



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

MARLON I. BROWN, DPA
DIRECTOR

HSS Holland Hotel LLC,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MTT Docket No. 20-003752

City of Holland,
Respondent.

Presiding Judge
Patricia L. Halm

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, HSS Holland Hotel LLC, appeals the ad valorem property tax assessment levied by Respondent, City of Holland, against Parcel Number 70-16-33-400-074 for the 2020 tax year. The property at issue is operated as a DoubleTree Hotel and holds a franchise with Hilton Worldwide.

A hearing was held in this matter on March 16, 2022. Paul M. Jones, attorney, appeared on behalf of Petitioner. Ronald VanderVeen, attorney, appeared on behalf of Respondent. Petitioner’s valuation witness was Laurence Allen. Respondent’s valuation witness was Jeffrey Genzink.

Both appraisers valued the subject property by first determining the going concern value, or total business value, of the hotel as an ongoing operating business. As discussed below, the going concern value includes a business’ real property, personal property, and intangible assets. Once a value for the going concern has been established, the value of the business’ personal property and intangible assets is subtracted, with the result being the value of the real property.

Based on the evidence, testimony, and case file, the Tribunal finds that the subject property’s true cash value (TCV), state equalized value (SEV), and taxable value (TV) are as follows:

Parcel Number: 70-16-33-400-074

Year	TCV	SEV	TV
2020	\$10,010,000	\$5,005,000	\$5,005,000

PETITIONER’S CONTENTIONS

Petitioner’s contentions of TCV, SEV, and TV are as follows:

Parcel Number: 70-16-33-400-074

Year	TCV	SEV	TV
2020	\$7,380,000	\$3,690,000	\$3,690,000

It is Petitioner's contention that the subject property is assessed in excess of 50% of its TCV. While Respondent's appraiser, Mr. Genzink, also concluded that the subject property is over-assessed, Petitioner contends that Respondent's revised value still results in an assessment that is still excessive.

As described by Petitioner, the crux in this case involves a dispute as how to account for the value of the intangible asset. The subject property operates as a DoubleTree Hotel and holds a franchise with Hilton Worldwide. Therefore, the intangible asset at issue is the franchise. Petitioner contends that Respondent's appraisal is flawed because it utilized the Rushmore Method and in doing so accounted for the franchise's value by deducting the franchise fee and the management fee in the income capitalization approach. Petitioner contends that the value of the intangible asset itself must also be deducted from the total business asset value just like the value of the personal property is deducted. Petitioner explained that the Tribunal has rejected a deduction for the value of the intangible asset in certain cases; however, this was because there was either no market evidence to support the value, or no evidence that "the capitalized value of the going concern[']s net income exceeded the value of the physical assets."¹ In this case, Petitioner submitted market evidence that the capitalized value of the going concern net income exceeded the value of the physical assets, and Petitioner attributed this value to that of the intangible asset.

In its Post-Hearing Brief, Petitioner argues that "Michigan case law does not provide a bright line standard for determining the true cash value of a hotel for property tax purposes."² Citing cases³ utilizing the Rushmore Method, Petitioner argues that the Rushmore Method is not "universally" accepted and that it has been criticized by the Tribunal. Petitioner argues that "the Rushmore Method only addresses half of the intangible question, the *cost* of the franchise. A primary drawback of the method is that it does not consider the *benefits* of the franchise."⁴ Petitioner agrees that "[w]hen the benefits of the franchise fee are equal to the cost of the franchise, then the Rushmore Method should adequately account for the intangible value."⁵ However, when the franchise's intangible benefits exceed the franchise fee, as it does in this case, additional value must be removed from the going concern value to account for the intangible asset. For this reason, Petitioner argues that there is market-based evidence to support an adjustment for the value of the intangible asset.

¹ Petitioner's Trial Brief at 3. See *Southfield Western v City of Southfield*, 146 Mich App 585; 382 NW2d 187 (1985).

² Petitioner's Post-Hearing Brief at 3-4.

³ In support of its argument, Petitioner cites *Metropolitan Life v Delta Twp*, (Docket No. 83722), issued April 2, 1990; *US Can Hospitalities, LLP v City of Romulus*, (Docket No. 328350), issued Sept. 29, 2009; *Grand Haven Investments, LLC v Spring Lake Twp*, (Docket No. 364917), issued Oct. 31, 2012; and *Treetops Acquisition Company, LLC v Township of Dover*, (Docket No. 316763), issued Sept. 5, 2012.

⁴ Petitioner's Post-Hearing Brief at 3. (emphasis in original.)

⁵ *Id.* at 6-7.

In challenging Respondent's appraisal, Petitioner argues that under Respondent's approach, "the real estate value would change with the franchise . . . This does not reflect true cash value because the value of the real estate should not fluctuate based on the hotel's brand."⁶

PETITIONER'S ADMITTED EXHIBITS

P-1 Allen & Associates Appraisal.

PETITIONER'S WITNESS

Mr. Laurence Allen, of Allen & Associates, was Petitioner's only witness. Mr. Allen has been certified as an appraiser since 1991 and has held the MAI (Member of the Appraisal Institute) designation since 1978. Mr. Allen testified that he has appraised five to ten hotels in the last five years. Mr. Allen was recognized as an expert in real estate valuation.

Mr. Allen described the subject property as containing 8.76 acres of land, with a zoning classification of C-2. The property contains a four-story, "full-service" hotel, with 168 rooms, 97 of which are "single king" rooms, 63 are "double queen" rooms, and 8 are "junior suite" rooms. The hotel was constructed in 1987 and was operated as a Holiday Inn. Attached to the hotel is a 1-story recreational area that is described as being a large atrium area with an indoor pool and whirlpool. This part of the building is what was referred to as a "Holidome." The hotel was renovated in 2012-2013 when it was converted from a Holiday Inn to a DoubleTree Hotel. As a result, as of December 31, 2019,⁷ the hotel had an effective age of 29 years with a useful life of 40 years.⁸ As of tax day, the furniture, fixtures and equipment (FF&E) had an effective age of 7 years, and a useful life of 10 years.

The hotel's amenities include a guest laundry, a business center in the lobby, a fitness center, and a sundry shop. The building also contains a conference center, a bar, and a restaurant. Mr. Allen described the conference area as being small, with only 9,730 square feet. There is also an attached parking lot with 350 parking spaces.

Mr. Allen described the lodging market as being broken into three segments: commercial, group, and leisure. In the Holland area, the leisure market represented the largest segment at 64% of total room demand. The commercial segment accounted for 36% of room demand, with demand for the group segment being virtually zero.⁹ According to Mr. Allen, the subject property is outperforming in the commercial market but underperforming in the leisure market due to its location.

⁶ *Id.* at 9.

⁷ Pursuant to MCL 211.2(2), "[t]he taxable status of persons and real and personal property for a tax year shall be determined as December 31 of the immediately preceding year, which is considered the tax day"

⁸ P-1 at 50.

⁹ *Id.* at 60.

According to Mr. Allen, the subject property is located in a declining area. For the hotel business, “it’s not the best location.”¹⁰ Mr. Allen described the area as declining in population,¹¹ with the commercial activity having moved north of Chicago Road. Specifically, the newer hotels and the better branded hotels are located on US 31, about 2 to 3 miles north of the subject property. For these reasons, Mr. Allen concluded that the subject property’s neighborhood is “in the declining stage of its life cycle.”¹²

In terms of the subject property’s deficiencies, Mr. Allen described the parking lot as being old. It was his opinion that the parking lot will need to be renovated in the near future. According to Mr. Allen, room renovations occur approximately every seven years. Because the rooms were last renovated in 2012-2013, they are close to needing another renovation. Mr. Allen estimates that the room renovation costs will be \$25,000 to \$30,000 per room.

Mr. Allen considered the subject property’s highest and best use as both vacant and improved. As vacant, the maximally productive use was to hold the property for future development. As improved, the maximally productive use was the continued use of the property as a hotel with bar/restaurant and conference center. Ultimately, Mr. Allen concluded that the value of the hotel is greater than the value of the land, so continued use as improved is the highest and best use of the subject property.¹³

In concluding to a TCV for the subject property, Mr. Allen considered the income approach, the sales comparison approach, and the cost approach. It was Mr. Allen’s opinion that the cost approach was not applicable due to the age of the building and its functional obsolescence. While Mr. Allen utilized both the income approach and the sales comparison approach, he placed most emphasis on the income approach because this is an income-producing property, and “a potential buyer for a property such as the subject would typically base the purchase decision on the present value of the anticipated stream of future earnings.”¹⁴ Mr. Allen utilized the sales comparison approach to “measure the reasonableness of the value as indicated in the Income Approach.”¹⁵

Income Approach

According to Mr. Allen:

The Income Approach is the most relevant value indicator because a potential buyer for a property such as the subject would typically base the purchase decision on the present value of the anticipated stream of future

¹⁰ Transcript at 23.

¹¹ *Id.* at 22. See also P-1 at 24. However, upon cross-examination, Mr. Allen admitted this was a mistake and that the population actually increased from 2010 to 2021.

¹² P-1 at 24.

¹³ Transcript at 42.

¹⁴ P-1 at 70.

¹⁵ *Id.* at 85.

earnings . . . Future benefits for a hospitality property are determined by forecasting the average daily rate and average occupancy for the property based on foreseeable market conditions.¹⁶

Market based operating expenses are then deducted from gross revenues, the result of which is then capitalized into present worth.

In appraising the subject property, Mr. Allen first valued the business' going concern. As defined by *The Dictionary of Real Estate Appraisal*, "going concern value" means "[t]he market value of an established and operating business including the real property, personal property, financial assets, and the intangible assets of the business."¹⁷ As discussed herein, in this case the intangible asset is the franchise agreement with DoubleTree Hotels, which is part of Hilton Worldwide. The franchise agreement is a ten-year agreement, signed in 2012, meaning it was in place as of tax day. According to Mr. Allen, Petitioner pays royalties to the franchisor, Hilton Worldwide, and in exchange Petitioner is able to use Hilton's brand name and its reservation system "where travelers book through Hilton and get Hilton points for staying at Hilton hotels."¹⁸ Pursuant to the Franchise Agreement Summary, Petitioner pays a "monthly program fee" equal to 4% of the gross room revenue, and a "monthly royalty fee" equal to 5% of the gross room revenue.¹⁹ Mr. Allen opined that approximately 48% of the subject property's business is acquired through the Hilton reservation system.²⁰ In addition, Petitioner is able to utilize Hilton's marketing, advertising and purchasing systems, and Hilton provides training for staff and consulting services for hotel operations.

Mr. Allen identified five properties as being competitive with the subject property based on similarities in facilities, location, market orientation and/or rate structure.²¹ These properties included the Country Inn Holland, the Fairfield Inn, the Hampton Inn, the Holiday Inn Express, and the Residence Inn. Mr. Allen concluded to an average daily rate (ADR) for these properties of \$126.76, and an aggregate market occupancy of 63.8%.²²

In formulating his income approach, Mr. Allen relied on the following sources: (1) operating statements from properties throughout Michigan and the United States; (2) the subject property's 2017-2020 operating statements and a future pro forma; and (3) industry averages from various hotel publications. Mr. Allen also used operating statements from three comparable properties as benchmarks to compare to the subject property. As of tax day, Mr. Allen projected the subject property's stabilized occupancy rate to be 62%, with the ADR being \$123.00.²³ Mr. Allen also considered income from

¹⁶ *Id.* at 70.

¹⁷ *Id.* at 5, citing *The Dictionary of Real Estate Appraisal*, 6th Edition, (Appraisal Institute, 2015, at 143).

¹⁸ Transcript at 31.

¹⁹ P-1 at 51.

²⁰ Transcript at 59.

²¹ *Id.* at 54.

²² *Id.*

²³ Transcript at 39 and P-1 at 81.

the food and beverage department, and income from other sources such as vending, in-room movies, etc., to arrive at gross operating revenue. Mr. Allen estimated expenses in the following categories: (1) room related expenses; (2) food and beverage; (3) administrative and general; (4) franchise fees; (5) marketing; (6) repairs and maintenance; (7) utilities; (8) insurance; (9) management fee; (10) reserve for replacement; (11) and expenses related to other departments. After deducting these expenses, charges and reserves from gross operating revenue, Mr. Allen concluded to net operating income (NOI) before property taxes of \$1,197,187.²⁴

Next, Mr. Allen developed a capitalization rate, or cap rate, using the following three sources: (1) cap rates developed from the sales of other hotel properties, (2) a band of investment, and (3) investment surveys. Ultimately, Mr. Allen concluded to a cap rate of 9.0%. Mr. Allen then added a tax cap rate. To arrive at the tax cap rate, Mr. Allen divided the total millage rate levied against the subject property in half because properties in Michigan are assessed at 50% of market value. To account for the value of the intangible property, which is not taxed in Michigan, Mr. Allen multiplied this rate by 75%, resulting in a tax cap rate of 2.8924% and a loaded cap rate of 11.89%. With this, Mr. Allen's conclusion of value under the income capitalization approach for the subject property's market value of total business assets (MVTBA) was \$10,070,000.²⁵

Sales Comparison Approach

Mr. Allen's comparative analysis included sales of four hotel properties with meeting/conference space.

- Sale #1: West Bay Beach Resort – Traverse City

This property is a full-service hotel known as the West Bay Beach Resort, located in Traverse City, Michigan. This hotel was built in 1968 and was renovated in 2013. This property sold in January 2019 for \$23,200,000. The hotel contains 173 rooms, resulting in a per room price of \$134,104. Mr. Allen made no "transaction related adjustments"; however, he adjusted for RevPAR,²⁶ resulting in an indicated price per room of \$130,111.²⁷

- Sale #2: Holiday Inn Express - Detroit

This property is a limited-service hotel, operated as a Holiday Inn Express. The property is located in downtown Detroit, Michigan, and sold in April 2018 for \$23,300,000. This hotel was built in 1964 and was renovated after the 2018 sale. The hotel has 241 rooms, resulting in a price per room of \$96,680. Mr. Allen applied a transaction related adjustment for market conditions, concluding to an adjusted sales

²⁴ P-1 at 81.

²⁵ *Id.*

²⁶ RevPAR is revenue per available room, which is determined by multiplying the occupancy rate by the ADR.

²⁷ P-1 at 92.

price per room of \$101,515. This price was further adjusted for RevPAR, age/condition, and hotel classification, resulting in an indicated price per room of \$76,080.²⁸

- Sale #3: DoubleTree Hotel – Ann Arbor

This property is a full-service hotel, operated as a DoubleTree Hotel. The property is located in Ann Arbor, Michigan, and sold in January 2019 for \$16,750,000. This hotel was built in 1971 and was renovated in 2014²⁹ when it became a Holiday Inn, and again in 2019 when it became a DoubleTree. The hotel has 227 rooms, resulting in a price per room of \$73,789. Mr. Allen made no “transaction related adjustments”; however, he adjusted for RevPAR, resulting in an indicated price per room of \$64,413.³⁰

- Sale #4: Sheraton Hotel - Novi

This property is a full-service hotel operated as a Sheraton Hotel. The property is located in Novi, Michigan, and sold in November 2017 for \$30,500,000. This hotel was built in 1985 and was renovated in 2014. The hotel has 238 rooms, resulting in a price per room of \$128,151. Mr. Allen applied a transaction related adjustment for market conditions, concluding to an adjusted sales price per room of \$134,559. This price was further adjusted for RevPAR, resulting in an indicated price per room of \$115,593.³¹

Ultimately, Mr. Allen determined that Sale #3 was the most comparable sale.³² With this, Mr. Allen arrived at a price per room of \$70,000, resulting in a market value under the sales comparison approach of \$11,760,000.

Mr. Allen also developed a room revenue multiplier, referred to as the Gross Revenue Multiplier (GRM).³³ This multiplier is obtained by estimating the room revenue for a comparable sale and dividing that property’s sale price by the revenue. After performing this analysis for the four comparable sales, Mr. Allen concluded to a room revenue multiplier of 2.5.³⁴ To arrive at an estimate of market value, Mr. Allen multiplied the subject property’s estimated room revenue by 2.5, resulting in a market value of \$11,690,000. After reconciling the values under the sales comparison approach and the GRM approach, Mr. Allen concluded to an MVTBA of \$11,700,000.

Final Reconciliation

In reconciling his conclusions of value under the income approach and the sales comparison approach, Mr. Allen gave the most weight to the income approach and

²⁸ *Id.*

²⁹ P-1 contains conflicting dates for the year renovated. Specifically, page 89 states that the property was renovated in 2014, while page 92 indicates it was renovated in 2013.

³⁰ *Id.*

³¹ *Id.*

³² Transcript at 55.

³³ P-1 at 92 indicates that this was performed for the Hampton Inn. It is assumed that this is a typographical error.

³⁴ P-1 at 93.

concluded to a MVTBA of \$10,400,000, or \$61,905 per room. To determine the TCV of the real estate, Mr. Allen deducted the values of the personal property and the intangible asset from this amount.

1. Personal Property or FF&E³⁵

In concluding to a value for the tangible personal property, Mr. Allen utilized the personal property's assessed value as determined by Respondent. After rounding, Mr. Allen determined that the TCV of the personal property was \$551,600.³⁶ However, Mr. Allen deducted approximately 50% of this value, or \$280,000, an amount roughly equal to the property's SEV, to arrive at the MVTBA.³⁷ Mr. Allen testified that the amount of the deduction was incorrect, and that it should have been \$551,600.³⁸

2. Intangible Personal Property³⁹

In concluding to a value for the intangible asset, Mr. Allen considered the contribution of the franchise to the subject property's income producing ability. In doing so, Mr. Allen considered operation of the hotel without the franchise, which required a determination of occupancy and ADR as an independent hotel.⁴⁰ Mr. Allen concluded that without the franchise, the subject property's occupancy rate would fall from 62% to 60% and that its ADR would be reduced from \$123 to \$109, resulting in a RevPAR of \$65.40. Mr. Allen compared this to the subject property's RevPAR with the franchise of \$76.26.⁴¹ Ultimately, Mr. Allen concluded to an NOI without the franchise is \$957,907.⁴²

Mr. Allen explained that because the property is valued as a non-flagged property,⁴³ the cap rate will be higher due to the perceived risk. Given this, Mr. Allen arrived at a cap rate of 10%, to which a 3.09% tax cap rate was added, for a total cap rate of 13.09%. Ultimately, Mr. Allen valued the subject property as a non-flagged property at \$7,432,445, compared to the subject property's value as a flagged property at \$10,177,018.⁴⁴ Mr. Allen then subtracted the property's value as a non-flagged hotel value from the property's flagged hotel value. In Mr. Allen's opinion, the \$2,740,000 (rounded) difference represents the value of the intangible property. After deducting this value and the value of the personal property from the reconciled value of \$10,400,000, Mr. Allen concluded to a rounded TCV for the subject property (uncorrected) of \$7,380,000.

³⁵ *Id.* at 95.

³⁶ *Id.* at 95.

³⁷ *Id.* at 98.

³⁸ Transcript at 58.

³⁹ P-1 at 95.

⁴⁰ *Id.*

⁴¹ *Id.* at 96.

⁴² *Id.* at 97.

⁴³ According to *The Dictionary of Real Estate Appraisal*, a property with a "flag" is affiliated with a national franchise hotel.

⁴⁴ P- 1 at 98.

On cross-examination, Mr. Allen explained that the franchise fees total 9%, consisting of a 4% gross revenue fee for a monthly advertising and training program, and a 5% royalty fee for the use of the reservation system and the Hilton name. Mr. Allen further explained that these fees, approximately \$419,000 per year,⁴⁵ were deducted as expenses in the income approach before the cap rate was applied. As for the millage rate levied against the subject property, Mr. Allen testified that on page 83 of his report, he double counted the 18 mills levied for school operating purposes in the 2020 summer property tax millage. If the millage rate were corrected, “it would reduce the tax cap rate somewhat.”⁴⁶

On re-direct, Mr. Allen testified that if the millage rate were corrected, the loaded cap rate would be 11.25% instead of 11.89%, resulting in value under the income approach of \$10,641,000.⁴⁷ However, if the value of the personal property were corrected, the final conclusion of value would be slightly lower.⁴⁸

RESPONDENT’S CONTENTIONS

The property’s TCV, SEV and TV, as confirmed by the BOR, are as follows:

Parcel Number: 70-16-33-400-074

Year	TCV	SEV	TV
2020	\$12,200,000	\$6,100,000	\$5,217,001

Respondent’s revised contentions of TCV, SEV and TV are as follows:

Parcel Number: 70-16-33-400-074

Year	TCV	SEV	TV
2020	\$10,010,000	\$5,005,000	\$5,005,000

In its Pre-Trial Brief, Respondent stated that the parties’ valuation disclosures are surprisingly similar. For illustrative purposes, Respondent included the following chart:⁴⁹

	Mr. Allen’s Report (pp 94 and 98) ⁵⁰	Mr. Genzink’s Report
Income Value	\$10,070,000	\$10,510,000
Sales Value	\$11,700,000	\$11,760,000
Reconciled Value	\$10,400,000	\$10,600,000
Less FF&E	\$ 280,000	\$ 590,000
Net Value	\$10,120,000 (uncorrected)	\$10,010,000

Respondent explained that the parties’ valuation disclosures diverge when it comes to accounting for the value of the intangible asset, specifically the value of the

⁴⁵ Transcript at 94 and 95.

⁴⁶ *Id.* at 52.

⁴⁷ *Id.* at 112.

⁴⁸ *Id.* at 113.

⁴⁹ Respondent’s Pre-Trial Brief at 2.

⁵⁰ These figures do not reflect corrections made to errors in Mr. Allen’s appraisal.

franchise. Respondent argues that while intangible property is not taxable, intangible property can impact the value of the real property. In support of this argument, Respondent cites *Meadowlanes Dividend Housing Ass'n v Holland*,⁵¹ wherein the Court described various intangible interests as value influencers.

In valuing the subject property, Mr. Genzink utilized the Rushmore Method, which the Tribunal and the Court of Appeals have followed.⁵²

Under this approach, the franchise fee is considered the annualized intangible value of the franchise. In effect, the hotel owner pays a franchise fee to cover the value of services provided by the brand franchisor. This is similar to the treatment of third party property management services. The fee is deducted from income when [determining] the income approach.⁵³

“Simply stated, the Rushmore Method has proven that when you expense out the management and the franchise fee from your operating expenses of a hotel, that will zero out any benefit that you receive from a franchise.”⁵⁴ Respondent argues that Mr. Allen accounted for franchise by “(a) calculating a value [for the subject property] after deducting franchise fees from income and then (b) reducing the value by an additional \$2,740,000, thereby double deducting for the intangible franchise fee.”⁵⁵

In its Post-Hearing Brief, Respondent argues that Mr. Allen’s valuation method (the Allen approach), undervalues hotel real estate and has been rejected by the Tribunal in every case in which Mr. Allen utilized this methodology. In this case, Mr. Allen deducted the franchise fee, consisting of a 5% royalty fee and a 4% marketing and training fee, from his income approach before arriving at a NOI.⁵⁶ Under the Rushmore Method, Mr. Allen should have stopped there. However, Mr. Allen “follow[ed] his own method of again deducting another amount for the franchise, effectively double counting the franchise.”⁵⁷ Respondent argues that if this approach were adopted, the franchise, valued at approximately \$2,700,000 in Mr. Allen’s appraisal, would actually be worth \$6,400,000 - Mr. Allen’s \$3,700,000 reduction in NOI plus \$2,700,000. Respondent stresses that Petitioner is unable to cite any authority that has accepted the Allen approach.

Respondent refutes Mr. Allen’s income analysis because it did not adjust for the year of the franchise. In other words, the value of the franchise was the same regardless of whether the franchise was in its first year or its last. Respondent also argued that Mr. Allen did not have any market data to support his calculations. Mr.

⁵¹ *Meadowlanes Dividend Housing Ass'n v Holland*, 437 Mich 437; 473 NW2d 636,

⁵² See *Southfield Western Inc, supra, Amway Grand Plaza Hotel v City of Grand Rapids*, MTT Docket No. 237807, *US Can Hospitalities LLP v City of Romulus*, MTT Docket No. 328350, and *Grand Haven Investment LLC v Spring Lake Township*, MTT Docket No. 346917.

⁵³ Respondent’s Pre-Trial Brief at 4.

⁵⁴ Transcript at 137.

⁵⁵ Respondent’s Pre-Trial Brief at 2.

⁵⁶ Respondent’s Post-Hearing Brief at 2 and transcript at 94.

⁵⁷ Respondent’s Post-Hearing Brief at 3.

Allen relied on a study on the impact on revenue of debranding; however, this study was not submitted into evidence. Mr. Allen admitted that this study “does not include market data on the impact on value nor make any conclusion on methodology to account for the debranding in an appraisal.”⁵⁸

Respondent contends that if the errors contained within Mr. Allen’s valuation disclosure were corrected, the subject property’s TCV (before Petitioner’s deduction for the value of the franchise as an asset) would be \$10,600,000, or \$590,000 more than Respondent’s TCV.⁵⁹

RESPONDENT’S ADMITTED EXHIBITS

- R-1 2020 Assessment Card.
- R-2 Integra Appraisal Report.
- R-3 2020 Notice of Assessment.
- R-4 Fair + Equitable Article, *What’s a Hotel Worth*, January 2022.
- R-5 International Association of Assessing Officers (IAAO) Article, *Understanding Intangible Assets and Real Estate*, November 2016.

RESPONDENT’S WITNESS

Respondent’s valuation witness was Mr. Jeffrey Genzink. Mr. Genzink is employed by Integra Realty Resources and has been licensed in Michigan as a certified general appraiser since the early 1990s. Mr. Genzink is also a licensed real estate broker. Mr. Genzink holds the MAI designation and has held this designation since the mid-1990s. Mr. Genzink testified that he has appraised over 40 hotels during the three years preceding the hearing. Mr. Genzink was recognized as an expert in real estate valuation.

Mr. Genzink described the subject property as being located at 650 East 24th Street, Holland, Michigan. The improvements consist of a four-story structure, utilized as a hotel, built in 1987 and renovated in 2013.⁶⁰ The hotel is situated on 8.76 acres of land.⁶¹ Mr. Genzink described the hotel as being a full-service hotel. In addition, hotels are classified as one of the following: Luxury, Upper Upscale, Upscale, Upper Midscale, Economy, or Independent. The subject property is operated as a DoubleTree hotel, which is a Hilton “flag” hotel, and is rated as an Upscale hotel.⁶² The subject property contains 168 guest rooms, 8 meeting rooms with 9,730 square feet of event space, a restaurant and lounge, and an indoor pool and fitness center.

Mr. Genzink described the “Holland market” as being an area anchored by Grand Rapids that extends southwest from Grand Rapids to Holland, north to Muskegon, and

⁵⁸ *Id.* at 5.

⁵⁹ *Id.* at 2.

⁶⁰ Respondent’s Pre-Trial Brief at 1.

⁶¹ R-2, transmittal letter at 3.

⁶² *Id.* at 2.

southeast back to Grand Rapids. “These three market areas are the primary economic hubs of West Michigan with Grand Rapids being the economic and cultural hub.”⁶³ Mr. Genzink asserts that Holland has “experienced considerable job growth over the past five years.”⁶⁴ Mr. Genzink testified that Ottawa County’s population increased from 263,801 in 2010 to 295,835 in 2021. While Holland’s population is projected to grow at a rate slightly lower than the country, its growth rate is expected to surpass that of the rest of Michigan.⁶⁵

In response to Mr. Allen’s testimony that occupancy rates for hotels in the Holland area were on the decline, Mr. Genzink explained that the two appraisers used different competitive sets of properties. Mr. Allen included four properties in his primary market area analysis, while Mr. Genzink used eight. Mr. Genzink obtained data regarding these properties for the 2014 through 2019 period. After reviewing this data, Mr. Genzink determined that the number of room nights available reflected a growth rate of 44.5%, and an increase in room nights sold of 41.4%. This demand prompted construction of new hotels and, as a result, the occupancy percentage decreased from 2018 to 2019, but room nights sold increased by 11.5%.⁶⁶ In addition, both the ADR and the RevPAR increased during this period.

In valuing the subject property under the income approach, Mr. Genzink utilized the Rushmore Method, which is an approach used to determine the value of real property when the property is valued as a part of a going concern. As described by Mr. Genzink, “the Rushmore Method simply says when you deduct the franchise fees and the management fees, you have adequately and correctly zeroed out any intangible value.”⁶⁷ Mr. Genzink explained that in 2020, his company’s national hotel group completed a study and found that every one of their competitors and peers utilized the Rushmore Method. Mr. Genzink’s company also does financial for lenders, specifically national reviewers, which accept appraisals utilizing the Rushmore Method.

In this case, the DoubleTree franchise is intangible property. Mr. Genzink described the franchise as a license; it is not something that the franchisee (Petitioner) owns, nor can Petitioner sell it. In exchange for this franchise, Petitioner pays Hilton a 5% franchise fee and a 4% management fee, for a total fee of 9%. Mr. Genzink testified that these fees are within the market range.

In Mr. Genzink’s opinion, Mr. Allen’s approach of deducting a gross revenue fee for a monthly advertising and training program, and a royalty fee for the use of the reservation system and the Hilton name is consistent with the Rushmore Method. However, Mr. Allen’s additional deduction of \$2,740,000 for “Intangible Business Value” is not consistent with the Rushmore Method. Mr. Genzink testified that he is not aware of anyone else using the “Allen approach.”

⁶³ *Id.* at 17.

⁶⁴ *Id.* at 19.

⁶⁵ *Id.* at 20.

⁶⁶ Transcript at 142.

⁶⁷ *Id.* at 138.

Mr. Genzink discussed Respondent's exhibit R-4, which is a periodical by the IAAO titled *Fair+Equitable*. Within this publication was an article titled "*Myth vs Reality, 'going concern' hotel valuations*" written by Peter F. Korpacz,⁶⁸ MAI, CRE, FRICS, and Daniel H. Lesser, MAI, CRE, FRICS, CHA.⁶⁹ According to Mr. Genzink, this article "articulated what [he has] found to be true through court decisions, through what our peers are doing" relative to the Rushmore Method.⁷⁰ Mr. Genzink also discussed Respondent's exhibit R-5, which is another publication by the IAAO, titled "*Understanding Intangible Assets and Real Estate: A Guide for Real Property Valuation Professionals*."

As for the subject property's highest and best use, Mr. Genzink considered the property both as vacant and as improved with the existing structures. As vacant, Mr. Genzink opined that the highest and best use would be a commercial use; as improved, the highest and best use is the continued use as a full-service hotel. Mr. Genzink noted that the hotel adds value to the property, thus anyone who purchased the property would not buy it as a tear-down. Therefore, Mr. Genzink opined that the subject property's highest and best use is its continued use as a full-service hotel.

In valuing the subject property, Mr. Genzink considered the three typical approaches to value: the income approach, the sales comparison approach, and the cost approach. Like Mr. Allen, Mr. Genzink did not develop a value under the cost approach due to the age of the building and accrued depreciation.

Income Approach

In his income approach, Mr. Genzink utilized the "direct capitalization approach because investors in this property type typically rely on this method."⁷¹ Mr. Genzink began this approach by projecting the subject property's total room revenue. This was accomplished by analyzing historical data for the subject property, and data from the competitive set and comparable properties. Throughout his income approach, Mr. Genzink relied on hotel statistics from CBRE Trends and Smith Travel Research. Using these data sources, Mr. Genzink determined the total room nights available (RNA) for the subject property and projected the occupancy rate at 58.3%.⁷² Mr. Genzink also projected the subject property's ADR at \$120.84, resulting in total room revenue of \$4,319,197, and a RevPar of \$70.44.⁷³ Mr. Genzink considered income data from the subject property's food and beverage sales and other departments, in addition to information from other data sources and projected total revenue at \$5,105,543.⁷⁴

Mr. Genzink utilized the same data sources as Mr. Allen. Mr. Genzink projected expenses included room expenses, food and beverage expenses, other operated

⁶⁸ Mr. Korpacz is also the founder and president of Korpacz Realty. *Id.* at 136.

⁶⁹ Mr. Lesser is with LW Hospitality Advisors. *Id.*

⁷⁰ Transcript at 136.

⁷¹ R-2 at 54.

⁷² *Id.* at 49.

⁷³ *Id.* at 50.

⁷⁴ *Id.* at 57.

department and rental expenses, undistributed operating expenses, sales and marketing costs which includes the national franchise marketing fee (the royalty fee and the national advertising fee),⁷⁵ property operation and maintenance costs, utility costs, management costs for off-site professional management,⁷⁶ insurance costs, and reserves for replacement.⁷⁷ Ultimately, Mr. Genzink's projected operating expenses were slightly higher than the comparable properties. These expenses were deducted from the total revenue projection to arrive at a NOI for the subject property of \$1,288,381.⁷⁸

To arrive at a cap rate, Mr. Genzink extracted cap rates from five properties. These cap rates ranged from 6.78% to 9.18%, with an average of 8.38%. Mr. Genzink also considered data from the PwC Real Estate Investor Survey and ultimately concluded to a range of 9% to 10%. Mr. Genzink also determined a cap rate using the band of investment method. This method "derives a capitalization rate from the weighted average of the mortgage and equity demands on net income generated from the property."⁷⁹ Using this method, Mr. Genzink concluded to a cap rate of 9.75%. After considering these methods and the risk factors associated with the subject property, Mr. Genzink reconciled to a cap rate of 9.75%. He then added an effective tax rate of 2.51%, with the result being a loaded cap rate of 12.26%. After applying the loaded cap rate to the NOI, he arrived at a going concern value (rounded) of \$10,510,00.⁸⁰

Sales Comparison Approach

In this approach, Mr. Genzink searched for sales transactions of properties similar to the subject property. Mr. Genzink utilized the following criteria to select the comparable properties:

- Full-service hotels with upscale flags.
- Location in the lower half of the lower peninsula, with a focus on the west side of the state.
- 90-230 hotel rooms.
- Average to Good Age/Quality.
- Sales dates from 2017 to 2019.⁸¹

The search was expanded to include upper midscale properties that were also full-service hotels. Ultimately, Mr. Genzink considered the sales of the following properties:⁸²

⁷⁵ *Id.* at 62.

⁷⁶ Data from PwC Real Estate Investor Survey was also utilized.

⁷⁷ R-2 at 63-65.

⁷⁸ *Id.* at 57.

⁷⁹ *Id.* at 68.

⁸⁰ *Id.* at 72.

⁸¹ *Id.* at 73.

⁸² *Id.* at 80.

- Sale #1: Holiday Inn – Spring Lake

This property was built in 1969⁸³ and was renovated in 2013. The property sold in June 2018 for \$11,500,000. Adjustments of \$3,000,000 were made to the sale price for PIP renovations, resulting in an effective sale price of \$14,500,000. At 120 rooms, the price per room was \$120,833. Further adjustments were made for market conditions (date of sale), location, number of hotel rooms, age/condition/quality, and economic characteristics, with the result being a -35% net adjustment, and a final adjusted price per room of \$80,113.

- Sale #2: Holiday Inn – Ann Arbor

This property was built in 1972 and was sold in January 2019 for \$16,750,000. Thereafter the property was converted to a DoubleTree Hotel. Adjustments of \$9,000,000 were made to the sale price for PIP renovations, resulting in an effective sale price of \$25,750,000. At 225 rooms, the price per room was \$114,444. Further adjustments were made for market conditions, location, number of hotel rooms, age/condition/quality, and economic characteristics, with the result being a -40% net adjustment, and a final adjusted price per room of \$69,353.

- Sale #3: Holiday Inn – Jackson

This property was built in 2010 and sold in September 2018 for \$9,500,000. Adjustments of \$1,000,000 were made to the sale price for PIP renovations, resulting in an effective sale price of \$10,500,000. As of the date of the appraisal, the property had on-going renovations. At 99 rooms, the price per room was \$106,061. Further adjustments were made for market conditions, number of hotel rooms, age/condition/quality, amenities, and economic characteristics, with the result being a -34% net adjustment, and a final adjusted price per room of \$69,629.

- Sale #4: Hilton Garden Inn – Benton Township

This property was built in 2014 and was sold in October 2017 for \$11,500,000. No adjustments were made to the sale price for PIP renovations, resulting in an effective sale price of \$11,500,000. At 106 rooms, the price per room was \$108,491. Further adjustments were made for market conditions, number of hotel rooms, age/condition/quality, and economic characteristics, with the result being a -40% net adjustment, and a final adjusted price per room of \$66,396.

- Sale #5: Courtyard by Marriott – Lansing

This property was built in 1987 and was sold in September 2017 for \$14,850,000. Adjustments of \$1,200,000 were made to the sale price for PIP renovations, resulting in an effective sale price of \$16,050,000. At 129 rooms, the price per room was \$124,419. Further adjustments were made for market conditions, location, number of hotel rooms,

⁸³ *Id.* at 74 reflects a year built of 1972. This conflicts with the year built data on page 80.

age/condition/quality, and economic characteristics, with the result being a -40% net adjustment, and a final adjusted price per room of \$76,144.

In concluding to a value under the sales comparison approach, Mr. Genzink excluded sale #5 from consideration as it was an outlier. Ultimately, Mr. Genzink determined a per room value of \$70,000, resulting in an indicated value of \$11,760,000.

Final Reconciliation:

In reconciling the values under the income approach and the sales comparison approach, Mr. Genzink gave the greatest weight to the income approach. Mr. Genzink explained that the sales comparison approach was primarily used as support for the income approach. With this, Mr. Genzink concluded to a value for the going concern of \$10,600,000.

Allocation of Going Concern Value

1. Tangible Personal Property – FF&E⁸⁴

In valuing the FF&E, Mr. Genzink relied on information from the HVS Hotel Development Cost Survey 2017/2018. According to this survey, the average cost of FF&E new was \$28,900 per room. After applying a depreciation factor, Mr. Genzink concluded that the per room value was \$3,500, for a total FF&E of \$590,000.

2. Intangible Personal Property⁸⁵

Mr. Genzink accounted for the franchise value in the income approach by deducting the franchise fees and management fees as expenses. Therefore, there was no need for an additional reduction to account for the value of intangible property. “Accordingly, our value opinion applies to the real and personal property only, which is the subject of this appraisal. It does not include the value of any intangible property components and does not represent the hotel’s going-concern value.”⁸⁶

Allocation of Going Concern Value⁸⁷

Tangible property	
Land & Improvements	\$10,010,000
Tangible Personal Property (FF&E)	\$590,000
Total Tangible Property	\$10,600,000
Intangible Property	\$0
2020 True Cash Value Going Concern	\$10,600,000

⁸⁴ *Id.* at 84-85.

⁸⁵ *Id.* at 85.

⁸⁶ *Id.*

⁸⁷ *Id.*

FINDINGS OF FACT

The Tribunal's Findings of Fact concern only evidence and inferences found to be significantly relevant to the legal issues involved.

1. The subject property is located at 650 E. 24th Street, Holland, Michigan, in Ottawa County, Michigan. The property fronts US-31 and has access from E. 24th Street and S. Waverly Avenue.
2. The subject property is classified as commercial.
3. The subject property's Parcel No. is 70-16-33-400-074.
4. The subject property contains approximately 8.76 acres of land.
5. The structures located on the subject property include a 4-story, 168-room hotel with conference rooms, a restaurant, a bar, and a parking lot. The structure also includes a 1-story recreational enclosure with pool.
6. The hotel was built in 1987 and was substantially rehabilitated in 2013.
7. The hotel is a full-service, upscale hotel.
8. As of tax day, December 31, 2019, the subject property was operated as a DoubleTree Hotel and was subject to a Hilton Worldwide franchise.
9. The subject property's 2020 TV does not include additions or losses.
10. Both parties' appraisers utilized the income capitalization approach and the sales comparison approach. Neither appraiser utilized the cost-less-depreciation approach.
11. Petitioner owns the personal property. Petitioner does not own the franchise.
12. In his income approach, Mr. Allen deducted franchise fees, marketing fees, and management fees that accounted for the value added by the franchise. He also deducted an additional \$2,740,000 to account for the value of the intangible property.

CONCLUSIONS OF LAW

A proceeding before the Tax Tribunal is original, independent, and de novo.⁸⁸ The Tribunal's factual findings must be supported "by competent, material, and substantial evidence."⁸⁹ "Substantial evidence must be more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence."⁹⁰

"The petitioner has the burden of proof in establishing the true cash value of the property."⁹¹ "This burden encompasses two separate concepts: (1) the burden of persuasion, which does not shift during the course of the hearing, and (2) the burden of going forward with the evidence, which may shift to the opposing party."⁹² However, "[t]he assessing agency has the burden of proof in establishing the ratio of the average

⁸⁸ MCL 205.735a(2).

⁸⁹ *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

⁹⁰ *Jones & Laughlin*, *supra* at 352-353.

⁹¹ MCL 205.737(3).

⁹² *Jones & Laughlin*, *supra* at 354-355.

level of assessments in relation to true cash values in the assessment district and the equalization factor that was uniformly applied in the assessment district for the year in question.”⁹³

The assessment of real and personal property in Michigan is governed by the constitutional standard that such property shall not be assessed in excess of 50% of its TCV.⁹⁴

The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law except for taxes levied for school operating purposes. The legislature shall provide for the determination of true cash value of such property; the proportion of true cash value at which such property shall be uniformly assessed, which shall not exceed 50 percent.⁹⁵

The Michigan Legislature has defined TCV to mean:

The usual selling price at the place where the property to which the term is applied is at the time of assessment, being the price that could be obtained for the property at private sale, and not at auction sale except as otherwise provided in this section, or at forced sale.⁹⁶

The Michigan Supreme Court has determined that “[t]he concepts of ‘true cash value’ and ‘fair market value’ . . . are synonymous.”⁹⁷ “By provisions of [MCL] 205.737(1) . . . , the Legislature requires the Tax Tribunal to make a finding of true cash value in arriving at its determination of a lawful property assessment.”⁹⁸ In developing an opinion of true cash value, an analysis of highest and best use is required.

Through highest and best use analysis, an appraiser interprets the market forces that affect the subject property and identifies the use or uses on which the final opinion of value is based. . . If highest and best use is not adequately addressed, appraisers may inappropriately analyze the property being appraised.⁹⁹

Highest and best use is defined as “[t]he reasonably probable use of property that results in the highest use.”¹⁰⁰

To be *reasonably probable*, traditionally a use must meet certain conditions:

⁹³ MCL 205.737(3).

⁹⁴ See MCL 211.27a.

⁹⁵ Const 1963, art 9, sec 3.

⁹⁶ MCL 211.27(1).

⁹⁷ *CAF Investment Co v Michigan State Tax Comm*, 392 Mich 442, 450; 221 NW2d 588 (1974).

⁹⁸ *Alhi Dev Co v Orion Twp*, 110 Mich App 764, 767; 314 NW2d 479 (1981).

⁹⁹ Appraisal Institute: *The Appraisal of Real Estate* (Chicago, Appraisal Institute, 15th ed, 2020), at 34.

¹⁰⁰ *Id.* at 305.

- The use must be *physically possible* (or it is reasonably probable to render it so).
- The use must be *legally permissible* (or it is reasonably probable to render it so).
- The use must be *financially feasible*.

Uses that meet the three criteria of reasonably probable uses are tested for economic productivity, and the reasonably probable use with the highest value is the highest and best use.¹⁰¹

A fundamental concept of highest and best use is the idea that highest and best use is viewed from two perspectives:

- The use of the real estate based on the presumption that the parcel of land is vacant or can be made vacant by demolishing any improvements (i.e., as vacant or as if vacant)
- The use that should be made of the real estate as it exists (i.e., as currently improved or as if improved as proposed).¹⁰²

In this case, both appraisers analyzed the subject property as vacant and as improved as it existed on tax day. Both appraisers determined that the highest and best use of the subject property was its continued use as a hotel. The Tribunal agrees with their conclusion.

In determining TCV, the three most common approaches are the capitalization of income approach, the sales comparison, or market, approach, and the cost-less-depreciation approach.¹⁰³ “The market approach is the only valuation method that directly reflects the balance of supply and demand for property in marketplace trading.”¹⁰⁴ The Tribunal is under a duty to apply its own expertise to the facts of the case to determine the appropriate method of arriving at the TCV of the property, utilizing an approach that provides the most accurate valuation under the circumstances.¹⁰⁵ Regardless of the valuation approach employed, the final valuation determined must represent the usual price for which the subject would sell.¹⁰⁶

The Tribunal is not bound to accept either of the parties' theories of valuation.¹⁰⁷ “It is the Tax Tribunal's duty to determine which approaches are useful in providing the most accurate valuation under the individual circumstances of each case.”¹⁰⁸ In that

¹⁰¹ *Id.* (emphasis in original.)

¹⁰² *Id.* at 307.

¹⁰³ *Meadowlanes, supra* at 484-485; *Pantlind Hotel Co v State Tax Comm*, 3 Mich App 170, 176; 141 NW2d 699 (1966), *aff'd* 380 Mich 390 (1968).

¹⁰⁴ *Jones & Laughlin, supra* at 353 (citing *Antisdale v City of Galesburg*, 420 Mich 265; 362 NW2d 632 (1984) at 276 n 1).

¹⁰⁵ *Antisdale, supra* at 277.

¹⁰⁶ See *Meadowlanes Ltd Dividend Housing Ass'n v Holland*, 437 Mich 473, 485; 473 NW2d 636 (1991).

¹⁰⁷ *Teledyne Continental Motors v Muskegon Twp*, 145 Mich App 749, 754; 378 NW2d 590 (1985).

¹⁰⁸ *Meadowlanes* at 485.

regard, the Tribunal “may accept one theory and reject the other, it may reject both theories, or it may utilize a combination of both in arriving at its determination.”¹⁰⁹

In this case, both parties appraised the subject property’s fee simple interest. However, in doing so, each party valued the market value of the subject property’s “going concern.” According to *The Dictionary of Real Estate Appraisal*, “going concern” is defined in part as “[a]n established and operating business having an indefinite future life.”¹¹⁰

The “going concern value” of an ongoing operating business enterprise can be defined as the “value of all tangible and intangible assets of an established and operating business with indefinite life, as if sold in aggregate.” The value of the going concern for a hotel can be allocated into the following three components:

- Real Property
- Personal Property
- Intangible Property¹¹¹

“Market value of the going concern” is defined as “[t]he market value of an established and operating business including the real property, personal property, financial assets, and the intangible assets of the business.”¹¹² The MVTAB is defined as “[t]he market value of all of the tangible and intangible assets of a business as if sold in aggregate as a going concern.”¹¹³ Thus, to be included in the value of a going concern, tangible and intangible property must be (1) an asset of the business, and (2) capable of being sold by that business. When an appraiser determines the market value of a going concern, the value of any personal and intangible property of the business included in that value must be subtracted to determine the value of the real property. According to the Appraisal Institute, the “going concern value” of an ongoing operating business enterprise is defined as the “value of all tangible and intangible assets of an established and operating business with indefinite life, as if sold in aggregate.”¹¹⁴

For some property types like hotels, car washes, marinas, and assisted-living facilities, the real property rarely sells independently of personal property and intangible property. In those cases, establishing a reasonable allocation of the value opinion among the realty and non-realty components can be challenging.¹¹⁵

¹⁰⁹ *Jones & Laughlin* at 356.

¹¹⁰ Appraisal Institute: *The Dictionary of Real Estate Appraisal*, 6th ed, 2015.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *The Dictionary of Real Estate Appraisal*.

¹¹⁵ *The Appraisal of Real Estate* at 664.

Another important concept under the going-concern premise is that the sum of the independently develop[ed] market values of the parts may not be equal to the value of the whole. It is generally improper to value the real property, personal property, and intangible property separately from the going concern and simply sum up those individual values to arrive at the value of the whole property under the going-concern premise.¹¹⁶

“The ultimate goal of the valuation process is a well-supported conclusion that reflects the study of all factors that *influence* the market value of the subject property.”¹¹⁷ While tax benefits, deed restrictions, and zoning classifications are incorporeal items and “not taxable in and of themselves, [they] can increase or decrease the value of real property, and that amount should be reflected in the assessment process.”¹¹⁸ Citing *Antisdale*, the *Southfield Western* Court held that “the tribunal properly considered petitioner’s hotel business in evaluating the true cash value of the underlying property since the business increased the market value of that property.”¹¹⁹

Cost Approach

The cost approach “is particularly useful in valuing new or nearly new improvements and properties that are not frequently exchanged in the market.”¹²⁰ Further, it is more useful when “a lack of market activity limits the usefulness of the sales comparison approach” and it is “especially persuasive when land value is well supported and the improvements are new or suffer only minor depreciation . . .”¹²¹ However:

The cost approach is seldom used to value existing hotels because lodging facilities are particularly vulnerable to physical deterioration, functional changes, and uncontrollable external factors. A hotel may suffer from functional and external obsolescence before its construction is completed. As the building and other improvements age and depreciate, the resultant loss in value becomes difficult to quantify. Estimating the impact of even minor forms of obsolescence may require insupportable judgments that undermine the credibility of the cost approach.

A more significant reason why this approach is not applied to hotels is that its underlying assumptions do not reflect the investment rationale of typical hostelry buyers. Lodging facilities are income-producing properties that are purchased to realize future profits. Replacement or reproduction cost has little bearing on an investment decision when the buyer is primarily concerned with the potential return on equity.¹²²

¹¹⁶ *Id.* at 667.

¹¹⁷ *Meadowlanes* at 486. (emphasis added.)

¹¹⁸ *Antisdale* at 285.

¹¹⁹ *Southfield Western* at 590.

¹²⁰ *The Appraisal of Real Estate* at 36.

¹²¹ *Id.* at 530.

¹²² Appraisal Institute: *Hotel Market Analysis and Valuation* (2012), at 326-327.

In this case, both appraisers considered the cost approach but did not develop a value using this approach given the age of the subject property and the amount of depreciation involved. For these reasons, the Tribunal agrees that it was appropriate to not develop a value using the cost approach as it would not have provided credible evidence of the subject property's TCV.

Sales Comparison Approach

“The sales comparison approach is based on the assumption that an informed purchaser will pay no more for a property than the cost of acquiring an existing property with equal utility.”¹²³ “The sales comparison approach is most useful when a number of similar properties have recently been sold or are currently for sale in the subject property's market.”¹²⁴ “Although the sales comparison approach is seldom given substantial weight in a hotel appraisal, it can be used to bracket a value or check the value derived by the income capitalization approach.”¹²⁵

For certain property types, real property rarely sells independently from personal property and intangible property. However, in some cases, it may be possible to allocate the prices of comparable sales between real property, personal property, and intangible property. Also, it could be reasonable to address each asset class separately in the sales comparison approach or to address real property on its own.

For property types where real property rarely sells independently from the personal property and intangible property, comparable sale prices often cannot be reliably allocated to the various asset classes. In those cases, the sales comparison approach may only provide a value indication for the total property without allocation. In a sales comparison analysis without allocation, the total price of the comparable sale can be analyzed to provide a value indication for the subject property in total, including all asset types . . . *It is critical that the appraiser identify what assets were included in each comparable sale.*¹²⁶

In this case, both appraisers developed a value for the subject property using the sales comparison approach. Mr. Allen did not use the sales comparison approach as a primary indicator of value, using it instead to measure the reasonableness of the value indicated by the income approach. Similarly, Mr. Genzink utilized the sales comparison approach primarily for support for the income approach.

¹²³ *Id.* at 332.

¹²⁴ *The Appraisal of Real Estate* at 36.

¹²⁵ *Hotel Market Analysis and Valuation* at 333.

¹²⁶ *The Appraisal of Real Estate* at 668-669. (emphasis added.)

In his appraisal, Mr. Allen considered the sale of four comparable properties. Mr. Allen described Sale #1 as being “unbranded,” or not having a franchise. Based on the properties’ names, it appears that the remaining comparable properties may be subject to a franchise and, given Mr. Allen’s discussion regarding Sale #1, could be assumed to be “flagged” properties. However, while Mr. Allen concluded to a value for “total business assets” under the sales comparison approach,¹²⁷ no specific information was provided as to whether the comparable properties’ sales prices included personal or intangible property.

Similarly, Mr. Genzink considered the sales of five comparable properties in his appraisal, all of which are “upscale flags.”¹²⁸ Mr. Genzink adjusted the sales prices of these comparable properties based on “economic characteristics.” As explained by Mr. Genzink:

The economic adjustment to the comparables is typically based on the strength or weakness of the comparable franchise versus the subject’s upscale franchise. Although we focused on stabilized hotels in the Michigan market area, this adjustment would also apply to hotels with weaker or stronger franchises and operating condition.¹²⁹

Ultimately, Mr. Genzink applied a downward economic adjustment to the sales prices of all comparable properties. However, it appears as though more than just the strength or weakness of the franchise was considered in making this adjustment as the same -20% adjustment was applied to all properties. This across-the-board adjustment raises questions as to whether all upscale hotels are equal, and why adjustments were necessary for Sale #4 as this is the same brand as the subject property, i.e., Hilton, and Sale #2 was converted to a DoubleTree. In his appraisal, Mr. Genzink states that the value indicated by the sales comparison approach was a going concern value¹³⁰; however, no information was provided as to whether any personal property was included in these sales.

As explained by The Appraisal Institute, it is critical that the assets included in each comparable sale be identified. Because that did not occur in either appraisal, no weight can be given to either party’s sales comparison approach.

Income Approach

“In the income capitalization approach, the present value of the anticipated future benefits of property ownership is measured . . . In direct capitalization, the relationship between one year’s income and value is reflected in either a capitalization rate or an income multiplier.”¹³¹ “The income capitalization approach is generally the

¹²⁷ P-1 at 94.

¹²⁸ Transcript at 157.

¹²⁹ R-2 at 78.

¹³⁰ *Id.* at 81.

¹³¹ *The Appraisal of Real Estate* at 530.

preferred technique for appraising income-producing properties because it closely simulates the investment rationale and strategies of knowledgeable buyers. The approach is particularly relevant to hotel properties, which are bought mainly for investment purposes and involve relatively high risks.”¹³²

In this case, both appraisers utilized the income approach in concluding to a market value of the going concern. Within the income approach, Mr. Genzink utilized the Rushmore Method to account for the value of the intangible property. While Mr. Allen did not state that he utilized the Rushmore Method or describe specific deductions as accounting for intangible value, the deductions he made in his income approach follow Rushmore’s basic premise. Also known as the “management fee approach,” under the Rushmore Method, a:

[D]eduction of franchise fees and management fees accounts for returns to the business, and replacement reserves account for further replacement of furniture, fixtures, and equipment. This approach of valuing tangible assets exclusive of intangible assets is based on the theory that once the revenue attributable to intangible assets is deducted, all other remaining income is attributable to the real property and other tangible assets.

For a hotel property, proponents of this approach would deduct the management fee and the franchise fee (if it is a branded hotel affiliated with a chain) along with other operating expenses. By removing management fees and franchise fees from the revenue, appraisers reason that the influence of intangible assets has been eliminated. This approach maintains that the offices, staff, salaries, and overhead associated with management of the hotel reside not with the owner of the real property but with the company that manages and operates the hotel for the owner of the real property. Advocates of this approach state that because the management fee compensates the management company for those expenses, including staffing the hotel, the value of any intangible assets is removed, and any remaining net income is attributable to the real property. Advocates further state that, in the case of branded hotels, removal of the franchise fee eliminates intangible assets attributable to the brand and the final result represents only the value of the real property and the tangible personal property.¹³³

In this case, the franchise agreement includes a 4% monthly program fee¹³⁴ and a 5% monthly royalty fee,¹³⁵ resulting in a total franchise fee of 9%. Because Mr.

¹³² *Hotel Market Analysis and Valuation* at 341.

¹³³ *The Appraisal of Real Estate* at 676-677.

¹³⁴ As Mr. Allen described it, this fee is for advertising and training and assistance with Hilton operations. Transcript at 81.

¹³⁵ This fee is for use of the reservation system and the Hilton name.

Genzink was not provided a copy of the franchise agreement, he explained his deduction for franchise fees as follows: "So on page 62 of [R-2] we have a sales and marketing cost which is explained as marketing expenses [including] national franchise marketing fees, [including] both the royalty fee of the reservation system and the national advertising fee. So that's the franchise."¹³⁶ Ultimately, Mr. Genzink concluded to a 13% deduction, which included the franchise fee component of the license and a marketing fee.¹³⁷ Mr. Allen's equivalent deductions included a 5% franchise fee deduction, a 10.91% marketing deduction, and a deduction of at least 4% of the 7.27% deduction for administrative and general expenses, for a minimum franchise-related deduction of 19.91%.

The management fee deduction was more straightforward, and the deductions were similar. Mr. Genzink deducted 3.3%, while Mr. Allen deducted 3%.

As Respondent noted, both appraisers' analysis had similar income entries, resulting in relatively close conclusions of value. Mr. Allen concluded to gross operating revenue of \$5,544,984, while Mr. Genzink concluded to \$5,728,214. After deducting for all the various expenses, charges and fees, Mr. Allen concluded to a NOI of \$1,197,187, while Mr. Genzink concluded to a NOI of \$1,288,381.

As discussed, Mr. Genzink concluded to cap rate of 9.75% and a tax cap rate of 2.51%, resulting in a loaded cap rate of 12.26%. With this, Mr. Genzink's going concern value under the income approach was \$10,510,000. On the other hand, Mr. Allen concluded to a going concern value under the income approach of \$10,070,000. To arrive at this value, Mr. Allen utilized a loaded cap rate of 11.89% (9% cap rate and 2.89% (rounded) tax cap rate. However, Mr. Allen acknowledged at hearing that the tax cap rate was incorrect because he double counted the school operating millage. Mr. Allen also testified that before concluding to a tax cap rate, he reduced the 38.5651 millage rate by 25% "because the portion of the going concern value that is intangible is not taxed or is not taxable, just the real and personal property are taxable."¹³⁸ The resulting (uncorrected) tax cap rate was 2.8924%, with the uncorrected loaded cap rate (rounded) being 11.89%.¹³⁹ While it is true that intangible property is not taxed in Michigan, the Tribunal finds Mr. Allen's 25% tax cap rate reduction improper because, as discussed, the NOI does not include any value resulting from the franchise. Even though Mr. Allen didn't acknowledge that the franchise fee and management deductions were equivalent to the Rushmore Method deductions, the Tribunal finds that the value attributed to the franchise was accounted for "above the line" through various expense and fixed charge deductions.

¹³⁶ Transcript at 139.

¹³⁷ R-2 at 62.

¹³⁸ Transcript at 51-52.

¹³⁹ P-1 at 84.

Reconciliation

In reconciling their values under the income approach and the sales comparison approach, both appraisers gave the most weight to the income approach. Mr. Allen's reconciled value of the going concern was \$10,400,000,¹⁴⁰ while Mr. Genzink's reconciled value was \$10,600,000.¹⁴¹

However, it is unclear whether either appraiser's reconciliation process was correct because the values under each sales comparison approach presumably included intangible and personal property. These values were then reconciled with a value under the income approach that did not include intangible and personal property.

The Subject Property's TCV

As discussed, the value of the "going concern" can be allocated into the following three components: real property, personal property, and intangible property. Thus, when an appraiser values a property as a going concern, to determine the TCV of the real property, the value of the personal property and the intangible property must be deducted from the going concern value. Beginning with the personal property deduction:

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In the Rushmore approach, the calculation for deducting the personal property in place can be accomplished utilizing one of two procedures . . . The first procedure removes from the income stream any income attributed to the FF&E in place by taking the value of the FF&E and multiplying it by the capitalization rate. When the reduced income stream is capitalized, it excludes the value of the FF&E in place. The Rushmore approach terms this deduction a return "on" FF&E or the income that was earned on the FF&E in place. The second procedure simply deducts the value of the FF&E in place from the capitalized value of the overall net income. Both procedures produce identical results, which is to isolate the value of the FF&E currently in the hotel.¹⁴²

In this case, both appraisers utilized the second procedure. However, Mr. Allen erred in this calculation as the amount deducted for personal property equaled the property's SEV, or 50% of its TCV. Instead of \$280,000, the deduction should have been \$551,600. Mr. Genzink's deduction was slightly higher, at \$590,000.

Because Mr. Genzink utilized the Rushmore Method in his income approach, no additional deduction for the value of intangible property was required. Therefore, after deducting the value of the personal property, Mr. Genzink concluded to a TCV for the subject property of \$10,010,000.¹⁴³

¹⁴⁰ P-1 at 94.

¹⁴¹ R-2 at 82.

¹⁴² International Association of Assessing Officers, *Journal of Property Tax Assessment & Administration*, Vol. 1, Issue 4 (2004).

¹⁴³ R-2 at 85.

Like Mr. Genzink, Mr. Allen's income approach also accounted for the franchise value as set forth in the Rushmore Method. However, Mr. Allen went one step further and deducted \$2,740,000 for the value of the "intangible business asset," resulting in a final TCV (uncorrected) under Mr. Allen's income approach of \$7,380,000.¹⁴⁴

As it pertains to this deduction, previously referred to as the "Allen approach," the Tribunal agrees with Respondent's argument that this deduction is improper because Petitioner does not own the intangible asset at issue, i.e., the franchise. Unlike the deduction for the value of personal property, which Petitioner owns, this deduction is not justified. Instead, the franchise is owned by Hilton and Petitioner pays franchise fees "to license the name as well as access the global distribution and reservation systems."¹⁴⁵ Therefore, while a franchise license may influence a property's value, a deduction from the going concern value for the franchise is not appropriate because it is not an asset owned by the business.

Moreover, the intangible asset's *influence* on the going concern value was accounted for in the various deductions from gross operating income, i.e., in Mr. Allen's appraisal, the 5% franchise fee deduction, the 3% management fee deduction, and the various deductions for marketing expenses (10.91% "given the reliance on franchise marketing programs"¹⁴⁶), and 4% of the 7.27% "administrative and general" expense deducted for marketing and training.¹⁴⁷ In addition, Mr. Allen reduced the tax cap rate so as not to charge taxes on the untaxable portion, i.e., the intangible property.¹⁴⁸ With these deductions, Mr. Allen accounted for the franchise's influence on the property's market value at least, if not more, than that provided for under the Rushmore Method.

Even if Petitioner owned the franchise, the Tribunal finds Mr. Allen's valuation methodology unconvincing. In its Post-Hearing Brief, Petitioner states that "[w]hen Allen valued the intangible assets, he did not include the franchise fees as an expense."¹⁴⁹ The Tribunal finds this statement confusing as Mr. Allen did not actually value the intangible asset, i.e., the franchise. Instead, Mr. Allen "performed an analysis to value the *contribution* of the brand name to the income-producing ability of the real property."¹⁵⁰ Mr. Allen provided no support for his conclusion that this contribution equates to the value of a franchise. For example, consider a hypothetical situation where instead of licensing a franchise, the franchise is actually purchased for \$25,000 yet contributes to the property's income-producing ability many times over. Moreover, consider the possibility of a franchise becoming a detriment to a property's income-producing ability. Would this mean, under Mr. Allen's theory, that the franchise's contribution, in this case a negative, be considered as an addition to the going concern value instead of a deduction?

¹⁴⁴ P-1 at 98.

¹⁴⁵ *Id.* at 77 and 103.

¹⁴⁶ *Id.* at 78.

¹⁴⁷ Transcript at 82.

¹⁴⁸ *Id.* at 109.

¹⁴⁹ Petitioner's Post-Hearing Brief at 7, citing P-1 at 97.

¹⁵⁰ P-1 at 95. (emphasis added.)

With this, the Tribunal is left to determine the subject property's TCV based upon the parties' income approaches. After considering both appraisals, the Tribunal finds Mr. Allen's appraisal less reliable and less credible. In addition to the errors discussed herein, Mr. Allen's appraisal contains other questionable information. For example, on page 98, Mr. Allen utilizes a tax cap rate of 3.09% in valuing the subject property as a non-flagged property. Mr. Allen provided no explanation as to why the tax cap rate would differ between a non-flagged property and a flagged property. On this same page, Mr. Allen states that the subject property's MVTBA as a non-flagged property "is less than the capitalized value of as a DoubleTree which is \$10,177,018 (\$1,229,921 divided by 12.09%)." ¹⁵¹ It is unclear where these numbers came from as they are not located anywhere else within the appraisal. For these reasons, the Tribunal finds Mr. Allen's appraisal less reliable. Finally, the Tribunal finds Mr. Allen's application of the Allen approach and the deduction from the tax cap rate renders Mr. Allen's appraisal less credible.

Having considered the Rushmore Method and the applicable case law, the Tribunal finds that in this case Respondent's application of the Rushmore Method provides the best evidence available of the going concern's intangible value. Therefore, the Tribunal finds, based upon the Findings of Fact and the Conclusions of Law set forth herein, that Mr. Genzink's income approach is both reliable and credible, and provides the best evidence of the subject property's TCV. Therefore, the subject property's TCV, SEV, and TV for the 2020 tax year are as stated in the Introduction section above.

JUDGMENT

IT IS ORDERED that the property's SEV and TV for the tax year at issue are MODIFIED as set forth in the Introduction section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's true cash and taxable values as finally shown in this Final Opinion and Judgment within 20 days of the entry of the Final Opinion and Judgment, subject to the processes of equalization. See MCL 205.755. To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A

¹⁵¹ *Id.* at 98.

sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2018, through June 30, 2019, at the rate of 5.9%, (ii) after June 30, 2019, through December 31, 2019, at the rate of 6.39%, (iii) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, (iv) after June 30, 2020, through December 31, 2020, at the rate of 5.63%, (v) after December 31, 2020, through June 30, 2022, at the rate of 4.25%, (vi) after June 30, 2022, through December 31, 2022, at the rate of 4.27%, (vii) after December 31, 2022, through June 30, 2023, at the rate of 5.65%, (viii) after June 30, 2023, through December 31, 2023, at the rate of 8.25%, (ix) after December 31, 2023, through June 30, 2024, at the rate of 9.30%, (x) after June 30, 2024, through December 31, 2024, at the rate of 9.50%, and (xi) after December 31, 2024, through June 30, 2025, at the rate of 9.47%.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A motion for reconsideration must be filed with the Tribunal with the required filing fee within 21 days from the date of entry of the final decision. Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty or disabled veterans exemption and, if so, there is no filing fee. You are required to serve a copy of the motion on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion. Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.

Alternatively, you may file a claim of appeal with the Michigan Court of Appeals. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal of right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave." A copy of the claim of appeal must be filed with the Tribunal to certify the record on appeal. There is no certification fee.

By Patricia L. Haem

Entered: April 11, 2025
plh

PROOF OF SERVICE

I certify that a copy of the foregoing was sent on the entry date indicated above to the parties or their attorneys or authorized representatives, if any, utilizing either the mailing or email addresses on file, as provided by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk