

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

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| IN THE MATTER OF THE APPEAL OF |) | |
| ALPENHOF LODGE ASSOCIATES |) | Docket No. 2020-40 |
| FROM A DECISION BY THE TETON |) | |
| COUNTY BOARD OF EQUALIZATION |) | |

DECISION AND ORDER

APPEARANCES

Abraham Tieh, Senior Property Tax Consultant, O'Connor & Associates, appeared on behalf of Petitioner Alpenhof Lodge Associates (Alpenhof Lodge or Petitioner).

Keith M. Gingery, Deputy County Attorney, appeared on behalf of Teton County Assessor Melissa Shinkle (Assessor).

SUMMARY

[¶ 1] Petitioner, Alpenhof Lodge, appealed the 2020 assessed valuation of its hotel improvements before the Teton County Board of Equalization (County Board). It primarily complained that Assessor did not apply an income valuation method, which it claims would have demonstrated a value of approximately \$7.1 million. Petitioner also challenged several aspects of Assessor's cost valuation, including her 3.26 market adjustment factor, which generated a valuation of \$12 million. Finally, Petitioner claimed that Assessor's valuation violated constitutional equal and uniform taxation mandates. The County Board affirmed Assessor's valuation in a 3-2 decision.

[¶ 2] The Wyoming State Board of Equalization, Chairman E. Jayne Mockler, Vice-Chairman Martin L. Hardsocg, and Board Member David L. Delicath, reviewed the County Board's evidentiary record, received briefs, and heard oral argument. The Board finds that the County Board erred when it determined that Assessor complied with the Department of Revenue's rules addressing the selection of appraisal method results. The Board finds that Alpenhof Lodge failed to carry its burden of proof in challenging Assessor's cost appraisal. We reverse, in part, and remand the assessment so that Assessor may apply the income valuation method and reconcile the valuation outcomes per the Department of Revenue's rules. We otherwise affirm Assessor's valuation in all respects.

ISSUES

[¶ 3] Alpenhof Lodge did not identify issues per se. We infer the following questions:

1) Whether the County Board erred when it permitted one of its members, who was absent during the hearing, to later consider the record and participate in the decision to break the County Board's 2-2 tie vote on a motion to affirm the valuation?

2) Whether Assessor erred when she did not perform an income valuation and relied exclusively on the cost and market valuation methods?

3) Whether Assessor correctly applied the cost and market valuation methods?

4) Whether Assessor's valuation violates Wyoming's constitutional equal and uniform taxation requirement?

(Alpenhof Lodge's Br.).

[¶ 4] Assessor frames the issues as:

1. Whether the Appellant was provided a hearing in accordance with Chapter 7 of the Wyoming Rules of the State Board of Equalization?

2. Whether the Teton County Assessor used the proper valuation method?

(Assessor's Br. 4).

[¶ 5] We restate the issues:

1) Did the County Board conduct the contested case hearing in accordance with Wyoming law?

2) Did the County Board correctly decide that Assessor was not required, or was unable, to perform an income valuation?

3) Did the County Board correctly decide that Assessor properly applied the cost valuation method, including calculation of a market valuation adjustment?

4) Did the County Board correctly find that Assessor did not deprive Petitioner of equal and uniform taxation?

PROCEEDINGS AND EVIDENCE PRESENTED TO THE COUNTY BOARD

[¶ 6] The Alpenhof Lodge is a "full service," 42 room hotel located on .47 acres within Teton Village, Jackson Hole, Wyoming. (Ex. B-1, R. at 012; Hr'g Recording 1, 00:20:45:00-22:00).

[¶ 7] Alpenhof Lodge challenged Assessor's 2020 valuation of its hotel property. (Ex. 1-1, R. at 030; Exs. A-1 thru A-5, R. at 07-11).¹ Alpenhof Lodge challenged only Assessor's valuation of the improvements, asserting that they should be valued at \$7.1 million, rather than Assessor's valuation at slightly more than \$12 million. *Id.*

[¶ 8] Alpenhof Lodge chiefly objected that Assessor did not apply an income valuation with financial information provided to her. It asserted that a proper valuation of hotels must consider the property from an investment standpoint, including key industry indicators of value such as occupancy rates, revenue per room, average daily rate, a capitalization rate, and like measures of profitability. (Ex. 2-20, R. at 053; Hr'g Recording 2, 00:03:00-12:00).

[¶ 9] Alpenhof Lodge directed the County Board to its 2017-2019 profit and loss data. (Ex. 3-3 thru 3-17, R. at 083-97). Applying a hotel industry income valuation with the hotel's actual 2019 net revenues and industry average expense ratios (as a percentage of revenues), with a cap rate of 9%, it calculated an adjusted market value of \$7,153,500. (Ex. 3-2, R. at 082).

[¶ 10] Assessor responded that selection of a valuation method lies exclusively within her province. (Assessor's Br. 15-17; Hr'g Recording 2, 00:29:45-31:00, 1:22:00-25:00). Assessor testified that she considered an income valuation, but did not perform one. (Hr'g Recording 1, 00:39:30-42:45; Hr'g Recording 2, 00:29:30-34:00). She equivocated on whether she could have performed an income valuation, testifying that she rarely receives sufficient income data and would need to calculate obsolescence and a cap rate, among other components of the valuation. (Hr'g Recording 1, 00:39:00-53:00; Hr'g Recording 2, 00:54:00-1:02:00). She had access to information on Teton County and mountain region hotel performance, but offered no clear answer on whether she could have performed an income valuation. *Id.* Assessor testified that her office had used the income valuation method to value other businesses. *Id.*

[¶ 11] She disagreed with Alpenhof Lodge's valuation for several reasons. (Exs. A-3, F-5 thru F-7, R. at 09-11, 022-24; Hr'g Recording 1 at 00:31:00-34:00). She disagreed that hotel industry information from other regions should be used to value a Teton County hotel. She disagreed with Alpenhof Lodge's cap rate. She generally argued that Teton County properties and, in particular Teton Village properties, so differed from other regions that she would not use non-Teton County financial data to value a Teton Village business. (Exs. A-3, F-5 thru F-7, R. at 09-11, 022-24; Hr'g Recording 1 at 00:31:00-34:00, 0047:00-50:15, 00:54:20-55:00; Hr'g Recording 2, 00:16:00-22:00, 00:30:00-33:00, 0054:00-1:02:00).

¹ Alpenhof Lodge identified exhibits by number, followed by a dash and number to identify the page of the exhibit—example Exhibit 1-2 is Exhibit 1, page 2.

[¶ 12] Elaborating on her reluctance to consider information from outside Teton County, Assessor anecdotally testified to past property acquisitions, after which purchasers immediately levelled newly acquired Teton Village property to build a new or different structure. (Hr’g Recording 1, 0053:00:00-55:00). Teton County property was in such demand, she reasoned, that data from other locations becomes less helpful because hotels in other regions do not exist within Teton County’s rarified marketplace. This factor, as much as any other, compelled Assessor’s rejection of Alpenhof Lodge’s valuation. She emphasized that because Teton Village properties so infrequently sell, she struggled to track the value of land in this area. (Hr’g Recording 1, 00:52:00-55:00; Hr’g Recording 2, 00:30:00-33:00, 00:58:00-1:05:00, 1:10:00-12:00).

[¶ 13] Because income information is seldom available, Assessor usually applies the cost valuation method to value commercial properties. Applying the prescribed Computer Assisted Mass Appraisal (CAMA) system guidelines, including updated property replacement costs, Assessor calculated the hotel improvements’ replacement cost new less depreciation (RCNLD). To calculate depreciation, she applied an effective age of 19 years, a life expectancy of 45 years, and depreciated the improvements 21%.² (Exs. B-1 thru B-3, F-2, R. at 012-14, 019; Hr’g Recording 1, 00:22:00-24:30; Hr’g Recording 2, 00:24:00-30:00). She calculated an RCNLD of approximately \$3.7 million. *Id.*

[¶ 14] Assessor described how she calculated a market adjustment to value the hotel improvements. Assessor selected 12 commercial sales from the previous two years in four classified neighborhoods to calculate a market value adjustment multiplier of 3.26. (Exs. B-1, D-1, R. at 012, 016; Hr’g Recording 1, at 00:15:00-19:00, 00:22:00-24:10; Hr’g Recording 2, 00:22:00-36:00, 00:50:00-53:00, 1:03:00-08:00). Assessor excluded or “invalidated” some sales for standard reasons, and there were no eligible hotel or motel sales. *Id.* Assessor applied the 3.26 market adjustment multiplier to the RCNLD, *supra* ¶ 13, to account for market sales trends, i.e. increasing or decreasing property values due to market demand. *Id.*; *see* Rules, Wyo. Dep’t of Revenue, ch. 9 § 6(a)(iv) (2016), *infra* ¶¶ 44, 46. With this cost/market appraisal, Assessor valued the hotel improvements at \$12.074 million. (Exs. B-1 thru B-3, E-1, R. at 012-14, 017; Hr’g Recording 1, 00:22:00-36:00).

² Assessor calculated effective age, life expectancy and physical depreciation with Marshall and Swift guidelines, which prescribed an effective age and depreciation based on a range of discerned characteristics and factors, including type of construction, quality, condition, level of service and other hotel characteristics. (Ex. F-1 thru F-4, R. at 018-21; Hr’g Recording 1, 00:25:00-31:00; Hr’g Recording 2, 00:19:30-20:00, 00:28:15-29:45, 01:13:00-1:22:00). Alpenhof Lodge resisted Assessor’s effective age determination, characterizing Assessor’s analysis as speculative and as based on “feel.” (Hr’g Recording 2, 00:12:00-15:00). Alpenhof Lodge struggled to explain why Assessor’s effective age determination was contrary to departmental guidelines or accepted standards. It instead offered its preferred manner of determining an effective age and depreciation quotient. *Id.*

[¶ 15] Alpenhof Lodge also asserted that Assessor violated its constitutional right to equal and uniform taxation under Article 15, section 11(d) of Wyoming's Constitution. (Alpenhof Lodge Br. 5; Exs. 2-40 thru 2-47, R. at 073-80; Hr'g Recording 2, 00:25:00-27:00). It offered summary valuation information for various Teton County lodging businesses complaining that, by comparison, Assessor overvalued Petitioner's improvements. *Id.* Answering this allegation, Assessor refuted Alpenhof Lodge's asserted comparable businesses, disagreeing that the properties were sufficiently similar to the taxpayer's hotel property. (Ex. F-8 thru F-12, R. at 073-80; Hr'g Recording 2, 00:34:00-39:40).

[¶ 16] Without explanation, the County Board concluded that Alpenhof Lodge did not offer sufficient evidence to "overturn the assessor's valuation." (County Bd. Decision, R. at 0108). Citing various principles of Wyoming tax law, the County Board affirmed Assessor's valuation. (County Bd. Decision, R. at 0108-112).

[¶ 17] Four members of the County Board heard the appeal in person and, following close of the contested case hearing and discussion regarding the merits, reached a 2-2 tie vote on whether to affirm or reverse and remand for a new assessment. (Hr'g Recording 2, 01:32:00-1:52:57). The hearing officer tabled the matter until after the absent board member could review the record and participate. The absent board member later reviewed the record and, in open hearing, voted to affirm. (Hr'g Recording 3, 00:31:00-33:46).

CONCLUSIONS OF LAW

Standard of Review

[¶ 18] When the State Board hears appeals from a county board, it sits as an intermediate level of appellate review. *Town of Thermopolis v. Deromedi*, 2002 WY 70, ¶ 11, 45 P.3d 1155, 1159 (Wyo. 2002). In its appellate capacity, the State Board treats a county board as the finder of fact. *Id.*

[¶ 19] The State Board's standard of review of a county board decision is, by rule, nearly identical to Wyoming Statutes section 16-3-114(c)(ii) (2019), the Wyoming Administrative Procedure Act standard that a district court must apply in reviewing agency decisions. The State Board's review is limited to determining whether a county board's action is:

- (a) Arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law;
- (b) In excess of statutory jurisdiction, authority or limitations or lacking statutory right;

- (c) Without observance of procedure required by law; or
- (d) Unsupported by substantial evidence.

Rules, Wyo. State Bd. of Equalization, ch. 3 § 9(a)-(d) (2021).

[¶ 20] Because the State Board Rules are patterned on the judicial review provisions of Wyo. Stat. section § 16-3-114 (2019), judicial rulings interpreting that section offer guidance:

When an appellant challenges an agency’s findings of fact and both parties submitted evidence at the contested case hearing, we examine the entire record to determine if the agency’s findings are supported by substantial evidence. If the agency’s findings of fact are supported by substantial evidence, we will not substitute our judgment for that of the agency and will uphold the factual findings on appeal. “Substantial evidence is more than a scintilla of evidence; it is evidence that a reasonable mind might accept in support of the conclusions of the agency.”

Chevron U.S.A., Inc. v. Dep’t of Revenue, 2001 WY 79, ¶ 9, 158 P.3d 131, 134 (Wyo. 2001) (citations omitted).

[¶ 21] The State Board reviews conclusions of law *de novo*:

Questions of law are reviewed *de novo*, and “ ‘[c]onclusions of law made by an administrative agency are affirmed only if they are in accord with the law. We do not afford any deference to the agency’s determination, and we will correct any error made by the agency in either interpreting or applying the law.’ ”

Maverick Motorsports Grp., LLC v. Dep’t of Revenue, 2011 WY 76, ¶ 12, 253 P.3d 125, 128 (Wyo. 2011) (quoting *Bowen v. State, Dep’t of Transp.*, 2011 WY 1, ¶ 7, 245 P.3d 827, 829 (Wyo. 2011)).

[¶ 22] Likewise, the State Board reviews a county board’s ultimate findings of fact *de novo*:

When an agency’s determinations contain elements of law and fact, we do not treat them with the deference we reserve for findings of basic fact. When reviewing an “ultimate fact,” we separate the factual and legal aspects of the finding to determine whether the correct rule of law has been properly applied to the facts. We do not defer to the agency’s ultimate factual finding if there is an error in either stating or applying the law.

Mtn. Vista Ret. Residence v. Fremont Cty. Assessor, 2015 WY 117, ¶ 4, 356 P.3d 269, 272 (Wyo. 2015) (citations omitted).

[¶ 23] “The party challenging the sufficiency of the evidence has the burden of showing the lack of substantial evidence to support the agency’s findings.” *Faber v. Dep’t of Transp.*, 2009 WY 137, ¶ 5, 220 P.3d 236, 238 (Wyo. 2009).

[¶ 24] “A strong presumption favors the Assessor’s valuation. ‘In the absence of evidence to the contrary, we presume that the officials charged with establishing value exercised honest judgment in accordance with the applicable rules, regulations, and other directives that have passed public scrutiny, either through legislative enactment or agency rule-making, or both.’ ” *Britt v. Fremont Cty. Assessor*, 2006 WY 10, ¶ 23, 126 P.3d 117, 125 (Wyo. 2006) (quoting *Amoco Prod. Co. v. Dep’t of Revenue*, 2004 WY 89, ¶ 7, 94 P.3d 430, 435 (Wyo. 2004)). “[A] mere difference of opinion as to value” is not sufficient to overcome the presumption. *Id.* at ¶¶ 28, 34, 126 P.3d at 126-27.

[¶ 25] If Petitioner successfully overcame the presumption, the “county board was ‘required to equally weigh the evidence of all parties and measure it against the appropriate burden of proof.’ ” *Britt*, ¶ 23, 126 P.3d at 125 (citing *CIG v. Wyo. Dep’t of Revenue*, 2001 WY 34, ¶ 10, 20 P.3d 528, 531 (Wyo. 2001)). The Court explained the shifting of burdens upon overcoming the presumption: “The burden of going forward would then have shifted to the Assessor to defend her valuation,” but the ultimate burden of persuasion remained with the taxpayer to prove by a preponderance of evidence that the valuation was not derived in accordance with constitutional or statutory requirements. *Id.*

Applicable Law

[¶ 26] County assessors are required to “[f]aithfully and diligently follow and apply the orders, procedures and formulae of the department of revenue or orders of the state board of equalization for the appraisal and assessment of all taxable property[.]” Wyo. Stat. Ann. § 18-3-204(a)(ix) (2019).

[¶ 27] All property must be valued annually at fair market value. Wyo. Stat. Ann. § 39-13-103(b)(ii) (2019). Fair market value is defined as:

[T]he amount in cash, or terms reasonably equivalent to cash, a well informed buyer is justified in paying for a property and a well informed seller is justified in accepting, assuming neither party to the transaction is acting under undue compulsion, and assuming the property has been offered in the open market for a reasonable time[.]

Wyo. Stat. Ann. § 39-11-101(a)(vi) (2019).

[¶ 28] The Department identifies three valuation methods available to assessors, all three of which are discussed in this appeal:

Section 5. Appraisal Methods.

(a) The appraisal techniques which may be used by the County Assessor include the approaches described in this section. Each approach used shall be an appropriate method for the type of property being valued; that is, the property shall fit the assumptions inherent in the appraisal method in order to calculate or estimate the fair market value of the property. Each approach used shall also consider the nature of the property and the regulatory and economic environment within which the property operates.

(b) General Appraisal Methods and Reconciliation

(i) The Sales Comparison Approach. The comparable sales approach is an appropriate method of valuation when there are an adequate number of reliable arms-length sales and the properties subject to such sales are similar to the property being valued. For land valuation, the sales comparison is the preferred method of valuation. In the absence of adequate vacant land sales, other techniques may be used including allocation, abstraction, anticipated use, and capitalization of ground rents. In the mass appraisal of properties for property tax purposes it is acceptable to value the properties using generally accepted market modeling techniques. Comparable sales shall be adjusted to reflect differences in time, location, size, physical attributes, financing terms or other differences which affect value. The use of this approach depends upon:

- (A) The availability of comparable sales data;
- (B) The verification of the sales data;
- (C) The degree of comparability or extent of adjustment necessary for time differences; and
- (D) The absence of non-typical conditions affecting the sales price.

(ii) The Cost Approach. The cost approach is a method of estimating value by summing the land value, where applicable, with the depreciated value of improvements. In the CAMA system, RCNLD is calculated using Marshall and Swift cost tables. The cost approach is an accepted approach and could serve as the primary approach when sales data is unavailable or inadequate (such as special purpose properties). Market adjusted RCNLD plus land value is an accepted method of the cost approach. Sales prices shall be adjusted for time. Other factors influencing sale price should be considered. The cost approach relies on the principle of substitution in which an informed buyer will not pay more for a property than its comparable replacement. The approach requires:

(A) Accurate, current land values in the case of real property;

(B) Accurate, pertinent physical data regarding the property to which cost data may be applied;

(C) Current cost data which considers appreciation in the case of real and personal property;

(I) Costs may be estimated on the basis of typical replacement or reproduction costs.

(II) Typical replacement or reproduction costs may be estimated by the quantity survey method, the unit-in-place method, the comparative unit method, or the trended original cost method.

(iii) The Income or Capitalized Earnings Approach. The income or capitalized earnings approach is a method of estimating the value of property by converting the anticipated benefits to be derived from the ownership of the property into a value estimate as is reflected or accomplished by yield capitalization methodology. These benefits can be reflected through the net operating income or cash flow of a company. The anticipated future income and/or reversions are discounted to a present worth. Direct capitalization may also be used to convert a single year's income expectancy into an indication of value. This conversion is accomplished by either dividing the income estimate by an appropriate income factor in accordance with generally accepted appraisal techniques. Both direct and yield capitalization methodologies are considered to be the income or capitalized earnings approach as discussed in this subsection[:]

(A) For the purposes of this subsection, cash flow is the difference between dollars paid and dollars received. Dollars received include all revenues generated from operating assets. Dollars paid include all current expenses and capital expenditures, or annual allowances therefore, required to develop and maintain the income stream. Cash flow must also take into account all legally enforceable restrictions on the property.

(B) Net operating income or cash flow is discounted to fair value using a capitalization rate developed by the methods described in Section 4(a)(vii).

(iv) Reconciliation. The appraiser shall weigh the relative significance, applicability and appropriateness of the indication of value derived from the approaches to value or methods outlined above, and will

place the most weight and reliance on the value indicator which, in his professional judgment, best approximates the value of the subject property. The appraiser shall evaluate all alternative conclusions and reconcile the value indicators to arrive at a final estimate of value. For market value, the final estimate is that value which most nearly represents what the typical, informed, rational purchaser would pay for the subject property and a rational seller would accept if it were available for sale on the open market as of the date of the appraisal, given all the data utilized by the appraiser in their analysis.

Rules, Wyo. Dep't of Revenue, ch. 9 § 5(b)(i)-(iv) (2016).

Review of the County Board's Ruling

A. Did the County Board conduct the contested case hearing in accordance with Wyoming law?

[¶ 29] Alpenhof Lodge complains that the County Board erred when it permitted a board member, absent during the contested case hearing, to later review the evidence and vote on adjudication of its appeal. It objects that “the absentee board member was not in a position to render a proper decision without participating in the 3 hour long hearing debates in detail.” (Alpenhof Lodge Br. 1). Alpenhof Lodge suggests the Assessor may have gained an unfair advantage from the hearing officer's process for breaking the 2-2 tie vote. *Id.*

[¶ 30] Alpenhof Lodge essentially raises a procedural due process objection. Procedural due process is satisfied “ ‘if a person is afforded adequate notice and an opportunity to be heard at a meaningful time and in a meaningful manner.’ ” *Laughter v. Bd. of Cty. Com'rs for Sweetwater Cty.*, 2005 WY 54, ¶ 19, 110 P.3d 875, 882 (Wyo. 2005) (quoting *Amoco Prod. Co. v. Wyo. State Bd. of Equalization*, 882 P.2d 866, 872 (Wyo. 1994)). Alpenhof Lodge does not complain that the County Board denied it an opportunity to be heard or to participate. And, indeed, it did fully participate in the contested case hearing. Assessor enjoyed no proven advantage as a result of the delayed vote by a member of the County Board. When the County Board reconvened and again took up Petitioner's appeal, the hearing officer merely confirmed that the previously absent board member reviewed and considered the entire record. *Supra* ¶ 17. No further discussion of the merits occurred, and the record reveals no ex parte communications. *Id.*

[¶ 31] Wyoming Statutes section 16-3-107 (2019), which codifies basic guidelines for contested case hearings, does not address how tie votes are to be handled. Under circumstances similar to those present before the County Board, the Wyoming Supreme Court held that an administrative agency properly delayed after a tie vote and reconsidered the matter to break the tie vote in accordance with general parliamentary procedure.

Hirschfield v. Bd. of Cty. Com'rs of County of Teton, 944 P.2d 1139, 1143-45 (Wyo. 1997). Moreover, county boards of equalization often take under advisement decisions they are to render, and a county board of equalization is not required to immediately rule. The County Board violated no procedural guideline when it permitted an absent member to later review the evidence and proceedings before voting.

B. Did the County Board correctly decide that Assessor was not required, or was unable, to perform an income valuation?

[¶ 32] The County Board did not explain in its decision how Alpenhof Lodge failed to carry its burden. It merely found that pursuant to applicable rules,

the appraiser weighed the relative significance, applicability and appropriateness of the indication of value derived from the approaches to value methods outlined by the DOR and placed the most weight and reliance on the value indicator which in their professional judgment, best approximated the value of the subject property, and determined that the final estimate is the value which most nearly represents what the typical, informed, rational purchaser would pay, and what a rational seller would accept if it were available for sale on the open market as of the date of the appraisal, given all the data utilized by the appraiser in their analysis.

(County Board Decision, R. at 0107-08). We infer that a majority of the County Board agreed with Assessor's primary contention that she was not required to perform an income valuation and that her "consideration" of the income method was sufficient under the Department of Revenue's guidelines. *See supra* ¶¶ 10, 16-17, 28.

[¶ 33] The Department of Revenue prescribes three valuation methods, defines them, and requires that appraisers "weigh the relative significance, applicability and appropriateness of the indication of value derived . . . , and will place the most weight and reliance on the value indicator which, in his professional judgment, best approximates the value of the subject property." *Supra* ¶ 28.

[¶ 34] We recently discussed whether an assessor was required to apply all three valuation methods in *In re HollyFrontier Cheyenne Refining LLC*, 2019 WL 6464766, Doc. No. 2018-60 (Wyo. St. Bd. of Equalization, Nov. 21, 2019). In that case, HollyFrontier pressed the assessor early on to consider its financial information so that the assessor could perform an income valuation of its oil refinery facilities. Assessor had typically valued the refinery property through a cost valuation. We held that the assessor (through its contract appraiser) did not properly consider the taxpayer's financial information or attempt to value using the income method of appraisal. *Id.* at * 18, ¶¶ 65-66. A pivotal question in that case concerned the assessor's obligation under the Department of Revenue's guidelines.

[¶ 35] Reviewing the Department of Revenue’s rules, instructive guidance from appraisal industry resources such as the International Association of Assessing Officers and American Society of Appraisers (IAAO), and numerous judicial determinations, we concluded that “[i]f sufficient information is available to apply a valuation method, an appraiser must apply the method, evaluate the results, and consider the outcome during the reconciliation stage of the appraisal.”³ *Id.* at * 18, ¶ 63. We further noted that numerous tax valuation cases from other jurisdictions recognized the superiority of an income valuation to value commercial property, as well as the cost method’s tendency to overvalue under some circumstances.⁴ *Id.* at ** 16-18, ¶¶ 60-62.

[¶ 36] Assessor disagrees and preemptively argues that it was “not within the purview of the County Board of Equalization to attempt to determine the appropriate appraisal method.” (Assessor Br. 15). Assessor cites our decision in *In re Douglas Wind River Assoc. Ltd. P’ship*, 2009 WL 2971090, Doc. Nos. 2008-63, 64, 67, 82, 87, 88 (Wyo. St. Bd. of Equalization, Sept. 1, 2009) for the proposition that neither the County Board, nor this Board, should address which method of valuation is the best method to use. From this authority, she argues that we should limit our review to whether Assessor correctly applied the cost method she had sole discretion to choose. In *Douglas Wind River Assoc. Ltd P’ship*, however, each assessor performed an income valuation and considered the results along with their cost valuation outcomes. *Id.* at ** 11, 16-18, 20, 28, ¶¶ 58, 100, 115-18, 136-39, 198. That case is therefore of little assistance to Assessor and does not

³ The IAAO recognizes, however, the difficulty of applying an income valuation method as part of an “automated valuation model”:

[A] solid Cost Approach is needed where sales and/or income data are insufficient to calibrate an appropriately structured model. Also, care must be taken in developing and applying income valuations, to appraise only the real property and not the business, and to value based on typical management, not on the present management.

Commercial and industrial properties provide their unique AVM challenges. First, in some markets there are relatively few sales of commercial and industrial properties. This creates problems with land valuation for the cost approach, development of comparable sales or statistical models, and for developing capitalization rates and multipliers for the income approach.

IAAO, *Standard on Automated Valuation Models (AVMs)*, § 6 (Sept. 2003).

⁴ See also *Standard on Mass Appraisal of Real Property*, in which the IAAO advised:

The income approach is the most appropriate method in valuing commercial and industrial property if sufficient income data are available. Direct sales comparison models can be equally effective in large jurisdiction with sufficient sales. When a sufficient supply of sales data and income data is not available, the cost approach should be applied.

Standard on Mass Appraisal of Real Property, International Assoc. of Assessing Officers, § 4.6.4 (2017).

persuasively excuse a failure to apply the income valuation method when sufficient income data is available.

[¶ 37] Neither does *Airtouch Commc'ns Inc. v. Dep't of Revenue*, 2003 WY 114, 76 P.3d 342 (Wyo. 2003) support Assessor's argument. In that case, the Department of Revenue's appraisers applied several complex valuation methods to value state assessed telephone company property. The taxpayers did not allege that the Department failed to consider and apply a method. Rather, the dispute concerned the appraisal weight given to factors within the methods applied. The Court held that the weight assigned to valuation components fell within an appraiser's discretion and that it was not the court's place to second guess that discretion if substantial evidence existed. *Id.* at 351-53, ¶¶ 24-29.

[¶ 38] In the case before us, Assessor testified that she considered the income method, but did not apply it. *Supra* ¶ 10. The evidence is unclear on whether she could apply the income method *to her satisfaction*. Assessor received extensive financial performance information, but resisted use of other hotel financial information relied upon by the taxpayer in its proffered income valuation. *Supra* ¶¶ 11-12. But, the evidence does not support the County Board's implicit finding that Assessor was unable to perform an income valuation. The law does not support its legal conclusion that Assessor could merely "consider" the income method without actually applying it. And, she testified that her office has applied an income valuation to value other Teton County properties, including a hotel. *Supra* ¶¶ 10-13. Assessor's equivocations as to the challenge of performing an income valuation did not sufficiently refute Alpenhof Lodge's proven point: Assessor had sufficient information to perform an income valuation but chose not to.

[¶ 39] Assessor expressed disagreement with Alpenhof Lodge's submitted valuation on several points, including its cap rate calculation and reliance on hotel industry performance averages from other parts of the country. *Supra* ¶¶ 11-12. While we generally agree with Alpenhof Lodge that an income valuation, given adequate information was available, should have been performed, we do not find that Alpenhof Lodge carried its burden as to the suitability of its valuation. Assessor's disagreement with various aspects of the valuation are valid and we will not substitute our judgment for hers on those points. Alpenhof Lodge did not offer sufficient evidence or authority in response to Assessor's concerns. Indeed, the dissenting County Board members did not seek to affirm Alpenhof Lodge's valuation outcome, but rather expressed general discomfort with Assessor's failure to consider the business' performance. *Supra* ¶ 17. We shall, therefore, reverse in part and remand to Assessor for revaluation of the Alpenhof Lodge property through reconciliation of her cost valuation and an income valuation as required by departmental rule. *Supra* ¶ 28.

C. Did the County Board correctly decide that Assessor properly applied the cost valuation method, including calculation of a market valuation adjustment?

[¶ 40] Alpenhof Lodge objects to several aspects of Assessor's cost valuation. It disagrees with Assessor's effective age determination and corresponding depreciation deduction of 21%, arguing it should be 76%. (Alpenhof Lodge Br. 2); *supra* ¶ 13. It resists Assessor's market adjustment calculation of 3.26, arguing that Assessor should not have devised that adjustment from twelve commercial sales, none of which were hotels. (Alpenhof Lodge Br. 3). We consider each contention in turn.

[¶ 41] The parties' disagreement as to the proper manner of calculating depreciation had several moving parts. The evidence established that the hotel was constructed in 1965 and remodeled in 1982. *Supra* ¶ 13; (Ex. B-1, R. at 012). Assessor applied various interrelated Marshall & Swift⁵ guidelines to determine the effective age, remaining life, and applicable depreciation for different types and qualities of commercial structures. *Supra* ¶ 13; (Exs. F-1 thru F-4, R. at 018-21). Assessor categorized the hotel structures under class D, which included structures framed with "Wood or steel studs in bearing wall, full or partial open wood or steel frame, primarily combustible construction." *Id.* Referring to Marshall & Swift's guidelines for class D construction of hotels, Assessor used the recommended effective life of 45 years for good or excellent quality of construction. *Supra* ¶ 13; (Ex. F-3, R. at 020). Finally, applying Marshall & Swift's corresponding depreciation schedule for commercial properties with an effective life of 45 years, Assessor arrived at an effective age in years of 19 and depreciation of 21%. *Supra* ¶ 13; (Ex. F-2, R. at 019).

[¶ 42] Alpenhof Lodge argues that Assessor should have depreciated the hotel improvements as though the property were built in 1977 and allowed a deduction of 76%. *Supra* ¶ 13; (Alpenhof Lodge Br. 2). Alpenhof Lodge offered no evidence or authority that Assessor violated Wyoming property tax law in how she calculated depreciation. Because Petitioner's arguments and evidence before the County Board amounted to little more than a differing opinion, we affirm the County Board's affirmance of Assessor's effective age and depreciation determination.

[¶ 43] Second, Alpenhof Lodge objects to Assessor's market adjustment factor of 3.26, arguing:

Assessors [sic] listed 12 neighborhood sales in his [sic] ratio study which included small low value retail store, warehouse, small office, condos, and several small apartments. Subject is a motel, none of the sales assessor used for the ratio study was a hotel or motel. The average value of the 12 sales was \$2,415,000, and the average value was \$2,310,316. Subject is valued at

⁵ Marshall & Swift is a broadly accepted and cited appraisal resource. The Wyoming Department of Revenue incorporates Marshall & Swift replacement cost tables within Wyoming's CAMA system. Rules, Wyo. Dep't of Revenue, ch. 9 § 5(b)(ii) (2016).

\$13,449,405, about 6 times more than any of the sales assessor used. According to the Rocket [sic] Mountain Lodging Report provided by the assessor, Teton County had 6 hotel sales in 2019, 2018 and 2017. The assessor did not use any of the hotel sales for ratio study, nor did the assessor present any market approach valuation using hotel sales.

(Alpenhof Lodge Br. 3); *supra* ¶ 14. In its Reply Brief, Alpenhof Lodge further questions “how does sales ratio study affect replacement cost? Replacement cost is the cost to replace the improvement. It does not cost 3.26 times more to rebuild even if sales were higher.” (Alpenhof Lodge Reply Br. 5).

[¶ 44] Assessors may employ ratio studies during the mass appraisal process to adjust property values so that they track with market sales each year. Rules, Wyo. Dep’t of Revenue, ch. 9 § 4(a)(xxi), (xxxii) (2016). A “ratio study” is “a study of the relationship between appraised or assessed values and market values. Ratio studies evaluate the level and uniformity of the appraisals of assessments. A sales ratio study uses sales prices as proxies for market values, with the appraised/assessed value being the numerator and the sales price being the denominator.” *Id.* The State Board and Department of Revenue perform extensive ratio studies to measure an assessor’s “level of appraisal” county wide, and assessors must achieve a high appraisal level or face sanctions, including equalization. *See* Rules, Wyo. State Bd. of Equalization, ch. 5 §§ 3(a)(vi), 6(a)(i) (2021).

[¶ 45] Applying a cost valuation, Wyoming’s CAMA system allowed Assessor to calculate an RCNLD for the hotel improvements—the cost to construct a new facility, then depreciated to reflect the improvements’ age, wear, and tear. Yet, the hotel’s RCNLD would not necessarily replicate the price a willing buyer would pay for the property on the open market, i.e. the taxable value. *See supra* ¶ 27. Relying on a sample of various commercial property sales, Assessor applied a 3.26 market adjustment multiplier to account for the influence of other factors, such as the property’s location and market demand. *See In re Appeal of D Bar D Ranch, LLC*, 2005 WL 907431, Doc. No. 2004-123, ** 10-12 (Wyo. St. Bd. of Equalization, April 14, 2005) (“The market adjustment represents a sales comparison approach applied within the context of the practical constraints of ... CAMA. The Assessor is not only authorized but obliged to reconcile the results of different approaches to value, ..., and exercised his discretion to do so by use of the market adjustment.”).

[¶ 46] Alpenhof Lodge offered no authority supporting its argument that Assessor should not have applied a market adjustment. We find no such authority. Wyoming law not only allows assessors to apply market adjustments, it encourages them to. *See* Rules, Wyo. Dep’t of Revenue, ch. 9 § 6(a)(iv) (2016) (For residential property class, “[i]f analysis indicates no adjustment to RCNLD is necessary to meet the level of appraisal requirements,

making no adjustment is appropriate. However, making no adjustment to RCNLD based solely on a lack of sales is not appropriate.”); *see Appeal of D Bar D Ranch*, at ** 10-12.

[¶ 47] Alpenhof Lodge also complains that Assessor selected 12 commercial property sales from four Teton County neighborhoods to calculate her market adjustment. It argues that Assessor should not have included the sales of dissimilar commercial properties. *Supra* ¶¶ 14, 43.

[¶ 48] We begin (as did the County Board) by presuming that Assessor correctly understood and applied this mass appraisal tool. *Supra* ¶ 24. We then examine Alpenhof Lodge’s appraisal authority cited to question Assessor’s approach, as well as evidence offered to demonstrate that the Assessor’s valuation may be incorrect. *Supra* at ¶¶ 24-25. It was not enough to oppose Assessor’s judgment or appraisal technique with differing opinions on how it should have been done. *In re Appeal of Russell & Susan Magarity*, 2006 WL 370816, Doc. No. 2005-93, ** 15-16 (Wyo. St. Bd. of Equalization, Feb. 14, 2006) (Taxpayers’ argument that assessor should have based analysis on different comparable properties or characteristics amounted to difference of opinion and did not carry burden.).

[¶ 49] We are thus left with incomplete allegations of appraisal error: no citation to mass appraisal authority or standards as to how Assessor was required to calculate the adjustment factor, and no persuasive evidence that Assessor neglected to consider sales or otherwise erred in her selection of a sample. Moreover, Assessor’s selection of sales for ratio study analysis required *appraisal judgment*, so challenging that judgment required Petitioner to explain how she abused her discretion. Without such authority or evidence, the County Board reasonably rejected the allegations and found that Petitioner did not carry its burden. *Supra* ¶ 17.

[¶ 50] Even so, the IAAO’s Standards on Ratio Studies are instructive. The IAAO advises that, “[t]o develop an adequate sample size, the sales used in ratio studies can span a period of as long as five years” IAAO, *Standard on Ratio Studies*, Pt. 1, § 4.4 (2013). As for the “sample representativeness” criteria, of which Petitioner complains, the IAAO advises that “a ratio study is valid to the extent that the sample is sufficiently representative of the population.” *Id.* at Pt. 1, § 4.5. The IAAO explains:

By definition, a ratio study sample would be representative when the distribution of ratios of properties in the sample reflects the distribution of ratios of properties in the population. Representativeness is improved when the sample proportionately reflects major property characteristics present in the population of sold and unsold properties

Operationally, representativeness is improved when the following occur:

...

3. Sample properties are not unduly concentrated in certain areas or types of property whose appraisal levels differ from the general level of appraisal in the population

4. Sales have been appropriately screened and validated.

Id. Assessor addressed several of the points discussed above when she testified to how she prepared her ratio study sample, and she explained that she applied the 3.26 adjustment to all commercial properties in Teton County, except for several that were appraised separately. *Supra* ¶ 14.

[¶ 51] Because Petitioner has not carried its initial burden of production with sufficient evidence or authority indicating an error occurred, we decline to undertake further review of mass appraisal ratio study practice and performance standards. Our limited review of this IAAO guidance reveals no violation of ratio study parameters.

D. Did the County Board correctly find that Assessor did not deprive Petitioner of equal and uniform taxation?

[¶ 52] Petitioner complains that Assessor overvalued its hotel improvements when compared to the valuation of other Jackson, Wyoming hotels. Petitioner identified the assessed values of seven Jackson, Wyoming hotels, arguing that the disparity in valuations demonstrates a violation of article 15, section 11(d) of the Wyoming Constitution, which directs that all taxation shall be equal and uniform within each class of property. (*Alpenhof Lodge Br. 5*); *supra* ¶ 15.

[¶ 53] We may dispose of this allegation out of hand because, like most litigants raising this claim, Petitioner misunderstands this constitutional mandate and the type of proof required to sustain a violation:

102. Second, constitutional uniformity does not require the same result in every case; rather, it demands a uniform tax assessment process. “The Constitutional command is that the Legislature shall provide for a uniform and equal rate of assessment and taxation This is fundamental, and cannot be evaded by any shift or device whatever.” *Rocky Mtn. Oil & Gas Assoc., v. State Bd. of Equalization, Dep’t of Revenue & Taxation*, 749 P.2d 221, 235-36 (Wyo. 1987). In that case, the Court rejected the State Board’s imposition of different tax rates, which it found constituted an illegal “de facto classification” for specific entities. *Id.*

103. The Wyoming Supreme Court in *Appeal of Monolith Portland Midwest Co., Inc.*, 574 P.2d 757 (Wyo. 1978) addressed the valuation of limestone, shale and other minerals used to manufacture cement. The

Department argued it was required to include the same transportation costs applied to other producers to ensure valuation uniformity. The Court disagreed stating that the Wyoming Constitution’s mandates of uniform assessment (Article 15, Section 11) and equal and uniform taxation (Article 1, Section 28) “do not require, however, that all minerals of like kind be assigned the same value.” *Id.* at 761. The Court explained that “[u]niformity of assessment requires only that the method of appraisal be consistently applied. *Hillard v. Big Horn Coal Company, supra* [549 P.2d 293 (Wyo. 1976)]. It is an intrinsic fact in mineral valuation that differences in values result from the application of an appraisal method.” *Id.*

104. Finally, uniform taxation violations arise from “systematic, arbitrary, or intentional undervaluation of some property, as compared to the valuation of other property in the same class[.]” *Weaver v. State Bd. of Equalization*, 511 P.2d 97, 98 (Wyo. 1973). In *Weaver*, notwithstanding admitted tax disparities, the Court held taxpayers did not prove non-uniformity. *Id.* at 98-99.

In re Appeal of Carbon Creek Energy, LLC, and Powder River Midstream, LLC, 2018 WL 3978750, Doc. No. 2017-50, ** 26-27 (Wyo. St. Bd. of Equalization, Aug. 8, 2018) (internal footnote omitted).

[¶ 54] Alpenhof Lodge did not allege or offer substantial evidence that Assessor inconsistently applied the same valuation method. Nor did it answer Assessor’s responsive testimony that the seven businesses used for comparison were very different than Petitioner’s hotel property. *Supra* ¶ 15.

CONCLUSION

[¶ 55] The County Board erred when it found that Assessor’s “consideration” of the income valuation method complied with the Department of Revenue’s rules. Assessor, because she had sufficient financial information, was required to apply an income valuation and consider the outcome along with her cost valuation result. *Supra* ¶¶ 32-39.

[¶ 56] The County Board’s affirmance of Assessor’s cost valuation is otherwise supported by substantial evidence and consistent with Wyoming law. *Supra* ¶¶ 40-51. Petitioner offered insufficient evidence to carry its burden of proof.

[¶ 57] Petitioner failed to demonstrate that Assessor’s valuation of the hotel improvements constituted an unequal or non-uniform application of Wyoming’s property tax laws.

ORDER


[¶ 58] **IT IS HEREBY ORDERED** that the Teton County Board of Equalization Decision, to the extent it affirmed Assessor's consideration of the income valuation method and valued the hotel property without performing an income valuation as part of the overall valuation process, is **reversed and remanded** so that Assessor may conduct an income valuation and reconcile the valuation outcomes as required by Department of Revenue rule.

[¶ 59] **IT IS FURTHER ORDERED** that the Teton County Board of Equalization decision is otherwise **affirmed** in all respects.

[¶ 60] Pursuant to Wyoming Statutes section 16-3-114 (2019) and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days after the date of this decision.

DATED this 4 day of May 2021.

STATE BOARD OF EQUALIZATION



E. Jayne Mockler, Chairman



Martin L. Hardsocg, Vice Chairman



David L. Delicath, Board Member

ATTEST:



Jennifer Fujinami, Executive Assistant

CERTIFICATE OF SERVICE

I certify that on the 4 day of May 2021, I served the foregoing **DECISION AND ORDER** by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

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