APPEAL #: 20-714
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. 20-714 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 8, 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 has two associated parcels, ##### and #####. Portions of the parcels are used for the hotel, with the remainder excess land. A portion of the value for the two parcels is subtracted from the value of the subject property. The subtracted value is $$$$$. (Exhibit R-1).
4. The COUNTY-1 Assessor's Office valued the subject property at $$$$$ as of the January 1, 2019 lien date. (Pleadings).
5. The COUNTY-1 Board of Equalization ("County") upheld the original assessed value of $$$$$. (Pleadings).
6. The Taxpayer asked the Commission to reduce the value of the subject property to $$$$$. (Exhibit D).
7. The County asked the Commission to sustain the Board of Equalization value of $$$$$. (RESPONDENT'S REP-2 Testimony).
8. The value of the subject property was not appealed in 2016, 2017 or 2018. (Exhibit R-1).
9. 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).
10. 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).

11. 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).
12. 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).
13. 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).
14. 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).
15. 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).
16. 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).
17. The subject property is operated as a BUSINESS-1, which is classified as a midscale, limited service hotel. The national average daily rate is $$$$$. The franchise hotel group is BUSINESS-1, and franchise fees are %%%%. BUSINESS-2 reports there is %%%%% intangible business value, and a capitalization rate of %%%%% for this type of property. (Exhibit A).
18. 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).
19. 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).

20. 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).
21. 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).
22. PETITIONER'S REP-4 stated that the Rushmore approach 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).
23. 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).
24. 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).
25. 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).
26. 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).

27. 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).
28. PETITIONER'S REP-3 determined that developing a cost approach was not necessary for the subject property, and prepared the appraisal relying upon an income approach and sales comparison approach. He used a 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).
29. For limited-service hotels the average cost of FF&E is $17,100, 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 replacement cost new. However, the appraisal used an FF&E value of $$$$$, based on the Taxpayer's actual personal property amount. (Exhibits D and E).
30. PETITIONER'S REP-3 developed a sales comparison approach, and determined a value of $$$$$ per square foot, or $$$$$ for the subject property. He subtracted from that $$$$$ for the "hotel brand premium" and concluded a rounded value of $$$$$ for the subject property. (Exhibit D).
31. 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).
32. Following are the comparable sales used in PETITIONER'S REP-3' appraisal (Exhibit D):

    REDACTED TABLE
33. 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).
34. 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).

35. PETITIONER'S REP-3 concluded a value of $$$$$ for the subject property using an income approach, summarized as follows (Exhibit D):
    REDACTED TABLE
36. 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).
37. Following is a summary of the subject's profit and loss for January 1, 2018 through December 31, 2018 (Exhibit D):
    REDACTED TABLE
38. PETITIONER'S REP-3 stated that the expense categories can vary, depending on the class of the 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).
39. 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
40. 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).
41. Following is a summary of the 2018 CBRE operating expenses for the Mountain and Pacific Region (Exhibit D):

	2018 Dollars per Available Room	Change from Prior Year	2018 Percent of Revenue	2018 Dollars per 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%		

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

    REDACTED TABLE

43. 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

44. 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).
45. 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).
46. 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 says that the County allows for expenses, 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 the income approach, and then compares the value to the sales comparison approach. (RESPONDENT'S REP-2 Testimony).

47. 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).

48. RESPONDENT'S REP-2 stated that the capitalization rate is 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. He stated that the County has not seen any property selling at a %%%%% capitalization rate, as used in the Taxpayer's appraisal. (RESPONDENT'S REP-2 Testimony).

49. In support of the Board of Equalization value, the County submitted the following income approach (Exhibit R-1):

    REDACTED TABLE

50. The County's income approach is based on the subject's REVPAR as reported to the Board of Equalization. The County noted that during its 2019 visit to the subject property, the Assessor's Office was given an ADR of $$$$$ and an occupancy of %%%%%, resulting in a REVPAR of $$$$$. (Exhibit R-1 and BOE Record).

51. The County used an expense rate of %%%%% for all limited-service hotel properties, and %%%%% for all full-service hotels. 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).

52. 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).
53. 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
54. 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).
55. The County provided the following comparable sales (Exhibit R-1):
    REDACTED TABLE
56. The County noted that a source indicated the subject property sold for $$$$$ on DATE. However, the Assessor's Office has not validated the sales price, and the conditions of the sale are not known. (Exhibit R-1).
57. The County values hotels by, and places the most weight on, the income approach. Comparable sales are considered to help establish a value. The assessed value is typically adjusted to %%%%% less than the sales price because hotel sales include personal property and intangible value. (Exhibit R-1).
58. The County provided information on the sales of hotel properties between 2016 and 2018 and the assessed value of each property for the tax year following the sale. RESPONDENT'S REP-2 noted that the assessed value is an average of %%%%% lower than the sales price for the following properties (Exhibit R-1, RESPONDENT'S REP-2 Testimony):
    REDACTED TABLE
59. The County provided the following sales of unbranded hotels (Exhibit R-1):
    REDACTED TABLE
60. RESPONDENT'S REP-2 pointed out that the unbranded sales were sold for higher than the assessed value of the subject property, on a price per room basis. (RESPONDENT'S REP-2 Testimony).
61. RESPONDENT'S REP-2 stated that a cost approach is "built-in" to the data collection software used by the County. He noted that the hotel characteristics are updated in the data collection software every five years, and so the cost approach may not be as accurate. The County's cost approach arrived at a rounded value of $$$$$ for the subject property, as follows (Exhibit R-1):
    REDACTED TABLE

62. 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).
63. 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).
64. 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).
65. 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).
66. 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." (Exhibit RR-1).

67. RESPONDENT'S REP-2 stated that he has concerns with the Taxpayer's appraisal methodology. Specifically, 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.
68. 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. The County noted that the BUSINESS-5 is the best of the unbranded comparables used by the Taxpayer, but is located in an inferior location. (Exhibit RR-2).
69. The County provided additional information on the Taxpayer's first comparable sale. The Taxpayer reported that the property sold in DATE for $$$$$. The County noted that employees of the Assessor's Office had verified that the property sold for $$$$$. (Exhibit RR-2).
70. The County provided additional information on the Taxpayer's third comparable sale. The Taxpayer reported that the property sold in DATE for $$$$$. The County noted that the property sold in DATE for $$$$$ and no longer operates as a hotel. The property has been converted to studio apartments. (Exhibit RR-2).
71. 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).
72. PETITIONER'S REP-3 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).
73. 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).

<u>Commission Factual Analysis</u>

74. 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 a %%%%% capitalization rate that was in excess of the %%%%% brand specific capitalization rate provided by BUSINESS-2, and at the top end of the

%%%%%-%%%%% range for the published rates by RERC. The location of the properties used to develop the Taxpayer's capitalization rate is unknown. Additionally, there was no explanation as to why the subject property would be at the high end of the range.

75. The Tax rate of %%%%% should be added to the %%%%% capitalization rate, for an overall rate of %%%%%.
76. The Taxpayer capitalized both the income that was rent-adjusted for a non-branded property, and the branded revenue. However, the Commission rejected the Taxpayer's overall capitalization rate of 11.51%, and found the County's overall capitalization rate of %%%%% to be better supported. Applying the %%%%% capitalization rate to the net operating income of each of the Taxpayer's approaches, indicates a higher value than that requested by the Taxpayer.
77. 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 due solely to the brand of the hotel flag, and not physical differences in the size, location, and amenities. Thus, the Taxpayer's net decrease in revenue method of determining the business enterprise value and non-branded revenue is not reliable.
78. The Taxpayer's methodology effectively double counts the management fees. In its calculation of the business enterprise value using the Rushmore method, the Taxpayer capitalized the management fee of $$$$$ (5% of revenue) to arrive at the business enterprise value of $$$$$ In its determination of value, the Taxpayer's income approach deducted the management fee expense of $$$$$, resulting in a net operating income of $$$$$. The Taxpayer's appraisal capitalizes the net income, and then makes a deduction for "business enterprise value," removing the value indicated by capitalizing the management fee, which effectively deducts the expense a second time.
79. The indicated value of the subject property contains personal property, thus, it is necessary to remove the value of the personal property to arrive at the real property value for taxation purposes. The Taxpayer used a personal property value of $$$$$, the personal property value reported for the 2019 tax year. The County used a value of $$$$$ for personal property value. The Taxpayer had declared the value of its personal property used at the subject property to be $$$$$ for the 2018 tax year. The Commission finds the 2018 reported personal property value to be the most appropriate, as the 2019 personal property values had not been finalized as of the January 1, 2019 lien date.
80. 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, the methodology of which was previously found to be unreliable and unpersuasive.

81. The Commission finds the value of the subject property to be $$$$$ as of the January 1, 2019 lien date. This is based on the County's income approach value of $$$$$ less the 2018 personal property value of $$$$$, and less $$$$$ for the associated land value.
82. The Taxpayer's sales comparison approach is not convincing. As noted by the parties, the market relies primarily on the income approach. Further, Utah is a non-disclosure state. It is not known whether the sales were of the business and the underlying property together or whether they were sales of property only. The Taxpayer's comparable sales ranged from $$$$$ to $$$$$ per square foot, and the assessed value of the subject property was $$$$$ per square foot. The County's comparable sales ranged from $$$$$ per room to $$$$$ per room, and the assessed value of the subject was $$$$$ per room. Without more information about what was sold in each instance, the Taxpayer's sales comparison approach is suspect.

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.

In a proceeding before the Tax Commission, the burden of proof is generally on the petitioner to support its position. *See Nelson v. Bd. of Equalization of COUNTY-1*, 943 P.2d 1354 (Utah DATE); *Utah Power & Light Co. v. Utah State Tax Comm'n*, 590 P.2d 332 (Utah 1979); *Beaver County v. Utah State Tax Comm'n*, 916 P.2d 344 (Utah 1996); *Utah Railway Co. v. Utah State Tax Comm'n*, 2000 UT 49, 5 P.3d

652 (Utah 2000); and *Fraughton v. Tax Commission*, 2019 UT App 6. To prevail in this case, Utah Code Ann. §59-2-109(2) provides that the petitioner must: 1) demonstrate that the subject property's current value contains error; and 2) provide the Commission with a sound evidentiary basis for changing the subject property's current value to the amount it proposes.

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 not a "qualified real property" as that is defined at Utah Code Ann. §59-2-109(1)(c) for the 2019 tax year. The Taxpayer did not appeal the valuation for the 2018 tax year to the COUNTY-1 Board of Equalization in accordance with Section 59-2-1004.

D. The subject property was not the subject of a "valuation reduction" resulting from an appeal for the 2016, 2017, or 2018 tax years. Thus, the county assessor is not required to consider a valuation reduction in assessing the fair market value of the property in accordance with Utah Code Ann. §59-2-301.4.

E. The burden of proof in this case is on the Taxpayer. To prevail in this case, Utah Code Ann. §59-2-109(2) provides that the Taxpayer has a two fold burden of proof and must: 1) demonstrate that the subject property's current value contains error; and 2) provide the Commission with a sound evidentiary basis for changing the subject property's current value to the amount it proposes.

F. The Commission concludes that the Taxpayer has shown that there may be error in the assessed value. Although the County's appraiser explained that he was conservative with his valuation, had adjusted capitalization rates upward, had excluded value based on personal property amounts, and had ensured that the assessed value of hotels that sold was approximately %%%%% less than the sales price of the hotel to account for intangible value, 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 assessed value.

G. The Commission concludes, based on the factual analysis above, that the Taxpayer has not met its burden to provide a sound evidentiary basis in support of its requested value of $$$$$. The Taxpayer has not established the value of intangible property. Further, the Commission rejected the Taxpayer's capitalization rate, its net decrease in revenue method was found to be unreliable, and the Taxpayer's branded income approach effectively removes management fees twice. The Commission further notes that the same 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. Based on the factual analysis above, the Commission concludes the County's income approach is the best indicator of value. With the correction to the personal property amount, the resulting value for the subject property is $$$$$ as of the January 1, 2019 lien date.

Jan Marshall
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission hereby finds the value of the subject property for the lien date January 1, 2019 to be $$$$$ as of the January 1, 2019 lien date. The COUNTY-1 Auditor is hereby ordered to adjust its records accordingly. 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

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

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.