

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>AUSTRIA HAUS DEV GROUP LLP,</p> <p>v.</p> <p>Respondent:</p> <p>EAGLE COUNTY BOARD OF EQUALIZATION.</p>	<p>Docket No.: 70433</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on May 3, 2018, MaryKay Kelley and Sondra W. Mercier presiding. Petitioner was represented by F. Brittin Clayton III, Esq. Respondent was represented by Christina Hooper, Esq. Petitioner is protesting the 2017 actual value of the subject property.

Subject property is described as follows:

**242 East Meadow Drive, Vail, Colorado
Eagle County Schedule No. R048266**

The subject is identified as a 25-guest room hotel situated within a mixed-use property. In addition to the guest rooms, the subject includes a deed-restricted employee housing unit along with access to limited common elements (LCE). The LCE are shared with 18 residential club units and one ground floor commercial unit (not part of the subject). The property was constructed in 1998. The subject is part of the Austria Haus Condominium Association (AHCA).

Petitioner is requesting an actual value of \$6,247,000 for the subject property for tax year 2017. Respondent assigned a value of \$8,455,140 for the subject property for tax year 2017.

Petitioner presented an income approach to support the requested value of \$6,247,000.

Petitioner's witness, Cynthia Thornburgh, CFO/Asset Manager/Managing Member, Austria Haus Development Group LLP, testified that due to the multiple ownerships associated with the AHCA, the subject hotel had severely limited ability to effect changes in the common elements of the

the property; also causing inefficiencies in management and added expense to the operation of the hotel. Ms. Thornburgh reported that there had been limited updating to the common elements in the 20-year old property.

Petitioner's witness, Jodi Garman, Director at Duff & Phelps and Petitioner's tax agent presented a valuation analysis of the hotel operation. Ms. Garman applied direct capitalization in an income approach to value, relying on the income and expense information for the June 2016 trailing 12-month operating statement. Ms. Garman applied an additional expense adjustment to reflect a payment to Ms. Thornburgh for asset management. The capitalization rate was based on a review of numerous investor surveys and an analysis of two local Vail sales. Ms. Garman determined that neither the cost nor sales comparison approach would be reliable indicators of value given the age and mixed-use nature of the subject.

Respondent's witness, Ryan Kane, a Certified General appraiser with the Eagle County Assessor's Office, used the income approach to derive a value of \$10,615,570 for the subject property. Mr. Kane concurred that the cost approach was not applicable to the valuation of the subject; however, an analysis of comparable sales was considered as a test of reasonableness to the income approach.

Respondent assigned an actual value of \$8,455,140 to the subject property for tax year 2017.

Both parties relied on the same June 2016 trailing 12-month operating statement to complete an income approach, with the following points of departure identified: (1) revenue derived from renting of the employee housing unit; (2) the asset management fee paid to Ms. Thornburgh; (3) appropriate selection for management fee; and, (4) support for the concluded capitalization rate. To reach its decision, the Board will address the evidence concerning each of these issues.

First, Respondent added revenue of \$8,525 from the rental of the employee housing unit. Based on testimony at hearing, the Board was convinced that the rental income was already included as part of total revenue. The Board notes that ultimately both parties concluded to the same total departmental revenue of \$1,202,163, making this issue irrelevant.

Secondly, Petitioner deducted a fee to Ms. Thornburgh for asset management based on IRS Form 1065 – Schedule K-1, Partner's Share of Income, Deductions, Credits, etc. The Board was convinced through Ms. Thornburgh's testimony and supporting K-1 documentation that this was a function of a partner's ownership position and not an appropriate deduction to the actual operation of the hotel. The Board does not find Petitioner's deduction of this fee to be supported appraisal methodology.

Next, Petitioner applied the subject's actual management fee of 10% as a deduction to income. Respondent applied a reduced market derived management fee of 3.20% based on local market information and investor survey data. The Board was convinced that Petitioner's deduction was excessive and not supported by market. Petitioner's own investor survey evidence supported the lower fee.

Finally, Petitioner applied a significantly higher capitalization rate of 7.50%, compared to Respondent's rate of 5.50%. Ms. Garman concurred with Respondent's capitalization rate calculation of 5.98% for the Cascade Club based on its non-renovated condition. However, Ms. Garman calculated an 8.57% capitalization rate for the Holiday Inn Vail by adding the estimated \$10 million cost of the buyer's planned renovation to the price paid and calculating a capitalization rate based on a projected future net operating income after completion of the renovation. Comparing a rate based on anticipated future income following a renovation is speculative and not a reasonable comparison to the estimated income generated in the base period for the non-renovated subject property. According to Respondent, the capitalization rate calculated for the Holiday Inn Vail sale using the price paid for the property in its non-renovated condition, was 4.86%. Neither party placed significant weight on investor survey data as a source for the analysis of the capitalization rate.

The Board finds the evidence from local market sales presented by Respondent's witness to be compelling regarding the appropriate capitalization rate. The Board concludes the methodology used by Petitioner's analyst was not credible.

The Board notes that Respondent argued that the credibility of Petitioner's witness, Ms. Garman, was impacted because the tax agent was paid on a contingency fee basis, as disclosed to the Board. Taking into consideration the nature of Ms. Garman's compensation, the Board views the valuation submitted to be part of a consulting service, not an independent appraisal. In its analysis of this case, the Board has weighed the evidence provided by Ms. Garman in light of the potential bias of a contingency fee arrangement.

A taxpayer's burden of proof in a BAA proceeding is well-established: a protesting taxpayer must prove that the assessor's valuation is incorrect by a preponderance of the evidence in a de novo BAA proceeding. *See Bd. Of Assessment Appeals v. Sampson*, 105 P.3d 198, 202, 208 (Colo.2005). After careful consideration of the evidence, including testimony, presented at the hearing, the Board finds that Petitioner did not meet its burden.

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).

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-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 19th day of June, 2018.

BOARD OF ASSESSMENT APPEALS



MaryKay Kelley



Sondra W. Mercier

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



Milla Lishchuk

