

<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>STEAMBOAT SKI AND RESORT CORPORATION,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>ROUTT COUNTY BOARD OF COMMISSIONERS.</b></p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Barry J. Goldstein, Esq. Address: 950 S. Cherry Street, #320 Denver, Colorado 80246 Phone Number: (303) 757-8865 E-mail: Attorney Reg. No.: 2218</p>	<p><b>Docket Number: 37893</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** was heard by the Board of Assessment Appeals on September 24 and 25, 2001, Karen E. Hart, Claudia D. Klein, and Mark R. Linné, presiding. Petitioner was represented by Barry J. Goldstein, Esq. Respondent was represented by John D. Merrill, Esq.

**PROPERTY DESCRIPTION:**

Subject property is described as follows:

**181 ACRES THAT ARE IN PARTS OF SEC 22 & 27, T6N, R84W, 6PM  
(Routt County Schedule No. R6254548)**

Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 1998. The subject property consists of 181 acres of land, located proximate to the base area of the Steamboat Springs Ski Area, within the corporate boundaries of the City of Steamboat Springs.

**MOTIONS:**

On August 21, 2001, the Board granted Petitioner’s Motion to Incorporate Record from Docket 35186. The Board agreed to review all of the evidence in the transcript from said docket and hereby affirms that said record is incorporated into this docket.

At the outset of this hearing, the Board agreed to conduct a combined hearing for both Docket 37893 and Docket 37236, for the purposes of incorporating the relevant testimony into each Docket. However, the Board will issue separate Orders for each docket.

**ISSUES:**

**Petitioner:**

Petitioner contends that the subject has been overvalued based on a potential future use, rather than its existing use as an integral part of a ski area. The current zoning controlling development on the parcel precludes residential or commercial development on the parcel. Though the document was not in effect until September 19, 2001, it was known in 1995, and the impact upon potential development was known at that time. The Petitioner contends that the property should be valued according to its current use only, as a ski area.

**Respondent:**

Respondent contends that the property has been properly valued using the applicable approaches to value, namely the direct sales comparison approach. The development potential of the subject must be considered, and the impact of such potential must be considered in the determination of value.

**FINDINGS OF FACT:**

1. Petitioner’s witness, Mr. Steve Letman, CRE, Vice President with Nottingham Consulting Group, presented the following indicators of value:

Market:	\$633,500.00
Income:	\$696,850.00

2. Mr. Letman testified that he is familiar with the subject property and prepared an appraisal report on the property. He valued the property as of the assessment date of January 1, 1998.

3. The witness testified to and presented locational information demonstrating the subject's location proximate to the existing ski base area. There are some ski runs and ski lifts that cross the property, but they are not part of the property or its valuation. The subject site has a very steep terrain. Approximately 85% of the parcel has grades that are above 30%. It is extremely difficult to build on ground that has terrain this steep. The zoning on this parcel was AR, Agricultural Recreation District, until September 19, 2001. The subject parcel was included in the master plan for the area.

4. The witness testified that there had been no sale of the property in the last five years, though ownership of the Ski Corporation did change during that period through stock transfer.

5. The witness testified with respect to the Steamboat Springs Community Plan that was adopted in August 1995. The Community Code was adopted in September 2001.

6. The witness testified that he went to Steamboat Springs Planning and Zoning officials and spoke with them. The planners told them it was highly unlikely that development could take place in an Open Lands/Recreation (OR) zoning district. Any planner or developer would have gone through the same process that Mr. Letman went through to determine the impact of zoning on development. His opinion on the developability of the parcel is based on the Board's decision in the 1999 BAA case. The highest and best use of this parcel is for ski terrain. There was no potential for development on this site as of the effective date of his appraisal analysis. The witness testified that he developed two methods of valuing this parcel.

7. Petitioner's witness presented an income approach to derive a value of \$696,850.00 for the subject property.

8. The Ski Corporation has a permit with the U.S. Forest Service to lease the majority of the ski area. The rentals charged on the leased lands are based on fair market rates and, therefore, represent the best indication of what fees would be for ski terrain land.

9. The assessor's office has to follow strict guidelines when valuing possessory interests. They must use a 20% cap rate against the income. In his experience cap rates for pure land rentals are not as high, therefore, he applied 12%. The witness quantified the value by multiplying 181 acres by the \$462.00 rent rate per acre, divided by a 12% cap rate, resulting in a value of \$696,850.00.

10. Based on the market approach, Petitioner's witness presented an indicated value of \$633,500.00 for the subject property.

11. The witness testified that he next examined four sales in similar locations, all of which were located in different states, due to the limited availability of such sales within the local market. Appropriate adjustments were applied to the sales, primarily those for time, size, and development differences. The indicated range from direct sales comparison was \$1,150.00 to \$3,657.00 per acre. The witness concluded \$3,500.00 per acre from the direct sales comparison approach.

12. The witness testified under cross-examination that the access to the subject property was difficult along Burgess Creek Road. It was his understanding that Burgess Creek Road was the only public road access to the property. The witness admitted that his opinion would change if there were other public points of access to the subject parcel. His opinion of value, however, would not change.

13. Mr. Letman testified that he utilized two approaches to value. With respect to the income approach, he obtained rental rate information from representatives of the U.S. Forest Service, though he did not actually review the 1998 lease for the subject. He relied exclusively on what representatives from Steamboat Ski and Resort Corp. told him. The representatives told him how much they paid in rental payments. They also explained that this was not a pure rental rate, but was based on a formula that includes the number of skiers. They did not explain precisely what the formula was.

14. Mr. Letman noted the assessor's value for the possessory interest. This is the basis under which the Petitioner's interest is taxed. This is the actual value for the possessory interest of the Forest Service land. He did not believe that this value represented the fee-simple interest in the land, but rather, was based on a formula determined by the Division of Property Taxation. He believed that the Ski Corporation would have the right to exclude persons from the Forest Service property if they did not buy a lift ticket. He further indicated that he had not made an attempt to value the possessory interest determined by the assessor.

15. The witness testified that there has to be a relationship between the rental rate and the property value.

16. In response to a question relating to the difference between the possessory interest and the fee-simple interest, the witness testified that he assumed that the property would be leased to someone else to develop, not by the Petitioner, Steamboat Ski and Resort Corporation. He made no attempt to determine the difference in rights if it were a possessory interest versus a fee-simple interest. Under a typical lease, the lessee has the right to exclude others from the property, with the exception of the landlord. He thought that a tenant would want that right.

17. The witness testified that he used four comparables in each tax year examined. He obtained the initial information for these sales from other appraisers. He contacted either the buyer or the seller to confirm the information. Mr. Letman did not recall contacting Respondent's expert witness, Mr. Michael Nash, to obtain comparable sales information to value this property. He may have called Mr. Nash to obtain additional information on one of the sales, but could not recall for certain.

18. Mr. Letman testified that he contacted each buyer or seller for all of the sales in the confirmation process. In evaluating each of the sales, he did not consider the skier visits for the comparable sales. He believed that Steamboat had about 1,000,000 skier visits per year for the last several years. Most ski areas are somewhat unique to the area in which they are located. He was not able to get skier visits for any of the comparable sales he utilized. He did not actually visit any of the comparable sales.

19. The witness further testified that he did not attempt to obtain any further information relating to differences in value for real estate in the areas in which the comparables were located.

20. Mr. Letman testified that Greg Spern, Walter Frank, Tim Greene, Craig Diamond, and others indicated to him that there was no plan to develop the subject property. Greg Spern worked for American Ski Corporation, the owners of the subject property at the time. Greg Spern was also involved in the presentation for the Tennis Meadow development on January 19, 1999.

21. The witness testified that the Forest Service lease formula requires that payments be based on the number of acres under lease. The amounts paid by the ski area are not based on a per-acre basis. He used the total revenue and converted it to a per-acre basis.

22. The witness testified that the highest and best use to which the property could be put, as vacant, was as ski terrain. There is no ability to conclude a highest and best use without establishing current use and an evident future use.

23. The witness testified that he gave very little weight to the classification placed on the property by the assessor; that is because the classification does not have a bearing on market value. He testified that classification is the starting point for an assessor in determining value. It is the first step in achieving the highest and best use. Classification determines the valuation method applied by the assessor. The witness admitted that classification could make a difference in the valuation of commercial property in some cases.

24. Mr. Letman testified that the subject property is integral to the operation of the ski area. It is essential to the operation of the ski area because it is the only way to get down to the ski area base from the Forest Service land, though he admitted that was true only under its current configuration. The Ski Corporation would have to acquire other land in order to change the configuration.

25. Mr. Letman ultimately derived a value for the subject property of \$633,500.00 for tax year 1998.

26. The witness testified that while he would not necessarily conclude that it would be rational for the owner to sell these parcels for that amount, he assumed that the property would be sold with the balance of the ski area. He concludes that any sales price would be similar to the valuation he concluded.

27. Under redirect examination, Mr. Letman indicated that the property was valued as ski terrain, and public access would not be important in that case.

28. The witness testified that Steamboat is one of the premier ski areas in the United States. He would not put Mount Shasta in the same category, though he noted that even though not as glamorous as a Colorado resort, they get their share of skier visits.

29. The witness reiterated through his testimony that the sales he used were the best sales that he could find.

30. Petitioner's witness, Mr. Lance Biernbaum, MAI, GAA, Colorado Certified General Appraiser and Real Estate Broker, testified that he reviewed the consulting letter prepared by Steve Letman, and thought that the report was well written and accurate.

31. The witness testified that the report included four sales of ski areas throughout the country, and provided appropriate discussion of each of the sales. His conclusion was that it was an appropriate methodology to arrive at a fair and accurate value. He testified that he felt that Mr. Letman went through an appropriate process of analysis.

32. The witness testified under cross-examination that he did not attempt to independently verify any of the comparables. Further, he did not attempt to independently verify any of the rental rate information. He was under the impression that the Forest Service lease rate was on a per-acre basis. He was unaware at the time he reviewed Mr. Letman's letter that there was a formula used by the Forest Service to calculate the lease rate. He felt that the value was still supported, given that the income approach was merely utilized as a check of reasonableness.

33. The witness testified that his letter was not meant to be an independent indication of value for the subject. He was retained to determine if Mr. Letman's methodology was appropriate. He reiterated that he had not rendered an opinion of value. The concluded value by Mr. Letman appears to be reasonable.

34. Mr. Biernbaum explained the appraisal theory that would allow the use of U.S. Forest Service lease income.

35. Mr. Biernbaum testified that Mr. Letman was appraising the fee-simple estate. He felt that in this case, Mr. Letman was assuming that the Forest Service lease and the possessory interest was one-half of the fee-simple interest, thus permitting the doubling of the rental rate.

36. He was not familiar with the method in which the Forest Service establishes their rental rates. He did not know if the formula included a consideration of the revenue being achieved by the lessee.

37. In redirect testimony, the witness agreed with Mr. Letman's consideration of the gross rental payment on a per-acre basis as similar to a percentage rate payment in which the lease payments are expressed on a rent per square foot basis.

38. Petitioner is requesting a 1998 actual value of \$630,000.00.

39. Respondent's Witness, Amy Williams, Routt County Assessor, Colorado Certified General Appraiser, testified with respect to the subject property, and presented the following indicators of value:

Market: \$3,620,000.00

40. With regard to access issues, the witness testified that she did not view access as an issue; she felt that it was possible to access the subject from the existing easements, as well as the adjacent property.

41. The witness disagreed with the assertion that the subject site could not have been approved for development during the applicable period. History does not support the fact that these properties cannot eventually gain approval status from the town. Christie has been subdivided as late as 1999, and the Kuykendal parcel had been subdivided into the JG Townhomes.

42. The value assigned to the subject property was \$3,620,000.00.

43. The witness testified under cross-examination that she could not state what the zoning on the Christie parcels was. The owners had to go back before the City Council, even though they had some entitlements in place. Further, she did not know what the Christie parcels were zoned under the Master Plan guidelines, and felt that this would have an impact on value. After examining the Master Plan map, she believed that the Christie parcels were located in the Resort Commercial zoning district.

44. The subject property was valued considering all of the uses for the subject, including current, legal, and future.

45. In referring to Respondent's Exhibit #6, the witness testified that the document represented a list of sales from a number of different counties, including Routt, Summit, Grand, Gunnison, Pitkin, and San Miguel. She further indicated that these sales were utilized to derive the original value for the subject.

46. The witness testified that the subject parcel has had the same types of ski runs and related configuration for the last nine years.

47. Ms. Williams testified that there were other development opportunities available to the subject. Not every acre of the property is being traversed by a skier or a snowboarder. There is a possibility that other types of development could occur on the subject. She feels that the Petitioner was contemplating development on the site, and that suggests that there are opportunities to do other things with the parcel.

48. In redirect testimony, the witness commented on the County Board Of Equalization hearing on the Steamboat Grant Resort. She indicated that the hearing was based on an appeal on how the property should be treated, either commercial or residential. Classification has the greatest bearing on the value of a property.

49. In response to questions from the Board, the witness testified that there were several points of access to various parts of the subject. Given the adjacent ownership in some portions of the greater parcel, there is ample opportunity for providing a viable access to the subject. The witness felt that it was important to recognize that the parcel should be evaluated from a view “outside of the box.” Development potential should be examined by creative analysis of the land. The \$20,000.00 per acre value was based on consideration of a mix of uses that could currently or potentially be utilized on the parcel.

50. Respondent’s Witness, Mr. Michael Nash, MAI, Colorado Certified General Appraiser, with Nash-Johnson Associates, testified that one of the specialties of his firm is ski resort property. Clients include Aspen Skiing, Keystone, Winter Park Recreation Association, and the Town of Breckenridge. Additionally, the witness testified that he has appraised for American Skiing Company, the owner of the subject property.

51. Mr. Nash indicated that he did not utilize the income approach in valuing the subject property. The full fee-simple value is not considered within the ski area lease transaction with the U.S. Forest Service. Further, the witness indicated that these leases are not arm’s-length transactions.

52. The witness testified that his conclusion of the highest and best use for the property was for ski operations, land banking, and skiing.

53. The witness testified that an appraiser must project what can be done when there is conflicting criteria. In this case there is the underlying Agriculture Recreation District and the Community Plan Overlay District, both of which must be given some consideration.

54. The witness testified with respect to a ten-acre piece of property at the base of Keystone, which was presented as an example of a parcel that was up-zoned even in the face of an overlay district. The parcel was increased from a density of two units to a 29-unit density.

55. Mr. Nash testified that an appraiser must consider probable future uses. Though much of the subject is not developable, the appraiser examined topographic maps, and felt that there were certain areas that could accommodate development. The area around Bachelor Lift was examined, and a 12.5-acre parcel was identified as developable for upper-end residential single-family development.

56. Mr. Nash testified that the financial feasibility of the site must be considered, and the question that must be asked is what a resort owner would consider in this decision process. The witness presented examples of the financial motivation of ski area owners in other areas in which larger sites with minimal developable area transacted. Land is frequently land-banked by entities for future development or future flexibility.

57. Based on the data contained in his report, the witness testified that his value conclusion for the time period ending June 30, 1996 was \$6,335,000.00.



58. The witness testified during cross-examination that he had spoken with planning officials relative to the subject property, though he could not recall specifically with whom he had spoken.

59. The witness testified that the subject property had been presented for pre-application review by the American Skiing Company (ASC) to the Steamboat Springs City Council on January 19, 1999. He related that he recalled testimony in the previous BAA hearing referencing this pre-application. Upon an examination of the record of the City Council meeting, the witness concluded that the record, if accurate, did not indicate that the subject property was discussed at this meeting.

60. The witness testified that none of the sales he utilized in his appraisal were ski terrain in nature. Additionally, none of the sales he utilized were open space sales.

61. Mr. Nash testified that in the previous BAA hearing, he valued the open space land at \$10,000.00 per acre.

62. Mr. Nash testified that he sent out his report on August 31, 2001, and received a copy of the Snow Engineering report on September 17, 2001.

63. In the previous BAA hearing, Docket 35186, the witness testified that he had split the property into 45 developable acres and 136 acres of open space. He valued the open space at \$10,000.00 per acre, and the developable land at \$225,000.00 per acre.

64. In response to questions from the Board, the witness testified that any developer would want to capitalize on possible development opportunities. During the applicable time frame, he believed development was a reasonable expectation.

65. The witness testified in response to questions from the Board that he was aware that there were other ski areas in which exceptions to an overlay district had been allowed. He could not cite any examples of this occurring in Routt County, however. The only entitlement that the subject has is its existing zoning.

66. Mr. Nash testified that he had not left the state in search of comparable sales because he did not feel that other ski areas had the same characteristics as Steamboat.

67. Respondent's adverse witness under subpoena, Mr. Chris Diamond, President of the Steamboat Ski and Resort Corporation, testified that he has held this position since February, 1999. Prior to that he worked for American Skiing Company (ASC) since May 1996. He was previously president with ASC of Mount Snow Ski Area in Vermont.

68. The witness testified that Steamboat Ski and Resort Corporation has filed a ski area master plan with the U.S. Forest Service. The Steamboat Master Plan was developed by Snow Engineering and Steamboat staff. Snow Engineering is periodically utilized by Steamboat for consulting purposes.

69. The witness testified with respect to the chondola that had been referred to in earlier testimony; it was his opinion that the concept was not workable.

70. The witness testified that the idea to have a ski learning area in proximity to the subject was discarded for various reasons very early on.

71. The witness testified that the most recent discussion of the residential development possibilities on the subject was in February 1999. He was familiar with the IBI Group. They are a consulting group hired by ASC Properties, the real estate development arm of ASC. Greg Sporn was Senior Vice President for ASC Properties. He was the lead planner for Steamboat and worked with the IBI Group. He identified an ASC development site on a concept plan.

72. The witness testified that the 181-acre subject parcel is integral to the operation of the Steamboat Ski Area; it is essential to the operation of the Steamboat Ski Area. He would not consider selling the parcel for \$700,000.00 without significant easements permitting the operation of the ski area.

73. In response to cross-examination, the witness testified that for anything to be done on the subject property, the Master Plan would have to be amended and the Forest Service would have approval. To his knowledge, no such proposal has ever been made. The witness testified that the Snow Engineering reports have never been shown to anyone outside of the Ski Corporation. The IBI report is considered to be a conceptual plan only. No detailed plan was ever completed.

74. The witness testified that in 1995 there was a Community Plan in which the subject was designated OR zoning, in comparison to its existing AR zoning designation.

75. Mr. Diamond testified that upon his arrival in 1999, Mr. Diamond examined many of the ongoing ideas, and many ideas were discarded. The subject site was one of the development plans rejected. There has been no plan to develop the subject site with residential development. There had been some talk of eventually moving some of the ski school components to the subject site. In his opinion, it would be absolutely impossible to get approval for redevelopment of the subject site under the zoning in place during 1996-1998. Any residential construction would have required a subdivision plan, and it would have gone before the City Council. They would have gone by the development plan to guide all their development decisions.

76. In redirect testimony, the witness indicated that the ski school proposal would not have necessarily included a building. The plan has not been finalized, and even under the OR zoning, it would require much more discussion.

77. In response to questions from the Board, the witness testified that there is no way of feasibly developing the site, or of selling the property. He thought that the ongoing work on the development plan on the subject parcel, while the community plan was under development, was a process that was not well thought out, and was characterized as "stupid."

78. Respondent's adverse witness, Mr. Walter Frank, Acting Controller for Steamboat Ski Resort, testified that he has held this position since April 2001. Prior to that he was the tax manager for the company since 1991.

79. The witness testified that it is one of his responsibilities to be familiar with how the Ski Corporation uses the Forest Service land. It is utilized under the terms of a Special Use Permit.

80. The witness testified that he is familiar with the payment terms of the permit.

81. Respondent's adverse witness, Mr. Tim Greene, Vice President of Real Estate for American Skiing Company Resort Properties, testified that he had held this position since June of 2001. Between January 27, 1999 and June 2001, he was Director of Real Estate for the company.

82. The witness testified that his duties included general oversight of the real estate asset. Generally, land used in the operation of the ski area is not one of his responsibilities. He identified Headwall Road as the boundary dividing the operational real estate from the real estate that is developable.

83. The witness testified that he has no operational responsibility for the subject property.

84. The witness further testified that he is aware of a public presentation made concerning the Tennis Meadow property. He said he had a window seat to activities of the corporation over the last several years. ASC bought Steamboat in 1997. He was not involved in the planning process. He became aware of the IBI study shortly after its dissemination in the January 1999 meeting. He became aware of the development plans prior to his testimony in the Board of Assessment Appeals' case in February 2000.

85. The witness testified that he provided Peter Patton with the concept boards for the report that he provided to the BAA in the February 2000 hearing.

86. The witness testified that he has seen the appraisal completed by Ken Hammerling of Snow Engineering. He has not seen the purchase price allocation report for Steamboat. He first became aware of it the week of September 10, 2001.

87. In response to cross-examination, Mr. Greene testified that the Snow Engineering documents are internal documents that he believes were never shown to the public. Additionally, the documents were never used in any proposal to redevelop the property.

88. Mr. Greene testified that the Tennis Meadows development is approximately two miles from the subject property.

89. In response to questions from the Board, Mr. Greene testified that the focus of the Tennis Meadows development presentation on January 18, 1999, was on the development of a Marriott time-share development. After public opposition and a management shake-up, the plans for the development were shelved.

90. In rebuttal testimony, Petitioner's Witness, Mr. Tim Greene, testified with respect to the sale of Christie Parcel A. The site was sold with entitlements in place. A ski easement runs through an edge of the property. It made a difference, in his opinion, that the parcel had been approved for development.

91. Referring to the report of Mr. Nash, the witness testified with respect to the access points to the subject. He believes that there is ski-down access to the property or walk and bike access to the property. Mr. Greene testified that the Skiing Company has a special events or maintenance easement to the property only.

92. The witness testified that the construction of a roadway bisecting four ski runs would be required to access the property through the Kuykendall property. Additional testimony regarding Burgess Creek Road was offered by the witness. Another referenced access point, a retained access easement provided for maintenance and emergency vehicle operation, was granted during the sale of the Christie Parcel A properties. This easement dead ends at the subject property, but would not be usable for any type of development.

93. The witness testified that he disagreed with Mr. Nash; access to the subject property could occur through property that is contiguous with Ski-Time Square. He does not believe that any of the access points are practical or based on reality.

94. Under cross-examination, the witness testified that he was not aware of an implanted access roadway extension through the adjacent subdivision off of Ski Trail Lane.

95. The witness testified that various exhibits to the deeds referred to collectively as the Christie parcels, do indeed reference easements that would permit roadway usage to the subject property. He indicated that the Christie parcels allow for development of 59 condominium units.

96. Mr. Steve Letman, called as a rebuttal witness for the Petitioner, testified that the actual zoning of the subject parcel during the applicable base period was AR, Agriculture Recreation.

97. Mr. Letman testified that he spoke with Mr. Bob Wise, an attorney who specializes in development approvals, who along with other knowledgeable individuals, indicated that development of any type in the OR zoning district would be exceptionally difficult, if not impossible. It is his understanding that any PUD development must conform to the Community Plan. He believes that Mr. Nash has made a mistake in his highest and best use analysis in concluding that the subject represents development land. Any redevelopment effort involving the subject would require approval of the changes within the Master Plan, and this would require the approval of the U.S. Forest Service. The purpose of the Master Plan governs the Forest Service property, as well as the private lands owned by Steamboat. The goal is a comprehensive ski plan.

98. The witness testified that he does not believe that future development is reasonable, based on his discussions with Peter Patten, Bob Weiss, the owners of Steamboat Ski Area, and others. As the property existed on January 1, 1998, the owner could not have developed any residential or commercial development without City approval. The approval process is a lengthy process with many steps. The Ski Corporation would have to go through the entire subdivision process in order to develop the property.

99. The witness testified that the economic viability of the process was examined as part of the analysis. He does not believe that any developer would undertake the project, given that the Patten report states that only nine lots could be developed (this is based on the zoning in place during the applicable period). He disagrees with Mr. Nash's contention of valuing the land as development land. He believes that the land should be valued as skiing recreational land.

100. Petitioner's rebuttal witness, Mr. Lance Biernbaum, MAI, GAA, Colorado Certified General Appraiser and Real Estate Broker, testified that he reviewed the Nash appraisal. He disagreed with the analysis in the report. He felt that it was as impossible as you can get to approve any development on the subject site.

101. Mr. Biernbaum testified that the Nash report was hopelessly flawed and misleading, and detailed a reference that appeared four times in the report that was incorrect.

102. The witness testified that he disagreed with the selection of comparable sales.

## **CONCLUSIONS:**

1. Petitioner presented sufficient probative evidence and testimony to prove that the tax year 1998 valuation of the subject property was incorrect.

2. The Board believes that the evidence of the two experts differs with respect to the nature and extent of the data collection process, the analysis of the data, and the conclusions drawn from the available data. With respect to Mr. Letman's testimony and analysis, the Board is concerned that the comparable sales were not examined by the consultant and that the confirmation information was incorrect or incomplete. The Board believes that comparable sale data from a distant geographic location that is proffered to be the most comparable relative to the subject, requires a higher degree of due diligence. The Board is uncomfortable with the comparables used, and gives this data lesser weight.

3. Contrapuntally, the Respondent's witness, Mr. Michael Nash, completed an analysis that presented a number of comparable sales that more completely examine the relevant market factors that impact the subject property. The Board places a greater weighting on the Nash-Johnson report than on the Nottingham Consulting Group report. The valuation conclusions of \$40,000.00 per acre appear to appropriately consider the value of a development parcel in this location.

4. The Board, however, is concerned about the developability of the overall parcel that is the subject of this appraisal. The item of greatest criticality in the Board's consideration is the mindset of the Steamboat Ski and Resort Corporation in pursuing the development of this site. In this matter, the testimony of Mr. Diamond is most illustrative of the planning process. Mr. Diamond's testimony that the ongoing planning process in the wake of the potential zoning under the Master Plan document was inappropriate is perhaps the most cogent testimony that the Board considered.

5. In contrast to the developability of the parcel, the Board considered some of the testimony of the witnesses in the prior BAA Docket 35186, specifically Peter Patten, President and owner of Patten Associates, and Robert Weiss, a local land use attorney, both of whom considered the developability of the subject to be a far-fetched possibility, indicating that no prudent buyer would go forward with developing the subject parcel.

6. The Board has previously determined that the subject is best valued as a portion of the Steamboat Springs Ski Area. We concur with our previous decision, noting that the developability potential previously weighted in the decision for Docket 35186 placed significant weighting to the testimony of Mr. Nash of Nash-Johnson Associates. We place a lesser weighting on the testimony as we reach our decision in this matter.

7. While it is clear from the testimony that the subject property had been considered for potential redevelopment by internal elements of the Steamboat Skiing Corporation, the nature of the development discussions appear to have been very preliminary in nature. There were those within American Ski Corporation who felt that the idea had merit in the past, or there would not have been the efforts made to create the conceptual plan and documents presented to the Board. The Board concludes that the mere fact that the development potential of the parcel was under discussion, does not translate to its categorization as a development parcel suitable for comparison against other development parcels.

8. The Board felt that the testimony concerning the various rental payments made to the Forest Service encompasses much more than the realty value of the subject. Mr. Diamond characterized the fee as relating to enterprise value, a characterization that the Board concurs with. The use of the fee to derive any value estimate is not given any weight by the Board.

9. After consideration of the testimony, exhibits, previous Board decision and record from the 1999 appeal, Docket 35186, and the incorporated testimony of Docket 37236, the Board concludes that the subject property has demonstrable utility, including the land used for the ski runs and tangential and complementary lands adjacent to the base area. The subject parcel is considered by both the assessor and the officials of the American Skiing Company, as an integral part of the greater ski area. Neither party provided substantive evidence with respect to the one item of relevance, i.e., the valuation of the subject as a component of an operating ski area. While the Board understands that such data is not commonplace in the market, due to infrequent market transactions for this type of parcel, the data presented by both parties is less than helpful in this regard.

10. The Petitioner's expert has presented sales of secondary and tertiary parcels that are concluded to represent inferior economic and locational environments. Those sales of similar economic environments were either flawed from the perspective of their validity, or had been inadequately confirmed by the Petitioner's witness. These sales reflect parcels with significantly lesser utility in the market, in that no testimony was offered to indicate how these sales related to the ski area as a whole, and tend to reflect the lowest end of the continuum.

11. Mr. Biernbaum testified that the income approach was valid in the valuation of the subject. The Board strongly disagrees with the presentation, methodology, analysis, and conclusions associated with this statement. We have given no weight to income, given its calculation based on revenues of the greater resort. There is clearly an element of business value inherent in this income stream. Therefore, the Board gave no weight to the testimony of Petitioner's review appraisal expert, Mr. Lance Biernbaum.

12. The Respondent's expert gave too great of a weighting to development-oriented sales that reflected sites with the ability for productive development.

13. The Board was faced with sales reflecting widely disparate views of the valuation problem at hand. The range of the sales on a per acre basis, \$492.00 to \$5,132,326.00, are demonstrative of the data presented to the Board. The Board rejects the contentions of both parties, and believes that the most appropriate manner of determining the value of the subject is to weigh the entirety of the data presented, and determine the component value of the subject as an integral part of the base area of the Steamboat Springs Ski Area.

14. The Board concludes that the subject parcel has inherent utility that is greater than that indicated by the Petitioner's sales, and that this utility is less than the value indicated by the development parcels considered by the Respondent.

15. The Board disagrees with the Petitioner that a parcel that is an integral portion of a greater ski area cannot be valued separately. Any property is capable of being valued; at issue is the proper methodology and the comparable sales data utilized in the analysis.

16. The Board concludes that the value of a parcel that is an integral part of an operating ski area is greater than raw land parcels that are not so uniquely positioned, and is less than parcels that have the ability for productive development opportunities.

17. The Board believes that the value of the subject lies between these two datasets, and accordingly, a concluded value of \$15,000.00 per acre is determined to be appropriate, giving weight to the sales presented by each party. Given the 181 acres that comprise the subject, a final value of \$2,715,000.00 is concluded.

**ORDER:**

Respondent is ordered to reduce the 1998 actual value of the subject property, Schedule #R6254548, to \$2,715,000.00.

The Routt County Assessor is order to change her records accordingly.

**APPEAL:**

Petitioner may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If the Board recommends that this decision is a matter of statewide concern, or if it results in a significant decrease in the total valuation of the county, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

If the Board does not make the aforementioned recommendation or result of Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 45 days from the date of this decision.

**DATED and MAILED** this 25 day of January, 2002.

**BOARD OF ASSESSMENT APPEALS**

Karen E Hart  
Karen E. Hart

Claudia D. Klein  
Claudia D. Klein

Mark R. Linné  
Mark R. Linné

This decision was put on the record

JAN 25 2002

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

Diane Von Dollen  
Diane Von Dollen 37893.02

