

The Board of County Commissioners met in special session on August 4, 2010. Those present for the session were K. Keith Meinert, Vice-Chair; Heidi M. Albritton, Member; Mary Deganhart, County Attorney; Connie I. Hunt, County Administrator; and Linda Munson-Haley, Clerk of the Board. Commissioner Lynn M. Padgett was absent.

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

9:33 The Board of County Commissioners convened as the Board of Equalization to consider the following property valuation appeals:

**A. 9:33 1. Property Owner: Tavitac Corporation
Schedule Number: P000715**

A roll call vote of the Board of Equalization resulted in Commissioners Meinert and Albritton being present and Commissioner Padgett being absent.

Neither the Petitioner nor its representative was present either in person or by phone.

Assessor Mayfield, Chief Deputy Appraiser Freier, and Appraiser Michaud were present and were sworn in.

Commissioner Meinert opened the public hearing on Schedule Number P000715 for Tavitac Corporation. He explained that the Board had received a letter dated July 10, 2010 [sic] from Neil M. Goff concerning Account Number P000715 for Personal Property Valuation for the year 2010 for Elk Mountain Resort. Testimony was received from Neil Goff dated July 16, 2010 (*Petitioner Exhibit A.1-1*), testimony in the form of a letter from Neil Goff dated June 25, 2010 (*Petitioner Exhibit A.1-2*); and another letter dated July 28, 2010 from Neil Goff (*Petitioner Exhibit A.1-3*). Neil M. Goff was the authorized agent of Tavitac as evidenced by a Letter of Agency Authorization Form identifying him as such in *Petitioner Exhibit A.1-2*. With no personal testimony from the Petitioner, Commissioner Meinert asked the Assessor to proceed.

Assessor Mayfield provided a letter dated August 4, 2010 (*Assessor Exhibit A.1-1*) stating that the Tavitac Corporation, a.k.a. Elk Mountain Resort, opened for business in the summer of 2003. As of that date, Tavitac had never returned a Personal Property Declaration to the Assessor's Office, a requirement of a business. In 2007, Appraiser Freier did extensive research on Tavitac's website to try to garner information from it regarding the personal property shown there. She did further research looking up values for those particular items utilizing a medium to low value. The results of that research were presented for the record (*Assessor Exhibit A.1-2*). Because of the confidential nature of that information, the exhibit was sealed. A Best Information Available (BIA) value was placed on the tax rolls starting in the tax year 2008 and the Petitioner received a Notice of Valuation (NOV) for tax years 2008 and 2009. The values were never protested and the Petitioner did pay the taxes for those years. Because the Petitioner was appealing the real property valuation, the Assessor's Office discovered through the appeal documentation that the value the Petitioner placed on the personal property for income purposes was considerably higher than the BIA value. The Assessor, therefore, used that value for the tax rolls for 2010 utilizing the appropriate level of value and depreciation tables based on acquisition of personal property during the 2003 timeframe. The Assessor's Office felt warranted in doing that pursuant to C.R.S. §39-5-125. Since the Petitioner had never provided an itemized listing of personal property and was now closed for business, the Assessor's Office felt that they could defend their BIA value that, with depreciation, came to \$693,350. She provided copies of the statutes that talked about the responsibility of the taxpayer to submit a Personal Property Declaration every year and the ability to utilize BIA numbers (*Assessor Exhibit A.1-1*).

Commissioner Meinert asked the Assessor about the difference in the value for 2010 of \$693,350 and the value on the Notice of Determination (NOD) of \$4,435,590. Assessor Mayfield replied that the value was based on the numbers that the Petitioner provided for its Real Property Board of Assessment Appeals (BAA) case where a higher number was used for declaring what the equipment and furnishing would have been worth to arrive at the income valuation. She utilized that number for the 2010 NOV thinking that there was a lot of property that her office had not discovered; however, because the Petitioner was closed and there was no itemized list of the inventory, she recommended using the Assessor's Office's BIA value that, in 2009, was @ \$890,000 but when put into the depreciation tables for 2010 came out to be \$693,350. She felt that the BIA number was more defensible than the NOV and NOD number.

Commissioner Meinert asked since the Petitioner had never returned a Personal Property Declaration had the Assessor's Office ever attempted to visit the property to make its own determination. Freier replied that the Assessor's Office had made a site visit in March 2009. At that time Staff photographed a number of the items there that was more than what the Assessor's Office had on its BIA. Commissioner Meinert asked if the site visit and photos supported the BIA value of \$693,350 or the NOD value of \$4,435,590. Assessor Mayfield replied that they definitely supported the \$693,350 but added that if there was omitted property and once the research was done, the Assessor's Office could add the omitted property. She noted that items could have been removed since the site visit in 2009. Deganhart advised that Tavitac had the responsibility to notify the Assessor's Office if items were sold or transferred and they had not done so. Assessor Mayfield said that Tavitac had not returned a Personal Property Declaration. She explained that an itemized Personal Property Declaration was sent out every January once an account was established and it was the property owner's responsibility to add to or subtract from it and return it by April 15 of every year. Even if a property owner did not receive the Declaration the property owner still had the responsibility to report back to the Assessor.

Commissioner Meinert asked who had the burden of proof on determining the value, the Assessor or the property owner. Deganhart replied that at this point it was the property owner's burden to disprove if they believed the value was wrong. Commissioner Meinert clarified that value that they were looking at was the \$4,435,590 and he wondered why the Assessor's Office had made this large of a change. Deganhart explained that she had talked to Assessor Mayfield and they had not come to any determination of values except for 2008 and 2009. Starting in 2003 and 2004 Tavitac showed a \$7 million value from when they first started operating. Assessor Mayfield used that number to extrapolate out using the depreciation tables to come up with the \$4.4 million 2010 number. Tavitac was aware that the

County's BIA number was a substantially lower number because that was the number that was offered by the County during negotiations.

A discussion followed regarding the difference between the two numbers and why the Assessor's Office decided to use the BIA number. Assessor Mayfield pointed out that she was only addressing 2010 at the present time. She would be doing more research based on 2004, 2005, 2006 and 2007.

Commissioner Meinert asked if it was within the BOE's remit to challenge the Assessor's number as being too low. Assessor Mayfield replied yes.

Commissioner Albritton discussed the letter of July 28 from Neil Goff where he listed a series of points. Commissioner Meinert noted that the comments Goff was making in the letter were to challenge the \$4.4 million figure from the Assessor. Commissioner Albritton asked if a statement in the letter was true that alluded to the fact that because the property was dormant and no business was being conducted there, the subject personal property was not subject to the personal property tax. She was told by the Assessor's Office that it was not true. She asked if point B.2. in the letter was true that stated that the Resort Owner had properly reported all then existing personal property owned by it to the County. She was told by the Assessor's Office that was not true. She confirmed with the Assessor's Office that the County had never been in receipt of any kind of documentation from Tavitac indicating any sort of inventory of value or items listed as owned by Tavitac. Freier added, nothing other than what came up in the BAA hearings. Commissioner Albritton asked if there was a penalty for nondisclosure. Assessor Mayfield replied that if a Declaration was not returned by the April 15 deadline, there was a penalty of \$50 or a percentage of the value, whichever was less. She referred the Board to the last page of the documentation that she had submitted that discussed omission of actual value of certain personal property and the penalty that the Assessor may impose. Deganhart further clarified that if the Assessor, for example, omitted all of the artwork, rugs, spa equipment, etc., those items could be added and the Assessor could place a penalty on it. There was case law that made a distinction between omitted and undervalued property. Commissioner Albritton was frustrated by the fact that this company had never done what it was required to do by law; it had never submitted any documentation like every other business in the state was required to do to demonstrate what its personal property consisted of. She pointed out that none of the three letters from Goff addressed the specifics of the personal property or gave any evidence to the contrary opposing what the Assessor arrived at. For the record, she wanted it noted that Goff's point number B.2. was not correct; the Assessor's Office had not been in receipt of any proper documentation. Deganhart clarified with the Assessor that she had never established an account until it was put on the tax rolls in 2008. Assessor Mayfield replied that was correct and that she had verified with the Treasurer's Office that there had never been a tax bill sent out until 2008 and 2009 for personal property. Goff's statement that the Assessor's values for 2005 were correct, was incorrect. The County did not have an account established in 2005 for personal property.

Commissioner Albritton continued to address point B.3. of the letter that stated that the County inventoried the personal property in 2005 and Tavitac was comfortable with the universe of personal property located at the facility. Assessor Mayfield replied that unless Goff could provide documentation otherwise, the Assessor's Office did not do an inventory and did not have an account set up in 2005. Commissioner Albritton explained that she was happy to address factual points and clarify them but the letter was full of inaccuracies and untruths. Goff had not provided anything concrete for the Board to discuss. The BIA number was very conservative compared to the other numbers thrown about by the Applicants, themselves, and because they had not presented anything else this could be a short discussion today.

Commissioner Meinert had a question on valuation that Assessor Mayfield addressed.

Commissioner Meinert asked if the last sentence of B.2. of the July 28, 2010 letter meant anything to the Assessor's Office and had Goff provided any documentation to support the \$0.25 on the dollar assertion. Assessor Mayfield replied no, that she did not know where Goff was getting that information. Michaud interpreted it to mean that Goff was saying that it was only worth \$900,000 now and that was 25% of what they actually paid for it, fully admitting that they had \$4 million to begin with.

Commissioner Meinert discussed the first sentence in point B.3. of the letter that stated that the Petitioner had "maintained from the beginning that the personal property was functionally obsolete the day the facility opened" and asked if functional obsolescence applied to personal property as well as real property and, if so, how. Assessor Mayfield spoke to someone at the Division of Property Taxation (DPT) who stated that obsolescence referred to a situation where if a whole industry had gone under for an area, that equipment would no longer be functional in any instance. For example, if a logging industry went away from an area and a lumber mill could not sell its equipment to another lumber mill there could be some obsolescence. However the taxpayer had the burden of proof to provide the reason for the obsolescence and the value they felt should be applied to the property. Assessor Mayfield noted that it had value in use; Elk Mountain was open and utilizing the equipment so it had value.

Commissioner Meinert next discussed item B.4. of the letter. He asked about a reference to a cost segregation study that was prepared by KPMG and if it was part of the BAA hearing. Deganhart replied that it was not but that maybe it should be provided to the County.

Commissioner Meinert asked what "depreciation reserve" was as referenced in point B.5. Assessor Mayfield assumed that Goff was looking at the four accountants who worked on their books so maybe it was the depreciation they utilized for their income tax returns. It had nothing to do with the depreciation tables provided by the DPT.

Commissioner Meinert clarified for the record that no documentation or further itemization of such discrepancies as alluded to in B.4. and B.5. had ever been submitted. Assessor Mayfield agreed that they had not.

Commissioner Meinert questioned the reference in the Conclusion portion of the letter that the "actual value" was not more than \$500,000. Assessor Mayfield did not know where Goff got that number.

Commissioner Albritton discussed making another site visit to the site to inventory what was there. Assessor Mayfield explained that if the County did a full audit and if there was omitted property still on the premises, the Assessor could add the property at a later date.

Commissioner Meinert was troubled by the Assessor's reduction from \$4.4 million in the NOD to the suggested value of \$693,350 now. He understood that the Assessor's Office may not have the documentary evidence that would make them comfortable in doing an itemized valuation, but it was very clear from what Assessor Mayfield said about the lack of any inventory from Tavitac, the lack of any real rebuttal by Tavitac in any of Goff's three communications protesting the valuation where he did not even suggest that there was a difference in inventory and submit Tavitac's inventory, that the Assessor had to value this based on the best information that she could get from wherever. He felt that Assessor Mayfield evidently thought that she had good information when she sent him the NOV for \$4.4 million. That was what bothered him about accepting such a large reduction from that number. The burden of proof was on the Petitioner who had not provided any proof whatsoever that the \$4.4 million was incorrect.

Commissioner Albritton discussed her apprehension about accepting anything that the Petitioner had presented as accurate or correct. She wanted to be sure as the County moved forward that it could win at any stage. The BIA numbers were very strong with supporting documentation.

Freier asked the Board to keep in mind that this was the 2010 valuation. That did not mean that the County could not research omitted taxes from previous years. She was requesting copies of Tavitac's tax returns to the State of Colorado, Department of Revenue, under all of their entities' names, of which there were several. The Assessor's Office was still doing extensive research in other areas. Deganhart added that even for 2010 if the Assessor's Office went out and did a site visit and found more items that were not included in the analysis that Freier did, they could be added and there would be support for doing it.

Freier explained that the inventory used in this figure (*Assessor Exhibit A. 1-2*) was based on 2008 research done by the Assessor's Office. They were basically looking at beds, furnishings and kitchen stuff. Elk Mountain's website had a wealth of information about the property but it was no longer up. For those items that she could identify based on what she saw on the website, she went online to establish what the items were worth. Because she did not know the brand or quality of the items, she tried to be reasonable in the valuation placed on them even though Elk Mountain claimed that they were exclusive. There was no artwork, vehicles, etc. There was more discussion about omitted items and Assessor Mayfield advised the Commissioners that they could direct the Assessor's Office to go back and pick up omitted value.

Commissioner Albritton wanted to see the Assessor's Office go back and for a site visit to determine if there were omitted items.

M/S/P—*Motion was made by Commissioner Albritton and seconded by Commissioner Meinert to uphold the Assessor's value, which was a reduction in value, of \$693,350 for Schedule Number P000715 for Tavitac Corporation personal property. A roll call vote was taken on the motion with the following results.*

*Commissioner Meinert voted in the affirmative, reluctantly
Commissioner Albritton voted in the affirmative, reluctantly
Commissioner Padgett was absent*

Motion passed unanimously.

Commissioner Meinert closed the public hearing on Schedule Number P000715.

10:32 The Commissioners adjourned the special session:

OURAY COUNTY BOARD OF COUNTY COMMISSIONERS
OF OURAY, COLORADO, SITTING AS THE
OURAY COUNTY BOARD OF EQUALIZATION

ATTEST:

Lynn M. Padgett, Chair

K. Keith Meinert, Vice-Chair

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

Heidi M. Albritton, Commission Member