

<p><b>BOARD OF ASSESSMENT APPEALS, STATE OF COLORADO</b> 1313 Sherman Street, Room 315 Denver, Colorado 80203</p> <hr/> <p>Petitioner:</p> <p><b>VAIL ASSOCIATES, INC.,</b></p> <p>v.</p> <p>Respondent:</p> <p><b>EAGLE COUNTY BOARD OF EQUALIZATION.</b></p>	▲
<p>Attorney or Party Without Attorney for the Petitioner:</p> <p>Name: Stephanie M. Tuthill, Esq. Holme, Roberts &amp; Owen LLP</p> <p>Address: 1700 Lincoln Street, Suite 4100 Denver, Colorado 80203-4541</p> <p>Phone Number: (303) 861-7000</p> <p>Attorney Reg. No.: 15276</p>	<p><b>Docket Number: 31483</b></p>
<p><b>ORDER</b></p>	

**THIS MATTER** came to the Board’s attention on the filing of the parties’ status reports. Having reviewed the Board’s file on the matter and being duly advised upon the premises, the Board makes the following findings of fact and enters the following order:

**FINDINGS OF FACT:**

This matter is on remand from the Court of Appeals after entry of the Colorado Supreme Court’s decision in Board of County Commissioners v. Vail and Associates, Inc., Case No. 98SC869. The Supreme Court reversed the Colorado Court of Appeals, which had affirmed the final decision of the Board, dated January 16, 1997.

The Board’s January 16, 1997 decision held that the Petitioner’s possessory interests located in Eagle County, Colorado were not taxable under section 39-3-136, C.R.S. (1996). The Supreme Court held that section 39-3-136 was unconstitutional and remanded the matter back to the Board.

On remand, the parties disagree over the issues on remand the Board is required to address. The Petitioner contends that the Board should determine its equal protection argument raised in the original proceedings conducted by the Board. See transcript taken December 18, 1996 at pp. 42-44 (Petitioner's counsel argues equal protection).

By contrast, the Respondent contends that no issues remain for the Board's determination on remand. In the alternative, the Respondent contends that if an equal protection issue remains for Board determination, briefs should be ordered due before the Board determines the issue.

The Board is not convinced that it has jurisdiction to decide the equal protection issue raised by the Petitioner. See Board Order dated January 16, 1997, p. 3, para. No. 5. At the same time, however, the Board acknowledges how divisive this docket has been and the need to have a complete record on which to base a decision in the event either party is aggrieved after remand proceedings are completed and a second judicial review is sought.

Initially, at least two cases appear to apply to the Petitioner's equal protection argument and the Petitioner's criticisms of the Respondent's possessory interest assessment practices: Araphoe County Board of Equalization v. Podoll, 935 P.2d 14 (Colo. 1997) and Nuttall v. Leffingwell, 193 Colo. 137, 563 P.2d 356 (1977).

The Board finds that an order requiring the parties to brief the Petitioner's equal protection argument, including by analyzing the applicability of the two cases cited herein, will foster the completion of the record and the justice and complete determination of the petition.

An order establishing a briefing schedule should be entered.

### **ORDER:**

The parties are hereby ordered to prepare and file briefs addressing equal protection as may be applicable to the above docket as follows:

- a. The Petitioner shall prepare and file an opening brief no longer than 30 pages in length, double-spaced, within 30 days of the date of this order,
- b. The Respondent shall prepare and file an answer brief no longer than 30 pages in length, double-spaced, within 30 days of the date of service of the Petitioner's opening brief, and
- c. The Petitioner may file a reply brief no longer than 18 pages in length, double-spaced, within 14 days of the date of service of the Respondent's answer brief.

The briefs shall address the two cases cited herein.

Upon receipt of all the briefs from the parties, the Board will promptly enter its decision.

DATED and MAILED this 16<sup>th</sup> day of May, 2001.

**BOARD OF ASSESSMENT APPEALS**

Karen E Hart  
Karen E. Hart

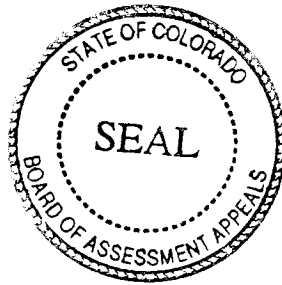
Mark R. Linné  
Mark R. Linné

This decision was put on the record

**MAY 16 2001**

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

Diane Von Dollen  
Diane Von Dollen



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