

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>BACHELOR GULCH PROPERTIES, LLC,</p> <p>Respondent:</p> <p>EAGLE COUNTY BOARD OF COMMISSIONERS.</p>	<p>Docket No.: 54478</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on November 15, 2011, Diane M. DeVries and James R. Meurer presiding. Petitioner was represented by F. Brittin Clayton III, Esq. Respondent was represented by Christina Hooper, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2007.

The subject property is described as follows:

**Eagle County Schedule No. R060016
Ritz Hotel Site
130 Daybreak Ridge Road # H-1
Avon, Colorado**

For clarification purposes, the property is identified as follows:

- H1 The original Ritz-Carlton Bachelor Gulch Commercial/Hospitality Property
 - H2 H1 minus 19 condominium units created in January of 2007
 - H3 H2 minus 31 condominium units created in September of 2007
- H3 is the subject of this order (see description below).

The property (H3) that is the subject of this order consists of the Bachelor Gulch Hotel facility containing restaurants, spa, fitness center, tennis courts, meeting/ballroom space, ski-valet and parking, plus the 30 residential condominiums that Bachelor Gulch had in inventory as of January 1, 2008. On the assessment date of January 1, 2007, the subject property did not legally exist, but rather was incorporated in the original 237 room, 257,900 square foot hotel (H1) as was platted in 2002. On two separate occasions during the course of tax year 2007, the

original hotel (H1) was subdivided by amendments to the 2002 plat, resulting in what is now classified as H3.

The original hotel facility (H1) was valued by the Eagle County Assessor at \$47,467,020.00 for tax year 2007. During tax year 2007, Eagle County processed the plat amendments for the property, distributing the total \$47,467,020.00 value, on a square foot basis, to all of the resulting subdivided units of the hotel, including the subject property. Eagle County originally allocated \$36,475,940.00 for the subject property (H3), which was a result of a typographical error in its original calculation. Eagle County is now advocating an allocation of \$36,383,710.00 for the subject property.

The issue before the Board is whether Respondent's allocation of \$36,383,710.00 is supportable and if the methodology used by Respondent to support this allocation is correct.

Petitioner contends that the correct methodology to determine the value of the hotel should not be based on the square footage formula used by Respondent, but rather should be based on the net operating income (NOI) of the hotel rooms taken out of service when the property was subdivided, and resulting economic loss to the hotel. Petitioner further contends that its methodology is superior to Respondent's in terms of applying accepted appraisal theory and ascertaining the values of the parcels created by the subdivision. Petitioner is requesting a value of \$28,092,734.00 for the subject property.

Petitioner's witness, Ms. Jodi Sullivan, computed the value of the subject as the sum of the negative \$16.5 million in value contributed by the non-room departments, all of which remained after the subdivision; and \$31.5 million in positive value contributed by the 117 guest rooms that remained after the subdivision. The sum of these components is \$15,100,000.00, which is the value that Ms. Sullivan allocates to the subject parcel. According to Petitioner, an affiliate of Petitioner, Bachelor Gulch Properties, LLC ("BGP"), purchased some of the condominium units in 2007. As a result of the Assessor's method of allocation, BGP's parcels were undervalued by ±\$13.0 million. As a matter of fairness to the County and to avoid an unfair windfall to BGP, Petitioner agreed to increase the actual value of its property by ±\$13.0 million to \$28,092,734.00.

Ms. Sullivan also testified that it is important to consider what a buyer and seller would be willing to pay or accept for each of the subject parcels. An actual buyer of a hotel property would value the parcels based on NOI, not square footage. A buyer would pay more for a square foot of hotel room than a square foot of an amenity space such as the parking garage, because the hotel rooms generate positive NOI but the amenities do not. The amenities add to the value of the rooms, but the rooms are not burdened with the cost of the amenities.

Petitioner further argues that Respondent did not attempt to apply the cost, income, or market approaches to value in concluding to a value for the property and that under article 10, section 3(1)(a) of the Colorado Constitution and section 39-1-103(15) of the Colorado Revised Statutes, *all* determinations of actual value and assessed value must be made based on appraisals that give appropriate consideration to the cost, income, and market approaches to value.

Respondent argues that Petitioner's proposed NOI methodology is based on speculation about what the net operating income for each room in the hotel would have been, and therefore what the estimated loss in value would be after the subdivision. Respondent's witness, Ms. Hurst, Eagle County Appraisal Manager, testified that as a matter of ad valorem appraisal practice, the Assessor cannot accurately or fairly calculate net operating income for each room based on facts of this case because the hotel was valued for 2007 as a single commercial operating unit; because no one knows for certain how many rooms were in service during base period; and because there are too many variables and uncertainties with respect to rates each room taken out of service may have commanded.

Respondent's witnesses, Ms. Shannon Hurst, and Ms. Cherice Kjosness, Property Tax Specialist for the Colorado Division of Property Taxation, stated that Respondent's methodology was proper, consistent with the directive of the Division of Property Taxation (DPT) Administrator, and therefore legally sound. While the DPT Manual advocates allocation of value based on ownership interests in general common elements rather than the square footage methodology utilized by the Assessor, Eagle County presented testimony and evidence showing that each of these units of allocation result in nearly identical allocated values because the subdivided units were each granted a percentage in general common elements for the entire project based on the square footage of each subdivided unit.

Ms. Hurst and Ms. Kjosness further testified that the sum of the allocated values of the parcels (H2 and H3) after the two subdivisions of the hotel in 2007 must equal the total market value that was set for the hotel (H1) as of January 1, 2007, which was \$47,467,02000. Both testified that the allocation of that value must be based on a factor that is static, known, and reliable.

Respondent further argued that Petitioner's appeal fails as a matter of law because Petitioner has failed to show that the Eagle County Assessor's allocation of value resulted in an erroneous valuation for assessment. Respondent contends that its allocation method on a square foot basis utilizes accurate, reliable and known data and results in a fair and equitable distribution of value. The Assessor's allocation method is consistent with the method advocated by DPT manual and is consistent with requirements of state law.

Respondent presented sufficient probative evidence and testimony to show that the allocation of \$36,383,710 to the subject property for tax year 2007 was correct.

Colorado case law requires that "[Petitioner] must prove that the assessor's valuation is incorrect by a preponderance of the evidence. . ." *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005). After careful consideration of the testimony and exhibits presented at the hearing, the Board concludes that Respondent's value and methodology supporting the value is reasonable and supportable. Respondent's methodology on a square foot basis utilizes accurate, reliable, and known data and results in a fair and equitable indication of value for the subject (H3).

ORDER:

The petition is denied. The Board concurs with Respondent's allocation of \$36,383,710.00 to the subject property (H3) for tax year 2007.

APPEAL:

If the decision of the Board is against Petitioner, Petitioner may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provisions of Section 24-4-106(11), C.R.S. (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).

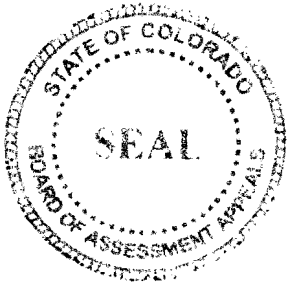
If the decision of the Board is against Respondent, Respondent, upon the recommendation of the Board that it either is a matter of statewide concern or has resulted in a significant decrease in the total valuation for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision of Section 24-4-106(11), C.R.S. (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).

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


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, Respondent may petition the Court of Appeals for judicial review of such questions.

Section 39-10-114.5(2), C.R.S.


DATED and MAILED this 8th day of February, 2012.

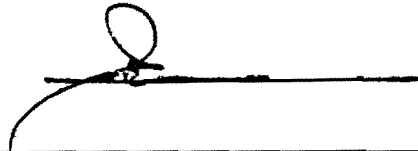


I hereby certify that this is a true and correct copy of the decision of the Board of Assessment Appeals.


Milla Crichton

BOARD OF ASSESSMENT APPEALS:


Diane M. DeVries


James R. Meurer