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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2015-001106

RECEIVED

OCT 12 2015

SC Court of Appeals

Charleston County Assessor, ... Appellant,

v.

University Ventures, LLC, ... Respondent.

RECORD ON APPEAL

Volume I of II

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SC ADMIN. LAW COURT

Docket No.: 14-ALJ-17-0150-CC

FINAL ORDER AND DECISION

Respondent.

For the Respondent: Morris A. Ellison, Esquire

This matter is before the South Carolina Administrative Law Court (“the ALC” or “the Court”) for a Contested Case Hearing pursuant to section 12-60-2540(A) of the South Carolina Code (2014). The Charleston County Assessor (“the Assessor”) appeals the Charleston County Board of Assessment Appeals’ (“the Board’s”) valuation of the real property located 2688 Fernwood Drive, North Charleston, South Carolina (“the Property”), for tax year 2011.

Respondent, University Ventures, LLC, purchased the Property as vacant land in 2006. Thereafter, in June 2008, Respondent began constructing a Hampton Inn and Suites Hotel on the property. The hotel was completed and issued a Certificate of Occupancy on April 22, 2009.

In 2011, the Assessor implemented a countywide equalization and reassessment (“the 2011 Reassessment”) pursuant to section 12-43-217 of the South Carolina Code (2014), which requires counties to appraise and equalize the properties under its jurisdiction every five years.

Id. The Assessor initially determined the taxable value of the Property for tax year 2011 was \$9,630,000 subject to a capped taxable value of \$9,407,000. The Assessor based this valuation on a fully completed, operating, and stabilized hotel as of December 31, 2009. However, in conducting the assessment, the Assessor used December 31, 2008, as the uniform date of value although the hotel was incomplete on December 31, 2008. Thus, the Assessor calculated the value of the 2009 completed hotel in 2008 dollars, which resulted in a hypothetical valuation of a hotel that did not exist in 2008.

Respondent timely objected to the Assessor's valuation, and, following review, the Assessor determined no adjustment in taxable value was warranted. Thereafter, Respondent made a timely application for review to the Board. The Board held a conference on February 5, 2014. Following the conference, the Board determined the Assessor should have valued the Property as vacant land for tax year 2011 because the hotel was incomplete on December 31, 2008.¹ The Board found the Property, as vacant land, was worth \$628,439. This was the value presented by Respondent based on comparables to arrive at a price of \$7.00 per square foot.

On March 17, 2014, the Assessor timely appealed to this Court pursuant to South Carolina Code Ann. § 12-60-2540 (2014). This Court held a hearing on the matter on January 21, 2015, at the South Carolina Administrative Law Court in Columbia, South Carolina. Both parties appeared at the hearing, introduced evidence, and provided testimony. After careful consideration of the evidence, the Court finds and concludes the preponderance of the evidence supports the Board's decision with a slight modification.

FINDINGS OF FACT

Having observed the witnesses and evidence presented at the hearing, and taking into

¹ Section 12-37-670 of the South Carolina Code (2014) provides, in relevant part: "No new structure must be listed or assessed for property tax until it is completed and fit for the use for which it is intended."

consideration the burden of persuasion on the parties and the credibility of the witnesses, I make the following findings of fact by a preponderance of the evidence:

1. Respondent is the record owner of the Property. The Property, which is located at 2688 Fernwood Drive, North Charleston, South Carolina, is approximately 2.06 acres. It is located in a commercial area of Charleston County with tax map identification number 486-06-00-130.

2. Petitioner bought the Property as vacant land in 2008 for \$1,253,224.00, and that same year, Respondent began construction of a Hampton Inn and Suites Hotel. Prior to 2008, the Property consisted of vacant land. In 2008 and 2009, the Property had a taxable value of \$404,000, which represented the Property's value as vacant land.

3. On December 31, 2008, the hotel was approximately sixty-five percent complete. The City of North Charleston issued a Certificate of Occupancy for the completed hotel on April 22, 2009.

4. There is no disagreement between the parties that on December 31, 2008, the highest and best use for the Property was as a hotel or that in 2010, the Property had a taxable value of \$8,180,000.

5. Charleston County conducts a county-wide equalization and reassessment of property values every five years (the reassessment cycle) pursuant to section 12-43-217 of the South Carolina Code.

6. The parties' initially stipulated that Charleston County chose December 31, 2008, as the uniform "date of value" for the reassessment cycle at issue.

7. Charleston County passed Ordinance #1568, which delayed "[t]he implementation of revised values from the 2010 county-wide appraisal and equalization

program” for one year pursuant to pursuant to section 12-43-217(B) of the South Carolina Code.

8. The testimony of the parties at the hearing conflicted as to the dates of the reassessment cycle at issue. The Assessor testified 2009 was the fourth year of the cycle, but also testified December 31, 2008, was the “date of value” for the assessment. The Assessor’s testimony indicated the reassessment cycle at issue is comprised of 2006, 2007, 2008, 2009, and 2010. In contrast, Respondent indicated the five-year reassessment cycle at issue is comprised of 2005, 2006, 2007, 2008, and 2009. Respondent testified the previous cycle ended in 2004 and implementation was delayed until 2005. Furthermore, Respondent testified the date of value for the previous cycle (the fourth year) was December 31, 2003, which is, predictably, five years before December 31, 2008, the date of value for the current cycle. Notably, the Assessor’s witness, Walter L. Ziegler, Sr., who has worked in the Charleston County Assessor’s Office for twenty-four years, confirmed December 31, 2003, was Charleston County’s date of value from the previous reassessment cycle. Furthermore, although Mr. Ziegler stated he could not recall when the last reassessment actually occurred, he confirmed the reassessment was delayed one year and actually implemented in 2005. The only logical conclusion from Mr. Ziegler’s testimony is that 2004 was a reassessment year and by ordinance, Charleston County delayed implementing the reassessment until 2005.² This Court finds the preponderance of the evidence supports Respondent’s testimony that the reassessment cycle at issue is comprised of 2005, 2006, 2007, 2008, and 2009.

9. Because I find the cycle at issue is comprised of 2005, 2006, 2007, 2008, and 2009, I also find Charleston County implemented the reassessment using the wrong years (2006, 2007, 2008, 2009, and 2010). Because of this mistake, Charleston County treated 2010 instead

² Mr. Ziegler later specifically admitted the reassessment was in 2004 and delayed until 2005. When questioned whether 2009 was a reassessment year, Mr. Ziegler stated: “It was my understanding it was supposed to be done for 2010.”

of 2009 as the fifth year of the reassessment cycle under section 12-43-217, which has resulted in misapplication of the statutory reassessment scheme. Specifically, because Charleston County treated 2010 as the fifth year of the cycle when it passed Ordinance #1586, it delayed implementation of the assessment until 2011 instead of 2010. This produced a six-year reassessment cycle instead of the statutory five-year reassessment cycle.

10. For the purpose of the reassessment implemented in 2011, the Assessor valued the Property at \$9,630,000 with a capped value of \$9,407,000. The Assessor arrived at this value by using December 31, 2009, as the date of assessment and December 31, 2008, as the date of value. Accordingly, the Assessor valued the 2009 completed hotel in 2008 dollars. This resulted in the Assessor retrospectively valuing a hypothetically complete hotel in 2008.

11. On September 28, 2011, Respondent filed a notice of objection to the Assessor's valuation, requesting a fair market value for reassessment purposes of \$1,000,000. On December 15, 2011, the Assessor and Respondent met to discuss the issue, but failed to come to a resolution. On January 17, 2012, Respondent filed a protest, again requesting a fair market value of \$1,000,000. The Assessor denied Respondent's protest.

12. On June 15, 2012, Respondent appealed to the Board. The Board held a conference on February 5, 2014, to review the matter. At the conference, Respondent argued the Assessor should have assessed the Property as it existed on the date of valuation, December 31, 2008. Moreover, Respondent argued that because the hotel was incomplete on December 31, 2008, it should be valued as vacant land pursuant to 12-37-670 of the South Carolina Code. Respondent presented evidence that the value of the property as vacant land was \$628,439 on December 31, 2008. Respondent's valuation was based on comparables from which it arrived at a fair market value of \$7.00 per square foot for the Property. In contrast, the Assessor argued

that all improvements present on the Property by December of the fourth year of the reassessment program (it argued December 31, 2009, was the fourth year) should be included in the reassessment despite the date of value.

13. On February 18, 2014, the Board issued a determination finding the Property should have been valued as vacant land for the purpose of the Reassessment. It further agreed with Respondent that the Property, as vacant land, had a value of \$628,439.

14. On March 14, 2014, the Assessor filed a request for a contested case hearing before this Court. This Court held a contested case hearing on the matter on January 21, 2015.

CONCLUSIONS OF LAW

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

1. The ALC has jurisdiction over this matter pursuant to section 1-23-600 of the South Carolina Code (Supp. 2014) and section 12-60-2540 of the South Carolina Code (2014).
2. While this matter reaches this Court somewhat in the posture of an appeal, the proceeding before the Court is a de novo contested case hearing to determine the appropriate classification and tax ratio for the subject property based upon the evidence presented at the hearing. See Smith v. Newberry County Assessor, 350 S.C. 572, 577, 567 S.E.2d 501, 504 (Ct. App. 2002) (“When a tax assessment case reaches the AL[C] in this posture [i.e., upon appeal from a county board of assessment appeals], the proceeding in front of the AL[C] is a de novo hearing.”); see also Reliance Ins. Co. v. Smith, 327 S.C. 528, 535, 489 S.E.2d 674, 677 (Ct. App. 1997) (“[A]though a case involving a property tax assessment reaches the AL[C] in the posture of an appeal, the AL[C] is not sitting in an appellate capacity and is not restricted to a review of the decision below. Instead, the proceeding before the AL[C] is in the nature of a de novo hearing.”).

3. The applicable standard of proof in this contested case hearing is by a preponderance of the evidence. Anonymous v. State Bd. of Med. Exam'rs, 329 S.C. 371, 496 S.E.2d 17 (1998).

4. In a contested case hearing before the ALC, the party contesting the decision of the Board has the burden of proof. See Cloyd v. Mabry, 295 S.C. 86, 88, 367 S.E.2d 171, 173 (Ct. App. 1988) ("A taxpayer contesting an assessment has the burden of showing that the valuation of the taxing authority is incorrect."). Here, the Assessor requested the contested case hearing and, therefore, the Assessor has the burden of proof to show the Board erred in valuing the Property for tax year 2011.

5. "The usual rules of statutory construction apply to the interpretation of tax statutes." Greenville Baptist Ass'n v. Greenville Cnty. Treasurer, 281 S.C. 325, 328, 315 S.E.2d 163, 165 (Ct. App. 1984). "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue, 399 S.C. 313, 320, 731 S.E.2d 869, 873 (2012). "Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Id. at 320-21, 731 S.E.2d at 873. However, a "statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect." CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011).

6. Section 12-43-210 of the South Carolina Code (2014) provides:

(A) All property must be assessed uniformly and equitably throughout the State. The South Carolina Department of Revenue may promulgate regulations to ensure equalization which must be adhered to by all assessing officials in the State.

(B) No reassessment program may be implemented in a county unless all real property in the county, including real property classified as manufacturing

property, is reassessed in the same year.

7. Section 12-43-217 of the South Carolina Code (2014) governs the counties' quadrennial reassessment. It provides as follows:

(A) Notwithstanding any other provision of law, once every fifth year each county or the State shall appraise and equalize those properties under its jurisdiction. ***Property valuation must be complete at the end of December of the fourth year*** and the county or State shall notify every taxpayer of any change in value or classification if the change is one thousand dollars or more. ***In the fifth year, the county or State shall implement the program*** and assess all property on the newly appraised values.

(B) ***A county by ordinance may postpone for not more than one property tax year the implementation of revised values resulting from the equalization program provided pursuant to subsection (A).*** The postponement ordinance applies to all revised values, including values for state-appraised property. The postponement allowed pursuant to this subsection does not affect the schedule of the appraisal and equalization program required pursuant to subsection (A) of this section.

(emphasis added).

8. Section 12-37-930 of the South Carolina Code (2014) governs the valuation of property, and provides, in pertinent part, 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 the 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.

9. Section 12-37-670 of the South Carolina Code (2014) provides, in pertinent part: "No new structure must be listed or assessed for property tax until it is completed and fit for the use for which it is intended."

10. Generally, property is taxed based on its value on December 31st of the preceding year. See S.C. Code Ann. § 12-37-900 (2014); Lindsey v. S.C. Tax Comm'n, 302 S.C. 274, 275, 395 S.E.2d 184, 185 (1990).

11. The outcome of this case is governed by the application of section 12-43-217's reassessment scheme to the facts. This case would be clear but for Charleston County's

misapplication of the statutory scheme. Section 12-43-217(A) provides all counties “shall” conduct a county-wide equalization and reassessment for all properties under their jurisdiction every five years. Section 12-43-217(A) further provides “property valuation must be complete at the end of December of the fourth year.” The language of 12-43-217(A) is clear and unambiguous. See Alltel Commc'ns, Inc., 399 S.C. at 320-21, 731 S.E.2d at 873 (“Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.”). Counties cannot choose how many years fall between one equalization and reassessment and the next: the reassessment cycle is every five years. Here, as stated in the Findings of Fact, I find the preponderance of the evidence supports finding the five-year equalization and reassessment cycle at issue included the years 2005, 2006, 2007, 2008, and 2009. The fourth year in this cycle was 2008. Accordingly, pursuant to section 12-43-217(A), Charleston County was required to complete property valuations by December 2008. Instead, Charleston County mistakenly treated 2009 as the fourth year in the cycle although, curiously, it chose December 31, 2008, as the uniform “date of value.”³

12. Because 2008 was the fourth year of the reassessment cycle, Charleston County was required to value the Property for purposes of the reassessment as it existed in December 2008. As of December 31, 2008, the Property was approximately sixty-five percent complete. Section 12-37-670 of the South Carolina Code provides “[n]o new structure must be listed or assessed for property tax until it is completed and fit for the use for which it is intended.” The

³ The Assessor argues that because it is instructed to use December 31st of the previous year to value a property, and it had to complete the assessment by December 2009, it had to use December 31st of the previous year, 2008, to determine the value of the property. I disagree. I find the principle that property should be valued by December of the previous year fits nicely into 12-43-217's statutory scheme. Because 2009 is the year the assessment was supposed to be implemented, then December of 2008 was December of the previous year, which aligns with 12-43-217's requirement that assessments be completed by December of the fourth year (2008). However, even if the Assessor's argument is correct, because 2008, and not 2009, was the fourth year, the Assessor would have needed to value the property by December 2007 in order to be in compliance with its interpretation of the law.

intended use of the Property was as an operational hotel, which it was not on December 31, 2008. Applying section 12-387-670 to the Property as it existed in December 2008, I find the Assessor could not include the improvements present in its assessment because the hotel was incomplete at that time. Accordingly, I find a preponderance of the evidence supports the Board's conclusion that the appropriate valuation of the Property on December 31, 2008, was as vacant land.

13. Next, I find a preponderance of the evidence does not support the Board's finding that the value of the Property as vacant land on December 31, 2008, was \$628,439. I find the preponderance of the evidence does not support the Board's valuation because both parties presented expert testimony at the hearing finding a larger value than \$628,439. At the hearing, both parties presented the testimony of expert appraisers who estimated the value of the Property on December 31, 2008. As part of their valuations, both experts valued the Property as vacant land, among other scenarios.

To value the vacant land, Respondent's expert, Mr. Joseph B. Rosen, compared the sales of three local properties in 2007 and 2008 and the sale of the Property in 2006 to estimate a price per square foot for the Property in December 2008. He also accounted for the declining state of the economy at the end of 2008, which he estimated resulted in a forty percent drop in real estate values. Mr. Rosen based this drop on two properties that each sold right before and right after the recession, which resulted in an average decline in value between the two properties of forty percent. Based on these comparables and the condition of the economy, he estimated the Property was worth \$8.20 per square foot on December 31, 2008, for a total value of \$734,000.

Similarly, the Assessor's expert, David Pope, compared three local real estate sales in 2006 and 2008 and the sale of the Property in 2006. He also considered the state of the economy

in late 2008, and estimated real estate values dropped twenty percent. Mr. Pope did not explain how he specifically determined the twenty percent drop in value. Based on these considerations, he estimated the Property was worth \$11.00 per square foot on December 31, 2008, totaling \$987,074.

As noted above, both expert valuations are higher than the valuation Respondent originally submitted to the Board. The difference between the experts' valuations is explained by their different interpretations of the effect of the economy on real estate values in 2008. As the impact of the economy is difficult to measure, particularly in retrospect, and the Court can find no readily perceivable fault in either expert's estimation of the impact of the economy on the value of the Property in 2008, the Court finds it appropriate to average the two experts' valuations to determine the value of the Property as vacant land in 2008. Accordingly, I find the value of the Property as vacant land on December 31, 2008, was \$860,537.

14. The Assessor argues that if it is not allowed to tax the improvements on the Property as of December 31, 2009, it will be treating the Property differently than the other properties in Charleston County's jurisdiction in violation of section 12-43-220 (which requires all property assessments for tax purposes to be "equal and uniform"). In support, the Assessor cites the testimony of its witness, Mr. Zeigler, who confirmed that all properties that were issued a Certificate of Occupancy by December 31, 2009, were included in Charleston County's 2011 reassessment.

The Assessor's argument suggests that this Court should overlook Charleston County's misapplication of section 12-43-217 to prevent the County's mistake from being imputed to other properties it may have improperly valued for the reassessment cycle. This Court cannot ignore the law to help the County sweep its mistake under the rug. The Assessor is right that

section 12-43-220 requires the "equal and uniform" assessment of property for tax purposes; therefore, if Charleston misapplied section 12-43-217, it is responsible for fixing the resulting problems for all affected properties to ensure equal and uniform treatment.

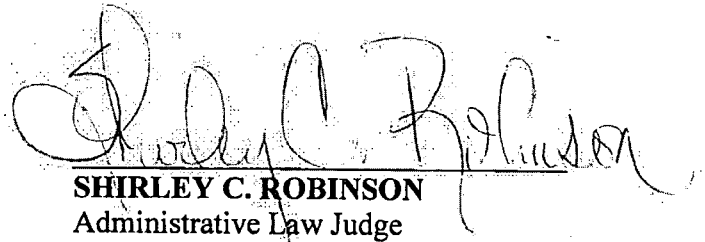
ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that the Board's decision finding the Property should have been assessed as vacant land for the purpose of the 2011 reassessment is **AFFIRMED**.

IT IS FURTHER ORDERED that the value of Property as vacant land on December 31, 2008, was \$860,537.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

April 23rd, 2015
Columbia, South Carolina

CERTIFICATE OF SERVICE
This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or in the Emergency Mail Service addressed to the party(ies) or their attorney(s).
This 23 day of April, 2015
By: Kathryn M. Bisher
Judicial Law Clerk

RECEIVED

MAY 21 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Docket No. 2014-ALJ-17-0150-CC

Charleston County Assessor, ... Appellant,

v.

University Ventures, LLC, ... Respondent.

NOTICE OF APPEAL

Appellant Charleston County Assessor appeals the Final Order and Decision of the Honorable Shirley C. Robinson, dated April 23, 2015, a copy of which is attached hereto and incorporated herein by reference as Exhibit A. Appellant received written notice of entry of the Final Order and Decision on April 27, 2015.

May 19, 2015



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RECEIVED

MAY 21 2015

SC Court of Appeals

EXHIBIT A

FILED

APR 23 2015

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

SC ADMIN. LAW COURT

Charleston County Assessor,

Petitioner,

v.

University Ventures, LLC,

Respondent.

Docket No.: 14-ALJ-17-0150-CC

FINAL ORDER AND DECISION

APPEARANCES: For the Petitioner: Joseph Dawson, III, Esquire
Bernard E. Ferrara, Jr., Esquire
Austin A. Bruner, Esquire

For the Respondent: Morris A. Ellison, Esquire

STATEMENT OF THE CASE

This matter is before the South Carolina Administrative Law Court ("the ALC" or "the Court") for a Contested Case Hearing pursuant to section 12-60-2540(A) of the South Carolina Code (2014). The Charleston County Assessor ("the Assessor") appeals the Charleston County Board of Assessment Appeals' ("the Board's") valuation of the real property located 2688 Fernwood Drive, North Charleston, South Carolina ("the Property"), for tax year 2011.

BACKGROUND

Respondent, University Ventures, LLC, purchased the Property as vacant land in 2006. Thereafter, in June 2008, Respondent began constructing a Hampton Inn and Suites Hotel on the property. The hotel was completed and issued a Certificate of Occupancy on April 22, 2009.

In 2011, the Assessor implemented a countywide equalization and reassessment ("the 2011 Reassessment") pursuant to section 12-43-217 of the South Carolina Code (2014), which requires counties to appraise and equalize the properties under its jurisdiction every five years.

Id. The Assessor initially determined the taxable value of the Property for tax year 2011 was \$9,630,000 subject to a capped taxable value of \$9,407,000. The Assessor based this valuation on a fully completed, operating, and stabilized hotel as of December 31, 2009. However, in conducting the assessment, the Assessor used December 31, 2008, as the uniform date of value although the hotel was incomplete on December 31, 2008. Thus, the Assessor calculated the value of the 2009 completed hotel in 2008 dollars, which resulted in a hypothetical valuation of a hotel that did not exist in 2008.

Respondent timely objected to the Assessor's valuation, and, following review, the Assessor determined no adjustment in taxable value was warranted. Thereafter, Respondent made a timely application for review to the Board. The Board held a conference on February 5, 2014. Following the conference, the Board determined the Assessor should have valued the Property as vacant land for tax year 2011 because the hotel was incomplete on December 31, 2008.¹ The Board found the Property, as vacant land, was worth \$628,439. This was the value presented by Respondent based on comparables to arrive at a price of \$7.00 per square foot.

On March 17, 2014, the Assessor timely appealed to this Court pursuant to South Carolina Code Ann. § 12-60-2540 (2014). This Court held a hearing on the matter on January 21, 2015, at the South Carolina Administrative Law Court in Columbia, South Carolina. Both parties appeared at the hearing, introduced evidence, and provided testimony. After careful consideration of the evidence, the Court finds and concludes the preponderance of the evidence supports the Board's decision with a slight modification.

FINDINGS OF FACT

Having observed the witnesses and evidence presented at the hearing, and taking into

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consideration the burden of persuasion on the parties and the credibility of the witnesses, I make the following findings of fact by a preponderance of the evidence:

1. Respondent is the record owner of the Property. The Property, which is located at 2688 Fernwood Drive, North Charleston, South Carolina, is approximately 2.06 acres. It is located in a commercial area of Charleston County with tax map identification number 486-06-00-130.

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3. On December 31, 2008, the hotel was approximately sixty-five percent complete. The City of North Charleston issued a Certificate of Occupancy for the completed hotel on April 22, 2009.

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² Mr. Ziegler later specifically admitted the reassessment was in 2004 and delayed until 2005. When questioned whether 2009 was a reassessment year, Mr. Ziegler stated: “It was my understanding it was supposed to be done for 2010.”

of 2009 as the fifth year of the reassessment cycle under section 12-43-217, which has resulted in misapplication of the statutory reassessment scheme. Specifically, because Charleston County treated 2010 as the fifth year of the cycle when it passed Ordinance #1586, it delayed implementation of the assessment until 2011 instead of 2010. This produced a six-year reassessment cycle instead of the statutory five-year reassessment cycle.

10. For the purpose of the reassessment implemented in 2011, the Assessor valued the Property at \$9,630,000 with a capped value of \$9,407,000. The Assessor arrived at this value by using December 31, 2009, as the date of assessment and December 31, 2008, as the date of value. Accordingly, the Assessor valued the 2009 completed hotel in 2008 dollars. This resulted in the Assessor retrospectively valuing a hypothetically complete hotel in 2008.

11. On September 28, 2011, Respondent filed a notice of objection to the Assessor's valuation, requesting a fair market value for reassessment purposes of \$1,000,000. On December 15, 2011, the Assessor and Respondent met to discuss the issue, but failed to come to a resolution. On January 17, 2012, Respondent filed a protest, again requesting a fair market value of \$1,000,000. The Assessor denied Respondent's protest.

12. On June 15, 2012, Respondent appealed to the Board. The Board held a conference on February 5, 2014, to review the matter. At the conference, Respondent argued the Assessor should have assessed the Property as it existed on the date of valuation, December 31, 2008. Moreover, Respondent argued that because the hotel was incomplete on December 31, 2008, it should be valued as vacant land pursuant to 12-37-670 of the South Carolina Code. Respondent presented evidence that the value of the property as vacant land was \$628,439 on December 31, 2008. Respondent's valuation was based on comparables from which it arrived at a fair market value of \$7.00 per square foot for the Property. In contrast, the Assessor argued

that all improvements present on the Property by December of the fourth year of the reassessment program (it argued December 31, 2009, was the fourth year) should be included in the reassessment despite the date of value.

13. On February 18, 2014, the Board issued a determination finding the Property should have been valued as vacant land for the purpose of the Reassessment. It further agreed with Respondent that the Property, as vacant land, had a value of \$628,439.

14. On March 14, 2014, the Assessor filed a request for a contested case hearing before this Court. This Court held a contested case hearing on the matter on January 21, 2015.

CONCLUSIONS OF LAW

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

1. The ALC has jurisdiction over this matter pursuant to section 1-23-600 of the South Carolina Code (Supp. 2014) and section 12-60-2540 of the South Carolina Code (2014).

2. While this matter reaches this Court somewhat in the posture of an appeal, the proceeding before the Court is a de novo contested case hearing to determine the appropriate classification and tax ratio for the subject property based upon the evidence presented at the hearing. See Smith v. Newberry County Assessor, 350 S.C. 572, 577, 567 S.E.2d 501, 504 (Ct. App. 2002) ("When a tax assessment case reaches the AL[C] in this posture [i.e., upon appeal from a county board of assessment appeals], the proceeding in front of the AL[C] is a de novo hearing."); see also Reliance Ins. Co. v. Smith, 327 S.C. 528, 535, 489 S.E.2d 674, 677 (Ct. App. 1997) ("[A]lthough a case involving a property tax assessment reaches the AL[C] in the posture of an appeal, the AL[C] is not sitting in an appellate capacity and is not restricted to a review of the decision below. Instead, the proceeding before the AL[C] is in the nature of a de novo hearing.").

3. The applicable standard of proof in this contested case hearing is by a preponderance of the evidence. Anonymous v. State Bd. of Med. Exam'rs, 329 S.C. 371, 496 S.E.2d 17 (1998).

4. In a contested case hearing before the ALC, the party contesting the decision of the Board has the burden of proof. See Cloyd v. Mabry, 295 S.C. 86, 88, 367 S.E.2d 171, 173 (Ct. App. 1988) ("A taxpayer contesting an assessment has the burden of showing that the valuation of the taxing authority is incorrect."). Here, the Assessor requested the contested case hearing and, therefore, the Assessor has the burden of proof to show the Board erred in valuing the Property for tax year 2011.

5. "The usual rules of statutory construction apply to the interpretation of tax statutes." Greenville Baptist Ass'n v. Greenville Cnty. Treasurer, 281 S.C. 325, 328, 315 S.E.2d 163, 165 (Ct. App. 1984). "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue, 399 S.C. 313, 320, 731 S.E.2d 869, 873 (2012). "Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Id. at 320-21, 731 S.E.2d at 873. However, a "statute must be read as a whole and sections which are part of the same general statutory law must be construed together and each one given effect." CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011).

6. Section 12-43-210 of the South Carolina Code (2014) provides:

(A) All property must be assessed uniformly and equitably throughout the State. The South Carolina Department of Revenue may promulgate regulations to ensure equalization which must be adhered to by all assessing officials in the State.

(B) No reassessment program may be implemented in a county unless all real property in the county, including real property classified as manufacturing

property, is reassessed in the same year.

7. Section 12-43-217 of the South Carolina Code (2014) governs the counties' quadrennial reassessment. It provides as follows:

(A) Notwithstanding any other provision of law, once every fifth year each county or the State shall appraise and equalize those properties under its jurisdiction. *Property valuation must be complete at the end of December of the fourth year* and the county or State shall notify every taxpayer of any change in value or classification if the change is one thousand dollars or more. *In the fifth year, the county or State shall implement the program* and assess all property on the newly appraised values.

(B) *A county by ordinance may postpone for not more than one property tax year the implementation of revised values resulting from the equalization program provided pursuant to subsection (A).* The postponement ordinance applies to all revised values, including values for state-appraised property. The postponement allowed pursuant to this subsection does not affect the schedule of the appraisal and equalization program required pursuant to subsection (A) of this section.

(emphasis added).

8. Section 12-37-930 of the South Carolina Code (2014) governs the valuation of property, and provides, in pertinent part, 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 the 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.

9. Section 12-37-670 of the South Carolina Code (2014) provides, in pertinent part: "No new structure must be listed or assessed for property tax until it is completed and fit for the use for which it is intended."

10. Generally, property is taxed based on its value on December 31st of the preceding year. See S.C. Code Ann. § 12-37-900 (2014); Lindsey v. S.C. Tax Comm'n, 302 S.C. 274, 275, 395 S.E.2d 184, 185 (1990).

11. The outcome of this case is governed by the application of section 12-43-217's reassessment scheme to the facts. This case would be clear but for Charleston County's

misapplication of the statutory scheme. Section 12-43-217(A) provides all counties "shall" conduct a county-wide equalization and reassessment for all properties under their jurisdiction every five years. Section 12-43-217(A) further provides "property valuation must be complete at the end of December of the fourth year." The language of 12-43-217(A) is clear and unambiguous. See Alltel Commc'ns, Inc., 399 S.C. at 320-21, 731 S.E.2d at 873 ("Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning."). Counties cannot choose how many years fall between one equalization and reassessment and the next: the reassessment cycle is every five years. Here, as stated in the Findings of Fact, I find the preponderance of the evidence supports finding the five-year equalization and reassessment cycle at issue included the years 2005, 2006, 2007, 2008, and 2009. The fourth year in this cycle was 2008. Accordingly, pursuant to section 12-43-217(A), Charleston County was required to complete property valuations by December 2008. Instead, Charleston County mistakenly treated 2009 as the fourth year in the cycle although, curiously, it chose December 31, 2008, as the uniform "date of value."³

12. Because 2008 was the fourth year of the reassessment cycle, Charleston County was required to value the Property for purposes of the reassessment as it existed in December 2008. As of December 31, 2008, the Property was approximately sixty-five percent complete. Section 12-37-670 of the South Carolina Code provides "[n]o new structure must be listed or assessed for property tax until it is completed and fit for the use for which it is intended." The

³ The Assessor argues that because it is instructed to use December 31st of the previous year to value a property, and it had to complete the assessment by December 2009, it had to use December 31st of the previous year, 2008, to determine the value of the property. I disagree. I find the principle that property should be valued by December of the previous year fits nicely into 12-43-217's statutory scheme. Because 2009 is the year the assessment was supposed to be implemented, then December of 2008 was December of the previous year, which aligns with 12-43-217's requirement that assessments be completed by December of the fourth year (2008). However, even if the Assessor's argument is correct, because 2008, and not 2009, was the fourth year, the Assessor would have needed to value the property by December 2007 in order to be in compliance with its interpretation of the law.

intended use of the Property was as an operational hotel, which it was not on December 31, 2008. Applying section 12-387-670 to the Property as it existed in December 2008, I find the Assessor could not include the improvements present in its assessment because the hotel was incomplete at that time. Accordingly, I find a preponderance of the evidence supports the Board's conclusion that the appropriate valuation of the Property on December 31, 2008, was as vacant land.

13. Next, I find a preponderance of the evidence does not support the Board's finding that the value of the Property as vacant land on December 31, 2008, was \$628,439. I find the preponderance of the evidence does not support the Board's valuation because both parties presented expert testimony at the hearing finding a larger value than \$628,439. At the hearing, both parties presented the testimony of expert appraisers who estimated the value of the Property on December 31, 2008. As part of their valuations, both experts valued the Property as vacant land, among other scenarios.

To value the vacant land, Respondent's expert, Mr. Joseph B. Rosen, compared the sales of three local properties in 2007 and 2008 and the sale of the Property in 2006 to estimate a price per square foot for the Property in December 2008. He also accounted for the declining state of the economy at the end of 2008, which he estimated resulted in a forty percent drop in real estate values. Mr. Rosen based this drop on two properties that each sold right before and right after the recession, which resulted in an average decline in value between the two properties of forty percent. Based on these comparables and the condition of the economy, he estimated the Property was worth \$8.20 per square foot on December 31, 2008, for a total value of \$734,000.

Similarly, the Assessor's expert, David Pope, compared three local real estate sales in 2006 and 2008 and the sale of the Property in 2006. He also considered the state of the economy

in late 2008, and estimated real estate values dropped twenty percent. Mr. Pope did not explain how he specifically determined the twenty percent drop in value. Based on these considerations, he estimated the Property was worth \$11.00 per square foot on December 31, 2008, totaling \$987,074.

As noted above, both expert valuations are higher than the valuation Respondent originally submitted to the Board. The difference between the experts' valuations is explained by their different interpretations of the effect of the economy on real estate values in 2008. As the impact of the economy is difficult to measure, particularly in retrospect, and the Court can find no readily perceivable fault in either expert's estimation of the impact of the economy on the value of the Property in 2008, the Court finds it appropriate to average the two experts' valuations to determine the value of the Property as vacant land in 2008. Accordingly, I find the value of the Property as vacant land on December 31, 2008, was \$860,537.

14. The Assessor argues that if it is not allowed to tax the improvements on the Property as of December 31, 2009, it will be treating the Property differently than the other properties in Charleston County's jurisdiction in violation of section 12-43-220 (which requires all property assessments for tax purposes to be "equal and uniform"). In support, the Assessor cites the testimony of its witness, Mr. Zeigler, who confirmed that all properties that were issued a Certificate of Occupancy by December 31, 2009, were included in Charleston County's 2011 reassessment.

The Assessor's argument suggests that this Court should overlook Charleston County's misapplication of section 12-43-217 to prevent the County's mistake from being imputed to other properties it may have improperly valued for the reassessment cycle. This Court cannot ignore the law to help the County sweep its mistake under the rug. The Assessor is right that

section 12-43-220 requires the "equal and uniform" assessment of property for tax purposes; therefore, if Charleston misapplied section 12-43-217, it is responsible for fixing the resulting problems for all affected properties to ensure equal and uniform treatment.

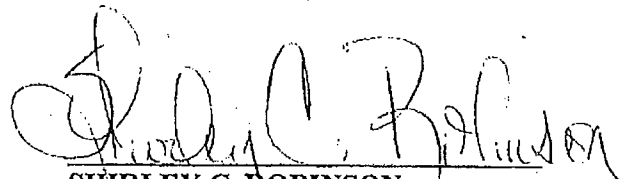
ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED that the Board's decision finding the Property should have been assessed as vacant land for the purpose of the 2011 reassessment is **AFFIRMED**.

IT IS FURTHER ORDERED that the value of Property as vacant land on December 31, 2008, was \$860,537.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

April 23rd, 2015
Columbia, South Carolina

DEPUTY CLERK OF SERVICE
This is to certify that the undersigned has this date
served this order in the above entitled action upon all
parties to this cause by depositing a copy hereof
in the United States mail, postage paid, or in the Emergency
Mail Service addressed to the party(ies) or the attorney(s).
This 23 day of April, 2015
By Kathleen M. Bickel
Judicial Clerk

RECEIVED

MAY 21 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

SC Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Honorable Shirley C. Robinson, Administrative Law Judge

Docket No. 2014-ALJ-17-0150-CC

Charleston County Assessor Appellant,

vs.

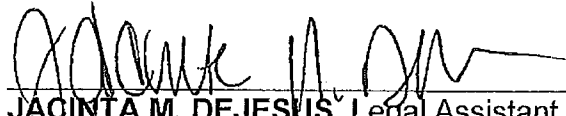
University Ventures, LLC, ... Respondent.

PROOF OF SERVICE

I certify that I have served Appellant's **Notice of Appeal** on all counsel of record by depositing a copy of the same in the United States Mail, postage prepaid, on May 19, 2015 addressed as follows:

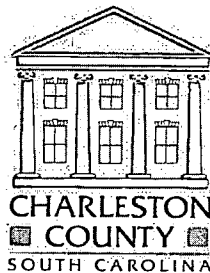
Morris A. Ellison, Esquire
William T. Dawson, III, Esquire
WOMBLE CARLYLE SANDRIDGE & RICE, LLP
Post Office Box 999
Charleston, South Carolina 29402
Attorney for Respondent

Honorable Jana E. Cox Shealy
Clerk of Court
Administrative Law Court
Edgar A. Brown Building, Suite 224
1205 Pendleton Street
Columbia, South Carolina 29201

A handwritten signature in black ink, appearing to read "Jacinta M. DeJesus", is written over a horizontal line.

JACINTA M. DEJESUS, Legal Assistant
CHARLESTON COUNTY ATTORNEY'S OFFICE

BERNARD E. FERRARA, JR.
CHIEF DEPUTY COUNTY ATTORNEY



CHARLESTON COUNTY ATTORNEY'S OFFICE
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405-7464
Telephone: 843.958.4010
Facsimile: 843.958.4017
bferrara@charlestoncounty.org

April 10, 2014

Honorable Shirley C. Robinson
South Carolina Administrative Law Judge
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Re: Charleston County Assessor v. University Ventures, LLC
Docket No. 14-ALJ-17-0150-CC

Dear Judge Robinson:

In accordance with your Order for Prehearing Statements filed March 21, 2014, I have enclosed please Petitioner's Prehearing Statement and Certificate of Service in the above-referenced matter.

Should you have any questions or need additional information, please do not hesitate to contact me.

Sincerely,

CHARLESTON COUNTY ATTORNEY'S OFFICE



Bernard E. Ferrara, Jr.

BEFJR/jdj
Enclosures

cc: Morris A. Ellison, Esquire
William T. Dawson, Esquire
Toy S. Glennon, Charleston County Assessor
Charleston County Board of Assessment Appeals

FILED

APR 10 2014

FILED

APR 10 2014

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Charleston County Assessor,)
)
Petitioner,)
)
vs.)
)
University Ventures, LLC,)
)
Respondent.)
_____)

Docket No. 14-ALJ-17-0150-CC SC ADMIN. LAW COURT

**PETITIONER'S
PREHEARING STATEMENT**

1. The nature of this proceeding;

This contested case arises from an appeal of the decision of the Charleston County Board of Assessment Appeals dated February 18, 2014.

2. The statutory provision(s) conferring subject matter jurisdiction to the Court and other applicable statutes and regulations;

The Administrative Law Court has subject matter jurisdiction pursuant to S.C. Code Ann. § 12-60-10, et seq. Other applicable statutes include S.C. Code Ann. § 12-37-930; § 12-37-610; § 12-43-217.

3. The issues to be presented for determination, including any claims or defenses expected to be raised;

The issue is whether the subject real property and its improvements are subject to taxation pursuant to quadrennial reassessment in Charleston County implemented in 2011.

4. The action requested of the Court and a detailed statement of the law which supports the requested action, including statutory and/or case citations;

The Charleston County Assessor requests that this Court reverse the decision of the Charleston County Board of Assessment Appeals because the Board assigned a value based solely on the value of the land (\$628,439) and excluded the value of improvements completed in the reassessment year of 2009. The Assessor requests that the Court assess the property at its fair market value of \$9,630,004 for quadrennial reassessment.

A. S.C. Code Ann. §12-43-217 provides:

(A) Notwithstanding any other provision of law, once every fifth year each county or the State shall appraise and equalize those properties under its jurisdiction. Property valuation must be complete at the end of December of the fourth year and the county or State shall notify every taxpayer of any change in value or classification if the change is one thousand dollars or more. In the fifth year, the county or State shall implement the program and assess all property on the newly appraised values.

(B) A county by ordinance may postpone for not more than one property tax year the implementation of revised values resulting from the equalization program provided pursuant to subsection (A). The postponement ordinance applies to all revised values, including values for state-appraised property. The postponement allowed pursuant to this subsection does not affect the schedule of the appraisal and equalization program required pursuant to subsection (A) of this section.

B. S.C. Code Ann. § 12-37-610 provides:

Each person is liable to pay taxes and assessments on the real property that, as of December thirty-first of the year preceding the tax year, he owns in fee, for life, or as trustee, as recorded in the public records for deeds of the county in which the property is located, or on the real property that, as of December thirty-first of the year preceding the tax year, he has care of as guardian, executor, or committee or may have the care of as guardian, executor, trustee, or committee.

C. S.C. Code Ann. § 12-37-930 provides in part:

All property should be valued for taxation at its true value in money and which all cases shall be held to be the price which the property would bring following reasonable exposure to the market, where both the seller and the buyer are willing, are not acting under compulsion, and are reasonably well informed as to the uses and purposes to which it is adapted and for which it is capable of being used.

D. "It is well settled that there is a presumption in favor of the correctness of a tax assessment." Cloyd v. Mabry, 295 S. C. 86, 367 S.E.2d 171 (Ct.App. 1988).

"A taxpayer contesting an assessment has the burden of showing that the valuation of the taxing authority is incorrect. Ordinarily, this will be done by providing the actual value of the property. The taxpayer may, however, show by other evidence that the assessing authority's valuation is

incorrect. If he does so, the presumption of correctness is then removed and the taxpayer is entitled to appropriate relief." Cloyd, supra

5. A brief summary of the facts to be presented at the hearing;

The subject of this appeal is real property identified as tax map parcel identification number 486-06-00-130 located in Charleston County. Respondent University Ventures, LLC ("University Ventures") purchased the property in 2006 as vacant land. On April 17, 2008, University Ventures applied for a building permit to construct a hotel on the property. It constructed the hotel and received a certificate of occupancy on April 22, 2009.

Charleston County conducted a quadrennial reassessment pursuant to S.C. Code Ann. § 12-43-217. The Assessor completed all property valuation at the end of December 2009, which was the fourth year of the reassessment. This reassessment was originally scheduled to be implemented in tax year 2010. Reassessment values were based on a uniform date of value of December 31, 2008. The implementation of the reassessment was delayed by ordinance until 2011 pursuant to S.C. Code Ann. § 12-43-217(B). The reassessment was approved by the South Carolina Department of Revenue as required by S.C. Regulation 117-1720.2 on June 1, 2011.

On June 30, 2011, the Assessor sent University Ventures its reassessment notice titled: Notice of Classification, Appraisal & Assessment of Real Estate 2011 Year that reflected a fair market value of \$9,630,000.00 based on the date of value of December 31, 2008.

On September 28, 2011, University Ventures filed a notice of objection requesting a fair market value of \$1,000,000.00. The Assessor held a conference with University Ventures on December 15, 2011. The parties did not reach an agreement on the value. University Ventures filed a protest on January 17, 2012, requesting a fair market value of \$1,000,000.

The Assessor replied to University Ventures' protest in writing stating there was no change of value. On June 15, 2012, University Ventures appealed the reassessment value to the Charleston County Board of Assessment Appeals ("Board"). Prior to the conference before the Board, the Assessor performed an appraisal of the property and valued the property at \$9,500,000. The Assessor provided the appraisal to University Ventures and submitted it to the Board.

The Board held a conference on February 5, 2014, and issued its decision on February 18, 2014, setting a value of \$628,439.00. The Board's decision was based only on the estimated land value of the property. The Board's decision did give value to the building because it claimed the hotel was under construction as of December 31, 2008. The Assessor filed its notice of contested case hearing with this Court appealing the Board's decision.

6. A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion;

The County expects to file a motion for summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure and Rule 19 of the Rules of Procedure for the Administrative Law Court on the grounds that there is no genuine issue of material fact that University Ventures' property has a market value of \$9,630,004 with a date of value of December 31, 2008.

7. A list of proposed witnesses and exhibits;

Exhibits:

1. Exchange of Evidence of Respondent presented to the Charleston County Board of Assessment Appeals
2. Decision of the Charleston County Board of Assessment Appeals
3. Appraisal Report prepared by Walter Zeigler

Witnesses:

1. Toy S. Glennon, Charleston County Assessor
2. Walter Zeigler, Commercial Specialist

8. A statement regarding the necessity of discovery, if any;

The Assessor anticipates performing discovery pursuant to Rule 21 of the Rules of Procedure for the Administrative Law Court.

9. The estimated time required for the hearing;

The Assessor estimates 5-6 hours required for the hearing.

10. Any dates the parties, counsel or key witnesses are specifically unavailable during the next three months;

May 1-2, 7, 14, 19-28; June 4-16, 25-27, 30; July 1-7, 18, 25.

11. An email address where you can be reached.

jdawson@charlestoncounty.org
bferrara@charlestoncounty.org
abruner@charlestoncounty.org
bmitchell@charlestoncounty.org

CHARLESTON COUNTY ASSESSOR



JOSEPH DAWSON, III, County Attorney
BERNARD E. FERRARA, JR., Deputy County Attorney
BRADLEY A. MITCHELL, Assistant County Attorney
AUSTIN BRUNER, Assistant County Attorney
CHARLESTON COUNTY ATTORNEY'S OFFICE
Lonnie Hamilton, III Public Services Building
4045 Bridge View Drive
North Charleston, South Carolina 29405
(843) 958-4010

ATTORNEYS FOR PETITIONER

Charleston, South Carolina
April 10, 2014

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

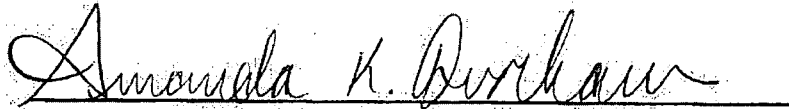
Charleston County Assessor,)
)
Petitioner,)
)
vs.)
)
University Ventures, LLC,)
)
Respondent.)
_____)

Docket No. 14-ALJ-17-0150-CC

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the **Petitioner's Prehearing Statement** upon Respondent University Ventures, LLC, by depositing a copy of the same in the United States Mail, postage prepaid, on April 10, 2014, addressed to its attorneys of record as follows:

Morris A. Ellison, Esquire
William T. Dawson, III, Esquire
WOMBLE CARLYLE SANDRIDGE & RICE, LLP
Post Office Box 999
Charleston, South Carolina 29402



AMANDA K. DURHAM, LAW CLERK
CHARLESTON COUNTY ATTORNEY'S OFFICE

FILED

APR 10 2014

SC ADMIN. LAW COURT

WOMBLE
CARLYLE
SANDRIDGE
& RICE

A LIMITED LIABILITY
PARTNERSHIP

5 Exchange Street
Charleston, SC 29401

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Fax: (843) 723-7398
www.wcsr.com

April 9, 2014

MORRIS A. ELLISON
ATTORNEY AT LAW
E-Mail: mellison@wcsr.com
DIRECT DIAL: 843-720-4614
FAX: 843-723-7398

Via Federal Express

The Honorable Shirley C. Robinson
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

RE: Respondent's Prehearing Statement
Charleston County Assessor's Office v. University Ventures, LLC
Docket Number 14-ALJ-17-0150-CC
WCSR File No. 67023.0027.2

Dear Judge Robinson:

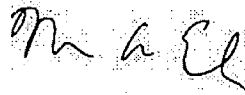
Enclosed please find an original and two (2) copies of Respondent University Ventures, LLC's *Prehearing Statement* in connection with the above referenced matter and delivered in accordance with the Order for Prehearing Statements filed on March 21, 2014. Please return the time-stamped copies to me in the self-addressed, stamped envelope enclosed herewith.

By copy of this letter, I am serving the same upon the Charleston County Assessor's Office and the Charleston County Attorney's Office.

Please do not hesitate to contact me if you have any questions. Thanking you in advance for your cooperation in this matter, I remain

Yours very truly,

WOMBLE CARLYLE SANDRIDGE & RICE, LLP



Morris A. Ellison

MAE/wtd
Enclosures

FILED

APR 09 2014

SC ADMIN. LAW COURT

cc: Charleston County Assessor's Office (via U.S. Mail)
Joseph Dawson III, Esq., Charleston County Attorney (via U.S. Mail)
University Ventures, LLC (via email)

- (a) The proceeding before the Administrative Law Judge on a contested case matter is in the nature of a *de novo* hearing. See *Sea Pines Plantation Co., Inc. v. Beaufort County*, 2002 WL 1486969, Docket No. 01-ALJ-17-0018-cc (SC ALJD June 20, 2002).
- (b) The County tax assessor's valuation is only a piece of the evidence to be considered in accurately valuing the property, and the court is free to determine the proper amount of weight to give such valuation. *Smith v. Newberry County Assessor*, 350 S.C. 572, 567 S.E.2d 501 (Ct. App. 2002).
- (c) Taxing statutes should be construed most favorably to the taxpayer and any doubt resolved against the taxing authority. See *Richland County Assessor v. Sally Walker*, 1997 WL 725106, Docket No. 97-ALJ-17-0206-CC (SC ALJD Nov. 6, 1997).
- (d) S.C. Code Ann. § 12-37-930 (2000 & Supp. 2012) states "[a]ll 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 the 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." The obligation is to the true value of real estate not the business value of the property. In order "[t]o arrive at a value for the real estate alone, the value attributable to tangible personal property and 'business value' must be deducted . . ." *Myrtle Beach Hosp. v. Horry County Assessor*, 1998 WL 574179, Docket No. 97-ALJ-17-0449-CC (S.C. A.L.J.D. 1997) (citing THE APPRAISAL OF REAL ESTATE, Appraisal Institute, p. 412 (10th ed. 1992)).
- (e) S.C. Code Ann. § 12-37-220(A)(10) (2000 & Supp. 2012) provides, pursuant to S.C. Const. art X, § 3, and subject to S.C. Code Ann. § 12-4-720 (2000 & Supp. 2012), "intangible personal property" is exempt from ad valorem taxation.
- (f) 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." On June 9, 2010 the South Carolina Attorney General released an advisory opinion stating 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 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 section 12-60-2510(A)(4) which allows a taxpayer to appeal the appraised value of real property in non-reassessment years. The Assessor relies on the Advisory Opinion in its use of a December 31, 2008 valuation date. If that date is correct, a hotel was under construction on the Property as of December 31, 2008, but had not yet been completed.
- (g) The Assessor's decision as to the valuation of property is generally presumed correct until the person complaining meets the burden of proving the case to the contrary. Ordinarily, the taxpayer satisfies its burden by proving the actual value of the property.

A taxpayer may, however, demonstrate by other evidence that the assessing authority's valuation is incorrect. If the taxpayer satisfies his burden, the presumption of correctness is removed and the taxpayer is entitled to appropriate relief. *See Richland County Assessor v. Sally Walker*, 1997 WL 725106, Docket No. 97-ALJ-17-0206-CC (SC ALJD Nov. 6, 1997).

(h) In December 2008, a real estate investor seeking to invest in commercial real estate, must have been willing and able to make such an investment in cash and, when examining the merits of purchasing commercial real estate, must consider a heavily discounted cash flow due to the natural illiquidity of real estate and lack of available financing in December 2008, particularly the lack of real estate related loans.

5. A brief summary of the facts to be presented at the hearing:

(a) The property at issue is situated at 2688 Fernwood Drive, North Charleston, South Carolina ("**Property**"). Prior to 2008, the Property consisted of vacant land. As of December 31, 2008, a hotel was under construction on the Property, but had not yet been completed. In 2009, a Hampton Inn & Suites opened on the Property.

(b) The tax year in dispute is 2011.

(c) Tax year 2011 was a countywide reassessment and equalization year in Charleston County and the Charleston County Assessor applied December 31, 2008 as the date of valuation for tax year 2011.

(d) For tax year 2011, the Charleston County Assessor's Office originally valued the Property at a fair market value equal to \$9,630,000 with a capped value equal to \$9,407,000.

(e) At the hearing before the Charleston County Board of Assessment Appeals ("**BOAA**") on February 5, 2014 (the "**Board Hearing**"), the Charleston County Assessor valued the Property at \$9,500,000¹.

(f) At the Board Hearing, Respondent valued the Property at \$628,439 based on a vacant land analysis.

(g) The BOAA determined a \$628,439 value for the Property.

(h) Respondent submitted to the Charleston County Assessor and the BOAA a comparable sales analysis to support its valuation of the Property.

(i) Respondent presented persuasive oral and documentary evidence to support its valuation of the Property.

¹ Prior to the Board Hearing, the tax bills and other communications from Charleston County reflected a capped value of the Property for tax year 2011 equal to \$9,407,000. The BOAA determination does not reference a capped value.

6. A summary of any motions expected to be presented at the hearing:
Respondent does not anticipate at this time filing any other motions at the hearing, but reserves the right to do so should Respondent determine a motion is appropriate.

7. List of Proposed Witnesses and Exhibits:

Witnesses:

- (a) Kimberly Bennett-Brown and/or such other representative from Respondent;
- (b) Curtis S. McCall, Jr., CRE, MAI and/or such other expert(s) to be determined by Respondent.
- (c) Any further witnesses determined through discovery and trial preparation.

Exhibits:

- (i) Summary Appraisal Report to be prepared by Curtis S. McCall, Jr.
- (ii) Notice of Classification, Appraisal & Assessment of Real Estate – 2011 Tax Year for the Property dated June 30, 2011.
- (iii) Written Notice of Objection for Tax Year 2011 for the Property filed with the Charleston County Assessor's Office on September 28, 2011.
- (iv) Protest of Appraisal/Assessment for Tax Year 2011 with Addendum and supporting information for the Property filed with the Charleston County Assessor's Office on January 17, 2012.
- (v) Notice of Classification, Appraisal, & Assessment of Real Estate 2011 Tax Year for the Property from Charleston County Assessor's Office dated May 23, 2012.
- (vi) Written Notice of Objection and Appeal to Charleston County Board of Assessment Appeals filed by Taxpayer with the BOAA and the Charleston County Assessor's Office on June 15, 2012.
- (vii) The BOAA determination in this matter dated February 18, 2013.
- (viii) Summary of Economic and Market Indicators including, market rates and bond yields, and stock dividend yields.
- (ix) Summary of market data reflecting the collapse of the financial and credit markets in mid-September 2008.

- (x) Summary of certain stock values as of January 2, 2008 and December 31, 2008.
- (xi) Summary of Commercial Property Price Indices and Monthly Commercial Property Investment Sales compiled by Cornerstone, Real Capital Analytics.
- (xii) Any further exhibits determined through discovery and trial preparation.

8. **Statement regarding the necessity for discovery:** Respondent may conduct discovery as allowed by ALC Rule 21.

9. **Estimated Time of Hearing:** The hearing should take one (1) day.

10. **Any dates in the next ninety (90) days when Respondent, Respondent's Counsel and Respondent's key witnesses are not available for a hearing:**

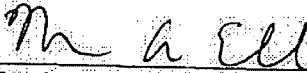
(a) Kimberly Bennett-Brown, Respondent's representative, is unavailable April 14-18, May 19-23, and June 30 – July 4.

(b) Respondent's counsel is unavailable April 15-16, 21-22, 25, May 8-9, 16, 23, June 4-6, 11-13, and July 15-31.

(c) Respondent's expert witness (known at this time) is unavailable April 14-23, June 6, 12-20, and 27, and each Friday during April, May, June and July.

11. **Email Address:** Morris A. Ellison – mellison@wcsr.com
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Attorneys for Respondent University Ventures, LLC

April 8, 2014
Charleston, South Carolina

CERTIFICATE OF SERVICE

This will certify that on April 9, 2014, I did serve a true and correct copy of the preceding *Respondent's Prehearing Statement* by forwarding the same via first-class, U.S. mail, postage prepaid and properly addressed, to:

Charleston County Assessor's Office
Attention: Toy S. Glennon
OT Wallace County Office Building
101 Meeting Street, Suite 300
Charleston, South Carolina 29401

Charleston County Assessor's Office
Attention: Toy S. Glennon
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Sarah J. Watson
Legal Assistant to Morris A. Ellison, Esq., and
William T. Dawson III, Esq.

FILED

APR 09 2014

Transcript of the Testimony of
**CHARLESTON COUNTY ASSESSOR V.
UNIVERSITY VENTURES**

Date: January 21, 2015



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Page 1

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 14-ALJ-17-0150-CC

Charleston County Assessor,)

Petitioner,

V.

University Ventures, LLC,

Respondent.)

ADMINISTRATIVE HEARING

* * * * *

Wednesday, January 21, 2015

10:19 a.m. - 4:42 p.m.

The hearing before the Honorable Shirley Robinson, was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 21st day of January, 2015, before Andrea R. Taylor, Court Reporter and Notary Public in and for the State of South Carolina.

1 APPEARANCES

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17

18 STIPULATIONS

19

20 It is stipulated and agreed that this hearing
21 is being taken pursuant to the rules of the
22 Administrative Law Judge Division and the South
23 Carolina Rules of Civil Procedure.

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1 THE COURT: Okay. If everyone is ready, we'll get
2 started. This is docket number 14-ALJ-17-0150.
3 It's Charleston County Assessor is the
4 Petitioner versus University Ventures, LLC,
5 Respondent. We've got the petitioner
6 represented by Austin Bruner, Joe Dawson, and
7 Bernie Ferrara.

8 MR. FERRERA: Thank you, Your Honor.

9 THE COURT: And we've got the respondent is
10 represented by Mr. Ellison.

11 MR. ELLISON: Yes, Your Honor.

12 THE COURT: Okay. And another Dawson. Is Mr.
13 Dawson here?

14 MR. ELLISON: No. No, he's not.

15 THE COURT: Okay. I see Mr. Dawson.

16 MR. ELLISON: Judge, he's available electronically if
17 you want him.

18 THE COURT: No, I don't need him if you don't need
19 him, that will be fine.

20 MR. ELLISON: I didn't say I didn't need him.

21 THE COURT: Okay. The issue in this case is the
22 County is appealing the Board of Assessment
23 Appeals' decision which placed the value on
24 property owned by University Ventures. The
25 County does not agree with that value and has

1 to the Board, just what the Board ruled, was
2 that those improvements should not have been a
3 part of the reassessment and, therefore, the
4 order that was issued placed no value to the
5 improvements and simply valued the land. And
6 once again, I welcome Mr. Ellison to say or
7 suggest that what I've just characterized is
8 not correct. The reason why I raise this
9 issue, Your Honor, is fortunately or
10 unfortunately, we're going to spend the better
11 part of today, maybe even tomorrow depending on
12 what's done on direct and cross examination,
13 talking about the facts as it relates to the
14 value of the improvement. While that may be
15 well and good, if the Court is not persuaded by
16 the County's legal position that the property
17 should be included in the reassessment, we will
18 have a lot of wonderful information on the
19 record, but it really won't do anything to the
20 core issue that must be decided, and that is
21 legally should those improvements be included
22 and, if so, what's the value. I will also
23 point out, Your Honor, the BAA did not give a
24 value to the improvements. And so, once again,
25 if the Court is inclined to agree with the

1 requested a contested hearing to address that
2 matter. Okay. Are we ready to proceed?

3 MR. DAWSON: Your Honor, we are. If I could beg the
4 Court's indulgence just for one pretrial matter
5 that I'd like to bring to the Court's
6 attention.

7 THE COURT: Sure.

8 MR. DAWSON: I appreciate you reading in or
9 attempting to frame why we're here, and I
10 wanted to make one point of emphasis. I
11 obviously welcome Mr. Ellison's thoughts on
12 what I'm about to say after I've said it, and
13 that is, Your Honor, there's really a principal
14 issue why we're here and it's a legal one.
15 It's not really a factual one. Normally we're
16 up here on valuation challenges where we just
17 disagree on the value of property. This is a
18 little unique, Your Honor, in that there's
19 really a principal legal issue, and that is
20 whether or not the improvements should have
21 been included in the last reassessment. Your
22 Honor, if the Court believes and agrees with
23 the County's position, then there is a dispute
24 on what the value should be of the improvement.
25 I believe the respondent's position, according

1 County that the law in South Carolina, and
2 we'll spend some time today I'm sure, today and
3 tomorrow if necessary, talking about the
4 County's view on the law as it relates to the
5 issue, if you're inclined to agree with the
6 County's position, you won't have anything from
7 the Board that represents what its thoughts
8 were on the value of the improvements. And
9 whether the Court's inclined to then rule on
10 those issues or send it back for the Board to
11 make that determination obviously is within the
12 Court's prerogative. So I wanted to at least
13 frame that for the Court as I understand it
14 because we are going to embark on a very fact
15 intensive discussion about values of something
16 that I believe the respondents will say should
17 not be valued. And I just wanted to at least
18 alert the Court to that because we probably
19 will spend a lot of time running through a lot
20 of numbers that may be irrelevant depending on
21 the Court's ruling. I definitely encourage Mr.
22 Ellison to respond as he deems appropriate.

23 MR. ELLISON: Your Honor, I think you framed the
24 issue correctly, and I would take issue in
25 major ways with what Mr. Dawson said.

1 Charleston County in 2011 was implementing a
2 equalization and general reassessment of all
3 property in the county. They chose the date.
4 The question as Your Honor put it is what's the
5 value of the property as of that date. And
6 there's no question that the statutes impact
7 how you go about doing that. But if Mr. Dawson
8 and the County want to turn this into a two-day
9 hearing, particularly it's going to be a real
10 challenge to do that particularly when their
11 assessor did not -- on the County's
12 instructions, did not value the property in its
13 condition as of December 31, 2008. Now they
14 have a reason why they say they don't have to
15 do that, but the appraisal that they produced
16 doesn't value the property in the condition as
17 of December 31, 2008. I would agree that there
18 is a legal issue, and I would agree that once
19 the Court frames that legal issue there are
20 factual issues. But the issue becomes, as you
21 put it at the very beginning, what's the value
22 of this property as of December 31, 2008, in
23 the condition that it was in as of December 31,
24 2008, subject to the statutory overlay.

25 THE COURT: Okay. At this point, we're going to

1 proceed with the hearing keeping in mind your
2 arguments, Mr. Dawson, about how the -- and
3 quite frankly, I think that -- I understand
4 what you're saying. And I think that the
5 question still is what's the value of the
6 property as of the date, the valuation date.
7 And I know your argument is that -- and I read
8 the Board of Assessment Appeals' decision, and
9 I think what they said they valued the land,
10 but the County's position is that the hotel
11 should have been value -- included in that
12 valuation ---

13 MR. DAWSON: Yes, ma'am.

14 THE COURT: --- because it was under construction.

15 MR. DAWSON: I think you've said it with a lot fewer
16 words than what I did exactly what I think the
17 point is. We welcome the opportunity to spend
18 the day with you to discuss those issues.

19 THE COURT: Okay.

20 MR. DAWSON: Thank you, Your Honor.

21 THE COURT: Okay. If you're ready to proceed with
22 opening statements, I'm ready to hear them.

23 OPENING STATEMENT - BY MS. BRUNER:

24 MS. BRUNER: Thank you, Your Honor. May it please
25 the Court, Your Honor, my name is Austin

1 Bruner, and I'm here representing Charleston
2 County Assessor's Office. And with me today I
3 have Joe Dawson, County Attorney, as well as
4 Bernie Ferrara, Chief Deputy County Attorney.
5 I also have Mr. Walter Ziegler, who's with the
6 Charleston County Assessor's Office, and David
7 Pope, who's our expert appraiser. Your Honor,
8 Mr. Dawson framed the issue as we see it. This
9 is a legal question and depending upon how you
10 find for the County's position or for Mr.
11 Ellison's position, that would determine the
12 value of the property. Your Honor, we believe
13 that law is clear and that the reassessment
14 law, which is 12-43-217, denotes that a County
15 is required to have all of the property that is
16 completed by the end of the fourth year
17 included in that reassessment. And Your Honor,
18 would you like a copy of ---

19 THE COURT: Oh, no.

20 MR. BRUNER: Okay. And Your Honor, I'm going to
21 talk about fourth year a good bit. I think
22 you'll hear that a good bit in the trial today
23 because I believe it's the respondent's
24 contention that because the property, the hotel
25 was not completed by the date of value, which

1 is 12/31/08 for the reassessment, that it can't
2 be valued. And honestly, Your Honor, we
3 believe that the statute clearly states in (A)
4 notwithstanding any other provision of law,
5 once every fifth year each county or the state
6 shall appraise and equalize those properties
7 under its jurisdiction. Property valuation
8 must be complete at the end of December of the
9 fourth year and the county or state shall
10 notify every taxpayer of any change in value or
11 classification if the change is \$1,000 or more.
12 And, Your Honor, we believe that because the
13 date of -- the end of the fourth year for our
14 reassessment purposes was 12/31/09, their hotel
15 was complete and a certificate of occupancy was
16 issued on April the 9th, 2009. There is no
17 dispute in that facts. Really there not
18 disputes in the facts in terms of how this has
19 been laid out, what was sent to them. And,
20 Your Honor, we believe that the law is clear on
21 what should happen. The date of value is kind
22 of a red herring in this situation because it
23 stands for two things, as you're aware. Date
24 of value is a point in time where it equalizes
25 values. It's a determination of values as well

1 as a determination of the highest and best use
2 of the property, and that's it. Nowhere in
3 case law, nowhere in state law does it say that
4 the -- a property has to be completed in order
5 to be included in the reassessment by the date
6 of value. It leads almost to an absurd result
7 if that were to happen because then people
8 would just wait to have a certificate of
9 occupancy until after that date of value so
10 their property could escape reassessment. But
11 we'll get into all that later, Your Honor.
12 What I have done is, because there are a lot of
13 dates in this case and a lot of things that
14 happened to get us there, I have created a
15 demonstrative exhibit, if you will. I provided
16 one to Mr. Ellison, and I've got a copy for you
17 as well as a large one for the Court. And I'll
18 bring it over here so you can see it as well as
19 provide one to you if you'd like to have one.

20 Is that close enough? Is that good?

21 THE COURT: I don't see very well, so ...

22 MR. BRUNER: Let me do this. How about this? How
23 about this? This is an exact copy of this.

24 I've provided it to Mr. Ellison.

25 THE COURT: Very good. Thank you. This is much

1 better.

2 MS. BRUNER: And, Your Honor, what I will, there is
3 one typo. It should be 2010, not 2014.. So I
4 apologize for that. It's on all of these as
5 2014, but it should be 2010.

6 THE COURT: Okay. Thank you, Ms. Bruner.

7 MS. BRUNER: You're welcome, Your Honor. So I'll
8 just walk you through the timeline. This all
9 started in 2005 -- I mean, in 2006 when
10 University Ventures purchased the property.
11 They purchased just the dirt for \$1,253,000.
12 It's located at 2688 Fernwood Drive, and it's
13 a Hampton Inn and Suites, very nice, very
14 beautiful hotel. But at that point, it was
15 just the dirt. And then on April 17th of 2008,
16 the City of North Charleston issued a building
17 permit to University Ventures, and this
18 building permit was issued on an estimated cost
19 of \$7,952,998. And, Your Honor, that's, you
20 know, their number, not ours. But then on June
21 11th of that same year, the National Bank of
22 South Carolina issued a mortgage for the
23 property for ten million dollars. So this is
24 how it's progressing in terms of getting to the
25 County. We've still got a ways to go in terms

1 of how we're here. But on September 22nd of
2 2008, an additional building permit was issued
3 and that was for the construction of a pool at
4 the property. On November 1st, the County sent
5 out its tax bills, and that was just on the
6 land. It was the fee -- the tax they had to
7 pay was \$5,845, but it was based on an
8 assessment value of the land \$404,000. And
9 then the next pertinent date would be our date
10 of value for the 2011 reassessment, which was
11 December 31st of 2008, and that's pursuant to
12 statute and that's 12-43-217 as well. Now, on
13 April 22nd -- I believe I misspoke, I said
14 April 9th of 2009 earlier. It's April 22nd of
15 2009 that the certificate of occupancy was
16 issued to the Hampton Inn and Suites. So that
17 was when the hotel could be up and running.
18 Then on November 1st of 2009, that was when the
19 tax bill was sent to University Ventures for a
20 \$404,000 property tax assessment. Again, just
21 the land, okay. They had to pay \$6,022. Then
22 the next thing that we get to actually before
23 that -- or no, Your Honor, is the end of that
24 fourth year. This is the important part that
25 we believe this case hinges on. December 31,

1 2009, pursuant to the statute that I told you,
2 12-43-217, we are required to complete the
3 reassessment by the end of that fourth year.
4 And Mr. Ellison mentioned in his pre-hearing
5 comments that, you know, the County doesn't
6 think we can put value on partially completed
7 improvements, for instance, what was actually
8 on the property as of the date of value. But,
9 Your Honor, there's a law, it's 12-37-670 as
10 well as 12-37-3140 that tell us we can't.
11 Until something is fit for its intended use, we
12 can't put it on the books. So it's either to
13 us land or totally ready to go, ready to be
14 moved into as a hotel or whatever its intended
15 purpose is. So I'll get back to it, that's the
16 end of the fourth year and for our purposes
17 there's no dispute that this hotel was complete
18 and up and running before the close of that
19 fourth year. Then, Your Honor, the next
20 pertinent date would be May of 2010. This was
21 when the value, University Ventures was sent a
22 tax bill or sent a notice of classification
23 appraisal and assessment that is letting them
24 know there's something different on the
25 property, and that was based on an \$8,180,000

1 value. They paid it. They didn't disputed it,
2 and that was for the 2010 assessment. Then,
3 Your Honor, January through December of 2011,
4 the County implemented its reassessment. We
5 did delay it for a year, which we're allowed to
6 by 12-43-217, but we cannot delay the
7 reassessment itself. We can only delay the
8 implementation. So that's why everything had
9 to be completed for our purposes by 12/31/09 to
10 be included in the reassessment. And that
11 reassessment notice was actually sent to them
12 in June of 2011. I'm sorry, Your Honor, in
13 June of 2011, they were sent the notice of
14 classification and appraisal for the
15 reassessment and that was based on a nine
16 million dollar 630,000 dollar value. It was
17 capped at \$9,407,000 because of the land. The
18 land had been previously reassessed and it has
19 a 15 percent cap. After that, Your Honor, we
20 -- University Ventures filed a protest. And
21 then we sent them their tax bill in November
22 for \$138,000, and it is a big difference from
23 the just land value. But, Your Honor, wanted
24 to draw your attention to that, as well as in
25 May of the following year we sent the

1 classification, notice of classification and
2 appraisal again to them. During that time, the
3 time period between the protest by University
4 Ventures and, you know, the second notice of
5 classification and appraisal in 2011, there
6 were some things that have to go on
7 statutorily, some conferences and trying to
8 determine if there is room -- if the property
9 should be re -- you know, re-valuated for
10 assessment purposes. And it wasn't, so the
11 original notice was sent. Then in October of
12 2012, the 2012 tax bill was sent, obviously
13 based on the \$9,407,000 capped value as a
14 \$9,630,000 total. And here we are because
15 February 18, 2014, the Board of Assessment
16 Appeals found that the improvements were not
17 taxable because they were not completed on the
18 date of value. And again, that's in our
19 opinion why we're here, Your Honor. The date
20 of value is important for those two purposes in
21 terms of determining and equalizing the value,
22 fair market value on a certain day, as well as,
23 you know, determining the property's best use.
24 That's it. Nothing has to be complete by that
25 time. And as you're aware, just because a

1 property is being used one particular way on
2 12/31/08, that doesn't mean that that's its
3 highest and best use. There are plenty of
4 times that things are not being used as an
5 appraiser would find the highest and best use
6 of the property. Your Honor, this hotel, like
7 I said, it's nice, it's really pretty and it's
8 -- both appraisers will say it's an above
9 average Hampton Inn. It's in the higher end of
10 the Hampton Inns. And our expert witness will
11 tell you that in terms of hotels, the Hilton
12 and Marriott are the gold standards, that's
13 what everybody looks up to and they're the best
14 in the market, and Hampton Inn is a part of the
15 Hilton Corporation, so it fits in there. It's
16 115 rooms, five stories, pool, and it really is
17 a pretty property. Good thing also is both of
18 our appraisers agree on the highest and best
19 use as of that date of value. They believe
20 that the highest and best use as of 12/31/08 is
21 as a hotel. You'll hear some differences in
22 cap rates and average daily rates, and all
23 those things factor into how we arrived at such
24 different values, Your Honor. But the real
25 question in this case is should the

1 improvements be included in the reassessment,
2 and we believe they should because 12-43-217
3 requires us to include them because they're
4 there by the end of the fourth year as denoted
5 in the statute.

6 THE COURT: Thank you.

7 MS. BRUNER: You're welcome, Your Honor. Would you
8 like me to take this down?

9 THE COURT: Yes.

10 MS. BRUNER: I will do that. Thank you.

11 THE COURT: Okay.

12 MR. ELLISON: Good morning, Your Honor.

13 THE COURT: Good morning.

14 OPENING STATEMENT - BY MR. ELLISON:

15 MR. ELLISON: It takes a lot -- first, it takes a
16 lot to dumbfound me, and I'm sitting here
17 dumbfounded. I've been at this for 32 years
18 and I've never heard anything like what I just
19 heard from Ms. Bruner. And here is -- I just
20 don't know what to say on some of this. Four
21 years later, we're here, I thought, dealing
22 with tax year 2011, dealing with Charleston
23 County's general reassessment and equalization
24 program that was implemented in 2011, and what
25 I've heard from the County for years has been

1 that the date of value is December 31, 2008.
2 I have heard that over and over and over again
3 until now when Ms. Bruner starts talking about
4 the fourth year and December 31, 2009, which I
5 just don't know what to say. We're four years
6 after the County implemented reassessment. The
7 equalization program that they're required to
8 do, they have consistently used December 31st,
9 2008, as their date of valuation. They told
10 their appraiser to use that date. And Ms.
11 Bruner gets up here today and starts talking
12 about December 31, 2009, if I heard correctly,
13 as the date of valuation. I mean, I don't know
14 what to say about that. I mean they're
15 talking, and I agree with a lot of what she
16 says, we're -- there is a difference between
17 the reassessment, the reappraisal and
18 implementation. And the date of reassessment
19 has consistently been, until this morning,
20 December 31, 2008. It was the County's
21 position as recently as 5:03 yesterday
22 afternoon in other pleadings filed with the
23 Court that that was the date of valuation, and
24 now we're talking about December 31, 2009. I
25 mean, that's a new one on me. Now, let's talk

1 about the way the statutes play out. We're
2 talking about a property -- I mean this is just
3 a general description -- on Fernwood Drive in
4 North Charleston; it's got the tax map number
5 on the slide, and we'll use this later. As Ms.
6 Bruner said, use prior to 2008 was as vacant
7 land. As of December 31, 2008, we agree, there
8 was a hotel under construction. The
9 certificate of occupancy isn't issued until
10 April 2009. So how is this all supposed to
11 work? 12-43-27 -- the Assessor has created
12 this problem. I mean, the taxpayer didn't
13 create it; the Assessor created it. The last
14 reassessment before this one was based on a
15 December 31, 2003, valuation. Implementation
16 was delayed by a year until 2005. The statute
17 says very clearly that the County is required
18 to appraise and equalize those properties under
19 its jurisdiction every fifth year, and the
20 County can postpone implementation for one
21 year. The problem that the Charleston County
22 Assessor's Office created in part is they
23 delayed implementation of the 2004 reassessment
24 by a year to 2005. Now they're saying the
25 valuation date is December 31, 2008, in order

1 to be five years after the last valuation, but
2 they delayed implementation for yet another
3 year, and we've got the ordinance where they
4 say they had the authority, and there's a
5 reference that we saw yesterday for the first
6 time talking about they've got a letter from
7 the Department of Revenue that I've never seen
8 that authorized it to be delayed for yet
9 another year. Don't know, and frankly, Your
10 Honor, matter of fact, I don't care, because if
11 the date of valuation is December 31, 2008,
12 which is what they've applied to every other
13 property on every other appeal, that's the date
14 we have to deal with. That's the date they
15 gave their appraiser to work with. And so what
16 we would normally do is we would normally look
17 at what the value of the property is in its
18 condition as of that date. There's one caveat
19 to that though in this case. And this is what
20 we're doing, what's the true value, reasonable
21 exposure? That's the statutory definition in
22 12-37-930. The limiting factor in this case is
23 what 12-37-670 says, and this is -- this is not
24 the only statute that talks about this, but (A)
25 says very specifically, no new structure is to

1 be assessed until it is completed and fit for
2 the use for which it is intended. Put in terms
3 that I can understand better, if you're under
4 construction it's when a certificate of
5 occupancy is issued; it's when you're up and
6 running. The certificate of occupancy is
7 issued, as Ms. Bruner said, I don't think
8 there's any argument about this, in April 2009.
9 But the valuation date, again, County chose it,
10 we didn't choose it, is December 31, 2008. And
11 the fact that they're implementing in 2011,
12 again, County chose that. Whether they're
13 right to do it or not to do it is a different
14 issue. But they're -- that gap was created by
15 Charleston County. And it's that statute, 12-
16 37-670, which says because the certificate of
17 occupancy wasn't issued as of the valuation
18 date, you've got to go back to the land value.
19 And that's what the Board did. That's what the
20 statute said. This is not that complicated.
21 If this case goes two days, it's not going to
22 be because of me. It's going to be because I
23 think the County wants to confuse things. And
24 I've heard so many different references to so
25 many different dates. I mean, I don't think

1 any of them are really relevant. This is the
2 engagement letter that the County gave to their
3 appraiser, Mr. Pope. What's the date?
4 December 31, 2009. No 2009. I mean two
5 thousand -- that was the first time I ever
6 heard that. That's what the -- and the way --
7 in order to -- I'll let them make their own
8 order argument. We'll get there. So the
9 Assessor assumes in the report that they want
10 to submit that you've got a fully stabilized
11 hotel, fully under construction up and running
12 December 31, 2008. They also want to ignore
13 the condition of the marketplace, and I found
14 Mr. Pope's description of the condition of the
15 marketplace very, very interesting. This is
16 what it looked -- these pictures come out of
17 Mr. Rosen's appraisal. This is an aerial of
18 the hotel now, but you go back to December 31,
19 2008, there's a draw application that's in Mr.
20 Rosen's appraisal, as of December 31, 2008, the
21 property was 65 to 70 percent complete. So if
22 you didn't have that statutes saying no, you
23 can't tax it until the CO -- I'm sorry, I'm
24 slipping in the slide -- until the certificate
25 of occupancy is issued, if you didn't have that

1 statute, you'd have -- the task of the court
2 with general reassessment and equalization,
3 which you're taxing every other property in
4 Charleston County as of that date, it would be
5 what's the value of a property that's 65
6 percent complete, but the statute says no, you
7 wait until the certificate of occupancy is
8 issued. We'll get into what was going on with
9 the financial history later and the fact that
10 in December of 2008, to state that that was bad
11 times would be a gross understatement, and Mr.
12 Pope talks about it at length and we'll talk
13 about that as well. But if we're going to
14 look at what the value of the property is as of
15 December 31, 2008, there's no argument there's
16 a hotel that's under construction, and the
17 statute says you can't revalue it until the
18 improvements are completed. So that's why we
19 revert back to the land value. And I think
20 it's also important to emphasize it's only,
21 given the way this has played out for tax year
22 2011. For tax year 2012 and forward, you value
23 the property based on the fact that the
24 certificate of occupancy has been issued. So
25 we're talking about one tax year; we're not

1 talking about multiple tax years here because
2 the statutes allow the Assessor to come back in
3 in 2012 and reassess because that limiting
4 factor isn't present anymore. Now, we think
5 this is relatively simple, but it requires both
6 a legal inquiry and a factual inquiry. The
7 factual inquiry is what's the value as of
8 December 31, 2008. Thank you very much, Your
9 Honor.

12 MS. BRUNER: Yes, Your Honor, I am. I would like to
13 call Walter Ziegler, please.

14 THE COURT: Mr. Ziegler, if you'll face the court
15 reporter and raise your right hand, she's going
16 to swear you in.

17 (Off the Record)

18 WALTER L. ZIEGLER, SR., being duly sworn, testifies
19 as follows:

20 MR. ZIEGLER - DIRECT EXAMINATION BY MS. BRUNER:

21 Q: Good morning, Mr. Ziegler, how are you?

22 A: I'm good. Good morning.

23 Q: Good morning. Would you please state your full
24 name for the record?

25 A: Walter L. Ziegler, Sr.

- 1 Q: And Mr. Ziegler, where do you reside?
- 2 A: I live in Mount Pleasant, South Carolina.
- 3 Q: Okay. And what do you do for a living?
- 4 A: I work at the County, Charleston County
- 5 Assessor's Office. I'm the commercial
- 6 supervisor.
- 7 Q: Did that title recently change?
- 8 A: I've been a supervisor for the last five
- 9 months.
- 10 Q: Okay. Got a promotion, permission, right?
- 11 A: I did.
- 12 Q: Congratulations.
- 13 A: Thank you.
- 14 Q: How long have you been with the Assessor's
- 15 Office?
- 16 A: A little over 24 years.
- 17 Q: And what has your position been while you've
- 18 been there? I mean, excuse me, let me
- 19 rephrase. Have you been completing appraisals
- 20 the whole time you've been there?
- 21 A: Yes. When I first got hired I did residential
- 22 work for about ten years and been doing
- 23 commercial work for the last 14 years.
- 24 Q: Okay. And what I'm going to do now, Mr.
- 25 Ziegler, is ask you to look at some documents

1 and tell me what they are, if you recognize
2 them.

3 A: Okay.

4 Q: I'll hand you this. It's been marked as
5 Petitioner's Exhibit 1. Can you tell me what
6 that document is?

7 A: This is the deed to the subject property when
8 University Ventures purchased the property back
9 in December of 2006 for \$1,253,224.

10 Q: Okay. And what was that for?

11 A: That was the land sale.

12 Q: Okay. And do you see documents like this in
13 your normal and ordinary course of business?

14 A: Yes.

15 Q: You do?

16 MS. BRUNER: Your Honor, I would like to move this
17 into evidence as Petitioner's Exhibit 1.

18 THE COURT: Mr. Ellison?

19 MR. ELLISON: No objection.

20 THE COURT: Okay. It's admitted, no objection.
21 (Petitioner's Exhibit Number 1 was admitted into
22 evidence.)

23 Q: Thank you, Mr. Ziegler. And do you recognize
24 this document, Mr. Ziegler?

25 A: This is the building permit for the subject

1 property that was issued by the City of North
2 Charleston for the construction of the hotel.
3 It was issued on April 12th, 2008, and the
4 value on the permit is \$7,952,998.

5 Q: Okay. And is that something that's issued by
6 us? Or who issued that?

7 A: The City of North Charleston ---

8 Q: Okay.

9 A: --- issued the permit and they forward a copy
10 to the Assessor's Office.

11 Q: Okay. And is that a document you see in your
12 normal and ordinary course of business?

13 A: Yes.

14 Q: Okay.

15 MS. BRUNER: Your Honor, I'd like to move that this
16 be marked as -- moved into evidence as
17 Petitioner's Exhibit 2.

18 MR. ELLISON: No objection.

19 THE COURT: It's admitted

20 (Petitioner's Exhibit Number 2 was admitted into
21 evidence.)

22 Q: Okay. Mr. Ziegler, thanks for bearing with me.
23 I've got a lot of documents for you. That has
24 been marked as Petitioner's Exhibit 3. Can you
25 tell me what that is?

1 A: This is a mortgage for the subject hotel that
2 was issued July the 11th, 2008, between
3 University Ventures and National Bank of South
4 Carolina, and the principal amount is ten
5 million dollars.

6 Q: Okay. Is this something that you see in the
7 normal and ordinary course of business?

8 A: Yes, it is.

9 MS. BRUNER: Your Honor, I'd like to move this into
10 evidence as Petitioner's Exhibit 3.

11 MR. ELLISON: Your Honor, I'm letting a lot of this
12 go because I don't think this is relevant, but
13 I don't think she's laid the appropriate
14 foundation. Just because this is the kind of
15 document that Mr. Ziegler sees in the ordinary
16 course of business is not the proper
17 foundation. Unless he's seen it, unless it's
18 in their files, I don't think the proper
19 foundation is laid for a lot -- I mean, I let
20 a lot of these go, but I don't think the proper
21 foundation's been laid.

22 MS. BRUNER: Your Honor, I'm happy to ask him some
23 more questions about this specific document if
24 you'd like me to.

25 THE COURT: Please do that.

1 Q: Mr. Ziegler, is this a document that you've
2 seen before?

3 A: It is.

4 Q: Is this a document that you see in your files?

5 A: Yes, it is. This one, especially when they
6 appeal the property value, we go to look to see
7 if there's any mortgage on the property.

8 Q: So if something was not necessarily in your
9 files, you go and try to find it to ---

10 A: Right, just for information.

11 Q: Okay.

12 MS. BRUNER: Your Honor, I think that answers Mr.
13 Ellison's questions in terms of ---

14 MR. ELLISON: It's fine.

15 MS. BRUNER: So I'd move to have it moved into
16 evidence, please.

17 THE COURT: It's admitted.

18 MS. BRUNER: Thank you.

19 (Petitioner's Exhibit Number 3 was admitted into
20 evidence.)

21 Q: Mr. Ziegler, this is marked as Petitioner's
22 Exhibit 4. Can you tell me what that is?

23 A: This is another building permit issued by the
24 City of North Charleston for the subject
25 property. It's for their pool. It was issued

1 in September 22nd, 2008, in the amount of
2 \$64,450.

3 Q: Is this something that would be kept in -- is
4 kept in your files?

5 A: It is.

6 Q: Is this something that you see in the normal
7 course of your business?

8 A: Yes, it is.

9 Q: And have you seen this document before?

10 A: I have.

11 Q: Okay.

12 MS. BRUNER: Your Honor, I'd like to move this into
13 evidence as Petitioner's Exhibit 4.

14 MR. ELLISON: No objection, Your Honor.

15 THE COURT: Admitted.

16 MS. BRUNER: I mean 5, I'm -- no, 4, sorry, Your
17 Honor.

18 (Petitioner's Number 4 was admitted into evidence.)

19 Q: Then this is marked as Petitioner's Exhibit 5.
20 Mr. Ziegler, can you tell me what this is?

21 A: This is the 2008 tax bill for the subject
22 property that shows it's appraised for land
23 value only at \$404,000.

24 Q: And that was what year?

25 A: 2008.

1 Q: Okay. And what is the tax bill? What was the
2 amount that needed to be paid?

3 A: \$5,845.07.

4 Q: Is this something that's kept in your files?

5 A: Yes.

6 Q: And is it something that you use in the normal
7 and ordinary course of business?

8 A: Yes.

9 Q: Your Honor, County would like to move this into
10 exhibit -- into evidence.

11 MR. ELLISON: No objection.

12 THE COURT: It's admitted.

13 (Petitioner's Exhibit Number 5 was admitted into
14 evidence.)

15 MS. BRUNER: Thank you, Your Honor.

16 Q: Mr. Ziegler, we're getting close with all these
17 documents, aren't we. Would you tell me, that
18 is marked as Petitioner's Exhibit 6. Can you
19 tell me what that is?

20 A: This is the certificate of occupancy completion
21 that was issued by the City of North Charleston
22 for the subject property and is dated April 22,
23 2009.

24 Q: Okay. And is this something that you receive
25 in your files?

1 A: Yes.

2 Q: And is it something that you use in your normal
3 and ordinary course of business?

4 A: Yes, it is.

5 MS. BRUNER: Your Honor, the Petitioner would like to
6 move this in as Petitioner's Exhibit 6.

7 MR. ELLISON: No objection.

8 THE COURT: Admitted.

9 (Petitioner's Exhibit Number 6 was admitted into
10 evidence.)

11 Q: Mr. Ziegler, this is marked as Petitioner's
12 Exhibit 7. Have you seen this document before?

13 A: I have.

14 Q: Can you tell the Court what it is.

15 A: This is the 2009 tax bill for the subject
16 property with a value of \$404,000 and a tax
17 bill of \$6,022.84.

18 Q: And what tax year was this for again?

19 A: 2009.

20 Q: And is this for -- what is this for, just ---

21 A: \$404,000 represent the value of the vacant
22 land.

23 Q: Okay. Is it something that is kept in your
24 files?

25 A: Yes, it is.

1 Q: And is it something that's used in the normal
2 and ordinary course of business?

3 A: Yes, it is.

4 MS. BRUNER: Your Honor, I'd like to move this in as
5 Petitioner's Exhibit 7.

6 MR. ELLISON: No objection.

7 THE COURT: It's admitted.

8 (Petitioner's Exhibit Number 7 was admitted into
9 evidence.)

10 MS. BRUNER: And then actually, Your Honor, I have
11 missed -- I marked something as Exhibit 8 that
12 I don't want to admit at this time, so can I
13 skip an exhibit and go back?

14 THE COURT: Yes.

15 MS. BRUNER: Thank you, Your Honor.

16 Q: Mr. Ziegler, this has been marked as
17 Petitioner's Exhibit 9. Can you identify for
18 the Court what that document is?

19 A: This is a Notice of Classification, Appraisal
20 and Assessment of Real Estate 2010 tax year for
21 the subject property. It's dated May the 14th
22 of 2010 and has a value of \$8,180,000. This
23 would have been sent by the Assessor's Office
24 to the owners of the subject property telling
25 them that there was a new building completed

1 prior year.

2 Q: Okay. And this is something you've seen
3 before?

4 A: Yes.

5 Q: And it's something that you use in your normal
6 and ordinary course of business?

7 A: Yes, it is.

8 MS. BRUNER: Your Honor, I'd move this in as
9 Petitioner's Exhibit 9.

10 MR. ELLISON: No objection.

11 THE COURT: It's admitted.

12 (Petitioner's Exhibit Number 9 was admitted into
13 evidence.)

14 Q: Mr. Ziegler, could you please identify this
15 document for the Court?

16 A: This is the 2010 tax bill for the subject
17 property. It shows the value of \$8,180,000
18 with a tax bill of \$122,356.44. This would --
19 the \$8,180,000 would represent the value of the
20 hotel, land and improvements.

21 Q: Okay. And is this something that you keep in
22 your files?

23 A: Yes, it is.

24 Q: Something you use in the normal and ordinary
25 course of business?

1 A: Yes, it is.

2 MS. BRUNER: Your Honor, the Petitioner would like to
3 move this in as Petitioner's Exhibit 10.

4 MR. ELLISON: No objection.

5 THE COURT: It's admitted.

6 (Petitioner's Exhibit Number 10 was admitted into
7 evidence.)

8 Q: Mr. Ziegler, this next document has been marked
9 as Petitioner's Exhibit 11. Can you please
10 identify that for the Court?

11 A: This is a Notice of Classification Appraisal
12 and Assessment of Real Estate, 2011 tax year
13 for the subject property where we value the
14 property at a market value of \$9,630,000. It
15 had a capped value of \$9,407,000. And this is
16 our county-wide equalization of assessments
17 based on current market value. This is our
18 reassessment notice that was sent to owner of
19 the subject property.

20 Q: And is this something that's kept in your
21 normal and ordinary course of business?

22 A: Yes, it is.

23 Q: Something you've seen before?

24 A: Yes, it is.

25 MS. BRUNER: Your Honor, I'd like to move this in as

1 Petitioner's Exhibit 11.

2 MR. ELLISON: No objection.

3 THE COURT: Admitted.

4 (Petitioner's Exhibit Number 11 was admitted into
5 evidence.)

6 Q: Mr. Ziegler, I have pre-marked that as
7 Petitioner's Exhibit 12. Can you please
8 identify that document for the Court?

9 A: This is a letter of objection for subject
10 property that is written by a member -- I think
11 it's an employee of University Ventures, Kim
12 Bennett Brown, contesting the value that we put
13 on the property for the 2011 reassessment.

14 Q: And have you seen that document before?

15 A: I have.

16 Q: Okay. And is it something that's kept in your
17 files in the ordinary course of business?

18 A: Yes, it is.

19 MS. BRUNER: Your Honor, I'd like to move this in as
20 Petitioner's Exhibit 12.

21 MR. ELLISON: No objection.

22 THE COURT: Admitted.

23 (Petitioner's Exhibit Number 12 was admitted into
24 evidence.)

25 Q: We're getting there, I promise, Mr. Ziegler.

1 I have handed you Petitioner's Exhibit 13 that
2 I've marked. Can you tell me -- identify for
3 the Court what that document is?

4 A: This is the 2011 tax bill for the subject
5 property that shows the market value of
6 \$9,630,000, but the taxes are based on the
7 capped value of \$9,407,000. The tax bill is
8 \$138,847.32.

9 Q: Okay. And you say capped value, what does that
10 relate to?

11 A: The capped value is the prior value that we
12 have on the property, the \$8,180,000, plus 15
13 percent and that adds up to the \$9,407,000.

14 Q: Okay. And is this a document you've seen
15 before?

16 A: Yes, it is.

17 Q: Is this a document that you keep in the normal
18 ---

19 A: Yes.

20 Q: --- and ordinary course of business?

21 A: Yes, it is.

22 MS. BRUNER: Your Honor, I'd like to move this is in
23 as Petitioner's Exhibit 13.

24 MR. ELLISON: No objection.

25 THE COURT: Admitted.

1 (Petitioner's Exhibit Number 13 was admitted into
2 evidence.)

3 MS. BRUNER: Thank you, Your Honor.

4 Q: Mr. Ziegler, I've handed you a document marked
5 Petitioner's Exhibit 14. Can you please
6 identify that document for the Court?

7 A: This is a Notice of Classification, Appraisal
8 and Assessment of Real Estate for 2011 tax
9 year. This is in response to the taxpayer
10 appealing their property value, the \$9,630,000.
11 And we did not make a change, so it shows to
12 the market value of \$9,630,000 and a capped
13 value of \$9,407,000.

14 Q: Okay. And have you seen this document before?

15 A: I have.

16 Q: Is this a document you use in the ordinary
17 course of your business?

18 A: Yes, it is.

19 Q: It's in your files?

20 A: It is.

21 MS. BRUNER: Your Honor, I'd like to move this in as
22 Petitioner's Exhibit 14.

23 MR. ELLISON: No objection.

24 THE COURT: Admitted.

25 (Petitioner's Exhibit Number 14 was admitted into

1 evidence.)

2 Q: Mr. Ziegler, I've handed you a document marked
3 Petitioner's Exhibit 15. Can you please
4 identify that document for the Court?

5 A: This is the 2012 tax bill for the subject
6 property which shows, again, the market value
7 at \$9,630,004 and -- but the tax bill of
8 \$140,427.70 is based on the capped value of
9 \$9,407,000.

10 Q: Okay. And have you seen this document before?

11 A: Yes, I have.

12 Q: Is this something that's kept in your files?

13 A: Yes, it is.

14 Q: And is it something that's kept in the normal
15 and ordinary course of your business?

16 A: Yes, it is.

17 MS. BRUNER: Your Honor, I'd like to move this in as
18 Petitioner's Exhibit 15.

19 MR. ELLISON: No objection.

20 THE COURT: Admitted.

21 (Petitioner's Exhibit Number 15 was admitted into
22 evidence.)

23 Q: I'm getting to the last of my exhibits. I have
24 handed you a document marked Petitioner's
25 Exhibit 16. Can you please identify that for

1 the Court?

2 A: This is the Charleston County Board of
3 Assessment Appeals' decision based on the
4 conference we had in front of the Board of
5 Assessment Appeals for University Ventures, and
6 this is their written decision.

7 Q: Okay. And what did they decide?

8 A: They decided that the subject property should
9 be valued as land value only for the 2011 tax
10 year.

11 Q: Okay. And have you seen this document before?

12 A: Yes, I have.

13 Q: Is this a document that's kept in your files?

14 A: Yes, it is.

15 Q: And in the normal and ordinary course of your
16 business?

17 A: Yes, it is.

18 MS. BRUNER: Your Honor, I move to have this moved
19 into evidence as Petitioner's Exhibit 16.

20 MR. ELLISON: No objection.

21 THE COURT: Admitted.

22 (Petitioner's Exhibit Number 16 was admitted into
23 evidence.) MS. BRUNER: Thank you.

24 Q: And Mr. Ziegler, I just have one more question
25 for you. A property that was completed in

1 2009, meaning a CO was issued every property in
2 Charleston County, what -- was that included in
3 your reassessment?

4 A: Yes, it was.

5 Q: Thank you. No more questions at this time.

6 THE COURT: Mr. Ellison.

7 MR. ELLISON: Yes, Your Honor, just one moment.

8 Just a little bit, Your Honor.

9 MR. ZIEGLER - CROSS EXAMINATION BY MR. ELLISON:

10 Q: Mr. Ziegler, looking at Exhibit 9, which is I
11 think the 2010 notice of -- reassessment
12 notice. See that?

13 A: I'm getting there.

14 Q: Okay.

15 A: Okay.

16 Q: Okay. The first time the County reassessed the
17 property with all the improvements on the
18 property was for tax year 2010, I think it is;
19 is that right?

20 A: That is correct.

21 Q: Okay. And it valued the property at
22 \$8,180,000, is that right, according ---

23 A: That's correct.

24 Q: --- to Exhibit 9?

25 A: That's correct.

1 Q: And for tax year 2011, when the County issued
2 its reassessment notice just bumped it up to
3 basically the capped number as shown on Exhibit
4 12, do you see that? Or Exhibit 11?

5 A: I see that.

6 Q: All right. So that you just basically bumped
7 it up to the cap number, right?

8 A: We used an income approach to come up with that
9 value.

10 Q: Now you said you've been with the Assessor's
11 Office for 24 years, right?

12 A: Yes.

13 Q: And the last general reassessment that the
14 County did before this one, that was based on
15 values as of December 31, 2003; is that
16 correct?

17 A: That is correct.

18 Q: And the County sought to delay implementation
19 of that reassessment with a schedule for --
20 strike that. That reassessment was supposed to
21 take place in 2004, was it not?

22 A: I don't recall.

23 Q: Mr. Ziegler, please, you don't recall? You
24 work for months if not years on reassessment.
25 You don't recall when the last reassessment was

- 1 supposed to be held? Supposed to be done?
- 2 A: I know it was delayed for the one year.
- 3 Q: All right.
- 4 A: It was delayed for one year.
- 5 Q: Right. But it was supposed to be done in 2004,
- 6 was it not? Yes or no?
- 7 A: I don't recall.
- 8 Q: You don't recall. You've worked for the
- 9 Assessor's Office for 24 years and you don't
- 10 recall. And it was actually implemented in
- 11 2005, wasn't it?
- 12 A: Yes, it was.
- 13 Q: And you said earlier it was delayed for a year?
- 14 A: Yes.
- 15 Q: Okay. So then we have to -- by state statute,
- 16 you're supposed to do it five years later,
- 17 right?
- 18 A: Every five years.
- 19 Q: Yes or no, please.
- 20 A: Yes.
- 21 Q: So the next reassessment -- when was the next
- 22 reassessment supposed to be done then? Was it
- 23 supposed to be done in 2009?
- 24 A: 2010.
- 25 Q: It was supposed to be done in 2010? But you're

1 supposed to do it every five years, right?

2 That's what the statute says.

3 A: It was my understanding it was supposed to be
4 done for 2010.

5 Q: You're only authorized by statute to delay for
6 one year; is that correct?

7 MS. BRUNER: Objection, Your Honor. He's asking for
8 a legal conclusion.

9 MR. ELLISON: I'm not -- he's in the Assessor's
10 Office; I'm asking for his experience.

11 MS. BRUNER: That is not experience ---

12 MR. ELLISON: And she called into -- I'm sorry, go
13 ahead.

14 MS. BRUNER: No, that's asking him to make a legal
15 conclusion on something that hasn't been
16 brought up.

17 THE COURT: He works in the Assessor's Office, and I
18 think he can testify -- well, my opinion is
19 that he can testify as to how they enforce the
20 statute.

21 MS. BRUNER: Thank you, Your Honor.

22 THE COURT: So I'm going to allow the question.

23 Q: Go ahead, Mr. Ziegler. What's your
24 understanding as to ---

25 A: My understanding is that we were supposed to

1 implement in 2010, and it got delayed to 2011.

2 Q: And the date of value was going to be December
3 31, 2008; is that correct?

4 A: That is the date of value that we used.

5 Q: And that is five years from the December 31,
6 2008 value; is it not?

7 A: December 31, 2003?

8 Q: Yes.

9 A: Okay. You said eight.

10 Q: From -- December 31, 2008 valuation is five
11 years from the December 31, 2003, valuation
12 date that the County Assessor's Office used in
13 its last general reassessment?

14 A: That is correct.

15 Q: And as far as you know, and you said this
16 earlier, the County's only authorized to delay
17 for a year; is that right? As far as you know?

18 A: I said we delayed implementation for 2004,
19 2005. Then it got delayed in 2010 to 2011. I
20 don't know the background of how it got
21 delayed.

22 Q: County council passed an ordinance, didn't it?

23 A: I believe so.

24 Q: You've seen that ordinance, haven't you? Well,
25 let's mark this as Respondent's, I think, 6.

1 MR. ELLISON: Is that right?

2 COURT REPORTER: That would be correct.

3 MR. ELLISON: I don't have multiple copies. I'm
4 sorry. Marked for identification only, please.

5 Q: Mr. Ziegler, have you seen this document
6 before? And I'll represent to you that it was
7 pulled off the County's website.

8 A: I do not remember reading this document.

9 Q: Do you remember -- does that, as far as you
10 know, correctly describe what happened with the
11 reassessment that we're here on today?

12 A: Yes.

13 MR. ELLISON: No further questions, Your Honor.

14 MS. BRUNER: Your Honor, I have no further questions
15 for Mr. Ziegler.

16 THE COURT: You don't?

17 MS. BRUNER: No.

18 THE COURT: Okay. Thank you. Thank you, Mr.
19 Ziegler..

20 MR. ZIEGLER: Thank you, Your Honor.

21 THE COURT: Ms. Bruner, you can call your next
22 witness.

23 MS. BRUNER: Yes, Your Honor. I would like to call
24 David Pope to the stand.

25 THE COURT: Before you take your seat if you'll face

1 the court reporter, raise your right hand, she
2 will swear you.

3 DAVID G. POPE, MAI, SRA, SGA, being duly sworn,
4 testifies as follows:

5 MR. POPE - DIRECT EXAMINATION BY MS. BRUNER:

6 Q: Good morning, Mr. Pope. How are you doing?

7 A: Doing great.

8 MS. BRUNER: Your Honor, I have got a copy for the
9 Court of Mr. Pope's appraisal that we're going
10 to be discussing. I've put it in a binder, and
11 I've got some additional copies just for your
12 ease of putting -- going through the document.

13 Q: Mr. Pope, would you please state your full name
14 for the record?

15 MR. ELLISON: Austin, I think I can make this a
16 little easier.

17 MS. BRUNER: Okay.

18 MR. DAWSON: We've got a notebook, Your Honor, which
19 has a copy of Mr. Pope's appraisal in it as
20 well as some other things that I think are
21 going to come in as well. Just for
22 identification, I'll hand the Court a copy of
23 the notebook. I think it will make things
24 easier in the long run.

25 MS. BRUNER: If this is for identification purposes

1 only ---

2 MR. ELLISON: That's all.

3 MS. BRUNER: --- I don't have a problem with that.

4 MR. ELLISON: That's all.

5 MS. BRUNER: Okay.

6 MR. ELLISON: I'm just trying to make it easier.

7 THE COURT: Thank you.

8 Q: Mr. Pope, will you please state your full name

9 for the record?

10 A: Yes. David Gardner Pope.

11 Q: And Mr. Pope, where do you reside?

12 A: High Point, North Carolina.

13 Q: In North Carolina?

14 A: Yes.

15 Q: And what do you do for a living?

16 A: I am a real estate appraiser.

17 Q: How long have you been appraising real estate?

18 A: Since 1983, so that would be 31 and a half

19 years.

20 Q: And where did you go to undergraduate?

21 A: Appalachian State University.

22 Q: Okay. And when did you become an appraiser?

23 A: Upon graduation in 1983.

24 Q: And what kinds of appraisals are you certified

25 to do?

1 A: I hold a general certification which allows me
2 to appraise under the state laws any type of
3 commercial property.

4 Q: That's good. And what kind of appraisals do
5 you generally do now?

6 A: Our firm and I, we specialize in hotels and
7 golf appraisals.

8 Q: Okay. And how long have you been with this
9 firm?

10 A: About 12 years, since about 2002.

11 Q: Okay. So I couldn't get my residence appraised
12 by you?

13 A: No, in my past years I have appraised houses,
14 but I have not done that in recent years. Our
15 firm only does hotel and golf properties.

16 Q: Okay. And so you have -- have you been to
17 visit this property?

18 A: Yes, I have.

19 Q: Okay. And do you have a copy of your appraisal
20 report?

21 A: Not in front of me.

22 Q: Okay.

23 MS. BRUNER: Your Honor, may I provide him a copy?

24 THE COURT: Yes.

25 Q: Mr. Pope, how many hotels would you say that

1 you have appraised in the last five years?

2 A: I don't know the exact answer, but as a firm,
3 we typically do between 150 and 200 hotel
4 appraisals a year.

5 Q: Okay.

6 A: Because I'm the principal owner of the firm and
7 I'm usually involved in every one of those.

8 Q: So your signature's on them?

9 A: Yeah, and I review them and are responsible for
10 them.

11 MS. BRUNER: Your Honor, at this time I would like
12 to ask the Court to qualify Mr. Pope as an
13 expert in real estate appraisals, specifically
14 in hotels.

15 MR. ELLISON: No voir dire.

16 THE COURT: Okay. Thank you.

17 MS. BRUNER: Thank you.

18 Q: Well, Mr. Pope, tell me about the property, the
19 subject property.

20 A: Yes. It's a Hampton Inn and Suites. As was
21 described earlier, it was under construction
22 2008, I think completed in April 2009, opened
23 for business, 115-rooms, very nice what we call
24 a limited or select service hotel.

25 Q: What does that mean?

1 A: When we talk about limited or select service,
2 it relates to -- let's just start with a full
3 service. Maybe describe what it's not and work
4 our way backwards. Full service hotel is
5 something like a downtown Marriott; it might
6 have a full restaurant, bar, a lot of meeting
7 space, we would tend to categorize as full
8 service. In other words, you can go and stay
9 and you can eat and have meetings and things
10 like that. A limited or select service hotel
11 tends to have fewer services available. In
12 this Hampton Inn and Suites they provide
13 complimentary breakfast in the morning and they
14 have a small amount of meeting space, so we
15 would tend to classify that as a limited or
16 select service type hotel.

17 Q: Okay. And so you visited this property. Do
18 you remember the date?

19 A: I believe it was August of this past year.

20 Q: Okay.

21 A: I've got the specific date but ...

22 Q: That's fine.

23 A: Okay.

24 Q: And you appraised this at a value of what date?
25 What was the retrospective date?

- 1 A: The date of value was December 31, 2008.
- 2 Q: Okay. Thank you.
- 3 A: Based on the assumption that it was complete as
4 of that date.
- 5 Q: Okay. And what did you determine the value for
6 this hotel is on that date?
- 7 A: My opinion of value based on those conditions
8 for the total going concern, inclusive of the
9 furniture and fixtures in the hotel, was \$10.2
10 million.
- 11 Q: Okay. But for tax assessment purposes, what
12 would that value, the allocation to real
13 property be?
- 14 A: The allocation, if you'll look on the bottom of
15 the second or third page, to the real property
16 it's \$8,861,350.
- 17 Q: Okay. Thank you. Now tell us about, just very
18 briefly, the different methods you would use to
19 appraise a hotel.
- 20 A: Well, as with any appraisal, there are three
21 basic methods are income, sales comparison, and
22 cost approach.
- 23 Q: Okay. And which method did you utilize to
24 determine your ultimate opinion of value?
- 25 A: This appraisal includes all three ---

1 Q: Right.

2 A: --- methods. Typically for a hotel we will
3 give primary consideration, especially one of
4 this quality, to the income approach, secondary
5 consideration to the sales comparison approach,
6 and virtually no consideration to the cost
7 approach.

8 Q: And why no consideration to the cost approach?

9 A: Because I think that the cost is somewhat
10 irrelevant in the minds of the person buying
11 the hotel. Investors typically buy and sell
12 hotels based on the amount of income they
13 produce. They're looking for a rate of return
14 on their investment, and that's the thing
15 they're most interested in. So replacement
16 cost becomes kind of irrelevant once they build
17 it.

18 Q: Okay. How about the sales comparison approach,
19 why was that not your primary approach?

20 A: Sales comparison approach is an okay approach
21 depending on the implementation of it. We
22 don't do it, a sales comparison approach in the
23 traditional appraisal since like someone
24 appraising a house would where they pick out
25 three comparables and make plus and minus

1 adjustments. In our sales comparison approach
2 we tend to focus on a multiplier of annual room
3 revenue because that's something that buyers
4 and sellers frequently -- and brokers, too, use
5 as a pricing mechanism in the marketplace. And
6 then we'll look at price per room just as a by-
7 product of that.

8 Q: Okay. And price per room, why is that
9 important?

10 A: It's not -- really not.

11 Q: Okay.

12 A: It's, you know, it's the relationship between
13 the income and the price per room that's most
14 important.

15 Q: Okay. Well then let's get into the description
16 of the subject property.

17 A: Okay.

18 Q: On page 24 of your appraisal report, that
19 middle paragraph, this -- can you read that
20 first sentence out for me, "The subject
21 property," it starts out with.

22 A: "The subject property was under construction in
23 late 2008 and opened for business in April
24 2009. This appraisal was based on the
25 hypothetical assumption that the property was

1 100 percent complete as of the December 31,
2 2008, appraisal."

3 Q: And you mentioned in the next couple of
4 paragraphs that this was a nice Hampton Inn.
5 Was it on the higher end of the Hampton Inn
6 scale?

7 A: Based on my experience it is a nice one.

8 MR. ELLISON: Your Honor, I don't mind some leading,
9 but this is getting a little excessive.

10 MS. BRUNER: I apologize. I'll be glad to taper it
11 back.

12 MR. ELLISON: Thank you.

13 MS. BRUNER: Absolutely.

14 Q: Mr. Pope, if you turn to page -- Mr. Pope, how
15 was the economic climate in the last quarter of
16 2008?

17 A: A bit of a mess.

18 Q: What does that mean?

19 A: Well, the economy was transitioning pretty
20 quickly to a recession, which ultimately became
21 the Great Recession, and it was a very
22 difficult time.

23 Q: And how does that factor into your report?

24 A: How was it reflected in my ---

25 Q: Yes.

1 A: --- appraisal?

2 Q: Yes.

3 A: Two ways: one, the appraisal, one of the basic
4 premises of the appraisal is a projection of
5 revenue which we think a buyer or seller might
6 have used to price the property.

7 Q: Okay.

8 A: In making that projection as of December 31,
9 2008, we were a lot more conservative than we
10 would have been under a more normal market
11 cycle ---

12 Q: Is that ---

13 A: --- not recessionary.

14 Q: Okay.

15 A: The second way, we used an overall
16 capitalization rate and the income approach and
17 a room revenue multiplier in the sales
18 comparison approach, and the overall
19 capitalization rate was higher than we would
20 have -- we were using in the months leading up
21 to that recession. So a higher capitalization
22 rate leads to a lower value.

23 Q: Okay. And in terms of the retrospective
24 appraisal, did -- how did that factor in? Were
25 -- you know, let's not go down that road yet.

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1 Hold on. If you don't matter -- if you don't
2 mind will you turn to page 46, please. We'll
3 get into -- start getting into the beginning of
4 your income approach. Under the title revenue
5 per available room RevPar.

6 A: Right.

7 Q: Would you just read me that first sentence.

8 A: "Revenue per available room is the most
9 important indicator as to the performance of a
10 hotel as it combines both occupancy and average
11 daily rate."

12 Q: How did you come up with the occupancy figure?

13 A: Well, in this appraisal we started with RevPar,
14 revenue per available room because it kind of
15 reflects both those things, occupancy and ADR.

16 Q: And what did you do to come up with the RevPar?

17 A: RevPar? Two things. One of the challenges in
18 the appraisal is the hotel had not been in
19 operation, you know, at the time of appraisal.
20 And typically if we're appraising an existing
21 property you've got a history that you can look
22 at. And buyers and sellers, in fact, give a
23 lot of emphasis to the historical operation of
24 a hotel. In this case the hotel was not in
25 operation so the challenge was how to make a

1 reasonable projection of revenue. So what I
2 did is we looked at several of the hotels in
3 the surrounding area that would have been
4 competitive with this property, we call it the
5 competitive set, and looked at what their
6 RevPar or revenue per available room had been
7 over the couple of years leading up to the day
8 of appraisal. One of the other things we did,
9 we also looked at all the Hampton Inn
10 properties in the Charleston market and looked
11 at what their revenues per available room were.
12 So from that -- and then we kind of factored in
13 the recession was kind of gearing up. We kind
14 of baked all that into a projection of RevPar.

15 Q: Okay. And where did you obtain -- on page 48,
16 the chart, the Hampton Inn RevPar in Charleston
17 area, where did you get that information?

18 A: Yes, the County, like most counties, collects
19 occupancy taxes. And the individual hotels
20 have to report to the County monthly what their
21 room sales were. So the County provided me
22 information on the Hampton Inn properties in
23 the county, as well as those other properties
24 on page 46 that I consider to be directly
25 competitive of this property.

1 Q: And I see on page 46 -- on page 46 and 51, how
2 would you utilize those numbers to come up with
3 your RevPar? Your range, if you will?

4 A: If you'll look, page 48, there's a discussion
5 where, you know, I look, number one, that the
6 RevPar's on page 46 for the competitive
7 properties, Fairfield Inn and Suites, the
8 Holiday Inn Express, and then over on page 48
9 I have the RevPar's for the various Hampton Inn
10 properties. And then if you'll look third
11 paragraph on page 48, my conclusion was a
12 RevPar projection of \$72 based on that
13 information. And that \$72 was -- again, the
14 goal of that was to try to reflect what the
15 economic times were at the date of appraisal.
16 If you'll notice, there are a couple of Hampton
17 Inn and Suites property listed on the top of
18 page 48 that were doing RevPar's of 2008 of \$81
19 and \$86 and my conclusion was 72.

20 Q: Thank you. And I do see there are no other
21 hotels up there in this -- the chart at the top
22 of page 48, just Hampton Inns. Why just
23 Hampton Inns?

24 A: Well, again, we want to look at it from two
25 perspectives. The chart on page 46 includes

1 some of the other hotels, and then the chart on
2 page 48 was focused just on Hampton Inn
3 properties in the market. So I wanted to kind
4 of go at it from two perspectives.

5 Q: Okay. Is there -- are there any hotels that
6 you wouldn't use in determining this RevPar?
7 Any brands?

8 A: Yeah, yeah. You know ---

9 Q: Give us an example.

10 A: --- lower tiered properties like Days Inn ---

11 Q: Okay.

12 A: --- or America's Best Value or EconoLodge or --
13 they're really not competitive with a Hampton
14 Inn property by virtue of their rates, the age,
15 the amenities they offer.

16 Q: Okay.

17 A: So the focus was on the properties that would
18 compete within, you know, the same price range,
19 same level of amenities.

20 Q: Okay. Now, and would that -- what other
21 factors would you look at in choosing things
22 for the competitive set, choosing hotels for
23 the competitive set?

24 A: Really the location, quality of the hotel, and
25 properties where, you know, if I'm a traveler,

1 what are my options in this -- if I want to
2 stay in this location, what are my options and
3 what hotels might I stay in.

4 Q: Okay. That sounds good. Thank you. Now we
5 get into your -- starting on page 50, the
6 occupancy projection as well as the ADR.
7 What's the ADR stand for?

8 A: ADR is the average daily rate.

9 Q: And what did you determine the ADR for this
10 hotel to be in 2008?

11 A: Let me put my pages back in order if I may.

12 Q: It's on page 52 if you'd like to look.

13 A: Yeah. So on page 51 there's a discussion of
14 average daily rates on a national level of
15 Hampton Inn and Hampton Inn Suites properties
16 and ---

17 Q: Now why would you use a national level?

18 A: Well, again, you know, the goal of this process
19 is to come up with a reasonable conclusion of
20 value and to do that you have a reasonable
21 conclusion of revenue.

22 Q: Okay.

23 A: So, you know, I've looked at local properties.
24 You know, ideally it would have been nice to
25 have, you know, three years of operating

1 history, but again, the hotel wasn't open. So,
2 you know, let's also look at what national
3 averages are for these types of hotels, this
4 brand. And again, really the goal of this is
5 to produce a reasonable projection of RevPar.

6 Q: So you, just for the Court's information, on
7 page 52 tell us what numbers you derived to
8 come up with on your annual revenue?

9 A: Yes. Page 52 at the bottom includes the
10 calculation. It shows sort of a summary of
11 what we've been discussing. Take 66 percent
12 occupancy times \$109 of ADR equals \$72 of
13 RevPar. And then the calculation where you
14 convert RevPar to annual room sales is on that
15 second line, the \$72 RevPar times 365 days per
16 year -- because RevPar is a daily RevPar -- 365
17 days per year and 115 rooms at this hotel. So
18 my final projection of room revenue is
19 \$3,022,200. And I might also just kind of
20 point out if you go back -- actually forward,
21 if you go forward to page 61, there's a chart
22 at the top, and again, based on the information
23 from the County and the hotels turning in their
24 sales reports, you know, I have all the 2008
25 room revenues for the Hampton Inn properties,

1 so my projection on this subject hotel is
2 \$3,022,000. And you can see in this chart how
3 that compares with the other Hampton Inns in
4 the market.

5 Q: Okay. In the market, is that ---

6 A: In the Charleston market.

7 Q: --- Charleston area?

8 A: Yeah.

9 Q: Okay. And the RevPar, revenue per available
10 room, is -- what is it again? Can you tell us?

11 A: If you take the total amount of revenue a hotel
12 generates, and if you do it -- you can do it a
13 couple of ways. You can do it on an annual
14 basis. RevPar is a daily rate, but on an
15 annual basis take the total amount of room
16 revenue, divide it by the number of rooms you
17 have available, which is 115, and then divide
18 it by 365 days in a year, it just says, on
19 average, this hotel generates \$72 of room
20 revenue per all my available rooms. And it's
21 a fairly common data point that's used in the
22 hotel industry.

23 Q: I see. And that's important to give you the
24 annual room revenue?

25 A: Uh-huh.

1 Q: What do you use that for?

2 A: Well, in the income approach. It's the
3 beginning of the income approach.

4 Q: Okay. And what's the next step?

5 A: So, you know, the pages up to page 51 are kind
6 of market trends where we talk about things
7 that are going on in the local market. The
8 goal of that is to come up with RevPar. So we
9 now skip ahead, fast forward to the income
10 approach.

11 Q: And that's where -- what cap rate did you come
12 up with for this property?

13 A: Cap rate?

14 Q: Yes.

15 A: Then we'll skip ahead. Cap rate ---

16 Q: Page 67, the capitalization rate.

17 A: Okay. On page 67 about two-thirds of the way
18 down the page, we talked about an overall
19 capitalization rate of 9.75 percent that's
20 applied to -- again, we used that room revenue
21 as the starting point, but you know, you go
22 through the process of calculating expenses and
23 come up with a net operating income the cap
24 rate gets applied to.

25 Q: Okay. And this -- how did you derive this cap

1 rate?

2 A: This cap rate? Couple ways. One thing that I
3 did in the process of this appraisal is I
4 wanted to see what we were actually doing in
5 December of 2008, so I went back through some
6 of our old appraisals just to look and see what
7 kind of cap rates were we using at that time.
8 So that was one thing I did. The other thing
9 is you'll see on page 66 there's a list of
10 sales of Hampton Inn properties primarily.
11 There are two more local, a Best Western and
12 Spring Hill Suites that we used. And there are
13 -- if you'll look out in that very last column
14 on that chart on page 66 it says OAR. And OAR
15 is overall rate, same as what we call like a
16 capitalization rate or cap rate; just different
17 terminology. And you can see these are the
18 sale properties, and they had various overall
19 capitalization rate indications. Then the
20 third thing I attempted to sort of pony in on
21 the right overall capitalization rate was over
22 on page 67. There are a number of surveys
23 where companies will actually go out and survey
24 investors of hotel properties and determine
25 what their criteria are in buying hotels and

1 pricing hotels. And on page 67, there's a
2 summary on one published by Price Waterhouse
3 Coopers. It comes out twice a year. And if
4 you'll look at 2008 under limited service
5 category, it shows the average respondents in
6 this survey indicated their target overall
7 capitalization rate was 9.83.

8 Q: And when you went -- back on 66, you went
9 through the hotel -- you put some various
10 hotels in there, why didn't you pick anything
11 other than Hampton Inns, Hampton Inns and
12 Suites?

13 A: In the hotel market there are different
14 categories of hotels, and there are also
15 different categories of buyers. Generally, in
16 the limited or select service world, anything
17 associated with a Hilton or Marriott franchise
18 is the gold standard. There are a number of
19 investors like Apple and Summit and some of
20 these other big REITs that buy hotels, and they
21 will only buy properties within those family of
22 brands because they're stronger brands.

23 Q: Okay.

24 A: Another tier of the market when you get down
25 more in the economy segment tends to be a

1 different set of buyers, you know, more the
2 owner/operators with different criteria and
3 even different requirements in terms of, you
4 know, what they're looking at.

5 Q: Okay. So all of that factored in on page 67
6 your capitalization rate that you've imposed is
7 what -- what did you come up with?

8 A: I don't think I imposed it.

9 Q: Not imposed. Not the right word. You
10 determined that the correct ---

11 A: My opinion.

12 Q: --- capitalization rate for this property was
13 what?

14 A: My opinion was at that time 9.75 percent, which
15 was higher than what it had been, what we had
16 been using in our office, you know, earlier in
17 the year.

18 Q: Absolutely.

19 A: So the goal, again, was to try to reflect what
20 was going on in the economy at that time.

21 Q: Okay. And why didn't you choose any sales that
22 were after 2009? I mean, why not after
23 12/31/08?

24 A: Well, it is a retrospective date of appraisal,
25 and the primary goal of a retrospective

1 appraisal is to try to somehow get your mind as
2 the appraiser back in that time frame what were
3 buyers and sellers thinking; what were they
4 doing? And so on December 31, 2008, they
5 wouldn't have had the benefit of information
6 that happened after that.

7 Q: Okay.

8 A: So again, you know, and unfortunately it was a
9 difficult time. So it's a little bit of a
10 challenge six years later to sort of slip your
11 mind back on (A) what was really going on about
12 that time of the appraisal. And, again, my
13 attempt to reflect that was, you know, looking
14 at old appraisals we had done as well as trying
15 to consider information as close to that date
16 as possible.

17 Q: Okay. Right under your determination, the
18 capitalization rate on page 67, you go into an
19 analysis about a loaded capitalization rate ---

20 A: Right.

21 Q: --- a loaded cap ---

22 A: Yes.

23 Q: --- cap load. And what is the purpose of that
24 in this -- in this appraisal?

25 A: Well, in this appraisal, one of the functions,

1 or the function of the appraisal is to
2 determine what is the proper level of taxation
3 for the property taxes. So one way to deal
4 with that is if you go back to page 59. On
5 page 59, that's what we call a pro forma or a
6 projection of income. And you'll notice
7 there's not a -- there's not a deduction for
8 property taxes. And property taxes are a
9 normal expense on a hotel operation. So
10 normally you would include a line item for
11 property tax -- real estate property taxes.

12 Q: And why didn't you include it here?

13 A: And so the way to -- it becomes kind of a
14 circular calculation because you're going to
15 apply an overall capitalization rate to the net
16 operating income. So if you don't know what
17 the taxes should be, every time you plug a
18 number in and calculate the value and then
19 calculate the taxes based on the value, the
20 number is circular. Now you can do it through
21 iteration. You can sort of close in on the
22 number, get the point where the taxes -- the
23 taxes equal the assessed value. The value
24 opinion and the assessed value and the taxes
25 kind of have to line up. So the way to deal

1 with that in these situations is to load the
2 cap rate, adjust the cap rate for what the
3 impact of real estate taxes are on value. And
4 that's what I did in that loaded cap rate
5 analysis.

6 Q: Is that typical in the income approach?

7 A: In property taxation issues, yes.

8 Q: Okay. And what is the load that you calculated
9 on page 68?

10 A: On page 68, it was 1.476 percent. And so I
11 added that to the 9.75 percent overall
12 capitalization rate that would have been
13 normal, you know, for properties where property
14 taxes had been taken out as an expense.

15 Q: Okay.

16 A: So that adjusted cap rate was 11.226 percent.

17 Q: Okay. That seems logical. Then we move in to
18 the sales approach ---

19 A: Yes.

20 Q: --- which you utilized next. You don't go into
21 much detail. Why is that?

22 A: Sales comparison approach?

23 Q: Uh-huh.

24 A: Sales comparison approach we use in an
25 appraisal of this type of facility more as a

1 secondary approach. It is based on multiples
2 of room revenue, and that is a commonly used
3 pricing mechanism in the market.

4 Q: Okay.

5 A: So that's our primary approach.

6 Q: Now in terms of all of your approaches, can you
7 rely on transactions after your date of value?

8 A: Well, again, my goal is not to. You know, if
9 maybe something closed in January that might
10 have been under contract in December of '08,
11 maybe in that kind of situation, but I
12 generally would not, you know, go too far
13 beyond, you know, a month or two ---

14 Q: Okay.

15 A: --- if I can help it.

16 Q: And what was your determination of value for
17 the sales comparison approach?

18 A: Sales comparison approach was -- I used a
19 multiple of 3.5 times that room revenue. It
20 was \$10.6 million.

21 Q: Okay.

22 A: And again, that does reflect the real property
23 as well as the beds and the TV's and those
24 kinds of things.

25 Q: So for tax assessment purposes, would all that

1 be included?

2 A: It would not, so we -- you know, there is an
3 allocation that we talked about at the
4 beginning.

5 Q: Now then we move on to your cost approach.

6 A: Okay.

7 Q: How do you start with the cost approach?

8 A: Cost approach normally starts with an estimate
9 of value for the land.

10 Q: Okay. And do you use any of the other
11 determinations you've come up with in income
12 or sales comparison in the ---

13 A: In other words, does the cost approach dictate
14 the -- anything? No.

15 Q: Okay.

16 A: I mean, really in this case cost approach, I
17 think I've said it a couple times here and in
18 court, is really just presented more as an
19 informational type approach. Since it was a
20 new hotel, I just felt like it was necessary at
21 least to address cost.

22 Q: Okay. And what is your reproduction cost
23 estimate on page 87?

24 A: Inclusive of my land value estimate it was
25 \$12,030,000.

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- 1 Q: Okay. I would like to draw your attention
2 actually to page 66. Let's go back to your
3 direct capitalization ---
- 4 A: Okay..
- 5 Q: --- portion. In that first paragraph under the
6 chart, you have the hotel sold in December of
7 2008 with an implied cap rate of 7.9 percent.
8 Where did you come up with that 7.9?
- 9 A: We're on page 66?
- 10 Q: Yes, sir.
- 11 A: All right. And we're talking about that sales
12 summary chart ---
- 13 Q: Yes, sir.
- 14 A: --- hotels?
- 15 Q: Under there in that first paragraph.
- 16 A: Are you referring to that Best Western?
- 17 Q: Yes.
- 18 A: Okay.
- 19 Q: The one in Ladson. I'm wondering where you
20 came up with the 7.9 percent?
- 21 A: That was provided, that sale, by another
22 appraiser.
- 23 Q: Okay.
- 24 A: And the numbers that that was based on was, if
25 you look -- if you look across the column, I

1 know the -- I apologize the print's small --
2 you'll see a net operating -- you'll see a room
3 revenue, 968,000 and a net operating income of
4 294,000, 70 percent expense ratio.

5 Q: Right.

6 A: And I will point out, yesterday I had a chance
7 to look at Mr. Rosen's appraisal, and he's used
8 the same sale and has a ten percent cap rate.

9 Q: How does that ---

10 A: And the difference -- let me explain the
11 difference, number one ---

12 Q: Okay.

13 A: --- and what I think maybe the difference is.

14 Q: Okay.

15 A: There -- in his analysis, the room revenue,
16 where I've got 968,000, they had a -- I think
17 he had a million and some dollars and his
18 expense ratio was a little different, so his
19 implied overall capitalization rate was ten
20 percent. One of the challenges is when you --
21 when we as appraisers are analyzing sales, we
22 get information from a variety of sources.
23 And, you know, in my experience, if you talk to
24 the buyer and the seller and the broker on a
25 transaction, they'll all report different

1 capitalization rates. You know, some base
2 capitalization rates on trailing 12 numbers,
3 you know, the year that just passed. Some base
4 capitalization rates on projected income. And
5 others, you know, they'll do different
6 variations of things. So it's not uncommon for
7 there to be some variation in this process.
8 And quite frankly, I like Mr. Rosen's ten
9 percent I think is more realistic for a Best
10 Western than 7.9 percent.

11 Q: Okay.

12 A: I think it makes a lot more sense at ten
13 percent than it does eight.

14 Q: Okay.

15 A: And it still fits within -- you know, our
16 Hampton Inn and Suites is a much better product
17 property than that Best Western, so it still
18 would be appropriate and its capitalization
19 rate would be less than what somebody would
20 have been thinking on that Best Western.

21 Q: Thank you. Now let's just talk generally about
22 the selection of sales you made for cap rates.
23 You didn't choose -- all your hotels have
24 interior corridors. Why is that?

25 A: Well, there was a big shift in the market in

1 the 1990s. So companies no longer build
2 exterior corridor hotels, you know, the ones
3 that you pull the car up to, drive in, like the
4 one I stayed in last night. And some of the
5 reasons is safety. You know, it's -- but the
6 more modern hotel, they all have interior
7 corridors.

8 Q: Right.

9 A: And what we're finding is, you know, Hilton,
10 Marriott and some of those will not re-license
11 these older exterior corridor hotels. So
12 again, if we're trying to reflect, you know,
13 what's the value of this Hampton Inn and
14 Suites, we should focus primarily on interior
15 corridor hotels.

16 Q: Okay. When you say re-license, what does that
17 mean?

18 A: All these hotels have franchise -- well, not
19 all of them, but the ones that are like a
20 Hampton Inn or something, they're franchised.
21 They have an agreement with Hilton to provide
22 services, you know, marketing services and
23 things like that. And like Hilton will not re-
24 license or renew a franchise agreement on an
25 older exterior corridor hotel.

1 Q: Okay.

2 A: So like in the one I stayed last night, they
3 were building a brand new Hampton Inn and
4 Suites across the highway from it to replace
5 the one that's going to be losing its license.

6 Q: Okay. You also picked -- why didn't you pick
7 any -- choose any hotels for your analyzation
8 of cap rates, the sales -- selection of sales
9 that were, you know, 20 or 30 years old?

10 A: Again, the primary goal is just to reflect
11 sales that were as similar as possible. You'll
12 notice there is one sale, I think 1989,
13 Chantilly, Virginia.

14 Q: Uh-huh.

15 A: But it's more about -- you know, hotels if --
16 like a Hampton, if you're going to stay in
17 Hampton's program, you have to continually do
18 renovations.

19 Q: Okay.

20 A: And so the age sometimes gets -- it's not
21 necessarily the overriding consideration
22 because hotels are frequently updated and
23 renovated and, you know, they have to kind of
24 maintain their brand standards.

25 Q: And what is your, we talked about it, but your

1 overall opinion of value for this hotel for a
2 date of value of 12/31/08 for the Hampton Inn
3 and Suites that you appraised?

4 A: If you go to page 90, it kind of reconciles all
5 this. My conclusion of the total value,
6 assuming again it was completed on December 31,
7 2008, and operating at a stabilized level, was
8 \$10.2 million. And then the allocated, if you
9 move forward to page 96, I took out the FF&E.
10 The FF&E's, the TV's, the beds, the sofas, the
11 dressers, the personal property, because it's
12 taxed separate from the real property. And I
13 took -- the allocation I used here was the
14 amount that had been filed by the property
15 owner in 2011, as I recall. So if you take
16 that from the total \$10.2 million, it leaves
17 \$8,861,350 for the real property.

18 Q: Is that your -- in your expert opinion, the
19 value of the -- the fair market value of the
20 hotel?

21 A: That is my opinion of value based on the
22 conditions we've talked about.

23 Q: Okay. And we talked -- this is just kind of a
24 follow up, but we talked about the
25 capitalization load. Do you include taxes in

- 1 A: Yes.
- 2 Q: Good. Great. And we've met before, I think
- 3 one time walking around the property.
- 4 A: Right.
- 5 Q: I don't know that we've met any other time.
- 6 A: I think that's the only time that I recall.
- 7 Q: Well, that's my misfortune. I'm sorry.
- 8 A: You're memorable. I would have remembered you.
- 9 Q: Uh-oh. I won't go there. If I lead on that I
- 10 will be in real trouble. Okay. Let's look at
- 11 the first page of your appraisal, your cover
- 12 page.
- 13 A: Okay.
- 14 Q: September 8, 2014. You prepared this appraisal
- 15 with a value date as of -- excuse me, December
- 16 31, 2008; is that right?
- 17 A: Yes.
- 18 Q: Not December 31, 2009, but December 31, 2008 --
- 19 -
- 20 A: That's correct.
- 21 Q: --- right? And this report, and we'll talk a
- 22 little bit more about this later, is prepared
- 23 in accordance with the Uniform Standards of
- 24 Practice for Appraisal, which is affectionately
- 25 known as USPAP?

1 your -- in the ---

2 A: Net operating income?

3 Q: Yes, do you include it in the NOI if you're

4 going to load ---

5 A: Not if you're going to load the tax. If you're

6 going to load the capitalization rate, you

7 don't include it as an expense ---

8 Q: Okay.

9 A: --- in net operating income.

10 Q: Okay.

11 MS. BRUNER: May I have just a moment, Your Honor?

12 THE COURT: Yes.

13 MS. BRUNER: Your Honor, nothing further at this

14 time.

15 THE COURT: Okay. Mr. Ellison, before you begin

16 your cross, let's take a five-minute break.

17 MR. ELLISON: Sure.

18 (Break from 11:56 a.m. until 12:04 p.m.)

19 THE COURT: Mr. Pope, you're still under oath. Mr.

20 Ellison.

21 MR. ELLISON: Yes, Your Honor. Thank you.

22 MR. POPE - CROSS EXAMINATION BY MR. ELLISON:

23 Q: Mr. Pope, let's go to the cover page. Do you

24 have a copy of your appraisal up there with

25 you?

1 A: That's correct.

2 Q: Okay. USPAP basically provides the standards
3 that tell you how you're supposed to prepare a
4 report like this; is that right? Basically?

5 A: They -- in general terms.

6 Q: Right.

7 A: The basic idea is ...

8 Q: So go to the first page of the report, cover
9 page dated September 8, 2014; I think it's the
10 following page. Let's look in the middle of
11 the first paragraph, five lines down, it says
12 that the appraisal is subject to hypothetical
13 condition that assumes the hotel was complete,
14 open, and fully stabilized in the market as of
15 December 31, 2008; you see that?

16 A: That's correct.

17 Q: Okay. And again, we'll talk more about it
18 later, USPAP let's you make these hypothetical
19 assumptions, right?

20 A: Under certain conditions, yes.

21 Q: And basically -- and we can get into the USPAP
22 definition, and we will to a degree.

23 A: Okay.

24 Q: But USPAP lets you assume that something
25 existed that didn't exist at the time; is that

1 right?

2 A: That's correct.

3 Q: And you base your work on the assumption that
4 what didn't exist did exist, in essence?

5 A: That's correct, yes. Yes.

6 Q: That's basically what a hypothetical condition
7 is.

8 A: Sure. That's what a hypothetical condition it.

9 Q: And a hypothetical condition here actually, to
10 parse words with you just a little bit, and I
11 can't help it, you're actually making three
12 different assumptions here if you look at this
13 sentence, right? And you need to answer for
14 the court reporter. Just nodding your head
15 doesn't get us there.

16 A: What -- the assumptions are it's ---

17 Q: We're going to go there in just a second. The
18 three assumptions are from that sentence,
19 number one is that the hotel was completed; is
20 that right?

21 A: Right.

22 Q: Number two is that it was open?

23 A: Right.

24 Q: Number two. And number three, that it was
25 fully stabilized?

1 A: Yes.

2 Q: Okay. So you made -- you're calling it one
3 assumption, but it's really three; is that
4 right?

5 A: I don't recall I calling it one assumption, but
6 that is -- that is my basic premise of this
7 appraisal. You ---

8 Q: So there are really three -- I'm sorry.

9 A: It's all in one -- it's -- that sentence covers
10 it.

11 Q: That sentence covers it, and there's three ---

12 A: This is the premise on which I'm ---

13 Q: Right.

14 A: --- developing my opinion of value for this
15 property.

16 Q: Right. Okay. And it also says at the bottom
17 here on this first page, it says that the
18 attached report is subject to the assumptions
19 and limiting conditions set forth, and it's
20 prepared -- to summarize for a moment -- in
21 accordance with USPAP, correct?

22 A: Correct.

23 Q: And it also says here that the appraisal was
24 prepared in accordance with the engagement
25 letter that you got from Ms. Bruner, right?

1 A: Right.

2 Q: Okay. Let's talk about the engagement letter,
3 okay.

4 A: Okay.

5 MR. ELLISON: And, Your Honor, this has been marked
6 for identification in the notebook Exhibit 1.
7 I'm sorry, I think it's marked as -- I think
8 it's marked as either -- is it one or two?

9 COURT REPORTER: The engagement letter?

10 MR. ELLISON: Yeah, it's 1 or 2.

11 COURT REPORTER: It's 1.

12 MR. ELLISON: It's 1. Okay. Great.

13 Q: Yeah, for identification only. This is a copy
14 of the engagement letter that you worked under
15 in doing this work; is that right?

16 A: My screen's a little fuzzy, so I apologize.

17 Q: You don't have it up there?

18 A: I've got that book ---

19 Q: That's fine. Let's work ---

20 A: It was in July.

21 Q: --- it's up on the screen.

22 A: Yeah. So let me -- what I recall, the ultimate
23 ---

24 Q: No, no. I don't want to ---

25 A: Okay.

1 Q: I don't want to turn it into a memory test.
2 A: Okay.
3 Q: So I'm going to have to stand up here with you,
4 and I apologize for that.
5 A: Let me move my water so you don't spill it.
6 MR. ELLISON: Judge, do you have it? The engagement
7 letter. 9/24, that's right. Now -- okay.
8 Q: And that exhibit, Exhibit 1 for identification,
9 that's a copy of the engagement letter between
10 you and the Charleston County Assessor's
11 Office, right?
12 A: Between the assessors?
13 Q: I'm sorry.
14 A: Yes.
15 Q: All right. Let's look on page two.
16 A: Okay.
17 Q: The first paragraph. It says that you are to
18 make the effective date of the appraisal
19 December 31, 2008; you see that?
20 A: Yes.
21 Q: Okay.
22 A: Let me clarify one thing too.
23 Q: Sure.
24 A: I believe there was a subsequent engagement
25 letter with the county attorney.

- 1 Q: Okay.
- 2 A: I don't recall; this was in July.
- 3 Q: This is the only one I've been provided and I
- 4 asked.
- 5 A: Okay. Okay.
- 6 Q: Okay.
- 7 A: I think ---
- 8 Q: If it was, I don't know about.
- 9 A: Okay.
- 10 Q: I am not trying to trick you.
- 11 A: And I'm not trying to be ---
- 12 Q: I know.
- 13 A: Yeah, but I'm just telling you kind of what I
- 14 recall.
- 15 MR. ELLISON: But what I want to do is -- and you're
- 16 yellowing up that screen something awful, Mr.
- 17 David.
- 18 MR. DAVID: I know, I see that. I'm trying to get
- 19 rid of it.
- 20 MR. ELLISON: It sort of looks like one of my kids
- 21 when they were in the coloring stage. I
- 22 apologize.
- 23 Q: But let's look at this first paragraph on the
- 24 top of page two. It says that the valuation
- 25 date is to be December 31, 2008. That's right?

- 1 A: Right.
- 2 Q: Okay. Then it says, Based on the physical
3 condition of the property as of December 31,
4 2010; is that right?
- 5 A: That's what it says.
- 6 Q: And that's what you did?
- 7 A: Yes, assuming it was completed, yes.
- 8 Q: But that date, it was assuming it was complete
9 as of December 31, 2010. Then it goes further
10 and says, Essentially, the effective date of
11 the appraisal will be December 31, 2008, based
12 on the hypothetical condition as if the subject
13 property were completed and open for business
14 on that date even though the property did not
15 open until April 2009. And that's what you
16 did?
- 17 A: That's correct, yes.
- 18 Q: And it doesn't mention stabilization here.
19 There are only so many times that you can
20 mention the same words without it getting --
21 turning a 115-page appraisal into about a 200-
22 page appraisal.
- 23 A: And you know how we like to do that.
- 24 Q: Absolutely. Absolutely. But again, we're
25 making those three hypothetical, make believe

1 assumptions for you to do your work?

2 A: Yes, that's right.

3 Q: Now, you're aware that the hotel was under
4 construction as of December 31, 2008?

5 A: Yes, I am.

6 Q: Okay. Do you have any reason to think that it
7 wasn't approximately 65 or 70 percent completed
8 as of that date?

9 A: Just based on what has been described in Court,
10 I would assume that to be the case. I
11 obviously was not there on that date.

12 Q: Obviously.

13 A: Right.

14 Q: You didn't actually inspect the property ---

15 A: No.

16 Q: --- until you and I met in ---

17 A: August.

18 Q: --- August, September 2014?

19 A: Right.

20 Q: But if -- you've looked at Mr. Rosen's
21 appraisal, right?

22 A: Right.

23 Q: I didn't say you reviewed it; I said you've
24 looked at it?

25 A: I looked at it briefly yesterday.

1 Q: Okay. And just to be clear for the Court, your
2 assignment is dictated by the terms of this
3 engagement letter, right?

4 A: Yes, they are.

5 Q: All right. Under USPAP, if you were engaged to
6 analyze Mr. Rosen's appraisal, that would be a
7 separate engagement, would it not ---

8 A: Yes.

9 Q: --- under USPAP, right?

10 A: Yes.

11 Q: And since you prepared -- under USPAP, because
12 you prepared an appraisal of this property, it
13 would be inappropriate for you to accept that
14 assignment because it would call into question
15 your objectivity, correct?

16 A: Restate that question.

17 Q: Under USPAP --- and I'll break it down for you.

18 A: Okay.

19 Q: Try to make it a little easier. Under US --
20 you prepared this report under USPAP, right?

21 A: Right.

22 Q: Okay. And I apologize for the yeses and nos,
23 but we need it for the court reporter. Under
24 USPAP, you have been engaged to value the
25 property as objectively as you can subject to

1 these make believe conditions that the assessor
2 gave you, right?

3 A: Yeah. I don't particularly like the word make
4 believe.

5 Q: I didn't say you liked the word, but that's
6 what a hypothetical condition is.

7 A: Hypothetical is making an assumption, yes, we
8 were engaged.

9 Q: I can call it other things besides make
10 believe, some of which Ms. Bruner really would
11 object to. Okay. But your engagement is
12 defined by that engagement letter, right?

13 A: That's correct.

14 Q: And you're trying to be as -- I'm not
15 criticizing, you're trying to be as objective
16 as you can, right?

17 A: Sure. Right.

18 Q: USPAP distinguishes between being objective and
19 being an advocate; does it not?

20 A: Sure.

21 Q: Okay. And if you are reviewing somebody else's
22 work, you're being an advocate; are you not?

23 A: No.

24 Q: If you've been engaged by a party to review
25 somebody else's work?

1 A: You're not being an advocate, no.

2 Q: It's a separate assignment under USPAP; is that
3 correct?

4 A: It would be a separate assignment, yes.

5 Q: And you haven't been engaged to do that?

6 A: It's a private -- an appraisal review, no, I
7 have not.

8 Q: Okay. Now, each of these three -- you don't
9 like make believe, I like make believe -- these
10 hypotheticals, okay, each of these assumptions
11 increases the value of what was actually there
12 on the ground as of December 31, 2008; is that
13 correct?

14 A: Yes.

15 Q: You've looked at Mr. Rosen's report. Did you
16 see that there was a pay application dated
17 December 31, 2008, attached as one of the
18 addenda to the report?

19 A: I did see that, yes.

20 Q: Do you remember that it said that the job was
21 essentially 65 percent complete as of December
22 31st?

23 A: I guess based on that particular contract with
24 ---

25 Q: Right.

- 1 A: --- that contractor, yes. I don't recall the
2 numbers, but I did see the ...
- 3 Q: Okay.
- 4 A: Yeah.
- 5 Q: But if it says 65 percent -- it says what it
6 says.
- 7 A: If it's there, yes.
- 8 Q: Okay.
- 9 A: And I ---.
- 10 Q: I'm sorry. I'm cutting you off.
- 11 A: I can't cite the numbers is what I'm trying to
12 say.
- 13 Q: I'm not asking you to.
- 14 A: But I saw the thing that it clearly stated that
15 the contract had not been totally fulfilled.
- 16 Q: Right. And you have no reason to question
17 whatever that number is on that document, do
18 you?
- 19 A: No.
- 20 Q: You weren't there, I wasn't there, none of us
21 were there. Well, Ms. Brown was there, but
22 none of the rest of us were there. So if you
23 assume that the hotel was completed, that
24 obviously adds value to the property; does it
25 not?

1 A: Yes.

2 Q: If you assume that it's open for business, that
3 also adds value to the property, right?

4 A: Yes.

5 Q: If you assume that the property was stabilized,
6 that also adds value to the business, right?

7 A: You're distinguishing between the property and
8 the business?

9 Q: I'm going to get there in just ---

10 A: Okay.

11 Q: --- a second.

12 A: But it adds value, let's leave it ---

13 Q: It adds ---

14 A: We'll get there?

15 Q: I'm going to -- I'll go there in just one
16 moment.

17 A: Okay. Sure.

18 Q: Okay. But it adds value?

19 A: Right.

20 Q: So each of those three make believe assumptions.
21 that the assessor asked you to do your work on
22 adds value to what we're dealing with?

23 A: Each of those three hypothetical conditions
24 does add value.

25 Q: Okay. Now, let's go to what you were asking me

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1 about just a moment ago, although I'm supposed
2 to be the one asking the questions. One of the
3 courses you took in your CV was called
4 Fundamentals of Real Estate Valuation; was it
5 not?

6 A: Yes.

7 Q: And that was a course that was first offered by
8 the Appraisal Institute in 2011; is that right?

9 A: Let's look at my CV.

10 Q: That's ---

11 A: Yeah.

12 Q: Okay. Let's do.

13 A: Let's ...

14 MR. ELLISON: It's on the addenda, Your Honor. The
15 top of the page in the addenda, it's the second
16 page of Mr. Pope's CV. On the top of the page
17 it says "Hotel Appraisal Experience." Do you
18 have it, Your Honor?

19 THE COURT: Yes.

20 Q: And let's go down to Appraisal Institute
21 courses, Mr. Pope.

22 A: Yes.

23 Q: Okay. Again, not a memory test. None of that.
24 Okay. See the -- I think it's the fifth one
25 down, Fundamentals of Separating Real Personal

1 Property and Intangible Business Assets; you
2 see that?

3 A: Yes.

4 Q: Okay. That course ---

5 A: I have taken that.

6 Q: I'm sorry. Go ahead.

7 A: Yes, I have taken that.

8 Q: And you took it in 2011?

9 A: Correct.

10 Q: And that was the first year that the course was
11 offered by the Appraisal Institute?

12 A: Not entirely.

13 Q: Well, I'm not talking about Course 800; I'm
14 talking about this course.

15 A: Okay. Okay. Yeah. The Appraisal Institute
16 ...

17 Q: Yeah, I don't want to ---

18 A: Yeah, okay.

19 Q: We'll really confuse the Court if we get into
20 Course 800, but this is the -- when you took
21 this course?

22 A: Yeah, that's when I took it, and that was -- it
23 had just ---

24 Q: Just started.

25 A: --- initial offerings, yes.

1 Q: Okay. And in this course, they didn't tell you
2 how to separate the value, did they?

3 A: No.

4 Q: In fact, the Appraisal Institute steered away
5 from that because it's pretty controversial,
6 correct?

7 A: It's an extremely controversial topic.

8 Q: Right.

9 A: Yes.

10 Q: Right. And there are advocates -- well, there
11 are at least two schools of thought; let's
12 leave it at that.

13 A: Yes, there are.

14 Q: Okay. But what it also -- in that course, you
15 get into an emphasis on a -- well, scratch
16 that. You're familiar with the treatise "The
17 Dictionary of Real Estate Appraisal," right?

18 A: Yes.

19 Q: I mean, to the extent that there's a Bible in
20 the industry, this is it, correct?

21 A: It's the, I guess people refer to the Appraisal
22 of Real Estate as the Bible; that's certainly

23 ---

24 Q: Okay.

25 A: --- another ---

- 1 Q: We've got that too.
- 2 A: I know. I saw that earlier. Yes.
- 3 Q: Okay.
- 4 A: But the dictionary is certainly accepted.
- 5 Q: Okay.
- 6 A: Yes.
- 7 Q: Well, so this is heavily relied upon?
- 8 A: This is authoritarian -- yes, it's a good
- 9 source, yes.
- 10 Q: To use some words that you were using earlier,
- 11 this is, if not the gold standard, this is the
- 12 diamond standard, correct?
- 13 A: It's the standard, yes, sir.
- 14 Q: Okay. In this dictionary and in that course,
- 15 they use a term "market value of a going
- 16 concern"; do they not?
- 17 A: Yes.
- 18 Q: Okay. The market value of a going concern
- 19 consists of four different things; does it not?
- 20 It consists of value of dirt, value of
- 21 improvements, value of personal -- of tangible
- 22 personal property, and value of intangible
- 23 personal property, right?
- 24 A: Yes. I would characterize it as three things.
- 25 Q: Well, you're not distinguishing ---

- 1 A: Dirt and buildings I would put as real
2 property.
- 3 Q: I'm not trying to ---
- 4 A: Yeah, I understand.
- 5 Q: I'm not trying to -- let's help the Court with
6 this a little bit because I know why you're
7 saying that.
- 8 A: Right.
- 9 Q: Okay. And first, the reason why I -- if you
10 are filing a personal income tax return, there
11 are different depreciation schedules for dirt
12 and for improvements; are there not?
- 13 A: Yes.
- 14 Q: Okay. And in broad -- this is why I
15 distinguish between the two. Last time I
16 checked, you can't depreciate dirt, right?
- 17 A: That's right.
- 18 Q: But you can depreciate the value of, for income
19 tax purposes, of improvements, right?
- 20 A: Yes.
- 21 Q: And in very, very broad strokes, you can
22 depreciate it over 40 years, right, as a
23 general rule?
- 24 A: I'm not a tax attorney, so I ---
- 25 Q: Do you have any reason to question that?

- 1 A: I don't have any reason to question it.
- 2 Q: But you can depreciate it over a long period of
- 3 time, correct?
- 4 A: Right.
- 5 Q: I'm sorry?
- 6 A: Yes.
- 7 Q: Okay. There's a different -- okay. I'm just
- 8 trying to walk through this. There's a
- 9 different depreciation schedule for tangible
- 10 personal property; is there not?
- 11 A: Yes.
- 12 Q: And it's much shorter than a depreciation for
- 13 improvements, right?
- 14 A: For real property.
- 15 Q: Yes. Okay. Is that a correct statement?
- 16 A: Yes.
- 17 Q: All right. And then the Internal Revenue
- 18 Service lets you also depreciate intangible
- 19 personal property; does it not?
- 20 A: Yes.
- 21 Q: Okay. And to ---
- 22 A: I don't think it would be characterized as
- 23 intangible personal property, but intangible
- 24 business property or ---
- 25 Q: Okay. And for the Court's benefit, the IRS

1 would call that good will, right?

2 A: Right.

3 Q: And the Appraisal Institute, certainly in the
4 fundamentals course, takes issue and gets into
5 some technicalities between whether to call it
6 intangible personal property or to call it good
7 will; does it not? But essentially it's the
8 same thing?

9 A: It's the -- yeah.

10 Q: But I didn't say that if I'm speaking at one of
11 those courses, so. All right. So you've got
12 these components consisting of the market value
13 of the going concern, right?

14 A: Right.

15 Q: And what you did initially is you came up with
16 a value and said -- and we can pull the page if
17 you want -- of the market value of the going
18 concern, right?

19 A: Of the total going concern, because that's the
20 thing -- place you have to start because ---

21 Q: Right.

22 A: --- that's the thing that's bought and sold in
23 the marketplace. In other words, these hotels
24 trade with the furniture and fixtures in place
25 and the real property. Now there's a huge

1 debate about to what extent, if any, there is
2 intangible business value.

3 Q: I'm not going to really go very far into that
4 ---

5 A: Okay.

6 Q: --- other than to note this Court has
7 recognized intangible value in other cases.

8 A: Okay.

9 Q: And what the course talks about -- and so you
10 come up and it's identified this way in your
11 report, you've valued the market -- I'm sorry
12 -- the market value of the going concern,
13 that's where you started?

14 A: That's where I started.

15 Q: But what we're charged with doing, with what
16 the Court's charged with doing is coming up
17 with the value of the dirt and the
18 improvements, right?

19 A: In this situation ---

20 Q: In this situation.

21 A: --- yes, that's right.

22 Q: And you made up those three assumptions to try
23 to get there? Those three hypotheticals?

24 A: In valuing the total going concern ---

25 Q: Yes.

1 A: --- it was based on those three hypothetical --

2 -

3 Q: Yes.

4 A: --- conditions.

5 Q: Yes.

6 A: And then there is an allocation at the end
7 between the real property and the tangible
8 business personal property.

9 Q: And you allocated a certain number to the dirt
10 and the improvements, right?

11 A: Right.

12 Q: And you allocated something to the tangible
13 personal property, right?

14 A: That's correct.

15 Q: And then you chose to attribute nothing to the
16 intangible value?

17 A: That's correct.

18 Q: And in the course, Fundamentals of Separation,
19 they teach you to do what they regard as real
20 estate businesses, you know, these going
21 concerns you talked about to the Court a few
22 minutes ago, that are most likely to have
23 intangible value associated with them; do they
24 not?

25 A: They talk about businesses that have the

1 potential to have that.

2 Q: That's right.

3 A: That's correct.

4 Q: And one of those businesses that they spent a
5 lot of time talking about is hotels, right?

6 A: Yeah. Again, there's a huge debate ---

7 Q: I'm not getting into it.

8 A: Okay.

9 Q: Now, if you changed any of those three
10 hypothetical conditions that are in the
11 engagement letter and in your report, the value
12 of the real estate would change as of December
13 31, 2008; would it not?

14 A: Yes.

15 Q: Okay. Now let's talk -- now let's give another
16 example. There was nothing that said -- Ms.
17 Bruner could have said to you if she had chosen
18 -- I'm not saying she would have -- Mr. Pope,
19 I want you to assume that the capitalization
20 rate at this time period was six percent. If
21 she told you to do that, you could do that;
22 could you not?

23 A: No.

24 Q: You can't do that?

25 A: No.

1 Q: You can't make -- you can't assume something
2 like that if you were instructed to do so under
3 USPAP?

4 A: I think it would be an extraordinary condition
5 ---

6 Q: Extraordinary condition.

7 A: --- that you might ...

8 Q: You wouldn't like it.

9 A: I don't even think you -- I don't know. You
10 know, the hypothetical, you know, it can't be
11 totally out in left field.

12 Q: Okay. Okay. Fair enough. But let's talk
13 about the condition of the market that you
14 describe using all sorts of interesting
15 language in various places in the appraisal.
16 I think you said earlier -- or strike that.
17 We'll get there in a moment. Let's talk about
18 stabilization for a second. When you say
19 stabilization, do you mean -- in response to
20 some of the questions on direct you said that,
21 gee, I wish I had three years worth of
22 financials, remember that?

23 A: Yes, I did say that.

24 Q: Okay. And three years of financials, if you
25 had them, would let you basically deal with

1 that assumption of a stabilized value; would it
2 not?

3 A: It would certainly help.

4 Q: Okay. To get to stabilization costs money;
5 does it not?

6 A: Yes.

7 Q: Okay. And it takes time, right?

8 A: Yeah. Various amount of time depending on ...

9 Q: And you have no idea sitting here today as to
10 whether this property has ever achieved
11 stabilization, do you?

12 A: I've only looked at this value on a
13 retrospective basis. I've not looked at it
14 going forward.

15 Q: Right. But you don't know whether it has
16 achieved stabilization or not, do you?

17 A: I would suspect it has, but I ---

18 Q: You don't know.

19 A: --- I don't -- I have not seen the financials.

20 Q: You don't know?

21 A: Right.

22 Q: And you don't know how long it took if it did,
23 do you?

24 A: No.

25 Q: And you don't know how much it cost, do you?

1 A: No.

2 Q: Okay. And in bad economic times, as a general
3 proposition, it costs more money to achieve
4 stabilization; does it not?

5 A: I think you have to back up and define what is
6 stabilization.

7 Q: Why don't you give us a definition.

8 A: Let me tell you what not ---

9 Q: To you.

10 A: --- what my view of it is.

11 Q: I'm good with that.

12 A: Stabilization, when a property opens for
13 business it takes a little while to build their
14 business to a certain level, to what you would
15 expect. You know, if you open a -- my
16 daughter's in the bakery business. The day
17 they opened the door they had very few
18 customers come through. Now, couple years
19 later the business has sort of grown to a point
20 where you would expect a business. Hotel's the
21 same way. You open the door -- hotels have a
22 lot of contracts with local businesses. That
23 takes a little time to get those contracts in
24 place. Stabilization to me is when the
25 property has reached a level of occupancy or

1 RevPar or even average daily rate that's
2 consistent with where you would expect it to be
3 in the marketplace relative to its competitors.

4 Q: Can we simplify that a little bit more? Would
5 you agree with me that stabilization is when
6 the property has achieved the revenue that you
7 can expect it to achieve in the marketplace so
8 we don't get into the terminology ...

9 A: I think it's important -- the distinction is
10 important ---

11 Q: Okay.

12 A: --- because we go through recessions and even
13 good times as we're in now and properties will
14 ebb and flow with the market. And so my view
15 of stabilization is when this property has been
16 open for business long enough that it's sort of
17 following the trend of the general market that
18 it's stabilized, you know, where you would
19 expect it to be kind of following relative to
20 its competitors. Where it's important in this
21 appraisal is in December 2008, the market was
22 in a bad place ---

23 Q: That's where we're going.

24 A: --- or was headed into a bad place.

25 Q: It was clearly headed -- it was either in or

1 headed to a bad place?

2 A: It was definitely on its way. And so the
3 question was what level would you expect this
4 property, had it been opened long enough, where
5 would you expected it had been in December
6 2008, you know, relative to the market. Not
7 where it would have been relative to, you know,
8 good economic times or, you know, a situation
9 like we're in or normal economic times.

10 Q: But you got out of the question of how much it
11 would cost to get there or how long it would
12 take by making up, subject to the instructions
13 of the Assessor's Office, that you were dealing
14 with a property that's already been stabilized,
15 right?

16 A: I wouldn't say got out of. That's your term,
17 not mine.

18 Q: Okay.

19 A: Normally, in an assessment ---

20 Q: You didn't -- let me rephrase it, make you a
21 little happier, I think, okay? You did not
22 calculate how much it would cost to get to
23 stabilization, did you?

24 A: No, I did not.

25 Q: You did not calculate the cost in terms of

1 dollars that it would take to get to
2 stabilization, did you?

3 A: That's the same as cost, right?

4 Q: Not quite. Now I'm going to get -- parse with
5 you a little bit. Okay. You didn't calculate
6 the cost in terms of dollars of what it would
7 take to get to stabilization, did you?

8 A: I did not do that calculation.

9 Q: And you did not calculate in terms of time how
10 long it would take to get to stabilization, did
11 you?

12 A: No.

13 Q: Okay. You just assumed it was already
14 stabilized, right?

15 A: Right.

16 Q: Okay. And let's go with the market conditions.
17 And we're going to talk about some of the
18 language, which I find fascinating, Mr. Pope,
19 in your appraisal given the position that the
20 Assessor's Office has taken about the wonderful
21 times we were in in 2008. And I want to go to
22 a couple of pages. Let's go to page 48. And
23 I won't be excessive though my friend, Ms.
24 Bruner, might think something else. On page 48
25 of your appraisal, you talk about how many

1 people could consider 2008 to be a tale of --
2 how did you word it -- really a tale of two
3 years; you see that, the second paragraph?
4 A: I believe I was quoting a news article, yes.
5 Q: Yeah. But you wouldn't have put it in there if
6 you didn't think that there was validity to it?
7 A: Well, it was quoted from what I would consider
8 a reliable source.
9 Q: Right.
10 A: Yes..
11 Q: Okay. You wouldn't disagree with that
12 statement ---
13 A: No, not at all.
14 Q: --- would you not? Okay. All right. And you
15 would agree with me, would you not, based on
16 what's in your appraisal that it sort of -- the
17 dividing line between the tale of two years was
18 really between the third quarter and the fourth
19 quarter; would you not?
20 A: Yes.
21 Q: Okay. And in the third quarter, without
22 getting into all of it because I'll get into it
23 later, a lot of really, really bad things
24 happened; did they not?
25 A: They did, yes.

- 1 Q: Lehman Brothers failed, right?
- 2 A: Right.
- 3 Q: AIG basically failed, right?
- 4 A: My wife was an employee there, so I know that
- 5 well.
- 6 Q: Oh, I'm sorry. Very sorry. Fannie Mae failed;
- 7 did it not?
- 8 A: Yeah.
- 9 Q: Freddie Mac failed; did it not?
- 10 A: Sure.
- 11 Q: Lots more risk in the last quarter of 2008 than
- 12 there was in the first three quarters; was
- 13 there not?
- 14 A: Yeah. And the recession had begun, but it
- 15 certainly accelerated going into the third
- 16 quarter, no doubt.
- 17 Q: To use nice language, we were in a storm in the
- 18 fourth quarter of 2008; would you agree with
- 19 that?
- 20 A: Yes.
- 21 Q: We didn't know how bad it was going to be or
- 22 how long it was going to last, but we were in
- 23 a storm?
- 24 A: Probably didn't realize it until I saw the
- 25 movie two years later.

1 Q: Which one?

2 A: I can't remember the name. There's been a
3 couple.

4 Q: Well, when you get off the stand you'll have to
5 tell me. Okay. All right. Let's look on page
6 50 of your report. Let's look at the second
7 paragraph on that page; you see that?

8 A: Uh-huh.

9 Q: Could you read into the record how you
10 described the state of the economy beginning
11 with the second sentence going to the -- but
12 not including the last sentence? Or actually
13 the last two sentences. Start with, On October
14 27, and then go to initially anticipated.

15 A: "On October 27, 2007, Smith Travel Research" --
16 -

17 Q: Let's slow down for the court reporter, please.

18 A: --- "forecast 2009 occupancy to decline 3.5
19 percent from year end 2008. As indicated in
20 the trends section of this report Price
21 Waterhouse" -- referring to that article I had
22 in the ---

23 Q: The Court has it. Right.

24 A: --- "Price Waterhouse Cooper's survey was
25 projecting occupancy decline 1.75 percent for

1 2009."

2 Q: Keep going. One more sentence.

3 A: "However, by December 2008, it was apparent
4 that the recession was going to be deeper than
5 initially anticipated."

6 Q: Okay. Let's go to page 54. In the first
7 paragraph on page 54, on the fifth line, the
8 line begins "Cost of the subject," see the
9 sentence that begins "Given"?

10 A: "Given the deteriorating economic conditions,
11 it is our opinion that the value of the
12 completed project" -- the hotel project --
13 "would have been less than the cost to build as
14 demonstrated further in the income approach
15 section of the appraisal report."

16 Q: Okay. And construction of this project had
17 actually begun well before the fourth quarter
18 2008; had it not?

19 A: Yes.

20 Q: Before the economic conditions had
21 deteriorated, correct?

22 A: Again, you know, the economic conditions began
23 to deteriorate early 2008. I don't know when
24 the project started.

25 Q: Okay. Well, we can get into that later.

- 1 That's fine. But we know it began before the
2 fourth quarter?
- 3 A: I would assume so if they were 65 percent
4 complete.
- 5 Q: Okay. Let's look at page 81. Bear with me for
6 one moment. Next to the last sentence on the
7 page, you see that sentence, it begins
8 "Further"?
- 9 A: Yes.
- 10 Q: Would you read that sentence into the record?
- 11 A: "Further, land prices likely declined as the
12 recession was getting underway in 2008."
- 13 Q: And in your calculation of the value of the
14 land in your cost approach, you made no
15 adjustment for any downward pressures on the
16 price of land, did you?
- 17 A: Yes, I did.
- 18 Q: Looking at the chart on the top, you have price
19 per square foot. All of these with the
20 exception of the last sale, which was
21 presumably under contract prior to the
22 recession beginning, you made adjustments to
23 the price per square foot there?
- 24 A: Well, let's take their subject land sale. The
25 subject site was purchased in December 2006 ---

1 Q: Right.

2 A: --- as the market was continuing to accelerate
3 for \$1,253,224. And my value conclusion on --
4 as of December 31st ---

5 Q: I'm talking about the land only; I'm not
6 talking about the value of ---

7 A: That's where I am.

8 Q: Okay.

9 A: Yeah, land only. December 30th -- 31, 2008, my
10 value opinion then was \$990,000 for the site
11 that had been purchased in 2006 for 1,253,000.

12 Q: Let's look at page 88, again, with the general
13 description of market conditions. Look at the
14 second paragraph. Could you read from the
15 second sentence of the second line to the end
16 of the paragraph, please.

17 A: I'm sorry. Read from where again?

18 Q: In the second paragraph on page 88 of your
19 report.

20 A: Right.

21 Q: Second sentence, and it begins in the middle of
22 the second line. Read into the record from
23 there to the end of the paragraph.

24 A: Okay. "However, sales of hotel assets began to
25 taper off significantly during the fourth

1 quarter of 2008 due to the unfolding banking
2 crisis and concern over the economy. Jones
3 Lang LaSalle Hotels reported a total hotel
4 transaction value in the US of \$8.2 billion in
5 2008, an 82 percent decline over 2007. Hotel
6 Brokers International, the nation's largest
7 hotel brokerage organization, reported a 67
8 percent decline in hotel real estate
9 transaction activity through the first three
10 quarters of 2008."

11 Q: And it's your belief that these various
12 paragraphs that we've read out of your report,
13 as far as you know, accurately described the
14 economic conditions back in the fourth quarter
15 of 2008?

16 A: Yes.

17 Q: Now, Mr. Pope, you would agree with me that, at
18 least in part, the capitalization rate is a
19 reflection of risk, is it not, at least in
20 part?

21 A: Yes, sure.

22 Q: And the riskier times yet, or the worst times
23 yet, as a general rule, the higher
24 capitalization rates go up, is that -- that's
25 a general rules?

1 A: There are a lot of factors to that. Risk ---

2 Q: As a general rule?

3 A: As a general rule, there is a correlation
4 between capitalization rates and perceived
5 levels of risk.

6 Q: And as risk goes up, so does capitalization
7 rates, as a general rule, right?

8 A: Yes. Capitalization rates, the higher they go
9 obviously the lower the value of the property.
10 It's kind of inverse of what most people ...

11 Q: Mr. Pope, as a general proposition, market
12 rates and bond yields are reported on a daily
13 basis; are they not?

14 A: Market rates and bond yields, yes, they are
15 reported on a daily basis.

16 Q: If I want to know what a bond rate is today, I
17 mean, there's lot of ways to do it. You can
18 call a stockbroker, can you not?

19 A: I can do it on my smart phone.

20 Q: You have the app, I don't. Okay. But you can
21 get them on a daily basis?

22 A: Right.

23 Q: Okay. And they change all the time. All
24 right. Mr. Pope, this document has been marked
25 for identification as Respondent's 5, see that?

- 1 A: Yes, I see it.
- 2 Q: Marked for identification only. And this
- 3 document in broad strokes describes how market
- 4 rates and bond yields progressed as a general
- 5 proposition over a period of time; does it not?
- 6 A: Yes, it does.
- 7 Q: Okay. And you would agree with me that rates
- 8 of return on liquid investments are generally
- 9 lower than they are on illiquid investments, as
- 10 a general rule; would you not?
- 11 A: As a general rule ---
- 12 Q: Right.
- 13 A: --- there's some ...
- 14 Q: Corporate bonds are pretty liquid; are they
- 15 not?
- 16 A: Yes.
- 17 Q: Okay. Looking at the bottom of what's been
- 18 marked for identification as Exhibit 5, the
- 19 bond rate on corporate bonds for BAA, which are
- 20 lowest investment grade, right?
- 21 A: It's been a long time since I studied finance
- 22 at Appalachian State University, the 1980s.
- 23 Q: Fair enough.
- 24 MS. BRUNER: Your Honor, it's been asked and
- 25 answered; he said he doesn't know, so. I mean

1 you know ---

2 THE COURT: I did hear the witness say he didn't
3 know, but -- so let's proceed and let him
4 answer to the best of his ability.

5 MS. BRUNER: Thank you.

6 Q: BAA are investment grade; are they not?

7 A: I don't know.

8 Q: Okay. Do you have any reason to think they
9 aren't?

10 A: I don't know.

11 Q: The BAA rates as reported in this document in
12 December 2007 was 6.65 percent, see that?

13 A: Yes.

14 Q: And in December 2008, that bond rate had skied
15 to 8.46 percent, see that?

16 A: Yes.

17 Q: And we went from a period of, shall we say,
18 lower risk to a period of much higher risk,
19 right?

20 A: Yes.

21 Q: And this spike in the bond rates is consistent
22 with your earlier testimony that rates of
23 return on safe investments would go up as risk
24 increased, correct?

25 A: I think you're being -- rephrase the question.

- 1 Q: Okay. Fine, no problem. I'll break it down
2 for you. Capitalization rates are in one sense
3 a measure of risk, correct?
- 4 A: For real property.
- 5 Q: For real property.
- 6 A: Okay.
- 7 Q: They're not bond rates, they're -- right?
- 8 A: They're not bond rates.
- 9 Q: They're not bond rates.
- 10 A: Yeah, they're two distinct things.
- 11 Q: Real estate is an illiquid investment, right?
- 12 A: It has less liquidity, yes.
- 13 Q: A lot less liquidity, correct?
- 14 A: Yes. It does take longer to dispose of real
15 property.
- 16 Q: Fair enough. Okay. You increased your
17 capitalization rate from what you were doing -
18 earlier in the year to what you think you would
19 have done later in the year with all these
20 assumptions because, in part, of a reflection
21 of the risks in the marketplace; is that
22 correct?
- 23 A: Yes.
- 24 Q: That's also consistent with what's reported
25 here as the increase in the corporate bond rate

1 from December 2007 to December 2008, correct?

2 A: I guess the question -- and I'm assuming where
3 you're headed with this is you want to make a
4 correlation between corporate bond rates ---

5 Q: Not direct.

6 A: --- and cap rates?

7 Q: Not direct.

8 A: Well, that's what you're implying.

9 Q: No. Let me ask the questions ---

10 A: Okay.

11 Q: --- Mr. Pope. Is it consistent -- is the
12 increase in the corporate bond rates consistent
13 with the increased risk?

14 A: An increase in corporate bond rates, as I
15 understand it -- again, it's been a long time
16 since I studied finance at Appalachian State --
17 is reflection of corporate earnings and the
18 risks associated with BAA bonds, or it could be
19 AAA bonds, but they're all related to corporate
20 enterprises. And certainly as risk increases,
21 it takes more yield to encourage people to
22 invest in those bonds.

23 Q: Mr. Pope, I appreciate the explanation, but I'd
24 like an answer to my question, okay.

25 A: Well, ask it again.

- 1 Q: The increase in the corporate bond rate is
2 consistent with increased risk; is it not?
- 3 A: Yes.
- 4 Q: And the bond rate here increased, according to
5 this report, by almost 200 basis points, right?
- 6 A: From?
- 7 Q: From December '07 to December '08?
- 8 A: Yes, just shy of 200 basis points.
- 9 Q: Just shy of 200 basis?
- 10 A: Sure.
- 11 Q: And you increased your capitalization rate by
12 less than 100 basis points, correct?
- 13 A: That's correct.
- 14 Q: Now I want to make two -- it's my turn to make
15 two assumptions, okay. Let's assume for the
16 moment that your instructions did not include
17 the authority to value the improvements as they
18 existed in the condition that they were in in
19 December 2008. Make that assumption. If you
20 couldn't look at that, you'd be left with land
21 value; would you not?
- 22 A: I'm sorry, I got lost in your question.
- 23 Q: If you couldn't look -- I want you to make an
24 assumption for me this time. If you couldn't
25 include the value of the improvements in your

1 appraisal, then you'd be left with the value of
2 the land; would you not?

3 A: I'm assuming the real question is if I'd been
4 just asked to appraise the value of the land --
5 -

6 Q: No, I'm asking you to value the property and
7 you can't include the value of the
8 improvements.

9 A: So you're left with land.

10 Q: That's what you're -- and that's what you'd
11 have to value, correct?

12 A: If that's what the assignment conditions
13 dictated.

14 Q: Okay. And if the assignment conditions
15 dictated that you couldn't value the
16 improvements until the certificate of occupancy
17 was issued, then you'd be left with land; would
18 you not?

19 A: I guess -- obviously there's caveats to that.

20 Q: Well, why don't you answer the question first,
21 then you can give me ---

22 A: I'm going to try.

23 Q: Okay.

24 A: If there were partially completed improvements
25 and the assignment was value the land, ignore

1 the improvements, you'd just value the land.

2 Q: Right.

3 A: If you said give me an as-is value on December

4 31st and you've partially completed

5 improvements ---

6 Q: Yes.

7 A: --- you would have land and a partially

8 completed building that would have ---

9 Q: Right.

10 A: --- additional value.

11 Q: Right.

12 A: Okay.

13 Q: But if it said you can't consider the

14 improvements until they're finished and a

15 certificate of occupancy is issued, you're left

16 with land; are you not?

17 A: If that's what the assignment conditions

18 dictated, yes.

19 MR. ELLISON: No further questions.

20 MS. BRUNER: Your Honor, just a few follow-up

21 questions.

22 THE COURT: I'm sorry?

23 MS. BRUNER: Just a few follow-up questions.

24 THE COURT: Sure.

25 MR. POPE - RE-DIRECT EXAMINATION BY MS. BRUNER:

1 Q: Mr. Pope, if you would, please turn to the
2 front of your report. There's an engagement
3 letter dated September 8, 2014.

4 A: When you say engagement letter, we call it a
5 transmittal letter?

6 Q: The transmittal letter.

7 A: Just to be clear, this is the document you're
8 ---

9 Q: Okay. And what does that transmittal letter
10 describe?

11 A: It's basically describing the assignment
12 condition and the value opinion.

13 Q: Okay.

14 A: Kind of just summarizes.

15 MR. ELLISON: Where are you?

16 MS. BRUNER: I'm sorry. The very first page of the
17 ---

18 MR. ELLISON: Yes. Okay.

19 Q: So what does this letter represent in terms of
20 your report that's here with us today?

21 A: It's essentially just a summary of the
22 assignment and the results, my opinions.

23 Q: So this is what you did ---

24 A: Yes.

25 Q: --- to arrive at the value?

1 A: These two pages.

2 Q: Okay. And did you factor in the declining
3 economy in 2008 in your report?

4 A: Yes.

5 Q: Okay.

6 MS. BRUNER: Your Honor, the only thing I'd like to
7 do is move to -- into evidence Petitioner's
8 Exhibit 17, which is the appraisal of Mr. Pope,
9 move it as our 17.

10 THE COURT: Mr. Ellison?

11 MR. ELLISON: No objection.

12 THE COURT: Okay. It's admitted.

13 (Petitioner's Exhibit Number 17 was admitted into
14 evidence.)

15 MS. BRUNER: No more questions, Your Honor.

16 THE COURT: Okay. Thank you. Thank you, Mr. Pope.

17 MS. BRUNER: Your Honor, the Petitioner doesn't have
18 any more witnesses.

19 THE COURT: Okay. Thank you. It looks like it's
20 about ten minutes until 1:00. And how many
21 witnesses do you have?

22 MR. ELLISON: One.

23 THE COURT: You've got one witness?

24 MR. ELLISON: Yes, ma'am.

25 THE COURT: Okay. Let's take -- if you all don't

1 mind, let's take maybe a 45-minute lunch break
2 so that we can make sure that we have adequate
3 time to conclude this today.

4 MR. ELLISON: Okay.

5 THE COURT: Okay. So we're going to reassemble ...

6 MR. ELLISON: 1:45, Your Honor?

7 MR. DAWSON: 1:45?

8 THE COURT: Yeah, 1:45. That doesn't give us -- but
9 1:45 is good.

10 MR. ELLISON: Thank you, Your Honor.

11 MS. BRUDER: Thank you, Your Honor.

12 (Lunch break from 12:54 p.m. until 1:52 p.m.)

13 THE COURT: Okay. If everyone is ready, Mr.

14 Ellison, you can proceed to call your first
15 witness.

16 MR. ELLISON: Well, Judge, I think for purposes of
17 the record I'm required to make a motion,
18 unless you tell me I'm not. For purposes of
19 preserving the record, I think I'm required to
20 make a directed verdict motion. The basis for
21 that motion is I don't think the County has
22 proven their case. They're required -- we can
23 put the statutes back up -- to give the Court
24 the value of the property as of their valuation
25 day, which at least until today, and I don't

1 know whether it's changed today, but it's
2 always been December 31, 2008, for purposes of
3 the equalization and county-wide reassessment
4 program. They implemented it in '11, but for
5 the various reasons, and I think the Court's
6 already heard a lot of this, they delayed by
7 effectively two years, which created this gap.
8 But their valuation date has always been
9 December 31, 2008. As of December 31, 2008,
10 they have tendered in their case an appraisal
11 that makes three assumptions, which are all
12 very material, none of which are true as of
13 December 31, 2008. They are the petitioners;
14 they have the burden -- I have the case law and
15 I can give the Court cites if you want -- they
16 have the burden since they are the petitioner
17 in this case of establishing the value of the
18 property as of December 31, 2008. And Mr.
19 Pope's assignment doesn't value -- based on the
20 engagement letter, doesn't value the property
21 as of that date. As such, they have failed to
22 carry the burden as of matter law, and
23 therefore, I need to make a motion for a
24 directed verdict on the basis that they haven't
25 proven what the value of the property is. It's

1 really that simple.

2 THE COURT: Okay. Mr. Dawson.

3 MR. DAWSON: Thank you, Your Honor. I would let Ms.

4 Bruner do it but she did most of the talking

5 this morning so I figured I needed to

6 participate at some level. Appreciate the

7 motion. I have a couple of responses. First,

8 Your Honor, there's clearly evidence on the

9 record from Mr. Pope with regard to his

10 appraisal. And while there is an engagement

11 letter, there is equally a transmittal letter

12 and that transmittal letter reflects exactly

13 what he did. And, Your Honor, that is in the

14 evidence in the record, it is in evidence. And

15 he articulated from that witness stand what his

16 assignment was, and his assignment was to do a

17 retrospect appraisal based on a hypothetical

18 condition. And, Your Honor, that's in the

19 record; therefore, we believe we met the

20 standard required to defeat a motion for

21 directed verdict. Equally, Your Honor, Mr.

22 Ziegler testified to value the County assigned

23 as part of the reassessment process, and that

24 is equally in evidence. So there's two pieces

25 of evidence from two witnesses articulating

1 what the County believes the fair market value
2 is of the property based on the County's
3 position with regard to South Carolina law.
4 Let me talk about the law for a second, Your
5 Honor. As I said earlier, this case has been
6 characterized by the respondents as the law in
7 South Carolina is whatever existed on a piece
8 of property on the date of value is what's
9 suppose to be valued. Your Honor, that's just
10 not the law in South Carolina. That is the
11 fundamental problem here, and as I said
12 earlier, if you address the issue of whether or
13 not a piece of property is subject to the
14 reassessment, dirt and improvements, then we
15 move forward and determine whether its value --
16 or what its value is. Their position has been
17 because it didn't exist on the date of value,
18 it is not subject to reassessment. Our
19 position is it does not have to exist because
20 the concept of highest and best use is not
21 predicated on what something is; it's
22 predicated on what its highest and best use is.
23 Mr. Pope testified, and it's in his appraisal,
24 that the highest and best use of that property
25 as of December 31, 2008, is a hotel. We

1 believe the law in South Carolina is that date
2 simply fixes two things. It establishes a
3 market value for properties throughout
4 Charleston County; and two, you have to
5 determine the highest and best use. And, Your
6 Honor, I will obviously address this issue
7 again in my closing, but you're familiar with
8 a case that we tried before you sometime ago;
9 it's the LMP decision. And one of the issues
10 that was raised in that case was this concept
11 of when do you determine the highest and best
12 use. Highest and best use is not based on what
13 someone could have done on the date of value --
14 excuse me, I apologize -- based on the last
15 reassessment. Highest and best use is
16 determined on the lien date. The lien date,
17 although Mr. Ellison says Ms. Bruner
18 mischaracterized it, she had said universally
19 the lien date in this case is 12/31/08. Her
20 reference to 12/31/09 was referenced saying the
21 reassessment statute in the five-year cycle
22 statute refers to a fourth year. She simply
23 said the fourth year is December 31, 2009,
24 referencing the fourth year, not referencing
25 the date of value. Your Honor, our position

1 has been articulated from that witness stand
2 that the highest and best use of that property
3 as of the lien date is a hotel. And because it
4 was a hotel that was given a certificate of
5 occupancy before we completed reassessment end
6 of 2009, it is subject to taxation. That is
7 the petitioner's position in this case. We
8 believe we put evidence on the record to
9 support that, and therefore, a directed verdict
10 would not be appropriate in this case.

11 MR. ELLISON: Again, Your Honor, I don't know
12 whether you want all this now or whether you
13 want it later. But I think one of the reasons
14 why the case law on this area is getting so
15 garbled is because of efforts made to confuse
16 things and to mix and match concepts. We have
17 never said that this property wasn't subject to
18 reassessment. In fact, it is subject to
19 reassessment. The Charleston County Assessor
20 picked the reassessment case. They picked
21 December 31, 2008. You value the property like
22 a part of equalization as it existed on that
23 date just like you reassess every other
24 property in the county as of that date. LMP,
25 for instance, was -- and there are lots of

1 other differences with it but LMP was an
2 interim appeal. It was not part of a general
3 reassessment. You can't equalize, which the
4 statute requires, unless you look at the value
5 of the property as of that date. I appreciate
6 Mr. Dawson wanting to refer to use,
7 particularly since the LMP case, which I'm sure
8 we're going to hear a lot about, the parties
9 and the courts all wondered, if you look at
10 every one of the reported decisions, they all
11 wondered why everybody in a commercial case
12 stipulated the applicability of a residential
13 statute. But again, that's why it gets garbled
14 here. The statutory framework here is very
15 simple. General reassessment, equalization,
16 one date for everybody. That's what the
17 statute says, plain as day. You assess the
18 property as of the value as of that date, what
19 was there. No hypothetical conditions, no made
20 up things. You know, I wonder whether we would
21 be here if the property had burned down after
22 the fact. Don't know, but that's not this
23 case. This case is general reassessment,
24 equalization, what's the value of the property
25 as of the date for everybody. And that -- they

1 haven't carried their burden. Their burden is
2 to show what the value was, not a fictional
3 hotel with three major assumptions, all of
4 which Mr. Pope says distorts the value,
5 although he didn't use the word distort, he
6 used the word increased. If you assume the
7 hotel is finished, that increases the value.
8 If you assume it's open, that increases the
9 value. If you assume that the certificate of
10 occupancy had issued and it was stabilized,
11 that increases the value. But that's not what
12 was there. The County has the ability under
13 the case law and under the statutes,
14 particularly under the statutory framework
15 that's been given to us by the legislature, the
16 County Assessor can reassess, but they have to
17 do it after this one year where it's as part of
18 general reassessment they have to live with the
19 condition of the property as of that date.
20 They can come back after the fact because the
21 certificates of occupancy have been issued.
22 But if you're going to do a general
23 reassessment, you can't pick and choose your
24 dates, and that's what the County is doing
25 here. And as a matter of law what they hired

1 Mr. Pope to do was make these three assumptions
2 which are contrary to the law and give us a
3 value, and that's what they've tendered. So
4 that's why I think the directed verdict is more
5 than just a perfunctory one, but I understand
6 how -- I obviously respect however the Court
7 wants to treat it. Very different than LMP.

8 MR. DAWSON: Your Honor, if I may respond?

9 THE COURT: I'm going to allow it.

10 MR. DAWSON: Thank you, Your Honor. I guess I want
11 to be very succinct. I said this when we first
12 started, this is a law case and not a fact
13 case. You've heard repeatedly again, law, law,
14 law, what is the law in South Carolina with
15 regard to valuing the improvement. That's what
16 this case is about, whether the law allows the
17 assessor to value the improvements when it did
18 not exist on the date of value, but it did
19 exist by the end of the reassessment period.
20 That's what this case is about. If the answer
21 to that question, which there's sufficient
22 evidence in the record to support the position,
23 we can't testify as to the law so there's no
24 witness I could ever put up here that could
25 testify as to the what the law is in South

1 Carolina because only the Court does that. You
2 decide the law. The facts are not in dispute.
3 We all agree December 31, 2008, was the date of
4 value that was used. We all agree that there
5 was a building permit issued before the date of
6 value and that the hotel was completed after
7 the date of value but before, as the statute,
8 says 12-43-217, the end of the fourth year of
9 the reassessment. Those facts aren't in
10 dispute. No one's disputed it. And when the
11 respondents if the Court decides to deny the
12 motion puts their case up with their one
13 witness, which is an expert, it's not going to
14 offer anything more on that question. What the
15 respondent's witnesses are going to offer is
16 what we think the value was if the Court
17 determines that the improvements should be
18 valued for reassessment. The answer is simple:
19 it's either yes or no. And if the answer is
20 no, they shouldn't, then it's only going to be
21 the land and that's what the BAA did. If the
22 answer is yes, those improvements pursuant to
23 South Carolina law should go on the tax rolls
24 as part of the reassessment then the Court has
25 to decide what value do I assign to it. You've

1 got one number from one side, one number from
2 the other side and you're going to find that
3 there are some similarities and differences and
4 the Court will ultimately decide what that
5 number is. We're hiding from the respondents
6 the fundamental question he believes the law is
7 garbled now. Well, then that says that this is
8 a legal question for which he claims the law is
9 garbled. We don't think the law is garbled.
10 The law is under 12-43-217, which deals with
11 reassessment. The law is 12-37-670, which says
12 once a property is fit for its intended use, it
13 goes on the books. So the question becomes
14 does it go on the books in our case in the
15 reassessment year, whereas Mr. Ellison has
16 asked you in his opening for you to simply skip
17 the reassessment year so we have a situation
18 where the improvements go on the books in '10,
19 they go off the books in '11, and then back in
20 '12 he's asking you to order that we now
21 reassess outside of our reassessment cycle that
22 property for '12. That is what he's asking you
23 to do. And we don't believe that's a correct
24 characterization of South Carolina law. He
25 cannot point to a case that says you're

1 supposed to do it that way. There's no statute
2 that says you do it that way. That's the
3 problem, and that's why we're in front of the
4 Court today, to answer that fundamental legal
5 question does the improvement become a part of
6 the reassessment or not. It is that simple,
7 and that's why we don't believe directed
8 verdict is appropriate here because we've met
9 our factual burden of demonstrating what we
10 believe the value is as of December 31, 2008,
11 that's on the record; therefore, you cannot, in
12 our opinion, grant directed verdict based on
13 how he's framed his case.

14 MR. ELLISON: Your Honor I'll be very -- and I
15 apologize.

16 THE COURT: Yes, please be brief.

17 MR. ELLISON: Very brief.

18 THE COURT: Okay.

19 MR. ELLISON: The law is -- when you determine the
20 law, you still have the factual question as to
21 what the value is. You're going to have
22 competing opinions as to what the value is no
23 matter how you apply the law. The problem with
24 the County's position and the way they
25 presented their case is they had a -- they did

1 not tender Mr. Ziegler as an expert. They
2 basically just authenticated records from the
3 Assessor's Office. Their expert was hired to
4 appraise something that did not exist. That's
5 why the directed verdict matters here. And to
6 say, as my friend and colleague, Mr. Dawson,
7 has said that we're taking it off the books,
8 we've never said that. We're not saying that.
9 They've created the problem. They created the
10 problem by delaying the implementation of the
11 reassessment. They're the creators of it, but
12 the law is very clear you have to value
13 everything the same way on a uniform date, and
14 they chose a date when there wasn't a hotel on
15 the property. They do pick it back up later,
16 but nobody -- again, I'm hearing new things all
17 the time. We have never suggested that you
18 take the property off the books and that it's
19 not subject to general reassessment. But it's
20 subject to it in accordance with the statutory
21 framework, not the way the County wishes it was
22 written.

23 THE COURT: Thank you. Mr. Ellison, I think that
24 the County has presented enough evidence that
25 I am not going to grant your motion for a

1 directed verdict at this time. So, at this
2 time, if you will call your witness, we'll
3 proceed.

4 MR. ELLISON: No problem, Your Honor. I'd like to
5 call Mr. Rosen to the witness stand.

6 THE COURT: Mr. Rosen, if you'll come to the witness
7 box. Before taking your seat, face the court
8 reporter, raise your right hand and she will
9 swear you.

10 JOSEPH B. ROSEN, MAI, SRA, having been duly sworn,
11 testifies as follows:

12 MR. ELLISON: And, Your Honor, as a preliminary
13 matter since you've denied the motion, I need
14 to formally tender some motions -- or excuse
15 me, tender some exhibits that I introduced for
16 identification purposes only previously. I
17 think they were all authenticated. It was all
18 satisfied, but specifically Ordinance Number
19 1586 I think we've marked for identification as
20 Exhibit 9. I'm sorry. I've got the wrong
21 number. I think that was Exhibit 6; and then
22 Exhibit 5, which was the corporate bond rates;
23 and Exhibit 1, the County's engagement letter
24 to Mr. Pope. Those are the three I think we
25 all marked for identification. At this point

1 in the proceedings, I'd like to move that they
2 be in there.

3 THE COURT: Ms. Bruner? Mr. Dawson?

4 MR. DAWSON: Yes, Your Honor. No objections to
5 Respondent's Exhibit Number 6 which is the
6 County ordinance. Your Honor, no objections to
7 Respondent's Number 1, which is the Pope
8 letter. I do object to Respondent's 5, which
9 is the bond rates. Do you want to hear ---

10 THE COURT: The basis for your objection?

11 MR. DAWSON: Yes, I'd be happy to, Your Honor.

12 Relevance, foundation. There is no witness
13 here that's going to test- -- my witness said
14 he said he didn't know much about it, did not
15 create the document. And, Your Honor, as a
16 practical matter, there's been no testimony
17 that that type of information was relied on by
18 anyone to form an opinion with regard to value.
19 If this witness is going to do that, we'll
20 obviously deal with that when that comes up,
21 but that's my basis for my objections.

22 THE COURT: Okay.

23 MR. ELLISON: Mr. Dawson's arguments all go to the
24 weight that the Court should give the exhibit
25 that's been tendered. Mr. Pope specifically

1 testified with regard to bond rates being a
2 measurement of risk. He said this was the type
3 of information that they generally accept.
4 We'll get into it more with Mr. Rosen, but I
5 think that we've laid the foundation in order
6 to get them admitted. And Mr. Dawson is free
7 to go ahead and cross examine Mr. Rosen on that
8 document as well which -- and those rates are
9 contained in his appraisal as well.

10 THE COURT: Based upon my recollection of Mr. Pope's
11 testimony ---

12 MR. ELLISON: Yes, Your Honor.

13 THE COURT: --- I am going to sustain Mr. Dawson's
14 objection to the introduction of Exhibit Number
15 5 at this time.

16 MR. ELLISON: Sure.

17 THE COURT: Now, you can raise it with your witness
18 and we'll revisit.

19 MR. ELLISON: Not a problem.

20 THE COURT: But at this point, Number 6 and Number
21 1., Respondent's Number 6 and Number 1 are
22 admitted.

23 (Respondent's Exhibit Numbers 1 and 6 were admitted
24 into evidence.)

25 MR. ELLISON: Thank you, Your Honor.

- 1 MR. ROSEN - DIRECT EXAMINATION BY MR. ELLISON:
- 2 Q: Mr. Rosen, could you state your full name for
- 3 the court, please?
- 4 A: Joseph Barnett Rosen.
- 5 Q: Let's talk in general terms about -- what's
- 6 your profession?
- 7 A: I'm a real estate appraiser.
- 8 Q: Are you familiar with the term MAI?
- 9 A: Yes, sir.
- 10 Q: And what does that term stand for?
- 11 A: It stands -- it doesn't really stand for
- 12 anything. It's a commercial designation. It's
- 13 most recognized probably in the world.
- 14 Q: And who gives you that -- what do you have to
- 15 do to get the MAI designation?
- 16 A: You have to take classes. You have to submit
- 17 your work product. You have to take -- and you
- 18 have to take a comprehensive exam. And I did
- 19 that and received it in May of 1991.
- 20 Q: I'd like to go first to the copy of your CV ---
- 21 A: Yes, sir.
- 22 Q: --- that is contained in the appraisal report.
- 23 A: Yes, sir.
- 24 Q: And before we get into that very far, did you
- 25 do an appraisal report of the property that is

1 subject to these proceedings?

2 A: Yes, sir.

3 Q: Okay. And looking at what's been marked for

4 identification Respondent's 3.

5 A: Yes, sir.

6 Q: Is that a copy of your appraisal?

7 A: Yes, sir, that is.

8 Q: Mr. Rosen, let's go to the CV that you attached

9 as part of the addendum.

10 A: Yes, sir.

11 Q: And it's about the third -- do you have a copy

12 of your appraisal up there with you?

13 A: Yes, sir.

14 Q: About the fourth page in, it says

15 qualifications of Joseph Rosen on the top.

16 A: It's probably at the end of the ---

17 Q: In the back?

18 A: Yeah.

19 Q: Near the back?

20 A: Yeah, in the back.

21 Q: Mr. Rosen, could you tell the Court in broad

22 strokes about your experience as an appraiser.

23 A: Yes, sir. I started in 1973 after two years in

24 college working with my father part time while

25 I continued to work on -- work on a college

1 degree, a BS in finance, which I obtained in
2 1977. So by the time I graduated I already had
3 over four years experience as an appraiser. My
4 father started the company in 19 -- May of
5 1956. And growing up I work -- I went with him
6 and not doing appraisals but photographing,
7 measuring buildings. So I had a little bit of
8 experience by the time I started working with
9 him. I continued doing appraisals first under
10 him, and then he had an assistant and she
11 trained me some, and then I took classes. You
12 have to take continuing edu- -- we now take
13 continuing education or we can take the whole
14 week, but at that point in time I was -- I took
15 a two-week class and went to Memphis State and
16 took that class. That was course 1A. And you
17 have to take certain classes to get more
18 experience levels. And I continued to take
19 those until I went actually for the residential
20 designation in 1986 and continued to write
21 demonstration reports and get my work product
22 reviewed until I got my MAI. And then actually
23 in 2000 I got the ASA, American Society of
24 Appraisers Designation in Real Property.
25 Q: Well, let's back up just a little bit.

- 1 A: Sure.
- 2 Q: Looking at the top of the page, you have
- 3 professional designations and affiliations, see
- 4 that?
- 5 A: Yes, sir.
- 6 Q: Do you have a South Carolina license?
- 7 A: Yes, sir.
- 8 Q: Do you have a license in some other states?
- 9 A: Yes, sir. I have a North Carolina and a
- 10 Georgia license.
- 11 Q: And what kind of license do you have?
- 12 A: I have certified general, and that's the --
- 13 that's the top level.
- 14 Q: Now, to make things -- and we'll explain why in
- 15 a few minutes, I'd like to call the Court's
- 16 attention to what's been marked for
- 17 identification as Exhibit 4 in the book.
- 18 A: Yes, sir.
- 19 Q: Can you tell the Court what that is, please?
- 20 A: Okay. That's my most recent qualifications
- 21 from January of this month.
- 22 Q: January of 2015?
- 23 A: Yes, sir.
- 24 Q: All right. And we'll talk about the
- 25 differences in a moment. But in many

1 respects, is this very different than the one
2 that's contained in the appraisal?

3 A: No, it's pretty much the same.

4 Q: All right. So for the sake of ease, let's talk
5 about what Exhibit 4 says. You talked a little
6 bit about your MAI designation. What's SRPA
7 stand for?

8 A: That's a Senior Real Property Appraiser. And
9 there used to be two organizations and the SRPA
10 and the SRA came from the Society of Real
11 Estate Appraisers, and then the RM and MAI came
12 from the American Institute of Real Estate
13 Appraisers and they merged. They don't -- they
14 only issue the MAI and the SRA.

15 Q: What's ASA stand for?

16 A: American Society of Appraisers. And that's
17 also an international group and they have
18 multidiscipline. So if you want an appraiser
19 of a yacht, you contact ASA and you get a yacht
20 appraiser. If you want real property, you get
21 a -- like myself, I'm real property. They have
22 specialties, just about everything you can
23 name.

24 Q: You've got a listing in here that says past
25 president 1988-89 SREA Chapter 194.

1 A: Yes, sir.

2 Q: What's that all about?

3 A: That was the Society of Real Estate Appraisers.

4 That was just right before they merged with the

5 American Institute of Real Estate Appraisers.

6 And I was a secretary, then vice president and

7 president.

8 Q: And then last line under professional

9 designations and affiliations it says president

10 of Chapter 112, the American Society of

11 Appraisers covering South Carolina.

12 A: Yes, sir.

13 Q: What's that all about?

14 A: I'm president of the ASA Chapter in South

15 Carolina. I served as president several years

16 ago and then another gentlemen took over and

17 then now I'm president again.

18 Q: Is that one of the major differences between

19 the updated appraisal and the one that was

20 contained in your appraisal report that you

21 tendered previously?

22 A: That's correct.

23 MR. ELLISON: Your Honor, at this point I'd like to

24 introduce into evidence Exhibit Number 4,

25 please, Mr. Rosen's updated CV.

1 MR. DAWSON: Your Honor, I'm yet to see the
2 document. I appreciate Mr. Ellison asking him
3 questions about it and I suspect I'm not going
4 to have an issue but -- thank you. No
5 objections, Your Honor.

6 THE COURT: Okay. It's admitted.
7 (Respondent's Exhibit Number 4 was admitted into
8 evidence.)

9 Q: Mr. Rosen, I'd like to spend a little bit more
10 time on this document. You have a listing
11 under education of various courses.

12 A: Yes, sir.

13 Q: Okay. Can you describe some of the courses
14 you've taken in your training?

15 A: I've taken easement valuation, appraisal of
16 commercial properties in declining market,
17 highest and best use, fair housing, USPAP,
18 inverse condemnation, appraisal challenges,
19 declining markets and sales concessions,
20 appraising distressed commercial real estate.
21 I do take some residential appraisal classes,
22 the lending world in crisis in January 2011 ---
23 Q: We'll come back to that in a minute.
24 A: Okay. Analyzing the effects of contamination,
25 understanding and applying litigation skills.

- 1 It's ---
- 2 Q: Let's talk about one of -- let's talk about two
- 3 of the courses you've taken.
- 4 A: Okay.
- 5 Q: About three-quarters of the way down the page
- 6 it talks about fundamentals of separating real
- 7 property, personal property and tangible
- 8 business values; do you see that?
- 9 A: Yes, sir.
- 10 Q: Is that the course that Mr. Pope testified that
- 11 he had taken earlier today?
- 12 A: Yes, that was a two-day course.
- 13 Q: Okay. What did you learn in that course?
- 14 A: How to -- they talked about separating
- 15 intangible and tangible assets, but they really
- 16 didn't go in -- it was only two days, so
- 17 there's a limit to what you can -- they didn't
- 18 tell you how to do it, but you have to know how
- 19 to do it, so.
- 20 Q: And was there a test at the end of that?
- 21 A: Yes, sir, there was.
- 22 Q: Was it a test that was easy enough for certain
- 23 lawyers to be able to pass?
- 24 A: I know a few.
- 25 Q: Thank you. Okay. What are the other courses

1 that you mentioned a few moments ago, The
2 Lending World in Crisis: What Clients Need
3 Their Appraisers to Know, when did you take
4 that course?

5 A: That was January 28th of 2011. That was --
6 looked like it was an all-day course.

7 Q: Do you remember who sponsored that course?

8 A: All these classes, unless otherwise noted,
9 they're all from the Appraisal Institute.

10 Q: In broad strokes, what did you learn in that
11 class?

12 A: Basically how to value these properties. We
13 had values declining and very limited market
14 and also problems obtaining financing.

15 Q: Have you been qualified as an expert in the
16 area of real estate appraisal before by any
17 courts?

18 A: Yes, sir.

19 Q: Have you ever been qualified as an expert in
20 the area of real estate appraisal by the
21 Administrative Law Court?

22 A: Yes, sir.

23 Q: Have you ever been qualified as an expert in
24 real estate appraisal by other courts?

25 A: Yes, sir.

1 MR. ELLISON: Your Honor, at this time we'd like to
2 tender Mr. Rosen as an expert in the area of
3 real estate appraisal and valuation.

4 MR. DAWSON: No voir dire, Your Honor.

5 THE COURT: Okay. Thank you. The Court recognizes
6 him as an expert in those areas.

7 Q: Now, Mr. Rosen, in order to make things go a
8 little bit quicker, we're going to basically
9 sort of like Ms. Bruner with Mr. Pope, we're
10 going to sort of track through your report.

11 A: Yes, sir.

12 Q: Did you prepare an appraisal report?

13 A: Yes, sir, I did.

14 Q: Did you value the property that's subject to
15 the litigation?

16 A: Yes, sir.

17 Q: What was the date of valuation that you used?

18 A: December 31, 2008.

19 Q: Now, in broad strokes, where is the property
20 located?

21 A: The property is located at 2688 Fernwood Drive,
22 North Charleston, Charleston County, and it's
23 right off of University Boulevard.

24 Q: Okay. Let's go -- unfortunately the page is
25 not numbered quite yet; it's called summary of

- 1 salient facts and conclusions.
- 2 A: Yes, sir. Should be a fourth page in it.
- 3 Yeah. One more page.
- 4 Q: In broad strokes what -- when did you inspect
- 5 the property?
- 6 A: I inspected it on August 27, 2014.
- 7 Q: What did you find when you inspected it?
- 8 A: Found a completed, operating Hampton Inn.
- 9 Q: At the time you inspected, you said the
- 10 property was completed. You were in the
- 11 courtroom earlier; you heard the talk about
- 12 stabilization?
- 13 A: Yes, sir.
- 14 Q: As far as you know at that time, was the
- 15 property stabilized?
- 16 A: No, it was not.
- 17 Q: How many guest rooms are there?
- 18 A: Hundred and fifteen.
- 19 Q: Is there a swimming pool?
- 20 A: Yes, sir.
- 21 Q: How many stories is the hotel?
- 22 A: Five stories.
- 23 Q: Now, you have in here objective. Can you tell
- 24 the Court what your objective was?
- 25 A: Objective was to estimate the going concern

1 value of the fee simple interest of the subject
2 property as of December 31st of 2008.

3 Q: Okay. Now, did you also do a valuation of the
4 land value of the property as of December 31,
5 2008?

6 A: Yes, sir, I did.

7 Q: And is that land value included in this report?

8 A: Yes, sir.

9 Q: And I'm going to skip a little bit. What was
10 the land value that you calculated as of
11 December 31, 2008?

12 A: \$734,000, which is \$8.20 a square foot.

13 Q: We'll get into more detail later, okay?

14 A: Sure.

15 Q: Now, you were in the courtroom earlier and you
16 heard Mr. Pope testify?

17 A: Yes, sir.

18 Q: And we used, during the course of my
19 conversation with Mr. Pope, the concept of the
20 market value of a going concern?

21 A: Yes, sir.

22 Q: Are you familiar with that term?

23 A: Yes, sir.

24 Q: Can you describe for the Court what your
25 understanding of that term is?

1 A: Market value of the going concern is the land
2 or dirt, the improvements, the tangible and
3 intangible assets.

4 Q: Okay. And can you give me an example of
5 tangible assets?

6 A: Tangible asset would be the furniture, FF&E.
7 You ---

8 Q: I'm sorry. FF&E stands for?

9 A: Oh, I'm sorry, I apologize. Furniture,
10 fixtures, and equipment.

11 Q: Okay.

12 A: Anything that's not really -- anything that's
13 not land and the building, anything that's
14 added to it. So it's usually something you can
15 walk out with.

16 Q: Now, was there a stabilized property -- excuse
17 me, stabilized hotel on the property as of
18 December 31, 2008?

19 A: No, sir. As of that date, you could not have
20 stayed in the hotel because ---

21 Q: Well, you could have.

22 A: I doubt it. You'd have had to have a hard hat.

23 Q: Were there any beds there?

24 A: No, no, at 65 percent -- at 65 percent
25 completion, and that's from the sheet, the

1 construction draw sheet, if you went in the
2 hotel, I'm not sure exactly what was in it, but
3 it was not a place you can really supposed to
4 go into.

5 Q: Not exactly a stabilized property at that time?

6 A: No, sir.

7 Q: Okay. And we're getting a little ahead of
8 ourselves. Did you attach a copy of the
9 construction draw?

10 A: Yes, sir.

11 Q: To your report?

12 A: Yes, sir, it's -- I think it's the ---

13 Q: Is that ---

14 A: It's not the last two sheets but it's near the
15 -- I think it's the last -- it's two -- I'm
16 sorry, three sheets and there's two more sheets
17 in the report. So if you go the back ---

18 Q: It's right behind your CV; is it not?

19 A: That's correct.

20 Q: And what was the date of this construction
21 draw?

22 A: December the 31st of 2008.

23 Q: And what percentage completion of the project
24 did it indicate was present as of December 31,
25 2008?

1 A: Sixty-five percent.

2 Q: And did you use that figure in preparing your
3 report?

4 A: Yes, sir.

5 Q: Now, you've estimated the market value of the
6 going concern?

7 A: Yes, sir.

8 Q: Did you need to do that to appraise the land
9 value of the property?

10 A: No, sir.

11 Q: Okay. Why did you need to do that?

12 A: I needed to estimate the market value of the
13 going concern to determine what the hotel would
14 have been worth on December 31, 2008, if it had
15 been completed.

16 Q: Why did you need to do that?

17 A: You start there to be able to estimate what the
18 value, market value of the property was it
19 being 65 percent complete. So just have to --
20 you have to finish -- you have to figure out
21 what the property is worth if it was finished,
22 and then you have to take out your land and
23 your completion cost 35 percent. You have to
24 take out the ---

25 Q: I don't want to get into -- we're going to go

1 there. We're going to go there. Okay. But so
2 let's back up just a little bit. Was your
3 assignment to value the property as of December
4 31, 2008?

5 A: That's correct. Yes, sir, it was.

6 Q: Was it to simply value the land? You did it --

7 -

8 A: Yeah.

9 Q: --- but was that your assignment?

10 A: I think my assignment was to value the property
11 as of December 31st of 2008.

12 Q: Okay. So did you make a hypothetical, make
13 believe assumption that you couldn't value the
14 improvements as of December 31, 2008?

15 MR. DAWSON: Objection. Leading.

16 MR. ELLISON: I asked if he made an assumption with
17 regard to a specific assumption. That's not
18 leading.

19 THE COURT: Overruled. Go on.

20 Q: Go ahead.

21 A: Yeah. Yeah, I made -- I had to make -- you
22 have to start with the ---

23 Q: No, no, no. I asked you a different question.

24 A: Okay. I'm sorry.

25 Q: My question was -- I'm not asking what you did.

1 I'm asking did you make an assumption that --
2 to exclude the value of the improvements as of
3 December 31, 2008?

4 A: No, sir.

5 Q: Okay. You valued the property as it was on
6 December 31, 2008; is that right?

7 A: That's correct.

8 Q: All right. So now to get there, you ended up
9 having to make a hypothetical assumption; did
10 you not?

11 A: Yes, sir.

12 Q: So if you -- and that's not the -- you didn't
13 have to make that -- do that to value the land,
14 correct?

15 A: That's correct.

16 Q: But to value what was there, you ended up
17 having to make that assumption?

18 A: Yes, sir.

19 Q: And we talked earlier about what USPAP is.
20 You're familiar with USPAP?

21 A: Yes, sir.

22 Q: All right. Did you make an assumption in
23 accordance with USPAP?

24 A: Yes, sir, I did.

25 Q: Okay. Now, let's run through -- again, no

1 assumptions to value the property as it was on
2 December 31, 2008. If you look at the summary,
3 does that basically tell the Court what you
4 did?

5 A: Yes, sir, it does.

6 Q: Can you run the Court through what you did
7 slowly.

8 A: Okay. I appraised the ---

9 Q: Before you do that.

10 A: Okay.

11 Q: In your 30 some odd years experience as an
12 appraiser, having taken all these courses and
13 having done all this, would you characterize
14 this as a easy, hard, medium, normal assign --
15 I mean, how do you characterize this?

16 A: This is fairly difficult.

17 Q: Okay. Why was it difficult?

18 A: Because it's -- number one, it's a hotel and
19 appraising a hotel is not like appraising an
20 office building. And then other thing is that
21 it's not finished. I mean I've appraised other
22 properties that weren't finished and we
23 basically went through a similar scenario, but
24 it's not as complex as this, so.

25 Q: So now that we've talked about the fact that

1 this wasn't ordinary.

2 A: Yes, sir.

3 Q: Looking at your appraisal, why don't you run
4 the Court simply through what you did?

5 A: Okay. This is on the second page of the letter
6 of transmittal?

7 Q: No, it's on the summary of salient facts.

8 A: Oh, summary, okay. You have to come up with
9 the hypothetical going concern value -- this is
10 near the bottom -- of the hotel as if it was
11 complete on December 31st of 2008.

12 Q: And what was that value?

13 A: That was \$8,450,000.

14 Q: Okay. And is that the figure that's about
15 three-quarters of the way down the page?

16 A: Yes, sir.

17 Q: Okay. Then what did you have to do?

18 A: And then from that you have to get the cost of
19 completion, and the cost of completion is
20 \$2,700,000. Actually \$2,700,600.

21 Q: So where did you get that from?

22 A: That is the 800 -- excuse me, \$8,450,000 less
23 the cost of the land and then that number times
24 35 percent. And that was -- that's the
25 \$2,700,600.

1 Q: Did you also look at the pay applications?

2 A: Yes, sir.

3 Q: And what did the pay applications say?

4 A: There was -- that was -- that's where I got the
5 information.

6 Q: Okay.

7 A: And that's in the back of the report. And then
8 you've got to take off the lease up cost.

9 Q: Whoa, whoa, let's back up.

10 A: Okay.

11 Q: So you start with a hypothetical market value
12 of the going concern?

13 A: Yes, sir.

14 Q: And then you subtracted what?

15 A: Subtracted the cost of completion.

16 Q: So from the eight some odd million dollars you
17 subtract \$8.4 million dollars. You subtracted
18 cost of completion, and what does that give
19 you?

20 A: I don't have a title for that.

21 Q: But what number did it give you on the
22 analysis?

23 A: \$5,749,400.

24 Q: And did you have to take off anything else?

25 A: Yes, sir. I had to take off the lease up cost.

1 Q: And what was your estimate of the lease up
2 cost?

3 A: \$440,000.

4 Q: And where did that number come from?

5 A: That's a calculation, and it's on page 114 of
6 the appraisal. And when you open the door to
7 the hotel you're not going to be 100 percent
8 occupied. You won't be 50 percent occupied, so
9 you -- we estimated what it would take, and it
10 would take eight months of 2009, you take --
11 and then 12 months of 2010 to lease up.

12 Q: And what did you base those calculations on; do
13 you remember?

14 A: Yeah.

15 Q: I know we're getting into the weeds a little
16 bit faster than I had planned.

17 A: Yeah. You could estimate it, but I actually
18 got the actual income and expenses from '09 and
19 '10 and used those -- used those numbers would
20 be more accurate. Because if we'd have -- if
21 I'd have used from what I interpreted the
22 market, it would have been a larger lease up
23 cost.

24 Q: So you deducted the lease up costs and that's
25 what gave you the \$5,309,400 figure?

1 A: That's correct.

2 Q: Was that the end of the inquiry?

3 A: No.

4 Q: What did you have to do then?

5 A: That's the hotel. It's 65 percent complete
6 with furniture, fixtures and equipment. So
7 you've got to take out the furniture, fixtures,
8 and equipment. So it's all hypothetical -- you
9 can't put the furniture, fixtures, and
10 equipment. But that number would include the
11 FF&E, furniture, fixtures, equipment. So if
12 you take out the \$1,350,000, then you come up
13 with \$3,959,400. And that's the market value
14 of the going concern as of December 31st, 2008,
15 based on the subject being 65 percent
16 completed.

17 Q: Is that the value of what was there as of
18 December 31, 2008, as best you can do it?

19 A: That's correct.

20 Q: And the only assumption that you made to get
21 there, if I heard you correctly, is that you
22 have a fully operating hotel?

23 A: That's correct.

24 Q: Now, let's talk about hypothetical conditions
25 for a second. What's a hypothetical condition

1 according to the appraisal -- I'm not talking
2 about the one that you made; I'm talking about
3 what one is.

4 A: Okay. A hypothetical condition is contrary to
5 what exists, what are supposed for the
6 analysis. So, if as of December 31, 2008, the
7 hotel was 65 percent complete; therefore, it's
8 a hypothetical condition that we assume the
9 hotel is 100 percent complete and ready to be
10 opened. So it's -- you make -- it's a
11 hypothetical condition, we have to use -- we
12 have to do hypothetical things. If you bought
13 a lot and you were going to build a house on
14 it, you know, the lot was \$50,000, the house is
15 going to be \$150,000, the hypothetical
16 condition is that the property would be worth
17 \$250,000 when you complete it. So we have to
18 make sure that people understand the
19 hypothetical condition assumes and is contrary
20 to what actually exists. It's kind of like,
21 you know, we're not telling the truth, we're
22 having to tell you what -- it's a hypothetical;
23 it does not exist, but we say it exists.

24 Q: What was the state of the economy -- and let's
25 look at page -- it's Roman at two, two little

1 i. What was the state of the economy in the
2 fourth quarter of 2008?

3 A: It was horrible conditions. Fannie Mae failed,
4 Freddie Mac failed, Lehman Brothers failed, AIG
5 failed, Washington Mutual failed. President
6 Bush did sign TARP in October -- October the
7 3rd of 2008. Banks were hanging by a thread.
8 Many of the banks were hanging by a thread.
9 You couldn't get loans. I surveyed several
10 banks, and I surveyed five banks and they were
11 not -- and as of October 2008, none of these
12 banks as well as other banks were not making
13 loans on hotels. It was hard enough to get a
14 hotel on anything -- I mean, excuse me, hard
15 enough to get a loan on anything.

16 Q: Mr. Pope had some documentation in his
17 appraisal talking about how 2008 could be
18 characterized as a tale of two economies or two
19 years, I can't remember the exact terminology.
20 What do you think of that characterization?

21 A: He was -- I think he was downplaying it a
22 little bit. It's -- 2008 was -- and my father
23 started the company, like I said, in fifty --
24 in 1956 and at that -- he just retired about
25 five years ago but he's okay, but he just

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1 finally retired at 80 years old; he's 85. And
2 he was born in '29 and he knew -- he could not
3 -- there was no way for anybody to understand
4 or explain what was going on in the economy.
5 I mean I really, you know, during the great
6 depression people jumped out of windows. I'm
7 not -- I wouldn't be surprised if some of that
8 happened and we just didn't know about. But it
9 was, I mean, people were -- people that were
10 multimillionaires were broke. The stock market
11 collapsed. I mean Bank of American went from
12 \$40 the beginning of the year to \$14. I mean
13 everything was collapsing. And I know how I
14 felt and I just -- I didn't know how to handle
15 everything. It was hard to imagine if the
16 country was going to survive or not. It was
17 actually -- and in the next page I talk about
18 just in 2008 -- I had the bank failures year by
19 year. In 2008, 25 banks failed. The next year
20 it was 138 banks failing. Well, you say well,
21 then it must have gotten worse in 2009. No.
22 The banks were hanging on by a thread and the
23 government could not take over banks quick
24 enough.

25 Q: Is one of the things that you looked at in

1 terms of preparing this report the bond rates
2 ---
3 A: Yes, sir.
4 Q: --- that were applicable? There you are.
5 A: Yeah. I'm sorry.
6 Q: I don't know what I've done with my copy.
7 A: I've got a copy here somewhere.
8 Q: Okay. Can you identify -- you said you've got
9 a copy?
10 A: Yes, sir. Mine's a little bigger.
11 Q: Okay. Tell the Court what this is again. I
12 think it's Exhibit 5 that Mr. Dawson has
13 objected to. Tell the Court what this is.
14 A: This is the calculating -- it says calculating
15 capitalization rights. We use this when we
16 were calculating. You can calculate a
17 capitalization rate by using BA -- the
18 corporate bonds BA rate. And in December of
19 '07 it was 6.65, but it was up 181 points by
20 December of 2008. It was 846, excuse me, 8.46.
21 So, you know, it was up, that's -- this goes
22 from 2006 into 2009 and that was the highest.
23 Q: As far as you, is this information contained on
24 Exhibit 5 accurate?
25 A: Yes, sure. We get this information in the

1 Appraisal Institute, one of the publications,
2 they send this and we used to keep up with all
3 this. But now you can it online. But, no,
4 this is very important. And we use the BAA
5 rate because it's the more risky bonds and then
6 to that you add your risk and liquidity.

7 Q: Okay. Is this, again, is this the kind of
8 information that you typically look at as part
9 of your analysis?

10 A: Yes, sir.

11 Q: All right. Is this information available on a
12 daily basis?

13 A: Yes, sir, it is.

14 Q: If you wanted to get this information, how
15 would you go and get it?

16 A: Federal Reserve.

17 Q: Are there other ways too?

18 A: Yeah, I'm sure there are other ways. But the
19 Federal Reserve, they call it FRED.

20 Q: Okay.

21 MR. ELLISON: Your honor, at this time, again, I'd
22 like to introduce Exhibit 5 as an exhibit.

23 MR. DAWSON: No objection to the exhibit, Your
24 Honor.

25 THE COURT: Okay. It's submitted.

1 (Respondent's Exhibit Number 5 was admitted into
2 evidence.)

3 MR. ELLISON: It just takes a little longer
4 sometimes.

5 Q: Okay. In doing your analysis, did you also
6 look at -- and again, I don't want to get into
7 the weeds with this.

8 A: Sure.

9 Q: Did you also look at things such as what the
10 County had assessed it at previously?

11 A: Yes, sir.

12 Q: All right. Let's go to page 14 of your
13 appraisal.

14 A: Okay. Yes, sir.

15 Q: And this stuff is all in there. Tell the Court
16 what's on page 14.

17 A: Page 14 is a summary of the next three pages,
18 which is the property taxes and the assessor's
19 appraisal for 2008, for 2009, and for 2010.

20 Q: And where did you get this information from?

21 A: From the following tax bills that are on page
22 15, 16, and 17.

23 Q: Okay. Now, I'm going to ask you to make a
24 hypothetical that is not contained in your
25 report.

- 1 A: Okay.
- 2 Q: Okay. I want you to assume that you cannot
3 value the improvements in the condition that
4 they were in as of December 31, 2008.
- 5 A: Yes, sir.
- 6 Q: Just assume that.
- 7 A: Okay.
- 8 Q: If you could make that assumption, what are you
9 valuing?
- 10 A: Just the land.
- 11 Q: Did you value the land?
- 12 A: Yes, sir.
- 13 Q: All right. What did you value the land at?
- 14 A: \$734,000 as of December 31st of '08.
- 15 Q: Now, that value is greater than the assessor's
16 value, which I think Mr. Ziegler testified was
17 largely based on land value?
- 18 A: Yes, sir.
- 19 Q: Okay. Does your appraisal contain an analysis
20 as to what the land value of the property was
21 as of December 31, 2008?
- 22 A: Yes, sir, it did.
- 23 Q: Did it take into account the economic
24 conditions that were in -- that we were all
25 dealing with in December 2008?

- 1 A: Yes, sir, it did.
- 2 Q: Okay. Can you walk -- tell us what page you
3 started, and can you walk the Court in broad
4 strokes through what you did to come up with
5 the value of the land only as of December 31,
6 2008.
- 7 A: I'm going to start on page 90.
- 8 Q: Give us all a chance to get there, please.
- 9 A: Okay.
- 10 Q: And it might be the best way to do it would be
11 to go to page 94 which has the table.
- 12 A: Okay. That's fine. We'll need to go back to
13 90 at some point.
- 14 Q: Sure.
- 15 A: In doing an appraisal you go -- if you can
16 obtain the information you go for what they
17 call paired sales. And a paired sale might be
18 two lots side by side and one of them is
19 located at a corner, for one corner is worth
20 ten percent more than that's the paired sale as
21 an adjustment. So what I did was I searched
22 the records that I could find in Charleston
23 County to find a paired sale. And the first
24 paired sale -- I think we've better go back to
25 page 90 and I can explain it. First paired

1 sale was a property sold for \$4,324,500 in
2 February of '07. So the market was in pretty
3 good shape here. And then it resold May the
4 8th of 2008, for \$3,384,000. That was a 27.8
5 percent decrease. Now most appraisers and most
6 people think of real estate always going up,
7 but this was the proof that it went down. And
8 it went down 27.8 percent and we hadn't gotten
9 to the end of '08. We only -- that's -- we
10 hadn't got to the midpoint of '08. So that's
11 27.8 percent decrease. Sale B, if you need
12 information look at page 91 and 92 where all
13 the information and the verification who I
14 talked to is on that page. And then if you go
15 to page 93, that tract of land sold for
16 \$1,850,000 on July the 9th of 2008, and then
17 resold in July the 8th of 2009, and it went
18 down 51 percent. And I verified it with Okey
19 Landers on -- at that phone number. So I
20 looked at 51 percent decrease and a 27.8
21 percent decrease and I just -- I determined
22 that a 40 percent adjustment down because all
23 my land sales occurred in either '06 -- 2006,
24 which would be on page 94, December of '06,
25 July of '07, December of '07, and May of '08.

1 And it was obvious that the subject property,
2 which is sale four, wasn't going to be worth as
3 much because everything in the market was down.
4 And there was nothing indicating anything going
5 up. And this was throughout the entire --
6 pretty much the entire country.

7 Q: So the trend was things were going down?

8 A: Everything was going down and you couldn't get
9 financing. So ---

10 Q: Let's talk about trends for a second.

11 A: Yeah.

12 Q: Okay. Both you and Mr. Pope prepared reports
13 in compliance with USPAP?

14 A: Yes, sir.

15 Q: At least -- you haven't analyzed Mr. Pope's
16 report, have you?

17 A: No, I looked at it. I didn't have the time to
18 read the whole thing from cover to cover.

19 Q: But you did your report in compliance with
20 USPAP?

21 A: Yes, sir.

22 Q: Does USPAP have a policy with regard to what
23 you can do in order to deal with trends?

24 A: Yes, sir.

25 Q: What is USPAP'S policy with regard to looking

1 at trends?

2 A: We can look at trends, and we are supposed to
3 look at trends. And if we, you know, if we
4 don't look at trends, we may have violated a
5 part of USPAP.

6 Q: Does USPAP authorize you to look at information
7 that is available post-valuation date in order
8 to assist with the valuation, the analysis of
9 that trend?

10 A: Yes, sir.

11 Q: And is there a specific provision in USPAP that
12 authorizes that?

13 A: Yes, sir. I can't tell you offhand. I've got
14 a copy of USPAP over there if I need it.

15 Q: As far as you -- so do I. As far as you know
16 it's in there, correct?

17 A: Yes, sir.

18 Q: Okay. And if you want, I can get you the ---

19 A: Yeah, I mean, let me just say -- let me clarify
20 this a little bit. When we do an appraisal and
21 we deliver the appraisal on anything, an office
22 building, if something happens three days later
23 we -- a lot of appraisers don't do it, but we
24 will contact the client, the lender, and say
25 there's a new project going right across the

1 street that's going to have an impact, negative
2 or positive. Once the appraisal is done, if we
3 find something else we do change the appraisal.
4 So it's important that we do know of
5 everything.

6 Q: Okay. So you looked at these paired sales?

7 A: Yes, sir.

8 Q: Okay. And as a result of looking at the paired
9 sales, did you come up with a generic amount to
10 discount the land value?

11 A: Yes, sir.

12 Q: And what was that figure?

13 A: Forty -- minus 40 percent.

14 Q: And is that the figure that you used in your
15 table on page 94?

16 A: Yes, sir, it is.

17 Q: Let's look at the table for a second. Again,
18 your -- I mean we're -- I'm asking you to make
19 an assumption that was not made in the
20 appraisal.

21 A: That's correct.

22 Q: I'm asking you to assume that you can't value
23 the improvements because they're not done yet.

24 A: Yes, sir.

25 Q: All right. If you assume that, does page 94

- 1 reflect what you think the land was worth on
2 December 31, 2008?
- 3 A: Yes, sir.
- 4 Q: And that -- and what's that figure, again?
- 5 A: \$734,000.
- 6 Q: Okay. Did you do a sales comparison approach?
- 7 A: No, sir.
- 8 Q: Why not?
- 9 A: I just -- I don't typically when I'm doing
10 hotels, motels I don't typically do sales
11 comparison approaches. I only -- I do use
12 sales. So there's a sales comparison approach
13 and if I can get the cap rates is the only
14 thing I use out of them.
- 15 Q: So you use the sales to help basically
16 determine the applicable capitalization rates?
- 17 A: That's correct.
- 18 Q: Did you do an income approach?
- 19 A: Yes, sir.
- 20 Q: All right. Now, we've pulled away this
21 assumption that you can't value the
22 improvements?
- 23 A: Yes, sir.
- 24 Q: So in order to value what's there -- now we're
25 going to get into the weeds more than we did

1 when we went through the summary. Did you
2 first determine the value -- the market value
3 of the going concern?

4 A: Yes, sir.

5 Q: Okay. And that's the -- not that your analysis
6 is the same, but it's the same basic technique
7 that Mr. Pope did; is that right?

8 A: Yes, sir.

9 Q: Okay. I mean no difference in technique?

10 A: No.

11 Q: All right. You came up with a different
12 number. Can you walk the Court through what
13 you did with reference to pages.

14 A: Income approach?

15 Q: Yes.

16 A: Okay. Yes.

17 Q: Again, we're valuing what's there.

18 A: Okay.

19 Q: As of the valuation.

20 A: So to do the income approach, I used a
21 composite set and came up and they -- that
22 provided me with an ADR, an average daily rate
23 of \$94.22.

24 Q: Okay. Does the analysis basically start on
25 page 67?

1 A: Yes, sir, it does. But the valuate the --
2 actually that market analysis starts there, but
3 I was going right to the income approach.
4 Q: That's fine. Let's go there. What page is
5 that?
6 A: 114.
7 Q: Thank you. Why don't you walk us through the
8 income approach.
9 A: Okay.
10 Q: Again, we're determining what's there?
11 A: Yes, sir. I used what they call the Star
12 Report ---
13 Q: What's the Star Report?
14 A: Star Report is a report that Smith Travel can
15 pull up on -- you go to on a property and they
16 pull it up and they get you -- they don't give
17 you the information for this hotel, that --
18 first hotel, second hotel. They give you
19 several hotels. And based on that composite
20 set they -- the occupancy for 2008 was 64.29
21 percent, this is on page 113 is where I'm
22 reading from, and the ADR was \$94.22. So
23 that's the average daily rate. And I used the
24 average daily rate on the next page of ninety
25 ---

- 1 Q: The next page being 114.
- 2 A: I'm sorry, 114, yes, sir, \$94.22 average daily
3 rate times 115 rooms times 365 days. That's a
4 total potential income of \$3,954,885.
- 5 Q: And you've got a different occupancy rate than
6 Mr. Pope got?
- 7 A: Yes, sir.
- 8 Q: And what was your occupancy rate?
- 9 A: My occupancy rate was -- I used 75 percent.
- 10 Q: Okay. And that gives you an effective gross
11 income?
- 12 A: Yes, sir.
- 13 Q: What was that number?
- 14 A: \$2,966,163.
- 15 Q: Okay.
- 16 A: And then I used an expense ratio of 68 percent.
- 17 Q: Where did that come from?
- 18 A: That's from the market comparables.
- 19 Q: Okay.
- 20 A: And that's the expenses for all the -- for all
21 your expenses, your taxes, all your expenses
22 total.
- 23 Q: Well, did you actually back out the taxes in
24 order to load the capitalization rate?
- 25 A: You would, but I didn't do that. I just used

1 68 percent because I got it from the other
2 market.
3 Q: Okay.
4 A: Okay. That would give you an NOI, net
5 operating income ---
6 Q: Thank you.
7 A: --- of \$949,172.
8 Q: Okay.
9 A: And then you divide that by the capitalization
10 rate.
11 Q: And what was the capitalization rate that you
12 used?
13 A: It was 11.25.
14 Q: And that capitalization rate is a little
15 different than Mr. Pope's rate?
16 A: Yes, sir.
17 Q: How did you derive an 11.25 percent
18 capitalization rate? For instance, did you use
19 the bond rates that we talked about earlier;
20 did you look at those?
21 A: I looked at that, but what I used was on page
22 112. There were six hotels that sold and
23 looked at the capitalization rates that I got
24 the information on, and they ranged from 10.12
25 to 15.43. Now remember we're in December 31st

1 of '08, we're at the bottom of the market, and
2 the last sale was one in last and it was -- it
3 closed December 22 of '08. But you've got to
4 remember, when a sale closes, the day it closes
5 it's months from when it was under contract.
6 So things can change, so I looked at all these
7 ---

8 Q: So, excuse me, so that property had been placed
9 under contract, as far as you know, prior to
10 September 15, 2008, when Lehman Brothers
11 failed?

12 A: Yes, sir.

13 Q: All right. So go ahead.

14 A: So I looked at all those, and I estimated that
15 the indicated capitalization rate was 11.25.

16 Q: Okay. So when you divide the net operating
17 income by the capitalization rate on page 114,
18 what do you get?

19 A: \$8,450,000 rounded.

20 Q: And you rounded it up to how much?

21 A: I rounded it up like \$13,000.

22 Q: And the number that you get for the market
23 value of the going concern ---

24 A: Yes, sir.

25 Q: --- is how much?

- 1 A: \$8,450,000.
- 2 Q: Okay. Again, we're trying to get to what the
3 value of the property is as it was December 31,
4 2008, no hypothetical as far as getting there?
- 5 A: That's correct.
- 6 Q: So then what did you do?
- 7 A: Then you have to take out -- off the lease up
8 cost to arrive at a 76 percent stabilized
9 occupancy. And that's \$440,000, and on the
10 bottom of the page is how I calculated it.
- 11 Q: Okay.
- 12 A: And then the cost to complete the project is
13 \$2,300,600. So the estimated value as of -- it
14 should say December, but it's as of the end of
15 December 2008. Prior to completion of the
16 building, assuming the 65 percent completion,
17 it's \$5,309,400. And that includes the
18 furniture, fixtures, equipment.
- 19 Q: So did you back that out?
- 20 A: Yeah. You had to back that out. You had to
21 take that out.
- 22 Q: And did you do that on page 115?
- 23 A: Yes, sir, I did. And that means that the
24 property as is going concern, interest value of
25 the property as of December 31st of 2008 was

1 \$3,959,400.

2 Q: Okay. Now, let's talk about capitalization
3 rates again just a little bit.

4 A: Okay.

5 Q: Is capitalization rate a part of measurement of
6 risk?

7 A: Yes, sir.

8 Q: Can you explain why that is?

9 A: Capitalization rate is a rate of return, and
10 that's how you usually describe it is rate of
11 return, but there's also risk in it. So, and
12 you can get it -- you can do a blended rate;
13 you do your equity given rate times the
14 percentage when you put the cash in and also
15 the mortgage equity rate -- mortgage constant,
16 I'm sorry. And that's how you can obtain it
17 that way, but I like to try to get it out of
18 the market if I can.

19 Q: Okay. So to sort of put it in broad summary
20 terms.

21 A: Yes, sir.

22 Q: Okay. If you're valuing the land as of
23 December 31, 2008, what's the value of the
24 land?

25 A: \$734,000.

1 Q: If you're valuing what's there on December 31,
2 2008, what's the value?

3 A: \$3,959,400.

4 Q: And all this information is contained in your
5 report, correct?

6 A: Yes, sir.

7 MR. ELLISON: Your Honor, at this point I'd like to
8 introduce a copy of Mr. Rosen's report in as
9 our Exhibit 3.

10 MR. DAWSON: No objections, Your Honor.

11 THE COURT: Okay. It's submitted.

12 (Respondent's Exhibit Number 3 was admitted into
13 evidence.)

14 MR. ELLISON: Your Honor, no further questions. Mr.
15 Dawson your witness.

16 MR. ROSEN - CROSS EXAMINATION BY MR. DAWSON:

17 Q: Mr. Rosen, I unfortunately have this habit of
18 drifting around the courtroom, so I apologize
19 if that becomes painful on your eyes or your
20 neck. I'll try not to drift too much.

21 A: Sure. That's fine.

22 Q: Mr. Rosen, we met for the first time today ---

23 A: Yes.

24 Q: --- this morning. And as I mentioned to you,
25 I at least heard your name on at least a couple

1 occasions. One of my bosses in Charleston, I
2 had mentioned I was going to be visiting with
3 you today said to tell you hello. His name is
4 Herb Sass.

5 A: Oh.

6 Q: I don't know if that name does anything for
7 you.

8 A: I know Herb well.

9 Q: Wonderful boss.

10 A: County councilman.

11 MR. ELLISON: We got that on the record, Your Honor.

12 A: He's an appraiser; that's how I know him.

13 Q: Mr. Rosen, I obviously represent the County,
14 and in that role, I have to be the bad guy, so
15 to speak, because I get to ask you questions to
16 try to either distinguish and/or impeach some
17 of the things that you've said. So I apologize

18 ---

19 A: Sure.

20 Q: --- if at times we just simply don't agree.

21 A: Sure.

22 Q: And that's going to be okay. So I want to
23 start with your assignment.

24 A: Yes, sir.

25 Q: Is it fair to say your assignment was to place

1 or give an opinion of value of the subject
2 property on December 31, 2008, as it existed?

3 Is that a fair statement?

4 A: It's hard for me to answer that yes or no.

5 That was part of. That was part of it. It's
6 hard for me to remember exactly. I mean I know
7 it was the going concern, the value of the fee
8 simple interest and that was probably the land,
9 but it -- but to get to anything other than the
10 land I had to go through the whole gyration,
11 so. But I can't really remember exactly.

12 Q: I'm finished. Are you finished?

13 A: Yes, sir.

14 Q: So maybe try this way. Is it fair to say that
15 the opinion of value that you just concluded
16 giving to the Court of, and I'll give you the
17 exact number, of 3,959,400 represents your
18 opinion as it relates to the subject property
19 as it existed on December 31, 2008?

20 A: That's correct.

21 Q: And as it existed, in your opinion, was an
22 incompleated hotel?

23 A: Yes, sir.

24 Q: So it was not functioning?

25 A: That's correct.

1 Q: It was not in its form for its intended use?

2 A: That's correct.

3 Q: And it represented what had been done by way of
4 construction and land?

5 A: Yes, sir.

6 Q: Okay. You have been qualified as an expert
7 because you've done appraisals in South
8 Carolina before?

9 A: Yes, sir, and other states.

10 Q: And I also understand that you've also done
11 work with assessors in the state of South
12 Carolina; is that correct?

13 A: Yes, sir. I served on the Richland County
14 Board of Appeals for about six years ago. I've
15 probably have done some work for the assessors,
16 but it's hard to remember exactly what I've
17 done ---

18 Q: Sure.

19 A: --- over 41 years.

20 Q: And you, I believe you testified about the
21 difficulty of this assignment. So let's talk
22 about the difficulty of it. In your opinion or
23 in your expertise, you've not been engaged to
24 hire in the past engaged to assign value to an
25 incomplete hotel in South Carolina? And I

1 apologize if it sounds like that's a yes or no
2 question because I'm simply asking you, have
3 you done this before?

4 A: I can't recall offhand. Like I said, we only
5 -- we keep our files ten years or more, so I
6 can't -- I didn't pull anything ---

7 Q: Sure.

8 A: --- but I don't recall offhand. I know we did
9 -- we've done a lot of -- during my time in the
10 '70s and '80s when we had recessions we did a
11 lot of incomplete properties. But I can't
12 remember ---

13 Q: Okay.

14 A: --- I can't remember hotel -- a hotel at the --
15 -

16 Q: Is it fair to say you've only done hotel
17 appraisals maybe a dozen times?

18 A: I don't know. Probably more than a dozen in 41
19 years.

20 Q: Okay. So when you say more than a dozen, 20
21 times; is that much more?

22 A: I can't tell you. If you start asking me I can
23 tell you about where in the state I've done
24 work ---

25 Q: Sure.

1 A: I did, it was a hotel, an EconoLodge over on
2 Rivers, 526 came across, did that. That was
3 back in the '80s, I think. And I've done stuff
4 in Camden and I've done stuff -- you know, so
5 I have to -- I'd have to go to each city to try
6 to recall.

7 Q: Sure. But you wouldn't be able to recall any
8 of those being hotels that were incomplete or
9 under construction at the time that you formed
10 an opinion of value on it; is that not true?

11 A: No. Takes me a minute to recall. We did a
12 hotel in Cayce, and I can't remember, but it
13 burned. It had burned and we had to do some --
14 but it's been -- it's no longer there so, it's
15 a CVS now. I remember doing that one and I
16 remember that was somewhat similar to this, but
17 I can't recall it because it's been probably 20
18 years ago. It was where the -- it was the
19 Howard Johnson's hotel.

20 Q: Okay. I'm sure even in that situation you
21 would have put a zero value to the improvement
22 because it would have been worth nothing, is it
23 not?

24 A: No, no, no. They rebuilt it. I mean they had
25 to remodel it.

1 Q: Okay. So in this particular example, your
2 assignment was to actually appraise what was
3 actually on the ground and not to give a value
4 under this hypothetical hotel that would have
5 existed some time in the future; is that not
6 true?

7 A: Well, I wouldn't have done these steps without
8 having -- so there must have been more -- there
9 must have been more than just value the land.
10 If I'd have valued the land, I could have done
11 half the report.

12 Q: And I apologize.

13 A: Sure.

14 Q: I'm not being real clear. I'm not suggesting
15 that there wasn't some of form of improvement
16 on the property. I'm not trying to suggest
17 that.

18 A: Yeah.

19 Q: I'm simply saying your assignment, although
20 you've described your methodology, I'm not
21 asking you about the methodology yet. I'm
22 asking you about the assignment. Your
23 assignment was to value, give an opinion of
24 value on what existed on the ground, dirt and
25 improvements at whatever stage, in this

1 particular case. I understand your
2 methodology; we'll talk about that a little
3 later. I'm asking you about the ultimate
4 conclusion and opinion you're offering to the
5 Court. Was it not based on what was actually
6 on the ground at the time?

7 A: Yes, sir.

8 Q: Okay. Thank you. I believe you were asked a
9 question about my favorite exhibit. I believe
10 it's Respondent's Number 5, which is this BA
11 bond rate.

12 A: Yes, sir.

13 Q: And I think your testimony when Mr. Ellison
14 asked you a question about it, he asked you if
15 you relied on that document and I think you
16 quickly said no, no, no, I actually relied on
17 page, was it 112 in your report?

18 A: Yes, sir. The cap rates on 112.

19 Q: So in fact, you didn't consider information
20 like that back in 2008, to include the end of
21 2008, when you were valuing hotels in South
22 Carolina?

23 A: Well, I considered -- I considered it because
24 it's more proof of what was going on in the
25 market.

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1 Q: I'm asking about what you did in 2008. I want
2 to be very clear. In 2008 when you were
3 valuing more than a dozen hotels throughout
4 your career, which I'm assuming some of them
5 would have been in or around that time, you
6 didn't rely on documents like you were handed
7 which is Respondent's Number 5?

8 A: No, I didn't relay on the document. I relied
9 on this information right here that -- that
10 corporate bonds BAA.

11 Q: Okay.

12 A: BAA in -- whatever I could find as of the end
13 of '08.

14 Q: Okay. But when asked a question in this case
15 ---

16 A: Yeah.

17 Q: --- you didn't concede you relied on that. You
18 actually said what you actually did was relied
19 on page 112 in your report ---

20 A: Right, I considered it.

21 Q: --- is that what you said?

22 A: I considered this. I didn't rely on it.

23 Q: Okay.

24 A: I considered it. I mean I didn't put weight --
25 I'm sorry, maybe -- I had put more weight on

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1 page 112, sorry.

2 Q: Okay. Well, since we're at 112 let me just ask
3 you a few questions about page 112.

4 A: Yes, sir.

5 Q: 112 you said you used to establish cap rates in
6 this case; is that not true?

7 A: Yes, sir.

8 Q: And you indicated that one of the particular
9 sales that you relied on was a Best Western,
10 which is on page 112, right?

11 A: Yes, sir.

12 Q: And in that, you said although it represents a
13 cap rate of 10.12 percent, that's really not a
14 good number, according to you?

15 A: No. I didn't say it was not a good number.
16 It's no different than number four, which is
17 15.43. I considered these six, and I utilized
18 11.25. I could have utilized 11.5, I could
19 have utilized -- it's the appraiser's decision
20 when you have that range. I was giving the
21 assessor the benefit of the doubt. Although
22 the cap rate was at the lower end of the range,
23 it was not in the middle, each subject was
24 going to be complete, and therefore, that's why
25 I went to the -- not to the middle but to lower

1 than the middle.

2 Q: Maybe I'm mischaracterizing your testimony, but
3 you seem to suggest that because, although the
4 date of this transaction was December 22, 2008,
5 it really wasn't reflective of the market in
6 December of 2008; is that -- wasn't that your
7 testimony?

8 A: That's correct.

9 Q: Okay. So you're saying you've relied on
10 information that you don't believe was
11 reflective of the market? I'll ask you again.
12 I want to make sure I'm very clear.

13 A: Yeah.

14 Q: Because I thought I heard your testimony to be
15 that you didn't think that the ten percent cap
16 rate that utilized, which is a Best Western
17 that sold December 22, 2008, some seven or
18 eight -- forgive me on my math -- days from our
19 date of value, it's your opinion that that is
20 not reflective of the market?

21 A: It was reflective of the market, that was one
22 of the six indications. But that was not -- I
23 did not feel like, based on information I
24 considered, including this 8.46, that a 10.12
25 cap rate would not be logical as of December

1 the 31st of 2008.

2 Q: Some seven, eight days later?

3 A: That's the -- let me explain something. You're
4 talking about the date of the deed.

5 Q: That's correct.

6 A: Okay. And -- but as I said earlier, the sales
7 negotiated at one point in time and closed,
8 they don't normally close within two weeks,
9 three weeks, four weeks. Something like this
10 could be several months. And this is the date
11 of the -- this is the date of the deed. I find
12 that date's recordings are sometimes years
13 later, but this is the actual date of the deed.
14 But apparently they had some financing lined up
15 and they closed it on that date. But that's --
16 one sale always make the market.

17 Q: Sure. Okay. Let me ask you about another
18 particular sale that you used. And I'm
19 assuming, once again, you used these sales to
20 be indicative of what you believe the market to
21 be in and around that time?

22 A: For the capitalization rates.

23 Q: For the capitalization rates. And you used
24 hotels that you believe were comparable to the
25 subject hotel to be able to arrive at what you

1 perceive to be a comparable cap rate; is that
2 not true?

3 A: I utilized the best sales I could find, but if
4 you look, one's a Days Inn, one's a Best
5 Western, and one's a Comfort Inn Microtel,
6 Holiday Inn Express and Best Western, so ---

7 Q: Appreciate you going where I want to go.

8 A: Yeah. So those are ones, those are the most
9 recent sales I could find in South Carolina,
10 and I did find two in North Carolina, but I
11 used the best. And some of them were -- and
12 two of them were exterior corridors.

13 Q: Thank you, sir, for bringing that up. Because
14 what you're representing to the Court is, and
15 you've heard testimony earlier today that the
16 Hampton Inn is reflective of what has been
17 called the gold standard?

18 A: Right.

19 Q: And I don't see any of the hotels that you've
20 listed that would be considered a part of that
21 gold standard except for if you want to
22 classify that Holiday Inn Express, yet you've
23 used two hotels, one in Wilson, North Carolina
24 ---

25 A: Yes.

1 Q: --- as if it's somehow reflective of the
2 Charleston market and based on a MicroTel hotel
3 ---

4 A: Yes, sir.

5 Q: --- and it is your opinion that that is
6 comparable from the standpoint of the types of
7 risks that an investor would rely on to
8 determine or arrive at a cap rate on December
9 31, 2008, in Charleston County?

10 A: Okay. The cap rate is what is -- you're trying
11 to say that I used like these sales to value
12 the property. No, I used these sales to obtain
13 a capitalization rate. I didn't use them to --
14 I didn't use sales price per room. I didn't --
15 the only thing I was using -- utilizing these
16 for were to obtain a capitalization rate.

17 Q: Yes, sir. And I didn't mention anything about
18 rooms. I didn't mention anything about the
19 sales. I', simply asking you about cap rates.
20 And you used this as the basis for arriving at
21 a cap rate in this case. And my question to
22 you is whether or not you believe an investor
23 looking at a MicroTel in Wilson, North
24 Carolina, is reflective of what an investor
25 would look at with regard to a hotel in

- 1 Charleston County, South Carolina?
- 2 A: No, sir. I used these six sales to obtain
3 capitalization rates, and there's a
4 relationship to get your capitalization rate is
5 income divided by sales price. So the income
6 in cap -- the relationship would be the same.
7 So the capitalization rates are what I utilized
8 and the relationship in each of the cities, I
9 don't -- I don't adjust for them. I didn't
10 adjust, make any adjustments. Whatever -- like
11 the exterior corridor that's, you know, that's
12 the income and the sales price of the
13 relationship, and I was trying to get that
14 capitalization rate at.
- 15 Q: You would agree with me in South Carolina that
16 the standard by which property is -- its fair
17 market value is determined is a willing buyer,
18 willing seller standard; is that not true?
- 19 A: Yes, sir.
- 20 Q: And with that regard to a willing buyer and a
21 willing standard, don't you agree with me that
22 hotels in Wilson, North Carolina, hotels in
23 Charleston, South Carolina, hotels in Forest
24 City, North Carolina, are not all the same?
- 25 A: No, they're all different.

- 1 Q: They're all different?
- 2 A: Yes, sir.
- 3 Q: And wouldn't you agree with me an investor or
4 a willing buyer would view the risks and the
5 potential upsides benefits of purchasing
6 property in Charleston, South Carolina, to be
7 different than the expectations in Wilson,
8 North Carolina?
- 9 A: As I said, I utilized these to obtain a
10 capitalization rate. I was not utilizing these
11 to value the subject except to get the
12 capitalization rate.
- 13 Q: You have made representations, and I'll try to
14 -- that you couldn't get a loan in 2008; do you
15 remember making that statement?
- 16 A: Yes, sir.
- 17 Q: Do you still stand behind that statement that
18 you could not get a loan in 2008? Or is that
19 ---
- 20 A: Are you asking me personally?
- 21 Q: No, sir, I'm not asking if you got a loan.
- 22 A: Okay, no, because I couldn't get a loan at my
23 house.
- 24 Q: I appreciate that. But what I'm asking you ---
- 25 A: A refinance.

1 Q: --- since you were qualified as an expert and
2 you are giving your opinions with regards to
3 the market to the Court, I'm assuming when you
4 said you weren't referring to you
5 personally or me personally; you were referring
6 to the investor globally who would be investing
7 in hotels with regard to property in
8 Charleston, South Carolina, and your statement
9 was you could not get a loan in 2008; isn't
10 that true?

11 A: That's correct.

12 Q: And you even testified that you communicated
13 with and called several banks to validate that
14 statement; is that true?

15 A: Yes, sir. Yeah.

16 Q: Would it surprise you to know that you actually
17 could get a loan in 2008 for ten million
18 dollars to build a hotel?

19 A: If you're talking about -- if you're talking
20 about this hotel -- if you're talking about
21 this hotel, it's possible because, like I said,
22 sales take months to close. Commitments to do
23 the hotel would have been committed -- the day
24 they broke ground, that loan was negotiated
25 months before. And the appraisal had to be

1 ordered and the title and all that. So, no, it
2 wouldn't surprise me, no. You could not get a
3 -- you could not get loans in October,
4 November, December of 2008.

5 Q: So really let me try to characterize your
6 testimony correctly. It's not that you're
7 telling the Court today that there were not
8 loans negotiated and recorded in October and
9 November and December of 2008, because you
10 actually didn't go and do the research to
11 determine if there were mortgages recorded in
12 that period of time; is that not true?

13 A: That's correct.

14 Q: Okay. Your ---

15 A: I said you could not get a loan.

16 Q: Okay.

17 A: Did not say close one; you could not get a
18 loan. I talked -- I was looking for the page
19 in my appraisal. I talked to several different
20 bankers and all of them said that they would
21 not make a loan on a hotel and they would not
22 -- they would not make -- and they basically --
23 I asked them specifically would you make a loan
24 -- would you make a loan and would you make a
25 loan to a hotel, and all of them basically said

1 the same thing. I'll figure out where that

2 page is in a minute. I'm sorry. Page VI.

3 Q: Give me a second to navigate there, please.

4 A: Sure.

5 MR. ELLISON: It's VII.

6 MR. ROSEN: Oh, VII. What did I say?

7 MR. ELLISON: You said VI.

8 MR. ROSEN: Oh, I'm sorry. VII. Sorry.

9 MR. ELLISON: I was talking to Joe Dawson.

10 MR. ROSEN: Sorry. Too many Joes.

11 Q: Go ahead, you were telling me what?

12 A: Yeah, VII. It's -- I talked to First Community

13 Bank, Drew Painter; Arthur State Bank, Rhonda

14 Hughey; First Citizens Bank, that's a large

15 bank, of course, you know, Brian Blackwelder;

16 Southern First, they're down in Charleston and

17 in Columbia and Greenville, Blake Taylor; and

18 BB&T in Spartanburg, Stan Parker, and basically

19 what I got was beginning October 2008, these

20 banks were no longer making loans on hotels.

21 Q: Okay. I'm going to hand you three documents.

22 A: Sure.

23 Q: And I'm going to represent to you that there

24 are three mortgages that are recorded with

25 First Citizens Bank, and I just ask you to look

1 at them and tell me what they are, what they're
2 dated, and for the amount?

3 A: Okay.

4 Q: I apologize we don't print big letters in
5 Charleston.

6 A: That's all right. I'm getting new glasses in
7 a week or two. I assume this first one is a
8 house in Kiawah.

9 Q: I'm just asking you just to identify the best
10 you can.

11 A: Oh, it's a two million dollar, over a two
12 million dollar loan, real estate loan in
13 Kiawah.

14 Q: That's fine. There's another document; would
15 you please just identify that one as well.

16 A: Okay. Sure.

17 Q: I think I handed you a stack of them.

18 A: Yeah, that was the first one.

19 Q: And, Mr. Rosen, I'm not trying to belabor it.

20 A: Sure.

21 Q: You're at liberty to look at it as long as you
22 want. I just simply want you to identify what
23 it is as you understand it from the first page.
24 And you're at liberty to study it as long as
25 you like.

1 A: All right. I see one is dated October 31st of
2 '08, so that -- that would be, you know, in
3 addition which you don't have and it's not
4 available to the Court -- it's not available
5 from the courthouse is the date, the commitment
6 letter of when these things were dated. This
7 looks like it's possibly an industrial property
8 on Morrison Drive.

9 Q: Okay.

10 A: I forgot to look at the date. This one's dated
11 looks like December 18 of 2008 and it's on
12 Wadmalaw Island. I assume this is a house, but
13 it could be something else. I don't know.

14 Q: I'm going to ask you to find one more real
15 quick and I'm going to move on too.

16 A: Sure.

17 Q: I will ask you -- or I'll tell you that I'm
18 sure you're familiar with Hospitality, LLC, but
19 they also build and own hotels in Charleston,
20 and that's the Comfort Suites in Charleston.
21 Would you please -- you're at liberty to read
22 it as long as you like ---

23 A: Sure.

24 Q: --- but I'll represent to you that that's a
25 hotel loan that closed first part of January of

1 2009 for a hotel that was built in Charleston
2 sometime in 2009. And I'm going to ask you to
3 look at it and identify it for the court and
4 tell me if that's another loan from another
5 bank in South Carolina and for how much.

6 A: Yes. It's a ten million dollar loan. This
7 thing is dated January 15th of 2009, so if it's
8 the completion of the hotel, it's probably very
9 similar to the subject property proposed at a
10 point in time before the crunch, before the --
11 I call it a depression/recession or whatever,
12 so. And if you own -- Hospitality LLC I think
13 owns what, four hotels. I don't know why I'm
14 thinking -- they own several hotels. So they
15 have a -- if you've got a basis you can
16 convince a bank, you got a lot of hotels you
17 might -- but the question I asked was to the
18 bankers were y'all making these loans on
19 hotels. And they basically said no. And this
20 five banks -- one bank said -- one bank I think
21 I talked to after I finished the appraisal, he
22 said possibly, but today we're not making any
23 loans. It's called Capital Bank. So it
24 change -- it changes. And it depends upon how
25 much money you have in relationship, so. But

1 basically, you couldn't get any loans unless
2 you, you know, unless you had a lot more
3 collateral than you needed.

4 Q: Okay. Would you please turn your attention to
5 page 90 of the report.

6 A: Sure.

7 Q: I believe that section of your report deals
8 with your paired sales for land.

9 A: Yeah.

10 Q: Let's talk about paired sale land sale A.

11 A: Yes, sir.

12 Q: And you indicated that you had actually made
13 contact and did research with regard to these
14 sales, correct?

15 A: Yes, sir.

16 Q: All right. So let's talk about land sale A.
17 In your report on page 91 ---

18 A: Yes, sir.

19 Q: --- you reflect a tax ID number that reflects
20 two parcels; is that not correct?

21 A: Yes, sir.

22 Q: In your testimony earlier, you didn't highlight
23 that point, did you, that that particular
24 paired sale involved two parcels of land; is
25 that not true?

1 A: You're right, I didn't talk about -- I didn't
2 talk about the buyer or the seller or anything
3 I just talk about ---

4 Q: Sure.

5 A: --- that's the information I got.

6 Q: And what you indicated to the Court was that
7 this particular sale, which occurred in
8 February 22, 2007, was sold approximately a
9 year later or so, May 8, 2008, and it sold for
10 what you articulate or characterize as a 27
11 percent increase?

12 A: Yes, sir.

13 Q: I'm not going to ask you to pull your
14 calculator out, but I'll represent to you your
15 math is not right. But that's not really my
16 point on this particular one, but you're at
17 liberty to use your calculator to determine if
18 in fact that's 27 percent or it's really 21
19 percent because your point is you reflected a
20 decrease in value; is that not true?

21 A: Yes. That's correct.

22 Q: That's the essence?

23 A: Yes.

24 Q: So would it surprise you to know that when that
25 particular property sold on May 8, 2008, that

1 it only sold one of the TMS numbers that you
2 / reflected in your report, and that is TMS
3 number seven, not TMS number seven and eight?

4 A: You're saying that the property was not -- was
5 bigger than 44 acres, 45 acres when it first
6 sold and smaller, because when I verified it
7 with Susan Reubish with Keller Williams, I
8 confirmed it with her, and I believe I had at
9 that point in time the deeds.

10 Q: Okay. I'm going to hand you a document then
11 because you did some research on this
12 particular property, right?

13 A: Yes, sir.

14 Q: Okay. So I'm going to hand you a document.
15 I'm going to ask you to identify it for the
16 record, please.

17 A: Okay.

18 Q: Let me help you out while you're looking.
19 Would you agree with me that it's titled Title
20 to Real Estate and it's between Highway 17
21 South Investments, LLC?

22 A: Yes, sir.

23 Q: And West Ashley Apartments, LLC, on the first
24 page?

25 A: Yes, sir.

1 Q: I do want to make sure the Court is aware of
2 what we're talking about, and that's referring
3 to your first land paired sale which identified
4 on page 91; is that not true?

5 A: Yes, sir.

6 Q: And if you draw your attention to the third
7 page of that document, there's an exhibit
8 reflecting the property that's involved in this
9 transaction; is it not?

10 A: Yes, sir.

11 Q: And in the property description, does it refer
12 to the 40 acres that you referred to in the
13 original sale, or does it refer to 15 acres?
14 I apologize for having you reading for the
15 Court ---

16 A: Sure.

17 Q: --- for the ---

18 A: Yes, sir, I see it does --- it does talk 15
19 acres, yes, sir.

20 Q: So the paired sales that you're referring to
21 originally identified it as 40 acres, and the
22 sale that occurred subsequent to that only
23 involved 15 acres. Could that not be the
24 reason why the value of that property dropped?

25 A: I'm still reading this.

- 1 Q: Take your time, sure.
- 2 A: I probably -- I don't think I can answer this.
- 3 I'm reading a deed and it talks about Tract B
- 4 and then it talks about new Tract A and Tract
- 5 B, so ...
- 6 Q: I'm going to ask you to read into the record
- 7 the first two lines of the -- of Exhibit A,
- 8 which is the reference the property for this
- 9 particular transaction.
- 10 A: All right. All that certain piece, parcel or
- 11 tract of land situate lying and being in the
- 12 City of Charleston, County of Charleston, South
- 13 Carolina, known and designated as Tract B,
- 14 182,735.29 square feet 15.673 acres as shown on
- 15 a plat entitled property line abandonment ---
- 16 Q: You're at liberty to continue to read ---
- 17 A: Yeah.
- 18 Q: --- now you're going to get ---
- 19 A: Well, the reason why I'm doing it is
- 20 abandonment and adjustment plat showing the
- 21 property adjustment of TMS 307-00-00-007, -008,
- 22 and -092 to make new Tract A 29.13 acres and
- 23 Tract B 15.673 acres and showing a portion of
- 24 TMS 307-00-00-007, 0.017 acre being transferred
- 25 to the right-of-way property of Highway 17

1 South Investments LLC along with the temporary
2 access easement located in the City of
3 Charleston, Charleston County, South Carolina.

4 Q: Mr. Rosen, if you are finished reading, would
5 you agree with me that all the language that
6 you read after the first two lines was simply
7 telling the Court the type of the plat? Would
8 you agree with me. ---

9 A: Yeah.

10 Q: --- that it's referring to Tract B and the
11 language you just read that says as shown on
12 plat entitled, everything afterwards was the
13 title of the plat which refers to three parcels
14 which is the title of the plat ---

15 A: Yeah ---

16 Q: --- that this particular transaction only
17 includes one TMS number, not both?

18 A: I can only rely on what I saw, and I don't
19 remember offhand. But when I verified it, I
20 verified with her as being 44.804 acres. And
21 we talked about -- we talked about, you know,
22 how it had dropped in value because it sold for
23 less. I don't remember -- I can't tell you
24 about this.

25 MR. DAWSON: Your Honor, I would like to move the

1 document we just described and I'd like to
2 refer to it as Petitioner's Exhibit 18 into
3 evidence. I hand you a copy of that, Mr.
4 Ellison.

5 MR. ELLISON: No objection, Your Honor.

6 THE COURT: Okay.

7 MR. ELLISON: What number is that?

8 MR. DAWSON: 17. I'm sorry, 18.

9 THE COURT: It's admitted.

10 (Petitioner's Exhibit Number 18 was marked for
11 identification purposes and admitted into evidence.)

12 Q: Mr. Rosen, let's talk about land sale B.

13 A: Yes, sir.

14 Q: What research did you do there?

15 A: I obtained copies of the deeds and I contacted
16 the buyer. I tried to contact I believe -- I
17 believe I tried to contact -- I try to usually
18 contact the seller and the buyer, but I got a
19 hold of Okey Landers.

20 Q: So in this instance you did not talk to the
21 buyer to understand any facts or circumstances
22 surrounding this particular sale; is that true?

23 A: You just said I didn't talk to the buyer.

24 Q: I'm sorry, you did not talk to the seller?

25 A: No.

1 Q: To determine what the facts and circumstances
2 that motivated him to sell or it to sell its
3 property for 50 percent of its value one year
4 later?

5 A: I don't remember talk -- I knew Okey Landers
6 had told me why it went down because I asked
7 him the question. I can't remember Charleston
8 one why -- couldn't get a hold of them. But
9 I did talk to Okey Landers, and there's the
10 telephone number that I reached him at.

11 Q: Did you do any research in the county's deed or
12 register of deeds to look at any other deeds or
13 mortgages related to that particular property?

14 A: I did not look at mortgages.

15 Q: Okay.

16 A: I did look -- we subscribe to Costar and I
17 looked -- I went through Costar, I don't know
18 how many deeds, and then I also consulted with
19 some appraisers to see if they knew of any
20 other paired sales in Charleston County.

21 Q: Okay. And so this particular paired sale the
22 seller, the original seller obviously was
23 Charleston One, LLC and it's your testimony
24 that they bought this property on July 9, 2008,
25 for \$1,850,000?

1 A: That's correct.

2 Q: And is it your understanding that they got a
3 mortgage when they purchased this property?

4 A: I didn't check that out.

5 Q: So I'm going to hand you a document that
6 purports to be the mortgage that they actually
7 got on the property when they acquired it on
8 July 8, 2008. Would you agree with me that
9 that's the mortgage to Charleston One, LLC?

10 A: Yes, sir.

11 Q: Okay. And since you didn't look to research to
12 determine if that mortgage is satisfied, I will
13 tell you I attempted to look because that's why
14 I pulled the mortgage, and I found no
15 satisfaction of that particular mortgage on
16 that property when Ms. Okey Landers purchased
17 it a year later. Wouldn't that be an
18 indication to you that that mortgage has not
19 been satisfied as of record for \$1.8 million
20 given Ms. Landers bought it for \$900,000 and
21 that mortgage is still of record? If that is
22 true. I'm simply representing to you I did a
23 search, could not find where it was satisfied.
24 I'm simply asking you hypothetically if in fact
25 that mortgage has not been satisfied and she

1 purchased for \$900,000 one year later, what
2 would that be an indicator to you since you
3 used ---
4 A: Sloppy attorney.
5 Q: I love that one. I love that one. And so ---
6 A: When I call up -- when I call up an attorney
7 that closed a loan six months earlier and I say
8 I've been to the courthouse, I can't find the
9 deed on record.
10 Q: Okay.
11 A: You know what they say? Oh, it's in my file.
12 Q: So it's your understanding that the best
13 explanation for a sale that occurred where the
14 value has dropped 50 percent was it just must
15 have been a lawyer because you didn't go check
16 yourself?
17 A: Well, I mean I asked what price did you pay,
18 she said \$900,000. And they talked about the
19 4,000 square foot house that was on the
20 property and that they were aware that the
21 previous purchase was \$1,850,000.
22 Q: And she offered you no more information and you
23 did not inquire on any more ---
24 A: I didn't ask about mortgage, whether there was
25 a mortgage on it.

1 Q: Hypothetically speaking. Hypothetically
2 speaking, could the buyer, Ms. Landers, have
3 assumed the loan, hypothetically speaking?
4 A: Anything is hypothetical. But I would venture
5 to say if you read the whole mortgage I would
6 think there was a due on sale.
7 MR. ELLISON: Here's the ---
8 MR. DAWSON: I don't have it.
9 MR. ELLISON: You don't have it?
10 MR. DAWSON: I don't know if I have it?
11 MR. ELLISON: The deed. Hold up.
12 MR. DAWSON: If he's got an objection he can make
13 that.
14 MR. ELLISON: No, no.
15 MR. DAWSON: I'm only asking or he can deal with it
16 on re-direct. Your Honor, I'm ---
17 MR. ELLISON: Well, you're showing him documents that
18 you're not showing me.
19 MR. DAWSON: I'll be happy to hand it to you; you can
20 have it. Mr. Ellison, I'd appreciate it if you
21 didn't look over my table.
22 MR. ELLISON: Okay. Can you come over here then, Ms.
23 Austin, for a moment.
24 A: Can I tell a story?
25 Q: Not yet. Let me ask a question first and if

- 1 you can weave it in I'd be happy to hear it.
- 2 Wait one second, please.
- 3 A: Okay. Be glad to.
- 4 Q: All right, sir. Let me draw your attention to
- 5 your -- to the end of your report.
- 6 A: Yes, sir.
- 7 Q: You have offered the Court -- I apologize.
- 8 Would you turn to the beginning of your report
- 9 where you had your summary.
- 10 A: Yes.
- 11 Q: And it's not numbered, but I believe it's the
- 12 third page of the document after your
- 13 transmittal letter to University Ventures, LLC.
- 14 A: Yes.
- 15 Q: I want to make sure I understand your testimony
- 16 today. It's your opinion that if a hotel
- 17 existed, in order to do your methodology, that
- 18 the total value including the going concern is
- 19 \$8.4 million?
- 20 A: 8,450,000.
- 21 Q: And you utilized what you believed to be a
- 22 stabilized value to arrive -- stabilized hotel
- 23 to arrive at your \$8,450,000 value to start
- 24 your methodology?
- 25 A: Yes, sir.

- 1 Q: Your opinion then is if you back out the lease
2 up cost and the FF&E, you arrive at what value?
- 3 A: The lease -- taking out the lease up cost ---
- 4 Q: That's correct.
- 5 A: --- cost of completion ---
- 6 Q: That's fair. You can take that out as well.
- 7 A: Yeah, I think we're at \$3,959,400, if that's
8 the answer. If I'm understanding the question
9 you're asking.
- 10 Q: That's fair. And so it is your opinion today
11 that if the Court were to value this particular
12 property to include the improvements, the value
13 that it should be put on the books is the
14 actual state of construction at 65 percent
15 along with the land value at \$3,959,400?
- 16 A: Well, that's my opinion of the value. But
17 that's not -- I never understood -- I never
18 heard of any case where the building is not 100
19 percent complete with a CO, then you can't have
20 a -- you either have land value or if land
21 value, building value.
- 22 Q: I appreciate you saying that. Appreciate you
23 helping me out a little bit. So it's really
24 your position that if the improvements are not
25 complete, you can't tax it; and if the

1 improvements are complete, then you can? Is
2 that not true?

3 A: That's what I've always learned, and I've been
4 doing this since I was ten years old with my
5 father.

6 Q: Appreciate it.

7 A: We used to look -- on January 1st we used to go
8 out and inspect the houses and I'd crawl
9 underneath. If there was a hot water heater
10 and you could occupy it, then it was taxed.
11 And if there wasn't a hot water heater, you
12 couldn't tax it.

13 Q: So although your assignment was to arrive at a
14 number, you don't believe that number is a
15 valid number because that number can't be used?

16 A: No, no. I didn't say that. It's up to -- it's
17 up to the Court to decide, but if you have to
18 -- if you have to have a number, if the Court
19 decides to tax something that's 65 percent
20 complete, that's the value, \$3,959,400.

21 Q: And if the Court were to assume that it was
22 complete, what value would you recommend the
23 Court to apply to this particular property?
24 Assuming the law is as I've articulated, and
25 you've been here all day.

1 A: Sure.

2 Q: What value would you ask the Court to assign if
3 the Court were not going to tax it or apply a
4 value based on a 65 percent completion, but
5 were going to base it on 100 percent
6 completion?

7 A: Well, that would be the \$8,450,000 less -- it
8 would be -- let's see, it would be that --
9 okay, if it's 100 percent, okay, then you've
10 got to take out the -- you wouldn't take out
11 the cost of completion ---

12 Q: Okay.

13 A: --- but you'd take up the lease up cost and the
14 FF&E.

15 Q: Okay.

16 A: Now, that's -- this number is not in my
17 appraisal and this is the number I'm
18 calculating -- it's \$6,660,000. \$6,660,000.00.

19 Q: And once again hypothetically if you assume
20 that it was stabilized, and therefore, you
21 didn't have a lease up cost, you would add that
22 \$440,000 you just took out. you'd put it back
23 in, wouldn't you?

24 A: That's correct.

25 Q: Okay.

1 MR. DAWSON: Your Honor, I think that's all the
2 questions I have.

3 MR. ROSEN: You want to hear my story.

4 MR. DAWSON: Only if the court wants to.

5 MR. ROSEN: It's about a minute. In 1991 my father
6 sold a lot to Dunbar Funeral Home. The deed
7 was recorded but never microfilmed. Several
8 months ago Ken Wingate's office called me and
9 said we can't it -- and we have microfilm. And
10 I said well, the microfilm broke and that's
11 where it is. They said no, we've already
12 checked it. There's no break in the microfilm;
13 it's missing. I was the only person in the
14 entire world that they could find that had a
15 copy, and it was a Xerox copy of the deed in my
16 file that should have been thrown out in 1991.
17 So when you asked about something not being
18 taken off record ---

19 MR. DAWSON: That's why you blame it on lawyers.

20 MR. ROSEN: No, I blame -- the register of deeds had
21 to write a letter and take my page and get it
22 in the record. It was not on record from 1991
23 until a few months ago. That was the register
24 of deeds.

25 MR. DAWSON: Thank you for your story.

1 THE COURT: Mr. Ellison, do you have anything on re-
2 direct?

3 MR. ELLISON: No, Your Honor, no questions.

4 THE COURT: Thank you, Mr. Rosen.

5 MR. ROSEN: Thank you very much.

6 THE COURT: Mr. Ellison, do you have any other
7 witnesses?

8 MR. ELLISON: No, Your Honor, I don't.

9 THE COURT: Okay. Let's take a ten-minute break and
10 we'll come back and hear anything that the
11 County may have and proceed to closings.

12 (Break from 3:47 p.m. until 4:02 p.m.)

13 THE COURT: Mr. Ellison, you indicated that wraps
14 your case?

15 MR. ELLISON: Yes, Your Honor.

16 THE COURT: Okay. And Ms. Bruner? Mr. Dawson?

17 MR. ELLISON: Your Honor, can I beg the Court's
18 indulgence for about two minutes.

19 THE COURT: Sure.

20 MR. ELLISON: I'm trying to get something straight
21 that will save us more than two minutes if I
22 can get this straight.

23 THE COURT: Okay. Well, go to it.

24 (Off the Record)

25 MR. ELLISON: Your Honor, I'm ready.

1 THE COURT: Okay. Ms. Bruner, Mr. Dawson, do you
2 have anything in reply?

3 MR. DAWSON: No, Your Honor, we do not. Thank you.

4 THE COURT: Okay. So at this point we're ready to
5 proceed to closings beginning with the County.

6 MR. DAWSON: Thank you, Your Honor. I will ask just
7 for clarification, I'm not suggesting that the
8 Court's going to rule when we finish our
9 closing, but I would expect that you may ask
10 for proposed orders, and the reason why I ask
11 that is it may curtail somewhat what I may say
12 because we'll have an opportunity to articulate
13 our position in that proposed order.

14 THE COURT: Yes.

15 MR. DAWSON: Is that what you probably will be
16 inclined to do?

17 THE COURT: That is what I'm inclined to do.

18 CLOSING STATEMENT - BY MR. DAWSON:

19 MR. DAWSON: Thank you, Your Honor. I will be wrong
20 on one point, I started the day out by saying
21 it will take the better part of a day and maybe
22 two, so I will concede I was wrong on the
23 better part of the day, maybe two, but I won't
24 concede that I'm wrong on what I believe that
25 this case is about. And Your Honor, we started

1 out this day with me telling you that I
2 believed the issue that's really squarely
3 before this Court to decide is a question of
4 law, and depending on that question of law,
5 which there really can be no testimony, so to
6 speak, then we will ultimately decide, the
7 Court, what value to put on the property as a
8 result of the 2011 reassessment. The reason
9 why I start there again is because, Your Honor,
10 we're up here today because the County has
11 challenged the Board of Assessment Appeals'
12 decision, which was to place this particular
13 property, property improvements, property by
14 itself, whatever you want to classify it, with
15 a value of \$628,439 because the Board felt the
16 building was incomplete at the end of 2008.
17 What that signals to me is the Board felt
18 because the improvements were not in existence
19 on the date of value, they could not be a part
20 -- the improvements could not be a part of the
21 reassessment. That's what the Board decided;
22 that's what we filed a contested case with
23 regards because we believe that was error, that
24 somehow because something did not exist on the
25 lien date it could not be a part of the

1 reassessment that was due to be conducted the
2 following year. So Your Honor, I want to start
3 with the law. And, Your Honor, I'd be happy to
4 if it's easier for me to hand you the statutes
5 as I talk about them, if you would prefer, not
6 because you're going to look at them later,
7 that's fine. But the first one I want to talk
8 about is 12-43-217, and I'd be happy to hand it
9 to the Court.

10 THE COURT: I have a copy.

11 MR. DAWSON: Thank you, Your Honor. I want to draw
12 your attention to the words of the law because
13 that's what's governing this particular case.
14 It says, notwithstanding any other provision of
15 law, once every fifth year each county or the
16 state shall -- so it's mandatory, we don't have
17 any discretion -- appraise and equalize those
18 properties under its jurisdiction. Second
19 sentence I believe is what's important in this
20 case because no one's disputing the County has
21 a duty and responsibility to reassess property.
22 It says property valuations -- once again, a
23 mandatory word -- must be completed, and then
24 it tells you when. This is the only place in
25 the reassessment statute that it gives you a

1 time period. While we have spent a lot of time
2 talking about 12-31-08, which it has an
3 application here; I'm not suggesting it
4 doesn't. I know Mr. Ellison somehow suggested
5 that Ms. Bruner somehow tried to
6 mischaracterize the lien date as being
7 something different, that is not what I'm
8 doing. So please hear what I'm saying and not
9 what Mr. Ellison is going to mischaracterize
10 it. It says, Must be completed at the end of
11 December of the fourth year. Your Honor, Ms.
12 Bruner said earlier, I will say now that the
13 date by which we must complete something is not
14 the date of value, it is a separate date. Ms.
15 Bruner told you at the beginning of this trial
16 that December of 2009 is where the statute
17 charges the County to complete a process. Now,
18 Your Honor, you will not find anything in this
19 particular statute that refers to the lien
20 date. I'm referring to 12-43-217, that's found
21 in a different area of the Code. I'm not
22 suggesting that it has application; it
23 absolutely has application. It is embodied
24 under our law for our system of taxation. So
25 I'm not suggesting that that does not exist; it

1 does exist. I'm simply articulating what the
2 statute says with regard to what we're supposed
3 to do for reassessment which must be completed
4 by the end of the fourth year. Your Honor, in
5 our reassessment cycle, that is the end of
6 2009, the Assessor's got to be completed. Now,
7 Your Honor, as you know, case law and statutes,
8 statute in particular 12-37-900 refers to this
9 lien date. It's the date, December 31st, the
10 year before the tax year in question. If this
11 were not a reassessment case, if the
12 respondents in this case were simply
13 challenging the property tax assessment for the
14 tax year 2011, you know as well as I do we
15 would use the December 31st the year preceding
16 the year in question. That's where this
17 December 31st, 2008, comes because our
18 reassessment must be completed by the end of
19 2009, therefore, we must use as a date to fix
20 and establish market values December 1st, 2008
21 (sic). That statute does not say therefore,
22 whatever you are attempting to value must be
23 completed and in place for its intended
24 purposes. It simply controls a point in time
25 to establish the market and to establish

1 highest and best use. That's it. So, Your
2 Honor, we then have to go look to another
3 statute to get guidance on what's supposed to
4 happen. Your Honor, I'd submit to you there's
5 two other statutes. The first one is 12-37-
6 670, and the other is 12-37-3140. Two
7 statutes, 12-37-670, 12-37-3140. Your Honor,
8 670, and I will unfortunately read it to you
9 and not because I'm trying to attempt to show
10 you my great reading skills but to draw the
11 point. Mr. Ellison flashed it on the screen in
12 his opening. 12-37-670 says, no new structure
13 must be listed or assessed for property tax
14 until it is completed and it is fit for the use
15 for which it's intended. Best evidence in most
16 case is a CO. Once again, in this case, Your
17 Honor, that's not even in question that it was
18 fit for its intended purpose on April of 2009.
19 The question becomes now that it fits within
20 the statute that this is a new structure that
21 is now fit for its intended purpose after the
22 lien date but before the end of the fourth
23 year, does this piece of property get
24 reassessed land and improvements. There's no
25 question before the end of the fourth year that

1 the property was fit for its intended purpose.
2 There's no question whether it was 65 percent
3 complete or 100 percent complete. So we have
4 a statute in 12-37-670 that says this is the
5 point in time, fit for its intended purpose.
6 3140 is what gives us the authority. And a
7 reason why I raise 3140, Your Honor, you heard
8 testimony that the property was put on the
9 books and the improvements were taxed in tax
10 year 2010. 3140 is where we get the guidance
11 for that. 3140(E) talks about ATIs and
12 improvements. The law says under 670, once
13 it's fit for its intended purposes, 3140 says
14 you put it on the books in the next tax year.
15 So we could not put it on the books for tax
16 year 2009 because it was completed in that
17 year; however, 3140 gives us guidance it goes
18 on the books in the next tax year. The
19 difference I'm trying to draw, or the
20 distinction I'm trying to draw, Your Honor, is
21 that in 2009 we were charged with completing
22 reassessment. In 2009, we were required to
23 look to December 31st, 2008, to establish
24 market values for properties. The argument I
25 think you've heard throughout this case, and I

1 point you to both experts' testimonies, and I
2 will refer to Mr. Rosen's report on page 66, as
3 part of his highest and best use analysis, he
4 uses the term or he refers on page 66 with
5 regard to his highest and best use analysis for
6 the property, as improved, and his conclusion,
7 it's my opinion that the existing hotel. Now,
8 his testimony was that he was only charged with
9 looking at what was actually on the ground.
10 But he says the existing hotel represents the
11 highest and best use of the property. Now, his
12 assignment was to look only at December 31st,
13 2008, yet he says in his highest and best use
14 analysis on page 66 at the bottom that its
15 highest and best use was as a hotel, existing
16 hotel. The County's expert says the same
17 thing. They both recognize when doing a
18 highest and best use analysis, you look to the
19 lien date and you determine not what actually
20 exists but you determine its highest and best
21 use as of that date, and then you look at the
22 market and you establish a value based on the
23 market. Your Honor, I referenced to you
24 earlier the LMP case, appreciate Mr. Ellison
25 raising the issue. This is really not that

1 case. Well, I will concede it's really not
2 that case, but I won't concede that a lot of
3 legal principles addressed in that case apply
4 here. Your Honor, it's my opinion South
5 Carolina law says we don't have the option, and
6 I think even Mr. Rosen said at the end, I don't
7 think you can put on the books 65 percent
8 complete property. It's either all or none.
9 I heard for the first time today that the
10 position of the respondents is that we want the
11 property to go on the books for 2009 as land,
12 for 2010 for land and improvements, for the
13 reassessment year, 2011, just the land. And
14 then in '12 we can reassess it again and we'll
15 put the value that we believe is appropriate
16 then. I have yet to find the statute that
17 spells that methodology or process. We put it
18 on, take it off, put it on, take it off. The
19 position the board took that they didn't take
20 exception to was not what was just described in
21 the opening. The position the Board said was
22 hey, it's incomplete, therefore, it's not part
23 of the reassessment. No law referencing that
24 position because there is no law referencing
25 that position. Your Honor, if this property

1 had not been fit for its intended purpose by
2 the end of the reassessment period, that would
3 be a different set of facts. You'd have a hard
4 time making their argument to you years after
5 we're supposed to complete the reassessment and
6 we somehow magically decide we're going to
7 reassess it because, Your Honor, I suspect if
8 we had done that this would be a different case
9 but they would say the County has no authority
10 to reassess a property beyond the reassessment
11 period. The argument you're hearing today is
12 you don't have authority to reassess the
13 property in its entirety to include
14 improvements simply because it did not exist on
15 that date. Your Honor, that's catamount to in
16 a highest and best use analysis the appraiser
17 looking at his analysis and he identifies that
18 on a particular date that it's not legally
19 permissible. But Your Honor, we would fail the
20 highest and best use test because you couldn't
21 do it, therefore, it would be inappropriate for
22 us to try to apply a value based on what didn't
23 exist because it wouldn't be its highest and
24 best use. If, for example, the zoning didn't
25 allow that piece of property on December 31st,

1 2008, to be a hotel, it could only be a single-
2 family home, it would be inappropriate for the
3 County to go back to December 2008 and assess
4 the property as if it were a hotel because we
5 simply liked the market values for hotels on
6 that date. It could not pass the highest and
7 best use test and, therefore, it could not be
8 put on the books as a hotel. Your Honor, we
9 don't have those facts here. We don't have
10 those facts. What we have is the respondent
11 simply saying we don't believe because it
12 wasn't a hotel on the date of value that it can
13 be reassessed pursuant to 12-43-217. Under the
14 law of South Carolina, that's just not the
15 case. Your Honor, what I don't want to do is
16 spend a lot of time talking about the
17 difference in opinions of the experts with
18 regard to value because, as I said to you
19 before, I think this case becomes very simple
20 if the Court determines that the reassessment
21 should apply to improvements and land for its
22 entirety, because, Your Honor, you heard two
23 different values, you heard one appraiser say
24 I think it's worth based on the taxable value
25 taking out the FF&E, our appraiser, somewhere

1 around 8.9 million. You heard their appraiser
2 say hey, if you take out the FF&E it's
3 somewhere around seven million. Your Honor, I
4 don't think that's really where the fight is
5 today. The fight really is is it \$7,100,000,
6 according to Mr. Rosen, or is it zero for the
7 improvements and we only put it on the books
8 for the land? Because when it all comes down
9 to it, that is the fundamental question. If
10 you ignore the County's position on value for
11 a second, simply ignore it as if it didn't
12 exist, and you solely pursue this case under
13 the theory of Mr. Rosen says the value that is
14 taxable is 7.1 million, or it is what the Board
15 said you do not value the improvements, that is
16 the case in its essence. Mr. Rosen said
17 correctly you can't put this on the books for
18 3.9 million because you can't put on the books
19 something that's partially complete. 12-37-670
20 says that. I appreciate his candor. He says
21 that was what I was asked to do, but you can't
22 do that. Yet we spent the better part of the
23 afternoon talking about something we all know
24 we can't do. I suspect Mr. Ellison is going to
25 get up here after I've just said that and he's

1 got to now clean that up. Either he's going to
2 say yeah, you should put in on the books for
3 what it was actually worth on that date. He's
4 going to have a hard time reconciling 12-37-670
5 because you can't do that. Or he's got to say
6 I actually think the Board was right, I don't
7 care what was on the ground at the time with
8 regard to improvements, since it wasn't
9 complete, you can't put it on the books.
10 That's what I started out this morning and he
11 said that's not correct. Or he has to concede
12 my position that because at the end of the
13 fourth year, pursuant to 12-43-217, it was
14 complete; it was fit for its intended use and,
15 therefore, it must be reassessed, then he has
16 to concede his own expert said you should put
17 it on the books for 7.1 at a minimum if you
18 believe their position in its entirety and
19 completely ignore the County's position.
20 That's the conundrum he's in, and he's got to
21 now clean up what I just said, because as he
22 asked Mr. Pope in his cross examination,
23 there's only three options. I've just
24 identified his three options because there's no
25 other way to get around it. Your Honor, we

1 believe this is fundamentally a case of
2 statutory interpretation. We believe the
3 statutes in South Carolina govern what should
4 happen here. We believe 12-43-217 governs what
5 should happen since that piece of property was
6 fit for its intended use before reassessment
7 was to be completed, it should be included in
8 its entirety, improvements and land, in the
9 reassessment for 2011. Thank you, Your Honor.

10 MR. ELLISON: May it please the Court.

11 THE COURT: Yes.

12 CLOSING STATEMENT - BY MR. ELLISON:

13 MR. ELLISON: I want to thank everybody for their
14 time and attention. I wouldn't exactly call
15 this the most scintillating of hearings. And
16 I've tried enough of these cases with my
17 friend, Mr. Dawson, and my other friends at the
18 County Attorney's Office who I have tried
19 numerous cases with, I appreciate their
20 civility. I appreciate their general
21 willingness to work with this and how this got
22 presented. And if there's one thing I've
23 learned is I never predict what Mr. Dawson's
24 going to do, and I don't think he ought to
25 predict what I'm going to do, because if he did

1 this afternoon, you're in for a surprise. What
2 we're dealing with is really very simple. The
3 County Assessor's Office has made a mess of
4 this. We are dealing -- and we have to keep a
5 couple of things in mind in order to interpret
6 the statutes that govern the process. There is
7 a difference between reappraisal and
8 implementation. And the gap that the County
9 assessment, the Charleston County Assessor's
10 Office has created, they created it by delaying
11 implementation twice. The value for every
12 piece of property as part of general
13 reassessment has to be the same date. You
14 can't mix and match them. The date that the
15 County chose for reassessment, this is not an
16 interim appeal, and I think it's very
17 interesting to go there, but we're not going
18 there today given the positions that the County
19 has taken today. But we're dealing with
20 countywide reassessment and equalization and
21 the date of value for every piece of property
22 that -- and this is not the first time we've
23 been up here on these, and not the first time
24 on this cycle, but every property has been what
25 are we looking at as of December 31st, 2008.

1 And properties after that time tend to get
2 improved generally, and the County Assessor
3 can't go in, ah-ha, now we're going to get you,
4 we're going to go away from the general date
5 for everybody, but because you've improved it,
6 now we can go grab those too. You can't do
7 that. They have to have a uniform date. And
8 you walk through the statutes, it's very
9 simple, they have to apply that uniform date
10 the whole way through. And what do we have?
11 We have a piece of property as of December
12 31st, 2008, in North Charleston; prior to 2008,
13 it was vacant land, that's the way it was
14 taxed. As of December 31st, 2008, there was a
15 hotel under construction. In 2009, the
16 certificate of occupancy is issued. I don't
17 think anybody's arguing about that. Let's walk
18 through the statutes. We talked about
19 hypothetical conditions, and we'll go to what
20 that is in just a moment. The statute says
21 what we're doing today is once every fifth
22 year, each county of the state shall appraise
23 and equalize, not just appraise but equalize
24 the values those properties under jurisdiction.
25 Again, this is not an interim appeal; it is

1 part of general reassessment. One date, not
2 mix and match so heads the assessor wins, tails
3 the taxpayer loses. And they can only postpone
4 for more than one tax year, and effectively
5 they've done it, they're two years out. Again,
6 the taxpayer didn't do that; the County
7 Assessor did that. But that's the date that
8 they used for everybody, except they don't want
9 to use it now. What are we supposed to do?
10 What's the true value as of that valuation date
11 that a reasonable buyer would pay to a
12 reasonable seller? But we've got a problem.
13 What's the problem? You know, we go and we
14 reassess it. What's on the property as of
15 December 31st, 2008? Well, if you assess
16 what's there, you've got a property that's
17 under construction. The problem is that we
18 have really a hypothetical condition that is
19 imposed on this process by the state statutes,
20 because what the state statutes say, 12-37-670,
21 is no new structure must be listed or assessed
22 for property tax until it is completed and fit
23 for the use for which it is intended. So even
24 though the hotel is under construction on the
25 valuation date, this hypothetical condition, we

1 assume that they don't exist yet. Why? State
2 statute says that we make that assumption. I
3 mean the legislature can impose all sorts of
4 assumptions if it wants to, but that's the one
5 that's imposed. What the County told the
6 Assessor to do -- Mr. Pope to do is appraise
7 the property with an effective date of the
8 appraisal December 31, 2008, not 2009, 2008.
9 based on the physical condition of the property
10 as of December 31st, 2010. So we're making a
11 different hypothetical. We're asking the
12 appraiser to assume something else that's not
13 a fact. But that's not authorized by the state
14 statutes. So what does Mr. Pope do? We've
15 reported our opinion of the retrospective value
16 as of December 31, 2008, which is what we're
17 supposed to do; that's what the engagement is,
18 coincides with the most recent revaluation in
19 Charleston County, the appraisal is subject to
20 a hypothetical condition, actually three of
21 them. Assumes the hotel is completed, open and
22 fully stabilized. Each of those add to value
23 in the market as of December 31, 2008. None of
24 those things are true on December 31, 2008, and
25 the testimony is uncontroverted that if the

1 hotel is completed the value goes up; if it's
2 open the value goes up; and if it's fully
3 stabilized the value goes up. The County is
4 saying we don't have to use December 31, 2008.
5 Thank you, Mr. Taxpayer, for going and making
6 these improvements because now we can get you
7 and effectively tax you at a different date
8 because you made it -- because we've created
9 this two year gap, we can get you for that too.
10 We don't have to equalize; we can equalize for
11 everybody but you. So we make these
12 assumptions, and we also talk about the fact,
13 the state of the market. And for once, in
14 dealing with these cases with Charleston
15 County, I think everybody is agreeing that the
16 last quarter of 2008 is, to use the language
17 that my 15-year-old son would use, it's a mess.
18 The tale of two years, and you really have a
19 bright line in September 2008, and Mr. Pope has
20 numerous references in his appraisal as to the
21 fact the market collapses in the last quarter
22 of 2008. Now, what's a hypothetical condition?
23 Both reports are prepared in accordance with
24 USPAP, the standards for the Appraisal
25 Institute. What USPAP says is that a

1 hypothetical condition is defined as a
2 condition directly related to a specific
3 assignment which is contrary to what is known
4 by the appraiser to exist on the effective date
5 of the assignment results but is used for the
6 purpose of analysis. In other words, it's make
7 believe. Mr. Pope didn't like that language
8 but that's what we're doing, we're making it
9 up. We're making it up. The statutes can tell
10 us to make something up. They can say pretend
11 that there are no improvements. Make that
12 hypothetical condition, assume that there are
13 no improvements, and the statutes say that.
14 The statutes don't say you can assume that the
15 property's fully up and running; they don't say
16 that you can use a different date; they don't
17 authorize the hypothetical conditions of an
18 open, stabilized completed hotel effectively
19 two years after the valuation date. The
20 statutes don't authorize that. This is what's
21 there now. How do we know what percentage was
22 complete? And Mr. Dawson takes issue with it,
23 okay, but that's what's there. If we're going
24 to ask an appraiser to appraise what's there
25 and not make believe what's there is a half 65

1 percent complete hotel, here is the pay
2 application that was submitted about that time.
3 The statute said no, we've got to assume we
4 can't tax the improvements; got to wait. We
5 have a bunch of slides that talk about just how
6 bad the market was. It was pretty bad. Again,
7 Mr. Rosen went through the analysis. If you
8 have land, he went through that analysis. If
9 you don't -- which is what you effectively have
10 to do here. And Mr. Dawson doesn't like the
11 fact -- he says I'm making it up. Well, I
12 didn't make up the statute that says that you
13 can come back after improvements are made when
14 they're finished and add them all to the value,
15 because they created -- they are the creators
16 of their own problem. That's why in 2012 they
17 can go back because that hypothetical condition
18 is removed and appraise the property with the
19 value of improvements added. That's why they
20 can do it. There's that hypothetical
21 condition. So what's the land value as of
22 December 31st, 2008? It's \$734,000, and we
23 would submit that's what -- because we're
24 dealing with general reassessment subject to
25 that hypothetical condition imposed by the

1 legislature in the statutes you ignore the
2 improvements, that's the value of this property
3 for tax year 2011. I thank you very, very much
4 for your attention.

5 THE COURT: Anything further from the County?

6 MR. DAWSON: Your Honor, I just want to say in
7 reference to 12-43-217, Mr. Ellison referred to
8 the mess the County created, and he's referring
9 to the delay in implementation. I wanted to
10 emphasize it is not a delay in the
11 reassessment. It is a delay in implementing
12 it. The reassessment would have occurred, and
13 we're simply holding the information and the
14 values to be applied at a subsequent year. We
15 only are allowed to do it one time. That's
16 found in 12-43-217. It is not delaying the
17 assessment; it is delaying the implementation
18 of the work that was done. I simply draw that
19 to the Court's attention because it's been
20 referred to as if that is a correct statement
21 of the words and a correct application of the
22 law. It is not. It is not the County's
23 position. The County's position is the statute
24 is clear, it is a delay of implementation.
25 It's not a delay of the reassessment. And this

1 argument somehow we are attempting to get a
2 windfall by grabbing something that we could
3 not otherwise have grabbed under an application
4 the County has never utilized in the statute is
5 simply not the case. It is a delay in its
6 implementation. 12-43-217(B) deals with that.
7 12-43-217(C) deals with it. It is not the
8 County delaying its duties. It's simply
9 delaying the impact of the values that were
10 established on 12/31/08 in its application to
11 properties in 2009 in this particular instance.
12 Under normal circumstances we would implement
13 that information in tax year '10. The General
14 Assembly has allowed counties to delay that
15 implementation one year. So it's simply
16 implementing them in '10 or implementing them
17 in '11, not simply waiting to grab additional
18 properties that we would not otherwise have
19 gotten. Whether there was a delay or not, Your
20 Honor, the application that we've articulated
21 today would have been the same because the
22 analysis I've given you doesn't change based on
23 its implementation. If the facts as I've
24 described them, which are undisputed, that the
25 hotel was fit for its intended purpose in '09,

1 the fact that we delayed the assessment is
2 irrelevant because it would have been completed
3 in '09; therefore, 670 says we can put it on
4 the books and the reassessment says it should
5 be identified and included in the reassessment.
6 The delay is a red herring, Your Honor. I just
7 simply wanted to bring that to your attention.
8 Thank you.

9 THE COURT: Thank you, Mr. Dawson. What is causing
10 me a little heartburn here is that the
11 reassessment, you agree, Mr. Dawson, that the
12 reassessment occurred based upon values as of
13 December 31, 2008?

14 MR. DAWSON: That's correct.

15 THE COURT: For all property in Charleston County?

16 MR. DAWSON: That's correct.

17 THE COURT: But in this instance, the property was
18 not complete the -- the respondent's property
19 was not complete?

20 MR. DAWSON: Yes.

21 THE COURT: And you all concede that it should not
22 be counted based upon that 2008 date, December
23 31, 2008, it was not completed. But what you
24 all have done is you're looking at the value as
25 of December 31, 2009, when it was completed?

1 MR. DAWSON: Your Honor, I may attempt to try to ---

2 THE COURT: Yes.

3 MR. DAWSON: --- articulate what I've been trying to
4 communicate and, that is, we believe, and I
5 agree with Mr. Ellison, all properties in
6 Charleston County have to be treated the same
7 whether they come into existence at a later
8 date or not, whether or not, in some instances,
9 by way of analogy, outside of the reassessment
10 year your property's highest and best use
11 changes because let's say there's some new
12 improvement. Your Honor, I believe the case
13 law supports this position that the 12/31/2008
14 date is not a date to determine existence of
15 properties. And I use the analogy of highest
16 and best use because something could not
17 actually be occurring on a piece of property
18 but that does not mean that you have to ignore
19 its highest and best use for taxation. If we
20 had a vacant piece of land and that vacant
21 piece of land was being used for farming,
22 however it was zoned for commercial, you would
23 not say that since it's being used as a farm
24 its highest and best use is a farm if it were
25 zoned for something else because its use is not

1 being used at its greatest income potential.
2 It's being used for a lesser use. Under the
3 argument that's being made here today, since it
4 did not exist as the thing on that date, we
5 should ignore the entire body of law that deals
6 with highest and best use and simply only focus
7 on what it was on that particular date. I use
8 that analogy only, Your Honor, because I don't
9 want to sound like I am not agreeing with what
10 you're saying; I'm trying to put in context my
11 argument. My argument is we agree, we must
12 establish values for all properties whether
13 it's in existence today or in the future
14 12/31/08 so that in subsequent years when it's
15 time to assign a value to a piece of property,
16 we're relying on that reassessment date of
17 12/31/08 to apply to properties even in the
18 future because we believe that's what the law
19 requires us to do. That was a similar argument
20 that I made to the court in LMP. We were tied
21 to an earlier reassessment date for purposes of
22 values, but we had to look to a future date to
23 apply the taxes to that piece of property based
24 on the lien date in that case, which was the
25 year preceding the tax year in question;

1 however, we had to go back in time and rely on
2 values. Values, values of all properties,
3 depending on what classification you put it in,
4 depending on what its highest and best use. We
5 captured values and applied it to a future
6 date. The argument you're hearing today is
7 that's really not the law in South Carolina,
8 you can't do that. You can only do it based on
9 what existed on the lien date. So that's why
10 I wanted to part there because I think that is
11 a very important distinction to make. And I
12 understand the position the Court has to
13 wrestle with, and that is, given as I presented
14 it the facts and law, how does South Carolina
15 treat that instance. Because it is somewhat of
16 a novelty that you have a piece of property at
17 65 percent complete on the tax control date,
18 the lien date. It does get completed before
19 the reassessment process finishes. The
20 argument is since it didn't fully exist on the
21 date that you established all values, you can't
22 take the value of 12/31/08 and apply it to that
23 piece of property that was finished four months
24 later and put it on the books for reassessment.
25 Their argument is South Carolina law prohibits

1 that, and their argument is that 12-37-670 is
2 the prohibition. Don't see where it says that.
3 Our position, Your Honor, is 12/31/08 simply
4 establishes a market, and to the extent they
5 believe we've applied the wrong highest and
6 best use, that should have been the argument.
7 Their argument should have been, Your Honor,
8 that's not the highest and best use of that
9 property and since 12/31/08 is the date we have
10 to determine highest and best use and value,
11 since its highest and best use wasn't that, it
12 cannot be put on the books at that value.
13 That's not what they're saying here. They're
14 saying because it didn't exist. That's the
15 issue that we believe the Court has to address,
16 does the existence on the tax control date, the
17 lien date, equal what it must be put on the
18 books at a future date. Once that question is
19 resolved then the answer is existence controls
20 when it's put on the books as of the tax
21 control date of 12/31/08, then it must be put
22 on the books as land value only because all
23 that existed for tax purposes, because we can't
24 put on partial improvements, it has to either
25 be fit for its intended use or not, then we're

1 limited. And if that's the ruling of the
2 Court, then all these other discussions about
3 value, we don't take exception to the \$700,000
4 value that Mr. Ellison has said the value
5 should be. The issue for us is so that it can
6 be uniformly applied with all properties in
7 Charleston County in every instance where we
8 have a piece of property that has a building
9 permit but no CO as of 12/31/08 should not, the
10 improvements should not be put on the books and
11 should not be included in the reassessment.
12 Your Honor, we have other properties that fit
13 that description because for every property
14 that got a CO in 2009, we treat it as part of
15 the reassessment. So we have the issue of
16 since we're charged with uniformity and
17 equalization, we now have one property that's
18 being treated one way and all the other
19 properties being treated a different way.
20 That's why we're here, because the law in South
21 Carolina is if it wasn't complete and fit for
22 its intended purpose on 12/31/08, and it was
23 complete in the tax year or the year 2009, and
24 it's the ruling of this Court that it cannot be
25 a part of the reassessment, we should not have

1 treated those properties differently. Those
2 folks didn't appeal. This particular taxpayer
3 did. We believe the law is what I just
4 described, but if the law is not that then we
5 should reverse it for all others because
6 they're not being uniformly applied; it's not
7 being treated the same. We have some
8 properties that got CO's that are being put
9 unto the reassessment with improvements and
10 land based on the fact that they were completed
11 in 2009 and other, one property because it
12 wasn't, I think the position is don't put it on
13 at its actual value because it's incomplete;
14 simply put it on at the land value which is all
15 that's taxable. That is the position the
16 County is taking, and we believe the correct
17 application is what I just described of the
18 law.

19 THE COURT: Okay.

20 MR. DAWSON: Thank you, Your Honor.

21 THE COURT: Thank you, Mr. Dawson. Thank you all
22 for coming. What I'm not going to decide this
23 case today. I want the parties to each submit
24 a brief in the form of a proposed order. And
25 I don't know if you all want the transcript

1 from this hearing prior to doing that or ---
2 MR. ELLISON: We should, Your Honor.
3 THE COURT: Okay. Let's say 45 days.
4 MR. ELLISON: After the transcript?
5 THE COURT: No, 45 days from today.
6 MR. ELLISON: Forty-five days from today?
7 THE COURT: Yes.
8 MR. ELLISON: Okay.
9 THE COURT: Forty-five days from today if you all
10 will submit, have those in my office, I'll
11 review them and -- also I will give you
12 actually ten days. We don't finalize it; it
13 will be 55 days before we finalize it. Once
14 you get them to me, you'll have ten days from
15 the time each one of you submit your proposed
16 orders to file any response to the opposing
17 side's proposed order. Okay. And once I
18 receive those and review them I will issue an
19 order with some form of ruling. Thank you all
20 for coming.
21 (There being nothing further, the hearing was
22 concluded at 4:42 p.m.)

INVENTORY of EXHIBITS

Page 1 of 2

Caption:	Charleston County Assessor v. University Ventures, LLC	Date/Time:	1/21/2015 at 10:00 a.m.
Docket No:	14-ALJ-17-0150-CC	Judge:	Robinson

Petitioner's:	Description	Marked	Admitted	Proffered
#1	University Ventures Purchase of Vacant Land 12-5-2006	Yes	Yes	
#2	North Charleston Building Permit for Building 4-17-2008	Yes	Yes	
#3	National Bank of SC Mortgage for 10,000,000.00 7-11-2008	Yes	Yes	
#4	North Charleston Building Permit for Pool \$64,450.00 9-22-2008	Yes	Yes	
#5	2008 Tax bill to University for \$5,845.07 11-1-2008	Yes	Yes	
#6	Certificate of Occupancy issued to University Ventures 4-22-2009	Yes	Yes	
#7	2009 Tax bill to University Ventures for \$6,022.84 11-1-2009	Yes	Yes	
#8	12-243-217(a)		No	
#9	2010 Notice of Classification based on \$8,180,000.00 5-14-2010	Yes	Yes	
#10	2010 Tax Bill sent to University Ventures for \$122,356.44 11-1-2010	Yes	Yes	
#11	2011 Reassessment Notice to University Ventures for market value of \$9,630,000.00 and capped value of \$9,407,000.00 6-30-2011	Yes	Yes	
#12	University Ventures Protest of 2011 Reassessment Notice 9-19-2011	Yes	Yes	
#13	2011 Tax bill sent to University Ventures for market value of \$9,630,000.00 and capped value of \$9,407,000.00 11-12-2011	Yes	Yes	
#14	2011 Notice of Classification, Appraisal and Assessment (repeat of 2011 Reassessment Notice) 5-23-2012	Yes	Yes	
#15	2012 Tax bill sent to University Ventures for market value of \$9,630,000.00 and capped value of \$9,407,000.00 10-1-2012	Yes	Yes	
#16	BAA Decision – Improvements not taxable for 2011 since they were not complete by 12-31-2008 (2-18-2014)	Yes	Yes	
#17	Appraisal Report of Mr. Pope	Yes	Yes	
#18	Title to Real Estate	Yes	Yes	

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INVENTORY of EXHIBITS

Page 2 of 2

Caption:	Charleston County Assessor v. University Ventures, LLC	Date/Time:	1/21/2015 at 10:00 a.m.
Docket No:	14-ALJ-17-0150-CC	Judge:	Robinson

Respondent's:	Description	Marked	Admitted	Proffered
#1	7/24/14 David Popes Engagement letter	Yes	Yes	
#2	9/8/14 Appraisal Report by David Pope	Yes	No	
#3	11/2/14 Appraisal Report by Rosen	Yes	Yes	
#4	Rosen updated CV	Yes	Yes	
#5	Corporate Bond Rate	Yes	Yes	
#6	Document on county website re: reassessment	Yes	Yes	

Resp # 2

is

Pet'r #17