IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

RICK SINGH, AS PROPERTY APPRAISER,

Appellant/Cross-Appellee,

v. Case No. 5D18-2927

WALT DISNEY PARKS AND RESORTS US, INC.,
SCOTT RANDOLPH, AS TAX COLLECTOR,
REEDY CREEK IMPROVEMENT DISTRICT,
A POLITICAL SUBDIVISION OF THE STATE
OF FLORIDA, AND LEON BIEGALSKI, ET AL.,

Appellees/Cross-Appellants.

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Opinion filed August 7, 2020

Appeal from the Circuit Court
for Orange County,
Thomas W. Turner, Judge.

John H. Pelzer, of Greenspoon Marder, LLP, Ft. Lauderdale, for Appellant/Cross-Appellee.

Ashley H. Lukis, of Gray Robinson, P.A., Tallahassee, and Thomas J. Wilkes and Rachael M. Crews, of Gray Robinson, P.A., Orlando, for Amicus Curiae, David Johnson, as Seminole County Property Appraiser.

Raoul G. Cantero and David P. Draigh, of White & Case LLP, Miami, and Robert E.V. Kelley, Jr., and Patrick J. Risch, of Hill, Ward & Henderson, P.A., Tampa, for

Appellee/Cross-Appellant Walt Disney Parks and Resorts U.S., Inc.

Ashley Moody, Attorney General, and Robert P. Elson, Senior Assistant Attorney General, Revenue Litigation Bureau, Office of the Attorney General, Tallahassee, for Appellee, Department of Revenue.

Steven R. Bechtel and James R. Lussier, of Mateer & Harbert, P.A., Orlando, for Appellee, Scott Randolph, as Orange County Tax Collector.

Robert S. Goldman, of Dean, Mead & Dunbar, Tallahassee, for Amicus Curiae, The Florida Restaurant & Lodging Association, Inc.

Jennifer R. Dixon and S. Brendan Lynch, of Lowndes, Drosdick, Doster, Kantor & Reed, P.A., Orlando, for Amicus Curiae, Central Florida Hotel & Lodging Association, Inc.

ON AMENDED MOTION FOR REHEARING

COHEN, J.

We grant Appellant's Amended Motion for Rehearing, withdraw our previous opinion, and substitute this opinion in its place.

Rick Singh, as Property Appraiser of Orange County ("Appraiser") appeals the trial court's final order setting aside Appraiser's 2015 tax assessment of Walt Disney Parks and Resorts US, Inc.'s ("Disney") real property known as the Disney Yacht & Beach Club Resort ("the Property") and substituting a different tax assessment. Disney cross-appeals certain evidentiary rulings.

The dispute in this case began in 2015, when Appraiser's tax assessment of the Property increased by 118% from the previous year's assessment. Disney challenged

that assessment, and the trial court held a non-jury trial. For the reasons discussed herein, we reverse and remand.[1]

The Property was constructed in 1990 on 65 acres of land. It features 1197 guest rooms, a 70,000 square foot conference center, dining outlets, retail stores, a spa, and other recreational amenities. It is located adjacent to Epcot, on a lagoon, near several other hotels.

Appraiser assessed the just value of the Property at $336,922,772 as of January 1, 2015.[2] Disney filed a complaint against Appraiser; Scott Randolph, as tax collector; the Reedy Creek Improvement District, a political subdivision; and Leon Biegalski, as executive director of the Department of Revenue ("DOR").[3] Pursuant to chapter 194 of the Florida Statutes and article V, sections 5 and 20 of the Florida Constitution, Disney argued that Appraiser's assessment did not comply with section 193.011, Florida Statutes (2015), and professionally accepted appraisal practices because it exceeded market value and erroneously included the value of certain intangible property.[4]

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[1] We have considered the brief filed by the Florida Department of Revenue, as well as a number of amicus briefs, which were filed by the Seminole County Property Appraiser, the Central Florida Hotel and Lodging Association, and the Florida Restaurant and Lodging Association.

[2] This resulted in an assessed value of $169,652,408 for ad valorem tax purposes. See § 193.1554(3), Fla. Stat. (2015) (providing that yearly reassessment of non-homestead property may not exceed ten percent of assessed value from previous year).

[3] The trial court granted Reedy Creek Improvement District, Biegalski, and Randolph's motions to be excused from trial.

[4] Prior to trial, the Honorable Kevin Weiss ruled that Appraiser's assessment was entitled to a presumption of correctness.

At trial, the parties agreed that the income approach to value was a professionally accepted appraisal practice and provided the most reliable indicator of value, but they disputed the proper methodology for performing such an assessment.

Disney presented Michael Mard, a business appraiser, who testified that he valued the intangible assets on the Property under a fair market value standard, as if a hypothetical investor was buying the Property. Mard stated that he valued the intangibles consistent with the uniform standards of professional appraisal practice ("USPAP"). Mard described the Property's intangible values as "assets that generate economic benefit that have no physical substances," and specifically identified (1) cash/working capital, (2) favorable operating licenses, (3) assembled workforce, and (4) brand/copyright/goodwill. Using summaries of financial statements, he determined that the business enterprise value of the Property was $341,870,000.

Disney also presented the testimony of Todd Jones, a real estate appraiser, who explained that he used the income capitalization approach to assess the Property. Jones opined that the approach was applicable to any property where space is rented. Jones's appraisal method involved the adoption of hypothetical conditions on the Property; he assumed that the retail and restaurant spaces were leased to third parties. To Jones, this method was the cleanest way of extracting business value from Disney's financial records. Jones explained that no one was actually leasing the businesses on the Property; the spaces were all occupied by Disney.

In conducting his valuation, Jones first determined the average daily rate ("ADR") of the rooms. He started with the actual ADR, then made adjustments to account for non-taxable items that were part of the value of the room. He used the adjusted ADR to

calculate the potential gross income from room rentals, then adjusted that number based on 75% occupancy, the market average, to determine the room revenue. Finally, Jones accounted for a 76.9% expense factor of operating a hotel.

Next, Jones calculated the hypothetical lease income for the Property's restaurants, retail shops, and spa. He testified that he reviewed comparable leases to determine the appropriate rental rates for the spaces. For the upscale restaurant on the Property, he calculated 11,100 square feet multiplied by $60 per square foot, then factored in a 4% vacancy and collection loss. For the retail and spa spaces, he calculated 28,050 square feet multiplied by $41 per square foot and factored in a 4% vacancy and collection loss. This resulted in an appraisal of $1,104,048. He did not apply an expense ratio to those values because the hypothetical leases in his assessment were triple net leases, meaning that the hypothetical tenant is responsible for expenses, such as taxes, insurance, and common area maintenance.

Jones combined the room, restaurant, retail, and spa incomes to determine the total net operating income. He divided the net operating income by a loaded capitalization rate of 9%. Finally, Jones made a $10,140,014 deduction for tangible personal property value and a deduction to account for the lack of laundry facilities on the Property. Ultimately, Jones's assessment of the Property was $180,933,631, which he rounded to $180,900,000.

Appraiser's main witness was Richard Tuck, the senior valuation expert from Appraiser's office, who had performed the initial assessment of the Property.[5] Tuck

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[5] Tuck testified that in 2015, he became responsible for the assessment of the Property.

testified that he used the income approach, also known as the Rushmore method, to assess the Property.

Tuck first determined the ADR, then used that number to determine the gross potential room income. Tuck multiplied the potential room income by a 75% occupancy rate. He then calculated what he called “ancillary income,” which he testified was primarily based on restaurant sales and the convention center contracts. Tuck had explained that in the case of appraising a hotel, the ancillary income was all income that is not from room revenue. He determined that the Property earned $73,727,719 in ancillary income.

Tuck added the effective room income and ancillary income, then deducted an 80% expense factor from that value, consisting of 70% hotel operation expenses, a 4% management fee expense, and 6% for the franchise fee expense. He explained that deducting a management and franchise fee removed the business-related income from the gross ancillary income figure. Tuck did not make adjustments to revenue for any amenities or for the fact that the Property is Disney-branded.

Tuck divided the net operating income by a 9.732 capitalization rate, then made a $15,973,391 reduction for tangible personal property value, as well as reductions for a laundry allocation and a cell tower allocation, resulting in a final assessment of $336,922,772.

In its rebuttal case, Disney presented Dr. Henry Fishkind, an economist with experience in business valuation, who opined that the Rushmore method was inconsistent with economic theory and market behavior and that it underestimated

business value, thereby overestimating the remaining value of the real estate.[6] Dr. Fishkind opined that the Rushmore method ignored certain aspects of the hotel business, such as goodwill,[7] loyal customers, and an assembled workforce. He gave examples of the Disney brand, characters, ability to use the theme parks, character breakfasts, transportation, and high-quality service as some of the values not recognized by the Rushmore method.

Additionally, Dr. Fishkind disagreed with the way the Rushmore method valued furniture, fixtures, and equipment because he believed it only accounted for a return *of* investment, not a return *on* investment. Likewise, he opined that the Rushmore method failed to account for an economic return on investment because no rational economic actor would franchise their business or hire management to earn merely a return of their investment; they would do so to earn a profit on their investment. To Dr. Fishkind, the Rushmore method needed to include a normalized risk adjusted return on those expenses—but even doing so would not account for a business's goodwill, loyal customers, know-how, reputation, and other like things. Overall, he opined that there was no scenario in which simply deducting franchise and management fee expenses would remove all of the intangible values of a business operation from an assessment.

The trial court concluded that the main reason for the increase in the Property's assessment from the previous year was that Appraiser's assessment included

[6] Dr. Fishkind testified that there were no empirical tests which showed that the Rushmore method of identifying and isolating a business value by deducting franchise and management fees is accurate.

[7] Dr. Fishkind explained that goodwill is the excess amount that a hotel buyer will pay above the assets and values, as well as the excess amount a guest will pay to stay at a hotel.

approximately $74,000,000 of ancillary income from the sale of food, beverages, merchandise, and other goods and services on the Property. It noted that the parties agreed that Appraiser considered all eight factors in section 193.011 but relied exclusively on factor 7, the income from the Property, in making its assessment.

The trial court found that Appraiser improperly considered income from the business activities conducted on the Property in establishing the just value of the Property. It also rejected Appraiser's contention that the intangible assets identified by Disney did not qualify as intangible property. It held that Appraiser was "essentially asking this Court to unlawfully expand the statutory definition of 'real property' to include something other than 'land, buildings, fixtures, and other improvements to land,'" as described in section 192.001(12), Florida Statutes (2015). Moreover, it ruled that even if the Rushmore method was a professionally accepted appraisal practice, it could not be used in a manner that violated Florida law. The trial court concluded that by including value attributable to Disney business activities on the Property, Appraiser applied the Rushmore method in a way that violated Florida law.

The trial court found that the testimony demonstrated that the restaurants and retail spaces operated independently from the room rentals. Thus, it adopted Appraiser's effective gross room income but used Disney's figure for the value of the Property based on the restaurant, retail, and spa spaces. Accordingly, the trial court replaced Disney's ancillary income figure—$73,727,719—with Disney's rental income of the restaurants,

retail, and spa—$1,743,408—and reassessed the Property.[8] It concluded that the just value of the Property was $209,156,074.[9]

On appeal, Appraiser argues that the trial court erroneously rejected its use of the Rushmore method for assessing ancillary income and relatedly, its assessment of the ancillary income on the Property. Appraiser also argues that the trial court erroneously assessed the Property because its assessment was not based on a professionally accepted appraisal practice and was not supported by competent substantial evidence. Appraiser argues that instead of performing its own assessment, the trial court should have remanded to it for a reassessment.

Pursuant to article VII, section 4 of the Florida Constitution, "[b]y general law regulations shall be prescribed which shall secure a just valuation of all property for ad valorem taxation[.]" Art. VII, § 4, Fla. Const. "[T]axes can be lawfully levied, assessed, and collected only in the express method pointed out by statute." State ex rel. Seaboard Air Line R. R. v. Gay, 35 So. 2d 403, 409 (Fla. 1948) (citing 51 Am. Jur. Taxation § 651 (1948)). "No assessment shall exceed just value." Art. VII, § 4(d)(2), Fla. Const. "Just valuation has been determined by the Florida Supreme Court to be synonymous with fair

[8] Disney moved to amend the final judgment, pointing out that the trial court made two calculation errors inconsistent with Jones's testimony: (1) the trial court applied Tuck's 80% expense rate against Jones's restaurant, retail, and spa rental income figure, instead of only the room rentals, despite that the hypothetical restaurant, retail, and spa leases were triple net leases; and (2) the trial court subtracted the actual tangible personal property assessment of $15,973,391 instead of the lesser figure adopted by Jones, $10,140,014, which accounted for the fact that some of the retail and restaurant fixtures and equipment would be owned by the tenants. The trial court entered an amended order fixing the calculation errors.

[9] The assessed value for ad valorem tax purposes nevertheless remained at $169,652,408. See § 193.1554(3), Fla. Stat.

market value, to-wit, the amount a purchaser willing but not obliged to buy, would pay a seller who is willing but not obliged to sell." Holly Ridge Ltd. P'ship v. Pritchett, 936 So. 2d 694, 696 (Fla. 5th DCA 2006) (citations omitted).

The Florida Constitution specifically prohibits counties from levying ad valorem taxes on intangible personal property. Art. VII, § 9, Fla. Const.; Pritchett, 936 So. 2d at 699 ("The power to tax intangible personal property is available only to the state." (citations omitted)). "Intangible personal property" is "money, all evidences of debt owed to the taxpayer, all evidences of ownership in a corporation or other business organization having multiple owners, and all other forms of property where value is based upon that which the property represents rather than its own intrinsic value." § 192.001(11)(b), Fla. Stat. In contrast, "real property" is "land, buildings, fixtures, and all other improvements to land." § 192.001(12), Fla. Stat.

We agree with the trial court that Appraiser, in the manner in which he applied the Rushmore method, impermissibly included the value of Disney's intangible business assets in its assessment. That application requires franchise and management fee expenses to be deducted from the total property income, which purportedly removes the business value from the assessment. However, it does not provide for adjustments to the gross business income for intangible business value prior to making those expense deductions. Jones testified that the deductions for franchise and management fee expenses removed all intangible business value, such as cash/working capital, favorable operating licenses, assembled workforce, brand, copyright, and goodwill. By taking a percentage out of a business's net income for management and franchise fee expenses, without first removing intangible business value from that gross income stream, the

Rushmore method does not remove all business value from an assessment. We find, on this record, that the Appraiser did not establish that the trial court erred in its determination that the Rushmore method ignores the fact that an intangible business value may be directly benefiting a business's income stream.

We find SHC Half Moon Bay v. County of San Mateo, 171 Cal. Rptr. 3d 893, 911 (Ct. App. 2014), to be instructive. Like Florida, California prohibits appraisers from assessing the value of intangible business assets in a property assessment. Cal. Rev. & Tax. Code § 110(d)(1); SHC, 171 Cal. Rptr. 3d at 903 ("Put another way, '[s]ection 110(d)(1) prevents *the value* of intangible assets from enhancing or being reflected in the valuation of taxable property.'" (quoting Elk Hills Power, LLC v. Bd. of Equalization, 304 P.3d 1052 (Cal. 2013))). In SHC, the assessor used the Rushmore method to assess a hotel and admitted that it did not attempt to identify or make reductions for intangible business value prior to conducting its assessment. 171 Cal. Rptr. 3d at 910. The assessor's expert conceded that deducting management and franchise fee expenses did not account for the intangible value of the property. Id. at 911. The court concluded that the assessor ignored the hotel's credible evidence and testimony that certain intangible assets were necessary to the beneficial and productive use of the property and were subsumed in the valuation. Id. at 910. Additionally, the court found that the assessor had failed to explain how the deduction of management and franchise fees removed the value of the majority of the intangible property from the assessment. Id. In all, it concluded that the assessment, conducted using the Rushmore method, failed to exclude certain intangible assets, which violated California law. Id. at 911.

Here, although Tuck did not admit that his assessment included the value of intangible assets, he, like the assessor in SHC, admittedly did not make any deductions to Disney's income stream to account for the intangible business value that contributed to that income. Tuck's explanation of how the deductions for franchise and management fee expenses removed the entire intangible business value from Disney's income stream is unconvincing. SHC, 171 Cal. Rptr. 3d at 903; see Havill v. Scripps Howard Cable Co., 742 So. 2d 210, 213–14 (Fla. 1998) (discussing assessment of tangible personal property of cable companies and explaining near-impossibility of removing value of intangible assets when using income approach to valuation; "[T]he valuation of a cable television company's tangible personal property by the income approach is constitutionally infirm. From the single value arrived at by the income approach, it is virtually impossible to segregate specific items and identify their values. Thus, it is unlikely that the value of intangible assets and other nontaxable items can be subtracted in a nonarbitrary fashion to reveal the just valuation of the tangible personal property."). Thus, the trial court did not err in rejecting Appraiser's ancillary income figure, derived using the Rushmore method.

Appraiser suggests that the trial court erred in conducting its own assessment based on the evidence presented during the trial. However, section 194.301(2)(b), Florida Statutes, provides that if a taxpayer successfully challenges an ad valorem tax assessment:

> [T]he value adjustment board *or the court* shall establish the assessment if there is competent, substantial evidence of value in the record which cumulatively meets the criteria of s. 193.011 and professionally accepted appraisal practices. If the record lacks such evidence, the matter must be remanded to the property appraiser with appropriate directions from the value adjustment board or the court, and the property appraiser must comply with those directions.

(emphasis added). Accordingly, because Disney successfully challenged Appraiser's assessment, the trial court was required, if it could, to establish an assessment pursuant to a professionally accepted appraisal practice, based on competent substantial evidence. Otherwise, the trial court should have required the Appraiser to reassess the Property.

This Court reviews a trial court's assessment for competent substantial evidence. Jones v. Portofino Tower One Homeowners Ass'n, 77 So. 3d 242, 244 (Fla. 1st DCA 2012). "Competent substantial evidence" is evidence that is sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached. De Groot v. Sheffield, 95 So. 2d 912, 916 (Fla. 1957). We find that although the trial court used the testimony and evidence presented to reassess the Property pursuant to the income capitalization approach utilized by Jones, the trial court's assessment was nevertheless invalid; Jones's assessment of the rental value of the restaurant, retail, and spa spaces was not supported by competent substantial evidence.

First, related to the Property's upscale dining restaurant, Jones testified that he determined the market rate for the leased spaces by considering comparable leases. However, he did not consider the market rental rates of any upscale restaurants in hotels; instead, he considered two freestanding Capital Grille restaurants in the Orlando tourist corridor. For evidence to be "substantial," evidence must be real, material, pertinent, and relevant evidence, as opposed to ethereal, metaphysical, speculative, theoretical, or hypothetical, and it must have definite probative value. Dunn v. State, 454 So. 2d 641, 649 n.11 (Fla. 5th DCA 1984) (Cowart, J., concurring). We do not believe Jones's evidence of the rental rates of two freestanding restaurants constituted substantial

evidence of the rental rate of a restaurant in a hotel. Although we recognize that the Capital Grille offers an upscale dining experience similar to the restaurant on the Property, Jones offered no evidence that freestanding restaurants have similar rental rates to hotel restaurants. Notably, hotels have captive audiences and are able to capitalize on that by up-charging guests for aspects of their vacation experience, including dining. It would follow that the rental rate for a hotel restaurant space would be greater than that of a freestanding restaurant.

Additionally, Jones testified that although the restaurant on the Property was 22,650 square feet, he calculated the rental rate using the square footage of the dining area only—11,100 square feet. Jones stated that he did this because he believed the Capital Grille also only valued its dining area in determining its rental rate. However, Jones acknowledged that the data he used from one of the Capital Grille restaurants reflected that the restaurant dining area was 8700 square feet but that the kitchen was only 300 square feet. He explained that at that Capital Grille restaurant, the kitchen is open to the dining area, and he admitted that he was unsure what part of the restaurant was demarcated as a kitchen area versus a service area.[10] We find this comparison unpersuasive and inadequate to support Jones's restaurant rental value. De Groot, 95 So. 2d at 916.

We also find that Disney's assessment failed to account for the 10,000 square foot conference center on the Property. Jones attributed no rental value to the space because a Disney employee testified that a group using the conference center is not charged for

[10] Additionally, we note that there was evidence that the Property had multiple dining facilities, yet Jones's calculation valued only the large, upscale restaurant on the Property.

use of the space; rather, the group is contracted to fill a certain number of rooms on the Property and spend a certain amount of money on food and beverage, either at the Property or at meeting spaces within the theme parks. We find that by merely attributing a rental value to restaurants, Disney failed to account for the value of the conference center space. Certainly, if Disney did hypothetically lease the restaurants on the Property, it would also lease the conference center or would account for the lost value of the conference center in determining its restaurant lease prices.

Finally, Jones testified that in making a deduction for tangible personal property, he attributed approximately 1/3 of the Property's tangible personal property to the hypothetical lessees. Jones provided no basis whatsoever for how he determined that 1/3 of the tangible personal property value would be owned by the lessees.

For these reasons, we find that the record did not contain competent substantial evidence to support Disney's assessment of the value of the restaurant, retail, and spa spaces, which the trial court adopted. Accordingly, because the record did not contain competent substantial evidence from which the trial court could make an assessment, the trial court should have remanded to Appraiser for a reassessment.

In its cross-appeal, Disney argues that the trial court abused its discretion by refusing to consider Jones's testimony regarding the adjustments he made to the ADR to account for intangible assets that added value to the rooms. "A trial court has wide discretion in determining the admissibility of evidence, and, absent an abuse of discretion, the trial court's ruling on evidentiary matters will not be overturned." Hidden Ridge Condo. Homeowners Ass'n v. Onewest Bank, N.A., 183 So. 3d 1266, 1268–69 (Fla. 5th DCA 2016) (citing LaMarr v. Lang, 796 So. 2d 1208, 1209 (Fla. 5th DCA 2001)).

Prior to trial, Appraiser sought to exclude all evidence of Disney's actual income and expenses on the basis that it sent Disney an income and expense survey ("Survey") prior to making its assessment, but Disney failed to respond. It relied on Higgs v. Good, 813 So. 2d 178 (Fla. 3d DCA 2002) (holding that taxpayer may not withhold requested income information from appraiser, then subsequently challenge appraiser's assessment and use requested information to support its challenge). The trial court reserved ruling on the matter.

At trial, Disney presented Joy Garas, one of its property tax managers. Garas admitted that in 2014, Disney received the Survey from Appraiser, but explained that it did not respond to the Survey because it had not done so in at least 28 years and that Appraiser had access to the information it requested based on an information sharing agreement that Appraiser had with the DOR. Specifically, Garas testified that Appraiser had access to Disney's sales tax returns submitted to the DOR each month, which included the sale of everything subject to sales tax—rooms, food and beverage, and merchandise. However, Garas admitted that Disney's monthly submissions to the DOR contained information for all of Disney's hotels combined, not information specific to the Property.

Disney also presented the manager of room operations on the Property, who testified that the hotel room amenities included: early access to dining reservations at Disney restaurants, transportation from the airport on the Magical Express, complimentary luggage service, complimentary transportation to the theme parks by bus

or boat, special Disney cartoons in each room, Magic Bands,[11] and access to "Extra Magic Hours."[12]

Jones testified that he considered the Magical Express, Magical Bands, Extra Magic Hours, free parking, and transportation to be part of the intangible value of the room. Thus, he made deductions to the ADR for those items, reasoning that they were part of the value of the room but did not constitute taxable real property pursuant to section 192.001(12). In contrast, Tuck was of the view that those items were not intangible aspects of the value of the rooms, but rather, tangible property and part of the regular operation costs of a hotel.

In its final judgment, relying on Higgs, 813 So. 2d at 178, the trial court concluded that Disney was barred from asserting that certain items should have been considered as intangible values included in the ADR because Disney failed to respond to Appraiser's Survey requesting information "to be used in calculating the assessment of the subject property under the income approach method." See also Palm Corp. v. Homer, 261 So. 2d 822 (Fla. 1972). As explained, Disney did not deny that it failed to respond to Appraiser's Survey and does not complain of the ADR that Appraiser calculated; its only complaint is that the trial court should not have ignored Jones's testimony regarding the deductions that he made from the ADR.

Our review of the Survey reveals that Appraiser never requested information about Disney's non-taxable, intangible amenities that contribute to the value of the rooms.

[11] Magic Bands are bracelets that are mailed to guests prior to their arrival at the Property. The Magic Bands function as a room key, charge card, and security gate key.

[12] Extra Magic Hours are designated times, in addition to normal operating hours, when a Disney theme park is open only to Disney resort guests.

Appraiser requested the Property's income from its: rooms, food and beverage, banquet and convention, telephone, and other. It also requested the "costs of goods sold" for those same categories. Finally, Appraiser asked for the Property's operating expenses for: utilities, maintenance, administration, management, services, property insurance, and franchise fees. Therefore, under Jones's view, the items he made deductions for were neither "costs of goods sold" nor "operating expenses," and thus, were not part of the numbers Appraiser requested in its Survey. In contrast, in Tuck's opinion, those values were part of the general expenses of the Property and thus, subject to disclosure on the Survey.

The trial court recognized that Jones claimed that the value of certain items should have been deducted from the ADR because he considered them to be intangible assets. However, rather than adjudicating whether the items were indeed intangible assets contributing to the value of the room—which were not included as part of the request on the Survey—or whether they were mere operation expenses, the trial court simply ruled that it would not consider Jones's testimony. Accordingly, we find that the trial court abused its discretion by rejecting Jones's testimony without considering whether the items Jones testified about were actually subject to the Survey.[13]

Additionally, Appraiser had not complained of Disney's failure to respond to the Survey for nearly three decades. Apparently, Appraiser's policy regarding the Survey changed after Tuck became responsible for assessing the Property. Appraiser had every

[13] We find no merit to Disney's argument that legislative changes that permit a tax appraiser to access DOR information and subpoena tax information from taxpayers have rendered it unnecessary to preclude a taxpayer from relying on information that a tax appraiser required and that the taxpayer did not provide.

right to require information specific to the Property rather than relying on the DOR data, which consisted only of combined information on all of Disney's hotels. However, as a matter of fundamental fairness, Appraiser should have put Disney on notice of this change in policy.

While we would have preferred drafting an opinion that would resolve the parties' dispute, we find the record evidence is insufficient for us to do so. Accordingly, we reverse and remand to the trial court, with instructions that it remand to Appraiser for a reassessment of the Property consistent with this opinion.

MOTION GRANTED; REVERSED and REMANDED with instructions.

LAMBERT and EDWARDS, JJ., concur.