BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 ——— Petitioner: **BELMAR HH OWNER LLC,** v. Respondent: **JEFFERSON COUNTY BOARD OF EQUALIZATION.**	**Docket No.: 72387**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on November 13, 2018, Debra A. Baumbach and Gregg Near presiding. Petitioner was represented by Kendra L. Goldstein, Esq. Respondent was represented by Jason W. Soronson, Esq. Petitioner is protesting the 2017 actual value of the subject property.

The Board accepted Petitioner's Exhibits 1 and 5; Respondent's Exhibit A except pages 41 and 43 and Exhibit B. The parties stipulated to the admission of the expert witnesses.

Subject property is described as follows:

> **7310 Alaska Drive**
> **Lakewood, CO 80226**
> **Jefferson County ID No. 300464216**

The subject property is the Hyatt House Denver Lakewood at Belmar. The improvements consist of a six story extended stay lodging facility containing 135 rentable units. The building was completed in 2016 on a site containing 0.88 acres (38,343 square feet). There is a limited amount of surface parking but shared surface and structured parking is available within the Belmar commercial district. Smith Travel Research classifies Hyatt House as an upscale chain. The classification is further modified as a Limited Service facility offering less than 5% of revenues derived from food and beverage departments.

Evidence presented to the Board

Petitioner presented the following indicators of value:

Market:	Not Applied
Cost:	Not Applied
Income:	$12,158,511

Petitioner is requesting an actual value of $12,158,511 for the subject property for tax year 2017. Respondent assigned a value of $13,987,026 for the subject property for tax year 2017 supported by an appraisal report for $15,480,000.

Petitioner's witness Brett Eric Russell, a Certified General Appraiser, presented a sales comparison approach with six comparable sales ranging in sale price from $11,000,000 to $19,049,595 and containing from 84 to 126 rooms. After adjustments were made, the sales ranged from $13,400,000 to $17,800,000 for the subject's 135-room property.

Mr. Russell developed a range of value for the subject property and made adjustments for the subject's incomplete income stream, age and configuration as well as condition. Because of the often subjective nature of the adjustment process, and because typical hotel investors do not apply sales comparable approach, the witness chose not to utilize this approach in the final value estimate.

Mr. Russell considered the cost approach but declined to develop a value opinion. The witness acknowledged the approach is typically appropriate since the subject is new and not affected by physical, functional or external factors. Mr. Russell stated knowledgeable purchasers of complex hotel properties are more concerned with the economics of the investment.

Petitioner presented an income approach to derive a value of $12,158,511 for the subject property.

Mr. Russell was provided income and expenses by the current ownership and analyzed the trailing twelve month operating cash flow. Forward looking projections were not considered as the valuation is for property tax purposes.

Based upon the ownership statements for the 107 days of operation, the subject reflected a 68.3% occupancy at an average room rate of $132.68 resulting in a Revenue Per Available Room (RevPar) of $90.68 for the period. Expenses for room and beverage services and operating services such as administration, franchise fee, marketing and utilities were subtracted to develop a gross profit. Further reductions were applied for a management fee and non-operational expenses which resulted in an estimate of EBITDA (Earnings before taxes, insurance, depreciation and amortization) (similar to Net Operating Income (NOI)), of $505.00 per room. No reduction for reserves was applied as the property operates for the first year under various warranties.

Operating statements from five comparable properties were presented by the witness. Respondent objected to comparables No. 2 and No. 3 due to inclusion of post base period data. The remaining comparables illustrated NOI amounts from 32.7% to 42.2% that bracketed and supported the witness's estimate of 37%. Mr. Russell also included operating statements per available room and per occupied room as support.

Utilizing the above analysis, the subject commanded a hypothetical 2015 to 2016 NOI of $1,720,787. To develop the direct capitalization rate the witness presented a sample of overall rates of 6.1% to 11.7% on a national basis, from 7.8% to 8.9% by investor surveys and from 8.1% to 8.6% derived from transactions within the local market.

Mr. Russell concluded an overall rate of 8.5% that he adjusted upward 3.46% for the effective tax rate to derive a capitalization rate of 11.96%. The capitalization rate was applied to the hypothetical estimated NOI for 2015/2016 to produce a value opinion of $14,387,851, rounded to $14,400,000 as a value indication by use of the income capitalization approach.

In reconciliation the witness considered the data and analysis provided in the development of the value indication and afforded the income capitalization primary weight and concluded to a value of $14,400,000 for personal property.

Mr. Russell adjusted the value indication for personal property by a depreciation analysis. The witness then compared the conclusion with the depreciated personal property valuation developed by Jefferson County. The value determined by the County, $2,229,340, was adopted as appropriate.

The adjusted value opinion is therefore $14,387,851 (minus) $2,229,340 (equals) $12,158,511.

Respondent presented the following indicators of value:

Market:	Not applied
Cost:	$15,850,000
Income:	$14,980,000

Respondent's appraiser Mark C. Stoldt, a Certified General Appraiser, declined to present a market approach. Mr. Stoldt determined, through research of the CoStar Comps data base, there was an inadequate number of similar comparable sales to make a reasonable analysis. The witness did not apply a sales comparison approach.

Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of $15,850,000.

Mr. Stoldt reported the actual purchase price of the subject site of $1,650,000 as entitled with zoning, site improvement and building permit approvals. The deed for the land acquisition contained a specific use restriction limiting the site for hotel and uses ancillary to hotel use for a period of 20 years after purchase. The witness adopted the transaction as the appropriate indication of land value.

Mr. Stoldt referenced the Building Permit by the City of Lakewood issued to Alliance Construction Solutions LLC as of December 29, 2014 indicating a construction cost of $12,500,000. The witness stated the above figure did not include some soft costs such as personal property and developer and entrepreneur profit. A plan check review by the City calculated the construction cost to be $14,534,563. With addition of the land purchase Mr. Stoldt concluded to a minimum construction cost range of $14,150,000 to $16,184,563.

Additional cost information was provided by the developer indicating actual payments for the total project of $22,298,813. This cost included expenses attributed for Costs to Doing Business of $4,648,072, subtraction of this amount resulted in an indication of value for the real estate of $17,650,000.

The witness also applied an estimated construction cost determined by proprietary software provided by the Marshall Valuation Service. The data source estimated the total construction cost to be $15,850,000. After analysis of all the data noted above, Mr. Stoldt determined the cost approach value derived from the Marshall Valuation Service to be the most reasonable and concluded a total value (land and improvements) of $15,850,000 by this approach.

The witness considered the income approach to derive a value of $14,979,237 rounded to $14,980,000 for the subject property.

Mr. Stoldt was provided income and expenses incurred by the current ownership during their operation up to the value date of June 30, 2016. The witness developed a pro forma value placing reliance on market indicators and expectations based on the 2016 operating statement and market-based trend information.

Mr. Stoldt's proforma applied an Average Daily Rate (ADR) of $135.60 per room and an occupancy rate of 73.7% relying upon published sources and the 2016 operating statement. After addition of other income at 3% the witness derived total operating revenue of $5,072,138. Expenses, including fees for management and franchise as well as reserves for replacement were applied at 60% producing RevPar of $102.94 and an NOI of $2,028,855. Citing four capitalization surveys Mr. Stoldt adopted a rate of 8.5% further adjusted upward 3.46% for the effective tax rate to derive a capitalization rate of 11.96%. Application of this rate produced a value opinion of $16,963,671 including personal property. Personal property value, developed by Jefferson County, of $2,229,340 was deducted from the value opinion to determine a market value for the real property of $14,734,331 rounded to $14,730,000.

Mr. Stoldt reconciled to a final value for the real property giving greatest weight to the cost approach. The final market value for the fee simple estate was $15,480,000.

The Board's Findings

The burden of proof is on a protesting taxpayer to show that the assessor's valuation is incorrect by a preponderance of the evidence in a de novo BAA proceeding. *Board of Assessment Appeals v. Sampson,* 105 P.3d 198 (Colo.2005). After careful consideration of all of the evidence, including testimony presented at the hearing, the Board finds that Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2017 valuation of the subject property was incorrect.

Both parties to the dispute considered the three approaches to value. Petitioner's expert declined to present a cost approach, developed but placed no reliance on a sales comparison approach and focused his analysis solely on the income approach. Respondent's expert declined to present a sales comparison approach, developed but placed only minimal weight on the income approach and gave the greatest weight to the cost approach.

The Board found Petitioner's reasoning regarding the exclusion of the cost approach to have been most compelling. Both parties were in agreement that a newly constructed improvement is less influenced by the more speculative nature of depreciation. However, the Board was swayed by Petitioner's s position that investors in hotel properties are less concerned with the cost of the improvement preferring to rely upon the expected income stream after ramp up and stabilization. The Board found Petitioner's assertion to be credible due to the lack of actual sales of new properties and the preponderance of data in support of valuation based on income.

Neither party placed reliance upon a sales comparison approach but both gave consideration to an income approach. The parties found agreement on the format for the approach, the capitalization rate and use of Jefferson County's valuation of personal property. The Board finds Petitioner's appraiser to have correctly applied this approach by considering only data from the period(s) prior to the statutory valuation date. Respondent's appraiser incorrectly applied this approach in Exhibit A and attempted to remedy the error in presenting Exhibit B. Mr. Stoldt stated his revised analysis was based on the ownership's 2016 operating statement, a forward looking analysis that is inappropriate for property tax purposes. The Board was not convinced that Respondent's appraiser correctly approached the valuation and, as demonstrated in Exhibit B, page 11, applied adjustments to the portions of the income approach based on forward looking assumptions exceeding the facts in place as of the valuation date.

The Board concludes that the 2017 actual value of the subject property should be reduced to $12,158,511.

ORDER:

Respondent is ordered to reduce the 2017 actual value of the subject property to $12,158,511.

The Jefferson County Assessor is directed to change his/her records accordingly.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of

Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation of the respondent county, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (commenced by the filing of a notice of appeal with the Court of Appeals within forty-nine days after the date of the service of the final order entered).

In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

DATED and MAILED this 13th day of December, 2018.

BOARD OF ASSESSMENT APPEALS

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

Debra A. Baumbach

Gregg Near

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Milla Lishchuk