a Request for Reconsideration with the Commission, this order constitutes final agency action. You have thirty (30) days after the date of this order to pursue judicial review of this order in accordance with Utah Code Ann. §59-1-601 et seq. and §63G-4-401 et seq.