**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**
**TAX DIVISION**

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| **CHH CAPITAL HOTEL PARTNERS LP,** | ) | |
| | ) | Case No. 2009 CVT 9455 |
| ***Plaintiff,*** | ) | Judge John M. Campbell |
| | ) | |
| **v.** | ) | |
| | ) | |
| **DISTRICT OF COLUMBIA,** | ) | |
| | ) | |
| ***Defendant.*** | ) | |

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**ORDER**

This matter came before the Court for trial on May 10, 11, 13, and 25, 2011, on the appeal of Petitioner CHH Capital Hotel Partners, L.P. Petitioner appeals from the Tax Year 2009 assessment of property known as The Capital Hilton Hotel, located at 1001 16th Street, NW, and identified as Lot 39 in Square 198. The specific issue for trial was the determination of the estimated market value of the taxable real property component of the hotel as of January 1, 2008.

Respondent District of Columbia initially assessed the property for $124,973,100. Petitioner timely filed an administrative appeal of this assessment within the Office of Tax and Revenue (OTR), which affirmed its initial assessment. Petitioner then appealed the OTR decision to the D.C. Board of Real Property Assessments and Appeals (BRPAA). During the BRPAA appeals process, the District's assessor revised his initial assessment to $118,701,067. After hearing the matter, BRPAA reduced the assessment further, to $113,148,379, but provided no explanation for its decision. Petitioner paid the taxes due in full, and filed its challenge in this court.

Based on the evidence and the record, the Court concludes that Petitioner has failed to carry its burden of proving that the Respondent's assessment is incorrect or illegal, and that the assessment therefore must be upheld.

## Standard of Review and Burden of Proof

This Court's review of real property tax assessments is de novo. *Wyner v. District of Columbia*, 411 A.2d 59, 60 (D.C. 1980). Petitioner bears the burden of proving that the assessment is "incorrect or illegal, not merely that alternative methods exist giving a different result." *Safeway v. District of Columbia*, 525 A.2d 207, 211 (D.C. 1987). A taxpayer may do this by showing that the District's choice or implementation of methodology is "irrational or unfounded," *id.*, or that there is "a defect in the methodology." *YWCA v. District of Columbia*, 731 A.2d 849, 850 (D.C. 1999). But showing merely that there is a different way of doing it, with a different outcome, is not enough. As the Court of Appeals has recognized, "there are various ways for determining an accurate estimate of fair market value," *District of Columbia v. Rose Assoc.*, 697 A.2d 1236, 1238 (D.C. 1997); "the government therefore is given sizable discretion in 'choosing the method or approach for an assessor to use in estimating the market value of a particular property.'" *YWCA v. District of Columbia*, 731 A.2d at 851 (quoting *Wolf v. District of Columbia*, 597 A.2d 1303, 1308 (D.C. 1991)). A further implication of this is that a taxpayer's burden is not met simply by proving that the methodology advocated by its own expert is itself sound; rather, the taxpayer must show that the District's methodology is <u>not</u> sound, *YWCA v. District of Columbia*, 731 A.2d at

851 (citing cases), or at least that its own expert's methodology is superior to – that is, more accurate than – the District's. *Id.* at 852.

The Petitioner argues that because the District does not appear to be defending BRPAA's valuation of $113,148,379 (since BRPAA gave no explanation of how it came to this number, *see* Pet. Ex. 4), there is no "presumption of validity" of that figure, and the District therefore bears the burden of proving that its higher assessment is valid. The Court disagrees. It is true that there are several numbers being batted around in this case. There is the District's initial assessment of $124,973,100. There is the District's revised assessment (presented during the proceedings before BRPAA) of $118,701,067. There is BRPAA's decision, reducing the assessment to $113,148,379. There is the assessment produced by the taxpayer's expert of $95,700,000. And finally there is the number produced by the District's trial expert of $126,432,000.

As a result of the trial, however, it is clear that the District is defending its assessor's revised valuation of $118,701,067. This is the number that the taxpayer needs to prove was derived through an incorrect or illegal methodology if it is to prevail, as the parties clearly understood during the trial. The District would bear the burden of proof if it wished the Court to endorse the higher number offered by its expert; but the Court does not understand the District to be seriously pursuing this argument. Finally, though, the Court does conclude that because the value that came out of the BRPAA appeals process – $113,148,379 – was the final word before the proceedings here, the taxpayer should receive the benefit of that assessment if the challenge here fails, as it does. The taxpayer should be no worse off than if he had not appealed to this Court.

## Background and Summary

The property at issue is a well-known and centrally-located hotel in downtown Washington, DC, a few blocks from the White House at the corner of 16th and K Streets. It was constructed in 1943, and has 544 guest rooms. It operates under the Hilton flag. Petitioner purchased the hotel in April 2007. Petitioner specializes in the purchase of hotels.

The nub of this case is a disagreement about how to separate the value of the subject property's land and improvements (which are subject to real property tax) from the value of the tangible personal property it contains and its value as a business enterprise (both of which are not subject to real property tax). Everyone agrees that this has to be done. Everyone agrees that the appraiser's or assessor's task requires estimating the fair market value of the property, and that at least in this circumstance the best overall way to do this is through what is termed the income approach to value. Since a property's market value can be understood as its ability to generate net income (plus a re-sale value), an appraiser can use capitalized net income information to derive that market value. Everyone also agrees, though, that the estimated fair market value derived from this calculation, if not properly adjusted, would include all four components of value – land, improvements, personal property, and intangible business value. The hypothetical buyer, after all, would be purchasing the entire hotel, including everything in it and its value as a going enterprise. It follows, then, that the taxing authority is obligated to try to determine how much of that overall market value is attributable solely to the land as well as the improvements – "the bricks and mortar" – since those are the only components subject to real property taxation.

At the risk of oversimplifying, as the Court understands it there logically are two basic ways to do this. First, one can endeavor to isolate and strip out any portion of total net income that is attributable to non-real-estate components before capitalizing the total net income value. The total value thus generated, then, will include only real estate value. Second, and alternatively, one could calculate the total fair market value of the property as a whole (by capitalizing total net income), and then afterwards identify and remove all value associated with the non-real-estate components. It would seem to make sense that as to any single component of value, one may do one or the other, but not both.

In assessing this hotel, the District purported to follow what is generally called the "Rushmore Approach" in order to accomplish this separation. The main thrust of the taxpayer's challenge here is that the Rushmore Approach is inadequate for this task, and that the correct method is what appears to be called the "business enterprise approach," which can be viewed as a variation on or refinement of the Rushmore approach, and whose principal exponent is the taxpayer's expert, David Lennhoff. For purposes of this case, there are two key differences between the two methodologies. The first concerns how best to remove value attributable to "FF&E" – the furniture, fixtures, and equipment making up the hotel's tangible personal property. The second difference concerns whether and how best to deal with the business start-up costs associated with the original opening of the hotel. The two approaches yield a significant disparity in taxable value: Mr. Lennhoff's valuation is $23 million less than the District's revised assessment, and more than $30 million lower than the District's expert's valuation.

Findings

The Court heard testimony from four witnesses at trial: (1) Mr. David Clark, an assessor in the District's Office of Tax and Revenue (Mr. Clark appeared in place of the actual assessor, Mr. Hovermale, who had retired and was not available); (2) Mr. Mark Nunnelly, Chief Accounting Officer of Ashford Hospitality Trust, which is the majority owner and general partner in Petitioner CHH Capital Hotel Partners, L.P.; (3) Mr. Lennhoff, the Petitioner's expert witness; and (4) Mr. Rafael Menkes, another OTR assessor whom the Court permitted the District to qualify as its expert witness.

Mr. Clark based his testimony primarily on the worksheets prepared by Mr. Hovermale, particularly the final one prepared for the BRPAA appeals process. *See* Resp. Ex. 7. According to Mr. Clark, the primary method that Mr. Hovermale used to ascertain the value of the property in order to finalize the assessment was the income approach to value. The Calendar Year 2005, 2006, and 2007 Income and Expense Reports filed with OTR by the hotel's owners were the primary sources of the information reviewed by Mr. Hovermale for the assessment. Mr. Hovermale used the actual revenue and expenses from the Calendar Year 2007 Income and Expense Report to derive the assessment.

In developing an income stream for capitalization, Mr. Hovermale removed income related to the Hotel's personal property and its business value. Revenue attributable to the personal property (FF&E) was removed by deducting both the "return on" FF&E and "return of" FF&E. The "return on" FF&E (which seeks to remove value associated with personal property currently being used by the hotel) was calculated in three basic steps: (1) estimating the replacement cost of FF&E per room and multiplying that cost by the total number of rooms, to get a total replacement cost for the hotel's FF&E; (2) allowing a depreciation factor against this total replacement cost; and (3) multiplying the depreciated value by an appropriate rate of return on the investment – in this case, Mr. Hovermale used 7.5%. The "return of" FF&E is the replacement reserve fund set aside for replacing FF&E over a period of time, since personal property used in a hotel gets heavy use and has a relatively short useful life. Mr. Hovermale set this replacement reserve at 4% of the Hotel's total gross revenue. This is consistent with what the Petitioner reported in its Calendar Year 2007 Income and Expenses Report. Revenue attributed to the Hotel's business value was removed by deducting the cost of management expenses and the cost of the trade name. These costs together represented 5% of the Hotel's total revenue.

After removal of the Hotel's personal property component and business component, Mr. Hovermale found the net operating income attributable to real estate to be $11,397,571. Mr. Hovermale developed his capitalization rate by reviewing a range of capitalization rates, based on published data from the third quarter, in the District's Tax Year 2009 Pertinent Data Book. In deriving a capitalization rate, Mr. Hovermale considered the risks associated with the Hotel, the hotel market for the District of Columbia, and the Hotel's location. After producing a capitalized value, Mr. Hovermale allowed $12,760,432 in capital expenditures, spread over 5 years and discounted to a present value of $9,786,544, which he then deducted. Mr. Hovermale excluded certain claims as capital expenditures including a petty cash fund, renovations, soft goods, and technology. This process yielded a final value of $118,701,067 for the subject property.

Mr. Clark testified that the methodology used by Mr. Hovermale is consistent with what is called the Rushmore Approach to valuing hotels for purposes of real property assessment. He emphasized that the manner in which this approach seeks to account for and remove the value of personal property, in particular, is consistent also with the outcomes owners actually report.

Mr. Rafael Menkes testified for the District as its expert witness, qualified by the Court over the objection of the petitioner. Mr. Menkes valued the hotel for purposes of real property taxation at $126,432,000.

The Court finds no need to discuss in detail Mr. Menkes' specific conclusions. Mr. Menkes works for the District as a major properties assessor, in essentially the same job as Mr. Hovermale and Mr. Clark. His actual experience in valuing hotels similar to the Hilton is scant, as is his formal training. The Court permitted him to testify as an expert, but in the end, having heard his testimony, gives little weight to his expert opinion. To be clear, the Court does not discount his testimony completely. To the contrary, he was able to describe his (and Mr. Hovermale's) methodology, to identify both as grounded in the Rushmore Approach, to explain the common-sense logic underlying certain aspects of it, and to contrast that approach with Mr. Lennhoff's. In doing this, he shed valuable light on the mechanics of both approaches, as well as on their differences. But Mr. Menkes lacked the broader expertise or experience to explain why one was superior to the other on a theoretical level, except to say that the District uses the Rushmore Approach and that he thinks it is better. More important, the District itself plainly has decided not to press any argument that Menkes' valuation is in fact the correct one. Instead, the District now defends Mr. Hovermale's revised assessment of

$118,701,607. Under these circumstances, there is no need to explore Mr. Menkes' conclusions further.

Mr. David Lennhoff testified as an expert witness for the petitioner. Mr. Lennhoff is unquestionably well qualified and experienced, and has been permitted to testify as an expert, specifically on the valuation of hotels, in a number of jurisdictions. As noted earlier, he is the principal proponent of a valuation methodology that challenges the sufficiency of the Rushmore Approach – and that typically results in a significantly lower taxable value for hotel real property. He produced an extensive report for this litigation, admitted into evidence as Petitioner's Exhibit 12. According to his valuation, the fair market value of the real estate component of the Capital Hilton as of January 1, 2008, was $95,700,000.

Like Mr. Hovermale, Mr. Lennhoff used the income approach in valuing the subject property. Mr. Lennhoff reviewed the Hotel's operating history from Calendar Years 2005-2007 in projecting a net operating income over Calendar Years 2008 and 2009. He used a two-year period primarily because of certain assumptions he made: that the Hotel would be extensively renovated during Calendar Year 2008, effectively reducing the available rooms from 544 to 494 for any given day; and that the renovations would be completed during Calendar Year 2009. In developing an income stream for each year, Mr. Lennhoff, like Mr. Hovermale, sought to remove income related to the Hotel's personal property and business value. Again like Mr. Hovermale, Mr. Lenhoff purported to remove revenue attributable to the personal property by deducting the return on FF&E and return of FF&E. Mr. Lennhoff determined a value for the FF&E, and then calculated income from it, using an 8% chattel mortgage rage. Mr. Lennhoff also factored in a replacement reserve fund set aside for replacing FF&E (and other building components over a period of time) but asserted that the replacement reserve is simply an operating expense, and was not related to removing FF&E value. He emphasized that his calculations so far (in removing revenue attributable to FF&E as well as a replacement revenue) did <u>not</u>, in his opinion, completely remove all value attributable to personal property, and that the latter goal would require a later additional deduction.

Mr. Lennhoff removed revenue attributed to the Hotel's business value in part by deducting what Mr. Lennhoff termed business start-up costs. Business start-up costs include assembling staff, training, pre-opening marketing, and management, among other components. Mr. Lennhoff also made a deduction for management expenses, representing 3% of the Hotel's total projected revenue.

Using these deductions, Mr. Lennhoff derived net operating income attributable to real estate for the two-year period he was using, applied a capitalization rate, and finally derived a real estate value of $126,668,900. Then, however, Mr. Lennhoff took two deductions from his indicated value: (1) $2,350,000 for retail tenant improvements of existing vacant space, and (2) $28,600,000 for renovation costs outlined in Petitioner's "Ashford Summary of Capital Projects," attached as the final Addendum to Petitioner's Exhibit 12, and referenced on page 86 of Lennhoff's report. The deduction for retail tenant improvements taken by Mr. Lennhoff included renovation of a basement that had been vacant for six years. That projected renovation cost was not included in Petitioner's planned capital projects. More important, as Mr. Lennhoff acknowledged, the $28,600,000 for renovation costs included expenditures related to personal property (i.e., FF&E). Mr. Menkes estimated this portion of the $28.6 million to be approximately $16 million; the exact amount, however, is less significant than the fact that the deduction was made. According to Mr. Lenhoff's methodology, the renovation costs associated with replacing FF&E had to be deducted in this way in order fully to remove the value of the FF&E from the real estate value.

Besides these differences in methodology, there are notable differences between the underlying assumptions and projections that Mr. Lennhoff used and those employed by the District. Among other things, Mr. Lennhoff assumed that a hypothetical buyer would begin renovations of the Hilton in 2008, and that this would reduce the number of rooms available from 544 to 494. This, in turn, led Mr. Lennhoff to project a significant reduction in gross revenue and in gross operating profit for Calendar Year 2008. It is also the reason he chose to use a two-year approach for projecting net operating income. In addition, Mr. Lennhoff assumed that the hypothetical buyer would spend a considerable sum to renovate the vacant basement space.

It is interesting, at least, to observe that none of these things happened. That is, Petitioner did not begin renovations in 2008, did not renovate the basement, and did not see a reduction in either gross revenue or gross profit in 2008. In fact, the opposite occurred: Petitioner saw a significant <u>increase</u> in both revenue and profit in 2008. Petitioner points out that considering post-appraisal facts in assessing an appraisal is not permissible, strictly speaking, because the whole point of doing an appraisal as of a given date is to put yourself in the shoes of a market participant <u>on that date</u>, looking ahead, who does not know the future. Strictly speaking, this is unarguably true. On the other hand, it surely <u>is</u> permissible, if later events show an operating assumption to have been incorrect, to re-examine the bases of the assumption more critically, in light of the fact that it turned out to be wrong. Later events do not invalidate such an assumption; but they may provide a new lens through which to inspect it. The assumption may still prove to be valid, in that it was justified based on the information available at the time. Alternatively, the fact that things turned out differently may reveal a flaw in the assumption itself.

As it turns out, however, these differences are not materially important to the Court's analysis. For one thing, even if one assumed these to be "methodological" differences, they do not have very much practical effect. The difference between Mr. Hovermale's and Mr. Lennhoff's post-capitalization values, before final adjustments, is actually relatively small -- $128,786,122 for Hovermale, and $126,668,990 for Lennhoff: a difference of about $2.1 million, or slightly more than 1.5 percent. The parties, moreover, clearly do not regard these matters as their methodological battleground. In any event, based on the evidence before it, it would not be possible for this Court to conclude that Mr. Lennhoff's assumption and projections were clearly superior in any respect to the District's.

## Analysis

As stated earlier, the matter comes down to whether the Petitioner has carried its burden to show that the District's assessment here was incorrect or illegal, in the sense that it was irrational, unfounded, or otherwise methodologically defective. The Petitioner has not done this, either by directly attacking the District's methodology or by showing that Lennhoff's is superior to it.

At bottom, Mr. Lennhoff did not persuade the Court of the correctness of his method, much less that it is superior to the District's use of the "Rushmore Approach." Most important, the District's methodology seems to make sense. The Court was able to discern its logic from a number of sources at trial, including explanations offered by Mr. Clark and Mr. Menkes, criticism and commentary from Mr. Lennhoff, articles offered into evidence and referred to by both sides (District's exhibits 9 and 10, for example), as well as cases cited and referred to by the parties (discussed further below).

The method followed by the District – patterned on the Rushmore Approach – seems to the Court well-conceived to yield a fair and accurate estimate of market value for the taxable real property component of the Capitol Hilton Hotel as of January 1, 2008. The approach followed by the District is well-established and broadly accepted, both in its overall outline and in its specifics. The assessor here recognized the income approach to value as the proper general methodology; understood the need to isolate the different categories of value and remove those unrelated to the land and the capital improvements (which together make up the taxable real-property component); and set about doing so in a logical and generally accepted manner.

As explained earlier, Mr. Hovermale first calculated a net operating income for the hotel, using actual income and expense reports filed with OTR by the owners of the property. He followed a common methodology for removing the value of personal property (furniture, fixtures, and equipment – FF&E) from that income stream. To do so, he first calculated the value of FF&E in place in the hotel by estimating its full replacement cost, depreciating that amount, and then multiplying by an appropriate expected rate of return. To this, he then added an amount as a "replacement reserve" for replacing the property as needed over time. These two numbers represented the "return on" and "return of" FF&E. Subtracting them from net operating income effectively removed income attributable to personal property from the hotel's income stream. Mr. Hovermale then removed an additional 5% to account for the business value of the hotel. He reached this figure by taking the management fee of 3% and imputing a 2% "franchise" or "trade name" cost.[1] This 5% is used to estimate income generated by special management expertise or trade name value, and so must be excluded from income.

After performing these calculations, Mr. Hovermale divided the resulting net operating income attributable only to real estate by an 8.85% capitalization rate to reach a capitalized value of $128,786,112. The Court finds the capitalization rate used here to have been properly derived, and notes additionally that it was not criticized by the Petitioner's expert. Mr. Hovermale then deducted (at the BRPAA stage) almost $10 million to account for capital expenditures planned by the Petitioner, as well as some additional costs, to reach a final taxable value of $118,701,607. The Court finds this process, and the resulting valuation, to be methodologically sound and fully supported by the evidence.

The Petitioner's expert witness, Mr. Lennhoff, did not persuade the Court that the District's approach was incorrect or insufficient, or that it yielded a wrong result. He also did not persuade the Court that his own methodology is superior to the District's. As noted earlier, his primary attack on the District's valuation focused on two things that, in his opinion, the District failed to account for.

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[1] Mr. Hovermale originally used 1% for the trade name, but adjusted it to 2% during the BRPAA appeals process. *See* Respondent's Exs. 2 and 7.

The first aspect of Lennhoff's attack concerns the process of removing value attributable to personal property or FF&E. Lennhoff contends that an additional deduction must be taken "below the line" – that is, after the income stream has been capitalized to value – for the actual replacement cost of the FF&E. In the present case, this amount is included in $28.6 million in renovation costs he would deduct based on the Petitioner's planned renovations of the property. (Petitioner's Ex. 12, p. 86). According to Mr. Menkes (whose calculation on this point the Court credits), some $16 million of the $28.6 million is attributable to replacing FF&E. The Court agrees with the District that this deduction "double counts" the value of the personal property. The Rushmore approach used by the District already calculated the depreciated replacement cost of the FF&E as part of its "above the line" deductions from the income stream, thereby removing income associated with existing FF&E, and already accounted for income to be used to replace FF&E by taking a percentage reduction for a replacement reserve. Nothing more is required or appropriate in order to strip out the value of FF&E, including planned replacement of it.

The second major aspect of Lennhoff's critique concerns his contention that an appraiser or assessor must calculate and deduct the "start-up" costs associated with getting the hotel up and running – even if, as here, that happened in 1943. The Court does not find this plausible on either a practical or theoretical level. As the Rushmore approach notes, hotels, unlike other businesses, are in a virtually perpetual "start up" mode – for example, always advertising for new "tenants" in the form of guests, and dealing with high turnover in staff. Moreover, it simply defies common sense to suppose that in the sale of a hotel in 2008 the market participants are trying to calculate a start-up cost carried forward from 65 years ago.

This Court's conclusions are informed and supported by the reasoning of recent opinions from other jurisdictions.[2] In *Chesapeake Hotel LP v. Saddle Brook Township*, 22 N.J. Tax 525 (N.J. Tax Ct. 2005), the New Jersey court faced a conflict over the valuation of the Saddle Brook Marriott. The court heard expert testimony directly from both Mr. Lennhoff and Mr. Rushmore. As here, Lennhoff testified that "in addition to the adjustments of the Rushmore method, several additional adjustments must be made to arrive at an accurate valuation for the real property." *Id.* at 528. The first such adjustment, again, was an additional deduction for FF&E. Lennhoff agreed with the Rushmore approach in deducting a replacement allowance and an investment return on the depreciated value of the FF&E, but asserted that these deductions failed to completely remove FF&E value from overall value of the property. To accomplish this, he found it necessary to deduct the full depreciated value of the personal property from the value arrived at after capitalizing net income. *Id.* at 529. The second additional deduction, as in the present case, was for business start-up costs. The hotel had been built in 1966, and the tax assessment was for Calendar Year 1999.

Mr. Rushmore testified for the taxing authority. He disputed both the appropriateness of the additional FF&E deduction (which he found, in essence, to duplicate the earlier deduction), and the appropriateness of deducting "start-up" costs for a 33-year-old hotel. *Id.* at 531-32.

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[2] The District asserts that its use of the Rushmore Approach has been "sanctioned" by our Court of Appeals in *District of Columbia v. Washington Sheraton Corp.*, 499 A.2d 109 (D.C. 1985). This interpretation vastly overreads that opinion. The *Washington Sheraton* court merely referenced an article by Rushmore as providing a basis for certain appraisal methods, none of them critical to the present case, and not in opposition to any other methodologies.

The court, after examining both theories, found that "Lennhoff's proposed adjustments, on the whole, are not persuasive either for theoretical or empirical reasons." *Id.* at 532. The court found the business start-up adjustment to be implausible virtually on its face for a property more than 30 years old. *Id.* at 533. As to the additional deduction for FF&E, the court found it lacked any theoretical justification:

> Once an appropriate allowance of income earned on FF&E is deducted from the income stream to be capitalized, that property is no longer in the capitalized value . . . . [T]o allow a deduction for return on FF&E from income as well as a deduction of the invested capital from value is, as Rushmore concludes, to double count.

*Id.* at 534.

In *RRI Acquisition Co. v. Supervisor of Assessments of Howard County*, 2006 Md. Tax Lexis 1, the Maryland Tax Court, in valuing the Red Roof Inn in Jessup, considered the same clash between the Rushmore Approach (used by the taxing authority) and the Lennhoff approach, advocated by Mr. Lennhoff as the petitioner's expert witness. After describing both methods in detail, the court there described the Rushmore approach as "market driven and tested," while Lennhoff's approach consisted of "academic constraints unsubstantiated by the market." *Id.* at 14. Lennhoff's treatment of the FF&E, the court found, was an "impermissible duplication." *Id.* at 12. The Maryland court also concluded that an adjustment for start-up costs might be sound for a new hotel, when such costs were still yielding tangible and identifiable benefits. But applying it to a hotel that was 14 years old was not plausible. *Id.* at 13. The Hilton involved in the present case, of course, was more than 60 years old on the date of the valuation.

Petitioners (and Mr. Lennhoff) have pointed the Court to a decision from the Loudon County, Virginia, Circuit Court, offering it as a counterweight to the Maryland

and New Jersey cases. *See WXIII/Oxford-DTC Real Estate, LLC v. Bd. of Supervisors*, At Law No. 29368 (20th Judicial Circuit of Virginia, April 5, 2004). This Court concludes, however, that Petitioner claims too much for the Virginia case. The key point occupying the court there was that the owner had recently acquired the property from Xerox and was converting it from a private training facility into a national conference center available to groups from all over the world. In other words, the property was being completely reworked to convert it to an entirely new use. It was in this particular context that the Court found that a deduction for business start-up costs – advocated by Mr. Lennhoff, who testified – was appropriate: "Lennhoff recognized that the use of the property was being changed, and, as a result, the value of intangibles, such as start-up expenses and the cost of assembling a work-force, has to be determined before the value of the real estate can be ascertained." *Id.* at 10. The court appeared to believe that the "older Rushmore method," *id.*, would have ignored these expenses – an assumption that may or may not have been correct. Regardless, the Virginia court did not discuss or even mention any different treatments of FF&E, or approve Lennhoff's handling of such matters over any other method. The Virginia case, then, is simply not apposite to the present circumstance.

## Conclusion

In sum, the Court did not find Mr. Lennhoff's critique of the District's methodology to be persuasive, and did not find his own approach to be superior to the District's. The Petitioner has failed to carry its burden of proving that the District's valuation of this property is incorrect, illegal, unfounded, or the product of a defective methodology. Accordingly, the District's assessment of $118,701,067 – reduced, however, to $113,148,379 by BRPAA – must be sustained.

It is **SO ORDERED**, this 21st day of July, 2015.

**John M. Campbell**
Associate Judge

Copies to:

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*Via CaseFileXpress*