

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

**Docket Nos.: 45141 &
47734**

Petitioner:

WORLD MARK, THE CLUB,

v.

Respondent:

**LARIMER COUNTY BOARD OF COMMISSIONERS
AND LARIMER COUNTY BOARD OF
EQUALIZATION.**

ORDER ON REMAND

THIS MATTER is on remand to the Board of Assessment Appeals after entry of the Court of Appeals' decision in Case No. 2008CA853. The Court of Appeals reversed the Order of the Board of Assessment Appeals and remanded for further proceedings consistent with the Court's opinion.

The subject property is described as follows:

**740 Moraine Avenue, 725 E. Riverside Drive, and
1401 E. Riverside Drive, Estes Park, Colorado
(Larimer County Schedule Nos. 35264-12-001, 35264-12-002, 35264-12-003,
35264-13-001, and 35351-05-019)**

At the hearing on December 18, 2007, both parties stipulated to the following actual values for the subject property for tax year 2005 as assigned by Respondent:

<u>Schedule No.</u>	<u>Value Assigned</u>
35264-12-001	\$1,607,100
35264-12-002	\$1,500,000
35264-12-003	\$81,021
35264-13-001	\$500
35351-05-019	\$392,100

In addition, both parties stipulated to commercial classification for two vacant land parcels, identified by Schedule Nos. 35264-12-003 and 35264-13-001.

Based on the evidence presented at the hearing and the Colorado Court of Appeals' opinion in Case No. 08CA853, the remaining subject parcels "do not fall within the 'hotel and motel' exception to 'residential real property.' See § 39-1-102(5.5) & (14.5)." Therefore, the Board finds the parcels were incorrectly classified by Respondent as commercial and should be reclassified as residential for tax year 2005.

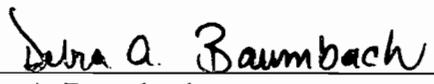
ORDER:

Respondent is ordered to reclassify Schedule Nos. 35264-12-001, 35264-12-002, and 35351-05-019 to residential for tax year 2005.

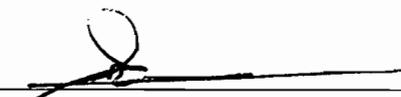
The Larimer County Assessor is directed to change his/her records accordingly.

DATED and MAILED this 25th day of November 2009.

BOARD OF ASSESSMENT APPEALS



Debra A. Baumbach

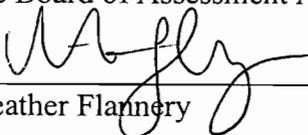


James R. Meurer



Sondra W. Mercier

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



Heather Flannery



**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**

1313 Sherman Street, Room 315
Denver, Colorado 80203

**Docket Nos.: 45141 &
47734**

Petitioner:

WORLDMARK, THE CLUB,

v.

Respondent:

**LARIMER COUNTY BOARD OF COMMISSIONERS
AND LARIMER COUNTY BOARD OF
EQUALIZATION.**

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on December 18, 2007, Debra A. Baumbach, James R. Meurer, and Sondra W. Mercier presiding. Petitioner was represented by Thomas E. Downey, Jr., Esq. Respondent was represented via teleconference by William G. Ressue, Esq. Petitioner requests an abatement/refund of taxes for Schedule Nos. 35264-13-001 and 35351-05-019 for tax year 2005 as Docket No. 47734. Further, as Docket No. 45141, Petitioner protests the valuation of Schedule Nos. 35264-12-001, 35264-12-002, and 35264-12-003 for tax year 2005.

The Board consolidated Docket Nos. 45141 and 47734.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**740 Moraine Avenue, 725 E. Riverside Drive, and
1401 E. Riverside Drive, Estes Park, Colorado
(Larimer County Schedule Nos. 35264-12-001, 35264-12-002, 35264-12-003,
35264-13-001, and 35351-05-019)**

The subject property consists of 32 separate buildings containing 51 lodging units, an office/manager's quarters, a storage unit, and vacant land. Each unit includes one or more bedrooms, one or more bathrooms, and a combined living and dining area. Units include either full

kitchens or limited kitchens that are equipped with two-burner stove tops. Some units include gas fireplaces and/or washer/dryer facilities. All have cable TV, VCR/DVD players, stereo with CD, telephone, iron with ironing board, and hair dryer. The property includes a recreation room and separate exercise room for common use.

The owner of the subject property is WorldMark, The Club (“WorldMark”) a California Nonprofit Mutual Benefit Corporation. WorldMark holds title to the subject property, subject to the Declaration of Vacation Owner Program, recorded June 17, 2004 under reception number 2004-00589994, along with the Amended and Restated Declaration of Vacation Owner Program, recorded December 22, 2005 under number 2005-0109105.

Both parties stipulated to the following actual values for the subject property for tax year 2005 as assigned by Respondent:

<u>Schedule No.</u>	<u>Value Assigned</u>
35264-12-001	\$1,607,100
35264-12-002	\$1,500,000
35264-12-003	\$81,021
35264-13-001	\$500
35351-05-019	\$392,100

In addition, both parties stipulated to commercial classification for two vacant land parcels, identified by Schedule Nos. 35264-12-003 and 35264-13-001.

The parties stipulated that with the exception of sales and marketing use, the units only were used by members of WorldMark using “vacation credits” and that the property was not used by members of the general public on an overnight or weekly basis. The property was not advertised or marketed to the general public for use on an overnight or weekly basis. See Joint Ex. 1.

The Owners Agreement and Owners Education Manual governs ownership. “WorldMark, The Club Retail Installment Contract Vacation Owner Agreement for Colorado”, states that “Vacation Credit ownership is not an interest in specific real property and no real property title is conveyed or title insurance issued.”

Ownership expires after 40 years for Standard ownership or is perpetual for Premier ownership. Ownership can be transferred through sale, gift, inheritance, divorce, or any other operation of law. WorldMark holds a deed or lease to each unit subject to the Declaration of Vacation Owner Program.

The Declaration of Vacation Owner Program and Amended and Restated Declaration of Vacation Owner Program gives notice of a time share plan, defines the member’s use as an easement, and restricts the use to “Residential Occupancy.” The member’s rights are defined as “an easement in gross for the use, possession and enjoyment of the Property and the exercise of any and all of rights appertaining thereto”

For 2005, Worldmark offered the following four types of “ownership”: (1) “Owner” meaning a member; (2) “House” meaning Wyndham Resort Development sales and marketing use;

(3) “Developer” for sales and marketing use; and (4) “Trial Membership” for a one year trial membership sold to a potential member. A clear majority of the use was designated as “Owner” use. A majority of the occupancy during 2005 was for three days or less.

In addition, there was testimony at the hearing that no member had a guaranteed right to use any of the properties. Rather, a member would call to see if a particular property was available for a particular period of time. If the property was available, the member could use vacation credits and occupy the Worldmark property. If the property was unavailable, the member was not permitted to stay at the particular property requested.

The sole issue in this case is one of classification. Petitioner contends that the three developed parcels should be classified as residential real property for tax year 2005. That includes parcels identified by Schedule Nos. 35264-12-001, 35264-12-002, and 35351-05-019. Petitioner contends that the subject be classified as residential because it is a “time share use” under Colorado Revised Statutes (“C.R.S.”) section 12-61-401.

In contrast, Respondent contends that the subject correctly is classified as commercial because the subject property is a “hotels and motels” pursuant to C.R.S. section 39-1-102 (5.5)(a).

The primary factor in classification as commercial or residential is the actual use of the property. *Farney v. Board of Equalization of Dolores County*, 985 P.2d 106, 109 (Colo. Ct. App. 1999). “Residential real property” is defined as residential land and residential improvements, but does not include hotels and motels. C.R.S. § 39-1-102(14.5).

“Residential improvements” are defined as “a building, or that portion of a building, designed for use predominately as a place of residency by a person, a family, or families.” C.R.S. § 39-1-102(14.3). “Residential land” is defined to mean “a parcel or contiguous parcels of land under common ownership upon which residential improvements are located and that is used as a unit in conjunction with the residential improvements located thereon.” C.R.S. § 39-1-1-02(14.4).

C.R.S. section 39-1-102(5.5)(a) defines hotels and motels as “improvements and the land associated with such improvements that are used by a business established primarily to provide lodging . . . to the general public and that are predominately used on an overnight or weekly basis” Among other things not relevant here, the term “hotels and motels” does not include “a residential unit, except for a residential unit that is a hotel unit.” C.R.S. § 39-1-102(5.5)(a)(I).

A “residential unit” is defined as “a condominium unit, a single family residence, or a townhome.” C.R.S. § 39-1-102(5.5)(c)(V). A “condominium unit” means a unit, as defined in C.R.S. section 38-33.3-103(30) and also includes a time share unit. C.R.S. § 39-1-102(5.5)(c)(I).

“Time share unit” is defined as a “condominium unit that is divided into time share estates as defined in section 38-33-110(5), C.R.S., or that is subject to a time share use as defined in section 12-61-401(4), C.R.S.” C.R.S. section 38-33-110(5) defines “time share estate” as either an interval estate or a time-span estate. C.R.S. section 12-61-401(4) defines “time share use” as “a contractual or membership right of occupancy for life or for a term of years, to the recurrent, exclusive use or

occupancy of a lot, parcel, unit, or specific or nonspecific segment of real property . . . for a period of time.”

Based on this statutory framework, the issue this Board must determine is whether the subject property is a “hotel or motel,” a term specifically exempted from the definition of residential real property or instead, whether the subject property is more akin to a “time share unit” and thus a “condominium,” which fits within the definition of residential unit.

Like a hotel or motel, the subject property was used on an overnight or weekly basis - a majority of the occupancy during 2005 was for three days or less. Moreover, the sale of memberships were to the general public and Worldmark appears to be a business established primarily to provide lodging.

Unlike hotel or motel use, however, only members are allowed use of the subject units. Membership requires commitment to a contract agreement that allows for use, permits transfer of use rights, requires annual dues, allows for the levy of special assessments, states a purchase price, and allows for participation by owners in a governing body. No such contract or membership is required for nightly hotel or motel stays. Members are also subject to the Declaration of Vacation Owner Program, which is recorded against each unit.

Nevertheless, the subject property appears to be more akin to a “hotel or motel” than a “time share unit” primarily because members are not guaranteed the right to occupy any particular property for any particular period of time. Rather, members only receive the right to occupy a property should space be available. Members do not purchase “the recurrent, exclusive use or occupancy of a lot, parcel, unit, or specific or nonspecific segment of real property . . . for a period of time”. *See* C.R.S. § 12-61-401(4).

Accordingly, Petitioner did not present sufficient probative evidence and testimony to prove that the tax year 2005 classification of the subject property was incorrect.

ORDER:

Respondent’s classification of the subject property for tax year 2005 for Schedule Nos. 35264-12-001, 35264-12-002, and 35351-05-019 is affirmed.

APPEAL:

Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of C.R.S. section 24-4-106(11) (commenced by the filing of a notice of appeal with the Court of Appeals within forty-five days after the date of the service of the final order entered). C.R.S. §§ 39-8-108(2), 39-10-114.5(2) (2007).

DATED and MAILED this 6th day of March 2008.

BOARD OF ASSESSMENT APPEALS

Debra A. Baumbach
Debra A. Baumbach

James R. Meurer
James R. Meurer

Sondra W. Mercier
Sondra W. Mercier

This decision was put on the record

MAR 06 2008

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

Heather Heinlein
Heather Heinlein

