

The Board of County Commissioners met on August 5, 2009 in continuation of a Board of Equalization hearing from 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.**

3:05 The Board of County Commissioners reconvened as the Board of Equalization in continuation of the August 4, 2009 hearing on the following 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.

**I. 3:05 11. Property Owner: Kolowich Group, Inc.
Schedule Number: R005432 and R003637**

Susie Mayfield, County Assessor; Raelene Freier, Chief Deputy Appraiser; and Dennis Michaud, Appraiser; were present.

Commissioner Albritton reopened the public hearing on Schedule Numbers R005432 and R003637 and reminded everyone that they were still under oath. She acknowledged that the Petitioner had submitted a copy of a lease, *Equestrian Center Lease (Petitioner Exhibit I.11-2)*.

Raelene Freier, Chief Deputy Appraiser, explained that she had done additional research and talked with the Department of Property Taxation to get more clarification on the horse issue. She explained her situation and the Division's position was that if the horses produced an income it would qualify the land for agricultural (ag) status. She looked at the San Juan riding program's website and they did have a price list of what they charged. In that case it would seem reasonable to qualify the land for ag status. She did more research and discovered that it had been classified in the past as grazing land, which was essentially non-irrigated ground. They are not in hay production so it would not be irrigated hay production land, but they did fall into a category used for pastures of Meadow Hay. She suggested that the BOE look at that ag class for the ground. It was a Class IV Meadow Hay Ground, that was relatively productive land and based on the fact that fees were being charged.

Commissioner Padgett pointed out that there was no direct evidence in the lease that fees were actually charged and/or that the fees were received.

Freier explained that the horses had to show an income. She printed off the San Juan Riding Club's fee schedule (*Assessor Exhibit I.11-4*). The horses had to be an integral part of the income, such as riding lessons or pack animals.

Commissioner Meinert discussed the fact that the lease talked about irrigation water for hay production. He asked if there was a lease on a land to a farmer who was producing hay for his own use on his own farm would that qualify. Freier replied that it would if the purpose of the farm was to generate an income. Commissioner Meinert asked if the land was growing hay and the hay was to be used for horses that were there for whatever reason, would that qualify, and he was told that it would not qualify if the horses were just pleasure horses. Freier added that it was a reasonable assumption that there was income associated with the horses being kept on the grounds. She suggested classifying it as a Classification D that broke out to \$213.46 per acre. On Schedule Number R003637, the 42-acre piece, that would give a total valuation of \$8,970 and on Schedule Number R005432, the 46-acre piece, a total valuation of \$6,830. She added that the two parcels were contiguous.

Deganhart asked if the lease covered these parcels.

Commissioner Meinert felt that the lease could have been written more clearly but asked if the land was actually being utilized by the party in question did it not qualify the land. Assessor Mayfield explained that the lease did not clearly specify the property in question.

Commissioner Albritton pointed out that the Commissioners had received what they requested in the form of the lease and the information that Freier compiled but the Petitioner needed to present his case.

The Commissioners had several questions of the Petitioner and were able to reach Brian Kolowich by telephone.

Freier explained for the Petitioner's benefit that she had spoken to the Department of Property Taxation to get more clarification on the horses and the DPT related that as long as the horses were grazing on the pasture and the horses, themselves, were producing an income, *i.e.* lessons, the land would qualify for agricultural status. She pulled off a price list from the San Juan Riding Program's website (*Petitioner Exhibit I.11-4*) so she had no problem with the ag land classification. When looking through the history of the property the Assessor had classified it as grazing land, which was non-irrigated grazing. The land technically fit into a meadow hay category and was primarily used for irrigated pasture. Freier felt that the meadow hay class would encompass it without getting into irrigated hay production ground.

Commissioner Albritton had a question on what specific parcels the lease covered. Kolowich replied that it covered the barn, parking areas, paddocks, corrals and arena located on Lot C-2 and Lot OS-3 (*Petitioner Exhibit I.11-2*). Additional leased premises include use of the East Pastures, west of and bordering Golden Eagle Trail, and the use of irrigation water when available for growing and stock water purposes. On the plat there was a landform break that created an east section and west section with a ridge between. Commissioner Padgett asked how many acres comprised the east pastures on east side of the ridge. Kolowich replied about 23. Commissioner Padgett clarified that

the remainder of the 77 acres was west of the ridge. Kolowich replied that she was correct and that he had made it available but SJRP did not use it.

Commissioner Albritton advised Kolowich that the Commissioners were comfortable with the information that Freier had found as far as classification, the bottom line being that the horses generated some sort of income for the people who held the lease. However, the lease needed more clarification because it did not spell out the parcels under protest. Kolowich explained that the parcel descriptions predated ownership of the property. He had no idea why one was 23 and the other 44. Assessor Mayfield explained that it was not a matter of two different accounts and acreage but a matter of the lease giving a legal description of the parcels involved rather than "East Pastures," etc. Commissioner Padgett added that it needed to be as obvious as possible, that the Board should not be fishing in a deep hole to classify the property; the onus was on the landowner to have everything clear and ready to present to the Board. Kolowich replied that he took note of the comments and in a perfect world he would agree; however, the parties had a relationship for years and the agreement was between them and not the County. The essence of the agreement was between the two parties who signed it. He would make sure that it was crystal clear in the future so that the Assessor's Office could understand it exactly.

Commissioner Meinert asked if the Board found that the lease covered the property in question. Freier replied that she had seen horses in the west part of the pasture and one would reasonably assume that was what was going on. Commissioner Meinert asked if the Board found that the terms of the lease and the use of the horses in question qualified the land for the ag classification and Freier replied that she felt that it did. Commissioner Padgett added that the terms were on the website that the County had to dig up. Commissioner Meinert agreed and admonished Kolowich that future Boards would not be as tolerant with having to dig up the information on behalf of the Petitioner. He encouraged Kolowich to work with the Assessor's Office to find out what was necessary to document the information so that there would be no question about qualification in the future. Commissioner Meinert noted that the other question was the classification of the land within the agricultural classification and asked if it was the concurrence of everyone that Meadow Hay Pasture was the appropriate classification and that it would be valued at \$213.46/acre. The Assessor's Office agreed. Freier noted that on R003637 the land valuation would be \$8,970 and on account R005432, the valuation would be \$6,830.

M/S/P—*Motion was made by Commissioner Padgett and seconded by Commissioner Meinert in the matter of Schedule Numbers R003637 and R005432, that based on the lease that had been supplied today, an agreement between the landowner of these two parcels and the San Juan Riding Program, and also based on the information provided by the Assessor's Office that was obtained from the San Juan Riding Program's website that clearly showed a fee schedule for the use of lessons and the riding of horses that were boarded and grazing and utilizing these parcels, these parcels did qualify for an agricultural classification under the definition of ranch as provided in C.R.S. 39-1-102(1.6)(a)(I), and the property should be classified as Class D Meadow Hay valued at \$213.46 per acre resulting in a value for R003637 of \$8,970 and a valuation for R005432 of \$6,830, and the Board recognized that in the future the Assessor's Office may require a clearer lease with clear legal description of both parcels as well as a clear nexus of fees for use of the horses boarded and pastured on these parcels. 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.

G. 3:44 Continuation of public hearing from August 4, 2009:

**10. Property Owner: Tavitac Corp.
Schedule Number: R002556**

No one was present from Tavitac. Susie Mayfield, County Assessor; Raelene Freier, Chief Deputy Appraiser; and Dennis Michaud, Appraiser; were present.

Commissioner Albritton reopened the public hearing and explained that the Assessor's Office had received an email dated August 5, 2009 from Neil M. Goff with Brownstein Hyatt Farber Schreck, LLP on behalf of Elk Mountain Resort (Tavitac Corporation) agreeing to the settlement proposed by the Assessor's Office to value the subject real property at \$10,250,000 for 2009 and 2010 (*Petitioner Exhibit G.10-3*).

Susie Mayfield, County Assessor, advised the Board that she had asked Goff to fax something with an actual signature but he had already emailed this and was off to meetings. In his messages to her he said that they were pleased and appreciated the County working with them to come up with a stipulation.

Commissioner Albritton noted for the record that the Petitioner had stipulated to the amount of \$10,250,000.

Commissioner Meinert questioned the fact that the Petitioner had specified for 2009 and 2010. Mayfield explained that it was typical unless there were specific changes made to the property, *i.e.* demolition, new construction, etc.

M/S/P—*Motion was made by Commissioner Meinert and seconded by Commissioner Padgett in the matter of Schedule Number R002556 in the name of Tavitac Corporation, the Board found that the stipulation negotiated between the property owner and the Assessor's Office valuing the property at \$10,250,000 was*

acknowledged and should be accepted by the Board. Discussion. Commissioner Padgett pointed out that there had been considerable discussion yesterday as to why the stipulation should go through and that it was in the best interest of the county. 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.

3:52 Commissioner Albritton adjourned the Board of Equalization hearing:

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