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October 30, 2018

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Richard Moon
Board of Equalization
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Re: Interested Parties Meeting – October 31, 2018
Confidentiality of taxpayer Information in Assessment Appeals

Dear Mr. Yeung and Mr. Moon:

I will be participating in the Interested Parties Meeting via telephone on October 31, 2018. If you find it appropriate, I would like to share some:

ACTUAL EXAMPLES of how taxpayers and their retained fee appraisers and licensed assessor staff appraisers secure and utilize confidential 3rd party financial information to value income producing property.

- 3rd party financial information is routinely used by assessors and retained fee appraisers when valuing income producing properties. Although all three traditional approaches to value (Cost Approach, Sales Comparison Approach and Income Approach) are used for most properties, accurate 3rd party financial data is particularly important when using the Income Approach to value income producing property.
- Assessors and retained fee appraisers both rely on 3rd party financial information when using the income capitalization approach, discounted cash flow analysis and the Sales Comparison Approach as a check or a test of reasonableness. To do this assessors and fee appraisers establish a reasonable "market range" of comparable income producing properties and applicable discount rates which are utilized in calculating reasonably anticipated net future income.
- Assessors do this by analyzing and comparing confidential information provided by taxpayers operating comparable properties within the county, analyzing confidential 3rd party financial information regarding comparable properties obtained from other counties and by analyzing confidential sales information.

- Retained fee appraisers hired by taxpayers seeking to lower their assessed taxes perform the same type of analysis.
- According to testimony provided in recent Assessment Appeal hearings involving Los Angeles County hotel properties, retained fee appraisers secure confidential 3rd party financial information directly from hotels and then use this information to support Applications seeking reduced assessments:

“[W]e are lucky that within our database that we receive hundreds and actually thousands of annual financial statements every year from hotels. So we were able to pick five like kind properties that operate like the subject in order to test the reasonability of Marriott's projections. And eventually, we came up with our own independent conclusions, but they are very close to Marriott and the comparables.”

(See, In Re: AEG Olympic & Georgia Partners, L. A. County Tax Assessor's Appeals Bd. Hearing Transcript, 5/10/16, Vol. 2, p. 127, ln. 18 to p. 130, ln. 123, attached hereto.)

AN ACTUAL EXAMPLE of how taxpayers secure the information needed to cross-examine assessor witnesses regarding 3rd party information redacted in accordance with Revenue & Taxation Code § 408 and *Trailer Train Company v. SBE* (1986) 180 C.A.3d 565 is provided in the October 2016 AAB Hearing Transcript in which:

- The Assessor supports the enrolled value by providing a financial data set for each comparable hotel and providing the names and locations for each hotel, but the names of the hotels are not matched up to each data set to protect confidentiality. (Transcript, p. 977.)
- Counsel for the taxpayer objects claiming he won't be able to cross-examine if the data sets are not matched up to the name of each hotel. (Transcript, p. 977.) [We find out later that the taxpayer has enough information from its own sources to identify all the properties and withdraws the objection.]
- At some point it is suggested that the Assessor disclose the confidential information in closed session. Assessor Hearing Representative Jeff Meyer explains why that is inappropriate and why the taxpayer must secure a court order under R & T 408(e)(3) if the taxpayer actually needs the underlying income data. (Transcript, pp. 983-987.)
- J. Meyer explains on page 987 that enough information is provided to allow the taxpayer to conduct a meaningful cross-examination.
- **AAB Member Soleimani agrees and reminds the taxpayer:** “In your own case in chief you do have some data on St. Francis, and if I recall, Hilton San Francisco as well. [2 of 4 hotels the Assessor is using] So maybe if you consult your own papers you'll be able to figure out the rest.” (p. 988.)

- On page 989, J. Meyer explains that the taxpayer used similar information from several different hotels identified as A, B, C and that hotel appraisers secure this type information from other hotels under a confidentiality agreement that the fee appraisers may waive.
- After a one-day break the hearing resumed on 10/20/16. The taxpayer's representative reported that "we are confident we can match up the four hotels with the numbering system on the Assessor's Exhibit 8, on Page 7. And so, with that, we will withdraw our objection and proceed with the case." (Transcript, p. 1001.)

(See, In Re: AEG Olympic & Georgia Partners, L. A. County Tax Assessor's Appeals Bd., Hearing Transcript, 10/18/16, Vol. 11, p. 977, ln. 17 to p. 988, ln. 2; & 10/20/16, Vol. 12, p. 1001, Ins. 8-14, attached hereto.)

To better understand the full scope and nature of the 3rd party financial documents available to the taxpayer and any confidentiality agreements that may limit the use of such documents in Assessment Appeal hearings, Los Angeles County recently issued narrowly tailored Special Interrogatories and a Request for Production of Documents to Long Point Development, LLC. in the action filed by Long Point seeking the disclosure of confidential 3rd party documents. If the taxpayer already has access to the requested documents the Superior Court proceeding is moot.

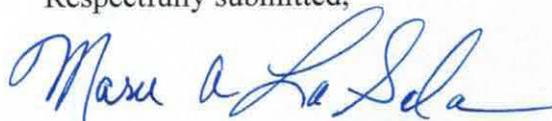
Understanding how taxpayers routinely secure and use confidential 3rd party financial documents to support Applications for Reduced Assessment is an important issue that needs to be examined not only for the cases pending in Los Angeles County but also for purposes of this Interested Parties Meeting.

It appears that CATA seeks to create an uneven playing field in hearings seeking reduced assessments for income producing properties by:

- blocking or frustrating an Assessor's ability to utilize essential 3rd party financial information needed to establish and prove the fair market value of property;
- while simultaneously continuing to use the same 3rd party financial information collected within its industry.

Law Office of Marie A. LaSala

Respectfully submitted,



Marie A. LaSala

1 LOS ANGELES COUNTY
2 TAX ASSESSOR'S APPEALS BOARD
3

4 IN RE:)
5 AEG OLYMPIC & GEORGIA)
PARTNERS,)
6 Applicant.)
7)
8)
9)
10)
11)
12)
13)

14 TRANSCRIPT OF
15 HEARING PROCEEDINGS
16 VOLUME 2

17 May 10, 2016
18 9:03 a.m.

19 Room B4
20 500 West Temple Street
21 Los Angeles, California

22 Aurora Bowser, CSR No. 12801
23
24
25

1 APPEARANCES

2 Board Members:

3 LESLIE G. BELLAMY, CHAIRMAN
4 MERCEDES BARBA
5 MAGGIE SOLEIMANI

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FOR THE ASSESSOR: DIRECT CROSS REDIRECT RECROSS

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(None)

1 A Correct. And there's a number of
2 different terms for this bottom line, "net house
3 profit," "NOI." All of them are pre depreciation
4 and income taxes and debt service.

5 Q So net house profit could also be net
6 operating income, NOI?

7 A Yes.

8 Q Thank you. I would gather, then, as you
9 go across -- now, these are projections that
10 Marriott International made?

11 A Yes, they are.

12 Q And as you go across the page for each
13 subsequent year out through, it looks like, the
14 year 2020, again, this information would all be
15 projections that were put together by Marriott
16 International?

17 A Yes, that's my understanding.

18 Q Now, after looking at this pro forma, did
19 you also -- going back to Page 5 of Section V, did
20 you also look at operating statistics from other
21 hotels in order to evaluate the Marriott
22 International pro forma?

23 A Yes, we did. Obviously, Marriott is more
24 than qualified to do projections on these types of
25 hotels that they own and operate, but we are lucky

1 that within our database that we receive hundreds
2 and actually thousands of annual financial
3 statements every year from hotels.

4 So we were able to pick five like kind
5 properties that operate like the subject in order
6 to test the reasonability of Marriott's
7 projections. And eventually, we came up with our
8 own independent conclusions, but they are very
9 close to Marriott and the comparables.

10 Q Was one reason you needed to do that is
11 because, again, you did not have historical
12 performance information for the subject since it
13 was a brand-new hotel?

14 A Not necessarily. Even if we had
15 historical performance, which only adds to the
16 reliability of our projections, we always
17 benchmark it against comparables.

18 Q What were the five hotels you looked at?

19 A We looked at the San Francisco Marriott
20 Hotel, the Beverly Hilton Hotel, the Westin
21 St. Francis, the Hyatt Regency Century Plaza and
22 San Diego Marriott Marquis Hotel.

23 Q Now, the information for these hotels is
24 presented on Pages 8 and 9 of Section V; is that
25 correct?

1 A Yes, that is correct.

2 Q And I see that the information has been
3 de-identified on Pages 8 and 9. They are just
4 referred to as "Hotel A, Hotel B, Hotel C, Hotel D
5 and Hotel E." Was there a reason why you
6 de-identified the information here in the report
7 on those pages?

8 A CBRE Hotel has a formal understanding
9 with the hotel owners and operators that the
10 information that they provide us is kept in
11 confidence. And we either report it anonymously
12 like we've done here or we aggregate five or more
13 properties in to one consolidated statement to
14 show the average. But we do give some additional
15 information in the paragraph above the bullet
16 point of properties on Page 5 under the heading
17 "Operating Statistics." You can see that these
18 hotels range in room size from 569 rooms to 1,495
19 guest rooms, so we're within that range. And
20 their occupancies range from 66.7 percent to 78.7
21 percent. Again, our stabilize occupancy is 73
22 percent.

23 These five properties had an average ADR
24 of -- excuse me. The range in ADR was from 177.49
25 to 228.75. And again, our average daily rate for

1 the subject starts around 193 and then grows from
2 there. So again, a lot of comparability from
3 these five hotels as far as how they operate in
4 this top line.

5 Q There's also a statistic here called
6 "GOP." What is that?

7 A GOP is the gross operating profit, and it
8 is the level of revenues after you deduct the
9 undistributed expenses, but before a management
10 fee. There's a lot of variations in management
11 fees as well as fixed expenses, property taxes,
12 insurance. And so it's another means of filtering
13 out what you can accurately compare to something
14 that's a little bit more variable. So we look at
15 GOP operating ratios quite a bit.

16 Q Now, looking at the information on Pages
17 8 and 9 of Section V, was it necessary to know the
18 specific identity of each hotel in order to use
19 this information in making your analysis?

20 A I don't think ultimately that it should
21 matter with the detail that we have provided for
22 each of them, but there may be more comfort if you
23 knew the individual properties. >

24 Q Are the categories that are shown here on
25 Page 8 in the left columns: Revenues,

PROOF OF SERVICE
(C.C.P. §§ 1013(a)(b), 2015.5)

STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA

I am a citizen of the United States and a resident of the county aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 615 La Buena Tierra, Santa Barbara, California.

On October 24, 2018, I served a true copy of the within **RESPONDENT'S TRIAL SETTING CONFERENCE REPORT** on the Interested Parties in said action:

- by facsimile transmission to the fax numbers for each Interested Party as indicated below:
- by electronic service to the following email addresses for each Interested Party as indicated below:
- by depositing it in the United States Mail in a sealed envelope with postage thereon fully prepaid to each Interested Party as indicated below:
- by Express Mail for priority overnight delivery in a sealed envelope with postage thereon fully prepaid to each Interested Party as indicated below:

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Counsel for Petitioner Long Point Dev., LLC

(State) I declare, under penalty of perjury, that the above is true and correct.

Executed on October 24, 2018, at Santa Barbara, California.

Marie A. LaSala

**LOS ANGELES COUNTY
TAX ASSESSOR'S APPEALS BOARD**

IN RE:)
)
AEG OLYMPIC & GEORGIA PARTNERS,))
)
)
Applicant.)
_____)

TRANSCRIPT OF PROCEEDINGS

VOLUME 11

DATE: October 18, 2016

REPORTER: Mindy Pierce

LOCATION: Los Angeles, California



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INTERNATIONAL TOWER
888 S. FIGUEROA STREET, SUITE 840, LOS ANGELES, CA 90017
866.432.4300

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1 MR. CHAIRMAN: Okay. I'm sorry.

2 MR. PHILLIPS: That's fine. It's the same list as
3 located in the managers agreement, I just filled in some of
4 the data so we can get a sense of these hotels and the cities
5 they're located in and the number of rooms. And I was going
6 down the third column where you can see the cities these are
7 located in. Boston, Massachusetts; Philadelphia; Nashville;
8 Houston; San Antonio.

9 The ones not located in California and number of
10 rooms was 1,363, for a total average rooms across the entire
11 set of 1,361. And being a Competitive Set listed in the
12 Manager's Agreement has some teeth. And I'm going to refer
13 to the Management Agreement Article 2.02. That's going to be
14 on Page 17.

15 MR. CHAIRMAN: That's 17 of Assessor 12 of the
16 Management Agreement? Is that the Article 2?

17 MR. PHILLIPS: Yes, it is. At the top of the page,
18 Article 2, Section 2.02 termination. And Section A, subject
19 to the provisions of section 2.02-B, below, owner shall have
20 the option to terminate the agreement if, with respect to any
21 two consecutive physical years, not including any portion of
22 any physical year prior to the expiration of the fifth full
23 physical year after the opening date.

24 Then down to Section 2, which is the top of the next
25 page, Page 18, where it says the revenue index of the hotels

1 during each such physical year is less than the revenue index
2 threshold for such physical year. Now, what that means is
3 that you have to be able to identify what is the revenue
4 index mean. You're holding them to some standard there. The
5 revenue index is -- bear with me one second here -- on Page
6 86 of Assessor 12. And we can see the revenue index shall
7 mean the number that is equal to the revenue for available
8 rooms for the hotels; meaning, the subject property, meaning
9 those two hotels; the JW Marriott and the Ritz-Carlton. And
10 the revenue per available room for the hotels, is divided for
11 the average revenue in the competitive set, that's the index.

12 Now the threshold is the very next paragraph. And
13 it shall mean that the number equal to 100 divided by 100 or
14 1. Now what that does, they're covering for changes in the
15 hotels, they might modify this threshold, and it's
16 manipulated, there's a new entry or a removal of a hotel from
17 the list that might affect the Rev PAR, that might affect the
18 subject's true position in a market. What the performance
19 termination is essentially saying is that if they didn't beat
20 the average Rev PAR of a competitive set two years in a row,
21 that they can terminate the management agreement. That is,
22 to me, a very important equalization.

23 So if we're going to talk about competitive set, I
24 think it's important to recognize the true competitive set as
25 listed in the management agreement. And if the owner is

1 holding the Marriott to that standard, and they can terminate
2 the management agreement if they don't perform according to
3 the description as outlined -- not management agreement, they
4 can terminate the agreement itself, that, to me, would imply
5 that the true competitive set is the one listed in the
6 management agreement.

7 We tried to do a comparison to this true competitive
8 set. We were able to gather some data. And I'll refer now
9 to that scenario here. Let's go back to Page 6 on my
10 narrative. And I'll pick it up there.

11 The assessor was able to gather 2009, '10, '11 and
12 '12 Rev PAR data from four California-based hotels within the
13 Competitive Set. And this performance data was compared to
14 the 2010, '11, '12 Rev PAR for the subject property. Now
15 with regard to the actual data, it relates to the performance
16 of the property immediately after the assessment period and
17 provides additional context with regards to the business plan
18 numbers.

19 I'm going to jump to Page 7, the next page. Now,
20 the hotel data, Rev PAR occupancy, ADR data on the hotels in
21 this data set, we don't have access to this data. I spoke to
22 consultants such as PKF which gather this kind of information
23 from the hotels, certainly the hotel and manager, in order to
24 do an assessment on an annual basis of this information. We
25 haven't received any of this information, even though if they

1 are adhering to their contract, they are doing this every
2 year.

3 But we have some samples with other assessors in the
4 state, and we were able to gather information on the two
5 hotels as I've listed them. The Westin St. Francis, the
6 Hilton San Francisco, Marriott Mascone, and the Loews Hotel
7 in Hollywood. I'm not identifying which hotels these are, I
8 do identify hotels Number 1, Number 2, Number 3 and Number 4,
9 never really identifying which data set belongs to which
10 hotel. So we're maintaining that sense of confidential
11 record.

12 Now that top box is the competitive sample data I've
13 been able to gather. The box at the bottom is the subject
14 properties pro forma, their actual performance as we have
15 been given the actual data and their 2007 business plan
16 sections.

17 MR. O'NEALL: Mr. Chairman, at this point in time, I
18 gather that on this Page 7 of Applicant or Exhibit 8, Hotel
19 Number 1 is not necessarily the Westin St. Francis but one of
20 those to the box in the left. The applicant won't be able to
21 cross-examine this information unless these hotels are
22 identified. If the assessor wishes to close the hearing in
23 order to do so, we would not oppose that, but otherwise,
24 we're cross-examining in the dark when it comes time to
25 addressing this page in the assessor's appraisal report.

1 MR. CHAIRMAN: Mr. Meyer?

2 MR. MEYER: Go off the record?

3 THE CLERK: Off the record.

4 (DISCUSSION HELD OFF THE RECORD)

5 THE CLERK: Back on the record.

6 MR. CHAIRMAN: Before we go off, I'm getting kind of
7 senile. Before I forget my question, could you go back? I
8 was trying to keep up with your pages. Could you go back and
9 say what you said about if something, then management --

10 MR. PHILLIPS: The performance termination issue.

11 MR. CHAIRMAN: Would you say that again?

12 MR. PHILLIPS: Be happy to. If the subject
13 property's Rev PAR, the JW Marriott and the Ritz-Carlton,
14 their Rev PAR revenues in any given year, the way the
15 contract is worded, if their Rev PAR does not outperform the
16 average of the Rev PAR from the competitive set as listed in
17 the management agreement, they can, doesn't mean they will,
18 but they can terminate the management agreement.

19 MR. CHAIRMAN: The Rev PAR of the --

20 MR. PHILLIPS: Of the competitive set.

21 MR. CHAIRMAN: The average Rev PAR?

22 MR. PHILLIPS: That's correct, yes.

23 MR. CHAIRMAN: I think you said for two consecutive
24 years.

25 MR. PHILLIPS: Yes, they don't do just one year.

1 There's two consecutive years. Thank you. If they don't
2 outperform the offering of the competitive set two
3 consecutive years in a row, the owner has the option to
4 terminate the managers agreement.

5 MR. CHAIRMAN: Thank you.

6 MR. PHILLIPS: Mr. Chairman, I'm going to go ahead
7 and go off record.

8 THE CLERK: Off the record.

9 (DISCUSSION HELD OFF THE RECORD)

10 THE CLERK: We're back on the record, and again,
11 we're still on Track 2.

12 MR. KOTSCHEDOFF: Madam Clerk, and Mr. Chairman, we
13 actually have an additional objection we'd like to lodge
14 regarding the same page that was lodged just prior to the
15 break. So I'm thinking it might be more appropriate to do it
16 now rather than later.

17 MR. CHAIRMAN: Which page is that?

18 MR. KOTSCHEDOFF: I believe the assessor was on Page
19 7 of the Exhibit.

20 MR. PHILLIPS: I think Mr. Meyer will address
21 that.

22 MR. KOTSCHEDOFF: We had an additional objection to
23 make, and he can address both of the objections at the same
24 time if that's okay.

25 MR. CHAIRMAN: Fine.

1 MR. KOTSCHEDOFF: In addition to the objection that
2 Mr. O'Neill raised just prior to the break, we would also
3 object to the use of the actual operating performance that is
4 listed in columns labeled 2010, '11 and '12 for this
5 competitive set example because it's information that would
6 not have been known as of the evaluation date. Further, with
7 the subject property, in the middle section there they're
8 citing actual performance, which would be different than the
9 pro forma projections. We believe that that should not be
10 included on this page as it just shows gross revenue only and
11 is misleading on the overall net income picture. But also,
12 it's performance evaluation date data as well.

13 MR. CHAIRMAN: You're talking about actual operating
14 performance for 2009?

15 MR. KOTSCHEDOFF: If you go to the bottom box, it
16 says, "subject property", And in the middle it says, "actual
17 performance". There is actual performance quoted for '10,
18 '11 and '12. And then in the upper box it says, "competitive
19 sample", there's actual operating performance from these 4
20 hotels from '10, '11 and '12, and it's not pro
21 forma estimates, it is actual operating performance.

22 MR. CHAIRMAN: Mr. Meyer?

23 MR. MEYER: Thank you. I think I hear three ✓
24 separate objections there. Just so I'm clear, there's an
25 objection to using subject data for time period subsequent to

1 our evaluation date?

2 MR. KOTSCHEDOFF: Correct.

3 MR. MEYER: There's an objection to using income
4 data from other properties that are subsequent to our
5 evaluation date?

6 MR. KOTSCHEDOFF: For the competitive set samples.

7 MR. MEYER: And then Mr. O'Neill's objection
8 earlier, which I'm going to get to.

9 Let me address these first two. I'm going to ask
10 Mr. Phillips a quick question off record and I'll come right
11 back on.

12 THE CLERK: Off the record.

13 (DISCUSSION HELD OFF THE RECORD)

14 THE CLERK: Thank you, Mr. Chairman. We're back on
15 the record, we're still on Track 2.

16 MR. MEYER: I guess first, let me address
17 Mr. Kotschedoff's two objections here. Revenue and taxation
18 code section places a 90-day limit on comparable sales for --
19 2.5, I believe, is the code section that does not apply to
20 the income approached and it does not apply to subject data
21 beyond the 90 days. And the further you read into the
22 assessor's evaluation you're going to see the assessor is not
23 using these subsequent data from subsequent dates directly in
24 our evaluation, we are using pretty much straightforward
25 pro forma. And Mr. Phillips will talk about that when he

1 gets into his income approach.

2 There are arguments that were made by the applicant
3 during their case regarding flag and franchise, and this is
4 foundation for our argument as to why we are not making such
5 an adjustment. This is a new property, we didn't compare
6 historic data, but we do need to compare it to a competitive
7 set, which Mr. Phillips has already gone through. So it is
8 very important to the assessor's case here, though those
9 numbers are not used for estimating the income in our
10 evaluation. And there's nothing that excludes/precludes the
11 assessors from using income data beyond the 90 days,
12 basically being used to address what the applicant presented
13 during their case in chief.

14 There's an argument that's in front of the board on
15 how to value these properties and how to properly reflect any
16 enterprise sort of value, and this is foundation for the
17 assessor's argument as to why we are not doing any sort of
18 flagging franchise adjustment like the applicant did. It's
19 foundation data for how we are recognizing any value, are
20 removing any value that might exist that is not real property
21 value. Again, this is income data, the 90 day rule does not
22 exclude income data.

23 MR. KOTSCHEDOFF: I believe the post 90-day issue
24 under section 402.5 is for the sales comparison approach. As
25 Mr. Meyer states, there is some income information that's

1 allowed beyond that 90-day period, but that's typically for
2 the derivation of cap rates and the use of cap rates. In
3 this case, the assessor is using occupancy and ADR
4 information for 2010, '11 and '12, which is all information
5 that would not have been known as of the evaluation date.

6 MR. CHAIRMAN: I'm sure cap rate information beyond
7 the evaluation date isn't known either during the evaluation
8 date. We're going to take a break.

9 THE CLERK: Okay, Mr. Chairman, I'm going to go off
10 record.

11 (DISCUSSION HELD OFF THE RECORD)

12 THE CLERK: Thank you, Mr. Chairman. We're back on
13 record. And again, we're still on Track 2.

14 MR. CHAIRMAN: The board is going to overrule your
15 objection on those last two issues, as well as the assessor
16 isn't going to give the rights to that information for their
17 evaluation, which you said you weren't going to do. What
18 about this first one?

19 MR. MEYER: I'd like to respond to that one as well. ✓
20 And that was an objection they were asking us to identify the
21 four hotels and the date related data specifically to each of
22 those four hotels or go into a closed hearing. I'm not
23 willing to go into a closed hearing to disclose that data. A
24 closed hearing is for the applicant's trade secrets. Revenue
25 taxation code section 451. "All information requested by the

1 assessor or furnished in the property statement shall be held
2 secret by the assessor". The statement is not a public
3 document, is not open to inspection except otherwise provided
4 in section 408. I want to read the piece of section for you
5 of 408 as well. I can give you a copy if you want.

6 MR. CHAIRMAN: I wanted him to get to it.

7 MR. MEYER: I can give the board a copy if the board
8 wants a copy.

9 MR. CHAIRMAN: Do you want a copy? Okay.

10 MR. MEYER: 408 talks about assessor's records, it
11 talks about data the assessor keeps, talks about market data
12 the assessor must share. I'm going to read 408(e)3. "Except
13 as provided in section 408.1 an assessee or his or her
14 designated representative may not be permitted to inspect or
15 copy information and records that also relate to the property
16 or business affairs of another".

17 That's what we're talking about; data, that income
18 data that applies to the business affairs or relates to the
19 business affairs of another, ie, the subject's competitors.

20 I'll read further. "Unless that disclosure is
21 ordered by a competent court in a preceeding initiated by a
22 taxpayer seeking to challenge the legal record of the
23 assessments". That's what 408(e)3 says. I need a court
24 order to release that data. I'm looking for a page I seem to
25 have misplaced. If you give me a moment.

1 MR. CHAIRMAN: You want to go off record?

2 THE CLERK: We're going to go off record. We're
3 off.

4 (DISCUSSION HELD OFF THE RECORD)

5 THE CLERK: Thank you, Mr. Chairman. We're back on
6 the record and we're still on Track 2.

7 MR. MEYER: I'm reading from the Property Tax Law
8 Guide, Volume 1, and I'm reading foot notes. Reading from
9 the Property Tax Law Guide, Volume 1. It's a footnote for
10 Revenue Taxation Note Section 408, I just read a portion of
11 that to you.

12 MR. CHAIMAN: Is this an annotation?

13 MR. MEYER: This is not an annotation, it's a
14 footnote in the property tax guide and it's going to relate
15 to case law.

16 MR. KOTSCHEDOFF: Mr. Meyer, are we still at 408?

17 MR. MEYER: I'm on the footnotes under 408. There's
18 a few notes. And I'm going to read information related to
19 fair market data. "Market data, as used in this section, is
20 narrowly defined in subdivision D, and both subdivisions B
21 and D make it clear that market data and other assessor's
22 records relating to a taxpayer's assessment are not construed
23 to require disclosure of information relating to the business
24 affairs of another taxpayer. Thus, information furnished to
25 an assessor by an oil company on its aquisition of certain

1 property did not constitute marked data and was not subject
2 to disclosure by the assessor in defending his assessment
3 against taxpayer oil company. Chanslor-Western Oil and
4 Development Co. versus Cook".

5 There is nothing that prevents the assessor from
6 using data that we acquire, but there are code sections, and
7 without a court order, that prevents us from disclosing it.

8 MR. CHAIRMAN: Does that complete your response?

9 MR. MEYER: Yes.

10 MR. KOTSCHEDOFF: I may need to take a moment, but I
11 would like to make a point prior to doing that. I believe
12 three of the four properties in the competitive set sample on
13 Page 7 are from San Francisco, so I'm not certain that the
14 assessor of Los Angeles county has that obligation of
15 confidentiality that they might for a location in their
16 county.

17 MR. MEYER: Section 408, assessor records, talks
18 about all kinds of data the assessor gathers. B says, "The
19 assessor may provide appraisal data in his or her possession
20 to the assessor of any county". So we receive data under
21 408, and we're going to keep it confidential as required
22 under 408.

23 MR. KOTSCHEDOFF: I don't see anything in the
24 section that applies to information provided from another
25 county to L.A. county as the confidential data. So it does

1 say an assessor, I presume in this case the city of
2 San Francisco or county of San Francisco may provide the data
3 to the assessor of Los Angeles, but I don't see anything that
4 says that Los Angeles has to maintain that same level of
5 confidential record. It may be in there, I just didn't see
6 it when I read it.

7 MR. MEYER: If I may, Mr. Chairman, I'd like to read
8 408(e)3 one more time. "Except as provided in section 408.1,
9 an assessor, or his or her designated representative, may not
10 be permitted to inspect or copy information and records that
11 also relate to the property or business affairs of another,
12 unless that disclosure is ordered by a competent court in a
13 proceeding initiated by a taxpayer seeking to challenge the
14 legality of the assessment of his or her property".

15 That data that applicant is asking for relates to
16 the property or business affairs of another.

17 MR. CHAIRMAN: Any questions?

18 MR. MEYER: I think the gist of Mr. O'Neill's ✓
19 objection was to reflect that the applicant is unable to
20 conduct meaningful cross-examination because of the way the
21 data is introduced. By having four hotels identified as a
22 competitive set, it gives enough information to figure out
23 what's what, and I think you would still be able to do a
24 meaningful cross-examination. But that's just my opinion.

25 MR. KOTSCHEDOFF: I don't know how I would match up



1 each location to each hotel number just based on the data
2 here.

3 MS. SOLEIMANI: In your own case in chief you do
4 have some data on St. Francis, and if I recall, Hilton
5 San Francisco as well. So maybe if you consult your own
6 papers you'll be able to figure out the rest.

7 MR. KOTSCHEDOFF: I think just the Westin
8 St. Francis was the only one.

9 MR. CHAIRMAN: So are you objecting because you feel
10 that what this explanation is does not apply to properties
11 outside of L.A. county? Is that your objection?

12 MR. KOTSCHEDOFF: Yeah, I don't think, or I don't
13 know that it applies to properties outside of L.A. County,
14 number one. Number two, we don't have an opportunity to
15 cross-examine the information the assessor has put forth and
16 tie it to a specific hotel because there's no way, based on
17 this data, to figure it out.

18 MR. CHAIRMAN: I'm not sure that maybe these cases
19 are running together. Maybe it's in the L.A. LIVE, but I
20 seem to remember a situation whereby some properties were
21 given only numbers. Is that in L.A. LIVE?

22 MR. KOTSCHEDOFF: We had that earlier in our first
23 exhibit, and then we provided the data later, we did match up
24 the generically labeled hotel with the actual hotel name.
25 And that may be what you're remembering.

1 MR. CHAIRMAN: Okay. 

2 MR. MEYER: If I may, Mr. Chairman, the applicant,
3 in their initial case, identified some properties, I think
4 they used letters, A, B, C. The applicant later came and
5 told us which hotels each specific one was. That was not at
6 the assessor's request, Mr. Lugosi testified that that's
7 information that his company receives under a confidentiality
8 agreement. He came in and chose to present that. The
9 assessor never requested something violating their
10 confidentiality agreement or anything like that. They chose
11 to do it. And I told you at the time that the assessor will
12 not be returning the same favor or whatever you want to call
13 it. We're held to a certain standard under the revenue and
14 taxation code, and we're not going to disclose that data.

15 And the applicant says that they have no way of
16 knowing which hotels this data relate to. It's a small set.
17 It's four. These hotels are in the competitive set in the
18 subject properties hotel management agreement. It's a basis
19 that their management agreement is held to as a comparison.
20 I can't say they have it, but it seems like they should have
21 access to it.

22 We got a limited amount of data that we were able to
23 collect from either other properties within our county or
24 other counties where we collected data, and we are presenting
25 it in a masked format here.

1 MR. CHAIRMAN: My question is, I believe that you
2 stated that these are the only four you could get information
3 from and they provided it to you? I'm going to wait until
4 he's finished.

5 MR. KOTSCHEDOFF: I'm sorry, Mr. Bellamy. I thought
6 you were speaking to Mr. Meyer.

7 MR. CHAIRMAN: I was speaking to both of you. My
8 question is, did Westin St. France, Hilton San Francisco,
9 Marriott Moscone and the Loews tell the assessor's office
10 that they wanted this information to be confidential?

11 MR. MEYER: No, I don't know that. I haven't spoken
12 with any of those hotels.

13 MR. CHAIRMAN: Somebody must have.

14 MR. MEYER: I would have to find out. I do believe
15 they asked for confidentiality, but I would have to confirm
16 that with the person who helped me gather the data. There's
17 certain authority under the revenue and taxation code that
18 allows the assessor to collect data. I know when the
19 assessor send out what we call a 401d letter we also
20 reference 451 in that letter that it's held secret.

21 But the authority that the assessor has to collect
22 the data is in revenue and taxation code which also requires
23 the assessor to keep that data confidential. Whether there
24 was a specific discussion between the San Francisco assessor
25 and the individual owners, I can't speak to that. But it

1 would still be held confidential, and I believe it would be
2 held confidential and secret under section 451.

3 MR. KOTSCHEDOFF: Mr. Chairman, I believe
4 Mr. Bodeau has some comments on this. He's an attorney for
5 the applicant.

6 MR. BODEAU: I just want to point out that the
7 assessor is turning the law on its head. Revenue taxation
8 code 408 requires the assessor to maintain the
9 confidentiality of taxpayer documents. This goes for the
10 documents for this property, and for all of the taxpayers,
11 for other taxpayers that give the assessor information.

12 The case of Chanslor-Western Oil, which is what Mr.
13 Meyer quoted from the property tax's law guide, was actually
14 a case where the assessor tried to use confidential
15 information, and the court said the assessor could not do
16 that. The quote from the case from Chanslor-Western says,
17 "We must conclude that the assessor's use of information
18 obtained pursuant to section 441 is limited to either market
19 data or information obtained from the taxpayer seeking the
20 reduction". That's us. Not the four hotels they're taking
21 information from.

22 By the way, if the assessor wants to use that
23 information then the burden is on the assessor to go get the
24 court order or to get the information. It's not our burden
25 to go to court before the assessor presents its case to say,

1 hey, relating to the private affairs of third parties that
2 we're supposed to go get a court order. That's not the way
3 it works. If they want to use it, they've got to submit a
4 basis for admissibility of their own evidence. And they
5 haven't done that. So Chanslor-Western is very clear.

6 And the rest of it goes to the right of
7 cross-examination. The point of allowing an applicant a
8 meaningful right to cross-examine the evidence offered
9 against them requires that the applicant be able to identify
10 the information without guessing. The assessor is offering
11 evidence. The assessor can't hold the information, public
12 information secret. They have to put on the case and show us
13 what we're using, otherwise, we have no meaningful comparison
14 to use as the basis for cross-examination.

15 To say that we're supposed to take a guess, go home
16 try to make figure out, would violate due process because we
17 do have a due process right. And the way they're handling
18 confidential information doesn't give us that right. So I
19 would respectfully submit 408 precludes them from refusing to
20 release the public market data while presenting the
21 confidential third party data. The law is exactly opposite;
22 the law asks them to use market data and stops them from
23 using confidential information. They're trying to twist
24 things around here to get information in here not allowed, to
25 do so without disclosing the basis for their data. That's

1 all I have to say.

2 MR. CHAIRMAN: Thank you. Do you want to go and
3 discuss this? I know what I want to do.

4 MR. MEYER: Go ahead.

5 MR. CHAIRMAN: This is what I want to do. We don't
6 even know if it's confidential. So everything you said was
7 based upon it being confidential. Assessor said they haven't
8 checked to see if it's confidential, so what that means to me
9 is that we're going to end our hearing today and assessor is
10 going to determine whether it's confidential. Wait a minute.

11 And if it's confidential, then we have to, the board
12 is going to have to determine whether we use the excuse of
13 trade secrets for the closed session. We haven't made that
14 decision yet. And that's where we are.

15 I'm not going to sit up here, and I was thinking
16 about that this morning, I'm not going to sit up here and go
17 through objection after objection. I'm not going to do that.
18 You guys, this doesn't even have anything to do with value;
19 this has to do with what you guys presented. They're trying
20 to counteract what you presented. This has absolutely
21 nothing to do with value. So we can take that route, we can
22 end this today, right now, and I don't even know if they can
23 get that information by Thursday, so we might be into next
24 year, so that's your decision.

25 Let's go off the record.

1 THE CLERK: Off the record.

2 (DISCUSSION HELD OFF THE RECORD)

3 THE CLERK: Thank you, Mr. Chairman. We're back on
4 the record and we're still on Track 2.

5 MR. CHAIRMAN: Where are we?

6 MR. MEYER: I think we're ready to take a break.

7 MR. CHAIRMAN: Think so?

8 MR. MEYER: I'll let Mr. Kotschedoff speak.

9 MR. KOTSCHEDOFF: Mr. Chairman, what we were
10 thinking of pursuing, Ms. Soleimani's method of trying, on
11 our own, to try to match the hotel numbers with the hotel
12 names. And we've spoken to our experts, and they think they
13 can probably do it.

14 MR. CHAIRMAN: I'm sure they can.

15 MR. KOTSCHEDOFF: I hope we can. And then our
16 intent is to try it figure it out, obviously late today or
17 first thing tomorrow morning.

18 MR. CHAIRMAN: You mean Thursday morning?

19 MR. KOTSCHEDOFF: No, by tomorrow morning, and then
20 I'll reach out to Mr. Meyer, our plan is to hopefully do it
21 by lunch time tomorrow jut to let him know if we were able to
22 do that. And if we were, we can just continue as with the
23 assessor's presentation.

24 MR. CHAIRMAN: Good. Sounds good to me.

25 MR. MEYER: If that works out, that sounds good to

1 me as well. If he's not able to, if Mr. Kotschedoff is not
2 able to match it up, are you going to continue your
3 objection?

4 MR. KOTSCHEDOFF: I will let you know tomorrow. I
5 do not have an answer for that right now.

6 MR. MEYER: Because depending Mr. Kotschedoff's
7 objection, Mr. Bellamy, I may have some other legal arguments
8 after talking to counsel.

9 MR. CHAIRMAN: Okay.

10 MR. MEYER: You have the entire package. You can
11 actually see the scope of his numbers and what they are
12 trying to use it from.

13 MR. KOTSCHEDOFF: I agree.

14 MR. CHAIRMAN: Okay, gentlemen and lady.

15 MR. MEYER: Mr. Chairman, may I have a motion to
16 continue to October 20th, 2016, board 1 at 8:30 a.m.?

17 MR. CHAIRMAN: So moved.

18 MS. SOLEIMANI: Concur.

19 MS. BARBA: Concur.

20 MR. CHAIRMAN: So ordered.

21 THE CLERK: Thank you, everyone, have a good day.
22 Off the record.

23 (Whereupon, the hearing was concluded
24 at the hour of 2:05 P.M.)
25

**ASSESSMENT APPEALS BOARD
COUNTY OF LOS ANGELES**

In the Matter of the Applications
for Changed Assessment of,

OLYMPIC AND GEORGIA
PARTNERS, LLC,

Applicant.

) Application Nos:

)

) 2008-033611

) 2008-033612

) 2009-023270

) 2010-016556

) 2012-022886

) 2013-001156

) 2013-018614

) 2013-018615

) 2013-018616

) 2013-018617

) 2013-018618

) 2013-018619

)

) APPLICANT'S BRIEF

) REGARDING NON-TAXABLE

) INTANGIBLE ASSETS

) AND RIGHTS

)

**REPORTER'S TRANSCRIPT OF PROCEEDINGS
VOLUME 12**

DATE: October 20, 2016

REPORTER: Willie Anderson

LOCATION: Los Angeles, California



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1 LOS ANGELES, CALIFORNIA

2 THURSDAY, OCTOBER 20, 2016, 9:23 A.M.

3 VOLUME 12

4 * * *

5
6 (Whereupon, the pledge of allegiance
7 was conducted.)

8 THE CLERK: Good morning. Okay, Mr. Chairman.
9 The following Applicant scheduled here today, before
10 Board 1, Thursday, October 20th, 2016, represented by
11 Peter and Amy Kotschedoff, authorized to appear on
12 behalf of Olympic & Georgia Partners.

13 Again, this is a continuance from Tuesday
14 October 18, 2016 as more time was required.

15 We have the following, all under Olympic &
16 Georgia Partners, 2008-033611, 2008-033612, 2009-023270,
17 2010-016556, 2012-022886, 2013-001156, 2013-018614,
18 2013-018615, 2013-018616, 2013-018617, 2013-018618 and
19 2013-018619.

20 Again, this is a continuance from Tuesday
21 October 18, 2016, as more time was required. We have
22 Applicant's Exhibits A through double F as in "Frank,"
23 and Assessor's 1 through 12.

24 Will all parties please state their names for
25 the record.

1 MR. KOTSCHEDOFF: Peter Kotschedoff representing
2 the Applicant.

3 MRS. KOTSCHEDOFF: Amy Kotschedoff representing
4 the Applicant.

5 MR. PHILLIPS: Drew Phillips, appraiser for the
6 Assessor's office.

7 MR. MEYER: Jeff Meyer, Assessor representative.

8 CHAIRMAN BELLAMY: Okay. How did yesterday go?

9 MR. KOTSCHEDOFF: I think we are confident we
10 can match up the four hotels with the numbering system
11 on the Assessor's Exhibit 8, Page 7.

12 CHAIRMAN BELLAMY: Okay.

13 MR. KOTSCHEDOFF: And so, with that, we will
14 withdraw our objection and proceed with the case.

15 CHAIRMAN BELLAMY: Thank you.

16 Mr. Meyer?

17 MR. MEYER: Thank you, Mr. Chairman. I can't
18 say that I'm not a little disappointed. I was looking
19 forward to an argument over what Chanslor-Western Oil
20 actually says, but I guess that's a moot point right
21 now, so I'll turn to Mr. Phillips and ask him to
22 continue with his presentation.

23 CHAIRMAN BELLAMY: He worked on it all day
24 yesterday, huh?

25 MR. MEYER: Yes, sir.