

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM THE ADMINISTRATIVE LAW COURT

John D. McLeod, Administrative Law Judge

ALC Case No. 11-ALJ-17-0299-CC
Appellate Case No. 2013-002550

Tilbros, Inc., ...Respondent,
vs.

Cherokee County Assessor's Office.....Appellant.

RECORD ON APPEAL
VOLUME 1

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**INDEX
VOLUME 1**

Final Order and Decision.....	3
Order Denying Motion to Alter or Amend.....	18
Appellant's Motion to Alter or Amend.....	19
Transcript (Preliminary Remarks).....	21
Transcript of Testimony	
Joseph Rosen	
Direct.....	29
Cross.....	93
Redirect.....	158
Recross.....	170
Robert Weaver	
Direct.....	172
Cross.....	197
Redirect.....	221
Recross.....	223
Joseph Rosen	
Direct in Reply.....	224
Cross in Reply.....	233
Redirect in Reply.....	239

VOLUME 2

Appellant's Exhibits	
Exhibit 1.....	243
Exhibit 2.....	246
Exhibit 3.....	247
Exhibit 4.....	248
Exhibit 5.....	249
Exhibit 6.....	250
Exhibit 7.....	290
Exhibit 8.....	308
Exhibit 9.....	309
Exhibit 10.....	311
Respondent's Exhibits	
Exhibit 1.....	313
Exhibit 2.....	316
Exhibit 3.....	317
Exhibit 4.....	321
Exhibit 5.....	322

Exhibit 6.....	450
Exhibit 7.....	451
Exhibit 8.....	452
Exhibit 9.....	460
Exhibit 10.....	479
Exhibit 11.....	483
Exhibit 12.....	488
Exhibit 13.....	493
Exhibit 14.....	494
Exhibit 15.....	495
Exhibit 16.....	496
Exhibit 17.....	502
Exhibit 19.....	503
Exhibit 20.....	517
Exhibit 21.....	518
Certificate of Counsel	526

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Tilbros, Inc.,

Petitioner,

vs.

Cherokee County Assessor's Office,

Respondent.

In re: TMS # 10/063-00-00-060.001

Docket No. 11-ALJ-17-0299-CC

FINAL ORDER AND DECISION

Appearances:

For Petitioner: Morris A. Ellison, Esq. of Womble Carlyle Sandridge & Rice, LLP

For Respondent: Joseph L.V. Johnson, Esq. of Saint-Amand, Thompson & Mathis, LLC

STATEMENT OF THE CASE

This contested case was brought by Tilbros, Inc. ("Petitioner") against the Cherokee County Assessor's Office ("Respondent" or "Assessor") concerning the assessed value for purposes of ad valorem taxation of real property owned by Petitioner located at 834 Windslow Road, Gaffney, South Carolina Cherokee County, South Carolina, and designated as Tax Map Number 063-00-00-060.001 (the "Property"). Petitioner operates a 60 room roadside Sleep Inn hotel on the Property which is adjacent to Interstate 85. Petitioner objected to the assessed value of the Property, exhausted all pre-hearing remedies with the Assessor and the Cherokee County Board of Assessment Appeals (the "Board"), and sought a contested case hearing before the South Carolina Administrative Law Court ("ALC") pursuant to S.C. Code Ann. § 12-60-2540 (2000). The ALC heard the contested case on June 25, 2013 (the "ALC Hearing"). Based upon the testimony and exhibits presented at the ALC Hearing and applicable law, I find Petitioner has satisfied its burden and the Assessor's valuation of the Property is erroneous. I conclude for tax year 2010 the Property should be valued at One Million Thirty-Two Thousand and No/100ths (\$1,032,000.00) Dollars.

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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:

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).

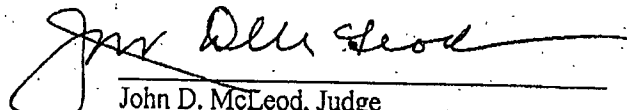
ORDER

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.

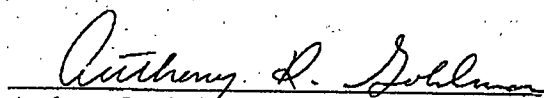

John D. McLeod, Judge
S.C. Administrative Law Court

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).

October 14, 2013
Columbia, S.C.


Anthony R. Goldman
Judicial Law Clerk

Tilbros, Inc.,

Petitioner,

vs.

Cherokee County Assessor,

Respondent.

**ORDER DENYING RESPONDENT'S
MOTION TO ALTER OR AMEND
JUDGMENT**

Before me is a Motion to Alter or Amend the final order issued in the caption case.

I have reviewed the file and find that the original order correctly states the findings of fact and conclusions of law made by this Court.

THEREFORE, the motion is DENIED.

November 5, 2013
Columbia, S.C.


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

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).

November 5, 2013
Columbia, S.C.


Anthony R. Goldman
Judicial Law Clerk

FILED

NOV 05 2013

SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Tilbros, Inc.,

Docket No. 11-ALJ-17-0299-CC

Petitioner,

vs.

MOTION TO ALTER
OR AMEND JUDGMENT

Cherokee County Assessor,

Respondent.

TO: MORRIS A. ELLISON, ATTORNEY FOR THE ABOVE NAMED PETITIONER:

YOU WILL PLEASE TAKE NOTICE that the undersigned as attorney for the Respondent will move before the Honorable John D. McLeod, S.C. Administrative Law Court Judge pursuant to Rule 59 of the Rules of Civil Procedure to alter, amend and reconsider his Order dated October 14, 2013. The Order was received by the undersigned via e-mail on October 14, 2013. Issues to be reconsidered are:

1. The finding that the Petitioner has satisfied its burden of proving that the Assessor's valuation of the real property owned by the Petitioner as designated as Tax Map #063-00-00-060.001 (hereinafter "Property") was erroneous.

2. The finding that the income capitalization is the sole proper method to use to value the Property without examining the sales or cost approaches.

3. The finding that the Petitioner satisfied its burden of proving the Assessor's valuation was incorrect as to the true value of the property when no evidence was presented to the Court as to the methods or valuation of the purchase of the property in May of 2008 for \$3,000,000.00.

4. The finding that the Respondent's expert witness presented the Court with sufficient evidence of his valuation methods for his appraisal, when the evidence presented demonstrates he utilized comparable sales that were dissimilar to the Property.

5. The finding that a sixty-six percent (66%) expense ratio based upon the comparable sales provided appropriate when Petitioner's expert testified that the *actual* expense ratio for the Property was sixty-two percent (62%). In contrast, the *actual* occupancy rate of thirty-five point five percent (35.5%) was utilized, when the Petitioner's comparable sales averaged a sixty-nine point seven-five percent (69.75%) occupancy rate.

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SC ADMIN. LAW COURT

6. The finding that a capitalization rate of twelve percent (12%) submitted by the Petitioner based upon comparable sales was proper when the comparable sales utilized were dissimilar to the Property.

7. The failure to find that the Respondent based the final valuation of the property by utilizing the cost approach.

8. The finding that the Respondent failed to make any adjustments to account for the Property, and that the Respondent's income figures were improperly derived.

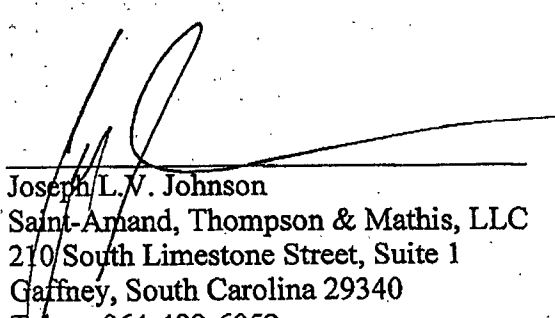
9. The finding that the use of a 1% reserve estimate is remarkably low when no evidence was presented to reach this conclusion.

10. The finding that the Respondent asserts that real estate is a liquid investment.

11. The finding that the principles of equity do not apply in this case, or in every tax valuation case, regardless of the current economic conditions.

12. The failure for the Court to address the discrepancies between the respective comparable sales utilized by the Petitioner and Respondent, including, but not limited to, the inherent differences of the Petitioner's comparable sales in geography, flags, and corridor designations in comparison to the Property.

13. The finding that One Million Thirty-Two Thousand and No/100ths (\$1,032,000.00) Dollars is the proper value of the Property as of December 31, 2008.



Joseph L.V. Johnson
Saint-Amand, Thompson & Mathis, LLC
210 South Limestone Street, Suite 1
Gaffney, South Carolina 29340
Tel.: 864-489-6052
Fax: 864-489-5406

October 22, 2013
Gaffney, South Carolina

Attorney for Respondent

1 **THE COURT:** My name is John McLeod. My law clerk is
2 Anthony Goldman. Ms. Carla Dominick is our
3 court reporter this morning. This is docket
4 number 11-ALJ-17-0299-CC, Tilbros, Inc. versus
5 Cherokee County Assessor. Mr. Johnson?

6 **MR. JOHNSON:** Yes, sir, Your Honor.

7 **THE COURT:** Good to have you here today, sir.

8 **MR. JOHNSON:** Thank you, sir.

9 **THE COURT:** From the Saint-Amand firm in Gaffney.

10 **MR. JOHNSON:** That's correct, Your Honor.

11 **THE COURT:** Yes, sir. Mr. Ellison?

12 **MR. ELLISON:** Yes, Your Honor.

13 **THE COURT:** Good to have you here and Mr. -- is this
14 your witness?

15 **MR. ELLISON:** This is my witness.

16 **THE COURT:** Mr. Rosen?

17 **MR. ELLISON:** Mr. Rosen.

18 **MR. ROSEN:** Yes, sir.

19 **MR. ELLISON:** And my client, Mr. Tilva.

20 **THE COURT:** A couple of preliminary questions. I
21 have in my file a proposal of stipulations
22 filed by the petitioner. Were those
23 stipulations agreed to?

24 **MR. ELLISON:** Yes, Your Honor.

25 **MR. JOHNSON:** That's correct, Your Honor.



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1 THE COURT: All right. As they are in my file, are
2 you going to put those into evidence?

3 MR. ELLISON: Yes, Your Honor.

4 THE COURT: I'll let you do that at the proper time.

5 MR. ELLISON: I think Mr. Johnson and I -- I mean,
6 I'd love to give you a big controversy but I
7 think we've agreed that both sides' exhibits
8 can come in without objection and I've pre-
9 marked a book which has much of what you
10 already have, Your Honor. And then Mr. Johnson
11 has shown me exhibits that he also wants to use
12 and I have no objection to those as well.

13 THE COURT: All right. Well just make sure that you
14 properly state for the record that they are to
15 be admitted and have me admit them. Do you
16 want to do them ahead of time?

17 MR. ELLISON: I think we've already agreed to that.

18 THE COURT: All right. Well, let's have them in my
19 hand.

20 MR. JOHNSON: Your Honor, there is one slight
21 amendment to that. I do agree with everything.
22 Me and Mr. Ellison talked about this this
23 morning. He's presented an article that he has
24 prepared himself ---

25 THE COURT: I was aware that he was quoting himself



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MR. JOHNSON: That's right.

THE COURT: --- which I thought was ---

MR. JOHNSON: And he's a smart fellow and I read through the first few pages. It seems like a good article, but I guess my only issue with it -- I don't know that I've seen this. I think you said the March article?

MR. ELLISON: March of 2013.

MR. JOHNSON: New article -- I can't see where I've been sent this. I don't deny the fact that maybe he did send it. I've just not see it. I guess my only issue is is he testifying himself or ---

THE COURT: Well I had the same question, Mr. Ellison.

MR. ELLISON: No, Your Honor. The only reason why it was in there is it discusses the different ways of extracting business value from a hotel. I don't need it and I can do without it.

THE COURT: All right. Well, I'm going to rule it inadmissible ---

MR. ELLISON: That's fine, Your Honor.

THE COURT: --- at this point.

MR. ELLISON: Thank you, Judge. That's tab 18 in



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1 the ---

2 **MR. JOHNSON:** That's fine, Judge.

3 **THE COURT:** All right. I have Tilbros
4 Incorporated's list of stipulations and
5 exhibits and so forth, all of which have been
6 agreed upon, other than Number 18, which is the
7 article by Mr. Ellison. Is that right, Mr.
8 Johnson?

9 **MR. JOHNSON:** That's correct, Your Honor.

10 **THE COURT:** All right. These will be admitted into
11 evidence.

12 (Petitioner's Exhibit Numbers One through Seventeen
13 and Nineteen through Twenty-one were admitted into
14 evidence.)

15 **THE COURT:** And if they are recited in the course of
16 the trial, then we'll give them a number to
17 further identify them.

18 **MR. ELLISON:** Your Honor, they were tabbed in the
19 book by number and ---

20 **THE COURT:** That's what I anticipated, but they are
21 a part of your Exhibit Number One.

22 **MR. ELLISON:** Yes, sir.

23 **THE COURT:** All right. What else did you hand me
24 there? What about Mr. -- these are marked
25 what? All right. I have in my hands



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1 Respondent's Exhibits One through Ten. Have
2 they been agreed upon? They are to be admitted
3 without objection?

4 **MR. JOHNSON:** That's correct, Your Honor.

5 **MR. ELLISON:** Yes, Your Honor.

6 **THE COURT:** All right. Respondent's One through Ten
7 admitted without objection.

8 **(Respondent's Exhibits One through Ten were admitted**
9 **into evidence.)**

10 **THE COURT:** Now, I'm going to call on you for
11 opening statements, which I don't usually
12 insist upon but in this case, I think that I
13 need to be refreshed about the facts. The one
14 thing I believe I'm certain of is you've agreed
15 on December 31, 2008, as the valuation date,
16 which is the critical date.

17 **MR. ELLISON:** Yes, Your Honor.

18 **THE COURT:** And my perception is that the remaining
19 issues revolve around not the propriety of cost
20 versus -- what was the other criteria? But
21 you've agreed upon the method of valuation.
22 You just still think it's too high, is that
23 correct?

24 **MR. ELLISON:** Not exactly, Your Honor.

25 **THE COURT:** Well, I'm glad to be corrected so I



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won't have any misapprehension as we go forward. Let's go forward with the arguments.

MR. ELLISON: Sure, Your Honor. Thank you.

THE COURT: Mr. Ellison.

OPENING STATEMENT BY MR. ELLISON:

MR. ELLISON: May it please the court, I'd like to thank the Court and Mr. Johnson, everybody for -- it's wonderful to be in a courtroom setting where we're not skirmishing over what I regard as tangential issues and really trying to get to the heart of the matter. I think that makes things much easier for everybody. What we're dealing with is a tax appeal and most of this PowerPoint I'm not going to use right now. I just want to use a couple of the slides right now. And as the Court recalled, we were supposed to try this case back in November of 2012 and we got into a discussion, I guess it was about two or three weeks before that trial as to what would be the valuation date that we would use. But before we get to that, let's talk about what we're charged with doing because I think that's critical to the difference, Your Honor, that I cited to you in terms of methodology, because what we're



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1 I-85 in Cherokee County. Thank you, Your
2 Honor.

3 **THE COURT:** One question before you sit down.

4 **MR. ELLISON:** Yes, sir.

5 **THE COURT:** Along the way, I heard you use December
6 31, 2009, as being accepted by both parties as
7 evaluation and I want you to explain that.

8 **MR. ELLISON:** Sure. When we first went -- were
9 doing this, the county said that the valuation
10 date was going to be December 31, 2009. As the
11 Court is aware, there is quite a controversy in
12 this state right now as to what to use for the
13 appropriate date of valuation but we said sure,
14 we'll use December 31, 2009. That's the date
15 that both the county and the tax payer used
16 when we went before the Board of Assessment
17 Appeals, originally I believe it was May 2012,
18 and we were getting ready to try the -- and Mr.
19 Rosen calculated the value using that date
20 initially. When we were getting ready to try
21 the case in October -- we were going to try it
22 in November of last year, but in October of
23 last year, when we were working on
24 stipulations, Mr. Johnson said no, the county
25 wants to use the valuation date of December 31,



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1 2008, and he explained the reasons why the
2 county was then taking that position. And
3 rather than argue about it, I said okay, so
4 long as we don't have to go back to the Board
5 of Assessment Appeals. And so we stipulated to
6 using December 31, 2008, for purposes of this
7 appeal, without my having to recycle back to
8 the Board of Assessment Appeals.

9 **THE COURT:** So are you using the values as
10 determined by the Board as of 2009?

11 **MR. ELLISON:** I think that's what the Board did, but
12 they're coming out, for purposes today, with a
13 valuation as of December 31, 2008.

14 **THE COURT:** I understand. Thank you.

15 **MR. ELLISON:** Okay. And for purposes of this
16 appeal, that's the date we're using, December
17 2008.

18 **THE COURT:** Mr. Johnson.

19 **OPENING STATEMENT BY MR. JOHNSON:**

20 **MR. JOHNSON:** Thank you, Your Honor. May it please
21 the Court, I would also like to thank everyone
22 -- Mr. Ellison and you, Your Honor, Mr.
23 Goldman, everybody here today. As representing
24 a small county like Cherokee, we usually don't
25 have these type of opportunities to do these



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1 call Mr. Rosen to the witness stand, please.

2 **THE COURT:** Come be sworn, please, sir.

3 **JOSEPH ROSEN,** having been duly sworn, testifies as
4 follows:

5 **MR. ROSEN - DIRECT EXAMINATION BY MR. ELLISON:**

6 Q: Mr. Rosen, could you state your full name for
7 the record, please?

8 A: Joseph Barnette Rosen.

9 Q: Mr. Rosen, I'm going to hand you a copy before
10 we -- in order to expedite things a little bit
11 -- a copy of a document that's been admitted
12 into evidence. See if you can identify this,
13 please.

14 A: Yes, sir.

15 Q: Can you tell the Court what this is?

16 A: It's a copy of -- color copy of the appraisal
17 report I completed on this property.

18 Q: And, Your Honor, for purposes of the record, is
19 Exhibit Five, or numbered behind tab five.

20 **THE COURT:** All right. Exhibit Five is specifically
21 admitted into evidence without objection.

22 **MR. JOHNSON:** That's correct, Your Honor.

23 Q: Mr. Rosen, how long have you been working as an
24 appraiser?

25 A: Started in July of 1973. Started working with



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1 my father, Harvey Rosen, and I've there ever
2 since, so next month will be 40 years.

3 Q: And do you have a -- what kind of license do
4 you have?

5 A: I have both the certified general license in
6 the State of South Carolina, which is the
7 highest level you can have in the state. I
8 also hold a Georgia and North Carolina license,
9 and I have professional designations.

10 Q: Now I want to go through this, but let me turn
11 the Court's attention to Mr. Rosen's CV or
12 resume, which is at the back -- unfortunately,
13 it's not numbered, but it's in the back of his
14 appraisal. I want to go through that.

15 **THE COURT:** Any objection to that, Mr. Johnson?

16 **MR. JOHNSON:** No objection, Your Honor.

17 **THE COURT:** Are you admitting that into evidence?

18 Q: Mr. Rosen, do you work with property owners in
19 appraising the cost of properties?

20 A: Yes, sir, I have.

21 Q: What kind of properties, in general?

22 A: I've appraised everything from funeral homes,
23 cemeteries, office buildings, convenience
24 stores, hotels, motels, industrial properties,
25 almost everything I can think of. I have a



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1 list but I don't have it in the report.

2 Q: Okay. Have you done work for banks and other
3 lenders?

4 A: Yes, sir, I have.

5 Q: Have you done work and -- specifically,
6 consulting work with government officials, such
7 as assessors in other counties?

8 A: Yes, sir, I have.

9 Q: Can you describe, in general terms, what kind
10 of consulting work you've done for assessors in
11 counties, other than Cherokee?

12 A: Sure. I've not done any consulting work for
13 Cherokee. I have appraised in Cherokee. But
14 I've consulted with assessors. I'm well known
15 throughout the country that I work with other
16 appraisers, share information, and I do consult
17 with assessors of -- one assessor is over in
18 Sumter County. I've known him for 30 years and
19 they've had some questions about valuation of
20 hotels and I was over there doing some
21 appraisals for property owners and met with
22 their appraiser, and then he came by my office
23 -- Chip Napa -- and I met with him and gave
24 copies of articles -- some of your articles --
25 and I ---



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1 Q: We're not supposed to talk about that, Mr.
2 Rosen.

3 A: And I also gave him copies of front portions of
4 appraisals that I -- so he could see how it's
5 done.

6 Q: Okay. Now are you familiar with a designation
7 called an MAI designation?

8 A: Yes, sir.

9 Q: Can you tell the Court what that is?

10 A: MAI designation is recognized throughout the
11 entire world. There's MAIs throughout the
12 entire world. I think it's 60 countries, but
13 it started in the United States in the early
14 30's. The organization was called the American
15 Institute of Real Estate of Appraisers and they
16 award the MAI designation which required
17 courses, review of appraisal work, and a
18 comprehensive exam, and a demonstration report.

19 Q: So what does MAI stand for?

20 A: It doesn't really stand for anything. It used
21 to stand for Member and Appraisal Institute but
22 everybody that's a member organization is a
23 member, so it's really -- it just recognizes
24 the -- as a commercial designation in the
25 highest and most well known throughout the



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1 entire world.

2 Q: So an MAI designation is the highest
3 designation an appraiser can get, if I heard
4 you correctly?

5 A: Yes, sir.

6 Q: Okay. Have you done work with regard to tax
7 appeals involving hotels?

8 A: Yes, sir.

9 Q: Have you appraised hotels for other purposes as
10 well?

11 A: Yes, sir.

12 Q: Now, looking at your -- I'm going to call it a
13 CV. That's simply because I have a little bit
14 of a medical background. Looking at your CV,
15 do you have a list of courses that you've taken
16 in that CV?

17 A: Yes, sir.

18 Q: All right. And I don't want you to go through
19 all of these, but there's one course in
20 particular that I think warrants mentioning,
21 and that's the course on fundamentals of
22 separating real property, personal property and
23 tangible business assets.

24 A: Yes, sir.

25 Q: Are you familiar with that course?



1 A: Yes, sir.

2 Q: Did you take that course?

3 A: Yes, sir. I took it back in March of 2012.

4 Q: And that's shown about two thirds of the way
5 down in your CV on that -- down this page that
6 shows your CV, is that right?

7 A: Yes, sir.

8 Q: What was discussed in that course?

9 A: It was discussed in that course about
10 separating business value in intangible and
11 intangible to tangibles from properties.

12 Q: And why was that important?

13 A: Because the government has required -- the
14 Small Business Administration has required us
15 to break intangibles and tangibles out of
16 values because there's -- a bank doesn't want
17 a loan on a piece of property where there's
18 tangibles and intangibles and personal
19 property. They want to loan 30 year loans on
20 the land and buildings.

21 Q: So in that course, did you learn what were the
22 candidate properties that would have intangible
23 value?

24 A: Yes, sir.

25 Q: Were hotels one of those kinds of properties?



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1 A: Yes, sir.

2 Q: Did the course specifically teach you how to
3 measure intangible value?

4 A: No.

5 Q: So, let's talk about the hotels for a moment.
6 Did the course teach you that hotels have
7 intangible value associated with them?

8 A: Yes, sir. It did.

9 Q: Okay. Can you give me some examples of
10 intangible values for a hotel?

11 A: Intangibles are the employees, the cash,
12 setting up of the hotel itself, you have ---

13 **THE COURT:** Excuse me. What do you mean by setting
14 up the hotel itself?

15 A: Organizing and opening a hotel. A hotel that's
16 closed down -- that hadn't opened yet would
17 have very little intangibles.

18 Q: John, let me help you a little bit with that.
19 You're familiar with the term flag, as it's
20 used not with flag days with hotels?

21 A: Yes, sir.

22 Q: Can you tell the Court what is meant in the
23 industry by a flag?

24 A: A flag is the name brand of the hotel. Comfort
25 Inn, Hilton, Hyatt. That's the flag.



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1 Q: So different flags have different reservation
2 systems, do they not?

3 A: Yes, sir.

4 Q: And different flags have different requirements
5 for what's required of a specific hotel, do
6 they not?

7 A: That's correct.

8 Q: And so you've got a reservation system, is that
9 right?

10 A: Yes, sir.

11 Q: You also have web sites. Is that correct?

12 A: Yes, sir.

13 Q: Is that another example of intangible value?

14 A: Yes, sir. That would -- yeah. That would be
15 another intangible.

16 Q: So did the course talk about taking all of
17 these things together and then separating them
18 out, depending on what your assignment was?

19 A: Yes, sir.

20 Q: Your Honor, at this time I'd like to tender Mr.
21 Rosen as an expert appraiser, please.

22 **MR. JOHNSON:** No objection.

23 **THE COURT:** Without objection, Mr. Rosen is so
24 qualified as an expert appraiser of real
25 estate.



1 Q: Mr. Rosen, I'd like you to turn to the first
2 page of the appraisal.

3 A: Yes, sir.

4 Q: You prepared this written report, is that
5 correct?

6 A: Yes, sir. I did.

7 Q: And what kind of report is that?

8 A: It's a summary appraisal report.

9 Q: Now there's a reference on page one of your
10 appraisal, although this page is unfortunately
11 not designated as that, but the first page of
12 the appraisal.

13 A: Yes, sir.

14 Q: There's something called the uniform standards
15 of professional appraisal practice.

16 A: Yes, sir.

17 Q: Is that what's commonly referred to in the
18 business as USPAP?

19 A: Yes, sir, it is.

20 Q: Can you tell the Court what USPAP is?

21 A: USPAP is the standards that we have to perform
22 to and all appraisals have to conform to USPAP
23 and there's two standards. Standard one is the
24 preparation of the appraisal. Standard two is
25 the reporting part of the appraisal, and it's



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1 been around since the -- I think in the late
2 80's or early 90's USPAP. And it used to be
3 every year it was updated. Now it's every two
4 years.

5 Q: Does USPAP have any prohibitions with regard to
6 misleading information or presentations?

7 A: Yes, sir.

8 Q: Can you describe those briefly for the Court,
9 please?

10 A: We have ---

11 **THE COURT:** Briefly. Very briefly.

12 A: We have to explain and we cannot mislead the
13 public, so we have the certain standards that
14 we have to -- parts of standard two when we
15 report an appraiser.

16 Q: So you certified in this report, in this
17 written report, that you complied with USPAP.
18 Is that correct?

19 A: Yes, sir. I did.

20 Q: All right. If you hadn't done that, would a
21 bank had been able to accept this appraisal?

22 A: No. A bank would not accept the appraisal.

23 Q: Okay. And in terms of you talking about the
24 Small Business Administration a little while
25 ago, if you did not separate out real property



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1 value from tangible personal property value
2 from intangible, would that appraisal qualify
3 for an SBA loan?

4 A: No, sir. It would not.

5 Q: Now, the lenders, as you understand, can still
6 lend against the property. Is that right?

7 A: I don't believe a lender can lend against a
8 piece of property if it doesn't meet USPAP.

9 Q: No, no. It doesn't -- USPAP -- if you don't
10 separate -- I'm sorry. If you didn't separate
11 out the values, what do they tell -- in that
12 course that you talked -- the fundamentals of
13 separating value. What did they tell you about
14 what the SBA would let you do? You could still
15 lend against the property if you were a lender,
16 could you not?

17 A: I believe so.

18 Q: But you'd have to -- but the purpose of it was
19 to recognize the different risks inherent in
20 the different kinds of properties. Is that
21 right?

22 A: Yes, sir. That's correct.

23 Q: Okay. Now we -- not we, you calculated out the
24 value as of December 31, 2008, did you not?

25 A: Yes, sir. I did.



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1 Q: And as we alluded to in the openings, you also
2 calculated the value as of December 31, 2009,
3 did you not?

4 A: Yes, sir. I did.

5 Q: What was the value that you got for December
6 31, 2009, as you remember?

7 A: I'll have to grab that report, if that would be
8 all right.

9 Q: That's fine.

10 A: The value of the subject property as of
11 December 31st of 2009 is \$746,000.

12 Q: And what was the value that you calculated of
13 the real property associated with this hotel as
14 of December 31st, 2008?

15 A: \$698,000.

16 Q: So if my math is correct, just basic math, you
17 calculated that the value had actually
18 increased from December of 2008 to December
19 2009. Is that right?

20 A: Yes, sir.

21 Q: Now, let's talk a little bit about the history
22 of this particular hotel. As far as you know,
23 when did Tilbros acquire this hotel?

24 A: I believe it was May of 2008. Now it had been
25 listed for sale for a long time.



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1 Q: And when Tilbros acquired the hotel, what kind
2 of flag did it have?

3 A: It had a Holiday Inn Express flag.

4 Q: Did it lose that -- May of 2008 was, if not the
5 height of the market, it was pretty close to
6 it, was it not?

7 A: Yes, sir. It was -- things were still going
8 very well.

9 Q: And is there a bright line as to when the real
10 estate market crashed, if you will?

11 A: September of 2008.

12 Q: And is that when Lehman Brothers failed?

13 A: Yes, sir.

14 Q: Did that have an impact on the real estate
15 market?

16 A: Yes, it did.

17 Q: All right. Was it negative or positive?

18 A: Horribly negative.

19 Q: Did AIG fail also?

20 A: Yes, sir.

21 Q: Did Washington Mutual fail in September 2008?

22 A: Yes, sir.

23 Q: And, I mean, was there anything going on in the
24 real estate market in the last quarter of 2008?

25 A: No. Most lenders had pretty much stopped



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1 lending money because banks were failing.

2 Q: And so let's back to this particular property.
3 It was purchased by Tilbros in May 2008, I
4 think you said.

5 A: Yes, sir.

6 Q: And had a Holiday Inn Express flag.

7 A: Yes, sir.

8 Q: All right. What happened to that flag?

9 A: They apparently -- they had to cover it up.
10 Had to bag the flag.

11 Q: Okay. Now I know what you mean, but the Court
12 may not know. When you say bag the flag, what
13 do you mean?

14 A: Okay. If you've ever driven down the road you
15 see a sign -- I know of -- I'm trying to think
16 of the last one I saw. They put something over
17 it. So it might have been a Ramada Inn, and
18 all of a sudden, it's the Columbia Inn or it
19 may not have a name, but you lose your
20 reservation. You'll still keep your same phone
21 number usually, but you lose your reservation
22 system. So I can't call up Holiday Inn Express
23 and say I want to stay at the Holiday Inn
24 Express in Cherokee County or Gaffney because
25 it's not part of the system anymore.



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1 Q: If you went to the Holiday Inn Express web
2 site, would you be able to find out about this
3 hotel ---

4 A: No, sir.

5 Q: --- after you had bagged the flag?

6 A: No, sir.

7 Q: Okay. Are there also different standards with
8 regard to the hotel itself with regard to
9 personal property?

10 A: Yes, sir.

11 Q: What was the approximate occupancy rate of this
12 hotel when Tilbros purchased it?

13 A: The information that I got from LoopNet was 96
14 percent occupied.

15 Q: Okay. So it's 96 percent occupied in May 2008.
16 In December 2000 -- and fast forwarding a lot,
17 forgetting about the market crash, what's the
18 approximate occupancy rate at a hotel?

19 A: Thirty-five and a half percent.

20 Q: So a drop ---

21 **THE COURT:** That's in December of '08.

22 **MR. ELLISON:** Correct, Your Honor.

23 **THE COURT:** Okay. Your voice wasn't clear on that.

24 **MR. ELLISON:** I'm sorry. I'm sorry. If I'm not
25 clear, please let me know.



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1 Q: So you had a drop of approximately 50 percent
2 in occupancy from May 2008 to December 2008,
3 regardless of what was going on with the
4 economy. Is that right?

5 A: That's correct.

6 Q: For this particular property.

7 A: Yes, sir.

8 Q: Now in addition to bagging the flag, was there
9 a period of time when this hotel had no flag?

10 A: Yes, sir.

11 Q: How long was that?

12 A: That was from May -- I guess May 6th until
13 August 30th of 2008.

14 Q: And then what happened, as far as a flag was
15 concerned?

16 A: Well, during that time, they did some
17 renovations to convert it to a Sleep Inn. You
18 have to meet -- and that Sleep Inn is part of
19 Choice Hotels. You have to meet their
20 standards so they had to do some conversions to
21 be able to meet their standards so they opened
22 on August 30th as a Sleep Inn motel.

23 Q: And has it been a Sleep Inn hotel or motel ever
24 since that time, as far as you know?

25 A: Yes.



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1 Q: Now, the summary of the results of your
2 appraisal are contained on pages 76 and 77 of
3 your appraisal, are they not?

4 A: Yes, sir.

5 Q: Now, are you familiar with something called the
6 Rushmore Method?

7 A: Yes, sir, I am.

8 Q: What's that?

9 A: The Rushmore Method is the method that
10 allocates the business -- the going concern and
11 the return and to allocate the FF and E by
12 doing a return of the FF and E and return on --
13 -

14 **THE COURT:** Please sir, don't use acronyms.

15 A: Oh ---

16 Q: Your Honor, I don't want to get into the
17 details of what the Rushmore approach is.
18 We'll get into that in just a moment. But I
19 think you said the Rushmore approach is a
20 method that is used for extracting the business
21 value of a hotel. Is that right?

22 A: Yes, sir.

23 Q: All right. Now ---

24 **THE COURT:** Well having asked the question, I want
25 to know what the FF and E is.



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1 Q: I was going to do it in a minute, but let's do
2 it now then.

3 A: Furniture, fixtures and equipment.

4 **THE COURT:** That's enough said. Thank you.

5 A: Thank you.

6 Q: Well I'm going to give you, Judge, another
7 acronym right now. What's ADR?

8 A: ADR is average daily rate.

9 Q: What's that?

10 A: Average daily rate is what the average rate is
11 that the hotel charges, so you have --
12 typically we talk about ADR for a certain time
13 frame of the year.

14 Q: Now we'll get more into that in just a moment.
15 But you were charged with valuating the real
16 property value of this property as of December
17 31st of 2008. Is that right?

18 A: Yes, sir. I was.

19 Q: And that charge is described at the very first
20 page of your appraisal. Is that right?

21 A: Yes, sir.

22 Q: Would it have been appropriate to look at the
23 income from a competitive set as opposed to
24 this property?

25 A: No, sir.



1 Q: Why not?

2 A: Competitive set is other hotels that rent the
3 area and it would not be proper to utilize the
4 competitive set because the competitive set may
5 be -- it's different hotels, maybe different
6 levels, economy, budget, hotels, they may be
7 higher end hotels, and the location of the
8 hotel is important, as well as the franchise,
9 the choice -- the Sleep Inn, which is part of
10 the Choice Hotels.

11 Q: Now Mr. Rosen, you've seen what's up on the
12 projector right now, slide 28 before, have you
13 not?

14 A: Yes, sir.

15 Q: All right. Now you didn't prepare this, did
16 you?

17 A: No, sir. I did not.

18 Q: Now, we're going to go -- but the column that
19 is labeled tax payer. See that column?

20 A: Yes, sir.

21 Q: Does that column reflect the analysis contained
22 in your appraisal?

23 A: Yes, sir. It does.

24 Q: Now, does this presentation reflect how the
25 Rushmore Method is supposed to be used?



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1 A: Yes, sir, under the taxpayer column.

2 Q: Okay. Now, you're familiar -- and I'm not
3 going to introduce it as an exhibit. You're
4 familiar with this book, are you not?

5 A: Yes, sir. I have it in my library.

6 Q: Okay. Could you describe this book for the
7 Court, please?

8 A: This is a book that Rushmore wrote. I forget
9 how many years ago. And this describes how to
10 -- about appraising hotels and how to allocate
11 business from the valuation.

12 Q: Now, the Rushmore approach is not the only
13 approach for extracting value, is it?

14 A: No, sir.

15 Q: Is it generally regarded as the most
16 conservative approach?

17 A: Yes, sir.

18 Q: Are you familiar with something called the TAB
19 approach, or Total Assets of Business approach?

20 A: Yes, sir. I think that's the Lennhoff report.

21 Q: Okay. Is that a more aggressive way of doing
22 things?

23 A: Yes, sir. And there's quite a bit of variance
24 between the two.

25 Q: Okay. Now there's no jury in here and I'm not



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1 appealing to a jury. Could you tell the Court
2 why you used the Rushmore approach?

3 A: The Rushmore Method is the more accepted method
4 in the industry.

5 Q: So, in ---

6 **THE COURT:** In what industry? In the hotel
7 industry?

8 A: In the hotel industry and the appraisal
9 industry and Rushmore has actually been to
10 Columbia. I forgot how many years, but I took
11 his two day seminar, as well as a webinar --
12 two hour webinar with him -- with Mr. Rushmore
13 and Lennhoff explaining the difference. I have
14 some of the information from that.

15 Q: I am not going to burden the Court with that.

16 A: But there's quite a bit of difference between
17 the two.

18 Q: Okay. So you took the most conservative
19 approach in terms of extracting the business
20 value. Is that right?

21 A: Yes, sir.

22 Q: So let's run through this. And again, this is
23 just presented a little differently than is on
24 specifically, pages 75 through 77 in your
25 report. All right.



1 **THE COURT:** Just one moment.

2 **MR. ELLISON:** Sure.

3 **THE COURT:** When you refer to it as the most
4 conservative approach that is capable of
5 construction ---

6 **MR. ELLISON:** Yes.

7 **THE COURT:** --- when you say that, you mean that
8 he's used the approach that is the fairest, the
9 most likely to result ---

10 **MR. ELLISON:** No.

11 **THE COURT:** All right. You define it then, before
12 we go forward.

13 **MR. ELLISON:** Let me -- let me help with that.

14 Q: As a general proposition -- Your Honor, there's
15 a big debate in the appraisal industry as to
16 how to extract business values, is there not?

17 A: Yes, sir. That's correct.

18 Q: And the course that you took, that I believe
19 Mr. Weaver also took, it doesn't teach you how
20 to do this. It just tells you you've got to do
21 it. Is that right?

22 A: Yes, sir.

23 Q: Okay. In the Rushmore approach -- this is,
24 Your Honor, why I wanted to use that article,
25 but Mr. Johnson won't let me use the article.



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1 In the Rushmore approach, it's a general
2 proposition. That generally attributes a
3 smaller number to business value than the other
4 methods, does it not?

5 A: That's correct.

6 Q: All right. So when we state conservative, the
7 using the contract that Judge McLeod was
8 talking about, you'll have a bigger real estate
9 value if you have a smaller intangible value,
10 will you not?

11 A: That's correct.

12 Q: Because you're looking at the overall income of
13 the property. Is that right?

14 A: That's correct.

15 Q: Now as a general proposition, using the
16 Rushmore approach, as a general proposition,
17 the value of the intangibles will be somewhere
18 between 10 to 25 percent of the total value of
19 the hotel, is that right?

20 A: Yes, sir.

21 Q: If you use the total assets approach, the TAB
22 approach, that's a more aggressive approach,
23 right?

24 A: Yes, sir. It is.

25 Q: And the primary advocate of that is a fellow by



1. the name of David Lennhoff, is that right?

2. A: That's correct.

3. Q: All right. Now Mr. Lennhoff was one of the co-
4. author's of that article. When he uses his
5. approach, that approach will often attribute 40
6. to 50 percent or more of the value of the hotel
7. to intangibles. Is that right?

8. A: That's correct.

9. Q: So let me -- Your Honor, let me get out of the
10. hotel business for a moment. Are you familiar,
11. Mr. Rosen, with the North Carolina motor
12. speedway in Broad Stroke? Do you know where it
13. is?

14. A: I know where it is, but not that familiar with
15. it.

16. Q: Okay. Well, all right. I won't use that
17. example, but basically when an investor is
18. buying the hotel, they're not just buying the
19. real estate, are they?

20. A: No.

21. Q: They're buying the income stream. Is that
22. right?

23. A: That's correct.

24. Q: So what the Rushmore approach and the TAB
25. approach try to do is they try to separate out



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1 the components and help generate that overall
2 income. Is that right?

3 A: That's correct.

4 Q: And the appraisal institute doesn't endorse --
5 does not endorse any specific approach. Is
6 that right?

7 A: That's correct.

8 Q: Okay. So let's go through the Rushmore
9 approach and Broad strokes, and then we'll run
10 through the way you applied it in this case.
11 Looking at the slide, what's the first name
12 that you calculate? And I'm not asking you to
13 put a number to it. Just methodology. What's
14 the first thing that you calculate?

15 A: Gross income.

16 Q: Okay. So the first thing you've got to do is
17 you've got to get the gross income -- and this
18 is the gross income of the business. Is that
19 right?

20 A: Yes, sir.

21 Q: All right. And I think you said earlier you're
22 supposed to do it with the gross income of the
23 specific business, not of the so-called
24 competitive set. Is that right?

25 A: That's correct.



1 Q: And is that because you're appraising this
2 particular property?

3 A: Yes, sir.

4 Q: Okay. Would it be a violation of USPAP to use
5 the competitive set as opposed to this
6 particular property?

7 A: Yes, sir.

8 Q: And that would -- in your view, would that be
9 misleading?

10 A: Yes, sir. It would be extremely misleading.

11 Q: Okay. So after you've calculated out the
12 income, then what are you supposed to do?

13 A: Then you deduct your expenses.

14 Q: And when you talk about expenses, you're
15 talking about the expenses of this particular
16 property. Is that right?

17 A: Yes, sir.

18 Q: All right. Now, in terms of presentation,
19 there are certain expenses that you take out of
20 these for purposes of putting it into the
21 Rushmore approach that are part of expenses,
22 but you have to extract them now to calculate
23 the business side. Is that right?

24 A: Yes, sir.

25 Q: And I'm going way down. One of the biggest



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1 examples of that is property taxes. Is that
2 right?

3 A: Yes, sir.

4 Q: Now, the investors interested, again, in
5 return, not interest -- in total return. Not
6 interested in the real estate component in and
7 of itself. Is that right?

8 A: That's correct.

9 Q: So in applying the Rushmore approach, you first
10 had to do gross income, and then you had an
11 expense number. Do you see that?

12 A: Yes, sir.

13 Q: And we'll get back into the specifics in a
14 moment. Then what's the next thing that you
15 have to do?

16 A: Then you allocate the business -- you want to
17 adjust for business value.

18 Q: And under the Rushmore approach, how do you do
19 that?

20 A: You look at the income attributable to the
21 business or growing concern ---

22 Q: No, no, no, no, no. I'm sorry. How do you
23 calculate that income attributable to the
24 business? You know, we're trying to separate
25 out the real estate value.



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1 A: Right.

2 Q: What things do you look at?

3 A: You look at the basic management fee -- the
4 base management fee, which would be charged and
5 you get that number. The management fee is
6 three percent, and that's of the gross income.

7 Q: Okay. And do you also look at the franchise
8 fee?

9 A: Yes, sir.

10 Q: Why do you look at the franchise fee?

11 A: The franchise fee is 7.6 percent for the Sleep
12 Inn hotel.

13 Q: That's going to be different sometimes from a
14 Marriott or a Hilton or a Sleep Inn or
15 whatever, right? Is that right?

16 A: Yes, sir. It will be different. So I look at
17 -- I obtain that information and for the Choice
18 Hotels, they charge 7.6 percent.

19 Q: Okay. So then do you then deduct -- now we're
20 getting into the FF and E -- furniture,
21 fixtures and equipment ---

22 A: Yes, sir.

23 Q: --- you have to make an adjustment for the FF
24 and E?

25 A: Yes, sir.



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- 1 Q: Okay. How do you do that?
- 2 A: Okay. You take the -- you want a return of and
- 3 a return on the FF and E. Furniture, fixtures
- 4 and equipment.
- 5 Q: Okay. And that's shown upon slide 28, is that
- 6 right?
- 7 A: Yes, sir.
- 8 Q: It's also in your report.
- 9 A: Yes, sir.
- 10 Q: Okay. So then we say return of the personal
- 11 property. What do you mean by that?
- 12 A: That return of is the same as like a reserve or
- 13 placement. In the hotel industry, we call it
- 14 Personal Improvement Plan, PIP, and because the
- 15 furniture, fixtures and equipment have a
- 16 relatively shortly life, you have got get a
- 17 return of the FF and E.
- 18 Q: And is there pretty much a standard reserve or
- 19 return of personal property?
- 20 A: Typically, it's around five percent.
- 21 Q: Would one percent be a typical reserve?
- 22 A: No, sir. I mean, it could be more than five
- 23 percent, but if you use five percent, that's --
- 24 in 20 years -- and the FF and E won't last 20
- 25 years, so five percent is fairly conservative,



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1 but you can't use less than five percent.

2 Q: If you use one percent, are you overstating
3 income?

4 A: Oh yeah. You'll be overstating income
5 dramatically.

6 Q: And why is that?

7 A: Because it's not going to -- the -- you're
8 saying that it's going to last, the FF and E is
9 going to last, but you have to get a return of
10 it and it's not going to last 50 years or 100
11 years.

12 Q: Okay. At least most of it won't.

13 A: No. I've never seen furniture last that long.

14 Q: I just have some antique dealers in Charleston
15 that might disagree with you. Now, you say the
16 return on the equipment on the FF and E. What
17 do you mean by that?

18 A: Okay. Return on the FF and E reflects the
19 owner's cost of capital. An owner is entitled
20 to the annual return of that capital, so I
21 think of it as, like, a return on -- and you
22 have to think it clearly -- when you land -- if
23 you land lease land, you land lease it with
24 return on, but when you return of, your return
25 has to be greater, because you've got land and



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1 a building. You understand that? So a
2 building will last, let's say 50 years, and you
3 have to give a return on the land in return of
4 the building, so that's where it -- on the
5 personal property, you have to give a return of
6 and you have to give a return on.

7 Q: So you deduct those things -- again, we'll run
8 through the numbers in a few minutes, but under
9 the Rushmore approach, you might get a net
10 operating income attributable to real estate,
11 is that right?

12 A: That's correct.

13 Q: Then what do you do?

14 A: Then you subtract the property taxes.

15 Q: Are you familiar, Mr. Rosen, with the term
16 called loaded capitalization rate or loaded
17 rate?

18 A: Yes, sir.

19 Q: Explain to the Court what a loaded
20 capitalization rate is.

21 A: A loaded capitalization rate is a rate you
22 would use if you didn't deduct the property
23 taxes. You include a higher capitalization
24 rate. I use a 12 percent rate. It's not
25 loaded. You have to load it so it would be a



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1 much higher rate and you take net income and
2 divide it by a much higher rate because it's
3 loaded. It includes the taxes expense.

4 Q: So if you loaded the capitalization rate, and
5 we can do the math.

6 A: Yes, sir.

7 Q: If you loaded the capitalization rate in this
8 particular property, that would increase the
9 capitalization rate by probably close to three
10 percent, would it not?

11 A: It would probably do it -- it would be
12 probably, like 4.2 percent.

13 Q: So you use an unloaded capitalization rate of
14 12 percent. We'll talk about the
15 reasonableness of that in a few minutes. Is
16 that right?

17 A: Yes, sir.

18 Q: Okay. So you have a net operating income, and
19 you've netted out the property taxes at that
20 point.

21 A: Yes, sir.

22 Q: Okay. And then, you applied the capitalization
23 rate. Is that right?

24 A: Yes, sir.

25 Q: And you apply it by dividing the net income by



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1 the capitalization rate.

2 A: Yes, sir.

3 Q: And then you get a value. Is that right?

4 A: That's correct.

5 Q: Okay. And that's basically the Rushmore
6 approach.

7 A: Yes, sir.

8 Q: Now let's talk about the specifics in this
9 particular case.

10 A: Yes, sir.

11 Q: And we're going to run through it as it's shown
12 on slide 28, primarily. How did you calculate
13 the net income of the property? Do you
14 remember?

15 A: Um ---

16 Q: Or is that -- not the net, I'm sorry. The
17 gross income of the property.

18 A: Oh, okay.

19 Q: I'm sorry.

20 **THE COURT:** If it doesn't upset your train of
21 thought too much, go down this the way it's
22 listed on the page so I'll be able to follow
23 it.

24 **MR. ELLISON:** That's the way I'm doing it, Your
25 Honor. That's why I'm starting with the line



1 at the very top, gross income. I let him use
2 the word gross.

3 **THE COURT:** Okay. All right.

4 A: The gross income, or the income, there's 60
5 rooms and utilized 60 rooms times 365 days
6 times the average daily rate, which is \$73.67,
7 which came -- that average daily rate came from
8 the Star report, which is in the back of the
9 appraisal.

10 Q: So you've got a gross income number looking at
11 this particular property. Is that right?

12 A: Yes, sir. And then ---

13 Q: Wait, wait, wait. And you said it would be a
14 violation of USPAP to have used a competitive
15 set, as opposed to looking at this particular
16 property.

17 A: Yes, sir. Because it would misrepresent.

18 Q: Okay. So then, what did you do after you
19 calculated the gross income of this particular
20 property?

21 A: Then I ---

22 Q: I'm sorry. Let me back up because this might
23 be important. In terms of looking at the gross
24 income, specifically the calculation of the
25 average daily rate, did you take into account



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1 that the flag had changed?

2 A: Actually, I did not. The Star report only
3 reports when it has a flag. So the -- May into
4 August; that ---

5 Q: You didn't look at that.

6 A: No. Because that information wasn't available
7 -- wasn't reported.

8 Q: Did -- I'm sorry?

9 **THE COURT:** Go ahead, but I do have a question.

10 **MR. ELLISON:** Your Honor, I'd rather answer your
11 questions than my questions.

12 **THE COURT:** Well how does occupancy figure into
13 this? A while ago you had testimony to the
14 effect that some had 90 percent and some had 50
15 percent, depending on the time.

16 **MR. ELLISON:** Right.

17 **THE COURT:** So it seems to me that it's being
18 calculated as if you have full occupancy the
19 whole year.

20 **MR. ELLISON:** Mr. Rosen, you understand what the
21 Judge is asking?

22 A: I think so. What I'm doing when I said gross
23 income, that's if you rented every room every
24 night and you had no vacancy, and then you take
25 off for the occupancy, because you're not going



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1 to ---

2 Q: Let's run through the math, okay?

3 A: Yeah.

4 Q: You have average daily rate of this particular
5 hotel.

6 **THE COURT:** That's the fee that's paid.

7 **MR. ELLISON:** That's right.

8 **THE COURT:** Okay.

9 **MR. ELLISON:** I'm going to run through the math,
10 trying to simplify it a lot.

11 Q: You have the average daily rate, right?

12 A: Correct.

13 Q: Okay. You multiply that, do you not?

14 A: Yes, sir.

15 Q: Okay. You multiply that by the number of
16 rooms. Is that right?

17 A: Yes, sir.

18 Q: Okay. So you've got a potential for the
19 property. Is that right?

20 A: That's correct. Times the number of days.

21 Q: I'm getting there right now. Times the number
22 of days.

23 A: Yes, sir.

24 Q: Okay. And then you also multiply it by the
25 occupancy rate. Is that right?



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1 A: Yes, sir.

2 Q: All right. So the math, to get to the --
3 you're looking at the income -- the gross
4 income of this property by looking at the
5 charges the Court was talking about, multiplied
6 by the number of rooms, multiplied by the
7 number of days, and multiplied by the occupancy
8 rate.

9 A: That's correct.

10 Q: And this is for this particular property. Is
11 that right?

12 A: Yes, sir.

13 Q: And that gives you your gross income number
14 that's on the top of the page of approximately
15 \$572,000.

16 A: Yes.

17 **THE COURT:** Excuse me. Isn't the occupancy rate a
18 rather subjective figure? In other words, you
19 don't know until the end of the year.

20 A: That's correct. But what I have is the Star
21 report, which is relied on by appraisers. It's
22 in the back. It looks like that. It says Star
23 -- STR -- and that information is in the Star
24 Report, and it says, "The running 12 months is
25 35.5 percent occupancy," my property.



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1 **THE COURT:** Okay. And that's what you're basing it
2 on.

3 **MR. ELLISON:** Right. It's based on the Star Report,
4 but let's walk it through here a little bit
5 more specific. Star -- STR -- stands for Smith
6 Travel Research. Is that right?

7 A: Yes, sir. I'm sorry.

8 Q: It's okay. It's okay. So hotels, such as the
9 Sleep Inn, report to Smith Travel Research what
10 their occupancy rate is, does it not?

11 A: Yes, sir.

12 Q: They also report what their average daily rate
13 is. Is that right?

14 A: That's correct.

15 Q: So the STR Report, which is done once a year.
16 Is that right?

17 A: Well you can pull the STR report at any point,
18 but ---

19 Q: In the appraisal business, you pull it up once
20 a year, right?

21 A: Yes, sir.

22 Q: So you take these figures that are reported for
23 the actual performance for the hotel for the
24 previous year. Is that right?

25 A: Yes, sir.



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- 1 Q: I'm going to bog down in details so I won't.
2 But so in general, though, this is based on
3 actual performance of this hotel as of the end
4 of 2008. Is that right?
- 5 A: Yes, sir.
- 6 Q: And that's where you get your gross income
7 number.
- 8 A: Yes, sir.
- 9 Q: Okay. And Judge, I can go into more -- I
10 didn't think you wanted me to. Okay. So after
11 you've gotten your gross income for this
12 particular property, then we talked about under
13 the Rushmore approach, you apply the expenses.
14 Is that right?
- 15 A: Well ---
- 16 Q: You deduct the expenses.
- 17 A: After we've gotten -- times the occupancy rate
18 ---
- 19 Q: Right.
- 20 A: --- we'd got the gross -- we got the -- excuse
21 me. We got the income.
- 22 Q: You got your gross income.
- 23 A: Okay.
- 24 Q: Your gross income comes in around \$572,000. Is
25 that right?



1 A: Yes, sir.

2 Q: Again, all this is in the report.

3 A: Yes, sir. Page 75.

4 Q: Okay. Then you calculate your expenses. Is
5 that right?

6 A: Yes, sir.

7 Q: All right. And then you calculate the expenses
8 for this particular property?

9 A: No, sir.

10 Q: Okay. How do you calculate the expenses?

11 A: Okay. Expenses I utilized were 73 percent and
12 that came from the host study, also done by
13 Smith Travel Research and appraisers rely on
14 this host study. You buy it once a year and I
15 used the 2009 host study which for the
16 operating year of 2008 and based on different
17 -- they have -- you can get the information for
18 the number of rooms, the location and I utilize
19 73 percent.

20 Q: Okay. And so you ended up with a figure for
21 this property, an estimate of \$337,000. Is
22 that right? For expenses.

23 A: Yes, sir.

24 Q: All right. And that gave you a net before the
25 application of trying to extract the business



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1 value of roughly \$234,000 and that is the third
2 figure that's in the column labeled taxpayer.
3 Is that right?

4 A: Yes, sir. I do.

5 Q: Okay. And that's the same number that's on
6 page 75 ---

7 A: Yes, sir.

8 Q: --- of your report. All right. Now, there are
9 a couple of things -- again, not to complicate
10 it. Then we're going to go to the business
11 value adjustment. You said you had to have a
12 management fee. Is that right?

13 A: Yes, sir.

14 Q: And your management fee was how much?

15 A: 2.9 percent.

16 Q: Okay. And that worked out to roughly \$17,000.
17 Is that right?

18 A: Yes, sir.

19 Q: Okay. And the franchise fee, I think you said
20 earlier for a Sleep Inn was approximately 7.6
21 percent?

22 A: Yes, sir.

23 Q: All right. So, you added -- and that worked
24 out to approximately \$43,000? Is that right?

25 A: Yes, sir.



1 Q: All right. So the total for the business value
2 adjustment under the Rushmore approach was
3 around \$60,000. Is that right?

4 A: Yes, sir.

5 Q: So then we have to deal with the personal
6 property, which is one of those components that
7 helps generate the income, right?

8 A: Yes, sir.

9 Q: So we had the return of personal property,
10 right?

11 A: Yes, sir.

12 Q: And that number was what?

13 A: \$28,635.

14 Q: And that's based on a five percent reserve?

15 A: Yes, sir.

16 Q: And in your experience, is that a reasonable
17 figure in the hotel industry? I don't want to
18 repeat everything.

19 A: Yes, sir.

20 Q: And we talked about return on the personal
21 property.

22 A: Yes, sir.

23 Q: All right. And how much was that?

24 A: That was \$6,156.

25 Q: And page 76 of your report, about the middle of



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1 the page says, "Derivation on return of FF and
2 E."

3 A: Yes, sir.

4 Q: Can you explain to the Court in broad strokes
5 how you did that? How you calculated out the
6 return on the rate of return?

7 A: The return on the furniture, fixtures and
8 equipment was \$38,000 times 16 percent, and
9 that 16 percent comes from the capitalization
10 rate and the tax rate on personal property, a
11 4.2 percent. So the rate of return on personal
12 property is 16.2 percent, so it's \$38,000 times
13 16 percent is \$6,156.

14 Q: Okay.

15 A: \$38,000 is what they filed with the auditor for
16 personal property. Actually replacement cost
17 would probably typically be higher, but I
18 always tend to use what they file.

19 Q: Okay. So looking at the slide 28, you end up
20 with a net operating income of approximately
21 \$139,000. Is that right?

22 A: Yes, sir.

23 Q: And that's attributable solely to the real
24 estate, correct?

25 A: Yes, sir.



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1 Q: So then you deducted the real estate taxes?

2 A: Yes, sir.

3 Q: Okay. And I think you said earlier, it would
4 be misleading not to deduct from there. Is
5 that right?

6 A: That's correct.

7 Q: But you could have done it if you loaded the
8 capitalization rate. Is that right?

9 A: Yes, sir. You could have.

10 Q: All right. But you didn't load your
11 capitalization rate.

12 A: No, sir.

13 Q: All right. And you determined that a 12
14 percent unloaded rate was reasonable. Is that
15 right?

16 A: Yes, sir.

17 Q: All right. And I think you said earlier that
18 the real estate market had basically collapsed
19 in the last quarter of 2008?

20 A: Yes, sir. It did.

21 Q: All right. Is a 12 percent rate reasonable
22 during that time period?

23 A: At that point in time, it did appear to be
24 reasonable.

25 Q: Did the capitalization rate generally change



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- 1 with market conditions?
- 2 A: Yes, sir.
- 3 Q: So if the market's doing well, the
- 4 capitalization rate would be lower, right?
- 5 A: Yes, sir.
- 6 Q: And that's because investors are not expecting
- 7 quite as high a return on their investment, is
- 8 that right?
- 9 A: Yes, sir.
- 10 Q: Now real estate is basically a illiquid
- 11 investment, is it not?
- 12 A: Yes, sir.
- 13 Q: All right. So would you expect the real estate
- 14 capitalization rate to be higher or lower than
- 15 a return, for instance, on a bond?
- 16 A: It's usually quite a bit -- it can be quite a
- 17 bit higher.
- 18 Q: Okay. So ---
- 19 A: But it's always higher.
- 20 Q: Okay. A BAA rated bond is the lowest rated
- 21 commercial grade bond, is it not?
- 22 A: Yes, sir.
- 23 Q: And you'd expect the rate of return on a hotel
- 24 to be significantly higher than a BAA rated
- 25 bond, would you not?



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1 A: Yes, sir.

2 Q: And the BAA rates had spiked from June of 2008
3 -- December of 2008, had they not?

4 A: Yes, sir.

5 Q: Actually, they had spiked to almost nine
6 percent, had it not?

7 A: Yes, sir.

8 Q: Bear with me for one moment. Look at Exhibit
9 13.

10 A: Yes, sir.

11 Q: Can you identify that for the court, please
12 sir?

13 A: Yes, sir. This is the economic and market
14 indicators from the evaluation of -- this is
15 the appraisal institute's valuation of --
16 magazine or information that they produced and
17 ---

18 Q: If you -- hold on. If you go to the last line
19 in the first set of numbers which is called
20 market rates and bond yields, that's what
21 you're pointing to for the court?

22 A: Oh, I'm sorry. Yes, sir. That's correct. And
23 the last line is corporate bonds, BAA and then
24 there's a separate column over December 2008
25 and the rate was 8.46 and it had risen from



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1 '06.. It kept increasing until December -- it's
2 the highest for that two year -- three year
3 period.

4 Q: And you would expect an unloaded capitalization
5 rate to be substantially higher than 8.46
6 percent ---

7 A: Yes, sir.

8 Q: --- in December 2008, is that right?

9 A: Yes, sir.

10 Q: Now the general state of the economy impacts
11 the value of the real estate, does it not?

12 A: Yes, sir.

13 Q: It impacts the income, is that right?

14 A: Yes, sir.

15 Q: Generally speaking?

16 A: Yes, sir.

17 Q: And it impacts the capitalization rate, does it
18 not?

19 A: Yes, sir.

20 Q: Is it a pretty significant impact on
21 capitalization rate?

22 A: Yes, sir.

23 Q: And can you describe to the Court, in broad
24 terms, why you would expect the status of the
25 economy to impact the capitalization rate?



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1 A: The capitalization -- if the economy changes,
2 the capitalization rate's going to change
3 because the interest rates -- interest rates
4 have a strong impact on the capitalization
5 rate.

6 Q: And turning to page 51 of your report, did you
7 discuss in broad strokes the impact of the
8 economy?

9 A: Yes, sir. I did.

10 Q: And that's on page 51 of the report?

11 A: Yes, sir.

12 Q: And -- pardon me for just a moment. Let's sort
13 of run through this general state of the
14 economy just a second. Not there yet. Okay.
15 We talked earlier that September 2008 Freddie
16 Mac and Fannie Mae had failed, is that right?

17 A: Yes, sir.

18 Q: Okay. And did that have an impact on the real
19 estate market?

20 A: Yes, sir.

21 Q: Okay. What kind of impact?

22 A: A horrible impact. Couldn't get -- all of a
23 sudden, banks weren't making loans.

24 Q: What happened to Lehman Brothers in September
25 2008?



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- 1 A: They failed.
- 2 Q: What about AIG in September 2008?
- 3 A: They failed.
- 4 Q: What about Washington Mutual in 2008?
- 5 A: They failed.
- 6 Q: Okay. Was Washington Mutual the biggest
- 7 originator of residential loans ---
- 8 A: Yes.
- 9 Q: --- in the United States at that time?
- 10 A: And they were a huge bank. Even though it
- 11 might not be located here, appraisers knew who
- 12 Washington Mutual was.
- 13 Q: Actually, they were out of California, weren't
- 14 they?
- 15 A: That's correct.
- 16 Q: And actually, their data center was in
- 17 Florence, just off of I-95, was it not?
- 18 A: Yes.
- 19 Q: Okay. So they were really covering the
- 20 country, were they not?
- 21 A: Yeah.
- 22 Q: Okay. And you're familiar with TARP?
- 23 A: Oh, yes.
- 24 Q: And that was started in October 2008 ---
- 25 A: That's correct.

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- 1 Q: --- is that right?
- 2 A: Yes, sir.
- 3 Q: About \$700,000,000 was put into TARP initially,
- 4 is that right?
- 5 A: Yes, sir.
- 6 Q: And December 2008, did other things happen?
- 7 A: Yeah.
- 8 Q: Did Merrill Lynch merge with Bank of America?
- 9 A: Yes, sir. They had to.
- 10 Q: Okay. And did Wachovia essentially fail?
- 11 A: Yes, sir.
- 12 Q: Okay. Now you also look -- in terms of gauging
- 13 the general economy, you also look at stock
- 14 prices as a general rule, do you not?
- 15 A: Yes, sir..
- 16 Q: So if we look at some of these stock prices,
- 17 which is shown on slide five, this is
- 18 information that was compiled showing what had
- 19 happened to the stock prices on those
- 20 institutions from January 2008 to December
- 21 2008, is that right?
- 22 A: Yes, sir. Yes, sir.
- 23 Q: And overall, the Dow, which -- Dow Industrial
- 24 Average looked at a lot more and dropped over
- 25 30 percent, is that right?



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1 A: Yes, sir.

2 Q: These stocks had dropped ---

3 A: Over 90 percent.

4 Q: --- right. Close enough. Okay. Now, as a
5 general rule, there are three approaches to
6 value when you do an appraisal, is that right?

7 A: Yes, sir.

8 Q: What are those approaches?

9 A: The cost approach, the sales comparison
10 approach, and the income approach.

11 Q: Okay. Did you use the cost approach in your
12 appraisal of this property?

13 A: No, sir.

14 Q: Why not?

15 A: The cost approach is mainly used for new or
16 relatively new properties. This property is --
17 it's got some age on it, so depreciation is
18 difficult to estimate. But lodging facilities
19 are not typically -- you don't put much weight
20 on them because you can build a hotel anywhere,
21 but that doesn't mean it will operate.

22 **THE COURT:** Wait a minute. You don't put much
23 weight on what, sir?

24 A: The cost approach.

25 **THE COURT:** Okay.



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1 A: Or you can refer to it as a replacement cost.
2 It's the land value plus the replacement cost,
3 less depreciation.

4 **THE COURT:** Thank you.

5 Q: Now, let's focus in on that for just a moment.
6 If you had used the cost approach, would you
7 have had -- in order to present fairly in
8 accordance with USPAP, which you are bound by,
9 and every appraiser is bound by ---

10 A: Yes, sir.

11 Q: --- would you have had to have calculated the
12 approximate value of the land?

13 A: Yes, sir.

14 Q: Okay. So you have to show that. Then you
15 think he said the cost of construction, is that
16 right?

17 A: Yeah. Replacement cost.

18 Q: All right. So replacement cost. So you have
19 to show the land, then you have to show the
20 replacement cost of the improvements, right?

21 A: Yes, sir.

22 Q: And then you show the depreciation on all that.

23 A: Yes, sir.

24 Q: But you have to show all three to present the
25 cost approach, is that right?



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1 A: Yes, sir.

2 Q: To do it fairly, in accordance with USPAP.

3 A: Yes, sir. If you had -- if you come up with
4 land value, you've got to have land sales.

5 Q: Okay. But you've got to show what that value
6 is.

7 A: That's correct.

8 Q: And -- but you didn't use the cost approach,
9 right?

10 A: No, sir.

11 Q: All right. Let's talk about the sales
12 comparable approach.

13 A: I don't use the cost approach when I do hotels.

14 Q: Okay. As a general rule, was financing
15 available in the last quarter of 2008?

16 A: No, sir.

17 Q: As a general rule, were permits being issued to
18 build new construction in the last quarter of
19 2008?

20 A: Very little, and only time was if they a
21 commitment from the bank and if the bank would
22 still reliable.

23 Q: So let's move on to the second approach, the
24 sales comparable approach.

25 A: Yes, sir.



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1 Q: All right. Can you describe how that approach
2 works, in general terms.

3 A: The sales comparison approaches use comparable
4 properties compared to the subject property,
5 which works fine for most properties. But
6 hotels are different.

7 Q: Why are hotels different?

8 A: Because you have to look at the occupancy rate
9 and you have to look at the average daily rate
10 and it's -- there's a lot of problems because
11 they're more complex investments, so -- than
12 your typical office buildings or shopping
13 centers. So -- and let me give you an example.
14 Two hotels across the street from each other.
15 One's a Comfort Inn, one's a Holiday Inn
16 Express. They're both similar hotels. The
17 occupancy rate at the Comfort Inn is 40 percent
18 and the occupancy rate at the Holiday Inn
19 Express is 70 percent. The average daily rate
20 was \$80 for both hotels. So that's why you
21 can't -- that's why it's not good to use, you
22 know -- if the Holiday Inn Express had sold,
23 you compare it to the Comfort Inn, you would
24 overvalue the Comfort Inn. The bank would have
25 a very risky loan. I did the appraisal of the



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1 Comfort Inn for a tax appeal, and the same guy
2 owned both hotels. I said how did you keep the
3 other hotel -- how did you keep the Comfort Inn
4 open? He said with the profits of the Holiday
5 Inn Express. So that's why you -- there's a
6 difference in the hotels.

7 Q: There was also a problem in using the sales
8 comparable from before September 2008, was
9 there not?

10 A: Yes, sir.

11 Q: Can you describe for the Court what that
12 problem was?

13 A: If you used sales from early 2008 and 2007, the
14 market was, of course, much stronger. The
15 occupancy rate was higher. When the --
16 starting in September or October '08, the
17 occupancy rate of the hotels started falling
18 because people weren't spending money, people
19 weren't traveling, businesses were cutting
20 back. So the -- so there a lot of changes in
21 the market.

22 Q: Okay. So what's the third approach?

23 A: Okay. The third approach is the income
24 capitalization approach, and that was the
25 approach I utilized.



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1 Q: And in your experience, is that the most
2 commonly accepted approach for investors
3 investing in hotels?

4 A: Yes, sir.

5 Q: All right. But because we are here to value
6 the real property, is that why you had to
7 approach the Rushmore approach to the income
8 approach?

9 A: Yes.

10 Q: And we went through how you did that, is that
11 right?

12 A: Yes, sir.

13 Q: Okay.

14 **THE COURT:** I have a question while there's a
15 moment. In determining the value of comparable
16 sales, you undoubtedly have had the opportunity
17 to review many deeds of real estate which show
18 the purchase price. Is that correct?

19 A: Yes, sir. I have.

20 **THE COURT:** Do you find that that purchase price
21 just includes the value of the real estate of
22 the hotel, or does it include the FF and E, the
23 furniture, fixtures and equipment that you've
24 termed it? In other words, there's a basis
25 issue there and I'm just wondering how these



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1. folks play that.

2. A: Well, I had to say, sometimes people -- the
3. sales price on a hotel on the deed will be
4. everything, will be -- that's what they paid
5. for the hotel to acquire the land, the
6. building, the FF and E, and the business value,
7. which is not correct. They should -- you know,
8. because they're paying tax on it. They're
9. paying deed stamps on it. So you really should
10. have an accountant break it out. But we see
11. this in convenience stores too. So we -- on
12. the sales of convenience stores, they sometimes
13. -- most of the time, whatever the deed says is
14. not what it actually sold for, so we have to
15. attempt to verify the sale. Sometimes people
16. will talk to us and sometimes they won't, so --
17. but we have to go through -- try to verify each
18. sale and that's another problem why we don't
19. always use sales with other motels because
20. people don't want to tell you their business,
21. you know, what -- and they may not actually
22. know how they allocated it. A lot of hotels
23. were bought before the recession at so much
24. times the occupancy that they would -- if they
25. were doing \$300,000 in income, they would buy



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1 it based three times that \$300,000 to \$900,000,
2 and that's what they'd buy the motel for.

3 **THE COURT:** And that would appear on the face of the
4 title to the real estate.

5 A: Right. I mean they paid ---

6 **THE COURT:** It could.

7 A: Yeah, well they -- we were using multiple and
8 that was not -- that was not real smart.

9 **THE COURT:** All right. Well, my question then is am
10 I assured by you that no such misinformation is
11 creeping into the report that is offered here
12 today?

13 A: That's correct. This is an accurate ---

14 **MR. ELLISON:** It is accurate Judge?

15 A: --- this is an accurate report and not only is
16 it an accurate report, it's -- you, the Courts
17 or anybody is welcome to turn it to the South
18 Carolina Appraiser's Board and they'll review
19 my report to see if it meets the standards and
20 if there's mistakes, then they will -- I'll be
21 punished for the mistakes, whether ---

22 **THE COURT:** I wasn't suggesting that you had ---

23 A: No, no, no.

24 **THE COURT:** --- anything wrong.

25 A: No, no, no. But I'm -- but all my reports that



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1 I ever do, I'd stand by them. I don't -- I've
2 done many reports in the 40 years and I've done
3 donations, you know, where people have donated
4 property. They wanted that in Myrtle Beach and
5 it was \$18,000,000, and I stood by that report
6 and the IRS apparently signed off on it. It
7 was an \$18,000,000 donation, so whatever my
8 report is, I try to do the best job I can, but
9 I stand by my reports..

10 Q: I think the Judge is asking a little different
11 question.

12 A: Oh, okay.

13 **MR. ELLISON:** Let me -- I know what you're asking.
14 Let me -- if I might, Your Honor.

15 **THE COURT:** Yes, sir.

16 Q: In doing an income approach, Mr. Rosen ---

17 A: Yes, sir.

18 Q: --- you don't look at the stated consideration
19 on a deed, do you not?

20 A: That's correct.

21 Q: That's irrelevant, is that right?

22 A: That's correct.

23 **THE COURT:** That was the approach you used and if
24 that's the case, my question has been answered.

25 **MR. ELLISON:** All right. But let's go a little bit



1 farther because you also asked -- you wanted to
2 make sure that there's not misinformation
3 seeping into this, so I wanted to address that
4 portion of your question as well, Your Honor.

5 **THE COURT:** Proceed.

6 **MR. ELLISON:** Thank you, Your Honor.

7 Q: You used the income approach, right?

8 A: Yes, sir.

9 Q: And let's leave out the Rushmore approach right
10 now.

11 A: Yes, sir.

12 Q: You used an income approach, right?

13 A: That's correct.

14 Q: And in order to do that, you used the
15 information that was provided to Smith Travel
16 Research, is that right?

17 A: That's correct.

18 Q: Information that is provided to Smith Travel
19 Research is provided by individual hotel
20 owners, is it not?

21 A: That's correct.

22 Q: And it's provided anonymously, is it not?

23 A: That's correct.

24 Q: The reason it's provided anonymously, as a
25 general rule, is because somebody like Mr.



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1 Tilva doesn't want the other competition to
2 know what they're charging specifically, is
3 that right?

4 A: That's correct.

5 Q: So when it's reported in Smith Travel Research,
6 that's why you get into this whole competitive
7 set issue, is that right?

8 A: That's correct.

9 Q: But when you were doing the calculation for
10 this particular hotel, when you looked at it,
11 you looked at this hotel, did you not?

12 A: Yes, sir.

13 Q: And you looked at the average daily rate for
14 this hotel that Tilbro -- that the property
15 owner provided you, right?

16 A: Yes, sir.

17 Q: So there's an incentive for -- because
18 everybody in the industry relies on Smith
19 Travel Research, do they not?

20 A: Yes, sir.

21 Q: There's an incentive to provide correct
22 information, is that right?

23 A: Yes, sir.

24 Q: And at the risk of sounding improper, we're not
25 dealing with determinations as to whether



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1 information that's on a deed is right or wrong,
2 are we?

3 A: No.

4 Q: Now on big deals, big deals -- and when I say
5 big deals, in excess of \$15,000,000 or so, the
6 IRS, as a general rule, requires you or
7 requires the property owner to break out ---

8 **MR. JOHNSON:** Your Honor, I'm sorry. I must object.
9 There's a lot of leading going on and ---

10 **MR. ELLISON:** I'm just trying to help the Court.

11 **MR. JOHNSON:** I understand, but ---

12 **THE COURT:** That's okay. I understand.

13 **MR. ELLISON:** That's fine.

14 **MR. JOHNSON:** It's very dense, I know, but there's a
15 lot going on. I'm sorry.

16 **MR. ELLISON:** He's right. I was just trying to help
17 the Court. Okay.

18 Q: Is there an IRS requirement on large deals to
19 separate out these components?

20 A: Yes, sir. I understand there is.

21 Q: All right. But when one is doing it on a deed,
22 it's not always done, is it?

23 A: No, sir.

24 Q: All right. Now the last thing I want to talk
25 about right now on direct examination is the



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1 capitalization rate.

2 A: Yes, sir.

3 Q: You felt that a 12 percent capitalization rate
4 was reasonable, is that right?

5 A: Yes, sir.

6 Q: How did you come up with that number?

7 A: I utilized five sales of hotels -- utilized
8 those capitalization rates.

9 Q: Is that found in your report?

10 A: Yes, sir. That's found on page 60 to 69.

11 Q: Okay. So you used the comparable sales to
12 determine the capitalization rate as I
13 understand it.

14 A: Yes. But that's where the capitalization rates
15 came from.

16 Q: And again, you used an unloaded capitalization
17 rate?

18 A: That's correct.

19 Q: And that's because you deducted the taxes from
20 the expenses, is that right?

21 A: Yes, sir.

22 Q: Would it be misleading to use an unloaded rate
23 if you did not deduct the tax expense?

24 A: Yes, sir. It would be misleading. It would
25 overvalue the property.



1 Q: Okay. And the 12 percent rate in view of the
2 8.46 percent bond rate in December 2008, do you
3 feel that's a reasonable spread between the
4 corporate bond rate and a rate for an investor
5 on a hotel?

6 A: Yes, sir. It is.

7 Q: And again, an investor in a hotel isn't looking
8 at just the real estate or the personal
9 property or the intangible, is it?

10 A: No, sir.

11 Q: They're looking at the whole package.

12 A: Yes, sir.

13 Q: And what you're charged with doing here,
14 according to your assignment, is determining
15 the value of the real estate.

16 A: That's correct.

17 Q: And that's what you said you did on the first
18 page of your report, is that right?

19 A: Yes, sir.

20 Q: And you did it in accordance with USPAP
21 standards, is that right?

22 A: Yes, sir.

23 Q: Nothing further at this time, Your Honor.

24 **THE COURT:** Thank you. Cross examination, Mr.
25 Johnson.



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MR. ROSEN - CROSS EXAMINATION BY MR. JOHNSON:

Q: Thank you, Your Honor. Good morning, Mr. Rosen.

A: Good morning. How are you doing?

Q: Good, and you?

A: Good.

Q: Good.

A: I've got a good date.

Q: Well you do too, sir. Thank you very much. Do you need water or anything? Are you okay?

A: I've got some, thank you.

Q: Okay. Good. Good. I've just got a few questions for you, Mr. Rosen. We've got into great detail about your background and history and I think you said, goodness, you're almost at 40 years now, right?

A: Yes, sir.

Q: Okay. In that 40 years, did you, through the whole time you were doing appraisals, did you do hotels?

A: No, sir.

Q: When did you first start doing hotels?

A: The first hotel I remember working on was in North Charleston. It was an Econo Lodge and the highway department was taking for their



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1 526.

2 Q: Okay. When was that?

3 A: That was probably in the '83, I think.

4 Q: Okay. So you've been doing them at least 20,
5 25, 30 years at hotels.

6 A: We did a few hotels -- every few years, we'd do
7 a hotel.

8 Q: Okay. How many would you say you've done in
9 the last five years?

10 A: Including this one?

11 Q: Sure.

12 A: Thirteen.

13 Q: Thirteen?

14 A: Yes, sir.

15 Q: Okay. And of those 13, what are the make-up of
16 the clients? For example, we've got a tax
17 appeal here. What are the different clients
18 you usually have?

19 A: Well of the 13 hotels, four were for tax
20 appeals.

21 Q: Okay.

22 A: The rest of them were for -- let me see. The
23 rest of them were for bank -- every five years
24 -- three to five years, banks have to get new
25 appraisals, so, for refinance. One was for --



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1 and I really don't know exactly but the guy had
2 a hotel. He was running 13 percent occupancy
3 and the loan was with Wells Fargo and I don't
4 like to do hotels for individuals if I know
5 it's for financial purposes, but apparently he
6 used that appraisal to write down the loan
7 because he sold the hotel for 1.1 million
8 dollars.

9 Q: So it was an individual request that he used
10 with a bank. The bank didn't request it.

11 A: Right. The bank didn't request it.

12 Q: Okay.

13 Q: And since then, they've tore down the hotel.
14 The church next door bought the hotel and tore
15 it down and it's for a parking lot.

16 Q: Okay. So by my math, you said 13, four were
17 for tax appeals. That would include -- this
18 would be one of the four, correct?

19 A: Yes, sir.

20 Q: One personal and eight banks.

21 A: Yes, sir.

22 Q: Is that right?

23 A: That sounds about right.

24 Q: Now with all 13 of these you've used in the
25 last five years, have you used the same



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1 approach to appraising them?

2 A: I think almost all of them. One we couldn't
3 get the -- we couldn't get any financial
4 information on the hotel. It was not -- it did
5 not have a flag.

6 Q: You couldn't get the information from the owner
7 of the hotel?

8 A: Yes, from the owner.

9 Q: Or the previous owner of the hotel?

10 A: From the owner..

11 Q: From the owner?

12 A: Because he was in default.

13 Q: Okay. So of the other 12 then, did you use the
14 exact same method that you used here today?

15 A: Yes, sir.

16 Q: And that's the exact same calculations that
17 were on the board?

18 A: Well we used the same procedure so the numbers
19 might be different, but ---

20 Q: Well I understand the numbers would be
21 different ---

22 A: Yes, sir.

23 Q: --- but the formula used ---

24 A: Yes, sir.

25 Q: The going on, going off -- excuse me, the



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1 return on turned off and going concern business
2 value, the deductions of property value, you
3 used that every single time for the last 12.

4 A: Yes, sir.

5 Q: Okay. So the procedure you used today then,
6 based on that, you'd use the exact same
7 procedure if a bank request a loan.

8 A: Yes, sir.

9 Q: Okay. So today, if Wells Fargo or where I
10 live, First Piedmont Federal wanted to extend
11 funding to this bank for this hotel, you would
12 agree that \$698,000 is a fair price for the
13 funding ---

14 A: Yes, sir.

15 Q: --- for the loan.

16 A: Based on financials, yes, sir, \$698,000.

17 Q: And of course that's as of that date of
18 valuation. I'm not talking about today, but I
19 just wanted to ---

20 A: That's correct. As of the end of 2008..

21 Q: Okay. Now as far as new hotels ---

22 A: Yes, sir.

23 Q: --- do you use this same valuation?

24 A: I haven't done a new hotel in I can't tell you
25 -- a lot of times you'd be shocked -- there are



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1 a lot of appraisal companies that come from
2 many states away -- many of the new hotels are
3 appraised by out of state appraisal companies.

4 Q: Okay.

5 A: And including Mr. Rushmore. He's come -- he
6 comes to Columbia. Does -- he did a big
7 Holiday Inn Express in Columbia.

8 Q: Okay. So when -- you said it had been a while.
9 Do you have any idea when the last time was he
10 did one?

11 A: I couldn't tell you.

12 Q: More than 10 years ago? More than 20 years
13 ago?

14 A: I don't know. Probably -- probably I would say
15 definitely more than 10 years ago.

16 Q: Okay. Okay. And when you did that last one --
17 and of course I know it's been a while and you
18 might not remember, but do you remember what
19 method you used then.

20 A: I couldn't tell you.

21 Q: Okay. So you don't remember if you used
22 competitive set to look at the hotel or you
23 don't -- you just don't remember?

24 A: I don't remember.

25 Q: Okay.



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1 A: I hope you can understand.

2 Q: Well, it's been a while. I can't remember what
3 I did last week, so I understand. Now, in your
4 appraisal -- and the funny thing, I will
5 reference it a lot, so I hope you've got it
6 handy in front of you there.

7 A: Right here.

8 Q: Okay. You used the method -- we talked about
9 the Rushmore Method, and you also attached
10 within the appraisal an article. Is that
11 correct?

12 A: Yes, sir.

13 Q: Okay. And unfortunately, I think much like
14 your CV, it's not numbered on the page, but
15 it's toward the end of the appraisal, correct?

16 A: Yes, sir. It's probably -- well, let me see.
17 It's ---

18 Q: It's almost the last thing.

19 A: Yeah. It's about -- my qualifications and then
20 the zoning and then the article.

21 Q: Okay. And just to show the Court, this is the
22 first page of it? Is that right?

23 A: Yes, sir. It says page nine on the bottom of
24 it, but that's -- that was of the article.

25 Q: Of the article, correct. That's the



1 "Understanding the Unique Aspects of Hotel
2 Property Tax Valuation," correct?

3 A: Yes, sir.

4 Q: And I guess for our sake, it's written it
5 appears by Daniel Lesser and Karen Rubin.

6 A: Yes, sir. You're right.

7 Q: Do you know who these people are?

8 A: I know who Mr. Lesser is.

9 Q: Okay. He's got that MAI ---

10 A: Uh-huh (affirmative response).

11 Q: --- designation, correct?

12 A: Yes, sir.

13 Q: Okay. Well, just for our purposes, I'll just
14 refer to it as the Lesser article, okay?

15 A: Okay.

16 Q: Now, when did you first read this article?

17 A: It was printed -- it was in the appraisal
18 journal in '93. I would have looked at it in
19 '93 when the -- when we get quarterly articles
20 from the appraisal journal. We get the
21 appraisal journal on a quarterly basis, so I
22 would have read it -- looked at it then. But
23 I don't remember exactly when I read it.

24 Q: Okay.

25 A: I've read it, you know, as I've done hotel



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1 appraisals.

2 Q: Okay. And that's right at about 20 years ago,
3 so you probably read it right when it came out
4 and ---

5 A: Yeah.

6 Q: --- I assume you've ready it since, as well.

7 A: Yes, sir.

8 Q: Okay. Just briefly, if you can, explain to the
9 Court what the article states.

10 A: The article states, basically, the Rushmore
11 Method -- now I will have to mention Mr. Lesser
12 works with Rushmore's company, Hospitality
13 Valuation Services, also known as HVS.

14 Q: Okay.

15 A: But it describes the allocating the business --
16 taking the business's value and the turn on and
17 return of FF and E.

18 Q: Okay. And does it -- it also mentions, I
19 believe, the three different methods of
20 valuation, correct?

21 A: Yes, sir. Cost approach, yes, sir.

22 Q: And cost, sales and income, right?

23 A: Yes, sir.

24 Q: It goes into detail about each type and the
25 pros and cons of each, doesn't it?



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- 1 A: Yes, sir.
- 2 Q: Okay. Now you said you read it first 20 years
3 ago. When's the first time you've actually
4 relied on this article to make an appraisal for
5 a hotel?
- 6 A: Probably in the last several years. I can't --
7 I don't know off hand.
- 8 Q: Okay. But you have relied upon this article to
9 do appraisals?
- 10 A: Yes, sir. I've followed the format. Yes, sir.
- 11 Q: Okay. And the format that's used in this
12 article is the format you used for this
13 particular property, right?
- 14 A: Yes, sir.
- 15 Q: Okay. Matter of fact, I think it's a pretty --
16 it appears to be a very high basis for the
17 appraisal itself. You reference many things in
18 the article in your appraisal, don't you?
- 19 A: Yes, sir.
- 20 Q: Several instances of basically copying and
21 pasting what it says, correct?
- 22 A: I think I referred to the article.
- 23 Q: Right. I mean several instances.
- 24 A: Yes, sir.
- 25 Q: Okay. Now do you feel that this is a valid

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1 article today?

2 A: Yes, sir.

3 Q: Do you think it still has weight and it should
4 be used to make valuations for hotels?

5 A: Well, yes, sir. There's other articles -- I
6 have, you know, other articles that I've read.

7 Q: I understand. I understand. We're talking
8 about this article.

9 A: Yes, sir.

10 Q: And it's 20 years old. Do you think it's still
11 valid?

12 A: Yes, sir.

13 Q: I mean you put it in your appraisal so I assume
14 ---

15 A: Yes, sir.

16 Q: --- you rely on it.

17 A: Yes, sir. Well I put it in my appraisal
18 because I felt it was an important article and
19 at that point, the institute had not developed
20 their course, the fundamentals of allocating
21 tangible and intangible business valuation.

22 Q: So even though it's 20 years old, I mean you
23 still think it's valid?

24 A: Well, yes, sir. Let me tell you, my father is
25 retired now. He's 84 years old, but we have



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1 the books that he started accumulating since
2 the 50's, when he started in 1956 and I'm
3 working on an assignment. My deposition's on
4 Thursday and the oldest article is from 1966,
5 and a bunch of the articles are from the 70's
6 so, you know, age does not necessarily make an
7 article bad or good. Sometimes it's very
8 important to have whatever information we can
9 obtain and the article or articles are not
10 necessarily antique.

11 Q: Did they have Sleep Inns in 1966?

12 A: Say again?

13 Q: Did they have Sleep Inn hotels in 1966?

14 A: Oh, no. This is on a cemetery.

15 Q: Okay.

16 A: They didn't have a hotel.

17 Q: Okay. I was just curious. So you hold it in
18 high regard. Do you adhere to everything it
19 says in your appraisal?

20 A: I used it as a guide.

21 Q: Okay. Now in this appraisal, we've talked
22 about the three methods and that's going to
23 come up a lot, and you used the income method,
24 correct?

25 A: Yes, sir.



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1 Q: Okay. You explained it when Mr. Ellison was
2 asking you, but if you could just clarify
3 again, why did you use this over the sales
4 approach?

5 A: Why to use the income approach over the sales?

6 Q: Right. Why did you use it?

7 A: Because it reflects more accurately the
8 operating -- the hotel.

9 Q: Okay. What are the negatives of the sales
10 approach to use in this ---

11 A: Well, the sales -- there's -- the sales are not
12 -- it's difficult to get all the factors out of
13 each sale and as I gave you the example, you
14 make, you know, on that Holiday Inn Express and
15 the Comfort Inn ---

16 Q: Right.

17 A: --- if you don't have the accurate information,
18 you're going to over or under appraise a hotel
19 and it just -- in my book, it's just as bad to
20 over appraise something as it is to under
21 appraise something.

22 Q: What -- to do the sales method, what
23 information do you need?

24 A: Well, you would -- to do the sales, you want to
25 get all the information. You want to get the



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1 income information to obtain the capitalization
2 rate, but you -- if you're appraising a hotel,
3 you want hotels that are doing a similar
4 occupancy, maybe similar ADRs.

5 Q: So you want occupancy rates ---

6 A: I want occupancy.

7 Q: --- you want to see if it's similar to the
8 hotel you're appraising?

9 A: Yes, sir.

10 Q: Room numbers and things like that?

11 A: Number of rooms with similar, yes.

12 Q: I mean it doesn't have to be exact, but
13 similar.

14 A: Yeah. I mean a 60 room hotel versus a 150 room
15 hotel, there's some difference.

16 Q: So the information that you need, you would
17 probably, I assume, look at comparable sales,
18 then.

19 A: Yes, sir.

20 Q: Because we sometimes call comps.

21 A: Yeah, right.

22 Q: And you had what, four, maybe five comps in
23 your appraisal?

24 A: I had five that I utilized in the purpose of
25 that -- utilized those five to extract



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1 capitalization rate.

2 Q: The cap rates, that's right. Okay. What other
3 -- what information -- you said you need to
4 know income information ---

5 A: Yes, sir.

6 Q: --- for sales approach.

7 A: Yes, sir. There's -- also we need to know
8 whether there are exterior or interior corridor
9 ---

10 Q: Okay.

11 A: --- because that's ---

12 Q: Do your comps ---

13 **THE COURT:** Wait a minute. Let him finish.

14 Q: I apologize.

15 A: An exterior or interior corridor, which is very
16 important. Exterior corridor is the old style
17 motel that you walk out the motel room and
18 you're outside, maybe covered. Interior
19 corridor is like a Hampton Inn where you walk
20 in the front door and nobody can get to your
21 room without going through that front door.

22 Q: I see. I see. Okay. And was that information
23 -- is that provided in the comps that are in
24 your appraisal that you used?

25 A: Yes, sir. Where we could get the information,



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1 we did.

2 Q: I think -- you've got it in front of you. Are
3 they on all five of them?

4 A: Yeah. As much information as I could get. Now
5 I see the Lodge -- say one was an exterior
6 corridor. I don't have a photograph of said
7 one.

8 Q: Okay.

9 A: But some of them are exterior -- it's all these
10 things that you need to consider.

11 Q: I see. And you've got that information there
12 on the comps.

13 A: Yes, sir. I got as much information. Yes,
14 sir.

15 Q: Well, if you had the information -- comps,
16 based on room numbers and the corridors and
17 things, then why didn't you use the sales
18 approach just as -- to show what it would do in
19 this case?

20 A: Because I didn't feel like it would provide an
21 accurate indication.

22 Q: Okay. So you -- how much trouble would it be
23 to do it to see what it comes up with?

24 A: I just elected not to do it.

25 Q: Okay. So it was your choice. You decided not



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1 to ---

2 A: Yes, sir. Well, the locations -- the location
3 is important. The flag is important, and I
4 decided that I -- that the sales comparison
5 would not reflect the true value of the subject
6 property.

7 Q: Do you think it would be important to use the
8 sales approach to just get a general idea of
9 what it would be? Or you just didn't want to
10 do it?

11 A: I elected not to do it.

12 Q: Okay. If you could, Mr. Rosen, please turn to
13 page 14 of the Lesser article. Please let me
14 know when you're there.

15 A: I'm there.

16 Q: Page 14?

17 A: Yes, sir.

18 Q: If you'll look on the right column, there is a
19 paragraph staring hotel investors.

20 A: Yeah.

21 Q: You go to the end of that. It looks like the
22 third sentence starting with although, it says,
23 "Although the sales comparison approach may
24 provide a range of values to bracket in support
25 the final estimate of the value." It says,



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1 "Any reliance beyond establishment of broad
2 parameters is not justified by the qualify of
3 data."

4 A: That's correct.

5 Q: So the Lesser arguments -- the Lesser article,
6 excuse me, says it could provide a bracket, a
7 general idea of high or low or somewhere in
8 between, right?

9 A: Yes, sir.

10 Q: And you used this article, but you didn't use
11 the sales approach.

12 A: Well if you read the first two lines of that
13 same paragraph, "Hotel investors typically do
14 not employ the sales comparison approach in
15 reading a final purchase decision."

16 Q: That's right. Your final decision is based on
17 income.

18 A: Right.

19 Q: But this article says it's probably not a bad
20 idea to use it just to see if you're way high
21 or way low, right?

22 A: Well, that's what it says.

23 Q: Yeah. But you didn't do that.

24 A: No, sir.

25 Q: Okay. All right. Just want to be clear. Now,



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1 we've talked a lot about your calculations and
2 I think probably the best thing to do, let's go
3 to your sheet. I have it on page 76 of your
4 appraisal. Please let me know when you're
5 there.

6 A: Yes, sir. I'm there.

7 Q: Okay. The FF and E, we've talked about that.
8 That's the personal property, correct?

9 A: Yes, sir. Furniture, fixtures and equipment.

10 Q: Okay. And the -- I know you testified to it
11 earlier, but refresh my memory. Where did that
12 \$38,000 value come from? It's about mid-way
13 through the page.

14 A: Yes, sir. That came from the auditor's
15 department. That's the amount that every hotel
16 has to file with every county for the personal
17 property with the taxes in this state, so I
18 typically use that number, which is what the
19 property owner provides to the auditor or the
20 auditor assesses the value.

21 Q: Okay. Okay. So is that the -- that's not the
22 amount of tax dollars they spent, that's what
23 the auditor is saying the value of the personal
24 property is.

25 A: That's correct.



1 Q: That's right. The \$38,000. So, obviously you
2 trust the county on that, but you don't on the
3 real estate.

4 A: No, you jumped ahead of me. I said that's what
5 the auditor -- the property owner provides that
6 to the auditor. Sometimes the auditor will put
7 a value on the property, but typically the
8 property owner provides the auditor -- they
9 file a personal property return. I have to do
10 it in my office on my equipment.

11 Q: I see. And the return they, I guess presumably
12 filed, obviously the auditor said it's \$38,000
13 and you just rely on what the auditor says.

14 A: Yes, sir.

15 Q: Okay. Now, as far as the sales price, we've
16 talked about the consideration on the deed and
17 things of that nature. What was the sales
18 price?

19 A: Of this hotel?

20 Q: Yes. Yes, sir.

21 A: The sales price was \$3,000,000, which included
22 the land, the improvements, furniture,
23 fixtures, equipment, any business value.

24 Q: Okay. And in doing the appraisal process, you
25 mentioned you don't know how that's divvied up,



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1 so to speak, if you look at the county records
2 because it just says \$3,000,000.

3 A: That's correct.

4 Q: And if one looked at it, you may assume it's
5 the real estate alone because the deed only
6 covers real estate is worth \$3,000,000,
7 correct?

8 A: Yes, sir.

9 Q: But you're saying that \$3,000,000 includes not
10 only the land, but also personal property, the
11 business value, whatever intangibles.

12 A: I think it included everything -- the day they
13 closed, included everything except the name on
14 the sign. It included the sign, but it didn't
15 include the Holiday Inn Express but appeared to
16 include everything else.

17 Q: Okay. Okay. So that value wasn't
18 extrapolated. Did you, in your appraisal
19 process, figure out what the values of the
20 personal property were during the -- when the
21 sale occurred?

22 A: No. I just used -- I used what they had filed
23 with the auditor, the \$38,000 for the FF and E.

24 Q: Okay.

25 A: Which is probably low, but it was, you know, it



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1 was not brand new and that's what I typically
2 do in all the appraisals that I've done.

3 Q: Well, did you by chance contact the buyer or
4 seller to get any information from them about
5 how it's divided up?

6 A: I met with her on several occasions, you know,
7 several times and talked to her.

8 Q: And I'm sorry, please clarify ---

9 A: Oh, I'm sorry.

10 Q: --- who is she?

11 A: Oh, okay. Ms. Tilva.

12 Q: Okay. And is that the property owner?

13 A: Well, the property owner -- it's Tilbros is the
14 company and the property owner -- I don't know
15 who -- she's one of the property owners or
16 she's one of the partners in Tilbros.

17 Q: She's a representative of the company.

18 A: Yes, sir.

19 Q: Okay. Okay. So you met with her. Did she
20 provide you with any information as to what the
21 personal properties were?

22 A: A breakdown? I don't believe she did.

23 Q: You never got a breakdown? So for all you
24 know, based on the deed, it's \$3,000,000, the
25 real estate could be \$2.9 million of that.



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1 A: I don't know. It was also May of 2008. My
2 purpose was to value it on December 31st of
3 2008.

4 Q: I understand.

5 A: And so, you know, there's a lot of -- even
6 though it's only a short period of time of
7 eight months, the world had changed
8 dramatically.

9 Q: I understand.

10 A: But we've appraised properties and if they burn
11 the next day, the value's going to be
12 different, so things can change ---

13 Q: I would hope so.

14 A: Yeah, things can change, so I looked at
15 December 31st of '08 and it really didn't
16 matter what she had paid.

17 Q: It didn't matter at all?

18 A: I didn't consider it because it didn't look --
19 it was significantly higher than the income
20 indicated.

21 Q: If the deed had said \$700,000, and you knew for
22 a fact that the deed was accurate as to the
23 real estate alone, no other personal property,
24 intangibles, no going concern, nothing else,
25 would that be important?



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1 A: I look at everything -- I consider -- but I --
2 it didn't -- my purpose was December 31st of
3 2008 and this was, you know, eight months
4 earlier.

5 Q: Well I don't think that answered my question.
6 I asked if the deed was \$700,000 and you knew
7 -- she told you that was for real estate alone.
8 You knew that. Would the deed be important
9 then?

10 A: I would consider it, but I would not -- I still
11 have to do an appraisal and it may or may not
12 be the same.

13 Q: Right. I mean, I would assume that's probably
14 what you do with residential properties, right?
15 Somebody buys a house. If you do an appraisal,
16 you look at what the person paid for it.

17 A: Yeah, but I don't -- I seldom do houses
18 anymore. I mainly do commercial.

19 Q: Fair enough. So basically what you're telling
20 the Court, you don't know -- you didn't ask how
21 it was split up.

22 A: I think I did -- as best I remember, I asked,
23 but I don't think she gave -- had a breakdown
24 of it.

25 Q: And so you didn't see any purchase contracts



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1 that may split that up or anything like that?

2 A: I don't remember seeing anything. I would have
3 asked, because -- but I don't remember seeing
4 that.

5 Q: All right. Moving on, we talked about the
6 capitalization rate ---

7 A: Yes, sir.

8 Q: --- and if my memory serves me correct, you got
9 that from the comps, did you not?

10 A: Yes, sir.

11 Q: Okay, and I'm looking at -- you had a good
12 breakdown here on page 73 of the appraisal.
13 Instead of going through them individually, you
14 listed all five right here.

15 A: Yeah. Yes, sir.

16 Q: And there's the each of the cap rates, you
17 know, one's in Spartanburg, you know, we're
18 about 30 miles away. It's 11.29. Seneca, you
19 know, the corner of the state 11.73. Mount
20 Pleasant on the other side of the state is
21 13.95. Forest City, not that far away is
22 11.54 and Wilson -- I'm not even sure -- where
23 is Wilson, North Carolina?

24 A: Wilson's up -- I believe Wilson's between I
25 think -- kind of between Fayetteville and



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1 Wilmington. I believe Wilson's in that area.

2 Q: Okay. That one's pretty far away. 15.43
3 percent, correct? And based upon these
4 percentages is where you came up with the 12
5 percent, is that right?

6 A: Well, I looked at those and considered them and
7 I just determined that 12 percent was the
8 indicated capitalization rate.

9 Q: Okay. How did you get these comps? Like, how
10 are they provided? I assume you didn't do the
11 research -- I mean somebody provided this to
12 you, right?

13 A: Yeah, I worked -- as I said, there's appraisers
14 all over the country that I communicate with --
15 -

16 Q: Right, right.

17 A: --- and -- but these were predominantly
18 appraisers in South Carolina and North Carolina
19 that we -- I exchange on a fairly regular
20 basis.

21 Q: Okay.

22 A: And they -- we exchange information, so I was
23 provided these sales.

24 Q: Now why would it be important to look more at
25 South Carolina and North Carolina? Why don't



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1 you look at Oregon hotels or Washington hotels?

2 A: Well that's -- I like to stay as close to the
3 subject as possible.

4 Q: Well, that's probably a good idea, right?
5 There's market differences in different
6 regions, correct?

7 A: Yes, sir. It's -- you're right. Every
8 market's different.

9 Q: Okay. Now, you said you got these from other
10 appraisers or whomever you got these --
11 acquired these prompts from. Do you have
12 access to a lot of different comps?

13 A: When you say access to a lot of different
14 comps, you talking about -- I mean, you know,
15 unlimited? No. I, you know, I exchange with
16 several appraisers and we also have access
17 through services.

18 Q: What services are those?

19 A: Co-Star, LoopNet.

20 Q: Those are -- are they, I guess internet
21 services?

22 A: Well, they're internet services, but Co-Star is
23 by subscription and so is LoopNet.

24 Q: Okay. And so through those two services and
25 your appraisal friends, whoever may be that



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1 provides you, this is how you acquire comps.

2 A: Yes, sir.

3 Q: When you prepared this appraisal, do you
4 remember how many comparable sales you went
5 through?

6 A: I don't remember off hand.

7 Q: Was it more than five?

8 A: I have -- I mean, I have sales, you know, all
9 up in -- I keep them by location.

10 Q: Okay.

11 A: But we have been -- we have sales going back
12 for, you know, for several years.

13 Q: Right.

14 A: So I'm sure I had more than five sales, but
15 these were the five that I thought were the
16 most, in my opinion, were the most comparable.
17 And I was trying to stay in -- not in 2006, but
18 try to get 2008. Tried, you know, and so these
19 were the ones from 2008.

20 Q: Okay.

21 A: And I think one of them is from 2007.

22 Q: Well I guess my question is ---

23 A: Two are from 2007. I'm sorry.

24 Q: It appears you have access to two services and
25 however many appraisers that can give you these



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- 1 comps, right?
- 2 A: Well, I guess I need to explain. LoopNet gives
- 3 very brief information. Co-star ---
- 4 Q: What information -- I'm sorry to interrupt, but
- 5 what information is LoopNet?
- 6 A: LoopNet? LoopNet will give you the seller, the
- 7 buyer, sales price, maybe the room count ---
- 8 Q: Does it give you cap ---
- 9 A: --- room size.
- 10 Q: Does it give you cap rate?
- 11 A: No. That's it.
- 12 Q: Oh, okay.
- 13 A: Co-star is -- we pay \$730 a month for Co-star,
- 14 and on hotels, they don't have the income
- 15 expense so you can't get cap rate. So they
- 16 have the seller, the buyer, the broker, the
- 17 sales price. Sometimes they'll have the deed,
- 18 and sometimes they'll have -- if they have a
- 19 listing -- if the hotel was listed, they'll
- 20 have the information.
- 21 Q: Okay. So obviously, you've got access to some
- 22 information and if you want to go through more
- 23 procedures you can get more information, right?
- 24 A: Yes, sir.
- 25 Q: Okay. I guess my question is, are these the



1 first five you just happened to fall upon?

2 A: No, sir.

3 Q: Okay. Well how many did you go through before
4 you got to these five?

5 A: I can't remember. This is, you know ---

6 Q: February?

7 A: Yeah.

8 Q: Four months ago?

9 A: Four months ago.

10 Q: Well, was it ---

11 A: Yeah.

12 Q: --- 20?

13 A: What?

14 Q: Do you think it was maybe 20 different comps?

15 A: I don't remember. I mean I would probably have
16 gone through the whole drawer to see but I
17 would have excluded '06, tried to exclude '07,
18 but when I only had three, I think -- three --
19 I went back to '07. So you don't want to go to
20 '09 because if I'd used 2009 sales, they hadn't
21 occurred yet.

22 Q: Fair enough. No problem. Now, why would you
23 -- you kind of mentioned this before and you
24 mentioned the dates of sales, that's why you
25 chose these? Correct?



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1 A: Dates of sales and trying to be as close to,
2 you know -- I started out, you know, as close
3 to the subject as possible. Spartanburg's
4 close, Seneca's a little further away, and, you
5 know, I wound up getting one out of Mount
6 Pleasant.

7 Q: Okay. So you tried to find some geographical
8 similarities.

9 A: Yes, sir.

10 Q: Okay. Because it's -- I think you would
11 probably agree with me that a hotel in Gaffney
12 is probably not worth as much as a hotel in
13 downtown Charleston, correct?

14 A: Oh yeah. That's right.

15 Q: Big difference between the two. Okay. So
16 other than geographical considerations and sale
17 date considerations, what other factors led you
18 to choose these five comps?

19 A: I just felt like these were the most recent,
20 closest in proximity to time of December 31st
21 of '08 and closest -- as relative close as I
22 could find to the subject property. Like you
23 said, I didn't go to Georgia. I probably
24 looked at sales in Georgia, and I don't
25 normally go to Tennessee or Virginia.



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1 Q: So basically, just geography and sale date.

2 A: Yes.

3 Q: Now, you had also mentioned before about the
4 difference between the corridors and I think
5 you've explained it, but again, just very
6 briefly, what's the difference between interior
7 and exterior?

8 A: Interior corridor is where you walk in a front
9 door, there's a registration desk, and you have
10 a hallway and you cannot get to the rooms
11 without going through that corridor through the
12 front door by the desk. Exterior corridor is
13 usually an office up front and then you leave
14 out of that office and there are corridors that
15 are exterior, so they're hanging on, you know,
16 they're old style hotels. I don't think they
17 -- I haven't seen any new exterior corridors.

18 Q: Kind of like old motels. They don't make them
19 that way anymore really.

20 A: Right.

21 Q: Okay. Is there a value difference between the
22 two?

23 A: I don't know if it's a value difference, but
24 the room rate -- the rate of -- the room rate
25 would be tied to the sales price.



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1 Q: Okay.

2 A: And -- excuse me. I'm sorry. The room rate
3 would be tied to the cap rate, so it's all in
4 the sale so I see sale one wind up here so it's
5 -- of the five cap rates, it was the lowest cap
6 rate and it's an exterior corridor.

7 Q: Okay.

8 A: So when you -- sometimes, I mean, I look at all
9 of the hotels that are in this report and
10 considered these were the five best.

11 Q: Well, does it -- I guess my question is, does
12 it add value if you have that interior corridor
13 versus an exterior corridor?

14 A: It may add value, but ---

15 Q: It's worth more.

16 A: Yeah. It's worth more.

17 Q: Okay.

18 A: So it would sell for less with an exterior
19 corridor, probably.

20 Q: Okay.

21 A: It's just, you know, generality, but it would
22 probably rent for less so the cap rate would
23 still be -- it would still be similar. The
24 duration ship wouldn't change.

25 Q: So when you go -- if you were to appraise two



1 pieces of property. Let's say they are
2 geographically similar, same flag, same room
3 number, same amenities, same everything, and
4 one's interior and one's exterior, would you
5 value those two exactly the same?

6 A: I don't know.

7 Q: It's probably never come up before, has it?

8 A: I did one in Myrtle Beach on a condemnation
9 case and the other appraiser -- I remember the
10 other -- I didn't use -- I used only interior
11 corridors. The other appraiser used exterior
12 corridors and I don't think he adjusted for it.
13 So, you know, I think it's -- there's no hard
14 fast rule because see, you -- if you've got
15 your room rates, they're all -- it's all tied
16 together.

17 Q: Okay. Now as far as your five comps, do you
18 remember which ones were interior and which
19 ones were exterior?

20 A: Sure. Number one's exterior corridor.

21 Q: Okay.

22 A: Number two is interior corridor, number three
23 is an exterior corridor, number four is an
24 exterior corridor, and number five is an
25 interior corridor.



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1 Q: Okay. By my count, three exterior, two
2 interior, is that right?

3 A: Yes, sir.

4 Q: And again, you've re-laid your importance on
5 the difference between the two. I guess my
6 question is if you had access to all those
7 different sales and different comps, why didn't
8 you use more interior?

9 A: If they didn't sell in 2008 I wouldn't -- I
10 didn't -- wouldn't have used them.

11 Q: Okay. So you saw -- would you say that you saw
12 other comps that were interior, maybe even
13 geographically similar, but they didn't have
14 the sale date, so you said I'm not using them.

15 A: Well, the market changed.

16 Q: I mean, yes or no? Is that right?

17 A: Yeah.

18 Q: Okay. And I guess, goodness, we hadn't even
19 brought it up. What type of hotel is the
20 subject hotel?

21 A: Subject hotel?

22 Q: Yes.

23 A: Interior corridor.

24 Q: Interior corridor. Can you point to the part
25 of your appraisal where you make reference to



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1 that?

2 A: I don't believe I state that it's interior
3 corridor.

4 Q: Okay.

5 A: But I have the floor plans that show it's
6 interior corridor, but apparently I did not
7 specifically say interior corridor.

8 Q: Okay. So it may not be listed in the text and
9 of course you can -- you've got several
10 pictures ---

11 A: Yeah.

12 Q: --- page 35, I see one. You can tell it's not
13 exterior, it's an interior, right?

14 A: Right.

15 Q: Okay. Now, bear with me one moment. If you
16 could please, turn to page 71 of your
17 appraisal.

18 A: Yes, sir.

19 Q: You there?

20 A: Yes, sir. I'm here.

21 Q: Okay. Now, you've got -- this is for the
22 revenue at the top, correct?

23 A: Yes, sir.

24 Q: Okay. Now, where did these figures -- where
25 did they come from?



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1 A: Okay. These figures came from page 74. If you
2 look at page 74, that was the Sleep Inn income
3 statement for one month. It was for the month
4 of December, and it says 12 months ended
5 December 31st, 2008, and that's, you know,
6 that's the way the computer generated it. That
7 was for -- from -- that was for the time that
8 she operated the Sleep Inn, so what I used was
9 -- I call it effective and then I annualized
10 what she had done.

11 Q: I see. And so basically what you're saying,
12 looking at gross profit on -- you're on page 74
13 of the income, it's \$34,000 and some change,
14 and on page 71, you've taken that and made it
15 for a year.

16 A: Yes, sir.

17 Q: Is that right?

18 A: Yes, sir.

19 Q: Now, you said five months is effective.

20 A: Uh-huh (affirmative response).

21 Q: Why was that time frame used? Or why did you
22 select five months, I should say.

23 A: I had to take -- to make it -- to annualize, I
24 had to use a certain amount of months.

25 Q: Okay.



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- 1 A: So ---
- 2 Q: Why five, is my question?
- 3 A: I believe that was from the time she -- when
- 4 she -- when they became Sleep Inn.
- 5 Q: So that's the flag time.
- 6 A: Right. Right.
- 7 Q: Okay. Now, I noticed on page 71 going through
- 8 the income, there are a few that are on seven
- 9 and a half months, correct?
- 10 A: Which page are you on?
- 11 Q: I'm sorry. Page 71.
- 12 A: Uh-huh (affirmative response).
- 13 Q: Again it's the five months effective page.
- 14 There are asterisks on several of the expenses.
- 15 A: Okay.
- 16 Q: And those are listed as seven and a half
- 17 months.
- 18 A: Right.
- 19 Q: Can you explain why the seven and a half on one
- 20 and five on the other?
- 21 A: Okay. The owners owned the hotel for seven and
- 22 a half months. It was under renovation from
- 23 May to August, but only rented a few rooms, and
- 24 ...
- 25 Q: Well, were the rooms that they rented in that



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1 few time, were they factored into the five
2 month equation? Was that income factored in?

3 A: I don't believe so.

4 Q: Okay. So basically, you factored in the
5 expenses during that time, but you didn't
6 factor any income for that two and a half month
7 period.

8 A: I really -- I don't remember off hand, but I
9 remember there was some expenses -- let's see.
10 I think that was -- the reason why I called it
11 five months effective, it was at seven and a
12 half months but I didn't think it would be fair
13 to take the seven and a half months and
14 annualize it, so since she did -- she said she
15 did very little business there because there
16 was no flag, I gave it effective -- that's
17 where the five months effective came from, but
18 that's the income she took in for -- from when
19 she bought it until the end of the year. I was
20 wrong. I mis-stated it. And then the expenses
21 -- you're right. The expenses were based on
22 the seven and a half months. I don't know --
23 I can't remember why I said some of them -- I
24 didn't do them all annualized. I can't
25 remember why I didn't do them all annualized



1 here for -- based on seven and a half months.
2 There was some reason, but that's the best I
3 can remember.

4 Q: Okay.

5 A: You're right. I did the report in February,
6 but I inspected the property in ---

7 Q: The previous February, right?

8 A: Yeah. February 2nd of 2012, so that's when I
9 met with her so I don't -- as we talked about
10 earlier, I wrote the report -- the previous
11 report in April of 2012.

12 Q: Okay.

13 A: So it's been a while.

14 Q: So what you're saying is the -- you've taken
15 the seven and a half months that they had the
16 hotel. The first two and a half months were
17 loaded with expenses because they were doing
18 renovations.

19 A: That's correct.

20 Q: And you used that amount to annualize for part
21 of the expenses, the asterisks expenses,
22 correct?

23 A: Yes.

24 Q: Okay. But you only used five months of the
25 income, correct?



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1 A: No. I used the seven and a half months of
2 income but called it five months because she
3 had very little occupancy.

4 Q: You didn't note that here. You said five
5 months effective.

6 A: Right. That's where I called it five months
7 effective.

8 Q: But you're saying it's seven and a half months
9 worth.

10 A: Seven and a half months but if -- try to
11 describe it to you. It's -- there were so few
12 people coming in and I could, I mean I could
13 take the 163 and calculate and tell you what it
14 would be annualized, but, you know, it's -- it
15 would be, you know ...

16 Q: Well I'm glad you brought a calculator. I
17 should have as well today.

18 A: Looks like I better get the other calculator.
19 But it's -- it would be significantly different
20 than -- it would be the -- 393 would have been
21 less than three -- probably less than \$320,000
22 annualized.

23 Q: Okay.

24 A: Because ---

25 **THE COURT:** But in here what you said ---



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1 A: Oh, I'm sorry.

2 **THE COURT:** --- it would be less than what?

3 A: It would be less than \$323,000 annualized.

4 Total revenue would be less than \$320,000 but
5 it would not have been proper to say well, the
6 motel's open for seven and a half months but
7 nobody was, I mean very few people had come in.
8 I mean she didn't give me an exact count, but
9 it wouldn't have been fair and so basically it
10 was five months of good business. I mean like,
11 if the parking lot had been full -- if the
12 parking lot was -- I think they did some work
13 on the parking lot. People weren't coming in,
14 so ---

15 **THE COURT:** I understand that.

16 A: --- I'm trying to do the best job I can
17 reflecting -- and I didn't have good, you know,
18 accurate, daily occupancy or monthly.

19 **THE COURT:** I understand.

20 A: So all I had was this annual report.

21 Q: Let me ask you this. The same page, page 71.

22 A: Yeah.

23 Q: On the far right column towards the very end,
24 there is total expenses. It was 62.31 percent.
25 Do you see that?



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- 1 A: Yes, sir.
- 2 Q: Okay. What is that?
- 3 A: That's the percentage of the total expenses
4 based on an annualized revenue.
- 5 Q: Okay. Now is that also known as the expense
6 ratio?
- 7 A: No. That's expense percentage.
- 8 Q: Well if you turn the page, please, page 72, the
9 second paragraph, what does that first sentence
10 say?
- 11 A: Oh, okay. You're right.
- 12 Q: So is that right? It's the ---
- 13 A: Yeah. The expense ratio is 62.31 percent.
- 14 Q: Okay. Now, as far as calculating the value of
15 this piece of property ---
- 16 A: Yes, sir.
- 17 Q: --- if they -- if that number is higher, the
18 expense ratio is higher, they've got higher
19 expenses, that would mean they have less
20 income, right?
- 21 A: Right.
- 22 Q: Okay. So the value, based on the income
23 approach, the value of the property would be
24 less than.
- 25 A: Yes, sir.



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1 Q: So the higher, the expense ratio, the lower the
2 appraisal, right?

3 A: High expense ratio -- yeah. The lower the
4 appraisal. Right.

5 Q: Okay. So based on the information that you
6 were provided, the income statement on this
7 subject property here, the expense ratio was
8 62.31 percent.

9 A: Yes, sir.

10 Q: Correct?

11 A: Yes. Correct.

12 Q: What expense ratio did you use?

13 A: Seventy-three percent.

14 Q: Eleven percent difference. Where did that come
15 from?

16 A: You just subtract 73 from 62 and you get 11.

17 Q: I understand how I came up with the 11 percent
18 difference. Where did you get the 73 expense
19 ratio?

20 A: From the -- on the bottom of page 71, from the
21 Smith Travel Star host study.

22 Q: Okay. So what you did was you took an expense
23 ratio based on other properties, not the
24 subject property.

25 A: That's correct.



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1 Q: You looked at other places.

2 A: I used the host study.

3 Q: Okay. Which is ---

4 A: Which is, as you can see on the bottom of the
5 page, the type of hotel. It's economy priced.
6 The expense ratio was 62.7 percent. Interstate
7 location, 70.7 percent. Size in the 75 -- 73.5
8 percent. South Atlantic Hotel -- South
9 Atlantic is the southeast coast, South
10 Carolina, Georgia. I can show you -- I think
11 I have that information. And that's 70.8
12 percent. And then I considered, after using --
13 I used 73 percent based on that report.

14 Q: So the 73 percent is based on other hotels, not
15 this one.

16 A: That's correct.

17 Q: Did you ---

18 **THE COURT:** Excuse me. Before we go further, I need
19 to clear something up for my notes.

20 **MR. JOHNSON:** Yes, sir.

21 **THE COURT:** Was I correct that I heard Mr. Rosen
22 acknowledge an error that would reduce the
23 total revenue down to about \$320,000? Is that
24 right?

25 A: Yes, sir. It wasn't -- I didn't make that



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1 error in the report. When I was first telling
2 you I couldn't remember the five months
3 effective. The problem was it's been a while
4 since I wrote the report, and I hadn't got the
5 financial information.

6 **THE COURT:** I understand and I'm not concerned with
7 the reason, but I need to know from the
8 standpoint of the figures. Should have
9 \$393,000 be reduced to the roughly \$323,000
10 figure I heard mentioned and if so, how does it
11 affect the other figures here vis a vis the
12 ultimate appraisal?

13 A: No, it shouldn't be changed. It should be the
14 393, and the reason why is because five months
15 was actually seven and a half months but I
16 called it five months effective because the two
17 and a half months of renovations, no -- very
18 few people come in the front door, so if you --
19 if I had not adjusted to try to reflect what
20 was happening, then it would have been 320,000
21 instead of 393. So I called it five months
22 because she was really open for business for
23 five months. She had the doors open for two
24 and a half months during construction, but
25 you're not going to -- you're not going to go



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1 in a hotel that doesn't have a -- that has a
2 bag over their sign. You're not going to
3 probably go in there, and if their parking
4 lot's, you know, got all trucks in there and
5 they're renovating the hotel, you're probably
6 not going to want to stay there, so that's why
7 -- and I hope -- I've tried to explain it but
8 basically, what I -- it was fresh in my mind
9 when I wrote the report. I couldn't remember
10 it because it was from -- I got these figures
11 from her in February of 2012 and I didn't
12 remember why I did it this way.

13 **THE COURT:** Thank you, sir.

14 A: Sure.

15 Q: Thank you, Your Honor. Mr. Rosen, I'm sorry.
16 We were talking about expense ratio. You
17 testified that you used a 73 percent expense
18 ratio for this -- for the appraisal here,
19 correct?

20 A: Yes, sir.

21 Q: And that was based upon other properties, not
22 the subject property.

23 A: Yes, sir. That was based on the host study ---

24 Q: Okay.

25 A: --- which is other properties.



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1 Q: Other properties. Now, you actually have an
2 exact expense ratio for this property and it's
3 63.21 percent, right?

4 A: I have an exact expense but it's annualized.
5 It's also renovated -- it's renovated and I'm
6 not sure where all the renovation costs were in
7 this statement. I don't understand -- they had
8 to make changes so it's not -- it's not a good
9 financial statement. That's why I didn't use
10 it.

11 Q: Okay. If you made a lot of renovations ---

12 A: Yes, sir.

13 Q: --- to a property, would that have increased
14 your expense ratio or decrease it?

15 A: It should have increased it.

16 Q: So for this property, they did a lot of
17 renovations for her.

18 A: Or some renovations. I'm not sure ---

19 Q: Or some. Renovations when they changed flags,
20 I assume. They had some renovations they had
21 to do. Factoring those in, the expense ratio
22 is 62.31.

23 A: Yes, sir.

24 Q: Which, based on what you said, is higher than
25 it would be if they didn't make renovations.



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- 1 A: I don't know. All I know is what they provided
2 me and I just -- and 62 percent is a very low
3 expense ratio for a hotel that you renovated.
- 4 Q: Okay. So you just decided -- you looked at the
5 host study, and for purposes of this appraisal,
6 you used a 73 percent expense ratio.
- 7 A: Yes, sir.
- 8 Q: And because of that higher percentage, which is
9 11 percent higher than the actual expense
10 ratio, the value of this property has been
11 reduced.
- 12 A: Yes, sir.
- 13 Q: Okay. Now I'd also like to know the comps you
14 looked at, starting on page 60. Did those
15 comps make any reference to any expense ratios?
- 16 A: Yeah. In each one of the comps, there's an
17 expense ratio there.
- 18 Q: Okay. Looking on page 61, the Days Inn, that
19 one's 67.75, which is lower than the one you
20 used, correct?
- 21 A: Yes, sir.
- 22 Q: All right. The next one on page 63, 65.21.
23 Again, eight percent lower than the one you
24 used, correct?
- 25 A: Yes, sir.



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1 Q: All right. The next one. Page 65. 63.64
2 percent. Ten percent less than what you used,
3 correct?

4 A: Yes, sir.

5 Q: Sorry if I'm going too fast. Page 67. Expense
6 ratio of 67 percent. Again, lower than the one
7 you used, correct?

8 A: Yes, sir.

9 Q: And then lastly, page 69. Expense ratio of
10 66.6 percent, and again, lower than the one you
11 used.

12 A: Yes, sir.

13 Q: So all the comps you used have lower expense
14 ratios than the one you actually used in your
15 paper, right?

16 A: Yes, sir, and as you pointed out, three of
17 those were exterior corridors. Expense ratios
18 would be -- exterior corridors would be less.

19 Q: Okay.

20 A: Because there's less -- there's no carpet in
21 the exterior corridors.

22 Q: So it would have been nice to have three comps
23 that were interior then, right?

24 A: Yeah.

25 Q: So can you explain, as far as the interior



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1 corridors, the two you used the comps, why
2 didn't you use those expense ratios?

3 A: I just didn't use -- I felt like the host study
4 is a national -- it's a nationally but not
5 internationally accepted study by Smith Travel
6 Research and that provides a reliable expense
7 ratio and NOI ratio. It provides a lot of
8 information and to, you know, to pick this --
9 and while, you know, there's no guarantee that
10 all this is exactly, you know, you -- because
11 I've attempted this -- you try to verify the
12 sale with the seller and try to verify the sale
13 with the buyer. Sometimes you get different
14 information. So, you know, when you -- with
15 Smith Travel you have a pretty good assurance
16 that that's accurate information.

17 Q: Okay. So you used a national service for
18 national hotels to get the expense ratio, yet
19 you had regional comps that were lower expense
20 ratios.

21 A: When I say national ---

22 Q: Is that not right?

23 A: When I say national, you've got to look at page
24 71 again. It's economy priced hotel,
25 interstate location, size in South Atlantic.



1 South Atlantic is the southeast coast, so it's
2 -- they use -- they do -- it's not national.
3 They regionalize it.

4 Q: So the regionalized, of course, is where you
5 got the 73.

6 A: Yes, sir.

7 Q: And the South Atlantic, would that include one
8 on Myrtle Beach?

9 A: I believe so.

10 Q: Okay. That would be part of it? Charleston be
11 part of it?

12 A: Yeah.

13 Q: Okay. Okay. Now, Mr. Rosen, let's go back to
14 page 71, if you could, please. That's again,
15 your annualization calculations and everything.
16 For expenses, the last one listed is property
17 taxes.

18 A: Yes, sir.

19 Q: And that's 14.11 percent.

20 A: Yes, sir.

21 Q: Okay. And that is added -- all those -- I
22 trust your math, but all those percentage
23 numbers added together is 62.31 percent.

24 A: Yes, sir.

25 Q: Okay. So when you do your calculation and you



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1 multiply the income against the expense ratio,
2 that 14 percent is factored in, is it not?

3 A: Yes, sir. I believe so.

4 Q: And again, you used -- this says 63.21. You
5 used a higher number. You used 73.

6 A: Yes, sir.

7 Q: So I would assume that 73 would at least
8 include the property taxes at 14 percent.

9 A: Yes, sir.

10 Q: Okay. So you have included the property taxes
11 in the expense ratio.

12 A: Yes, sir.

13 Q: Can you explain, please, page 76. Again, this
14 is your over -- your math that shows how you
15 came up with it and everything. Towards the
16 very end -- it's actually if you go on the
17 numbered side, it would be the third from the
18 bottom. There's 55,535.

19 A: Yes, sir.

20 Q: What number is that?

21 A: That's the property taxes.

22 Q: Okay. So you took it out again.

23 A: I only took it out one time.

24 Q: Well you reduced -- you had income at 139,
25 correct?



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1 A: Yes, sir.

2 Q: Right above there and you deducted 55,000 from
3 there.

4 A: Yes, sir.

5 Q: Because that's the property taxes that they
6 paid.

7 A: Yes, sir.

8 Q: But you had already multiplied that amount.
9 The 234 is where you got derivative of the
10 property taxes at 14 percent.

11 A: You need to look at page 75, fourth line from
12 the bottom.

13 Q: Yeah, so you added it in, correct?

14 A: Added it in -- to get to the Rushmore method,
15 I need to net out the expenses that would be
16 attributable to the business value. I need to
17 get the property taxes back in. I need to get
18 the net income of 154,642. I needed to add the
19 reserves, the property taxes and the management
20 fee, and then I got the net income before
21 reserve property taxes and management fee.

22 Q: Okay.

23 A: And that's because of the -- that follows the
24 Rushmore Method.

25 Q: Okay. If you go above what you were just



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1 mentioning ---

2 A: Yeah.

3 Q: --- and we do the ADR calculation ---

4 A: Right.

5 Q: --- you get 1.6 million?

6 A: Right.

7 Q: What did you do then? What's the next step?

8 A: Times the occupancy rate.

9 Q: And where did you get the occupancy rate from?
10 The Star Report, right?

11 A: Yeah. From the Star Report in here.

12 Q: I wasn't trying to trick you.

13 A: Yeah, right. From the Star Report.

14 Q: Okay. And so that's 572. What do you do with
15 that 572?

16 A: Multiply it times 73 percent expenses.

17 Q: All right. The 73 percent expenses. What do
18 you get then?

19 A: You get a net income of 154.

20 Q: Okay.

21 A: Okay.

22 Q: All right, 154. And that doesn't include
23 property taxes because you're going to add that
24 into it, right?

25 A: Right.



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1 Q: You're going to add in that 55.

2 A: That's correct.

3 Q: Well, when you multiply the 572 times the 73
4 percent, you already testified that includes 14
5 percent allocation for property taxes.

6 A: Right. That includes the expenses. It
7 includes the property taxes.

8 Q: Right. So you take the 572, you multiply it by
9 the percentage that includes property taxes ---

10 A: Right.

11 Q: --- you reduce that number. Now we're at 418.

12 A: Right.

13 Q: All right? And then you get a calculation of
14 234. You go to the end, you take 55,000 again.

15 A: Right.

16 Q: So you've taken property taxes out twice, have
17 you not?

18 A: No, because I put it back. I added it back in
19 and then took it back out?

20 Q: You did take it out and ---

21 A: But you had to put it back in so I could follow
22 the Rushmore Method.

23 Q: Okay. So you're saying the Rushmore Method
24 says you had to take property taxes as an
25 expense out twice.



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1 A: You can take it out twice as long as you put it
2 back once, you're all right. And I've taken it
3 out -- I had to take it out -- I had to put --
4 I took it out because I used the expense ratio,
5 and then I added it back so that I could follow
6 the Rushmore Method, and then when I got
7 through with the proper, you know, net income,
8 then I took out the income attributable to
9 business of going concern, and the -- less the
10 income attributable to FF and E, which is
11 furniture, fixtures and equipment, and then
12 subtracted the property taxes. So I've only
13 taken it out once. I see what you're saying,
14 that I took it out twice, but I added it back
15 in.

16 Q: As a net value there.

17 A: Right.

18 Q: Okay. Now as far as -- excuse me. Page 76.
19 Let me get you on the right page. You there?

20 A: Yeah. Yeah.

21 Q: Okay. What is the value of this -- the
22 business value you're deducting in this
23 equation?

24 A: The business value of the hotel?

25 Q: Yeah, yeah.



- 1 A: \$60,700.
- 2 Q: Okay. And that is about one third of the way
- 3 up the page. That's the -- if you include the
- 4 franchise and the going concern and everything,
- 5 that's where you get the 67 -- 60,700, correct?
- 6 A: Yeah. That's where the calculation is.
- 7 Q: Okay. So, in your experience with all these
- 8 other hotels, ---
- 9 A: Yes, sir.
- 10 Q: --- is that about the same as some of these
- 11 other hotels?
- 12 A: You mean business value?
- 13 Q: Yeah.
- 14 A: Now, it depends upon the hotel. The one I
- 15 mentioned it was 13 percent occupancy, business
- 16 value was -- I can't remember. It was a very
- 17 small number.
- 18 Q: Okay.
- 19 A: But at 13 percent occupancy, you could
- 20 understand.
- 21 Q: Okay. And what about one that's a higher
- 22 occupancy, one that's over 50 percent.
- 23 A: Well, it relates to the gross revenue, so if
- 24 you're doing, you know, gross revenue of a
- 25 million 40,000, it would probably be about --



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1 it would probably be double. If you were
2 doing, you know, 10,000,000 gross revenue, it
3 would be a lot higher.

4 Q: Okay. But in your opinion, this property
5 that's underperforming the competitive set,
6 based on this time frame and the occupancy
7 rate, you believe it's worth this -- the
8 business value is worth \$60,000.

9 A: \$60,700.

10 Q: Seven hundred.

11 A: Yes, sir.

12 Q: That's ---

13 A: You understand that we haven't talked about
14 location that's on the front of the appraisal.

15 Q: Yes.

16 A: That hotel is located between a road and the
17 on-ramp, a frontage road and the on-ramp. So
18 it's not as well located as possibly -- you
19 keep talking about that competitive set -- as
20 other hotels.

21 Q: And so you think ---

22 A: That may have an impact on it. I'm just
23 pointing that out.

24 Q: Okay. Now, not to belabor the point, but you
25 mentioned the importance of the flag.



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1 A: Yes, sir.

2 Q: The flag matters and I think you go into detail
3 about, you know, the different tiers of hotels
4 and those are kind of related to the flags,
5 aren't they?

6 A: Yes, sir.

7 Q: I think it goes without saying Hilton is a
8 little bit different than a Micro-tel, is it
9 not?

10 A: Yes, sir.

11 Q: Better value to a Hilton, right?

12 A: Yes, sir.

13 Q: So the flag matters. Now I guess my question
14 again, going back to your comps, page 73, how
15 many Sleep Inns did you use?

16 A: I didn't have a Sleep Inn that sold in that
17 time frame.

18 Q: Okay. So you didn't see one in your research
19 for the comps?

20 A: To the best of my knowledge.

21 Q: Okay. Now as far as in calculating the income,
22 of course you took what Tilbros provided you as
23 their income segment that we talked about.

24 A: Yeah.

25 Q: Did you take any information from the Holiday



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1 Inn Express that it was from May of January of
2 that year?

3 A: They couldn't provide me that information.

4 Q: Well, they couldn't provide it or you didn't
5 ask for it?

6 A: No, I asked. I asked for any information and
7 she didn't have it.

8 Q: Who is she?

9 A: Amy Tilva. I'm sorry.

10 Q: Okay. That's okay. But what I'm asking is you
11 didn't ask the previous owners for that
12 information.

13 A: No.

14 Q: Okay. And is that -- I assume it's probably
15 not a general practice to do that, is it?

16 A: Well, it's difficult to get information from
17 previous owners.

18 Q: Okay.

19 A: It would be up to Ms. Tilva to get that.

20 Q: Okay. What about any information from 2009?
21 Did you use that in your calculations? Because
22 you already made an appraisal. You got it
23 done, right?

24 A: Yeah. I didn't use the information from 2009
25 report because I was doing it as of 2008.



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1 Q: Okay. So you ---

2 A: I mean I can -- if you want to ask questions
3 about it, I've got the report.

4 Q: No, that's okay..

5 A: And certainly I need the occupancy -- it's a
6 higher value, so occupancy must have been
7 higher.

8 Q: Okay.

9 A: I had that originally, and then that's when
10 y'all changed and said do it as of the end of
11 '08.

12 Q: So you did have the -- you had the income
13 information for '09 because you did it before,
14 right?

15 A: Yes, sir..

16 Q: Okay. Okay. But you didn't use that income
17 information to prepare this '08 appraisal.

18 A: No, because that would be -- that wouldn't be
19 proper. That would be misrepresenting -- I
20 mean we're doing value at the end of '08. To
21 use '09 financials to value it as of '08, I
22 mean to help me value it as of '08 would be
23 inconsistent.

24 Q: You think the Lesser article would agree with
25 that?



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1 A: I don't know remember off hand.

2 Q: Well I direct your attention to page 16 on the
3 left paragraph, the last paragraph, and I can
4 read it real quick. "An appraiser can use an
5 existing hotel's historic statement of income
6 expense for either the year prior or subsequent
7 to the date of value, as long as the historic
8 net income can be considered to represent a
9 competently operated, stabilized operating
10 level." So it says as long as you can use it
11 for stabilization, you should look at it.

12 A: Okay.

13 Q: But you didn't this time.

14 A: I didn't.

15 Q: Okay. One last question. I know you're
16 probably getting tired of this.

17 A: No, that's all right.

18 Q: Did you look at any -- we got your comps. Did
19 you look at any other local properties in the
20 county?

21 A: Like, hotels?

22 Q: Yeah, hotels. Yeah.

23 A: There were no sales of hotels that I could
24 find.

25 Q: Okay. Did you look at any information as far



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1 as the values or assessed values or anything at
2 all about other hotels?

3 A: No, sir. But I was doing an appraisal and
4 you're asking about whether they were equitable
5 or not?

6 Q: Well, just -- not necessarily that, but just,
7 you know, what other hotels are in the county?
8 I mean you're looking at a market situation,
9 you know, you talked about the two hotels that
10 are across the street and how they were
11 different and things, my question is, for this
12 appraisal, did you look at any hotels that were
13 local in the county?

14 A: No, sir. I mean I looked at them visually, but
15 other than that, I didn't look at the assess --
16 the appraised value or anything.

17 Q: And as a matter of fact, there's one across the
18 street, isn't there?

19 A: Uh-huh (affirmative response).

20 Q: If you look at the ---

21 A: On the aerial.

22 Q: --- on the aerial, very front page, if I'm not
23 ---

24 A: I see it's a Red Roof. I think it's a Red
25 Roof.



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1 Q: If I may approach, that's it right there?

2 A: I think that's the Red Roof, yeah.

3 Q: So did you look at any data concerning the Red
4 Roof across the street?

5 A: No, sir.

6 Q: Okay. And I believe it's probably got the same
7 on ramp, off ramp issues that this hotel had,
8 correct? It's right off the ---

9 A: No, sir. It's on that frontage road, but it's
10 not between the frontage road and the on ramp.

11 Q: I see.

12 A: But it's -- if you -- you can't -- it's
13 difficult to walk all the way around this
14 hotel.

15 Q: I see. I see.

16 A: I mean you get -- and you probably get some
17 noise from the -- because you're -- I mean,
18 you're right on the on ramp.

19 Q: I see.

20 **THE COURT:** I'm going to suggest we break for lunch
21 now and take up re-direct after lunch. Let me
22 say that I had to schedule a telephone
23 conference for my lunch hour. So I'm going to
24 suggest, it's a quarter of one, that we -- you
25 all come back at quarter of two and I'll try to



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1 be here. If not, indulge me just a few extra
2 moments to either finish my conference or my
3 lunch.

4 **MR. JOHNSON:** Yes, sir.

5 **THE COURT:** But I'll be back as close to that as I
6 can.

7 **MR. ELLISON:** Yes, sir.

8 **THE COURT:** We'll be in recess until quarter of two.

9 **MR. ELLISON:** Yes, sir.

10 (Lunch was taken from 12:47 p.m. to 1:50 p.m.)

11 **MR. ROSEN - REDIRECT EXAMINATION BY MR. ELLISON:**

12 Q: Mr. Rosen, when you prepared this appraisal --
13 I think we talked about this a little earlier,
14 you certified that this appraisal is prepared
15 in accordance with the standards of the Uniform
16 Standards of Professional Appraisal Practice or
17 USPAP, is that right?

18 A: Yes, sir.

19 Q: Okay. And that certification is found on the
20 cover letter of your appraisal?

21 A: Yes, sir.

22 Q: Now, we've talked a lot about the Rushmore
23 Method, and would you agree with me -- I think
24 you would -- that it would be wrong to double
25 count the property taxes in this analysis?



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1 A: Yes, sir. It would.

2 Q: Did you double count them?

3 A: No, sir.

4 Q: All right. Now what I want to do, is I want to
5 direct your attention to page 75 of your
6 appraisal, and then we're going to look at
7 slide 28, and just as it would be wrong to
8 double count it, it would be wrong not to count
9 it at all.

10 A: Yes, sir.

11 Q: And it would be wrong not to load the
12 capitalization rate. Now there was an increase
13 it by about four percent if you're not dealing
14 with the property taxes, right?

15 A: That's correct.

16 Q: All right. So let's look at some of what Mr.
17 Johnson asked you about. He talked with you
18 about the 73 percent expense ratio. Remember
19 that?

20 A: Yes, sir.

21 Q: All right. And you show that 73 percent
22 expense ratio on page 75 of your appraisal,
23 right?

24 A: Yes, sir.

25 Q: So if we were applying 73 percent as the



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1 expense ratio without making any other
2 adjustments, that number would show expenses
3 for this property of approximately \$418,000,
4 right?

5 A: Yes, sir.

6 Q: Now if we look at number 28 -- on slide 28, you
7 don't have a \$418,000 number, do you?

8 A: No, sir.

9 Q: You have a much lower number, is that right?

10 A: Yes, sir. \$337,942.

11 Q: Okay. And the net income before the
12 adjustments for the Rushmore approach is
13 \$234,000, right?

14 A: Yes, sir.

15 Q: Do you see that on page 75 of your report?

16 A: Yes, sir.

17 Q: All right. So would it be fair to say that you
18 took that general expense ratio, 73 percent,
19 and then backed out certain expenses in order
20 to present this in accordance with the Rushmore
21 Method?

22 A: Yes, sir.

23 **THE COURT:** Excuse me, what page did you say?

24 **MR. ELLISON:** Seventy-five, Your Honor. We have the

25 234 ---



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1 **THE COURT:** Hold up just a minute.

2 **MR. ELLISON:** Certainly.

3 **THE COURT:** Which page in the report is identical to
4 what's shown on the screen?

5 **MR. ELLISON:** None in the report itself. It's --
6 Mr. Rosen testified that the slide is re-
7 formatted to show the application of the
8 Rushmore report.

9 **THE COURT:** Okay. Thank you. Go ahead.

10 **MR. ELLISON:** And it's also formulated in order so
11 that you could have an apples to apples
12 comparison later on of what the assessor did
13 versus what Mr. Rosen did within that report,
14 but we'll get there later.

15 Q: So if we're looking at slide 28, which is also
16 one of the pre-marked exhibits, and we're
17 looking at slide 75 -- excuse me, page 75, the
18 net income is the same on both, right?

19 A: Yes, sir.

20 Q: Okay. But to get there on the slide, you
21 backed out certain expenses, right?

22 A: Yes, sir.

23 Q: All right. You backed out the property taxes,
24 right?

25 A: Yes, sir.



1 Q: And in accordance with the Rushmore Method, you
2 backed out the replacement reserve for
3 furniture, fixtures and equipment, is that
4 right?

5 A: Yes, sir.

6 Q: And you backed out the management fee, is that
7 right?

8 A: Yes, sir.

9 Q: Now those are still shown on slide 28, but
10 they're only shown once rather than twice.

11 A: Right.

12 Q: If you had included them in the 73 percent and
13 shown it on the slide, then Mr. Johnson would
14 have been right, that you would have been
15 double-counting it.

16 A: Yes, sir.

17 Q: But by presenting it this way, this just counts
18 it one time, does it not?

19 A: Yes, sir.

20 Q: And this presentation is done in accordance
21 with the Rushmore Method.

22 A: Yes, sir.

23 Q: And this information that's on slide 28,
24 basically is the same information as you can
25 find on pages 75 through 77 of your appraisal,



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1 is that right?

2 A: Yes, sir. That is correct.

3 **THE COURT:** You said that slide 28 is also an
4 exhibit. What exhibit number is it?

5 Q: I think it is. It may not be.

6 **MR. ELLISON:** Your Honor, I don't see it on my list
7 in the book. I apologize.

8 **THE COURT:** All right. Well somehow or the other, I
9 want a hard copy of that in the record because
10 I won't be able to properly consider this ---

11 **MR. ELLISON:** No problem.

12 **THE COURT:** --- without it. Any objection?

13 **MR. JOHNSON:** No objection, Your Honor.

14 **MR. ELLISON:** Your Honor, I've got a hard copy right
15 here. I would be happy to tender that.

16 **THE COURT:** All right. Let's put it in as an
17 exhibit. You want Anthony to go make
18 photocopies so you can keep your original?

19 **MR. ELLISON:** Sure.

20 **MR. JOHNSON:** I think I've got a copy.

21 **MR. ELLISON:** Let me see it?

22 **THE COURT:** That's a negative image. Do you have it
23 the other way?

24 **MR. ELLISON:** I have it as a positive image, I
25 think. There you go.



1 **THE COURT:** All right.. We'll let Anthony tend to
2 that and then we'll put it in the record.

3 **MR. ELLISON:** Thank you, Your Honor.

4 **THE COURT:** You may proceed if you wish. I don't
5 need it before me this second.

6 **MR. ELLISON:** Okay. Okay.

7 Q: Now Mr. Rosen, an appraisal is really just a
8 snapshot in time, is it not?

9 A: That's correct.

10 Q: It is an opinion of value as of a particular
11 date, is that right?

12 A: Yes, sir.

13 Q: So let's take two snapshots in time if we
14 could, please.

15 A: Sure.

16 Q: May 2008. What was the occupancy rate of the
17 property of the hotel?

18 A: Ninety six percent.

19 Q: Okay. Let's fast forward to December 2008.
20 What's the occupancy rate in December 2008?

21 A: 35.5 percent.

22 Q: Let's do that snapshot again in terms of loans.
23 Were loans available, in your experience as a
24 professional appraiser for hotels in May 2008?

25 A: Yes, sir.



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1 Q: But they weren't available in December 2008,
2 were they?

3 A: That's correct.

4 Q: And if we look at page 73 of your report, did
5 you do some due diligence to see whether there
6 were loans available?

7 A: Yes, sir. I checked with four banks -- five
8 banks -- actually five banks.

9 Q: Now we heard -- you testified a little earlier,
10 and I got a little lost, with regard to the use
11 of the competitive set and the Star Report and
12 that sort of thing. The analysis with regard
13 to a competitive set, that's used in connection
14 with the income approach to value, is that
15 correct?

16 A: The competitive set?

17 Q: The concept of a competitive set.

18 A: Yes, sir. It is.

19 Q: All right. You're not looking necessarily at
20 a competitive set if one is doing a sales
21 comparable approach, is that right?

22 A: That's correct.

23 Q: And citing back to the article that Mr. Johnson
24 cited an awful lot, in the back of your report
25 by Mr. Lesser ---



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1 A: Yes, sir.

2 Q: --- the topic sentence of the paragraph that he
3 had you read from, on the right hand side of
4 the page says what about the use of the sales
5 comparison report?

6 A: Hotel investors?

7 Q: Yes.

8 A: "Hotel investors typically do not employ the
9 sales comparative approach in reading their
10 final purchase decisions."

11 Q: And hotel investors are looking for overall
12 return, is that right?

13 A: Yes, sir.

14 Q: Regardless of whether it comes from the real
15 property, correct?

16 A: Yes, sir.

17 Q: Whether it comes from the personal property,
18 correct?

19 A: Yes, sir.

20 Q: Or whether it comes from the intangible value.

21 A: That's correct.

22 Q: Now in looking at expenses, is it appropriate
23 to look at the competitive set?

24 A: Yes, sir.

25 Q: Why is that?



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1 A: The competitive set -- well, the expenses for
2 and the whole study, they obtained a large
3 amount of volume of information.

4 Q: Actual data, is it not?

5 A: Yes, sir. Actual data. And so you have a
6 tremendous amount of information rather than
7 just a couple of sets. Now one of the things
8 that never came up, and I apologize. This is
9 a three story hotel, so it costs more to
10 operate a three story hotel than it does a two
11 story hotel. And this one does have an
12 elevator, so you do have some -- there may be
13 some additional expense there, but we're not
14 specific when we go -- that's why I like to use
15 the whole study because they have a tremendous
16 amount of information. This could be an amount
17 of input from hotels.

18 Q: Would it have been appropriate in accordance
19 with USPAP to look at the expenses of sales
20 comparables as opposed to the competitive set?

21 A: We could look at it, but it would be better to
22 use the whole study.

23 Q: So if you want to comply with USPAP to present
24 something that's not misleading, are you going
25 to use the competitive set ratios or are you



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1 going to use the so-called sales comp ratios?

2 A: Competitive set.

3 Q: Now the only reason, if I understood you
4 correctly, why you did any kind of sales
5 comparable approach, was in order to help
6 derive the capitalization rate, is that right?

7 A: That's correct.

8 Q: And you testified earlier that the market had
9 essentially shut down by the last quarter of
10 2008, is that right?

11 A: That's correct.

12 Q: Looking at page 73 of your report ---

13 A: Yes, sir.

14 Q: --- are any of -- what's the latest date of any
15 sale that you used for deriving the
16 capitalization rate?

17 A: December 1st of 2008. That was the Wilson,
18 North Carolina, sale.

19 Q: And that was the only sale that you could find
20 that could help you with the capitalization
21 rate in the last quarter of 2008?

22 A: Yes, sir.

23 Q: Is that effectively because there were no sales
24 in the last quarter of 2008?

25 A: That's correct. It was -- there weren't -- I



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1 wasn't able to find that many, you know, that
2 was the only sale I could find the last
3 quarter.

4 Q: So there was basically no sales going on, is
5 that right?

6 A: That's correct.

7 Q: There are no loans going on, as I understand
8 it.

9 A: That's correct.

10 Q: And so this capitalization -- you came up with
11 a 12 percent, again, unloaded capitalization
12 rate.

13 A: That's correct.

14 Q: And you feel that that's reasonable, given the
15 market at the time?

16 A: Yes, sir.

17 Q: If anything, it might be a little low?

18 A: It could be because that Micro-tel sale is
19 15.43 percent. That's the highest indication.

20 Q: Your Honor, that's all I have.

21 **THE COURT:** Anything on re-cross?

22 **MR. JOHNSON:** Very -- I have two questions here.

23 **THE COURT:** All right what -- just one second.

24 Let's deal with this slide 28.

25 **MR. JOHNSON:** Yes, sir. I'm sorry.



1 THE COURT: You want to offer that?

2 MR. ELLISON: Yes, Your Honor. I guess it would be
3 Exhibit Two?

4 COURT REPORTER: Twenty.

5 MR. ELLISON: We could call it two. However you
6 want to do it.

7 THE COURT: All right. Without objection?

8 MR. JOHNSON: Without objection, Your Honor.

9 (Petitioner's Exhibit Number Twenty was admitted into
10 evidence.)

11 THE COURT: All right. Without objection, the hard
12 copy of what has been up on the screen as
13 slide 28 is marked Petitioner's Exhibit Twenty,
14 according to Ms. Dominick. It's entitled,
15 "Compare: Taxpayer Approach Versus County
16 Approach." The record would be meaningless
17 without that.

18 MR. JOHNSON: Yes, sir.

19 THE COURT: Thank you.

20 **MR. ROSEN - RECROSS EXAMINATION BY MR. JOHNSON:**

21 Q: Mr. Rosen, just very briefly, you had mentioned
22 the occupancy rate for the subject hotel, early
23 in 2008 was at 96 percent, correct?

24 A: Yeah -- well that -- that's what LoopNet had on
25 their sale information.



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1 Q: You answered my question. I was going to ask
2 where did you get that information.

3 A: It was on LoopNet.

4 Q: Okay. Is that in your appraisal anywhere?

5 A: No, sir. I don't know if I have the
6 information with me, but it was with -- the
7 motel was listed for \$3,750,000 and the
8 occupancy rate was shown as being 96 percent.

9 Q: Okay. Now one last thing about the approach is
10 we talked about the income approach. Doesn't
11 the article, the Lesser article, talk about one
12 of the main reasons it's more utilized and more
13 helpful in hotel valuations is because that's
14 what prudent investors look for?

15 A: That's correct.

16 Q: In other words, the Lesser article makes
17 reference to the idea that you would value this
18 property this way because that's how investors
19 determine whether they want to buy a property
20 and how much they want to pay for it.

21 A: Yes, sir.

22 Q: Is that right?

23 A: That's correct.

24 **THE COURT:** Anything further?

25 **MR. ELLISON:** No, Your Honor. I would like the



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1 right -- reserve the right to call Mr. Rosen
2 again, if necessary on rebuttal.

3 **THE COURT:** Granted.

4 **MR. JOHNSON:** Yes. Oh, I'm sorry. No objection to
5 that.

6 **THE COURT:** All right. Your case, please.

7 **MR. JOHNSON:** Oh I'm sorry. I did not realize he
8 had rested, Your Honor.

9 **THE COURT:** Yeah, he rested.

10 **MR. JOHNSON:** Your Honor, I'm going to call Robert
11 Weaver. If I may have one moment to get my
12 copies I just made by ---

13 **THE COURT:** Yes, sir.

14 **MR. JOHNSON:** Mr. Weaver, will you please take the
15 stand?

16 **ROBERT WEAVER,** having been duly sworn, testifies as
17 follows:

18 **MR. WEAVER - DIRECT EXAMINATION BY MR. JOHNSON:**

19 Q: Mr. Weaver, if you could, please state your
20 full name for the record.

21 A: My name is Robert Weaver.

22 Q: And what is your current occupation?

23 A: I'm currently the tax assessor for Cherokee
24 County, South Carolina.

25 Q: Okay. And how long have you held that



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1 position?

2 A: For approximately four years.

3 Q: Okay. Do you remember exactly when you first
4 were hired?

5 A: Yes.

6 Q: Well when was that?

7 A: April 2009.

8 Q: Okay. And just for the record's sake, I guess
9 you weren't the assessor at the date evaluation
10 in question here today, is that correct?

11 A: That's correct.

12 Q: And who was that assessor?

13 A: Robert Everett.

14 Q: From one Robert to another?

15 A: That's right.

16 Q: Okay. Now, if you could for the Court's
17 information, go into your background. What did
18 you do before you were Cherokee County
19 Assessor?

20 A: Okay. Prior to working for the assessor's
21 office, I worked for the Department of Revenue.
22 I was a staff appraiser for the Department of
23 Revenue and prior to that, I worked in the York
24 County Assessor's office.

25 **THE COURT:** I assume that's the South Carolina



1 Department of Revenue?

2 A: Yes. The South Carolina Department of Revenue.
3 That's correct.

4 Q: And Mr. Weaver, can you go into detail what
5 type of training you have for your job?

6 A: Yes, sir. I'm currently a certified general
7 appraiser. I'm licensed in South Carolina and
8 North Carolina as well.

9 Q: If I may approach, I want to present you which
10 I believe is Respondent's Exhibit Number One,
11 which is essentially your resume, correct?

12 A: That's correct.

13 Q: And to the best of your knowledge, is the
14 information listed in this resume correct?

15 A: That's correct.

16 Q: Okay. And you've listed a number of Appraisal
17 Institute courses and exams and things that you
18 have completed, is that right?

19 A: Yes, sir.

20 Q: Okay. If you could, describe for the Court
21 what your role and duties are being a county
22 assessor.

23 A: Okay. My responsibilities include overseeing
24 the daily operation of the assessor's office.
25 Our office is required to appraise real



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1 property and mobile homes in the county and
2 we've got to make sure that we're being fair
3 and equitable.

4 Q: Okay. And of course when we talk about real
5 property, we're talking about things like
6 hotels too, correct?

7 A: That's correct.

8 Q: Okay. Your Honor, I believe we've already
9 agreed that that -- I didn't know how you
10 wanted to handle that particular. It's already
11 been stipulated as ---

12 **THE COURT:** I want you to mention that each time it
13 comes up so there'll be no mistake.

14 **MR. JOHNSON:** I'd be happy to, Judge.

15 **THE COURT:** Thank you.

16 Q: Okay. And Mr. Weaver, you had also mentioned
17 you are licensed in South Carolina as an
18 appraiser. Is this a copy of your certificate?

19 A: It is.

20 Q: And that certificate is Respondent's Exhibit
21 Number Two, I believe. And does that show that
22 you are currently licensed?

23 A: That's correct.

24 **THE COURT:** And that's been previously stipulated.

25 **MR. JOHNSON:** Thank you.



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1 Q: And you also mentioned you're licensed in North
2 Carolina too, correct?

3 A: Yes. I'm a certified general appraiser in
4 North Carolina as well.

5 Q: Now just out of curiosity, why North Carolina
6 too?

7 A: Just, you know, I don't do any appraisals in
8 North Carolina or anything like that, you know,
9 just trying to broaden my horizons.

10 Q: And you had to have separate licensing for
11 that?

12 A: That's correct.

13 Q: And just for the Court's information, Cherokee
14 County's neighboring North Carolina, is it not?

15 A: That's correct. Yes, sir.

16 Q: And I approach with a Respondent's Exhibit
17 Number Three, which is a copy of your North
18 Carolina certification.

19 A: That's correct.

20 Q: Which I believe has also been -- Respondent's
21 Number Three has also been submitted and
22 stipulated on the record. Your Honor, based
23 upon information, I ask this witness be
24 qualified as a expert in real estate
25 appraisals.



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1 MR. ELLISON: No objection, Your Honor.

2 THE COURT: Without objection, he is so qualified.

3 Q: Now Mr. Weaver, again, you stated you started
4 in April of 2009 as the assessor. This
5 particular case that we're involved in now is
6 for the tax year of 2010, correct?

7 A: Yes. It's a 2010 appeal. Correct.

8 Q: Correct. Okay. And were you involved with the
9 appeals process to get where we are today?

10 A: That's correct.

11 Q: And as a matter of fact, did you make a, what
12 I think you sometimes refer to as an on site
13 inspection?

14 A: That's correct.

15 Q: And it's in our Respondent's and Petitioner's
16 Stipulation of Facts, but would you agree that
17 the Petitioner followed the proper procedures
18 as far as making the appeal?

19 A: Correct. I do.

20 Q: And made the timely objection and they followed
21 all the necessary statutory requirements.

22 A: That's correct.

23 Q: Okay. And one such requirement was to do the
24 on site inspection, which you did. If I may
25 present, I believe we are on number Five --



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1 Four. Excuse me. Respondent's Exhibit Number
2 Four has already been stipulated to. Is that
3 a copy of your signature on the bottom of that
4 page?

5 A: Yes, sir. It is.

6 Q: Okay. And what is that document?

7 A: This is what we call the change letter. Any
8 time we have an appeal filed with our office,
9 we have to, by law, send them what's called a
10 change letter so we let them know what the
11 market value was before and what the market
12 value after was.

13 Q: Okay. And that particular document, what does
14 it indicate happened after the appeal?

15 A: After the appeal it was lowered. Before the
16 appeal, it was \$1,962,540 and it was lowered to
17 \$1,876,000.

18 Q: Okay. And if you look at the top of that,
19 could you please tell the Court what the date
20 of that letter is?

21 A: December the 14th, 2010.

22 Q: Okay. So the change letter was issued. What
23 was the procedure then? What did the
24 petitioner do then?

25 A: Then the petitioner filed a letter stating they



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1 did not agree with that value.

2 Q: Okay. And what was the next procedure after
3 they said they didn't agree?

4 A: At that time, I sent in the appeal board
5 information. If they wished to appeal it with
6 the board, then that was their option.

7 Q: Okay. And I believe they did appeal to the
8 board, did they not?

9 A: They did. Yes, sir.

10 Q: I believe -- did you appear at that hearing?

11 A: Yes, I did.

12 Q: I believe that Mr. Ellison was there on behalf
13 of Tilbros.

14 A: That's correct.

15 Q: Okay. And after the appeal board heard the
16 appeal for Tilbros, what was the result?

17 A: They upheld my value.

18 Q: Okay. If I may approach, what should be
19 Respondent's Exhibit Number Five already
20 stipulated to, could you tell the Court what
21 that document is?

22 A: This is a letter from the chairman of the
23 appeal board stating that they upheld my value
24 at \$1,876,000, and that was sent to the tax
25 payer's attorney.



1 Q: Okay. And what's the date of that letter?

2 A: The date of that letter is May the 9th, 2011.

3 Q: And who is the author of that letter?

4 A: Mr. Floyd Watson. He's the chairman of the
5 appeal board.

6 Q: Okay. Now they upheld the value. Did you make
7 a, like a slide show presentation to the board?

8 A: I did, yes, sir.

9 Q: Okay. And I have one with me, which should be
10 a bound copy of Respondent's Number Six. Do
11 you have that in front of you as well?

12 A: Yes, sir. I do.

13 Q: I think you mentioned you did. It's also been
14 stipulated on the record as Respondent's
15 Exhibit Number Six, the presentation to the
16 board, and what was the date of the board
17 hearing?

18 A: It's March the 31st, 2011.

19 Q: Okay. What -- go through the steps you went
20 through in making this presentation to the
21 board. What information did you provide them
22 and how did you present it to them?

23 A: Basically what I did was I gave them a
24 presentation and the first slide talked about
25 the appeal process, and then the subsequent



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1 slides talked about, you know, the pertinent
2 information about the subject property, the
3 acres, the number of rooms, the square footage,
4 that type of thing. There were several slides
5 of pictures of the subject property. There was
6 a aerial photograph of the subject property.
7 Then there was a slide talking about the
8 inspection of the property and how I spoke with
9 and what I did, and then I went into the
10 approaches of value.

11 Q: And what -- to the board, what presentation did
12 you make about the different approaches of
13 value?

14 A: I used the cost approach and I used the income
15 approach.

16 Q: Okay. And using the cost approach, looking at
17 the slide, I think you have what I'm looking at
18 is Marshall and Swift cost manual, if you have
19 that in front of you.

20 A: Yes, I do.

21 Q: Is this the calculations you used for the cost
22 approach?

23 A: Yes, sir, it is.

24 Q: Okay. And based upon using these figures, what
25 was the total value, based upon your



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1 assessment?

2 A: \$1,876,000.

3 Q: Okay. Now, with the cost approach, did you
4 just use one approach and stop?

5 A: No, sir. I looked at the income.

6 Q: Okay. And of course we've gone ad nauseam
7 about the income approach. I think we all know
8 what that is now. It looks like you go through
9 the ADR and occupancy rating and all that, do
10 you not?

11 A: Yes, sir, I do.

12 Q: Okay. And using the -- looking at the slide
13 labeled competitive set analysis, if you're
14 there. Okay in competitive set analysis, what
15 are those four properties?

16 A: They are in the competitive set that was set by
17 hotel management in the Star Report.

18 Q: Okay. And one by one, let's just kind of go
19 through them. The first one, what hotel is
20 that?

21 A: The Red Roof.

22 Q: And we, on Mr. Rosen's presentation, we
23 discussed the Red Roof. Is that the one he was
24 referring to?

25 A: That's correct, yes, sir.



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1 Q: And is that the one that I believe is across
2 the street?

3 A: That's correct.

4 Q: And this states it was open 1999, which was --
5 when was the subject hotel opened?

6 A: 1999. It was built in 1999, according to our
7 records.

8 Q: Okay. And how many -- do you remember how many
9 rooms the subject hotel has?

10 A: Sixty.

11 Q: Okay. And how much did Red Roof have?

12 A: Sixty three.

13 Q: Okay. And I won't go one by one, but you see
14 the other three there. Are they all in
15 Cherokee County?

16 A: Yes, sir, they are.

17 Q: Okay. And you have shown, of course,
18 photographs of the four different ones, did you
19 not?

20 A: Yes, sir. I did.

21 Q: Now in the presentation, if you'll go past the
22 photographs, there's an average daily rate
23 analysis, and we've talked about what ADR is,
24 and just for the Court's reinformation after
25 lunch, what is the ADR?



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1 A: ADR is the revenue divided by the rooms sold,
2 so that's -- we look at the rack rates as well,
3 which is the total cost of minus -- before the
4 discounts, you know, in other words.

5 Q: Okay. And in using on this slide, you listed
6 for 2009, two separate ADRs.

7 A: Correct.

8 Q: And what were those two separate ADRs?

9 A: One was for the subject property and the other
10 was for the competitive set in the Star Report.

11 Q: Okay. And there's a parenthetical notation
12 there. You said you used 6779.

13 A: That's correct.

14 Q: And that was for which ---

15 A: The competitive set.

16 Q: Okay. And of course that's the lower rate,
17 correct?

18 A: That's correct.

19 Q: Now, if you will please turn to the next -- the
20 projected income and expense page in your
21 presentation. I believe that's it right there.

22 A: Yes, sir.

23 Q: This is more or less similar to the slides that
24 have been presented. This is your calculation
25 for income, correct?



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1 A: That's correct.

2 Q: Okay. Can you, just in your own words, go
3 through and tell the Court what you did here.

4 A: Sure. The first step in the income approach is
5 to establish potential growth income. You can
6 look at any appraisal book and it's going to
7 tell you the first step is PGI, potential gross
8 income. It's not actual income. You always
9 compare the contract rent with the market rent
10 because if the assignment is fair market value
11 fee simple, that's what you want to look at.
12 You want to look at market data. So you want
13 to see how that hotel is performing in that
14 market, and you want to extract market data
15 from the local market. And so what I did was
16 I compared the ADR and the occupancy rate with
17 the competitive set, and I felt like the ADR
18 for the competitive set and the occupancy was
19 more appropriate to establish potential gross
20 income.

21 Q: And ---

22 A: And that got me -- I'm sorry. Go ahead.

23 Q: Well I was going to ask what was the PGI then,
24 based upon that?

25 A: It was \$1,484,601.



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1 Q: Okay. And in your calculation to the board,
2 you use '09 occupancy rate of 49 percent, is
3 that correct?

4 A: That's correct.

5 Q: And you multiply that to get the EGI. What is
6 the EGI?

7 A: It's effective gross income. Your top number
8 is potential gross income minus any vacancy and
9 collection loss. On a hotel, it's a little bit
10 different, see, you've got the occupancy factor
11 on your hotel. Other properties, you would
12 start with PGI and you would give it a vacancy
13 and collection loss, and that would get you
14 down to the effective gross income.

15 Q: Okay. And that amount at \$727,454.

16 A: That's correct.

17 Q: All right. Now you went through some of the
18 expenses.

19 A: Yes.

20 Q: Where was the -- where did you derive all those
21 from?

22 A: All these expenses came from the financial
23 statement for 2009 furnished by the tax payer.

24 Q: Okay. When you made this presentation, did you
25 have 2008 information?



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1 A: It was just a partial year. She purchased in
2 a partial year. This wasn't enough data in my
3 mind to do anything with.

4 Q: So essentially, you deducted your expenses from
5 the EGI, correct?

6 A: That's correct.

7 Q: And what did you get out of that?

8 A: I came up with a net operating income of
9 \$221,382.

10 Q: Okay. Now once you get that NOI, what's your
11 next step to do then?

12 A: The next step is to develop a cap rate and I
13 talked with several appraisers in the local
14 market and we had an appraisal done on a
15 similar hotel for the reassessment and the cap
16 rap that they came up with was very similar to
17 what I came up with, and that was 10 percent.
18 So you take your NOI and divide it by the cap
19 rate and that gives you the value.

20 Q: Okay. And then once you get the value, what
21 did you do then?

22 A: Okay. Once I got the value there, I subtracted
23 out the personal property. And talking with
24 appraisers in the local market, some say \$1000
25 a room, some say \$1500 a room, some say \$2000



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1 a room, depending on the hotel. I thought it
2 was appropriate to go with \$1200 a room.

3 Q: Okay. And what was the final calculation then?

4 A: The final calculation was \$2,142,000.

5 Q: Okay. Using -- based on the '09 figures you
6 had, income approach, \$2,100,000, roughly.

7 A: Yes, sir.

8 Q: Okay. Now when you prepared this, did you have
9 a 2008 Star Report?

10 A: No, I did not.

11 Q: Okay. When did you receive that?

12 A: I received that, I guess a couple months ago.

13 Q: Okay. And was that through this appeal?

14 A: Yes, it was through this, yes, court case.

15 Q: So your income on the '09 figure is \$2,100,000?

16 A: Yes, sir.

17 Q: Your cost approach, \$1,876,000.

18 A: That's correct.

19 Q: Which figure of the two did you present to the
20 board as a value?

21 A: I used the \$1,876,000. I've never raised
22 anyone's property value under appeal unless I
23 just missed an addition or something like that.
24 It's not my protocol to do that.

25 Q: Okay. So you had two options based on the



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1 calculation. You took the lesser.

2 A: That's correct.

3 Q: Okay. Now for purposes of this case,
4 subsequent to the appeals hearing, did you look
5 at any other figures or anything?

6 A: Yes. We were supplied with the Star Report,
7 the 2008 numbers.

8 Q: Okay. And based upon this, if I may approach,
9 present you with what I believe is Respondent's
10 Number Six, which I believe has been admitted
11 by stipulation already. I believe that is the
12 recalculation. Is that correct?

13 A: That's correct.

14 Q: So in this example, what figures did you use
15 here?

16 A: Again, we, you know, we had very limited data
17 for 2008, so you have to rely heavily on the
18 Star Report and your comparable sales. Just
19 like proposed construction. No different than
20 new construction or proposed construction. You
21 don't have any data of the subject property, so
22 what are you going to do? You're going to look
23 at the market data.

24 Q: Okay. And so based upon using the new figures
25 you were presented, you prepared this



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1 Respondent's Number Six. Is that correct?

2 A: Yes.

3 Q: Okay. And what was the value that you
4 extrapolated from that?

5 A: \$1,988,760 minus \$72,000 for their personal
6 property, and the residual value to the
7 property is \$1,917,000.

8 Q: Okay. And was the county's position still that
9 the lesser, the \$1,800,000 is the appropriate
10 value?

11 A: That is correct. That's correct.

12 Q: Now in addition to hearing for this case, did
13 you do any other research as far as other
14 properties are concerned?

15 A: Yes, sir.

16 Q: And what research did you do?

17 A: I went out in the market, looked in LoopNet,
18 talked to appraisers, I networked with
19 appraisers, was able to get seven comparable
20 sales, hotels.

21 Q: If I may approach, I believe this is
22 Respondent's Exhibit Number Seven, already
23 stipulated to, which is the comparisons you
24 mentioned, correct?

25 A: That's correct.



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1 Q: Let's go through these one at a time. What's
2 the first comparable?

3 A: The first comparable sale is Sleep Inn in
4 Statesville, North Carolina. It sold \$45,000,
5 price per room. The overall cap rate was 8.82.
6 The expense ratio was 66 percent. The number
7 of rooms is 70. It's located on I-44, close
8 proximity to I-77 in Iredell County in
9 Statesville.

10 Q: What was the sale date?

11 A: The sale date was April the 1st, 2008.

12 Q: And what was the cap rate?

13 A: The cap rate was 8.82 percent.

14 Q: And I believe that's an interior corridor.

15 A: That's an interior corridor and it's the same
16 franchise.

17 Q: Okay. Go to the second one. It's the same
18 Exhibit but it's a second comparable.

19 A: Okay. Second comparable is a Holiday Inn
20 Express in Brevard, North Carolina. It sold in
21 April the 14th, 2008 for \$4,400,000. It had 63
22 rooms. It sold for \$79,000 per price per room.
23 The expense ratio is 69 percent and the overall
24 cap rate was 7.87 percent.

25 Q: I believe that was an interior corridor?



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1 A: And that was an interior corridor as well.

2 Q: Now was the -- this subject property, this
3 property, what was the flag before it was a
4 Sleep Inn?

5 A: It was a Holiday Inn Express.

6 Q: The same as this.

7 A: That's correct.

8 Q: And again, just briefly, go through number
9 three here. That again, a Holiday Inn Express.

10 A: Yes, it sold in April the 29th, 2008. It's in
11 Duncan, South Carolina, real close to the
12 subject property, \$5,700,000, 75 rooms, \$76,000
13 per room, expense ratio 66 percent, and the cap
14 rate was 8.40.

15 Q: And the fourth appears to be another Holiday
16 Inn.

17 A: Holiday Inn Express, interior corridor, sold in
18 January of 2008 for \$5,600,000, 82 rooms, the
19 expense ratio as 66 percent, and the cap rate
20 was 8.65 percent.

21 Q: And the fifth one?

22 A: The fifth one was a Quality Inn located in
23 Greenville, North Carolina, sold March of 2008
24 for \$3,900,000. This is an exterior corridor.
25 It had 110 rooms and the expense ratio is 69.9



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1 percent, and the overall cap rate is 10.49
2 percent.

3 Q: And the next one is a Sleep Inn as well, is
4 that right?

5 A: That's correct. It's a three story Sleep Inn
6 with an interior corridor. It sold in April of
7 2008 for \$4,100,000. It had 82 rooms and the
8 expense ratio is 66.48 percent and the cap rate
9 was 9.58 percent.

10 Q: And the last one.

11 A: The last one is a Red Roof. It's a two story
12 exterior corridor. It sold in September of
13 2008 for \$2,700,000. It had 84 rooms. The
14 expense ratio is 70.37 percent with a cap rate
15 at 11.15.

16 Q: Were any of the comps, of the seven comps that
17 you listed, any of the cap rates 12 percent or
18 higher?

19 A: No.

20 Q: Okay. Were any of the expense ratios 73
21 percent or higher?

22 A: No, sir.

23 Q: Speaking of cap rates, we're on Eight.
24 Respondent's Exhibit Number Eight, already
25 stipulated to on the record. What is that



1 document?

2 A: This is from the P. K. Capital consulting
3 publication and showing the cap rate for 2008
4 is 7.9 percent.

5 Q: Okay. What's the -- where is this derived
6 from?

7 A: It's derived -- it's like a national
8 publication.

9 Q: Okay. And I believe ---

10 A: From my understanding.

11 Q: It says -- my copy's not as good as yours.
12 Mine says source. What does that say below?

13 A: Source is P. K. Hospitality research per
14 Moody's Economy.com.

15 Q: Okay. And again, for '08, it's showing 7.9.
16 What's it showing for 2009?

17 A: Ten percent.

18 Q: Okay. What cap rate did you use?

19 A: I used the 10 percent.

20 Q: I believe we're on the last one, if I have my
21 numbers correct.

22 **THE COURT:** The Exhibit that has PKF on it is
23 Exhibit Nine, my law clerk says. I may have
24 said Eight.

25 **MR. JOHNSON:** I did, Your Honor. I apologize. That



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1 should be number Nine. And this is.

2 **THE COURT:** Thank you.

3 Q: Presented to you, Exhibit Number Ten,
4 Respondent's been stipulated to on the record.
5 What is this document?

6 A: This is basically a spreadsheet that I did.
7 You know, the law requires me to be fair and
8 equitable. I have to look at on a per room
9 basis or on the square foot basis, depending on
10 the type of property, you know, compared to
11 other properties, am I being fair and
12 equitable, so if you look at the Sleep Inn
13 price per room before the appeal, \$31,654 and
14 the value after the appeal was \$31,267, and
15 based on Mr. Rosen's appraisal here, it's
16 \$11,633 per room. And these are values. It's
17 not cost. These are values, and you look at
18 the other hotels in our county. The Red Roof
19 we talked about, it's \$30,000. Hampton Inn,
20 that's a full service and is valued at \$54,000
21 per room. And the Jamison Inn, which is a
22 exterior corridor, it's valued at \$38,000, plus
23 the \$39,000. And the Super 8 Motel, which
24 exterior corridor is valued at \$30,000 per
25 room, and the Homestead Lodge, which is a



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1 exterior corridor, is valued at \$16,000 a room.
2 And the last is a Quality Inn, which is a
3 exterior corridor, is valued at \$15,000 or
4 almost \$16,000 price per room.

5 Q: Okay. So based on this, how close in value is
6 Mr. Rosen's appraisal versus all the other
7 ones?

8 A: It's just way out of whack.

9 Q: And is that not only the total value, but what
10 about the price per room?

11 A: It's on the price per room as well.

12 Q: So the Court upheld this appraisal would be
13 quite a difference.

14 A: That's correct.

15 Q: One last thing and then Mr. Ellison will ask
16 you some questions. The comps that we
17 discussed, we submitted seven different
18 comparable sales. How did you get those?

19 A: I got those from an appraisal that was done on
20 a similar hotel across the street under a 2010
21 appeal, and also calling some appraisers that
22 I know.

23 Q: Okay. So just word of mouth and you were able
24 to get it.

25 A: That's correct.



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1 Q: Oh, I'm sorry. One last thing from Exhibit
2 Ten. As far as the other properties, is there
3 any pending litigation for the 2000 tax year on
4 any of these?

5 A: No, sir.

6 Q: So they've all accepted the value.

7 A: That's correct.

8 Q: That's all I have, Judge. Please answer Mr.
9 Ellison's questions.

10 **THE COURT:** Cross examination, Mr. Ellison.

11 **MR. WEAVER - CROSS EXAMINATION BY MR. ELLISON:**

12 Q: Last things first, Mr. Weaver. You saw the
13 statute. What you're charged with doing is
14 determining the true value of this property, is
15 it not?

16 A: That's correct.

17 Q: Okay.

18 A: Market value.

19 Q: Are you familiar with the decision of the court
20 in Meeting Street Ventures against Charleston
21 County Assessor, where the court held that what
22 the assessed values of other property values
23 are is completely irrelevant to making a
24 determination as to the true value of this
25 property?



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1 A: I'm not familiar with that.

2 Q: If that's what the court held, then the
3 assessed values of other properties are
4 irrelevant to the analysis of the true value of
5 this property, is that correct?

6 A: Why would Chapter 43 say the assessor has to be
7 fair and equitable about it?

8 Q: If the assessor is charged with determining the
9 true value, and the court said that means you
10 look at the value of this property and not
11 assessed values. The citation, by the way, for
12 that case, is 2004 West law, 3154642. And
13 actually, Mr. Weaver, I was on the losing side
14 of that. I agreed with you at that time.

15 A: Right.

16 Q: The court said I was wrong.

17 A: Right.

18 Q: Okay.

19 **THE COURT:** That an ALC case you're referring to.

20 **MR. ELLISON:** It is, Your Honor. I can't remember
21 the judge.

22 **THE COURT:** Doesn't matter.

23 Q: But Meeting Street Ventures, LLC, versus
24 Charleston County Assessor, 2004 West law
25 3154642, February 19th, 2004. And in addition,



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1 Mr. Weaver, the point of sale law doesn't talk
2 about equitable values, does it?

3 A: No. It says the sensible transfer of interest.

4 Q: It doesn't talk about ---

5 A: And it doesn't say point of sale either.
6 Assessable transfer of interest.

7 Q: In determining value based on assessable
8 transfers of interest, it doesn't anywhere say
9 you have to take into account concepts of
10 equity, does it?

11 A: That's correct.

12 Q: Now I listened very carefully to the testimony
13 that you gave, and I think you said you never
14 did a sales comparison approach, is that right?

15 A: That's correct.

16 Q: You used a cost approach, right?

17 A: Correct.

18 Q: And you used an income approach.

19 A: That's correct.

20 Q: Okay. And the Rushmore approach is irrelevant
21 to the cost approach, is it not?

22 A: That's correct.

23 Q: Did you do the income approach in accordance
24 with the Rushmore approach?

25 A: There's several -- there are several concepts



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1 from the Rushmore the way that I extract out,
2 goodwill and personal property and business
3 value is the same way that I've seen local
4 appraisers do it, which is you take out the
5 franchise fee and the management fee. But
6 that's assuming that the subject property hotel
7 is performing as the competitive set.

8 Q: That's not what Mr. Rushmore says, is it?

9 A: Well I ---

10 Q: I've got his book. Have you read his book?

11 A: I've read articles ---

12 Q: Have you read his book?

13 **THE COURT:** Let him finish.

14 **MR. ELLISON:** I will.

15 Q: Have you ever read his book?

16 A: No. Not page -- not cover to cover.

17 Q: Mr. Rushmore ---

18 A: But I do have it.

19 Q: But you haven't read it.

20 A: But it changes.

21 Q: I mean, you're welcome to look at it. Mr.
22 Rushmore never says that this all depends on a
23 competitive set, does it?

24 A: Yes, but it does.

25 Q: That's not what he says, is it?



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- 1 A: I'm not sure. I've never talked to him so I
2 don't know what he said.
- 3 Q: And you haven't read his book.
- 4 A: I've seen parts of it.
- 5 Q: Mr. Weaver, you claimed that you used the
6 Rushmore approach, did you not?
- 7 A: That's correct.
- 8 Q: Okay. And you did this as a mass appraisal, is
9 that right?
- 10 A: What do you mean by that?
- 11 Q: You didn't value this particular property, did
12 you?
- 13 A: Yes I did. I valued it under appeal.
- 14 Q: You didn't do it according to USPAP standards,
15 did you?
- 16 A: That's kind of vague, I mean ---
- 17 Q: No, some ---
- 18 A: --- we have to comply with USPAP, but we don't
19 write reports like Mr. Rosen presented. We
20 don't write reports.
- 21 Q: You haven't certified that your analysis
22 complies with USPAP standards, have you?
- 23 A: We don't -- we do not need certifications in
24 the assessor's office.
- 25 Q: Just answer my question. You can explain it

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1 however you want to.

2 A: Okay.

3 Q: You have not certified that you have done the
4 analysis in accordance with USPAP standards,
5 have you?

6 A: That's correct.

7 Q: In fact, you used a mass appraisal approach,
8 did you not?

9 A: A mass appraisal is looking at a universal --
10 looking at a lot of properties at one time and
11 creating a base cost and that type of thing.
12 That's mass appraisal. When you work something
13 under appeal, you're looking at it as a
14 individual piece of property.

15 Q: Mr. Weaver, I'm going to hand you a copy of the
16 document ---

17 A: But it's a mass commercial -- what we call a
18 commercial appeal. The scope of work is a lot
19 less than it would be a independent fee
20 appraisal.

21 Q: Mr. Weaver, I would ask you to look at what's
22 been marked as Petitioner's Exhibit Seven. Are
23 you familiar with that?

24 A: Yes, sir. That's a email I sent Mr. Johnson --
25 -



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1 Q: Dawson.

2 **MR. JOHNSON:** I'm sorry, Your Honor, what was the
3 number on that one?

4 **MR. ELLISON:** Seven.

5 **MR. JOHNSON:** Seven.

6 **THE WITNESS:** Seven.

7 Q: It's a copy of an email that you sent Mr.
8 Dawson in my office early on in this process,
9 is it not?

10 A: That's correct, yes, sir.

11 Q: And you wrote Mr. Dawson that "The cost
12 approach obviously excludes both business value
13 and personal property and it's easy to use and
14 understand. I know it's limitations but this
15 is mass appraisalment. I don't have time to
16 spend three weeks on one property." Is that
17 right?

18 A: That's correct. That's what I said.

19 Q: The statute charges you with valuing this
20 property, does it not?

21 A: It does.

22 Q: Now let's go through -- this is slide 28 and
23 this -- go through the right hand now. This is
24 based -- and I don't -- I apologize for not
25 having the number. I think it's Respondent's



1 Six, but the right hand column is an income
2 approach based on the numbers that you provided
3 to us. Now you calculated a potential income
4 of the property, did you not?

5 A: That's correct.

6 Q: And you did it not on the basis of what this
7 property had done, but rather on the basis of
8 a competitive set, correct?

9 A: That's correct.

10 Q: So you assumed that this property would achieve
11 a occupancy rate of 67 percent, is that right?

12 A: No, that's not correct. The occupancy was 48
13 ---

14 Q: Is that how you got to your number?

15 A: The occupancy was 48 percent.

16 Q: But that's not what this is calculated on, is
17 it? The occupancy rate of the competitor set
18 was 48 percent.

19 A: That's correct.

20 Q: Okay. Isn't it true that the occupancy of this
21 particular property was 35 percent in December
22 2008?

23 A: That's correct.

24 Q: And isn't it true that this property has never
25 achieved occupancy, since it was purchased, in



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1 excess of 40 percent?

2 A: I can't answer that question.

3 Q: So you don't know.

4 A: I know that the information I got 2008 and
5 2009, but based on my conversation with Ms.
6 Tilva, I was thinking I would have to go back
7 and look at my notes, but I was thinking that
8 in 2010, she exceeded the competitive set.

9 Q: In 2009, you'll find that the occupancy rate
10 was 40.4 percent, do you not?

11 A: Right, but I'm talking about when I had a
12 conversation with Ms. Tilva when I inspected
13 the subject property.

14 Q: So you've incorporated a concept of a
15 competitive set to determine a theoretical
16 hotel and what kind of potential income that
17 property would generate, is that right?

18 A: I did what the income approach -- its first
19 step is potential gross income -- what can that
20 property -- what is the potential of that
21 property.

22 Q: But you based your analysis not on this
23 property, but on the basis of a theoretical
24 competitive set, which is using a mass
25 approach, is it not?



1 A: Based on the competitive set in the Star
2 Report.

3 Q: You didn't look at this property, you looked at
4 the competitive set potential, is that right?

5 A: I looked at the occupancy of the subject
6 property, and that's not the market.

7 Q: But it's not -- this property may not be the
8 market. You're charged with valuing this
9 property. And what you did is you took the
10 potential gross income of a competitive set and
11 tried to apply it to this property to get your
12 \$736,000 number. Is that right?

13 A: That's what every appraiser does when they sale
14 -- potential gross income under the income
15 approach. They compare the market with the
16 contract rent. This is no different.

17 Q: You heard Mr. Rosen say that by doing so, that
18 that would violate USPAP standards, did you
19 not?

20 A: I don't know how that violates USPAP.

21 Q: You're not an MAI, are you?

22 A: No, sir.

23 Q: Okay. So let's go to the second number here,
24 the \$480,000 expense number. You calculated
25 that based on looking at, again, 2009 numbers



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1 for a competitive set, correct?

2 A: Yes. I looked at 2009 at the subject property,
3 the expenditures, but I also looked at the
4 expense ratio of the comparable sales.

5 Q: And you made it clear that the \$460,000 number
6 included the expense for real property taxes,
7 correct?

8 A: Correct.

9 Q: That's not what the Rushmore approach does,
10 does it?

11 A: There's several ways to do the Rushmore.

12 Q: Here's the book. Tell me in the book where it
13 tells me what you did is right.

14 A: I don't -- tell me that it's wrong.

15 Q: I'm happy to show you. I'll be happy to show
16 you.

17 A: You can't open up a book to appraise property.
18 You've got to extract it from the local market.
19 That's why USPAP requires people to have the
20 geographic competency to do the appraisal ---

21 Q: On page ---

22 A: --- because you have to extract it from the
23 local market.

24 Q: On pages 243 through 245 in Mr. Rushmore's
25 book, it doesn't say -- it says that you don't



1 do this, does it not? And you're happy to look
2 at it if you want.

3 A: I don't need to look at it.

4 Q: So you're ---

5 A: I know how to do an appraisal on a hotel and I
6 know how to extract out business value.

7 Q: But you're ---

8 A: But I don't have to do it that way. Not
9 everybody does it that way, Mr. Ellison. The
10 concept ---

11 Q: But you're saying you're applying his approach.

12 **THE COURT:** All right. Let's just stop a minute. I
13 can't hear when you all talk over each other.
14 I'm trying to keep up with it. So let him
15 finish his answer before you start.

16 **MR. ELLISON:** Sure.

17 **THE COURT:** Now, proceed, please.

18 A: My methodology -- the articles I've read is to
19 extract out business value, is doing the
20 management fee and the franchise fee, and
21 that's what I've seen local appraisers do.
22 I've talked to several local appraisers and
23 that's how they do it, and they don't do it a
24 return on return of a personal property. They
25 get down to the residual value or extracting



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1 out the business value and then they do a price
2 per room for the personal property and they
3 subtract out the personal property.

4 Q: Rushmore doesn't do it that way, Mr. Weaver,
5 and I'll call your attention specifically to
6 page 245. He does a return of and return on
7 personal property.

8 A: That's one way to do it, yes, sir.

9 Q: That's the way he does it and you said you were
10 using the Rushmore Method.

11 A: What Mr. Rushmore said was extract out
12 franchise fee and the management fee. That's
13 what he says.

14 Q: He also says you would calculate ---

15 A: And there's several ways to get there.

16 Q: Your Honor, we can copy pages of the book if
17 you think we need to. We probably should.
18 Let's -- at the next break, let's copy pages
19 243 through pages 249.

20 **THE COURT:** What do you say, Mr. Johnson?

21 **MR. JOHNSON:** No objections, Your Honor.

22 **THE COURT:** All right.

23 **MR. JOHNSON:** Because I can get copies.

24 **THE COURT:** Anthony will -- sir? Anthony will take
25 care of that for you.



1 **MR. JOHNSON:** Thank you, Your Honor.

2 **Q:** So Mr. Rushmore talked about doing return of
3 property and return on property, and that just
4 went up there on the slide. Do you see that,
5 Mr. Weaver?

6 **A:** That's correct.

7 **MR. ELLISON:** Okay. And -- Your Honor, if I could
8 tender -- I'd like to tender this excerpt from
9 Mr. Rushmore's book.

10 **THE COURT:** Is that what you wanted copied?

11 **MR. ELLISON:** Yes, Your Honor. That's exactly what
12 I wanted copied. Mr. Rosen had it.

13 **THE COURT:** All right. So that's without objection.
14 That'll be Petitioner's -- what is it, Ms.
15 Dominick?

16 **COURT REPORTER:** Twenty-One.

17 **THE COURT:** Petitioner's Twenty-One is admitted
18 without objection.

19 **(Petitioner's Exhibit Number Twenty-one was admitted**
20 **into evidence.)**

21 **Q:** So looking at slide 28, did you include the
22 real property taxes in your expenses?

23 **A:** Yes, I did. Sixty-nine percent includes real
24 property.

25 **Q:** Did you include the -- did you load the



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1 capitalization rate?

2 A: No, sir. I did not. I typically do not load
3 the cap rate because that's kind of hard to
4 explain to the tax payer. But I can explain
5 how I do it.

6 Q: The industry standard is that if you include
7 the taxes and expenses, then you load the
8 capitalization rate.

9 A: No, that's just the opposite. If you extracted
10 out expenses -- if you extracted out the
11 property tax expense from the expense column,
12 then you would have to load the cap rate, and
13 the way you do that is take the assessment
14 ratio, multiply it by the applicable millage
15 rate, and it usually calculates to be about two
16 and a half percent. So you would take that cap
17 rate and add that two and a half percent, not
18 four percent.

19 Q: So it's your testimony that it's okay to
20 include the expenses for taxes and not
21 capitalize -- excuse me, not load the
22 capitalization rate.

23 A: Absolutely.

24 Q: Would it surprise you to know that that's
25 exactly the opposite of the industry standard?



1 A: If your property tax is in the expense, you do
2 not load the tax rate. You only load the tax
3 rate when you take out the property tax.

4 **THE COURT:** Mr. Ellison?

5 **MR. ELLISON:** Yes, sir?

6 **THE COURT:** Here's your ... one for Mr. Johnson.

7 **MR. JOHNSON:** Thank you.

8 Q: Now an investment in real estate is an illiquid
9 investment, is it not?

10 A: I'm not sure what you mean by that, sir.

11 Q: Hard to -- it's easier to sell securities than
12 it is to sell real estate, is it not?

13 A: I've never sold real estate. I don't know.

14 Q: Okay. Do you think that the capitalization
15 rate for a piece of real estate should be about
16 the same as the return on a corporate bond?

17 A: I wouldn't know. I don't know that much about
18 corporate bonds, but I ...

19 Q: Isn't the capitalization rate measuring return
20 on investment?

21 A: That's one way of looking at it.

22 Q: Okay. And isn't the interest rate payable on
23 a corporate bond return on investment?

24 A: Now say your question again, sir?

25 Q: Isn't the interest rate payable on a corporate



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1 bond another measure of return on investment?

2 A: I don't -- I don't look at that. I very seldom
3 do the band of investment technique.

4 Q: Do you agree ---

5 A: I use capitalization sales.

6 Q: Do you agree with the concept?

7 A: I can't agree to -- when you say the concept,
8 are you talking about the band of investment
9 technique?

10 Q: No. It's a very simple question.

11 A: Okay.

12 Q: The question is, the return on a corporate
13 bond, is that one measure of return to an
14 investment?

15 A: I don't know.

16 Q: Do you believe that the capitalization rates
17 changed from January 2008 to December 2008?

18 A: I didn't see it in the market, I mean ...

19 Q: You didn't see it in the market?

20 A: As far as market sales.

21 Q: There were no market sales ---

22 A: Capitalization sales.

23 Q: There were no market sales after September 15,
24 2008, were there?

25 A: I couldn't find any.



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- 1 Q: You couldn't find any.
- 2 A: No, sir.
- 3 Q: Every one of your sales, every one of your
- 4 seven sales, is in the first half of 2008.
- 5 A: That's correct.
- 6 Q: And that's before the market crashed, right?
- 7 A: Correct.
- 8 Q: It's before the Dow crashed 30 percent, right?
- 9 A: Right.
- 10 Q: Before Lehman closed. Before the commercial
- 11 mortgage banks backed security, the CNBS market
- 12 for real estate loans went poof. There were no
- 13 loans available, as a practical matter, for
- 14 hotels in the last part of 2008, were there?
- 15 A: I don't recall bankers -- I don't know.
- 16 Q: Are you aware of any?
- 17 A: Aware of what?
- 18 Q: Any loans made that are secured by hotels the
- 19 last quarter of 2008?
- 20 A: Well I'm -- no. I'm the assessor in a small
- 21 county. We only have about nine hotels.
- 22 Q: Okay. That's fine. Were you aware of ---
- 23 A: So I don't know. I'm not aware of any.
- 24 Q: You would agree with me, Mr. Weaver, that USPAP
- 25 sets the standard for the appraisal industry,



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1 would you not?

2 A: That's correct.

3 Q: And this particular hotel lost money in both
4 2008 and 2009, correct?

5 A: Based on their financials, correct.

6 Q: Are you familiar with the total assets or tab
7 methodology for extracting business value?

8 A: Yes, somewhat.

9 Q: That's methodology that's put forward by Mr.
10 Lennhoff and others?

11 A: That's correct.

12 Q: And that's a more aggressive methodology than
13 the Rushmore Method, is it not?

14 A: Yes.

15 Q: The tab methodology often will attribute 40,
16 50, and sometimes even 60 percent of a hotel's
17 value to intangible value, correct?

18 A: Yeah. That's correct.

19 Q: But Rushmore is usually much less, is that
20 correct?

21 A: Yes.

22 Q: Now you came up with a reserve of one percent?

23 A: Yes, sir.

24 Q: What was the basis for that?

25 A: The basis is a lot of times if you don't



1 totally reconstruct the operating statement and
2 take out the expenses, then a lot of times,
3 those expenditures are going to be on your
4 financial statement, so looking at the 2009
5 financial statements, they had about \$12,000
6 that looks like it was those type expenditures,
7 so I gave them additional one percent because
8 usually it fluctuates to three to five percent.

9 Q: Industry standards are reserved for personal
10 property at five percent, is it not?

11 A: Three to five percent in the local market.

12 Q: And you used one percent.

13 A: I used three percent. Again, I did not --
14 again, the ratio that I used, the expense ratio
15 that I used already had some expenditures in
16 that. If you take a look and you look at their
17 2009 expenditures, they had those expenditures
18 on the expense column and I used their
19 expenses, so if you would leave those type of
20 expenditures in and you give another five
21 percent, you just overstated the expenses and
22 understated your NOI and therefore, understated
23 your value.

24 Q: You did nothing in terms of a return on
25 personal property, did you?



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1 A: No, sir.

2 Q: You made no adjustment for changes in market
3 conditions from January 2008 to December 2008,
4 did you?

5 A: I had no sales to prove that, so no, I did not.

6 Q: You would not disagree with the slides that you
7 saw earlier with regard to the closing of all
8 these financial institutions in September 2008,
9 would you?

10 A: Sure.

11 Q: You wouldn't disagree that the Dow Jones
12 Industrial Average dropped 30 percent, would
13 you?

14 A: No, sir.

15 Q: You would not disagree that the real estate
16 market that essentially frozen because of the
17 absence of credit in the last quarter of 2008,
18 would you?

19 A: No, sir.

20 Q: You haven't seen any copy of any building
21 permits that were issued for hotels for
22 Cherokee County or anywhere in the last quarter
23 of 2008, would you?

24 A: No, sir.

25 Q: In doing your cost approach, did you do any



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1 comparison with regard to land values?

2 A: Yes, sir. The land value was already
3 established.

4 Q: How was it established?

5 A: It was established -- during the reassessment
6 we -- they implemented a reassessment 2009 and
7 sent out the notices in February and I came on
8 board in April of 2009.

9 Q: You based -- in doing your cost approach to get
10 a land value, which is the way you have to
11 start. You based that off of assessed values
12 of other real property in Cherokee County?

13 A: No, sir. We already have the land value
14 established.

15 Q: Did you establish it by the market looking at
16 comparable land sales?

17 A: I looked at one across the street.

18 Q: That's not in your material, is it?

19 A: No, sir.

20 Q: Any other comparable land sales in your
21 material?

22 A: No, sir, because the land value was already
23 established and I didn't think there was an
24 issue with it.

25 Q: Now you don't disagree that the return on



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1 corporate bonds for BAA bonds in December 2008
2 was approximately 8.46 percent, do you?

3 A: I have no documentation to prove that.

4 Q: You saw the document that was introduced
5 earlier, did you not?

6 A: I suppose I did. I don't remember it. I saw
7 a lot of different stuff.

8 Q: I understand. Mr. Weaver, I want to show what
9 I think has been marked as Exhibit Nine, this
10 interest rate study.

11 **THE COURT:** That's the one with PKF on it ---

12 **MR. ELLISON:** Yes.

13 **THE COURT:** --- unless there's more than one that
14 isn't marked.

15 **MR. ELLISON:** No, there's no more. This is the only
16 one.

17 Q: Have you seen this document before, Mr. Weaver,
18 right?

19 A: Yes, sir.

20 Q: This document was actually prepared in early
21 2009, was it not?

22 A: Yes.

23 Q: And the F ---

24 A: Is forecast.

25 Q: --- is forecast.



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1 A: Yes, sir.

2 Q: And the 2008 number, those are based on
3 annualized sales, right?

4 A: Yes.

5 Q: So the 7.9 cap rate was based on annualized
6 sales, not what was going on in the market in
7 the last quarter of 2008, is that correct?

8 A: That's correct.

9 Q: And again, if I understand your calculation of
10 income and expenses for your income approach,
11 you used 2009 estimates for competitive sets,
12 correct?

13 A: You talking about the 2008 data?

14 Q: You used estimates ---

15 A: The 2008 ---

16 Q: --- out of the two ---

17 A: --- yes, I looked at the expense ratio of the
18 comparable sales and also the expense ratio of
19 the 2009 data from the second property.

20 Q: You didn't look at the 2008 data for this
21 property making your calculation, did you?

22 A: Didn't have enough data there to work any
23 numbers. Had just part of the year.

24 Q: Your Honor, I don't have anything else at this
25 time.



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1 THE COURT: Redirect.

2 MR. JOHNSON: Just a few, Your Honor.

3 MR. WEAVER - REDIRECT EXAMINATION BY MR. JOHNSON:

4 Q: Mr. Weaver, I just want to clear up a few
5 things that came up in cross examination. The
6 question was posed about occupancy rates since
7 2008 and I believe in your presentation,
8 Respondent's Number Six, under occupancy rate
9 analysis ---

10 A: Right.

11 Q: --- you listed the 2010. You were informed it
12 was 56.6.

13 A: Yes.

14 Q: So you do have information that was higher than
15 40 after that.

16 A: That's correct, yes.

17 Q: Okay. Just to be clear about that

18 A: All right.

19 Q: Just, really, two or three other things here
20 for clarity's sake, in your calculations, did
21 you extract out the management fee?

22 A: Yes. In the 2008 figures here, there's -- you
23 can see my management figure three percent.

24 Q: Right.

25 A: Yes, sir.



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1 Q: Franchise fee?

2 A: The franchise fee would be in the 69 percent
3 expense ratio.

4 Q: Okay. And you deducted for personal property,
5 too.

6 A: That's correct. Yes, sir.

7 Q: Okay. And one last thing that came up as far
8 as the comps are concerned. Do you think it
9 would be fair to show comparable sales after
10 the date of valuation?

11 A: We always kind of look at that for like a trend
12 line and compare where the market's going.

13 Q: So most, if not all of your seven comps, were
14 all early '08, late '07, I believe.

15 A: '08, I believe.

16 Q: Okay.

17 A: Yeah. 2008.

18 Q: And I think Mr. Rosen's were too, weren't they?

19 A: Yes, sir.

20 Q: That's all I have, Judge.

21 **THE COURT:** All right.

22 **MR. ELLISON:** I have just a few questions, Your
23 Honor.

24 **THE COURT:** Just as to the matters brought out on
25 redirect.



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1 **MR. ELLISON:** I'm sorry?

2 **THE COURT:** Just to matters brought out on
3 redirect.

4 **MR. ELLISON:** I understand.

5 **MR. WEAVER - RECROSS EXAMINATION BY MR. ELLISON:**

6 Q: Mr. Weaver, your office calculated the value of
7 the subject value as of December 31, 2008, at
8 \$1,876,000, correct?

9 A: That's correct. Yes, sir.

10 Q: For December 31st, 2009, your office also
11 calculated the value of this property at
12 \$1,876,000, is that correct?

13 A: Now say that again for me, I'm sorry.

14 Q: For December 31st, 2009, your office also
15 calculated the value of this property at
16 \$1,876,000, did it not?

17 A: That's correct.

18 Q: And for December 31st, 2012, on the assessment
19 notices that just came out, your office has
20 calculated the value of the property at
21 \$1,880,000, correct?

22 A: That's correct.

23 Q: So despite everything that's going on in the
24 market, your office is calculating this
25 property to have the same value for the last



1 five years, is that correct?

2 A: That's correct.

3 Q: Nothing further, Your Honor.

4 MR. JOHNSON: Nothing, Your Honor.

5 THE COURT: Well, that's ---

6 MR. JOHNSON: That's our case, Your Honor.

7 THE COURT: All right; thank you. Sir, you may
8 step down. Anything in reply?

9 MR. ELLISON: Mr. Rosen.

10 THE COURT: When you finish your questions, I have
11 one question for him, but I want you to ask
12 yours first.

13 MR. ELLISON: Your Honor, I'm happy to defer to the
14 Court. Your questions are more important than
15 mine.

16 THE COURT: Go ahead, sir.

17 MR. ELLISON: Thank you, Your Honor.

18 **MR. ROSEN - REDIRECT EXAMINATION BY MR. ELLISON:**

19 Q: Mr. Rosen, I'll remind you that you're still
20 under oath.

21 A: Yes, sir.

22 Q: Mr. Rosen, you heard Mr. Weaver's testimony
23 regarding how you deal with the property taxes,
24 did you not?

25 A: Yes, sir.



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1 Q: Is his testimony consistent with USPAP
2 standards?

3 A: I don't believe it is.

4 Q: If you include the real property taxes in
5 expenses, does USPAP require you to load the
6 capitalization rate in order to keep it from
7 being misleading?

8 A: I believe it would. I believe it would.

9 Q: And so I don't lead you, why would USPAP
10 standards require you to do that?

11 A: USPAP standards requires you to -- things not
12 be misleading so that it can be understood by
13 somebody reviewing the report.

14 Q: So let's try to work off the slide 28 again for
15 a moment. Mr. Rosen, if you don't deduct the
16 real property tax expenses, an investor -- I
17 mean, that's money that comes away from an
18 investor, right?

19 A: Yes, sir.

20 Q: So if an investor's not getting that money, the
21 investor's expecting a better return, correct?

22 A: Yes, sir. They expect that the net income
23 would be higher.

24 Q: So in order to -- so either the income -- the
25 expenses don't include the property taxes, in



1 which case you don't load the capitalization
2 rate ---

3 A: Yes, sir.

4 Q: --- or if you include them, then you have to
5 load the capitalization rate, is that right?

6 A: That's correct.

7 Q: And based on what you heard Mr. Weaver say, he
8 did not do that, correct?

9 A: That's what he said.

10 Q: And that makes a difference in your experience
11 earlier with the capitalization rate of
12 somewhere between two to four percent.

13 A: Yes, sir.

14 Q: And if we look at the numbers on the board, you
15 had a 12 percent capitalization rate. Mr.
16 Weaver -- which was unloaded.

17 A: Yes.

18 Q: But that's because you took out the income tax,
19 does it not? I'm sorry, the property taxes,
20 right?

21 A: That's correct.

22 Q: And Mr. Weaver uses 10 percent, a lower rate,
23 and includes the real property taxes.

24 A: Yes, sir.

25 Q: And I don't want to rehash it completely. How



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1 did you derive your capitalization rate of 12
2 percent?

3 A: I looked at five sales of hotels, motels that
4 occurred in 2007, 2008, and tried to find
5 similar locations. I certainly didn't want to
6 use a hotel out of Charlotte because a
7 Charlotte hotel would be -- have a higher --
8 probably a higher occupancy, just like a hotel
9 in Charleston would have a higher occupancy in
10 downtown Charleston. So I tried to find what
11 I felt were similar locations.

12 Q: And so you looked at those sales.

13 A: Yes.

14 Q: And those sales all pretty much occurred prior
15 to the crash, right?

16 A: Yes, sir, except that one.

17 Q: The one that was December 1st.

18 A: Yes, sir.

19 Q: And using those pre-crash sales ---

20 A: Yes, sir.

21 Q: --- you came up with an unloaded capitalization
22 rate of 12 percent.

23 A: That's correct.

24 Q: Now let's focus on December 2008. In your
25 experience, were there any real estate loans



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1 being made?

2 A: No, sir. I verified it with five bankers.

3 Q: Any transactions going on?

4 A: Very little.

5 Q: And look at Exhibit Thirteen, which is the bond
6 rates.

7 A: Yes, sir.

8 Q: Exhibit Thirteen. Is that information that you
9 typically use in the appraisal industry?

10 A: Yes, sir.

11 Q: Is it your experience, an investment in real
12 estate an illiquid investment as opposed to an
13 investment in a corporate bond?

14 A: Well, yes, sir. Real estate is illiquid. You
15 can't -- you can sell stock on Monday and get
16 the money by Friday. Real estate, you can't do
17 it and in the fourth quarter '08, '09, '10,
18 '11, '12 and '13, it's been difficult to sell
19 real estate.

20 Q: So would you expect the capitalization rate for
21 real estate to be higher than a corporate bond
22 rate?

23 A: Yes.

24 Q: By a significant margin?

25 A: Yes, sir.



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1 Q: What was the corporate bond rate for BAA bonds,
2 which are traded in the market place, in
3 December 2008?

4 A: 8.46.

5 Q: So would you expect there to be a premium over
6 that for illiquidity ---

7 A: Yes, sir.

8 Q: --- for real estate?

9 A: Yes, sir.

10 Q: And that's before you ever get to a load.

11 A: That's correct.

12 Q: Mr. Rosen, you heard Mr. Weaver's testimony,
13 did you not?

14 A: Yes, sir.

15 Q: Did you have any other problem with some of his
16 testimony from a USPAP standard?

17 A: Yes, sir.

18 Q: Could you describe those for the Court, please?

19 A: Well, I have a copy of USPAP with me, both the
20 2008 and '09. There are certain things that
21 must be in appraisal. Your certification must
22 be in an appraisal. That's, I mean that's a
23 significant -- even though it may not seem like
24 important, it doesn't have any value on it.
25 Certification -- just so you'll know what



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1 certification is, my certification is third
2 page -- fourth page in the report. It says
3 certification on the top and it has to be
4 signed and that's a requirement, strongest
5 requirement. Because it says if you inspected
6 the property, who provided significant
7 professional assistance. "Statements contained
8 in this report upon which the analysis,
9 opinions and conclusions expressly here and
10 based are true and correct." I mean there's a
11 lot of -- lot of important lines, 11 of them.
12 You also have -- line 11 -- you have to say you
13 prepared the appraisal -- performed the
14 services as an appraiser within three years of
15 the assignment, and I have, because I did the
16 2009, so I had to state that -- that's a strong
17 violation. There's some other points.

18 Q: Well, USPAP requires that a report not be
19 misleading, correct?

20 A: That's correct.

21 Q: And did you find any of Mr. Weaver's report
22 potentially misleading?

23 A: Yes, sir, I did. I think that the -- that
24 there are problems. I mean, he says he
25 followed Rushmore, and he didn't follow



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1 Rushmore, so that becomes misleading in itself.

2 Q: Is it misleading to say you're using the
3 Rushmore approach and not to factor in a figure
4 for return on and return of personal property?

5 A: That's correct.

6 Q: So it's misleading not to do it if you say
7 you're following Rushmore.

8 A: Right. Right. If you don't say you've
9 followed Rushmore, you can probably get away
10 with whatever you want.

11 Q: Okay. What other problems that you found in
12 his report that are potentially misleading?

13 A: It may seem insignificant, but he never
14 identified who his client was, and you have to
15 identify who the client is. It's the intended
16 use. There's a lot of -- out of the 13
17 requirements, 11 of them he didn't really --
18 oh, excuse me, I'm sorry. Nine out of the 11
19 are questionable.

20 Q: All right. Is it appropriate under USPAP to
21 use an estimate for competitive set to
22 determine potential gross income when you have
23 the figures available for this particular
24 property?

25 A: You could consider the set, but if you've got



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1 the subject's -- you need to explain why you
2 wouldn't use the subject. He doesn't explain
3 why he doesn't use it. If he explained the
4 points, you'd be in better shape.

5 Q: I'm sorry, Your Honor, you had a question?

6 **THE COURT:** That answers my question, but I need to
7 interject a slight question to make sure I'm on
8 track. In saying what you just said, are you
9 referring to the occasion on which you had an
10 actual figure say of 60 odd percent and you
11 used a theoretical figure based on industry
12 data of 73 or something like that?

13 A: Yes, sir. But you've got to explain why you --
14 -

15 **THE COURT:** You've got to explain why you ---

16 A: --- why you would use it.

17 **THE COURT:** That answers my question. Thank you.

18 **MR. ELLISON:** The cardinal rule, Judge, is to shut
19 your mouth while you're ahead and I'm about to
20 violate it.

21 Q: Doesn't the Rushmore approach, in order to deal
22 with a problem when a property is
23 underperforming, doesn't the Rushmore approach
24 allow one to make an adjustment for inferior
25 management?



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1 A: Yes, sir.

2 Q: You didn't make that adjustment, did you?

3 A: No, sir.

4 Q: All right. And Mr. Weaver didn't make that
5 adjustment, did he?

6 A: No, sir.

7 Q: So if you wanted to use this competitive set,
8 you had to disclose it, right?

9 A: Yes, sir.

10 Q: And after you disclose it, then one would need
11 to make an adjustment for, in this case,
12 inferior management based on what we've heard
13 today.

14 A: Yes, sir.

15 Q: And that wasn't done by anybody.

16 A: That's correct.

17 Q: Nothing further, Your Honor.

18 **THE COURT:** All right.

19 **MR. JOHNSON:** Yes, sir, Your Honor.

20 **MR. ROSEN - RECROSS EXAMINATION BY MR. JOHNSON:**

21 Q: Mr. Rosen ---

22 A: Yes, sir.

23 Q: --- you said you've done appraisals with tax
24 appeals like this ---

25 A: Yes, sir.



1 Q: --- before, correct? Now, have you done this
2 all over the state?

3 A: No, sir.

4 Q: Where all have you done those?

5 A: Richland County, Kershaw County, Kershaw
6 County. I've done two in Kershaw and one in
7 Richland County.

8 Q: Okay. And I guess as an appraiser, you
9 generally know how assessments work then,
10 correct?

11 A: I know -- I've never worked in an assessor's
12 office.

13 Q: Okay.

14 A: So -- but I know somewhat of -- somewhat how
15 the assessor's office works, but I don't know
16 as much as probably you know.

17 Q: Okay. Thank you.

18 A: Definitely not as much as Mr. Weaver knows.

19 Q: Well, thank you. Well, in your 40 years
20 experience, do you know of any assessor's
21 office that sends out full appraisal reports to
22 the tax payers?

23 A: Yes. They have to -- I believe they have to
24 send out full appraisal reports -- I believe
25 it's 30 days before the -- in front of the



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1 board because I served on Richland County's
2 board of appeals for several years, like, five,
3 six years.

4 Q: And that's Richland County?

5 A: Richland County.

6 Q: Okay. So when someone makes an appeal, you're
7 saying Richland County requires -- the county
8 requires that the assessor submit an appraisal.

9 A: Yes, sir. They have to give all the
10 information ---

11 **THE COURT:** Go tell him to stop that. If we can
12 stand it for a minute, we're going to stop it.
13 Go ahead until it starts again.

14 Q: Thank you, Your Honor. So your information, or
15 what you believe is that -- sorry. The
16 information that you believe for Richland
17 County is their assessors send out appraisals.

18 A: Yeah. Best of my knowledge -- best of my
19 memory, they were required to do that because
20 that's what they present to the board and then
21 from the board, if they disagree, it goes to
22 the administrative law judge.

23 Q: Okay. And in those appraisals, did they
24 generally meet the same requirements of, is it
25 USPAP?



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1 A: Yes, sir. USPAP, yes, sir.

2 Q: Okay. So they submit a written certified
3 appraisal to all tax payers who may file an
4 appeal.

5 A: Yes, sir.

6 Q: And that's ---

7 A: Let me say this. Most of your appeals in
8 Richland County are on residential appeals, so
9 there weren't that many commercial. So it's
10 not as if, you know -- and I know Richland
11 County has a lot more appeals than most
12 counties, but -- and I think in Kershaw County
13 they had to have some type of -- they had a
14 report on the hotel that I was involved in.

15 Q: Okay.

16 A: I want to go with one -- only one went to the
17 board.

18 Q: So it's safe to say you don't necessarily know
19 how other counties in the state operate as far
20 as sending full appraisals out.

21 A: That's correct. I mean there's 46 counties but
22 if you have an appraiser's license, which is
23 licensed by LLR, you have to conform to USPAP.

24 Q: Okay. And this is, of course, your appraisal,
25 right?



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1 A: Yes, sir.

2 Q: And what you're saying is, under what you
3 believe the guidelines to say, is that every
4 assessor for every appeal, when they make an
5 appraisal of any valuation, whatever it may be,
6 whatever property, they need to give something
7 like this to every tax payer.

8 A: If it's going to the board or the
9 administrative law judge, yes.

10 Q: Okay.

11 A: But it doesn't have to be that thick. I mean
12 I covered more stuff, but it has to cover the
13 correct points. It has to cover what's in
14 USPAP.

15 Q: Okay. What points does it have to cover?

16 A: I'll give you a copy of USPAP.

17 Q: Well why don't you tell me?

18 A: It would be easier for me to -- I mean I'll try
19 to hit the high points, but -- standard one in
20 developing a real estate appraisal, "An
21 appraiser must be aware and understand correct
22 employ those recognized methods and techniques
23 that are necessary to produce a credible
24 appraisal." Number -- and you've got a sub
25 thing, "Not commit a substantial error of



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1 omission or commission that significantly
2 affects an appraisal and not rendering
3 appraisal services in a careless manner or
4 negligent manner, such as by making a series of
5 error although individually might not
6 significantly affect the results of an
7 appraisal, in the aggregate affects the
8 credibility of those results." I mean it's --
9 I'm -- I'd rather give it to you and let you
10 put it into the record.

11 Q: Well, I'm just curious. You said you heard his
12 -- Rob -- Mr. Weaver's testimony ---

13 A: Yeah.

14 Q: --- and you said that you felt he -- basically
15 you said you thought he violated your
16 procedures.

17 A: Not my procedures. Violated USPAP.

18 Q: Your as in appraiser's procedures.

19 A: Yeah. Yeah. I mean ---

20 Q: Is that ---

21 A: --- I've written down, I mean, you have to
22 state the intended use of the appraisal. You
23 have to "summarize the information sufficient
24 to identify the real estate involved in the
25 real estate involved in the appraisal including



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1 the physical and economic property
2 characteristics relevant to the assignment,
3 state the real property interest appraised."

4 Q: And not to interrupt, Mr. Rosen, but are you
5 reading the USPAP right now?

6 A: Yeah.

7 Q: Okay. I just didn't know what you were
8 reading.

9 A: Sure. "State the type and definition of value
10 and cite the source of the definition. State
11 the effective date of the appraisal." It
12 appeared -- and that, it appears it's in
13 December 31st of '08. Summarize the scope of
14 work, what he did to develop it. He didn't
15 cover the scope of work.

16 Q: In your opinion.

17 A: Yeah, in my opinion.

18 Q: And you testified you've never been an assessor
19 or worked in assessor's office, correct?

20 A: That's correct.

21 Q: That's all I have, Your Honor.

22 **MR. ROSEN - REDIRECT EXAMINATION BY MR. ELLISON:**

23 Q: I will to try to clarify something things
24 without getting lost in the weeds. USPAP sets
25 out the standards for the appraisal industry,



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1 correct?

2 A: Yes, sir.

3 Q: And those standards are applied to appraisers
4 through the licensing board of South Carolina,
5 among other things, correct?

6 A: Yes, sir.

7 Q: An assessor's not required to issue a full
8 report, is it? And I think that's what Mr.
9 Johnson was getting at.

10 A: No, it's -- the assessor's -- I don't believe
11 the assessor's required to issue a full report
12 unless it's going to go -- from what I
13 understand, unless it's going to come here or
14 to the board.

15 Q: Well, isn't the issue, Mr. Rosen, that if the
16 assessor or any appraiser issues a report, it
17 has to comply with basis USPAP standards?

18 A: Yes, sir, it does.

19 Q: And it doesn't have to be a written report, it
20 can be an oral report.

21 A: Yes, that's correct. You can do an oral
22 report.

23 Q: And the thrust -- and I think that's what Mr.
24 Johnson was driving at -- and the thrust of
25 USPAP is that whatever report that you present,



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1 that there are standards in the appraisal
2 industry promulgated by the appraisal
3 foundation to stop appraisals from being
4 misleading.

5 A: That's correct.

6 Q: Whether it's a written report or an oral
7 report.

8 A: That's correct.

9 Q: But there's no specific requirement that it has
10 to -- as far as you know -- that that has to be
11 a written report but if it is, it has to comply
12 with USPAP standards.

13 A: That's correct.

14 Q: That's all, Your Honor.

15 **MR. JOHNSON:** Nothing further, Your Honor.

16 **THE COURT:** You may step down, Mr. Rosen.

17 A: Sure. Thank you.

18 **THE COURT:** Before we go any further procedurally,
19 let me say that neither of you should extract
20 any meaning whatsoever from any question that
21 I've asked, although I know lawyers will want
22 to do that, but they've been asked purely for
23 me to better understand all of what's before
24 me. My next question is, do you want to make
25 closing arguments or would you prefer -- and



1 I'm going to ask you to present proposed orders
2 in the form of a brief. Do you want to let
3 that suffice or do you want to make closing
4 arguments?

5 **MR. ELLISON:** Your Honor, I'd like to close.

6 **MR. JOHNSON:** If he does, then I certainly will to.

7 I don't know if you want to give our court
8 reporter a break. We worked her pretty hard
9 this morning.

10 **THE COURT:** You okay, Ms. Dominick? Okay.

11 **COURT REPORTER:** I'm fine.

12 **MR. ELLISON:** Before I close, you said proposed
13 orders. How long do have ...

14 **THE COURT:** Given the fact that we're in the holiday
15 season, I'd say 60 days. Is that enough?

16 **MR. ELLISON:** That's fine.

17 **CLOSING STATEMENT BY MR. ELLISON:**

18 **MR. ELLISON:** My wife thanks you. My kids thank
19 you. The horses don't thank you. Your Honor,
20 I'm going to skip through some of the slides
21 because I know the hour is relatively late and
22 people have to travel, but I want to do the
23 most important thing first, and that is to
24 thank the Court, the Court staff, I'd like to
25 thank Mr. Johnson, I'd like to thank Mr.



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