REDACTED

REPRESENTATIVES FOR PETITIONER:
Bradley D. Hasler, Dentons Bingham Greenebaum, LLP

REPRESENTATIVES FOR RESPONDENT:
Frank J. Agostino, Esq.

BEFORE THE
INDIANA BOARD OF TAX REVIEW

MCC SB CONDO, LLC,	)	Petition Nos.: See attached
Petitioner,	)	Parcel Nos.: See attached
v.	)	County: St. Joseph
ST. JOSEPH COUNTY ASSESSOR,	)	Years: 2014, 2015, 2016
Respondent.	)	

September 10, 2021

FINAL DETERMINATION

The Indiana Board of Tax Review ("Board") having reviewed the facts and evidence, and having considered the issues, now finds and concludes the following:

I. INTRODUCTION

1. MCC SB Condo, LLC operates a condominium hotel commonly known as the Waterford Estates Lodge that consists of 202 separate parcels. This appeal concerns the valuation of the 116 parcels owned by MCC. MCC's parcels include a commercial space containing the front desk, administrative office space, meeting rooms, a ballroom, a kitchen, and restaurant space (hereinafter, the "Commercial Unit") and 115 condominium units. There are another 86 condominium units that MCC does not own, 84 of which participate

in a rental pool agreement that allows MCC to rent the units to guests and to share in the revenue with the individual unit owners.

2. MCC offered an appraisal prepared by Laurel A. Keller, MAI, who primarily relied on the income capitalization approach to determine the market value-in-use of MCC's 116 units as of January 1, 2016. Her analysis involved determining the going concern value of the entire condominium hotel complex, deducting the value attributable to the non-realty components, and then allocating the total value of the real estate between MCC's 116 units and the 86 privately owned units. Keller then trended the concluded value attributable to the Commercial Unit to determine its value as of March 1, 2014 and March 1, 2015. We find Keller's appraisal sufficient to make a prima facie case and ultimately conclude it supports a reduction to the assessments at issue.

3. In contrast, the Assessor's appraiser, Steven W. Sante, MAI, SRA, offered an opinion of value solely for the Commercial Unit as of January 1, 2016. He used the cost and sales comparison approaches to analyze its value as if it were a freestanding building. Through this, Sante endeavors to value a hotel without the hotel rooms, and he fails to offer market evidence of the value of the condominium units. The Assessor therefore fails to rebut MCC's prima facie case for the Commercial Unit.

II. PROCEDURAL HISTORY

4. MCC contested the 2014, 2015, and 2016 assessments for the Commercial Unit (Parcel No. 71-03-24-376-236.000-003) and the 2016 assessments for its 115 condominium units. The St. Joseph County Assessor and the St. Joseph County Property Tax Assessment Board of Appeals ("PTABOA") determined the following assessments for the Commercial Unit:

Year	Land	Improvements	Total
2014	$689,000	$1,628,500	$2,317,500
2015	$689,000	$1,610,200	$2,299,200
2016	$689,000	$1,646,000	$2,335,000

5. The PTABOA determined the following aggregate assessment for the 115 condominium units:

Year	Land	Improvements	Total
2016	$1,023,000	$2,402,500	$3,425,500

6. MCC timely filed Form 131 petitions with the Board.[1] On March 15, 2021, our designated administrative law judge, Jacob Robinson ("ALJ"), held a telephonic hearing on MCC's petitions.[2] Neither he nor the Board inspected the property.

7. Terence Mark, St. Joseph County Assessor Rosemary Mandrici, and appraisers Laurel A. Keller and Steven W. Sante testified under oath.

8. MCC submitted the following exhibits:

Exhibit No.	Description
P-1	Appraisal of Waterford Estates Lodge prepared by Laurel A. Keller, MAI, Senior Vice President of Newmark Knight Frank Valuation & Advisory, LLC, as of January 1, 2016
P-2	Appraisal of Waterford Estates Lodge prepared by William H. Kastilahn, MAI, and Jeremy Walling, MAI, MRICS, of Colliers International Valuation & Advisory Services, LLC, as of October 22, 2014

[1]MCC elected to appeal the 2016 assessment for the Commercial Unit directly to us after the PTABOA failed to issue a determination within 180 days of the filing of its Form 130 notice of appeal. *See* Ind. Code § 6-1.1-15-1.2(k) (allowing taxpayers to appeal to the Board if the county board has not issued a determination within 180 days of the date the notice of appeal was filed).

[2]MCC filed a motion for withdrawal of Petition No. 71-003-16-1-5-00160-18 because it was duplicative of another petition filed for Parcel No. 71-03-24-376-076.000-003. During the hearing, our ALJ confirmed that the Assessor had no objection to the withdrawal and granted MCC's motion.

P-3	Declaration of Waterford Estates Lodge, recorded on November 14, 2005, as amended through January 1, 2016 (including By-Laws of the Waterford Estates Lodge Condominium and Waterford Estates Lodge Owners' Association)

9. The Assessor submitted the following exhibits:

Exhibit No.	Description
R-1	Appraisal of Parcel No. 71-03-24-376-236.000-003 prepared by Steven W. Sante of Appraisal Services, Inc., as of January 1, 2016 and January 1, 2017

10. The record also includes the following: (1) all pleadings, motions, briefs, and documents filed in these appeals, including the parties' proposed findings of fact and conclusions of law, (2) all orders and notices issued by the Board or our ALJ, and (3) the audio recording of the hearing.

III. Findings of Fact and Conclusions of Law

A. The Waterford Estates Lodge

11. The Waterford Estates Lodge ("Lodge") was built in 1970 as a Ramada Inn. It is located at 52890 State Road 933 North in South Bend, which is approximately 2.1 miles from the University of Notre Dame campus, 3.2 miles from Memorial Hospital, and 5.3 miles from the South Bend International Airport. The Lodge is a two-story, 201-room, full-service condominium hotel complex situated on 7.54 acres. It features basic hotel services and offers amenities including a restaurant, indoor and outdoor swimming pools, fitness center, and meeting rooms. The Lodge operates independent of any nationally recognized hotel brand, and it has no guest loyalty program, no well-known franchise affiliation, and no central reservation system. The site has good access due to its location along a major roadway and its proximity to a major toll road. Although its visibility from surrounding roadways is poor, its signage is visible from State Road 933. *Ex. P-1 at 2-3, 15-16, 30, 35-36.*

12. The Lodge's 201 condominium units contain a combined total of 64,601 square feet. The guestrooms feature typical hotel furniture and fixtures including flat-panel televisions, dressers, bedside tables, desks and chairs, wall sconces, floor lamps, and lounge chairs or loveseats. They also contain soft goods including window coverings, bed coverings, pillows, mattresses, and carpeting. Guest bathrooms are finished with tile flooring and tub/shower surrounds, granite countertops, and wall-mounted light fixtures. The Lodge also has a Commercial Unit containing 22,968 square feet of front desk and administrative office space, two meeting rooms, a 9,000 square foot ballroom, a kitchen, and a restaurant with seating for approximately 200 people. *Ex. P-1 at 2-3, 15-16, 38-40, and at Addenda (Anchor Construction Ownership and Area Use Plans).*

13. In 2006, the Lodge underwent a renovation and a conversion into a condominium hotel. The renovation focused mainly on guest-facing components such as the restaurant and guestrooms. Other than routine maintenance and repairs, the Lodge has not received any major upgrades in the past 10 years, and its overall condition is below average. There are several items of deferred maintenance including the ballroom chiller, pool pumps and filtration equipment, laundry equipment, and several water heaters and guestroom HVAC units that are at or near the end of their useful life. *Ex. P-1 at 2-3, 15-16, 40.*

14. The Lodge is encumbered by a recorded declaration of covenants and restrictions ("Declaration"). *Ex. P-3 at Declaration.* Among other things, the Declaration provides that each owner has an undivided interest in the common areas equal to such owner's percentage interest (the total square footage attributable to a particular unit divided by the total square footage of all condominium units). *Ex. P-3 at Declaration ¶8.* It also provides that each condominium unit owner must contribute to regular and special assessments based on percentage interest. *Ex. P-3 at Declaration ¶13.* The common areas consist of the real estate and all improvements located outside of the interior walls of the 201 condominium units and the Commercial Unit. Under the Declaration, the owner of the Commercial Unit has a legal obligation to contribute to common area

expenses just like the owners of the condominium units. However, based on the relative size of the Commercial Unit, the owner of that unit is responsible for approximately 26% of all common expenses at the property. *Mark testimony; Ex. P-1 at Addenda (Anchor Construction Ownership and Area Use Plans) Ex. P-3 at Declaration ¶6, and at First Amendment to the Declaration (Exhibit C).*

15. The Declaration also provided for the creation of the Waterford Estates Lodge Owners' Association ("Association"). From 2014 through 2016, the Association existed as a legal entity, but it did not levy any assessments and did not perform any common area maintenance. In 2019, the Association was reconstituted and began performing its intended duties to create a budget, levy assessments, and engage in common area maintenance. Due to the Association's inaction during the 2014 to 2016 timeframe, the common areas had fallen into a state of significant disrepair. *Mark testimony; Ex. P-3 at Declaration ¶12.*

16. The Lodge's current use is as a condominium hotel. MCC rents out its own 115 condominium units and uses the Commercial Unit to provide food and beverage services and meeting room space to hotel guests. Out of the 86 separately owned condominium units at the property, 84 participate in a rental pool agreement where MCC rents out the units. The individual unit owners share in the revenue according to a contractually agreed formula. *Keller testimony; Mark testimony; Ex. P-1 at 3, 15, 20.*

B. EXPERT OPINIONS

1. Keller's Appraisal

17. MCC offered an appraisal report from Laurel A. Keller, MAI, a senior vice president with Newmark Knight Frank. Keller received a Bachelor of Science degree in hospitality management from Purdue University. She is licensed as a certified general real estate appraiser in Indiana and several other midwestern states. Keller holds the MAI designation from the Appraisal Institute, and she is also a member of the invitation-only

International Society of Hospitality Consultants. Keller has spent approximately the last 20 years of her career performing hospitality valuations. During her career, Keller has appraised approximately 850 lodging properties in over 40 states, including condominium hotel properties. *Keller testimony; Ex. P-1 at Addenda (Qualifications).*

18. Keller considered all three approaches to value. She developed values using the cost approach and the income approach but decided not to develop a value using the sales comparison approach due to the lack of sales of comparable condominium hotel properties in Indiana or the surrounding region. Keller valued the retrospective market value-in-use of MCC's fee simple interest in its 115 condominium units and the Commercial Unit as of January 1, 2016, and certified that her appraisal was prepared in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). After allocating a value to the Commercial Unit for the January 1, 2016 assessment date, she trended that value back to March 1, 2015 and March 1, 2014 to arrive at a value conclusion for the Commercial Unit for those assessment dates. *Keller testimony; Ex. P-1 at 3-8, 22, 65, 80, and Addenda (Commercial Unit Allocation and Real Estate Value Change).*

a. Keller's Cost Approach

19. Keller started her cost approach by determining the value of the land. She narrowed her search for land sales based on their location, size, use, and transaction dates, and identified four comparable land sales:

- Land Sale 1 is a 4.35-acre site located approximately 1.5 miles from the Lodge purchased for $7.11/SF in May 2015 for development of an outpatient/urgent care center.
- Land Sale 2 is a 2.15-acre site located approximately 4.1 miles from the Lodge purchased for $2.40/SF in March 2014 for a built-to-suit retail and office development.

- Land Sale 3 is a 6.32-acre site located approximately 0.3 miles from the Lodge that was purchased for $4.54/SF in July 2013 for development of an assisted living center.
- Land Sale 4 is a 3.91-acre site located approximately 7.8 miles from the Lodge that was purchased for $3.08/SF in June 2013 by McDonalds Real Estate Co.

Keller testimony; Ex. P-1 at 66-68, 70-72.

20. After adjusting for real property rights, conditions of sale, financing terms and market conditions, the sales ranged in price from $3.50/SF to $5.00/SF. Keller concluded to a market value of $4.00/SF, producing a land value for the Lodge's 7.54-acre site of $1,300,000 (rounded). *Keller testimony; Ex. P-1 at 70-73.*

21. Keller used Marshall Valuation Service ("MVS") to estimate the replacement cost new of the existing building improvements. She classified it as an average Class C Hotel and selected a base cost of $129.96/SF (including a $2.31/SF adjustment for sprinklers). Keller further adjusted the base cost using current and local multipliers and indirect costs of $12.48/SF (10% of direct costs), for a total replacement cost estimate of $137.28/SF or $18,162,779. Because the Lodge does not have the modern layout or efficiencies offered by newer hotels and those design elements are impractical to correct, Keller made a $14,500,000 deduction for functional incurable obsolescence. She then made an 80% age/life depreciation adjustment, resulting in a depreciated replacement cost new for the building improvements of $732,556. *Keller testimony; Ex. P-1 at 74-77.*

22. For site improvements, Keller estimated a replacement cost new of $738,995 ($2.25/SF multiplied by the Lodge's 328,442 square feet of land area). She then adjusted her estimate by $73,899 for indirect costs (10% of direct costs), producing a total replacement cost new of $812,894. After applying an 80% age/life depreciation adjustment, she concluded to a depreciated replacement cost new for the site improvements of $162,579. *Keller testimony; Ex. P-1 at 77.*

23. Keller also estimated the value of furniture, fixtures, and equipment (FF&E). Her estimate includes all the FF&E in the Lodge's guestrooms and common areas, and the related mechanical and maintenance equipment. She reviewed information on the cost new for FF&E compiled by her firm for various hotel property types and estimated that new FF&E would cost $15,000 per unit, for a total replacement cost new of $3,000,000 (rounded). Keller estimated the effective age of the Lodge's FF&E at 6 years and its effective life at 7 years, producing depreciation of 85.7%. This resulted in a depreciated value for the FF&E of $430,000 (rounded). *Keller testimony; Ex. P-1 at 78.*

24. Adding together the land value and the depreciated value of the building, site improvements, and FF&E produced an indicated value of $2,600,000 (rounded) under the cost approach. *Keller testimony; Ex. P-1 at 79.*

b. Keller's Income Capitalization Approach

25. For her income capitalization approach, Keller relied on the direct capitalization method. She reviewed the Lodge's actual operating data from 2013, 2014, and 2015 and hotel industry metrics published by STR, Inc. to project the Lodge's revenue and expenses for 2016. *Keller testimony; Ex. P-1 at 81-86.*

26. To help her develop a projected occupancy rate and average daily rate ("ADR") for the Lodge, Keller analyzed trends and statistics within the national lodging market and performed a supply and demand analysis. Based on her analysis, Keller projected that market occupancy would increase by 3% in 2016 due to growth in demand. She then conducted a room night analysis to quantify and project overall room night demand for the Lodge. Her analysis led her to project a stabilized occupancy rate of 33% for 2016. After determining the Lodge's stabilized occupancy rate, Keller was able to estimate its ADR. While the Lodge has shown the ability to consistently increase its ADR, its room rate has consistently lagged behind its competitors. After reviewing the rate growth trends for four competitive hotels in South Bend, as well as local and national economic

trends, Keller projected the Lodge's ADR to be $94.00 for 2016. *Keller testimony; Ex. P-1 at 49-62, 86.*

27. Using her occupancy rate and ADR projections, Keller was able to estimate the Lodge's total room revenue and revenue per available room ("RevPAR") for 2016. Keller concluded to total room revenue of $2,275,740, resulting in RevPAR of $31.02 for the Lodge's 201 condominium units. She tested the reasonableness of her revenue projections by comparing the Lodge's penetration rates for occupancy, ADR, and RevPAR against the market's penetration rates and concluded that they were reasonable and supported. Keller also projected the Lodge's restaurant would produce $605,250 in food and beverage revenue during 2016, resulting in total operating revenue before expenses of $2,880,990 for 2016. *Keller testimony; Ex. P-1 at 62-63, 86-87, 94.*

28. Next, Keller projected the Lodge's expenses for the various guest services and operations associated with guestrooms, food and beverage expenses, administrative and general expenses, marketing expenses, property operations and maintenance expenses, utility expenses, information and telecoms systems expenses, management fees, insurance expenses, and reserve for replacements. Keller also deducted [redacted] for the portion of the revenue that it is obligated to share with the 84 individual condo owners who participate in the rental pool agreement. Additionally, Keller added in non-operating income of [redacted], which represents the maintenance and capital reserve fees paid by the owners of the 86 condominium units not owned by MCC. Based on her estimated income and expenses, Keller ultimately concluded to a net operating income ("NOI") of $297,517. *Keller testimony; Ex. P-1 at 87-94.*

29. To develop a capitalization rate, Keller reviewed six investor surveys for full-service hotels and two investor surveys for select-service hotels. The surveys for full-service hotels indicated a range of cap rates from 5.0% to 17.0%, while the surveys for select-service hotels had cap rates ranging from 6.5% to 11.0%. Keller selected 8.5%, which is within the range of the relevant survey data and similar to the average rate for the select-

service hotels. Her selection took into consideration the limited pool of buyers caused by the perception of increased risk due to the Lodge's split ownership structure, the difficulty in liquidating it after a holding period, and the lack of updates since 2006. *Keller testimony; Ex. P-1 at 95-96.*

30. Because Keller excluded the property tax expense from her income and expense forecast, she loaded her 8.5% cap rate with the effective tax rate of 2.416%, resulting in a loaded cap rate of 10.92%. Dividing her estimated NOI by the loaded cap rate of 10.92% produced an indicated total going concern value for the Lodge of $2,700,000 (rounded) under the income capitalization approach. *Keller testimony; Ex. P-1 at 96-97.*

c. Keller's Reconciliation and Going Concern Analysis

31. Keller placed primary emphasis on her income capitalization approach because it is generally considered to be the best and most accurate approach for measuring the value of income-producing properties. It is also the methodology purchasers of this type of property would use to evaluate the historical cash flow of the property and forecast its ability to produce cash flow in the future. Due to the Lodge's age, investors would typically not give the cost approach much weight. Keller therefore only gave it secondary weight and as a test of the reasonableness of her income approach conclusion. Keller ultimately reconciled to a total going concern value for the Lodge of $2,700,000. *Keller testimony; Ex. P-1 at 102-103.*

32. Because MCC does not own the 84 condominium units that participate in the rental pool agreement, Keller quantified their business value in order to exclude it from the overall going concern value. Relying on the same 33% stabilized occupancy rate and $94.00 ADR used in her income approach, she projected rooms revenue for the 84 units to be $951,064. After applying expense deductions using the ratios she developed for her income approach, Keller determined that the 84 privately owned units would produce NOI of $32,155. She selected a capitalization rate of 12% to account for the risk inherent

in the income associated with the rental program. Her selection was derived from conversations with market participants, including hotel investors and hotel brokers, that suggested rates of return for the Lodge would be 200 to 400 basis points higher than the applicable rates for a hotel with a traditional fee simple ownership structure. Dividing the condominium rental program NOI of $32,155 by the 12% capitalization rate yields a business value of $270,000 (rounded). *Keller testimony; Ex. P-1 at 98-100, 104-106.*

33. Deducting the $270,000 in business value attributable to the 84 condominium units that participate in the rental pool agreement and the $430,000 in FF&E (see ¶23 above) from the Lodge's going concern value of $2,700,000 produced a market value-in-use for the Lodge's real estate of $2,000,000. *Keller testimony; Ex. P-1 at 97, 101, 106-107.*

34. To determine the market value-in-use for MCC's 115 condominium units and the Commercial Unit, Keller calculated the percentage of the Lodge's total square footage owned by MCC. MCC owned approximately 65% of the total square footage, while the owners of the remaining 86 condominium units owned approximately 35%. After allocating 65% of the Lodge's market value-in-use to MCC's 115 condominium units and the Commercial Unit, Keller concluded to a total market value-in-use of $1,300,000 for MCC's 116 parcels as of January 1, 2016. *Keller testimony; Ex. P-1 at 97-98, 101, 106-107.*

d. Keller's Value Allocation for the Commercial Unit

35. Keller determined that the Commercial Unit represents 26.9% of the 85,524 square feet owned by MCC. She therefore allocated 26.9% of the $1,300,000 in value attributed to all 116 of MCC's parcels to the Commercial Unit, resulting in an indicated market value-in-use for the Commercial Unit of $350,000 (rounded) as of January 1, 2016. Keller then trended that value back to the March 1, 2014 and March 1, 2015 valuation dates using the Consumer Price Index ("CPI"). She applied a change factor of 98.95% to trend from January 1, 2016 back to March 1, 2015, resulting in an indicated market value-in-use for

the Commercial Unit of $346,000 (rounded) as of March 1, 2015. Similarly, she applied a change factor of 99.88% to trend from March 1, 2015 back to March 1, 2014, resulting in an indicated market value-in-use for the Commercial Unit of $346,000 (rounded) as of March 1, 2014. *Keller testimony; Ex. P-1 at Addenda (Commercial Unit Allocation and Real Estate Value Change).*

2. Sante's Appraisal

36. The Assessor offered an appraisal report prepared by Steven W. Sante, MAI, SRA. Sante holds a Bachelor of Science in accounting from Indiana University at South Bend. He is licensed as a certified general appraiser in Indiana and Michigan. *Sante testimony; Ex. R-1 at 55.*

37. Sante provided an opinion of value solely for the Commercial Unit as of the January 1, 2016 assessment date.[3] He developed a value for the Commercial Unit using the cost and sales comparison approaches, and he certified that his appraisal was prepared in conformity with USPAP. Sante did not develop a value using the income capitalization approach because rental data is not readily available for just the commercial area of hotel properties. Additionally, he explained that the Commercial Unit was primarily used to support the adjoining hotel rooms, not to generate income. Sante therefore reasoned that the income approach would not produce credible results. *Sante testimony; Ex. R-1 at 2-3, 23, 51.*

a. Sante's Cost Approach

38. Sante began his cost approach by calculating a land value for the Commercial Unit's 22,968 square feet as if vacant and available to be put to its highest and best use. He identified five comparable land sales:

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[3] Although Sante also valued the Commercial Unit as of the January 1, 2017 assessment date, that assessment is not at issue in this appeal.

- Land Sale 1 is a 39,672 SF site located approximately 0.15 miles from the Lodge purchased for $4.54/SF in February 2014 and developed with an ATM machine.
- Land Sale 2 is a 61,855 SF site located approximately 0.83 miles from the Lodge purchased for $3.88/SF in February 2014 for development of additional parking.
- Land Sale 3 is a 61,289 SF site located approximately 2.50 miles from the Lodge purchased for $4.00/SF in April 2013 for development of a daycare facility.
- Land Sale 4 is a 51,000 SF site located approximately 2.59 miles from the Lodge purchased for $6.01/SF in February 2017 that remains undeveloped.
- Land Sale 5 is a 59,517 SF site located approximately 0.33 miles from the Lodge purchased for $6.05/SF in April 2018 for development of a hotel.

Sante testimony; Ex. R-1 at 25-33.

39. Sante applied downward adjustments of 30% to all five of his comparable land sales due to their superior frontage on the travel corridor in comparison to the Lodge's off-highway location. After adjustment, his land sales ranged in price from $2.72/SF to $4.23/SF. Because Land Sale 5 is located in the same corridor as the Lodge and was developed with a hotel, Sante gave it the most weight and concluded to a price of $4.24/SF. Applying his land price conclusion to the Commercial Unit's 22,968 square feet produced an indicated land value of $97,400. *Sante testimony; Ex. R-1 at 33-34.*

40. Sante used MVS and the segregated cost method to estimate a replacement cost for the Commercial Unit of $2,539,469. He then added $152,368 in entrepreneurial incentive, for a total undepreciated replacement cost of $2,691,838. Sante found no functional or external obsolescence. He used the age/life method to calculate physical depreciation, which produced a total depreciation estimate of $1,199,185. Additionally, Sante estimated the depreciated cost of the site improvements to be $22,000. Adding Sante's land value to his depreciated costs for the building and site improvements produced an

estimated value of $1,612,000 for the Commercial Unit as of January 1, 2016. *Sante testimony; Ex. R-1 at 35, 37.*

b. Sante's Sales Comparison Approach

41. Sante developed a sales comparison approach to test the reasonableness of his cost approach conclusions. He noted that it is unlikely the Commercial Unit would be sold without the hotel rooms and other amenities, and he found no sales of similar improvements. Instead, he identified the following four sales of hotel properties located in St. Joseph County:

- Sale 1 is a 60,405 SF hotel built in 1986 that is located approximately 0.83 miles from the Lodge. It was purchased for $67.88/SF in September 2017.
- Sale 2 is an 80,310 SF hotel built in 2000 that is located approximately 0.21 miles from the Lodge. It was purchased for $75.96/SF in March 2018.
- Sale 3 is a 38,316 SF hotel built in 2015 that is located approximately 4.29 miles from the Lodge. It was purchased for $91.35/SF in August 2019.
- Sale 4 is a 70,516 SF hotel built in 1995 that is located approximately 0.24 miles from the Lodge. It was purchased for $146.43/SF in March 2012.

Sante testimony; Ex. R-1 at 38-49.

42. Because unlike the Commercial Unit, all four sales included guest rooms and other typical hotel amenities, Sante judged the value of MCC's Commercial Unit to be below the price range shown by his sales comps. Sante rated Sales 2-4 as superior to the Commercial Unit, and he found Sale 1 to be the most comparable to the Commercial Unit due to its similar age. However, Sante noted that Sale 1 is closer to the university and the toll road and lacks any restaurant facilities. He therefore estimated the value of the Commercial Unit to be $63/SF. Applying that price to 22,353 square feet produced an estimated value of $1,408,200 for the Commercial Unit as of January 1, 2016. *Sante testimony; Ex. R-1 at 38, 48-49.*

c. Sante's Reconciliation

43. Because he had sufficient data to estimate replacement costs, depreciation, and site value, Sante felt that his cost approach produced credible results. On the other hand, Sante concluded that his sales comparison approach "lacks rationale, as it is unlikely the subject improvements would be sold without the other hotel amenities included." He therefore placed the most weight on his cost approach and reconciled to a final value conclusion of $1,612,000 for the Commercial Unit as of January 1, 2016. *Sante testimony; Ex. R-1 at 50.*

C. Other Testimony

44. MCC also presented testimony from Terence Mark, Director of EAA US Holdings Corporation, which owns MFC Holdco LLC, which is in turn the owner of MCC SB Condo, LLC. Mark is also President of the Waterford Estates Lodge Owners' Association. He explained that MCC operates its 116 units as a single economic unit and uses one set of financial statements. Mark approached multiple hotel investment groups about purchasing the Lodge. None were interested due to the lack of a functioning owners' association to collect funds for common area maintenance and the Lodge's historically poor financial performance. MCC discussed paying an investor to take ownership of MCC's units, but that effort was unsuccessful. MCC also attempted to donate its units to the University of Notre Dame at no cost, but the university declined MCC's offer. *Mark testimony.*

45. St. Joseph County Assessor Rosemary Mandrici reviewed the property record cards for the 116 parcels that are on appeal and concluded that they fairly reflected the parcels' market values-in-use. She made no special adjustments or overrides to any of their assessments. Nor did she change any of the physical characteristics or depreciation factors that were applied to the parcels. *Mandrici testimony.*

D. ANALYSIS

1. Objections

46. The Assessor objected to MCC's recalling of Keller to offer additional rebuttal testimony. Our ALJ overruled the objection, and we adopt his ruling.

2. Burden of Proof

47. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proof. Indiana Code § 6-1.1-15-17.2 creates an exception to that general rule and assigns the burden of proof to the assessor in two circumstances--where the assessment under appeal represents an increase of more than 5% over the prior year's assessment for the property, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. IC § 6-1.1-15-17.2(b) and (d). Here, MCC stipulated that it has the burden of proof.

3. True Tax Value

48. In Indiana, assessments are based on a property's "true tax value." True tax value does not mean fair market value. Ind. Code § 6-1.1-31-6(c). Nor does true tax value mean the value of the property to the user. Ind. Code § 6.1-1.1-31-6(e). Subject to these somewhat tautological directives, the Legislature relies on the Indiana Department of Local Government Finance ("DLGF") to define true tax value. Ind. Code § 6-1.1-31-6(f). The DLGF defines true tax value as: "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or a similar user, from the property." MANUAL at 2.

49. The MANUAL offers further guidance. It defines "market value-in-use," "value in use," and "use value," as being synonymous. MANUAL at 6-8. But it also states that a property's true tax value will equal its value-in-exchange when properties are frequently exchanged and used for the same purposes by the buyer and seller. *Id.* at 2, 4.

50. True tax value is something other than purely market value or value-in-use. Given the mandates from the Indiana Supreme Court and the Legislature, the DLGF created a valuation standard that relies heavily on what it terms as objectively verifiable data from the market, but still maintains the notion of property wealth gained through utility, and therefore recognizes situations where true tax value will differ from market value.

51. Regardless of the method used to prove true tax value, a party must explain how the evidence relates to the property's value as of the relevant date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006). For 2014, 2015, and 2016, the valuation dates were March 1, 2014, March 1, 2015, and January 1, 2016, respectively. Ind. Code § 6-1.1-2-1.5(a).

4. Valuation Evidence

52. In Indiana "each assessment and each tax year stands alone" and the Board "evaluates each property's value based on its specific facts and circumstances." *CVS Corp. v. Monroe Cty. Assessor*, 83 N.E.3d 1286, 1292 (Ind. Tax Ct. 2017). The Board is "not bound to reach the same conclusions regarding the persuasive value of an appraiser's reports and valuation methods for different tax years or different properties." *Id.* The Tax Court has held that the "valuation of property is an opinion and not an exact science." *Monroe Cty. Assessor v. SCP 2007-C-26-002*, LLC, 62 N.E.3d 478, 482 (Ind. Tax Ct. 2016).

53. A trier of fact is often "faced with [multiple] qualified experts who presented diametrically opposed opinions, supported by extensive reports and reasoning, as to the value of [certain] real estate." *Crider v. Crider*, 15 N.E.3d 1042 (Ind. Ct. App. 2014). It is up to the trier of fact to "judge the credibility of the battling expert witnesses." *Id.* at 1059 (quoting *Goodwine v. Goodwine*, 819 N.E.2d 824, 830 (Ind. Ct. App. 2004)). The Board must determine what portions of an appraisal are supported by the evidence:

> The Indiana Board is Indiana's property valuation and assessment expert. Consequently, when the Indiana Board ascertains . . . that parts of an appraisal are not probative, it should not then accept those parts of the appraisal to value the property.

Marion County Assessor v. Wash. Square Mall, LLC, 46 N.E.3d 1, 14 (Ind. Tax Ct. 2015).

a. Keller's Appraisal

54. The Assessor had three primary criticisms of Keller's appraisal. The first was that Keller did not develop a sales comparison approach. Although the Assessor asserted that Keller could have used the four local hotels she included in her supply and demand analysis to develop the approach, the Assessor offered no evidence demonstrating that two of those hotels even sold during the relevant timeframe. Additionally, Keller testified that she did not develop the approach because she could not find any sales of comparable *condominium-hotels*.

55. While Keller testified that she considered using sales of regular hotels (such as the Quality Inn and the Comfort Suites included in her supply and demand analysis and relied on by Sante in his sales comparison approach), she explained that she had no support for the adjustments needed to account for converting regular hotels to condominium-hotels or the effect of having 86 individual condominium owners. Thus, she did not see the sales comparison approach as a viable way to value the Lodge. We find Keller's explanation credible and therefore take no issue with her decision to forego developing a sales comparison approach.

56. The Assessor's other two criticisms involved Keller's income capitalization approach. First, the Assessor claimed that Keller impermissibly capitalized the Lodge's actual income. Although examining a property's actual rent is an important step, relying on it exclusively is inappropriate when appraising a property's market value-in-use. *See*

Indiana MHC, LLC v. Scott Cty. Ass'r, 987 N.E.2d 1182, 1185-86 (Ind. Tax Ct. 2013) (citing THE APPRAISAL OF REAL ESTATE 493, 501, 509, 511-12 (12th ed. 2001) ("[T]o provide a sound value indication under the income capitalization approach, one must not only examine the historical and current income, expenses and occupancy rates for the subject property, but the income, expenses, and occupancy rates of comparable properties <u>in the market</u> as well.") (emphasis in original).

57. However, Keller did not rely on the Lodge's actual income for 2016. While she did review the Lodge's operating statements for 2013 through 2015—she simply used that historical information as a starting point. To forecast the Lodge's revenues and expenses for 2016, Keller considered the occupancy rates and income and expense ratios of the four local hotels included in her supply and demand analysis. She also reviewed hotel industry data on revenues and expenses published by STR, Inc. for five descriptive categories (Orientation - Full-Service Properties; Affiliation - Independent; Geographic Region - East North Central; Market Type - Suburban; and Price Category - Upper Midscale Class). Keller then checked her income and expense projections against both the Lodge's historical performance and the industry averages. Thus, we find no merit to the Assessor's claim.

58. The Assessor also criticized Keller's use of the CPI to trend the Commercial Unit's indicated value back to the 2014 and 2015 valuation dates. However, the Assessor did not establish that such an approach violates USPAP. Nor did she offer any evidence showing that Keller calculated her trending factors incorrectly. While there may be more specific indices (as Keller acknowledged), the Assessor has failed to convince us that Keller's use of the CPI was inappropriate.

59. Because the Assessor failed to impeach the credibility of Keller's appraisal[4] and we find it to be reasonable and well-supported, we conclude that MCC made a prima facie case establishing the Commercial Unit's market value-in-use for the 2014, 2015, and 2016 assessment years and its 115 condominium units' market value-in-use for the 2016 assessment year. We therefore turn to the Assessor's valuation evidence to determine whether it is persuasive enough to rebut MCC's case.

b. Sante's Appraisal

60. Sante provided an opinion of value solely for the Commercial Unit. Thus, his appraisal values a hotel without the hotel rooms. The Assessor provided no market data as to the value of the 115 condominium units.

61. We easily conclude that the Commercial Unit's current use (and by extension, its market value-in-use) is inextricably intertwined with the rooms as a condominium hotel, and the Commercial Unit would not be developed independently or sold as a stand-alone unit.

62. Sante admitted as much when he noted that it is unlikely the Commercial Unit would be sold without the hotel rooms and other amenities. He was also unable to find any sales of similar improvements. Based on those issues, Sante himself concluded that his sales comparison approach "lacks rationale." Similarly, in concluding that the income approach would not produce a credible valuation, Sante explained that he could not locate rental data for just the commercial area of hotel properties. He also admitted that the Commercial Unit is primarily used to support the adjoining hotel rooms, not to generate income.

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[4] Because the Assessor confined her criticisms to Keller's income approach and Keller relied solely on that approach when concluding to a reconciled value, we need not evaluate the merits of Keller's cost approach. The Board also notes that the Assessor failed to challenge Keller's obsolescence deduction, adjustments to income from the 84 units, and allocation of value of the Commercial Unit. Accordingly, the Board is compelled to accept them as unrebutted.

63. While valuing a component of a complex may be appropriate, that is not the case here where the value of the condominium units are inextricably linked to the value of the hotel. But the Assessor does not make that argument. Her Proposed Findings of Fact and Conclusions of Law request the Board to reject Keller's appraisal so that "Sante's appraisal need not be considered." Because the Assessor's evidence only values the Commercial Unit, she fails to present probative evidence to rebut Keller's appraisal.

IV. CONCLUSION

64. Because the Assessor failed to impeach or rebut MCC's valuation evidence, we find for MCC. We therefore order the assessments for MCC's Commercial Unit changed to the following values:

Year	Assessment
2014	$346,000
2015	$346,000
2016	$350,000

65. We further order the aggregate assessment for MCC's 115 condominium units changed to the following value:

Year	Assessment
2016	$950,000

This Final Determination of the above captioned matter is issued by the Indiana Board of Tax Review on the date written above.

____
Chairman, Indiana Board of Tax Review

Betsy J. Brand
Commissioner, Indiana Board of Tax Review

Jonathan R. Elrod
Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>. The Indiana Tax Court's rules are available at <http://www.in.gov/judiciary/rules/tax/index.html>.

Petition Number	Parcel Number	Property Address
71-003-14-1-4-00124-17	71-03-24-376-236.000-003	52890 SR 933
71-003-15-1-4-00125-17	71-03-24-376-236.000-003	52890 SR 933 N
71-003-16-1-4-00209-21	71-03-24-376-236.000-003	52890 SR 933 N
[redacted]	[redacted]	[redacted]
71-003-16-1-5-00062-18	71-03-24-376-227.000-003	52890 ST RD 933 #417
71-003-16-1-5-00063-18	71-03-24-376-219.000-003	52890 ST RD 933 #409
71-003-16-1-5-00064-18	71-03-24-376-216.000-003	52890 ST Rd 933 #406
71-003-16-1-5-00065-18	71-03-24-376-196.000-003	52890 ST RD 933 #309
71-003-16-1-5-00066-18	71-03-24-376-195.000-003	52890 ST RD 933 #307
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