



# STATE TAX COMMISSION OF MISSOURI

WELK RESORT GROUP, INC., ) Appeal Nos. 22-89500 & 22-89501  
Complainant(s), )  
)  
v. )  
)  
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)  
SUSAN CHAPMAN, ASSESSOR, )  
TANEY COUNTY, MISSOURI, )  
Respondent. )

## DECISION AND ORDER

Welk Resort Group, Inc. (Complainant) appeals the Taney County Board of Equalization's (BOE) decisions determining the true value in money (TVM) of the subject commercial properties as of January 1, 2021, alleging overvaluation and discrimination. Complainant did not produce any evidence of discrimination and did not produce substantial and persuasive evidence of overvaluation. The BOE's decisions are affirmed.<sup>1</sup>

Complainant were represented by counsel, Brian Mueller. Respondent was represented by counsel, Travis Elliott. The evidentiary hearing was conducted on September 21 and October 12, 2023, via WebEx before Senior Hearing Officer Benjamin

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<sup>1</sup> Complainant timely filed a complaint for review of assessment. The State Tax Commission (STC) has authority to hear and decide Complainant's appeal. Mo. Const. art. X, Section 14; section 138.430.1, RSMo 2000. All statutory citations are to RSMo 2000, as amended.

Slawson. These matters were assigned to SHO Todd D. Wilson for decision on August 7, 2024. The appeal is for the 2022 tax year, therefore, the value as determined in this appeal is for January 1, 2022.

### FINDINGS OF FACT

**1. Subject Property.** The subject properties are listed below:

Appeal No.	TMV assigned to property by Assessor and BOE	Parcel Locator Number
22-89500	\$7,306,280	18-6.0-14-003-001-006.000
22-89501	\$1,716,190	18-6.0-14-003-001-006.003

**2. Property Descriptions.** There are two, separately assessed parcels. The larger parcel, 100-18-6.0-14-003-001-006.000, is the subject property in 22-89500, consisting of approximately 23.8 acres. The improvements were constructed on or about 1994. This parcel contains an 83,365 square foot, 4 level hotel, with 159 rental units; a 60,000 square foot live performance theater building that contains a 9,050 square foot front house to seat 2,250 guests; and a 10,000 square foot fully functional restaurant. There are also two accessory buildings consisting of 7,126 square feet and various site improvements including paved parking area, swimming pool, miniature golf course, park and patio improvements.

The smaller parcel, 18-6.0-14-003-001-006.003, is the subject of appeal 22-89501 and consists of approximately 2.87 acres. It contains a 16,559 square foot clubhouse and sales building which was built in 2008 and remodeled in 2017. The property also has an 8,237 square foot “natatorium” which contains a swimming pool and other water park amenities. Also located on the property is a 1,500 square foot mobile home, along with

signage, parking lots, landscaping, utilities, drainage infrastructure and other improvements.

**3. BOE.** The BOE classified the subject properties as commercial and independently determined the TVM on January 1, 2021, of each parcel was:

<b>Appeal No.</b>	<b>TMV assigned to property by Assessor and BOE</b>	<b>Parcel Locator Number</b>
22-89500	\$7,306,280	18-6.0-14-003-001-006.000
22-89501	\$1,716,190	18-6.0-14-003-001-006.003

**4. Complainant’ Evidence.** Complainant submitted Exhibit A, the Appraisal report of both the properties combined completed by Keith D. McFarland, ASA of the McFarland Appraisal Group, LLC, and Exhibit B, the Written Direct Testimony (WDT) of Mr. McFarland. Both exhibits were received without objection.

Complainant presented testimony from Keith D. McFarland, a commercial real estate appraiser licensed in Missouri. Mr. McFarland completed one appraisal report encompassing both subject properties. Mr. McFarland used the income approach under the “Rushmore Method” valuing the entire property as a hotel/motel as of January 1, 2021. (WDT at 3) Mr. McFarland testified that the income of the property was not stabilized as the COVID19 pandemic had basically shut down the theater and caused hotel income to decline markedly in 2020. He testified that if he had only used the 2020 income in the Rushmore method of the income approach to value, the property would not have had a positive value.

Mr. McFarland did not use the cost approach to value any of the buildings because in his opinion the STC has said that the cost approach is not applicable in valuing a hotel

and all the other structures were ancillary to the hotel. (WDT at 3) Mr. McFarland further did not complete the sales comparison approach for any portion of the properties as hotel sales reflect a going concern value. (WDT at 4) The 2 level clubhouse and office building, restaurant, natatorium building, mobile home, theater, mini golf course and accessory buildings were all considered as amenities to the hotel and included in the calculations of the income approach using the Rushmore method.

Mr. McFarland testified COVID-19 impacts on the economy were a vital component of adjustments in the income method. Mr. McFarland testified that he calculated rates based on national data projections from CBRE and the actual income and expense data of the subject property for 2018, 2019, and 2020. The income and expense levels were also compared to published income and expense estimates from the 2021 Trends in the Hotel Industry published by CBRE.(Exhibit A at 54) On cross examination, Mr. McFarland acknowledged that different locations had different restrictions in the COVID19 pandemic.

Mr. McFarland relied exclusively on the income approach, and calculated an average daily rate of \$100 for 159 rooms and a stabilized occupancy rate of 60% which is higher than the 2019 and 2020 rates of 56.4% and 38.4% respectively, but is lower than the 2018 occupancy rate of 61.4%. (Exhibit A at 57) Mr. McFarland also included Food & Beverage Revenues, Theater Revenues and Miscellaneous Revenues in his calculation of income for the property to arrive at a total gross income estimate of \$6,687,888. Deducting expenses as set out in Exhibit A, Mr. McFarland arrived at a Net Operating Income (NOI) of \$943,371. This figure was then reduced for management fees of 3.5% or

\$234,076 and Estimated Income Attributable to Personal Property of \$391,951 leaving a Net Income Attributed to Real Property of \$317,951. Mr. McFarland then developed a capitalization rate by using the Band of Investment method to arrive at 9.38% unloaded capitalization rate. 1.78% was added to this to “load” the rate to take real estate taxes into consideration for a final loaded capitalization rate of 11.16%. (Exhibit A at 66). Dividing the NOI by the loaded cap rate resulted in the conclusion of value of \$2,850,000 (rounded). (Exhibit A at 66)

Complainant offered no evidence regarding common assessment levels in Taney County, Missouri, or that they were assessed at a greater percentage of the Fair Market Value of their property than the common assessment level generally applied to Taney County commercial properties.

**5. Respondent's Evidence.** Respondent submitted the following Exhibits which were all admitted without objection:

<b>Exhibit #</b>	<b>Description</b>
22-89500 - 1	Taney County Assessor’s Work Card
22-89500 – 2	Taney County Previous Values Card
22-89500 – 3	Complaint for Review
22-89500 - 4	Taney County BOE letter
22-89500 – 5	Appraisal Report by Kelly Trimble, MAI, ASA
22-89501 – 1	Taney County Assessor’s Work Card
22-89501 – 2	Taney County Previous Values Card
22-89501 - 3	Complaint for Review
22-89501 – 4	Taney County BOE letter
22-89501 - 5	Taney County BOE Appeal form
22-89501 - 6	Appraisal Report by Kelly Trimble, MAI, ASA

Respondent submitted the WDT of Kelly Trimble, MAI, ASA and Susan Chapman, Taney County Assessor.

Respondent presented testimony from Kelly Trimble, a commercial real estate appraiser licensed in Missouri who works mainly in the Branson, Missouri area. Mr. Trimble completed two separate appraisals, one for each of the separate parcels. The appraisal in 22-89500 was broken into 3 parts, a value for the Motel, a value for the theater and a value of excess site area. Mr. Trimble testified that he used both the Sales Comparison Approach and the Income approach to value the motel. In his report, Mr. Trimble sets out that the appraisal is not attempting to estimate the income of the entire property. Theater incomes have been declining for several decades in this market and theaters do not normally produce any income, however, they still have substantial value in this particular market. (Exhibit 5, at 252) Mr. Trimble testified that he has studied and utilized the Rushmore method of Income Capitalization for motels, having personally attended a seminar by Dr. Rushmore in Branson on the approach. Mr. Trimble, in his appraisal report, stated that the Rushmore method has limitations as it requires stabilized income and a positive income; without these two factors, the Rushmore method fails (Exhibit 5 at 140)

In accordance with this understanding of the Rushmore method, Mr. Trimble stated that he gave very little, if any, weight to the property's 2020 income figures as they were not representative of stabilized income due to the COVID 19 pandemic. Mr. Trimble stated that by the end of 2020, advance bookings for the 2021 year provided clear evidence across the Branson community that 2021 was likely to perform as well as 2019, thus it was common for the market participants in the Branson market to view 2019 as the last year of stabilized income. (Exhibit 5 at 253)

Mr. Trimble also completed the Sales Comparison Approach for the Motel portion as well the other portions of the property. Mr. Trimble stated that there was an abundance of local sales to use as comparisons and that even if not relying heavily upon the Sales Comparison Approach for the motel portion of the property its use and development was a good cross reference of value as determined by the Income approach. Mr. Trimble determined that the value of the various portions of the tract in 22-89500 were: Motel \$4,220,000; Theater \$2,000,000 and Excess Site \$150,000 for a total value of \$6,370,000.

Mr. Trimble completed a separate appraisal report for the tract in Appeal 22-89501, which he called the Amenity Core Property which has the 2 level clubhouse and office building along with the Natatorium, mobile home and other amenities. In doing so, Mr. Trimble assigned no contributory value to the water park improvement due to its age, cost of operation, limited actual use, and declining appeal. (Exhibit 6 at 98) Mr. Trimble developed the Sales Comparison Approach using larger single tenant or two tenant office buildings for comparison to the clubhouse and office building; and empty utility grade buildings for comparison to value the natatorium building as a utility grade structure. Mr. Trimble did not develop the cost approach due to the age of the property and its obsolescence. Mr. Trimble did not develop the income approach to the property due to it being owner occupied and would, likely, continue to be so. (Exhibit 6 at 93) Using the comparable sales method, Mr. Trimble developed a value of \$1,720,000 for the Amenity Core property.

Susan Chapman, Taney County Assessor testified regarding the procedures that her office uses in determining value of commercial properties for assessment purposes. Ms.

Chapman discussed the Hunnicutt cost system that is used by her office.

**6. Value.** The TVM of the subject properties was:

<b>Appeal No.</b>	<b>TMV</b>	<b>Parcel Locator Number</b>
22-89500	\$7,306,280	18-6.0-14-003-001-006.000
22-89501	\$1,716,190	18-6.0-14-003-001-006.003

## **CONCLUSIONS OF LAW**

### **1. Assessment and Valuation**

Pursuant to Article X, Sections 4(a) and 4(b), Mo. Const. of 1945 real property and tangible personal property is assessed at its value or such percentage of its value as may be fixed by law for each class and for each subclass. Article X, Sections 4(a) and 4(b), Mo. Const. of 1945. Commercial real property is assessed at 32% of its TVM as of January 1 of each odd-numbered year. Section 137.115.5(1)(c). "True value in money is the fair market value of the property on the valuation date and is a function of its highest and best use, which is the use of the property which will produce the greatest return in the reasonably near future." *Snider v. Casino Aztar/Aztar Mo. Gaming Corp.*, 156 S.W.3d 341, 346 (Mo. banc 2005) (internal quotation omitted). The fair market value is "the price which the property would bring from a willing buyer when offered for sale by a willing seller." *Mo. Baptist Children's Home v. State Tax Comm'n*, 867 S.W.2d 510, 512 (Mo. banc 1993). Determining the TVM is a factual issue for the STC. *Cohen v. Bushmeyer*, 251 S.W.3d 345, 348 (Mo. App. E.D. 2008). The "proper methods of valuation and assessment of property are delegated to the Commission." *Savage v. State Tax Comm'n*, 722 S.W.2d 72, 75 (Mo. banc 1986).



The income approach “is most appropriate in valuing investment-type properties and is reliable when rental income, operating expenses and capitalization rates can reasonably be estimated from existing market conditions.” *Snider*, 156 S.W.3d at 347. “The income approach determines value by estimating the present worth of what an owner will likely receive in the future as income from the property.” *Id.* “The income approach is based on an evaluation of what a willing buyer would pay to realize the income stream that could be obtained from the property when devoted to its highest and best use.” *Id.* (internal quotation omitted). “When applying the income approach the valuing business property for tax purposes, it is not proper to consider income derived from the business and personal property; only income derived from the land and improvements should be considered.” *Id.*

The State Tax Commission utilizes the “Rushmore Method” to estimate the TVM of hotels. *Yogijikrupa Hospitality-C LLC, v. Assessor, Taney County, Mo.*, Appeal No. 19-89506, 2021 WL 4977443, at \*5 (Mo. St. Tax Comm’n 2021) (noting “[t]he STC has long recognized the Rushmore Method under the income approach for the valuation of hotel properties”).<sup>2</sup> The Rushmore Method enables a valuation of hotel real estate by deducting

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<sup>2</sup> The Rushmore Method is also widely accepted by courts across the country. *Glenpointe Assoc. et al. v. Township of Teaneck*, 31 N.J. Tax 596, 645 (2020) (holding the Rushmore method is generally used to value hotels); *Wisconsin & Milwaukee Hotel, LLC v. City of Milwaukee*, 936 N.W.2d 403 (Wis. App. 2019) (holding the “Rushmore approach to value hotels” complied with state law); *CHH Cap. Hotel Partners, LP v. D.C.*, 152 A.3d 591, 597 (D.C. 2017) (the Rushmore method is a “well-established and broadly accepted” method “well-conceived to yield a fair and accurate estimate of market value”); *RRI Acquisition Co. v. Supervisor of Assessments of Howard Cty.*, 2006 WL 925212, at \*5 (Md. Tax Feb. 10, 2006) (applying Rushmore and holding a deduction for return on FF & E from income is required); *Marriott Corp. v. Bd. of Cty. Comm’rs of Johnson Cty.*, 972 P.2d 793, 796 (Kan. App. 1999) (holding the Rushmore method was the appropriate method to value a hotel and noting it “has been accepted in a number of litigated matters and rejected in

the value of a franchise affiliation and the FF&E required to operate a hotel.

The Rushmore Method deducts the contributory value of the FF&E by estimating both the replacement cost and the return generated by the FF&E. The replacement cost is typically reflected in a reserve for replacement. The return on the FF&E is typically estimated by (1) using the market value of the personal property as shown on the assessment rolls; (2) an appraisal of the personal property; or (3) using the depreciated book value of the personal property. *Prestige Hotels v. Cox*, Appeal No. 20-79023 (Mo. St. Tax Comm'n, Feb. 25, 2022).

## **2. Evidence**

The hearing officer is the finder of fact and determines the credibility and weight of the evidence. *Kelly v. Mo. Dep't of Soc. Servs., Family Support Div.*, 456 S.W.3d 107, 111 (Mo. App. W.D. 2015). The finder of fact in an administrative hearing determines the credibility and weight of expert testimony. *Hornbeck v. Spectra Painting, Inc.*, 370 S.W.3d 624, 632 (Mo. banc 2012). "It is within the purview of the hearing officer to determine the method of valuation to be adopted in a given case." *Tibbs v. Poplar Bluff Assocs. I, L.P.*, 599 S.W.3d 1, 9 (Mo. App. S.D. 2020). The hearing officer "may inquire of the owner of the property or of any other party to the appeal regarding any matter or issue relevant to the valuation, subclassification or assessment of the property." Section 138.430.2. The Hearing Officer's decision regarding the assessment or valuation of the property may be

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none that have been brought to our attention"); *In re J.F.K. Acquisitions Group*, 166 B.R. 207, 209 (Bankr.E.D.N.Y.1994) (utilizing the Rushmore method and noting the appraiser who developed the method is an "eminent expert in the field of hotel appraisers.")

based solely upon his inquiry and any evidence presented by the parties, or based solely upon evidence presented by the parties. *Id.*

### **3. Complainant's Burden of Proof**

The BOE's valuation is presumptively correct. *Rinehart v. Laclede Gas Co.*, 607 S.W.3d 220, 227 (Mo. App. W.D. 2020). To prove overvaluation, a taxpayer must rebut the BOE's presumptively correct valuation and prove the "value that should have been placed on the property." *Snider*, 156 S.W.3d at 346. The taxpayer's evidence must be both "substantial and persuasive." *Id.* "Substantial evidence is that evidence which, if true, has probative force upon the issues, and from which the trier of fact can reasonably decide the case on the fact issues." *Savage*, 722 S.W.2d at 77 (internal quotation omitted). Evidence is persuasive when it has "sufficient weight and probative value to convince the trier of fact." *Daly v. P.D. George Co.*, 77 S.W.3d 645, 651 (Mo. App. E.D. 2002); *see also White v. Dir. of Revenue*, 321 S.W.3d 298, 305 (Mo. banc 2010) (noting the burden of persuasion is the "party's duty to convince the factfinder to view the facts in a way that favors that party"). A taxpayer does not meet his burden if evidence on any essential element of his case leaves the STC "in the nebulous twilight of speculation, conjecture and surmise." *See, Rossman v. G.G.C. Corp. of Missouri*, 596 S.W.2d 469, 471 (Mo. App. 1980).

Hotels and motels generally are valued by an income capitalization approach that takes the property's stabilized net income and capitalizes it into an estimate of market value. The stabilized net income is intended to reflect the anticipated operating results of the hotel over its remaining economic life, given any or all applicable stages of buildup, plateau, and decline in the life cycle. Therefore, such stabilized net income excludes from consideration

any abnormal relation of supply and demand and any transitory or nonrecurring conditions that may result in unusual revenues or expenses of the property. The process of deriving the stabilized net income for a lodging facility requires the appraiser to look into the future and estimate operating revenues and expenses. This is accomplished by forecasting or predicting trends in historical performance based on the hotel's current position in an economic life cycle. Most types of real estate exhibit a pattern or life cycle in their ability to generate income over a period of time. Usually, a property's net income will start low and rise quickly, reaching a plateau before slowly declining. By determining a hotel's position in its life cycle the appraiser is able to forecast future income based on historical operating results.

#### **5. Complainant Did Not Prove Overvaluation.**

Complainant' opinions of value are ultimately not persuasive due to Complainant' appraiser's reliance upon national data, deductions related to COVID-19 in his approach to value, his failure to assign any value to multiple separate structures on the properties to arrive at a value of \$2,850,000 for a total of 29.55 acres of improved land in Branson, Taney County, Missouri. A stabilized net income excludes from consideration any abnormal relation of supply and demand and any transitory or nonrecurring conditions that may result in unusual revenues or expenses of the property. *See The Valuation of Hotels and Motels for Assessment Purposes*, p. 275-277. The Rushmore method is the preferred method for valuing motels/hotels, but the use of it assumes a stabilized net income. Complainant's final conclusions of the TVM of the subject properties were affected by the reliance upon a nonrecurring condition in COVID-19, thereby undermining the credibility

and persuasiveness of Complainant's evidence. Respondent's appraisal reports did not make such deductions rather focused on the stabilized income and advanced bookings to project a rebound in revenue for 2022. Although not required given the burden of proof, Respondent presented exhibits and testimony that supported the BOE's valuation of the subject property.

### CONCLUSION AND ORDER

The BOE decisions are AFFIRMED. The TVM of the subject properties, as of January 1, 2022, were:

<b>Appeal No.</b>	<b>TMV</b>	<b>Parcel Locator Number</b>
22-89500	\$7,306,280	18-6.0-14-003-001-006.000
22-89501	\$1,716,190	18-6.0-14-003-001-006.003

### Application for Review

A party may file with the Commission an application for review of this decision within 30 days of the mailing date set forth in the certificate of service for this decision. The application "shall contain specific detailed grounds upon which it is claimed the decision is erroneous." Section 138.432. The application must be in writing, and may be mailed to the State Tax Commission, P.O. Box 146, Jefferson City, MO 65102-0146, or emailed to Legal@stc.mo.gov. A copy of the application must be sent to each person listed below in the certificate of service.

***Failure to state specific facts or law upon which the application for review is based***

*will result in summary denial.* Section 138.432.

### **Disputed Taxes**

The Collector of Taney County, as well as the collectors of all affected political subdivisions therein, shall continue to hold the disputed taxes pending the possible filing of an application for review, unless said taxes have been disbursed pursuant to a court order under the provisions of section 139.031.

So ordered August 23, 2024.  
STATE TAX COMMISSION OF MISSOURI

Todd D. Wilson  
Senior Hearing Officer

### Certificate of Service

I hereby certify that a copy of the foregoing has been electronically mailed and/or sent by U.S. Mail on August 23, 2024, to:

Complainant(s) and/or Counsel for Complainant(s), the County Assessor and/or Counsel for Respondent and County Collector.

Stacy M. Ingle  
Legal Assistant