

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>ROARING FORK CLUB LLC,</p> <p>v.</p> <p>Respondent:</p> <p>PITKIN COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 58250</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on June 22, 2012, Diane M. DeVries and Louesa Maricle presiding. Petitioner was represented by F. Brittin Clayton III, Esq. Respondent was represented by Michelle B. Whisler, Esq. Petitioner is protesting the 2011 actual value of the subject property.

During the hearing, the parties agreed to stipulate to a net operating income (NOI) for the property of \$630,371.

The subject property is described as follows:

**100 Arbaney Ranch Road, Basalt, Colorado
Pitkin County Parcel Nos. 2467-174-29-004, 2467-202-30-003,
2467-173-30-032, and 2467-173-00-011**

The subject property is the Roaring Fork Club (the Club), a private, non-equity membership club that is part of the larger Roaring Fork Planned Unit Development (PUD) in the Town of Basalt, Colorado. In addition to the subject property, the Roaring Fork PUD includes 50 residential homes (referred to as "cabins") that were built for individual sale and are not included in this petition. The developer of the subdivision owns the subject property, which is the focal point amenity for the PUD. The subject property is comprised of a total of 284.073 acres of land bisected by the Roaring Fork River and State Highway 82. The southern portion of the land area is also bisected by the Rio Grande Trail. The Club improvements include a Jack Nicklaus designed 18-hole championship golf course, a 28,337 square foot members' lodge, a pro shop building, maintenance building, swimming pool and tennis club facility, two tennis courts, a small satellite food service building, parking areas,

fishing ponds, and other water features. Large parking garages for cars of the Roaring Fork subdivision cabins are also located on the property, but because the garages are used in conjunction with the residential cabin properties, they have not been included as part of the club and golf course valuation. Construction of the club facilities was completed in 1999.

Petitioner is requesting an actual value of \$7,000,000 for the subject property for tax year 2011. Respondent assigned a value of \$19,018,400 for the subject property for tax year 2011.

Both parties testified that they relied on the methodology outlined in the class material APR 230: Valuation of Golf Courses, as taught by the Division of Property Taxation (DPT), to value the subject. However, Petitioner contends that the DPT methodology is flawed, so has used a modified version. The primary point of disagreement between the parties involves club memberships that were previously sold and whether or not the initial deposits for those memberships should be included in the property valuation. As of the appraisal date, total initial membership deposit consideration of approximately \$54,000,000 has been paid to the developer. Respondent includes value for those membership deposits as part of the bundle of rights associated with the fee simple interest in the property. Petitioner does not recognize value for the deposits and contends that issued memberships at the Club confer upon the members mere licenses, not representing any estate or interest in the underlying real property. Accordingly, Petitioner contends the issued memberships are not taxable as real property. Petitioner contends that a willing buyer and willing seller would not recognize value for the membership deposits previously paid. Respondent contends that by excluding the value of the sold memberships, Petitioner is valuing only the leased fee interest in the property and not the entire fee simple interest, as required by State statute.

Petitioner presented the following indicators of value:

Cost:	Considered but not used
Market:	Considered but not used
Income:	\$7,000,000
Final Conclusion:	\$7,000,000

Petitioner contends that the club memberships confer upon the members non-taxable licenses and intangible personal property rights, not taxable interests in real property. Petitioner contends that a license is not an interest in land.

Petitioner contends that if the holder of an interest in property does not have the exclusive right to use and possession of the property, then that interest in that property is not subject to assessment under Section 39-1-103(17)(a)(II)(B), C.R.S.

Petitioner claims that even if the previously issued memberships were treated as taxable real property interests, the value of these "interests" is zero. Therefore, it is not permissible to include the deposits paid on previously issued memberships in the value of the real property.

Petitioner's witness, Mr. Bob Daniel, Chief Operating Officer of the Club testified regarding the development history of the Roaring Fork PUD and the Club. Mr. Daniel testified that the golf

course and other club amenities were necessary to create and drive value to the lots/cabins and that no one would build this club for the income to be achieved by it alone. The economic value of the subject property is to create value for the larger PUD. The witness testified that the Club is a non-equity club and members have no rights of ownership. The club offers three membership levels including Regular Memberships, National Memberships, and Social Memberships. All owners of cabins in the Roaring Fork PUD are required to be members of the club at the highest membership level, known as Regular Members. Membership fees vary according to the membership level, and include an initial deposit ranging from \$37,500 to \$175,000 as of the effective date of value, plus annual dues and an annual food and beverage minimum fee. Membership deposits are repaid, without interest, upon the earlier of: 30 years after the membership is issued, or at reissuance of the membership by the Club following the member's resignation. The deposits paid can be refunded in full or in part; the percentage of deposits to be refunded is determined by the club annually. Memberships are not transferrable. The witness testified that 88% to 90% of the Club memberships had been sold as of the date of value. Mr. Daniels testified that when a private non-equity club like the subject first opens, the initial deposits paid by members go toward the construction of the facilities and fixed operating expenses because there is initially an inadequate amount of annual operating revenue to support the club.

Petitioner's witness, Mr. Bruce Cartwright, Managing Director, Tax Services, at Duff & Phelps LLC, presented his valuation analysis of the subject property based on the income approach to value. The witness testified that he considered but did not use the cost approach because of the obsolescence affecting the property and because of the difficulty in finding comparable land sales. Petitioner contends that the cost of building the golf course and amenities does not equal the value of the Club. Respondent has relied on the cost approach to value the subject, but the cost approach is not relevant because no buyer would pay the replacement cost value for the property. The witness testified that he considered but did not use the market approach to value because of the difficulty in obtaining adequate, reliable information for the sales.

Mr. Cartwright presented an income approach to derive a value for the subject property. The witness used a total of 665 memberships for the club as of June 30, 2010, which he broke down into the three membership classes. The witness testified about the DPT methodology, which suggests starting with the assumption that there are no members and all memberships are available for sale. The annual revenue stream could then be valued using annuity capitalization, with a "sellout" period based on the historical experiences of similar clubs. Petitioner contends that the DPT methodology is flawed because of the concept that all memberships are valued in addition to the operating income. The witness testified that unsold memberships have value, but previously sold memberships do not and there would be no operating net income if all memberships were unsold. The witness testified that because the Club began selling memberships in 1999, he modified the DPT methodology to include only unsold memberships. Mr. Cartwright testified that his modified analysis started with the 118 unsold memberships available as of June 30, 2010. For each membership class, the witness applied the deposit price as of the effective date of value to the number of unsold memberships to derive the potential revenue from membership sales. The witness deducted selling costs of five percent and estimated the annual net revenue based on his estimate of the sellout period for each class, ranging from 0.21 to 114 years. The witness then applied a discount rate of 15% to the annual net revenue estimate and the Present Worth of \$1 per period factor to derive the present worth of

membership sales for each class. Using this approach, the witness testified that he estimated the value of all of the unsold memberships at \$4,138,029. Next, the annual NOI from operations of \$630,371 was capitalized using a tax loaded capitalization rate of 13.76% to derive the value for the annual operations of \$4,581,088. The combined value of the unsold memberships and the annual operations was \$8,719,116 and after deducting Respondent's \$1,708,700 assigned value for personal property, the value of the real estate was \$7,010,416. Mr. Cartwright concluded to a rounded value for the property of \$7,000,000.

Respondent presented the following indicators of value:

Cost:	\$26,575,000
Market:	Considered but not used
Income:	\$30,950,000
Final Conclusion:	\$26,575,000

Respondent contends that the membership documents admitted into the record and the testimony of multiple witnesses established that membership rights include the right to use and enjoy the golf course, lifetime use of the facilities or a life estate, rights of survivorship, right of first offer to purchase the club facilities and other rights as set forth in the membership documents. Respondent contends that the Colorado Supreme Court has determined that usufructuary rights, or rights to use or enjoy property, are "interests in land" and "real property" subject to property taxation. *Mesa Verde Co. v. Montezuma County Bd. of Equalization*, 898 P.2d 1, 5 (Colo. 1995). According to Respondent, the Colorado unit assessment rule (Section 39-1-106, C.R.S.) typically operates to tax land and improvements together, without the additional separate taxation of lesser interests therein, such as leaseholds, because taxation of the whole is presumed to include taxation of the derivative parts, with the owner passing on the burden of taxation as the fee owner chooses. *City and County of Denver v. Board of Assessment Appeals*, 848 P.2d. 355, 358-359 (Colo. 1993). Therefore the Assessor must determine the correct valuation of all of the derivative parts of the fee simple interest. Respondent contends the membership rights in the subject property may be considered a leasehold interest, or other partial interest in the subject property and must be valued.

Respondent contends that the article, *Challenges in the Appraisal of Private Golf Clubs*, by Martin E. Benson, MAI, published in The Appraisal Journal, October 1998, provides additional support for the club owner's leased fee versus fee simple interest in private, non-equity clubs. The author asserts that structurally, these clubs have divided property rights; the owner of the fee simple interest has divided this interest by granting certain property rights to others, the members. A second article, *Valuing Private Golf Courses: Where Did That Money Go?*, by J. Richard Tuck Jr. published in the Assessment Journal, September/October 1998, Volume 5, Issue 5, states: "In a non-equity club, initial fees are the equivalent of a large, up-front lease payment, and these fees should be included in the fee value. If these payments were not made, the monthly membership fees would have to be substantially higher." The author goes on to say: "Often high-end clubs are paid for by the sale of memberships. Initial membership payments can be considered a fund which, if multiplied by a safe rate, will show how much money in additional annual dues would have been required if the up-front membership payments had not been made. This additional income can be capitalized and added to the value generated by income from operations."

Respondent's witness, Mr. Lawrence C. Fite, a Certified General Appraiser in the State of Colorado and Chief Appraiser in the Pitkin County Assessor's Office presented his appraisal of the subject property and testified that Respondent is required by State law to value the fee simple interest in the subject property. The witness testified that the fee simple value analysis is not synonymous with the leasehold analysis used by Petitioner. Based on the DPT materials, Respondent contends that if all membership sales are not accounted for, the full fee simple interest in the property is not accounted for.

Respondent used a state-approved cost estimating service as well as actual construction cost information for the Club to derive a market-adjusted cost value for the subject property of \$26,575,000, rounded.

Respondent used the income approach to derive a value for the property of \$30,950,000. For each membership class, the witness applied the deposit price as of the effective date of value to the total number of memberships to derive the potential revenue from membership sales. The witness deducted selling costs of five percent and estimated the annual net revenue using his estimate of the sellout period (sell out period) for each class. The witness testified that the initial deposits are much higher on the date of value than the initial deposits when memberships were first made available. Because the witness used the current deposit rates for the present worth calculation, he concluded that it is reasonable to expect the estimated sell out period would be longer than was achieved when memberships were offered at lower rates. Relying on membership information provided by Petitioner and focusing on the last two years of sales in each category, the witness estimated absorption rates of 14 to 30 years for the different membership classes. The witness then applied a discount rate of 11% to the annual net revenue estimate and the Present Worth of \$1 per period factor to derive the present value of membership sales for each class. Using this approach, the estimated value of all of the memberships is \$26,800,000, rounded. The witness next calculated the net income from operations starting with the stipulated annual NOI of \$630,371. The net income after deducting replacement reserves was capitalized using a tax loaded capitalization rate of 10.76% to derive an initial value for the annual operations. From that figure, the witness deducted the assigned value of the personal property and concluded to a value of the income from operations of \$4,149,766. The witness testified that the combined value of the memberships and the annual operations is \$30,950,000, rounded.

Mr. Fite testified that he placed most reliance on the cost approach and concluded to a value for the subject property of \$26,575,000. Respondent assigned an actual value of \$19,018,400 to the subject property for tax year 2011.

Respondent's witness, Mr. Curt Settle, a Certified General Appraiser in the State of Colorado and Manager of Appraisal Standards for the Colorado Division of Property Taxation testified regarding the valuation methodology recommended by the DPT. Mr. Settle testified that Petitioner has inappropriately modified the methodology prescribed by the Division of Property Taxation. By modifying the methodology, Petitioner has valued only a portion of the bundle of rights for the property, in this case the leased fee interest, and failed to address the fee simple interest in the property. Respondent is required to value the fee simple interest.

Petitioner failed to present sufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2011.

The Board finds there is a discrepancy in the number of National memberships used by the parties in their respective income analyses. Petitioner used 150 memberships and Respondent used 155. Both parties admitted undated Membership Plan documents into evidence that each present different membership numbers than used by either party. The Board finds there is reliable evidence that the number of memberships can change, but finds no definitive source for the number of memberships by class as of June 30, 2010. Though Respondent used a higher number to calculate the value of all of the memberships, the Board concludes that using a lower number would not have reduced Respondent's income approach to a lower value than assigned by the BOE. Therefore, the Board concludes that the potential impact of the discrepancy is not material in this case.

The Board finds that Petitioner has failed to prove its characterization of the Club memberships as "mere licenses" or possessory interests that are not taxable. Petitioner has relied on that characterization of the memberships to justify its modification of the APR 230: Valuation of Golf Courses methodology to value the property. The Board is not persuaded by Petitioner's case law support for this claim. *Welsch v. Smith* involved an adverse possession and prescriptive easement claim over land owned by others. *Millennium Park* involved a food vendor's concession in a public park. In *Mesa Verde*, the taxpayer had a possessory interest to operate a private business on exempt government property in Mesa Verde National Park. *Denver jetCenter* addressed possessory interests of a private company over surface areas of land beyond a building footprint at a public airport. The Board finds that the interests addressed in those cases are not on point with the club membership interest and deposits at issue in this case. The Board concludes that whether or not the term "license" is applied to the Club memberships is not important. The issue is what role do the memberships and initial deposits play in the fee simple value bundle of rights.

That members do not hold an equity interest in the real estate is not in dispute. However, the Board concludes that by giving the right to use the Club facilities in exchange for the initial deposits plus annual dues and fees, the Club owner has transferred a portion of the fee simple bundle of rights to the members in the form of an effective leasehold interest. Mr. Daniel testified that the deposits paid by members go toward the construction of the facilities and fixed operating expenses because there is initially an inadequate amount of annual operating revenue to support the club. Based on this, the Board concludes that without the deposits, the Club might not have been built, or it would be necessary for the annual membership dues to be much higher in order to support traditional debt service and the operation of the Club, and that those higher annual dues would significantly increase the annual net operating income for the property. Therefore, the Board finds that it is appropriate to factor in the additional contributory value of the deposits paid for previously sold memberships to the value from the annual NOI in addition to potential revenue from deposits for as yet unsold memberships. The Board concludes that the Petitioner's methodology values only the owner's leased fee interest in the property and Petitioner's modification of the DPT methodology is not supported.

With regard to other non-stipulated factors used by the parties in the income approach, the Board finds that the 15% discount rate used by Petitioner is toward the high end of the range of average rates presented for golf clubs of all types, indicating a higher risk associated with the

property. The Board finds that the rates included in Petitioner's analysis for public daily fee courses and semi private golf clubs are not comparable for a private golf club. The Board finds that the Burbach & Associates investor survey discount rates presented for a general golf course category for Colorado properties represent a survey response from only one valuation and consulting business, not an investor. A survey response of only one significantly limits the reliability of that data. The Realty Rates investor survey rates presented for private golf clubs around the country is 9.13% to 19.26%. Respondent used an 11% rate after consulting the Burbach and Realty Rates surveys and also considering the capitalization rate used. Respondent's use of a lower discount rate was based on the strength and desirability of the real estate market for well located properties in Pitkin County. The Board is persuaded that the 11% rate used by Respondent, indicating lower risk, is supported. Petitioner relied on the same surveys to select a base capitalization rate of 12% based on the average for all types of golf courses. The Board finds that the Realty Rates survey capitalization rates for private clubs range from 6.14% to 15.68%. Respondent used a base rate of 9.0% extrapolated from commercial property capitalization rates in Pitkin County, adjusted upward commensurate with the rate spreads indicated by the published surveys for retail and commercial properties compared to golf clubs. Respondent contends that the published rates have limited application to the desirable Roaring Fork Valley location. Respondent contends that local commercial properties typically sell for prices that result in capitalization rates well below national averages because of the mountain resort location and significant barriers to entry for new competition. The Board finds from the evidence presented that the subject property has been well received and is persuaded that the location would be perceived by potential investors as less risky than many parts of the country. While Respondent's extrapolation approach to selecting a capitalization rate is more subjective, the 9.0% base rate is well supported by the Realty Rates range for private golf clubs.

The Board agrees with Petitioner that in the case of the subject property, the cost approach to value, given most weight by Respondent, is not the most reliable indicator of value. The Club is approximately 11 years old and depreciation from all applicable sources is difficult to accurately quantify. Also, in the absence of land sales for golf course development or other large tract open spaces land sales, Respondent used sales of two sites intended for residential subdivision development, a working ranch, and a high alpine site with tenuous access to estimate the value of the subject land. Because of the different land uses, the Board finds that the adjustments to the sales relative to the subject property are more subjective than if Respondent had sales for similar golf course use.

ORDER:

The petition is denied.

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 of the respondent county, 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).

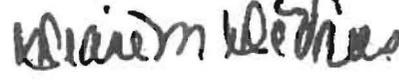
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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 of the respondent county, Respondent may petition the Court of Appeals for judicial review of such questions within thirty days of such decision.

Section 39-8-108(2), C.R.S.

DATED and MAILED this 16th day of August, 2012.

BOARD OF ASSESSMENT APPEALS

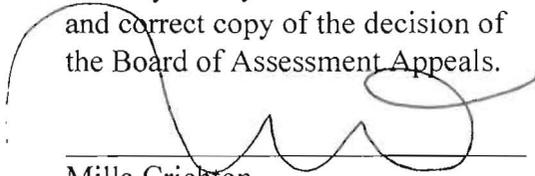


Diane M. DeVries



Louesa Maricle

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



Milla Crichton

