

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>HYATT GRAND ASPEN,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>PITKIN COUNTY BOARD OF EQUALIZATION.</b></p>	<p><b>Docket No.: 70945</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on November 7, 2018, Diane DeVries and Samuel Forsyth presiding. Petitioner was represented by Gregory S. Gordon, Esq. Respondent was represented by Richard Y. Neiley, Esq. Petitioner is protesting the 2017 actual value of the subject property.

Petitioner’s Exhibits 1-9 as well as Reply Exhibits 1 and 2 were admitted into evidence. Respondent’s Exhibit A and Rebuttal Exhibits A, B, and C were also admitted.

Subject property is described as follows:

**53 Fractionally Owned Residential Condominium Units  
G. A. Resort  
415 E. Dean Street  
Aspen, Colorado**

The subject property consists of 53 fractionally-owned condominium units located in the Hyatt Grand Aspen Resort in Aspen. There are 7 1-bedroom units, 18 2-bedroom units, 27 3-bedroom units, and 1 4-bedroom unit. The subject is located ½ block from the gondola at the base of Aspen Mountain and 3 blocks away from Lift 1-A on the western side of the ski area. The 53 units have similar décor and finishes. The kitchens have stone counters and high-end appliances. The living and dining areas have hardwood floors. The larger units have a master suite with fireplace and private bath with stone finishes, walk-in shower and jetted tub.

Grand Hyatt Resort condominiums is one of 4 complexes featuring fractional interest owned units located at the base of Aspen Mountain. The Grand Hyatt Resort fractional interest units are unique among the 4 complexes. For the other three complexes, owners have no guarantee that they will be able to use the particular unit that they purchase. Additionally, for these three complexes use of a unit is on a rotational reservation system where an owner's priority changes from year to year. The fractional interest for the subject property includes the right to occupy the specific unit that was purchased during established peak times and during floating times off-peak. Units that have a particular week of use that are not occupied by the fractional interest owner may be leased out.

The resort was built in 2005. Resort amenities include a full-service staff for check-in and daily housekeeping. The main floor level features an owner's lounge area, business center, sport shop, outdoor pool, two hot tubs and fire pit area. The building has underground parking.

Petitioner is requesting an actual value of \$155,857,200 for the subject property for tax year 2017. Respondent assigned a value of \$200,669,800 for the subject property for tax year 2017.

Petitioner called its first witness, Lawrence Fite, General Certified Appraiser, employed by the Pitkin County Assessor's Office. Petitioner asked Mr. Fite why he only used whole-interest unit condominium sales when valuing the subject fractional interest condominium units, rather than using available comparable sales of fractional interest units. Mr. Fite offered several reasons. Fractional interest condominium units are unique in so many ways that the sales are not reliable in valuing fractional interest properties. Mr. Fite also referenced Division of Property Taxation's class materials which recommend that Assessors use whole interest condominium sales when valuing fractional interest properties. In relation to the appraisal procedures of these types of units, the DPT course materials state that "[f]or ad valorem purposes, the valuation of all timeshares within a single unit should not exceed that of a unit bought in fee simple, without provisions for timesharing".

Introducing an argument of equity, Petitioner asked Mr. Fite why a similar resort proximate to the subject, Aspen Residence Club, appeared to be valued at approximately 30% less per unit than the units at Aspen Residence Club and Hotel. Mr. Fite replied that there were enough differences between this resort and the subject that the answer to that question would provide no evidence as to the actual value of the subject units.

Finally, Petitioner presented Mr. Fite with a BAA case from tax year 2012 that involved an appeal of fractional interest condominium units in Snowmass Club Condo Association in Pitkin County. Part of the decision indicated the following; "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)". Mr. Fite replied that the testimony and analyses applied in that particular case, 5 years ago regarding to that property, were relevant to that market, those units, and that time frame and not relevant to the current appeal. Mr. Fite stated that his analysis for the actual values for the properties under this appeal are based on this time frame, this market, and these units.

Petitioner called Mr. David Ritter, a Certified General Appraiser. Mr. Ritter authored a document, offered in rebuttal, which he titled "Review (of) an appraisal of 53 G. A. Resort residential condominiums locate (sic) at 414 East Dean Street Aspen Colorado prepared by Lawrence C. Fite a Certified General Appraiser, employed by Pitkin County Assessor's Office completed on October 17, 2018." Mr. Ritter's review appraisal generally validated the supporting data regarding the subject including references to the improvements, neighborhood analysis, photographs, maps, zoning, and highest and best use. Review appraiser also validated Mr. Fite's market conditions (time) adjustment factors. As part of the review of the Respondent's expert's appraisal, Mr. Ritter proceeded to appraise the subject units. Mr. Ritter disagreed with the minimal amount of comparable sales that Mr. Fite analyzed. Mr. Ritter reiterated in his report that there are 7 one-bedroom condominium units, 18 two-bedroom condominium units, 27 three-bedroom condominium units, and a single 4-bedroom condominium unit. Mr. Ritter's opinion is that the first and primary unit of comparison is bedroom count. He disagreed with Mr. Fite emphasizing unit size as the primary unit of comparison. Despite the variety of bedroom units represented by the 53 subject units under appeal, Mr. Ritter observed that Mr. Fite's sales comparison analysis was limited to just 4 comparable sales including 1 two-bedroom unit and 3 three-bedroom units.

In Mr. Ritter's appraisal imbedded in this review appraisal document, Mr. Ritter identified 11 one-bedroom whole-interest condominium sales, 13 two-bedroom whole interest condominium sales, and 9 three-bedroom whole interest condominium sales. All the sales occurred between July 1, 2014 and June 30, 2016. The 33 identified sales were distributed among 11 different resorts in the Aspen market. After arraying the sales by bedroom count, Mr. Ritter applied the county's market condition (time) adjustment factor. Mr. Ritter made no other adjustments to the comparables. Mr. Ritter then determined the mean, median and weighted average of the market condition adjusted sales by bedroom count.

- After review of the time adjusted mean, weighted average and median of the time-adjusted 11 one-bedroom whole interest condominium unit sales, distributed among 6 different resorts, the review appraiser concluded to \$1,560 per square foot.
- After review of the market condition adjusted mean, weighted average and median of the market condition adjusted 13 two-bedroom whole interest condominium unit sales, distributed among 7 resorts, the review appraiser concluded to \$1,445 per square foot.
- After review of the adjusted mean, weighted average and median of the market condition adjusted 9 three-bedroom whole interest condominium unit sales, distributed among 6 resorts, the review appraiser concluded to \$1,860 per square foot.

After applying the concluded value per square foot based on the market condition adjusted sales arrayed by bedroom count to the subject property units, the Petitioner is requesting a 2017 actual value of \$155,857,200 based solely on the sales comparison (market) approach.

Respondent presented 4 comparable sales ranging in size from 1,242 square feet to 1,699 square feet, in market condition adjusted sale prices from \$2,295,300 to \$3,522,400 and in market condition adjusted sale prices per square foot from \$1,710 to \$2,227. After qualitative adjustments the sale prices ranged from \$2,869,100 to \$4,156,400 and sale price per square foot from \$2,138 to \$2,627.

Comparable 1 is located at Mountain Queen Resort, originally constructed in 1974. This comparable is adjusted a positive 3% for resort amenities, positive 10% for age and quality of complex, and positive 5% for quality of interior finish for a total upward adjustment of 18%. This comparable is deemed by the Petitioner to be similar to the subject in location and parking. Comparable 2 is in Aspen Alps Resort, a 'condo-hotel complex', originally constructed in 1963. This unit was fully renovated prior to the sale. The Petitioner applied a positive 3% adjustment for resort amenities, positive 10% adjustment for age and quality of complex, and a 5 % positive adjustment for parking. The total net adjustment is positive 18%. The Petitioner deemed that location and interior quality warranted no adjustment. Comparable 3 is in North of Nell Resort, originally constructed in 1965. The Petitioner applied a 10% adjustment for resort amenities, a negative 5% adjustment for location as this complex is located at the base of Aspen Mountain, a positive 10% adjustment for age and quality of complex, a positive 10% adjustment for quality of interior finish. The total net adjustment is positive 25%. No adjustment was applied for parking. Comparable 4 is located at Durant Condominium Resort, originally constructed in 1969. The Petitioner applied a 5% positive adjustment for resort amenities, positive adjustment of 10% for age and quality of complex, positive 5% adjustment for interior quality of finish, and a positive 5% adjustment for parking. The total net adjustment is positive 25%. No adjustment was deemed appropriate for location.

Respondent's opinion of the most relevant units of comparison are primarily square footage of unit and secondarily location of unit by floor. Respondent concluded to a typical value of \$2,400 per square foot for a typical unit on a typical floor. The typical floor location was deemed by Respondent to be the middle floor. Respondent's opinion is that units on lower floors have less value than units on middle floors, and that units on floors above middle floor have greater value. Respondent concluded to \$2,300 per square foot of units on 1<sup>st</sup> floors, \$2,400 per square foot for units on middle floors, and \$2,500 for units on top floors.

Respondent presented a value of \$200,669,800 for the subject property based solely on the market approach.

Petitioner presented insufficient probative evidence and testimony to prove that the subject property was incorrectly valued for tax year 2017.

There were five relevant matters of disagreement between the parties introduced during the hearing:

1. Whether to use fractional interest condominium sales to value fractional interest properties rather than whole interest sales;
2. Whether, when using whole interest sales to value fractional interest properties, a discount should be applied to the whole interest sales;
3. Whether the opinion stated by an appraiser for the County in a Board of Assessment Appeals hearing in the past should be relevant in the current matter;
4. Equitable valuation between a competitive development and subject development;
5. Value of the subject properties and specifically which units of comparison should be considered.

As to 1 above, insufficient evidence was presented to convince the Board that only fractional interest condominium sales are relevant in valuing fractional interest properties. Respondent's witness provided credible and thorough background reasoning as to why the use of fractional interest sales to value fractional interest properties was not appropriate. The primary reason was that fractional interest properties possess too many variables inherent in their sale. Additionally, the directives provided by the Division of Property Taxation recommend the use of whole interest sales to value fractional interest properties. Further, the Petitioner's own review appraiser used only whole interest condominium sales in his review analysis.

As to 2 above, insufficient probative evidence was presented to convince the Board that fractional interests warrant a discount. Except for an opinion by the County appraiser at a hearing 5 years ago relating to a different property, no evidence was provided to substantiate any discount to whole interest condo sales when determining the value of fractional interest properties. Also, Petitioner's review appraiser did not apply any such discount to the whole interest condominium sales used to value the fractional interest properties.

As to 3 above, the Board concurs with Respondent's witness that any opinions expressed in a hearing relating to a different property with different characteristics, and different data collection period have no relevance to the matter of valuing the subject property in the relevant time frame.

As to issue 4, Petitioner introduced Exhibit 3 that reflected values established for the Aspen Residences for tax year 2017. Petitioner argued that these values per square foot were lower than the values established by the County and that the subject values should be in line with the values for Aspen Residences. Regarding equalization, the Board can only consider an equalization argument as support for the value determined using the market approach. *Arapahoe County Bd. Of Equalization v. Podoll*, 935 P.2d 14, 16 (Colo. 1997). For an equalization argument to be effective, Petitioner must also present evidence or testimony that the assigned value of the comparable used was also correctly valued using the market approach. As that evidence and testimony was not presented, the Board gave limited consideration to the equalization argument presented by Petitioner.

As to 5 above, the Respondent presented a detailed and well supported Appraisal Report in establishing the value of the subject property. Colorado case law requires that "[Petitioner] must prove that the assessor's valuation is incorrect by a preponderance of the evidence." *Ed. of Assessment Appeals v. Sampson*, 105 P.3d 198, 204 (Colo. 2005). Petitioner did not produce sufficient probative evidence to convince the Board that Respondent's valuation of the subject for tax year 2017 was incorrect. The Petitioner provided what was characterized as an appraisal of the subject property imbedded in a rebuttal document identified as a Review Appraisal. The Petitioner identified 33 whole interest condominium sales to value the subject property. The 33 sales were distributed among 11 different resort areas. After arraying the sales by bedroom count, the Petitioner applied a market condition (time trend) to the sales. The appraiser then determined statistical values of the entirety of the time trended sales arrayed by bedroom count. Other than market condition (time) no other adjustments were made to the comparables used by the Petitioner. Further, the Board was not made aware of the location or age or characteristics of the 11 resorts cited. The Respondent identified 4 whole interest condominium sales each from a different resort. After an initial adjustment for changing market conditions (time), the Respondent described in detail and adjusted

when appropriate the following units of comparison: complex/ resort amenities; location; age/quality of construction/ overall quality of complex; interior quality of finishes, and parking. The Board finds the analysis of value of the Respondent in the Appraisal Report with well described and adjusted comparable sales to be more compelling than the statistical analysis developed by the Petitioner imbedded the appraisal review report.

**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).

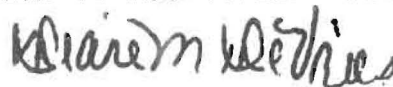
In addition, if the decision of the Board is against Respondent, Respondent may petition the Court of Appeals for judicial review of alleged procedural errors or errors of law within thirty days of such decision when Respondent alleges procedural errors or errors of law by the Board.

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 20th day of December, 2018.

**BOARD OF ASSESSMENT APPEALS**



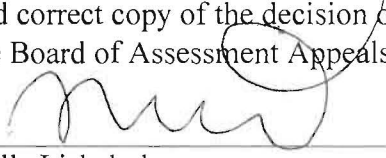
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Diane DeVries



Samuel M. Forsyth

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



Milla Lishchuk

