

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>POWDER MONARCH, LLC (ROCKY MOUNTAIN SKI CORPORATION),</p> <p>v.</p> <p>Respondent:</p> <p>CHAFFEE COUNTY BOARD OF EQUALIZATION.</p>	
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Melissa Goforth Rocky Mountain Ski Corporation</p> <p>Address: #1 Powder Place Monarch, Colorado 81227</p> <p>Phone Number: (719) 539-4712</p> <p>E-mail: Melissa@skimonarch.com</p>	<p>Docket Number: 42431</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on May 18, 2004, Karen E. Hart and Rebecca Hawkins presiding. Petitioner was represented by Ms. Melissa Goforth. Respondent was represented by Jennifer Davis, Esq. Petitioner is protesting the 2003 actual value of the subject property.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**23715 West U.S. Highway 50, Monarch, Colorado
(Chaffee County Schedule No. R380108300602)**

The subject property consists of commercial improvements located at the Powder Monarch Ski area. The improvements were constructed between the 1940's and 1998, and are of fair to average quality. There is a 22,157 square foot five-level lodge with a cafeteria, lounge, pizzeria, rental shop, retail store, lockers, restrooms, offices, and a 1,392 square foot deck. Other structures include maintenance buildings, wastewater treatment facility, children's center and ski school. The improvements total approximately 37,480 square feet.

ISSUES:

Petitioner:

Petitioner contends that the subject property has been overvalued. The market transaction allocation negotiated between the buyer and seller and used in the sale of the subject property represents the value for the commercial improvements.

Respondent:

Respondent contends that all three approaches to value were considered and the non-realty assets were properly valued.

FINDINGS OF FACT:

1. The following issues are pertinent to this case:
 - The property known as Ski Monarch, LLC is the subject of this appeal. It was purchased on November 17, 2002 and includes various structures connected with the ski resort, a combination of non-realty physical assets, the wastewater treatment plant, possessory interest, goodwill, 10.54 acres of vacant land and 670 acres leased from the United States Forest Service. An additional 850 acres of Forest Service land is available for use by Petitioner from January to April of each year through a special use permit.
 - The ski area has a possessory interest via a long-term lease with the United States Forest Service. Only the commercial improvements are the subject of this appeal.
 - An appraisal by Intermountain Consultants was completed for loan purposes on October 1, 2002. Both parties presented the appraisal in their exhibits and are in agreement with the majority of the report. Although the author of the report was not called as a witness, there was no objection by either party to the admittance and consideration of the report by the Board.

- Two main issues of this appeal are the classification and value of the commercial improvements, specifically the chair lifts and the value of the possessory interest and goodwill.

2. Based on the market approach, Petitioner presented an indicated value of \$2,550,000.00 for the subject property.

3. Petitioner's witness, Ms. Melissa Goforth, CFO of Powder Monarch, LLC, testified that she was employed by the seller during the purchase negotiations. She contends that the cost approach should not be considered in determining the value of the subject property, as the subject ski area is under a long-term lease, depreciation is difficult to estimate, and buyers do not place any emphasis on the cost approach when making purchase decisions on properties of this type.

4. Ms. Goforth explained that the numerous investors for the subject property include herself and Mr. Richard Moorhead, another employee of the ski area. She and Mr. Moorhead each own 2.27% of the company in exchange for their labor. The remaining investors who own the 95.46% majority interest paid for the goodwill of the business going concern. The value allocated to goodwill does not depend on the management skills of the current managers but rather on the annual snowfall and terrain of the mountain. Monarch Ski area has existed for over 60 years, providing a quality skiing experience.

5. Ms. Goforth described the assets of the ski area as old and small with slow chair lifts. She testified that the negotiations between the buyers and seller began prior to the closing date of November 17, 2002, and the final purchase price was determined during the summer of 2002. She believes the sale of the subject property on November 17, 2002 is significant, since the sales price was determined during the base period. She testified that the sale of the subject was an arms-length transaction. The seller made certain concessions after due diligence and the price was lowered by an appropriate amount. The obligations assumed by the buyers are shown in Respondent's Exhibit 3. All allocated values are shown on page 1 of Petitioner's Exhibit D. All parties to the transaction attest that these figures best represent the fair market value of each asset. She testified that the asset values were market driven, not based on the tax needs of the parties; if so, the value of the personal property would have been higher. These allocations stood up to an audit by a Certified Public Accountant.

6. Under cross-examination, Ms. Goforth testified that she is an accountant and prepared Form 8594 for the income tax return on the subject property. It was subject to the scrutiny of the Internal Revenue Service. Negotiations between the buyers and seller produced the allocations indicated on Form 8594.

7. Petitioner's witness, Mr. Carl Robert Nichols, a real estate investor and primary negotiator between the parties during the sales transaction, testified that he arrived at the value of the subject property using the income approach to value. He did not consider the cost or market approaches. He analyzed the profit centers that contribute to the net income of the ski area. He did not split out any of the assets, as the buyers were purchasing a business and goodwill. The value for

goodwill was determined through negotiation. He did not care about or look at other ski area sales, as he was only interested in the income stream from the subject property. He explained that he had worked with the seller in the past during previous negotiations with different buyers, and that the subject had been on the market approximately two years prior to June 2002. Early in June 2002, he began drafting the contract that eventually resulted in the sale of the property.

8. Under cross-examination, Mr. Nichols explained that the land lease and the bill of sale are included in Petitioner's exhibits. He purchased Monarch Mountain Lodge in 1999 and received a \$100,000.00 credit on that purchase. He used the credit for discount lift tickets, free hotel rooms and an office without rent. He estimated that the monetary benefit might have been between \$6,000.00 and \$10,000.00 per year. Mr. Nichols testified that he did not know of any other Monarch employees involved in the transaction besides Ms. Goforth and Mr. Moorhead. He structured the transaction so that Ms. Goforth and Mr. Moorhead were minority owners and would continue doing their jobs. He wanted to include local people in the investor pool, as they were knowledgeable about local and ski area issues.

9. Petitioner is requesting a 2003 actual value of \$2,550,000.00 for the subject property.

10. Respondent's witness, Mr. Richard Roberts, a Licensed Appraiser with the Chaffee County Assessor's Office, presented the following indicators of value:

Market:	\$4,377,603.00
Cost:	\$3,822,909.00

11. Based on the market approach, Respondent's witness presented an indicated value of \$4,377,603.00 for the subject property. Mr. Roberts testified that he did not present comparable sales but relied on market data to arrive at the value presented.

12. Respondent's witness used a state-approved cost estimating service to derive a market-adjusted cost value for the subject property of \$3,822,909.00.

13. Mr. Roberts testified that he completes a market study throughout Chaffee County every two years to arrive at a base cost for various commercial buildings. To arrive at a conclusion of value for the subject property, he reviewed the results of the study, actual construction costs, and figures from the Marshall & Swift Cost Service. No market research was available regarding chair lifts. To help determine the classification of the chair lifts as real or personal property, he reviewed descriptive information from Marshall & Swift and talked to Mr. Rich Moorhead, the General Manager of Monarch Ski Area during 1999 and 2000. Mr. Roberts elected to treat the chair lifts as real property. Chair lifts must be customized, engineered and designed for the specific terrain of each slope.

14. Mr. Roberts testified that he has a degree in ski area management and spent 20 years in the ski industry. He believes the appraisal prepared by Intermountain Consultants Inc. (Petitioner's Exhibit E) is well done. The only difference between Respondent's value and Petitioner's value is the process used for the personal property, including the chair lifts.

15. Respondent's witness did not complete an income approach to value; he relied on the income approach contained in the Intermountain Consultants Inc. appraisal. He also agreed with the methodology used and the valuation of the goodwill in that appraisal.

16. Under cross-examination, Mr. Roberts explained that the ski area does not have value without the chair lifts. He testified that Intermountain Consultants used appropriate appraisal methodology to determine the \$710,000.00 value for goodwill.

17. Under re-direct, Mr. Roberts emphasized that he believes the method used to value the business contribution in Petitioner's Exhibit 1B is an appropriate method to value goodwill. He agrees that ski resorts are unique in that they are tied directly to the real estate on which they operate.

18. Upon questions from the Board, Mr. Roberts testified that he utilized mass appraisal techniques in his appraisal report. He did not present a site-specific appraisal due to the superior quality of the appraisal report prepared by Intermountain Consultants Inc. This report stands alone as a complete appraisal; the appraiser is a specialist in ski resorts and appraises properties throughout the United States.

19. Mr. Roberts testified that he examined the comparable sales contained in the Intermountain Consultants appraisal, and determined that no other valid sales were available. The sale of the subject property closed outside the base period on November 17, 2002. Negotiations between buyer and seller on the final sale price continued from late May 2002 to the first part of June 2002. However, no information was available to Mr. Roberts at the time he completed his appraisal. Upon further questions from the Board, Mr. Roberts described the market as being flat from May 2002 through November 2002, rendering values the same on June 30, 2002 as November 17, 2002.

20. Respondent assigned an actual value of \$4,079,675.00 to the subject property for tax year 2003.

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's first consideration is the classification of the chair lifts. Respondent's witness testified that the chair lifts are tied directly to the real estate, thereby rendering them real property. The Board was not convinced by this argument, and concludes that the mere fact that the chair lifts are considered real property in the Marshall & Swift Cost Manual does not justify their classification as real property for ad valorem purposes. The appraisal report prepared by Intermountain Consultants Inc. describes the chair lifts as personal property and the Board concurs. Colorado Revised Statute 39-1-102(4) defines fixtures as "those articles that were once movable chattels, but have become an accessory to or a part of real property by having been physically incorporated therein or annexed or affixed thereto." The subject property chair lifts are fixtures

affixed to the land but are removable and considered essential to the business operation, not to the real estate. The Board determined that the chair lifts should be classified and valued as personal property.

3. Respondent's witness did not present his own market or income approach, testifying that the Intermountain appraisal was of superior quality and he chose to rely upon its findings. The income approach value from the appraisal is \$5,900,000.00 prior to deductions for personal property and goodwill, which were included in the income stream. Calculations for these items, as well as the chair lifts, varied according to the source: the Intermountain appraisal, the subject property's sale settlement sheet, and Respondent's exhibits.

4. The Board could not give much weight to Respondent's appraisal report. There was no supporting documentation for the cost or market approach and Mr. Roberts did not prepare an income approach. Respondent's witness testified that the Intermountain appraisal was of superior quality to any appraisal that he could prepare, as Intermountain was an expert in the field of ski area appraisal. The Board determined that the Intermountain appraisal should be given more weight than Mr. Roberts' appraisal report.

5. The Board was persuaded that negotiations for the purchase of the subject property were set in motion during May 2002. Testimony indicated that the ultimate sales price was determined prior to June 30, 2002, although the closing did not occur until November 2002. The Board believes that the sale of the subject property is a viable reflection of a market transaction, and due to the determination of the sales price prior to June 30, 2002, the sale may be considered.

6. Regarding the value of the chair lifts, the Board believes that the cost calculation in the Intermountain appraisal would be an excessive deduction. Testimony indicated that the chair lifts were built specifically for an intended slope and thus would not be reusable in another location without modification. The Board believes that the \$850,000.00 allocated for chair lifts on the settlement sheet for the actual sale of the subject property is more appropriate.

7. Regarding deductions for other personal property, the Board believes that the Intermountain appraisal values of \$269,333.00 for the snow maintenance equipment, and \$844,417.00 for other equipment including vehicles, furniture, fixtures, and equipment (FF&E) and rental equipment are appropriate deductions to be made from the income value.

8. Contrasting views were presented concerning the value of the goodwill. Respondent's witness argued that the goodwill value allocation in the settlement sheet was inflated because two parties of the transaction worked for the seller. Respondent's witness presented testimony but no substantiation to support his argument. Petitioner's testimony concerning goodwill and going concern value was influential and the Board gave it more weight. The Board concurs that a large part of the value of a ski area is goodwill and personal property, and was convinced that the buyers and seller negotiated a goodwill value that was satisfactory to all parties. The Board concluded that the deduction for goodwill should be \$1,894,819.00.

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

Capitalized Income Approach Value:		\$5,900,000.00
Less:		
Goodwill	\$1,894,819.00	
Snow Maintenance Equip.	269,333.00	
Other Personal Property	<u>844,417.00</u>	
Subtotal		-3,008,569.00
Value Prior to Chair Lift Deduction:		\$2,891,431.00
Deduction for Chair Lifts	<u>850,000.00</u>	
Final Real Estate Value		\$2,041,431.00

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 \$2,041,431.00.

ORDER:

Respondent is ordered to reduce the 2003 actual value of the subject property to \$2,041,431.00.

The Chaffee County Assessor is directed to change his/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 December 2004.

BOARD OF ASSESSMENT APPEALS

Karen E Hart

Karen E. Hart

Rebecca Hawkins

Rebecca Hawkins

This decision was put on the record

DEC 23 2004

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

