

<p>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p>SPI GOLF INC,</p> <p>v.</p> <p>Respondent:</p> <p>EAGLE COUNTY BOARD OF COMMISSIONERS.</p>	<p>Docket No.: 75457</p>
<p>ORDER</p>	

THIS MATTER was heard by the Board of Assessment Appeals on November 13, 2019, Debra A. Baumbach and Gregg Near presiding. Petitioner was represented by Richard G. Olona, Esq. Respondent was represented by Christina Hooper, Esq. Petitioner is requesting an abatement/refund of taxes on the subject property for tax year 2016.

EXHIBITS

Petitioner's Exhibits 1-3 were admitted into evidence. Respondent's Exhibits A, D, E and F were admitted into evidence.

PROPERTY DESCRIPTION

**1265 Berry Creek Road
Edwards, CO
Eagle County Schedule No.: 2105-032-15-001**

The subject is the Sonnenalp Golf Club and Clubhouse. It is an 18-hole, 7,100-yard, championship links style, semi-private, non-equity country club golf course, designed by Jay Morrish and Bob Cupp. Golf amenities include a driving range, practice putting green, short game area and concrete cart paths. Other improvements include a maintenance facility and administration building. There are six ponds and multiple sand bunkers. The golf course opened in 1981.

The clubhouse totals 31,522 square feet, and 20,818 effective square feet. There are two levels, including the Balata Restaurant, kitchen and bar, golf pro shop, fitness club, informal lounge

and dining facilities, patio dining, event rooms, men's and women's locker rooms, tennis facility (four courts), three heated outdoor swimming pools and outdoor hot tub. The basement level has golf cart storage, cleaning and charging for the fleet of 65 electric golf carts. The year of construction is 1984. The subject also includes a smaller parcel, split by tax district. It includes the upper part of the driving range and two practice greens.

As of January 1, 2016, the administration building was being demolished, and the clubhouse and health club/fitness facilities were also to receive a major renovation and addition. As of January 1, 2016, the total permit value for the major renovation and addition was \$5,948,100. As of December 31, 2015, \$1,431,652 had been spent on the construction of the new clubhouse.

The Sonnenalp offers equity and non-equity membership categories that include original founder, older members and new members. As of August 2014, the Sonnenalp had 229 golf members and 16 social members. The club had a membership cap of 275 golf members with no social membership cap. The cost of a non-equity golf membership was \$25,000. Annual dues are \$5,100.

PETITIONER'S PRESENTATION

Petitioner called Mr. Johannes Faessler as a witness. Mr. Faessler is the owner, general manager and president of SPI Golf, Inc. Mr. Faessler testified about the history of the subject. According to Mr. Faessler, the demand for golf memberships has decreased. The memberships are aging and are difficult to replace with new members. The witness testified that SPI Golf, Inc. has been moving away from the golf business and described the recent renovation efforts that were undergoing at the subject property. The cost of renovations is estimated to be over seven million. Mr. Faessler also testified that the subject is in need of a new irrigation system.

Next, Petitioner presented Mr. A. Mark Dyson, CCIM, MAI, AI-GRS, AI-RSS, DYCO Diversified, Inc., as a witness. Mr. Dyson disclosed that he was not acting in an appraiser capacity but instead as a consultant appearing on a contingent fee providing a broker opinion of value. Mr. Dyson testified that there were seven golf course failures in Eagle County. According to the witness, Eagle County is significantly over-supplied with golf courses. Mr. Dyson discussed that the golf industry is in decline as indicated by the national, Colorado, and Eagle County trends. Mr. Dyson also stated that the subject golf course sold a significant amount of refundable memberships creating a three million dollar liability.

In his broker's opinion of value report, Mr. Dyson concluded to the market value via gross rent multiplier (GRM) of \$3,337,294 (\$185,556 per hole). Further, taking in consideration the subject's significant expenditures, Mr. Dyson arrived to an overall rate of 14%. Application of the overall rate to the average net income of \$322,368 (2010-2014) resulted in a going concern value of \$2,300,000 (\$127,778 per hole). Giving most weight to the GRM valuation with support from the direct capitalization method, Mr. Dyson concluded to the subject's value of \$3,200,000 (\$177,778 per hole) via the income approach.

Mr. Dyson presented a sales comparison approach, but that approach was not used to derive the subject's value. Cost approach was not developed.

The witness also developed an intangible value for the subject property of \$555,556, rounded to \$550,000. In addition, movable personal property was valued at \$300,000. Both the intangible value and the movable personal property values were subtracted from the subject's going concern value to conclude to the subject's 2016 value of \$2,350,000.

RESPONDENT'S PRESENTATION

Respondent presented Mr. Ryan Kane, MAI, a Certified General Appraiser, with Eagle County Assessor's Office. Mr. Kane described the subject property and its location. According to Mr. Kane, subject property is a "trophy property," not a distressed property as argued by Petitioner. Mr. Kane also provided a summary of different golf memberships offered by the subject. In developing an opinion of highest and best use for the subject property, the witness concluded to an *as if vacant* value of 15 to 25 million. As to *if improved* value, Mr. Kane stated that maximally productive use of the land and improvements is for golf course, clubhouse and related recreational purposes.

Mr. Kane developed three approaches to value the subject property. Within the cost approach, Mr. Kane concluded to the land value of \$10,000 per acre, with the total land value of \$1,633,900. Using the Marshall and Swift Cost Services, the witness concluded to the total course improvements of \$6,850,270. After the application of 50% obsolescence, the witness concluded to the subject's value, including land value, of \$5,059,035. After adding \$1,431,652 in cost of construction improvements as of December 31, 2015, the witness arrived to the subject's value of \$6,490,690 for tax year 2016 via the cost approach.

The witness next testified to the income approach he developed for the subject property. Applying the direct capitalization method and using 2014 owner's operating statement data, Mr. Kane arrived to the adjusted net operating income (EBITDA) of \$492,186. After application of 10% capitalization rate, effective tax rate of 1.95% (11.95%, loaded), concluding to \$4,200,000 for the subject via direct capitalization approach. Based on the subject's location and quality, which Respondent considered to be better than the national average, GIM of 1.5 was derived. Based on the actual gross revenue for FY2014, the witness concluded to the GIM of \$5,026,422 (\$3,350,948 times 1.5). Reconciling the direct capitalization approach and the GIM approaches to \$4,200,000 and after accounting for personal property value, existing golf value, new construction and real property value, the witness concluded to the subject's 2016 value via the income approach of \$5,293,060.

In the sales comparison approach, the witness concluded to the subject property's value of \$4,800,000. Similarly to the cost approach, the witness accounted for personal property value, golf value, new construction and real property value to arrive to the subject's 2016 value of \$5,893,060 via the sales comparison approach.

After reconciling all three approaches to value, with greatest weight on the income approach, the witness concluded to \$5,300,000 for the subject property for tax year 2016.

Respondent disagreed with Petitioner's characterization of the failing golf course market in Eagle County and provided testimony that Petitioner's statement regarding seven golf course failures in Eagle County was inaccurate. In addition, Respondent disagreed with Petitioner that an adjustment for intangible property was appropriate. According to Respondent, Petitioner deducted twice for management fees in the income approach, which resulted in double-dipping.

Respondent assigned 2016 value for the subject property is \$4,242,010.

BURDEN OF PROOF

In a proceeding before the Board, the taxpayer has the burden of proof to establish, by a preponderance of evidence, that the assessor's valuation is incorrect. *Bd. of Assessment Appeals v. Sampson*, 105 P.3d 198 (Colo. 2005). Preponderance of the evidence refers to the evidence that is most convincing and satisfying in the controversy between the parties. *Batterberry v. Douglas Cty. Bd. of Equalization*, 16CA1490 (Colo. App. 2017). The evaluation of the credibility of the witnesses and of the weight, probative value, and sufficiency of the evidence is solely within the fact-finding province of the BAA. *Bradford v. Chaffee Cty. Bd. of Equalization*, 12CA0927 (Colo. App. 2013).

THE BOARD'S FINDINGS

Petitioner's witness, Mr. Mark Dyson, presented a Broker Opinion of Value and Letter of Agency to the Board in support of a value opinion of \$2,350,000 for the subject property. The opinion represented the value of the real estate as a portion of a going concern which he values to be \$3,200,000.

The Board determines there are three significant issues in regard to the value conclusion(s).

- A. The Board does not find credible the testimony by Mr. Dyson regarding his valuation as separate from the responsibility incumbent upon him as a Certified General Appraiser in the State of Colorado as well as his active membership as an MAI member of the Appraisal Institute. The witness disclosed a contingent fee assignment based upon a percentage of Petitioner's savings should the Board conclude the assigned value determined by Eagle County is in error. The Board finds the following reference from *The Appraisal of Real Estate*, 14th Edition page 684 to be instructive: *If the consulting service includes a valuation, the appraisal portion of the service is subject to professional appraisal standards.* In this case it is clear the witness has provided a valuation concluding to a specific value as of a specific date. The Board concludes Mr. Dyson's report is biased and misleading.
- B. The witness testified to limited experience practicing as a tax expert and his statement of qualifications leans heavily upon experience as a fee appraiser and reviewer. In fact, within his qualifications, only one assignment regarding a tax appeal was cited (Exhibit 3, at page 1). In addition this experience did not result in an appearance before the Board. In this vein the Board found numerous occasions where

the witness incorrectly identified and relied upon data outside the base period. For this reason the Board did not place significant weight upon the testimony.

- C. The "Broker Opinion" relies heavily upon hearsay and references to the work of others. The witness also included and relied upon data from an appraisal report prepared for bank purposes.

The Board finds Respondent's appraisal report to have been deficient in the handling of two valuation factors. Petitioner's witness correctly found the subject property to include a business component. Both parties recognized value to personal property and both reduced the value opinions for this factor. Petitioner's appraiser went further and considered the value of intangible assets concluding to a reduction of \$550,000 from the value of the going concern. As the parties were very similar in the calculation of gross revenues the Board determines Respondent's value opinion must be adjusted downward by \$550,000 to recognize this factor. In addition, the Board agrees with Petitioner that the incomplete health club/fitness facilities would not command a dollar for dollar market value of the \$1,431,652 expended by Petitioner as of the valuation date. Cost does not always equal value. No evidence was presented to the Board relative to this question, *but the Board considers there is some value to the planning, zoning, entitlements and physical components in place*. Given the reduction of \$550,000 from Respondent's appraised value of \$5,300,000 to a revised figure of \$4,750,000 the Board finds the assigned value of \$4,242,010 adequately recognizes the expected diminution.

Sufficient probative evidence and testimony was presented to support the assigned value determined by Eagle County.

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 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-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 when Respondent alleges procedural errors or errors of law by the Board.

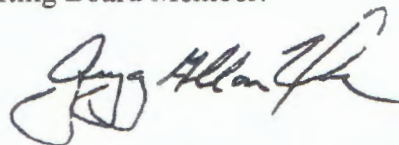
If the Board does not recommend its decision to be a matter of statewide concern or to have resulted in a significant decrease in the total valuation for assessment of the county in which the property is located, Respondent may petition the Court of Appeals for judicial review of such questions.

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

DATED and MAILED this 3rd day of December, 2019.

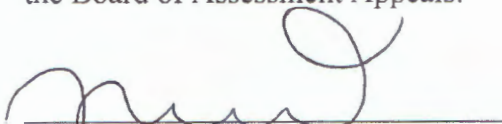
BOARD OF ASSESSMENT APPEALS:

Drafting Board Member:



Gregg Near

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



Milla Lishchuk

Concurring Board Member:



Debra A. Baumbach,
*concurring without modification pursuant to
Section 39-2-127(2), C.R.S.*

