

The Board of County Commissioners met in special session on August 4, 2009. Those present for the session were Heidi M. Albritton, Chair; K. Keith Meinert, Vice-Chair; Lynn M. Padgett, Member; Mary Deganhart, County Attorney; Connie Hunt, County Administrator; and Linda Munson-Haley, Clerk of the Board.

- **Note – This meeting was recorded for reference purposes.**

**8:05 The Board of County Commissioners convened as the Board of Equalization to consider the following property valuation appeals:**

Commissioner Albritton reconvened the Board of Equalization and a roll call of the members of the Board of Equalization confirmed that Commissioner Albritton, Commissioner Meinert and Commissioner Padgett were present.

- A. 8:05**
- 1. Property Owner: Owen A. Knutson  
Schedule Number: R000622**
  - 2. Property Owner: Owen A. Knutson  
Schedule Number: R001159**

Owen Knutson was present. John Zimmerman was present as a consultant on behalf of the Ouray County Assessor's Office along with Susie Mayfield, County Assessor.

Commissioner Albritton opened the public hearing on Schedule Numbers R000622 and R001159 for Owen A. Knutson.

The Clerk of the Board swore Owen Knutson, John Zimmerman and Susie Mayfield.

**Schedule Number R001159**

Owen Knutson presented an exhibit (*Petitioner A. 1&2-1*) and explained that he had three issues. With regard to the subject property on the corner of 8<sup>th</sup> and Main Street, he had requested that the Assessor review the percentage of residential and business mixed use of the building, which the Staff did. Before the reassessment, the improvements were 20.44% and after the reassessment they dropped to 17.88%. The land stayed at 22.48%. He felt that the land should be valued the same as the improvements percentage-wise. The parking for 801 Main Street, the building, was Main Street. The parking for the residence and Cutting Edge was on 8<sup>th</sup> Avenue. During the past several years cars driving down 8<sup>th</sup> Avenue have lost control. Once, during the summer, a car was out of control on 8<sup>th</sup> Avenue and slid into the wall of his building costing him \$800 to \$900 in damage. In the winter a car slid into is car that was parked there. To solve the problem he contracted to have fill moved into the vacant lot and excavation for additional parking places to park his RV and personal car. He felt that the adjacent land to the building should be valued as if they were one lot. In reviewing the Goldbelt, that had a double lot, and Fox, that had a double lot across street, he discovered that their value was \$35.06 per sq. ft. His land, which was 6,923 combined sq. ft. was valued at roughly \$46. He purchased the two lots at the same time but was treating both as one for personal and business use. He would be selling both as one unit. He felt he should get combined lower rate for the double lot as his neighbors did.

John Zimmerman introduced himself as the commercial appraiser who did the valuations of all of the business properties in the county. The Assessor's Office submitted an exhibit (*Assessor A. 1&2-1*). Zimmerman explained that he was involved in the field inspection of the Knutson property and had firsthand knowledge of the property. If he understood correctly, the issue was mainly if the second lot immediately north of the building should be assessed with the residence and building. The Assessor's Office's contention, based on use not contiguous ownership, was that the lot was not being used as part of the integral day-to-day operational use of the building and, thus, the lot could not be distributed into the residential use of the building. As far as the valuation, the property was valued consistently with other properties along the corridor. According to the information he had from Knutson, there was no dispute of the valuation, only the issue of use and what percentage was allocated to residential versus commercial use that boiled down to the vacant lot north of the subject building.

To some confusion expressed by the Commissioners, Zimmerman explained that the land value under the building was set consistently all up and down the Main Street corridor. That particular lot was valued just as if it were vacant. The land value was set. The computer system that was used applied the value to the building and did not look at the allocation of building to land independently. The ratios were independent each year and could not be compared from the prior years to the next assessment.

Commissioner Meinert asked to clarify if all commercial property land values along Main Street were valued as 100% commercial; that no portion was considered residential. Zimmerman explained that the land value as a whole was valued at market value depending on the percentage of use in the building the land can inherit that classification. Commissioner Meinert expressed more confusion and asked to clarify further that the Assessor had assessed the land underneath the commercial properties, at the same proportion of residential to commercial as it assessed the building. Zimmerman replied that it was based on square footage, typically. Commissioner Meinert asked Zimmerman to confirm that he meant yes. Knutson interjected that that was *his* argument.

Commissioner Padgett the proportion of the land that gets the 29% rate should be the same as the improvement that gets the 29% commercial rate.

Zimmerman explained that breaking down by square footage was the most common way. To be consistent with other properties he would not have a problem adjusting the land value to be consistent with the improvement value.

Commissioner Meinert tried to clarify even further with the Petitioner that there was a change in the proportionality and valuation during the review period as represented on the Notice of Determination and he asked Knutson if he believed that the proportional change made was made only to the structure and not to the land value, and that he was now asking to make the same proportional adjustment to the land value. Knutson replied, "Yes."

Commissioner Meinert then asked Zimmerman if he was to take a property, for example, that had no residential on the ground floor, it was all on the second floor, which was typical of most properties along Main Street, was he saying in that case since there was no residential property that physically sat on the land that all of the land was assessed at the commercial rate. Zimmerman replied, "No." A portion of the land was allocated to residential. It depended on where the property was and the available information. The most typical way to do it would be based on the square footage or the value allocation method. It was a complicated method to figure out how much of that land is allocated to residential. It was possible to have a building with 1,000 sq. ft. up and 1,000 sq. ft. down but the land value was more commercial than residential because the lot was a prime commercial lot and the commercial space was occupying more of the lot. He concluded that the best approach to use would be the square footage comparison method to ensure equalization. Zimmerman offered to recalculate the property.

Knutson agreed that approach would be okay if it fit the other properties across the street, as well.

A discussion followed as to how to recalculate the value. Commissioner Albritton asked Zimmerman to get an official number for the record.

### **Schedule Number R000622**

Commissioner Albritton clarified that R001159 was the parcel with the improvements on it and R000622 was the vacant land.

Commissioner Padgett explained that the crux of the argument was that was this vacant lot being used critically and was it integrative with the adjacent parcel.

Zimmerman explained that if the vacant lot was part of a yard and was a separate lot or parcel but was contiguous to the residence, for example it was fenced in with the residence and the sidewalk crossed the parcel, those things were what determined residential. This was a distinctly different lot. There were no doors or ingress or egress on that side of the building and it was overgrown with trees and grass. He did not see any integrated use of the building. For equity purposes, this piece of property was an independent piece of property.

Commissioner Padgett asked how a parking lot portion of a commercial building was factored in, for example, a grocery store with a vacant lot next door that was used as a parking lot. Zimmerman explained that in that scenario it did not matter as far as the impact on the taxpayer because the grocery store was assessed at the 29% assessment rate and the vacant lot parking lot at the 29% assessment rate. This matter comes up when there are two pieces of property and part of one was residential. The tax implications were the crux of the matter. Commissioner Padgett asked if the parking lot in her example was on an adjacent lot was it classified as a vacant land or commercial land. Zimmerman said that if it was just a piece of ground with road fill, he would do it as vacant land, commercial vacant land.

Commissioner Meinert saw it as not a commercial issue but an issue similar to other protesters who had residential property with a lot adjoining the residence. He always had a problem with coming to a conclusion unless the owner of the property had taken steps to dissolve the property line and integrate the two pieces of property so that there was not a separate buildable lot that would be marketable as such. In this instance, he asked if this lot could be sold separately from the commercial property. The Assessor and Zimmerman replied that it could. Commissioner Meinert asked if the vacant lot was being used in conjunction with the adjacent residential property. Zimmerman replied that he did not believe it was. It was sellable as an independent piece of property. That was the point of the decision. Commissioner Meinert added that it seemed to him that it should be assessed at the vacant land rate.

Knutson acknowledged that it was a reasonable conclusion but he disagreed with it because he could not park on 8<sup>th</sup> Avenue and it was an important place for the residence to have a place to park. When he purchased the property the vacant land was important to him for investment purposes as well as living there. He did plan to list the properties together.

Commissioner Padgett explained that the Commissioners encouraged people to combine parcels to make it cleaner when wanting to consider them as one for tax purposes. She discussed an exception that was made for property that had a storage improvement that was clearly set on the line between the two lots. She wondered if putting down gravel was enough of an improvement to be considered as connecting the lots for improvement's sake. She was in agreement that there was not enough compelling evidence to consider these two lots to be integrated and critical in function to each other.

Commissioner Meinert encouraged the Petitioner to combine the lots legally to dissolve the property line between them so that they were one piece of property.

**M/S/P**—*Motion was made by Commissioner Meinert and seconded by Commissioner Padgett that in the matter of Schedule Number R000622 in regard to a vacant lot owned by Owen A. Knutson, the Board of Equalization found that the Assessor had properly assessed the lot as vacant property and the value and the assessment as vacant land should stand. [The Assessor's Valuation was \$157,690 before review and \$154,530 after review.] A roll call vote was taken on the motion with the following results.*

*Commissioner Albritton voted in the affirmative  
Commissioner Meinert voted in the affirmative  
Commissioner Padgett voted in the affirmative*

*Motion passed unanimously.*

**Schedule Number R001159, continued...**

Zimmerman advised the Board that the commercial portion of the land would be valued at \$77,980 that represented roughly 47% of the land value and the residential value of the land would be \$87,980 that represented 53% of the land value. The total value would remain unchanged, only the proportionality changed. The residential portion reflected improvements were valued at \$187,430 and the commercial improvements, there were two lines but when added together they were valued at \$167,290.

**M/S/P**—*Motion was made by Commissioner Padgett that in the matter of Schedule Number R001159, the proportion of commercial and residential use be identical for the improvements and the land value, and based on the Assessor's recalculation using an approximate percentage of 47% of residential use and 53% of commercial use, the improvement values shall be changed to \$77,980 for the residential component of the land—Commissioner Albritton noted that was the commercial component. Commissioner Meinert added, not the improvement but the land value. There was some confusion and a discussion followed. For lack of a second, the motion died.*

**M/S/P**—*Motion was made by Commissioner Meinert and seconded by Commissioner Padgett that in regard to Schedule Number R001159 in the matter of commercial/residential property owned by Owen A. Knutson, the Board found that the apportionment of the valuation of the property should be changed as follows: the total residential value of the land and improvements would be \$275,410; the total commercial valuation of the land and improvements would be \$245,270. [The total value of the property remained the same, only the proportions changed. The Assessor's Valuation was \$198,080 before review and \$238,900 after review for residential, and \$328,250 before review and \$281,780 after review for commercial, with totals of \$526,330 before review and \$520,680 after review.] A roll call vote was taken on the motion with the following results.*

*Commissioner Albritton voted in the affirmative  
Commissioner Meinert voted in the affirmative  
Commissioner Padgett voted in the affirmative*

*Motion passed unanimously.*

Knutson referred to page 3 of his exhibit and noted that it related to the fact that other taxpayers were getting adjustments for size. The exhibit showed that two other comparable land assessments were getting \$35 per sq. ft., and his two lots were assessed at \$46.75 and \$45.81 per sq. ft. Commissioner Albritton pointed out that he had not protested the total value of the land. Knutson replied that he meant to say that. Commissioner Albritton explained that he could take his protest to the next step if he wanted to protest that.

Commissioner Albritton closed the public hearing.

**8:56 Commissioner Albritton recessed and reconvened at 9:01:**

- |           |             |           |                         |                             |
|-----------|-------------|-----------|-------------------------|-----------------------------|
| <b>B.</b> | <b>9:01</b> | <b>3.</b> | <b>Property Owner:</b>  | <b>Pamela J. Conrad</b>     |
|           |             |           | <b>Schedule Number:</b> | <b>R006107</b>              |
|           |             | <b>4.</b> | <b>Property Owner:</b>  | <b>Rane &amp; Riley LLC</b> |
|           |             |           | <b>Schedule Number:</b> | <b>R006106</b>              |
|           |             | <b>5.</b> | <b>Property Owner:</b>  | <b>Rane &amp; Riley LLC</b> |
|           |             |           | <b>Schedule Number:</b> | <b>R006109</b>              |

Doug MacFarlane, Dennis Conrad and Eric Dickerson were present. John Zimmerman was present as a consultant on behalf of the Ouray County Assessor's Office along with Susie Mayfield, County Assessor.

Susie Mayfield, County Assessor, explained that the Petitioners for Agenda Items B.3., B.4. and B.5. were in the same building and whatever decision was made for one would affect the whole building.

Commissioner Albritton opened the public hearing on Schedule Number R006107 for Pamela J. Conrad, and Schedule Numbers R006106 and R006109 for Rane & Riley, LLC.

The Clerk of the Board swore Doug MacFarlane, Dennis Conrad and Eric Dickerson in.

Doug MacFarlane stated that he owned an office in the building in question. He did not file a protest but if changes were made it would apply to the entire building and would affect him. Dennis Conrad filed a protest and Eric Dickerson was Rane & Riley LLC. Conrad and Dickerson authorized MacFarlane to present for them. MacFarlane noted that he was in Unit #201. County Attorney Deganhart advised MacFarlane that he could present on behalf of Rane & Riley but not on his own behalf as he did not file an appeal. MacFarlane explained that he was there to talk in general terms of value and that he was presenting on behalf of all three schedule numbers.

The Petitioners presented *Petitioner Exhibit B.3.-5.-1* and *Petitioner Exhibit B.3.-5.-2* for the record.

MacFarlane stated that the building was in the light industrial area north of the core of the town of Ridgway. He had compared the assessed value of a number of properties reasonably similar in the I-1, Light Industrial-1 District, and I-2,

Light Industrial-2 District zones, and for reference had compared the subject property to comparable properties in the Historic Business District zone (*Petitioner Exhibit B.3.-5.-1*). There were two uses in the Standing Mountain Building, shop and office use. Eric Dickerson had one shop and one office and Dennis Conrad had a shop in the building. It was a mixed use building. At this point MacFarlane presented photographs of the building on poster board. Each of the comps had similar uses and were on the same block. The relationship to mixed and office uses was most similar to the Zaugg property. The properties most similar to the subject building were Zaugg, Ridgway Plumbing, Joe Ryan, and Valley Floors. All of these comps had an average of \$32 per sq. ft. of taxable value. However, Rane and Riley, Conrad and D&D (MacFarlane's business) had an average of \$55 per sq. ft., with the offices at \$62 and the shop space at \$46. There were very similar uses, locations, things that could be done with the buildings, and they competed head-to-head on a rental basis with the Standing Mountain Building but Standing Mountain was 40% higher in terms of valuation of the spaces within. He understood after talking to the Assessor that the basis for the cost assessment was that what was paid for the units became the assessed value. He understood the rationale but there was discrepancy between similar properties. It was a big enough gap that if the buildings next door and down the street were paying significantly less taxes, there was a disparity that needed to be addressed. In comparison, office space in the Kirby Brooks Building that is not in the same neighborhood went for \$49.56 and could be used as a residence by zoning. The office space for Eric Dickerson is \$62 in a Light Industrial Zone. They saw a disconnect there. Overall, taken at a factored value of mixed use office/shop on similar properties, the value of \$46 for shop space in the Standing Mountain Building and yet for a building that contained shop and office space in Zaugg, Joe Ryan, Ridgway Plumbing, and Valley Floors there was a factored overall value of \$32 for the entire building. That represented a gap of 40%. To extend the argument, Dennis Conrad's shop was four walls, a garage door and a mezzanine for \$46. To compare that with a building with developed office space and shops at \$32 did not make sense.

Dennis Conrad owned Shop 1 in the Standing Mountain Building. Historically, he was a solo craftsman who built custom furniture in the traditional sense of no production work and one-of-a-kind. He worked alone. His major point was the same as presented by MacFarlane that in the industrial park there were similar shops serving similar functions in the identical geographical location yet there are very different tax rates. It was his feeling that there had not been enough recent sales to base the value of his unit strictly on the sales price alone that he paid. It came up in the process of the revaluation of these properties in 2009 that Shop 1 and Shop 3, both in the Standing Mountain Building, were valued differently (*Petitioner Exhibit B.3.-5.-2*). They were identical spaces other than Shop 3 was two feet narrower than Shop 1, thus 40 square feet smaller. A review was requested and the resolution appeared somewhat arbitrary. He objected to the use of the term condo/shop because condo implied a living residence; he preferred to call it a shop unit. The condo-type unit ownership should be encouraged and not penalized. The unit purchase allowed individual crafts people, tradesmen and other professionals to have a presence that they might not otherwise find affordable. It was his opinion that the unit should not be taxed solely on the purchase price but on a broader look at properties with similar uses in the same geographical location. The idea of owning a unit in an industrial park for a solo craftsman was an entrée into a site with collegiality and conviviality that would not be found in the middle of nowhere. His motivation to be there was to be working with similar people of similar mind and he was willing to pay to get that privilege and honor. He gave anecdotal story that highlighted the benefit of having a diversity of craftspeople and tradesmen working in close proximity to each other. Their profit margins were very slim. He felt that they should be reevaluated based on the idea that similar shops, similar use, and identical geographical location should have the same taxes. He understood what he paid for it. The monetary value of the shop was different than the actual value to the person who practiced there. What a person paid for it was what he paid for it. A fair and appropriate resolution was a more complex matter.

Rane and Riley, Eric Dickerson, explained that he was the developer who developed the building. He rented for five or six years before doing the building with a partner. There were still three units for sale and he was trying to rent them. The rent alone with the taxes was an unfair burden. Adam Johnson and Dan Zaugg were trying to do the same thing as he was but they were paying less in taxes for a very similar building. Karen Brooks had beautiful granite counters and kitchen, and he was paying more basically for his garage/shop than she was.

The Assessor's Office submitted exhibits for Conrad (*Assessor Exhibit B.3.-5.-1*) and for Rane and Riley (*Assessor Exhibit B.3.-5.-2*). Zimmerman referred to the definition of market value on the exhibits from "Appraisal of Real Estate, Eleventh Edition, pg. 22." It was his job to try to determine market value. In this case these properties all sold during the data collection period for consistent prices and helped to establish the value of the property. He read the property description from his exhibit. There were two sales in the Standing Mountain Professional Building within the timeframe used for the valuation. One sale was a condo/shop unit that sold for \$128,000 or \$160 per square foot. The other was an office unit on the upper level that sold for \$122,430 or \$210 per square foot. As a result, the three condo/shop units in the building were valued at \$158 per square foot and the four office units were valued at \$210 per square foot. Therefore, he requested that the Board uphold the valuation on the subject properties, R006106 and R006109, of \$143,260 and \$121,350, respectively. He added the definition of condominium from the "Dictionary of Real Estate Appraisal, 4<sup>th</sup> Edition", "a multi-unit structure or property in which persons hold fee simple title to individual units and undivided interest in common areas." The common area issue was critical when looking at the Petitioners' comparisons. Many of the buildings used by the Petitioners were not condominiumized. In talking about condo units one was talking about the space that was within the outside walls, the common areas, hallways, shared bathrooms, etc., and these were not factored into the value per square foot that was being analyzed in the units' square footages. The other buildings had bathrooms, hallways and common areas that were factored into the square footage. Those units' values were divided by the square footage of an entire building with all of the hallways, bathrooms and entryway corridors; however, the condo complex was isolated down to the space within the unit itself. These were really an apples to oranges comparison. Even if there was some validity to their comparisons, there were still two sales within the subject complex that defined basically the value in terms of classification and identification of the property. He was supposed to be valuing the condominium unit in this case and each subject parcel was its own unit. He has sales of like units without having to make adjustments. There was no need to go somewhere else to look for information to value the property when there were two strong sales right in the center of the data collection period. It was his opinion that the comparison of equity with other properties was not a valid comparison because of the common areas square foot issue and there was strong evidence within the complex as to what the units were worth.

Commissioner Albritton asked when talking about common space and the fact that these individual tenants were not being attributed that square footage into their assessed value, is their assessed value higher than the other buildings? She used a comparison to the Kirby Brooks Building. Zimmerman explained that the Kirby Brooks Building and Choate were condominium buildings. Assessor Mayfield noted that the other comps were not condominiumized. Commissioner Albritton asked if there were other sales in the area of condominiumized spaced with somewhat similar amenities but of higher quality would that bring the average square footage rate down. Zimmerman explained that the sales would be considered but if there were sales within a specific condo complex that indicated value in that complex, rather than watering down the sales of other properties those sales would apply. Most appraisers would prefer to use sales within the subject complex. In the case of the Kirby Brooks Building they may not be the same type of condo units and may have different uses. There was more discussion on how sales were applied.

Doug MacFarlane continued to discuss the differences between the Standing Mountain spaces and the other comps that included higher land values, 3-phase power, and office use. If it was within 5% or 10% he would not be bringing it to the BOE. Even the gross net in terms of the comparisons on total value for non-condo and condo, about 10% of the gross square footage gets devoted to common features in a building with multiple tenants. That was well outside of the variation of the 40%+ in this comparison even factoring in the difference of the 10% or 15%. He felt there was a flat disparity because of the narrowness of the criteria that was used simply by taking the sales in the building to set the value. That created such a big difference to other buildings, whether condos or not, in the same block, same use, competing in the same rental market. He agreed that it was practically impossible to hone in on exactly what the value should be but for the value that Michaud spoke to, where the value to him was "X" it seemed that the next step was to even out using as many similar values and comps as available to level the playing field. There were maybe a dozen buildings in the Light Industrial area. Even an office in Kirby Brooks was at \$49 where the offices in the Standing Mountain were at \$62. Both have common areas factored in yet there was a pretty big split.

Commissioner Padgett pointed out that the Kirby Brooks condos were three times the square footage of the office space in the building that was being protested. There was a lot of market data in the area that suggested that there was a difference in the price per square foot. Eric Dickerson pointed out that tenants in the Kirby Brooks Building could live in their offices.

Commissioner Meinert understood the Assessor's point of having objective standards but he also understood the Petitioners' point. He recalled that this came up two years ago when the Board was entertaining protests from motel owners in the City of Ouray. They argued compellingly about how different properties competed against each other and the County needed to be careful not to set up a disparity between the properties that would affect their ability to compete. In order to compensate for that, he asked how the other properties, the "non-condo-ized" properties, were valued and if an attempt had been made to take the sales of the properties in this condominium into account in valuing the other properties. That would come up with an area valuation that would ensure that all similarly situated, similarly used and similarly located properties were being treated equally and consistently.

Zimmerman explained that pointed out the difficulties in small economic areas like Ridgway. One of the reasons that he had difficulty supporting raising the values on one or two sales was in determining if that established a market. In this case, about one-third of the units in the subject property sold, which was a good indication of the market. He further discussed the complications with doing the regional approach suggested by the Commissioners. In essence, when the Assessor did the sales ratio analysis in the Ridgway area, the sales ratio was where the Assessors took a list of all sales that occurred and compared the values to the sales prices, they needed to be within a 95-105% compliance zone. After they were done with the reappraisal, if they were still low in terms of that sales ratio, in other words they had not appropriately adjusted for the market, they would need to move everything up or down depending on the sales ratio. That was where they got the pooling effect in moving an entire group of data or of properties all in one direction or another when doing the final neighborhood calculations to bring the sales ratio into compliance. Commissioner Meinert asked if the sales ratio analysis was the only way that he had taken the sales of the particular properties in this condominium into account in valuing the other standalone properties like Zaugg, Ryan, etc. Zimmerman replied that he was correct. Commissioner Meinert took Zimmerman's point that these properties were sufficiently different because of the common areas and he acknowledged that and he acknowledged that the common areas would affect the per square foot valuation but the Petitioner made the point that the common area of a condominium was only 10% of the building area yet the valuation discrepancy was as much as 40%. Zimmerman did not have first-hand knowledge that 10% of this building was common area. He pointed out that the subject property, if looking at the building as a whole, had complex roof lines, was a multi-storied structure, and had good fenestration and some decorative features on the front. Some of the other freestanding buildings that were not condominiumized were fairly simple architecture and some were older. Those sorts of things should be taken into consideration in terms of a possible explanation for the difference in value.

Commissioner Albritton asked Zimmerman if he had looked at land values versus improvement values to pinpoint discrepancies.

Zimmerman explained that when a property was "condominiumized" the land value was absorbed into the individual condominium units. To do that kind of analysis, one would have to figure out the land value under the site where the condos were built, figure out the cost to construct the building, and proportion it into the square footage into the units taking into account that office spaces were finished at a different rate than shop units.

Commissioner Albritton referred back to the previous appeal where Zimmerman stated that he had established a land value commonality to the business district in Ouray and asked if he had done something similar in Ridgway. Zimmerman said that he had but that condos were different because they did not own the land, only the air space. In mass appraisal, the land was not valued separately.

The Petitioners continued to plead their case.

Conrad pointed out that as a result of their protests, the value of Shop 3 came into compliance with the market value established by his shop, Shop 1, going from \$112,860 to \$121,350. If they had not protested the value of Shop 1 would have been \$127,790 and the value of Shop 3 would have remained \$112,860.

Zimmerman explained that one petition had been denied and the one was raised, thereby equalizing the two properties to the correct level of value. He pointed out that a protest opened the door for correction. Assessor Mayfield added that if one property was incorrect that did not mean to make the others incorrect, too.

Commissioner Padgett was sympathetic about the price per square foot and the need to compete. She was looking for a solution but in comparing the Zagg property that was almost 2,900 square feet there was no straight line. The market did not live on a straight line trend for square foot and market price. The problem in this county was that there were so few sales for comparison of like properties. The situation was that there were qualified sales in the building and she could not rationalize dropping the value of these properties 40% based on the other information presented. She could not find the rationale that would not affect the entire county to drop this by a significant amount.

Dickerson addressed the pooling of the properties and categorization and said that they were being categorized into the Historic Business District (HBD) for more than what those units were paying that could be lived in. He asked why he should pay 40% more for a shop than someone in the HBD.

Commissioner Meinert restated Commissioner Padgett's concern that to make a dollar per square foot comparison between a piece of property that was 700 square feet in size that sold for \$127,000 and a property that was almost 3,000 square feet that sold for 3 times as much was not a valid comparison. He could not get over the fact that if people had paid that value for that property during the period in question and that meant that the property was deemed to be worth that much by them then, he asked, how could the Assessor justify a 40% different valuation. He pointed out that the Petitioner had bought the property in the building for the value that the Assessor had put on it. As subjective as people considered the Assessor's job to be, the Assessor had hard data to justify the value that was put on properties. He sympathized with their plight but he did not see how the BOE could overturn the hard data that the Assessor used.

Commissioner Albritton agreed but explained that she had a hard time with the idea that through the course of this process the County was creating pockets of higher valued properties based on sales but then there was the reality of the rest of the market. She asked at what point did the other sales in like properties and like purposes come into play when doing the equalization. She thought that the Petitioners made some good points that their valuations were high compared to other locations on a dollar-per-square foot basis. She would rather use other areas to create a more level playing field than to create pockets of highly valued properties solely because of the sales. For her, personally, she would like to try to bridge that gap.

There was more discussion on the influence of others sales. Commissioner Meinert agreed with Commissioner Albritton that if there was a line of attack or criticism in the discrepancy between these kinds of properties the Assessor should be looking at whether the other properties were valued high enough on the basis of the sales that took place in this building. To him, these properties were appropriately valued.

Commissioner Padgett noted that when considering that the common space was not factored into the square footage if you looked at these values and considered that there was 10% of the square footage missing, values of \$62/sq. ft. would drop to \$56/sq. ft., and \$46/sq. ft. would end up being \$42/sq. ft. However, the State provided oversight to ensure that this Board did not act as a rogue board and it was not in the best interest of the county to do what was being proposed. The Assessor's Office put most weight on the sales in the building and there was no way around it. If anything, and in consideration that there were only two sales, she asked if it was justifiable for the Board to give the Petitioners the benefit of the doubt and drop it down 5%.

Zimmerman he agreed that there was just one sale of each type of unit and if the Board felt that was not a good indication of the market and wanted to separate the building into office units and shop units and adjust the value that would be the Board's prerogative. As an appraiser he would rely on the sale. His only other comment was that when the County was in a market that had 30 sales over the course of a 4-year period and was getting audited by the State on an annual basis based on the sales ratios, by reducing the value the County was ratcheting the potential median sales ratio down. There was some risk in getting it down too far and getting a State order.

Commissioner Albritton noted that the implication of upholding this value was that in the next go around everyone else's value should go up. Zimmerman added, if there was a market to support that.

MacFarlane stated that this created an unfortunate negative incentive to create a condominium building and get involved in parceling it out. If the person ended up with something that was so disparate to similar properties, the other properties could rent similar units for less. To create the situation where the playing field was so unlevel and to penalize someone who owned a condo, Dennis spoke well to the benefits of encouraging that, it was an unfortunate side effect if the net result of a very rigid sales dollar approach to the appraisal resulted in much higher taxes to people who were trying to use that model to further business vitality. He felt that it would be simpler to reset the Standing Mountain Building to more accurately reflect similarity to the other businesses that were already in place in that area than to readjust everything.

Commissioner Padgett replied that the data showed that the Petitioners' valuations were well-supported and further action would go back in the next cycle to look at the valuations of the other properties and it was likely that they would be adjusted accordingly.

**M/S/P**—Motion was made by Commissioner Meinert and seconded by Commissioner Padgett in regard to Schedule Number R006107 in the name of Pamela Conrad, and R006016 and R006109 in the names of Rane and

Riley, since the Board had not received information that could convince it that the valuations on these properties were made incorrectly or that another value was more appropriate, the Board would uphold the valuations of all three properties as arrived at by the Assessor's Office and not change that valuation. [The Assessor's Valuation for Schedule Number R006107 was \$127,790 before and after review, for Schedule Number R006106 was \$143,260 before and after review, and for Schedule Number R006109 was \$112,860 before review and \$121,350 after review.] Discussion.

Commissioner Padgett asked to add "based on the knowledge of two qualified sales during the period."

Commissioner Meinert amended his motion to include the language and Commissioner Padgett seconded the amended motion.

A roll call vote was taken on the motion with the following results.

Commissioner Albritton voted in the affirmative  
Commissioner Meinert voted in the affirmative  
Commissioner Padgett voted in the affirmative

Motion passed unanimously.

Commissioner Albritton closed the public hearing.

**10:23 Commissioner Albritton recessed and reconvened at 10:32:**

**C. 10:32 6. Property Owner: Daniel D. Alustiza  
Schedule Number: R001003**

Daniel D. Alustiza attended by phone. John Zimmerman was present as a consultant on behalf of the Ouray County Assessor's Office along with Susie Mayfield, County Assessor.

Commissioner Albritton opened the public hearing on Schedule Number R001003 for Daniel D. Alustiza.

The Clerk of the Board administered the oath to Daniel D. Alustiza.

Alustiza referred to his exhibit (*Petitioner Exhibit C.6-1*) and pointed out that there was no real valid proof of what the Assessor's Office said. He talked to the Appraiser in the Assessor's Office a few months ago and asked him if he had actual proof of what he was stating and he said no. Last week he got an offer for his building in the mid-\$600s. The Assessor's Office had an actual value of \$848,570. Commissioner Meinert explained the difference between the assessed value and the actual value. The assessed value was after the assessment rate of 29% was applied. The actual value was what was determined to be the commercial value of the property. Alustiza concluded that he had not seen any actual valid data proving that the property went up over \$200,000. He was comparing it to the last actual value from two years ago.

Zimmerman referred to the property description in his exhibit (*Assessor Exhibit C.6-1*). The value of \$848,570 was well below the sales price of \$992,500 paid for the property during the data collection period. He bolstered his argument with two additional properties with similar uses and in similar locations, both in the \$900,000 range.

Commissioner Meinert related that he could understand the sensitivity when someone bought property at one price and had to sell it at a lower price and wondering why it was being appraised at a different price. He asked Zimmerman to walk everyone through the qualifying period, what that period was, and what the statutory obligations were as far as identifying sales that took place during the qualifying period.

Zimmerman explained that every two years in Colorado all of the Assessors in the state were required to reappraise all of the real property in their counties. Real property was defined as land and attached improvements. By statute, when they do that they have to use a certain period of time for sales. For this valuation period, the appraisal date was set for June 30 of the preceding year, 2008, and the Assessors looked at sales that occurred in the 18-month period that preceded June 2008, that was January 1, 2007 to June 2008. However, in counties without enough sales data during that time period, they were allowed to go back in time in increments of intervals of 6 months at a time for up to five years until they achieved enough market data to get an appropriate sales database. In this case, they had to use the maximum allowable time of five years because Ouray County did not have a high volume of commercial sales during the time period. The Assessor tried to adjust older sales or to figure market trends since the sales occurred to the more contemporary date of June 2008. In this case, they did not time adjust; they looked at all five years of sales. Part of the reason for that was that the evidence of the sale that occurred in May 2007 that was indicative of another \$900,000 sales price, which was two years later than the subject sales price, indicated that sales prices were holding steady.

Commissioner Meinert clarified that the Assessor's task was to value the property as it existed or as it would have been valued in June 2008. By statute, the Assessors were not allowed to use comparable sales that occurred after that date or to take into consideration any market movement that occurred after that date.

Commissioner Padgett asked Zimmerman to explain why the subject property was currently value at \$143,930 less than its 2005 selling price.

Zimmerman explained that, based on the square footage of the property that was purchased, he agreed with the Petitioner that the sales price was not a fair value of the property when he bought it and looked at other sales to influence the decision on the subject property. Just the sale of the subject property would support a value of \$992,500 but he felt that was outside of the norm for the market and, therefore, valued it at what he thought it would sell for and appraised it at \$848,570 based on the physical characteristics and what he had observed in the market. The other two sales bolstered his decision in valuing the property.

Zimmerman advised that the land value was \$168,000 for the lot underneath the building. He admitted to being concerned about the amount of increase on this property in particular and wanted to allocate that sales price to the appropriate parts of the building. He placed a relatively large amount of value on the residential portion of the property that was advantageous to the taxpayer. A lot of that sale price and value of \$848,000 was attributable to the opportunity to live in or have a residence in Ouray, not so much the relatively small part of the building that had commercial frontage on Main Street, which was a difficult space to rent. Commissioners Padgett and Albritton asked if there were two separate residences in this building. Alustiza replied that there was only one.

Commissioner Meinert noted that if that was not correct it would not affect the valuation of the entire property but might affect the apportionment between commercial and residential causing less of the value being allocated to residential that would be to the disadvantage—. Commissioner Albritton clarified that the proportion was correct, even though it was one residence it occupied the bulk of the building. Her question was that by saying that it was two residences, did it add additional value. Zimmerman replied, no, that it was all based on square footage of the residence. Commissioner Albritton asked what the condition and quality was rated at for the residential portion. Zimmerman replied that the condition was above average and the quality was good, which was relative to other properties.

Alustiza noted that Zimmerman had stated that to achieve an appropriate value as of June of last year he went back two to three years. Alustiza felt that was a weak data sample and did not achieve an appropriate value. Zimmerman believed that it was an appropriate value based on the guidelines that were set and would be similar to what a fee appraiser would have found a year ago. He felt that it reflected a fair market value for the property as of June 2008. Alustiza asked why these numbers were not brought in the last time in 2006. Assessor Mayfield clarified that his question was why he did not have a higher valuation on his property in 2006. Alustiza agreed saying that it was shocking that the value went up over \$200,000 since then. Commissioner Albritton clarified further that he was asking what the increase was attributable to. Alustiza replied, yes. Zimmerman explained that he was not involved in that appraisal but a possible explanation was that the property had been undervalued at the time. To a question by Alustiza about the data that was used, Zimmerman replied that he had gone back to the period that was allowable and required to use market data to value not only Alustiza's property but other properties in the county. There were only two other properties that sold. When comparing the sales price of his property and the other two properties that were very similar in use and location, all sold for over \$900,000. Alustiza's should have sold for less but the sale was there and the Assessor's Office valued it for significantly less. Alustiza felt that it was based on old data. Commissioner Albritton explained that the process was in arrears and what the Board was looking at was in that older time period. In two years the Assessor would be looking at what was on the ground now. She explained that the Assessor could go back up to five years to get data if there was nothing more current available. More discussion was had on this subject. Commissioner Meinert concluded that the concern that the BOE had was whether this valuation was appropriate for the market that existed in June 2008 and, based on the data in front of him, he did not see other data that would argue that it did not reflect the market that existed at that time. He added that was what the statutes required the Assessor's Office to do and that it did not allowed for use of market information that had taken place after June 2008.

Susie Mayfield, County Assessor, explained that based on the guidelines they were given according to the Colorado Revised Statutes and the Assessor's Reference Library as published by the Department of Property Taxation, they were limited to actual qualified sales. In the absence of sales that provided the data, they could not make any other decision. If the County was audited and there was not enough sales data, the auditors were allowed to come in and do their own appraisals based on like properties and they would be dealing with the same data that the Assessor's Office had.

**M/S/P**—*Motion was made by Commissioner Padgett and seconded by Commissioner Meinert that, in the matter of Schedule Number R001003, the Assessor's Office had presented adequate evidence that the property and its mixed use commercial and residential building had been appropriately and favorably valued at \$848,570, and the Board upheld the value.*

*A roll call vote was taken on the motion with the following results.*

*Commissioner Albritton voted in the affirmative  
Commissioner Meinert voted in the affirmative  
Commissioner Padgett voted in the affirmative*

*Motion passed unanimously.*

Commissioner Albritton advised the Petitioner of his options and closed the public hearing.

**D. 11:04 7. Property Owner: Cindy M. DeVittorio  
Schedule Number: R005667**

Cindy M. DeVittorio did not attend the hearing. John Zimmerman was present as a consultant on behalf of the Ouray County Assessor's Office along with Susie Mayfield, County Assessor.

Commissioner Albritton opened the public hearing on Schedule Number R005667 for Cindy M. DeVittorio.

Zimmerman explained that the stipulation was done by another certified general appraiser in his office but it was his understanding that the stipulation said that DeVittorio had withdrawn from the Board of Equalization. It was his experience that if there was a withdrawn it would not come to the floor. (*Exhibit D.7-1*)

**M/S/P**—*Motion was made by Commissioner Meinert and seconded by Commissioner Padgett that the Board of Equalization acknowledged and accepted the Assessor's Office's revaluation that had been stipulated to by Petitioner Cindy M. DeVittorio on the property in question on Schedule Number R005667. [The Actual Value stipulated to was \$88,300.]*

*A roll call vote was taken on the motion with the following results.*

*Commissioner Albritton voted in the affirmative  
Commissioner Meinert voted in the affirmative  
Commissioner Padgett voted in the affirmative*

*Motion passed unanimously.*

Commissioner Albritton closed the public hearing.

**11:07 Commissioner Albritton recessed and reconvened at 11:13:**

**E. 11:13 8. Property Owner: Ridgway Lodge & Motel, Inc.  
Schedule Number: R004020**

Greg Damico with Tax Advisors attended by phone on behalf of the Ridgway Lodge & Motel, Inc. John Zimmerman was present as a consultant on behalf of the Ouray County Assessor's Office along with Susie Mayfield, County Assessor.

Commissioner Albritton opened the public hearing on Schedule Number R004020 for Ridgway Lodge & Motel, Inc.

The Petitioner had submitted an exhibit, *Petitioner Exhibit E.8-1*, prior to the hearing.

Greg Damico with Tax Advisors explained that he had spoken with John Zimmerman about the property and was preparing a withdrawal letter that he would send (*Petitioner Exhibit E.8-2*). Commissioner Albritton clarified for the record that they were talking about Schedule Number R004020.

**M/S/P**—*Motion was made by Commissioner Meinert and seconded by Commissioner Padgett in the case of the Ridgway Lodge & Motel, Inc., Schedule Number R004020, based on the verbal representation of the counsel for the owner who had advised the Board that they were withdrawing the appeal, that the Board accepted the withdrawal and that written notification would be included in the record.*

*A roll call vote was taken on the motion with the following results.*

*Commissioner Albritton voted in the affirmative  
Commissioner Meinert voted in the affirmative  
Commissioner Padgett voted in the affirmative*

*Motion passed unanimously.*

Commissioner Albritton closed the public hearing.

**F. 11:16 9. Property Owner: Sally E. Kornberg  
Schedule Number: R004833**

Sally E. Kornberg was not present. John Zimmerman was present as a consultant on behalf of the Ouray County Assessor's Office along with Susie Mayfield, County Assessor.

Commissioner Albritton opened the public hearing on Schedule Number R004833 for Sally E. Kornberg.

**M/S/P**—*Motion was made by Commissioner Padgett and seconded by Commissioner Meinert regarding Schedule Number R004833 for Sally E. Kornberg, that the Board accepted the stipulation on the matter. [The Actual Value stipulated to by Sally E. Kornberg as Trustee was \$718,170 (Exhibit F.9-1).] A roll call vote was taken on the motion with the following results.*

*Commissioner Albritton voted in the affirmative  
Commissioner Meinert voted in the affirmative  
Commissioner Padgett voted in the affirmative*

*Motion passed unanimously.*

Commissioner Albritton closed the public hearing.

11:17 Commissioner Albritton recessed for lunch and reconvened at 3:01:

G. 3:01 10. Property Owner: Tavitac Corp.  
Schedule Number: R002556

No one was present from the Tavitac Corp. John Zimmerman was present as a consultant on behalf of the Ouray County Assessor's Office along with Susie Mayfield, County Assessor.

Commissioner Albritton opened the public hearing on Schedule Number R002556 for Tavitac Corp.

The Petitioner had submitted exhibits (*Petitioner Exhibit G.10-1*) and (*Petitioner Exhibit G.10-2*) for the record.

Susie Mayfield, County Assessor, explained that because her office did not have time to go through all of the documentation presented by the Petitioner, they decided to call the Petitioner to discuss the documentation and possibly arrive at a stipulation on the value. They spoke to the Petitioner's representative who said that he would try to contact his client. She added that they were doing this in the best interest of the county to save money on further hearings with the Board of Assessment Appeals or abatements.

John Zimmerman explained that in reviewing the documents submitted by the Petitioner, there was merit to the argument about obsolescence. Although it was not officially closed on January 1, 2009, it was effectively closed. The property had been completely overbuilt for any valid commercial, economic use. That overbuilding was in appraisal terms, functional super-adequate obsolescence, and it was difficult to find other properties that had been overbuilt to such a degree for sales comparisons and to plug into a comparisons grid to calculate the obsolescence amount. There were different approaches and he referred to the Appraisal Real Estate book. Commissioner Meinert asked about Marshall and Swift and Zimmerman explained that if the Assessor applied Marshall and Swift to the buildings out there it would come up with a significantly higher value. Essentially, the Petitioner had a strong case with comparable properties, some from Las Vegas, and had done a good job in setting forth the issues. Zimmerman noted that there was a pending abatement and a new two-year valuation cycle ahead and he was looking at trying to maintain as much valuable as possible and not put value at risk for the county. This crossed over the boundary from appraisal to common sense. He explained that it would be a huge appraisal project and would be costly to the County. What he was trying to do with the proposed stipulation was to ensure a certain value for the County for the next two years and not put at risk the value all the way down to or below this number. He felt that if the Petitioner went to Board of Assessment Appeals (BAA), he would ask for a number lower than this. Commissioner Meinert discussed the discrepancy in Tavitac's request on the Notice of Determination for a value of \$5 million and an abatement of \$5 million for the previous years yet all of the data that Tavitac submitted to justify the valuation methodology came up with \$9.6 million. Zimmerman explained that when he spoke to Mr. Goff, the attorney representing Tavitac, he indicated that the \$5 million was a lowball number before they could do any research. It was clear that Tavitac had more than one appraiser working on the project over an extensive amount of time and had done a good job of laying out the facts. He felt that Tavitac had a substantial chance of winning at the BAA. Essentially, after some haggling back and forth, they offered to stipulate at \$10,250,000.

Commissioner Meinert felt that it was an excellent analysis. He asked if it was true that all of the income statements were superfluous to their argument since they were not using the income approach. Zimmerman acknowledged that they needed to consider all three approaches to value. He dismissed the income approach out of hand. Deganhart agreed that Zimmerman was correct that there was no reason to use it in this instance based on BAA decisions. Tavitac's attorney did not want to give that up completely. Commissioner Meinert noted that if he wanted to apply the income approach the Board of Equalization may want to quibble about some of the line items. Everyone agreed.

Zimmerman advised that if the Commissioners did not hear from the Petitioner today they would need a continuance or a denial. Assessor Mayfield noted that the hearing could be continued to tomorrow.

Commissioner Meinert had more questions. It appeared that when Tavitac went into the market valuation methodology and cost approach they acknowledged that the replacement cost (RCN) on page 5 of Tavitac's memo dated July 31, 2009 as part of *Petitioner Exhibit G.10-2* of the resort would cost \$17 million, the land improvements would be \$1.6 million, and an additional \$2.3 million of land value at \$8,500 an acre. There was an exhibit that supported the \$8,500/acre, \$2.3 million land valuation. He asked if Zimmerman agreed that was a reasonable approach. Zimmerman agreed and pointed out that Tavitac had valued the land 2.5 times higher than the Assessor's valuation of the land. Commissioner Meinert had a question about the 64% depreciation. Zimmerman thought that they were making an assertion that the typical depreciation behavior of the comparable sales was 64% so, if they were to replace these buildings at these resorts, to get back to the sales price the depreciation would be an average of 64%. He did not think that they would have presented these facts if they could not back them up. The Assessor has Tavitac's actual costs for the buildings ranging from 1998 through 2004. There was almost \$29 million of building costs, excluding the amount paid for the land. He felt sick to his stomach about the value going to \$9 million but there was a good basis for it. He supposed that Tavitac's attorney was questioning the financial intelligence of his client. This was a beautiful property and assets that were not worth anything on the market relative to what it was valued at. Tavitac had common sense and facts on its side and that was why he had suggested trying to find a middle ground. Assessor Mayfield explained that BAA cases of this type usually would not get scheduled for a year-and-a-half to two years out so the Assessor was placing a value on the tax rolls and certifying that value but would have to tell the taxing authorities not to spend the money because it might go away.

Commissioner Padgett asked, procedurally, if the Board of Equalization had the authority to go with the \$9.7 figure and hope Tavitac did not appeal to the BAA, or would it just deny everything because Tavitac requested \$5 million but justified \$9.7 million. Zimmerman replied that one reason to get a stipulation was that Tavitac would then give away its

right to appeal; however, if this Board acted and lowered the value they could come back for another round and knock it down further. His recommendation was that if the Commissioners were going to act on it they should deny it altogether. If they decided to drop it to the stipulated value they should do it on the condition that Tavitac sign the stipulation and agree to drop the case. Deganhart recommended that the Board either deny it today or continue the hearing to tomorrow.

Commissioner Albritton wanted to allow time to get in touch with the Petitioner and suggested tabling the hearing until that happened.

Assessor Mayfield explained that they had made it clear to the attorney for the Petitioner that the stipulation was only for the appeal, not the abatement. All present agreed that the abatement should not be heard until the appeal had been heard and agreed to address it later this month.

There was more discussion on the implications to the taxing authorities, which calculated to about \$65,000 for one year. Zimmerman noted that on the other hand he was trying to hedge against a possible reduction a year-and-a-half from now with interest back on an additional sum of money that would have been collected and would have to be refunded with interest. It was his opinion that within those range of values it would be best to end it and ensure the losses than to continue to be at risk and still end up at the lowest end of the value later.

Commissioner Meinert appreciated Zimmerman's input and felt that was the right approach for the Board to consider how to safeguard the county's interests and the interests of the other taxing authorities. A discussion followed as to what it would cost to go to BAA. When prodded, Zimmerman guessed that it would cost \$30,000. Commissioner Meinert discussed the costs to the County to go to BAA as opposed to what gains could result from it.

***M/S/P**—Motion was made by Commissioner Padgett and seconded by Commissioner Meinert in the matter of Schedule Number R002556 for the Tavitac Corporation, to table the item because the Board expected to receive a phone call either in the afternoon or tomorrow. If the Board had not received said phone call by 4 p.m. tomorrow the hearing would be convened to discuss further options and/or take action. A discussion occurred relative to whether all parties could be at the meeting if continued to tomorrow and what possible action could occur at that time.*

*A roll call vote was taken on the motion with the following results.*

*Commissioner Albritton voted in the affirmative  
Commissioner Meinert voted in the affirmative  
Commissioner Padgett voted in the affirmative*

*Motion passed unanimously.*

Commissioner Albritton tabled the public hearing.

**H. 3:39 The Board of Equalization reconvened as the Board of County Commissioners to consider the following:**

**Public Hearing – Petitions for Abatement or Refund of Property Taxes:**

- 1. Applicant: Tavitac Corporation  
Schedule Number: 425916200031**

Commissioner Albritton opened the public hearing and entertained a motion to table.

***M/S/P**—Motion was made by Commissioner Padgett and seconded by Commissioner Meinert in the matter of an Abatement or Refund of Property Taxes for the Tavitac Corporation, Schedule Number 425916200031, to table the item to a future regular Board of County Commissioners meeting to be determined. Discussion.*

*Commissioner Meinert noted that meant that the Commissioners could not hear the item tomorrow because it would require further notices. Hunt explained that if the Commissioners continued it they would not have to post further notices. Commissioner Meinert asked to clarify that if it was tabled then it could not be heard tomorrow. The other two Commissioners agreed to table it to a date uncertain.*

*Susie Mayfield corrected the Schedule Number noting that the number referred to in the motion was the Parcel Number.*

*Commissioner Padgett amended the motion to correct the Schedule Number to R002556 and Commissioner Meinert seconded the amended motion.*

*A roll call vote was taken on the motion with the following results.*

*Commissioner Albritton voted in the affirmative  
Commissioner Meinert voted in the affirmative  
Commissioner Padgett voted in the affirmative*

*Motion passed unanimously.*

Commissioner Albritton closed the public hearing.

**3:43 Commissioner Albritton recessed and reconvened at 4:32:**

**4:32 The Board of County Commissioners reconvened as the Board of Equalization to consider the following property valuation appeals:**

**I. 4:32 11. Property Owner: Kolowich Group, Inc.  
Schedule Number: R003651, R003636, R005432, and R003637**

Brian Kolowich attended by phone. John Zimmerman was present as a consultant on behalf of the Ouray County Assessor's Office along with Susie Mayfield, County Assessor.

Commissioner Albritton opened the public hearing on Schedule Numbers R003651, R003636, R005432, and R003637 for the Kolowich Group, Inc.

Brian Kolowich was sworn in.

The Board of Equalization had received a letter dated July 15, 2009 from Sara Kolowich Johnson, Kolowich Group, Inc. Treasurer (*Petitioner Exhibit I.11-1*).

**Schedule Number R003636**

Olga Spanhoff, Executive Director of the San Juan Riding Program, and Debra Currin, a representative from Eagle Hill Ranch, were sworn in to testify on behalf of the Petitioner.

The Clerk acknowledged that the Board had received a fax from the San Juan Riding Club, "Equestrian Center Lease," that was entered into the record (*Petitioner Exhibit I.11-2*).

Brian Kolowich referred to the parcel as Lot C-2, the Eagle Hill Ranch (EHR) barn, and commented that the structure was nearing 18 years old. The original cost was \$165,000 in the improvements. This was a commercial lot that had extreme limitations on use. It cannot be compared to any other commercial property that was on any main street in the county in terms of comparing it to market forces that might affect its value. It was clearly designated on the plat as stables. On his books, he had depreciated the building down to nearly nothing. It could not be sold or used for anything other than what it was being used for now. Any kind of market comparison approach on that building would seem totally inappropriate because there was just not a market comparable with those kinds of limitations and restrictions on it. He asked Assessor Mayfield to correct him if wrong but he thought the valuation was \$379,000. He could not sell it for \$200,000 if he wanted to because of the use limitations on the property. He was having a real problem with that valuation and always had.

*[The Board was in receipt of a packet of information from the Assessor's Office and it was entered into the record as Assessor Exhibit I.11-1.]*

Zimmerman asked if the neighboring parcel to the north was restricted in terms of zoning or use in any way. Kolowich replied that it was restricted on the plat as open space with a notation that said corrals. The covenants further stated that no structures other than those immediately integral to the day-to-day operations of the paddocks and the corral shall be constructed there, such as storage sheds, etc. The piece of open space was noted on the plat as OS3 and it did count towards the overall open space in the final calculations for the Eagle Hill Ranch PUD but it remained privately held as part of the equestrian operation. Improvements were limited to fencing, underground utilities, and the arena. Zimmerman pointed out that the building value itself, the improvements, was \$60,590 plus \$4,480 of other improvements that included a loft in the building. The combined building with the loft was \$65,070 to isolate in on the issue. He asked if Kolowich was in agreement with that value. Kolowich replied that he was in agreement with that improvement value. Zimmerman inferred that they could then just talk about the land that was valued at \$300,000. He agreed that the issues the Petitioner brought to light would have an impact on the value of the lot in terms of diminished rights. The next question was how to quantify it because it was away from other commercial areas and had some basis in history in terms of what was on the value in the past and looking at what happened since two years ago when it was reappraised. On that basis he did not have any comparable sales that had a stable, etc. so he took the land value and preserved the proportion of value and moved it forward. He pointed out that the property including the parcel immediately to the north, a total of 7.75 acres, and the building thereon and the fencing improvements were listed in October 2007 for \$440,000. Kolowich agreed and added that they were listed in 2005 and 2003 for that number. Zimmerman was not suggesting that the listing price was a substitute for a sale; he was merely trying to give some perspective of where they might be in terms of value. Other than that he did not have support for a piece of land similarly valued based on the bundle of rights being pulled out. Kolowich noted that the listing included a long-term lease on approximately 77 acres of irrigated pasture land that was essential to even talking to a customer about the property. As it stood now it was extremely limited and he would let Spanhoff and Currin comment on that since they use the land. He really did not agree with the analysis because if that piece of real estate, 4.75 acres where the barn sat, was a residential lot it could carry improvements worth 3 or 4 times its value and present in the market as a million dollar plus property. But this property could not sustain a residence or additional structures because it was hogtied in potential use. A value of \$300,000 could not be defended in his opinion.

Commissioner Albritton asked if Zimmerman was aware of the property to the north. Zimmerman replied, not until just now. She asked if by knowing it now he would reevaluate that parcel of land.

Commissioner Meinert discussed the Notice of Determinations before the Board and asked if R003651, described as an open space lot that was valued at zero, was the same parcel as the property to the north. Zimmerman said that it was. Kolowich agreed and noted that it was exempt because it was open space. Commissioner Meinert clarified that the issue in front of the Assessor was whether that piece of property added value to the one that contained the barn. Zimmerman replied no, that his reason for bringing the open space parcel into the discussion was because of the listing that included the open space parcel, and he wanted to have an apples-to-apples comparison. He was willing to agree that it was just a listing and not a sale; however, the listing was for \$440,000 and he wanted to ensure that he was comparing the same entities of property, a zero value property and the subject property that was valued at \$365,070. He was not disagreeing with the Petitioner that the lot was restricted and he agreed that it would limit the value of the parcel. From a commercial point-of-view there should be an adjustment on the parcel to reflect that restriction of use. With this being the first reappraisal cycle he was trying to respect the historical value. His point of standing when they first started the project was that there was a piece of land worth \$300,000 and no information to tell them anything different. They now have information that said that it was a restricted parcel and he felt that it did merit some adjustment. Kolowich agreed and offered that the reason why he did not scream sooner was that he only learned in the last few years that the current residents of Eagle Hill Ranch were interpreting his covenants differently than what he had intended. He wrote them to leave a way open for expansion on the property. He was notified the homeowners of Eagle Hill Ranch would take exception to any further improvements and it would take litigation for him to resolve it.

Commissioner Padgett asked if there had been a legal interpretation of the covenants and restrictions that the Assessor's Office and Attorney needed to be aware of. Kolowich related that it went back to when Greg Moberg who was the Land Use Administrator at the time and who rendered the opinion that to do anything additional on the property would require a complete plat amendment process. Commissioner Padgett asked if there was any legal opinion. Kolowich replied no.

Commissioner Padgett asked if the barn parcel and open space parcel were privately owned and not by the homeowners association (HOA). Kolowich explained that there were about seven or eight open space parcels in the PUD. If there were eight of them, seven were dedicated to the HOA. This one was retained because the area of it was needed to meet the 25% open space requirement at the time of the PUD. The operation required that land and being a PUD it was approved that way. Commissioner Padgett reasoned that was why this piece of land could be bought and sold by entities outside of Eagle Hill; however, someone could not buy and sell the open space, they could merely get an agreement from the HOA for a lease. Kolowich explained that the agricultural (ag) land that would be addressed next had always been privately owned. The area that the pond was on, around the clubhouse, and the aggregate land that involved the trail system was owned by the HOA. Commissioner Padgett was trying to get a sense of the understanding of those who bought into the EHR community as to whether they considered the barn and this parcel an amenity. Kolowich replied no. It was stated specifically in the covenants that they were not and that they had no obligation to support them, otherwise their homeowners association dues would have gone to underwrite the operation. Commissioner Padgett asked why the covenants would apply to the barn parcel. Kolowich explained that there were three commercial lots approved in the master plan: C-1 (the clubhouse), C-2 (the barn), and C-3 that was a Bed & Breakfast but had not been platted at this time. EHR was approved in three filings adding open space to each new space that was created per filing. The first final plat was recorded in 1992 and the last in 2002. Commissioner Padgett trying to understand the limited uses of parcel C-2, and she understood Kolowich to say that even his own understanding of what he could or could not do on the parcel had evolved because of covenants that encumbered it. What she was trying to understand was that there was this parcel that was privately owned and not a part of the amenities of EHR or EHR, itself, yet it was encumbered by covenants that restricted the type of use that could happen on it and impact its property values. Kolowich explained that by virtue of the fact that half of this land that made up the 7.75 acres was clearly noted on the plat as OS3, and by operation of the covenants and the understanding at the time, in 1992 when PUDs were a new thing, the covenants were silent as to what could happen on Lot C-2 but the Land Use Code was specific at the time about what could not happen on open space.

Commissioner Meinert noted that Lot C-2 was not shown as open space on the plat; Lot C-2 was the stable area. Kolowich agreed but pointed out that the two sat side by side, the entire aggregate was 7.75, Lot C-2 was 4.75. Commissioner Meinert referred to a 1997 plat in the Assessor's exhibit titled, "Eagle Hill Ranch Filing No. 1 (Amended)" that showed the C-2 stable area of 4.75 acres. Just to the north of that was a road called Sweetwater Road and just to the north of that was Lot OS3 that was shown as 3 acres of open space. Kolowich replied that was correct. He thought that the Assessor had acknowledged that to the extent that there were valid restrictions and covenants that restricted the uses that could be put to Lot C-2 then that would affect the value and should be taken into consideration. The questioning that Commissioner Padgett had been asking was what were those restrictions and where did they come from because the Commissioners did not have anything in front of them that outlined exactly what those restrictions and covenants were. Kolowich replied that this was one of the first and earliest set of covenants that were drafted for a recreational PUD and a lot of the issues were not addressed because they were not anticipated. The Land Use Code did not have a commercial real estate section because very little, if any, commercial property existed in the county. It existed in the towns. It befuddled Moberg, too, because the Code did not address it, and, since it did not say, Moberg felt that a plat amendment would be necessary to get everyone's agreement as to what could happen on the property. Commissioner Meinert clarified that Kolowich was suggesting that the restrictions stemmed from the Land Use Code rather than the covenants.

Kolowich replied that the covenants did direct that the property was required to pay the equivalent of ten homeowners' dues as its contribution to the Eagle Hill Ranch PUD. It limited the uses of the property, itself, to stables. It did not say one barn only. It did not say up to three barns, either. It was silent to expansion capabilities. The whole point was going back to the underlying value of \$300,000. There was nothing about this property in its current state that could substantiate that value when there was a total of ten rentable stalls.

Commissioner Padgett wished that there was some evidence to hang her hat on as to what uses were allowed or not allowed on the parcel.

Commissioner Meinert asked the Assessor and Zimmerman if the Commissioners had that list of uses and it was clear what the restrictions were and what uses could be put to the piece of property, would they be able to determine a reduction in the market value that should apply to the property.

Zimmerman replied that because it was restricted to a specific use and the specific use in this case had an income component to it, *.i.e.* a price associated with a horse that was boarded for x number of dollars a month, they could figure the capacity of the property to produce income at its current, restricted use and they could capitalize that income stream. He did that while listening to the conversation and, with regard to the commercial parcel only but was curious to know if the rents included use of the open space parcel, allowing a capacity of ten animals in the stable facility...

Kolowich noted that it was all included in the package. He explained that Spanhoff and Currin could give Zimmerman a better idea of what a market rate would be for such a service package.

Zimmerman wanted the BOE to decide whether to consider a market rate for just boarding a horse or a market rate for having an additional area to run the horse. He knew that those were two different rates.

Commissioner Meinert asked was it not clear that the open space parcel was listed as corrals so had access to the people who boarded their horses there and there were equestrian trails on the property that the boarders had access to. Zimmerman asked if that added capacity to the property and added that they could talk about the capacity of one or the capacity of both combined.

Commissioner Padgett was still stuck on how the property owner thought that there was an array of different uses and that they had now gone away. There was no evidence to show that this property could only be used to board ten horses. The Commissioners had required evidence of restrictions from other Petitioners and did not have this proof before them now. That was troubling to her. The Commissioners had devalued other properties because they had good cause and proof. There was no evidence that at sometime in the last few years what could or could not be done on Lot C-2 had changed

Kolowich Moberg related that it was Moberg's opinion that because the plat was silent on what could or could not happen there, only stables could occur there unless there was a plat amendment that on the plat expanded those uses. That was Staff's opinion and that was where he stopped.

Commissioner Padgett asked for a recess to get the County Attorney's opinion.

Commissioner Albritton said that it seemed to her that there were gaps in the information that the Assessor would need to have to determine a value. If that was the case the Board could not do much until the Assessor could come forward with a defensible number.

Zimmerman replied that he had a number that he was very comfortable with if the Board agreed that the restriction on the property was in place.

Commissioner Padgett said that she would like to have that understanding and if it held true and the County Attorney was comfortable enough with it to render an opinion on that piece, then they could move forward and hear what the numbers were based on a ten-stall barn.

Commissioner Meinert thought that what the homeowners in the area and others who wanted to see severe restrictions on the property were hanging their hats on was that on the plat Lot C-2 was shown as a stable area only. The question the Commissioners had to determine was whether they agreed that what they saw before them in the plat supported that interpretation that it restricted the use to a stable area for somewhere in the range of ten horses.

Commissioner Padgett added that the contention was there that there could be no further improvements made to the property and could not increase the number of stalls. Deganhart replied, no, that there could be more stalls, that it could have multiple barns, office space for riding lessons, and things that would be horse associated. She did not think that there was anything that she had seen, although she had not seen the covenants, that would restrict it to the current barn only.

Commissioner Padgett asked if that could include an education center and Kolowich replied that was always his intention.

Deganhart added that it could include a retail area for more types of things. She felt that it would be defensible, barring anything in the covenants or on another plat, to place other kinds of horse/stable facilities there.

Kolowich advised that the barn came after the plat was recorded, not before.

Commissioner Meinert asked Assessor Mayfield and Zimmerman, based on what they had just heard and especially with the County Attorney's interpretation, did they believe that there would still be restrictions on the property sufficient to warrant devaluation.

Zimmerman noted that Deganhart's comments had a lot of merit because if the property was expandable for a possible capacity for 30 animals then it could easily justify \$300,000. His numbers, based on a reasonable income for 10 animals, was not substantially lower than \$300,000. She made a good point that the property had a greater possibility

to produce income even though it had restricted use. Based on that, he encouraged the Board to deny the appeal because it was such a good point and it justified the valuation that had been put on it.

Commissioner Meinert summarized that what he was hearing was that it had been recognized that there were certain grounds for devaluation depending on the restrictions of use but the formula for that devaluation was based on the potential income that could be generated on the property. Even though the Commissioners did not know the full nature of the restrictions, from what was in front of them it did not appear that devaluation would be substantial recognizing that the property could be expanded to some extent.

Kolowich noted that his only comment as the Appellant was that he did not know what numbers Zimmerman had used but advised the Commissioners that they had a boarder sitting in the room who was paying at a rate of \$75 per month for a combination of stall board, and having the ability to move her horse to a paddock and/or pasture it on 77 acres. Currin agreed that was correct.

Zimmerman explained that his numbers were substantially different because he believed that the relationship Kolowich was speaking of involved a charitable organization. Kolowich differed and said it was separate and apart from the San Juan Riding Program.

Currin elaborated that an average boarding facility would be full care, full service with other people taking care of the manure and the turnout. Basically, she would just show up and ride. At this facility, she did all of the work and just rented the use of the facility and space. She commented on the capacity of growth in that subdivision, the homeowners, and she was one of them, would never allow a tack store or any type of retail store to be built there. The riding program had a lease and she had a separate lease. There were no people on the payroll to do the services.

Commissioner Albritton commented that it was not restricted to that style of operation. If someone wanted to operate it in a more full service way they would not be prevented from doing so.

Commissioner Padgett asked about what authority EHR had to prevent a tack store. Currin replied that she thought that it was in the covenants. As a homeowner she would protest it. She also did not think that the capacity was available or there was enough space to do that. Commissioner Padgett respected Currin's opinion but pointed out that the Board had to go on evidence.

Assessor Mayfield noted that one other issue was that the OS3 had been, since platting, established as an open space lot and did not have a value associated with it. The value of all open space was inherent in any common elements inherent in the value of the lots. Therefore, Kolowich had not been paying taxes on this particular piece of property. In its inception in 1997 the Assessor's Office was never made aware that it was privately held and being listed for sale.

Zimmerman figured at a rate of \$75 per stall per month, in order to utilize the property fully would require more than ten stalls and it would have to be a full service type of arrangement. When something was appraised it was looked at as maximum capacity, the property having been maximized, in terms of maximization there would either be, on a 4-acre site, 50 or 60 horses at \$75 where the owners did their own services, or 15 or 20 stalls on a full service basis with higher expenses but the income capacity would be more in the neighborhood according to the Petitioner of \$250 to \$400 a month for full service. Either way he looked at it he came out with the same concept that, even under restricted use... the problem with the property now was that it was not being used to its maximum capacity because there was unutilized land. He had to add a component of value for unutilized land to the income approach. Assessor Mayfield explained that was required by the State. Zimmerman added that it was just good appraisal practices.

Kolowich added that of that 4.75 acres, due to slope issues, probably less than half would be usable for operating. The rest was over a hillside or unbuildable for one reason or another.

Zimmerman explained that the buildings could be built on the level ground and that horses did not care about unlevel ground. He did not agree that the levelness of the land was an issue in terms of utility.

Commissioner Meinert was at the point of accepting and acknowledging the concept of devaluing the land based on restrictions but he did not know what the restrictions were and the Assessor had presented testimony that, based on the full use and potential of the land, it may have a value of \$300,000 on the land, and had already depreciated the existing stable and improvements to \$65,700. There was nothing in front of him to allow him to hang his hat on what that devaluation should be, if any.

Kolowich concluded that in the interest of time he would withdraw his protest on this valuation at this time and prepare for the next valuation.

***M/S/P***—*Motion was made by Commissioner Padgett and seconded by Commissioner Meinert to accept Brian Kolowich's withdrawal of Schedule Number R003636 for Lot C-3 of Eagle Hill Ranch.*

*A roll call vote was taken on the motion with the following results.*

*Commissioner Albritton voted in the affirmative  
Commissioner Meinert voted in the affirmative  
Commissioner Padgett voted in the affirmative*

*Motion passed unanimously.*

## Schedule Number R003651

Commissioner Albritton opened discussion on Schedule Numbers R003651 for the Kolowich Group, Inc.

*[The Board was in receipt of Assessor Exhibit I.11-2 and it was entered into the record.]*

Kolowich confirmed that the Petitioner was not protesting this valuation.

**M/S/P**—*Motion was made by Commissioner Meinert and seconded by Commissioner Padgett on Schedule Number R00365 that the Assessor's valuation of zero was an appropriate value for this property.*

*A roll call vote was taken on the motion with the following results.*

*Commissioner Albritton voted in the affirmative  
Commissioner Meinert voted in the affirmative  
Commissioner Padgett voted in the affirmative*

*Motion passed unanimously.*

## Schedule Numbers R005432 and R003637

Raelene Freier, Chief Deputy Appraiser, was sworn in.

Commissioner Albritton stepped out to make a telephone call.

Commissioner Meinert noted that if the hearing was not completed by 6 p.m. it would be continued to tomorrow, August 5, 2009. He explained that these were two pieces of property that would be taken together on Schedule Numbers R005432 and R003637 for Kolowich Group, Inc.

*[The Board was in receipt of Assessor Exhibit I.11-3 that was entered into the record.]*

Commissioner Albritton returned to the meeting.

Kolowich provided a brief history of the property and its uses since they've owned it and then he would turn it over for a final statement of uses to Olga Spanhoff, who had been managing the property. The ranch was settled before Colorado was a state. Water was first appropriated to it in 1873. Over the years it raised horses, cows and sheep. The Kolowich family purchased the property in 1971 and had leased it over the years to ranchers in the county before he became a resident of Colorado. They established an equine operation in 1992 and operated as a commercial horse facility for 12 years. About four years ago the Kolowiches turned the operation over to the San Juan Handicapped Riding Program while retaining the right to lease to additional tenants. Many horses had been born, bred, raised, bought and sold on the property. He had a problem with the new definition that was being applied to agricultural uses in the statute. He admitted that it may have been there a long time because anything that recognized the commercial value of draft horses must be old. Specific to this property, he knew of six foals that had been born there. Because they leased to other operators he had a cursory knowledge of what happened on the property. In every prior assessment the commercial bundle of activity there had satisfied every prior Assessor. That operation had not changed. He was concerned about applying this new, narrow, strict and relatively contemporary definition of agriculture to this parcel in particular but many others and throwing good operations in financial chaos because of not fitting neatly into this little square peg. This property fits, maybe not neatly, but it fits and has operated for years. He turned the discussion over to Olga Spanhoff as it was under her management as Executive Director.

*[The Board was in receipt of a letter from Olga Spanhoff dated August 3, 2009 (Public Exhibit I.11-1) that was entered into the record.]*

Olga Spanhoff explained that she had been involved with Kolowich and the properties since 2002 when she first started working with the therapeutic riding program that was leasing his property at that point. When the San Juan Riding Program was formed in 2005 and they negotiated a lease with Kolowich, the pasture lands were included as places to house the horses and additional livestock. Part of what the group did was pasture management that included noxious weed management, mitigation, irrigation, mowing and, as part of the management plan, rotation of llamas with the intention of production of a summer hay crop to support the riding program horses that were on the first two parcels that the BOE discussed. It was their intention to get those pastures healthy to produce their own necessary hay crop for the program horses. Currently there were ten horses and they rotated the horses and llamas throughout the pastures as part of the pasture management plan.

Commissioner Padgett had a question about the word "draft", if it just meant a working animal, and if there was a state definition that described the type of work it did. Freier replied that there was nothing in the statutes but that the word generally described a working animal used in conjunction with the operation of a farm or ranch to produce a farm product.

Assessor Mayfield replied to Kolowich's reference to the new ag law being too narrow, and not being followed through or something different from previous Assessors. She had been the Assessor since November 2002. She had no jurisdiction over how the previous Assessor had interpreted the State Statutes as far as the agricultural classifications. In the past two years she had tasked Raelene Freier with looking at all of the agricultural accounts because there had been abuse in the county of the agricultural classification and/or there had been some overlooking the responsibility of the Assessor's Office to contact the agricultural property owners on a regular basis to get the forms filled out as to how they were using the property. When Freier followed up to request the lease information, hay production, water

information, federal income tax form information, and she contacted the owners of the property to get the information regarding agricultural status, she did not receive that information. The statute was not new but was being enforced more strictly by her office. Kolowich agreed and replied that he was aware that there were abuses.

Raelene Freier, Chief Deputy Appraiser, explained that they were talking about two contiguous parcels on CR 5 totaling 77 acres next to EHR. She read from her exhibit the definitions of "agricultural land" as defined in the Colorado Revised Statutes, § 30-1-102, "agricultural and livestock products" as defined in C.R.S. § 39-1-102(1.6)(a)(l)(1.1), "farm" as defined in C.R.S. § 39-1-102(1.6)(a)(l)(3.5), and "ranch" and "livestock" as defined in C.R.S. § 39-1-102(1.6)(a)(l)(13.5). As the Assessor mentioned the Assessor's Office had been monitoring the agricultural accounts very closely. She sent a letter to the Petitioner in December 2008 requesting information for substantiation of the agricultural use of the land. She did not hear anything. She sent a follow-up letter on March 5, 2009 requesting the information once again stating at that time that the land was scheduled to be reclassified if she did not receive any documentation. Finally, on April 8, 2009 she sent a final letter notifying the Petitioner of the change in classification to vacant land status. Not until May 28, 2009 when the protest was filed did she hear anything. The Petitioner wrote in their May 28 letter that the property had been used in conjunction with the San Juan Handicapped Riding Program for hay production, hay storage and grazing. The Assessor had received no documentation to date validating that. The Assessor's Reference Library stated that in addition to the requirements of grazing, the manner in which the livestock were used was crucial to the designation of the land as agricultural. The statutes require the animals to be used for food for human or animal consumption, breeding, draft or profit. Animals not used for these purposes do not meet the definition of a ranch regardless of whether the landowner makes a profit from the grazing of such animals or not. She continued to read from the exhibit regarding the animals and that the landowner did not need to own the livestock to qualify but the owner of the livestock must be engaged in an agricultural endeavor from the raising of the livestock. "For example, a landowner who leases his land for grazing and boarding of pleasure horses owns land that does not qualify as a ranch. Since the horses are not being used for food for human or animal consumption, breeding, draft or profit, the horses are not livestock under the statutory definition." She noted that the San Juan Riding Program was one of the most worthwhile programs in the county and she got its mission statement from the Secretary of State's website [see Assessor Exhibit I.11-3]. She concluded that this did not meet the criteria for agricultural status. The horses were not being used for human or animal consumption, breeding, draft or profit. The program was registered with the State as a nonprofit organization.

Commissioner Albritton asked about the llamas and hay production for the program. Freier replied that the llamas had been put there this June, outside of the evaluation period, and she had confirmed that fact with Spanhoff. She also learned from Spanhoff that they had been mowing the fields but were not baling it for hay. The Assessor had no documentation of any sort to backup what was out there. Commissioner Albritton asked, as far as documentation, what type the Assessor needed, for the hay for example. Freier replied that it was listed in the letters sent to the Petitioner and attached as part of the exhibit that she detailed. Commissioner Albritton asked Kolowich if he could supply the documents. Kolowich replied that he had a lease agreement with the San Juan Riding Program. He asked Freier what address she had used to send the correspondence. Freier replied 7 Hadley Lane in Hilton Head, South Carolina. Kolowich thought that he had notified someone of the change of address to Atlanta.

Assessor Mayfield advised Kolowich that she had emailed him, his brother and his sister in response to the mailing address. She asked if he had received it. Kolowich said that his brother was on vacation and he handed it to Brian on Saturday. He added that he had not had a post office box in Ridgway for 25 years. Tax notices were forwarded. No one recalled receiving any of those notices. Assessor Mayfield asked if he had checked his emails to which Kolowich replied that he knew that she had been corresponding with his brother. Mayfield noted that her email stated that she had attempted to notify the Kolowiches at the post office box in Ridgway and at the South Carolina address, the two addresses on her accounts. She added that it was not her responsibility to track down taxpayers. Kolowich said that he had read that and that there was no post office box in Ridgway. When her office sends out Notices of Valuation they are specifically noted not to forward. They are returned to her office with the proper information from the U.S. Postal Service stating whether a box had been closed and/or a forwarding address had been given. When it stated that a box had been closed or there was no such address her office would attempt to use another address on another account or would try to track down someone via *whitepages.com*, but, again, it was not her responsibility. Her office then attempted to send out the NOD to an address on another of Kolowich's accounts. When it came back to her office on the 14<sup>th</sup>, she knew that it had to get to the family by the 15<sup>th</sup> if they planned to file an appeal, so she FedEx-ed it to the address overnight. They were advised by his sister, Sally, and his mother of the correct address.

Commissioner Padgett noted that there was only six minutes left. She heard that the Assessor's Office had tried strenuously to find him. Her burning question was if he would be able to provide a copy of any of the other types of documentation, except the lease agreement, that showed that this was being operated as a ranch. Kolowich replied that they did not file any IRS reports. They had water documentation showing their allocation, consumption and expenses each year. They had signed lease agreements that covered a wide range of activities in addition to the handicap riding. He argued these were nothing but draft horses for handicapped kids.

Commissioner Albritton concluded that if Kolowich could submit information that would sway the Assessor's opinion or comply with the parameters the BOE would look at them and take them into consideration but they would have to be submitted by tomorrow.

Kolowich explained that they had been notified and had only been able to work on it since July 16. He had been residing in Montrose and no one had tried to contact him. Be that as it may, for one reason or another it slipped through the cracks. He appreciated the opportunity to have the information before the Board by tomorrow at 4 p.m.

Commissioner Meinert noted that it would be helpful for Kolowich to have the information in front of him to submit the documentation. He pointed out that one statement in the Statutes said, for example, that a landowner who leased his land for grazing and boarding of pleasure horses owned land that did not qualify as a ranch.

Kolowich felt that it could be argued that horses that carried handicapped kids were not pleasure horses but working horses.

Commissioner Padgett pointed out that the Board could not consider the llamas because of the timeframe.

Kolowich stated that it seemed like monetary profit was the key to the definition. Commissioner Meinert explained that it did not require a profit but that the operation was such that it was *intended* to derive a profit. Kolowich asked to clarify if that meant even if the profit was non-monetary such as in dealing with a charitable organization because it created a profit in the community.

Commissioner Padgett explained that the State provided oversight to ensure that a board did not operate in an arbitrary, capricious or rogue manner so that whatever adjustments were made at the BOE, the State would be looking at them to ensure that there was a proper basis to justify the decisions.

**M/S/P**—*Motion was made by Commissioner Meinert and seconded by Commissioner Padgett to continue the hearing to 3 p.m. on August 5, 2009.*

*A roll call vote was taken on the motion with the following results.*

*Commissioner Albritton voted in the affirmative  
Commissioner Meinert voted in the affirmative  
Commissioner Padgett voted in the affirmative*

*Motion passed unanimously.*

Commissioner Albritton continued the hearing until 3:00 p.m. on August 5, 2009.

Assessor Mayfield notified the Board that the attorney for Tavitac had called saying that he had gotten the word out to the board members and was waiting to hear back.

**6:02      The Board of Equalization hearing was continued to August 5, 2009:**

OURAY COUNTY BOARD OF COUNTY COMMISSIONERS  
OURAY, COLORADO

ATTEST:

\_\_\_\_\_  
Heidi M. Albritton, Chair

\_\_\_\_\_  
K. Keith Meinert, Vice-Chair

\_\_\_\_\_  
Michelle Nauer, County Clerk and Recorder  
By: Linda Munson-Haley, Clerk of the Board

\_\_\_\_\_  
Lynn M. Padgett, Commission Member