

**BOARD OF ASSESSMENT APPEALS,
STATE OF COLORADO**
1313 Sherman Street, Room 315
Denver, Colorado 80203

**Docket Nos: 68337,
68338, 68339, & 68340**

Petitioners:

**HDH PARTNERSHIP, LAWRENCE AUSHERMAN, ET AL.,
HONDROS FAMILY REAL ESTATE, LLC, & TERESA M. MULL
REVOCABLE TRUST,**

v.

Respondent:

HINSDALE COUNTY BOARD OF EQUALIZATION.

ORDER

THIS MATTER was heard by the Board of Assessment Appeals on June 7, 2016, MaryKay Kelley and James R. Meurer presiding. Petitioners were represented by Michael J. Russell, Esq. Respondent was represented by Michael P. O'Loughlin, Esq. Petitioners are protesting the 2015 actual value of the subject parcels.

The subject properties are described as follows:

Ranch Parcels Nos. 2, 30, [6, 21, 28], & 8**

Lake Fork Hunting and Fishing Club

Hinsdale County Account Nos.:

R000133 (HDH Partnership)

R000104 (Ausherman)

****R000107, R000125 & R003113 (Hondros)**

R000065 (Mull)

The subject of this appeal consists of four ranch parcels in the Lake Fork Hunting and Fishing Club (the Club) located along both sides of State Highway No. 149, as well as along the Lake Fork of the Gunnison River in Hinsdale County. The three ranches owned by Hondros Family Real Estate, LLC are treated as one parcel for purposes of this hearing. The Club consists of a total of 29 separate parcels of real property, four of which are the above referenced parcels addressed in this appeal. These 29 parcels range in size from 35 to 155 acres, and include a total of 47 (full and partial) ownership interests.

In 1979, the original developer, Wee Country Corporation, recorded the “Declaration and Establishment of Covenants, Conditions, Reservations and Restrictions” (“Declaration”) for Lake Fork Hunting and Fishing Club which established the Lake Fork Club. Under the terms of the Declaration, Wee Country Corporation subdivided 1,400 acres of the property into 29 smaller parcels (“Ranches”). In 1999, a deed restriction was placed on the development by the Club members that eliminated any subdivision of the parcels, any residential development, or the development of natural resources on the parcels. In addition, the Club is subject to cross easements that allow any member to access the entire 1,400 acres of the Club. The Club continues to be operated as a hunting and fishing club for the benefit of the owners of the parcels.

The four parcels that are addressed in this hearing are referenced below.

Petitioner **HDH Partnership** (Docket No. 68337) took title to Ranch parcel No. 2 of the Lake Fork Club via deed dated September 25, 2002 and recorded on October 3, 2002 at Reception No. 92516. This parcel contains 35 acres per county records.

Petitioners **Ausherman, Ish and Marclunan** (Docket No. 68338) took title to Ranch parcel No. 30 of the Lake Fork Club via deed dated October 12, 1994 and recorded on October 19, 1994 at Reception No. 85331. This parcel contains 101.9 acres per county records.

Petitioner **Hondros Family Real Estate, LLC** (Docket No. 68339) took title to: (1) Ranch parcel No. 6 (2/3 interest) via deed dated December 10, 2013 and recorded on December 12, 2013 at Reception No. 100558; (2) Ranch parcel No. 21 (1/3 interest) via deed dated March 24, 2015 and recorded on March 30, 2015 at Reception No. 10129; and Ranch parcel No. 28 (1/3 interest) via deed dated June 24, 2010 and recorded on July 8, 2010 at Reception No. 98269. These parcels contain 139.2 total acres per county records.

Petitioner **Teresa M. Mull Revocable Trust** (Docket No. 68340) took title to Ranch No. 8 (2/3 interest) of the Lake Fork Club via deed dated September 30, 2009 and recorded on October 5, 2009 at Reception No. 97893. This parcel contains 155 acres per county records.

The values presented to the Board from the parties are found in the following table. Note that these values are based on the percentages owned (e.g. 33%, 66% or 100%):

Petitioner	Petitioner's Value	Respondent's Assigned Value
HDH	\$65,333	\$420,000
Ausherman et al	\$65,333	\$534,980
Hondros	\$87,111	\$493,700
Mull	\$43,555	\$255,750

Petitioners presented two arguments regarding the subject parcels addressed in this appeal. The first argument involves an ownership issue; the second is a valuation issue. These arguments are summarized as follows:

- Petitioners argue that the Hinsdale County Board of Equalization erred in upholding the Assessor's determination that Petitioners are the owners of the parcels to which they hold record title, but do not have the rights to use, occupy or exclude others from that property.
- Petitioners argue that the Hinsdale County Board of Equalization erred in upholding the Assessor's valuation of the real property to which Petitioners hold record title on a Ranch-by-Ranch basis, using the comparative sales method without accounting for restrictions on that property's use.

Petitioners' first two witnesses, Mr. Mark Ish and Mr. John Hondros, both owners of several of the subject parcels and members of the Club, testified as to the Club's history, ownership structure, and physical characteristics.

In addition, the testimony was presented concerning the restrictions of the Club. According to Petitioners, the Lake Fork Club in effect owns the Ranches due to the extremely restrictive Covenants, Bylaws, and Rules that limit the rights of the individual title owners of the Ranches. Individual title owners are highly restricted in their use of the property and cannot build on the parcels, cannot subdivide them, and cannot develop any natural resources on them. The bylaws provide that the Club "has full charge and control of the grounds, cabins, funds and other property of the Club." Therefore, Petitioners contend, the Lake Fork Club, not the individual owners of the Ranches, should be responsible for paying property taxes on the Ranch parcels.

Petitioners' third witness, Mr. Arnie Butler, MAI, testified that he was engaged by Petitioners to prepare an appraisal on the subject. After an inspection of the property and review of the covenants, Mr. Butler determined that the Club should be valued as one 1,400-acre recreational ranch as opposed to individual ranch parcels. According to Mr. Butler, this conclusion was based on his opinion of the highest and best use of the subject. Relative to the valuation of the 1,400 acre parcel, Mr. Butler referenced four sales of large ranch properties in his analysis and concluded to an unrestricted value of \$4,000 per acre, or \$5,600,000 in total value. In addition, Mr. Butler reviewed 11 sales to provide an opinion of the deed restricted value of the subject's acreage of \$1,960,000, which equates to a ±65% discount from his concluded unrestricted market value.

Respondent presented testimonies of several witnesses, including Ms. Joan Nelson, Hinsdale County Assessor, Mr. Kyle Hooper, Colorado Department of Property Taxation, and Ms. Susan Thompson, Hinsdale County Commissioner. Respondent maintains that each subject parcel must be valued and assessed on individual basis and not as an aggregate 1,400 parcel as argued by Petitioners.

As discussed, the two major issues involved in this hearing consisted of the ownership and valuation of the Ranches. Based on a review of the exhibits and testimony, the Board's conclusions relative to the referenced issues are as follows:

Ownership

Petitioners argue that although they hold record titles to the Ranches within the Lake Fork Fishing and Hunting Club, the Club's severely restrictive covenants, bylaws and rules prevent them from using, occupying, deriving profits or excluding others from the real estate without the Club's permission. According to Petitioners, because the Club retains nearly all of the incidents of ownership – except record titles – it is the Club that should be considered an “owner” for purposes of taxation, not the individual Club Members.

In support of their argument, Petitioners point out that the Bylaws of the Club provide that the Club has “full charge and control of the grounds, cabins, funds and other property of the Club.” The “Club Grounds” are defined in the Bylaws to include “all property owned by Lake Fork Hunting and Fishing Club including all ranches by virtue of the ownership of which persons are entitled to membership.”

Further, Petitioners emphasize that under the Club’s Rules and Regulations, Members have only limited rights to use the Club Grounds, including the Ranches to which they hold title, for the hunting and fishing purposes. They have no right to use particular Ranches they hold title to any more or less than any other part of the Club grounds. They do not have the right to exclude others from those Ranches while they are using them or to control where other Members go on the Club grounds. In addition, Club Members are required to register their presence and presence of their guests with the Club. And, Members are prohibited from subdividing, constructing improvements, developing mineral or other natural resources on their parcels.

The Board did not find Petitioners’ arguments compelling. Each of the four Petitioners, as well as every other Member that makes up the Lake Fork Club, obtained their interests in their respective Ranches by and through a deed transferring real property. As holders of the property deeds, Petitioners have the right to place on the open market and sell their Ranch parcels. The revenue from such a transaction goes to the seller of the Ranch and the buyer receives a real property interest via a deed as is the case in any real property transaction. The Board found that the Members’ unrestricted right to dispose of their parcels by the way of a deed transfer and to keep the proceeds as a persuasive incidence for purposes of establishing ownership.

The Board recognizes, however, that title ownership alone does not establish “ownership” for purposes of taxation. See *Roaring Fork Club, LLC v. Pitkin County Board of Equalization*, 342 P.3d 467 (Colo. App. 2013). The Colorado Court of Appeals, in *Traer Creek Plaza, LLC v. Eagle County Board of Commissioners*, 12 CA 2305 (Nov. 14, 2013), has stated:

Record title alone, however, is not determinative of tax exempt status under the Colorado law. The question of ownership for tax purposes must be decided on the basis of ‘real ownership’ rather than ‘forms and labels.’ [.] The parties’ intent, as demonstrated by the factual circumstances, determines real ownership. *Id.*

Actual control of the property may indicate the intent to own, even if that control is exercised by an entity which does not have record title to the property.

Although the owners of the Ranches take their parcels subject to Lake Fork Club Covenants, Bylaws, Rules and Regulations, the Board was not convinced that the restrictions imposed therein, in effect, divest the individual Ranch title holders of the property ownership. The Board finds that any and all restrictions that Petitioners cited as abrogating their ownership rights are entirely self-imposed as they can be amended or terminated at any time by the majority vote of the Ranch owners. In pertinent part, Declaration and Establishment of Covenants, Conditions and Restrictions for Lake Fork Hunting and Fishing Club, at page 5, states as follows:

TERMINATION OR AMENDMENT

This Declaration shall not be amended or terminated unless the Owners representing an aggregate interest of 75% or more of the Ranches in the entire property affected thereby, consent and agree to such amendment or termination by appropriate instruments duly recorded.

An example of the Ranch owners' self-governance, was the August 6, 1999 amendment to the Club's Declaration and Establishment of Covenants, Conditions and Restrictions for Lake Fork Hunting and Fishing Club, thereby 75% or more of the individual Ranch owners voted to amend the Declaration to state that "No residences shall ever be constructed on individual Ranch." *See Exhibit F to Petitioner's Opening Brief.* While Petitioners have portrayed the restriction on the parcel development as an abrogation of their ownership rights by the Club, in fact, the Board sees it as an exercise of the Ranch owners' liberties and self-governance with respect to their ownership of the Ranches. No provision of the Declaration prevents the amendment of any and all of its provisions, at any time, by the majority vote of the Ranch owners. To the contrary, the owners have the right to terminate the Declaration, in its entirety, if they choose to do so.

The Board also did not find support for Petitioners' claim that the Club, with exception of the record title, retains nearly all incidents of ownership associated with the Ranches and the Club grounds. The Club's By-laws state that all Club members "shall be entitled to all privileges of the Club and its grounds." *See By-laws of Lake Fork Hunting and Fishing Club, Art. VI, Section 2.* And indeed, in addition to having an unrestricted right to dispose of their property, the Club Members enjoy other quintessential incidents of ownership, such as the right to possess and use the Club grounds in their 1,400-acre entirety. Moreover, another significant ownership right – the right to exclude others from the land – is also enjoyed by the Members in that no non-Members are allowed to enter the Club's grounds.

There can be no argument that members buying into a hunting and fishing club do so in order to have access to hunting and fishing. As is the case with the Lake Fork Hunting and Fishing Club, the Members, in addition to acquiring a title to a parcel of land within the Club grounds, also gain an unfettered right, granted they are in the good standing, to hunt and fish on the 1,400-acre span of the Club grounds. While Petitioners argue that their ownership rights are

“severely restricted” in that they “have no right to use the Ranch they hold title to any more or less than any other part of the Club Grounds” – to have otherwise would defeat the Club’s purpose. The Members are not limited to hunting and fishing on their individual parcels, instead, they are free to engage in recreational activities of their choice on all the Club grounds, which would not be possible if there were fencing enclosing individual properties, residential improvements, or mineral excavations, etc. The Board finds that each Club Member’s unrestricted use of the Club grounds as a whole is not a limitation, as Petitioners attempt to portray, but is a benefit for which Petitioners purposefully bargained for in purchasing valuable property rights within the Club’s grounds.

The Board found that the parties’ intent, as demonstrated by the factual circumstances, reflects ownership in the hands of the individual Club Members, not the Club. The individual Members, in addition to being record title holders, by virtue of their majority vote, exercise actual control over the Ranches and therefore are the “real owners” in both - form and substance - for purposes of the property taxation. See *Traer Creek Plaza*, (“The parties’ intent, as demonstrated by the factual circumstances, determines real ownership.”)

In addition, Petitioners contend that because they do not have the right to use or occupy the particular Ranches titled in their names, their interests in connection with the Ranches are more accurately characterized as non-taxable licenses or time-shares. Therefore, Petitioners argue that the Club, not individual deeded owners of the Ranches, should be liable for real estate taxes on the entire 1,400-acre property.

The Board found unavailing Petitioners’ attempt to classify their valuable property rights in the Ranches as either licenses or time-shares. The rights associated with either a license or a time-share fall short of the rights that Petitioners possess with respect to their Ranch parcels. The term “license” is used as indicating a temporary privilege to do an act or series of acts upon the land of another without acquiring any estate therein. *Radke v. Union Pacific Railroad Co.*, 334 P.2d 1077, 1083 (Colo. 1959). Clearly, Petitioners’ ownership rights could not be equated to mere licenses as each of them are the deeded owners of the clearly-defined, albeit on paper only, parcels of land within the Club grounds. Unlike a license, that is only a temporary privilege to enter and use the land, Petitioners’ rights are more of a tangible nature in that they can sell, transfer, or otherwise dispose of their parcels in a manner they see fit.

Similarly, a time-share is not a fair comparison to Petitioners’ rights as the holders of interest in their Ranches. A time-share is usually a contract whereby a time-share holder pays a fee to use an unspecified unit, generally in a hotel, for a predetermined period of time. See generally *Bernhardt v. Hemphill*, 878 P.2d 107, 1012-13 (Colo. App. 1994) (a time-share estate is either an interval or time-span ownership interest). Unlike the case with Petitioners’ ownership rights, time shares do not implicate a right to transfer real property in fee simple. *Id.* at 113. Moreover, in contrast with the time-share principles, Petitioners are not limited by any time constraints to access the Club grounds and may do so on unlimited basis. Basically, Petitioners need not “share” their time at the Ranches with anyone; if they wish to, they can fish and hunt on the property grounds every day of the year, as long as they maintain property ownership within the Club.

And finally, Petitioners request the Board to issue a ruling that would affect the rights of the remaining 43 owners that comprise the Lake Fork Club that are not parties to this appeal. Petitioners represent only four out of a total of 47 Ranch owners and there is nothing in the record to indicate that the remaining owners have been notified of, have consented to, or approved of the remedies sought by the four Petitioners in appealing their property taxes before the Board. The Board is not convinced that adjudicating the important rights of the individuals who are not the parties to this case would not run afoul of the principles of basic fairness and due process.

Based on the above, the Board finds that Respondent appropriately taxed each Ranch parcel separately according to the deeds recorded in Hinsdale County property records. The Board's conclusion is harmonious with and further supported by Section 39-5-104, C.R.S. that states that "[e]ach tract or parcel of land and each town or city lot shall be separately appraised and valued [. . .]." Petitioners presented insufficient credible evidence to support their assertions of error in Respondent's per-parcel assessment methodology.

Valuation

Given that the Board has concluded that each parcel should be separately assessed, the Board now turns to the issue of the 2015 valuation of the subject parcels.

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 Petitioners provided insufficient probative evidence to convince the Board that Respondent's 2015 valuation of the subject parcels is incorrect. Given Petitioners' lack of a supportable market approach or sufficient supportable testimony or evidence discrediting Respondent's valuation, no impeachment of Respondent's conclusions of value could be reasonably accomplished. In addition, no credible information was provided by Petitioners indicating that Respondent's analysis did not consider the value of any non-realty interests associated with the Club membership.

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-nine days after the date of the service of the final order entered).

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-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 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.

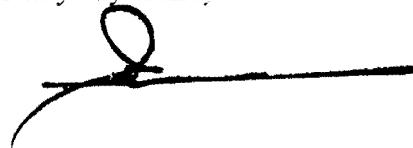
Section 39-8-108(2), C.R.S.

DATED and MAILED this 26th day of August, 2016.

BOARD OF ASSESSMENT APPEALS

MaryKay Kelley

MaryKay Kelley



James R. Meurer

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

Milla Lishchuk

