BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203 Petitioner: **CLUB MED CRESTED BUTTE LLC,** v. Respondent: **GUNNISON COUNTY BOARD OF EQUALIZATION.**	
Attorney or Party Without Attorney for the Petitioner: Name: Mark G. Grueskin, Esq. Address: Isaacson Rosenbaum P.C. 633 17th Street, Suite 2200 Denver, Colorado 80202 Phone Number: (303) 292-5656 E-mail: mgrueskin@ir-law.com Attorney Reg. No.: 14621	**Docket Number: 42300**
ORDER	

THIS MATTER was heard by the Board of Assessment Appeals on February 28 and March 1, 2005, Karen E. Hart and Sondra W. Mercier presiding. Petitioner was represented by Mark G. Grueskin, Esq. Respondent was represented by George Rosenberg, Esq. Petitioner is protesting the 2003 actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

500 Gothic Road, Crested Butte, Colorado
(Gunnison County Schedule No. R005488)

The subject property is a 261- room resort hotel, owned and operated as a Club Med.

ISSUES:

Petitioner:

Petitioner contends that the most appropriate way to value the subject is as a traditional year-round, transient or nightly stay hotel using the income approach.

Respondent:

Respondent agrees that the income approach is the best method for valuation; however, there is disagreement regarding several assumptions under this approach. Respondent further contends that the subject should be valued as a special use property.

FINDINGS OF FACT:

1. Petitioner's witness, Mr. Gregory Hartmann, a Certified General Appraiser with Hospitality Valuation Services, presented the following indicators of value:

Market:	$14,600,000.00 - $18,300,000.00
Cost:	$17,600,000.00
Income:	$17,500,000.00

2. Mr. Hartman presented five comparable sales in his report; however, three sold outside the January 1, 2001 through June 30, 2002 base period. He relied on the sales comparison approach to determine the appropriate range of value for the subject. Mr. Hartman testified that the sale of the Club Med at Copper Mountain and the sale of the subject provided the best indication of the range of value for the subject.

3. Mr. Hartmann selected the Club Med at Copper Mountain sale because of the similar resort base location, programs offered, room count and more recent date of sale. He indicated that the Copper Mountain property suffered from the same performance problems and low revenue as the subject. The property sold for $38,000.00 per room; however, Mr. Hartmann made a 69.5 percent positive adjustment to reflect the potential for increased revenue if the property was used as a lodging facility rather than employee housing. The adjusted sale price for the Club Med at Copper Mountain was $64,656.00 per room.

4. Mr. Hartmann testified that the subject sold for $110,536.00 per room in April 2000. He further noted that April 2000 was a high point for hotel values. Mr. Hartmann applied negative adjustments of 25 percent for market conditions and 20 percent for the superior condition and facilities at the time of the 2000 sales date, but made a positive adjustment of 4.1 percent for slightly lower revenue per room. After adjustments, the sales price was $69,725.00 per room.

5. Mr. Hartmann testified that he had performed a cost approach; however, he had given it little weight. The age of the property made depreciation adjustments difficult. Additionally, functional and external obsolescence were factors because of the kids club and excess restaurant space.

6. The Petitioner's Appraiser developed an income approach based on the property being used as a year-round transient stay hotel, as the subject's net income was negative throughout its use as an all-inclusive Club Med resort that operates only from mid-December through the first week of April. Consequently, he relied on the historical occupancy of the subject prior to its operation as a Club Med. Between 1991 and 1999, occupancy levels ranged from a low of 30.6 percent to a high of 44.4 percent. Over that period, the occupancy averaged 40.4 percent for the full years of operation. In his report, Mr. Hartmann gave consideration to the differences between off-peak and peak demand and projected occupancy levels, including the impact of operating the subject as a traditional, year-round transient stay hotel. He concluded to a forecast occupancy level of 46 percent, which exceeds the subject's best year of performance.

7. Mr. Hartmann forecasted an average nightly rate of $129.00 for the subject, based primarily on his analysis of the subject's historical averages. His income and expense forecast was derived from Smith Travel Research HOST reports in addition to information developed from in-house data. As shown on pages 11-11 through 11-20 of his report, Mr. Hartmann concluded to a stabilized net income of $3,150,000.00. From this amount, Mr. Hartmann deducted $379,000.00 as income attributed to the business. He further deducted $505,000.00 from net income for "return of" personal property, as well as $108,000.00 for "return on" personal property. The "return on" personal property was based on an estimated value of $979,000.00 for personal property. After these deductions, Mr. Hartmann concluded to a stabilized net income attributable to the real estate of $2,158,000.00.

8. Mr. Hartmann's value conclusion in the income approach is based on income of $2,158,000.00 capitalized at a tax-loaded rate of 12.3 percent, based on the 2003 tax rate. The subject's indicated value by the income approach was $17,500,000.00, rounded. Mr. Hartmann testified that he focused on the income approach in his analysis, and that the value indicated by the income approach was supported by the sales comparison approach. He used the cost approach as a test of reasonableness.

9. Petitioner is requesting a 2003 actual value of $17,500,000.00 for the subject property.

10. Ms. Judith M. Smith, Gunnison County Assessor, testified that the Respondent discovered the subject's renovations in the fall of 2004 and sent a Special Notice of Valuation to Petitioner for the previously omitted renovations. She asked the Board to consider a higher value than the $26,591,430.00 assigned by the County Board of Equalization to account for the value of the omitted renovations.

11. Respondent's witness, Mr. Edward G. Bosier, Arapahoe County Assessor and Certified General Appraiser, presented the following indicators of value:

Market:	$27,500,000.00
Cost:	$33,464,209.00
Income:	$29,350,000.00

12. Respondent assigned an actual value of $26,591,430.00 to the subject property for tax year 2003. However, the Respondent is asking the Board to increase the value to $28,000,000.00 to reflect the value of the previously omitted renovations.

13. Mr. Bosier testified that he valued the subject at its actual use as a Club Med facility to comply with §39-1-103 (5)(c) C.R.S.

14. Respondent agreed with the land value contained in Petitioner's cost approach; however, Mr. Bosier used *Marshall* information to value the actual square footage of the improvements. Mr. Bosier believes that the improvement value should be based on square footage rather than on room count, as it more accurately reflects the lounge, theater and expanded restaurant improvements. Mr. Bosier's value under the cost approach reflects a 10 percent deduction for economic depreciation, but does not include a deduction for functional obsolescence.

15. Mr. Bosier presented four sales in the sales comparison approach, including the April 2000 sale of the subject. The other three sales are located in Vail, Beaver Creek and Aspen. Respondent's comparable sales set a range in value for the subject of $105,000.00 to $155,000.00 per room. Three of the sales analyzed (not including the sale of the subject) were considered superior compared to the subject; however, not enough data was available to make appropriate adjustments. He concluded at the low end of the range at $105,000.00 per room or $27,500,000.00, rounded. Mr. Bosier testified that he gave some consideration to the value indicated by the sales comparison approach, especially to the sale of the subject.

16. Mr. Bosier testified that he analyzed four primary components in the income approach: 1) average daily rate; 2) occupancy; 3) expense percentages and 4) capitalization rate. The value of the personal property was a secondary component. In general, Mr. Bosier agreed with Petitioner's assumptions for each of these items except occupancy. Mr. Bosier relied on market studies and information rather than the subject's actual occupancy. He concluded to an occupancy rate of 58 percent based on a HOST industry report and a 1997 – 1999 Smith Travel Research Trend Report for Gunnison County, which showed occupancy at 50.1 percent for 1998 and 52.0 percent for 1999.

17. In his analysis, Mr. Bosier deducted 14.8 percent for "return on" personal property, then after capitalization, deducted $1,699,684.00 (the amount shown on Petitioner's Personal Property Declaration Schedule) to account for "return of" personal property. Mr. Bosier concluded to a value of $27,088,893.00; then made an upward adjustment of $2,275,000.00 to reflect the additional theatre and restaurant renovations, for a total value under this approach of $29,350,000.00. Mr. Bosier testified that he did not rely solely on the income approach in his valuation of the subject property.

18. In cross-examination, Mr. Bosier testified that he valued the subject under its current use, as a special-use property, but also included a hypothetical use as a nightly stay hotel. (Reference Respondent's Exhibit 1, Highest and Best Use, page 21 and Assumptions and Limiting Conditions, page 47.) Mr. Bosier testified that the special use nature of the subject was reflected in the $2,275,000.00 adjustment made in the income approach. In Mr. Bosier's opinion, the theater and additional restaurant space add value, but not additional income. As a nightly stay hotel, these improvements would be considered a superadequacy. Mr. Bosier made no adjustments for the renovations in the sales comparison approach, as he treated the subject as a nightly stay hotel. The value of these improvements was included in the cost approach.

CONCLUSIONS:

1. Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2003 valuation of the subject property was incorrect.

2. The Board was convinced that the valuation of the subject as a nightly stay hotel was appropriate. In *Board of Assessment Appeals v. Colorado Arlberg Club*, 762 P2d 146 (Colo. 1988) the Colorado Supreme Court held that "...reasonable future use is relevant to a property's current market value for tax assessment purposes." The court explained that Colorado's tax statute "does not preclude consideration of future uses." The court contrasted "reasonable future use" with "speculative future uses," which the court said could not be considered in determining market value for property tax purposes. The Board has determined that use of the subject as a nightly stay hotel is a "reasonable future use," not a "speculative future use."

3. As suggested by both parties, the Board placed the most weight on the income approach in its determination of value. The Board found Petitioner's occupancy and room rates to be reasonable, as they were based primarily on the actual historical performance of the subject as a nightly stay hotel. The Board found the Respondent's occupancy rate to be excessive, as it was above both the actual performance of the subject and the performance of other properties in the market.

4. The Board found the Respondent's $2,275,000.00 positive adjustment to the income approach to be unsupported, as there was no indication that the additional renovations provided any additional revenue to the subject. Furthermore, Respondent's requested increase in value to account for the renovations is not properly before the Board, as the renovations were discovered and placed on the tax roll subsequent to the 2003 tax year at issue. Consistent with the appeal rights shown on the Special Notice of Valuation, the taxpayer may protest the value assigned to the renovations.

5. The Board found the Petitioner's Income and Expense forecast to be reasonable, indicating a stabilized net income of $3,150,000.00 prior to adjustments for personal property and income attributable to the business. The Board further found the $379,000.00 deduction for income attributed to the business to be appropriate.

6. The Board disagrees with the Petitioner's deductions from income for "return on" personal property. The Petitioner's estimate for "return on" personal property is based on an estimate of value. In its determination of value, the Board adjusted the "return on" personal property based on $1,262,172.00, the amount listed on the 2001 Personal Property Declaration Schedule. At a return of 11 percent, the deduction for "return on" personal property is adjusted to $138,839.00.

7. The Board also disagreed with the Petitioner's deduction from income for "return of" personal property. While it is appropriate to deduct personal property from the capitalized value, it is not appropriate to deduct personal property from income prior to capitalization. Consequently, the Board deducted $1,262,172.00 for "return of" personal property after capitalization of income.

8. The Board found the 12.3 percent capitalization rate used by both the Petitioner and Respondent to be well supported and reasonable.

9. The Board recalculated the value of the subject property as follows:

Net Income:	$3,150,000.00
Less: Income Attributed to the Business:	($379,000.00)
Less: "Return on" Personal Property:	($138,839.00)
Net Income Attributable to the Real Estate:	$2,632,161.00
Capitalized at 12.3%:	$21,399,683.00
Less: Personal Property:	($1,262,172.00)
Indicated Value of Real Property:	$20,137,511.00

10. Based on all of the evidence and testimony presented, the Board concluded that the 2003 actual value of the subject property should be reduced to $20,137,511.00.

ORDER:

Respondent is ordered to reduce the 2003 actual value of the subject property to $20,137,511.00.

The Gunnison County Assessor is directed 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 Respondent alleges procedural errors or errors of law by this Board, Respondent may petition the Court of Appeals for judicial review within 30 days from the date of this decision.

DATED and MAILED this 23rd day of March 2005.

BOARD OF ASSESSMENT APPEALS

Karen E Hart

Karen E. Hart

Sondra W. Mercier

Sondra W. Mercier

This decision was put on the record

MAR 22 2005

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

Penny S. Lowenthal

Penny S. Lowenthal

STATE OF COLORADO
SEAL
BOARD OF ASSESSMENT APPEALS

42300.05.doc