

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

1313 Sherman Street, Room 315
Denver, Colorado 80203

**Docket No.: 64667,
64669, 64671**

Petitioner:

**SNOWMASS CLUB CONDO ASSOCIATION INC.,
SANCTUARY AT SNOWMASS CLUB
AND RENE MORIN,**

v.

Respondent:

PITKIN COUNTY BOARD OF COMMISSIONERS.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on December 10, 2014, Diane M. DeVries, James R. Meurer and MaryKay Kelley presiding. F. Brittin Clayton III, Esq., appeared on behalf of Petitioners. Respondent was represented by Laura Makar, Esq. Petitioners are protesting the 2012 actual value of the subject properties.

Dockets 64667, 64669, and 64671 were consolidated for purposes of the hearing.

Subject properties are described as follows:

Snowmass Club

239 Snowmass Club Circle, Snowmass Village, Colorado

**Sch. Nos. R017497, 504, 511, 518, 525, 532, 539, 546, 553, 567, 560, 574, 581, 588,
595, 602, 609, 616, 623, 630, 637, 644, 651, 658, 665, 672, 679, 686, 693, and 700**

Sanctuary at Snowmass Club

134 Snowmass Club Drive, Snowmass Village, Colorado

Sch. Nos. R019082-85, R019087-91

Rene Morin (Sanctuary at Snowmass Club)

134 Snowmass Club Drive, Unit 144, Snowmass Village, Colorado

Pitkin County Schedule No. R019086

Snowmass Club: Respondent assigned a value of \$45,528,600 but is recommending a reduction to \$45, 010,400 for the thirty condominiums. Petitioners are requesting a value of \$28,149,260.

Sanctuary Condos: Respondent assigned a value of \$23,793,400 for the nine units. Petitioners are requesting a value of \$16,453,540.

Unit 144 Sanctuary Condos (Merin): Respondent assigned a value of \$2,155,000. Petitioners are requesting a value of \$1,537,150.

PROPERTY DESCRIPTION

The complex is comprised of Snowmass Club, Sanctuary Condos, and athletic/recreational facilities. Totaling 210 acres, it is located in the heart of Snowmass Village.

Snowmass Club consists of thirty units (14 two-bedroom and 16 three-bedroom).

Sanctuary Condos consists of nine units (one three-bedroom, six four-bedroom, and two five-bedroom) plus Unit 144 addressed separately.

Deeded ownership of each unit consists of an undivided or fractional ownership known as “interval ownership” or “interval interest” constituting “timeshare estates” under Colorado law. Deeded ownership in Snowmass Club consists of an undivided one-seventh (1/7th) interest. Deeded ownership in Sanctuary Condos consists of an undivided one-eighth (1/8th) interest. Owners are permitted use of a unit in the building (which may not be the deeded unit) for four weeks per year (two in summer and two in winter) on a rotating basis. Use in excess of four weeks per year is provided on a “space available” basis for one week at a time.

All units are fully furnished. Parking spaces are allocated in the heated garage (one per Snowmass Club units and two per Sanctuary Condos units) with additional outdoor parking available. Benefits include use of the 19,000 square foot athletic club (four pools, two hot tubs, and weight/cardio/aerobics rooms), golf course, indoor and outdoor tennis courts, and restaurant plus miscellaneous services and programs.

Unit 144, Sanctuary Condos (Owner: Merin)

Rene Merin is the 100% owner of Unit 144 in the Sanctuary. It has never been interval owned. Mr. Merin has exclusive use of his living unit as well as membership in the athletic club.

PETITIONERS' CASE

Petitioners' witness, Erik Cavarra (manager and managing broker for Alpine Properties) discussed the unique nature of interval-owned units; limited use, inability to occupy any one unit,

inability to decorate, additional rules, and higher financing interest rates. He estimated that fractionally-owned units sell approximately 30% lower than wholly-owned units.

Petitioners' witness, Bruce G. Cartwright, Managing Director of Duff & Phelps, presented an analysis of the subjects' fractionally-owned units based on price per square foot. He relied on this analysis because every factor involved in purchase is the same regardless of the number of bedrooms and bathrooms. He considered comparison with interval-owner sales to be mandatory; every owner is encumbered by the fractional requirement.

Snowmass Club

Mr. Cartwright presented seven two-bedroom and two three-bedroom interval-ownership sales from Snowmass Club. Using averages of prices per square foot, he concluded to values of \$550.00 and \$685.00 per square foot for two-and-three-bedroom units, respectively.

Sanctuary Condos

Using the same methodology, Mr. Cartwright presented the only five interval-ownership sales within Sanctuary during the base period, all four-bedroom units. He concluded to a value of \$710.00 per square foot for all units in Sanctuary Condos.

Unit 144 (Merin) in Sanctuary Condos

Mr. Cartwright applied the same methodology for Unit 144 as for other interval-owned units (see above), stating that it is a unique product in an interval-owned complex and that the owner has access to the same amenities and services as the interval owners. He concluded to a value of \$710.00 per square foot times subject unit 144's 2,165 square feet, or \$1,537,150.

RESPONDENT'S CASE

Respondent's witness, Larry Fite, Chief Appraiser for Pitkin County, testified that the Assessor's Reference Library (ARL) does not provide guidance for valuation of fractional interest properties, and state auditors would not approve fractional interest methodology. Valuation of time shares for a single unit should not exceed that of a unit purchased in fee simple without provisions for time sharing. Methodology should use comparison with 100% ownership sales, which would be equal to one assessment per unit. Assessors are required to value the whole, not parts of the whole.

Mr. Fite referred to an article in "80 Insights/Summer 2010" that suggested applying a percentage to undivided interest valuation to reflect fractional ownership. Several studies reported discounts between 15% and 35% for fractional interests (Mr. Fite agreed that 30% was a defensible figure).

Snowmass Club

Respondent's witness, Cheryl Hasselbring, Pitkin County Appraiser, presented four comparable fee simple condominium sales for each of the thirty units. Time-adjusted sale prices ranged from \$1,020,924 to \$2,574,261. Adjustments were made for location, quality and condition, size, bathroom count, floor, end versus interior location, amenities, parking, and view. Value conclusions for the thirty units varied.

Sanctuary Condos

Ms. Hasselbring presented the same four comparable fee simple condominium sales for each of the nine units. Time-adjusted sale prices ranged from \$1,095,142 to \$3,506,190. Adjustments were made for age, quality and condition, size, bathroom count, floor, end versus interior location, amenities, and parking. Value conclusions for the nine units varied.

Unit 144, Sanctuary Condos (Owner: Merin)

Ms. Hasselbring presented the same four comparable condominium sales, all fee simple. Time adjusted sale prices ranged from \$1,095,142 to \$3,506,190. Adjustments were made for age, quality and condition, size, bathroom count, floor, end versus interior location, amenities, and parking. She concluded to a value per square foot of \$800.00 or \$2,380,500 adjusted at 9.5% for an indicated value of \$2,155,000.

CONCLUSION

Snowmass Club and Sanctuary Condos: The Board acknowledges the unique nature of these units, which offers luxury units and amenities to buyers primarily interested in the high seasons of winter and summer and willing to accept the limitations of their residency. The Board finds that Respondent's application of fee simple valuation is flawed because owners do not share the same fee simple rights. The Board agrees with Petitioners' witness that sale prices reflect the bedroom/bathroom count and common amenities. Sizes vary, and price per square foot is an acceptable methodology for this assignment per the Board.

Unit 144 in Sanctuary Condos is wholly owned by Mr. Merin, who also has membership in the athletic club. This unit is not interval-owned like all other residential units in the complex. If marketed, it would appeal to buyers wanting 100% fee simple ownership and occupancy. Petitioners' agent, however, presented no fee simple sales. The Board is persuaded that interval-owned units realize an estimated 30% lower value than sellers of fee simple units. Petitioners' estimate of value (\$1,537,150) would calculate, then, to \$1,998,295 for Unit 144. This estimate, rounded to \$2,000,000, is supported by Respondent's fee simple estimate of \$2,155,000.

ORDER ON MOTION FOR SUMMARY JUDGMENT

On or about November 19, 2014, the Board received Respondent's Motion for Summary Judgment. Petitioners filed Petitioners' Response to Respondent's Motion for Summary Judgment on or about November 25, 2014.

In its Motion for Summary Judgment, Respondent informed the Board that Petitioners in dockets 64667, 64669 and 64671 have previously entered into a binding stipulation with the Board of County Commissioners as to the valuation of the subject properties for 2011 tax year. Petitioners' appeal to the Board involves the 2012 valuation of the same subject properties. According to Respondent, there is no increase or decrease in actual value attributable to an unusual condition on the relevant property between 2011 and 2012. Therefore, Respondent contends that, as a matter of law, the value stipulated for 2011 must be the value determined to apply for 2012.

The Board disagrees with Respondent's argument and finds that, under the Colorado statutes, a taxpayer may challenge the valuation of its property for the second year in a biennial valuation cycle without demonstrating that "unusual conditions" have risen between the first year and the second year:

Initially, we reject the county's argument . . . that in order to challenge a valuation in the second year of a base year period, the taxpayer must show the existence of an unusual condition. . . . [U]nusual circumstances must exist before *an assessor* may revalue property; [but there is a] statutory right of a taxpayer to challenge an incorrect valuation in the second year of a two-year base period.

Resolution Trust Corp. v. Board of County Comm'rs of Arapahoe County, 860 P.2d 1383, 1386 (Colo. App. 1993) (emphasis in original).

Moreover, the Board agrees with Petitioners that the assessed value of a property in the second year of a valuation cycle may be different from the first year due to (1) unusual condition; or (2) the taxpayer's protest of the value for the second year.

[A]bsent certain statutory exception *or a challenge by a taxpayer*, the assessor need not make an independent appraisal regarding the second year of a reassessment cycle, and the valuation of a taxpayer's property for both years of that cycle will be the same.

Weingarten v. Board of Assessment Appeals, 876 P.2d 118, 121 (Colo. App. 1994) (emphasis added).

Therefore, the Board finds that, under the facts and circumstances of this case, the value of the first year within a two-year valuation period is not binding or conclusive in a taxpayer's

challenge to the value for the second year. Accordingly, Respondent's Motion for Summary Judgment is denied.

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioners based on a 2012 actual value for the subject properties:

Snowmass Club \$28,149,260
Sanctuary Condos \$16,453,540 excepting Unit 144
Unit 144 of Sanctuary Condos (Merin) \$2,000,000

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

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-nine 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-nine 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 14th day of January, 2015.

BOARD OF ASSESSMENT APPEALS

Diane M DeVries

Diane M. DeVries

James R. Meurer

James R Meurer

MaryKay Kelley

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

Milla Lishchuk

Milla Lishchuk

