INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petitions: **45-030-14-1-4-00114-17**
45-030-15-1-4-00115-17
45-030-16-1-4-01280-17
Petitioner: **Park Merrillville Hotel, LLC**
Respondent: **Lake County Assessor**
Parcel: **45-12-22-201-005.000-030**
Assessment Years: **2014-2016**

The Indiana Board of Tax Review ("Board") issues this determination, finding and concluding as follows:

Procedural History

1. Petitioner challenged its 2014-2016 assessments. The Lake County Property Tax Assessment Board of Appeals ("PTABOA") failed to hold hearings within 180 days as required by Ind. Code § 6-1.1-15-1(k) (2016 supp.), and Petitioner opted to file appeals directly with the Board. *See* I.C. § 6-1.1-15-1(o) (2016 supp.).[1] Petitioner elected to have the appeals heard under our small claims procedures. Respondent did not seek to remove the appeals to our plenary procedures.

2. Ellen Yuhan, our designated administrative law judge ("ALJ"), held a hearing on June 11, 2018. Neither she nor the Board inspected the property.

3. The following people were sworn as witnesses:

For Petitioner:	John Yanek, tax representative, Donald DiNapoli, appraiser,
For Respondent:	Robert W. Metz, Lake County hearing officer, Joseph E. James, Lake County hearing officer, Dale Kleszynski, appraiser.

[1] The General Assembly repealed Indiana Code § 6-1.1-15-1 in 2017. 2017 Ind. Acts 232, § 9. But it enacted a replacement statute that still allows taxpayers to appeal to the Board if a PTABOA fails to act within its statutory deadlines. *See* I.C. § 6-1.1-15-1.2(k) ("If more than one hundred eighty (180) days have passed since the date the notice of appeal was filed, and the [PTABOA] has not issued a determination, a taxpayer may initiate any appeal with the Indiana board of tax review under section 3 of this chapter.")

Facts

4. The subject property contains a two-story, 112-room limited-service hotel built in 1987. It has an indoor pool, a lobby, an eating area, a mezzanine, a lounge, and a food service area, but it does not have an elevator. It sits on 6.1 acres of land and is located at 7850 Rhode Island Street in Merrillville. *See Pet'r Exs. 1-3; Resp't Exs. 2-4*.

5. The following table summarizes the overall assessment and what the parties argue are the correct values based on the opinions of their experts:

Year	Assessment	Petitioner (DiNapoli)	Respondent (Kleszynski)
2014	$5,928,100	$3,400,000	$5,050,000
2015	$5,999,700	$3,300,000	$5,050,000
2016	$5,718,300	$3,300,000	$5,375,000

Record

6. The official record includes the following:

   a. A digital recording of the hearing

   b. Exhibits:

   Petitioner Exhibit 1: Appraisal by Donald DiNapoli and Edward King for 2014,
   Petitioner Exhibit 2: DiNapoli and King appraisal for 2015,
   Petitioner Exhibit 3: DiNapoli and King appraisal for 2016,
   Petitioner Exhibit 4: Effective tax rates for 2014-2016,

   Respondent Exhibit 1: Property record card for the subject property,
   Respondent Exhibit 2: Appraisal by Dale J. Kleszynski for 2014,
   Respondent Exhibit 3: Kleszynski appraisal for 2015,
   Respondent Exhibit 4: Kleszynski appraisal for 2016,

   c. The Form 131 petitions, all motions filed by the parties, and all notices and orders issued by the Board or our ALJ.

Summary of Parties' Contentions

7. Petitioner's case:

   a. Petitioner bought the property for $2,341,500 at an auction in December 2014. The auction fell about 9½ months after the 2014 assessment, 3½ months before the 2015 assessment, and about 12½ months before the 2016 assessment. Based on the auction's timing, Petitioner believes that the sale price reflects the property's value for each year under appeal. *Yanek testimony*.

b. Petitioner hired Donald DiNapoli and Edward King to appraise the property. They certified that they developed their opinions and prepared their report in conformity with the Uniform Standards of Professional Appraisal Practice ("USPAP"). For convenience, we will refer to the report as DiNapoli's, as he was the one who testified in support of it. If we do not accept the sale price from the auction, Petitioner urges us to accept DiNapoli's valuation opinion for each year. *Yanek testimony and argument; DiNapoli testimony; Pet'r Exs. 1-3.*

c. DiNapoli believed that the hotel was generally well located as a commercial lot with frontage along Interstate 65 just north of Route 30 and that it benefitted from its location along the Route 30 corridor. But he thought that that the anticipated closure of the nearby Holiday Star theater complex would adversely affect the market until that site was redeveloped.

d. DiNapoli estimated the hotel's effective economic age as 25 years in 2014 and 2016, and 24 years in 2015. It was well maintained, with no deferred maintenance, and its internal condition was good due to recent renovations. Although DiNapoli felt the hotel was functional for its intended use and age, he explained that current design standards call for three-story (rather than two-story) buildings with elevators and much higher energy efficiency. *Pet'r Exs. 1-3*.

e. DiNapoli examined information about the December 2014 auction at which the Petitioner bought the property from a lodging trust. He believed that the sale price was discounted due to the property's limited exposure to the market. According to a press release from HNN Newswire, the property was one of 24 that the trust sold due to sub-par performance. The average revenue-per-available-rooms ("RevPAR"), for those 24 properties was $72, while the subject property's RevPAR for the year ending in December 2015 was $30.66. RevPAR is calculated by multiplying a hotel's average daily room rate ("ADR") by its occupancy rate. *Pet'r Exs. 1-3*.

f. DiNapoli developed all three generally recognized valuation approaches. He began by estimating the value of the land as if vacant. He identified sales of six sites that he viewed as comparable to the subject site. He then adjusted each sale price to account for relevant differences between the properties. He did not quantify any individual adjustment; instead, he used a plus or minus to indicate whether the comparable property was superior or inferior to the subject site with regard to a specific characteristic. *Pet'r Exs. 1-3*.

g. In explaining how he arrived at $6.50/sq. ft. or $1.73 million as an appropriate value for all three years, DiNapoli indicated that the unadjusted and adjusted sale prices ranged from $2.01/sq. ft. to $15.96/sq. ft. and $7.20/sq. ft. to $15.55/sq. ft., respectively. That does not match the data for the unadjusted sale prices contained elsewhere in his report, and there is no indication of how he quantified any adjustments to arrive at a range of adjusted sale prices. In any case, DiNapoli did not explain why he settled on a value that was below the low-end of the range for his adjusted sale prices. *Pet'r Exs. 1-3.*

h. Turning to the improvements, DiNapoli consulted Marshal Valuation Service ("MVS") and examined construction costs in the area to determine replacement cost new. He used the base cost for limited-service hotels and applied multipliers from MVS for things such as location and current costs. He did not include a cost component for entrepreneurial incentive. *Pet'r Exs. 1-3.*

i. DiNapoli then estimated accrued depreciation using the age/economic life method as well as market-extracted depreciation for three of the sales from his sales-comparison analysis. For his age/economic life analysis, DiNapoli estimated the hotel's effective economic age at between two and four years less than its chronological age, depending on the assessment year at issue. He then added another 20%, or nine years, to the economic age to account for the hotel's functional and external inadequacies. He settled on accrued depreciation ranging from 75% to 77% for the years at issue. *Pet'r Exs. 1-3*

j. After adding the hotel's depreciated replacement cost to the depreciated replacement costs of site improvements and his estimated land value, DiNapoli came to the following conclusions under the cost approach:

Year	**Value**
2014	$3,750,000
2015	$3,790,000
2016	$3,640,000

Pet'r Exs. 1-3.

k. For his sales-comparison analysis, DiNapoli chose ten sales of limited-service hotels from the surrounding or competing area. He did not quantify individual adjustments, once again indicating that the properties were superior, inferior, or similar to the subject property in terms of each element of comparison. But he did quantify a net adjustment to each sale price. His adjustments appear inconsistent in some instances. For a hotel located at 510 East End Avenue, he described the building size as similar to the subject hotel and made no adjustment for 2014 and 2015. But he made a negative building-size adjustment for 2016. And the net adjustment remained the same for all three years. For the hotel at 2300 Willowcreek Road, he made a positive adjustment for lack of an indoor pool for 2014 and 2015 but not for 2016. Again, the net adjustment remained the same for all three years.

l. Based on his adjusted sale prices, DiNapoli estimated a value of $30,000 per room, or $3,360,000 for each year. *Pet'r Exs. 1-3.*

m. Turning to the income approach, DiNapoli estimated revenue from room rentals using ADR and occupancy data for the subject property as well as industry data from his records and from the Host Report compiled by Smith Travel Research ("STR"). The Host Report included data for what DiNapoli described as the subject hotel's "competitive set"—eight hotels with similar facilities and amenities that DiNapoli viewed as competitive with the subject hotel based on their location, quality, brand recognition, market orientation, and rate structure. He did not consider the subject hotel's actual ADR and occupancy rates from 2014 as stabilized because, as of March 1, 2014, it needed significant capital improvements to "maintain its flag" and continue operating as a Courtyard by Marriott. In fact, performance predictably declined when the hotel rebranded itself as a Clarion Inn by Choice Hotels and lost the benefit of the Marriott brand along with Marriott's worldwide reservation system. *Pet'r Exs. 1-3*.

n. DiNapoli believed that a typical investor from 2014 would anticipate repositioning the hotel under a different "midscale-hotel-type" flag. The midscale averages both nationally and for Northern Indiana were lower than the subject property's ADR as a Marriott hotel, and DiNapoli believed the subject property would have even lower performance because of its age and functional inadequacies. DiNapoli therefore believed it was reasonable to reduce the average rates by 10% for the subject property. He settled on ADR between $70 and $77 and an occupancy rate of 50% for the three years at issue. He also added a small amount for other revenue in addition to room rentals. *Pet'r Exs. 1-3*.

o. After estimating revenue, DiNapoli turned to operating expenses. Once again, he examined both the property's actual expenses and market data from STR's Host Report. There are two instances where it appears that DiNapoli may have erred either in reporting expenses or in his calculations. First, he included 1.1% expense for Information & Telecommunications Systems in his narrative for 2014, but he did not subtract that expense from revenues when calculating his projected net operating income ("NOI"). Second, in his narrative for 2016, DiNapoli said 50% of "Other Operated Department Revenues" would be indicative of the hotel's expenses associated with that revenue. But he subtracted 70% when calculating NOI, a difference of $5,840. It is not clear which percentage was correct, the one from his narrative or the one he used in calculating NOI. *Pet'r Exs. 1-3*.

p. Although capitalized expenditures for non-realty items such as furniture, fixtures, and equipment ("FF&E") are not treated as expenses in the operating statement, those items affect cash flow. Consequently, DiNapoli explained that he needed to account for their contribution to his projected revenue stream. To do so, he calculated adjustments to account for the return *of* and *on* FF&E. To calculate the return *of* FF&E, DiNapoli simply divided its replacement cost new by its economic life. To calculate the adjustment for return *on* FF&E, he multiplied the depreciated replacement cost of the FF&E by the required rate of return, which he believed was 200 basis points above the "going in rate." There appear to be a couple of minor errors in DiNapoli's calculations for 2015 and 2016. For 2015, multiplying the depreciated replacement cost of $532,000 by DiNapoli's chosen rate of return (10.5%) yields $55,860, not $53,200 as indicated in his report. For 2016, DiNapoli indicated that the required rate of return was 11.5%, but he used 10.5% in his calculation. That led him to underestimate the return on FF&E by $4,400.[2] *Pet'r Exs. 1-3*.

q. After deducting operating expenses and the return of and on FF&E from the hotel's projected revenue, DiNapoli arrived at the following NOI for each year:

Year	Occupancy	ADR	Revenue	Expenses and FF&E	NOI
2014	50%	$77	$1,606,000	$1,175,509	$430,491
2015	50%	$70	$1,460,000	$1,076,480	$383,520
2016	50%	$70	$1,460,000	$1,078,920	$381,080

Pet'r. Exs. 1-3.

r. In selecting an overall capitalization rate, DiNapoli considered the band-of-investment method, debt coverage ratios, and data from three investor surveys—PwC, RERC, and RealtyRates. Those surveys included ranges and averages for limited-service hotels or, in the case of RERC, for "second tier" hotels. Based on all that data, and considering that the subject property contained an older hotel with functional inadequacies, DiNapoli settled on an overall rate of 9.5% for each year. For 2014, however, he believed it was necessary to add 100 basis points to reflect the additional risk attendant with the impending need to rebrand the hotel. Also, because he was appraising the property for purposes of determining an appropriate tax assessment, he loaded its effective tax rate to his overall rate instead of treating taxes as an expense. After all those considerations, DiNapoli settled on the following loaded capitalization rates:

Year	PwC[3]	RERC	Realty	Band	Debt Cov.	OAR[4]	Taxes	Loaded
2014	9%	9.4%	11.63%	9.54%	9.01%	10.5%	2.135%	12.64%
2015	9%	9.4%	11.63%	9.54%	9.01%	9.5%	2.1612%	11.66%
2016	8.8%	9.2%	9.39%	9.54%	8.35%	9.5%	2.0665%	11.57%

Pet'r Exs. 1-3.

s. Finally, DiNapoli divided each year's projected NOI by the indicated capitalization rate to arrive at the following values:

[2] For 2014, DiNapoli wrote that he estimated the rate of return "at 10.5% (200 basis points above the going in rate or 12.5%)." *Pet'r Ex. 1*. He clearly meant that he estimated the rate of return at 12.5%, which is the rate he actually used in his calculation.
[3] The table reflects the average rate for each survey.
[4] Overall rate.

Year	NOI	Cap Rate	Rounded Total
2014	$430,491	12.64%	$3,410,000
2015	$383,520	11.66%	$3,290,000
2016	$381,080	11.57%	$3,280,000

Pet'r Exs. 1-3.

t. In reconciling his conclusions, DiNapoli primarily relied on the income approach because a typical buyer would look at the property's performance to determine its value. He gave only "secondary consideration" to his conclusions under the sales-comparison approach because he did not have specific confirmation of sales terms, including how the parties to the sales allocated the sale prices between real estate and non-realty items, such as FF&E and business value. Nonetheless, he believed that his conclusions served as a test of reasonableness of the hotel's going-concern value. He also said that the cost approach was indicative of the real property's value. His reconciled values were:

Year	Value
2014	$3,400,000
2015	$3,300,000
2016	$3,300,000

Pet'r Exs. 1-3.

u. Turning to the appraisal from the Respondent's expert, Dale Kleszynski, Petitioner argued Kleszynski made inconsistent adjustments to the sale prices of his comparable properties. In his analysis of vacant land for the cost approach, Kleszynski made negative adjustments for smaller properties and positive adjustments for larger properties, as one would expect based on the economies of scale. By contrast, while all of his improved sales involved hotels that were smaller than the subject hotel, he made positive adjustments to their sale prices to account for the differences in gross building area. Also, in his analysis under the income approach, Kleszynski loaded his overall rate with the property's gross tax rate rather than its effective tax rate. According to Petitioner, those errors affect Kleszynski's credibility. *Yanek testimony and argument; Resp't Exs. 2-4; Pet'r Ex. 4.*

8. Respondent's case:

a. Respondent relied on Kleszynski's USPAP-certified appraisals. Like DiNapoli, Kleszynski believed that the property was well located with access to amenities. He did not perceive any examples of functional inutility that would affect the property's marketability, although he did make a small deduction for functional obsolescence in his analysis under the cost approach. *Resp't Exs. 2-4.*

b. He examined the sale price from the December 2014 auction in which Petitioner bought the subject property. Based on comparative sales data, STR reports, operational data for competitive facilities, and national indices, he did not believe the sale price reflected the property's market value. *Resp't Exs. 1-3.*

c. Kleszynski estimated the subject site's value for each year using sales of comparable vacant sites. He used five sales for each year. Unlike DiNapoli, Kleszynski quantified his adjustments to the sale prices. He settled on the following values:

Year	Unit Price	Total Value
2014:	$7.25/sq. ft.	$1,925,000
2015	$7.25/sq. ft.	$1,925,000
2016	$7.75/sq. ft.	$2,060,000

Resp't Exs. 2-4.

d. Kleszynski used a similar method as DiNapoli to estimate replacement cost, although he came up with a lower base cost. Unlike DiNapoli, he separately added soft costs and 15% for entrepreneurial incentive. He estimated less physical deterioration than DiNapoli, partly because he estimated a lower effective age (22 years) and a longer economic life (50 years). He deducted an amount equal to 5% of replacement cost to account for functional obsolescence stemming from the hotel's lack of an elevator and 10% to account for economic obsolescence based on the then current market conditions for lodging and hospitality properties. *Resp't Exs. 2-4.*

e. After adding his depreciated improvement costs to his estimated land value, Kleszynski arrived at the following values under the cost approach:

Year	Value
2014	$5,100,000
2015	$5,140,000
2016	$5,365,000

Resp't Exs. 2-4.

f. For his sales-comparison analysis, Kleszynski used mostly the same sales for each year. They were from Merrillville, Indiana; Tinley Park, Illinois; Romeoville, Illinois; and Calumet City, Illinois. All the hotels were three stories, although it is unclear whether they had elevators. He considered the sales appropriate based on the sale dates, and the hotels' configuration, use, and location at the confluence of heavily travelled interstate exchanges. *Resp't Exs. 2-4.*

g. Unlike DiNapoli, Kleszynski quantified his adjustments. Among other things, he made negative adjustments to all the sale prices under the heading "Physical Variations of the Current Use." Within that general category, he explained that all but one of the hotels was in superior condition to the subject hotel and that all the sales included personal property and FF&E. *Resp't Exs. 2-4.*

h. He also made positive adjustments to account for each hotel having less gross building area than the subject hotel. At the hearing, he explained why he did not think those adjustments were inconsistent with his land-sales analysis, where he adjusted unit values for small sites downward. According to Kleszynski, he adjusted the land sales based partly on the economies of scale but also because the subject site has a large retention pond that makes part of the site unusable. In adjusting for differences in gross building area, he was accounting for variation in utility associated with the significantly smaller buildings. *Resp't Exs 1-4; Kleszynski testimony.*

i. Based on the adjusted sale prices, Kleszynski reached the following conclusions for the subject property:

Year	Unit Value	Total Value
2014	$45,000	$5,050,000
2015	$45,000	$5,050,000
2016	$48,000	$5,375,000

Resp't Exs. 2-4.

j. Turning to the income approach, Kleszynski explained that he did not have access to the subject property's income and expense information for 2012-2014 and had access to only limited information for 2015-2016. He therefore used STR's Trend Report to consolidate average daily rates, occupancy levels, revenue per room, and annualized income. He assumed that the hotel would not perform as well as competitive facilities in the area until stabilized. He estimated expenses based on the actual operation of what he viewed as comparable Midwestern hotels, although he kept the names and locations of those hotels confidential at the owners' requests. Unlike DiNapoli, Kleszynski did not adjust his projected revenue by deducting amounts for the return of and on FF&E, although he did deduct a lump sum for FF&E after he capitalized his NOI. In any case, Kleszynski projected the following NOI for each year:

Year	Occupancy	ADR	Revenue	Expenses	NOI
2014	55%	$78	$1,796,252	$1,225,000	$571,252
2015	55%	$78	$1,796,252	$1,225,000	$571,252
2016	60%	$78	$1,973,184	$1,357,000	$616,184

Resp't Exs. 2-4.

k. Like DiNapoli, Kleszynski used the band-of-investment method and survey data to develop an overall rate. He used lower interest and equity return rates and a longer amortization period than DiNapoli. And unlike DiNapoli, he consulted only one survey—PwC. Out of an abundance of caution, he loaded his overall rate with the property's gross, rather than net, tax rate for each year. Based on his analysis, Kleszynski determined the following capitalization rates.

Year	PwC	Band	OAR	Taxes	Loaded Rate
2014	9%	7.91%	7.91	2.4336%	10.35%
2015	8.95%	7.91%	7.91%	2.774%	10.7%
2016	8.8%	7.91%	7.91%	2.3756%	10.3%

Resp't Exs. 2-4.

l. As explained above, Kleszynski deducted an amount for FF&E from his capitalized NOI, although he did not explain why he did so or how he calculated the amount. He arrived at the following values:

Year	NOI	Cap Rate	Subtotal	FF&E	Rounded Total
2014	$571,252	10.35%	$5,519,342	$420,000	$5,100,000
2015	$571,252	10.7%	$5,338,803	$395,000	$4,945,000
2016	$616,184	10.3%	$5,982,368	$455,000	$5,525,000

Resp't. Exs. 2-4.

m. In reconciling his conclusions under the three approaches, Kleszynski gave the greatest weight to the sales-comparison approach due to the availability of sales that he believed were comparable to the subject property. He gave what he described as "supportive consideration" to the cost and income approaches. He identified the primary weaknesses of the cost approach as the difficulty in estimating construction costs and the need to apply assumptions about depreciation and obsolescence. He similarly believed that the limited information about the property's historical operation weakened his conclusions under the income approach. With those things in mind, Kleszynski settled on the following reconciled values:

Year	Value
2014	$5,050,000
2015	$5,050,000
2016	$5,375,000

Metz testimony; Resp't Exs. 2-4.

ANALYSIS

A. Burden of Proof

9. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. Indiana Code § 6-1.1-15-17.2 creates an exception to that 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, or where it is above the level determined in a taxpayer's successful appeal of the prior year's assessment. I .C. § 6-1.1-15-17.2(b), (d).

10. The assessment decreased between 2013 and 2014. Petitioner, therefore, has the burden of proof for 2014. Assigning the burden for the other years at issue will depend on our determination for each preceding year. Given that both parties offered USPAP-compliant appraisals, deciding who has the burden of proof is largely an academic exercise. The more relevant question is which appraisals we find more persuasive. *See Stinson v. Trimas Fasteners, Inc.* 923 N.E.2d 496, 502 (Ind. Tax Ct. 2010) ("When there are competing opinions as to how a property should be valued, the Indiana Board must determine which opinion is more probative."). We focus the rest of our discussion on that question.

B. True Tax Value

11. Indiana assesses property based on its "true tax value," which is determined under the rules of the Department of Local Government Finance ("DLGF"). I.C. § 6-1.1-31-5(a); I.C. § 6-1.1-31-6(f). The DLGF defines "true tax value" as "market value-in-use," which it in turn defines as "[t]he market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL 2. Evidence in an assessment appeal should be consistent with that standard. For example, USPAP-compliant market-value-in-use appraisals often will be probative. *See id; see also, Kooshtard Property VI, LLC v. White River Twp. Ass'r*, 836 N.E.2d 501, 506 n.6 (Ind. Tax Ct. 2005). So may sales data for the property under appeal, sales or assessment data for comparable properties, or any other evidence compiled in accordance with generally accepted appraisal practices. *Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006); *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments in property-tax appeals).

12. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the property's market value-in-use as of the relevant valuation date. *Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). Otherwise, that evidence lacks probative value. *Id*. The valuation date for the 2014 and 2015 assessments at issue was March 1 of the assessment year. The valuation date for 2016 assessments was January 1, 2016. *See, e.g.* I.C. § 6-1.1-2-1.5.

C. The Parties' Valuation Evidence

13. With that basic guidance in mind, we turn to the parties' valuation evidence. We begin with the sale price from the 2014 auction where Petitioner bought the property. Although Petitioner believes we should base our determination on that sale price, neither appraiser thought it reflected the property's market value-in-use. We agree with those experts and give the sale price little weight.

14. Turning to the competing valuation opinions from the parties' experts, we are more persuaded by DiNapoli's opinions than by Kleszynski's. Both are experienced, qualified appraisers. And both applied all three generally accepted valuation approaches. But we agree with DiNapoli that, for an income-producing property like the subject hotel, a well-supported analysis under the income approach will often most closely reflect the thinking of market participants. DiNapoli relied most heavily on his conclusions under the income approach. And he supported his conclusions with solid data and generally sound methodology.

15. That does not mean that his analysis was flawless. As explained above, he made a couple of minor errors in calculating return on FF&E, an error in failing to subtract an expense for information and telecommunication systems in 2016, and an apparent error in the expense associated with other operated department revenues in 2014. With one exception, those errors only negligibly affected his calculation of NOI. Given that DiNapoli rounded his value conclusions to $100,000 increments, it is unlikely those errors affected his opinions. Correcting DiNapoli's omission of the telecommunications expense for 2016 arguably might lead to a lower valuation opinion for that year, but Petitioner has not asked for that. While those and other errors cause at least some concern about the care with which DiNapoli prepared his appraisals, we still find that his ultimate valuation opinions are not only reliable but are the most probative evidence of the property's true tax value.

16. We have more confidence in DiNapoli's revenue, occupancy, and expense projections than in Kleszynski's projections. DiNapoli's projections are closer to the property's actual experience. We do not necessarily fault Kleszynski for the gaps between his projections and the property's actual operating history—he was apparently handicapped by his lack of access to information about that history. And the goal is to determine market revenue and expenses. But a property's actual experience is highly relevant to that determination. Kleszynski based his projections on less complete, and therefore less reliable, data than DiNapoli did. Kleszynski himself recognized that shortcoming in explaining why he gave his conclusions under the income approach only "supportive consideration."

17. In addition, DiNapoli's approach for dealing with income attributable to FF&E is more persuasive than Kleszynksi's approach. DiNapoli determined an adjustment based on the return of and on FF&E, and he explained his calculations. His approach appears to follow the "Rushmore" method, which has been widely, if not universally, accepted. *Chesapeake Hotel, LP v. Saddlebrook Twp.*, 22 N.J. Tax 525, 527-28 (N.J. Tax Ct. 2005) (explaining that the method of excluding amounts for the return of and on FF&E from a hotel's projected NOI, which was developed by Stephen Rushmore, has been "employed by experts in other hotel valuation cases and followed in reported decisions in New Jersey and other jurisdictions."). By contrast, Kleszynski explained neither his approach for dealing with FF&E nor how he calculated his deduction.

18. DiNapoli also generally supported his capitalization rates. We recognize that they are substantially higher than the rates Kleszynski chose. Much of that gap is attributable to

the appraisers' differing views on the level of risk posed by the subject property. DiNapoli felt that the hotel's age and functional inadequacy posed substantial risk. That led him to use a higher rate of return for the equity position in his band-of-investment analysis than the rate Kleszynski used. It similarly led DiNapoli to estimate an overall rate that was generally close to or above the averages reported by the various surveys he examined. Kleszynski, by contrast, chose overall rates that were well below the average reported by the only investor survey he consulted.

19. We are more persuaded by DiNapoli's assessment of the risk associated with the subject hotel than by Kleszynski's assessment of that risk. The hotel's actual operating history showed declining occupancy and ADR from 2012 through 2015. That, coupled with functional inadequacies and the need for rebranding in 2014, supports DiNapoli's choice of a higher overall rate.

20. While we do not put much stock in DiNapoli's analyses under the cost or sales-comparison approaches, he gave his conclusions under those approaches little weight. One of the reasons he offered for not relying more heavily on his sales-comparison analysis—his inability to confirm specifically how sale prices for his comparable properties were allocated between real estate and non-real estate interests—also gives us pause when considering Kleszynski's sales-comparison analysis. Hotel sales commonly include non-realty items, such as FF&E and intangible property. Thus, an appraiser must carefully allocate each sale price between real estate and non-real-estate interests. Yet Kleszynski did little to explain how he determined those allocations.

21. In sum, we find DiNapoli's valuation opinions, which rely primarily on a generally sound application of the income approach and therefore more accurately reflect market thinking and more convincingly separate real-estate interests from non-real-estate interests than Kleszynski's opinions, are the most persuasive evidence of the subject property's true tax value.

FINAL DETERMINATION

22. We order that the assessments be changed to the following values:

Year	Value
2014	$3,400,000
2015	$3,300,000
2016	$3,300,000

ISSUED: September 7, 2018

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Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

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>.