STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Northbridge Associates, LLC,	)	Docket No. 06-ALJ-17-0863-CC
Petitioner,	)	
v.	)	**FINAL ORDER AND DECISION**
	)	The Honorable Carolyn C. Matthews
Charleston County Assessor,	)	November 25, 2008
Respondent.	)	

Appearances: Morris A. Ellison, Esquire, and William T. Dawson III, Esquire, Attorneys for Petitioner

Joseph Dawson, III, Esquire, Bernard E. Ferrara, Jr., Esquire, and Bernice M. Jenkins, Esquire, Attorneys for Respondent

Statement of the Case

Petitioner Northbridge Associates, LLC contests Respondent Charleston County Assessor's valuation of its Hampton Inn and Suites for tax year 2005. Pursuant to a 2005 countywide reassessment, the Assessor valued this Hampton Inn and Suites, located on the Isle of Palms Connector in Mount Pleasant, Charleston County, South Carolina, designated as Tax Map Number 558-00-00-388, at $9,300,000.

Petitioner objected to that valuation, and timely appealed to the Charleston County Board of Assessment Appeals ["Board"]. The Board held a hearing on October 11, 2006; it affirmed the Assessor's valuation of $9,300,000 on October 19, 2006. On October 30, 2006, the Board issued a revised Decision, again affirming the Assessor's valuation of $9,300,000.

Northbridge Associates, LLC timely filed with the Administrative Law Court a Request for a Contested Case pursuant to S. C. Code Ann. §12-60-2540 (2000). The Administrative Law Court heard this case on March 3 and 4, 2008. At the Hearing, Petitioner argued that the Assessor should have reduced the assessed value of the real property based on its superior management and intangible business value. Based upon all the testimony and exhibits introduced at the Hearing, I find that Petitioner has not met its burden of disproving the validity of the Assessor's valuation of the subject property. Thus, for tax year 2005, I find that the Assessor's value of $9,300,000 is correct.

Issue

What is the value for the Tax Year 2005 of the real property at Hampton Inn and Suites, Tax Map No. 558-00-00-388, located on the Isle of Palms Connector, Mount Pleasant, in Charleston County, South Carolina?

Findings of Fact

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

1. The Administrative Law Court has personal and subject matter jurisdiction of this matter.
2. Timely notice of the date, time, place, and nature of the hearing was given to all parties.
3. Petitioner owns the subject property, located on the Isle of Palms Connector in Mount Pleasant, Charleston County, South Carolina, designated as Tax Map Number 558-00-00-388.
4. In 1998, Petitioner constructed a Hampton Inn & Suites on the property. Petitioner owns and manages the hotel on the property in conjunction with Hilton Corporation and Bennett Hospitality.
5. The Hampton Inn & Suites has 121 rooms, three meeting rooms, 1,500 square feet of meeting space, a fitness room, a breakfast area where it provides a complimentary Continental breakfast to guests, and an outdoor pool. The Hampton Inn & Suites is classified as a mid-scale, limited service hotel without food and beverage. The hotel is situated on 2.1 acres located in the Sweetgrass Shopping Center, adjacent to the Marriot Residence Inn. It is one mile from the Isle of Palms, across US Highway 17 from Snee Farms Golf Course and Boone Hall Plantation.
6. Charleston County conducted a countywide reassessment in 2005. The subject property was initially appraised at $10,057,000, for the reassessment. After an application for review was filed by the Petitioner, the value was reduced by the appraiser to $9,299,000,

7. Petitioner timely requested a contested case hearing before the Administrative Law Court (ALC).

8. Petitioner timely appealed the Board's decision to the ALC. This case arises from the Assessor's assessment of the property for Tax Year 2005 at $9,300,000, valued as of December 31, 2003.

9. At the ALC hearing, both the Assessor and the Assessor's expert testified regarding the value of the property. Assessor's expert Andrew Hinds (Hinds) is a Certified Real Estate Appraiser in six states. He is a member of the Appraisal institute (MAI), a licensed Realtor, who has earned the Certified Commercial Investment Member (CCIM) designation, and is a member of the International Society of Hospitality Consultation (ISHC). He has appraised more than 800 hotels, fifty which are located in South Carolina. He has also sold numerous hotels. He was qualified as an Expert in the Field of Hotel Appraisal without objection.

10. Petitioner's witness, Chris Donato, also testified at the hearing. He is a Certified Real Estate Appraiser and holds the MAI and CCIM designations. He has appraised ten to fifteen hotels in South Carolina. However, those appraisals were for Mortgage underwriting purposes only. He also appraised one hotel for a condemnation proceeding. He was qualified as an expert in Hotel Valuation. Petitioner also had Tom Dolan testify on its behalf. Dolan is not licensed as an appraiser in any state. He also does not have any MAI and CCIM designations and does not have a Real Estate license. He lectures on the "Rushmore Approach", discussed infra, at various trade associations and state assessor's organizations. He was qualified as an expert.

11. Petitioner, the Assessor, and all witnesses agree that the highest and best use of the property is as a Hotel.

12. In determining the value of hotels, the parties must (1) Identify a Competitive Set and conduct a Competitive Set Analysis; (2) Determine the Occupancy Rate of the Competitive Set; (3) Determine the Average Daily Rates of the Competitive Set; and (4) employ a Valuation Method for the Subject Hotel based on the information gleaned from the Competitive Set.

Competitive Set Analysis:

13. To determine what figure should be used as a market average daily rate and what the market occupancy level for the subject hotel should be, the analysis of the competition in the

market must be completed, along with the analysis of the operating history of the subject hotel. Therefore, the Assessor and the parties' experts each delineated Competitive Sets of hotels with which to compare the subject property.

14. The Assessor and the Assessor's expert Hinds agreed on the same hotels for their competitive sets. Their competitive set consists of (1) the subject property, (2) the Homewood Suites, (3) the Hampton Inn Patriots Point, (4) the Residence Inn, (5) The Hampton Inn Daniel Island, and (6) the Comfort Suites.

15. Three of these hotels are in the immediate neighborhood of the subject property: the Comfort Suites, Residence Inn, and Homewood Suites. The remaining two are Hampton Inns, one located in Mount Pleasant and the other located on Daniel Island, on the main corridor approaching Mount Pleasant.

16. Petitioner's two expert witnesses do not agree on their competitive sets. Petitioner's two experts defined their competitive sets thusly:

Dolan	**Donato**
Hampton Inn & Suites-Subject	Hampton Inn & Suites-Subject
Homewood Suites	Homewood Suites
Hampton Inn Patriots Point	Hampton Inn Patriots Point
Hampton Inn Daniel Island	Residence Inn
Comfort Suites	Holiday Inn
Holiday Inn	
Comfort East	
Mainstay Suites	

17. Dolan's competitive set includes five of the six properties in Respondent's set, but adds three additional properties for a total of eight competing properties. However, Dolan excludes the Residence Inn, which is adjacent to the subject hotel and is owned by the same company as the subject. The remaining three additional properties are not comparable to the subject. Two are full service Holiday Inns; one is an older exterior corridor property called the Comfort Inn East.

18. Donato's competitive set includes four of the six properties that the Assessor and Hinds use, but includes an additional hotel – The Holiday Inn – that is included in the set defined by Dolan.

19. The subject hotel has 121 rooms. Forty-one of the rooms are one-bedroom suites and 80 are regular rooms or non-suite rooms. Because the subject hotel offers both suites and regular rooms, it competes directly with the Homewood Suites, which has 107 rooms. 104 are one-bedroom suites and four are two-bedroom suites. The subject also competes directly with the Residence Inn, which has 90 rooms (60 one-bedroom suites and 30 two-bedroom suites). The subject also competes with other hotels that have regular rooms of the same quality that are not considered 'suites.'

20. The subject hotel is a limited service, interior corridor hotel that offers a free continental breakfast, outdoor pool, guest laundry, fitness room and open lobby area with a large fireplace and gathering area. I find that the hotels in the competitive set which are most similar to the subject are the Residence Inn, Homewood Suites, Comfort Suites, and the two Hampton Inns, which were used by the Assessor and Hinds in delineating their competitive sets.

21. There are several hotels in Petitioner's competitive sets that are not truly comparable to the subject property. The Comfort Inn East, which Dolan used in his Competitive Set, is an exterior corridor motel where guests drive up to each door to access their room. There is no central lobby. The Holiday Inn, which both Donato and Dolan used, is a full service hotel with a restaurant and lounge that caters to a different clientele than that of the subject hotel.

22. The subject hotel is rated as a midscale chain without food and beverage by Smith Travel Research. However, Smith Travel Research also classifies the subject hotel as an upscale price category in the Mount Pleasant/Isle of Palms area. The other three properties in this upscale price category list include the Residence Inn, Homewood Suites, and the Seaside Inn. The subject's suite rooms compete in price with the Homewood Suites and the Residence Inn. The subject's non-suite rooms compete with the other hotels on each of Petitioner's competitive sets to some degree, except the Comfort Inn East.

23. The subject hotel's image is similar to that of the Homewood Suites and Residence Inn due to the physical characteristics, condition and location. Its brand name, Hampton Inn & Suites, is well known and considered a quality accommodation in the travel community. Based on photographic evidence, the subject hotel is most similar to the Residence Inn and Homewood Suites and superior to all the other hotels in the various competitive sets.

24. For the reasons set forth above, the competitive set utilized by Respondent and

Respondent's expert are valid comparisons for determining the valuation of the subject hotel.

Occupancy Rate Analysis:

25. The next component of hotel valuation is an analysis of the occupancy rates for the competitive set. Occupancy rate is calculated by multiplying the total number of rooms in a hotel by the number of days in a year. Then, the actual number of rooms occupied in a particular year is divided by the total number available.

26. Hinds interviewed a management representative from each hotel in his competitive set, excluding the subject hotel and the Residence Inn. During his investigation, Hinds determined that the Hampton Inn Patriots Point was under renovation for most of 2004, and therefore, there were 4,867 room nights that were not available for use due to renovations (rooms out of service). He adjusted for this, arriving at the actual occupancy for that hotel of 72.6%. He also learned that The Homewood Suites occupancy for 2004 was 61.6%, but the hotel had not reached stabilized occupancy, and that The Hampton Inn Daniel Island had not reached stabilized occupancy until 2005.

27. Donato did not interview the management representatives of any of the properties in his competitive set. Dolan interviewed the management representatives of only the subject hotel.

28. Based on the analysis of the subject hotel's occupancy history and the occupancy of Respondent's competitive set, Hinds determined that the occupancy rate for 2004 was 72.6%. The Assessor estimated a rate of 70.0%.The subject hotel's actual occupancy rate for 2004 was 73.51% and 71.78% for 2003. I find that the Assessor's and Hinds' estimates for their competitive sets are consistent with the actual occupancy rates of the subject hotel. Both are below the subject's actual occupancy rate of 73.5% for 2004.[1] Additionally, Hinds' estimates are below the Residence Inn's occupancy rate of 75.5% and his estimates match that of the Hampton Inn Patriots Point of 72.6%, adjusted to reflect room nights out of inventory due to renovation.

29. Petitioner's estimate of 65% is 11.6% lower than the subject's actual occupancy rate, and Petitioner's experts failed to demonstrate that their estimate of occupancy rate was reasonable for

[1] There are 121 rooms available at the subject hotel. Multiplying that number by 365 yields 44,165 for total rooms available. The total number of rooms occupied in 2004 was 32,461. 32,461 divided by the total number of rooms available - 44,165 - yields a 73.5% occupancy rate.

the subject hotel.

30. It appeared Donato and Dolan did not fully analyze the information available. Both extracted raw data from the surveys and reports provided to them and testified that the subject hotel was outperforming the market. Without conducting research or providing substantive evidence, Petitioner's witnesses testified that the subject hotel's superior management was the sole reason for their rates. Thus, I find their analysis of occupancy rates and conclusion less credible than Hinds.

31. I am not persuaded by Petitioner's view and find the preponderance of the evidence supports the Assessor's experts' occupancy rates. The manager of the subject hotel did not testify at trial. Nor is there any documentation in the record of what constitutes the alleged "superior management" at the subject hotel.

Average Daily Rate Analysis:

32. The third step in determining the valuation of the subject property is to ascertain the average daily rates of hotels in the competitive set. The average daily rates (ADR) in the competitive sets ranged from $77.59 per night for the Hampton Inn Patriots Point to $108.27 per night for the Residence Inn. The average daily rate was $106.07 per night for the Homewood Suites. The actual average daily rate for the subject hotel was $92.97 for 2003 and $95.99 for 2004. The average daily rate for <u>all</u> Hampton Inn & Suites properties corporate wide was $92.83 for 2003 and $94.64 for 2004. The Residence Inn and Homewood Suites set the upper end of the range; the next highest is the subject hotel. From this data and based on other projections of the subject hotel's occupancy rate, Hinds estimated that the average daily rate would increase to $98 per day for tax year 2005. The Assessor estimated that the average daily rate of $96 was stabilized for 2004.

33. Petitioner's experts 'average daily rate estimates of $87.30 [Dolan] and $90 [Donato] are not supported by the market or the actual operating history of the subject hotel property. Petitioner offered no testimony regarding the basis for these rates, other than attributing them to superior management. Moreover, since Petitioner's witnesses included properties in their competitive sets that are of lesser quality than the subject property and thus not truly competitive, their analysis yielded lower average daily rates.

34. Accordingly, I am not persuaded by Petitioner's view and I agree with the Assessor's estimate of the average daily rate and Hinds' evidence supporting that ADR. I find the Assessor's and Hinds' analysis and reports regarding average daily rates more credible than those proffered by Petitioner. Further, I find the appraisals submitted by the Assessor and Hinds most persuasive in the valuation of the subject hotel.

Valuation Method:

35. The final step in determining the value of the subject property is to determine which valuation method should be used. Commercial Real Estate is generally valued using three commonly accepted methods for ad valorem tax purposes: (1) the Income Capitalization Approach; (2) the Sales Comparison approach; and (3) the Cost Approach. The Assessor's expert witness, Andrew A. Hinds, relied on all three methods in determining the value of the subject property.

36. In commercial real estate appraisals, the Income Approach converts net operating income into a value, estimating a market-derived overall rate of return. Net income is calculated prior to debt service, and is divided by a capitalization rate to determine the value of the property.

37. Of the three traditional approaches that the Assessor and Hinds used, I find that the income capitalization approach should receive primary emphasis. It reflects the economics of ownership, which is the basis of investment in this type of property, and is based on a detailed analysis of the subject hotel operation. However, the sales comparison approach provides good support for a value estimate. Based on the evidence submitted and analysis of the data presented by the Assessor and Hinds, the going concern market value of the subject hotel as of December 31, 2004 is $9,800,000, and as of December 31, 2003 is $9,300,000.

38. Using the three approaches to value, yields the following values for the subject hotel:

Cost Approach	$ 9,600,000
Income Capitalization Approach	$ 9,800,000
Sales Comparison Approach	$10,100,000

39. These values are consistent with the Assessor's original determination that the value of the subject property is $9,300,000. Therefore, I find that the Petitioner failed to meet its burden

of proof that the Assessor's valuation of the property was incorrect.

The Rushmore Approach:

40. Petitioner's expert witnesses, Chris Donato and Tom Dolan, utilized an alternative methodology known as the Rushmore Approach. Mr. Donato valued the property at $6,568,000 as of December 31, 2003 and Mr. Dolan valued the property at $6,500,000 on December 31, 2003.

41. The "Rushmore Approach" created by Stephen Rushmore and HVS is an income approach developed specifically for hotel valuations that allows adjustments to reflect more accurately the impact of the business on the value of the real property and to determine the value of solely the real property for ad valorem tax purposes.

42. The Rushmore Approach, adopted in other jurisdictions,[2] modifies the income approach and adjusts components of the net income calculations to extract the hotel's "business value" from the net income figure.

43. In order to deduct the income attributable to management, as opposed to the real estate, the Rushmore Approach analyzes the hotel's competition by identifying the hotel's competition known as the "competitive set," and adjusting the hotel's average Average Daily Rate ("**ADR**"), Occupancy Rate, and Revenue per Available Room[3] ("**RevPAR**") to reflect the quality of management and extract the intangible business value from the Property in order to calculate the true value of the real estate properly for ad valorem tax purposes.

44. By comparing the subject hotel's ADR, Occupancy Rate, and RevPAR to those values achieved by other hotels in the competitive set, the Rushmore Approach analyzes the strength of the subject hotel's management. For example, if the hotel is performing poorly compared to its competition, the Rushmore Approach adjusts the subject hotel's ADR, Occupancy Rate and RevPAR upwards. If the subject hotel is performing well, the Rushmore Approach adjusts the

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

[3] Revenue Per Available Room is calculated by multiplying the Average Daily Rate by the Occupancy Rate.

subject property's ADR, Occupancy Rate and RevPAR downward to reflect figures more consistent with those in the competitive set.

45. The Assessor contends that the hotel property is appraised at market value, which is supported by the fee simple market appraisals performed by her staff and Hinds. The Assessor does not disagree with the Rushmore Approach in principle, but contends the competitive set chosen by Petitioner does not reflect accurate hotel market conditions, revenues, expenses, and values in Charleston County because it includes hotels that are not truly comparable, such as the Holiday Inn Hotel, which is a full service hotel, and The Comfort Inn East, which is an older exterior corridor motel.

46. Petitioner contends that the subject property is overvalued because it is outperforming the market. Petitioner's experts value the real property at $6,800,000, contending that the average daily rate and occupancy levels should be adjusted downward based on superior management. However, the Rushmore Approach requires that the appraiser perform research if there is such a discrepancy, and such a wide discrepancy in both occupancy rates and average daily rates of the hotels in Petitioner's competitive sets would not be considered comparable to the subject hotel.

47. While the Rushmore approach is one approach that can be used in valuing the subject property, I find that the three commonly accepted method for ad valorem tax purposes: (1) the Income Capitalization Approach; (2) the Sales Comparison approach; and (3) the Cost Approach should be used. The County's expert provided values of the subject property through the three traditional approaches to value, which I find are the acceptable methodologies to value the subject hotel.

Business Value:

48. In his valuation, the Assessor's Expert Hinds employed the Rushmore Approach in part by deducting the "business value" of the hotel from the value he calculated using the Income Capitalization Approach. The "Rushmore Approach" calculates the "business value" by making a deduction for a management fee and a franchise fee, after adjusting for occupancy and average daily rate to account for superior management, if it exists.

49. Testimony revealed that most hotels today are operated under a management contract and franchise to run the day-to-day operations of the hotel. They pay a fee for this service, typically

a percentage of total income. If the hotel is affiliated with a chain or brand, the affiliation charges a fee for this service, which is a percentage of the room revenues. The subject hotel is operated under the management contract with brand affiliation.

50. In determining the Business Value of the property, both Petitioner and the Respondent allowed as an expense a management fee of 3% of total income. All parties agreed that the market fee is 3%, even though the subject hotel's actual agreement with the management company contains a management fee of 2.5% of total income. Both Petitioner and the Respondent allowed as an expense 4% of room revenue for franchise fees. This is the actual percentage paid by the subject hotel. Therefore, all parties allowed identical percentage amounts for those components of business value, accounted for them in the same manner, and used similar procedures as an expense to the hotel operations. However, Petitioner contends that Hinds did not make a large enough deduction for occupancy and average daily rate to allow for the superior management of the subject hotel. The subject hotel has a management fee of approximately 3% of its gross revenues. The gross income attributable to business is calculated as follows: gross revenues of $3,198,363 times the management fee of 3% equals business income of $95,951.

51. The net business income is calculated as follows: gross revenue of $95,951 times the ratio of net income of 35.0% equals net income estimate of $33,583.

52. The business value estimate is calculated as follows: income attributable to business of $33,583 divided by the capitalization rate of 25% equals business value of $134,331, rounded to $130,000. The allocation of value is calculated as follows: total value estimate of $9,800,000 less furniture, fixtures and equipment of $210,000 less business allocation of $130,000 equals allocation to real estate of $9,460,000.

53. In the case before me, expert witness Donato testified that the subject hotel had superior management. In view of that testimony, one can conclude that the subject hotel is managed in an efficient manner so as to produce optimal net income. It is the job of a competent hotel management company to maximize revenue and limit expenses to fully realize net operating income for a hotel.

54. The evidence presented by the Petitioner does not support its contention that the Property was not equitably valued and appraised at its fair market value. The Appraisal Report submitted

by the Assessor is the most credible reflection of the value of the Property. Therefore, Respondent did not meet its burden of showing that the Property was overvalued.

55. Further, the evidence does not reflect an intentional and systematic under-valuation of hotel properties in Charleston County. The values assigned by the Assessor to the Property were well within the equitable values of other properties in its general area.

56. The Assessor's valuation of the Hampton Inn at $9,300,000, based on the three commonly accepted methods of valuation, is reasonable and is supported by the evidence and market data in the record.

Conclusions of Law

Based upon the findings of fact, I conclude the following as a matter of law:

1. S.C. Code Ann. § 12-60-2540 authorizes the South Carolina Administrative Law Court to hear this contested case arising from a controversy involving the valuation of real property pursuant to Chapter 23 of Title 1 of the 1976 Code, as amended. The taxable status of real property for a given year is to be determined as of December 31 of the preceding tax year. S.C. Code Ann. § 12-37-900. Atkinson Dredging Company v. Thomas, 266 S.C. 361, 22 S.E. 2d 592 (1976).

2. The Legislature set forth in S.C. Code § 12-37-930 how real property must be valued:

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

Therefore, market value is the measure of true value for taxation purposes. Lindsey v. S.C. Tax Comm'n, 302 S.C. 504, 397 S.E.2d 95 (1990). There is no valid distinction between market value for sales purposes and market value for taxation purposes under S.C. Code Ann. § 12-37-930. S.C. Tax Comm'n v. S.C. Tax Board of Review, 287 S.C. 415, 399 S.E.2d 131 (Ct.App. 1985).

3. An Assessor's valuation is presumed correct and the property owner bears the burden of proving the Assessor's determination is not correct. 84 C.J.S. Taxation § 410 (1954). Ordinarily,

this is done by proving 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 removed and the taxpayer is entitled to appropriate relief. See In re Mayfair Mills, Inc. v. Spartanburg County, 295 B.R. 827 (S.C. 2002); See also; Cloyd v. Mabry, 295 S.C. 86, 367 S.E.2d 171 (Ct.App. 1988); Belk Dept. Stores v. Taylor, 259 S.C. 174, 191 W.E.2d 144, 146 (1972) (nothing that the taxpayer contesting an assessment has the burden to prove that the assessed valuation was incorrect); and Newberry Mills, Inc. v. Dawkins, 259 S.C. 7, 190 S.e.2d 503,507 (1972) (noting that it was incumbent upon the taxpayer to prove that the taxing authority's valuation of its property was incorrect).

4. The income approach seeks to determine the present value of future benefits of property ownership based upon the net income an informed buyer believes the property will produce during its remaining useful life. See The Appraisal of Real Estate (American Institute of Real Estate Appraisers 10th ed.).

5. The income capitalization approach is an accepted means of valuing commercial property. When applying the income approach, a reliable method is that of the direct capitalization technique. That technique primarily relies upon factors of net operating income and overall capitalization rate. The capitalization rate is the desired yield a purchaser would seek on the capital investment. The estimated value of the property is derived by dividing the net operating income by the applicable capitalization rate. S.C. Tax Comm'n v. S.C. Tax Board of Review, 287 S.C. 415, 399 S.E.2d 131 (Ct.App. 1985).

6. While not conclusive, market sales of comparable properties present probative evidence of fair market value of similar property. 84 C.J.S. Taxation § 411 (1954). Furthermore, estimating the value of property, all of the factors which affect market value or would influence the mind of a purchaser should be considered, such as location, quality, condition, and use. 84 C.J.S. Taxation § 410.

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

8. In determining net operating income for purposes of deriving real property value for ad valorem tax purposes under the income approach, the tangible and intangible personal property,

and the income derived therefrom, must be separated from the real property's value. *See The* Ocean Course Golf Club, Ltd. v. Charleston County Assessor, 2005 WL 405408, *6-*7 (S.C.A.L.J. Jan. 18, 2005).

9. Petitioner pays a yearly business license tax based on the gross income generated by hotel operations. *See* S.C. Code Ann. § 5-7-30 (2004 & Supp. 2007).

10. Petitioner pays yearly personal property taxes based on the value of its furniture, fixtures and equipment located at the Property. *See* S.C. Code Ann. §§ 12-37-210, 12-37-220; 12-37-710 (2000 & Supp. 2007)

11. South Carolina courts, as well as other jurisdictions, have relied on the Appraisal Institute standards for valuation as published and updated in several editions of The Appraisal of Real Estate. See, e.g., S.C. Tax Comm'n v. S.C. Tax Board of Review, 287 S.C. 415, 399 S.E.2d 131 (Ct.App. 1985); Badische Corporation (BASF) v. Town of Kearn, 288 N.J. Super, 171, 672 A.2d 186 (1996).

12. Petitioner appealed the Assessor's valuation for tax year 2001 to this Court. By Order 03-ALJ-17-0148-CC, J. Kittrell upheld the Assessor's valuation of this property of $8,530,000. No evidence was introduced at this hearing to show that the value of the hotel has decreased since the 2001 valuation.

13. In the instant case, Petitioner has failed to establish that the Assessor's valuation is incorrect. Petitioner failed to establish through reliable, cogent, and competent quantitative evidence, or otherwise, that its valuation of the subject hotel was credible. However, the Assessor did demonstrate through reliable, cogent and competent evidence that it correctly valued the subject hotel. I conclude that the appraisals submitted by the Assessor and her expert are credible and that the methodology of valuation, i.e., cost approach, income capitalization approach and sales comparison approach, established the value of the real property.

Effective Date of Valuation:

14. Generally, the date of value for a given tax year is as of the lien date for taxes. Under S.C. Code Ann. Sections 12-37-900, the date for valuation for property for tax purposes is "the thirty-first day of December next preceding" the tax year under consideration. However, SC statutes have some conflicts regarding date of value. The property value in question is being appealed

for the 2005 tax year. Therefore the date of value would generally be December 31, 2004. However, the SC legislature recently adopted SC Code of Law Section 12-43-215 which states that if Market value is lower as of the lien date than it is as of the re-assessment date, the Charleston County Assessor's office would value the property as of the lien date. Doing so would construe conflicting statutes in favor of the taxpayer as the courts have frequently required. The more recent value date will apply if it benefits the taxpayer. There is no indication in the market that values fell between December of 2003 and December of 2004. Accordingly, the date of value for this Tax Year 2005 appeal is December 31, 2003, which is the date of value for the countywide reassessment.

ORDER

IT IS HEREBY ORDERED that the Assessor's valuation of Petitioner's property for tax year 2005 of $9,300,000 is correct and consistent with Section 12-37-930.

AND IT IS SO ORDERED.

HONORABLE CAROLYN C. MATTHEWS
Administrative Law Judge

November 25, 2008
Columbia, South Carolina