<table>
<tr><td>BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO
1313 Sherman Street, Room 315
Denver, Colorado 80203

Petitioner:

KENSINGTON LAND INVESTMENT PARTNERS, D.B.A. CORDILLERA SPA & LODGE,

v.

Respondent:

EAGLE COUNTY BOARD OF COMMISSIONERS.</td><td></td></tr>
<tr><td>Attorney or Party Without Attorney for the Petitioner:

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Attorney Reg. No.: 6941</td><td>Docket Numbers: 37982 and 37983</td></tr>
<tr><td colspan="2" align="center">ORDER</td></tr>
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THIS MATTER was heard by the Board of Assessment Appeals on April 26, 2001, Debra A. Baumbach, J. Russell Shaw, and Karen E. Hart presiding. Petitioner was represented by William A. McLain, Esq. Respondent was represented by Reneé Allee Black, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

LOT 1 CORDILLERA SUB FIL 1 & 2
(Eagle County Schedule No. R031529)

Petitioner is requesting an abatement/refund of taxes on the subject property for tax years 1998 (Docket No. 37982) and 1999 (Docket No. 37983). The subject property consists of a 56-room mountain resort lodge and spa, consisting of 3 buildings built between 1988 and 1998, located on 9.116 acres near Edwards, Colorado.

ISSUES:

Petitioner:

Petitioner contends that the subject property has been overvalued due to the use of an incorrect capitalization rate via the income approach. The best method for developing a cap rate for the subject property is via the band-of-investment method.

Respondent:

Respondent contends that the subject property was correctly valued using all three approaches to value. The Vail Valley is a low-risk area for hotels, which is reflected in lower cap rates via the market comparison method.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Richard D. Williams of W&R Hospitality Services Inc., a Certified General Appraiser, presented the following indicators of value for tax year 1998:

Market:	$4,040,000.00 to $8,730,000.00
Cost:	$8,120,000.00
Income:	$5,140,000.00

2. Mr. Williams presented the following indicators of value for tax year 1999:

Market:	$4,040,000.00 to $8,730,000.00
Cost:	$7,840,000.00
Income:	$6,210,000.00

3. Mr. Williams testified that he has previously valued several hotels in the Vail Valley. Exhibit B is an appraisal report he prepared for the subject property value as of January 1, 1998 and January 1, 1999. His compensation is by fee.

4. Mr. Williams described the property and the dates that he inspected it. The property was originally opened in 1988; the carriage house opened in 1989; and the new wing was opened in late 1997. It is a mountain resort. There are 56 guest rooms.

5. Mr. Williams testified that his assignment was to determine a market value in fee simple interest for the land and improvements for property tax purposes. He removed the personal property and business value. The subject property is not a franchise, which is important to the amount of business draw that occurs. The subject property is a member of the Small Luxury Hotels of the World.

6. Mr. Williams testified that the subject property is located west of the town of Edwards, on a hilltop surrounded by residential properties. It is several miles from the town center of Edwards, Beaver Creek ski area, and the town of Vail. There are excellent views from the hotel. It is not a ski-in/ski-out hotel. It does not have easy access. The patrons of the subject property are more likely non-skiers. The subject does better in the summer when golfing becomes available. The highest rental rates are only achievable in the winter. The subject property is more a summer resort.

7. Mr. Williams testified that although the subject property is a high-quality hotel, there were signs of some deferred maintenance at the time of his inspection, which was admittedly after the assessment dates. Generally, the property is in good condition.

8. The witness clarified that the value being appealed is only the hotel, the carriage house and the new addition to the hotel, not the golf course. Most of the lots in the Cordillera subdivision have been sold. There is no retail property in close proximity to the hotel. Patrons go to the Cordillera for the spa and golfing.

9. The witness testified that the hotel has never shown a profit. It is a marketing tool used by Kensington to sell lots. It is a 5-star hotel, which means it has higher expenses in order to maintain this rating. He does not believe it would normally be feasible to have the property developed as a hotel. The highest and best use if vacant would be for a residential use. The hotel does add value to the land, and the highest and best use as improved is as a hotel.

10. Mr. Williams testified that the most valid valuation approach for hotels is the income approach. Hotels are management intensive. He places the most emphasis on this approach. The cost approach is used as a value test for new buildings or special-use properties; it is not appropriate for a hotel. The sales comparison approach is difficult to use, as every hotel is unique. The subject property is unique, which makes it difficult to compare with other lodges.

11. Mr. Williams testified that information from Smith Travel Research (STR) was used to value the subject property. Five hotels in the Vail area report to this service. Page 9-2 of Exhibit B has a chart showing reported average daily rates and occupancy. The STR data does not include the subject property. It is difficult to achieve more than a 65% occupancy rate year round. Only meeting spaces can help increase summer occupancy. The subject has only a small meeting space available. Mr. Williams testified that previous management expanded the hotel by 28 rooms in hopes of attracting more conference business.

12. Mr. Williams testified that the subject property has less free independent traveler (FIT) business in the winter than competing hotels, but has more FIT business in the summer due to the golf course. The primary competitors with the subject property are luxury hotels in Vail and Beaver Creek. The Hyatt, Marriott, and Vail Cascade are much larger than the subject. The Lodge at Vail is more similar in size to the subject. Mr. Williams calculated a yield penetration by dividing the revenue per available room (RevPAR) by the average RevPAR of all the competitors in the set. The difference between the subject property and the competitive set is evidence that the subject's distance from the ski slopes is perceived to be a negative attribute of the subject's location.

13. Petitioner's witness presented an income approach to derive a 1998 value of $5,140,000.00, and a 1999 value of $6,210,000.00 for the subject property.

14. Mr. Williams testified that he considered the subject property's operating history from January 1, 1995 through June 30, 1996 for tax year 1998, and January 1, 1997 through June 30, 1998 for tax year 1999. The hotel had 28 rooms prior to 1997. It had 56 rooms as of 1997. He used a stabilized occupancy rate of 57% for tax years 1998 and 1999. The average daily rate was $243.00 for tax year 1998 and $258.00 for tax year 1999.

15. Mr. Williams testified regarding the subject property operating performance for 1997 and 1998. Page 9-20 of Exhibit B shows figures from the actual profit and loss statement. However, he had to use stabilized rates since the hotel actually lost money. Pages 9-24 and 9-25 contain data obtained from the STR Host report for comparison of the subject property data to the average hotel in its class and range.

16. Mr. Williams testified that he used a fixed and variable component model to analyze revenue and expense levels. He assumed the subject would make money on telephone revenue; even though the subject lost money, most hotels make money. He looked at each revenue stream and determined a maximized amount. He did the same with expenses. From a potential new owner outlook, the expenses were high. The spa expense ratio was 95% compared to 15% to 25% typical ratios. The maintenance and energy expenses are high due to the winter weather. Mountain hotels cannot generate enough revenue for marketing expenses; they advertise in spurts.

17. Mr. Williams testified that Page 9-38 of Exhibit B is stabilized income for the subject property, based on the base year periods. The actual expenses were extremely high, so he used typical industry expenses. This is why it shows a net income versus the actual losses. A typical investor would consider typical expenses and would lower the actual costs. He dealt with property taxes by loading them into the cap rate. He also subtracted a return on personal property, using an 11% cap rate.

18. Mr. Williams testified that he determined his cap rate using the band-of-investment method. It is difficult to determine an expected rate of return, but they were able to calculate the cap rates due to the large amount of data they collected from their in-house appraisal data. Most hotels have mortgage financing of 65% to 75%. The interest rates ranged from 9% to 11%. He estimated an interest rate of 8.5% for 1997 and 8% for 1998. He established an equity yield rate based on his company's past appraisal data and investor interviews. The overall cap rates ranged from 8% to 14%. He used a base cap rate of 11% then added the actual tax rates. His tax-loaded cap rate for 1998 was 13.3912% and the tax-loaded cap rate for 1999 was 13.164%.

19. Petitioner's witness presented a cost approach to derive a market-adjusted cost value for the subject property of $8,120,000.00 for tax year 1998, and $7,840,000.00 for tax year 1999.

20. Mr. Williams testified that he considered the cost approach but did not rely upon it. Investors only look at the cost approach if a property is new or for proposed developments. He believes it has no relevance to the subject property.

21. Based on the market approach, Petitioner's witness presented an indicated value range of $4,040,000.00 to $8,730,000.00.00 for the subject property.

22. Petitioner's witness presented 4 comparable sales ranging in sales price from $72,135.00 to $155,932.00 per room and in size from 61 to 349 rooms. There were no adjustments made to the sales.

23. Mr. Williams testified that the market approach is not appropriate for hotels; appraisers use a value range, as adjustments are all subjective. His income value estimate falls within the comparable sales value range. He pointed out that the sales value range included personal property and business value.

24. Mr. Williams estimated the subject property value to be $5,140,000.00 for tax year 1998, and $6,210,000.00 for tax year 1999 based on the income approach.

25. Under cross-examination, Mr. Williams testified that skier visit rates have been deteriorating over a number of years. The County Board of Commissioners (BOCC) reduced the assessor's original assigned values. The subject property income used in his report is similar to Respondent's. The cap rate is what is at issue. His cap rate was based on typical investor information nationwide as well as sold properties located in Vail.

26. Upon questioning from the Board, Mr. Williams testified that the subject property phone expenses are high either because the subject does not charge enough or they are not automated. The spa is used as an amenity to sell the real estate. The Cordillera residents may use the subject property at a fee, which is included in the subject property income calculation. His cap rate is higher than the Hyatt at Beaver Creek sale, as he considered other information as well. The subject property owners may have thought they would draw skiers, but golfing became the bigger draw. The spa was needed to try to attract people to the hotel in the off-season. It also created an image for Cordillera. It was subsidized in operation by the sale of real estate. Being a member of Small Luxury Hotels gives an image of luxury for a lesser marketing expense. They have always intended for the hotel to make a profit. The lodge and spa set the tone for the entire real estate development.

27. Petitioner is requesting an actual value of $5,140,000.00 for tax year 1998, and $6,210,000.00 for tax year 1999 for the subject property.

28. Respondent's witness, Mr. Max Schlafley, Appraisal Coordinator for the Eagle County Assessor's Office, a Certified Residential Appraiser, presented the following indicators of value for tax year 1998:

Market:	$7,800,000.00
Cost:	$9,276,069.00
Income:	$7,500,000.00

29. Mr. Schlafley presented the following indicators of value for tax year 1999:

Market:	$7,800,000.00
Cost:	$9,276,069.00
Income:	$8,400,000.00

30. Mr. Schlafley testified that during the appropriate time frames, Eagle County had seen a dwindling number of skiers and the area was moving toward four-season resorts, using golf courses to attract spring, summer, and fall business.

31. The subject property is the premier lodge in Colorado. It is modeled after a European spa hotel. It is advertised as having an award winning design and is attracting worldwide visitors. The lodge can be seen from Edwards, Colorado; it overlooks the valley.

32. Mr. Schlafley testified that he prepared an appraisal of the subject property using all three approaches to value. His report shows the wrong assigned value. The BOCC lowered the assessor's value, which is the valuation that is noted in his report.

33. Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of $9,276,069.00 for both tax years 1998 and 1999.

34. Mr. Schlafley testified that for his cost approach he tried to select land sales of similar-use properties. He adjusted the sales for location and size. He took the effective building area and used $8.00 per square foot for the land value, which translates to a total unit land value of $2.52 per square foot. He arrived at a total land value of $1 million. He used the Marshall & Swift Cost Valuation Service to arrive at a total improvement value after depreciation of $8,276,069.00.

35. Based on the market approach, Respondent's witness presented an indicated value of $7,800,000.00 for the subject property for both tax years 1998 and 1999.

36. Respondent's witness presented 5 comparable sales ranging in sales price from $77,921.00 to $389,830.00 per room and in size from 39 to 323 rooms. After adjustments were made, the sales ranged from $92,000.00 to $308,000.00 per room.

37. Mr. Schlafley testified that he adjusted the comparable sales for size, location, and condition. He also presented an overall capitalization rate. The indicated value was $140,000.00 per room. He did not rely upon the market approach, but used it to bracket the value by the income approach. He concurred with Petitioner's appraiser that the market approach was not a good approach in determining the subject property value.

38. Respondent's witness used the income approach to derive a value of $7,500,000.00 for the subject property for tax year 1998, and a value of $8,400,000.00 for tax year 1999.

39. Mr. Schlafley testified that he arrived at a room income expense rate of 70% and a "other income" expense rate of 85%; he arrived at these figures from using various sales, and also verified the Vail Marriott information. He used a weighted expense rate of 78%. The income approach value was based on market income, rent rates, and expenses. He considered the management rates of other hotels and arrived at a management expense rate of 2% for the subject property. He also used a 2% expense rate for the subject property not being a franchise hotel. He used 3% for a return of personal property and also made a deduction for a return on personal property. His stabilized income is very similar to the calculation of Petitioner's expert witness.

40. Mr. Schlafley testified that the real difference between his income approach and Petitioner's is the capitalization rate. He has not seen any cap rate over 10% in the Vail valley that included the tax load. Vail is a trophy property area and is not comparable to the metro area. Property sales in the mountain areas have sold with cap rates as low as 3%. His cap rate was developed from local information, not published sources. There is a strong market in Eagle County.

41. Mr. Schlafley testified that you should not use the band-of-investment method to determine the cap rate. To calculate the cap rate, you must remove the property tax expense. Those sale properties that have higher cap rates needed remodeling work or were in poor condition at the time of sale. He used a 7% cap rate based on data from all the sales. The subject property is only 5-6 years old.

42. Mr. Schlafley testified that his final estimate of value was $7,900,000.00 for tax year 1998, and $8,400,000.00 for tax year 1999.

43. Mr. Schlafley testified that his final estimate of value included more than just the spa and restaurant incomes, as there are other services available. The 1998 final value was higher than the market and income approach, but lower than cost the approach. The 1999 value was bracketed by the cost and market approaches.

44. Under cross-examination, Mr. Schlafley admitted that the award-winning design he referred to earlier applied to the golf course. He clarified that 28 rooms in the subject property were permitted in 1996 and 1997; 56 rooms were available in 1998.

45. Regarding the market approach, Mr. Schlafley testified that Sale 1 is located near a gondola, but it is not a ski-in/ski-out hotel. He admitted that Sale 2 occurred outside the time frame for the 1998 appeal. Sale 3 is not a ski-in/ski-out hotel. Sales 4 and 5 are true ski-in/ski-out hotels. Sale 1 had 323 rooms; the Lodge at Vail had 59 rooms; the Hyatt had 302 rooms. He used $240.00 for an ADR with a 60% occupancy rate. He used industry standards and based his data on the market, not speculation. He used the direct sales comparison method to calculate the overall rates; he divided the net income by the sales price. He also calculated a band-of-investment cap rate.

46. Mr. Schlafley testified that he is familiar with the Property Tax Administrator's (PTA) Hotel/Motel Valuation Workshop. He would characterize the subject property as a combination resort hotel/spa. He believes that the cost approach may apply to the subject property, as it is somewhat new. He does not agree that the Property Tax Administrator favors the income approach in valuing hotels.

47. Under redirect testimony, Mr. Schlafley testified that by ski-in/ski-out he means a hotel that is located at the base of a lift where you can ski up or to the lift. His cap rate information came from other appeal cases and from other appraisers' information given in other hearings. The use of the band-of-investment method for calculating a cap rate is only appropriate if there is no other information; the preferred method is the direct sales method. In the band-of-investment method, risk is measured according to the buyer; a stronger buyer will get a lower rate; the method is too subjective.

48. Upon questioning from the Board, Mr. Schlafley testified that he did not use the cap rate from the sale at the Lodge at Vail, as there were many considerations in the sale. Mr. Schlafley testified that you must look at the condition of the property at the time of sale; those in good condition at the time of sale were Sales 3, 4, and 5, with cap rates of 3.1%, 6.7%, and 8.7%. Regarding the sales approach, he relied most on Sale 3; the $140,000.00 per room cost came close to the median by coincidence. He believes that the room counts on page 17 are the most accurate in his Exhibits 1 and 4. The corrected valuation numbers are from the BOCC. There was no stipulation.

49. According to verbal testimony, the Respondent assigned an actual value of $7,643,931.00 to the subject property for tax year 1998, and $7,877,620.00 for tax year 1999.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the tax years 1998 and 1999 valuations of the subject property were incorrect. Petitioner's witness, Mr. Williams, presented a well-organized and well-supported appraisal report.

2. Both Mr. Williams and Mr. Schlafley testified that the cost approach was the least reliable valuation approach for the subject property and the Board agrees. The cost approach was given the least amount of weight by the Board.

3. Regarding the market approach, the Board noted that Respondent's value via the market approach fell within the market value range offered by the Petitioner. Petitioner used the same sales as Respondent (except for Respondent's additional Sale 4). Both parties testified as to the difficulties in using the market approach and the evidence supports this testimony: for each identical sale, each party had at least one variation in room count or sales price, resulting in differing sales prices per room. As a result, the Board considered but gave lesser weight to the market approach.

4. The Board gave the most weight to the income approach. After careful examination of all the evidence and testimony, the Board concurs with both parties that the major difference between both income approach calculations is the capitalization rate.

5. The Board examined Respondent's overall cap rates calculated via the direct sales method. We found this method less convincing based on the evidence and testimony presented in this case.

6. The Board examined the Property Tax Administrator's Hotel Motel Valuation Workshop materials submitted as Petitioner's Exhibit A. The material states on page 44 that "Market derived capitalization rates for hotels are susceptible to the same shortcomings inherent in the sales comparison approach." Pages 24 through 26 discuss the many shortcomings in the use of the sales comparison approach, including … "The reliability of the sales comparison approach depends on three factors:…3. Degree of comparability, i.e. the extent of adjustment needed to account for the differences between the subject and the comparable property."

7. Mr. Schlafley's testimony was that some of the sales were under renovation or needed repair. Some of the sales comparables had an excess of 300 rooms as compared to the subject property's 56 rooms. Some of the sales were ski-in/ski-out hotels, some were limited service hotels; all were more winter ski-oriented hotels in contrast to the subject property summer golf-oriented lodge. There was no convincing evidence that adjustments were made for all these factors before calculating the overall cap rates. Some of the calculated cap rates appeared to be unreasonably low. The Board also noted that both parties agreed that the sales comparison approach to value was not a good method to value the subject property, due to the many variables involved in the sale properties. The Board finds this also holds true in the derivation of an overall cap rate via the same method using the same set of sales.

8. The Board was persuaded that Petitioner's base cap rate of 11% was appropriate. It was supported by Respondent's documentation in Exhibit 3. An 11% base cap rate falls within Mr. Schlafley's calculated range of rates via the summation method of 7.5% to 12.6%. Mr. Schlafley also calculated an 11% cap rate using the band-of-investment method, the same method used by Mr. Williams. The Board wishes to note that for a final cap rate calculation via the band-of-investment method, both a tax rate and a recapture rate should be added to the base rate; neither party included a recapture rate in their calculations. However, this inclusion would result in a lesser value than that requested by Petitioner. After considering all the information presented by both parties, the Board affirms Petitioner's requested non-tax loaded cap rate of 11%.

9. The Board concluded that the 1998 actual value of the subject property should be reduced to $5,140,000.00, with $364,640.00 allocated to land and $4,775,360.00 allocated to improvements.

10. The Board concluded that the 1999 actual value of the subject property should be reduced to $6,210,000.00, with $364,640.00 allocated to land and $5,845,360.00 allocated to improvements.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner based on a 1998 actual value for the subject property of $ 5,140,000.00.

Respondent is ordered to cause an abatement/refund to Petitioner based on a 1999 actual value for the subject property of $ 6,210,000.00.

The Eagle County Assessor is directed to change her records accordingly.

APPEAL:

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If the Board recommends that this decision is a matter of statewide concern, or if it results in a significant decrease in the total valuation of the county, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If the Board does not make the aforementioned recommendation or result of Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

DATED and MAILED this 31st day of May, 2001.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach

J. Russell Shaw

Karen E. Hart

This decision was put on the record

MAY 31 2001.

I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.

Diane Von Dollen

STATE OF COLORADO SEAL BOARD OF ASSESSMENT APPEALS

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