

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>WHALE ROCK COUNTRY CLUB dba RED ROCKS COUNTRY CLUB,</p> <p>v.</p> <p>Respondent:</p> <p>JEFFERSON COUNTY BOARD OF COMMISSIONERS.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Richard G. Olona, Esq. Attorney at Law</p> <p>Address: 2525 16th Street, Suite 225 Denver, Colorado 80211- 3958</p> <p>Phone Number: (303) 433-1699</p> <p>Attorney Reg. No.: 17940</p>	<p>Docket Number: 40110</p>
<p style="text-align: center;">ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on May 21,2003, Judge Nuechter and Debra A. Baumbach presiding. Petitioner was represented by Mr. Richard G. Olona, Esq. Respondent was represented by Martin E. McKinney, Esq.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**Whale Rock Golf Course
(Jefferson County Schedule No. 128334)**

**18000 W. Belleview Ave., Morrison, CO 80465
(Jefferson County Schedule Nos. 128338, 201474, 201593,432066)**

**16350 W. Belleview Ave., Morrison, CO 80465
(Jefferson County Schedule No. 193929)**

**16235 W. Belleview Ave., Morrison, CO 80465
(Jefferson County Schedule No. 198298)**

**Vacant Land, Morrison, CO 80465
(Jefferson County Schedule Nos. 425895, 425901, 425907, 425909, 425918,
425920, 430508, 432068)**

Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2001. The subject is comprised of an 18-hole golf course, two-story clubhouse, outdoor swimming pool and two tennis courts. There are also two maintenance buildings and several smaller support buildings.

ISSUES:

Petitioner:

Petitioner contends that the subject has been overvalued. The land sales used by the Respondent are considered to be inappropriate and overstate the value of the land. None of the sales were adjusted and they were not considered to be arms-length transactions.

Respondent:

Respondent contends that the subject has been correctly valued, using the cost and market approach. The appraisal presented supports the assigned value and any adverse factors affecting the overall value.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Jeff Monroe, Licensed Appraiser with Tax Profile Services, presented the following indicators of value:

Market:	\$3,450,000.00
Cost:	\$3,422,660.00
Income:	\$3,425,000.00

2. Based on the market approach, Petitioner's witness presented an indicated value of \$3,450,000.00 for the subject property.

3. Petitioner's witness presented nine comparable sales ranging in sales price from \$2,920,000.00 to \$7,675,000.00. After adjustments were made for time trending, the sales ranged from \$2,948,616.00 to \$8,176,945.00.

4. Mr. Monroe testified that the sales comparison approach was done as a test of reasonableness. There were limited sales in the area and sales from different areas were considered. Comparable Sale #6, known as "Tiburón," sold twice: once in 1997 and then again in 2001. The comparable sales selected were reviewed for similar physical characteristics. Comparable Sale #3, known as the "Legends," is the only private club that was considered. There were differences in land area, clubhouse and golf course size. Adjustments were made for any differences in characteristics.

5. Petitioner's witness presented a cost approach to derive a market-adjusted cost value for the subject property of \$3,422,660.00.

6. Mr. Monroe testified that the methodology used to derive the cost approach was calculated by estimating the current cost to construct a reproduction or replacement of the existing structure, including entrepreneurial profit. Depreciation was deducted from the total cost and then the land value was added in.

7. Mr. Monroe testified how important it is when considering the land value to select the appropriate land sales suitable for comparison. There was only one suitable land sale for comparison to derive the land value. This sale was deed restrictive and limited to golf or other recreational use at the time of the sale. The land sale considered sold December 31, 1996 for \$1,000,000.00. There are approximately 200 acres indicating a price per acre of \$5,000.00. This sale was confirmed.

8. Mr. Monroe testified that if no land sales with deed restrictions are available, then agricultural land may be considered. However, the agricultural land would indicate a lower price per acre. If other land sales were to be considered, the warranty deeds and all the conditions regarding the sales would have to be carefully examined. If a high degree of adjustments are required, the sales may be inappropriate to use as comparable sales.

9. Mr. Monroe testified that, based on the land sale presented in the report, the land value was estimated to be 148 acres at \$5,000.00 per acre. The golf improvements were estimated to be \$95,000.00 for 18 holes, less the depreciation, indicating total golf improvements of \$1,453,500.00. The other improvements (clubhouse, cabana, pool, tennis courts, maintenance buildings and cart barn) indicated a value of \$1,312,490.00. The pool and tennis courts were adjusted 50% for economic obsolescence. The main reason for the economic adjustment is the pool and tennis courts are considered to be loss leaders and are used primarily to attract new members. The total value based on the cost approach indicated \$3,422,660.00.

10. Mr. Monroe testified that he physically inspected the subject property. He estimated the cost per hole from a quality index value worksheet provided to him by Mr. George Moore, Assessor located in Palm Beach, Florida. Marshall and Swift Cost Services rate the cost range per

hole into Class I through IV categories. The quality index gives a point structure ranging from 0-949 points. The subject's total points indicated 623 points. This is mid-range indicating the subject is a Class III, with a cost per hole of \$86,000.00 to \$117,500.00 per hole.

11. Mr. Monroe further testified the course is comprised of a native push-up design for 15 holes. There are three additional new holes constructed from land that could not be used for the construction of residential dwellings. The information concerning the physical aspects of the course was derived from a questionnaire supplied to the superintendent of the course. There was a physical inspection of the subject several times and he spoke to the superintendent, general manager and controller.

12. Petitioner's witness presented an income approach to derive a value of \$3,425,000.00 for the subject property.

13. Mr. Monroe testified that a direct income capitalization approach was calculated using actual income from the subject, as well as a pro forma income calculated as if the course was a daily fee, using 1999 data.

14. The reported actual gross income resulted in \$2,763,505.00 for 1999. The effective gross income indicated the same figure. Actual expenses resulted in \$2,297,935.00, less return on personal property. The indicated net operating income resulted in \$407,554.00, and the capitalization rate utilized was 11% , for an income value of \$3,705,036.00. There was a deduction of tangible personal property, as well as business value, resulting in an indicated real property value of \$2,721,833.00.

15. The reported rounds played were estimated to be 38,000 for the pro forma daily fee analysis with revenue totaling \$1,995,000.00. Cost of goods sold resulted in \$361,000.00, indicating a total income of \$1,634,000.00. The typical operating expenses were calculated at 70% and the capitalization rate utilized was 11%, less the personal property, for an indicated value of \$3,839,600.00.

16. Mr. Monroe testified that there were several issues regarding the appraisal report presented by the Respondent. The land sales used to derive the land value estimate were not adjusted for any physical characteristics. The open space sales presented were not sales, they were acquisitions, and restrictions were placed on them. The sales used in the market comparison approach were adjusted; however, supportable data was provided to support how the adjustments were arrived at.

17. Under cross-examination, Mr. Monroe testified that he has appraised over 40 golf courses for ad valorem purposes. The subject is a private course and the highest and best use is the current use. The subject is restrictive and is zoned PUD. The only land sales that were considered were those with similar restrictions placed upon them. The guidelines were reviewed from "Golf Course Valuations," Course 230, outlining the methodology used in the valuations of golf courses. The course recommends that land with similar restrictions be considered for comparable sales; however, there is no strict rule that other land sales may not be used.

18. Under-cross examination, Mr. Monroe testified that there were no paired sales available in Colorado to determine any type of supportable market time adjustment. The overall expenses and income for the pool and tennis courts were examined. The overall expenses were higher than the income generated. It was determined that an adjustment was warranted for the pool and tennis courts. The figure arrived at was based on professional experience and reviewing expense and revenue reports from 20 courses.

19. Under further cross-examination, Mr. Monroe testified that several tools were used to arrive at a cost per hole. The market time adjustment was derived from comparable sale #6, known as the "Tiburon Golf Course." This property sold first in 1997 and then again in 2001. This was considered to be a paired sale, and the adjustment was approximately 1.8% per year.

20. Mr. Monroe further testified that potential investors purchase golf courses on the overall income stream. The investor looks at the level of competition for the golfer, the number of rounds played and the level of income. Comparable sales nationally were considered in the valuation, typical buyers are from all over the United States. The comparable sales used were golf course sales, not land sales, and it is not known if there were any deed restrictions.

21. Mr. Monroe testified that the pro forma income approach was based upon actual income and expenses. There are restrictions with private clubs, and income and expenses may not be the same as public clubs. Private clubs also have other income associated with storage and locker fees. The tangible personal property figure reported in the report of \$456,821.00 does not include business fixtures. The calculated capitalization rate was from the Integra Report. A pro forma income approach was also done as if it were a daily fee course. The cost approach was most relied upon for the most supportable value.

22. Petitioner's witness, Mr. Todd Johnson, controller for the course, testified that he is responsible for the financial reports. The club is forced to compete for members and produce income. The club has the lowest dues structure in the area. The club has a small clubhouse and dining facilities and higher expenses. The golf course is not a signature course and was not designed by an architect, it is considered to be a neighborhood course. The income produced from the pool and tennis courts is far less than the costs associated with them. The actual income and expenses were provided to Mr. Monroe for the income report.

23. Petitioner is requesting a 2001 actual value of \$3,422,660.00 for the subject property.

24. Respondent's witness, Mr. William B. Stuhlman, Certified General Appraiser with the Jefferson County Assessor's Office, presented the following indicators of value:

Market:	\$5,400,000.00
Cost:	\$4,455,750.00
Income:	N/A

25. Based on the market approach, Respondent's witness presented an indicated value of \$5,400,000.00 for the subject property.

26. Respondent's witness presented three comparable sales ranging in sales price from

\$5,100,000.00 to \$5,700,000.00. The indicated sales price per hole indicated a range of \$185,185.00 to 316,667.00. After adjustments were made, the sales ranged from \$297,500.00 to \$364,200.00 per hole.

27. Mr. Stuhlman testified that there were a limited number of golf course sales during the past five years. Three sales were reviewed and utilized in the market approach. The sales ranged from 192 acres to 213.41 acres. Adjustments were made to all of the sales for any differences in physical characteristics. After adjustments, the indicated value equates to \$5,400,000.00 for the subject. The market approach was done for a test of reasonableness.

28. Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$4,455,750.00.

29. Mr. Stuhlman testified three land sales and three open space sales were considered in the cost approach. The sales considered occurred from 1996 to 2000. The sales ranged in size from 41.864 acres to 369.14 acres. The sales ranged from \$5,216.00 to \$33,637.00 per acre. Based on the location, size and time, an indicated value for the subject would be \$10,000.00 per acre.

30. Mr. Stuhlman testified that it is difficult to find suitable land sales; these were the best sales available. Sale #1 was acquired by the City of Lakewood. There were 70 acres already under lease for Bear Creek State Park and rezoning was necessary in order to complete. Comparable sale #2 was acquired by the City of Arvada for an additional nine holes to an existing course. Sales #4 and #5 were open space, and sale #3 was purchased for a golf course. Comparable Sales #1 and #2 were verified sales and were considered to be arms-length transactions. The land was used for golf courses in both of these sales and they were considered to be suitable sales. The indicated unadjusted average per acre was \$15,413.00; he used a figure of \$10,000.00. This figure takes into consideration any factors that might affect the land value.

31. Mr. Stuhlman testified that he relied upon Marshall and Swift Cost Valuation Service and reviewing actual construction costs in the Denver area for the replacement costs. The clubhouse, maintenance buildings, pools and tennis courts were valued based upon the replacement cost new less any depreciation using the C.L.T. (Cole-Layer-Trumble) System.

32. Mr. Stuhlman testified that \$110,000.00 was used as a cost per hole due to the terrain. This is considered to be the upper range for a Class III course. There was 15% depreciation applied to the cart paths and sprinkler system. The depreciation figure used was 30% for the costs of the holes; depreciated at 50%, with a 20-year effective life. The depreciated value per hole was estimated to be \$93,500.00.

33. Mr. Stuhlman testified that there were no income or expense reports submitted by the Petitioner for this hearing. The income approach was not presented, as the subject is a private club and not purchased on the basis of income. The income and expenses would have to be changed from a private club to a daily fee course to estimate the income approach. This method is considered to be unreliable.

34. Mr. Stuhlman testified that the cost approach was the most reliable and supportable method for valuation. The land and cost estimates are considered to be conservative and the assigned value takes into consideration any factors affecting the overall value.

35. Mr. Stuhlman testified the Petitioner did not provide any cost information regarding the construction of the three additional holes. He believes the adjustment of 50% for economic obsolescence made by the Petitioner is aggressive and is not supportable. It appeared the pool and tennis courts were already depreciated. The comparable sales used by the Petitioner are not considered to be appropriate sales. All the sales, with the exception of one, were outside the state. He does not believe that sales outside the state should be considered in the valuation. It is difficult to derive supportable adjustment figures.

36. Mr. Stuhlman testified the area was in a growth period during the base period. The appraisal supports the assigned value conclusion.

37. Under cross-examination, Mr. Stuhlman testified the biggest difference is in the land value. All of the land sales were averaged and the indicated value was \$15,413.00 per acre. Based on professional experience, the adjusted land value used in the cost approach was \$10,000.00. He does not believe that the "Highlands Ranch" land sale used by the Petitioner was a suitable sale. This sale was restricted only to a golf course and he does not believe that the subject has such restrictions.

38. Respondent assigned an actual value of \$4,485,620.00 for the subject property for tax year 2001.

39. Petitioner's rebuttal witness, Mr. Tom McElhinney, testified to the land sales presented by the Respondent. Several of the sales were acquired for part of an assemblage and were considered too small for a golf course. Respondent's Sale #3, "Highlands Ranch," is the most appropriate sale. This sale was deed restricted prior to the sale and is the most similar to the subject.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2001 valuation of the subject property was incorrect.

2. The Board has carefully considered all admitted evidence and testimony and has granted in part the Petitioner's value conclusion. The Board can sympathize with the difficulty in the valuation of a private non-profit golf club. The Board agrees there are limited sales to derive a reliable conclusion based on the market comparison approach. Appropriate adjustments may be difficult to support. This is a private club and the Board believes the income approach may not be the most reliable approach to value based on the limited income and expense data and private non-profit clubs do not operate at their full income potential.

3. Both parties were in agreement that the cost approach was the most reliable methodology for the valuation of the subject. The main difference between both parties is the land value in the cost approach. The Board was most persuaded by the Petitioner's land value of \$5,000.00 per acre. The Respondent did present six comparable sales. However, there were no individual or itemized adjustments made to any of the sales. Several of the sales were acquired for additional space and represented smaller acreage indicating a higher cost per acre. The Board was not convinced that the \$10,000.00 per acre land value presented by the Respondent was supportable. The average unadjusted price per acre was \$15,413.00 and was then adjusted to \$10,000.00 per acre with no basis other than there is no land available for less than \$10,000.00 per acre.

4. The Board believes that the "Highlands Ranch Golf Course" sale in 1996 is the most supportable sale on which to base the land value in the cost approach. This land was purchased for the purpose of the construction of a golf course and has restricted use. Both the Petitioner and Respondent considered this sale and the Petitioner relied upon it. From the evidence and testimony presented by both parties, this sale required limited adjustments and was considered to be the most similar to the subject.

5. The Board was not convinced that the economic obsolescence adjustment of 50% is supportable in Petitioner's cost approach. The primary reason for the adjustment is that the cost is more than the income it provides and is considered to be a loss leader to attract new members. However, the Board heard testimony that during the base period there was a small waiting list indicating the club was running at full capacity. This 50% adjustment appears to be aggressive with lack of supportable data.

6. The Board concluded a land value of \$5,000.00 per acre be applied to the land value, resulting in a value of \$740,000.00. The Board concluded with the golf improvement value of \$1,453,500.00, and both parties were in agreement with the other improvement value of \$1,312,490.00. The Board did not agree with the adjustment for economic obsolescence of 50% and did not include it in the valuation.

7. The Board concluded that the 2001 actual value of the subject property should be reduced to \$3,505,990.00.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner based on a 2001 actual value for the subject property of \$3,505,990.00.

The Jefferson County Assessor is directed to change his records accordingly.

APPEAL:

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

In addition, if the decision of the Board is against the Respondent, the Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law when the Respondent alleges procedural errors or errors of law by the Board of Assessment Appeals.

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 recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, the Respondent may petition the Court of Appeals for judicial review of such questions with 45 days from the date of this decision.

DATED and MAILED this 29th day of July, 2003.

BOARD OF ASSESSMENT APPEALS

Judee Nuechter

Judee Nuechter

Debra A. Baumbach

Debra A. Baumbach

This decision was put on the record

JUL 29 2003

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

Penny S. Lowenthal
Penny S. Lowenthal

