

ISSUE

What is the true value of the Property as of December 31, 2008 for tax year 2010?¹

POSITION OF THE PARTIES

Petitioner argued as of December 31, 2008 the Assessor failed to (1) account for the state of financial and credit markets,² (2) consider the Property's actual income and expenses, (3) extract the business value and personal property value associated with a hotel property, (4) consider the Property was significantly underperforming, (5) account for the lack of comparable sales, and (6) consider an appropriate capitalization rate in light of then current market conditions. Petitioner sought a reduction in the Property's assessed value to reflect the true value of the real estate in light of market conditions as of December 31, 2008. The Assessor claimed its valuation of the Property was proper based partly on the assessed values of other hotel properties in Cherokee County and applied a lower capitalization rate based in part on the claim that the real estate is a liquid asset.

FINDINGS OF FACT

Having carefully considered the entire record, all testimony, evidence, exhibits and arguments, and taking into account the credibility of the witnesses, I make the following findings of fact:

¹ Respondent valued the Property as of December 31, 2009 at the Cherokee County Board of Assessment Appeals

S.C. Code Ann. § 12-37-3140 provides that for purposes of determining fair market value of real property the date of value is the date "determined on appeal." Tax year 2010 is a non-reassessment or "mid-cycle" tax year in Cherokee County. Prior to a hearing scheduled in this contested case for the fall of 2012, Respondent indicated that it felt that the Property should be valued as of December 31, 2008. Petitioner and Respondent subsequently agreed that the case would not need to be referred back to the Board and stipulated to December 31, 2008 as the date of value for purposes of this hearing.

On June 9, 2010, the South Carolina Attorney General released an advisory opinion stating that the date of value for real property tax assessments is December 31st of the year of the last countywide reassessment (the "Advisory Opinion"). Op. S.C. Atty. Gen. 2010 WL 2678685 (June 9, 2010). The Advisory Opinion creates a conflict between the South Carolina statutes governing real property taxes. The Advisory Opinion further fails to consider a critical interaction of South Carolina real property tax law and taxpayer rights with respect to the taxation of real property. Specifically, the Advisory Opinion does not consider the significant changes to the real property tax system with the enactment of the Real Property Valuation Reform Act of 2007 and the concurrent 2007 amendment to South Carolina Code Ann. §12-60-2510(A)(4) which allows a taxpayer to appeal the appraised value of real property in years in non-reassessment years. Since the parties to this action have stipulated to a December 31, 2008 valuation date in this case, the Court need not address the issue of the appropriate valuation date for mid-cycle appeals.

² The collapse of the financial and credit markets throughout 2008 is evidenced by the failure in September 2008 of Freddie Mac, Fannie Mae, Lehman Brothers, AIG, Washington Mutual, the Troubled Asset Relief Program enacted by the United States Congress in October 2008, and in December 2008 the mergers of Merrill Lynch with Bank of America and Wachovia with Wells Fargo.

1. The ALC has personal and subject matter jurisdiction of this matter.
2. Notice of date, time, place and nature of the ALC Hearing was timely given.
3. Petitioner owns the Property located at 834 Windslow Road in Cherokee County, South Carolina, and designated as Tax Map Number 063-00-00-060.001.
4. Petitioner acquired the Property in May 2008. Petitioner flagged the hotel as Sleep Inn in August 2008. The hotel was not flagged during much of 2008.
5. The hotel consists of a three (3) story building containing and seventy-two (72) parking spaces (including handicap spaces). The Property is an irregular shape containing 1.27 acres and is located on a frontage road directly adjacent to Interstate 85.
6. Cherokee County conducted a county wide reassessment for tax year 2009.
7. This appeal stems from the Assessor's assessment of the Property for tax year 2010.
8. The parties stipulated to December 31, 2008 as the date of value for tax year 2010.³
9. For tax year 2010, Respondent initially valued the Property at a fair market value equal to \$1,962,540, but, after Petitioner's initial appeal, reduced the fair market value of the Property to \$1,876,000.
10. Petitioner timely appealed the Assessor's valuation to the Board.
11. Before the Board, the Assessor valued the Property for tax year 2010 at a fair market value equal to \$1,876,000.⁴
12. The Board affirmed the Assessor's valuation of the Property.
13. Petitioner timely appealed the Board's decision to the ALC.
14. Petitioner and the Assessor agree that the highest and best use of the Property is as a hotel.
15. Commercial real estate is generally valued using three commonly accepted methods for

³ See Note 1, *supra*.

⁴ The Assessor's value of the Property has not changed since December 31, 2008 as demonstrated by the Assessor's stated value of \$1,876,000 as of December 31, 2008, December 31, 2009 and at \$1,880,000 as of December 31, 2012 (as evidenced by the Assessor's determination of value for the tax year 2013 countywide reassessment).

ad valorem tax purposes: (i) the income capitalization approach, (ii) sales comparison approach, and (iii) the cost approach.

16. The cost approach assumes an informed purchaser will not pay more for a property than the cost of producing a substitute property of equal utility.

17. The cost approach is the least useful method of valuing hotel properties given the state of the economic markets as the cost approach does not take into account the lack of available financing, the declining market, and the economic obsolescence and depreciation of improvements to real property. In addition, an informed purchaser would not undertake the cost to construct and operate a hotel in the depressed economic environment present as of December 31, 2008 (the date of value).

18. The sales comparison approach to value assumes a prudent purchaser will not pay more for a property than the cost to acquire a similar property in the competing market.

19. The utility of the sales comparison approach is limited by (i) the state of the economic markets and lack of available financing in December 2008; (ii) the absence of comparable local sales,⁵ and (iii) limited reliability in complex investments such as hotels which include real estate, personal property, and business value.

20. The income capitalization approach is an accepted means for valuing commercial property, *S.C. Tax Comm'n v. S.C. Tax Bd. Of Review*, 287 S.C. 415, 339 S.E.2d 131 (Ct. App. 1985), and is an appropriate valuation methodology for hotel properties. Hotels are traditionally valued and appraised using the income approach as the income approach takes into account the business value of and income generated by the hotel business operated on the real property.

21. The income approach converts net operating income into a value estimating a market

⁵ The Assessor improperly compared the value of the Property to the assessed value of other properties in Cherokee County, claiming that any reduction in value related to the Property would be "unfair" to other taxpayers who had not appealed the assessed value of their hotels. Absolute equality is not attainable, "while our constitution requires equality and uniformity in tax assessments, 'absolute accuracy with respect to valuation and complete equality and uniformity are not practically attainable.'" *Reliance Ins. Co. v. Smith*, 327 S.C. 528, 537 (Ct. App. 1997).

derived overall rate of return. Net income⁶ is calculated prior to debt service and is divided by a capitalization rate to determine the value of the property.

22. The gross income of a hotel property differs from many other commercial properties because an appraiser must extract the hotel's business value, also sometimes described as the intangible value, in order to determine the real estate's "true value" as required by South Carolina law. See S.C. Code Ann. § 12-37-930 (Supp. 2007).

23. At the ALC Hearing, Petitioner offered expert testimony valuing the Property as of December 31, 2008 from Joseph B. Rosen ("Rosen"), a South Carolina licensed general appraiser and Member of the Appraisal Institute with the appraisal firm Rosen Appraisal Associates located in Columbia, South Carolina. Respondent likewise offered one expert witness.

24. The income approach to value is based on the principle that market value is directly related to the property's future income capability. Under the income approach, the projected net income stream of the subject property is divided by the appropriate overall capitalization rate.

25. "In the income capitalization, the present value of the future benefits of property ownership is measured." *Charleston County Assessor v. Nirenblatt, Nirenblatt and Hoffman*, 1997 WL 436048, *5 (citing THE APPRAISAL OF REAL ESTATE, American Institute of Real Estate Appraisers, p. 81 (10th ed. 1992)). The purpose of the income approach is to ascertain the net income an informed buyer believes the property will produce during its remaining useful life. *Id.* However, the information used in determining the value of future benefits under an income approach should be based on the average earnings for a reasonable period of time rather than the income for a single year. *Charleston County Assessor v. Nirenblatt, Nirenblatt and Hoffman*, 1997 WL 436048, *5 (citing *Somers v. City of Meriden*,

⁶ In determining net operating income for purposes of deriving real property value for ad valorem tax purposes under the income approach, the tangible and intangible personal property, and the income derived therefrom, must be separated from the real property's value. See *The Ocean Course Golf Club, Ltd. v. Charleston County Assessor*, 2005 WL 405408, *6-*7 (S.C.A.L.J. Jan. 18, 2005). For example, a hotel owner pays annually a business license tax based on gross income and personal property taxes based on the value of furniture, fixtures and equipment. See S.C. Code Ann. §§ 5-7-30 (2004 & Supp. 2007) and 12-37-210, 12-37-220; 12-37-710 (2000 & Supp. 2007).

174 A. 184 (Conn. 1934); 83 C.J.S. TAXATION § 411 (1954)).

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude the following as a matter of law:

1. South Carolina Code Ann. §12-60-2540 (2000 & Supp. 2007) authorizes the ALC to hear this contested case.
2. This proceeding before the ALC is in the nature of a de novo hearing. *See Sea Pines Plantation Co., Inc. v. Beaufort County Assessor*, 2002 WL 1486969, Docket No. 01-ALJ-17-0018-CC (June 20, 2002).
3. After conducting a hearing, the assigned Administrative Law Judge issues a final decision in a written order containing separate findings of fact and conclusions of law. S.C. Code Ann. § 1-23-350 (2005 & Supp. 2007) and R.P.S.C.A.L.C. Rule 29(c).
4. The purpose of this proceeding is to value real property, not the Petitioner's hotel business located on the Property. *See* S.C. Code Ann. §§ 12-43-220 (e) and 12-37-930 (2000 & Supp. 2007); *See also* S.C. Code Ann. § 12-37-220 (A)(10) (2000 & Supp. 2007) (intangible personal property is exempt from ad valorem taxation).
5. The South Carolina General Assembly has decided that real property must be valued as

follows:

True Value
of no testimony
or evidence
about purchase
price

All property must be valued for taxation at its true value in money which in all cases is the price which the property would bring following reasonable exposure to the market, where both the seller and buyer are willing, are not acting under compulsion, and are reasonably well informed of the uses and purposes for which it is adapted and for which it is capable of being used. S. C. Code Ann. § 12-37-930 (2000 & Supp. 2007) (emphasis added).

6. Initially, the Court must determine the proper date for valuing the Property. *See* S.C. Code Ann. § 12-37-900 (2000 & Supp. 2007); *Ocean Course Golf Club, Ltd.*, 2005 WL 405408, *10; *Lindsey v. S.C. Tax Comm'n*, 302 S.C. 274, 275 n.1, 395 S.E.2d 184, 185 n.1 (1990) (*citing* S.C. Code Ann. § 12-37-900). For purposes of this matter, the parties have stipulated the date of valuation is

December 31, 2008.⁷

7. “[A] taxing statute must be construed most favorably to the taxpayer, and any doubt should be resolved against the taxing authority.” *Ryder Truck Lines, Inc. v. S.C. Tax Comm’n*, 248 S.C. 148, 152, 149 S.E.2d 435, 437 (1966); *Richland County Assessor v. Walker*, 1997 WL 725106, Docket No. 97-ALJ-17-0206-CC (Nov. 6, 1997).

8. South Carolina Code Ann. §12-4-510 (2000 & Supp. 2007) authorized the South Carolina Tax Commission to alter values set by the assessor on real property. South Carolina Code Ann. § 12-4-30(B) (2000 & Supp. 2007) provides that an administrative law judge shall hear all contested cases as defined by South Carolina Code Ann. §1-23-310 (2005 & Supp. 2007).

9. “Generally, the proper valuation of realty for taxation is a question of fact, to be ascertained in each individual case in the manner prescribed by statute.” 84 C.J.S. *Taxation* § 510 (2001 & Supp. 2007).

10. The Court must assume that the assessor’s valuation is correct and that it was made in conformity with the law. The property owner bears the burden of disproving the assessor’s determination. *See Joe W. Hiller, Architect, Inc. v. Colleton County Assessor*, 1996 WL 909131, Docket No. 95-ALJ-17-0231-CC (S.C. A.L.J. Feb. 16, 1996).

11. Generally, the property owner meets its burden of proving the valuation of the property by proving the property’s actual value. *See Richland County Assessor v. Walker*, 1997 WL 725106, Docket No. 97-ALJ-17-0206-CC, at *2 (S.C. A.L.J. Nov. 6, 1997); *Joe W. Hiller, Architect, Inc.*, 1996 WL 909131, at *4.

12. As the fact finder, an administrative law judge is not compelled to accept valuations proposed by experts for the opposing sides in a dispute between a taxpayer and a county assessor. *Ocean Course Golf Club, Ltd.*, 2005 WL 405408, *13 (citing *Smith v. Newberry County Assessor*, 350 S.C. 572, 578, 567 S.E.2d 501, 504 (Ct. App. 2002)).

13. In order to determine the real property’s “true value,” courts have used the income approach

⁷ See Note 1, *supra*.

to value but generally must extract the other values which help comprise the value of the business which operates on the Property. See *Ocean Course Golf Club, Ltd.*, 2005 WL 405408; *Glen Pointe Assocs. v. Township of Teaneck*, 10 N.J. Tax 380, 1989 N.J. Tax LEXIS 5, at *11-12 (1989); *Chesapeake Hotel, LP v. Saddlebrook Township*, 22 N.J. Tax 525 (2005).

14. South Carolina courts, as well as other jurisdictions, have relied on the Appraisal Institute's standards for valuation. See, e.g., *Myrtle Beach Hospital, Inc. v. Horry County Assessor*, 1998 WL 574179, Docket No. 97-ALJ-17-0449-CC (SC ALJ Aug. 17, 1998); *South Carolina Tax Commission v. South Carolina Tax Board of Review*, 287 S.C. 415, 339 S.E. 2d 131 (Ct. App. 1985); *Badische Corporation (BASF) v. Town of Kearney*, 288 N.J. Super. 171, 672 A. 2d 186, 189 (1996).

15. While commercial real estate is generally valued using three commonly accepted methods for ad valorem tax purposes: (1) sales comparison approach; (2) the cost approach; and (3) income capitalization approach, it is clear that in the context of hotel properties, the income capitalization approach, with appropriate adjustments to reflect market conditions and characteristics unique to the Property, is the most appropriate method of valuation in this particular instance.

16. The cost approach to valuing hotel properties is flawed as the cost approach does not take into account the economic obsolescence and depreciation of the value of the improvements to the real property. The cost approach is the least useful method of valuing hotel properties given the state of the economic markets as the cost approach does not take into account the lack of available financing, the declining market, and the economic obsolescence and depreciation of improvements to real property. In addition, an informed purchaser would not undertake the cost to construct and operate a hotel in economic environment present as of December 31, 2008 (the date of value).

17. The sales comparison approach involves the examination of sales of similar properties. Proper application of the sales comparison approach requires an investigation into all pertinent information that influenced the reported sales prices to be used for comparison purposes. The correct application of the sales comparison approach is an essential part of the valuation process as it provides a probable range of market value for the subject property. In the sales comparison approach, the

geographic limits of the appraiser's search for sales data depend on the nature and type of real estate being valued. Certain types of properties have regional, national and even international markets. See *Myrtle Beach Hospital, Inc.*, 1998 WL 574179 (SC A.L.J.D. Aug. 17, 1998) (citing Appraisal Institute, The Appraisal of Real Estate at 409 (10th Ed. 1992)).

18. The income capitalization approach is an acceptable means for valuing commercial property. See *S.C. Tax Comm'n v. S.C. Tax. Bd. of Review*, 287 S.C. 414, 339 S.E.2d 131 (Ct. App. 1985). The income approach is an appropriate valuation methodology for hotel properties.

19. The standard income approach requires (i) a calculation of the net income being generated for a property before debt service; and (ii) a determination of an appropriate capitalization rate for such net income. The net income is divided by the capitalization rate to determine the appropriate value of the property. If there are errors with either (i) the capitalization rate; or (ii) the calculation of the net income being generated by a property, the calculated value of a property using the income approach will be flawed.

20. Hotels are a unique mixture of real property and intangible business value⁸ which generate income through personal property, real property, and management. The use of real property as a hotel is unique and the relationship between the business value and the real estate value pose problems with valuing the real property for ad valorem taxation purposes.

21. The value of a hotel often depends partly on the superior management and performance of the hotel. One way of measuring this relationship is by analyzing the business value of the hotel through the "Rushmore Approach"⁹ to hotel valuation and appraisal. The Rushmore Approach is not the

⁸ Hotels require any appraisal stating the true value of the real property be inclusive of deductions and adjustments taking into account the revenues generated by the personal property and the management of the hotel. Simply, the valuation of real property associated with a hotel requires the income approach subject to deductions to account for intangible business value not generated by the value of the real property.

⁹ The "Rushmore Approach", created by Stephen Rushmore, MAI with the international valuation firm Hospitality Valuation Services (HVS), is an income approach developed specifically for hotel valuations that allows adjustments to reflect more accurately the impact of the business on the value of the real property and to determine the value of solely the real property for ad valorem tax purposes. The Rushmore Approach conservatively modifies the income approach and adjusts components of the net income calculations to extract the hotel's "business value" from the net income figure. Other jurisdictions have adopted the Rushmore Approach. See e.g., *Glenpointe*

exclusive method of extracting the intangible value of a hotel but has been used by other courts. The Rushmore Approach is generally regarded as the most conservative approach for extracting intangible value. This methodology recognizes hotels are complex business entities which generate three revenue streams: (i) revenue generated by personal property; (ii) revenue generated by the real property; and (iii) revenue generated by the management of the hotel. The income approach to valuation, if not modified by the Rushmore Approach, does not distinguish between these three revenue streams and calculates one revenue figure inclusive of revenue generated by real property, personal property and management of the hotel. In order to isolate the hotel property's real property value, the Rushmore Approach deducts the hotel property's management fee and franchise fee from the net income figure, removes income attributable to the hotel's personal property by calculating the "return of the personal property," and deducts from the operating income the "return of personal property" by calculating the replacement value of the hotel's personal property based on industry standards and values specific to the subject certain hotel.

22. In order to calculate the true value of the real property and the income generated only from the real property, the Rushmore Approach extracts business value and personal property value, and revenues generated therefrom, from the hotel's business income and provides a value solely for the real property based on the income approach to value. Upon such deductions, only the value of the real property remains.

23. The "going concern" value of a hotel includes business value generated by the management of the hotel, the hotel's ability to draw potential guests to a given location, and the hotel's personal property. For example, a hotel property's revenue can be impacted by the level of services provided; the franchise or "flag;" whether the property is an upscale or economy property; the services offered by the property such as a continental breakfast or wireless internet service; the effectiveness of the

Associates v. Township of Teaneck, 10 N.J. Tax 380 (1989); *Sunwest Hotel Corp. v. Bd. of County Comm'rs of Reno County, Kansas*, 1998 WL 982905, at *13 (Kansas U.S. District Ct. Sept. 29, 1998); *Chesapeake Hotel, LP v. Saddlebrook Township*, 22 N.J. Tax 525 (2005).

hotel's website; and the computer reservation system. These factors bear no relationship to the true value of the hotel's real property which this Court is charged with determining.

24. A hotel operator also owns tangible personal property in the form of furniture, fixtures and equipment, much of which is subject to personal property taxation under South Carolina Code Annotated §§12-37-210, 12-37-220 and 12-37-710 (2000 & Supp. 2007). Personal property, however, may also exist in the form of intangibles. These intangibles include business concern, intellectual property (e.g. trademarks, copyrights, etc.), strength of management, and revenue or income derived therefrom. Intangible personal property is exempt from ad valorem taxation under South Carolina Code Annotated §12-37-220(A)(10).

25. The major difficulties in valuing the Property stem from the distressed economic climate in December 2008 when the real estate lending market had essentially shut down.

26. Petitioners' expert, Mr. Rosen, valued the Property as of December 31, 2008 at \$698,000.00 based on the following analysis:

- (a) Mr. Rosen analyzed a competitive set for the hotel based on the January 2009 Smith Travel Research (STR) Report (see Petitioner's Exhibit #8) for the hotel as of December 31, 2008 to determine income and expense figures for similar hotel properties in the area with which Petitioner competes. Mr. Rosen analyzed the potential gross income, vacancy, and operating expenses of the competitive set.
- (b) Since Petitioner acquired the Property in May 2008 and operated the hotel without a flag until August 2008, Mr. Rosen annualized Petitioner's partial income and expense figures as of December 31, 2008 and compared these figures to the competitive set.
- (c) Mr. Rosen determined gross income of \$572,747 and expenses of \$337,942 resulting in a net income (before adjustments) of \$234,805 for the Property as of December 31, 2008.
- (d) To account for business value, Mr. Rosen deducted from the net income the management fee (\$17,182¹⁰) and a franchise fee (\$43,259¹¹).
- (e) To account for personal property value, Mr. Rosen determined the "return of" and "return on" personal property. Mr. Rosen determined \$28,637 as the "return of" personal property by calculating the reserve for replacement by multiplying

¹⁰ The management fee is based on the industry standard of 3% of gross revenue.

¹¹ The franchise fee is based on the franchise fee assessed by Choice Hotels which franchises the Sleep Inn flag.

the Property's gross revenue by 5%, an industry standard for reserve for replacement costs. Mr. Rosen derived a \$6,156 "return on" personal property based on the replacement cost of hotel's furniture, fixtures, and equipment.

- (f) By deducting business value (\$60,700) and personal property value (\$34,800), Mr. Rosen determined a net operating income for the Property to be \$139,305. Mr. Rosen then deducted the 2008 real property taxes to determine the Property's net income after taxes and based solely on the real property to be \$83,770.
- (g) Mr. Rosen determined a capitalization rate of 12% was appropriate for the Property given the Property's location and quality and economic conditions as of December 31, 2008.
- (h) By applying the capitalization rate to the estimated annualized income of the Property, Mr. Rosen determined the appropriate real estate value for the Property in Cherokee County, South Carolina as of December 31, 2008 was \$698,000.¹²

27. With modifications contained herein, the Court generally accepts Petitioner's application of the income approach. The Court also finds, based on Petitioner's suggestion, that the Rushmore Approach can be applied in this case.¹³ The Court, however, finds an expense ratio equal to sixty-six percent (66%) is appropriate in light of the competitive sets offered into evidence by Petitioner and Respondent.¹⁴ Applying a sixty-six percent (66%) expense ratio to Petitioner's income approach results in a value equal to \$1,032,000.00.

28. The Assessor's determination of the Property's value under the income approach differs from Petitioner's approach in four important respects: (i) calculating the Property's net income; (ii) calculating the appropriate reserves; (iii) adjusting for the personal property value associated with the Property, and (iv) calculating an appropriate capitalization rate.

29. I find the Assessor's analysis flawed in each of these areas.

30. First, instead of using actual income figures, the Assessor estimated income figure based on the competitive set, but failed to make any adjustments to account for the Property and market

¹² Mr. Rosen calculated this value by dividing the net operating income of the Property after making adjustments to extract business value and personal property value (\$83,770) by the capitalization rate (12%).

¹³ As noted elsewhere in this Order, the critical issue is that hotels possess intangible value. The Rushmore Approach is one method of extracting intangible value and was purportedly applied by both parties in this case.

¹⁴ Petitioner's income approach utilized a 73% expense ratio based on Mr. Rosen's analysis of Petitioner's competitive set and the actual income and expense figures for the Property as of December 31, 2008. Respondent's income approach utilized at sixty-nine percent (69%) expense ratio based on Respondent's analysis of comparable sales.

conditions. In essence, the Assessor did not appraise the subject Property since he based his calculation of income on the performance of other “competitive” properties rather than the Property. In so doing, the Assessor fails to recognize any attributes or other characteristics specific to the Property under appeal. Having calculated income based on the financial performance of other hotels, the Assessor then applied the Property’s actual expenses as of December 31, 2009 rather than the expenses as of the December 31, 2008 date of value, thereby failing to account for the economic conditions in 2008. In other words, the Assessor uses an estimate of 2008 income based on the performance of other properties and 2009 expenses of the Property. The Assessor’s use of estimated income and actual expenses as of December 31, 2009 results in an inflated net income calculation.

31. Second, the Assessor’s 1% reserve estimate is remarkably low considering the 5% industry standard for calculating a reserve for replacement cost. Use of a low reserve has the effect of inflating the Property’s value by increasing the Property’s theoretical net income.

32. Third, though the Assessor claims to have used the Rushmore Approach, he failed to account for the “return on” value of the personal property.

33. Fourth, the Assessor’s capitalization rate (10%) ignores the economic conditions then in existence. He bases his estimate on a forecast of capitalization rates beginning in 2009, after the applicable December 31, 2008 date of value. A strong indicator of the economic conditions in existence as of December 2008 is the corporate “Baa” bond rate, which was 8.46%¹⁵.

34. Notably, the Assessor (i) claims that “equity” requires the Assessor consider the appraised value of other hotel properties in Cherokee County¹⁶, and (ii) asserts real estate is a “liquid” investment.

35. Absolute equality in each case is not attainable. Reliance Ins. Co., 327 S.C. 528, 537 (Ct. App. 1997). That is especially true in times of economic turmoil such as that which existed at the time

¹⁵ *Economic and Market Indicators*, VALUATION, 3rd Quarter 2009 at p.42 (Appraisal Institute).

¹⁶ The Assessor further argued that a reduction in value for the Property would require the Assessor to reduce the value of all hotel properties in Cherokee County. Since taxpayers are afforded by statute the right to appeal the Assessor’s determination of value of real property, I find this argument wholly without merit.

relevant here.

36. Additionally, "liquid assets" are defined by the Appraisal Institute as "assets that can be immediately converted into cash and are immediately available to pay debts." THE DICTIONARY OF REAL ESTATE APPRAISAL 115 (5th ed. 2010). Historically, and especially in the midst of the economic conditions present in December 2008, real estate was not a liquid investment and is not appropriately valued as a liquid asset.

37. The Assessor uses a capitalization rate of ten (10%) percent, a mere 1.54% over the December 2008 return offered on liquid "Baa" corporate bonds¹⁷. The Assessor's capitalization rate fails to recognize the illiquidity of real estate as an investment and the risks associated with a hotel in December 2008.

38. Even if the taxpayer fails to prove the actual value of the property, the taxpayer still meets its burden of proof when the taxpayer show(s) by other evidence that the assessing authority's valuation is incorrect. *See Joe W. Hiller, Architect, Inc.*, 1996 WL 909131; and *Cloyd v. Mabry*, 295 S.C. 86, 367 S.E.2d 171 (S.C. App. 1988).

39. Petitioner's application of the income approach and the Rushmore Approach was properly performed in accordance with the standards of the Appraisal Institute and demonstrates where the Assessor's analysis is flawed.

40. In this case, Petitioner meets its burden by proving the actual value of the real property is a value other than that determined by the taxing authority by presenting the values calculated for the Property by Mr. Rosen. *See Joe W. Hiller, Architect, Inc.*, 1996 WL 909131.

41. Petitioner is entitled to have the disputed value of the Property lowered to accurately reflect the true value of the real property for ad valorem tax purposes.

42. Since Petitioner has met its burden of proof, the valuation of the Assessor, as affirmed by the Board, is vacated by this Order.

¹⁷ The corporate "Baa" bond rate in December 2008 was 8.46%. *See Economic and Market Indicators, VALUATION, 3rd Quarter 2009* at p.42 (Appraisal Institute).

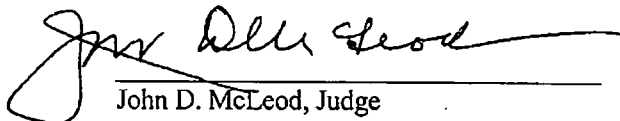
ORDER

Based on the above Findings of Fact and Conclusions of Law, it is hereby:

ORDERED, that the Assessor's fair market value equal of \$1,876,000 for the Property for tax year 2010 be reduced to \$1,032,000;

IT IS FURTHER ORDERED that upon entry of this Order, Respondent promptly shall certify the \$1,032,000 value to the Cherokee County Auditor as the final value for tax year 2010 and thereafter, if Petitioner made any overpayment of ad valorem and other taxes to Cherokee County and/or the City of Gaffney based on the Assessor's value of the Property, the Cherokee County and/or City of Gaffney Treasurer(s) shall refund to Petitioner any such overpayment in a timely manner.

AND IT IS SO ORDERED.

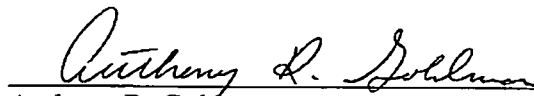


John D. McLeod, Judge
S.C. Administrative Law Court

October 14, 2013
Columbia, S.C.

CERTIFICATE OF SERVICE

I, Anthony R. Goldman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Anthony R. Goldman
Judicial Law Clerk

October 14, 2013
Columbia, S.C.