

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>LAZIER TIVOLI, LLC,</p> <p>v.</p> <p>Respondent:</p> <p>EAGLE COUNTY BOARD OF COMMISSIONERS.</p>	<p>Docket No.: 51472</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on September 28, 2009, Sondra W. Mercier, Louesa Maricle, and James R. Meurer presiding. Petitioner was represented by Robert R. Gunning, Esq. Respondent was represented by Christina Hooper, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2006.

PROPERTY DESCRIPTION:

Subject property is described as follows:

**386 Hanson Ranch Road, Vail, Colorado
(Eagle County Schedule No. R008874)**

The property consists of a 56,501 gross square foot, five-story, mixed use project located in the commercial core of the town of Vail, Colorado. The structure contains 61 hotel rooms, a 3,000 square foot residential penthouse unit, and a 300 square foot residential employee housing unit. The construction of the building was completed in 2006 and amenities for the project consist of a fitness center, reserved parking, lounge, business center, two hot tubs, breakfast service, and a ski in-ski out location. There is a 20-space underground parking garage below the structure. Lot size is 17,708 square feet and the building is considered to be of above average construction quality. The former Tivoli Lodge, the predecessor to the current lodge, was razed in 2004 and subsequently replaced by the current building. The hotel is independent rather than franchised and the building was only partially complete as of the January 1, 2006 assessment date.

Both Petitioner and Respondent stipulated to the following facts:

1. The penthouse unit was partially complete as of the assessment date and is valued at \$1,535,260.00.
2. The employee housing unit was partially complete as of the assessment date and is valued at \$69,530.00.
3. The 61 hotel units and associated amenities were 75% complete as of the assessment date.

Given the stipulated facts, it is only the commercial portion (61 units and amenities) of the building that is *at issue* in this hearing.

Petitioner presented the following indicators of total value (including stipulated residential) for the subject property:

Market:	N/A
Cost:	N/A
Income:	\$6,851,948.00

Petitioner presented an indicated value of \$6,851,948.00 for the subject property with \$5,247,158.00 allocated to the hotel. This value acknowledges the partial completion of the building as of the assessment date.

Petitioner's basis for value for the hotel was an income approach which concluded a value of \$5,247,158.00 for the property, accounting for the 75% partial completion. Petitioner's income model reflected a \$242.37 average daily rate, a 50% occupancy factor, and 318 days of operation. Expenses including departmental, undistributed operating, management, and fixed were estimated at \$1,656,735.00 or 66% of total revenue, the capitalization rate loaded for taxes was estimated at 11.44%, and the deduction for tangible personal property was \$1,161,329.00. The basis for Petitioner's numbers was actual income and expenses from the prior Tivoli operation, projections for the new Tivoli facility, a competitive set of comparables, as well as data provided by Smith Travel Research for limited service hotels.

In addition, Petitioner provided an abbreviated market approach reflecting a going concern price of \$166,667.00 to \$178,571.00 per hotel room as a test of reasonableness. Petitioner concluded that if the comparables used in this approach were properly adjusted to exclude personal property, intangible assets, and state of completion, the price per room would be similar to the value concluded in the income approach.

Petitioner is requesting a 2006 actual value of \$6,851,948.00 for the subject property.

Respondent presented the following indicators of total value (including stipulated residential) for the subject property:

Market:	\$12,258,250.00
Cost:	\$16,141,600.00
Income:	\$12,063,120.00

Respondent presented an indicated value of \$12,063,120.00 for the subject property with \$10,458,330.00 allocated to the hotel. This value acknowledges the partial completion of the building as of the assessment date.

Respondent's primary basis for value for the hotel was an income approach which concluded a value of \$10,458,330.00 for the commercial (hotel) portion of the property, accounting for the 75% partial completion.

Respondent's income model reflected a \$244.00 average daily rate, a 65% occupancy factor, and 365 days of operation. Expenses including departmental, undistributed operating, management, and fixed were estimated at \$2,260,723.00 or 61% of total revenue, the capitalization rate loaded for taxes was estimated at 10.44%, and the deduction for tangible personal property was estimated at \$414,800.00. The basis for Respondent's numbers was a non-disclosed competitive set of income comparables and data provided by Smith Travel Research for full service hotels.

In addition to the income approach, Respondent presented a cost approach reflecting a value for the commercial land and improvements of \$10,653,460.00, for a total value for the subject property of \$16,141,600.00; however, Respondent did not indicate the level of weight given to this approach in the final opinion of value. Respondent's witness did indicate in testimony that the cost approach was reviewed when considering the overall feasibility of the project.

Respondent's market approach concluded to a total value for the subject property of \$12,258,250.00. However, Respondent indicated that there were no sales of hotel properties within the time frame, so the value for the commercial portion of the property was based upon the cost approach, \$10,653,460.00, and the market approach was used to value the residential portion of the property.

Respondent assigned an actual value of \$12,063,120.00 to the subject property for tax year 2006.

Both Petitioner and Respondent based the value of the commercial (hotel) portion on the income approach. The major points of contention between the parties were a number of the variables used within the income approach, specifically days of operation, occupancy rate, the capitalization (overall) rate, and the deduction for personal property. In addition, Petitioner and Respondent disagreed on the hospitality classification of the property (limited vs. full service), and Petitioner objected to the non-disclosure of the comparables used in Respondent's competitive set.

Petitioner presented sufficient probative evidence and testimony to prove that the tax year 2006 valuation of the subject property was incorrect.

Given the physical and economic characteristics of the property, the Board agrees that the income approach provides the most reliable indication of market value for the commercial (hotel) portion of the subject project. After further review of the income, expense, and rate estimates used in Petitioner's and Respondent's direct capitalization models, the Board concludes that the majority of variables used in Petitioner's model are more reflective of the market conditions during the study period. The Board concludes that an average daily rate of \$243.00 is supportable; however, the Board does take exception to the use of the 318 days of operation by Petitioner and determines that, based on testimony, 365 days should be used in the analysis. The Board further determines that an occupancy rate of 50% accurately reflects the seasonality of the hotel operation and that expenses equate to 65.5% of total revenue. In addition, the Board concludes the base capitalization rate used in the model should be 9.5% as reflected in the National Hotel Market Capitalization Rate Survey provided by Petitioner and that the deduction for personal property should be \$763,495.00 as evidenced by actual numbers reflected in Respondent's Exhibit 7.

Although the Board understands the requirement for confidentiality regarding certain information and documents, the Board places minimal weight on comparables or a competitive set that is not disclosed and / or independently verified.

The Board concludes that the 2006 actual value of the subject property should be reduced to \$8,369,572.00 allocated as follows:

Hotel	\$6,764,782
Penthouse Unit	\$1,535,260
Employee Residential Unit	\$69,530
Total	<u>\$8,369,572</u>

ORDER:

Respondent is ordered to cause an abatement/refund to Petitioner, based on a 2006 actual value for the subject property of \$8,369,572.00.

The Eagle County Assessor is directed to change his/her records accordingly.

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-five 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 for assessment of the county wherein the property is located, may petition the Court of Appeals for judicial review according to the Colorado appellate rules and the provision 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-five 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 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 for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.


Section 39-10-114.5(2), C.R.S.

DATED and MAILED this 5th day of November 2009.


BOARD OF ASSESSMENT APPEALS



Sondra W. Mercier



Louesa Maricle



James R. Meurer

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



Heather Flannery

